

Generative AI and Section 230

Section 230 is the law that makes companies and users responsible for their own online speech, and not the speech of others. Section 230 is important to preserve the online spaces that we all use for freedom of expression. It does not protect companies that create harmful content.

Generative AI has created a grey area around when companies can receive Section 230 protection. On one end of the spectrum, there is harmful content generated by the user, for which the company **would** have Section 230 protection; and on the other end, there is content that the company materially contributed to in a harmful way, for which the company **would not** be protected.



The Gray Area

Finding the line where Section 230 applies can be hard. Typically, a user prompts an AI tool with a question or command to generate output. These outputs can come from existing sources on the internet, or they can be originally generated by AI. Section 230 would apply to the company if the AI simply aggregates existing information, as a search engine does. Section 230 would apply even if the outputs are defamatory or otherwise legally actionable, because that content **was already published elsewhere** on the internet. If the AI tool *fabricates* harmful content, however, then the AI is the creator of that content, and the company would not enjoy Section 230 protection.

Even with these anchors, there is a lot of grey area where outputs are a blend of AI and user input, and it is difficult to determine whether the AI materially contributed to what made the output harmful.

Courts Should Navigate These Gray Areas

While it may be tempting for Congress to step in to clarify where Section 230 applies in the context of generative AI, it would be exceedingly hard to write a law that would protect users' rights before courts have a chance to clarify these issues. Courts' case-by-case decisions will provide clearer guidance on how Section 230's current framework applies to unique factual scenarios.

Want more information? Please contact Assistant Director of Federal Affairs Maddie Daly at maddie@eff.org.



The Electronic Frontier Foundation is the leading nonprofit defending digital privacy, free speech, and innovation.

Learn More: <https://www.eff.org>