

**FREE SPEECH SAVIOR OR SHIELD FOR SCOUNDRELS: AN EMPIRICAL STUDY OF  
INTERMEDIARY IMMUNITY UNDER SECTION 230 OF THE COMMUNICATIONS DECENCY ACT**

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43 LOY. L.A. L. REV. 373 (2010)<sup>1</sup>

Case Database Coding Form  
(with measures of inter-coder reliability<sup>2</sup>)

<b>Variable Name</b>	<b>Description</b>	<b>Coder Agreement</b>	<b>Krippendorff's Alpha</b>
<b>Number</b>	Number of decision (in chronological order)	-	-
<b>Case Count</b>	Enter "1" for entries corresponding to the most recent decision in each case; mark other decisions involving the same case as "0"	100%	1.00
<b>Case Name</b>	Party names from case caption	-	-
<b>Citation</b>	Full case citation, including reporter and date	-	-
<b>Docket</b>	Docket number for case or appeal (if multiple cases are consolidated on appeal, use first case's docket number)	-	-
<b>Date of Filing</b>	Date that plaintiff initiated the case (usually date of first complaint)	67%	0.66
<b>Date of Decision</b>	Date decision/order was issued	94%	0.94
<b>State</b>	State where case was heard; use postal abbreviation (e.g., NY, MA)	89%	0.88
<b>Federal Circuit</b>	If decision is from federal court, indicate circuit where case is located (D.C.=12, Federal Circuit=13)	100%	1.00
<b>Court Name</b>	Name of court issuing the decision; use Bluebook abbreviations (e.g., D.N.J., S.D.N.Y.)	100%	1.00
<b>Judge Name</b>	Name of judge who issued decision/order (full name, no title)	100%	1.00
<b>Jurisdiction</b>	Indicate whether case is in federal or state court	100%	1.00
<b>Removal</b>	Indicate whether the case has been removed from state to federal court: <ul style="list-style-type: none"> <li>• Y (i.e., case is in federal court because defendant removed it)</li> <li>• N (i.e., case was initially filed in federal court or not removed from state ct.)</li> <li>• Remanded (i.e., case back in state court after remand)</li> </ul>	100%	1.00
<b>Court Level</b>	Level of court: <ul style="list-style-type: none"> <li>• 1 = trial court</li> <li>• 2 = appellate court</li> <li>• 3 = highest court</li> </ul>	100%	1.00
<b>Concurrence or Dissent</b>	Indicate whether decision being described has a concurrence or dissent with regard to the court's treatment of Section 230: <ul style="list-style-type: none"> <li>• None (i.e., case has no concurrence or dissent)</li> <li>• Concurrence</li> <li>• Dissent</li> <li>• Both (i.e., case has both a concurrence and dissent)</li> </ul>	94%	0.73
<b>Posture</b>	Posture of case when section 230 issue addressed:	94%	0.92

<sup>1</sup> Available at <http://ssrn.com/abstract=1625820>.

<sup>2</sup> To check the reliability of the coding process, a random sample of 18 decisions was selected from the 184 decisions in the study set. A second coder independently coded this sample of 18 cases, and the results of the two codings were compared in order to assess the degree of inter-coder reliability. Where appropriate, the percentage rate of agreement and "Krippendorff's alpha" for the data fields are listed on the coding form. See KLAUS KRIPPENDORFF, CONTENT ANALYSIS: AN INTRODUCTION TO ITS METHODOLOGY 221-30 (2d ed. 2004). Inter-coder reliability calculations were performed using ReCal2, an online utility that computes inter-coder reliability coefficients for nominal content analysis data coded by two coders. Available at <http://dfreelon.org/utis/recalfront/recal2/>.

Variable Name	Description	Coder Agreement	Krippendorff's Alpha
	<ul style="list-style-type: none"> <li>• Preliminary Injunction (including TROs)</li> <li>• Declaratory Judgment</li> <li>• Discovery (e.g., motion to compel or stay discovery)</li> <li>• Motion for Leave to Amend</li> <li>• Judgment on the Pleadings</li> <li>• Motion to Dismiss (including demurrers)</li> <li>• Motion to Quash</li> <li>• Motion to Remand</li> <li>• Motion to Strike (e.g., anti-SLAPP motion)</li> <li>• Summary Judgment</li> <li>• Bench Trial</li> <li>• Jury Trial</li> <li>• Motion for Sanctions or Fees</li> <li>• Post-Trial Motion (e.g., JNOV)</li> <li>• Other (describe in notes or description)</li> </ul>		
<b>Legal Claim(s) - All</b>	List of all legal claims plaintiff or defendant (if counter claims involve S.230) made in the case	-	-
<b>Legal Claim(s) - Considered</b>	List of legal claims for which a party raised, or the court considered, Section 230 immunity	89%	0.82
<b>Source Sued in Current Case?</b>	Indicate whether plaintiff filed a claim <i>in this case</i> against the source(s) of the content at issue: <ul style="list-style-type: none"> <li>• Y</li> <li>• N</li> <li>• Partial (i.e., some sources were sued)</li> <li>• N/A (i.e., no "content" or third-party involved)</li> </ul>	61%	0.30
<b>Third-Party Source Sued in Another Case?</b>	Indicate whether plaintiff filed a claim against third-party source(s) of content in another lawsuit: <ul style="list-style-type: none"> <li>• Y</li> <li>• N</li> <li>• Partial (i.e., some third-party sources were sued)</li> <li>• N/A (i.e., if third-party sued in current case or no "content" or 3rd party involved)</li> </ul>	-	-
<b>Third-Party Source Liable?</b>	Indicate whether liability has been established by a court against third-party source(s) of content in either the current case or another case: <ul style="list-style-type: none"> <li>• Y</li> <li>• N (including if not sued or otherwise not applicable)</li> <li>• Partial (i.e., some third-party sources found liable or some claims successful)</li> <li>• Pending (i.e., if claim or lawsuit against third-party is pending)</li> <li>• Settled</li> <li>• Unknown (i.e., not able to be to be determined)</li> </ul>	-	-
<b>Website Involved</b>	Name(s) and URL(s) of defendant's website, if applicable	-	-
<b>Publication Medium / Type of Site</b>	Select the term(s) that best describes the medium of publication or type of website where content was disseminated: <ul style="list-style-type: none"> <li>• Blog (e.g., PerezHilton.com, Instapundit.com)</li> <li>• Chatroom (e.g., IRC chat, Yahoo Chat)</li> <li>• Consumer Reviews (e.g., Yelp, RipoffReport)</li> <li>• Content Hosting (e.g., video, audio, or photo sharing such as YouTube, Flickr)</li> <li>• Educational (e.g., high-school, college, or university)</li> <li>• Email (e.g., listservs, e-newsletters)</li> <li>• Forum (e.g., Autoadmit, Craigslist's "rants")</li> <li>• Gripe Site (e.g., Walmart sucks)</li> <li>• Internet Services or Access (i.e., provided by ISP, cybercafé, employer)</li> <li>• Marketplace (e.g., eBay, Craigslist "for sale")</li> <li>• Micro-Blog (e.g., Twitter)</li> </ul>	67%	0.63

Variable Name	Description	Coder Agreement	Krippendorff's Alpha
	<ul style="list-style-type: none"> <li>• News (e.g., New York Times; Boston.com, Drudge Report)</li> <li>• Organization (e.g., nonprofit, corporate site, advocacy organization)</li> <li>• Portal/Directory (e.g., Yahoo!)</li> <li>• Retail (e.g., Amazon, Walmart)</li> <li>• Search Engine (e.g., Google search)</li> <li>• Services – matching/database (e.g., Roommates.com, apartment matching, dating site)</li> <li>• Social Network (e.g., Facebook, Myspace)</li> <li>• Virtual World (e.g., Second Life)</li> <li>• Website – General (e.g., general purpose website that does not fit other category)</li> <li>• Wiki (e.g., Wikipedia)</li> <li>• Other (describe in notes or description)</li> </ul>		
<b>Defendant Type</b>	<p>Select the term(s) that best describes the role, with regard to the content at issue, of the defendant(s) who is claiming preemption under §230:</p> <ul style="list-style-type: none"> <li>• Conduit (e.g., ISP, backbone provider, library providing physical access)</li> <li>• Content Host (e.g., YouTube, Amazon, Roommates.com)</li> <li>• Search or Application Provider (e.g., Google search, spam filter)</li> <li>• User</li> </ul>	100%	1.00
<b>Content Type</b>	<p>Select term(s) that best describe the content at issue:</p> <ul style="list-style-type: none"> <li>• Audio</li> <li>• Code (e.g., software)</li> <li>• Conduct (i.e., acts or omissions are at issue, not content; e.g., filtering)</li> <li>• Graphic</li> <li>• Photo</li> <li>• Text</li> <li>• Video</li> <li>• Virtual</li> <li>• Other (describe in notes or description)</li> </ul>	94%	0.83
<b>Anonymous Content</b>	<p>Indicate whether the court or a party stated that the content at issue was submitted anonymously:</p> <ul style="list-style-type: none"> <li>• Y</li> <li>• N</li> <li>• Unknown (i.e., not able to be to be determined)</li> <li>• Partial (if some content at issue is anonymous)</li> </ul>	78%	0.63
<b>Content Available</b>	<p>Indicate whether content at issue is still available from defendant (i.e., has it been removed or corrected):</p> <ul style="list-style-type: none"> <li>• Y</li> <li>• N (including if no “content” was at issue or content is ephemeral; e.g., claim directed at spam filtering, text messages, email)</li> <li>• Partial (if some content at issue is available)</li> <li>• Unknown (i.e., not able to be to be determined)</li> </ul>	-	-
<b>Reason for Unavailability</b>	<p>If content at issue is no longer available, indicate reason:</p> <ul style="list-style-type: none"> <li>• Court Order</li> <li>• Ephemeral (i.e., content not typically stored, e.g., email)</li> <li>• Settlement</li> <li>• Voluntary</li> <li>• Website Defunct (i.e., site now unavailable, reason unknown)</li> <li>• Unknown (i.e., site still available, but content gone for unknown reason)</li> <li>• Other (describe in notes or description)</li> <li>• N/A (if content still available or otherwise not applicable)</li> </ul>	-	-
<b>Areas of Judicial Focus</b>			
<b>Timing of Section 230 Defense</b>	<p>Indicate if court addressed the proper timing for a party to interpose Section 230 as a defense:</p> <ul style="list-style-type: none"> <li>• Not Addressed</li> </ul>	100%	1.00

Variable Name	Description	Coder Agreement	Krippendorff's Alpha
	<ul style="list-style-type: none"> <li>• Found to be appropriate in motion to dismiss</li> <li>• Found not to be appropriate in motion to dismiss</li> <li>• Found to appropriate in motion for judgment on pleadings</li> <li>• Not Ripe - Additional discovery necessary</li> <li>• Ripe - Discovery not necessary (including additional discovery if requested)</li> <li>• Other (describe in notes or description)</li> </ul>		
<b>Policies Discussed</b>	Indicate if court discussed the policies underlying Section 230 (indicate source used): <ul style="list-style-type: none"> <li>• Not Addressed</li> <li>• Case Cite (i.e., case cited in support of policies)</li> <li>• Legislative History</li> <li>• Preamble (i.e., any reference to §230(a) or (b))</li> <li>• Other (describe in notes or description)</li> </ul>	100%	1.00
<b>Scope of Interactive Computer Services Covered</b>	Indicate if court addressed whether defendant is a user or provider of an "Interactive Computer Service" ("ICS") under Section 230: <ul style="list-style-type: none"> <li>• Not Addressed</li> <li>• Found to be ICS (i.e., court does not distinguish b/t user and provider)</li> <li>• Found not to be ICS (i.e., court does not distinguish b/t user and provider)</li> <li>• Found to be provider of ICS</li> <li>• Found not to be provider of ICS</li> <li>• Found to be user of ICS</li> <li>• Found not to be user of ICS</li> <li>• Other (describe in notes or description)</li> </ul>	94%	0.92
<b>Scope of Information Content Providers Covered</b>	Indicate if court addressed whether the source of the content is an "information content provider" ("ICP") under Section 230: <ul style="list-style-type: none"> <li>• Not Addressed</li> <li>• Defendant found to be ICP</li> <li>• Defendant found not to be ICP</li> <li>• Source found to be ICP</li> <li>• Source found not to be ICP (e.g., information not "provided through the Internet or any other interactive computer service")</li> <li>• Other (describe in notes or description)</li> </ul>	94%	0.93
<b>Scope of Claims Covered</b>	Indicate if court addressed whether claims against defendant are preempted by S.230: <ul style="list-style-type: none"> <li>• Not Addressed</li> <li>• Claim Qualifies for Preemption</li> <li>• Does Not Qualify - IP Claim (federal law)</li> <li>• Does Not Qualify - IP Claim (state law)</li> <li>• Does Not Qualify - Federal Criminal Law</li> <li>• Does Not Qualify - Communications Privacy Law</li> <li>• Does Not Qualify - Claim Not Based on Publisher Liability</li> <li>• Does Not Qualify - Claim Based on Distributor Liability</li> <li>• Does Not Qualify - No Application to Declaratory or Injunctive Relief</li> <li>• Other (describe in notes or description)</li> </ul>	94%	0.87
<b>Nature of Party's Relationship to Source of Content</b>	What did the court find was the nature of the defendant's relationship with the source of the content: <ul style="list-style-type: none"> <li>• Not Addressed</li> <li>• Editorial Control (e.g., defendant has contractual right with source to edit)</li> <li>• Employer – Employee</li> <li>• Encouragement (e.g., solicitation of content, inducement)</li> <li>• Independent Contractor (e.g., not an employee, but contractual relationship found; source was under contract to provide content)</li> <li>• Joint Venture</li> <li>• Master – Agent (e.g., control over 3rd party)</li> </ul>	50%	0.17

Variable Name	Description	Coder Agreement	Krippendorff's Alpha
	<ul style="list-style-type: none"> <li>No Relationship Found (e.g., simply a user or independent 3rd party)</li> <li>Pay for Content (e.g., payment to source for content)</li> <li>Provided Physical Computer Access (e.g., libraries, internet cafes, employer)</li> <li>Support Services (e.g., financial services, credit-card clearing services)</li> <li>Other (describe in notes or description)</li> </ul>		
<b>Nature of Party's Interaction with Content</b>	<p>What did the court find was the nature of the defendant's interaction with the content at issue:</p> <ul style="list-style-type: none"> <li>Not Addressed</li> <li>Co-Creation (e.g., joint creation)</li> <li>Editorial (e.g., editing, moderating)</li> <li>Framing (e.g., adding material such as tags, headers, or titles)</li> <li>Host - Passive (no interaction with content) (e.g., Blogger, Amazon S3)</li> <li>Knowledge (i.e., knew or should have known from content itself)</li> <li>Linking</li> <li>Manipulation (e.g., sorting, selective publication, removal, or prioritization in order to "shape" content)</li> <li>No Interaction (e.g., passive conduit or no other interaction)</li> <li>Open Submission Form (e.g., blog comments, text boxes, questionnaires where defendant did not create responses)</li> <li>Pre-Populated Submission Form (e.g., defendant created responses)</li> <li>Profiting (i.e., defendant seeking to profit from content at issue, including preferential treatment or removal in exchange for payment; includes "extortion")</li> <li>Redistribution (e.g., <i>Batzel</i>-type republication of content from another medium)</li> <li>Self-Creation</li> <li>Other (describe in notes or description)</li> </ul>	72%	0.66
<b>Nature of Party's Relationship with Plaintiff or Others</b>	<p>What did the court find was the nature of defendant's relationship with the plaintiff or others:</p> <ul style="list-style-type: none"> <li>Not Addressed</li> <li>Notice (i.e., refusal to remove or modify content after notification from plaintiff or others)</li> <li>Promise to Plaintiff (e.g. to remove content or take other action)</li> <li>Promise to Public – Marketing (e.g., to remove or moderate content in marketing or sales pitches)</li> <li>Promise to Public – Terms of Use (e.g., to remove or moderate content in website terms of use)</li> <li>Other (describe in notes or description)</li> </ul>	94%	0.74
<b>Provider is a Source</b>	<p>Indicate whether the party asserting S.230 as a defense was found to be the sole original source of at least some of the content at issue:</p> <ul style="list-style-type: none"> <li>Y</li> <li>N (including if no "content" involved)</li> <li>Not Reached</li> </ul>	89%	0.80
<b>Preemption Granted</b>	<p>Indicate whether the court found preemption under S.230 (separate claims should be indicated in the appropriate column: Claim1, Claim2, etc.):</p> <ul style="list-style-type: none"> <li>Y</li> <li>N</li> <li>Partial (if some claims were preempted)</li> <li>Not Reached (if court did not address S.230 defense or withheld final determination of issue)</li> </ul>	94%	0.92
<b>Current Disposition of Decision</b>	<p>Indicate disposition of claim(s) against party raising S.230 in the decision being analyzed:</p> <ul style="list-style-type: none"> <li>Affirmed</li> <li>Affirmed in part; reversed in part</li> <li>Counterclaim Dismissed</li> </ul>	78%	0.72

Variable Name	Description	Coder Agreement	Krippendorff's Alpha
	<ul style="list-style-type: none"> <li>• Dismissed-partial (i.e., some, but not all, claims against party raising S.230 were dismissed)</li> <li>• Dismissed-total (i.e., all claims against party raising S.230 were dismissed)</li> <li>• Injunction Denied</li> <li>• Injunction Issued</li> <li>• Motion Denied</li> <li>• Reversed (including w/ remand)</li> <li>• Subpoena Enforced</li> <li>• Subpoena Quashed</li> <li>• Vacated (including w/ remand)</li> <li>• Verdict-defendant</li> <li>• Verdict-plaintiff</li> <li>• Other (describe in notes or description)</li> </ul>		
<b>Final Disposition of Case</b>	<p>Indicate final disposition of claim(s) against party raising S.230:</p> <ul style="list-style-type: none"> <li>• Dismissed-partial (i.e., some, but not all, claims against party raising S.230 were dismissed)</li> <li>• Dismissed-total (i.e., all claims were eventually dismissed)</li> <li>• Injunction Denied</li> <li>• Injunction Issued</li> <li>• Pending</li> <li>• Settled</li> <li>• Subpoena Enforced</li> <li>• Subpoena Quashed</li> <li>• Verdict-defendant</li> <li>• Verdict-plaintiff</li> <li>• Withdrawn</li> <li>• Other (describe in notes or description)</li> </ul>	83%	0.69
<b>Verdict or Settlement Amount:</b>	<p>Indicate amount of any verdict or settlement involving defendant(s) at issue; enter \$ amount or:</p> <ul style="list-style-type: none"> <li>• N/A (i.e., if no verdict or settlement occurred)</li> <li>• Unknown (i.e., if amount is not determinable)</li> </ul>	-	-
<b>Sanctions or Fees Awarded</b>	<p>Indicate whether the court awarded sanctions or attorneys' fees to either party in the decision being reviewed:</p> <ul style="list-style-type: none"> <li>• Not raised (or addressed by the court)</li> <li>• Raised by party, but not awarded</li> <li>• Raised by party, awarded to defendant</li> <li>• Raised by party, awarded to plaintiff</li> <li>• Raised by judge, awarded to defendant</li> <li>• Raised by judge, awarded to plaintiff</li> <li>• Other (describe in notes or description)</li> </ul>	83%	0.65
<b>Appeal</b>	<p>Indicate whether court's treatment of S.230 issue was addressed on appeal (if trial court opinion, whether trial court was affirmed, reversed, etc.; if appellate court, whether appellate court was affirmed, reversed, etc.):</p> <ul style="list-style-type: none"> <li>• Not appealed (i.e., S.230 issue not appealed, not raised on appeal, or withdrawn)</li> <li>• Affirmed</li> <li>• Affirmed on other grounds (i.e., on grounds other than Section 230)</li> <li>• Affirmed in part; reversed in part</li> <li>• Certification to another court</li> <li>• Certiorari denied (i.e., appeal not granted; e.g. Sup. Ct. cert. denied)</li> <li>• Dismissed (i.e., appeal or petition dismissed by higher court)</li> <li>• Pending (i.e., case pending or time to appeal not yet expired)</li> <li>• Reversed (including w/ remand)</li> <li>• Reversed on other grounds (i.e., on grounds other than Section 230)</li> <li>• Vacated (including w/ remand)</li> <li>• Vacated on other grounds (i.e., on grounds other than Section 230)</li> </ul>	67%	0.32

Variable Name	Description	Coder Agreement	Krippendorff's Alpha
<b>Source</b>	Indicate if decision is available on: (use multiple terms if appropriate) <ul style="list-style-type: none"> <li>• Westlaw</li> <li>• Lexis</li> <li>• Other (if not available on Westlaw or Lexis; indicate source in parens)</li> </ul>	-	-