



## Is Craigslist Eligible for Immunity?

May 22, 2010

Connecticut Attorney General Richard Blumenthal and a coalition of 39 attorneys general have long accused Craigslist of furthering prostitution and human trafficking. Blumenthal's May 3, 2010, subpoena to Craigslist has reignited the debate over the online bulletin board's responsibility for prostitution ads posted on its site.

Craigslist is clearly fighting back. Its CEO, James Buckmaster, recently [wrote](#) on the official Craigslist blog, "As AG Blumenthal knows full well, craigslist [sic] has gone beyond fulfilling its legal obligations, far beyond classifieds industry norms, has more than lived up to any promises it made, and working together with its partners is in fact a leader in the fight against human trafficking and exploitation." This stands, however, in stark contrast to the picture painted by Rachel Lloyd, executive director of Girls Educational and Mentoring Services, [who told the \*New York Times\*](#), "Craigslist has not given any indication that they are outraged and disturbed that their site is the primary way children are bought in the country."

In a 2008 Joint Agreement between Craigslist and 40 attorneys general, Craigslist agreed to create new measures on the site designed to thwart ads for prostitution and human trafficking. It pledged to donate net revenues for the controversial ads to charity, and in 2009 implemented a telephone verification system for the "erotic services" section of the site, requiring a working phone number for advertisers, and enabling blacklisting of phone numbers for those who post inappropriate ads. Craigslist reported that phone verification resulted in an 80 percent reduction in ad volume and in significantly increased compliance with site guidelines.

Though the attorney generals initially claimed victory, some think the 2008 agreement actually backfired and allowed the company to profit further off sex ads. In May 2009, Craigslist announced that the "erotic services" category would be eliminated and replaced with an "adult services" category. Each posting to this new category will be manually reviewed before appearing on the site, to ensure compliance with Craigslist posting guidelines and terms of use. New postings will cost \$10, but once approved, will be eligible for reposting at \$5.

Recently published revenue projections estimating the controversial ads could bring in \$36.3 million for Craigslist this year appear to have played a role in Blumenthal's decision to issue a subpoena. Blumenthal cited these revenue reports in his press release announcing the subpoena into whether the Craigslist is doing enough to curb prostitution ads on the site and whether it is profiting from them. However, what is most interesting is what the attorney general does not say. He does not allege that Craigslist broke the law; instead he says that if they broke a promise, "it may be breaking the law."



Craigslist has solid legal support for its position that it is not violating the law. While it is illegal for media outlets to facilitate prostitution by publishing advertisements, federal law actually immunizes Craigslist for content submitted to the site by users. The 1996 Communications Decency Act provides broad immunity for “interactive computer service(s)” such as Craigslist. Section 230 of the Act states that any “interactive computer service” is not a publisher of the content that third parties post, and thus is immune from lawsuits or prosecution based on the material its users post.

The immunity provided by the Communications Decency Act is very broad. In October 2009, a U.S. district judge in the Northern District of Illinois tossed a lawsuit filed by Cook County Sheriff Thomas Dart alleging that Craigslist was liable for the illegal ads posted by its users in its “erotic services” (now “adult services”) category. The court held that Section 230 of the Communications Decency Act immunized Internet intermediaries like Craigslist from civil liability for material posted by third parties.

However, one wonders if Craigslist policies of reviewing the ads prior to publication – and therefore have the opportunity to read and edit content before publishing it — could open it up to the charges that they are in fact a publisher and Section 230’s protection should not apply.

*Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

*The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrah and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!*

