IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC.	)	
Plaintiff	)	Judge Amy J. St. Eve
v.	)	Magistrate Judge Jeffrey Cole
CRAIGSLIST, INC.	)	Case No. 06 C 0657
Defendant.	)	

MEMORANDUM IN SUPPORT OF
CRAIGSLIST'S MOTION FOR JUDGMENT ON THE PLEADINGS

Introduction

With a small staff in a single office in California, defendant craigslist, Inc. operates a website dedicated to local community classifieds and forums, where people share ideas and find things they need in their lives, including jobs, dates, cars, activities, community information, and housing. craigslist emphasizes service to its users, and the vast majority of craigslist's services, including all portions of the site devoted to the Chicago community, are provided without charge. The quantity of user-supplied information exchanged on the craigslist site is enormous: in a typical month, users post more than 10 million new notices to the site.[1]

Plaintiff's one-count complaint alleges that craigslist has violated the Fair Housing Act, 42 U.S.C. § 3604(c) (the "FHA" and "§ 3604(c)") by "publishing" allegedly discriminatory housing notices on its website. craigslist deplores any discrimination on the basis of race, color, religion, sex, familial status or national origin, and the craigslist website prominently displays educational notices that explain that such discrimination is unlawful. The website also provides

[1] These monthly postings total roughly 70 times the 44 million words contained in the Encyclopedia Britannica. The number of classified ads that users post to craigslist.com is increasing at a rate of approximately 100% per year.

resources enabling users of the site to access information from groups and governmental agencies dedicated to promoting fair housing.

The threshold issue before this Court is not the illegality or legality of particular housing notices that members of the public allegedly have posted on craigslist's website. The question is whether craigslist may be held liable for such third-party postings, assuming for purposes of this motion that at least some of them violated the FHA.

As a matter of clear federal law, an entity such as craigslist may not be held liable for unlawful content that, as here, originates not from craigslist but from users of the craigslist website. craigslist falls squarely within the protection afforded by 47 U.S.C. § 230 ("Section 230"), which broadly immunizes interactive computer service providers from liability for third-party content. Numerous courts across the country — including four federal Courts of Appeals, district courts within this Circuit, and district courts in eight other Circuits — have ruled in favor of companies like craigslist in circumstances closely analogous to those presented here. Indeed, in a very recent case, in which another web site operator was sued under the FHA for dissemination of allegedly discriminatory housing postings, a district court in California barred the claims against the operator.

As the large and expanding body of case law construing Section 230 has confirmed, Section 230 embodies a legislative policy choice that liability for unlawful content on the Internet should be imposed on the wrongdoers who originate that content, not on service providers, such as craigslist, who serve as conduits for vast quantities of other people's communications. Congress recognized that imposition of liability on such conduits would threaten to crush the growth and development of new and valuable electronic media, and would also create perverse disincentives to the sorts of laudable voluntary self-regulation of

objectionable content in which craigslist in fact engages. Congress has looked on with approval as the courts have broadly construed the immunity provided by Section 230.

This case presents the very paradigm for which Section 230 was enacted. Holding that craigslist is immune from liability in this case will not leave Plaintiff without a remedy, but rather will require Plaintiff to focus its remedial efforts on the persons who created and posted the allegedly unlawful housing notices about which Plaintiff complains.

Overview of Factual Allegations[2]

craigslist operates craigslist.org, an interactive Internet service offered in numerous U.S. communities, including Chicago. Cmplt. at ¶ 7. The website, craigslist.org, is a forum for huge quantities of postings divided into numerous categories, including community announcements, for sale postings, upcoming event notices, personal ads, job postings, and notices for housing rentals and sales. *Id.*

As described in the Complaint, persons who visit craigslist.org (and select the city of their choice) and "click" on "housing" are presented with a choice of either posting a notice for housing or looking at housing notices posted by other users of the website. *Id.* at ¶ 9. If a visitor indicates a desire to post a notice for housing (to sell, buy or rent housing or find a roommate), the website presents a series of choices for the category of notice the user seeks to post on the website (*e.g.*, "rooms & shares," "room/share wanted," "apartments for rent," "apts wanted,"

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[2] A motion for a judgment on the pleadings under Fed. R. Civ. P. 12(c) is evaluated under the same standards as a motion pursuant to Rule 12(b)(6). *GATX Leasing Corp. v. National Union Fire Ins. Co.*, 64 F.3d 1112, 1114 (7th Cir. 1995). Accordingly, the Court should "view the facts in the complaint in the light most favorable to the nonmoving party . . . . However, . . . [the Court is] not obliged to ignore any facts set forth in the complaint that undermine the plaintiff's claim or to assign any weight to unsupported conclusions of law." *Northern Ind. Gun & Outdoor Shows, Inc. v. City of South Bend,* 163 F.3d 449, 452 (7th Cir. 1998) (citations omitted). As with a 12(b)(6) motion, the Court should dismiss a complaint under Rule 12(c) only "if it appears beyond doubt that the plaintiff can prove any facts that would support his claim for relief." *Id.* While craigslist treats all of Plaintiff's factual allegations as true for purposes of this motion, its recitations of those facts herein does not constitute an admission that any of them is in fact true.

"real estate for sale," and "real estate wanted"). *Id.* at ¶¶ 10-11. After the visitor indicates the kind of notice he or she wishes to post, the website prompts him or her to fill in a number of relevant "fields" (*e.g.*, rent or price, location, and contact information). *Id.*

The Complaint purports to describe and quote from approximately 120 allegedly discriminatory housing notices that allegedly were posted on the craigslist Website by users of the site. *Id.* at ¶¶ 16-141.[3] Plaintiff alleges that these postings appeared on the Website, for at least one day each, during a period from July 2005 to January 2006.

Plaintiff contends that craigslist is liable under FHA § 3604(c) solely because it allegedly "published [these allegedly discriminatory] notices, statements and advertisements with respect to the sale or rental of dwellings." *Id.* at ¶ 153. Plaintiff does not allege that craigslist wrote or edited any of the notices at issue. Nor does Plaintiff allege that craigslist encouraged or endorsed any of these notices. Rather, Plaintiff asserts liability against craigslist for allegedly failing to prevent third-parties — members of the public who use its free services— from posting such notices on its website.[4]

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[3] Many of the allegedly discriminatory housing notices that the Complaint purports to describe would not be actionable even in a suit against the persons who originated the postings. For example, most of the notices alleged to be discriminatory on the basis of religion simply advise potential renters of a dwelling's location or provide factual information about the neighborhood. *See, e.g.*, Cmplt. at ¶¶ 37, 41-42, 43 ("Walk to shopping restaurants, coffee shops, synagogue"), 45-47, 48 ("very quiet street opposite church"), 49-54 ("Catholic Church, and beautiful Buddhist Temple within one block"), 56-58. Similarly, most of the notices alleged to discriminate on the basis of familial status merely refer to an age or occupation, but indicate no preference one way or the other regarding the presence of children in the household. *See, e.g.*, *id.* at ¶¶ 61 ("Perfect for 4 Med students"), 67-68, 75, 77-79, 80 ("perfect for students and young professionals"), 83 ("Prefer quiet one or two person household"), 84 ("Preferred renter will be: Young couple with/out children Young couple with 1 or 2 children or Older couple"), 89, 90 ("Quiet building is home for a few young professionals & students"), 92, 95, 97-98, 104, 108, 112, 114, 116-19, 123-25, 127, 140. As noted in fn 1 *supra*, the Court should not assign any weight to unsupported conclusions of law." *Northern Ind. Gun & Outdoor Shows, Inc.*, 163 F.3d at 452.

[4] Plaintiff gratuitously and unfairly asserts that craigslist is "fully aware of its obligations under the Fair Housing Act," because, "[u]pon information and belief," craigslist has been sued before for not "endeavoring to prevent such [discriminatory] advertisements." Cmplt. at ¶ 15. In fact, as craigslist told Plaintiff before it filed the present lawsuit, craigslist had never been sued for alleged violations of the

Argument

A. Section 230 Affords Immunity to craigslist.

The principal operative provision of Section 230 declares that "[n]o 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." 47 U.S.C. § 230(c)(1).

In 1997, the Fourth Circuit recognized that "§ 230 creates a federal immunity to *any cause of action* that would make service providers liable for information originating with a third-party user of the service." *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998) (emphasis added). Writing for a unanimous court, Chief Judge Harvey Wilkinson stated:

> Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted. Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect.

Id. at 331. Federal and state courts throughout the country, including three other federal Courts of Appeals, have consistently reached the same conclusion, confirming that § 230(c)(1) immunity is "quite robust" and extends to all manner of content and claims. *See, e.g., Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003); *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003), *cert. denied*, 541 U.S. 1085 (2004); *Green v. America Online, Inc.*, 318 F.3d 465, 471 (3d Cir. 2003), *cert. denied*, 540 U.S. 877 (2003); *Ben Ezra, Weinstein, & Co. v. America Online, Inc.*, 206 F.3d 980, 984-85 (10th Cir.), *cert. denied,* 531 U.S. 824 (2000); *see*

FHA. Of course, liability under this federal statute does not depend on a defendant's awareness of the statute. Moreover, a review of craigslist's public website (as Plaintiff clearly has done) shows craigslists' knowledge — and support of — the FHA (the website includes links to extensive educational materials regarding the fair housing laws and their laudable objectives). In any event, the factual dispute regarding prior litigation is not material and has no bearing on the present motion pursuant to Rule 12(c).

also Noah v. AOL Time Warner Inc., Case No. 03-1770, 2004 WL 602711 (4th Cir. Mar. 24, 2004) (*per curiam*) (holding that Section 230 bars lawsuit alleging that online service provider had failed to prevent users from transmitting discriminatory messages in violation of Title II of the federal civil rights laws).[5]

The breadth of the immunity afforded by Section 230(c)(1) is confirmed not only in its legislative history (discussed below) but also in its specific exemption of particular statutes and types of claims from the immunities it otherwise creates. Section 230(e) sets forth a series of exceptions providing that Section 230 shall not be construed to impair the enforcement of any federal criminal statute, to limit or expand any law pertaining to intellectual property, or to limit the application of the federal Electronic Communications Privacy Act of 1986 or any similar state laws. 47 U.S.C. § 230(e). By creating these particular and limited statutory carve-outs, Congress plainly demonstrated that Section 230 immunity reaches all other types of statutory (and non-statutory) claims. *See, e.g. Noah v. AOL Time Warner Inc.*, 261 F. Supp. 2d 532, 539 (E.D. Va. 2003) ("Congress's decision to exclude certain claims but not federal civil rights claims as a group, or Title II specifically, must be respected."); *see also Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980) ("Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of a contrary legislative intent"). Thus, as another federal district court has specifically held, the absence of any carve-out for claims under the FHA — which is not a criminal, intellectual property, or communications privacy statute — indicates that Section 230's immunity does, if all the elements of the immunity are otherwise met, extend to claims based on the FHA. *Fair Housing Council v. Roommate.com, LLC*, Case No. CV 03-09386PA (RZX), 2005 WL 3299077 at *1,

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[5] All unpublished opinions referred to herein are attached hereto in alphabetical order as Ex. 1.

*3-4 (C.D. Cal. Sept. 30, 2005) ("The FHA is not among the types of laws which are specifically exempted from the CDA. As such, and without evidence of contrary legislative intent, a court may not create an exemption for the fair housing laws without violating the maxim *expressio unius est exclusio alterius*").

The statutory language and case law establish that Section 230(c)(1) immunity applies whenever three elements are satisfied: (1) the defendant claiming immunity is "a provider . . . of an interactive computer service," (2) the plaintiff's claims seek to "treat[]" the defendant as the "publisher or speaker" of allegedly harmful or unlawful information, and (3) the information at issue was "provided by another information content provider." 47 U.S.C. § 230(c)(1); *see generally Ben Ezra, Weinstein, & Co*, 206 F.3d at 984-85; *Zeran*, 129 F.3d at 330. Each element is satisfied here.

First, craigslist is a "provider" of an "interactive computer service." Section 230 broadly defines "interactive computer service" to include "*any* information service, system, or access software provider that provides or enables computer access by multiple users to a computer server." 47 U.S.C. § 230(f)(2) (emphasis added). As the Complaint explains, craigslist "operates a website accessible at 'chicago.craigslist.org'" (Cmplt. ¶ 7) (as well as other websites), and Plaintiff's claim is based on content that allegedly was available at that site. Thus, craigslist is, like many other providers of web-based services, a provider of an interactive computer service, because it "provides or enables computer access by multiple users to a computer server" — namely, the servers on which the website, including the underlying database of information, is hosted. *See Carafano*, 339 F.3d at 1123-24 (holding that provider of online dating service website is an interactive computer service provider); *Barnes v. Yahoo, Inc.*, Case No. 05-926-AA, 2005 WL 3005602 at *1 (D. Or. Nov. 8, 2005) (holding that provider of

interactive website is an interactive computer service provider); *Gentry*, 99 Cal. App. 4th at 831 n.7 (holding that eBay auction website is an interactive computer service); *Schneider*, 31 P.3d at 40-41 (holding that Amazon.com online marketplace is an interactive computer service); *Fair Housing Council v. Roommate.com, LLC*, Case No. CV 03-09386PA (RZX), 2005 WL 3299077 at *1, *3-4 (C.D. Cal. Sept. 30, 2005) (Roommate.com is an "interactive computer service" because the "website allows those with residences, and those looking for residences, to post information about themselves and available housing options on a searchable database").

Second, the allegedly unlawful content that is the subject of this lawsuit — namely, allegedly discriminatory housing notices that allegedly appeared on craigslist's website — constitutes "information provided by another information content provider." 47 U.S.C. § 230(c)(1). The pleadings in this case establish that all of the allegedly discriminatory housing notices originated not from craigslist, but from individual users of the craigslist website. *See* Cmplt. at ¶¶ 8-14 (describing how users of craigslist's website provide information for the website); *id.* at ¶¶ 16-141 (describing postings allegedly "published" by craigslist); *see also* craigslist's Answer with Affirmative Defenses (filed April 14, 2006) at ¶¶ 8-14. The postings themselves obviously are "information," and Section 230 defines an "information content provider" as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3). Users who post notices on the craigslist website fall at the very core of this definition. *See, e.g., Zeran*, 129 F.3d at 330 (bulletin board postings created by unauthorized users of the AOL service were "information provided by another information content provider"); *Carafano*, 339 F.3d 1119, 1121, 1124 (bogus online profile posted by website user constitutes "information provided by another information content provider").

Third, the complaint necessarily and impermissibly "treat[s]" craigslist as a "publisher" of the allegedly discriminatory postings at issue in at least three distinct ways:

- By its own terms, Plaintiff's Complaint explicitly seeks to hold craigslist liable as the "publisher" of the allegedly discriminatory housing postings. For example, the very first sentence of the Complaint, under the heading "Nature of the Case," states that this is a suit against craigslist "for *publishing* notices, statements or advertisements" in violation of the FHA. Cmplt. ¶ 1 (emphasis added). Likewise, the Complaint's "Claim for Relief," which purports to state the essence of Plaintiff's cause of action, directly alleges that "Defendant craigslist, Inc. *published* notices, statements or advertisements with respect to the sale or rental of dwellings, in violation of 42 U.S.C. § 3604(c)." *Id.* at ¶ 153 (emphasis added). Indeed, no less than 135 of the Complaint's 153 paragraphs use the terms "publish" or "publication" to characterize the alleged activity for which Plaintiff is suing criagslist. *See id.* ¶¶ 1, 14-142, 147-151, 153. This is not surprising, since the provision of the FHA that Plaintiff has invoked itself uses the word "publish" to define the violation: That provision makes it unlawful "[t]o make, print, or *publish,* or cause to be made, printed, or *published*, any statement, notice or advertisement" that discriminates in certain respects with respect to the sale or rental of a dwelling. 42 U.S.C. § 3604(c) (emphasis added).

- Imposing liability on craigslist in this case would impermissibly "treat" craigslist as the "publisher or speaker" of third-party content because it would "cast [craigslist] in the same position as the party who originally posted the offensive" material. *Zeran*, 129 F.3d at 333. In particular, Plaintiffs would hold craigslist liable based on the very same theory of liability that could be used against the originators of the allegedly unlawful postings, thus necessarily "treat[ing]" craigslist as the original publisher. *Id.*

• Holding craigslist liable here would subject it to a legal regime in which it would have to review, edit, and/or screen third-party content, imposing on it the "quintessential duties" of a publisher. *Id.* at 330. The Complaint is premised on the theory that Craigslist has an obligation to prevent the allegedly discriminatory postings from appearing in the first place. And the prayer for relief makes that explicit: Plaintiff wants an order requiring Craigslist to "report . . . any individual or entity seeking to post a discriminatory housing advertisement," "prevent website access to individuals who post or attempt to post discriminatory housing advertisements," and "implement screening software to preclude discriminatory advertisements from being published on Defendant's website." Cmplt. at ¶ 19. As the Fourth Circuit held in *Zeran*, *any* claim based on a service provider's alleged failure to "exercise . . . a publisher's traditional editorial functions," such as monitoring or screening other parties' transmissions or deciding whether to withdraw or delete content, necessarily treats the provider as a publisher of that information. *See* 129 F.3d at 330; *see also Ben Ezra, Weinstein & Co.*, 206 F.3d at 986 ("Congress clearly enacted § 230 to forbid the imposition of publisher liability on a service provider for the exercise of its . . . self-regulatory functions.").

B. Extensive Case Law Confirms that Section 230 Bars craigslist's Liability for Third–Party Postings.

The decade since Congress passed Section 230 has generated a large body of case law affirming the comprehensive reach of Section 230's immunity. As the Ninth Circuit recently observed, its first decision construing the statute (*Batzel v. Smith*) "joined the consensus developing across other courts of appeal that § 230(c) provides broad immunity for publishing content provided primarily by third parties." *Carafano*, 339 F.3d at 1123; *see also Zeran*, 129 F.3d at 328 ("Section 230 . . . plainly immunizes computer service providers like AOL from liability for information that originates with third parties."); *Green*, 318 F.3d at 471 ("By its

terms, § 230 provides immunity to AOL as a publisher or speaker of information originating from another information content provider."); *Ben Ezra, Weinstein, & Co.*, 206 F.3d at 984-85 (Section 230 "creates a federal immunity to any state law cause of action that would hold computer service providers liable for information originating with a third-party").

Numerous federal district courts and state appellate and trial-level courts have likewise concluded that Section 230 broadly immunizes providers of interactive computer services from liability for harms arising from the dissemination of allegedly unlawful third-party content. *See, e.g.*, *Noah v. AOL Time Warner Inc.*, 261 F. Supp. 2d 532 (E.D. Va. 2003) (§ 230 immunized AOL from federal Title II "public accommodation" discrimination claim based on AOL's alleged failure to prevent unlawful harassment of Muslims in AOL chat rooms by AOL users), *aff'd*, No. 03-1770, 2004 WL 602711 (4th Cir. Mar. 24, 2004) (*per curiam*).[6] In fact, while the

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[6] *See also Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d 1090, 1117-18 (W.D. Wash. 2004) (§ 230 barred consumer protection and tortious interference claims based on third-party content, even though Amazon.com provided tools that helped shape the content); *Perfect 10, Inc. v. CCBill, LLC*, 340 F. Supp. 2d 1077, 1107-1108 (C.D. Cal. 2004) (confirming broad scope of § 230 immunity and applying it to unfair competition claim); *Novak v. Overture Servs. Inc.*, 309 F. Supp. 2d 446, 452 (E.D.N.Y. 2004) ("Under Section 230(c), an 'interactive computer service' qualifies for immunity so long as it does not also function as an 'information content provider' for the portion of the statement or publication at issue"); *PatentWizard, Inc. v. Kinko's Inc.*, 163 F. Supp. 2d 1069, 1071 (D.S.D. 2001) (§ 230 broadly immunizes provider, Internet access from liability for third-party content); *Marczeski v. Law,* 122 F. Supp. 2d 315, 327 (D. Conn. 2000) (§ 230 bars defamation claim against host of chat room based on allegedly defamatory statements made by others); *Blumenthal v. Drudge*, 992 F. Supp. 44, 49 (D.D.C. 1998) (in § 230, Congress "made the legislative judgment to effectively immunize providers of interactive computer services from civil liability in tort with respect to material disseminated by them but created by others"); *Barnes v. Yahoo!, Inc.*, No. Civ. 05-926-AA, 2005 WL 3005602 (D. Or. Nov. 8, 2005); *Smith v. Intercosmos Media Group, Inc.*, No. Civ. A. 02-1964, 2002 WL 31844907, at *5 (E.D. La. Dec. 17, 2002) (§ 230 barred claim against Internet domain name registrar based on third-party's registration of allegedly defamatory domain name); *Austin v. CrystalTech Web Hosting*, No. 1 CA-CV 04-0823, 2005 WL 3489249 (Ariz. Ct. App. Dec. 22, 2005); *Doe v. America Online, Inc.*, 783 So. 2d 1010, 1013-17 (Fla. 2001) (§ 230 immunizes online service provider from liability under state criminal statutes arising from allegedly harmful chat room messages originated by subscriber); *Donato v. Moldow*, 865 A.2d 711, 717 (N.J. Super. Ct. App. Div. 2005) (in passing § 230, Congress "granted a broad immunity to providers or users of interactive computer services"); *Barrett v. Fonorow*, 799 N.E.2d 916, 924-25 (Ill. App. Ct. 2003) (confirming § 230's broad immunity); *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 830 (Cal. Ct. App. 2002) ("Section 230(c)(1) thus immunizes providers of interactive computer services . . . and their users from causes of action asserted by persons alleging harm caused by content provided by a third party"); *Kathleen R. v. City of Livermore*, 104 Cal. Rptr. 2d 772, 776-81 (Cal. Ct. App. 2001) (§ 230 immunizes

Seventh Circuit has yet to render any decision construing the reach of Section 230, three district court decisions in this circuit (including one from this district) have adhered to the broad construction of the immunity that has been unanimously endorsed by all other Federal courts that have interpreted the statute. *See Morrison v. America Online, Inc.*, 153 F. Supp. 2d 930, 932-34 (N.D. Ind. 2001) (§ 230 bars defamation claim against online service provider for allegedly defamatory statements made in emails sent by subscriber); *Does v. Franco Prods.*, Case No. 99-C-7885, 2000 WL 816779 at * 4 (N.D. Ill. Jun. 22, 2000) (§ 230 "creates federal immunity against any state law cause of action that would hold computer service providers liable for information originating from a third party"), *aff'd on other grounds*, *Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003); *Associated Bank-Corp. v. Earthlink, Inc.*, No. 05-C-0233-S, 2005 WL 2240952, at *4 (W.D. Wis. Sept. 13, 2005) ("Imposing liability on Defendant for the inaccurate information provided by a third-party content provider would treat Defendant as the publisher, a result § 230 specifically proscribes").[7]

As noted above, in a recent case bearing strong similarities to this one, a federal district court in California held that Section 230 barred an FHA claim against an interactive computer service provider for housing notices posted on the service by its users. *Fair Housing Council v. Roommate.com, LLC*, Case No. CV 03-09386PA (RZX), 2005 WL 3299077 (C.D. Cal. Sept. 30, 2005). There, the court rejected a claim that Roommate.com, a website that allows users to post

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library from state law claims based on its provision of Internet access); *Schneider v. Amazon.com, Inc.*, 31 P.3d 37, 43 (Wash. Ct. App. 2001) (Congress has conferred immunity based on third-party content for online services such as Amazon.com); *Stoner v. eBay Inc.*, No. 305666, 2000 WL 1705637, at *1 (Cal. Super. Ct. Nov. 1, 2000) (§ 230 immunizes eBay from liability stemming from the sale of material by third-party users of its Web-based services); *Jane Doe One v. Oliver*, 755 A.2d 1000, 1003-04 (Conn. Super. Ct. 2000), *aff'd*, 792 A.2d 911 (Conn. App. Ct. 2002) (*per curiam*).

[7] As discussed below (*infra* at § C), *Doe v. GTE* affirmed *Does v. Franco Prods.* on state law grounds, without issuing any holding regarding the scope of Section 230.

and search for housing notices, was liable under the FHA for allegedly discriminatory housing notices posted by third parties. The court held "that [§ 230] applies to shield Roommate from liability for the FHA violations alleged by Plaintiffs to the extent Plaintiffs seek to make Roommate liable for the content provided by its users." *Id.* at *3. This holding is consistent with other case law applying § 230 to bar claims brought under a wide variety of statutes.[8]

C. The *Dicta* in *Doe v. GTE* Provides No Basis for Departing from the Settled Caselaw Concerning Section 230.

craigslist anticipates, based on its pre-litigation communications with Plaintiff's counsel, that Plaintiff may argue that *dicta* expressed by Judge Easterbrook in *Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003), should persuade this court to reject the broad construction of §230(c)(1) endorsed by *Zeran* and its progeny and to deny craigslist immunity in this case. Any such argument would be meritless.

In *GTE,* the Seventh Circuit affirmed the decision of this court (Kocoras, C.J.) in *Does v. Franco Prods.*, Case No. 99-C-7885, 2000 WL 816779 at * 4 (N.D. Ill. Jun. 22, 2000), which had dismissed claims against providers of web-hosting services based on Section 230 immunity. The case involved the sale over the Internet of unlawfully-taped, hidden-camera, pornographic videos; the defendants had provided web-hosting services to pornographers who offered the videos for sale. The Seventh Circuit's affirmance was based on state common law grounds, and it rendered no decision or holding regarding the scope or operation of Section 230(c)(1). The Seventh Circuit held that while the defendants "*could* learn, at some cost, what [the

[8] *See, e.g., Noah*, 261 F. Supp. 2d at 538-39; *Corbis*, 351 F. Supp. 2d at 1118 (Washington state Consumer Protection Act); *Perfect 10, Inc.*, 340 F. Supp. 2d at 1109-11, (California statutory unfair competition and false advertising claims); *Doe*, 783 So. 2d at 1012, 1018 (negligence *per se* claim based on Florida criminal child pornography statutes); *Gentry*, 121 Cal. Rptr. 2d at 710 (California statutory unfair competition law and "Autographed Sports Memorabilia" statute); *Oliver*, 755 A.2d at 1002 (Connecticut statutory harassment statute).

pornographer] was doing with the [web] services [provided by defendants]. . . , state law does not require these providers to learn." 347 F.3d at 661.

Though not at all necessary to the Seventh Circuit's decision, Judge Easterbrook's opinion for the court in *GTE* included three paragraphs about "possib[le]" alternative constructions of Section 230(c)(1) that would differ from the construction uniformly adopted in all other circuits. *See* 347 F.3d at 658-60. The opinion carefully designated this discussion as mere *dicta*; cast the key aspects of the discussion in the form of questions rather than declarative sentences; and did not even purport to reject the holdings of *Zeran, Ben Ezra, Green, Batzel* and their progeny. *See* 347 F.3d at 660. ("We need not decide which understanding of § 230(c) is superior"). The two "possib[le]" alternatives to that the opinion identified were, first, that § 230(c)(1) might be merely a "definitional clause" and not a source of substantive immunity, and, second, that perhaps § 230(c)(1) forecloses only "liability that depends on deeming [the service provider] a 'publisher'" in some formal sense, as occurs, for "example," under "defamation law." *Id.*

The possible "definitional" reading of §230(c) that the *GTE dicta* identified (but did not embrace) does not withstand scrutiny because it conflicts with the plain language of the statute. Under that reading, § 230(c)(1) would merely define the category of entities that may enjoy the separate immunity that is established by § 230(c)(2). *Id.* at 659. That latter section protects a "provider or user" of an interactive computer service from liability for efforts to *remove or restrict* content that it determines in good faith to be harmful or objectionable. 47 U.S.C. § 230(c)(2). Under the "definitional" reading of Section 230(c)(1), according to the *GTE dicta*, "an entity would remain 'a provider or user' — and thus be eligible for the immunity under § 230(c)(2) — as long as the information came from someone else; but it would become a

'publisher or speaker' and lose the benefit of § 230(c)(2) if it created the objectionable information." *Id.* at 660.

This "definitional" interpretation is untenable for several reasons. *First,* as noted above (*supra* at 7), Section 230 already *has* its own separately designated "definitions" component — § 230(f) — that explicitly defines terms used elsewhere in the statute, including terms used in Section 230(c). *See* 47 U.S.C. § 230(f). *Second*, on its face, § 230(c)(1) does not purport to be a "definition" of anything: it states that "[n]o 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." 47 U.S.C. § 230(c)(1). Section 230(c)(1) does not define the term "provider or user," as the *GTE dicta* pondered; rather, it plainly erects a substantive prohibition on how "providers and users" may be "treated." *Third*, the so-called "definitional" interpretation of § 230(c)(1) does not logically mesh with the language of § 230(c)(2). By its plain terms, Section 230(c)(2) protects a service provider who removes or restricts content under a "good faith" belief that the affected content is unlawful or objectionable, without any reference or implication that a service provider's status as a "publisher or speaker" should have any effect on the statute's application.

Any argument by Plaintiff that is premised on the other prong of the *GTE dicta* — the "yet another possibility" that Section 230 might be an immunity only from claims (like defamation) for which "publishing" is a formal element, 347 F.3d at 660 — should fare no better. It is clear from the terms and structure of Section 230 that the statute provides an immunity from a broad range of claims. This is evident from the statutory exceptions spelled out in §230(f). If the immunity established by section 230(c)(1) reached only a narrow category of claims for which "publishing" is technically an element, there certainly would have been no need for Congress to spell out that the immunity does not reach liability under intellectual property laws, the electronic

communications privacy laws, or enforcement of federal criminal statutes. The breadth of Section 230 immunity is also underscored by the overarching and explicit policy goals of the statute, which are not tied to any special concern about defamation liability or the like, and which include an overall objective to keep the Internet and other interactive computer services "unfettered by Federal and State regulation." 47 U.S.C. § 230 (b)(2); *see also* 47 U.S.C. § 230 (a)(4) (finding that such services "have flourished... with a minimum of government regulation"). It is hardly surprising, therefore, that courts across the country have unanimously rejected the notion that the application of Section 230 is confined to any narrow class of cases, and have consistently recognized that *any* claim based on the alleged distribution of third-party content by a service provider treats the service provider as a "publisher" of that content. *See supra* at 11-13.

In any event, even if Section 230(c)(1) could be construed narrowly as barring only types of liability for which "publishing" is technically an element, Plaintiff's FHA claim plainly would still be barred. The FHA (§ 3604) explicitly makes it unlawful "[t]o make, print, or *publish*, or cause to be made, printed, or *published*" discriminatory housing advertisements (emphasis added), and Plaintiff's Complaint itself consistently and repeatedly characterizes craigslist's supposedly unlawful conduct as the "publishing" of unlawfully discriminatory ads. *See supra* at 9.

A decision by this court permitting Plaintiff's suit against craigslist to proceed, whether premised on the *GTE dicta* or otherwise, would be an abrupt and unjustified departure from the well-developed and carefully reasoned body of case law that has developed over the last decade. The body of reported precedent in the federal courts regarding the scope and application of immunity under § 230(c)(1) — which includes decisions from courts located in no less than nine of the federal circuits — is unanimous. Every federal court that has reached the question has agreed with *Zeran* that Section 230 creates a federal immunity to "*any cause of action* that would

make service providers liable for information originating with a third-party user of the service." 129 F.3d at 330 (emphasis added). No reported decision of any court has favorably cited the *GTE dicta*, nor have district judges within the Seventh Circuit been deterred from following the uniform body of federal decisions on this subject, including in the years since the *GTE* opinion was issued. *See Associated Bank-Corp. v. Earthlink, Inc.*, No. 05-C-0233-S, 2005 WL 2240952, at *4 (W.D. Wis. Sept. 13, 2005) ("Imposing liability on Defendant for the inaccurate information provided by a third-party content provider would treat Defendant as the publisher, a result § 230 specifically proscribes").

Where, as here, a statute has been on the books for a decade, been consistently interpreted by many courts over that span, and has not been amended by Congress, courts should be loathe to disturb a settled body of law. In circumstances like these, it is certainly reasonable to assume that the courts that have spoken in unison have gotten it right and that Congress is satisfied that the judiciary has correctly construed its intent.

Indeed, with this particular statute, there is no need to *assume* that the homogenous body of court decisions reflects the will of Congress, for Congress in fact has *explicitly* endorsed the courts' expansive reading of § 230(c)(1) immunity. In 2002, Congress passed the "Dot Kids Implementation and Efficiency Act," establishing a new "kids.us" sub-domain — dedicated to content deemed safe for minors — within the federally controlled ".us" Internet domain. *See* 47 U.S.C. § 941. In enacting that statute, Congress specifically extended the protections of Section 230 to cover certain entities that would operate in the new sub-domain, knowing full well how Section 230 had been applied in the courts. *Id.* § 941(e)(1). The definitive committee report accompanying the new statute could not have been more clear and direct in embracing *Zeran* and the other leading precedents. Citing *Zeran, Ben Ezra*, and *Doe v. America Online* as key

examples, the committee report declared that "[t]he courts have correctly interpreted section 230(c)," and that "[t]he Committee intends these interpretations of Section 230(c) to be equally applicable to those entities covered by [the new statute]." H.R. Rep. No. 107-449, at 13 (2002). In these circumstances, there can be no question that the settled body of law is correct and that any reliance by Plaintiff on the *dicta* in *Doe v. GTE* will be completely misplaced.

D. Dismissal of Plaintiff's Claim Will Further Section 230's Policy Objectives.

The important congressional policies behind § 230 further confirm that Plaintiff's claim against craigslist should be dismissed. In enacting § 230, Congress sought to encourage the robust development and continued vitality of the Internet and other interactive computer services by removing the specter of service provider liability for third-party speech. Congress declared:

- it is "the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services," 47 U.S.C. § 230(b)(2);
- the Internet should be "unfettered by Federal or State regulation," *id.*;
- and the Internet has "flourished, to the benefit of all Americans, *with a minimum of government regulation*," 47 U.S.C. § 230(a)(3)-(4) (emphasis added).

In universally upholding the broad reach of § 230 immunity, the courts have repeatedly recognized this congressional purpose to protect the vast public benefits the Internet provides. For example, the Ninth Circuit explained that "making interactive computer services and their users liable for the speech of third parties would severely restrict the information available on the Internet." *Batzel*, 333 F.3d at 1027. Given the "staggering" volume of third-party content that they carry, and "[f]aced with potential liability for each message republished by their services," *see id.* at 331, such services likely would be forced, absent § 230's protection, to restrict or abandon many of the features that enable the dissemination of third-party content in the first place. In short, § 230 was passed "to prevent lawsuits from shutting down websites and other

services on the Internet." *Id.* at 1028; *see also Zeran*, 129 F.3d at 330 (Congress enacted § 230 to promote "freedom of speech in the new and burgeoning Internet medium" by eliminating the "threat [of] tort-based lawsuits" against interactive services for injury caused by "the communications of others"); *Carafano,* 339 F.3d at 1122 (§ 230 enacted "to promote the free exchange of information and ideas over the Internet").

Conclusion

WHEREFORE, craigslist respectfully requests that this Court dismiss Plaintiff's complaint and provide such other relief as is just.

Respectfully submitted,

CRAIGSLIST, INC.

April 14, 2006

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on April 14, 2006, he caused a true and correct copy of CRAIGSLIST'S MOTION FOR JUDGMENT ON THE PLEADINGS and supporting MEMORANDUM to be served through the Court's electronic system on:

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