

Carafano v. Metrosplash.com: An Expansion of Tort Immunity for Web Service Providers Under 47 U.S.C. § 230, Even When They Take a Greater Editorial Role in Publishing Material from Third Parties

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I. OVERVIEW

Christianne Carafano, a.k.a. Chase Masterson, is a popular actress, known best for her role on the television series “Star Trek: Deep Space Nine.”¹ On October 23, 1999, an unknown individual in Berlin, Germany, posted a false profile of Carafano on the Internet dating service Matchmaker.com (Matchmaker).² The profile included a photograph of the actress (her name was listed as “Chase529”), an open-ended essay portraying her as sexually adventurous, answers to a series of multiple-choice questions from the Matchmaker service that included a message that she was “looking for a one-night stand,” a fake contact e-mail address, and, most troubling, her actual home address in Los Angeles.³ If a user contacted the fake e-mail address, he received a response that listed Carafano’s actual phone number.⁴ Initially unaware of the posting, Carafano began to receive numerous threatening and sexually explicit phone calls and faxes, forcing her and her son to move out of their home and stay in hotels for several months.⁵ Carafano finally learned of the profile several weeks after she began to receive the harassing messages.⁶ She demanded that Matchmaker remove her profile, and within several days, the company complied.⁷

Carafano filed suit in California state court against Matchmaker and its corporate owners, alleging invasion of privacy, negligence,

1. Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1121 (9th Cir. 2003).
2. See *id.*
3. See *id.*
4. See *id.*
5. See *id.* at 1121-22.
6. See *id.*
7. See *id.*

defamation, and misappropriation of the right of publicity.⁸ The case was removed to federal district court on diversity grounds.⁹ In the pleadings, Matchmaker argued that it was statutorily immune from tort liability under 47 U.S.C. § 230(c)(1), a provision from the 1996 Communications Decency Act that exempts technology providers from liability when they post information online that has been supplied by a third party.¹⁰ The district court disagreed, ruling that Matchmaker was “another information content provider” within the scope of the statute, which barred the company from immunity because it was partially responsible for some of the editorial content of the posting.¹¹ Nonetheless, the district court granted summary judgment to Matchmaker based on the merits of each tort claim.¹² On appeal, the United States Court of Appeals for the Ninth Circuit affirmed the district court’s summary judgment motion on different grounds, reaching the opposite conclusion on the question of statutory immunity.¹³ The court *held* that Matchmaker’s editorial role in developing the profile did not make the company an “information content provider” within the scope of § 230, and therefore Matchmaker was entitled to statutory immunity. *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir. 2003).

II. BACKGROUND

When Congress passed the Communications Decency Act, a far-reaching bill with the primary goal of preventing minors from accessing indecent material on the Internet,¹⁴ it included a separate provision that provided tort immunity to Internet service providers (ISPs) for publishing content that had been provided to them by a third party.¹⁵ Under the common law, a “publisher” is held to a strict liability standard for printing or broadcasting defamatory material written or spoken by others, even if he were unaware that the material existed or that it was

8. *Id.*

9. *Id.*

10. *Carafano v. Metrosplash.com, Inc.*, 207 F. Supp. 2d 1055, 1064 (C.D. Cal. 2002), *aff’d on other grounds*, 339 F.3d 1119 (9th Cir. 2003).

11. *Id.* at 1068.

12. *Id.* at 1076-77.

13. *Carafano*, 339 F.3d at 1124-25.

14. Key provisions of this act relating to indecent material on the Internet were struck down by the United States Supreme Court in 1997. *See Reno v. ACLU*, 521 U.S. 844 (1997). However, the sections relating to § 230 were unaffected. *See Batzel v. Smith*, 333 F.3d 1018, 1026 (9th Cir. 2003).

15. *See Batzel*, 333 F.3d at 1026; 47 U.S.C. § 230(c)(1) (2000).

offensive.¹⁶ As a result, by creating the immunity provision for the then-new medium of the Internet, “Congress decided not to treat providers of interactive computer services like other information providers such as newspapers, magazines or television and radio stations”¹⁷

The statute specifies 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.”¹⁸ The statute further provides that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”¹⁹ Courts have interpreted this language to mean that if an individual or entity provided information to an “interactive computer service” and the latter then posts that information on the Internet, even though the computer service “published” the material, it will be immune from the state laws allowing for publisher’s strict liability for offensive material.²⁰

Subsequent court decisions have found that Congress had two key reasons for enacting the § 230 protections.²¹ First, Congress wanted to ensure that the Internet, then only in its infancy, remained “a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.”²² Congress believed that, considering the millions of users in chat rooms and other Internet forums, it would be impossible for online service providers to monitor every single posting.²³ By immunizing service providers against publisher liability, Congress ensured that they continued to promote the free exchange of ideas and messages, rather than restrict postings because of the fear of lawsuits.²⁴ Second, Congress enacted § 230

16. *See Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997) (citing W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 113, at 810 (5th ed. 1984)). Under the common law, a “publisher” has been defined as an entity that exercises some editorial control over the publication. *See id.*

17. *Blumenthal v. Drudge*, 992 F. Supp. 44, 49 (D.D.C. 1998).

18. 47 U.S.C. § 230(c)(1). The statute defines an “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet.” *Id.* § 230(f)(2). It further 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.” *Id.* § 230(f)(3).

19. *Id.* § 230(e)(3).

20. *See Zeran*, 129 F.3d at 331-32.

21. *See id.* at 330-31.

22. *Id.* at 330 (quoting 47 U.S.C. § 230(a)(3)).

23. *See id.* at 331.

24. *See id.*

because they wanted to encourage the online services to self-regulate their postings for offensive material.²⁵ Before § 230 was enacted, such self-policing would have placed them in the traditional role of publisher, which would have exposed them to strict liability.²⁶ Congress thus enacted § 230 to remove the “disincentives” of self-regulating online content.²⁷

The first case to examine the ramifications of the new immunity clause was *Zeran v. American Online, Inc.*²⁸ In *Zeran*, six days after the Oklahoma City bombing, an unknown person posted a false message on an AOL bulletin board that advertised offensive T-shirts praising the bombing and encouraged interested parties to call “Ken” at the plaintiff’s home phone number in Seattle.²⁹ After an Oklahoma City radio station learned of the posting and encouraged listeners to bombard Zeran with complaints, the plaintiff was inundated with death threats and other violent calls, which continued until the hoax was exposed and the radio station made an on-air apology several weeks later.³⁰ Zeran sued AOL for negligence and defamation, arguing that the online service was liable for posting the offensive material and failing to remove it promptly.³¹ AOL’s defense was that it was immune from liability under § 230 because it merely posted information provided by a third party.³²

The United States Court of Appeals for the Fourth Circuit held that AOL was an “interactive computer service” that received information from a third-party “information content provider,” and thus under § 230 was exempt from the strict liability standard normally applied to publishers in state law tort suits.³³ According to the court:

By its plain language, § 230 creates a federal immunity to any cause of action that would make service providers liable for information originating from a third-party user of the service. Specifically, § 230 precludes courts from entertaining claims that would place a computer service provider in a publisher’s role. Thus, lawsuits seeking to hold a service provider liable for

25. *See id.*

26. *See id.*; *see also* Stratton Oakmont, Inc. v. Prodigy Servs. Co., 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995) (holding that because Prodigy was considered a “publisher” of third-party material to its online bulletin board, it was strictly liable for the posting of defamatory material).

27. *See Zeran*, 129 F.3d at 331.

28. *See id.* at 327.

29. *See id.* at 329.

30. *See id.*

31. *See id.* at 328.

32. *See id.* at 330.

33. *Id.* at 332.

its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone, or alter content—are barred.³⁴

Noting that one of Congress's purposes for enacting immunity for service providers was to remove the "disincentives" for self-policing, the court argued that "in line with this purpose, § 230 forbids the imposition of publisher liability on a service provider for the exercise of its editorial and self-regulatory function."³⁵

While there has been no nationally binding Supreme Court case on the matter since the *Zeran* decision in 1997, both federal and state courts have consistently applied the Fourth Circuit's reasoning to bestow § 230 tort immunity (for defamation as well as negligence and other torts) on technology companies that publish information received from third-party sources.³⁶ In doing so, courts have required that defendant companies meet two key elements defined in the statute to receive § 230 immunity: (1) the defendant must be an "interactive computer service" and (2) the information in question must have been "provided by another information content provider."³⁷

Regarding the first element, since the *Zeran* ruling, courts have gradually expanded the scope of the statute by broadening the definition of "interactive computer service" from ISPs to "a wide range of cyberspace services."³⁸ In the earliest cases interpreting § 230, the defendants who received immunity were ISPs, specifically AOL.³⁹ In addition, Congress clearly intended to protect ISPs under the statute by defining the "interactive computer service" as "including specifically a service or system that provides access to the Internet."⁴⁰ In *Schneider v.*

34. *Id.* at 330.

35. *Id.* at 331. In addition to defining immunity for publishers, the *Zeran* court also held that § 230 immunity applied to "distributors" of offensive material, who under the common law are entities that disseminate information *without* exercising editorial control. *Id.* at 332-34. This issue is unsettled in the courts, with a recent California state court decision finding that § 230 did not apply to "distributors," but only to "publishers." *Barrett v. Rosenthal*, 5 Cal. Rptr. 3d 416, 425-42 (Cal. Ct. App. 2003). However, distributor liability was not discussed in the noted case, and thus is outside the scope of this Note.

36. *See, e.g.,* *Green v. Am. Online*, 318 F.3d 465, 470-71 (3d Cir. 2003); *Ben Ezra, Weinstein, & Co. v. Am. Online Inc.*, 206 F.3d 980, 984-86 (10th Cir. 2000); *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703, 714-16 (Cal. Ct. App. 2002).

37. *See, e.g., Gentry*, 121 Cal. Rptr. 2d at 714; *Schneider v. Amazon.com, Inc.*, 31 P.3d 37, 39 (Wash. App. 2001). Both of these decisions, and others, have also explicitly required a third element, that the cause of action must treat the defendant as a "publisher" rather than a "distributor" of information. *See Gentry*, 121 Cal. Rptr. 2d at 714; *Schneider*, 31 P.3d at 39. However, the issue is not addressed in the noted case, and thus it is not discussed here.

38. *See* *Batzel v. Smith*, 333 F.3d 1018, 1030 n.15 (9th Cir. 2003).

39. *See* *Blumenthal v. Drudge*, 992 F. Supp. 44, 49-53 (D.D.C. 1998).

40. 47 U.S.C. § 230(f)(2) (2000).

Amazon.com, however, for the first time, a Washington state court ruled that Web sites are also considered to be “interactive computer services,” even if they do not also provide Internet access.⁴¹ The court ruled that Amazon’s Web site postings at issue were “indistinguishable” from AOL’s message boards in *Zeran*, and interpreted the plain language of the statute to mean that ISPs were merely a “subclass of the broader definition of interactive service providers entitled to immunity.”⁴² Since the *Schneider* ruling, courts have ruled that § 230 protections apply to online auction sites,⁴³ e-mail listservs,⁴⁴ and, in the noted case, Internet dating services.⁴⁵

While courts have broadly applied § 230 protections to companies on the basis of being “interactive computer services,” they have applied a more rigorous test to the second key element of immunity—that the information must have been provided by “another information content provider.”⁴⁶ Courts have interpreted the statutory language to mean that the immunity does *not* apply if a defendant company, in addition to being an “interactive computer service” that posts the information, *also* serves as an “information content provider” for the offensive or illegal information at issue.⁴⁷ In other words, if the defendant company “creat[ed] or develop[ed]” the information (as the statute provides), it would lose its immunity rights.⁴⁸

As noted above, a company is immune under § 230 if it simply engages in a traditional publisher’s editorial responsibilities, such as choosing which content to post and correcting typographical or factual errors.⁴⁹ However, if a company actively engaged in the creation of the content in a way that is “more substantial than merely editing portions of an e-mail and selecting material for publication,” then it will have helped “create” the material and thus still be exposed to liability.⁵⁰

In *Gentry v. eBay*, the plaintiffs sued the online auction site for negligence after they purchased sports memorabilia from the site that turned out to be counterfeit.⁵¹ The plaintiffs argued that § 230 did not apply because eBay was partially responsible for some of the illegal

41. 31 P.3d at 40.

42. *Id.*; see *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 329 (4th Cir. 1997).

43. See *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703, 715 (Cal. Ct. App. 2002).

44. See *Batzel v. Smith*, 333 F.3d 1018, 1030-31 (9th Cir. 2003).

45. See *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003).

46. See *Batzel*, 333 F.3d at 1031.

47. See *id.*

48. See *id.*; 47 U.S.C. § 230(f)(3) (2000).

49. See *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997).

50. *Batzel*, 333 F.3d at 1031.

51. 121 Cal. Rptr. 2d 703, 707-08 (Cal. Ct. App. 2002).

content at issue and thus was also an “information content provider.”⁵² Specifically, they argued that third parties used eBay’s “customer rating system” to generate a false positive rating of the memorabilia and one of eBay’s company-generated “product descriptions” to paint the fake memorabilia in a positive light.⁵³ However, the Washington state court ruled that eBay did not “provide” the illegal information because it did not technically create or develop either the false positive ratings or the product descriptions; it merely supplied the means on its site by which the third parties falsely rated and identified their products.⁵⁴ As a result, the court ruled that eBay was not an “information content provider” within the scope of the statute, and thus was immune under § 230.⁵⁵

III. COURT’S DECISION

In the noted case, the Ninth Circuit followed the previous line of cases that ruled for a broad interpretation of § 230 when it found an online dating service, Matchmaker.com, to be statutorily immune for posting a false profile of a famous actress that originated from a third-party imposter in Germany.⁵⁶ In doing so, the Ninth Circuit reached a different conclusion than the federal district court that had initially considered the case.⁵⁷ In its decision, the lower court ruled that Matchmaker fulfilled the first element of immunity because it fit the definition of “interactive computer service.”⁵⁸ However, the lower court ruled that Matchmaker served as “another information content provider,” which barred it from immunity under § 230.⁵⁹ In reaching its decision, the lower court noted that Matchmaker played an “active role in developing the information that gets posted” by asking a series of multiple-choice and essay questions tailored to each local community, and limiting the scope of the profile to the answers to those questions.⁶⁰ The district court ruled that Matchmaker’s solicited questions and its limitation of the profile’s content to those questions meant that it exceeded the normal editorial functions granted by the statute.⁶¹ Instead,

52. *See id.* at 715.

53. *Id.* at 715-18.

54. *Id.*

55. *Id.*

56. *See* Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1125 (9th Cir. 2003).

57. *See id.*; *see also* Carafano v. Metrosplash.com, Inc., 207 F. Supp. 2d 1055, 1065 (C.D. Cal. 2002), *aff’d on other grounds*, 339 F.3d 1119 (9th Cir. 2003) (reaching opposite conclusion on statutory immunity question).

58. *Id.* at 1065-67.

59. *Id.* at 1066-67.

60. *See id.*

61. *Id.*

noting the line drawn by past cases, the court ruled that Matchmaker was “partly responsible for the creation or development of the information being provided,” and thus fit the definition of “an information content provider,” thereby barring it from § 230’s protections.⁶² Nonetheless, the district court went on to grant summary judgment to Matchmaker on each tort claim.⁶³

On appeal, the Ninth Circuit began by noting that the threshold issue (before considering the summary judgment motions) was whether Matchmaker could be considered to be “another information content provider,” which would bar the company from receiving § 230 protections.⁶⁴ After reviewing the legislative history of § 230, the court noted that the prior cases “treated § 230(c) immunity as quite robust,” by carving out a broad definition of “interactive computer service” and a narrow definition of “information content provider.”⁶⁵ The court affirmed with little discussion that Matchmaker was an “interactive computer service” within the scope of the statute.⁶⁶ The court then remarked that the “consensus developing across other courts of appeals” was that § 230 provided broad immunity for technology companies posting information that was “primarily” provided by a third party.⁶⁷ As a result, the court noted, “so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process.”⁶⁸

Given these parameters, the court held that Matchmaker did not actively create or develop the content of the online posting and was *not* “another information content provider,” thus entitling the company to § 230 immunity.⁶⁹ The court ruled that Matchmaker’s multiple-choice and essay questions merely represented a means by which the dating service facilitated the posting of the users’ information.⁷⁰ Importantly, the court noted, the individual user was solely responsible for choosing all of the profile content—e.g., answering the multiple choice questions, writing the essays, and providing the photograph.⁷¹ In contrast, Matchmaker was “not responsible, even in part,” for the content.⁷² In

62. *Id.* at 1068.

63. *See id.* at 1076-77.

64. *See* Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).

65. *See id.* at 1123.

66. *See id.* at 1122-23.

67. *Id.* at 1123 (citations omitted).

68. *Id.* at 1124.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

making its conclusion, the court cited the Washington state court's ruling in *Gentry*, in which the court held that third party's misuse of eBay's "customer rating system" did not bar the online auction company from § 230 protections.⁷³ Similarly, the Ninth Circuit held that Matchmaker's classifications of dating information did not make the company a "'developer' of the 'underlying misinformation'" because the third-party German perpetrator, not Matchmaker, was responsible for misusing and controlling the information.⁷⁴ Finally, the Ninth Circuit dismissed Carafano's arguments that Matchmaker's sixty-two questions and essay solicitations represented more "creation" and "development" of content than eBay's customer rating system, finding that "this is a distinction of degree rather than of kind and Matchmaker still lacks responsibility for the 'underlying misinformation.'"⁷⁵

In making its decision, the court reasoned that providing Matchmaker with § 230 immunity, despite the company's editorial role in requesting the personal information, was consistent with the Congressional intent of the statute.⁷⁶ Noting that one of Congress's purposes was to ensure that the Internet would continue to develop and flourish, the court argued that Matchmaker's ability to match individuals with similar interests for dating relationships was a positive outgrowth of the Internet, and was thus consistent with the statute.⁷⁷

Finally, the court held that the § 230 statute did not explicitly bar immunity to a company that served as an "information content provider" for *some* of the information posted online; instead, the statute barred protections for those companies that provided the specific information at issue in the complaint.⁷⁸ The court noted the statute "precludes treatment as a publisher or speaker for '*any* information provided by *another* information content provider,'" thus creating a high bar for a plaintiff to overcome to defeat the immunity claim.⁷⁹ Indeed, the court noted, the statute would bar Carafano's claim "unless Matchmaker created or developed the particular information at issue."⁸⁰ Thus, the Ninth Circuit held that Matchmaker could not be considered an "information content

73. See *id.* (citing *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703, 717 (Cal. App. Ct. 2002)).

74. See *id.*

75. *Id.* at 1125.

76. See *id.* at 1124-25.

77. See *id.* at 1125 (citing 47 U.S.C. § 230(b)(1) (2000)).

78. *Id.*

79. *Id.* (citing 47 U.S.C. § 230(b)(1) (emphasis added)).

80. *Id.*

provider” within the scope of the statute, and thus affirmed the district court’s summary judgment motion, albeit on different grounds.⁸¹

IV. ANALYSIS

The Ninth Circuit’s ruling is consistent with the most recent decisions granting a broad interpretation of § 230 immunity, particularly concerning the definition of “interactive computer service.”⁸² Regardless of whether Congress foresaw that Web site service providers other than ISPs would be covered under the statute, the *Schneider* ruling and its successors have expanded the scope of “interactive computer service,” and the Ninth Circuit broke no new ground on that issue.⁸³

However, by disagreeing with the lower court and holding that Matchmaker was *not* “another information service provider” despite its multiple-choice questions and essay answers, the holding appears to go even further than past jurisprudence on the extent to which a publisher can have even greater editorial control over offensive information, yet continue to maintain its § 230 immunity rights.⁸⁴ Before analyzing the issues in the *Carafano* case, the Ninth Circuit noted that there was a “consensus developing across other courts of appeals that § 230(c) provides broad immunity for publishing content provided by third parties.”⁸⁵ The court then attempted to characterize this “consensus” by noting that “so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process.”⁸⁶ The court’s test for determining whether the publisher is barred from immunity is much narrower than the *Blumenthal* court’s 1998 interpretation of the statute, cited by the district court, that “joint liability would be possible if [the publisher] ‘had *any role* in creating or developing any of the information’ in the posted material.”⁸⁷ Indeed, the Ninth Circuit’s language is so broad that it appears arguably to grant a legal presumption to the defendant that he is immune unless the third party did not “willingly provide” the essential published content. Thus, while all of the prior jurisprudence had consistently found publishers in those cases to be exempt from

81. *Id.*

82. *See* Batzel v. Smith, 333 F.3d 1018, 1030 n.15 (9th Cir. 2003).

83. *See* Schneider v. Amazon.com, Inc., 31 P.3d 37, 40 (Wash. Ct. App. 2001).

84. *See* Carafano, 339 F.3d at 1122-23.

85. *Id.* at 1124.

86. *Id.*

87. Carafano v. Metrosplash.com, Inc., 207 F. Supp. 2d 1055, 1068 (C.D. Cal. 2002), *aff’d on other grounds*, 339 F.3d 1119 (9th Cir. 2003) (quoting Blumenthal v. Drudge, 992 F. Supp. 44, 50 (D.D.C. 1998) (emphasis added)).

liability, the Ninth Circuit's holding appears to define the "create or develop" clause of "another information content provider" more narrowly than previously held, and thereby ensures that § 230 immunity can be applied even when publishers take a more active role, rather than engaging in simple editorial functions.

Moreover, the court's holding that Matchmaker's services were similar to eBay's, and thus exempting the company from "creating and developing" the profile, is questionable.⁸⁸ As the district court pointed out, Matchmaker appeared to take a more active role in developing its profiles by limiting the content to answers to its multiple-choice and essay questions.⁸⁹ Unlike Matchmaker, eBay's customer rating system simply allowed for consumers to fill in any positive or negative information; the rating system was merely a small part of the profile, rather than the basis for the whole profile.⁹⁰ In addition, some of the imposter's answers to Matchmaker's multiple-choice questions, including one saying Carafano was allegedly "looking for a one night stand," arguably incited some individuals to harass and threaten her, which formed one of the bases of her tort claims.⁹¹ Thus, even under the Ninth Circuit's strictest definition of "another information content provider," which would guarantee immunity "unless Matchmaker created or developed the particular information at issue," the company appeared to take a sufficiently active editorial role to bar it from immunity.⁹²

Finally, the noted case, along with other recent decisions, indicates the extent to which § 230 immunity is now applied in ways that are inconsistent with their original Congressional intent. As the *Zeran* court noted, Congress passed § 230 in order to foster the *free* exchange of ideas across the Internet, by immunizing Internet service providers from information posted on "chat rooms" (and thus incentivizing ISPs not to curtail the dialogue).⁹³ In recent cases, however, courts have extended § 230 protections to organizations involved in *commercial* activity on the Internet, who are primarily interested in encouraging individuals to pay to use their services, rather than encouraging any free and open debate on issues.⁹⁴ Indeed, the Ninth Circuit's justification for granting Matchmaker immunity because Congress intended to expand

88. See *Carafano*, 339 F.3d at 1123-24.

89. See *Carafano*, 207 F. Supp. 2d at 1067.

90. See *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703, 717-18 (Cal. Ct. App. 2002).

91. See *Carafano*, 339 F.3d at 1121.

92. See *id.* at 1125.

93. See *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330-31 (4th Cir. 1997).

94. See, e.g., *Carafano*, 339 F.3d at 1125; *Gentry*, 121 Cal. Rptr. 2d at 714-16.

commercial opportunities on the Internet (in this case facilitating the means by which couples can date online) is a dubious claim.⁹⁵

In addition, Congress's second goal in passing § 230 was to encourage service providers to self-regulate their online areas, by removing the publisher's strict liability standard.⁹⁶ However, as the noted case illustrates, it is difficult to see why an online service would take greater precautions to protect people when all of its actions are immune from liability. In the noted case, the fraudulent profile was successfully posted with Carafano's home address—a violation of Matchmaker's internal policies—and her photograph was approved by Matchmaker's internal staff before it was posted.⁹⁷ Had Matchmaker been faced with the fear of lawsuits, perhaps it would have assumed greater care in self-regulating its profiles before they were posted. Instead, however, a victim of a "serious and utterly deplorable" fraud was left without civil recourse because the publisher of the material was held to be immune.⁹⁸ Given the anonymity of the Internet, the ease by which a third party can post false material online, and the difficulty of locating these third-party perpetrators, the expansive interpretation of § 230 immunity means that there will likely be more tort victims left without civil recourse in the foreseeable future.

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95. See *Carafano*, 339 F.3d at 1124-25.

96. See *Zeran*, 129 F.3d at 331.

97. See *Carafano*, 339 F.3d at 1121.

98. See *id.* at 1125.

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