



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

454 SHOTWELL STREET, SAN FRANCISCO, CA, USA 415.436.9333 WWW.EFF.ORG

*EFF Staff Attorney Marcia Hofmann*

## Best Practices For OSPs:

### THE COMMUNICATIONS DECENCY ACT AND ACCUSATIONS OF DEFAMATION AND OTHER BAD BEHAVIOR

- 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 protect against federal criminal laws, federal intellectual property laws, or state and federal electronic communications privacy laws. There is a split of authority as to whether it protects against state intellectual property laws.
- An OSP can select and edit user content, but immunity may not apply if you significantly contribute to the meaning of the material or “develop” it.
- 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, send a letter explaining that your company has immunity, which may help avoid a lawsuit. A company should work with an attorney to develop a form letter for such situations.
- Even when you’re not legally required to police or remove disputed content, you should adopt internal policies for addressing complaints.
- Don’t promise to take down content if you don’t intend to do so. Follow any promises you make in your privacy policy or terms of service.
- If you have any questions about Section 230 or whether you qualify for immunity under certain circumstances, consult counsel.