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How tech companies avoid content liability via Section 230

Section 230 of the Communications Decency Act protects website owners and social media companies from liability for hosting other people's content on their platforms. The provision's Good Samaritan clause shields websites from lawsuits if they make good faith efforts to curb harmful or "objectionable" content. Tech firms like Facebook and Google have argued against a rollback of the law because it enables them to take down such material without being sued for doing so. Critics of the provision argue for narrowed immunity.

Rolling back Section 230 is one of the primary legal levers that members of Congress and other policymakers have threatened to use as they attempt to regulate the tech industry. Lawmakers on both sides of the aisle, including Sen. Ted Cruz (R-Texas), have warned the Trump administration against including online liability language in the USMCA, saying the move could complicate their efforts to amend Section 230. Several 2020 Democratic candidates — former Vice President Joe Biden, Sen. Amy Klobuchar (D-Minn.), tech entrepreneur Andrew Yang and Rep. Tulsi Gabbard (D-Hawaii) — have also suggested that Section 230 undergo reforms.

In 2018, lawmakers passed legislation that added an exception to Section 230, making platforms liable for third-party content that facilitates prostitution and sex trafficking. In June 2019, Sen. Josh Hawley (R-Mo.) introduced a bill that would require major internet companies to certify they are moderating content in a politically neutral fashion to maintain Section 230 protections. Measures introduced by Rep. Paul Gosar (R-Ariz.) and by Rep. Ed Case (D-Hawaii) would eliminate liability protections for companies taking down "objectionable" material and for posting online vacation property listings that violate short-term rental regulations.

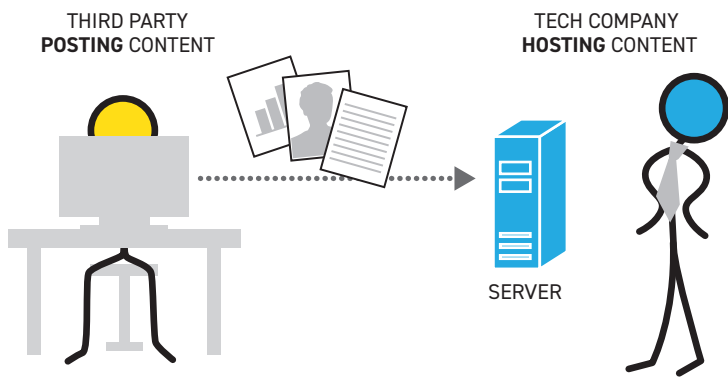
How Section 230 shields tech companies from legal liability of posted third-party content

1

A tech company hosts third-party content

Section 230 states: "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."

In practice, this means that websites like YouTube or Twitter are not held legally responsible for publishing text, pictures and videos submitted by platform users.

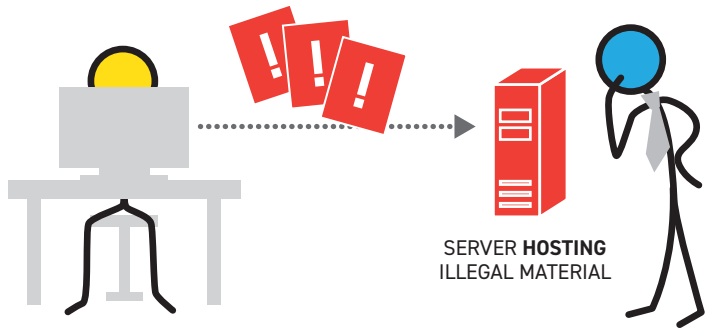


2

The content is not filtered prior to publishing

Website owners are not required to vet content submitted by users prior to publishing it online.

Websites that receive large volumes of user content may inadvertently host illegal material flagged by other users or law enforcement after the fact.



3

The tech company responds to court requests

When illegal content is brought to their attention, web companies must be responsive.

If law enforcement subpoenas a website and asks owners to help identify a user who submitted illegal content, the owners must comply by providing available evidence, such as IP addresses.

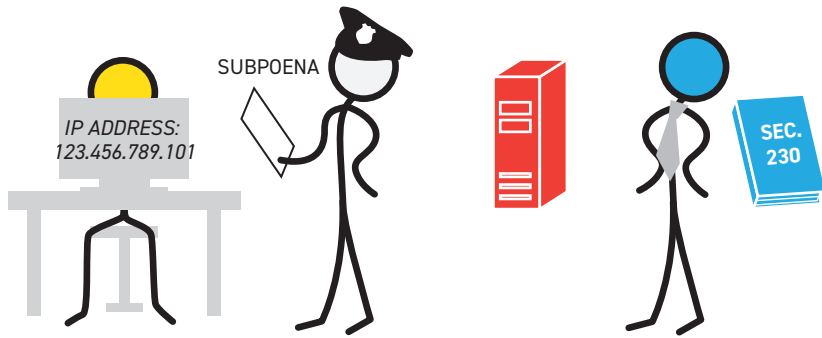


4

The tech company is protected from legal liability

If website owners are not significantly involved in creation of illegal content themselves, they cannot be held liable as the "speaker or publisher" of the information. Victims and prosecutors must pursue users that created content, not websites hosting it.

If tech companies moderate and decide which content should be removed because it may be viewed as offensive, harrassing or defaming, they may be subject to lawsuits.



Exceptions to Section 230 liability protection

Liability immunity provided by the provision does not apply to certain types of lawsuits. For instance, online service providers cannot claim Section 230 as a defense to federal criminal prosecutions or intellectual property claims. If a service provider helps develop unlawful content, they may also be subject to liability.



Federal
criminal
laws

Intellectual
property
laws

State law
"consistent" with
Section 230

Electronic
Communications
Privacy Act of 1986

Certain civil actions or state
prosecutions where conduct violates
federal laws prohibiting sex trafficking

Sources: U.S. Code Title 47. TELECOMMUNICATIONS Chapter 5. WIRE OR RADIO COMMUNICATION Subchapter II. COMMON CARRIERS Part I. Common Carrier Regulation Section 230. Protection for private blocking and screening of offensive material, Congressional Research Service report LSB10306 "Liability for Content Hosts: An Overview of the Communication Decency Act's Section 230"; Letter from union organization UNITE HERE submitted to House Speaker Nancy Pelosi; POLITICO staff reports

By Cristina Rivero and Tucker Doherty, POLITICO Pro DataPoint