

Susman Godfrey Partner Ian Crosby Drafts Pro Bono Amicus Brief for Significant Wisconsin Case Clarifying Immunity Under Communications Decency Act

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On April 19, the Wisconsin Court of Appeals issued an important decision regarding when and how online service providers may invoke the protections of the Communications Decency Act (CDA) of 1996. The court's ruling in *Daniel v. Armslist* found that the owner of a website cannot use the CDA as a shield from liability for the foreseeable effects that the features of a site are designed to facilitate and encourage, regardless of whether or not that liability also relates to user-generated content.

Susman Godfrey LLP partner Ian B. Crosby drafted an amicus brief for this case, pro bono, on behalf of computer scientist Yaser Doleh in coordination with the Brady Campaign to Prevent Gun Violence. The brief, which drew on Doleh's subject matter expertise, provided a technical analysis of features that attract and facilitate illegal gun sales on Armslist.com, a website that has frequently been described as "the Craigslist for guns." Doleh became involved in the case because he lost a child to suicide using a weapon purchased from an illegal seller on Armslist.

"It is very gratifying to have contributed to this important case that provides much-needed clarity on the scope of the CDA," said Crosby. "Website owners must understand that the CDA does not provide blanket immunity, especially if they specifically include features that facilitate illegal activity or otherwise create legal liability."

The CDA was enacted in 1996 to regulate indecency and obscenity on the internet and limit the accessibility of pornography to minors. At the same time, it also declared that internet services providers are not publishers and therefore are not liable for content submitted to their sites by third parties. Since the CDA came into effect, website owners have used it as a defense from prosecution and civil litigation with respect to liability arising out of user-generated content.

In *Daniel v. Armslist*, the website Armslist invoked the CDA as a defense in a lawsuit brought by the family of a woman who was killed at her workplace, along with several co-workers, by an ex-boyfriend who had bought a gun from a seller he found on the Armslist site. The so-called "hand-to-hand" private sale was done without a background check that would have found the man was prohibited from owning a firearm due to a restraining order obtained by his ex-girlfriend.

The lawsuit against Armslist claimed it was liable for the woman's death since it had facilitated the illegal sale. Armslist argued that because the ads on its site are user-generated content it was shielded by the CDA from liability for anything that resulted from the gun sale. A trial judge had originally sided with Armslist before the matter went before the Wisconsin Court of Appeals.

Crosby's brief argued that the CDA did not shield Armslist from liability for user-generated content because the design of its web site plays a key role in developing that content, which encourages the illicit sales of guns. The submission also argued that elements of the design of the Armslist site specifically facilitate hand-to-hand firearm sales without background checks. The court agreed that allegations relating to the effect of design elements of the website itself were not subject to immunity under the CDA, and further that whether those features were "neutral" with respect to attracting submissions from illegal sellers went to the underlying merits of the case, not to CDA immunity.

Crosby is an intellectual property litigator who regularly counsels clients on highly technical areas of the law, including the applicability of the CDA. He has represented leading innovators in software, electronics, aerospace and e-commerce in matters involving patents, copyrights, trade secrets and antitrust issues.