Trends in ISP and Platform Liability: CDA Section 230 and DMCA Safe Harbors

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The internet as we know it today was made possible, in part, through the creation of a legal framework that permits platforms and internet service providers (ISPs) to host user-generated content without substantial risk of liability. Two significant statutes are collectively responsible for establishing this framework: The Communications Decency Act of 1996 (CDA) and The Digital Millennium Copyright Act (DMCA), enacted in 1998.

Without these two pieces of legislation, the internet would be a vastly different place than it is today. The CDA and DMCA both allow ISPs, social media platforms, and other online service providers (collectively referred to in this article as "service providers") to act as conduits and repositories for user-generated content without liability for such content. This statutory civil immunity allows service providers to take a hands-off approach to user-generated content, obviating the need to conduct pre-publication moderation or review of content made available on or through their services. Without this protection, service providers would be less likely to host the third-party content we have come to expect on the internet—such as reader commentary on news sites, YouTube videos, and Instagram posts—lest they be exposed to liability for defamation, copyright infringement, or other causes of action arising from the user-generated content they host. Considering, for example, that an estimated 500 hours of video are uploaded to YouTube *per minute*, service providers simply could not exist in their current form without Section 230 of the CDA and Section 512 of the DMCA to protect them from liability arising from such content.

Yet, despite their importance to the modern internet, Section 230 and the DMCA's safe-harbor provisions have been subject to increasing scrutiny and criticism from a variety of sources—particularly over the past year. Litigants, lawmakers, and even President Trump have all sought to limit or overcome the protections of Section 230 and the DMCA in an effort to hold service providers more accountable for user-generated content they host. Service providers should be cognizant of these developments and understand that Section 230 immunity and the safe harbor protections Section 512 of the DMCA are neither absolute nor indestructible in this rapidly changing legal landscape.

Read the full article here.

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