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## Recent 47 USC 230 Cases

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# 47 USC 230 Overview

- 47 USC §230(c)(1): “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”
- Elements of defense:
  - “Provider or user of an interactive computer service”
    - ICS = “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions”
  - “Treated as a publisher or speaker”
    - Excludes federal criminal law, [federal] IP laws and ECPA
  - “Provided by another information content provider”
    - ICP = “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service”

# Does 230 Preempt Claims re Marketing Reps?

- **Arguments against:**

- Vendors should take responsibility for the words they pick
- Vendors can misrepresent with impunity for economic benefit

- **Arguments for:**

- Third party content/actions may make marketing representations false
- Congress overturned *Stratton Oakmont* holding Prodigy's marketing representations against it

- **Older precedent:**

- Anthony v. Yahoo! Inc., 2006 WL 708572 (N.D. Cal. March 17, 2006)
  - 230 No: Yahoo disseminated expired dating profiles as if they were still current
- Prickett v. infoUSA, Inc., 2006 WL 887431 (E.D. Tex. Mar. 30, 2006)
  - 230 Yes: information vendor verified information

# Does 230 Preempt Claims re Marketing Reps?

- Recent cases:

- Doe v. SexSearch.com, 2007 WL 2388913 (N.D. Ohio Aug. 22, 2007)
  - 230 Yes: Users were over 18
- Mazur v. eBay Inc., 2008 WL 618988 (N.D. Cal. March 4, 2008)
  - 230 Yes: auction houses were screened
  - 230 No: live bidding is "safe," is conducted against "floor bidders" and involves "international" auction houses

# Does 230 Protect Retailing?

- Argument for: retailing is just another way to “publish” third party content
- Arguments against:
  - Statute only covers “publishing” and “speaking”
  - Offline fulfillment should be outside 230
  - Third party vendors may be so involved in sales
- Recent cases:
  - Almeida v. Amazon.com, Inc., 2006 U.S. APP. LEXIS 17989 (11th Cir. July 18, 2006)
  - Federal Trade Commission v. Accusearch, Inc., 2007 WL 4356786 (D. Wy. Sept. 28, 2007)
  - Curran v. Amazon.com, Inc., 2008 WL 472433 (S.D. W.Va. Feb. 19, 2008)

# Does 230 Preempt State IP Claims?

- Argument for: if state IP laws aren't preempted, then state law conflicts curb nation-wide behavior
- Argument against: 230(e)(2) says "Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property."
- Recent cases:
  - Perfect 10 v. ccBill, 481 F.3d 751 (9th Cir. 2007)
  - Doe v. Friendfinder Network, 2008 WL 803947 (D. N.H. March 27, 2008)