Hot Topics in Intermediary Liability

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This presentation will bring people up to speed on the latest legal pressures on intermediary platforms. Topics include Section 230 jurisprudence and proposed legislation, important updates regarding the DMCA, and other pressures on intermediaries affecting their ability to protect their users.

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b) List of Links to Supplemental Materials
The state of the law surrounding Internet Intermediaries roundtable session

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I. Section 230 updates
   a. State of litigation
      i. Cases regarding material support of terrorists (see, e.g., Fields v. Twitter)
      ii. Cases regarding subsection (c)(2) (case list to be provided)
   b. The state of Sesta and related bills to amend Section 230
   c. Other Section 230 issues (list to be updated)

II. DMCA updates
   a. The state of cases exploring repeat termination policies (see, e.g., BMG v. Cox, case list to be updated)
   b. Other vectors of attack on the DMCA safe harbor (see, e.g., Mavrix v. Livejournal, Cloudflare litigation; case list to be updated)
   c. Discussion of lurking challenges exploiting the IP exemption of Section 230 (patent claims, trademark claims, effect on domain names; list to be updated)

III. Discovery issues
   a. Ability of platforms to protect the First Amendment rights of its users
      i. Civil subpoenas (see, e.g., Montagna v. Nunis, Glassdoor v. Superior Court)
      ii. Grand jury subpoenas (see, e.g., Glassdoor Ninth Circuit appeal)
   b. Ability of platforms to notify users of discovery demands (see, e.g., Credo Mobile and Cloudflare appeal re: National Security Letters)

IV. Rights of platforms to filter, or resist filtering
   a. First Amendment rights of platforms
      i. Search engines (case list to be provided)
      ii. User-generated content sites
   b. Relation with principles of common carriage and network neutrality
   c. Reach of foreign jurisdictions
      i. State of litigation on enforceability of global injunctions (see, e.g., Equustek)
      ii. Effect of the GDPR

Cathy Gellis is a technology lawyer in the San Francisco Bay Area with a practice focused on intellectual property, free speech, privacy, and other innovation policy matters, especially as they pertain to Internet platforms. She regularly files amicus briefs in key cases exploring these issues, participates in related regulatory proceedings, speaks to legal and lay audiences around the world, and writes about the policy implications of technology regulation on Techdirt.com and other widely-read publications. In a previous life she was an aspiring journalist who then became an Internet professional, where she developed and managed websites for enterprises in Silicon Valley and Europe.
Cathy Gellis – Intermediary Liability -- Links to Supplemental Materials


https://cyberlaw.stanford.edu/blog/2015/12/final-draft-europes-right-be-forgotten-law