

Online Safe Harbors

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Konomark - Most rights sharable.

Two safe harbors for third-party content

- **§230**
 - Defamation and other state law claims
 - Applies automatically
- **DMCA**
 - Copyright infringement
 - Requires special set-up to use

47 U.S.C. §230

"Protection for Good Samaritan blocking and screening of offensive material":

"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."

"No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

Who is protected?

Any "interactive computer service" is protected.

"interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server

This includes blogs, forums, listservs, etc.

Who is protected?

The original author of the defamatory or otherwise actionable content is not protected.

What claims are barred?

Barred:

- Defamation
- Privacy torts
- Other state law civil claims

Not barred:

- Copyright
- Trademark
- Criminal law

Unclear:

- Right of publicity

Bounds of immunity

Okay:

- Passively hosting 3d party content.
- Screening posts/comments prior to publication.
- Selectively removing posts.
- Selectively publishing posts.
- Encouraging third parties to submit.
- Edits that don't materially alter the meaning.

DMCA Safe Harbor

- The safe harbor provisions at §512 are one of two of the most salient aspects of the Digital Millennium Copyright Act
- The other is the anti-circumvention provision.

17 U.S.C. §512(c)

Administrative requirements:

- (1) designate an agent to receive takedown notices
- (2) adopt and communicate to users a copyright infringement policy
- (3) properly comply with a takedown when received

17 U.S.C. §512(c)

Substantive requirements:

- You don't have actual knowledge that there is infringing content on your servers or know surrounding facts making the infringement apparent
- You don't receive any financial benefit directly attributable to the infringing activity, if you have the ability to control the activity
- You act expeditiously to remove or disable access to the infringing material upon obtaining actual knowledge or awareness of infringement or after getting a proper takedown notice