# Chapter 32
# Section 230 of the Communications Decency Act
## How ISPs and Users are Legally Exempted from Offensive Materials

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## ABSTRACT

*As a federal law, the 1996 Communications Decency Act (CDA) criminalizes any offensive content posted on a computer server that is operated by an Internet Service Provider (ISP). The law exempts ISPs and other "users" from any liability for the illegal content that is posted by third parties as long as they make a "good faith" effort to restrict the information. Plaintiffs, who claim to be victims of offensive messages and sued ISPs, consistently lost their court cases. District and appellate courts have upheld Section 230's provisions and Congress's authority to regulate in this area of online communication. The CDA applies to many forms of Internet communication: for example, websites, chat rooms, discussion forums, wikis, and blogs. This chapter reviews the law, examines how federal and state courts have interpreted the CDA regarding ISPs, describes under what conditions an ISP can be held responsible for illegal content, analyzes the "user" portion of the law, and presents the legal dangers of providing immunity for "users" who post illegal content online.*

## INTRODUCTION

In 1996 the U.S. Congress passed into law the Communications Decency Act (CDA) as part of the Telecommunications Act of 1996. The overall goal of the CDA was to encourage the growth of the Internet with minimal federal government restrictions. Section 230 of the law criminalizes any offensive content that is posted on an "interactive computer service" (Communications Decency Act U.S.C 47§230 2008). Offensive material includes information that is "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected…" (Section 230 (c)(2).

While trying to protect victims of offensive materials, Congress also added a provision to Section 230 that immunizes a "provider" or "user" of an

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interactive computer service from being defined as a publisher or speaker of the offensive material in question if a third party posted the content. Providers and users are exempt from liability provided they make a "good faith effort" to restrict any offensive content on their Internet servers. Congress defined information content provider as any person or entity that is responsible "whole or in part" for creating and developing online information. The law applies to the existing and emerging forms of online communication including Social Interaction Technologies (SIT).

Since the law's inception, victims of offensive material have unsuccessfully attempted to hold Internet Service Providers (ISPs) responsible for communication sent by third party users. The courts have upheld Section 230's provisions and Congress's intent to exempt ISPs and other "users" from any liability. The victims have had little, if any, recourse after the courts' decisions.

This chapter will explain what motivated Congress to pass Section 230 of the CDA into law. It will review several notable court cases at the federal and state levels where victims of online defamation have attempted to hold ISPs and "users" liable for the illegal content. The courts have been consistent in interpreting the law according to Congress's original intent, and as a result, plaintiffs have not been successful in their lawsuits against ISPs. The chapter will also point out under what circumstances an ISP may be considered an information content provider and not simply a publisher of information. It will conclude by pointing out possible future trends in how Section 230 impacts ISPs. The chapter will also show the dangers that lurk in cyberspace for users of social interaction technologies, especially minors.

## BACKGROUND

Social interaction technologies allow people from all walks of life and across vast geographic distances to communicate with one another. They operate at both the business and personal levels and reflect both the personal one on one interaction and impersonal communication. They can include sites related to a narrow interest about a specific theme (Magid & Collier, 2006). The advantages of SIT include democratizing the Internet so that anyone literally anywhere in the world with a computer and Internet connection can take part in some aspect of global communication and collaboration whether in a professional or personal capacity. The downside to SIT is the danger of individuals using these communication platforms to harm others with content that may be defamatory, lewd, obscene, and invade one's privacy.

Both adults and minors can be harmed. In an online environment, stalking, cyber-bullying, defaming, and scamming often spreads through SIT. The online world can be just as dangerous as the physical world. While Congress passed the CDA in 1996 to keep regulation of the Internet to a minimum so that the medium could "promote the continued development" and the "availability of educational and informational resources," lawmakers still wanted to protect victims from online offensive materials.

One of the main motivations for Congress to pass this legislation as part of the Telecommunications Act of 1996 was the decision by the New York Supreme Court in *Stratton Oakmont v. Prodigy Servicess Co* (1995). In *Stratton Oakmont* the Court held Prodigy Services liable for defamatory material that was posted on its "Money Talk" electronic bulletin board. Defamation defined by law as harming the reputation of an individual by making a false statement to a third party (Garner, 2000, p. 341). The Court ruled that as the publisher of the bulletin board Prodigy was responsible for all content and had to censor any offensive content. In drafting the law, Congress specifically referred to exempting publishers for any liability for offensive materials written by third party authors. Congress worried that holding publishers liable for content they did