IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER THE LAW, INC.,	)	
Plaintiff,	)	
v.	)	Case No. 06 C 0657
CRAIGSLIST, INC.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

AMY J. ST. EVE, District Court Judge:

Plaintiff Chicago Lawyers' Committee for Civil Rights Under Law, Inc. ("CLC") has filed suit under 42 U.S.C. §3604(c) of the Fair Housing Act ("FHA") seeking monetary, declaratory, and injunctive relief against Defendant "craigslist, Inc." ("Craigslist"). CLC alleges that such relief is warranted because Craigslist publishes notices, statements, or advertisements with respect to the sale or rental of dwellings that indicate (1) a preference, limitation, or discrimination on the basis of race, color, religion, sex, familial status, or national origin; and (2) an intention to make a preference, limitation, or discrimination on the basis of race, color, religion, sex, familial status, or national origin. Craigslist has moved for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) ("Rule 12(c)"), contending that Plaintiff's claim is barred based on the immunity afforded to "providers . . . of interactive computer services" ("ICSs") under 47 U.S.C. §230 ("Section 230"). For the reasons below, the Court grants Craigslist's motion.

LEGAL STANDARD

A motion under Rule 12(c) – a motion that a defendant may use to dismiss a complaint based on an affirmative defense, *see, e.g., McCready v. EBay, Inc.*, 453 F.3d 882, 892 n.2 (7th Cir. 2006) – is subject to the same standard as a motion to dismiss pursuant to Rule 12(b)(6). *Craigs, Inc. v. Gen. Elec. Capital Corp.*, 12 F.3d 686, 688 (7th Cir. 1993); *Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir. 1989). Thus, a court must "view the facts in the complaint in the light most favorable to the nonmoving party," *GATX Leasing Corp. v. Nat'l Union Fire Ins. Co.*, 64 F.3d 1112, 1114 (7th Cir. 1995), and cannot grant the motion "unless it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief." *Thomason*, 888 F.2d at 1204 (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02, 2 L. Ed. 2d 80 (1957)).

BACKGROUND

I. The Parties

Plaintiff CLC, a public interest consortium of forty-five law firms, is an Illinois non-profit organization with its principal place of business in Chicago, Illinois. (R. 1-1, Pl.'s Compl. at ¶5; R. 41-1, Pl.'s Motion to Supp. at ¶1.) CLC's mission is to promote and protect civil rights, particularly the civil rights of the poor, ethnic minorities, and the disadvantaged. (R. 1-1, Pl.'s Compl. at ¶5.) CLC strives to eliminate discriminatory housing practices by: (1) educating people about their rights under the fair housing and fair lending laws; (2) investigating complaints of fair housing discrimination; (3) providing referral information for non-discrimination housing matters; (4) advocating on a wide range of housing related issues, such as public housing, increased affordable housing, and fair and equal mortgage lending opportunities; and (5) providing free legal services to individuals and groups who wish to exercise their fair housing rights and secure equal housing

opportunities. (*Id.*)

Defendant Craigslist is a Delaware corporation located in San Francisco, California that operates a website through "a small staff in a single office." (*Id.* at ¶6; R. 15-1, Def.'s Motion at 1.) In a typical month, Craigslist posts more than 10 million items of "user-supplied information," (R. 15-1, Def.'s Motion at 1), and user postings are increasing at a rate of approximately 100% per year. (*Id.* at 1 n.1.)

In addition to the parties' submissions, the Court has granted leave to the National Fair Housing Alliance ("NFHA") to submit an *amicus* brief. The NFHA is a non-profit corporation that represents approximately eighty five private, non-profit fair housing organizations throughout the country. (R. 17-2; NFHA Br. at 1.) NFHA was founded in 1988 "to lead the battle against housing discrimination and ensure equal housing opportunity for all people." (*Id.*) The NFHA describes its mission as promoting equal housing, lending, and insurance opportunities through outreach, policy initiatives, advocacy, and enforcement. (*Id.*) Relying on the FHA, the NFHA and its members have undertaken enforcement initiatives in cities and states across the country. (*Id.*)

The Court also granted leave to file a joint *amicus* brief to ten companies and trade associations affiliated with the online and electronic communications industries (collectively, the "Service Providers"). These *amici* include: (1) Amazon.com, Inc., an online service that, through its website, offers millions of items for sale including jewelry, apparel, accessories, books, music, and DVDs; (2) AOL LLC, the operator the AOL.com website and the largest internet service provider ("ISP") in the United States, offering service to millions of members; (3) eBay Inc.,[1] operator of a website featuring an online auction-style trading format that offers "a forum in which

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[1] eBay has a minority stake of approximately 25% in Craigslist. (*Id.* at 2 n.1.)

today almost two hundred million users can sell goods directly to each other;" (4) Google Inc., an online provider that maintains the Google Web Search service, which is an index of more than eight billion Web pages from content providers around the world; (5) Yahoo! Inc., online provider that offers services, including a Web search engine and a network that hosts millions of personal websites, to more than 411 million individuals each month worldwide; (6) Electronic Frontier Foundation, a non-profit, member-supported civil liberties organization that "actively encourages and challenges industry, government, and the courts to support free expression, privacy, and openness in the information society;" (7) Internet Commerce Coalition, a coalition of ISPs, e-commerce companies, and trade associations; (8) NetChoice, a coalition of online businesses and consumers "who are united in promoting the increased choice and convenience enabled by e-commerce;" (9) NetCoalition, "the public policy voice" for providers of internet search technology, hosting services, ISPs, and Web portal services; and (10) United States Internet Service Provider Association, a national trade association that represents major American ISPs and network communications providers. (R. 28-1, Am. Motion for Leave at 2.)

II. The Pleadings

Craigslist operates a website that allows third-party users to post and read notices for, among other things, housing sale or rental opportunities. (R. 1-1, Pl.'s Compl. at ¶7; R. 13-1, Def.'s Ans. at ¶7.) The website, which is accessible at "chicago.craigslist.org" (among other web addresses), is titled "craigslist: chicago classifieds for jobs, apartments, personals, for sale, services, community: Non-commercial bulletin board for events, jobs, housing, personal ads and community discussion." (R. 1-1, Pl.'s Compl. at ¶7; R. 13-1, Def.'s Ans. at ¶7.) The website contains a link entitled "post to classifieds" that, if clicked, will display a webpage located at

"post.craigslist.org/chi" and titled "chicago craigslist >> create posting." (R. 1-1, Pl.'s Compl. at ¶8; R. 13-1, Def.'s Ans. at ¶8.) That webpage categorizes posts and advertisements and offers the following links: (1) "job," (2) "gigs," (3) "housing," (4) "for sale/wanted," (5) "resume," (6) "services offered," (7) "personal/romance," (8) "community," and (9) "event." The webpage also contains additional links labeled "log into your account" and "(Apply for Account)." (R. 1-1, Pl.'s Compl. at ¶8; R. 13-1, Def.'s Ans. at ¶8.)

When a user clicks on the website link "housing," the website will display a page located at "post.craigslist.org/chi/H" that bears the title "chicago craigslist > housing > create posting" and contains a line reading "Are you offering space/housing, or do you need space/housing?" (R. 1-1, Pl.'s Compl. at ¶9; R. 13-1, Def.'s Ans. at ¶9.) On this webpage, directly under this quoted text, there are two links labeled "I am offering housing" and "I need housing" as well as two other links (at the upper right of the page) labeled "log into your account" and "(Apply for Account)." (R. 1-1, Pl.'s Compl. at ¶9; R. 13-1, Def.'s Ans. at ¶9.)

When a user clicks on the link "I am offering housing," the website displays a page located at "post.craigslist.org/chi/H?want=n," also titled "chicago craigslist > housing > create posting." (R. 1-1, Pl.'s Compl. at ¶10; R. 13-1, Def.'s Ans. at ¶10.) This webpage contains a line reading: "Your ad will expire in 7 days. Please choose a category:" followed by eight categorized links entitled: (1) "rooms & shares," (2) "apartments for rent," (3) "housing swap," (4) "office & commercial," (5) "parking & storage," (6) "real estate for sale," (7) "sublets & temporary," and (8) "vacation rentals," as well as two other links (at the upper right of the page) labeled "log into your account" and "(Apply for Account)." (R. 1-1, Pl.'s Compl. at ¶10; R. 13-1, Def.'s Ans. at ¶10.) Accessing any of these links opens a new webpage making available suggested and "[r]equired"

fields that comprise the content of the post or advertisement. (R. 1-1, Pl.'s Compl. at ¶10.) These content fields list rent or price, specific and general location, the title of the advertisement, a contact email address, and a description with the capability to add pictures. (R. 1-1, Pl.'s Compl. at ¶10.)

The webpage further offers the option to "anonymize[]" a contact email address with a newly-assigned and unique email address using the domain name "craigslist.org." (R. 1-1, Pl.'s Compl. at ¶10.) When a user clicks on the link "I need housing" the website displays a webpage located at "post.craigslist.org/chi/H?want=y" that bears the title "chicago craigslist > housing > posting." This webpage categorizes posts and advertisements under links to the following: (1) "apts wanted," (2) "real estate wanted," (3) "room/share wanted," and (4) "sublet/temp wanted." (R. 1-1, Pl.'s Compl. at ¶11; R. 13-1, Def.'s Ans. at ¶11.) When a user clicks on these links, the webpage offers the option to anonymize a contact email address and the same suggested and "[r]equired" fields appear as when a user clicks on links associated with the "I am offering housing" link. (R. 1-1, Pl.'s Compl. at ¶11; R. 13-1, Def.'s Ans. at ¶11.) The webpage link titled "log in to your account," opens a webpage titled "craigslist: account log in" that lists an "Email/Handle" field and a "Password" field so that those with "craigslist accounts" may access their personal accounts, prior postings, responses to such postings, and other information. (R. 1-1, Pl.'s Compl. at ¶12; R. 13-1, Def.'s Ans. at ¶12.) This sign-in page has a line that reads "need help?" followed by a link that enables a user to send an email to the email address "accounts@craigslist.org." (R. 1-1, Pl.'s Compl. at ¶12; R. 13-1, Def.'s Ans. at ¶12.) The webpage link titled "Apply for Account," opens a new webpage located at "accounts.craigslist.org/login/signup," titled "craigslist: account signup," that directs individuals to type a five-letter verification word, to provide a contact email address, and to

click on a button to "create account" so that prior content and information may be saved and accessed later. (R. 1-1, Pl.'s Compl. at ¶13; R. 13-1, Def.'s Ans. at ¶13.) When home-seekers are interested in posted sale or rental housing opportunities, they obtain the necessary contact information from content published on Craigslist's website. (R. 1-1, Pl.'s Compl. at ¶14.)

CLC alleges that, through the above-described process, Craigslist publishes housing advertisements on its website that indicate a preference, limitation, or discrimination, or an intention to make a preference, limitation, or discrimination, on the basis of race, color, national origin, sex, religion and familial status. (*See also id.* ¶¶142-51 (alleging that CLC continuously monitors Craigslist's website and that it has diverted substantial time and money away from its fair housing program to efforts directed in response to Craigslist's publication of discriminatory housing advertisements).) Here is a sampling of the allegedly objectionable statements within rental postings on Craigslist's website:

- "African Americans and Arabians tend to clash with me so that won't work out" (R. 1-1, Pl.'s Compl. at ¶17)
- "Neighborhood is predominantly Caucasian, Polish and Hispanic" (*Id.* at ¶18)
- "NO MINORITIES" (*Id.* at ¶19)
- "Non-Women of Color NEED NOT APPLY" (*Id.* at ¶21)
- "looking for gay latino" (*Id.* at ¶24)
- "This is not in a trendy neighborhood – very Latino" (*Id.* at ¶26)
- "This neighborhood is probably what you've heard . . . predominantly hispanic, but changing slowly" (*Id.* at ¶27)
- "All in a vibrant southwest Hispanic neighborhood offering great classical Mexican culture, restaurants and businesses" (*Id.* at ¶28)
- "Requirements: Clean Godly Christian Male." (*Id.* at ¶30)

- "Owner lives on the first floor, so tenant must be respectful of the situation, preferably not 2 guys in their mid twenties, who throw parties all the time" (*Id.* at ¶33)
- "LADIES PLEASE RENT FROM ME" (*Id.* at ¶34)
- "This is what I am looking for . . . and the more a candidate has, the less I will ask in rent: Female Christian" (*Id.* at ¶37)
- "Christian single straight female needed." (*Id.* at ¶39)
- "Only Muslims apply" (*Id.* at ¶40)
- "near St Gertrudes [sic] church" (*Id.* at ¶41)
- "Walk to shopping, restaurants, coffee shops, synagogue." (*Id.* at ¶43)
- "very quiet street opposite church" (*Id.* at ¶48)
- "Catholic Church, and beautiful Buddhist Temple within one block" (*Id.* at ¶54)
- "Apt. too small for families with small children" (*Id.* at ¶60)
- "Perfect for 4 Med students" (*Id.* at ¶61)
- "Perfect place for city single" (*Id.* at ¶63)
- "absolutely ideal for a young professional and socialite!" (*Id.* at ¶67)
- "Perfect for Young Family or 2 Broke ASS Roommates" (*Id.* at ¶79)
- "young cool landlord who wants one nice quiet person to rent her basement" (*Id.* at ¶81)
- "Non-smoking adults preferred" (*Id.* at ¶82)

CLC alleges that these and similar statements discourage or prohibit home-seekers from pursuing housing and thus decrease the number of units available to them. (*Id.* at ¶¶ 16, 20, 22, 29, 35, 59.)

ANALYSIS

I. The Statutes at Issue

A. The Fair Housing Act

To redress this alleged injury, CLC here seeks a declaratory judgment that Craigslist violated 42 U.S.C. §3604(c) ("Section 3604") of the FHA,[2] which "prohibits racial discrimination of all kinds in housing." *Tyus v. Urban Search Mgmt.*, 102 F.3d 256, 260 (7th Cir. 1996). Section 3604(c), in particular, makes it unlawful:

> To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

42 U.S.C. §3604(c). As the NFHA points out in its *amicus* submission, courts have held that Section 3604(c) applies to a variety of media, including newspapers, *see, e.g., Ragin v. New York Times Co.*, 923 F.2d 995, 999-1000 (2d Cir. 1991), brochures, *Saunders v. Gen. Servs. Corp.*, 659 F. Supp. 1042, 1057-59 (E.D. Va. 1987), multiple listing services, *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 447 F. Supp. 838, 842 n.3 (E.D.N.Y. 1978), telecommunication devices for the deaf, *United States v. Space Hunters, Inc.*, 429 F.3d 416, 420 (2d Cir. 2005), a housing complex's "pool and building rules," *Fair Hous. Cong. v. Weber*, 993 F. Supp. 1286, 1289-91 (C.D. Cal. 1997),

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[2] CLC also seeks an injunction that bars Craigslist from continuing to publish discriminatory notices and further requires, among other things, that Craigslist: (1) develop a non-discriminatory policy that states, at a minimum, that all submissions to its website are subject to federal fair housing laws, (2) post a short statement on its website summarizing Craigslist's non-discrimination policy, (3) report to the U.S. Department of Housing and Urban Development and to CLC any individual or entity seeking to post a discriminatory housing advertisement on Craigslist's website, (4) delete accounts and prevent website access to individuals who post or attempt to post discriminatory housing advertisements, and (5) implement screening software to preclude discriminatory advertisements from being published on Craigslist's website. (*Id.* at 18-20.)

as well as "any other publishing medium." *United States v. Hunter*, 459 F.2d 205, 211 (4th Cir. 1972). (R. 17-2, NFHA's Br. at 8-9.) Along the same lines, the United States Department of Housing and Urban Development ("HUD") has issued a regulation[3] construing Section 3604(c) as applying to "[w]ritten notices and statements includ[ing] any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling." 24 C.F.R. §100.75.

B. The Communications Decency Act

Notwithstanding the FHA's broad scope, Craigslist argues that Plaintiff's Complaint fails on the pleadings because of the immunity afforded under Section 230(c)(1) of the CDA. Section 230(c) consists of two operative provisions, each under the subheading "Protection for Blocking and Screening of Offensive Materials:"[4]

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[3] The Secretary of HUD retains the "authority and responsibility for administering" the FHA, 42 U.S.C. §3608, and may promulgate regulations to carry out the FHA, 42 U.S.C. §3614a.

[4] In the two subsections immediately preceding Section 230(c), Congress identified certain findings and policies:

> (a) Findings. The Congress finds the following: (1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens. (2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops. (3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity. (4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation. (5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.
>
> (b) Policy. It is the policy of the United States – (1) to promote the continued development of the Internet and other interactive computer services and other interactive media; (2) 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; (3) to encourage the development of technologies which maximize user control over what

> (c) Protection for "good samaritan" blocking and screening of offensive material
>
> (1) Treatment of publisher or speaker
>
> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
>
> (2) Civil liability
>
> No provider or user of an interactive computer service shall be held liable on account of –
>
> (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
>
> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

47 U.S.C. 230(c).[5] These provisions preempt contrary state law, but do not "prevent any State from enforcing any State law that is consistent with this section." 47 U.S.C. §230(e)(3). In addition, Section 230 exempts certain areas of law from its scope, but the FHA is not among them. *See* 47

> information is received by individuals, families, and schools who use the Internet and other interactive computer services; (4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and (5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

47 U.S.C. §230(a), (b).

[5] Section 230(f) defines certain terms in Section 230(c). As is relevant here, the statute defines: (1) "interactive computer service" to mean "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server . . .;" and (2) "information content provider" to mean "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)(2), (f)(3).

U.S.C. §§230(e)(1), (2), (4) (excluding intellectual property laws, criminal laws, and the Electronic Privacy Act).

II. Previous Cases

Near-unanimous case law holds that Section 230(c) affords immunity to ICSs against suits that seek to hold an ICS liable for third-party content. The fountainhead of this uniform authority is *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997), the first case to address Section 230(c)(1)'s scope. In *Zeran*, a user sought to hold AOL, an ISP, liable for posting defamatory speech that originated from a third party. *Id.* at 329. The user contended that once he notified AOL of the defamatory posting that "AOL had a duty to remove the defamatory posting promptly, to notify its subscribers of the message's false nature, and to effectively screen future defamatory material." *Id.* at 330. The Fourth Circuit held that Section 230 barred the user's claim:

> The relevant portion of § 230 states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). By its plain language, §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. Specifically, §230 precludes courts from entertaining claims that would place a computer service provider in a publisher's role. Thus, lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content – are barred.

Id. at 328-30 (stating also that "Section 230 [ ] plainly immunizes computer service providers like AOL from liability for information that originates with third parties"). In support of this holding, the *Zeran* court cited the "purpose of this statutory immunity," something the court deemed "not difficult to discern:"

> Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium. 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.
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> * * *
>
> Congress made a policy choice, however, 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.

Id. at 330-31 (internal citation omitted). Virtually all subsequent courts that have construed Section 230(c)(1) have followed *Zeran,*[6] and several have concluded that Section 230(c)(1) offers ICSs a

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[6] *See Green v. America Online*, 318 F.3d 465, 470-71 (3d Cir. 2003); *Batzel v. Smith*, 333 F.3d 1018, 1031 n.18 (9th Cir. 2003); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122-25 (9th Cir. 2003); *Ben Ezra, Weinstein & Co. v. America Online, Inc.*, 206 F.3d 980, 984-85 (10th Cir. 2000); *Blumenthal v. Drudge*, 992 F. Supp. 44, 51-52 (D.D.C. 1998); *Parker v. Google, Inc.*, 422 F. Supp. 2d 492, 500-01 (E.D. Pa. 2006); *Dimeo v. Max*, 433 F. Supp. 2d 523, 530-31 (E.D. Pa. 2006); *Whitney Info. Network, Inc. v. Verio, Inc.*, No. 2:04CV462FTM29SPC, 2006 WL 66724, *2-3 (M.D. Fla. Jan. 11, 2006); *Associated Bank-Corp. v. Earthlink, Inc.*, No. 05-C-0233-S, 2005 WL 2240952, **3-4 (W.D. Wis. Sept. 13, 2005); *Morrison v. American Online, Inc.*, 153 F. Supp. 2d 930, 932-34 (N.D. Ind. 2001); *Barnes v. Yahoo!, Inc.*, No. Civ. 05-926-AA, 2005 WL 3005602, **2-3 (D. Or. Nov. 8, 2005); *Landry-Bell v. Various, Inc.*, No. Civ.A. 05-1526, 2005 WL 3640448, **1-3 (W.D. La. Dec. 27, 2005); *Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d 1090, 1117-18 (W.D. Wash. 2004); *MCW, Inc. v. Badbusinessbureau.com, LLC*, No. Civ.A.3:02-CV-2727-G, 2004 WL 833595, **7-8 (N.D. Tex. Apr. 19, 2004); *Noah v. AOL Time Warner, Inc.*, 261 F.Supp.2d 532, 537-38 (E.D. Va. 2003); *Smith v. Intercosmos Media Group, Inc.*, No. Civ.A. 02-1964, 2002 WL 31844907, **3-4 (E.D. La. Dec. 17, 2002); *Patentwizard, Inc. v. Kinko's, Inc.*, 163 F. Supp. 2d 1069, 1071 (D.S.D. 2001); *Marczeski v. Law*, 122 F. Supp. 2d 315, 327 (D. Conn. 2000); *Donato v. Moldow*, 374 N.J. Super. 475, 487-500, 865 A.2d 711, 718-27 (N.J. Sup. Ct. App. Div. 2005); *Austin v. Crystaltech Web Hosting*, 211 Ariz. 569, 573-74, 125 P.3d 389, 393-94 (Ariz. Ct. App. 2005); *Barrett v. Fonorow*, 343 Ill. App. 3d 1184, 1193-94, 279 Ill. Dec. 113, 121, 799 N.E.2d 916, 924 (Ill. Ct. App. 2003); *Doe v. America Online, Inc.*, 783 So.2d 1010, 1012-17 (Fla. 2001); *Schneider v. Amazon.com, Inc.*, 108 Wash. App. 454, 459-67, 31 P.3d 37, 39-43

"broad," "robust" immunity.[7]

In *Doe v. GTE Corp.*, 347 F.3d 655, 659-60 (7th Cir. 2003), however, the Seventh Circuit called *Zeran*'s holding into doubt. In the underlying proceedings, the district court followed *Zeran* and held that Section 230(c)(1) barred the plaintiffs' cause of action:

> [W]hat Plaintiffs ignore is that by seeking to hold GTE and PSINet liable for their decision not to restrict certain content it is seeking to hold them liable in a publisher's capacity. Section 230(c)(1) . . . "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 lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions-such as deciding whether to publish, withdraw, postpone or alter content-are barred." Thus, because Plaintiffs seek to hold GTE and PSINet liable for their "own conduct" as publishers, GTE and PSINet may avail themselves of the CDA's immunity in this action under §230(c)(1).
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> * * *

(Wash. Ct. App. Sept. 17, 2001); *Doe One v. Oliver*, 46 Conn. Supp. 406, 410-11, 755 A.2d 1000, 1003-04 (Conn. Sup. Ct. 2000); *see also Novak v. Overture Servs., Inc.*, 309 F. Supp. 2d 446, 452-53 (E.D.N.Y. 2004) (citing *Carafano* instead of *Zeran*, but to the same effect); *Beyond Sys., Inc. v. Keynetics, Inc.*, 422 F. Supp. 2d 523. 536-37 (D. Md. 2006) (CDA preempted the Maryland Commerical Electronic Mail Act and noting that "[c]ase law clearly establishes that CDA immunity applies even where an ISP knew of its customers' potentially illegal activity"); *cf. Barrett v. Rosenthal*, 114 Cal. App. 4th 1379, 9 Cal. Rptr. 3d 142, 150-67 (Cal. Ct. App. 2004) (disagreeing with *Zeran*'s holding).

[7] *Carafano*, 339 F.3d at 1123-24 (noting that "[Section] 230(c) provides broad immunity" and that "reviewing courts have treated § 230(c) immunity as quite robust:" "[u]nder § 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"); *Batzel*, 333 F.3d at 1031 n.19 (describing Section 230 as creating a "broad immunity"); *Ben Ezra*, 206 F.3d at 984-85 (Section 230 "creates a federal immunity to any state law cause of action that would hold computer service providers liable for information originating with a third party"); *Barnes*, 2005 WL 3005602 at *2 ("There can be no dispute that in the nine years since Section 230 was enacted that courts across the country have held that Section 230 generally bars claims that seek to hold the provider of an interactive computer service liable for tortuous [*sic*] or unlawful information that someone else disseminates using that service."); *cf. MCW*, 2004 WL 833595 at *7 ("Under this statutory scheme, Congress has immunized interactive computer services from any cause of action that would make them liable for publishing information provided by a third-party user of the service. Section 230(c) immunity is not so broad as to extend to an interactive computer service that goes beyond the traditional publisher's role and takes an active role in creating or developing the content at issue."); *see also Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, No. CV 03-09386PA, 2004 WL 3799488, *3-4 (C.D. Cal. Sept. 30, 2004) (finding that Section 230(c)(1) barred cause of action brought under Section 3604(c)).

> The Court agrees with Defendants . . . [t]he CDA creates federal immunity against any state law cause of action that would hold computer service providers liable for information originating from a third party.

Doe v. GTE Corp., 99 C 7895, 2000 WL 816779, *4 (N.D. Ill. June 26, 2000) (quoting *Zeran*, 129 F.3d at 330); *see also GTE*, 347 F.3d at 659 ("The district court held that subsection (c)(1), though phrased as a definition rather than as an immunity, also blocks civil liability when web hosts and other Internet service providers (ISPs) *refrain* from filtering or censoring the information on their sites." (emphasis original)).

The Seventh Circuit affirmed the district court's decision, but, in (self-acknowledged) *dicta*, it questioned the district court's reliance on *Zeran*:

> Franco [a third party] provided the offensive material; GTE [the ICS] is not a "publisher or speaker" as § 230(c)(1) uses those terms; therefore, the district court held, GTE cannot be liable under any state-law theory to the persons harmed by Franco's material. This approach has the support of four circuits. No appellate decision is to the contrary.
>
> If this reading is sound, then § 230(c) as a whole makes ISPs indifferent to the content of information they host or transmit: whether they do (subsection (c)(2)) or do not (subsection (c)(1)) take precautions, there is no liability under either state or federal law. As precautions are costly, not only in direct outlay but also in lost revenue from the filtered customers, ISPs may be expected to take the do-nothing option and enjoy immunity under § 230(c)(1). Yet § 230(c) – which is, recall, part of the "Communications Decency Act" – bears the title "Protection for 'Good Samaritan' blocking and screening of offensive material," hardly an apt description if its principal effect is to induce ISPs to do nothing about the distribution of indecent and offensive materials via their services. Why should a law designed to eliminate ISPs' liability to the creators of offensive material end up defeating claims by the victims of tortious or criminal conduct?
>
> True, a statute's caption must yield to its text when the two conflict, but *whether* there is a conflict is the question on the table. Why not read §230(c)(1) as a definitional clause rather than as an immunity from liability, and thus harmonize the text with the caption? On this reading, an entity would remain a "provider or user" – and thus be eligible for the immunity under § 230(c)(2) – as long as the information came from someone else; but it would become a "publisher or speaker" and lose the benefit of § 230(c)(2) if it created the objectionable information. The difference between this

> reading and the district court's is that § 230(c)(2) never requires ISPs to filter offensive content, and thus § 230(e)(3) would not preempt state laws or common-law doctrines that induce or require ISPs to protect the interests of third parties, such as the spied-on plaintiffs, for such laws would not be "inconsistent with" this understanding of § 230(c)(1). There is yet another possibility: perhaps § 230(c)(1) forecloses any liability that depends on deeming the ISP a "publisher" – defamation law would be a good example of such liability – while permitting the states to regulate ISPs in their capacity as intermediaries.

GTE, 347 F.3d at 659-60 (emphasis original). In the end, however, the Seventh Circuit disposed of the appeal on other grounds and, thus, did not definitively determine which of the above constructions is proper. *Id.* (determining that the court "need not decide which understanding of § 230(c) is superior, because the difference matters only when some rule of state law does require ISPs to protect third parties who may be injured by material posted on their services" and finding that plaintiffs had not established that such a rule of law existed). That issue is now before the Court.[8]

III. The Scope of Section 230(c)(1)

The parties dispute the operative effect of Section 230(c)(1). CLC argues that, in line with *GTE*'s *dicta*, Section 230(c)(1) must be read only as a definitional clause that provides no immunity on its own, but rather determines the subset of ICSs that fall within the grant of immunity afforded under Section 230(c)(2). (R. 16-1, Pl.'s Resp. at 8 ("[u]nder [a] straight-forward reading of Section 230(c)(1), an interactive computer service provider would, if it created the offensive material, be subject to treatment as a speaker or publisher and thus understandably would 'lose the benefit' of civil liability protection under (c)(2) – because as the author of the content it could not credibly maintain that good faith efforts were made to prevent the offensive disclosure. But where an interactive computer service does not create the offensive information, it is merely the provider or

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[8] One court within the Seventh Circuit has addressed the scope of Section 230(c)(1) since *GTE*. *Associated Bank-Corp.*, 2005 WL 2240952 at *4. Although that case followed *Zeran*, it failed to discuss, or even cite, *GTE*. *Id.*

user, and will be entitled to civil liability protection only for its efforts to block and screen.").) Craigslist, in contrast, argues that Section 230(c)(1) grants immunity as to all causes of action against an ICS (so long as the ICS is not the originator of the content at issue). (R. 15-1, Def.'s Motion at 2 ("As a matter of clear federal law, an entity such as [C]raigslist may not be held liable for unlawful content that, as here, originates not from [C]raigslist but from users of the [C]raiglist website. [C]raigslist falls squarely within the protection afforded by [Section 230], which broadly immunizes interactive computer service providers from liability for third-party content.").) The Court rejects both positions.[9]

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[9] After the parties had completed their briefing, CLC submitted as supplemental authority a one-page memorandum from Bryan Greene, HUD's Deputy Assistant Secretary for Enforcement and Programs. In that memorandum, Deputy Assistant Greene opines that Section 3604(c) applies to Internet postings notwithstanding Section 230(c)(1) of the CDA:

> [Section 3604(c)'s] prohibition applies to all advertising media, including newspapers, magazines, television, radio, and the Internet. Just as the Department has found newspapers in violation of the [FHA] for publishing discriminatory classifieds, the Department also has concluded that it is illegal for Web sites to publish discriminatory advertisements.
>
> Some Web sites assert that they are exempt from liability under Section [3604(c)] of the [FHA] because of a provision in the [CDA] . . ., which limits the liability of interactive computer services for content originating with a third party user of the service. Although the CDA does not state an intent to limit liability under the [FHA] or other civil rights states, some believe that Section 230 of the CDA gives Internet publishers immunity from lawsuits brought under federal and state civil rights statutes. However, HUD has concluded that the CDA does not make Web sites immune from liability under the [FHA] or from liability under state and local laws that HUD has certified as substantially equivalent to the [FHA].

(R. 41-1, Pl.'s Motion to Suppl., Ex. A. (Greene Memo to Fair Housing and Equal Opportunity Regional Directors dated Sept. 20, 2006).) CLC contends that this issuance is entitled to deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). (*See also* R. 16-1, CLC's Resp. at 3 n.1 (citing statements of HUD Assistant Secretary Kim Kendrick).)

The Court finds this supplemental authority unpersuasive. Foremost, this authority is not an agency regulation, but rather is merely a non-binding agency opinion that carries no "conclusive mystique." *Sehie v. City of Aurora*, 432 F.3d 749, 753 (7th Cir. 2005) (informal administrative opinions are not binding: "Interpretations such as those in opinion letters – like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law – do not warrant *Chevron*-style deference." (quoting *Christensen v. Harris County*, 529 U.S. 576, 587, 120 S.Ct.

A. Rules of Statutory Construction

In analyzing the scope of Section 230(c)(1), the Court "must first look to the language of the statute and assume that its plain meaning accurately expresses the legislative purpose." *United States v. Miscellaneous Firearms, Explosives, Destructive Devices & Ammunition*, 376 F.3d 709, 712 (7th Cir. 2004) (internal quotation omitted); *see also Chicago Transit Auth. v. Adams*, 607 F.2d 1284, 1289 (7th Cir. 1979) ("Words are to be given their ordinary meaning absent persuasive reasons to the contrary."). "The plain meaning of a statute is conclusive unless literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *United States v. Balint*, 201 F.3d 928, 932-33 (7th Cir. 2000); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Lauer*, 49 F.3d 323, 326-27 (7th Cir. 1995) ("We look first to the text for an answer. We look beyond the express language of a statute only where such language is ambiguous, or where a literal interpretation would lead to absurd results or thwart the goals of the statutory scheme."). "Therefore, [a court's] interpretation is guided not just by a single sentence or sentence fragment, but by the language of the whole law, and its object and policy." *Balint*, 201 F.3d at 932-33 (citing *Grammatico v. United States*, 109 F.3d 1198, 1204 (7th Cir. 1997)); *see Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000) ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" (quoting *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809, 109 S. Ct. 1500, 103 L. Ed. 2d 891 (1989))).

1655, 146 L. Ed. 2d 621 (2000)) (internal citation omitted)). Moreover, the statutory grant of authority in 42 U.S.C. §§3608 and 3614a does not grant the HUD Secretary the authority to interpret the CDA. *See also id.* ("agency opinion letters cannot substitute for an act of Congress" (citing *Marshall v. Rosemont*, 584 F.2d 319, 321 (9th Cir. 1978))).