

United States - Internet Service Provider Immunity For State Law Claims Under The Communication Decency Act

In *Perfect 10, Inc. v. CCBILL LLC*, Plaintiff, Perfect 10, Inc., a publisher of an adult entertainment magazine and website located at www.perfect10.com, brought an action against Defendants CWIE, an entity which provides web-hosting and related Internet connectivity services to owners of various websites and CCBill, an entity which allows consumers to use credit cards or checks to pay for subscriptions or memberships to e-commerce venues.

The Plaintiff alleged that Defendants violated federal copyright and trademark laws, and state unfair competition, false advertising, and right of publicity laws, by providing services to websites that posted images stolen from the Plaintiff's magazine and Internet website.

The district court found, inter alia, that Defendants were immune from liability for the state law unfair competition and false advertising claims (but not the right of publicity claim) based on the Consumer Decency Act "CDA". Plaintiff appealed these district court findings and Defendants cross-appealed, arguing that the district court erred in holding that the CDA does not provide immunity against Plaintiff's right of publicity claims.

The CDA establishes federal immunity to any cause of action that would make an ISP liable for information originating with a third party user of the service. This immunity is limited, however, and does not extend to laws pertaining to intellectual property. The Ninth Circuit held that the term "intellectual property" in the CDA means "federal intellectual property" and thus the CDA provides immunity to state right of publicity claims. The Ninth Circuit affirmed the District Court's ruling that there was immunity under the CDA as to the state unfair competition and false advertising claims, and reversed the District Court's refusal to immunize against the right of publicity claim. Thus, the Ninth Circuit held that the Defendants were eligible for CDA immunity for all of the state law claims that the Plaintiff brought against Defendants.

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