



Communication Law & Ethics

RU COMS 400 Unit 10

Digital Media law

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Class web site:

revolutionsincommunication.com/law

On Track: Unit 10

- Read the rest of Section 10 on web site
- Take quiz 10
- Prepare for moot court

Structure of this section:

- CDA Section 230
- De-platforming
- Privacy
- Antitrust

Laws & regulations

- Electronic Comm s. Privacy Act 1986 (limited government surveillance of computer comm)
- Telecommunications Act 1996 /
Communications Decency Act 1996
 - Title 47, **Section 230** CDA.
- Digital Millenium Copyright Act 1998
 - Exception to Section 230 / notice & takedown
- Sex Trafficking Law (FOSTA) 2018
 - Also an exception to Section 230
 - Craig's List personals shut down
- FCC net neutrality, 2015, 2017, 2023, 2025

Early Cases

- **Cubby v Compuserv – 1991**
 - (didn't edit)
- **Stratton Oakmont v Prodigy – 1995**
 - (did edit)
- **Reno v ACLU – 1996 -- CDA**
- **Zeran v AOL – 1997 -- AOL didn't have to remove content despite libel**

Direct regulation of social media

- **Moddy v Netchoice** -- 2024
 - Texas & Florida laws on bans & content regulation
 - Unanimous court says 1A too important
- **Prager v Google** – 2020
 - YouTube can categorize Prager with content warnings
 - The First Amendment right falls with YouTube
- **Gonzales v Google** – 2023
 - Algorithms protected by Section 230

Gov't influence on social media

- **Murthy v Missouri**
 - **Issue:** it is a violation of the First Amendment for the Biden administration to attempt to influence social media in areas of public health disinformation concerns?
 - Supreme Court says “routine communications” reframed as requests for censorship
 - Also said no showing of harm, hence no standing

How different is social media?

- *In Moody v Netchoice, 2024, Justice Samuel A. Alito, Jr asked: “Let’s say YouTube were a newspaper. How much would it weigh?”*
- *One answer, according to The Washington Post: The 7.2 million videos published each day in 2023 contain a total of about 5 billion words. In print, just a single copy of the words alone would weigh 50,000 pounds*

Traditional media



Top down systems
Run by experts.
Relatively scarce
Allow ltd public access,
Difficult to copy

Broadcasters and
printing companies are
entirely responsible for
all content they produce
or reproduce.



Digital media -- crowd sourced systems with cheap, abundant content, easily accessible, freely copied, permanently recorded, and published without filters, editing or responsibility.



Fully protected and indemnified

- Digital media have full First Amendment protection, like print media, and are not regulated like broadcast media. (Reno v ACLU, 1996).
- Digital / social media (“internet service providers”) are indemnified (not responsible) for user speech under Title 47 Section 230, upheld in Zeran v AOL, 1997)



Digital jurisprudence

- Is the marketplace of ideas broken?
- Are the tech giants too powerful?
- Should digital media be considered common carriers, regulated media (like broadcasting) or fully protected media (like print newspapers / magazines)?
- Do people have the right to privacy and to control information about them that is gathered by social media?



Early days of the internet

- In the early 1990s, the internet was accessed through “Internet Service Providers” (ISPs). These were phone companies or similar firms operating as common carriers. Clearly, they were no more responsible for the content of the Internet than the phone company would be for the content of a regular voice phone call.

To be safe, they did not edit

- **If the ISP did not edit**, and took a “hands off” approach, they were not considered responsible for any content (Cubby v Compuserv 1991)
- **If they did edit**, they were responsible (Straton Oakmont v Prodigy, 1995)
- In 1995, the internet was a frontier where it was possible to get away with virtually anything

Perhaps most alarming ...

- Children's easy access to obscene and indecent content was the motive behind the Communications Decency Act of 1996.
- It was challenged in *Reno v ACLU*, 1997



Reactions to CDA 1996

- The CDA provoked the Declaration of the Independence of Cyberspace by the late Grateful Dead lyricist John Perry Barlow—perhaps the ultimate expression of internet exceptionalism:
- “Governments of the Industrial World ... You are not welcome among us.... Cyberspace does not lie within your borders.”



Reactions to CDA & Reno, 1997

- “The best possible way to protect our children is to maintain a strong democracy. Democracy is not just about voting. It’s about citizens who are free to communicate with one another.”
- Howard Rheingold, in court testimony

Reno v ACLU, 1997

“We are persuaded that the CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech...

The special factors ... justifying regulation of the broadcast media ... are not present in cyberspace. Thus, these cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to the Internet.” Opinion by Justice John Paul Stephens

Reno v ACLU, 1997

Those special factors included:

- The history of extensive Government regulation of broadcasting, see, *e. g.*, ***Red Lion Broadcasting Co. v. FCC***, [395 U. S. 367](#), 399-400;
- The scarcity of available frequencies at its inception, see, *e. g.*, ***Turner Broadcasting System, Inc. v. FCC***, 512 U. S. 622, 637-638;
- and (broadcasting's) “invasive” nature, see ***Sable Communications of Cal., Inc. v. FCC***, [492 U. S. 115](#), 128.”

But part of the CDA survived

- The "safe harbor" provision in Section 230 protecting Internet service providers from being liable for the words of others (3rd party speakers) – Good Samaritan
- *“Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.” - US Supreme Court Justice John Paul Stephens*

The Magna Carta of the internet

- Section 230 of the Telecommunications law (US Code Title 47) begins by saying the internet is *“an extraordinary advance in the availability of educational and informational resources to our citizens.”*
- *Protecting the internet from liability for 3rd party communication is what Section 230 does.*

Title 47 Section 230

- *(1) Treatment of publisher or speaker — 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.*
- *(2) No provider ... shall be held liable ... for action voluntarily taken in good faith to restrict access to ... obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable... material...*

Zeran v AOL 1997 test case

- Kenneth Zeran sued after t-shirts linking him to the Oklahoma City bombing of 1995 were advertised on AOL. Zeran sued for libel but AOL was held NOT responsible.
- The Zeran case upheld Section 230, but in a way that was unexpected; Zeran let AOL do nothing.

After Zeran, no edits required

- As the Internet became increasingly populated with user-generated content, the issue of moderation became a major problem, since some relatively simple non-protected content (for example libel, private facts, pornography, incitement to violence) did not have to be edited.

Exceptions to CDA 230

- Federal criminal law (Fair Housing Act)
- Copyright law DMCA notice & takedown
- State law
- ECPA wiretap law -- unlawful not only to intercept private communications but also to disclose information knowingly obtained through unlawful interception.
- Sex trafficking law (FOSTA)
 - Fight Online Sex Trafficking Act of 2017
 - Mostly minors & fraud but Craig's List shut down personals

Defenders of the law say:

SECTION 230: THE “MOST IMPORTANT LAW IN TECH”

Section 230 of the Communications Decency Act is regarded as “the most important law in tech” because it promotes “the continued development of the Internet” by averting the risk of unpredictable liability for online services – which would have an “obvious chilling effect” on speech.

However, if liability protections are weakened:

Lost every decade:

↓ **\$440B** GDP
↓ **4.25M** jobs



71%

of investors would be uncomfortable investing in intermediaries

81% reduction in interest by angel investors

Section 230 enables:

100,000+

personnel in the Internet industry to engage in content moderation



CRAIG NEWMARK'S
CRAIGCONNECTS



ELECTRONIC FRONTIER
FOUNDATION

PRESENT:

CDA 230 is a federal law that prevents websites, blogs, and forums from being held responsible for the speech of their users.

CDA 230

"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."

THE MOST IMPORTANT LAW PROTECTING INTERNET SPEECH

SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996
— 47 USC § 230

CDA 230 protects web services and social networks, such as Facebook, Twitter, and blogs, from being held legally responsible for hosting or facilitating online speech. Without it, service providers would become targets for individuals, governments, and corporations who want to limit free expression. Under CDA 230, service providers are categorically protected against most legal claims based on what their users say or do, which means that they can't be forced to censor user content.

*NOTE: CDA 230 DOESN'T APPLY TO INTELLECTUAL PROPERTY CLAIMS AND FEDERAL CRIMINAL LAW.

WHAT IF THERE WERE NO CDA 230 TO PROTECT ONLINE SPEECH?

BLOGS AND SOCIAL MEDIA WOULD LOOK RADICALLY DIFFERENT.



Sites like Huffington Post, Facebook, Twitter, Google+,



Innovation would be diminished as new social

Gonzales v Google

- **Gonzales v Google** (argued Feb 21, 2023)
 - **Issue:** Whether Section 230(c)(1) of the Communications Decency Act immunizes interactive computer services when they make targeted recommendations of information provided by another information content provider, or only limits the liability of interactive computer services when they engage in traditional editorial functions
- **Holding:** plaintiffs' complaint was barred by Section 230 of the Communications Decency Act — is vacated, and the case is remanded for reconsideration in light of the court's decision in *Twitter, Inc. v. Taamneh*.
- **Judgment:** Vacated and remanded in a per curiam opinion on May 18, 2023.
 -



Twitter v. Taamneh (argued Feb 22, 2023)

- Issue: Whether social media companies can be sued for allegedly aiding and abetting an act of terrorism if they have hosted unrelated content expressing support for the violence.
- **May, 2023** Supreme Court ruled that social media companies did not “aid and abet” an ISIS terrorist attack simply because their algorithms recommended ISIS content or they failed to remove content that recruited members and spread terrorist messages.



Arguments for Section 230

- Encourages free speech – Arab Spring, Me Too, BLM
- Without it, blogs could be pressured to silence unpopular opinions
- Sites like Huffington Post, Facebook, Twitter could be sued every time a user crossed the line
- Innovation would be diminished
- Real-time posts would be limited



Arguments against Section 230

- Critics argue that Section 230 has gone too far, and that social media should at least be required to take down content that is violent, defamatory or invasive.
- Now that the companies originally protected by Section 230 are media giants, they are far more capable of taking responsibility for what it published on their sites by third parties.

WDBJ murder videos



- Two WDBJ Roanoke reporters killed
- on live TV Aug. 26, 2015 -- Alison Parker,
- Adam Ward
- Andy Parker, father of one victim, working with [HONR Network](#) combat offensive online material and hoaxes spread after tragedies
- "The HONR Network who worked long hours flagging videos so that I was spared. When finding offensive content, HONR volunteers would click the report button below each video and check the appropriate box explaining how the video violates [YouTube's Community guidelines](#).
- Although hundreds of videos have been taken down due to their diligence, they are often stymied, even with an enforceable copyright."



Reforming Section 230 :

- **Most proposals would carve out content exceptions**
- **Stop false health information** (Sen. Amy Klobuchar (D-MN) July 2021)
- **Structure of the law:** Allow platforms to be held accountable (Sen, Mark Warner, D-Va) February 2021
- **Stop harmful algorithms:** (Sen Marco Rubio, R-Fla) June 2021



**Where do we draw the line?
Is this 2016 meme criminal? Or free speech?**

Douglas Mackey sentenced to seven MONTHS in prison for election interference in 2023, appealing conviction in 2024.

Justice Dept sez:

- Mackey had established an audience on Twitter with approximately 58,000 followers. A February 2016 analysis by the MIT Media Lab ranked Mackey as one of the most significant influencers of the then-upcoming presidential election.
- Between September 2016 and November 2016, Mackey conspired ... to disseminate fraudulent messages that encouraged supporters of presidential candidate Hillary Clinton to “vote” via text message or social media, which was legally invalid.



Harvard Law Review sez:

- That Mackey's primitive meme — sandwiched between thousands of his other tweets — could have fooled American voters into believing that the 2016 election allowed voting by text does indeed strain belief. The government relied on conversations Mackey had with his coconspirators to show conspiratorial intent

Anti-Conservative Censorship

- [Freedom's Watch](#) in 2018 sued Google, Facebook, Twitter, and Apple, alleging antitrust violations for using their positions to create anti-conservative censorship. The case was dismissed by the [D.C. Circuit Court of Appeals](#) in May 2020, with the judges ruling that censorship can only apply to First Amendment rights blocked by the government and not by private entities.
- This is similar to the fight over Tx HB20 and NetChoice v Paxton

Deplatforming

Jan 8, 2021 – Twitter & Facebook permanently

ban Donald Trump and others two days after the attack on the US Capitol saying that he promoted the insurrection

Trump sued, saying 1st Amendment rights were violated

But Twitter & FB are private companies, and they are the ones with the rights in this case



Deplatforming – Prager v YouTube

- Is YouTube a public forum? 2020 case
- PragerU has a First Amendment right to lie about climate change and deny that straight people get HIV, but does NOT have a right to make these claims on YouTube, the 9th US Circuit Court said.
- PragerU claimed that YouTube should be considered a state actor or public forum. The court disagreed.
- Similar to Trump claim that FB and Twitter were state actors because of Section 230.

Deplatforming - Prager v YouTube

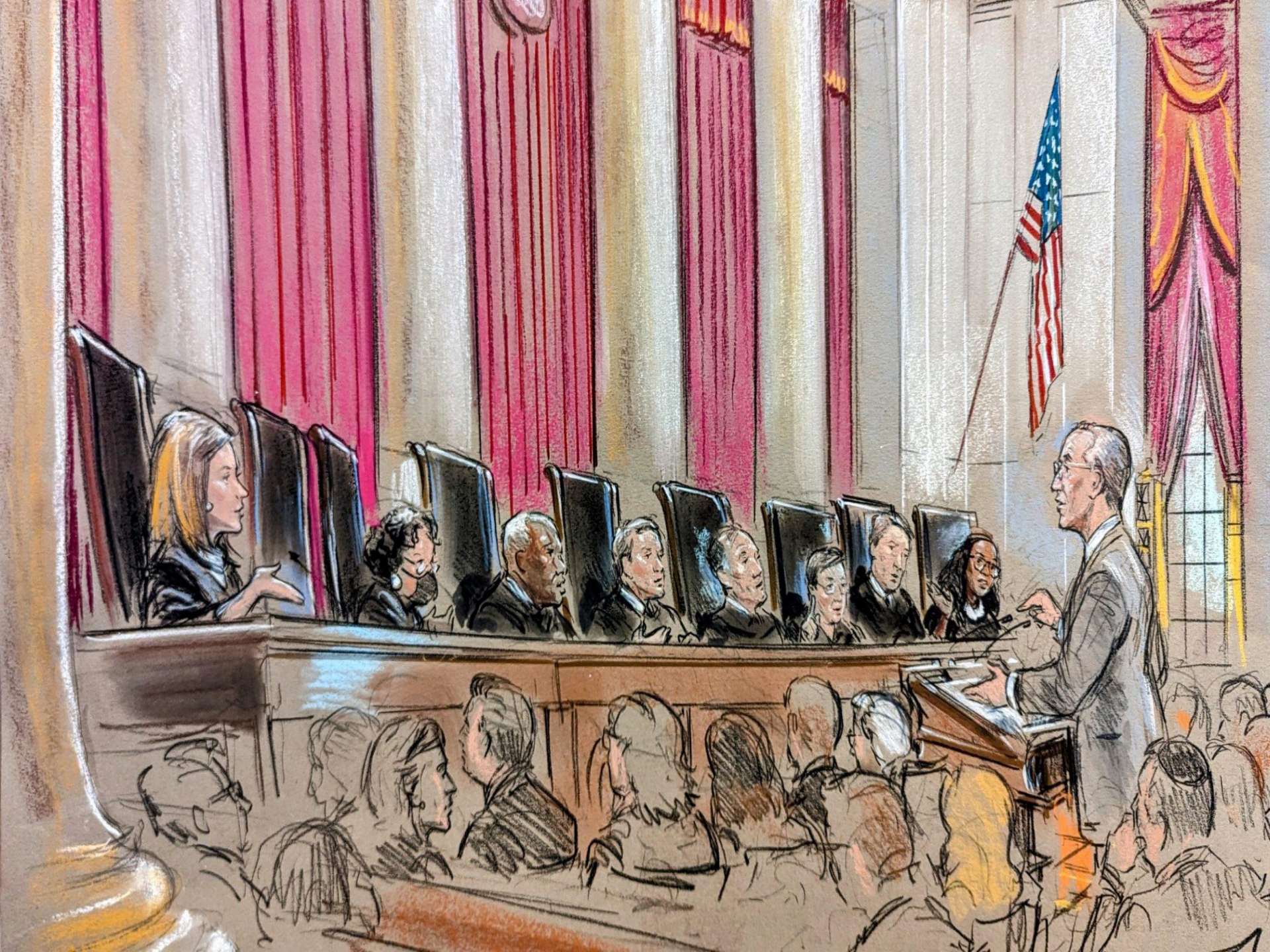
- The answer to bad content moderation isn't to empower the government to enforce moderation practices. Rather, the answer (as EFF told the court) is for users' platforms to adopt moderation frameworks that are consistent with human rights, with clear take down rules, fair and transparent removal processes, and mechanisms for users to appeal take down decisions. - EFF Amicus Prager v YouTube

Deplatforming (EFF reaction)

*The decisions by Twitter, Facebook, Instagram, Snapchat, and others to suspend and/or block President Trump's communications via their platforms is a simple exercise of **their** rights, under the First Amendment and Section 230, to curate their sites. We support those rights.*

Deplatforming (EFF reaction 2)

Nevertheless, we are always concerned when platforms take on the role of censors, which is why we continue to call on them to apply a human rights framework to those decisions. ... Going forward, we call once again on the platforms to be more transparent and consistent in how they apply their rules—and we call on policymakers to find ways to foster competition so that users have numerous editorial options and policies from which to choose.



Murthy v Missouri

- In 2022, Elon Musk bought Twitter and significantly altered the way it operated. He also selected specific independent journalists to release the "Twitter Files", a series of internal communications that Musk and the journalists assert show that parts of the U.S. government were working with Twitter to suppress free speech related to election fraud and misinformation about the pandemic

Moody v Netchoice 2024

- In February 2021, Florida governor [Ron DeSantis](#) proposed a state bill that would prevent interactive service providers from deplatforming candidates for running for office, citing the removal of the [Parler](#) app from the Google and Apple app stores as an example of such restrictions.^[7] This led to the introduction of Florida State Bill (SB) 7072, which the state legislature passed in May 2021.



Moody v Netchoice 2024

- In the July, 2024 Supreme Court decision, Justice Kagan said the lower courts had not performed a proper First Amendment analysis. The case was remanded and injunctions against the Florida and Louisiana laws remained.
- First Amendment rights were held to protect Netchoice / big tech and not state governments under a common carrier doctrine.

Privacy law introduced 2024

- American Privacy Rights Act
- National baseline for how a broad swath of companies can collect, use and transfer data on the internet
- Requires companies to gather only as much information as they need to offer specific products to consumers
- Lets people access and delete their data and transport it between digital services.

Previously Va & Calif privacy laws

- **California** - provides a private right to bring lawsuits against creators of nonconsensual deepfake pornography and outlaws manipulated video of politicians within 60 days of an election.
- **Virginia Consumer Data Privacy Act, (VCDPA)** passed in 2021, has provisions like Europe's GDPR and the CPRA
- **“Sensitive personal information” protected**, such as social security number, driver license number, and financial account number, also racial or ethnic origin, religious beliefs, union membership, the contents of a consumer's email and text messages (unless the business is an intended recipient), genetic and sexual orientation.
- Consumers will have the right to request limitations on the use and disclosure of that information

Weaker than EU privacy law

- **EU General Data Protection Regulation**
- Systematic legal approach in March 2014 with the GDPR.
- Primary aim is to enhance individuals' control and rights over their personal data and to simplify the regulatory environment for international business.
- It establishes lawful ways to collect information, data protection and security guidelines, and an individual right of informed consent, access and correction.

EU protects digital privacy

● What is the General Data Protection Regulation?

Protecting **your personal data rights** in the European Union


**What are
my rights?**

THE RIGHT TO

- ▶ information
- ▶ access
- ▶ rectification
- ▶ restrict processing
- ▶ erasure
- ▶ object
- ▶ an explanation
- ▶ data portability

**How can I
exercise
my rights?**



**What to do if my rights are
violated and my data misused?**

file a **complaint**

file a **case in court**

get **NGO representation**


**ENTITIES HOLDING
MY DATA**

● Conclusion

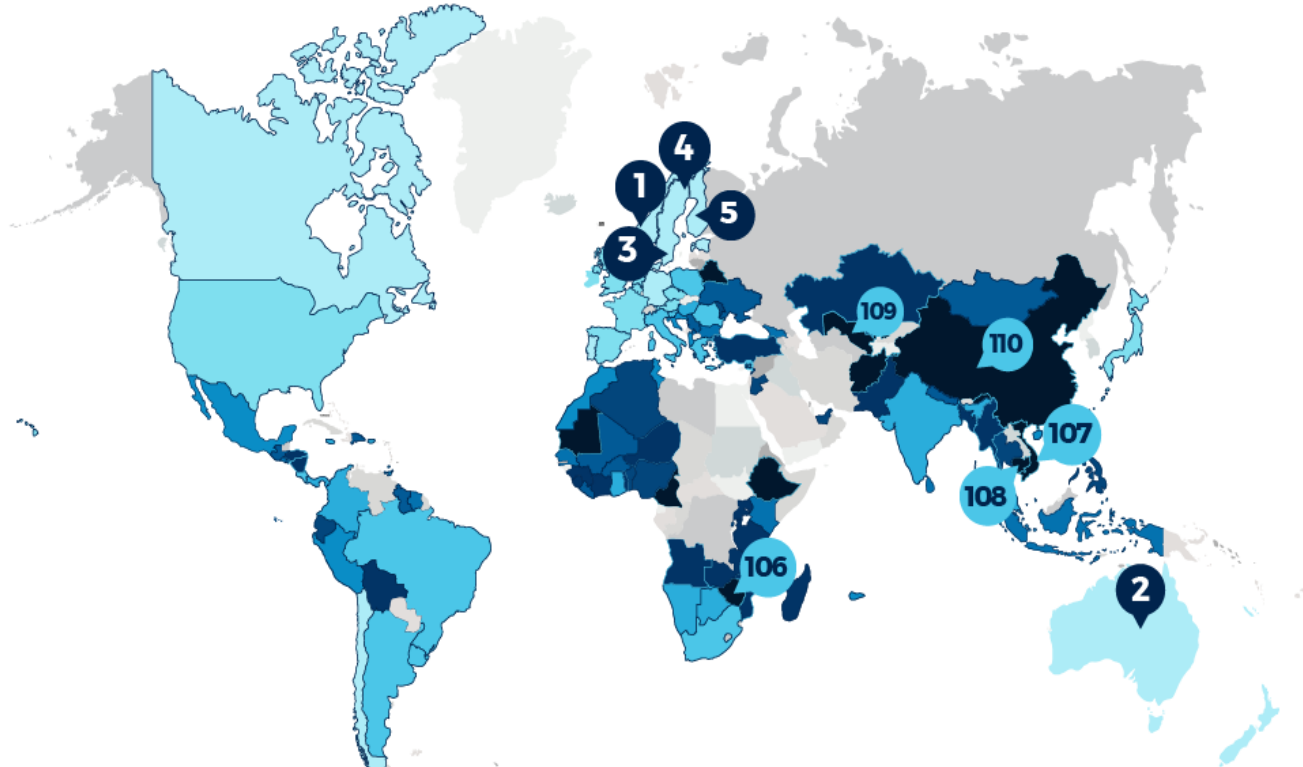
Take control, exercise your rights!

Why does EU protect privacy

- Long and tragic history
- Nazis used personal information to target Jewish populations
- Stasi (east German communist police) kept biased records; after the fall of the Berlin Wall, many became public.
- Less concern with individual and corporate freedom, more concern with rights

Internet privacy rankings

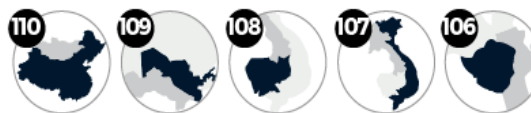
INTERNET PRIVACY BY COUNTRY



BEST COUNTRIES FOR INTERNET PRIVACY



WORST COUNTRIES FOR INTERNET PRIVACY



US law overrules GDPR

- Shortly after the GDPR became settled law, the U.S. Congress enacted the Clarifying Lawful Overseas Use of Data (CLOUD) Act in 2018.
- Federal law requires U.S.-based software companies and IT service providers to ensure that authorities can have access to all stored data, including data stored on foreign servers.
- U.S. service providers don't have to tell customers when authorities request their data.

Right to be forgotten

- EU case: Mario Costeja González v. Google Spain.
- Established right to “de-link” private information from search engines
- “Red Kimono” US case, Melvin v Reid, 1931, idea was rehabilitation



Digital structure: Net neutrality

- Net neutrality involves the principle that internet service providers (ISPs) be compelled to operate without discriminating against consumers. The argument is that they are essentially “common carriers” and should charge equally for the same services to everyone. The fear is that they can selectively throttle back content
- Obama FCC approved, Trump FCC reversed, Biden FCC supports net neutrality
- US Telecomm Assoc v FCC, 2016 supported Obama FCC

Search engine rankings

- Search King v Google, 2003 and KinderStart v Google, 2006 — were lawsuits brought by companies who claimed to be harmed by Google's changing search rankings.
- “PageRanks are opinions of the significance of particular web sites as they correspond to a search query,” said a federal court. “The Court simply finds there is no conceivable way to prove that the relative significance assigned to a given web site is false.”
- Not that there is a free speech right to algorithms per se, but that harm can't be determined in a suit



Antitrust (or competition) law

- Anti-competitive business practices designed to hold on to monopoly markets are not permitted under US and European anti-trust (anti-monopoly) laws.
- EU laws are tougher than those in the US. **In June, 2018, EU fined Google 4.3 billion Euros for favoring its own software on Android phones.**

House Judiciary, Oct 2020:

- Google, Apple, Amazon and Facebook “have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons.” By controlling access to markets, the report said:
- *... these giants can pick winners and losers throughout our economy. They not only wield tremendous power, but they also abuse it by charging exorbitant fees, imposing oppressive contract terms, and extracting valuable data from the people and businesses that rely on them.*



US anti monopoly laws easy

- To win an antitrust case, the government needs proof not only of market dominance and anticompetitive behavior, but also of economic harms, including higher costs for consumers
- But how do you prove economic harm to consumers from free social media products?



Thank you



Trends

- SC cases may upend parts of Section 230
- Regulations are coming to US law
- EU law leading in privacy protection, antitrust
- End of borderless international communication
- Cheap speech posing problems with libel (eg Alex Jones case)
- Social media censorship is a major issue
 - Effects cut both ways on political spectrum
- Defamation is different online; some argue that trolling (and worse) are “acts” not “speech”
- Some argue that human dignity may need more protection if the traditional marketplace of ideas is broken by digital media

Moody v NetChoice (23 –24)

- Texas & Florida laws on social media bans (Texas HB 20 in Fed appeals court)
 - HB 20 aims to expose social media platforms including Meta, YouTube and Twitter to new private lawsuits, as well as suits by the state's attorney general, over the companies' decisions to remove or reduce the visibility of user content they deem objectionable.
- Conservatives think they are barely allowed to exist on social media platforms

Sandy Hook network responds

- HONR - Non-profit founded in 2014 by Lenny Pozner, parent of a 2012 Sandy Hook victim
- Advocates for survivors & victims of mass casualty, and highly publicized, violent incidents, who were revictimized online by conspiracy theorists

Recently ...

Lawsuit over outright wholesale copying books via AI - (Wired magazine)

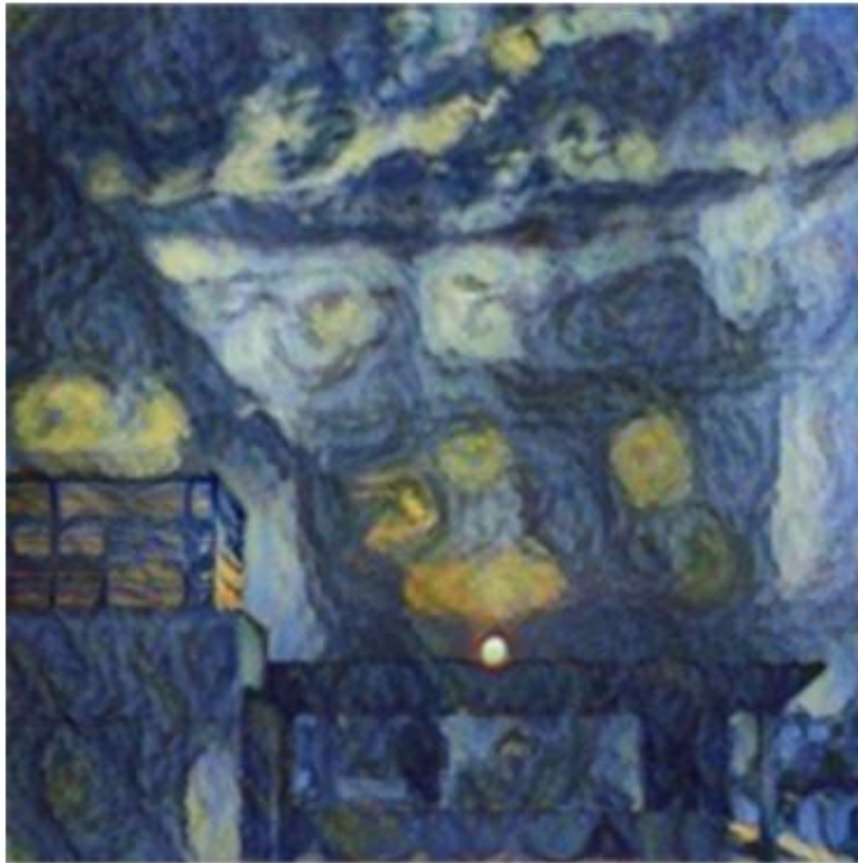
Dec 11 copyright denied painting in style of Starry Night by Van Gogh

Oct NY Times suit vs OpenAI & MS

- LLM (large language models) train on NYT

July Sarah Silverman case vs AI (training)

Copyright denied for AI image



Mr. Sahni's Original
Photograph
(base image)



Vincent Van Gogh's *The Starry Night*
(style image)

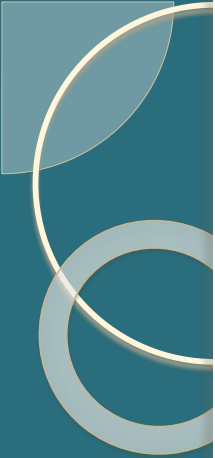
“The Work Does Not Contain Sufficient Human Authorship to Qualify for Copyright Protection” -- December 11, 2023 [decision](#) by the US Copyright Office (L of C) Copyright Review Board

AI newsroom / Nieman (Harvard)





Al Gutenberg







Net neutrality

- On 26 February 2015, the FCC ruled in favor of net neutrality by reclassifying broadband access as a telecommunications service and thus applying Title II (common carrier) of the Communications Act of 1934 to Internet service providers.^[13]
- On 14 December 2017, the FCC voted to repeal these net neutrality regulations, particularly by reclassifying broadband providers so that they are not considered common carriers under Title II of the Communications Act of 1936.



Net neutrality

- On Sep 26, 2023, FCC Chairwoman Rosenworcel began the process of re-establishing the FCC's oversight over broadband and restoring uniform, nationwide net neutrality rules.

Later Cases

- Seaton v Trip Advisor – 2011
 - Fair comment
- Google v Costeja (EU) – 2014 *
 - Right to be forgotten (to have links erased)
- Packingham v. North Carolina - 2017
 - State cant restrict access (overly broad)



Fair Housing Council v. Roommates.com, 2008

- Users were required to fill out a questionnaire with preferences for roommates age, gender, sexual orientation, and children
- Q -- Did Roommates.com violate the Fair Housing Act? After all, they are a 3rd party and did not create the information
- A – Their questionnaire induced 3rd parties to express illegal preferences

Harmful algorithms

- Oct 5, 2021 – Frances Haugen – Facebook Whistleblower testimony
- Facebook knew that its policies and algorithms were stoking violence and hatred, but also knew that this increased user “engagement” and therefore profits.



“The company’s leadership knows how to make Facebook and Instagram safer, but won’t make the necessary changes because they have put their astronomical profits before people. Congressional action is needed. They won’t solve this crisis without your help.”



Early objections to Section 230

- Fair Housing advocates
- “Trip Advisor” case
- Sandy Hook parents, who were victimized by conspiracy theorists
- Parents of Alison Parker and Adam Ward, killed on live TV at Smith Mt Lake in Va., wanted videos taken down
- Lots of individuals victimized by posts against them not tolerated in trad media

Seaton v Trip Advisor – 2011

- Travel review website said Seaton's hotel was among the dirtiest in America
- Kenneth M. Seaton sued the travel site for defamation and false light in Tennessee state court. Case moved to federal court.
- Suit dismissed – but not because of 3rd party content
- The court concluded that TripAdvisor's "Dirtiest Hotels" list is "clearly unverifiable rhetorical hyperbole," and that a reasonable person "would not confuse a ranking system, which uses consumer reviews as its litmus, for an objective assertion of fact." (Ollman v Evans test)





