Sarah Jones

v.

Dirty World Entertainment Recordings, LLC

National University

COM 650

Wendy Smith

Table of Contents

[TheDirty.com 3](#_Toc389322529)

[The Common Decency Act 3](#_Toc389322530)

[The Case Summary 4](#_Toc389322531)

[The Trial Court Decision 6](#_Toc389322532)

[Current Relevance 7](#_Toc389322533)

[Interview via E-mail 8](#_Toc389322534)

[Interviewee Biography 10](#_Toc389322535)

[Conclusion 10](#_Toc389322536)

[References 12](#_Toc389322537)

# TheDirty.com

 TheDirty.com is a website where anyone can post a picture and call out a person for bad judgment, bad behavior, bad plastic surgery, gold digging, escorting, promiscuity, bad parenting, etc. Once someone has posted their picture and comments, Nik Richie (aka Hooman Karamian), the website host, will make a comment about the picture, the person, or the poster. The comments are typically very rude and snarky.

 An entire subculture has arisen from the website. They are called the Dirty Army. There are separate pages for different cities, for “dirty” celebs, “dirty” athletes, etc. They have their own vernacular. The ITG or inner thigh gap was started on this site. Girls’ pursuit of this ITG has some medical professionals concerned with girls getting unnaturally thin. According to Nik, there should be at least two fingers space between your thighs; otherwise your legs are fat. They have coined DRD or “The Dennis Rodman Disease” which I have come to understand is herpes. If you are an escort and fly to foreign countries to *entertain* men for money, you are a “Porta Potty”. If they refer to a “purple crayon”, they are referring to the genitalia of an African American man. If you had breast augmentation and they are too far apart, you have a “refund gap”.

 I should at this point disclose that I have obtained this knowledge first hand, which accounts for the lack of citation thus far. Visiting this site used to be one of my most guilty pleasures. Nik finds ways to be demeaning and shocking. He doesn’t believe that anyone else’s opinion matters so your feelings should not get hurt. It is not a site to visit if you are looking for validation or kindness. It is not a site you should visit if you want to see the beauty and good in people.

# The Common Decency Act

 The Common Decency Act of 1996 (“CDA”) “was designed to combat Internet pornography and remedy the Prodigy decision, as the online industry interpreted it” (Blumstein, 2003). “Fearing that the specter of liability created by the Stratton Oakmont decision would deter ISPs from monitoring offensive material, such as Internet pornography, Congress enacted section 230’s broad immunity to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children’s access to objectionable and inappropriate online material” (Blumstein, 2003). “Accordingly, section 230 contains a “Good Samaritan” provision that protects and ISP from publisher liability when it uses its editorial control to monitor content” (Blumstein, 2003). Blumstein asserts, however, that Congress’ intent was “to protect and encourage ISPs to take active steps to monitor and remove objectionable content, not to protect them from liability when they knowingly choose not to remove it”.

 Shortly after the CDA took effect, the Supreme Court “struck down a portion of the statute for violating the First Amendment. The Court said that the statute chilled the rights of adults to communicate freely with each other, thereby going beyond its goal of protecting children” (Blumstein, 2003). In this finding, the Court “recognized that the First Amendment protects print and Internet publishers equally” (Blumstein, 2003). The CDA, as designed by Congress, was “designed to immunize ISPs from lawsuits seeking to hold them liable as publishers for exercising a publisher’s traditional editorial functions” (Blumstein, 2003). “To require ISPs to screen millions of messages for defamatory content would be a practical impossibility and an undue burden, resulting in an obvious chilling effect on free speech” (Blumstein, 2003). In 1997, in the case of Blumenthal v. AOL, “the Court construed section 230 [of the CDA] as insulating interactive computer services from liability for any failure to edit, withhold or restrict access to offensive material they carry” (Blumstein, 2003). Blumenstein says that critics are arguing that these decisions are expanding section 230 beyond what Congress originally intended and have created a “gaping” hole in the accountability of ISPs.

# The Case Summary

 This case involves a Bengals Cheerleader, Sarah Jones. On December 7, 2009, someone posted her picture with the following comment:

“Nik, here we have Sarah J., captain cheerleader of the playoff bound cinci Bengals..Most ppl see Sarah as a gorgeous cheerleader AND highschool teacher.. yes she’s also a teacher..but what most of you don’t know is..Her ex Nate…cheated on her with over 50 girls in 4 yrs…in that time he tested positive for Chlamydia Infection and Gonorrhea…so im sure Sarah has both…whats worse is he brags about doing sarah in the gym..football field..her class room at the school she teaches at DIXIE Heights.” (US District Court, 2013).

As per usual mode of operation, Nik added his snarky comment, “Why are all high school teachers freaks in the sack?” – nik. (US District Court, 2013). He also made subsequent comments like “I love how the DIRTY ARMY has a war mentality”, “Never try to battle the DIRTY ARMY” AND “You dug your own grave here Sarah” (US District Court, 2013)

Ms. Jones claimed that the posts “were untrue and caused mental anguish and embarrassment” (Myers, 2014). She sued for defamation, libel, and invasion of privacy asserting that “the comments were false and ruined he reputation at the high school where she taught” (Hill, 2013).

Her original case brought suit against the wrong website (Hill, 2013). After amending her original complaint to file suit against TheDirty.com, there was a delay due to the fact that Ms. Jones “had to take time off for her own criminal suit after she was charged with having sex with a minor” (Hill, 2013). “Richie was happy to point out on his blog (repeatedly) that Jones ruined her own reputation in the years after his site published a warning about her” (Hill, 2013). Her claims were regarding her marital issues were “unrelated to the criminal case that emerged against her in March 2012 in which she was accused of having sex with a teenage former student. Jones later pleaded guilty to sexual misconduct and custodial interference as part of a plea deal that allowed her to avoid jail time but prohibited her from teaching again” (Myers, 2014)

# The Trial Court Decision

 In short, the jury in the trial court “returned a verdict for the plaintiff for $38,000.00 compensatory damages and $300,000.00 punitive damages (US District Court, 2013). The defendants argued “that no rational court could deny CDA immunity in this case and the defendant’s claim for immunity was required by all existing precedents” (US District Court, 2013). Supported by several United States Circuit Court of Appeals decisions, this contention misrepresents the law (US District Court, 2013).

 The judge cited the following cases. The Ninth Circuit held “that a website did not enjoy CDA immunity for posting a questionnaire and requiring answers to it which were alleged to violate federal and state…laws, because such acts constituted the creation or development of information and thus made the site an information content provider” (US District Court, 2013). The Seventh Circuit “emphasized that the CDA does not provide a grant of comprehensive immunity from civil liability for content provided by a third party” (US District Court, 2013). The Tenth Circuit held “that a website could not claim immunity under the CDA if it was responsible for the development of the specific content that was the source of the alleged liability” (US District Court, 2013). “Although the Courts have stated generally that the CDA immunity is broad, the weight of the authority teaches that such immunity may be lost. That is, 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 is not entitled to immunity (US District Court, 2013).

 “The jury found by clear and convincing evidence that the defendants here received the postings on their website which would be actionable even by a public figure, i.e., that they were knowingly false or in reckless disregard for the truth” (US District Court, 2013). “The evidence conclusively demonstrates that these postings and others like them were invited and encouraged by the defendants by using the name TheDirty.com for the website and inciting the viewers of the site to form a loose organization dubbed “The Dirty Army”, which was urged to have “a war mentality” against anyone who dared to object to having their character assassinated” (US District Court, 2013). Because the defendant added his own snarky comment following the original post, his “conduct cannot be said to have been neutral with respect to the offensiveness of the content, such that he is not responsible for it within the meaning of § 47 U.S.C. § 230 (f)(3)” (US District Court, 2013).

 “The decision at the trial court level was counter to all the others that came before it” (Hunt, 2014). “It’s inconsistent with virtually all of the other trial court and appellate court decisions in the nation. It’s one that people in my circles (Lawrence Walters) have been talking about and following since the verdict” (Hunt, 2014).

# Current Relevance

 “Tech companies as large as Google and individuals as ordinary as commenters on websites have a stake in [this] legal drama” (Hunt, 2014). “The companies and individuals, not to mention First Amendment lawyers nationwide, are watching to learn the fate….of [this] potentially precedent-setting case that some predict is destined for the U.S. Supreme Court” (Hunt, 2014). “The verdict has tech companies including Google, EBay, Facebook, Amazon and Microsoft worried. Those and others have filed briefs with the court warning that, if the verdict stands, the legal precedent it sets could cripple the free expression and commerce that has flourished on the Internet” (Hunt, 2014). Lawrence Walters, a First Amendment lawyer, asserts that “the tech giants’ worries are founded” (Hunt, 2014). Saying further “we’re all publishers these days, whether we’re commenting or operating a forum or a blog or a Facebook page” (Hunt, 2014).

 David Gringas, TheDirty.com’s counsel, also represents Rip-off Report, a website where unhappy customers can write reviews of business, warns that this decision opens the door to lawsuits against that site as well (Hill, 2013). Anecdotally, there have been articles regarding the website Yelp. Some have argued that the reviews are not always true and are sometimes retribution by disgruntled employees. Does the site have any liability for third party posts? Do the posters have liability for posting their opinion, which to date, has been protected free speech?

 From a seemingly benign “silly” case between a cheerleader turned criminal against a gossip website has arisen a First Amendment fight that permeates almost all web content. The case will have far reaching implications on our right to free speech and the scope of the CDA.

# Interview via E-mail

Mr. Langberg was part of the legal team that won a $40 million defamation suit for Steve Wynn, Chairman of Wynn Resorts against Joe Francis, Creator of Girls Gone Wild. He was also plaintiff’s counsel in a defamation suit brought against Courtney Love for alleged defaming comments posted on Twitter.

**1.  Do you agree with the Court’s ruling?  If not, why?**

 Unfortunately, not.  I should start by saying that I think the Communications Decency Act should be changed.   The way that it is used is beyond what its original purpose was.   I can explain that to you if you want.   For the moment, suffice it to say that the way the law is written, an Information Service Provider (the website) can allow a person to post a defamatory statement even if the website owner KNOWS the statement is false and defamatory.  There are a lot of other problems with this law.

 But, as it is written, the trial court’s ruling is flat out wrong.   The website operator (if it meets the standard of an Information Service Provider) cannot be treated as the writer or publisher of information posted by a third party.  Period.   The website can be liable for their own statements.  But, it cannot be liable for the statements published by others.  The website is allowed to select between different posts.  The website can only put up posts that have one particular point of view.  The website does not have to be fair or unbiased in selecting the posts that are published.   If the website is providing a forum and the information is submitted by third parties by electronic means, they are immune under the CDA.   Only if the website alters the content can it be considered to be a writer or publisher and be held liable.

I am very confident (again, unfortunately) that this case will be overturned on appeal.

**2.   Had you been arguing the case, would you have argued different points of law?**

The lawyers for [thedirty.com](http://thedirty.com) made very good arguments.   I would not have argued differently.  The lawyers for Jones obviously persuaded the trial judge.   So, it is hard to say they should have argued differently.   If you listen to the appellate argument, you will hear that the arguments for [thedirty.com](http://thedirty.com) are much stronger and the judges are leaning towards overturning the prior ruling.

 **3.  How is this case similar or different from the Twitter case involving Courtney Love?**

 In the Love case, we sued the poster of the defamatory statements – just as the appellate court was suggesting in the oral argument in [thedirty.com](http://thedirty.com) case.   Courtney Love posted what we contended was a defamatory statement on Twitter.   If we had tried to sue Twitter, the case would have been dismissed because it is an Information Service Provider under the CDA.  But, Love, as the original poster, had no immunity.

**4.  Did the ruling set up a responsibility for the site host to sensor content?**

No.  Even the trial court’s ruling (which is wrong, as I addressed above) did not set up a responsibility for a site host to sensor content.  In fact, the law is clear that a site host has the right and ability to sensor content.   What a site host cannot do is change the content.   It appears that the trial court believed that [thedirty.com](http://thedirty.com) either changed content or, by adding its own comments, adopted the content of others.

**5.  If so, how is that not a violation of The First Amendment?**

Requiring a site host to censor content MIGHT be a violation of the 1st Amendment.   Of course, there are exceptions.   But, as I said, I don’t think the ruling, even if it stands, requires a site host to sensor content.

# Interviewee Biography



Figure : Mitchell Langberg

# Conclusion

 Before researching this case, it seemed like a straight forward First Amendment case. The case, as I understand it, is not purely a First Amendment case. In fact, it is a defamation case and is relying on case law surrounding the CDA. The CDA does have First Amendment ties, as noted above, when the Supreme Court struck down a portion of the statute for violating this Amendment. In this particular ruling, the Court stated that it “chilled the rights of adults to communicate freely with each other”. Also as noted above, the Court construed the CDA as insulating interactive computer services from liability for failure to edit, withhold or restrict access to offensive material.

 The judge in this case, though, ruled that even though the CDA is broad, “the weight of authority teaches that such immunity may be lost, in as much, that the website owner who intentionally encourages illegal or actionable third-party postings to which he adds his own comments ratifying or adopting the posts becomes the creator or developer of that content in not entitle to immunity”.

 So the judge summarily narrowed the CDA. His further comments though lead me to believe that his ruling was overly narrow because of his own contempt of this site. He said, as cited above, the website ‘incited’ The Dirty Army to have a war mentality against anyone who *dared* to object to having their character assassinated.He labeled them a loose organization. The use of ‘incited’, ‘war mentality’ and ‘dared’ demonstrate that he wasn’t looking at the law in its full scope. It is also concerning that a judge can determine that a loose organization can somehow have their opinions collectively used as a point of law to circumvent the First Amendment. So like minded individuals who post to a site somehow have more liability than anyone else?

 Also cited was the fact that by Nik adding his own opinion added liability because it could appear he was condoning or agreeing with the original post. Isn’t his right to free speech protected? Doesn’t he have a right to his opinion?

 As Mr. Langberg asserted, CDA may need to be changed. There is certainly a lot of room for interpretation in the law. However, in this case, I think the judge overstepped his authority by ruling against TheDirty.com. It will be interesting to read the opinion from the appellate court to see how my thoughts may or may not be supported.

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