



ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Defending Freedom on the Electronic Frontier

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Best Practices For OSPs:

DEFAMATION AND THE COMMUNICATIONS DECENCY ACT

- OSPs may face liability based on content generated in whole or in part by users, including claims for defamation.
- Defamation is: (1) a statement about a person to another person, (2) which is a false statement of fact, and (3) which tends to harm that person's reputation.
- Section 230 of the Communications Decency Act protects OSPs from a broad range of legal claims based on the publication of information from a third party, including defamation.
- The law provides, "[n]o 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." Furthermore, "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."
- Section 230 immunity requires that (1) the defendant be a provider or user of an interactive computer service, (2) the cause of action treat the defendant as a publisher or speaker of information, and (3) the information be provided by another information content provider.
- Section 230 doesn't apply to federal criminal, intellectual property, or electronic communications privacy laws.
- An OSP can select and edit user content, but immunity may not apply if you significantly change the meaning of the material.
- Immunity may apply regardless of whether an OSP chooses to police content on its site.
- If someone threatens to sue your company for publishing content protected by Section 230, you can send a letter to explain that you likely have immunity. You might work with an attorney to develop a form letter for such situations.
- If you have any questions about Section 230 or whether you qualify for immunity under certain circumstances, you should check with a lawyer.