



WIKIMANIA 2006

The International Wikimedia Conference

Wikimmunity:

A Brief Tutorial on Section 230
as Applied to Wikipedia

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Overview

- What does § 230 do?
- Will § 230 do it for Wikipedia?

Not in presentation, but in paper:

- Where § 230 came from / legislative history
- Section 230 as more than “merely definitional”

For my esteemed co-panelists:

- Is § 230 too broad, or not broad enough?
 - i.e., does it place the optimal level of responsibility on the intermediaries?



What does Section 230 do?

- Section 230(c)(1):
 - “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”
- An Internet intermediary is not liable for harmful speech that it does not itself create or develop
 - Procedure: affirmative defense
 - 3-pronged test



Does Wikipedia meet the test?

- ✓ “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”
- 3

Prong 21:

- Section 230(c)(1) only shields against certain claims
- Covered: Defamation, negligent failure to remove defamatory content
- Not covered: IP infringement claims (right of publicity unclear)
- “publisher” vs. “distributor” liability
 - Barrett v. Rosenthal in CA Supreme Court



“information provided by another information content provider”

- ✓ “information” = anything
- 2 ✓ “provided” =
 - “furnished ... under circumstances in which a reasonable person ... would conclude that the information was provided for publication on the Internet”
3. “by another information content provider”
 - ICP = “any person or **entity** that is responsible, in whole or in part, for the creation or development of **information**” (230(f)(3))
 - What constitutes the Wikipedia / Foundation “entity”?
 - What level of generality should be applied to the term “information” in 230(f)(3)?



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Section 230 of the Communications Decency Act

From Wikipedia, the free encyclopedia

Section 230 of the [Communications Decency Act](#) of 1996 (a common name for Title V of the [Telecommunications Act of 1996](#)) is a landmark piece of protection for online service providers and users from action against them for the actions of others, stating in part that:

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another inform

Section 230 of the [Communications Decency Act](#) was not part of the original Senate legislation, but was added in conference with the [House](#), where and [Ron Wyden](#) (D-OR) as the Internet Freedom and Family Empowerment Act and passed by a near-unanimous vote on the floor. Unlike the more unconstitutional, this portion of the Act remains in force, and enhances free speech by making it unnecessary for ISPs and other service providers to customers' conduct. The act was passed in part in reaction to the 1995 decision in *Stratton Oakmont, Inc. v. Prodigy Services Co.*, which suggested customer content, thus became [publishers](#), and legally responsible for [libel](#) and other torts committed by customers.

Section 230 is controversial because several courts have interpreted it as providing complete immunity for ISPs with regard to the [torts](#) committed by (4th Cir. 1997), cert. denied, 524 U.S. 937 (1998), which held that Section 230 "creates a federal immunity to any cause of action that would make sei the service."

Courts across the country have upheld Section 230 immunity in a variety of factual contexts. *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003) (website o [Metrosplash.com](#), 339 F.3d 1119 (9th Cir. 2003) (Internet dating service provider was entitled to Section 230 immunity from liability stemming from th [America Online](#), 206 F.3d 980, 984-985 (10th Cir. 2000), cert. denied, 531 U.S. 824 (2000) (no liability for posting of incorrect stock information); *Blur*: 230 immunity from liability for the content of an independent contractor's news reports, despite agreement with the contractor allowing AOL to modify (2002) (Section 230 "immunizes providers of interactive computer services ... and their users from causes of action asserted by persons alleging ha [Livermore](#), 87 Cal.App.4th 684, 692 (2001) (city immune under § 230 from liability for public library's providing computers allowing access to pornogr denied, 122 S.Ct. 208 (2000) (§ 230 immunizes AOL for negligence).

Immunity under Section 230 requires that: (1) the defendant is a provider or user of an interactive computer service; (2) the cause of action treat the d at issue be provided by another information content provider.

This rule effectively protects online forums but has been criticised for leaving victims with no hope of relief where the true tortfeasors cannot be identi

Section 230's coverage is not complete: it excepts federal criminal liability and intellectual property law. 47 U.S.C. §§ 230(e)(1) (criminal) and (e)(2) (i 135 F. Supp. 2d 409 (S.D.N.Y. 2001) (no immunity for contributory liability for trademark infringement); *Perfect 10, Inc. v CCBill LLC* (No. CV 02-7624 l by Section 230); cf. *Carfano*, 339 F.3d 1119 (dismissing, inter alia, right of publicity claim under Section 230 without discussion).

Cases relying on the CDA include:

- [Zeran v. AOL \(1997\)](#)
- [Carafano v. Metsrosplash.com \(2003\)](#) (the Star Trek actress case)
- [Barrett_v_Rosenthal](#)

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 - What level of generality should be applied to the term “information” in 230(f)(3)?
 - What constitutes “development”?
 - No: facilitation, inspection / review, re-publication / selection, window dressing, minor edits
 - Yes: specific direction / encouragement