For those who operate a website selling goods or services, the Communications Decency Act (“CDA”) §230 offers significant protection from claims of defamation, negligence, and similar claims, as demonstrated by recent cases.

The CDA's §230(c)(1) offers the following safeguard: “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.” This provision of federal law (which controls claims arising under state laws, too) has always been understood to protect so-called Internet Service Providers (“ISPs”) and helped to foster a robust Internet. When, however, is a company operating a website sufficiently passive so that it is protected by CDA §230, and when does it become active in the communications so as to lose that immunity?

**CDA's §230 for Websites Offering Services**

In *Beckman v. Match.com*, 2013 U.S. Dist. LEXIS 78339 (D. Nev. May 29, 2013), a woman sued Match.com after she was attacked by a man she met online through the dating site. The court held that Match.com would not be subject to liability, taking cover under §230. Although the pair met through the site, the content originated from third parties who filled out the profiles, not from the site itself. Thus, Match.com was not an information content provider. Rather, the site was a provider of interactive computer services, which the CDA defined as an “information service... that provides or enables computer access by multiple users to a computer server...” 47 U.S.C. § 230(f)(2). In other words, Match.com was a passive forum where users could communicate, and thus could not be held responsible for what happens as a result of the information exchange.

In addition, the court held that the plaintiff did not plead the negligent misrepresentation claim with particularity, and Match.com did not owe a special duty to subscribers of the site. This is an important lesson, that just because someone subscribes to a site, and even pays for the access, it does not mean that the website owes them a special duty such that a negligent misrepresentation claim would survive.

**CDA's $230 for Websites Offering Goods**

In *Okeke v Cars.com*, 2013 N.Y. Misc. LEXIS 2250 (N.Y. Civ. Ct. May 28, 2013), a user who paid for a truck, but never received it, sued Cars.com, the site where he bought the vehicle. The court held that CDA §230 shielded cars.com from any liability. The New York City Civil Court in Queens County held that Cars.com was an interactive computer service and thus immune from liability, because it was a forum where consumers could make purchases.

This case is noteworthy since the court also did not accept Cars.com’s argument that its terms of service prevented the claim, since the court did not find any evidence that the plaintiff had actual or constructive knowledge of the “browswrap” terms. While the terms were available on the Cars.com website and the user could read them by clicking a link, NY courts usually require a user to take an additional step to confirm they read the terms in order for the terms to have a binding effect. An example would be if the user were required to click “I understand and accept these terms” as a condition of proceeding with the purchase. However, this was not the case with the website at issue.

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A business should be aware that there are limits to CDA’s §230(c). In Fair Hous. Council v. Roommates.com, LLC, 521 F.3d 1157 (2008), the court held that CDA §230(c) did not apply as a safe harbor. This was because Roommates.com created the questions and answer choices in an online survey, so it was an “information content provider” as to the questions and could claim no immunity for posting them on its website, or for forcing subscribers to answer them as a condition of using its services.” Thus, if a business is an interactive content provider and has such active involvement as both drafting the questions and the selected answers and mandates users answer them, then CDA’s §230(c) may not apply. Similarly, the U.S. District Court for the Eastern District of Kentucky ruled on August 12, 2013, that a website host went beyond the role of a passive intermediary when he selected a domain name that encouraged offensive posts and added his own comments to defamatory user-generated content. (Jones v. Dirty World Ent. Recordings, LLC, E.D. Ky., No. 2:09-cv-00219-WOB, 8/12/13.)

However, as long as the business has a passive role as its function as a forum for commercial transactions to take place, and the transactions are between the customers themselves, CDA’s §230(c) remains a strong defense.

A legally binding contract can be memorialized in a letter or series of letters without a single document titled “Agreement.” Also, while a party may seek to leave parts of an agreement somewhat ambiguous so that a deal does not fall apart over negotiating something that appears intractable, it risks coming back and wreaking havoc like Kryptonite.

In Larson v. Warner Bros. Entm’t, 2013 U.S. App. LEXIS 671 (2013) (unpublished), (“Superman case”), the court upheld a 2001 agreement between Warner Bros. and the heirs of the co-creators of Superman, saying that there was a valid Agreement. This means that the studio has all of the rights to the action hero.

Warner Bros. can now proceed with releasing the film, “Man of Steel” and other projects involving Superman. The federal appellate court’s decision ends years of litigation over the rights to the iconic character, who was created by Jerome Siegel and Joseph Shuster in the 1930s. While a 2008 decision resulted in a win for the Siegel heirs and expanded their copyright ownership, Warner Bros. appealed the decision with the Ninth Circuit, which resulted in this case reversing the lower court decision.

An important point for parties that may find themselves in a dispute over whether a series of letters constitute a contract is to look at the language that exists in the letters. According to the Superman case, the following language was in a letter, stating that the heirs “accepted D.C. Comics’ offer of October 16, 2001 in respect of the ‘Superman’ and ‘Spectre’ properties. The terms are as follows. . . .” The court said that there was also five pages of provisions describing payment in exchange for allowing the Studio to create works based upon Superman. Further evidence that shows there was an Agreement was the end of the Letter, which the court said was from the lawyer for one of Siegel’s heirs, Laura Siegel Larson. Larson’s lawyer expressed gratitude to DC Comics’ attorney for the his “help and patience in reaching this monumental accord.”

If you’re planning on making a deal in California, it is also helpful to note that California law allows for parties to enter into a binding contract, even when some material, or significant, aspects of that agreement will be written out later. This holds true even if the parties do not spell out in writing that they intend to enter into a future agreement for these provisions.

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