

CDA Section 230: Protections and Challenges in the Digital Economy

Meaghan K. Pedati, Esq.
Associate
McGuireWoods LLP



Section 230: A Brief History

- **Communication Decency Act of 1996**
 - “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.”
- **To gain immunity:** the defendant must be a "provider or user" of an "interactive computer service"; the cause of action should treat the defendant as the "publisher or speaker" and the information must be "provided by another information content provider.”
- **Does not apply to:** federal criminal law, intellectual property claims, and electronic communications privacy law.



Section 230: The Court's Interpretation

Aol.

Google

craigslist

- **Complete immunity?**
 - *Zeran v. AOL*, 129 F.3d 327, 330 (4th Cir. 1997)
 - *Barrett v. Rosenthal*, 40 Cal. 4th 33 (2006)
- **Intellectual Property Claim**
 - *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102 (9th Cir. 2007)
- **False information**
 - *Goddard v. Google, Inc.*, C 08-2738 JF (PVT), 2008 WL 5245490, 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008)
- **Sexually explicit material**
 - *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. Oct. 20, 2009)

Section 230: What's Next?

It may be legal, but it may not be good for business.

- There is growing tension between maintaining business objectives and profitability against meeting social expectations and upholding ethical responsibilities.
 - **Backpage cases**
 - **Force v. Facebook**
 - **Fields v. Twitter**



Section 230: What's Next?

- **HR 1865 - Allow States and Victims to Fight Online Sex Trafficking Act of 2017**
 - **Content**
 - Amends the Communications Act of 1934 so that Section 230 shall not impair the enforcement criminal or civil laws relating to sexual exploitation of children or sex trafficking.
 - A provider that publishes information in furtherance of a sex trafficking shall be subject to a criminal fine or imprisonment.
 - **Status**
 - Introduced in early April 2017 by Rep. Ann Wagner R-MO
 - Referred to the House Energy & Commerce and Judiciary Committees



Questions or Comments?

Meaghan K. Pedati
MPedati@mcguirewoods.com

www.mcguirewoods.com