Case No. 07-50345

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JANE DOE, Individually and as next friend of Julie Doe, a minor,

Plaintiff-Appellant,

v.

MYSPACE INC. and NEWS CORPORATION,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division

BRIEF FOR AMICI CURIAE INTERNET COMMERCE COALITION, NETCOALITION, UNITED STATES INTERNET SERVICE PROVIDER ASSOCIATION, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, CTIA – THE WIRELESS ASSOCIATION, INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA, NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION, AND THE CENTER FOR DEMOCRACY & TECHNOLOGY, IN SUPPORT OF DEFENDANTS-APPELLEES

Patrick J. Carome
Samir Jain
C. Colin Rushing
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006
(202) 663-6000

Counsel for Amici Curiae

September 28, 2007

Case No. 07-50345

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JANE DOE, Individually and as next friend of Julie Doe, a minor,

Plaintiff-Appellant,

v.

MYSPACE INC. and NEWS CORPORATION,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division

SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Pursuant to Circuit Rule 29.2, the undersigned counsel of record certifies that the following listed persons and entities have an interest in this amicus brief. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

The Internet Commerce Coalition ("ICC"), an incorporated association, is not a publicly held corporation and does not have a parent corporation. No publicly traded corporation owns ten percent or more of its stock. The ICC's

members include leading e-commerce sites, such as Amazon.com; broadband Internet service providers, such as Verizon; and technology trade associations.

NetCoalition is not a publicly-held corporation, does not have a parent corporation, and no publicly-traded corporation owns ten percent or more of its stock. A list of its members is included in Appendix A.

The United States Internet Service Provider Association , an incorporated association, is not a publicly-held corporation, does not have a parent corporation, and no publicly-traded corporation owns ten percent or more of its stock. Its members include AOL, AT&T, EarthLink, Microsoft, United Online, Verizon, and Yahoo!.

The Computer & Communications Industry Association ("CCIA") is a non-profit trade association. CCIA has no parent corporation nor any issued stock or partnership shares of any kind, and as such, no publicly held corporation has an ownership stake of 10% or more in CCIA. A list of its members is included in Appendix A.

CTIA – The Wireless Association ("CTIA") is a non-profit trade association. CTIA has no parent corporation nor any issued stock or partnership shares of any kind. No publicly held corporation has an ownership stake of ten percent or more in CTIA. A list of its members is included in Appendix A.

The Information Technology Association of America is not a publicly-held corporation, does not have a parent corporation, and no publicly-traded corporation owns ten percent or more of its stock. A list of its members is included in Appendix A.

The National Cable and Telecommunications Association is not a publicly-held corporation, does not have a parent corporation, and no publicly-traded corporation owns ten percent or more of its stock. Its members include cable operators as well as cable programming networks and services, including Fox Cable Networks, Inc., which is wholly owned by a subsidiary of News Corporation.

The Center for Democracy & Technology, a non-profit public interest and Internet policy organization, is not a publicly-held corporation and does not have a parent corporation. No publicly-traded corporation owns ten percent or more of its stock.

Patrick J. Carome
Samir Jain
C. Colin Rushing
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006
(202) 663-6000

September 28, 2007

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

LEGISLATIVE HISTORY

STATEMENT OF THE AMICI

Internet Commerce Coalition ("ICC"), NetCoalition, the United States Internet Service Provider Association ("USISPA"), Computer & Communications Industry Association ("CCIA"), CTIA - the Wireless Association ("CTIA"), the Information Technology Association of America ("ITAA"), the National Cable and Telecommunications Association, and the Center for Democracy and Technology ("CDT") (collectively "Amici") submit this amicus brief to urge the Court to affirm the decision of the court below. Pursuant to Fed.R.App.P. 29(a), Amici have obtained the parties' consent to file this brief.

ICC is a trade association of leading broadband Internet service providers ("ISPs"), e-commerce sites, and technology trade associations. Its mission is to achieve a legal environment that allows service providers, their customers, and other users to do business on the Internet under reasonable rules governing liability and the use of technology.

NetCoalition serves as the public policy voice for some of the world's largest and most innovative Internet companies on key public policy matters affecting the online world. Its members are providers of search technology, hosting services, ISPs, and Web portal services.

USISPA is a national trade association representing the common policy and legal concerns of the major ISPs, portal companies, and network providers.

CCIA is a trade association dedicated to open markets, open systems, and open networks. CCIA members participate in many sectors of the computer, information, and communications technology industries, and range in size from small entrepreneurial firms to the largest in the industry. CCIA's members collectively employ nearly one million people and generate annual revenues exceeding $200 billion.

CTIA represents all segments of the wireless communications industry. Its members include wireless service providers, manufacturers, and wireless data and Internet companies. Many CTIA members are playing an increasingly significant role in the provision of interactive computer services.

ITAA provides public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. ITAA's members range from the smallest IT start-ups to industry leaders in the Internet, software, IT services, digital content, systems integration, telecommunications, and enterprise solution fields.

NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators, cable programming networks and services, and suppliers of equipment and services to the cable industry. The cable industry is the nation's largest broadband provider of high speed Internet access.

CDT is a non-profit public interest and Internet policy organization. CDT represents the public's interest in an open, decentralized Internet reflecting constitutional and democratic values of free expression, privacy, and individual liberty. CDT has litigated or otherwise participated in a broad range of Internet free speech cases.

Each of the Amici and their members have a substantial interest in the legal rules governing whether providers of interactive computer services may be liable for harms caused by online communications of third parties. Many courts facing this issue, including the court below in this case, have held 47 U.S.C. § 230 gives providers of interactive computer services, such as the companies represented by Amici, broad immunity from liability for such third-party communications. Plaintiffs urge this Court to depart from this precedent, asserting distinctions that, if recognized, would substantially undermine the immunity afforded by Section 230 and disserve the statute's core policy objectives.

Because they serve as platforms for the online communications of tens of millions of users, the service providers who are represented by Amici have been, and inevitably will continue to be, parties to lawsuits in which they must raise Section 230 as a defense. The success and viability of these companies' online businesses — and the vitality of online media and online free speech generally — depend at least in part on their not being confronted with the risk and uncertainty

of potential liability in cases in which it is alleged that one among their millions of users has used their services to engage in communications that caused harm to someone. A ruling that MySpace is not entitled to Section 230 immunity in this case could create substantial uncertainty regarding the legal rules governing providers of online services and imperil the future growth and development of the $500 billion information and communications technology industry. Amici therefore have a strong interest in the legal issues concerning Section 230 presented in this appeal.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Internet and related online services have spawned a communications revolution that is still ongoing. Interactive computer services, such as those offered by the companies whom Amici represent, provide new and ever-changing ways for individuals to share and gather information, communicate with one another, and engage in acts of publication that, until relatively recently, were solely in the province of traditional media companies. These new media have, as their defining quality, the capacity for anyone with a computer to disseminate instantaneously vast quantities of diverse content, which is then available around the globe.

The core issue presented by this case is whether providers of interactive computer services may be held liable for harm caused by communications that are disseminated through their services but that they do not originate. As MySpace has explained in its brief, and as Plaintiffs readily concede, courts throughout the nation have correctly concluded that 47 U.S.C. § 230(c)(1) ("Section 230") provides interactive computer service providers with broad immunity from liability for injuries resulting from the online communications of their users. Each of these courts has reached this conclusion based on the plain language of the statute, as well as Congress's clear intent.

Section 230 bars Plaintiffs' claims against MySpace because, as in every other case in which the defense has been successfully asserted, the alleged injuries resulted from communications that the defendant service provider facilitated but did not originate. Plaintiffs contend that MySpace is liable because it enabled two users, Pete Solis and Julie Doe, to engage in online communications with one another — communications that eventually enabled them to meet. Because Plaintiffs seek to hold MySpace liable for harm allegedly arising from exchanges of information that originated entirely from its users, Section 230 bars their claims.

Plaintiffs erroneously contend that their claims fall outside the scope of Section 230. They argue this case is not about the dissemination of third-party communications at all but rather MySpace's alleged failure to adopt appropriate security measures. But MySpace's only connection to this case is that its service was a platform for online exchanges of information that originated from Doe and Solis, and Plaintiffs' claims against MySpace are based entirely on the theory that those communications were a link in a chain of events that ultimately led to Doe being harmed by Solis. Thus, Plaintiffs are seeking to hold MySpace liable precisely because its service was the platform for the publication of information by and between these two users. Although Plaintiffs try to repackage their claims as violations of an alleged "duty" to take appropriate "security measures," such cosmetics do not change their claims' fundamental nature. In fact, the supposed

"security measures" that they claim MySpace should have employed (such as mechanisms to prevent Doe from publishing her profile in the first place or to prevent users like Solis from viewing it) are simply means for blocking, editing, or targeting content — all quintessential roles of a traditional publisher.

For this reason, Plaintiffs' claims clearly seek to treat MySpace as the publisher of the allegedly harmful communications of Doe and Solis, in direct contravention of Section 230(c)(1), which provides that entities such as MySpace "shall not be treated as the publisher or speaker" of third-party communications. Indeed, Plaintiffs' novel theory, if adopted, would change the outcome of many cases in which the Section 230 defense has been upheld: virtually *any* claim based on the alleged dissemination of third-party communications could be pled as a claim that the service provider failed to implement adequate security measures.

Plaintiffs argue, in the alternative, that Section 230 does not apply here because MySpace was itself an "information content provider" with respect to the online content that passed between Doe and Solis. But these two individuals were the sole creators and developers of *all* of the content in the online communications that allegedly led to the harm, and MySpace had no role in its origination. In these circumstances, the language of Section 230, and the legion of cases construing it, plainly foreclose Plaintiffs' fallback argument.

Plaintiffs' arguments directly conflict with Congress's two key objectives for passing Section 230. First, Congress intended to promote the continued development of interactive computer services. Congress recognized that a key element of these services was the ability to disseminate vast quantities of third-party information nearly instantaneously. Congress concluded that the risk of liability for third-party communications in this context would significantly diminish the incentives and ability of service providers to offer such robust and beneficial services (many of which are offered at no charge to users). Subject to certain well-defined exceptions not applicable here,[1/] Congress eliminated the risk that service providers could be held liable for harm caused by communications that are created and developed by others, leaving such liability to be borne by the originators of such communications.

Second, Congress sought to reduce disincentives to voluntary *self*-regulation by online service providers. Previously, service providers had faced disincentives to engage in screening, monitoring, or other self-policing of third-party communications because those very activities could give them actual or constructive knowledge of harmful content — a threshold predicate for liability for disseminators of third-party communications under the First Amendment and common law. By immunizing service providers from liability for harms caused by

---

1/ 47 U.S.C. § 230(e).

third-party communications, Congress freed service providers to experiment with, and to deploy, voluntarily, new forms of self-regulation. Subjecting MySpace to liability in this case would resurrect the very disincentives that Congress sought to eliminate.

Experience in the decade since Section 230's enactment has confirmed Congress's foresight. Interactive computer services have flourished, with innovative offerings rapidly being made available to consumers. Simultaneously, many service providers have voluntarily deployed a variety of self-regulatory measures, often developing new technological means for blocking harmful communications, in reliance upon the assurance that, due to Section 230, such activity will not itself give rise to liability. And persons who nevertheless suffer harm from unlawful online communications still have available to them the full range of legal remedies against the actual wrongdoers — the originators of such communications.

Although Solis's alleged criminal actions are appalling in every respect, the reprehensible nature of his alleged conduct (for which he has been indicted and is awaiting trial) should not obscure the fact that Plaintiffs' proposed limitations on Section 230 — which would extend far beyond the specific context of this case — would frustrate Congress's intent.

Amici cannot emphasize enough the degree to which the protection afforded by Section 230 has played a critical role in the development of interactive services that both empower users and encourage innovation and self-regulation. While Plaintiffs argue that this case is different, the theories they advance would, if embraced, fundamentally undermine Congress's core goals.

ARGUMENT

I. THE PLAIN LANGUAGE OF SECTION 230 BARS PLAINTIFFS' CLAIMS.

Ten years ago, the Fourth Circuit held that the plain language of "§ 230 creates a federal immunity to *any cause of action* that would make service providers liable for *information originating with a third-party user* of the service." *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (emphasis added), *cert. denied*, 524 U.S. 937 (1998). Since then, United States Courts of Appeal for the First, Third, Ninth, and Tenth Circuits,[2/] the Supreme Courts of California and Florida,[3/] and federal and state trial courts throughout the country have followed

---

[2/] *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413 (1st Cir. 2007); *Green v. America Online*, 318 F.3d 465 (3d Cir.), *cert. denied*, 540 U.S. 877 (2003); *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102 (9th Cir. 2007); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir. 2003); *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003); *Ben Ezra, Weinstein, & Co. v. America Online Inc.*, 206 F.3d 980 (10th Cir.), *cert. denied*, 531 U.S. 824 (2000).

[3/] *Barrett v. Rosenthal*, 146 P.3d 510, 515-29 (Cal. 2006); *Doe v. America Online, Inc.*, 783 So.2d 1010, 103-17 (Fla. 2001), *cert. denied*, 534 U.S. 891 (2001) (hereinafter "Florida Doe").

suit.[4/] As these courts have recognized, Section 230 bars a claim whenever three elements are met: (i) the defendant asserting immunity is an interactive computer service provider; (ii) the claim "treats" the defendant as a "publisher or speaker" of the information that caused the alleged harm; and (iii) the information at issue was provided by "another information content provider."

Plaintiffs do not challenge the case law or the basic analytical framework. Nor do they dispute that MySpace is an interactive computer service that is, in general, eligible for Section 230 immunity. Instead, they contend Section 230 does not apply here because their claims are "not based on publication of certain content," but rather on MySpace's alleged failure to implement "safety measures" to block the occurrence of potentially harmful communications. Based on this supposed distinction, Plaintiffs assert their claims do not treat MySpace as a

---

[4/] *E.g.*, *Doe v. SexSearch.com*, 2007 WL 2388913 (N.D.Ohio 2007); *Doe v. Bates*, 2006 WL 3813758 (E.D.Tex. 2006); *Eckert v. Microsoft Corp.*, 2007 WL 496692 (E.D.Mich. 2007); *Prickett v. InfoUSA, Inc.*, 2006 WL 887431 (E.D.Tex. 2006); *Dimeo v. Max,* 433 F.Supp.2d 523 (E.D.Pa. 2006), *aff'd*, 2007 WL 217865 (3d Cir.); *Barnes v. Yahoo!, Inc.*, 2005 WL 3005602 (D.Or. 2005); *Associated Bank-Corp. v. Earthlink, Inc.*, 2005 WL 2240952 (W.D.Wis. 2005); *Corbis Corp. v. Amazon.com, Inc.*, 351 F.Supp.2d 1090, 1117-18 (W.D.Wash. 2004); *Novak v. Overture Servs. Inc.*, 309 F.Supp.2d 446, 452 (E.D.N.Y. 2004); *Noah v. AOL Time Warner Inc.*, 261 F.Supp.2d 532 (E.D.Va. 2003), *aff'd*, 2004 WL 602711 (4th Cir. 2004); *PatentWizard, Inc. v. Kinko's Inc.*, 163 F.Supp.2d 1069, 1071 (D.S.D. 2001); *Blumenthal v. Drudge*, 992 F.Supp. 44, 49 (D.D.C. 1998); *Donato v. Moldow*, 865 A.2d 711 (N.J.Super.Ct.App.Div. 2005); *Barrett v. Fonorow*, 799 N.E.2d 916, 924-25 (Ill.Ct.App. 2003); *Schneider v. Amazon.com, Inc.*, 31 P.3d 37, 43 (Wash.Ct.App. 2001); *Austin v. CrystalTech Web Hosting*, 125 P.3d 389 (Ariz.Ct.App. 2005).

publisher. Alternatively, they argue MySpace itself was an "information content provider" with respect to the information exchanged online between Doe and Solis, even though it is undisputed that Doe and Solis were the exclusive sources of all of the information contained in the user profiles and other online communications at issue. As the district court recognized, the plain language of Section 230 forecloses each of these arguments.

A. The District Court Correctly Held that Plaintiffs' Claims Treat MySpace as a "Publisher" of Its Users' Communications.

As the case law confirms, any claim that would impose liability on an interactive computer service provider for harm allegedly resulting from information provided by another person necessarily "treats" the service provider as the "publisher or speaker" of that information in contravention of Section 230. In particular, as Plaintiffs concede, courts have recognized that a claim impermissibly "treat[s]" an interactive computer service provider as a publisher whenever it "seek[s] to hold a service provider liable for its exercise of a publisher's traditional editorial functions," including the decision "whether to publish, withdraw, postpone, or alter content." *Zeran*, 129 F.3d at 330; *see also Ben Ezra, Weinstein & Co.*, 206 F.3d at 986 ("Congress clearly enacted § 230 to forbid the imposition of publisher liability on a service provider for the exercise of its editorial and self-regulatory functions."); *Batzel*, 333 F. 3d at 1026-27, 1031; *SexSearch.com*, 2007 WL 2388913, at *7. As the Third Circuit explained, any claim that a service

provider "promulgat[ed] harmful content" and "fail[ed] to address certain harmful content" pertains to "decisions relating to the monitoring, screening, and deletion of content from its network — actions quintessentially related to a publisher's role." *Green*, 318 F.3d at 471.

Plaintiffs seek to hold MySpace liable solely because information originated by Doe and Solis flowed through its service, allegedly triggering a series of events that ultimately led to Solis's sexual assault on Doe. MySpace's transmission of that information is the *only* connection between MySpace and this case. Plaintiffs themselves assert that their claims are "causally connected" to this online content: as they describe it, "specific communications between Solis and Julie" as well as "[o]ther communications, namely the profiles and other information [that] passed between Julie and Solis over MySpace" are the alleged "cause" of the harm that came to Julie. (Pl. Br. at 36, 42.) Thus, Plaintiffs are seeking to hold MySpace liable for the harm that allegedly resulted from its transmission of third-party communications — precisely what the cases have held constitutes treating a service provider as a "publisher or speaker."

Plaintiffs contend that their claims are not based on the "content" of the communications transmitted through the MySpace service, but instead on MySpace's allegedly "lax security measures." (Pl. Br. at 42; *see also id.* at 31 (describing Plaintiffs' claim as breach of an alleged "duty to provide reasonable

safety measures to ensure that sexual predators did not gain otherwise unavailable access to minors through the use of the MySpace.com website").) But the "security measures" that Plaintiffs believe MySpace should have implemented are simply steps to exercise the "traditional duties" of a publisher with respect to such user communications: namely, to decide whether to publish, withdraw, edit, block, screen the communications, or otherwise control their distribution. In particular, Plaintiffs assert that MySpace should have prevented Doe from posting her profile in the first place, blocked Solis from viewing it through alternative privacy settings, and/or restricted Solis and Doe from engaging in other online communications. (*See, e.g.*, Pl. Br. at 51-55.) Requiring MySpace to take any or all of these steps would impose on it duties concerning whether, how, and in what circumstances third-party information is to be disseminated. These are the archetypal functions of a publisher. Calling them "security measures" does not alter that fact.

Seeing past Plaintiffs' semantics, the district court correctly concluded that Plaintiffs' claims are "directed toward MySpace in its publishing, editorial, and/or screening capacities." *Doe v. MySpace Inc.*, 474 F.Supp.2d 843, 849 (W.D.Tex. 2007). In rejecting Plaintiffs' effort to avoid Section 230 through "artful plead[ing]", the district court appropriately followed the lead of other courts, which repeatedly have emphasized that the protections of Section 230 do not rise and fall based on the ability of clever lawyers to disguise the true nature of claims that, in

fact, seek to hold service providers liable for the communications of their users, and pretending that they amount to something else. *See, e.g.*, *Universal Commc'n Sys.*, 478 F.3d at 418 ("[n]o amount of artful pleading" can avoid Section 230's bar); *Zeran*, 129 F.3d at 332 (discussing claim cast in terms of "negligence"); *Barnes, Inc.*, 2005 WL 3005602 (dismissing claim for breach of a supposed special duty).

A recent decision rejected the exact argument that Plaintiffs now advance. In *Doe v. SexSearch.com*, the plaintiff was a man who found a female companion, who he thought was an adult, through a website called SexSearch.com. *See* 2007 WL 2388913, at *1. In fact, the female turned out to be a minor even though (like Doe here) she had posted a profile falsely stating she was older. *Id.* After the two met and engaged in sex, authorities charged the plaintiff with a number of crimes. *Id.* Blaming his predicament on the website, he sued SexSearch.com for failing to prevent a minor from communicating on its site. Attempting to overcome the site operator's Section 230 defense, the plaintiff argued his claim was not based on "content of the profiles," but rather on "the fact that a minor was on the SexSearch website." *Id.*, at *7. The district court rejected that argument:

> At the end of the day, however, Plaintiff is seeking to hold SexSearch liable for its publication of third-party content and harms flowing from the dissemination of that content. The underlying basis for Plaintiff's claim is that if SexSearch had never published Jane Roe's profile, Plaintiff and Jane Roe never

> would have met, and the sexual encounter never would have taken place.

Id. The same applies here: Plaintiffs unmistakably are seeking to hold MySpace liable on the ground that if MySpace had never published Doe's profile, she and Solis "never would have met, and the sexual encounter never would have taken place."

Other courts similarly have rejected attempts by creative litigants to recast their claims as unrelated to the dissemination of third-party communications. For example, in *Noah*, a user of AOL's online service sued AOL for allegedly violating Title II of the Civil Rights Act, 42 U.S.C. § 2000a *et seq.*, which prohibits discrimination by owners of places of public accommodation, by allegedly refusing to prevent the dissemination of discriminatory and harassing comments in an online chat room. 261 F.Supp.2d at 534. Noah sought an injunction requiring AOL to block offending users from communicating in that forum. He argued that his claim did not treat AOL as a "publisher or speaker" of third-party content but, rather, as the "owner of a place of public accommodation." *Id.* at 538. In a decision affirmed on appeal, the court rejected Noah's argument. Because the "injury claimed by plaintiff" was caused by the online communications of AOL users, the court reasoned, it was "clear that plaintiff seeks to hold AOL liable for its failure to exercise a 'publisher's editorial functions.'" *Id.* at 538-39 (quoting *Zeran*, 129 F.3d at 330). The same logic applies here: just as Noah sought to treat

AOL as a publisher by attempting to require it to block certain users from communicating through a chat room, Plaintiffs seek to treat MySpace as a publisher by attempting to impose on it a duty to block dissembling minors from posting profiles of themselves, or alternatively to prevent other users such as Solis from accessing such profiles.

Ultimately, accepting Plaintiffs' theory would significantly undermine Section 230's protections by allowing future plaintiffs to circumvent its protections through the expedient of recasting claims that are fundamentally about the transmission of third-party communications. Under Plaintiffs' theory, many of the leading Section 230 cases would have come out differently. For example, in *Carafano*, the plaintiff sued the operator of Matchmaker.com ("Matchmaker"), an online dating site, after a third-party impersonator posted a bogus and scandalous profile of the plaintiff. Based on Section 230, the Ninth Circuit rejected Carafano's claim that the operator was liable in tort for allowing the false profile to be published. 339 F.3d at 1122. If Plaintiffs' view of the law were correct, however, Carafano could have easily re-pled her claim as a failure of Matchmaker to deploy security measures to verify the identity of its users.

Plaintiffs' theory would upend even the seminal *Zeran* case. In that case, on the heels of the bombing of the federal building in Oklahoma City, an AOL user posted bogus bulletin board advertisements for t-shirts mocking the victims. The

ads falsely listed the plaintiff, Kenneth Zeran, as their author. 129 F.3d at 329. Zeran sued AOL, alleging that it was responsible for negligently distributing the ads, but the Fourth Circuit held Section 230 barred Zeran's claims, regardless of how they were cast. *Id.* at 329-32. Under Plaintiffs' theory here, however, Zeran could have prevailed had he simply refashioned his claim as an alleged violation of an independent duty to employ security measures to prevent any user from masquerading as someone else. It is precisely such "artful pleading" that the Fourth Circuit — and many other courts — have rejected. 129 F.3d at 332.

B. Plaintiffs' Fallback Argument that MySpace Was an "Information Content Provider" of Its Users' Communications Is Meritless.

Doe's profile, and the content of all the other online communications between her and Solis that followed, all constituted "information provided by another information content provider" within the meaning of Section 230(c)(1). The statute defines an "information content provider" as "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) (emphasis added). Courts have routinely held that user-created content falls within this definition. *See, e.g., Zeran*, 129 F.3d at; *Carafano*, 339 F.3d at 1121; *Green*, 318 F.3d at 469.

Even though Solis and Doe indisputably created and developed the content of their profiles and subsequent communications without any involvement by MySpace, Plaintiffs nevertheless assert that MySpace was an "information content provider" as to those communications. They strain to reach this conclusion by arguing that MySpace "encouraged and prompted" Solis and Doe "to enter information in order to create and develop their profiles so that they could more easily contact or be contacted by other MySpace users." (Pl. Br. at 40.)

Plaintiffs' argument is foreclosed by the statutory definition of "information content provider" as one who is "responsible" for the "creation or development" of the information contained in the communications at issue. Even though MySpace provided the tools for Doe and Solis to develop profiles and exchange online messages, and even assuming it "prompted" them to use those tools, that cannot change the fact that MySpace did not "creat[e] or develop[]"the information that flowed between them.

The Ninth Circuit has rejected, in very similar circumstances, the argument Plaintiffs now advance. In *Carafano*, the court considered whether Matchmaker was an information content provider with respect to its users' online profiles. 339 F.3d at 1121. Matchmaker provided its users with highly structured tools for generating profiles and finding profiles of like-minded users. In particular, users were required to complete a lengthy, sexually-oriented questionnaire containing

both multiple-choice and essay questions. *Id.* Carafano argued Matchmaker was an "information content provider" with respect to a user's bogus profile of her because "some of the content was formulated in response to Matchmaker's questionnaire." *Id.* The Ninth Circuit disagreed. Even though "the questionnaire *facilitated* the expression of information by individual users, . . . the selection of the content was left exclusively *to the user.*" *Id.* at 1124 (emphasis added). As in the present case, "[t]he actual profile 'information'" in *Carafano* "consisted of the particular options chosen and the additional essay answers provided," and "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." *Id.* at 1124. Further, the court concluded, "Matchmaker cannot be considered an 'information content provider' under the statute because no profile has any content until a user actively creates it." *Id.*; *see also Gentry v. eBay, Inc.*, 121 Cal.Rptr.2d 703, 718 (Cal.Ct.App. 2002) (service provider immune if it "did not create or develop the underlying misinformation"). All of the same is true here.

Plaintiffs fare no better in arguing (Pl. Br. at 41) that MySpace was an information content provider because the MySpace service makes it relatively easy for users to find one another based on specified criteria. As the court recognized in *Carafano*, the entire *purpose* of innovative interactive services is to simplify and

expedite communication, including by streamlining the processes for sorting and browsing through available information. *See* 339 F.3d at 1124-25. As discussed below (*infra* at 23-28), Congress specifically wanted to encourage the development of innovative communication tools and passed Section 230 to achieve that result. Penalizing MySpace for making its service easier and faster to use would contravene Congress's intent.

Plaintiffs erroneously suggest (Pl. Br. at 38-40) the Ninth Circuit's decision in *Roommate.com* supports their position. That case explicitly reaffirmed that the "touchstone" of Section 230 "is that providers of interactive computer services are immune from liability for content created by third parties." *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 489 F.3d 921, 925 (9th Cir. 2007). In that case, the plaintiffs alleged that the provider of an online roommate-matching service had violated the federal Fair Housing Act because its website directed users to create and search for user profiles by expressing preferences regarding gender and family status — preferences that the court assumed, *arguendo*, the Fair Housing Act prohibits from being advertised by anyone looking for a roommate. *Id.* at 925-29.

The Ninth Circuit panel held that Roommate.com was immune with respect to the non-structured portions of its user profiles, but not with respect to its own multiple choice questions (and the corresponding choices from which users could

select) that specifically *required* users to express prohibited preferences and that Roommate.com then employed to "categoriz[e], channel[] and limit[] the distribution of users' profiles." *Id.* at 929. In short, the Ninth Circuit concluded that Roommate.com was not immune only with respect to content that the site itself provided.[5/] In doing so, however, that same panel, describing *Carafano*, explicitly reaffirmed that Matchmaker.com, the service at issue in *Carafano*, was *not* "'an information content provider' for the profiles on its website," and that instead the Matchmaker service merely "facilitated the expression of information provided by individual users." *Id.* at 927.

The same is true here. MySpace's sole role with respect to the online communications between Doe and Solis was to "facilitate[] the expression of information" that those two individual users provided. None of the content of those communications was created or developed by MySpace.

[5/] Amici believe that, in at least some respects, *Roommate.com* employed an erroneously narrow interpretation of Section 230. Nonetheless, even under the analysis employed in that case, MySpace is immune from Plaintiffs' claims.

II. PERMITTING PLAINTIFFS' CLAIMS AGAINST MYSPACE TO PROCEED WOULD DEFEAT THE TWO OBJECTIVES OF SECTION 230.

A. Plaintiffs' Claims Would Undermine Congress's Purpose of Encouraging the Development of Diverse Online Services and Promoting Vibrant Online Speech.

One of Congress's unequivocal goals in enacting Section 230 was to encourage the development of new and diverse interactive computer services. As Section 230's preamble explains, "interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity," 47 U.S.C. § 230(a)(3), and online services have "flourished, to the benefit of all Americans, *with a minimum of government regulation*." *Id.* § 230(a)(4) (emphasis added). Congress therefore declared: "It is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation*." *Id.* § 230(b)(2) (emphasis added). As courts have recognized, Congress thus clearly enacted Section 230 "to encourage the *unfettered and unregulated* development of free speech on the Internet." *Batzel*, 333 F.3d at 1028.

Congress was concerned that allowing online intermediaries to be held liable for harms caused by their users' communications would endanger this emerging medium. As the Fourth Circuit observed in *Zeran*:

> The imposition of tort liability on service providers for the communications of others represented, for Congress, simply another form of intrusive government regulation of speech. Section 230 was enacted, in part, to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum.

129 F.3d at 330; *see also id.* (Congress enacted Section 230 to promote "freedom of speech in the new and burgeoning Internet medium" by eliminating the "threat [of] tort-based lawsuits" against interactive services for injury caused by "the communications of others."); *Batzel*, 333 F.3d at 1018 ("Section 230 therefore sought to prevent lawsuits from shutting down websites and other services on the Internet.").

Congress recognized that interactive computer services are fundamentally different from traditional media because, unlike centralized "publishers," they enable millions of users to publish material online directly — often instantaneously. Congress passed Section 230 to ensure that the law took account of this key difference. For example, in urging passage of Section 230, Representative Goodlatte (one of its key sponsors) described a "very serious problem" for the companies that were offering online communications tools:

> There is no way that any of those entities, like Prodigy, *can take the responsibility to edit out information* that is going to be coming in to them from all manner of sources onto their bulletin board. We are talking about something that is *far larger than our daily newspaper*. We are talking about something that is going to be thousands of

> pages of information every day, *and to have that imposition imposed on them is wrong.*

141 Cong. Rec. 22,046 (1995) (Rep. Goodlatte) (emphasis added).

The Fourth Circuit thus correctly articulated the federal policy that Section 230 represents:

> 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.

129 F.3d at 330-31.

The sheer volume of third-party communications carried by services provided by companies whom Amici represent illustrates the challenge that online intermediaries would face if they were subject to liability for all third-party content:

- For example, AOL, a defendant in many of the leading Section 230 cases, disseminates an enormous range of third-party content, including message boards (at issue in *Zeran*), chat rooms (at issue in *Florida Doe*, *Green*, and *Noah*), and feature publications (at issue in *Blumenthal*).

- eBay has over two hundred million members. Each day, millions of new items for sale are listed or posted by third parties on eBay.com. eBay also invites buyers and sellers to rate and comment on their dealings with each other, and the comments and ratings are displayed in eBay's Feedback Forum (at issue in *Gentry*).

- Google's search service, at issue in *Parker v. Google*, 2007 WL 1989660 (3d Cir. 2007), and is used by millions of users every day, is based on an index of billions of third-party Web pages. The Google Base service enables providers to post a broad range of content online that is then discoverable on google.com.

- Amazon.com's site makes available millions of individual reviews posted by third-party users. These user reviews (the type of content at issue in *Schneider*) enable other purchasers to gather valuable feedback about the products offered for sale.

- Yahoo! offers individual users a wide variety of ways to publish online, including the popular Yahoo! Groups service (at issue in *Doe v. Bates*) and a sophisticated, simple to use profile feature (at issue in *Barnes*).

Each of these services has revolutionized how people buy and sell goods, make friends, learn facts and opinions, express their viewpoints, locate services,

and otherwise make connections that could not be made using traditional media. Section 230 plays a crucial role in keeping these services viable: given the "staggering" volume of third-party material that they carry, if service providers were "[f]aced with potential liability" for each third-party communication carried over their services, they could be forced to restrict or abandon many of the fora and features that enable the dissemination of such communications in the first place. *See Zeran*, 129 F.3d at 331; *Batzel,* 333 F.3d at 1027-28 ("[m]aking interactive computer services and their users liable for the speech of third parties would severely restrict the information available on the Internet").

In this case, therefore, the district court was correct, and in full harmony with settled case law, in declaring that Section 230 immunity exists "[t]o ensure that web site operators and other interactive computer services would not be crippled by lawsuits arising out of third-party communications," and in recognizing Congress's intent to encourage "web sites and other 'interactive computer services' to create forums for people to exchange their thoughts and ideas by protecting web sites and interactive computer services from potential liability for each message" that they disseminate. 474 F.Supp.2d at 847.

Plaintiffs' own description of MySpace reveals that MySpace is exactly the type of service that Congress intended to protect: MySpace allows "users [to] easily communicate with one another and access one another's profiles," and

includes "integrated blog, email, and instant messaging functions," providing yet more means for "communication among users." (Pl. Br. at 9.) Plaintiffs fault MySpace for offering this innovative service. As courts have recognized, however, these are *precisely* the type of features and functions that were once never possible and that Congress wanted to encourage. *See, e.g.*, *Carafano*, 339 F.3d at 1124-25.

Online services such as MySpace, with their millions of users, will inevitably have users who abuse their service and originate harmful content. In passing Section 230, Congress deliberately decided that recourse for such harmful content should not come from the intermediaries — because that would endanger the existence of the very services themselves. Instead, with the exception of a handful of narrowly drawn exceptions, none of which applies here, Congress determined that only the actual wrongdoers — the *originators* of the content — should be subject to liability. Thus, here, Solis is appropriately awaiting his criminal trial, and the district court correctly found that MySpace is immune.

B. Plaintiffs' Claims Would Undermine Congress's Goal of Encouraging Voluntary Self-Regulation.

Permitting Plaintiffs to proceed with a suit against MySpace would also undermine Congress's second policy objective: to encourage service providers to engage in *self*-regulation. Congress understood that service providers could play a constructive role by voluntarily taking steps to restrict access to or availability of objectionable material in ways that are appropriately tailored to the nature and

design of their particular services. As Representative Cox, a key sponsor of the immunity law, explained: "Government is going to *get out of the way* and let parents and individuals control [the Internet] rather than government doing that job for us." 141 Cong. Rec. 22,045 (1995) (emphasis added). Congress sought to attain this goal by "encourag[ing] interactive computer services and users of such services to self-police the Internet for obscenity and other offensive material." *Batzel*, 333 F.3d at 1028. *See also Zeran*, 129 F.3d at 331 (Section 230 was intended "to encourage service providers to self-regulate the dissemination of offensive material over their services"); 141 Cong. Rec. 22,046 (Section 230 was designed to give interactive service providers "a reasonable way to . . . help them self-regulate themselves without penalty of law") (statement of Rep. Barton).

Congress achieved this goal by reducing pre-existing legal disincentives to voluntary self-regulation. Under traditional common law and First Amendment principles, a service provider could be held liable for content that it merely disseminated only if it actually knew or should have known of the harmful content at issue.[6/] In the context of online media, Congress recognized, this legal regime perversely "reinforced service providers' incentives to . . . abstain from self-

---

[6/] An entity that serves as an intermediary for large quantities of third-party content, including the provider of an online forum, cannot be held liable for unlawful content that it disseminates unless it knew or should have known of that content. *See, e.g., Smith v. California*, 361 U.S. 147, 152-53 (1959); *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135, 140 (S.D.N.Y. 1991).

regulation," for fear of being held liable for anything a jury determines they should have uncovered — that is, "had reason to know" about — in the course of their efforts to monitor their services. *See Zeran*, 129 F.3d at 333 ("Any efforts by a service provider to investigate and screen material posted on its service would only lead to notice of potentially defamatory material more frequently and thereby create a stronger basis for liability.").

By passing Section 230, Congress freed service providers to adopt robust self-regulatory regimes, implement novel technical solutions, and otherwise respond to the demands of the marketplace and the possibilities of technology without exposing themselves to potential liability. And in fact, since passage of Section 230, many service providers *have* adopted a wide range of voluntary, self-regulatory measures.

This is well illustrated in the aggressive and creative actions of some of the most prominent companies represented by these Amici to self-regulate their own services. Just by way of example:

- Amazon.com provides users with mechanisms for reporting complaints about content, has automated and manual processes to review complaints, and removes third-party communications that fall outside its guidelines.
- AOL's Terms of Service include detailed Community Guidelines setting rules and standards for member-supplied content, and AOL also has a

"Community Action Team" that responds to complaints, monitors online fora, and has authority to enforce the Community Guidelines.

- eBay offers users a simple Web form for making instantaneous complaints about third-party content on the eBay service, including inappropriate Feedback, listing violations, and problems experienced in dealings with other users.
- Google provides various Web pages and e-mail addresses (such as groups-abuse@google.com) through which users can submit complaints and other comments concerning third-party content available through its services.
- Yahoo! provides a "Report Abuse" function that allows users to report improper content and established procedures to ensure that criminal activity is reported to the authorities.

Section 230(c)(1) immunity is therefore having its intended effect. Under the theory advanced by Plaintiffs in this case, however, entities that engage in self-regulation could, simply by doing so, obtain or receive the type of notice of facts that could give rise to a free-standing and amorphous duty to implement "security measures" to prevent some harm related to those facts. That theory would create

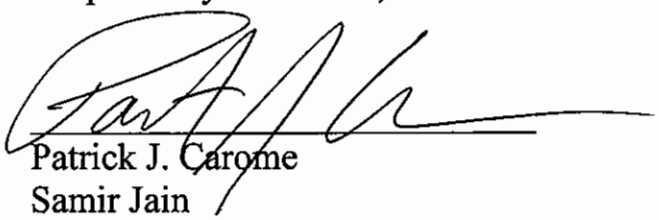
powerful disincentives from engaging in such self-regulatory efforts in the first place. Congress expressly sought to avoid such a result.[7/]

[7/] Plaintiffs' claims against MySpace run afoul of Congress's second goal in another respect. Specifically, Plaintiffs recognize that MySpace in fact *did* attempt to limit access to its service to users of a certain age, and *did* attempt to ensure that only profiles of persons sixteen years or older would be set, by default, to public. (Pl. Br. at 9-10.) Yet Plaintiffs assert that MySpace should be held liable in part for failing to do *enough* to implement this voluntary self-regulatory regime. (*Id.* at 14-15.) This contravenes Congress's second purpose.

CONCLUSION

For the foregoing reasons, Amici respectfully urge the Court to affirm the decision of the district court.

Respectfully submitted,



Patrick J. Carome
Samir Jain
C. Colin Rushing
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006
(202) 663-6000

Dated: September 28, 2007

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

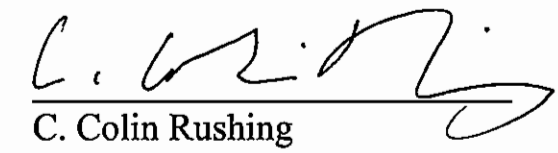
I hereby certify that on the 28th day of September, 2007, I caused true and correct copies, both paper and electronic, of the foregoing brief to be delivered by overnight courier to the Clerk for the United States Court of Appeals for the Fifth Circuit and to be served by overnight courier on the following counsel of record:

Kurt B. Arnold
Jason A. Itkin
Micajah Boatright
Arnold & Itkin, L.L.P.
1401 McKinney, Suite 2550
Houston, TX 77010

Gregory S. Coleman
Marc S. Tabolsky
Richard B. Farrer
Yetter & Warden, L.L.P.
221 West Sixth St., Suite 750
Austin, TX 78701

Clifford Thau
Vinson & Elkins L.L.P.
666 Fifth Avenue, 26th Floor
New York, NY 10103

Michael D. Marin
Christopher V. Popov
Vinson & Elkins L.L.P.
2801 Via Fortuna, Suite 100
Austin, TX 78746



C. Colin Rushing

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed.R.App.P. 29(d) and 32(a)(7)(B) because it contains 6,998 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2003 in 14-point Times New Roman font.

C. Colin Rushing

Dated: September 28, 2007

APPENDIX A

Members of CCIA:

Ada Core Technologies, Atreus Corporation, Broadvoice, CAI/SISCo, Cascode Technologies, Cybersurf, DevIS, E-GovOS, Entegrity Solutions Corp., Foresight Institute, Fujitsu Limited, Gnome Foundation, Google, Intuit, Inc., Linux Foundation, Linux Professional Institute, M5, Microsoft, Monster Government Solutions, MYSQL, NetCom Solutions International, Novak Biddle Venture Partners, On2 Technologies, OpenConnect Systems, Oracle Corporation, Red Hat, Seeqpod, Inc., Sima, SimDesk Technologies, Inc., Sun Microsystems, Inc., ViON Corporation, Yahoo! Inc.

Members of ITAA:

1105 Government Information Group, 1FORCE Government Solutions, 463 Communications, Accenture, Acquisition Solutions Inc., ACS, ActivIdentity, Inc., Adobe, AITC, Ajilon LLC, Akamai Technologies, Alien Technology Corporation, Alon, AMERICAN SYSTEMS, Analex Corporation AOL, Inc., Apogen Technologies Inc., Apple, Inc., Aprea and Micheli, Arcot Systems, AT&T, Authentify, Inc., Autodesk, Inc., Avaya Inc., AVIEL Systems, BAE SYSTEMS Information Technology, Baker & McKenzie Global Services LLC, Barnes & Thornburg LLP, BEA Government Systems, Inc., BearingPoint, BigFix, BizConnex, LLC, BMC Software Distribution, Inc., Bob Steele Consulting,

Boeing Company, Booz Allen Hamilton, Bull Services, Business Objects, CA, Inc., CACI International Inc., Caine Farber & Gordon, Inc., Canvas LLC, Capgemini, CAST Software, CDW Government (CDW-G), Cenzic, Inc., CGI, Cherokee Information Services, ChoicePoint, CIBER, Inc., Circle Consulting Services, Inc., Cisco Systems, Inc., CLMS (Calibrated Lifecycle Management Services), Cognizant Technology Solutions, Cohen & Grigsby, PC, COLMAR Corporation, Compass Rose International, Compubahn, Inc., Computer Frontiers, Inc., Computer Generated Solutions, Inc., Computer Marketing Associates, Inc. (CMA), Computer Sciences Corporation, Computer Task Group, Inc. (CTG), Configuresoft, Consist International, Inc., Courion Corporation, COVAD Communications Company, Covansys, Covert Security Solutions, Crowell & Moring, LLP, Curam Software, Daon, Inc., DATA Inc. USA, Data Systems Analysts, Inc., Decru, A NetApp Company, Dell, Deloitte, Deutsche Telekom, DeVry University, Dickstein Shapiro LLP, Digimarc, DLA Piper LLC, Donnell Systems, Inc., Dynamics Research Corporation, E Smith Consulting, LLC, Eagle Collaborative Computing Services Inc., EarthLink, Inc., eBay Inc., EDS Corporation, Electrosoft Services, Inc., EMC Federal Systems, EquaTerra, EWA Information & Infrastructure, Exegy, Inc., Extreme Networks, Fakhoury & Lum PLC, Fenwick & West LLP, Forrester Research, Fortress Technologies, Fragomen, Del Rey, Bernsen & Loewy P.C., Friedman & Associates, Fujitsu Limited, GAGE, GCS,

Inc., Gemalto North America, General Dynamics Information Technology, Gibson, Dunn & Crutcher, Global Governments, Inc., Global TechPro, Goel & Anderson, LLC, GoodToulz, Gordee, Nowicki & Arnold LLP, GovConnection, Inc., Grant Thornton LLP, GTSI, Corp., Guerra, Kiviat, Inc., GXS, Hanover & Associates, Ltd., Harmony Information Systems, Inc., Harris Corporation, Health eShare Technologies, Health Hero Network Inc., Hendela System Consultants, Inc., Hewlett-Packard Co., Hexaware Technologies, Inc., HID Global, High Performance Technology, Inc., Hobbs and Hobbs, LLC, Hogan & Hartson, Holland & Knight LLP, Howard Systems International, Inc., Hyperion Solutions Corp., IBM Corporation, ID Analytics, Idea Integration, Identity Matters, LLC, IdenTrust, Inc., Ifour, Imadgen LLC, ImageWare Systems, Inc., IMC, immixGroup, Inc., Infoition News Services, Infosys Technologies Ltd., Initiate Systems, Inc., Innovative Management & Technology (IMTS, LLC), INPUT, Integic Corporation, Intel Corporation, Intelligroup, Inc., International Direct Selling Technology Corp., International Info Systms Secrty Certificatn Consortium, IT Governance Group, IT Policy Solutions, LLC, ITS Corporation, ITT Educational Services, Inc., Jefferson Consulting Group, JVKellyGroup, Inc., Kanbay Inc., Kearney & Company, Kenexa Government Solutions, Kirkpatrick, Kirkpatrick & Lockhart Preston Gates Ellis LLP, Knowledge Consulting Group, KPMG LLP, L. Kenneth Johnson, L-1 Identity Solutions, L3 Communications Services Group, Lagan, Inc., Larsen and

Toubro Infotech. Ltd., LaunchDreams, LCG Systems, Inc., Lee Technologies, Levi, Ray & Shoup, Inc., LexisNexis Government Services, Lexmark International, Inc., Life is Great, Liquid Machines, Lockheed Martin Information Technology, LogicaCMG, Lumedx, ManTech International Corporation, Mastek, MAXIMUS, Mayer, Brown, Rowe & Maw, McAfee Inc., McConnell International, LLC, McDermott Will & Emery, McDonald Bradley, Inc., McKenna, Long & Aldridge, Microsoft Corporation, Milton Cooper, PA, Montage Management, Morrison & Foerster, LLP, Motorola, Natoma Technologies, Inc., nCircle Proactive Network Security, Neal Fox Consulting, NEC Corporation of America, Netezza, netForensics, Inc., NetReflector.com, Inc., NewVectors LLC, NIIT (USA) Inc., Nortel Government Solutions, Northrop Grumman Information Technology, Novell, NTMI/LTS (New Technology Management, Inc., NTT Corp., OpTech, Inc., Passlogix, Performance Technology Partners, LLC, Perot Systems, Phil Butler & Associates, Ltd., Pillsbury Wintrop ShawPittman, Polaris Software Lab, Ltd., Politec, Inc., Potomac Forum, Pragmatics, Inc., PricewaterhouseCoopers LLP (PwC) Washington Federal Practice, Primavera, PSC Group, Inc. The, Quest Software, Qwest Government Services, Inc., R&D Tax Credit Company, R. Newware IT Inc., Raytheon Company, Reality Mobile LLC, Red Hat, Inc., Reliable Integration Services, Rex Lint, Consultant, Richard A. Slifer and Associates, Robbins-Gioia, LLC, Rogers, Joseph, O'Donnell, & Phillips, Sagem

Morpho, Inc., SAIC, Salesforce.com, Inc., Samara & Associates, SAP Americas, Satyam Computer Services, Ltd., Securicon LLC, Securify, Seed Capital Partners, Self Group, The LLC, Serendipity Consulting, SGI Federal, SI International, Inc., Sigaba Corporation, SignaCert, Inc., Software AG, Americas, Software Consortium, Specifics, Inc., SRA International, Inc., Stanford Group Company, Stifel Nicolaus, Summit Strategies International, LLC, Sun Microsystems Federal, SunGard Availablity Services, Sybase, Inc., Symantec Corporation, Symantec Federal Region, Synergia Infotech, Synova, Inc., Syntel, Inc., System 1, Inc., SysTest Labs, TCS – America, Teksystems, The Borland Group, The Dalton Group, Inc., The Flyzik Group, TIBCO Government Solutions, Tower Software, TPI, Inc., Transportation Costing Group, Inc., Tripwire Inc., Trusted Computer Solutions, Tumbleweed Communications, Turnberry Group, The, Unisys Federal Systems, USinternetworking, Inc. (USi), Vangent, Inc., VCampus Corporation, Venable, LLP, VeriSign, Inc., Verizon, Vertex Inc., VIACK Corporation, Virginia Center For Innovative Technology, Virtusa, Visionary Integration Professionals, Inc., VJA Lexis Consulting, Vodafone Global Platform Group, Wachovia Corporation, Walter R. McDonald & Associates, Inc., Ways Consulting Services, Wipro Technologies, Womble Carlyle Sandridge & Rice, PLLC, Woodruff-Sawyer & Co., Xerox Corporation, Yahoo! Inc., and Zelinger Associates.

Members of NetCoalition:

Bloomberg, CNET Networks, Google, IAC/InterActiveCorp, Yahoo!, California ISP Association, North Carolina Consortium of ISPs, Ohio ISP Association, Washington ISP Association, Wyoming ISP Association, Virginia ISP Alliance, The River, Shreve.net, Worldnet, Atlanta Broadband, Tucows, Thing.net, and DSLi.com.

Members of CTIA:

@Road, 724 Solutions, ACCESS Systems Americas, Inc., AccuWeather, Inc., Aeris Communications, Inc., Air2Web, Inc., AirCell, Inc., AirG USA Incorporated, AIRVANA, Alcatel-Lucent, AnyDATA, Inc., AOL, Apple, Inc., ArrayComm LLC, Asurion, Azaire Networks, bcgi, BeVocal, Inc., Bluefire Security Technologies, Bluestreak Technology, Bridgewater Systems, Brightstar Corporation, Bytemobile, Inc., CBS Mobile, Cequint, Inc., Cibernet Corporation, Cisco, Inc., Clearwire Corporation, Comverse Technology, Inc., DigiCell International, Inc., Digit Wireless, LLC, EarthLink, EMC Test Systems, L.P., (ETS-Lindgren), Ericsson, Inc., FiberTower Corporation, Frontline Test Equipment, Gemalto, GN US, Inc., Haier America, Handmark, Inc., Harris Stratex Netoworks, Inc., Helio, Info Directions, InfoSpace, InnoPath Software, InterOP Technologies, LLC, Intrado, Inc., IP Unity Glenayre, ISCO International, Jumbuck Entertainment LTO, Kargo, Level 3 Communications, LG Electronics

MobileComm USA, Inc., loopt, Inc., M2Z Networks, Inc., MapInfo Corporation, Mavenir Systems, Medio Systems, Inc., Microsoft Corporation, MLB.com, Motorola, Motricity, National Analysis Center, Inc., Networks In Motion, Inc., NeuStar, Inc., NextG Networks, Inc., Nokia, Inc., Nortel Networks Corporation, Numerex Technologies, OnStar, Openwave, Paratek Microwave, Inc., Parrot, Inc., PCTEL, Inc., PCTest Engineering, Pharon Science & Applications, Inc., Promptu, Purcell Systems, Inc., Qpass, QUALCOMM, Inc., Quality One Wireless, Quality Partners, Inc., QuickPlay Media, Inc., RadioFrame Networks, Inc., RealNetworks, Recellular, Inc., RemoteMDx, Inc., Research In Motion Limited (RIM), Samsung Telecommunications America, L.P., SEQUANS Communication, Seven Networks, Inc., Smith Micro Software, Inc., Sound ID, SquareLoop, Inc., Superconductor Technologies, Inc., Sybase, Inc., Syniverse Technologies, TARGUSinfo, Tele Atlas, TeleCommunications Systems, Inc., Teleflip, Inc., Telephia, Inc., Tellabs, Telular Corp., TestQuest, Inc., Texas Instruments, Inc., The Howland Company, Inc., The NPD Group, The Weather Channel, Transpera, Trolltech, Upoc Networks, UTStarcom Personal Communications LLC, Vanu, Inc., VeriSign, Inc., Vibes Media, Vidiatro, Viva Vision, Inc., Wi-Ex, Wireless Test Systems, ZenZui, Zoove, ALLTEL, Aloha Partners, AT&T Mobility, Bluegrass Cellular, Inc., Carolina West Wireless, Cellcom, Cellular Properties Inc, dba Cellular One, Cellular South, Centennial Communications Corporation, Cincinnati Bell Wireless, Dobson

Communications Corporation, DoCoMo Guam, Douglas Telecommunications, Inc., East Kentucky Network LLC dba Appalachian Wireless, Edge Wireless LLC, Farmers Wireless, GCI Communication Corp., Illinois Valley Cellular, Inland Cellular Telephone Company, Leap Wireless, Mobile Satellite Ventures, Mohave Wireless, MTA Wireless, MTS Communications, Inc., Nex-Tech Wireless, LLC, NTELOS, Inc., Pioneer/Enid Cellular, Rural Cellular Corporation, Smith Bagley, Inc. DBA Cellular One of N.E. AZ, SouthernLINC Wireless, SpectrumCo, LLC, Sprint-Nextel Corporation, Stelera Wireless, L.L.C., Suncom Wireless Holdings, T-Mobile USA, TerreStar Network Services, Inc., TracFone Wireless, Inc., U.S. Cellular, Union Telephone Company, Verizon Wireless, Westlink Communications, Inc.