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Craigslist Cannot Be Sued Over User's Crime

A U.S. District Court in New York has dismissed a $10 million lawsuit brought against Craigslist by someone who was shot by a gun bought through the online classified ad site.

New York resident Charles Gibson sued Craigslist for negligence after suffering serious injuries as a result of gunshot wounds. According to Gibson's complaint, the shooter, who has a long history of mental illness, bought the gun off a listing on Craigslist. Describing the site as "a robber baron of the 21st century [where] [g]uns, drugs, sex and stolen merchandise are being sold," Gibson argued in his legal papers that Craigslist "must be immediately regulated or shut down."

The court, however, ruled that under the federal Communications Decency Act, Craigslist cannot be sued over user-generated listings (except in certain limited instances involving copyright and trademark infringement). The decision is consistent with several earlier rulings finding that Web sites such as Craigslist and MySpace are not liable for crimes perpetrated by their users. Last year the 7th Circuit Court of Appeals ruled that Craigslist was not liable for discriminatory housing ads. The same year, the 5th Circuit Court of Appeals threw out a complaint against MySpace by parents of a girl who

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was assaulted by someone she met on the site.

Why it matters: The popularity of online social and business networks means that, inevitably, some people will misuse them for fraudulent or criminal activities. Although victims of such misdeeds have not been successful in lawsuits brought against these networks, we anticipate that they will continue to test the boundaries of immunity these online service providers have been granted by federal law.

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Microsoft Sues Scammers for Click-Fraud

Last month Microsoft Corporation sued a trio of alleged fraudsters for carrying out a click-fraud scheme "believed to have impacted advertisers of auto insurance and the online role playing game, World of Warcraft," according to a post on the company's blog.

According to its complaint filed in federal court in the Western District of Washington, over the course of a year-long investigation, Microsoft gathered proof that three Vancouver, British Columbia, residents were involved in a complicated click-fraud scheme. Click-fraud is used to describe a scam in which a perpetrator repeatedly clicks on a competitor's keyword search ad, usually by the use of hired clickers or an automated program, to use up the rival's advertising budget (since companies typically pay for every click on an ad).

In 2008 several online advertisers for car insurance informed Microsoft of a suspicious and sudden increase in traffic. Microsoft discovered that keyword searches for "auto insurance quote" and clicks on ads appearing at the top of the search results pages had risen dramatically. The same pattern of activity was found for ads for the online game *World of Warcraft*. Microsoft then learned that an advertiser for World of Warcraft keywords was also being paid to steer traffic to car insurance sites.

In its complaint, Microsoft alleges that the advertiser, who is named as a defendant in the lawsuit along with two others, was operating or working for low-ranking sites that gathered potential client information for auto insurers. The defendant fraudulently steered traffic to rival sites, forcing them to pay for the worthless clicks and rapidly depleting their ad budgets, which, in turn, allowed the lower-ranking sites he sponsored to move up the ranks in the paid-search results.

Microsoft estimates the defendants made roughly $250,000 from the scam. The company alleges it provided close to $1.5 million in ad credits to the car insurance and World of Warcraft advertisers affected by the fraud. It is seeking injunctive relief and at least $750,000 in damages.

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Why it matters: Although the amount of money involved in the alleged scam seems relatively minor, this lawsuit is aimed, in part, at warning other click-fraud perpetrators that Microsoft takes complaints of such activity seriously and is willing to invest the time and money needed to investigate and sue perpetrators.

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Drug Marketers Fight Proposal to Ax Tax Break for Ads

Drug manufacturers are up in arms over a congressional proposal that would do away with tax deductions for direct-to-consumer (DTC) advertising of prescription drugs.

The proposal first surfaced on June 16, with a statement from Representative Charles Rangel (D-N.Y.), who chairs the influential House Ways and Means Committee. Rangel said House tax drafters are weighing the idea as a way to help fund the Democrats' proposed health-care-reform bill.

"One thing that's not off the table is that you can pick up $37 billion knocking out the deduction for advertising," Rangel told reporters. It is unclear exactly what he was factoring into the $37 billion tax figure, since drug marketers spent $4.7 billion last year on DTC advertising. Representative Rangel may have been including total sales costs, sales rep costs, free samples, and other expenses.

Industry officials argue that a differential tax on companies is a violation of the First Amendment. Advertising for any product is typically fully tax-deductible as a necessary business expense. By getting rid of the tax deduction for prescription drugs, the proposal would make it more expensive and burdensome to market this product category as compared to other product categories, the industry contends.

Why it matters: Although there is a First Amendment argument that the elimination of tax deductions for DTC ads is unconstitutional, that will not necessarily prevent Congress from passing such a law. Pharmaceutical marketers are understandably concerned.

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TJX Settles Data Theft Dispute for $9.75 Million

TJX Companies announced last month that it has reached a multistate settlement over a massive security breach that compromised at least 45.7 million credit and debit cards.

The parent company of retailers T.J. Maxx and Marshalls will pay $9.75

million to settle an investigation by 41 state attorneys general into the data theft. Of the total amount, $2.5 million will be used to create a data security fund for states and $1.75 million will go to cover expenses incurred by the states in their investigations. TJX must also certify that its computer system satisfies a comprehensive set of data security requirements and must facilitate the development of new technologies to remedy faults in the U.S. payment card system. In its statement announcing the settlement, TJX reiterated that it "firmly believes" it did not violate any consumer protection or data security laws.

The settlement monies will be drawn from a $39.5 million reserve created by the company to cover potential costs stemming from the breach, including litigation awards or settlements, investigations, and legal fees.

The data breach reportedly began in July 2005 but was not detected until December 2006. The company disclosed it in January 2007. Last year 11 people were indicted on charges they hacked into the computer systems of TJX and other major retailers to steal the card numbers. To date, four have pleaded guilty to charges of hacking or related charges, according to TJX.

Why it matters: The TJX incident is the largest security breach ever reported. With virtually all consumer credit and debit card data on one or several computerized databases, the threat of data breaches resulting in fraud is a real concern. Such incidents can cost companies, banks, and consumers millions of dollars. Unfortunately, battling hackers and other thieves is an ongoing battle, as they continue to develop new and sophisticated methods for stealing consumer data.

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Three Plead Guilty in Internet Gambling Case

Three former executives of the sports-betting Web site BetOnSports have pleaded guilty to federal racketeering charges.

The brother and sister of company founder Gary Kaplan — Neil Scott Kaplan, 43, and Lori Beth Kaplan-Multz, 48 — and his former personal assistant, Penelope Ann Tucker, 64, pleaded guilty last month to federal racketeering charges in a U.S. District Court in St. Louis.

All three agreed to forfeit money held in Swiss bank accounts, which for the siblings is anticipated to be millions of dollars. Formal sentencing is set for September 15, although none are expected to serve jail time. Neil Kaplan and Lori Kaplan-Multz placed ads for BetOnSports, and Tucker assisted Gary Kaplan with banking and payment operations.

Gary Kaplan founded the Costa Rica-based company in 1995. A decade later it ranked among the biggest Internet gambling operations, processing $1.8 billion in bets a year. In 2006 a federal grand jury indicted Gary Kaplan, his company, and several associates, and law enforcement agents arrested Kaplan in March 2007. Kaplan, who is being held in jail near St. Louis, is scheduled to go to trial in September.

Prosecutors allege the company falsely advertised that its online and phone-based betting operations were legal, and misled people into thinking that money transferred to BetOnSports was secure and available for withdrawal at any time. In actuality, the company used at least some of the money to expand, including the buyout of a rival. When BetOnSports shut down in 2006, gamblers lost more than $16 million, according to prosecutors.

Why it matters: The U.S. Department of Justice has engaged in a multiyear campaign against Internet gambling, using laws that critics contend are vague, ambiguous, and in some cases contradicted by state law. Yet anti-online-gambling efforts continue. Just last month the U.S. Attorney of the Southern District of New York seized $34 million in funds belonging to a reported 27,000 online poker players. Meanwhile, the U.S.'s anti-online-gambling efforts are the source of an ongoing dispute with the European Union. It remains to be seen how this complex and multifaceted matter ultimately plays out.

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Zango Loses Dispute with Spyware-Removal Vendor

The Ninth Circuit Court of Appeals ruled last month that spyware-removal vendor Kaspersky Lab is immune from liability for selling software that removes ad-serving software from users' computers.

"A provider of access tools that filter, screen, allow, or disallow content that the provider or user considers obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable is protected from liability," the court wrote.

The ruling upheld a district court in dismissing the lawsuit brought against Kaspersky Lab by adware company Zango. The court reasoned that the "good samaritan" provision of the federal Communications Decency Act (CDA) shielding interactive computer services from liability for good faith efforts to restrict objectionable material applied in Kaspersky's case.

In its 2007 complaint, Zango charged Kaspersky with illegally interfering with Zango's relationships with its customers by deleting its ad-serving software. Although Zango went out of business earlier this year, the court proceedings continued.

A group called the National Business Coalition for E-Commerce and Privacy, whose members include Eastman Kodak, JP Morgan Chase, and Experian, filed an amicus brief supporting Zango. The group argued that a ruling for Kaspersky could allow any company to sell software interfering with the software of other companies under the pretext of protecting users from objectionable content. On the other side of the dispute, consumer advocates, including the Anti-Spyware Coalition, the Center for Democracy & Technology, and the Electronic Frontier Foundation, weighed in in favor of Kaspersky.

Why it matters: The decision by the Ninth Circuit marks the first time a federal appellate court has ruled on whether the "good samaritan" provision of the CDA applies when anti-spyware companies decide to remove programs they deem objectionable. It suggests that adware companies could face an uphill battle in pursuing anti-spyware companies selling or providing programs that act to delete their software.

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Word of Mouth Marketing Ethics Code Provision Open for Comments

In response to three member requests, the trade group Word of Mouth Marketing Association (WOMMA) has opened the following item of the WOMMA Ethics Code for review and member discussion:

“We stand against marketing practices whereby the consumer is paid cash by the manufacturer, supplier or one of their representatives to make recommendations, reviews or endorsements.”

WOMMA strongly encourages members, interested parties, and consumers to submit comments on this issue. This issue will be held in abeyance for a period of 60 days. The public comment period is closed, but the WOMMA board is continuing to take all communication/discussion on the topic before rendering a final and binding decision.
If there are any questions or concerns about this process, please contact Kristen Smith, Executive Director of WOMMA, at Kristen@WOMMA.org or at 312-853-4400, x202.

Why it matters: The WOMMA Ethics Code of Conduct defines best practices, unacceptable practices, and baseline rules of the road for word of mouth marketers. The issue of paying or reimbursing “consumers,” such as bloggers and other users of social media, for their reviews or recommendations of products is currently before the Federal Trade Commission. This is a critical time for word of mouth marketers to give input on the subject. Although marketers can no longer comment on the WOMMA provision online, they can e-mail Paul Rand at PRand@zocalogroup.com. All comments sent to him will be provided to the WOMMA board prior to their rendering a final and binding decision.

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