

# Lawyers Still Ignorant of Communications Decency Act

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There are still many attorneys making money representing clients on Internet defamation cases that can't be won. They are either ignorant of the law, or ignoring it. My firm has been schooling others on the **Communications Decency Act** for years. But there are a number of firms that still need an education. A case recently came down in New York, where someone tried to sue a web host for the comments posted on his website.

Let's all say it together. If a website is created that allows visitors to post their comments, then under the Communications Decency Act the host of that website cannot be held liable for any defamatory remarks that others post. The law is very black and white in this area. The myth still continues that if the defamed party makes the website operator aware of the defamatory material, he somehow becomes liable for failing to take it down. That is simply not true.

Yes, the Communications Decency Act creates a huge incentive to permit or even encourage defamation on a website, since the website operator is free from liability. That loophole could be easily closed, and organizations such as the California Defamation Lawyers Association are lobbying to make a simple amendment to the Communications Decency Act, whereby a website would be required to remove a posting after a court has determined it to be defamatory. I have no doubt that amendment will ultimately be made, but until then the victim of defamation cannot sue the website operator for the comments of others. Ideally, even without a change in the law, a web host should respond to requests to remove defamatory posts, but if he, she or it could be held liable for comments, then the ability to host a community forum would disappear in almost all instances.

Consider a helpful, innocent person who decides to start a restaurant forum, discussing the local businesses. Someone goes on and leaves a post that a local sushi restaurant is using old fish. The sushi restaurant contacts the host, and insists that the post be taken down, claiming they use nothing but fresh fish. How would our hypothetical web host go about investigating such a claim? Is he required to go to the restaurant and inspect the receipts to determine the freshness of the fish? Must he insist that the poster provide proof of the old fish?

Most likely, if faced with civil liability, the host would simply take down the post. And when reviewing all the protests became too time consuming, the forum would disappear. The day Congress passes a law requiring website operators to verify all the claims made by visitors to their sites is the day that most free speech ends on the Internet. Many would prefer that, but in my opinion the open approach is the better approach.

