



Dear First Year Students,

On behalf of the Lawyering Skills I Program, I welcome you to USD. Professors Brandes, Current, Greene, Panikowski, Pearl, Semitsu, and I are excited to have you in our classes this year. We will teach you how to be lawyers—how to research, write, argue, and conduct yourselves like the professionals you will be in practice.

We look forward to meeting you during orientation. Before coming to orientation, please be sure to read the enclosed case involving Matchmaker.com and think about the questions we've posed in the instruction sheet. We'll have a good discussion about this case in our orientation classes.

To simulate the rigors of an actual law practice, you will be working very hard in our classes. In the fall, you will write four major writing projects—at least one of which will be a rewrite—and complete a number of major research assignments. Our focus in the fall is objective writing, which is writing that predicts how the law will impact a client's fact situation.

In the spring, we will teach you how to write persuasively. You will learn to use the law to argue for your client's position. You will write an appellate brief and argue your side in front of a panel of judges, comprised of actual judges and attorneys from the San Diego legal community.

Our students inevitably tell us that Lawyering Skills I was key to their success in practice. We hope that you will enjoy the experience. Good luck!

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Cannon", followed by a long horizontal flourish.

Professor Lisa Cannon
Department Chair of Lawyering Skills I

A little about the Lawyering Skills I Professors:

Professor Elisa Brandes: Professor Brandes is in her seventh year as an instructor in the Lawyering Skills I program. She is a *magna cum laude* graduate of the University of San Diego School of Law, where she finished fifth in her class. Professor Brandes began her legal career as a criminal prosecutor in the City Attorney's Office. She later joined the firm of Seltzer Caplan McMahan & Vitek where she handled a variety of civil litigation matters including wrongful termination claims, contractual disputes and attorney malpractice cases. After leaving Seltzer Caplan, she started her own practice handling criminal appeals. Most recently, she earned her LL.M. in Taxation from USD, graduating first in her class.

Professor Elisabeth "Lisa" Cannon: Professor Cannon has been teaching legal writing at USD since 2005. Previously, she worked at Latham & Watkins' San Diego office, where she was a member of the Ethics Committee and an associate attorney practicing business litigation for five years. In practice, she worked on a variety of litigation matters including health care, unfair competition and anti-trust, copyright, and securities litigation. She graduated *magna cum laude* from the Georgetown University Law Center, where she twice received an Outstanding Public Service award and was elected to the Order of the Coif. While at Georgetown, she served on the board of the Equal Justice Foundation. Professor Cannon received her A.B. from Harvard College, *cum laude*, in American History and Literature.

Professor Gail Greene: Gail Greene was born in the Republic of South Africa and moved to America in 1981. She received a B.S. degree in telecommunications and film from San Diego State University in 1985, and then worked in the communications field for a number of years. Professor Greene then attended USD School of Law and graduated *magna cum laude* in 1990. She was a member of the *San Diego Law Review*, and served as a comments editor for volume 27. Her student case note was published in volume 26 of the *San Diego Law Review*. After graduation, she joined Gray Cary Ware & Freidenrich in San Diego and practiced as a litigation associate until 1996. Professor Greene then left the practice of law to teach Lawyering Skills I at USD.

Professor Molly Current: Molly Current comes to USD with extensive experience teaching legal research and writing at both Santa Clara University School of Law and Chicago-Kent School of Law. After graduating from Georgetown University Law Center *magna cum laude* and serving on the editorial board of the Georgetown Law Journal, Prof. Current clerked for the Honorable Harold H. Greene of the U.S. District Court for the District of Columbia and the Honorable Frank. M. Johnson, Jr. of the Eleventh Circuit Court of Appeals. She then had extensive practice experience in both private practice, government, and public interest, including at the Seattle firm of Stoel, Rives, the D.C. firm of Kaye Scholer, the Civil Division of the United States Attorney's Office, the Washington State Human Rights Commission, the Seattle Department of Construction and Land Use, and the Housing Education & Law Project LLC.

Professor Kris Panikowski: Professor Panikowski did her undergraduate work at the University of Utah, where she had an academic scholarship in tennis, and graduated with degrees in English and Spanish. After completing Masters work in Communications and teaching freshman writing in Utah, Professor Panikowski worked as a political consultant, managing campaigns, drafting speeches and analyzing research data for both domestic and international clients. She attended law school at the University of Virginia, where she was a senior editor on the *Virginia Journal of International Law*, recipient of the graduation prize for Outstanding Student in Trial Advocacy, and a Dillard Fellow, in which capacity she taught legal writing and research. Professor Panikowski left the law firm of Fish & Richardson to join USD in 2005; prior to that, she had been an associate at Luce, Forward, Hamilton Scripps. In 2008, Professor Panikowski was awarded the prestigious Thorsnes Prize for Excellence in Teaching.

Professor Lisa Pearl: Professor Pearl has taught Lawyering Skills at USD since 2004. After Ms. Pearl received her B.A. in political science *magna cum laude* from University of Michigan and J.D. *cum laude* from Northwestern University Law School, she was a law clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois and practiced litigation at McDermott, Will & Emery. She was a legal writing instructor at DePaul University Law School and Assistant Clinical Communication & Legal Reasoning Professor at Northwestern University Law School before joining us at USD. Ms. Pearl also writes for professional theaters including La Jolla Playhouse.

Professor Junichi Semitsu: Professor Semitsu taught at the University of California at Berkeley in both the law school (Boalt Hall) and in the Department of African American Studies before coming to USD in 2005. At Berkeley, he was also the director of June Jordan's Poetry for the People. Professor Semitsu is an honors graduate of Stanford Law School, where he won Best Individual Oral Advocate in the Kirkwood Moot Court Competition and served as senior editor/ombudsman of the *Stanford Law Review* and director of the law school musical. After graduation, Semitsu clerked for the Honorable James R. Browning of the United States Court of Appeals for the Ninth Circuit. His publications include "Burning Cyberbooks in Public Libraries: Internet Filtering Software vs. the First Amendment," published in the *Stanford Law Review*, as well as essays in the *Chicago Tribune* and the *New Crisis*. He was a finalist in the San Francisco Poetry Slam and has performed on NPR. He most recently worked as the first embedded blogger for the Dixie Chicks (<http://3dixiechicks.spaces.live.com/>), which has earned him the reputation as the professor with the coolest summer job ever.

**USD SCHOOL OF LAW
ENTERING CLASS OF 2008
ORIENTATION: “ANATOMY OF A CASE” STUDY PACKET**

As part of the Orientation program, the attached case will be studied and discussed in two small classes led by your Lawyering Skills I professor: “Anatomy of a Case, Part I” on Thursday, August 21, and “Anatomy of a Case, Part II” on Friday, August 22. (Check your Orientation schedule and materials to find the exact times and locations of these sessions.) Please come to these classes prepared, meaning that you have read the attached case prior to the first class and are prepared to discuss and analyze the case in class. **Bring this packet with you to the two “Anatomy of a Case” sessions.**

We suggest that you read the case at least twice. During your first read-through, try to become familiar with the facts and legal issues discussed. The second time through, dig into the substance of the case and thoroughly analyze the court’s opinion.

Make sure to give yourself enough time to complete this process in a thorough way – at the beginning of law study, it can take a while to digest legal material. When you come across words that are unfamiliar to you, you should look them up in a legal dictionary (such as Black’s Law Dictionary). Don’t worry if you have to look up a lot of words now; with careful use of your dictionary and a few weeks of law study, you’ll become an expert with legal terminology.

Think about the following questions when you read the attached case:

- (1) What were the underlying facts of the case?
- (2) What was the primary legal question in the case?
- (3) What was the court’s answer to the legal question?
- (4) Why did the court decide the case the way it did; how did the court justify its conclusion?
- (5) Do you agree with the court’s conclusion? Why or why not?
- (6) What reasons could the court have used to justify a conclusion different from the one it reached?

Christianne Carafano, a/k/a Chase Masterson, Plaintiff-Appellant,
v.
Matchmaker.com, Inc., et al., Defendants-Appellees.
United States Court of Appeals, Ninth Circuit, 2003.
339 F.3d 1119¹

THOMAS, Circuit Judge.

This is a case involving a cruel and sadistic identity theft. In this appeal, we consider to what extent a computer match making service may be legally responsible for false content in a dating profile provided by someone posing as another person. Under the circumstances presented by this case, we conclude that the service is statutorily immune pursuant to 47 U.S.C. § 230(c)(1).

I.

Matchmaker.com is a commercial Internet dating service. For a fee, members of Matchmaker post anonymous profiles and may then view profiles of other members in their area, contacting them via electronic mail sent through the Matchmaker server. A typical profile contains one or more pictures of the subject, descriptive information such as age, appearance and interests, and answers to a variety of questions designed to evoke the subject's personality and reason for joining the service.

Members are required to complete a detailed questionnaire containing both multiple-choice and essay questions. In the initial portion of the questionnaire, members select answers to more than fifty questions from menus providing between four and nineteen options. Some of the potential multiple choice answers are innocuous; some are sexually suggestive. In the subsequent essay section, participants answer up to eighteen additional questions, including "anything that the questionnaire didn't cover." Matchmaker policies prohibit members from posting last names, addresses, phone numbers or e-mail addresses within a profile. Matchmaker reviews photos for impropriety before posting them but does not review the profiles themselves, relying instead upon participants to adhere to the service guidelines.

On October 23, 1999, an unknown person using a computer in Berlin posted a "trial" personal profile of Christianne Carafano in the Los Angeles section of Matchmaker. (New members were permitted to post "trial" profiles for a few weeks without paying.) The posting was without the knowledge, consent or permission of Carafano. The profile was listed under the identifier "Chase529."

Carafano is a popular actress. Under the stage name of Chase Masterson, Carafano has appeared in numerous films and television shows, such as "Star Trek: Deep Space Nine," and "General Hospital." Pictures of the actress are widely available on the

¹ Asterisks (* * *) are used to indicate deletions.

Internet, and the false Matchmaker profile "Chase529" contained several of these pictures. Along with fairly innocuous responses to questions about interests and appearance, the person posting the profile selected "Playboy/Playgirl" for "main source of current events" and "looking for a one-night stand" for "why did you call." In addition, the open-ended essay responses indicated that "Chase529" was looking for a "hard and dominant" man with "a strong sexual appetite" and that she "liked sort of be[ing] controlled by a man, in and out of bed." The profile text did not include a last name for "Chase" or indicate Carafano's real name, but it listed two of her movies (and, as mentioned, included pictures of the actress).

In response to a question about the "part of the LA area" in which she lived, the profile provided Carafano's home address. The profile included a contact e-mail address, cmla2000@yahoo.com, which, when contacted, produced an automatic e-mail reply stating, "You think you are the right one? Proof it!!" [sic], and providing Carafano's home address and telephone number.

Unaware of the improper posting, Carafano soon began to receive messages responding to the profile. Although she was traveling at the time, she checked her voicemail on October 31 and heard two sexually explicit messages. When she returned to her home on November 4, she found a highly threatening and sexually explicit fax that also threatened her son. Alarmed, she contacted the police the following day. As a result of the profile, she also received numerous phone calls, voicemail messages, written correspondence, and e-mail from fans through her professional e-mail account. Several men expressed concern that she had given out her address and phone number (but simultaneously expressed an interest in meeting her). Carafano felt unsafe in her home, and she and her son stayed in hotels or away from Los Angeles for several months.

Sometime around Saturday, November 6, Siouxzan Perry, who handled Carafano's professional website and much of her e-mail correspondence, first learned of the false profile through a message from "Jeff." Perry exchanged e-mails with Jeff, visited the Matchmaker site, and relayed information about the profile to Carafano. Acting on Carafano's instructions, Perry contacted Matchmaker and demanded that the profile be removed immediately. The Matchmaker employee indicated that she could not remove the profile immediately because Perry herself had not posted it, but the company blocked the profile from public view on Monday morning, November 8. At 4:00 a.m. the following morning, Matchmaker deleted the profile.

Carafano filed a complaint in California state court against Matchmaker and its corporate successors, alleging invasion of privacy, misappropriation of the right of publicity, defamation, and negligence. The defendants removed the case to federal district court. The district court granted the defendants' motion for summary judgment in a published opinion. *See Carafano v. Metrosplash.com, Inc.*, 207 F. Supp. 2d 1055 (C.D. Cal. 2002). The court rejected Matchmaker's argument for immunity under 47 U.S.C. § 230(c)(1) after finding that the company provided part of the profile content. *Id.* at 1067-68. However, the court rejected Carafano's invasion of privacy claim on the grounds that her home address was "newsworthy" and that, in any case, Matchmaker had

not disclosed her address with reckless disregard for her privacy. *Id.* at 1069. Similarly, the court rejected Carafano's claims for defamation, negligence, and misappropriation because she failed to show that Matchmaker had acted with actual malice. *Id.* at 1073-76.

Carafano timely appealed. America Online, eBay, and two coalitions of online businesses intervened to challenge the district court's construction of § 230(c)(1). Several privacy advocacy groups and two organizations representing entertainers intervened in support of Carafano.

II.

The dispositive question in this appeal is whether Carafano's claims are barred by 47 U.S.C. § 230(c)(1), which states that "[n]o 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." Through this provision, Congress granted most Internet services immunity from liability for publishing false or defamatory material so long as the information was provided by another party. As a result, Internet publishers are treated differently from corresponding publishers in print, television and radio. *See Batzel v. Smith*, 333 F.3d 1018, 1026-27 (9th Cir. 2003).

Congress enacted this provision as part of the Communications Decency Act of 1996 for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material. *See id.* at 1026-30 (recounting the legislative history and purposes of this section). Congress incorporated these ideas into the text of § 230 itself, expressly noting that "interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation," and that "[i]ncreasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services." 47 U.S.C. § 230(a)(4), (5). Congress declared it the "policy of the United States" to "promote the continued development of the Internet and other interactive computer services," "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services," and to "remove disincentives for the development and utilization of blocking and filtering technologies." 47 U.S.C. § 230(b)(1), (2), (4).

In light of these concerns, reviewing courts have treated § 230(c) immunity as quite robust, adopting a relatively expansive definition of "interactive computer service"² and a relatively restrictive definition of "information content provider."³ Under the statutory scheme, an "interactive computer service" qualifies for immunity so long as it

² "The term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." 47 U.S.C. § 230(f)(2).

³ "The term 'information content provider' means 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).

does not also function as an "information content provider" for the portion of the statement or publication at issue.

We recently considered whether § 230(c) provided immunity to the operator of an electronic newsletter who selected and published an allegedly defamatory e-mail over the Internet. *Batzel*, 333 F.3d at 1030-32. We held that the online newsletter qualified as an "interactive computer service" under the statutory definition and that the selection for publication and editing of an e-mail did not constitute partial "creation or development" of that information within the definition of "information content provider." Although the case was ultimately remanded for determination of whether the original author intended to "provide" his e-mail for publication, *id.* at 1035, the *Batzel* decision joined the consensus developing across other courts of appeals that § 230(c) provides broad immunity for publishing content provided primarily by third parties. *See Green v. America Online*, 318 F.3d 465, 470-71 (3d Cir. 2003) (upholding immunity for the transmission of defamatory messages and a program designed to disrupt the recipient's computer); *Ben Ezra, Weinstein, & Co. v. America Online Inc.*, 206 F.3d 980, 985-86 (10th Cir. 2000) (upholding immunity for the on-line provision of stock information even though AOL communicated frequently with the stock quote providers and had occasionally deleted stock symbols and other information from its database in an effort to correct errors); *Zeran v. America Online*, 129 F.3d 327, 328- 29 (4th Cir. 1997) (upholding immunity for both initial publication and delay in removal of false messages connecting offensive tee-shirts to the plaintiff's name and home telephone number). As the Fourth Circuit has noted:

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. Congress' purpose in providing the § 230 immunity was thus evident. Interactive computer services have millions of users. The amount of information communicated via interactive computer services is therefore staggering. 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. Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect.

Zeran, 129 F.3d at 330-31 (citation omitted); *see also Batzel*, 333 F.3d at 1027 (quoting *Zeran* with approval). Under § 230(c), therefore, so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process.

The fact that some of the content was formulated in response to Matchmaker's questionnaire does not alter this conclusion. Doubtless, the questionnaire facilitated the expression of information by individual users. However, the selection of the content was left exclusively to the user. The actual profile "information" consisted of the particular options chosen and the additional essay answers provided. Matchmaker was not responsible, even in part, for associating certain multiple choice responses with a set of physical characteristics, a group of essay answers, and a photograph. Matchmaker cannot be considered an "information content provider" under the statute because no profile has any content until a user actively creates it.

As such, Matchmaker's role is similar to that of the customer rating system at issue in *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 121 Cal. Rptr. 2d 703 (2002). In that case, the plaintiffs alleged that eBay "was an information content provider in that it was responsible for the creation of information, or development of information, for the online auction it provided through the Internet." *Id.* at 717. Specifically, the plaintiffs noted that eBay created a highly structured Feedback Forum, which categorized each response as a "Positive Feedback," a "Negative Feedback," or a "Neutral Feedback." *Id.* In addition, eBay provided a color coded star symbol next to the user name of a seller who had achieved certain levels of "Positive Feedback" and offered a separate "Power Sellers" endorsement based on sales volume and Positive Feedback ratings. *Id.* The court concluded that § 230 barred the claims:

Appellants' negligence claim is based on the assertion that the information is false or misleading because it has been manipulated by the individual defendants or other co-conspiring parties. Based on these allegations, enforcing appellants' negligence claim would place liability on eBay for simply compiling false and/or misleading content created by the individual defendants and other coconspirators. We do not see such activities transforming eBay into an information content provider with respect to the representations targeted by appellants as it did not create or develop the underlying misinformation.

Id. at 717-18. Similarly, the fact that Matchmaker classifies user characteristics into discrete categories and collects responses to specific essay questions does not transform Matchmaker into a "developer" of the "underlying misinformation."

We also note that, as with eBay, Matchmaker's decision to structure the information provided by users allows the company to offer additional features, such as "matching" profiles with similar characteristics or highly structured searches based on combinations of multiple choice questions. Without standardized, easily encoded answers, Matchmaker might not be able to offer these services and certainly not to the same degree. Arguably, this promotes the expressed Congressional policy "to promote the continued development of the Internet and other interactive computer services." 47 U.S.C. § 230(b)(1).

Carafano responds that Matchmaker contributes much more structure and content than eBay by asking 62 detailed questions and providing a menu of “pre-prepared responses.” However, this is a distinction of degree rather than of kind, and Matchmaker still lacks responsibility for the “underlying misinformation.”

Further, even assuming Matchmaker could be considered an information content provider, the statute precludes treatment as a publisher or speaker for “any information provided by another information content provider.” 47 U.S.C. § 230(c)(1) (emphasis added). The statute would still bar Carafano's claims unless Matchmaker created or developed the particular information at issue. As the Gentry court noted,

[T]he fact appellants allege eBay is an information content provider is irrelevant if eBay did not itself create or develop the content for which appellants seek to hold it liable. It is not inconsistent for eBay to be an interactive service provider and also an information content provider; the categories are not mutually exclusive. The critical issue is whether eBay acted as an information content provider with respect to the information that appellants claim is false or misleading.

121 Cal. Rptr. 2d at 717 n. 11.

In this case, critical information about Carafano's home address, movie credits, and the e-mail address that revealed her phone number were transmitted unaltered to profile viewers. Similarly, the profile directly reproduced the most sexually suggestive comments in the essay section, none of which bore more than a tenuous relationship to the actual questions asked. Thus Matchmaker did not play a significant role in creating, developing or “transforming” the relevant information.

Thus, despite the serious and utterly deplorable consequences that occurred in this case, we conclude that Congress intended that service providers such as Matchmaker be afforded immunity from suit. Thus, we affirm the judgment of the district court, albeit on other grounds.⁴

AFFIRMED.

⁴ The resolution of this case makes it unnecessary for us to address the district court's rationale, and nothing in this opinion should be construed as approving or disapproving of it. For the same reason, we need not--and do not--reach any other issue raised by the parties.