

# e-commerce law reports

**FEATURED ARTICLE**  
**07/09**



cecile park publishing

Head Office UK Cecile Park Publishing Limited, 17 The Timber Yard, Drysdale Street, London N1 6ND  
tel +44 (0)20 7012 1380 fax +44 (0)20 7729 6093 info@e-comlaw.com  
[www.e-comlaw.com](http://www.e-comlaw.com)

## Raggi v Las Vegas Metro Police Dept 2009 WL 653000 (D. Nev. 10 March 2009)

A US federal district court holds that a union of Las Vegas law enforcement personnel is shielded from liability for offensive content posted on its website under section 230 of the Communications Decency Act.

On 10 March 2009, a federal district court in Nevada held that a union of Las Vegas law enforcement personnel (LVPPA) was not liable for offensive content posted on its website. The plaintiff, a law enforcement support technician, sued LVPPA after two union members allegedly posted false, derogatory, and sexually explicit content about the plaintiff on LVPPA's website. In her complaint, the plaintiff alleged defamation, public disclosure of private facts, false light, and intentional infliction of emotional distress. The district court ultimately found that section 230 of the Communications Decency Act (CDA)<sup>1</sup> shielded the union from liability because:

- the union was a provider of interactive computer services;
- the union played no role in the creation of the objectionable forum content; and
- the members were not acting as agents of the union when they posted the content.

Section 230 of the CDA states 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'<sup>2</sup>. Congress enacted section 230 to promote the development of online, interactive technologies while also protecting providers of interactive computer services from liability for user-generated content<sup>3</sup>. Section 230 grants interactive computer service providers broad immunity from tort liability and State law intellectual property claims, so long as the content at issue is provided by a third party<sup>4</sup>. The statute defines 'interactive computer services' broadly and has been interpreted to include ISPs, operators of online bulletin boards, and hosts of social networking sites and blogs<sup>5</sup>.

LVPPA operates an online bulletin board that qualifies as an interactive computer service for purposes of section 230. The plaintiff, however, used the common law of agency to argue that her claims against the union were not based on its status as a provider of interactive computer services, but rather as that of an information content provider<sup>6</sup>.

Agency is the fiduciary relationship that arises when one person (the 'principal') manifests assent that another person (the 'agent') shall, subject to the principal's right and control, have power to affect the principal's legal relations through the agent's acts and on the principal's behalf<sup>7</sup>. In the United States, agency law encompasses the principle of *respondeat superior*, which holds an employer vicariously liable for torts committed by an employee or agent while acting within the course and scope of employment<sup>8</sup>. In addition, principals can be liable for the tortious conduct of their agents if an injured third party reasonably believed the agent had authority to act and such a belief is traceable to manifestations made by the principal<sup>9</sup>.

The plaintiff alleged that the two union members acted in the course and scope of union-related activity when they posted the offensive content, and therefore, the tortious conduct could lawfully be attributed to LVPPA. In a motion filed with the court, the plaintiff alleged that defendant, LVPPA - by and through two of its members - published the false and derogatory comments. Using agency law, the plaintiff attempted to remove LVPPA from the bounds of section 230, for where a service provider contributes content, it risks losing immunity<sup>10</sup>.

The court held that the offensive postings were developed entirely by the LVPPA members in their

individual capacities and that LVPPA in no way provided, developed, or even edited the allegedly offensive material. Moreover, the two union members were not, and had never been, officers, agents, or employees of LVPPA, and they did not have permission, either express or implied, to act or speak on behalf of the union. The court cited the Ninth Circuit's decision in *Batzel v. Smith* to emphasize that the existence of a principal-agent relationship is a prerequisite to imputing liability under the agency theory<sup>11</sup>. Because no such relationship existed here, the court granted section 230 immunity and dismissed the plaintiff's claim.

The Raggi case highlights the risks companies face when agency law can be used to impute liability for an employee's or an agent's tortious acts. While courts continue to grant broad CDA immunity, companies are advised to take proactive, strategic steps to minimize legal exposure for the online activities of third parties.

---

**Miriam D'Jaen** Associate  
Perkins Coie  
mdjaen@perkinscoie.com

---

1. 47 U.S.C. § 230.

2. *Id.* § 230(c)(1).

3. *Id.* § 230(b).

4. There is great debate about whether the CDA intended to exclude all intellectual property claims or just federal intellectual property claims. See *Perfect 10, Inc. v. CC Bill LLC*, 488 F.3d 1102 (9th Cir.) 127 S. Ct. 709 (2007); *Atl. Recording Corp. v. Project Playlist, Inc.*, 603 F. Supp. 2d 690 (S.D. N.Y. 2009); *Doe v. Friendfinder Network, Inc.*, 540 F. Supp. 2d 288 (D.N.H. Mar. 27, 2008) 2008 WL 2001745 (May 8, 2008).

5. An 'interactive computer service' is defined in 47 U.S.C. § 230(f)(2).

6. An 'information content provider' is defined at *Id.* § 230(f)(3).

7. Restatement (Third) of the Law of Agency § 1.01 (2006).

8. *Id.* § 2.04.

9. *Id.* § 7.08.

10. *Carafano v. Metrosplash.com*, 207 F. Supp. 2d 1055 (C.D. Cal. 2002).

11. 333 F.3d 1018, 1036 (9th Cir. 2003).



# cecile park publishing

Head Office UK Cecile Park Publishing Limited, 17 The Timber Yard, Drysdale Street, London N1 6ND  
tel +44 (0)20 7012 1380 fax +44 (0)20 7729 6093 info@e-comlaw.com  
[www.e-comlaw.com](http://www.e-comlaw.com)

Registered number 2676976 Registered address 141 Wardour Street, London W1F 0UT VAT registration 577806103

## e-commerce law & policy

Many leading companies, including Amazon, BT, eBay, FSA, Orange, Vodafone, Standard Life, and Microsoft have subscribed to ECLP to aid them in solving the business and legal issues they face online.

ECLP, was nominated in 2000 and again in 2004 for the British & Irish Association of Law Librarian's Legal Publication of the Year.

**A twelve month subscription is £420 (overseas £440) for twelve issues and includes single user access to our online database.**

## e-commerce law reports

You can now find in one place all the key cases, with analysis and comment, that affect online, mobile and interactive business. ECLR tracks cases and regulatory adjudications from around the world.

Leading organisations, including Clifford Chance, Herbert Smith, Baker & McKenzie, Hammonds, Coudert Brothers, Orange and Royal Mail are subscribers.

**A twelve month subscription is £420 (overseas £440) for six issues and includes single user access to our online database.**

## data protection law & policy

You can now find in one place the most practical analysis, and advice, on how to address the many problems - and some opportunities - thrown up by data protection and freedom of information legislation.

DPLP's monthly reports update an online archive, which is an invaluable research tool for all those who are involved in data protection. Data acquisition, SMS marketing, subject access, Freedom of Information, data retention, use of CCTV, data sharing and data transfer abroad are all subjects that have featured recently. Leading organisations, including the Office of the Information Commissioner, Allen & Overy, Hammonds, Lovells, BT, Orange, West Berkshire Council, McCann Fitzgerald, Devon County Council and Experian are subscribers.

**A twelve month subscription is £390 (public sector £285, overseas £410) for twelve issues and includes single user access to our online database.**

## world online gambling law report

You can now find in one place analysis of the key legal, financial and regulatory issues facing all those involved in online gambling and practical advice on how to address them. The monthly reports update an online archive, which is an invaluable research tool for all those involved in online gambling.

Poker, payment systems, white labelling, jurisdiction, betting exchanges, regulation, testing, interactive TV and mobile gaming are all subjects that have featured in WOGLR recently.

Leading organisations, including Ladbrokes, William Hill, Coral, Sportingbet, BskyB, DCMS, PMU, Orange and Clifford Chance are subscribers.

**A twelve month subscription is £520 (overseas £540) for twelve issues and includes single user access to our online database.**

## world sports law report

WSLR tracks the latest developments from insolvency rules in football, to EU Competition policy on the sale of media rights, to doping and probity. The monthly reports update an online archive, which is an invaluable research tool for all involved in sport.

Database rights, sponsorship, guerilla marketing, the Court of Arbitration in Sport, sports agents, image rights, jurisdiction, domain names, ticketing and privacy are subjects that have featured in WSLR recently.

Leading organisations, including the England & Wales Cricket Board, the British Horse Board, Hammonds, Fladgate Fielder, Clarke Willmott and Skadden Arps Meagre & Flom are subscribers.

**A twelve month subscription is £520 (overseas £540) for twelve issues and includes single user access to our online database.**

- Please enrol me as a subscriber to **e-commerce law & policy** at £420 (overseas £440)
- Please enrol me as a subscriber to **e-commerce law reports** at £320 (overseas £440)
- Please enrol me as a subscriber to **data protection law & policy** at £390 (public sector £285, overseas £410)
- Please enrol me as a subscriber to **world online gambling law report** at £520 (overseas £540)
- Please enrol me as a subscriber to **world sports law report** at £520 (overseas £540)

**All subscriptions last for one year. You will be contacted at the end of that period to renew your subscription.**

Name	<input type="text"/>		
Job Title	<input type="text"/>		
Department	<input type="text"/>	Company	<input type="text"/>
Address	<input type="text"/>		
Address	<input type="text"/>		
City	<input type="text"/>	State	<input type="text"/>
Country	<input type="text"/>	Postcode	<input type="text"/>
Telephone	<input type="text"/>	Fax	<input type="text"/>
Email	<input type="text"/>		

**1** Please **invoice me** Purchase order number   
Signature  Date

**2** I enclose a **cheque** for the amount of   
made payable to 'Cecile Park Publishing Limited'

**3** Please debit my **credit card** VISA  MASTERCARD   
Card No.  Expiry Date   
Signature  Date   
VAT No. (if ordering from an EC country)

Periodically we may allow companies, whose products or services might be of interest, to send you information. Please tick here if you would like to hear from other companies about products or services that may add value to your subscription.

priority order form

FAX +44 (0)20 7729 6093

CALL +44 (0)20 7012 1380

EMAIL [dan.towse@e-comlaw.com](mailto:dan.towse@e-comlaw.com)

ONLINE [www.e-comlaw.com](http://www.e-comlaw.com)

POST Cecile Park Publishing 17 The Timber Yard, Drysdale Street, London N1 6ND