

## Section 230 of the Communications Decency Act

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Internet businesses frequently ask law firms to prepare or evaluate Terms of Use (TOU), Terms of Service (TOS), privacy policies and other business practices in order to take advantage of the immunity provisions of [Section 230 of the Communications Decency Act \(CDA\)](#) as well as other statutory protection that may protect a web site from the content uploaded or posted by its users. In general, site providers, forum providers, moderators and other “intermediaries” who allow a third party to post content are not liable for allegedly defamatory posts by a user. That is, Section 230 provides a defense to liability, that is, a so-called “safe harbor” provision for an “interactive computer service” accused of being legally liable for alleged defamatory content posted by its users. With that said, however, there is a caveat because Section 230 does not always protect the provider or the “intermediary” from federal criminal law, intellectual property law and some electronic communications privacy law – these areas still pose liability and are worth having an experienced attorney conduct a comprehensive evaluation.

Below are some of the more frequently asked questions and answers (FAQs) about Section 230. Please note that these Section 230 FAQs are not to be construed as legal advice, nor should it be relied upon or otherwise substituted in place of seeking legal advice from qualified counsel.

**Question: Must an ISP, message board host, or other “intermediary” who allows a third party to post content to a site delete postings (e.g., content) that someone tells him/her are defamatory?**

**Answer:** No, ISPs and other “intermediaries” are not required to delete the alleged defamatory posting(s). [47 U.S.C. § 230](#) gives most ISPs and “intermediaries” the discretion to keep postings or to delete the postings, whichever they prefer, in response to claims by others that a posting is defamatory or libelous. However, it is recommended that the ISP or “intermediary” post Terms of User (TOU) or Terms of Service (TOS) that notify the third party or the entity alleging defamation of the ISP or “intermediary” right(s) to delete or not delete messages as the ISP or “intermediary” sees fit and that such terms have generally been held to be enforceable under law. [Section 230 of Title 47 of the United States Code \(47 USC § 230\)](#) was passed as part of the Communication Decency Act of 1996 and has been a valuable defense for Internet “intermediaries” ever since.

**What protection does Section 230 provide?**

Section 230 states that “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.” This federal law preempts any state laws to the contrary: “[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.” The courts have repeatedly rejected attempts to limit the reach of Section 230 to “traditional” ISPs, instead treating many diverse entities as “interactive computer service providers.”

### **Is Section 230 limited to defamation?**

While Section 230 has primarily been used to protect ISP and “intermediaries” against defamation claims, Section 230 has also been used to protect the ISP or “intermediary” from claims of negligent misrepresentation, interference with business expectancy, breach of contract, intentional nuisance, violations of federal civil rights, as well as claims of emotional distress and other claims. However, Section 230 protection does not extend to federal criminal law, intellectual property law violations (*e.g.*, infringement) and some electronic communications privacy law

### **How does Section 230 apply to bloggers?**

Bloggers can be both a provider and a user of “interactive computer services”. Bloggers are users when they create and edit blogs through a service provider, and they are providers to the extent that they allow third parties to add comments or other material to their blogs.

A blogger’s comments, entries written by guest bloggers, tips sent by email, comments by a moderator and other third party information provided through an RSS feed would all likely be considered information provided by another content provider. Accordingly, a site hosting this information would likely not be held liable for defamatory statements contained in it. However, if the “intermediary” selected the third-party information, no court has ruled whether this information would be considered “provided” by another provider. One court has limited Section 230 immunity to situations in which the originator “furnished it to the provider or user under circumstances in which a reasonable person . . . would conclude that the information was provided for publication on the Internet. . . .”

Section 230 seems to cover information a blogger has selected from other blogs or elsewhere on the Internet, since the originator provided the information for publication to the world on the Internet. However, no court has ruled on this.

### **Does an ISP or “intermediary” lose Section 230 immunity if it edits the third party content?**

Courts have held that Section 230 prevents the ISP from being held liable even if the ISP exercises the usual prerogative of publishers to edit the published material. And, ISPs may also delete entire posts. However, an ISP may still be held responsible for information provided in a commentary or through editing. For example, if the ISP edited the statement, “Bambi is not a criminal” to remove the word “not”, a court might find that the ISP has sufficiently contributed to the content to make it as its own. Similarly, if the ISP or “intermediary” include a hyperlink to content, but provide a defamatory comment describing the link, then the ISP or “intermediary” may not qualify for the immunity.

The courts have not clarified the line between acceptable editing and the point at which the ISP or “intermediary” becomes the “information content provider.” To the extent that edits or comment change the meaning of the information and the new meaning is defamatory, the ISP or the “intermediary” may lose the protection of Section 230.

**About Bambi Faivre Walters, PC:** Bambi Faivre Walters, PC is dedicated to providing intellectual property, technology and Internet counseling, and other strategic legal services. Our most common Internet Law concerns include the following:

- (1) Copyright concerns;
- (2) Domain Name concerns;
- (3) Free Speech, Defamation and Privacy concerns;
- (4) Web Site Development concerns;
- (5) Linking and Liability concerns;
- (6) Contract Law, Warranties, Fraud and other Internet legal lagniappe.

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