Ninth Circuit Rules Against Yahoo in Decency Case

By Andrew Longstreth

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Web publishers have long been under the impression that the federal Communications Decency Act of 1996 shields them from liability for the sometimes poor judgment of posters. But in a ruling last week, the U.S. Court of Appeals or the Ninth Circuit appears to have made an exception. Here's the story from Online Media Daily, the ruling, and analysis from Techdirt.

The case involves the nightmarish story of Cecilia Barnes, whose ex-boyfriend posted nude pictures of her on Yahoo, along with her name, her address, and her phone number. Barnes wrote to Yahoo several times, asking the company to remove the material, but she didn't hear back--until a local news program was set to air a story on Barnes's predicament. A day before the scheduled broadcast, Yahoo's director of communications allegedly told Barnes to fax her copies of Barnes's previous letters. The communications director supposedly assured Barnes that she would "personally walk the statements to the division responsible for unauthorized profiles and they would take care of it."

But two months later, Yahoo still had not removed the offending material. Barnes filed a lawsuit in Oregon state court, alleging negligent undertaking and breach of contract. (Yahoo finally removed the material after the suit was filed.) Yahoo removed the action to federal court, where Oregon federal district court judge Ann Aiken dismissed it based on the Communications Decency Act. But the Ninth Circuit ruled that Yahoo's promise to remove the content in question opened the company up to liability. **Jeffrey Neuburger of Proskauer Rose told Online Media Daily that Web publishers now have to think twice about how they respond to user complaints. "You can't say, 'We'll take it down,' because that could potentially form a contractual obligation," he said.**

Thomas Rask, III of Kell, Alterman & Runstein argued for Barnes. Patrick Carome of Wilmer Cutler Pickering Hale and Dorr argued for Yahoo.