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

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

PLAINTIFF CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC.'S MOTION TO ALTER OR AMEND JUDGMENT

Plaintiff Chicago Lawyers' Committee for Civil Rights Under Law, Inc. (CLC), by its attorneys, hereby moves this Court to alter or amend judgment entered on November 14, 2006. In support of this Motion, Plaintiff states as follows:

1. CLC asks this Court to reconsider its meager reading of the words "to print" in Section 3604(c) of the Fair Housing Act. The Supreme Court has long held that the Fair Housing Act should be interpreted liberally, to effectuate its important remedial purpose. *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1011 (7th Cir. 1980) ("The language of the Fair Housing Act is 'broad and inclusive,' 'subject to' generous construction"), citing *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972). Moreover, even the definition of "to print" cited by this Court (at n.18) ("to perform . . . the operations necessary to the production of . . . a picture") encompasses craigslist's conduct, i.e., its creation and display of a digital picture of discriminatory text.

2. CLC also asks this Court to reconsider its holding that the prohibition in Section 230(c)(1) on "[t]reatment of a publisher or speaker" bars *any* claim with "publication" as an element. The statutory language and its legislative history demonstrate that by prohibiting "[t]reatment of publisher or speaker," Congress did not intend to bar every claim as to which publication is an element, but rather to preclude imposition of liability on a provider of interactive computer services (ICS) because it screened third-party content. The Conference Committee report states, "[o]ne of the specific purposes of this section is to overrule *Stratton-Oakmont v. Prodigy* and any other similar decisions *which have treated such providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material."* H.R. REP. NO. 104-458, at 194 (1996) (Conf Rep.) (attached as Ex. 5 to Pl.'s Mem. in Opp'n to Mot.).

3. When passing the prohibition on "[t]reatment of publisher or speaker," Congress repeatedly acknowledged that it was troubled by two defamation decisions *(Prodigy* and *Cubby*) which treated an ICS as a publisher or speaker when the ICS exercised editorial control, but only as a distributor when the ICS refused to exercise editorial control. Under defamation law, a "publisher" is held to a higher liability standard than a "distributor." *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*,1995 N.Y. Misc. LEXIS 229, at 7 (N.Y. Sup. Ct. 1995) ("with this editorial control comes increased liability") (attached as Ex. 8 to Pl.'s Mem. in Opp'n to Mot.); Statement of Rep. Cox, "The court said . . . . You . . . are going to face higher, stricter liability because you tried to exercise some control over offensive material.") 141 CONG. REC. H8469 (1995) (attached as Ex. 7 to Pl.'s Mem. in Opp'n to Mot.).

4. Section 230(c), as originally written, did not contain a separate prohibition on "treatment of publisher or speaker." The prohibition on "[t]reatment of publisher or speaker" was the first sentence of what is now Section 230(c)(2), which (like the Conference Committee Report)

suggests that the prohibition on "[t]reatment of publisher or speaker" explains and prefaces the screening protection set forth in the next sentence.[1]

5. In short, Congress itself addressed what it meant by its prohibition on "[t]reatment of publisher or speaker" and said that it wished to ensure that no court would treat an ICS as a publisher just because that ICS *had* screened third-party content. Here, this case would not treat craigslist as a publisher because craigslist screened third-party content. CLC argues that craigslist *failed* to screen out the discriminatory third-party content and is therefore not entitled to 230(c) protection for good faith screening.

WHEREFORE, for the foregoing reasons, Plaintiff Chicago Lawyers' Committee for Civil Rights Under Law, Inc., respectfully asks this Court to reconsider its decision and to alter or amend the November 14, 2006, judgment.

Dated: November 17, 2006

Respectfully submitted,

/s/ Stephen D. Libowsky

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[1] Although the Conference Committee separated what is now 230(c)(1) into a separate provision and added a subtitle, the Committee stated that it did not intend to alter the substance of Section 230(c). The Conference Committee Report states, "The conference agreement adopts the House provision with *minor modifications* as a new Section 230 of the Communications Act." H.R. REP. NO. 104-458, at 194 (1996) (Conf. Rep.) (attached as Ex. 5 to Pl.'s Mem. in Opp'n to Mot.); 141 CONG. REC. H8469 (1995) (attached as Ex. 7 to Pl.'s Mem. In Opp'n to Mot.).