

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**Chicago Lawyers' Committee For
Civil Rights Under Law, Inc.,**

Plaintiff-Appellant,

v.

craigslist, Inc.,

Defendant-Appellee.

Appeal from the U.S. District Court
For the Northern District of Illinois, Eastern Division
Case No. 06 C 0657
The Honorable Judge Amy J. St. Eve

BRIEF OF *AMICI CURIAE*

**AMAZON.COM, INC., AOL LLC, CABLE NEWS NETWORKS, INC., EBAY INC.,
GOOGLE INC., IAC/INTERACTIVECORP, MICROSOFT CORPORATION, THE
NEW YORK TIMES COMPANY, TRIBUNE COMPANY, YAHOO! INC.,
ASSOCIATION FOR COMPETITIVE TECHNOLOGY, CENTER FOR
DEMOCRACY AND TECHNOLOGY, ELECTRONIC FRONTIER
FOUNDATION, INTERNET COMMERCE COALITION, NATIONAL CABLE &
TELECOMMUNICATIONS ASSOCIATION, NETCOALITION, NETCHOICE,
ONLINE NEWS ASSOCIATION, TECHNOLOGY NETWORK D/B/A TECHNET,
AND UNITED STATES INTERNET SERVICE PROVIDER ASSOCIATION
IN SUPPORT OF CRAIGSLIST, INC.**

Marc J. Zwillinger
SONNENSCHNAIN NATH & ROSENTHAL LLP
1301 K Street NW
Washington, DC 20005
(202) 408-6400

Samuel Fifer
SONNENSCHNAIN NATH & ROSENTHAL LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, IL 60606
(312) 876-8000

Counsel for Amici Curiae

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No.: 07-1101
Short Caption: Chicago Lawyers' Committee for Civil Rights Under Law,
Inc. v. craigslist, Inc.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1

The Court prefers that the disclosure statement be filed immediately following docketing; but the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amazon.com, Inc., AOL LLC, Cable News Networks, Inc., eBay Inc., Google Inc., IAC/InterActiveCorp, Microsoft Corporation, The New York Times Company, Tribune Company, Yahoo! Inc., Association for Competitive Technology, Center for Democracy and Technology, Electronic Frontier Foundation, Internet Commerce Coalition, National Cable & Telecommunications Association, NetCoalition, NetChoice, Online News Association, Technology Network d/b/a TechNet, United States Internet Service Provider Association
- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency or are expected to appear for the party in this court):
Sonnenschein Nath & Rosenthal LLP
- (3) If the party or amicus is a corporation:
 - i) Identify all its parent corporations, if any: and
Amazon.com, Inc. - N/A
AOL LLC - Time Warner Inc.
Cable News Network, Inc. - Turner Broadcasting System, Inc., a subsidiary of Time Warner Inc.
eBay Inc. - N/A
Google Inc. - N/A
IAC/InterActiveCorp - N/A
Microsoft Corporation - N/A
The New York Times Company - N/A
Tribune Company - N/A
Yahoo! Inc. - N/A

Association for Competitive Technology - N/A
Center for Democracy and Technology - N/A
Electronic Frontier Foundation - N/A
Internet Commerce Coalition - N/A
National Cable & Telecommunications Association - N/A
NetCoalition - N/A
NetChoice - N/A
Online News Association - N/A
Technology Network d/b/a TechNet - N/A
United States Internet Service Provider Association - N/A

ii) List any publicly held company that owns 10% or more of the party's or amicus' stock:

Amazon.com, Inc. - Legg Mason, Inc.
AOL LLC - Time Warner Inc.
Cable News Network, Inc. - Time Warner Inc.
eBay Inc. - N/A
Google Inc. - N/A
IAC/InterActiveCorp - Liberty Media Corporation and Legg Mason, Inc.
Microsoft Corporation - N/A
The New York Times Company - N/A
Tribune Company - N/A
Yahoo! Inc. - N/A
Association for Competitive Technology - N/A
Center for Democracy and Technology - N/A
Electronic Frontier Foundation - N/A
Internet Commerce Coalition - N/A
National Cable & Telecommunications Association - N/A
NetCoalition - N/A
NetChoice - N/A
Online News Association - N/A
Technology Network d/b/a TechNet - N/A
United States Internet Service Provider Association - N/A

Attorney's Signature: /s/ Marc J. Zwillinger

Date: December 13, 2007

Attorney's Printed Name: **Marc J. Zwillinger**

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d).

Yes X No _____

Address: Sonnenschein Nath & Rosenthal LLP
1301 K Street NW
Washington, DC 20005

Phone Number: (202) 408-6400
Fax Number: (202) 408-6399
E-Mail Address: mzwilling@sonnenschein.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No.: 07-1101
Short Caption: Chicago Lawyers' Committee for Civil Rights Under Law,
Inc. v. craigslist, Inc.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1

The Court prefers that the disclosure statement be filed immediately following docketing; but the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amazon.com, Inc., AOL LLC, Cable News Networks, Inc., eBay Inc., Google Inc., IAC/InterActiveCorp, Microsoft Corporation, The New York Times Company, Tribune Company, Yahoo! Inc., Association for Competitive Technology, Center for Democracy and Technology, Electronic Frontier Foundation, Internet Commerce Coalition, National Cable & Telecommunications Association, NetCoalition, NetChoice, Online News Association, Technology Network d/b/a TechNet, United States Internet Service Provider Association
- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency or are expected to appear for the party in this court):
Sonnenschein Nath & Rosenthal LLP
- (3) If the party or amicus is a corporation:
 - i) Identify all its parent corporations, if any: and
Amazon.com, Inc. - N/A
AOL LLC - Time Warner Inc.
Cable News Network, Inc. - Turner Broadcasting System, Inc., a subsidiary of Time Warner Inc.
eBay Inc. - N/A
Google Inc. - N/A
IAC/InterActiveCorp - N/A
Microsoft Corporation - N/A
The New York Times Company - N/A
Tribune Company - N/A
Yahoo! Inc. - N/A

Association for Competitive Technology - N/A
Center for Democracy and Technology - N/A
Electronic Frontier Foundation - N/A
Internet Commerce Coalition - N/A
National Cable & Telecommunications Association - N/A
NetCoalition - N/A
NetChoice - N/A
Online News Association - N/A
Technology Network d/b/a TechNet - N/A
United States Internet Service Provider Association - N/A

ii) List any publicly held company that owns 10% or more of the party's or amicus' stock:

Amazon.com, Inc. - Legg Mason, Inc.
AOL LLC - Time Warner Inc.
Cable News Network, Inc. - Time Warner Inc.
eBay Inc. - N/A
Google Inc. - N/A
IAC/InterActiveCorp - Liberty Media Corporation and Legg Mason, Inc.
Microsoft Corporation - N/A
The New York Times Company - N/A
Tribune Company - N/A
Yahoo! Inc. - N/A
Association for Competitive Technology - N/A
Center for Democracy and Technology - N/A
Electronic Frontier Foundation - N/A
Internet Commerce Coalition - N/A
National Cable & Telecommunications Association - N/A
NetCoalition - N/A
NetChoice - N/A
Online News Association - N/A
Technology Network d/b/a TechNet - N/A
United States Internet Service Provider Association - N/A

Attorney's Signature: /s/ Samuel Fifer

Date: December 13, 2007

Attorney's Printed Name: **Samuel Fifer**

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d).

Yes No

Address: Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, IL 60606

Phone Number: (312) 876-8000
Fax Number: (312) 876-7934
E-Mail Address: sfifer@sonnenschein.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	vi
STATEMENT OF THE <i>AMICI</i>	1
ARGUMENT.....	7
I. As Courts Throughout the Nation Have Held, Section 230(c)(1) Bars Any Claim Against Online Intermediaries Based on Their Dissemination of Third-Party Content	12
A. Contrary to the District Court’s Interpretation, Any Claim that Would Hold an Online Intermediary Liable for Disseminating Unlawful Third-Party Content “Treats” the Intermediary as the “Publisher or Speaker” of that Content.	13
B. Section 230 Immunity Does Not Depend on Evidence that the Online Intermediary Engaged in Blocking and Screening of Content.	16
II. The Settled Construction Of Section 230 Implements Congress’s Two Key Goals.	19
A. Section 230(c)(1) Immunity, as Consistently Applied in the Courts for a Decade, Has Freed Service Providers to Develop Innovative Services and Encouraged Vibrant Online Speech.	20
B. Section 230(c)(1) Immunity Has Given Service Providers Breathing Room to Engage in Voluntary, Market-Driven Self-Regulation, and Service Providers Have Responded.	25
CONCLUSION.....	25
CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(A)(7).....	26
CIRCUIT RULE 31(E)(1) CERTIFICATION.....	27

TABLE OF AUTHORITIES

CASES

<i>Ben Ezra, Weinstein, and Company, Inc. v. America Online Inc.</i> , 206 F.3d 980, 986 (10th Cir. 2000)	13
<i>Barnes v. Yahoo!, Inc.</i> , 2005 WL 3005602 (D. Or. 2005)	20
<i>Barrett v. Rosenthal</i> , 146 P.3d 510 (Cal. 2006)	14
<i>Batzel v. Smith</i> , 333 F.3d 1018 (9th Cir. 2003)	13, 16, 20, 22
<i>Blumenthal v. Drudge</i> , 992 F. Supp. 44 (D.D.C. 1998)	16, 19
<i>Carafano v. Metrosplash.com, Inc.</i> , 339 F.3d 1119, 1124 (9th Cir. 2003)	16
<i>Doe v. America Online, Inc.</i> , 783 So. 2d 1010 (Fla. 2001)	18
<i>Doe v. Bates</i> , 2006 WL 3813758 (E.D. Tex. 2006)	20
<i>Doe v. GTE Corp.</i> , 347 F.3d 655 (7th Cir. 2003)	8
<i>Doe v. MySpace, Inc.</i> , 474 F. Supp. 2d 843 (W.D. Tex. 2007)	13
<i>Gentry v. eBay Inc.</i> , 121 Cal. Rptr. 2d 703 (Ct. App. 2002)	13, 19
<i>Green v. America Online, Inc.</i> , 318 F.3d 465 (3d Cir. 2003)	12, 18
<i>Noah v. AOL Time Warner, Inc.</i> , 261 F. Supp. 2d 532 (E.D. Va. 2003)	18
<i>Parker v. Google Inc.</i> , 2007 WL 1989660 (3d Cir. 2007)	19
<i>Ragin v. New York Times Company</i> , 923 F.2d 995 (2d Cir. 1991)	18
<i>Schneider v. Amazon.com, Inc.</i> , 31 P.3d 37, 39 (Wash. Ct. App. 2001)	19
<i>Smith v. California</i> , 361 U.S. 147 (1959)	23
<i>United States v. BDO Seidman, LLP</i> , 492 F.3d 806 (7th Cir. 2007)	16
<i>Universal Commc'n Sys. v. Lycos, Inc.</i> , 478 F.3d 413, 418 (1st Cir. 2007)	13
<i>Zeran v. America Online, Inc.</i> , 129 F.3d 327 (4th Cir. 1997), <i>cert. denied</i> , 524 U.S. 937 (1998)	passim

STATUTES

42 U.S.C. § 3604(c)	11
47 U.S.C. § 230	1, 5, 10, 14, 17
47 U.S.C. § 941	10
141 Cong. Rec. 22,045 (1995).....	22
141 Cong. Rec. 22,046 (1995).....	22
H.R. Rep. No. 107-449 (2002)	10

STATEMENT OF AMICI

Amici curiae Amazon.com, Inc., AOL LLC, Cable News Network, Inc. (“CNN”), eBay Inc., Google Inc., IAC/InterActiveCorp (“IAC”), Microsoft Corporation (“Microsoft”), The New York Times Company, Tribune Company, Yahoo! Inc., Association for Competitive Technology (“ACT”), Center for Democracy and Technology (“CDT”), Electronic Frontier Foundation (“EFF”), Internet Commerce Coalition (“ICC”), National Cable & Telecommunications Association (“NCTA”), NetCoalition, NetChoice, Online News Association (“ONA”), Technology Network (“TechNet”), and the United States Internet Service Provider Association (“USISPA”) (collectively “Amici”) file this brief to urge the Court to rule in favor of craigslist, Inc. and to adhere to the prevailing interpretation of 47 U.S.C. §230(c)(1) that courts have applied in the decade since the statute’s enactment. Pursuant to Fed. R. App. P. 29(a), Amici have obtained the parties’ consent to file this brief.

Amici are providers of interactive computer services or organizations that represent the interests of providers or users of such services, as well as the interests of the public at large, in fostering a diverse and dynamic Internet.

Amazon.com offers customers a place to find and discover virtually anything they might want to buy online. Amazon also allows users to post a wide variety of content, including product offerings, customer-created images related to those offerings, and product reviews.

AOL operates one of the top online networks of Web sites in the United States, drawing more than 110 million unique visitors each month. AOL provides a wide

range of interactive computer services, including a wide range of platforms for the dissemination of enormous quantities of user-originated content such as AIM, the leading instant messaging service; AOL Webmail; the AOL Video portal; and the AOL online service, which incorporates various fora for user-originated content, such as message boards and chat rooms, that were involved in several of the leading Section 230 cases.

CNN is one of the world's most respected and trusted sources for news and information. In addition to its television networks, CNN provides content to wireless devices around the world and operates four Web sites, including CNN.com, the first major news and information Web site.

eBay pioneered the online auction-style trading format, creating a forum in which today over 100 million users can sell goods directly to each other. In addition to the vast array of third-party content that comprises the eBay marketplace, eBay permits buyers and sellers to publish ratings and comments on their dealings with one another.^{1/}

Google provides a variety of online services including the Google Web Search service, which is based on an index of the largest collection of documents searchable on the Web, and the Google Groups service, which maintains archives of more than a billion Usenet postings dating from 1981 to the present.

^{1/} eBay owns a minority interest in craigslist.

IAC is a diversified e-commerce company whose businesses are leaders in numerous sectors of the Internet economy, including Ask.com, Citysearch, Evite, LendingTree, Match.com, RealEstate.com, and Ticketmaster. Many of these businesses provide users with the ability to search for, view, and post a wide variety of user-generated content.

Microsoft's online services division provides a wide variety of interactive services, including Windows Live Expo, a free online classifieds service; Windows Live Spaces, a blogging and social networking service; Live Search, a search engine that offers an index of billions of third-party Web pages; and many other offerings that provide access to a variety of third-party content.

The New York Times Company is a diversified media company whose core purpose is to create, collect, and distribute high-quality news, information, and entertainment. The New York Times Company owns and operates more than thirty websites including nytimes.com, boston.com, and about.com.

Tribune, one of the country's top media companies, operates many businesses in broadcasting and publishing. In addition to its traditional media properties, Tribune operates 12 newspaper websites (including chicagotribune.com), 26 television and radio station websites, and various entertainment websites, with over 10 million monthly unique visitors.

Yahoo! offers a comprehensive branded network of online services to nearly 500 million unique visitors each month worldwide. Yahoo! offers a variety of services for third parties to share content on the Yahoo! network, including hosting millions of

personal websites, message boards on tens of thousands of topics, a search engine and online directory, and an online photo sharing service with 24 million visitors each month that hosts over 500 million images.

ACT is a trade association representing information technology businesses and professionals. ACT advocates for a regulatory and legal environment that promotes growth and investment in information technology and services.

CDT is a non-profit public interest and Internet policy organization. CDT represents the public's interest in an open, decentralized Internet reflecting constitutional and democratic values of free expression, privacy, and individual liberty.

EFF is a non-profit, member-supported civil liberties organization that works to protect rights in the digital world. EFF encourages and challenges industry, government, and the courts to support free expression, privacy, and openness in the information society.

ICC is a trade association of leading broadband Internet service providers, e-commerce sites, and technology trade associations. Its mission is to achieve a legal environment that allows service providers, their customers, and other users to do business on the Internet under reasonable rules governing liability and the use of technology.

NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators, cable programming networks and services, and suppliers of equipment and services to the cable

industry. The cable industry is the nation's largest broadband provider of high speed Internet access.

NetCoalition serves as the public policy voice for some of the world's largest and most innovative Internet companies on key public policy matters affecting the online world. Its members are providers of search technology, hosting services, Internet service providers ("ISPs"), and Web portal services.

NetChoice is a coalition of online businesses and consumers who are united in promoting the increased choice and convenience enabled by e-commerce. NetChoice members have a direct interest in preventing obstacles to e-commerce, such as the threat of incurring liability for content provided by third parties.

ONA is the premier U.S.-based organization of online journalists. ONA's members include reporters, news writers, editors, producers, designers, photographers, and others who produce news for distribution over the Internet and through other digital media, as well as academics and others interested in the development of online journalism.

TechNet is a national network of CEOs of technology companies in the fields of e-commerce, networking, information technology, biotechnology, and finance. TechNet is organized to promote the growth of the technology industry and to advance America's global leadership in innovation.

USISPA is a national trade association that represents the common policy and legal concerns of the major ISPs, portal companies, and network providers.

Each of the Amici has a substantial interest in the rules governing whether providers of interactive computer services may be liable for unlawful online content generated by third parties and disseminated through their systems. Over the past decade, federal and state courts throughout the country have held that Section 230(c)(1) broadly immunizes providers of interactive computer services, such as those offered by Amici or companies represented by Amici, from liability for such third-party content. Although the district court held that the service-provider defendant in this case, craigslist, is immune from the Plaintiff's claim, it failed to follow this extensive body of case law and instead adopted an unprecedented narrow construction of Section 230(c)(1). That narrow construction cannot be squared with either the provision's plain language or legislative intent. Plaintiff and its amicus, National Fair Housing Alliance ("NFHA"), meanwhile, urge an even more radical departure from the settled precedent, advocating an erroneous interpretation of Section 230(c)(1) that would strip it of all meaning and function.

Because they serve as platforms for the online communications of hundreds of millions of subscribers and users, many of the Amici (and many other companies whose interests Amici represent) have been, and inevitably will continue to be, parties to controversies in which they must raise Section 230 as a defense. The success and viability of these companies' online businesses — and the vitality of online media generally — significantly depend on their ability to avoid the potential for liability in cases in which it is alleged that one of their millions of users has misused an interactive service to create and disseminate unlawful content. A ruling for Plaintiff on the Section

230 defense in this case could create substantial uncertainty regarding the legal rules applicable to providers of online services and imperil the future growth and development of the online economy. For these reasons, each of the Amici has a strong interest in the legal issues concerning Section 230 presented in this appeal.

ARGUMENT

The Internet and related online services have spawned a communications revolution. Interactive computer services are providing new and rapidly evolving ways for individuals to share and gather information, communicate with one another, and engage in acts of publication that, until relatively recently, were solely the province of traditional media companies. These new media have, as their defining quality, the capacity for anyone with a computer to disseminate vast quantities of diverse content, which is then instantaneously available around the globe.

The core issue presented by this appeal is whether providers of interactive computer services may be held liable for communications that are disseminated through their services but that they did not originate. As craigslist explained in its brief, the answer is no: legions of courts have held that Section 230(c)(1) provides interactive computer service providers such as craigslist with immunity from such claims. Each of these courts has reached this conclusion based on the plain language of the statute, as well as Congress's clear intent.

The district court agreed that Section 230(c)(1) bars Plaintiff's claim, but in reaching that decision it articulated an erroneously narrow reading of Section 230. Rejecting the extensive body of case law construing Section 230, the district court undertook its own analysis, concluding that Section 230(c)(1) provides immunity only when "publishing" is a "critical element" of the plaintiff's cause of action (A027). It is unclear what this would mean as a practical matter because, as courts throughout the country have recognized, *any* claim against an online intermediary based on the alleged

dissemination of harmful third-party content necessarily treats the intermediary as the publisher or speaker of that content. The district court's efforts to draw a line between claims that have "publishing" as an element and those that do not ignores this fundamental principle and could lead to substantial confusion.

For their part, Plaintiff and the NFHA propose that this Court depart even more radically from the prevailing interpretation of Section 230 and find that Section 230(c)(1) does not provide any immunity at all. As craigslist explains in its brief, that proposed interpretation, purportedly based on inconclusive *dicta* from *Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003), is contrary to the plain meaning of Section 230(c)(1) and would render it incoherent. In particular, Plaintiff argues that Section 230 provides limited immunity from liability only to the extent that companies block or screen third-party content. (Pl. Br. at 9.) As discussed below, however, this argument confuses and confounds two separate immunities within Section 230: Section 230(c)(1) immunizes service providers from claims based on the dissemination of third-party content (subject only to certain exceptions inapplicable here). Section 230(c)(2), meanwhile, immunizes service providers from, among other things, claims based on their efforts to block, screen, or remove third-party content — that is, from claims by the originator of content that the service provider was *too* aggressive in blocking or removing that content.

Crucially, the interpretations suggested by the district court and Plaintiff would frustrate Congress's two key objectives for enacting Section 230. One objective was to promote the continued development of a wide variety of interactive computer services and vibrant online speech. Congress recognized that interactive services were

revolutionizing the way that people communicate and gather information because – unlike predecessor print and broadcast media – these services carry a vast amount of information that originates with subscribers and other third parties and is disseminated nearly instantaneously. In this context, Congress determined that the risk of liability arising from third-party communications would significantly diminish the incentives and ability of providers to offer such robust services. In order to promote ongoing development of online services, Congress decided to eliminate the risk that service providers would be held liable for communications originating with others (subject to only a few exceptions), leaving such risk on the originators of such communications.

Congress’s second objective was to eliminate the disincentives to *self*-regulation of online content that had existed under traditional legal principles. Before Section 230, service providers faced disincentives to engage in screening, monitoring, or other self-policing activities because such activities would tend to put them on actual or constructive “notice” of tortious or unlawful content flowing through their services. Such notice could strip service providers of First Amendment protections that they would otherwise enjoy with respect to third-party content, and thus potentially subject them to liability for that content. This made it legally safest, before Section 230’s enactment, for service providers to forego entirely all forms of self-policing of third-party content. By generally immunizing service providers from claims based on third-party content, Congress sharply curtailed the legal risks associated with self-policing, and thereby gave service providers substantial breathing room to develop and deploy innovative forms of self-regulation that are responsive to market demands, able to keep

pace with rapidly evolving technologies, and appropriately tailored to the nature and circumstances of each particular service offering.

The industry's experience in the decade since Congress passed Section 230 has confirmed the wisdom of Congress's foresight. In the wake of virtually unanimous case law affirming that Section 230(c)(1) grants service providers immunity from liability associated with third-party content, such services have flourished, with innovative offerings rapidly being made available to consumers. At the same time, service providers have engaged in a variety of voluntary self-regulatory measures, often developing new technological means for reducing the availability of harmful content in reliance on their understanding that, due to Section 230(c)(1), such measures would not put them at risk of incurring liability. And persons who nevertheless suffer harm still have available to them the full range of legal remedies against the actual wrongdoers — those who originated the harmful content.

Amici cannot emphasize enough the degree to which Section 230, as consistently interpreted by courts across the country over the past decade, has played a critical role in enabling the development of interactive services that both empower users and encourage innovation and self-regulation. Amici thus respectfully urge this Court to adopt the settled construction of Section 230, and to hold that Section 230(c)(1) immunizes online intermediaries such as craigslist from claims based on their dissemination of third-party content.

I. AS COURTS THROUGHOUT THE NATION HAVE HELD, SECTION 230(c)(1) BARS ANY CLAIM AGAINST ONLINE INTERMEDIARIES BASED ON THEIR DISSEMINATION OF THIRD-PARTY CONTENT

Ten years ago, the Fourth Circuit held that the plain language of 47 U.S.C. § 230(c)(1) “creates a federal immunity to *any cause of action* that would make service providers liable for *information originating with a third-party user* of the service.” *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998) (emphasis added). Since then, as craigslist’s brief sets out (at 10-11), the Courts of Appeals for the First, Third, Ninth, and Tenth Circuits, the Supreme Courts of California and Florida, and federal and state trial courts throughout the country have followed suit. And, in passing the “Dot Kids Implementation and Efficiency Act,” Congress explicitly endorsed this body of law. *See* 47 U.S.C. § 941 (extending protections of Section 230 to certain entities); H.R. Rep. No. 107-449, at 13 (2002) (“[t]he courts have *correctly interpreted* section 230(c),” and “[t]he Committee intends these interpretations of Section 230(c) to be equally applicable to those entities covered by” the Dot Kids Act).

In its brief, craigslist describes the three elements of Section 230(c)(1) immunity and explains how each is satisfied here. (craigslist Br. at 14-19.) Amici do not restate those arguments, but instead focus on the competing – and unprecedented – constructions of the statute that the district court and Plaintiff have offered. The district court’s interpretation of Section 230(c)(1) led to the correct result in this case but would, if adopted by this Court, fundamentally undermine the protections of Section 230

within this Circuit. Plaintiff's interpretation, meanwhile, would render one of the statute's key provisions incoherent and meaningless.

A. Contrary to the District Court's Interpretation, Any Claim that Would Hold an Online Intermediary Liable for Disseminating Unlawful Third-Party Content "Treats" the Intermediary as the "Publisher or Speaker" of that Content.

As the district court recognized (A027-A028), there can be no serious dispute that Plaintiff's claim seeks to "treat" craigslist as a "publisher" of third-party content in contravention of Section 230. The overwhelming majority of the Complaint's allegations specifically assert that craigslist "published" or engaged in "publication" of user-supplied information, and the claim at issue is premised on a statute (42 U.S.C. § 3604(c)) that explicitly prohibits "publish[ing]" certain content.

Rather than leave the analysis there, however, the district court attempted to invent new law. While acknowledging that "[n]ear-unanimous case law" has held that any claim based on the dissemination of third-party content treats the defendant as a "publisher" of that content (A013), the district court nonetheless cast aside that body of law and articulated a different, narrower interpretation of Section 230(c)(1). Specifically, the district court concluded that the provision applies only to claims that require, "to establish liability, a finding that an ICS published third-party content" (A023), or as to which publishing is a "critical element" (A027). As examples of such claims, the district court cited defamation — the formal elements of which include publication by a publisher — as well as causes of action under Section 3604(c) of the Fair Housing Act ("FHA") — because that statute uses the words "publish" and "published" in defining

the prohibited conduct. (A023.) Although the district court seemed to assume that there are entire categories of claims that would not fall within the scope of its narrow interpretation, it explicitly refrained from “attempting to define the full contours of the word ‘publisher’ or what constitutes ‘treat[ment] as a publisher.’” (A025.)

The district court’s novel interpretation of Section 230 ignores Congress’s careful choice of words. Congress did not write Section 230(c)(1) to bar only claims of which publication is an explicit “element.” Instead, Congress wrote the statute more broadly to cover *any* claim that would “treat” the online intermediary as a “publisher or speaker” of third-party content,^{2/} and the case law has consistently confirmed that to treat someone as a “publisher” of content means to hold the intermediary legally responsible for the dissemination of that content. The effect of such a holding is to impose on the intermediary the quintessential duties of a traditional publisher – such as requiring it to decide whether to publish the content and whether to retract or withdraw it upon receiving a complaint. As the *Zeran* court explained, “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content” necessarily “treat[]s” the defendant as a “publisher” of that content and therefore “are barred.” *Zeran*, 129 F.3d at 330; *see also Green v. America Online, Inc.*, 318 F.3d 465, 471 (3d Cir. 2003) (Section 230(c)(1) bars claims based on “decisions relating to

^{2/} As craigslist explains (at 19-20), Section 230(e) lists several exceptions from the scope of Section 230 immunity. Most if not all of the exceptions relate to claims for which publication is not a formal element and, under the district court’s view, these exceptions would be mere surplusage.

the monitoring, screening, and deletion of content from its network – actions quintessentially related to a publisher’s role”); *Ben Ezra, Weinstein, and Company, Inc. v. America Online Inc.*, 206 F.3d 980, 986 (10th Cir. 2000) (Section 230 bars liability based on the “exercise of [service provider’s] editorial and self-regulatory functions.”); *Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir. 2003). Similarly, claims that would hold an online intermediary liable for harmful third-party content “treat” it as the “publisher or speaker” of that content because they attempt to place the intermediary in the same legal position as the original “publisher[s] or speaker[s]” of the harmful remarks. See *Zeran*, 129 F.3d at 333 (plaintiff may not seek to “attach liability to AOL under the same theory” as the original publisher “without conceding that AOL too must be treated as a publisher of the statements”); *Gentry v. eBay Inc.*, 121 Cal. Rptr. 2d 703, 715 (Ct. App. 2002). Thus, as craigslist explained (at 16), Section 230 has been held to bar a wide variety of claims based on allegedly injurious speech, ranging from negligence to federal civil rights actions, that do not have “publication” as an explicit element.

The district court’s inventive interpretation would also seriously erode, if not eviscerate, the protections of Section 230(c)(1). Under the district court’s approach, plaintiffs could easily evade Section 230’s bar simply by artfully pleading a cause of action for which, as a technical or semantic matter, “publication” or “publishing” does not happen to be an explicit element. Indeed, the Fourth Circuit in *Zeran* specifically recognized this risk and rejected a plaintiff’s attempt to circumvent Section 230 by “artfully” pleading his claim as one for negligence rather than defamation. See *Zeran*, 129 F.3d at 332; see also *Universal Comm’n Sys. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir.

2007) (“[n]o amount of artful pleading” can avoid Section 230’s bar); *Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 849 (W.D. Tex. 2007) (“No matter how artfully Plaintiffs seek to plead their claims, the Court views Plaintiffs’ claims as directed toward MySpace in its publishing, editorial, and/or screen capacities.”).

The interpretation proposed by the court below would leave service providers with little guidance or protection. They would face potential liability for a vast and unknowable range of potential federal and state law causes of action — which, as discussed in more detail below, would undermine Congress’s clear intent.

B. Section 230 Immunity Does Not Depend on Evidence that the Online Intermediary Engaged in Blocking and Screening of Content.

Plaintiff’s principal argument is that Section 230 protects online intermediaries from claims based on the dissemination of third-party content *only* when the intermediaries make some effort to block and screen unlawful or harmful content. This theory, however, bears no relationship to the actual language of the statute.

Section 230(c) includes two distinct prohibitions. Under Section 230(c)(1), a “provider or user of an interactive computer service” may not be “treat[ed] as the publisher or speaker of” third-party content. As courts have confirmed, this language bars any claim based on the dissemination of third-party content that would “treat” a service provider as a “publisher or speaker” of that content. Section 230(c)(2), which Plaintiff asserts is the *sole* source of immunity in Section 230, provides a different, additional protection. It states that a “provider or user of an interactive computer service” may not “be held liable on account of any action voluntarily taken in good faith

to restrict access to or availability of” objectionable material, even if that material is “constitutionally protected.” 47 U.S.C. § 230(c)(2). Section 230(c)(2) thus ensures that good faith actions to block or screen objectionable content cannot give rise to liability and, in particular, that service providers cannot be sued by the originators of content that is censored or edited. *See, e.g., Barrett v. Rosenthal*, 146 P.3d 510, 520 (Cal. 2006) (“Section 230(c)(1) is concerned with liability arising from information provided online. Section 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information.”).

Eschewing a decade of consistent precedent, Plaintiff contends that Section 230(c)(1) merely defines the class of persons who are eligible for protections under Section 230(c)(2). (Pl. Br. at 8.) Under this interpretation, a person cannot be a “provider or user” entitled to the protection of (c)(2) if she is also deemed to be a “publisher or speaker” of the content at issue. (*Id.*) As craigslist explains (at 26-30), however, it is clear from the language of the statute that the “publisher or speaker” provision of (c)(1) does not define any term in (c)(2), and the distinct (c)(2) immunity does not depend in any way on whether the defendant is a “publisher or speaker” of the content at issue and does not even use those words. Instead, (c)(2) provides, without qualification, that a “provider or user of an interactive computer service” cannot be held liable for good faith actions to restrict access to, or availability of, objectionable material.

Plaintiff’s interpretation also depends on an incoherent understanding of Section 230(c)(2). Although it is far from clear, Plaintiff’s argument apparently assumes that

(c)(2) protects service providers from liability for displaying or disseminating content only if they engage in some form of “good faith” blocking and screening. (Pl. Br. at 9 (“Congress afforded ISPs, who do not themselves supply the content, protection from ‘Civil liability’ if, but only if, they make good faith efforts to block and screen.”).) But (c)(2) does not purport to immunize service providers from claims based on the *dissemination* of information – it prevents service providers from being liable “on account of” of their efforts to *restrict or block* access to information. Conversely, Section 230(c)(1) *does* apply to the dissemination of third-party content. And, as courts have explained, (c)(1)’s protections do not turn on whether the service provider actually adopted any blocking or screening mechanisms. *See, e.g., Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003) (service provider entitled to “full immunity” so long as a “third party willingly provide[d] the essential published content”); *Blumenthal v. Drudge*, 992 F. Supp. 44, 52 (D.D.C. 1998) (“Congress has conferred immunity from tort liability as an incentive to Internet service providers to self-police the Internet for obscenity and other offensive material, even where the self-policing is unsuccessful or not even attempted.”).

Plaintiff mistakenly contends (at 7, 8, 12, and 14) that Section 230 immunity applies only when the intermediary actually blocked and screened content, supposedly because that reading is necessary to reconcile the statute’s text with its title – “Protection for ‘Good Samaritan’ blocking and screening of offensive material.” Of course, if the heading or title of a statute conflicts with its actual text, the text must prevail. *United States v. BDO Seidman, LLP*, 492 F.3d 806, 823 (7th Cir. 2007). But the

conflict that Plaintiff attempts to conjure between the statute's title and the prevailing interpretation of Section 230(c)(1) is, in fact, entirely illusory. As courts have recognized, and as discussed in more detail in craigslist's brief (at 24-26) and below (*infra* at 19-28), (c)(1) immunity promotes an important policy that corresponds exactly with the statute's title: by eliminating the risk of liability for third-party content, (c)(1) frees service providers to monitor and screen their services and take actions to block harmful content without risk that such activities will create notice or knowledge that could supply a predicate for liability. *See Batzel*, 333 F.3d at 1028. Indeed, Plaintiff's proposed interpretation would not even protect service providers who engage in blocking and screening. Unless the screening or blocking worked perfectly (which is technically impossible), plaintiffs would undoubtedly bring claims arguing that particular blocking and screening mechanisms were inadequate and unreasonable and therefore insufficient to entitle a service provider to immunity. Plaintiff's interpretation is contrary to the plain text and purposes of the statute and should be rejected.

II. THE SETTLED CONSTRUCTION OF SECTION 230 IMPLEMENTS CONGRESS'S TWO KEY GOALS.

As craigslist explains (at 21-26), Congress passed Section 230 for two key reasons: to promote the continued development of vibrant and diverse online media and services, and to provide service providers with breathing room to engage in voluntary *self-regulation*. As the experience of many of the Amici confirms, the prevailing interpretation of Section 230 has enabled the statute to have precisely its intended effect.

A. Section 230(c)(1) Immunity, as Consistently Applied in the Courts for a Decade, Has Freed Service Providers to Develop Innovative Services and Encouraged Vibrant Online Speech.

The preamble of Section 230 could not be more clear: declaring that “interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity,” and determining that these services have “flourished, to the benefit of all Americans, with a minimum of government regulation,” 47 U.S.C. § 230(a)(3)-(4), Congress concluded that it is “the *policy* of the United States . . . to preserve the *vibrant and competitive* free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*” *Id.* § 230(b)(2) (emphasis added). Congress thus clearly enacted Section 230 “to encourage the *unfettered and unregulated* development of free speech on the Internet.” *Batzel*, 333 F.3d at 1027-28 (“there is little doubt that [Section 230] sought to further First Amendment and e-commerce interests on the Internet”). As *craigslist* explains, Congress achieved this goal by eliminating the risk that online intermediaries could be held liable for content that is transmitted via their services but which they do not originate. (*craigslist Br.* at 21-23.)

Plaintiff and NFHA suggest that there is no difference between traditional and new media in terms of the ability to screen harmful information, and that online media should be subject to the same burdens as traditional media. (*See, e.g., NFHA Br.* at 12.) In doing so, however, they ignore the facts of which Congress was keenly aware in passing Section 230. Unlike many interactive computer services, traditional media such

as newspapers can and generally do screen the content of advertising and other third-party content that they publish. For example, in *Ragin v. New York Times Company*, 923 F.2d 995 (2d Cir. 1991), the New York Times was held potentially liable under the Fair Housing Act for running allegedly discriminatory advertisements in part because of the “extensive monitoring” of advertisements that the Times “routinely performed.” *Id.* at 1004. Congress recognized that interactive computer services – even those owned or operated by traditional media companies – are fundamentally different than traditional media in this crucial respect. Rather than operating as a centralized “publisher,” online services make it possible for millions of users to publish material *directly* – and often instantaneously. The sheer volume of third-party communications carried by many of the Amici illustrates the obstacles that online intermediaries would face if they were subject to liability for all third-party content:

- For example, AOL disseminates an enormous range of third-party content, including message boards (at issue in *Zeran*, 129 F.3d 327) and chat rooms (at issue in *Doe v. America Online, Inc.*, 783 So.2d 1010, 103-17 (Fla. 2001); *Green*, 318 F.3d 465; and *Noah v. AOL Time Warner, Inc.*, 261 F. Supp. 2d 532 (E.D. Va. 2003)) enabling its millions of users to communicate in real time, and feature publications (at issue in *Blumenthal*, 992 F. Supp. 44).
- eBay has over two hundred million members. Each day, millions of new items for sale are listed or posted by third parties on eBay.com. eBay also invites buyers and sellers to rate and comment on their dealings with each

other, and the comments and ratings are displayed in eBay's Feedback Forum (at issue in *Gentry*, 121 Cal. Rptr. 2d 703).

- Google's search service, at issue in *Parker v. Google Inc.*, 2007 WL 1989660 (3d Cir. 2007), and used by millions of people every day, is based on an index of billions of third-party Web pages. The Google Base service enables providers to post a broad range of content online that is then discoverable on google.com.
- Amazon.com's site makes available millions of individual reviews posted by third-party users. These user reviews (the type of content at issue in *Schneider v. Amazon.com, Inc.*, 31 P.3d 37, 39 (Wash. Ct. App. 2001)) enable other purchasers to gather valuable feedback about the products offered for sale.
- Microsoft's online services division offers users a variety of ways to communicate with each other or to broadcast messages across the internet, including online classifieds with tens of thousands of new listings each month in the United States alone, blogging and social networking services with 111 million unique users worldwide and more than 2.4 billion page views each month, message boards with more than 12 million posts currently, and an online video-sharing service that allows users to upload, share and view their video clips.
- Yahoo! hosts millions of personal Web sites, including the profile service at issue in *Barnes v. Yahoo!, Inc.*, 2005 WL 3005602 (D. Or. 2005); provides forums for all manner of organizations through Yahoo! Groups, at issue in *Doe v.*

Bates, 2006 WL 3813758 (E.D.Tex. 2006); offers message boards on tens of thousands of topics with millions of messages at any given time; operates an online photo sharing service that hosts over 500 million images; and makes available numerous other types of third-party content.

Each of these services, and many others like them, have revolutionized how people buy and sell goods, make friends, learn facts and opinions, obtain and give feedback, locate services, find housing, or otherwise make connections in ways that are very different from traditional media. Section 230(c)(1), as consistently interpreted by courts across the country, has played – and continues to play – a critical role in keeping these services viable. Given the “staggering” volume of third-party content that they carry, if service providers were “[f]aced with potential liability” for each piece of such content carried over their services, they likely would be forced to restrict or abandon altogether many of the features and forums that enable the dissemination of third-party content in the first place. *See Zeran*, 129 F.3d at 331; *Batzel*, 333 F.3d at 1027-28 (“[m]aking interactive computer services and their users liable for the speech of third parties *would severely restrict* the information available on the Internet”) (emphasis added).

As NFHA’s brief confirms, the quantity of information at issue *in this case* is staggering. According to NFHA, “roughly 2 million new classified housing advertisements are posted on Craigslist” every month. (NFHA Br. at 12.) Reviewing these housing advertisements alone would be a massive task. At the same time, the service offered by craigslist and other providers who offer the ability to search for

housing online is clearly highly valued and useful. NFHA states that “three-quarters of homebuyers viewed the Internet as a useful tool in their home search,” and that in a single month in 2004, “more than 843 million minutes were spent on housing-related web sites.” (*Id.*) Thus, craigslist and other similar services provide an extraordinarily useful service for millions of users – for free. This is precisely the type of innovative service and flourishing speech that Congress wanted to encourage when it passed Section 230(c)(1).

The alternative interpretations offered by the district court and Plaintiff, however, would fundamentally undermine the ability to offer services such as those provided by craigslist and other innovative interactive computer service providers. Under those readings, service providers would be potentially liable for all of their users’ and other third parties’ communications – not only in the specific area of housing advertisements, but for *any* content as to which liability might be imposed. Under Plaintiff’s theory, service providers would be forced to familiarize themselves with every federal or state law or regulation that might apply to any type of content a user might decide to post, and then institute some form of screening mechanism that would, somehow, block all communications that may run afoul of such regulations. Moreover, under Plaintiff’s interpretation, a service provider would have no way to be certain that whatever screening mechanism it adopted was sufficient to qualify it for the immunity provision. The mere risk of litigation in these circumstances would itself create a significant disincentive to the development of innovative services – precisely the result Congress sought to avoid.

B. Section 230(c)(1) Immunity Has Given Service Providers Breathing Room To Engage in Voluntary, Market-Driven Self-Regulation, and Service Providers Have Responded.

Both the district court and Plaintiff suggest that the settled interpretation of Section 230(c)(1) undermines Congress's goal of encouraging service providers to block or screen harmful content. In fact, as craigslist explains (24-26), and as the experience of Amici demonstrates, (c)(1) immunity *encourages* self-regulation by eliminating disincentives to self-regulation that existed under pre-Section 230 law.

Congress was mindful that interactive computer services could be used to disseminate harmful, unlawful, or otherwise objectionable content. Nonetheless, Congress specifically and deliberately decided that the dissemination of that content should not be controlled by imposing liability on the intermediaries. Subject to a handful of specific exceptions, none of which applies here, Congress deliberately decided that only the actual wrongdoers – the *originators* of unlawful content – should be subject to liability. At the same time, Congress recognized that service providers could play a constructive role by engaging in self-regulatory efforts to restrict access to or availability of objectionable material in a manner that befits the particular nature and design of their services. As Representative Cox, a sponsor of the bill, explained: “Government is going to *get out of the way* and let parents and individuals control [the Internet] rather than government doing that job for us.” 141 Cong. Rec. 22,045 (1995) (emphasis added). Congress sought to achieve this goal by “encourag[ing] interactive computer services and users of such services to self-police the Internet for obscenity and other offensive material.” *Batzel*, 333 F.3d at 1028. *See also Zeran*, 129 F.3d at 331

(Section 230 was intended “to encourage service providers to self-regulate the dissemination of offensive material over their services”); 141 Cong. Rec. 22,046 (1995) (Section 230 was designed to give interactive service providers “a reasonable way to . . . help them *self-regulate* themselves *without penalty of law*”) (statement of Rep. Barton, emphasis added).

As craigslist explains (at 25-26), traditional common law and First Amendment protections created perverse disincentives that discouraged online services from engaging in self-regulation. *See Zeran*, 129 F.3d at 333 (“Any efforts by a service provider to investigate and screen material posted on its service would only lead to notice of potentially defamatory material more frequently and thereby create a stronger basis for liability.”).^{3/} Congress wanted to give service providers freedom to implement self-regulatory measures without fear that by doing so they would be exposing themselves to liability that would not otherwise exist. By passing Section 230, Congress freed service providers to adopt robust self-regulatory regimes, experiment with different approaches to self-regulation, implement novel technical solutions, and

^{3/} Contrary to Plaintiff’s suggestion (at 21-23), the problem of notice-based liability creating disincentives to service providers to self-regulate is not confined to the defamation context. The principle that distributors of large quantities of other people’s content cannot be held liable without scienter regarding the specific content at issue applies broadly as a matter of First Amendment doctrine to all manner of laws, torts, and other claims. *See, e.g., Smith v. California*, 361 U.S. 147, 152-53 (1959). Thus, even if the FHA generally imposes “strict liability” on all defendants, entities like newsstands, bookstores, libraries – and online clearinghouses like craigslist – nonetheless benefit under the First Amendment from the heightened scienter standard.

otherwise respond to the demands of the marketplace and the possibilities of technology.

Relying on dicta from *Doe v. GTE*, Plaintiff speculates that the prevailing interpretation of Section 230 immunity in fact encourages service providers “to do nothing” rather than engage in any self-regulatory actions. (Pl. Br. at 14.) But that speculation is belied by reality. After years of adapting to the prevailing Section 230 immunity regime, service providers *have* adopted a wide range of self-regulatory measures. This fact is well illustrated by the aggressive and creative steps taken by many of the Amici to self-regulate their own services in innovative, robust ways. Since passage of Section 230, many service providers have adopted a wide range of voluntary, self-regulatory measures. Just by way of example:

- Amazon.com provides users with mechanisms for reporting complaints about content, has automated and manual processes to review complaints, and removes third-party communications that fall outside its guidelines.
- AOL has implemented Community Guidelines setting rules and standards for member-supplied content, and AOL also has a “Community Action Team” that responds to complaints, monitors message boards and chat rooms, and has authority to enforce the Community Guidelines.
- eBay offers users a simple Web form for making complaints about third-party content on the eBay service, including inappropriate Feedback, listing violations, and problems experienced in dealings with other users.

- Google provides various Web pages and e-mail addresses (such as groups-abuse@google.com) through which users can submit complaints and other comments concerning third-party content available through its services.
- Microsoft requires users submitting content to its online services to agree to a detailed Code of Conduct and provides an abuse reporting system that allows Windows Live users to report improper and unauthorized third-party content.
- Yahoo! provides a “Report Abuse” function that allows users to report improper content and has designed and implemented measures involving both technical and human review to detect, report, and eliminate certain types of objectionable content.

Without the protection of Section 230(c)(1), the monitoring and filtering features offered by these and other service providers could generate precisely the type of “notice” that could lead to liability. *See Zeran*, 129 F.3d at 333. Similarly, without 230(c)(1) immunity, these service providers could be exposed to liability for adopting robust codes of conduct but allegedly failing to enforce them to a particular plaintiff’s satisfaction. In short, as the actions of the Amici reveal, service providers are taking precisely the kinds of voluntary, self-regulatory actions that Congress expected would take root, and Section 230(c)(1) immunity is therefore having its intended effect.

CONCLUSION

For the foregoing reasons, Amici respectfully urge this Court to join the numerous other courts that have held that Section 230(c)(1) immunizes online intermediaries such as craigslist from claims based on the dissemination of third-party content.

Respectfully submitted,

Marc J. Zwillinger
SONNENSCHN NATH & ROSENTHAL LLP
1301 K Street NW
Washington, DC 20005
(202) 408-6400

Samuel Fifer
SONNENSCHN NATH & ROSENTHAL LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, IL 60606
(312) 876-8000

Dated: December 13, 2007

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(A)(7)

The undersigned, counsel for *Amici Curiae* Amazon.com, Inc., et al. furnishes the following in compliance with F.R.A.P. Rule 32(a)(7):

I hereby certify that this brief conforms to the rules contained in F.R.A.P. Rule 32(a)(7) for a brief produced with a proportionally spaced font. This brief contains 7,000 words.

Dated: December 13, 2007

Samuel Fifer

CIRCUIT RULE 31(E)(1) CERTIFICATION

A full copy of the foregoing Brief of *Amici Curiae* Amazon.com, Inc., et al. has been furnished to the Court in digital form at the time that the paper Brief was filed.

Dated: December 13, 2007

By: _____
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on December 13, 2007, he caused two true and correct bound copies and one electronic copy of **BRIEF OF AMICI CURIAE AMAZON.COM, INC., ET AL.** to be served by messenger delivery on:

Stephen D. Libowsky
Howrey LLP
Suite 3400
321 N. Clark Street
Chicago, IL 60610

Laurie Wardell
Elyssa Balingit Winslow
Chicago Lawyers' Committee for Civil Rights Under Law, Inc.
Suite 600
100 N. LaSalle Street
Chicago, IL 60602

Eric D. Brandfonbrener
Perkins Coie LLP
131 S. Dearborn, Suite 1700
Chicago, IL 60603

The undersigned further certifies that in accordance with Fed. R. App. P. 25(d)(2), the required number of paper copies and a electronic copy of the foregoing **BRIEF OF AMICI CURIAE AMAZON.COM, INC., ET AL.** were filed with the Clerk of the Court of the U.S. Court of Appeals for the Seventh Circuit on December 13, 2007.
