

## **CDA Bars Cheerleader's Defamation Case Against TheDirty.com**

A Cincinnati BenGals cheerleader cannot sue a website that hosted allegedly defamatory posts about her, even though the website edited and added comments about the posts, the Sixth Circuit Court of Appeals found.

The appellate court reversed the trial court's finding that the website was not immune under the Communications Decency Act of 1996 (CDA) and vacated a jury award of \$38,000 in compensatory and \$300,000 in punitive damages.

The cheerleader, Sarah Jones, who was also a high school teacher, claimed she was the subject of several submissions posted by anonymous users on [www.TheDirty.com](http://www.TheDirty.com), including that "She has also slept with every other Bengal Football player." Despite numerous emails from Jones, TheDirty.com refused to remove the posts about her.

Nik Richie, the manager of TheDirty.com, or his staff selects and edits approximately 150 to 200 submissions from third parties each day for publication. The appellate court described the site as a "user generated tabloid primarily targeting non-public figures," to which "Richie typically adds a short, one-line comment about the post with 'some sort of humorous or satirical observation.'" To one of the posts about Jones, Richie commented, "Why are all high school teachers freaks in the sack?"

The CDA § 230 immunizes providers of interactive computer services against liability arising from content created by third parties and provides 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."

The trial court found the CDA offered no protection because "a website owner who intentionally encourages illegal or actionable third-party postings to which he adds his own comments ratifying or adopting the posts becomes a 'creator' or 'developer' of that content and is not entitled to immunity." The appellate court disagreed, finding that Richie's actions were consistent with that of a publisher in editing the content and therefore he was immune under the CDA. "A material contribution to the alleged illegality of the content does not mean merely taking action that is necessary to the display of allegedly illegal content. Rather, it means being responsible for what makes the display content allegedly unlawful."

The appellate court said the comments by Richie were made after the postings had been displayed. "It would break the concepts of responsibility and material contribution to hold Richie responsible for the defamatory content of speech because he later commented on that speech," the appellate court observed. "Although ludicrous, Richie's remarks did not materially contribute to the defamatory content of the posts appearing on the website."

The appellate court said the CDA did not bar Jones from seeking recovery from the persons who posted the comments.

*Sarah Jones v. Dirty World Entertainment Recordings, LLC*, Sixth Circuit No. 13-5946, issued June 16, 2014.