

THE COMMUNICATIONS DECENCY ACT—HOW DID WE GET HERE?

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Defamation Elements

1. A false and defamatory statement concerning another;
2. An unprivileged publication to a third party;
3. Fault amounting to at least negligence on the part of the publisher; and
4. Harm caused by the publication.

Categories of Liability

1. Publishers, such as book or newspaper publishers; and
2. Distributors, such as book stores or libraries.

Cubby, Inc. v. CompuServe Inc., 776 F. Supp. 135
(S.D.N.Y. 1991) –

CompuServe's bulletin board service hosted newsletter that contained allegedly defamatory comments. Court held that CompuServe was "distributor" because it exercised *no editorial control over materials* on bulletin board, and had neither constructive nor actual notice of defamatory content. No liability found.

Stratton Oakmont, Inc. v Prodigy Services, No. 31063/94 1995 WL 323710 (N.Y. Sup. Ct. 1995) –

Prodigy's bulletin board service hosted allegedly defamatory comments. Prodigy filtered out objectionable material and monitored content on computer bulletin boards to promote its "family-oriented" services. Court held that Prodigy was a publisher because it *screened and prepared content for its users*. Liability found.

COMMUNICATIONS DECENTY ACT, 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. Civil liability

No provider or user of an interactive computer shall be held liable on account of —

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997) –

Anonymous person posted name and number of plaintiff to AOL's bulletin board, advertising t-shirts glorifying Oklahoma City bombing. Despite being informed of postings, AOL let them remain. Court held AOL neither negligent nor liable under CDA immunity provisions.

Fair Housing Council of San Fernando Valley v. Roommates.com, 521 F. 3d 1157 (2008) —

Website provided roommate locator service for persons who wanted to share or rent residences. Registration process included predetermined options for creating personal profile, including age, gender and number of children. Fair Housing Act makes it unlawful to publish advertisements for housing that indicate preferences based on race, religion, sex, familial status, etc. Court held Roommates.com responsible for questionnaires on its site, i.e. *a content provider*, and therefore not immune under CDA.

Barnes v. Yahoo, 565 F.3d 560 (2009)–

Plaintiff who relied on Yahoo's promise to take down nude pictures of her put up on a Yahoo site by a former boyfriend, could make a claim against Yahoo for breaking its promise. Court held theory of promissory estoppel could defeat claim of immunity under CDA