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“Cannot Sue The Messenger”

Seventh Circuit Holds Craigslist Immune From Housing Discrimination Claims

By Jennifer L. Peterson

In a unanimous decision last week, the U.S. Court of Appeals for the Seventh Circuit interpreted the Communications Decency Act of 1996, 47 U.S.C. § 230 (“Section 230”), to provide immunity to craigslist for alleged violations of the Fair Housing Act. In *Chicago Lawyers’ Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, Case No. 07-1101 (March 14, 2008), Judge Easterbrook dismissed all claims against the popular website based on allegations that several postings for housing violate federal law prohibiting discrimination.

The court’s decision is the most recent ruling interpreting Section 230, a federal law providing some immunity to Internet service providers for tort claims based on third-party content. In applying Section 230, the court concluded that, despite the language in the postings on craigslist, the plaintiff “cannot sue the messenger just because the message reveals a third party’s plan to engage in unlawful discrimination.” Slip Op., p. 10.

Factual Background

Craigslist is “an electronic meeting place for those who want to buy, sell or rent housing (and many other goods and services).” *Id.*, p. 2. The Chicago Lawyers’ Committee for Civil Rights Under Law, Inc. (“Lawyers’ Committee”) sued craigslist for alleged violations of the Fair Housing Act because “[s]ome notices on craigslist proclaim ‘NO MINORITIES’ and ‘No children,’ along with multiple variations, bald or subtle.” *Id.* Specifically, the Lawyers’ Committee alleged that the website violated the federal “ban on ads that state a preference with respect to any of the protected classes.” *Id.* at 1; 42 U.S.C. § 3604(a).

Application of Section 230

Section 230 states that “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided another information content provider.” 47 U.S.C. § 230(c)(1). In addition, the federal statute includes a “good faith” provision, mandating that an Internet service provider “shall not be held liable on account of . . . any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.” 47 U.S.C. § 230(c)(2).

Previously, federal courts have interpreted Section 230 to provide “broad immunity from liability for unlawful third party content.” Slip Op., p. 5. In 2003, however, the Seventh Circuit, issued a decision questioning the scope of “immunity” in Section 230. See *Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003) (questioning the statutory structure and immunity for Internet service providers who “do nothing” or voluntarily block and screen potentially offensive material).

Here, the court held that Section 230 grants immunity to the “online information system” for all claims that would treat it as the publisher or speaker of information provided by a third party. *Id.* at 8. Section 230 immunity, therefore, applies if the underlying claim is grounded in the Internet service provider’s role as publisher or speaker of third-party content.

“Cannot Sue The Messenger” (continued)

[O]nly in a capacity as publisher could craigslist be liable under [the Fair Housing Act]. It is not the author of the ads and could not be treated as the “speaker” of the posters’ words, given [Section 230](a)(1).

Slip Op., p. 8.

The court rejected the Lawyers’ Committee’s argument that Congress did not intend to “immunize an [Internet service provider] from liability under the Fair Housing Act.” *Id.* “[T]he reason a legislature writes a general statute is to avoid any need to traipse through the United States Code and consider all potential sources of liability, one at a time.” *Id.* The court noted that the word “information” in Section 230(c)(1) is all encompassing:

That covers ads for housing, auctions of paintings that may have been stolen by Nazis, biting comments about steroids in baseball, efforts to verify the truth of politicians’ promises, and everything else that third parties may post on a web site; “information” is the stock in trade of online service providers.

Id., p. 9.

Finally, the court rejected the Lawyers’ Committee’s argument that craigslist can be liable for the postings because the computer service “caused” the discriminatory advertisements to be posted on the Internet. Craigslist did not “cause” the postings by “providing a place where people can post.” *Id.*

“Craigslist did not “cause” the postings by “providing a place where people can post.”

“Nothing in the service craigslist offers induces anyone to post any particular listing or express a preference for discrimination; for example, craigslist does not offer a lower price to people who include discriminatory statements in their postings.” *Id.* Accordingly, the court concluded that the Lawyers’ Committee can use the postings on craigslist to identify landlords and property owners and send those names “to the Attorney General for prosecution.” *Id.*, p. 10. Under Section 230, however, craigslist cannot be sued for

the third party content. “[G]iven §230(c)(1) [the plaintiff] cannot sue the messenger just because the message reveals a third party’s plan to engage in unlawful discrimination.” *Id.*

Conclusion

The Seventh Circuit’s decision is consistent with the ever-growing number of courts interpreting Section 230 to provide immunity to Internet service providers for alleged tort violations based on third-party content. This case is a significant victory because the court’s unanimous decision, authored by Judge Easterbrook, clarifies that the Seventh Circuit will consistently interpret Section 230 to provide immunity to “the messenger” when the underlying claim is premised on the Internet service provider’s role as publisher.

For more information about Internet speech and media law issues, please contact Jennifer L. Peterson at 608-284-2649 or jlpeterson@gklaw.com, or another member of the Godfrey & Kahn Media Law Team. ♦