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COMMUNICATIONS DECENCY ACT DEVELOPMENTS IN LIGHT OF *ROLAND, TAAMNEH, AND GONZALEZ*

By: [Neusha Etemad](#) and [Anne Marie Ellis](#)

CDA Background

Section 230 of the Communications Decency Act (CDA) was enacted in 1996 to provide websites with immunity from liability arising from posting third-party content. For a service provider to be immune, however, the information at issue must be “provided by *another* information content provider.” This begs the question whether website operators provide the content on their platforms or act solely as intermediaries for third-party content.

Determining who is an information content provider is a complex area of the law as more websites are verifying users and suggesting content, blurring the line between passive third-party content and content that a website provides themselves. Historically, the majority of federal circuits have applied broad federal immunity to content providers that publish third-party content. Courts are recently cracking down and limiting the safe harbor that content providers previously relied on to avoid liability.

Case Background – *Roland, et al. v. Letgo, et al.*

In *Roland v. Letgo*, two users of an online marketplace called Letgo, now merged with OfferUp, were murdered by an alleged “verified user” of the platform. To be verified on Letgo, a user inputs a phone number, and the platform sends the phone number a text message to confirm it truly exists. The “verified” designation is noted on users’ profiles. Despite being verified, Tyree Brown was allegedly selling a stolen car through a fictitious name on his profile. He murdered Joseph and Jossline Roland when they met to obtain the car title. Plaintiffs asserted seven claims against defendants who argued that all claims should be dismissed under Section 230 of the CDA.

A Colorado magistrate judge found that plaintiffs’ allegations were sufficient to survive a motion to dismiss, and Defendants Letgo and OfferUp were not granted immunity under Section 230 of the CDA. *Roland v. Letgo, Inc.*, No. 22-cv-00899 (D. Colo. April 14, 2022). To fall under CDA immunity, a website must passively display content that is created entirely by a third party. In *Roland*, Judge Hegarty found that plaintiffs sufficiently pled that Defendants contributed in part to Tyree Brown’s representation as a verified user. Judge Hegarty noted that his decision applied only to the pleading stage and did not impact whether defendants could assert CDA immunity at summary judgment. The ruling shows that internet service providers’ involvement in vetting users and their content could lead to higher litigation exposure.

The Ninth and Tenth circuits have weighed in on the issue. The courts have routinely differentiated between content that a website itself creates versus the “passive display” of content. The Ninth Circuit

found that requiring subscribers to select their roommate preferences through pre-populated answers prevented CDA immunity because the website “materially contributed” to the content’s unlawfulness. See *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1168 (9th Cir. 2008). Similarly in *Accusearch Inc.*, the Tenth Circuit found that a website’s participation in disclosing confidential telephone records through a third party classified it as a “developer” of information. See *FTC v. Accusearch Inc.*, 570 F.3d 1187, 1200-01 (10th Cir. 2009). At odds with *Accusearch*, the Ninth Circuit ruled in *Kimzey v. Yelp! Inc.* that Yelp had immunity when transforming negative reviews to conform to its star-rating system because the system is a “neutral tool” that did not amount to content creation or development. 836 F.3d 1263, 1269-70 (9th Cir. 2016).

Key Takeaways

To avoid greater exposure, internet service providers should consult with counsel regarding any activities involving vetting and attesting to information on their platforms and suggesting content. The United States Supreme Court is considering two cases, *Gonzalez v. Google LLC* and *Twitter, Inc. v. Taamneh*, that could drastically alter the future of the internet. Both cases were brought by family members of U.S. citizens who were killed by ISIS in terrorist attacks. The family members allege that platforms such as Twitter and YouTube are “aiding and abetting” ISIS attacks by failing to block content that promotes terrorism. The American Civil Liberties Union filed amicus briefs in both cases, highlighting the chilling impact on free speech that would result from imposing liability in these seminal cases.

Gonzalez is the first United States Supreme Court case to address the scope of section 230 immunity, and the results will be telling for any platform that allows public expression and publication. We will provide updates to keep content providers apprised of CDA developments as the law further evolves.



[Neusha Etemad](#)
Attorney
(619) 219-5362
netemad@buchalter.com



[Anne Marie Ellis](#)
Shareholder
(949) 224-6223
aellis@buchalter.com