impact on community associations' ability to obtain a significant amount of unpaid assessments due from previous owners of the property. Ultimately, however, we are hopefull that the courts will find the community associations' position compelling, and, in time, the legislature will clarify any ambiguity.

(Endnotes)
1 § 718.116, Fla. Stat. (2010).
2 § 718.116(1)(a), Fla. Stat. (2010) Emphasis added).
3 *Id.*
4 *Id.*
5 *Id.*
6 § 718.116(1)(b)(1), Fla. Stat. (2010).
7 § 718.116(1)(b)(1.), Fla. Stat. (2009).
8 § 718.116(1)(g), Fla. Stat. (2010).
9 § 718.116(1)(a), Fla. Stat. (2010).
10 *Id.*

Defamation in a Cyber World

By Daniel A. Kirschner

The Internet is a powerful medium of communication in which information can easily be accessed by millions of people worldwide through a global network of computers. Information on the Internet can be disseminated via email, posted on newsgroups, discussed in chat rooms or displayed on home pages in various formats such as sound, video or text. Unlike traditional forms of media, the Internet is unique in that publishers and editors are primarily absent in cyberspace. The birth of the Internet created tension when courts attempted to apply traditional defamation law to this burgeoning new world. To better protect internet service providers ("ISPs") and website operators from third-party claims for defamation committed on the Internet; Congress enacted section 230 of the Communication Decency Act ("CDA").[1] The creation of section 230 provides federal immunity to providers and users of an interactive computer for defamatory content made by a third party on the website.

Subsection (c) of the CDA, known as the "Good Samaritan" provision, states that "no provider or user of an interactive computer shall be treated as the publisher or speaker of any information provided by another information content provider."[2] This section also states that no provider of an interactive computer shall be liable for any action that is taken voluntarily and in good faith to restrict access to inappropriate material, whether or not such material is constitutionally protected.[3] Due to potential liability faced by ISPs and website operators, interactive service providers might choose to severely restrict the number and type of messages posted. Congress considered the weight of the speech interests implicated and chose to immunize service providers and websites to avoid any such restrictive effect.[4] In doing so, Congress made a policy choice to remove the Internet from traditional defamation law. This choice holds the original publisher liable for his defamatory speech, but shelters publishers and distributors from any liability for speech that did not originate with them.

By enacting section 230, Congress created a federal immunity to any cause of action that would make service providers and websites liable for information originating with a third party.[5] In addition, Congress sought to remove any disincentives tort liability might have on Internet providers and encourage them to self-regulate any offensive material over their services.[6]

Courts have typically applied section 230 broadly, and, in some instances, provided immunity in cases that did not involve self policing. In *Zeran v. American Online, Inc*., the court made it clear that section 230 grants publishers immunity from traditional publisher liability.[7] Specifically, section 230 precludes courts from entertaining claims that would place a computer service provider in a publisher's role. Thus, lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions are barred.[8] The court found that section 230 creates a blanket immunity protecting ISPs from any liability resulting from defamatory statements by a third-party using their service. The blanket immunity provided by section 230 was further expanded in *Blumenthal v. Drudge,* where the court found the interactive computer service was nothing more than a provider of an interactive computer service on which the third party made the defamatory remarks.[9] The court relied on the statutory language of section 230, which clearly states that such a provider shall not be treated as a "publisher or speaker," and therefore, may not be held liable in tort.[10]

The blanket immunity provided by section 230 is not without limits. In many cases, the courts have continued to find that the ISPs and websites are "information content providers," thereby denying them immunity. In *Anthony v. Yahoo! Inc.,* the court found that Yahoo! was not absolved from liability under section 230 for assisting a third-party in distributing misrepresentations.[11] Although a third-party created the defamatory content, Yahoo! was not entitled to immunity because Yahoo! assisted in the transmission of the defamatory content. Similarly, in *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, the court found that the Defendant was an

"information content provider" and immune from liability under the CDA.[12] The Ninth Circuit repeatedly stated throughout its *en banc* opinion that the Roommates.com website required its users to provide certain information as a condition of its use and was, therefore, an information content provider.

Section 230 provides a valuable and necessary resource for protecting internet service providers and websites from the unpredictable behavior of the billions of users of the Internet. ISPs and websites need to assume some responsibility for the content posted on its website, but it is unrealistic to require all content to be monitored. Further, without section 230, the courts would be inundated with lawsuits against ISPs and websites. In turn, to avoid litigation, websites would likely restrict all third party content, consequently limiting forums available to express one's thoughts.

In a world where the Internet is quickly becoming the most commonly used media forum, it is important to know what safe guards are available to websites and internet service providers. As the internet expands in the future, section 230 provides an important safeguard for Internet service providers and websites from a vast amount of litigation for the defamatory comment of third parties.

(Endnotes)

1 47 U.S.C. § 230.
2 47 U.S.C. § 230(c)(1).
3 47 U.S.C. § 230(c)(2)(A).
4 *Zeran v. American Online, Inc.,* 129 F. 3d 327, 330 (4th Cir. 1997).
5 *Zeran,* 129 F. 3d at 330.
6 *Ben Ezra, Weinstein, & Co. v. American On line, Inc.,* 206 F. 3d 980, 986 (10th Cir. 2000).
7 *Zeran v. American Online, Inc.,* 129 F. 3d 327, 330 (4th Cir. 1997).
8 *Zeran ,* 129 F. 3d at 330.
9 *Blumenthal v. Drudge*, 992 F. Supp.44, 52-53(D.D.C. 1998).
10 *Id.*
11 *Anthony v. Yahoo! Inc.*, 421 F. Supp.2d 1257 (N.D. Cal. 2006).
12 *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC,* 521 F.3d 1157 (9th Cir. 2008).

Robo-Signers: Will Their Actions Have Serious Legal Consequences, and, If So, For Whom?

By Brett L. Goldblatt

The latest scandal to captivate the nation and further cripple the severely depressed housing market has been dubbed "foreclosuregate."[1] Since the downturn in the nation's economy, millions of Americans have been forced out of their homes by banks, as they have been unable to keep up with their monthly mortgage payments. Now a practice has been uncovered whereby financial institutions were using "robo-signers" to rush through thousands of home foreclosures. A robo-signer is a person who quickly signs hundreds or thousands of foreclosure documents in a month swearing that he or she has personally reviewed the mortgage documents, but has not actually done so.[2] Banks were allegedly hiring hair stylists and Walmart floor workers, individuals who had no formal training, to sign foreclosure affidavits without ever reviewing the documents.[3] The foreclosure documents and affidavits, which were executed by robo-signers, were then used to establish a bank's ownership of a mortgage. By signing the documents, robo-signers were representing that they had personal knowledge of information which they knew absolutely nothing about.[4] Consequently, lenders have begun withdrawing affidavits signed by robo-signers, effectively terminating foreclosure proceedings around the country.[5]

Recent reports reveal that robo-signing was not unique to the foreclosure process. The latest permutation of robo-signing apparently occurred in the processing of mortgage assignments.[6] Mortgage assignments are documents showing a loan's transfer of ownership; transfers that happened repeatedly when Wall Street firms began buying, bundling and securitizing mortgages to sell to investors on the secondary markets.[7] In November 2010, employees at Nationwide Title Clearing, a company specializing in loan transfer and assignment services, testified to signing thousands of documents a day, often posing as executives of other companies.[8] Bank officials allegedly authorized employees at companies such as Nationwide Title Clearing to execute assignments on their behalf using fictitious executive titles.[9] While some argue that the robo-signer scandal is nothing more than an "overblown case of paperwork bungling", the underlying legal issues are far more consequential.[10] Aside from the obvious fact that executing documents under fictitious titles is fraudulent, robo-signing raises complicated issues such as who is the rightful owner of a loan and who has the right to foreclose on the loan.[11]

In *OneWest Bank, F.S.B. v. Drayton, et al.*, plaintiff OneWest Bank, F.S.B ("OneWest") initiated a foreclosure action after the defendants defaulted on their residential mortgage.[12] Prior to defendant's default, Erika Johnson-Seck, a Vice-President at OneWest, executed an assignment of the subject mortgage to Indymac Federal Bank.[13] Ms. Johnson-Seck executed the assignment under the title of Vice President of Mortgage Electronic Registration Systems, Inc. ("MERS"). MERS is an organization, similar to Nationwide Title Clearing, specializing in loan transfer and assignment services. Interestingly, Ms. Johnson-Seck later admitted that she was never employed by MERS.[14] After the subject mortgage was assigned to Indymac, Ms. Johnson-Seck re-assigned the mortgage to OneWest. This time, she executed the assignment as the Vice President of Indymac.[15] While Ms. Johnson-Seck was once employed by Indymac, she had no connection to Indymac at the time she executed the aforementioned re-assignment. Recently, Ms. Johnson-Seck was deposed in a Florida foreclosure action (*Indymac Federal Bank, FSB v. Machado*), where she admitted to being a robo-signer. She admitted to executing approximately 750 mortgage documents a week, including sworn