CDA No Bar to Claim for Negligent Failure to Warn Website Users

A claim that a website negligently failed to warn users about sexual predators contacting and raping women who used the site is not barred by the Communications Decency Act (CDA), the Ninth Circuit found.

The appellate court reversed a district court's ruling that Internet Brands, Inc., which operates modelmayhem.com, was immune from a negligence claim because the website was a publisher of content by another and therefore not liable under the CDA. The appellate court found the claim had nothing to do with content but rather whether the website should have warned users about sexual predators using the site to recruit victims.

The plaintiff posted her information on the website, which is targeted to and used by would-be models. She alleges that two rapists used the website to lure her to a fake audition in Florida, where they drugged her, raped her, and recorded her for a pornographic video. She alleges that Internet Brands knew that the site was used by the rapists because the company sued the previous operator of the website for failing to disclose the rapists' earlier activities on the site.

The appellate court found the CDA inapplicable because the statute was designed to protect websites from liability for material posted on the site by another party. "Jane Doe's negligent failure to warn claim does not seek to hold Internet Brands liable as the 'publisher or speaker of any information provided by another information content provider.'" Instead, her claim is based on Internet Brands' failure to give a warning to site users that rapists had used the site to contact and lure victims. "As a result, we conclude that the CDA does not bar this claim," the opinion stated.

"Jane Doe's failure to warn claim has nothing to do with Internet Brands' efforts, or lack therefore, to edit or remove user generated content. The theory is that Internet Brands should be held liable, based on its knowledge of the rape scheme and its 'special relationship' with users like Jane Doe, for failing to generate its own warning," the appellate court wrote.

The appellate court reversed and remanded the case without expressing an opinion on the viability of the merits of the duty to warn allegations.

Jane Doe No. 14 v. Internet Brands, Inc., DBA Modelmayhem.com, Ninth Cir. No. 12-56638, issued September 17, 2014.