

## Gun Sales Platform Seeks Reversal of Ruling That Undermines Protections for Website Owners

Article By:

Ashley I. Kissinger

Leah W. Feinman

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An intermediate appellate court in Wisconsin has issued a decision that removes an important legal defense from a host of website owners, including those who provide a platform for buyers and sellers to connect.

The court determined that a website that simply hosted communications between gun buyers and sellers potentially could be held civilly liable for gun violence committed by a buyer who used the site. The website owner has now filed a petition for review with the Wisconsin Supreme Court, and the Computer and Communications Industry Association (CCIA), the Electronic Frontier Foundation (EFF), and The Copia Institute filed amicus briefs as interested nonparties.

In [\*Daniel v. Armslist, LLC\*](#), the daughter of a woman who was shot and killed by her estranged husband sued Armslist, a website connecting gun sellers with gun buyers. The gunman, identified as Radcliffe Haughton, bought his gun on the website, and the plaintiff contended that the website's "design and operation" causally contributed to her mother's death. The plaintiff's theory was that the website made it easier for people who should not lawfully have guns to purchase them.

The website permits sales by both federally licensed firearm dealers—who must conduct a background check before a purchase can be made—and private sellers, who in many states need not do so. There was a domestic violence injunction filed against Mr. Haughton, making it unlawful for him to possess a firearm. He was able to buy his gun from a private seller without completing a background check, having used a function on the website that allowed him to exclude licensed dealers from his search results. The next day, he used the firearm to kill four people, including himself and the plaintiff's mother.

The plaintiff brought suit against Armslist asserting various tort causes of action, alleging that the design and operation of the site encouraged transactions in which prohibited purchasers like Mr. Haughton could potentially acquire firearms. The district court dismissed the complaint, holding that Armslist was immune under Section 230 of the Communications Decency Act, a federal law that provides protection from theories of liability that treat a website host "as the publisher or speaker of any information provided by another information content provider."

The Wisconsin Court of Appeals reversed the district court, holding that the plaintiff did not assert any theory of liability that treated Armslist as a "publisher or speaker." Contrary to the approach taken by most courts across the country, the Court of Appeals narrowly interpreted the statute's language, holding that the "only reasonable interpretation" of "publisher or speaker" in the law is in reference to "the specific act of publishing or speaking particular information" and that both terms are "used simply to convey the notion that liability may not be based on treating a provider as the disseminator or propagator of the described information."

The court held that Armslist was not entitled to immunity because the plaintiff's claims were aimed at Armslist's design of the website, not at the content posted by Mr. Haughton or the person who sold him his gun.

The decision runs against the tide of two decades of case law protecting websites that host the speech of third parties, including recent decisions making clear that social media platforms have Section 230 immunity from claims asserting that they provide "material support" to terrorists who communicate via those platforms.

It also creates a situation in which websites do not receive the same level of legal protection in Wisconsin that they do in much of the United States. Typically, a website like Armslist that offers a framework for lawful interpersonal communication would be immune from liability for its design and operation. It is only where a website's design *forces* people to act unlawfully—for example, by requiring them to unlawfully discriminate against others by specifying the race of roommate they are seeking, see *Fair Housing Council v. Roommates.com*, 521 F.3d 1157 (9th Cir. 2008)—that the website does not have Section 230 immunity for claims arising from its design. No such situation applies in this case.

Although the decision is precedential only in Wisconsin state courts, most websites do not have the ability to easily exclude viewers from a particular state. Accordingly, if the Wisconsin Supreme Court does not reverse the decision, web hosts threatened with tort liability in Wisconsin for their design and operation will be forced to defend those cases on substantive grounds, such as lack of causation and lack of duty.

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