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Controversial “Gripe Site” Protected (Again) by the Communications Decency Act and Defeats Novel Copyright Attack with Website “Browsewrap” License to User Generated Content

New Media & Technology Law Blog on **October 24, 2017**

The controversial consumer gripe site, RipoffReport.com, is at it again. The First Circuit recently affirmed a lower court’s ruling that RipoffReport.com was entitled to immunity under Section 230 of the Communications Decency Act, 47 U.S.C. §230(c)(1) (the “CDA” or “Section 230”) for defamation-related claims based on certain user posts on its site. (*Small Justice LLC v. Xcentric Ventures LLC*, 2017 WL 4534395 (1st Cir. Oct. 11, 2017)). This is the latest in a string of victories for RipoffReport.com on that issue. In this case, RipoffReport.com also successfully relied on its website “terms of use” to fend off a novel copyright attack from the plaintiff, the successor-in-interest to the copyright in the user postings at issue.

Congress provided immunity under Section 230 to online service providers for all claims stemming from third party content appearing on or through the service provider’s platform (“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.”). Generally speaking, courts have construed the immunity provisions in Section 230 broadly in cases arising from the publication of user-generated content. The CDA’s immunity is more fully explained here.

The plaintiff’s claims in *Small Justice* relate to two allegedly defamatory posts on RipoffReport.com. In response to the posts, the plaintiff filed a state law defamation suit against the author of the posts and obtained a default judgment, which included an order transferring ownership of the copyright in the posts to the plaintiff. In his suit against RipoffReport.com, the plaintiff brought defamation claims, and armed with the copyright assignment, copyright infringement claims.

To circumvent the CDA protections, the plaintiff argued that because RipoffReport claimed, based on its website terms of use, that it had a copyright interest in the posts, the posts were not that of "another information content provider," as that phrase is used in the CDA. Rather, the plaintiff alleged, RipoffReport.com was the information content provider, and therefore the immunity of the CDA did not apply. In addition, the plaintiff sought a declaration that he owned the copyright in the two posts, as well as an injunction barring RipoffReport.com from continuing to publish the postings and requiring the site to take down the posts.

In affirming the lower court's dismissal of the claims, the First Circuit rejected the plaintiff's arguments that the postings were not the work of another information content provider merely because Ripoff Report claimed it owned the exclusive rights of copyright in the postings. Thus, the court held that the CDA safe harbor did apply.

In examining the copyright issue, the appeals court affirmed the lower court's holding that the author of the posts agreed to convey a nonexclusive, irrevocable license to RipoffReport.com Thus, the court held that RipoffReport.com had the right to publish the posts on its site. The court also affirmed a $120,000 award of attorney's fees to RipoffReport.com under the Copyright Act and agreed with the lower court's view of the legal and factual basis for plaintiff's copyright claims as "at best questionable."

Having successfully defended a number of online defamation-related disputes over the past decade – essentially producing its own CDA Section 230 casebook – RipoffReport.com's latest victory in *Small Justice*is important for the court's affirmance of robust CDA immunity and dismissal of the plaintiff's creative attempt at a copyright end run around CDA immunity.

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