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**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON**

CECILIA L. BARNES,

Plaintiff,

v.

YAHOO! INC.,

Defendant.

Civil Action No. 6:05-CV-926-AA

**DEFENDANT YAHOO INC.'S
 MOTION TO DISMISS THE
 COMPLAINT**

REQUEST FOR ORAL ARGUMENT

I. L.R. 7.1 CERTIFICATION

On July 21, 2005, counsel for Defendant Yahoo! Inc., Patrick J. Carome, and counsel for Plaintiff Cecilia L. Barnes, Thomas R. Rask III, conferred in good faith regarding the issues presented in Defendant's motion and were unable to reach a resolution.

II. ISSUES

The issues presented by Defendant's motion to dismiss are:

(1) whether Defendant is immune from liability to Plaintiff based on 47 U.S.C. § 230(c)(1), which provides 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"; and

(2) whether Plaintiff has failed in any event to state a claim for negligence under applicable state law because she has based that claim on an alleged undertaking by Defendant to prevent allegedly harmful third-party information from being available through its interactive service but has failed to make the required allegations that either (a) any action Yahoo! took increased her risk of being harmed or (b) she reasonably relied on Yahoo!'s alleged undertaking and that such reliance resulted in injury to her that she would not have suffered if the alleged undertaking had not been made.

III. MOTION

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Yahoo! Inc. moves the Court for an order dismissing the Complaint with prejudice on the ground that Plaintiff has failed to state claim upon which relief can be granted.

IV. SUPPORTING DOCUMENTS

In support of this motion, the Defendant relies on the enclosed Memorandum in Support of its Motion to Dismiss the Complaint.

Respectfully submitted,
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/s/ Patrick J. Carome

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