

# REPRESSION OF THE ORGANIC INTERNET: THREE PROBLEMS, THREE SOLUTIONS

ANTHONY CIOLLI

This Essay identifies three significant obstacles to the ideal of the organic, open Internet, and proposes solutions to them that both progressive and conservative activists should embrace. Part I considers the problems stemming from the inadequate protections U.S. law offers to non-corporate social networking websites that, rather than grant intermediaries a true safe harbor, provide intermediaries with incentives to censor their users and other third party content providers. Part II examines the related issue of non-uniform standards for the disclosure of anonymous Internet speakers, which promote and subsidize SLAPP<sup>1</sup> suits and other frivolous litigation. Part III outlines the threats posed by the lack of effective remedies available to Internet users and intermediaries to defend themselves against corporations or public figures that seek to use the legal system to repress their constitutionally protected rights. Finally, Part IV proposes bi-partisan solutions to these three related problems that Internet activists on both sides of the political spectrum can support to ensure that the Internet will continue to remain host to the most open and free marketplace of ideas the world has ever known.

## I. THE PROBLEM OF INADEQUATE SAFE HARBORS

United States law purports to grant Internet intermediaries—including social networking websites, message boards, and blog communities—various safe harbors that shield the intermediary from liability for the actions of its users. Most notably, Section 230 of the

---

1. John C. Stauber & Sheldon Rampton, *SLAPP Happy: Corporations That Sue to Shut You Up*, PR WATCH, 2d Q. 1997, at 7, available at <http://www.prwatch.org/prwv4n2.pdf> (stating the acronym for Strategic Lawsuit Against Public Participation as SLAPP).

Communications Decency Act (hereinafter “Section 230”) states that “[n]o 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.”<sup>2</sup> Courts have almost universally held that Section 230 immunizes Internet intermediaries from vicarious liability for defamation, intentional infliction of emotional distress, and a wide variety of other torts.<sup>3</sup>

Despite Section 230’s stated goals, it fails to provide the most typical Internet intermediaries—and the intermediaries most in need of protection—with the tools necessary to meet Congress’s stated goals. In passing Section 230, Congress declared that “[i]t 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.”<sup>4</sup> However, one must consider that Section 230 and other safe harbors were passed in the early stages of the Internet’s life cycle.<sup>5</sup> Section 230, for instance, was passed as part of the Communications Decency Act of 1996.<sup>6</sup>

Those familiar with the evolution of the Internet are aware that the Internet of 1996 is vastly different from the Internet of 2008. The 1996 Internet was a “walled garden,” which, in this context, is defined as “a browsing environment that controls the information and Web sites the user is able to access.”<sup>7</sup> Rather than purchasing free and unrestricted access to the Internet, the typical Internet user would purchase a monthly membership to a walled garden Internet service provider such as America Online, CompuServe, or Prodigy, which would provide users with exclusive members-only content, such as premium message

---

2. 47 U.S.C. § 230 (1998).

3. *See, e.g.*, *Green v. Am. Online, Inc.*, 318 F.3d 465 (3d Cir. 2003); *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. Am. Online, Inc.*, 206 F.3d 980 (10th Cir. 2000); *Prickett v. InfoUSA, Inc.*, 561 F. Supp. 2d 646 (E.D. Tex. 2006); *Ramey v. Darkside Productions, Inc.*, No. 02-730 (GK), 2004 U.S. Dist. LEXIS 10107 (D.D.C. May 17, 2004); *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998); *Doe v. Cahill*, 884 A.2d 451 (Del. 2005); *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703 (2002); *Kathleen R. v. City of Livermore*, 104 Cal. Rptr. 2d 772 (2001); *Schneider v. Amazon.com, Inc.*, 31 P.3d 37 (Wash. Ct. App. 2001); *Barrett v. Clark*, No. 833021-5, 2001 WL 881259 (Cal. Super. Ct. July 25, 2001).

4. 47 U.S.C. § 230(b)(2) (1998).

5. *See* Anthony Ciolli, *Chilling Effects: The Communications Decency Act and the Online Marketplace of Ideas*, 63 U. MIAMI L. REV. 137, 148 (2008) [hereinafter Ciolli, *Chilling Effects*].

6. 47 U.S.C. § 230 (1998).

7. WhatIs.com, Walled Garden, [http://searchsecurity.techtarget.com/sDefinition/0,,sid14\\_gci554703,00.html](http://searchsecurity.techtarget.com/sDefinition/0,,sid14_gci554703,00.html) (last visited Mar. 9, 2009).

boards, while simultaneously restricting access to the remainder of the Internet.<sup>8</sup>

Section 230 was drafted and signed into law while the walled garden providers were at the height of their popularity. While “regular” individuals certainly created their own online content outside of these walled gardens, these ventures rarely involved individuals acting as an Internet intermediary or community administrator. For instance, GeoCities, the most popular provider of free homepages in the mid-1990s,<sup>9</sup> only provided its two million “homesteaders”<sup>10</sup> with basic features. In fact, blogs—at least in the interactive form known today—did not even exist in the mid to late 1990s.<sup>11</sup> Markos Moulitsas, founder and owner of the successful progressive blog community at DailyKos.com, has described his own experience running a “blog” during the walled garden era:

So I began a site called the Hispanic Latino News Service, which was a blog before there were blogs. In the morning I would go online to find news stories to feature, then in class I would literally craft every page by writing the full HTML. So I would have to create a new page for that day’s updates, and then move the previous day’s stuff to the archives, which meant manually creating new pages, then manually updating the indexes. It sucked, sure, but it was better than paying attention in class. Had blogging tools existed back then, perhaps I would’ve remained in my Latino niche.<sup>12</sup>

Furthermore, reader comments—the interactive element most commonly identified with blogs and which distinguishes a blog from a

---

8. Dan Tynan, *The 25 Worst Tech Products of All Time*, PC WORLD, May 26, 2006, at 2, available at [http://www.pcworld.com/article/125772-2/the\\_25\\_worst\\_tech\\_products\\_of\\_all\\_time.pdf](http://www.pcworld.com/article/125772-2/the_25_worst_tech_products_of_all_time.pdf) (stating that America Online did not allow its subscribers to access any content outside of its proprietary network until 1995).

9. See Jim Hu, *GeoCitizens Fume over Watermark*, CNET NEWS, June 23, 1998, available at <http://news.cnet.com/GeoCitizens-fume-over-watermark/2100-10233-212596.pdf> (stating that GeoCities has 2 million members); see also *Yahoo! Buys GeoCities*, CNN MONEY, Jan. 28, 1999, [http://money.cnn.com/1999/01/28/technology/yahoo\\_a/](http://money.cnn.com/1999/01/28/technology/yahoo_a/) (identifying GeoCities as the “third most visited site on the Web behind AOL and Yahoo!”).

10. The term “homesteaders” refers to customers of the website [www.homestead.com](http://www.homestead.com), a website creation site that is owned by GeoCities.

11. Wikipedia.org, Blog, <http://en.wikipedia.org/wiki/Blog> (last visited Feb. 3, 2009) (providing a general and broad overview and explanation of blogs).

12. Markos Moulitsas, *Apropos of Nothing at 30,000 Feet*, DAILYKOS.COM, Jan. 20, 2008, <http://www.dailykos.com/story/2008/1/20/151815/607/916/439447>.

passive website—did not become associated with blogs until late 1998, more than two years after Section 230 became law.<sup>13</sup>

Given the status of the Internet in the mid-1990s, it is quite clear that Section 230, and other safe harbors intended to protect Internet intermediaries and promote an open marketplace of ideas, did not have individuals in mind, but rather large, corporate providers such as America Online.<sup>14</sup> In passing Section 230, Congress was clearly contemplating granting immunity to America Online, but could not have envisioned a regular individual such as Markos Moulitsas creating their own prominent communities and making use of those same safe harbors. In other words, Congress failed to anticipate the transition from the walled garden providers to the advent of Web 2.0 less than ten years later.<sup>15</sup>

In failing to envision the forthcoming changes to the demographics of Internet intermediaries, Congress created the first problem that threatens the organic Internet: inadequate safe harbors. Congress, in creating the Section 230 safe harbor, sought to prevent over-censorship of third party content by Internet intermediaries who may fear that failure to remove defamatory or otherwise objectionable content would result in litigation.<sup>16</sup> After all, prior to Section 230, some intermediaries would remove third party content in response to a defamation complaint “regardless of whether the speech actually met the threshold for defamation or not.”<sup>17</sup> “Such censorship, [if not stopped, would have the potential to] ruin the Internet’s potential as a vibrant marketplace for the exchange of ideas, for ideas that may offend even just one individual might be removed by an Internet intermediary fearing litigation.”<sup>18</sup>

It should go without saying that large corporations such as America Online and a typical individual of relatively modest means will view the threat of a lawsuit differently. Unlike corporations, the mere threat of a lawsuit is a highly stressful event for an individual, who will typically be terrified by the prospect of potential legal liability even if they have a very strong case and the chance of being held liable is

---

13. See Mario Seminerio, *The Open Diary takes off*, ZDNET NEWS, Dec. 1, 1998, [http://news.zdnet.com/2100-9595\\_22-101090.html](http://news.zdnet.com/2100-9595_22-101090.html).

14. See Ciolli, *Chilling Effects*, *supra* note 5, at 153 (discussing the walled garden internet and section 230).

15. See Anthony Ciolli, *Joe Camel Meets YouTube: Cigarette Advertising Regulations and User-Generated Marketing*, 39 U. TOL. L. REV. 121 (2007) (characterizing “Web 2.0” as user created content, prevalent on social networking sites, blogs, and video sharing sites).

16. See 47 U.S.C. § 230(b)(2) (1998).

17. Anthony Ciolli, *Defamatory Internet Speech: A Defense of the Status Quo*, 25 QUINNIPIAC L. REV. 853, 863 (2007).

18. Ciolli, *Chilling Effects*, *supra* note 5, at 148.

remote.<sup>19</sup> Because “the hourly billing rates of even ‘inexpensive’ lawyers are more than many individuals can afford . . . those of modest means faced with the prospect of defending a lawsuit may feel that even if they win in court they will lose tens of thousands of dollars—or more—in attorneys’ fees.”<sup>20</sup>

Accordingly, the Web 2.0 generation of Internet intermediaries differs from the walled garden intermediaries of a decade ago. While a walled garden intermediary, armed with a statutory immunity, will not appear an attractive litigation target, quite the opposite is true for the typical blogger. Law professor Mike Madison illustrates the typical reaction of a blogger threatened with litigation through writing about his own experience of co-blogging with two non-lawyers:

The short just-the-facts version is that another neighbor was about to block access to a stone path that had run between two adjacent lots for several decades and that was, in popular understanding, protected by a recorded easement. In the course of the thread, one commenter (apparently a child who uses the path to walk to school) “outed” the landscaping family by name, and a second commenter suggested that the owner, who is apparently a lawyer, should have known better than to buy a piece of real estate without checking the record for easements.

And so, [A] nasty gram arrived unannounced in my inbox and in the inboxes of my two co-bloggers. (At the time there were two; now, there is one.) Delete the allegedly defamatory post (for the blog had impugned the professional reputation of the landscaping homeowner!), or face the consequences. There was and is no doubt that the point of the letter was to suppress community discussion of the path-blocking landscaping project. I’ve sent and received enough nasty grams on behalf of clients to understand what they really mean, I know enough about the Communications Decency Act to understand what it really means, and I know enough lawyers and law students and law professors to understand that if we stood and fought, we’d have some fun and some stress and in the end we would likely prevail.

Co-blogger number one, not a lawyer, asked immediately that we delete the post. The details aren’t important; the point is that he was scared out of his wits by the prospect of defending a

---

19. See Walter Olson and David Bernstein, *Loser-Pays: Where Next?*, 55 MD. L. REV. 1161, 1189 (1996).

20. Ciolli, *Chilling Effects*, *supra* note 5, at 185.

lawsuit. Co-blogger number two, also . . . decided that he had better things to do with his time than get caught up in this little mess. He withdrew from the blog.<sup>21</sup>

It is not difficult to imagine why Professor Madison's co-bloggers behaved the way they did in this situation. Although shielded from liability by Section 230's absolute immunity, enforcing that immunity does not come without a price. Since the typical blog does not generate any profits, its proprietors have no tangible incentive to fight such legal threats, particularly when they involve the speech rights of third party commentors. In fact, the typical blogger "do[es] not have sufficient knowledge of the law to do anything except comply with a corporation or wealthier party's request to remove or otherwise alter allegedly defamatory blog postings."<sup>22</sup> The end result, as illustrated in Professor Madison's case, is the typical Web 2.0 intermediary grudgingly censoring the protected speech of its users, or even outright exiting the market, due to Section 230 and similar safe harbors failing to meet their stated goals.

## II. THE PROBLEM OF NON-UNIFORM STANDARDS

A second problem that impedes the development of the organic Internet is the failure of Congress and the judiciary to promulgate uniform national standards on issues of critical importance to Web 2.0 intermediaries. In many contexts, national uniformity is not of the utmost importance, or even desirable, given this nation's history of federalism. As Justice Brandeis observed in his famous dissent in *New State Ice Co. v. Liebmann*,<sup>23</sup> allowing each jurisdiction to "serve as a laboratory" would result in jurisdictions "try[ing] novel social and economic experiments without risk to the rest of the country."<sup>24</sup>

But as Justice Brandeis implicitly conceded, such experiments with pluralism will fail when a rule generated in one jurisdiction puts the rest of the country at risk.<sup>25</sup> The Internet, as a global medium, is thus perennially endangered by the possibility of an unnecessarily restrictive rule articulated in one prominent jurisdiction having far-reaching consequences. Likewise, when a national standard does not

---

21. Mike Madison, *On Receiving a Cease and Desist Letter*, MADASONIAN.NET, Oct. 15, 2007, <http://madsonian.net/archives/2007/10/15/on-receiving-a-cease-desist-letter/>.

22. Jennifer Meredith Liebman, *Defamed by a Blogger: Legal Protections, Self-Regulation, and Other Failures*, 2006 U. ILL. J.L. TECH. & POL'Y 343, 370 (2006).

23. *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932).

24. *Id.* at 311.

25. *See id.*

exist and each particular jurisdiction has not adopted its own standard to fill the gap, uncertainty over what standard may apply in that jurisdiction in the future will naturally result in a chilling effect and other undesirable consequences.

Perhaps the most prominent example of a situation where a uniform national standard is clearly necessary but has not been adopted is in the context of anonymous Internet speech. Over the past decade, this nation's state and federal courts have applied at least five highly divergent tests to determine whether a litigant may draw upon the court's authority to unmask an anonymous Internet user, ranging from a mere demonstration of good faith to a "summary judgment plus" standard requiring the litigant's claims to withstand both summary judgment and meet a balancing test.<sup>26</sup> Such widely different outcomes are particularly significant when one considers that very few courts have actually ruled on this question and thus which of these five tests—if not a new test entirely—will apply in a particular jurisdiction remains a mystery.<sup>27</sup>

While experimentation with different rules may result in a national consensus at some undetermined point in the future, in the meantime the lack of uniform standards in the context of a multi-jurisdictional medium such as the Internet strongly promotes forum shopping and other ills. As the Arizona Court of Appeals observed in an opinion adopting the "summary judgment plus" standard, "adopting different standards could encourage assertion of . . . claims simply to reap the benefits of a less-stringent standard."<sup>28</sup> For instance, a plaintiff, knowing that Arizona state courts apply a "summary judgment plus" standard while Virginia state courts have merely required that a litigant seek a subpoena in good faith, will, whenever possible, seek to un-mask anonymous speakers in Virginia courts. Such forum shopping is of particular concern when the main goal of the litigation is not to seek redress for a legitimate injury but to silence a critic.<sup>29</sup> In other words,

---

26. See *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D. Cal. 1999) (identifying the motion to dismiss test); *In re Subpoena Duces Tecum to Am. Online, Inc.*, No. 40570, 2000 WL 1210372 (Va. Cir. Ct. Jan. 31, 2000) (explaining the good faith test); *Doe v. 2TheMart.com*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001) (applying the balancing test); *Doe v. Cahill*, 884 A.2d 451 (Del. 2005); *Mobilisa v. Doe*, 170 P.3d 712 (Ariz. Ct. App. 2007).

27. Anthony Ciolli, *Technology Policy, Internet Privacy, and the Federal Rules of Civil Procedure*, 11 YALE J.L. & TECH. 176, 176-77 (2009) [hereinafter Ciolli, *Technology Policy*].

28. *Mobilisa*, 170 P.3d at 719.

29. See Kathryn W. Tate, *California's Anti-SLAPP Legislation: A Summary of and Commentary on Its Operation and Scope*, 33 LOY. L.A. L. REV. 801, 855-56 (2000).

the absence of uniform standards essentially allows determined plaintiffs to take advantage of the least rigorous rule without providing Internet intermediaries and users with a comparable arrow in their quiver.

### III. THE PROBLEM OF INEFFECTIVE REMEDIES

Finally, one must consider a third, related problem—ineffective remedies for Internet intermediaries and users who have been aggrieved by litigants who have used the legal system for unjustifiable means. Suppose, for instance, that a litigant threatens to file a defamation suit against an Internet intermediary, and the intermediary, rather than give in to the litigant's demands, chooses to assert his Section 230 immunity. In the event such a litigant does not back off on his demands and actually files suit against the immunized intermediary, the intermediary must still incur substantial expenses to assert its immunity, for it will need to hire an attorney to litigate a motion to dismiss<sup>30</sup>—or, in some cases, a motion for summary judgment<sup>31</sup>—in order to terminate the action.

A litigant actually filing suit against an intermediary over the defamatory statements of a third party despite the existence of the strong Section 230 immunity is not a surprising outcome, for 75 percent of all defamation lawsuits are not filed for the purpose of recovering money, but “for purposes such as vindication, reprisal, response, and publicity,” since “[m]any plaintiffs want the gossip or rumor-mongering to stop and to be removed from the site.”<sup>32</sup> Thus, the fact that there is zero chance of actual monetary recovery will likely not deter the typical defamation plaintiff from filing suit against an intermediary immunized by Section 230. So long as the litigant is willing to expend attorney's fees of his own—or has access to pro bono representation—he may pursue a quest for vindication or to punish the intermediary by forcing it to incur costs that it cannot recover after it prevails in court.

A similar problem exists in the context of anonymous Internet speech. As discussed above, courts have adopted a wide variety of tests

---

30. *Global Royalties, Ltd. v. Xcentric Ventures, LLC*, No. 07-956-PHX-FJM, 2007 U.S. Dist. LEXIS 77551 (D. Ariz. Oct. 10, 2007).

31. See *Novak v. Overture Servs., Inc.*, 309 F. Supp. 2d 446 (E.D.N.Y. 2004). See also *Doctor's Assocs., Inc. v. QIP Holders, LLC*, No. 3:06-cv-1710 (JCH), 2007 U.S. Dist. LEXIS 28811 (D. Conn. Apr. 18, 2007) (holding that Section 230 immunity is an affirmative defense and thus cannot be raised in a Rule 12(b)(6) motion).

32. DANIEL SOLOVE, *THE FUTURE OF REPUTATION* 122 (Yale Univ. Press 2007) (quoting Jerome A. Barron, *The Search for Media Accountability*, 19 *SUFFOLK U. L. REV.* 789, 789–90 (1985)).

to determine whether an anonymous Internet speaker's identity should be disclosed to a litigant via a subpoena. However, even the most lax of these tests requires, at a minimum, that the anonymous Internet speaker receive notice that his identity is the subject of a discovery request so that he may have the opportunity to challenge the subpoena in court.

But what if notice is never provided and an anonymous Internet user is unaware of—and thus unable to move to quash—a subpoena seeking his identity? As one court observed, Internet users have “little solace” when their “Internet service company” or the discovering party “does not provide them notice when a subpoena is received.”<sup>33</sup> Such users have little solace because no established remedy exists to compensate the victim for the damage incurred when an anonymous Internet speaker is unmasked via a subpoena that is never challenged due to a failure to comply with the notice requirement. Accordingly, plaintiffs who fear that a subpoena intended to reveal an anonymous speaker's identity may not pass constitutional muster possess a strong incentive to ignore the notice requirement entirely due to the absence of effective remedies that may deter such a practice.

#### IV. THE SOLUTIONS

The three problems discussed in the prior sections are not insurmountable. Rather than allowing the negative consequences of these problems to continue to proliferate, Congress and other government institutions may minimize the potential damage to the Internet's development by considering and enacting three solutions.

##### *A. Repair Safe Harbors to Ensure that All Internet Intermediaries May Take Advantage of Them*

As discussed earlier, various Congressionally-enacted safe harbors, including the immunity provisions of Section 230 of the Communications Decency Act, have failed to keep pace with changes in the demographics of Internet intermediaries. Such safe harbors, crafted during the era of the walled garden Internet, fail to account for the large number of blogs, message boards, listservs, and other intermediaries maintained by ordinary individuals of average means. Accordingly, the obvious solution to this problem is for Congress to update its earlier laws in order to provide all intermediaries with an incentive to take advantage of the safe harbor provisions.

---

33. *Doe v. 2TheMart.com Inc.*, 140 F. Supp. 2d 1088, 1095 n.5 (W.D. Wash. 2001).

How may Congress go about updating Section 230 and other safe harbors so that both small-time bloggers and large corporations may exercise their immunity? Perhaps the easiest and most direct method is to amend Section 230 and other statutes to include a fee-shifting provision in which a litigant who unsuccessfully sues an immunized intermediary would be compelled to pay the intermediary's attorney's fees and other costs. Such fee-shifting, while not chilling legitimate lawsuits against the actual authors of defamatory statements or specific individuals who have engaged in copyright infringement, would serve to deter litigants from filing groundless lawsuits against entities that are clearly immunized, as well as make it significantly easier for an intermediary to obtain legal counsel to defend against such a lawsuit.<sup>34</sup>

#### *B. Adopt or Otherwise Encourage Uniform National Standards*

The problem of non-uniform standards, as one may expect, may be ameliorated by adopting a uniform standard where one does not exist. Unlike the task of amending prior legislation to repair existing safe harbors, creating uniform standards naturally requires Congress or other institutions to proactively seek out situations where a split in authority has resulted in significant uncertainty. For instance, Congress may resolve the uncertainty and other ill effects stemming from courts applying different standards to determine whether an anonymous Internet speaker should be unmasked by adopting a uniform national standard or otherwise encouraging such a standard to develop.<sup>35</sup>

#### *C. Craft Legislation with Remedies in Mind*

Finally, Congress may resolve the problem of ineffective or non-existent remedies by anticipating potential abuses when drafting new legislation and patching existing legislation to eliminate known abuses. For example, Congress should have taken into account studies showing that the vast majority of defamation lawsuits are filed for an improper purpose, such as punishing the defendant or vindicating the reputational interests of the plaintiff, and not to actually recover a monetary award.

---

34. Although Rule 11 of the Federal Rules of Civil Procedure provides a court with the power to sanction litigants initiating frivolous lawsuits, it does not represent an adequate substitute for fee-shifting. *See* U.S. Express Lines, Ltd. v. Higgins, 281 F.3d 383 (3d Cir. 2002). The case identifies the main objective of Federal Rule of Civil Procedure 11 as "...to deter baseless filings," though sanctioning a party may benefit the opponent. *Id.* at 393.

35. For instance, Congress could amend the Federal Rules of Civil Procedure to provide for a rule providing the test courts should apply in such a situation. *See* Ciolli, *Technology Policy*, *supra* note 27, at 177.

Consequently, Congress should have anticipated when passing Section 230 that many plaintiffs would continue to file suit against immunized intermediaries and thus included a fee-shifting provision in the original legislation to deter such suits, even if the overwhelming majority of intermediaries were large corporations such as America Online. Likewise, Congress, now hopefully aware of the growing number of lawsuits and subpoena actions seeking to unmask the identities of anonymous Internet speakers should, when crafting a potential national uniform standard, anticipate that a litigant may not properly serve notice on the anonymous speaker, and accordingly draft legislation to deter subpoenas without service. Congress should also provide anonymous speakers with an effective remedy to obtain redress if his identity is wrongfully disclosed.

#### V. CONCLUDING REMARKS

The problems of inadequate safe harbors, non-uniform standards, and non-existent or ineffective remedies threaten to impede the Internet's natural development. In order to reduce and eliminate the ongoing damage done to the Internet as a medium, Congress should resolve these problems by revisiting its prior safe harbor legislation to ensure all intermediaries are protected, preempt conflicting standards with new uniform standards, and craft legislation to provide intermediaries and individual Internet users with the remedies necessary to proactively fight against litigation abuse. Such action will preserve the Internet as an open and free marketplace of ideas and promote its continued organic growth.