

How Web providers dodged a big legal bullet

By Eric J. Sinrod

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Web site providers can take a deep breath. The California Supreme Court has ruled that they are not legally responsible for content posted by third parties on their sites.

In the case of [Barrett v. Rosenthal](#), the plaintiffs had operated Web sites that attempted to expose health frauds. The defendant directed the Humantics Foundation for Women and operated an Internet discussion group.

The plaintiffs asserted that the defendant and others had committed libel by maliciously distributing defamatory statements in e-mails and Internet postings that supposedly impugned the plaintiffs' character and competence and that also allegedly disparaged their attempts to combat fraud.

The California Supreme Court first went to the literal language of the CDA: "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."

The plaintiffs further argued that the defendant republished some of these messages even after she had been warned that they contained false and defamatory information.

The defendant filed a motion to strike the plaintiffs' complaint under the [California anti-SLAPP statute](#) (having to do with strategic lawsuits against public participation). The defendant claimed that her statements were protected speech, and she asserted that the plaintiffs could not establish a probability of prevailing in their lawsuit because of the defendants' immunity under Section 230 of the Communications Decency Act of 1996 (the CDA).

The trial court granted the defendant's motion, ruling that her statements involved an issue of public interest and were within the scope of the anti-SLAPP statute. The court also found that her statements generally were not actionable because they did not contain provable false assertions of fact.

The court decided that the only actionable statement appeared in an article the defendant received by e-mail from a co-defendant. This article accused one of the plaintiffs of stalking a Canadian radio producer. The defendant posted a copy of this article she had received from the co-defendant on the Web sites of two newsgroups devoted to alternative health

issues and medical-political issues, as opposed to posting on the site of her own discussion group.

The trial court ruled that the defendant was immune from liability under the CDA for this republication. An appeal was filed, and the Court of Appeal ultimately held that the CDA did not protect the defendant from liability as a distributor under the common-law definition of defamation. The defendant appealed to the California Supreme Court.

In considering the issue, the California Supreme Court first went to the literal language of the CDA: "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...No cause of action may be brought, and no liability may be imposed under any state or local law inconsistent with this section."

The Supreme Court noted that these provisions have been interpreted by other courts to "confer broad immunity against defamation liability for those who use the Internet to publish information that originated from another source." The Supreme Court recognized that this immunity has been applied notwithstanding traditional distinctions between publishers and distributors.

Under common law, distributors such as newspaper vendors and booksellers potentially could be liable only if they had notice of defamatory statements. However, the publishers of newspapers or books where statements first appeared could be liable even without such notice.

Here, the Supreme Court found that the Court of Appeal had departed from the proper interpretation of the CDA. Specifically, the Court of Appeal had ruled that common-law distributor liability survived the grant of immunity afforded by the CDA, meaning that Internet service providers and users could be exposed to liability if they republish statements with notice of their defamatory character.

Upon considering all of the issues, the Supreme Court held that the CDA prohibits distributor liability for Internet publications. The Court went on to rule that the CDA immunizes individual users of interactive computer services regarding the content of others.

In so doing, the Supreme Court recognized that "broad immunity for defamatory republications on the Internet has some troubling consequences," such as confining plaintiffs who contend that they were defamed on the Internet to pursuing recovery only from the original sources of statements. Still, the court found that its hands were tied unless and until "Congress chooses to revise the settled law in this area."

Obviously, a major sense of relief is being felt by the big-name Web sites, as well as smaller Internet players, as they feel that the California Supreme Court has helped to nail down their immunity under the CDA. And that has allowed them to dodge a potential, major bullet.

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