

# Santa Clara University

## U.S. Content Moderation & Removal Law

Prof. Eric Goldman

<http://www.ericgoldman.org>

[egoldman@gmail.com](mailto:egoldman@gmail.com)

# Section 230

- **Section 230(c)(1): no liability for third party content**
  - Protects both publish/leave-up & don't publish/removal decisions
  - “Knowledge” & “editorial control” are irrelevant
  - INTERNET COMPANIES CAN STRUCTURE THEIR U.S. CONTENT MODERATION POLICIES HOWEVER THEY WANT
    - Globally unique solution
  - Services can (and do) adopt “house rules”
- **Section 230(c)(2): safe harbor for good faith filtering**

# Section 230 Exceptions (Selected)

- ECPA/state law equivalents
- (Federal) Intellectual Property
  - Federal copyright (DMCA): notice-and-takedown
  - Federal trademark: notice-and-takedown (?)
  - Federal trade secret (DTSA): Section 230 applies
  - State IPs: ???
- Federal criminal prosecutions
- Roommates.com:
  - “If you don’t encourage illegal content, or design your website to require users to input illegal content, you will be immune”
  - Partially develop content by “materially contributing to its alleged unlawfulness”
  - “Roommate is sufficiently involved with the design and operation of the search and email systems—which are engineered to limit access to housing on the basis of the protected characteristics elicited by the registration process”
- Promissory estoppel
- “False advertising”
- Failure to warn
- SESTA/FOSTA (proposed)

# More Section 230/Content Moderation Reading

- The Ten Most Important Section 230 Rulings (2017), <https://ssrn.com/abstract=3025943>
- Online User Account Termination and 47 U.S.C. §230(c)(2) (2012), <https://ssrn.com/abstract=1934310>
- The Implications of Excluding State Crimes from 47 U.S.C. § 230's Immunity (2013), <https://ssrn.com/abstract=2287622>
- Sex Trafficking Exceptions to Section 230 (2017), <https://ssrn.com/abstract=3038632>
- Balancing Section 230 and Anti-Sex Trafficking Initiatives (2017), <https://ssrn.com/abstract=3079193>
- Unregulating Online Harassment (2010), <https://ssrn.com/abstract=1558681>
- The Regulation of Reputational Information (2011), <https://ssrn.com/abstract=1754628>
- Search Engine Bias and the Demise of Search Engine Utopianism (2006), <https://ssrn.com/abstract=893892>
- And, of course, <http://blog.ericgoldman.org>