

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TODD J. HOLLIS,

Plaintiff

vs.

TASHA C. JOSEPH, individually and as owner
and operator of DONTDATEHIMGIRL.COM,
EMPRESS MOTION PICTURES, doing
Business as THE CAVELLE COMPANY,
INC., CAROLYN MERITT LATTIMORE,
ALESIA ROSKOV, ANNA DOE, BARBARA
DOE, CATHERINE DOE, DEBORAH DOE,
and EMILY DOE,

Defendants.

CIVIL DIVISION

No. GD 06-12677

Code: 008

**BRIEF OF *AMICI CURIAE*
ELECTRONIC FRONTIER
FOUNDATION, AMERICAN
CIVIL LIBERTIES UNION OF
PENNSYLVANIA, AND CENTER
FOR DEMOCRACY AND
TECHNOLOGY IN SUPPORT OF
DEFENDANT TASHA JOSEPH
AND THE CAVELLE COMPANY**

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TABLE OF CONTENTS

STATEMENT OF AMICI CURIAE.....1

INTRODUCTION2

I. Federal Law Requires That This Action Be Dismissed Because Intermediary Defendants are Shielded From Civil Liability For Publishing Profiles Concerning Plaintiff Todd J. Hollis on DontDateHimGirl.com.....4

 A. Intermediary Defendants Qualify for Section 230 Protection Under the Plain Text of the Statute5

 B. Section 230’s Protection for Intermediary Defendants is Consistent With the Statute’s Purposes of Promoting Free Speech and Self-Regulation8

II. This Court Can Protect Plaintiff’s Interests Without Imposing Regulation Upon the Internet.....10

CONCLUSION.....11

TABLE OF AUTHORITIES

CASES

<i>Barrett v. Rosenthal</i> , 40 Cal. 4th 33 (Cal. 2006)	passim
<i>Batzel v. Smith</i> , 333 F.3d 1018 (9th Cir. 2003)	7, 8
<i>Carafano v. Metrosplash.com, Inc.</i> , 339 F. 3d 1119 (9th Cir. 2003)	6, 7
<i>Corbis v. Amazon.com</i> , 351 F. Supp. 2d 1090 (W.D. Wash. 2004)	7
<i>D'Alonzo v. Truscello</i> , No. 0274, 2006 Phila. Ct. Comm. Pl. LEXIS 244 (Phila. Ct. Comm. Pl. May 31, 2006).....	6, 7
<i>DiMeo v. Max</i> , 433 F. Supp. 2d 523 (E.D. Pa. 2006).....	6, 7, 8
<i>Drudge v. Blumenthal</i> , 992 F. Supp. 44 (D.D.C. 1998)	10
<i>Fram v. Yellow Cab Co. of Pittsburgh</i> , 380 F.Supp. 1314 (W.D. Pa. 1974).....	11
<i>Gentry v. eBay, Inc.</i> , 99 Cal. App. 4th 816 (Cal. Ct. App. 2002).....	7
<i>Green v. America Online, Inc.</i> , 318 F.3d 465 (3rd Cir. 2003).....	10
<i>Marczeski v. Law</i> , 122 F. Supp. 2d 315 (D. Conn. 2000).....	7
<i>Parker v. Google</i> , 422 F. Supp. 2d 492 (E.D. Pa. 2006)	6
<i>Pelagatti v. Cohen</i> , 536 A.2d 1337 (Pa. Super. 1987).....	11
<i>Reno v. ALCU</i> , 521 U.S. 884 (1997)	9
<i>Schneider v. Amazon.com</i> , 31 P.3d 37 (Wash. Ct. App. 2001)	7
<i>Voicenet Communs., Inc. v. Corbett</i> , No. 04-1318, 2006 U.S. Dist. LEXIS 61916 (E.D. Pa. Aug. 30, 2006)	6
<i>Zeran v. America Online, Inc.</i> , 129 F.3d 327 (4th Cir. 1997), <i>cert. denied</i> , 524 U.S. 937 (1998).....	3, 5, 9, 11

STATUTES

47 U.S.C. § 230.....	passim
----------------------	--------

OTHER AUTHORITIES

141 Cong. Rec. 22,046 (1995).....9

Internet World Stats, Usage and Population Statistics,
<http://www.internetworldstats.com/stats.htm> (updated Nov. 27, 2006)2

STATEMENT OF AMICI CURIAE

The Electronic Frontier Foundation (“EFF”) is a non-profit, member-supported civil liberties organization that works to protect rights in the digital world. Founded in 1990, EFF is based in San Francisco with staff members in Toronto and Washington, DC. It has over 13,000 dues-paying members throughout the United States and the world. EFF also maintains one of the world’s most linked-to websites (<http://www.eff.org>). EFF encourages and challenges industry, government and the courts to support free expression, privacy, and openness in the information society. It is particularly concerned that laws and regulations not be used to stifle free expression on the Internet by holding intermediaries liable where the content in question originates with a third party.

The American Civil Liberties Union of Pennsylvania (“ACLU-PA”) is a private non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the Pennsylvania and United States Constitutions. The ACLU-PA has approximately 19,000 members in the State of Pennsylvania. The ACLU-PA is the state affiliate of the American Civil Liberties Union, which was founded in 1920 for identical purposes, and is composed of more than 500,000 members nationwide. The ACLU-PA strongly supports the First Amendment right to free speech, including the right to engage in speech activities on the Internet. To that end, the ACLU-PA has participated in numerous cases raising First Amendment free-speech claims. *See, e.g., Serv. Employees Int’l Union v. Mt. Lebanon*, 446 F.3d 419 (3d Cir. 2006); *Flaherty v. Keystone Oaks Sch. Dist.*, 247 F. Supp. 2d 698 (W.D. Pa. 2003); *Killion v. Franklin Regional Sch. Dist.*, 136 F.Supp.2d 446 (W.D. Pa. 2001); *Melvin v. Doe*, 836 A.2d 42 (Pa. 2003).

The Center for Democracy and Technology (“CDT”) is a non-profit public interest and Internet policy organization. CDT represents the public’s interest in an open, decentralized Internet reflecting constitutional and democratic values of free expression, privacy, and individual liberty. CDT’s staff have conducted extensive policy research, published academic papers and analyses, and testified before Congress on free speech and other constitutional and statutory concerns about Internet content, including on the importance of intermediary liability protection to the promotion and protection of free speech online.

Amici believe that free expression is a fundamental human right and that the exchange of ideas is critical to a vibrant democratic society. The web of digital media that now connects us has heralded a new age of communications, and presents new ways to convey and receive speech. While *amici* are mindful of the serious issues that may arise when information, ideas and opinions flow free, they are dedicated to addressing such matters constructively while ensuring that fundamental rights are protected.

INTRODUCTION

The Internet is the most powerful medium of communication yet developed. It hosts a massive amount of information on virtually every subject known to mankind. It makes it possible for individuals throughout the world to connect with each other directly and share information about anything they choose, including frank or unpopular opinions presented with hyperbole, invective and sharp criticism. The Internet also enables people to quickly and easily access information about products, activities, and others’ experiences, regardless of geographic location. The amount of information communicated via the Internet is overwhelming. It is estimated that more than a billion people around the globe — roughly a sixth of the world’s population — have used the Internet this year. Internet World Stats, Usage and Population Statistics, <http://www.internetworldstats.com/stats.htm> (updated Nov. 27, 2006).

Congress recognized both the Internet’s incredible potential and the crucial role that

Internet intermediaries play in creating forums for both free speech and commerce online. It also realized that the only way to foster these forums is to ensure that intermediaries remain protected. The centerpiece of Congress' approach is Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("Section 230"). Section 230 provides protection for Internet intermediaries that works in two ways. By shielding intermediaries against most legal claims arising from speech by others on forums that they host, the law both encourages intermediaries to police speech on their forums and protects them if they cannot do so — a situation that is increasingly common for intermediaries that host a great deal of public speech. "By its plain language, § 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998). Thus, as the California Supreme Court held just last month, "section 230 exempts Internet intermediaries from defamation liability for republication. The statutory immunity serves to protect online freedom of expression and to encourage self-regulation, as Congress intended." *Barrett v. Rosenthal*, 40 Cal. 4th 33, 62 (Cal. 2006).

Section 230 has worked as Congress anticipated. It has encouraged the growth of the Internet by facilitating the free exchange of ideas and information throughout online communities. It has allowed the flourishing of message boards, blogs, online trading and selling websites like Ebay and Amazon.com, and websites such as the one hosted by defendants Tasha Joseph and Empress Motion Pictures, doing business as the Cavelle Company (hereafter "Ms. Joseph and Cavelle" or "Intermediary defendants"), which allows individuals to share information and opinion about dating and relationships. An important aspect of the Intermediary defendants' website that distinguishes it and similar online forums from almost any other kind of published expression is that any member of the public can use the same platform to express his point of view. Therefore, a person who disagrees with something that is said on Intermediary defendants' website for any reason — including the belief that a statement contains false or misleading statements about himself — can respond to those statements immediately at little or

no cost, and that response will have the same prominence as the offending message. Furthermore, Section 230 leaves open the option to pursue legal claims directly against individuals who make allegedly defamatory statements.

ARGUMENT

I. Federal Law Requires That This Action Be Dismissed Because Intermediary Defendants are Shielded From Civil Liability For Publishing Profiles Concerning Plaintiff Todd J. Hollis on DontDateHimGirl.com.

This case concerns the liability of the Intermediary defendants, owners and operators of the website DontDateHimGirl.com, for allegedly defamatory remarks made by third parties about Plaintiff Todd J. Hollis on the website. In addition to other arguments raised by the Intermediary defendants, the plaintiff's claims against the Intermediary defendants must fail because they are barred by Section 230 of the Communications Decency Act, 47 U.S.C. § 230, which protects providers and users of interactive computer services from liability for content provided by third parties. Since Section 230 became law ten years ago, court after court, whether federal or state, has recognized the express policies behind the statute by applying this protection broadly, not sparingly, to encourage free speech and self-regulation. *Barrett*, 40 Cal. 4th at 39 (“These provisions have been widely and consistently interpreted to confer broad immunity against defamation liability for those who use the Internet to publish information that originated from another source.”) This Court should follow the remarkably consistent precedent, and bar Plaintiff's claims against Ms. Joseph and Cavelle.

Without applying the protections of Section 230, this Court will open the floodgates to litigation against Internet intermediaries in Pennsylvania courts,¹ while creating a disincentive

¹ Every jurisdiction to address Section 230 has found robust protection, including federal courts in the Third Circuit. To the extent that Pennsylvania courts step away from the mainstream interpretation, forum-shopping plaintiffs will flock to Pennsylvania state courts in the hope of a different result than in other states or in federal courts in Pennsylvania. *See Barrett*, 40 Cal. 4th at 46 (“Adopting a rule of liability under section 230 that diverges from the rule announced in *Zeran* and followed in all other jurisdictions would be an open invitation to forum shopping by defamation plaintiffs.”)

for the development of public forums throughout the United States, causing a disastrous loss of free speech and open commerce online. As the *Zeran* court recognized, in enacting Section 230, Congress “made a policy choice . . . not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties’ potentially injurious messages.” *Zeran*, 129 F.3d at 330-31. In the words of the *Zeran* court:

[L]awsuits seeking to hold a service liable for its exercise of a publisher’s traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content – are barred. The purpose of this statutory immunity is not difficult to discern. Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium. . . . Section 230 was enacted, in part, to maintain the robust nature of Internet communication[.]

Id. at 330-31.

A. Intermediary Defendants Qualify for Section 230 Protection Under the Plain Text of the Statute.

Section 230 expressly protects people and entities that provide Internet services to users from state law causes of action arising from those activities, placing responsibility instead on parties who actually provide information through these services. The statute unequivocally states that “no 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.” 47 U.S.C. § 230(c)(1).² The statute goes on to require that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” 47 U.S.C. § 230(e)(3). Courts interpreting the text of Section 230 have found its meaning clear and unambiguous. *Zeran*, 129 F.3d at 330; *see also Voicenet Communs., Inc. v. Corbett*, No. 04-1318, 2006 U.S. Dist. LEXIS 61916 at *10 (E.D. Pa. Aug. 30, 2006) (“[T]he text of the CDA itself tells all parties . . . not to treat a provider or user of an interactive computer service as the

² The statute expressly provides users and providers of an interactive computer service the same immunity. *See Batzel v. Smith*, 333 F.3d 1018, 1030 (9th Cir. 2003) (“the ‘language of § 230(c)(1) confers immunity not just on ‘providers’ of such services, but also on ‘users’ of such services.”); *see also Barrett*, 40 Cal. 4th at 56-57 (“By declaring that no ‘user’ may be treated as a ‘publisher’ of third party content, Congress has comprehensively immunized republication by individual Internet users.”)

publisher of information posted by someone else. Moreover, it does so in mandatory terms.”).

A straightforward legal analysis establishes that Ms. Joseph and the Cavelle Company are precisely the type of defendants who are shielded from defamation claims under Section 230. To qualify for Section 230 protection, a defendant must show that “1.) it is a provider or user of an interactive computer service, 2.) the information complained about must be solely provided by another “information content provider”; and 3.) the asserted claims must be based on the defendant’s responsibility as a publisher or speaker of the information.” *D’Alonzo v. Truscello*, No. 0274, 2006 Phila. Ct. Comm. Pl. LEXIS 244 at *13 (Phila. Ct. Comm. Pl. May 31, 2006); *DiMeo v. Max*, 433 F. Supp. 2d 523, 529 (E.D. Pa. 2006). The Act defines an “interactive computer service” as “any information service system, or access software provider that provides or enables computer access by multiple users to a computer service.” 47 U.S.C. § 230(f)(2). An “information content provider” is “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” 47 U.S.C. § 230(f)(3).

First, DontDateHimGirl.com is an “interactive computer service” under the statute. Courts have interpreted Section 230 protection to be “quite robust, adopting a relatively expansive definition of ‘interactive computer service[.]’” *Carafano v. Metrosplash.com, Inc.*, 339 F. 3d 1119, 1123 (9th Cir. 2003); *see also Parker v. Google*, 422 F. Supp. 2d 492, 501 n.6 (E.D. Pa. 2006) (same); *Barrett*, 40 Cal. 4th at 39 (“These provisions have been widely and consistently interpreted to confer broad immunity against defamation liability for those who use the Internet to publish information that originated from another source.”). As a result, courts have determined that a vast array of Internet intermediaries qualify as providers and users for purposes of Section 230 protection. *DiMeo*, 433 F. Supp. 2d at 529 (website operator an interactive computer service provider and user); *Marczeski v. Law*, 122 F. Supp. 2d 315, 327 (D. Conn. 2000) (organizer of an online chatroom is a provider of an interactive computer service); *Batzel*, 333 F.3d at 1031 (website and listserv operator is an interactive computer service provider and user); *Carafano*, 339 F.3d at 1119 (online matchmaking service is an interactive

computer service); *Schneider v. Amazon.com*, 31 P.3d 37, 40 (Wash. Ct. App. 2001) (Amazon.com is an interactive computer service); *Corbis v. Amazon.com*, 351 F. Supp. 2d 1090, 1118 (W.D. Wash. 2004) (same); *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 830 (Cal. Ct. App. 2002) (eBay is an interactive computer service).

The court of common pleas in Philadelphia has, in fact, already resolved this issue. Earlier this year, that court determined that the owner/operator of a website that makes available third-party content is precisely the type of defendant that is protected by Section 230 and thus not subject to liability:

Defendant's website's eligibility as an "interactive computer service" is warranted, as this website provided a service for multiple users to access the same system of information from a single computer server A website that either archives, caches, or simply provides access to content that was created by a third party was intended to have proscribed liability on claims of defamation[.]

D'Alonzo, 2006 Phila. Ct. Comm. Pl. LEXIS 244 at * 15 (holding that the website owner and operator was eligible for Section 230 immunity for the publication of a news article on the website).

Ms. Joseph and the Cavelle Company, as owners and operators of the website DontDateHimGirl.com, qualify as both users and providers of an "interactive computer service" under Section 230. Like the defendants in *DiMeo* and *D'Alonzo*, Joseph and Cavelle operate a website on which third parties post content. This website enables other Internet users to access the third party content, and so is a provider of interactive computer services under Section 230. In addition, the website utilizes the services of Internet service providers, and so the Intermediary defendants are also users of interactive computer services. As such, the Intermediary defendants are the type of defendants to whom Congress extended Section 230 protection from civil liability.

By the terms of Plaintiff's complaint, the other two prongs of the Section 230 test are easily satisfied in this case. Third-party Internet users, who have also been sued in this case, provided the allegedly defamatory content published on DontDateHimGirl.com. Plaintiff alleges that these third parties "published false and defamatory statements" and "may have posted false

information about him” on DontDateHimGirl.com. Compl. ¶¶ 66-73, 79-86, 92-98, 104-110, 116. Plaintiff’s claims against the Intermediary defendants arise solely from their alleged responsibility for “publishing” that content. Compl. ¶¶ 38-46, 52-60. Thus, on the face of the Complaint, the Intermediary defendants qualify for Section 230 protection.

B. Section 230’s Protection for Intermediary Defendants is Consistent With the Statute’s Purposes of Promoting Free Speech and Self-Regulation.

One of Congress’ key objectives in enacting Section 230 was to promote online speech. *See e.g. Batzel*, 333 F.3d at 1027-28 (Section 230 was intended to encourage “the unfettered and unregulated development of free speech on the Internet.”). Congress noted when it passed the law that “[t]he Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.” 47 U.S.C. § 230(a)(3). As the Fourth Circuit explained in *Zeran*:

The specter of tort liability in an area of such prolific speech would have an obvious chilling effect. It would be impossible for service providers to screen each of their millions of postings for possible problems. Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted.

129 F.3d at 331; *see also DiMeo*, 433 F. Supp. 2d at 529 (“[A]bsent federal statutory protection, interactive computer services would essentially have two choices: (1) employ an army of highly trained monitors to patrol (in real time) each chatroom, message board, and blog to screen any message that one could label defamatory, or (2) simply avoid such a massive headache and shut down these fora.”).³

Congress also intended to encourage service providers to regulate their own activities. *Zeran*, 129 F.3d at 331 (Section 230 was meant to “to encourage service providers to self-regulate the dissemination of offensive material over their services.”); *Barrett*, 40 Cal. 4th at 34

³ Indeed, the Supreme Court echoed the importance of keeping the Internet free from regulation when declaring that First Amendment protections apply to online speech: “government regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it.” *Reno v. ACLU*, 521 U.S. 884, 885 (1997).

(when it enacted Section 230, “Congress contemplated self-regulation, rather than regulation compelled at the sword point of tort liability.”). Specifically, Congress found that “[t]he Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.” 47 U.S.C. § 230(a)(4). It also noted that a purpose of enacting Section 230 was “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation[.]” 47 U.S.C. § 230(b)(2); *see also Barrett*, 40 Cal. 4th at 56 (Section 230 is “a strong demonstration of legislative commitment to the value of maintaining a free market for online expression.”). As Congressman Bob Goodlatte explained when urging the House of Representatives to pass the bill that eventually became Section 230:

There is no way that any of those entities, like Prodigy, can take the responsibility to edit our information that is going to be coming in to them from all manner of sources onto their bulletin board. We are talking about something that is far larger than our daily newspaper. We are talking about something that is going to be thousands of pages of information every day, and to have that imposition on them is wrong.

141 Cong. Rec. 22,046 (1995) (Rep. Goodlatte). For these reasons, Congress unambiguously shielded interactive computer services from liability under most state and federal laws for content provided by third parties.⁴ 47 U.S.C. §§ 230(c)(1), (e)(3).

The law does not merely bar civil liability for posting third party content. In order “to encourage service providers to self-regulate the dissemination of offensive material over their services,” *Zeran*, 129 F.3d at 331, Section 230 allows the service provider to choose the amount of editorial control it will exercise, if any, without fear of liability stemming from its decision. The statute “does not require [information content providers] to restrict speech; rather, it allows [them] to establish standards of decency without risking liability for doing so.” *Green v. America Online, Inc.*, 318 F.3d 465, 472 (3rd Cir. 2003); *see also Drudge v. Blumenthal*, 992 F.

⁴ Section 230 does not preclude the enforcement of federal criminal statutes, intellectual property laws, or the Electronic Communications Privacy Act of 1986 and similar state laws. 47 U.S.C. § 230(e).

Supp. 44, 52 (D.D.C. 1998) (“Congress has conferred immunity from tort liability as an incentive to Internet service providers to self-police the Internet for obscenity and other offensive material, even where the self-policing is unsuccessful or not even attempted.”); *Barrett*, 40 Cal 4th at 34 (Section 230’s protection “applies even when self-regulation is unsuccessful, or completely unattempted.”).

Dismissal of Plaintiff’s claims against the Intermediary defendants in this case is consistent with the purposes for which Congress passed Section 230. DontDateHimGirl.com provides a forum in which Internet users can share information and frank impressions about men they have dated. Permitting this kind of discourse without government intervention advances Congress’s goals of promoting robust dialogue on the Internet and facilitating protected speech. Furthermore, it serves Section 230’s purpose of encouraging, but not requiring, self-regulation. While the Intermediary defendants are permitted under the statute to edit the website’s content, they bear no obligation to censor, remove, or otherwise alter the content that third parties post. This result is consistent with the word and intent of Section 230.

II. This Court Can Protect Plaintiff’s Interests Without Imposing Regulation Upon the Internet.

Congress enacted Section 230 to protect interactive service providers from liability stemming from defamation. However, Congress has not left Plaintiff without a remedy. Plaintiff has sufficient recourse against any individuals who have actually committed wrongdoing by posting defamatory material that damages Plaintiff’s reputation or otherwise tortiously harms his interests.

The Internet is an open, democratic forum for communication. As a result, this medium provides Internet users the unique opportunity to respond to content with which they take issue. Indeed, the profiles posted about Plaintiff on DontDateHimGirl.com each prominently encouraged men to “TELL US YOUR SIDE OF THE STORY. Send us an email, tell us what happened. We’ll post it next to your profile.” Compl. Ex. A-D. Plaintiff was able to immediately reach the same audience that had read defendants’ remarks about him on

DontDateHimGirl.com. He could have lodged his objections or otherwise responded to statements he considered unfounded in the same forum.⁵ Because Plaintiff had this platform, Section 230 protection for Intermediary defendants is likely to have a less serious impact on Plaintiff's ability to vindicate his rights than it might have in a less readily accessible medium.

Furthermore, Plaintiff has a legal remedy.⁶ He may still protect his interests by pursuing claims against the individuals who posted on DontDateHimGirl.com the content to which he objects; indeed, he has already named them as defendants in this action. Section 230 does not deny victims of defamation legal recourse. Information content providers may be held responsible for information they post on the Internet, even if computer service providers may not. *Zeran*, 129 F.3d at 330 (“None of this means, of course, that the original culpable party who posts defamatory messages would escape accountability.”); *Barrett*, 40 Cal 4th at 63 (“Plaintiffs are free under section 230 to pursue the originator of a defamatory Internet publication.”).

It remains to be seen whether Plaintiff can sustain his defamation per se claims against Defendants Meritt Latimore-Dallas, Alesia Roscov, Anna Doe, Barbara Doe, Catherine Doe, Deborah Doe, and Emily Doe. However, Pennsylvania law provides for civil liability where an individual is defamed per se. *See, e.g., Pelagatti v. Cohen*, 536 A.2d 1337, 1345 (Pa. Super. 1987); *Fram v. Yellow Cab Co. of Pittsburgh*, 380 F.Supp. 1314, 1328 (W.D. Pa. 1974). The ability of an aggrieved person to seek recourse directly against information content providers counters any imbalance caused by Congress' decision to protect Internet intermediaries from responsibility for material posted online.

CONCLUSION


Section 230 bars Plaintiff's claims against Tasha Joseph and the Cavelle Company for

⁵ It is worth noting that Plaintiff did not avail himself of this opportunity to refute the remarks that are the basis of this lawsuit.

⁶ The immunity under Section 230 is absolute, and the statute does not require this court to analyze the availability or efficacy of plaintiffs' alternative legal remedies. Nevertheless, the availability of alternatives underscores the good policy choices Congress made.

owning and operating DontDateHimGirl.com. For the foregoing reasons, Plaintiff's claims against these defendants should be dismissed.

Respectfully submitted,



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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TODD J. HOLLIS,)	CIVIL DIVISION
)	
Plaintiff,)	No. GD06-012677
)	
vs.)	
)	
TASHA C. JOSEPH, individually and as owner)	
and operator of DONTDATEIIMGIRL.COM,)	
EMPRESS MOTION PICTURES, doing)	
Business as THE CAVELLE COMPANY, INC.,)	
CAROLYN MERITT LATTIMORE, ALESCIA)	
ROSKOV, ANNA DOE, BARBARA DOE,)	
CATHERINE DOE, DEBORAH DOE, and)	
EMILY DOE,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this _____ day of _____, 200__, the Electronic Frontier Foundation, American Civil Liberties Union of Pennsylvania, and Center for Democracy and Technology are hereby granted leave of Court to file of record in this matter for the Court's consideration the Amici Curiae brief attached to the Petition for Leave to File Brief.

BY THE COURT:

_____ **J.**