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Crowdsourcing the News: News Organization Liability for iReporters

Virginia A. Fitt

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CROWDSOURCING THE NEWS: NEWS ORGANIZATION LIABILITY FOR iREPORTERS

Virginia A. Fitt†

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I. INTRODUCTION

The Society of Professional Journalists held an event on “‘backpack’ and ‘citizen’ journalism” and the pressure on ‘old media’ to become ‘new media,’” in an attempt to accommodate the changing landscape of journalism.¹ One blogger’s response? “Take those damn scare quotes off of ‘citizen’ journalism.”² Increasingly, professional news organizations have removed the “damn scare quotes.” But is this just damn scary? The mainstream media’s increasing reliance on citizen journalism creates an increased potential for libel, false reporting, copyright infringement, and unethical or uninformed reporting with mainstream media complicity.

The convergence of media platforms into multimedia and multi-format news organizations has replaced the traditional concepts of discrete newspapers, news shows, and cable news channels. In the face of declining profitability, many members of the traditional print media, including U.S. News & World Report,³ are dropping their print format in favor of providing online-only content.⁴ “Newspapers” are now delivered directly to e-readers, are produced in portable document format (PDF), and often incorporate videos or podcasts into their online content.⁵ Other news organizations are branching out to incorporate third-party contributors outside the traditional media—the viewers—as reporters.⁶ A television news broadcast may now seamlessly flow from nationally renowned reporters, to opinion content, to web polls, to user-produced content within a matter of minutes.⁷ The law, it seems, is woefully unprepared for format integration.

2. Id.
5. See infra Part II.
6. See infra Part II.
7. See infra Part II.
For ease of analysis, this article focuses exclusively on the iReporting model used by CNN, with a brief discussion of FOX News’ similar program. However, much of the discussion is applicable to other traditional news media’s incorporation of an online platform with user-generated content.

Part II of this paper describes the online iReport website and submission model as it is currently used by CNN.com. It then describes how media organizations are accomplishing format integration in an attempt to create a seamless news organization, building upon user-generated content for at least some on-air news content. Part III provides a background discussion of traditional news media tort liability for defamation, as well as website liability before and after the enactment of the Communications Decency Act. Part IV provides a discussion of the potential tort liability for news organizations both online and through on-air incorporation of iReporting. Part V concludes with guidelines for when extending liability is most appropriate and suggests an incorporation and adoption test.

II. VOX POP, VOX DEI? THE IREPORT MODEL FOR OUTSOURCING THE NEWS THROUGH CROWDSOURCING

A July 2003 Associated Press (AP) memo warned that AP reporters should not quote Greg Packer in future stories. Packer, a New York highway maintenance worker, uses his vacation time to attend media events and has appeared in news publications more than one hundred times. He is now famous for spouting such inanities as “[i]t’s a day for happiness and to be together” and “[g]ood people, good family, good balloons” to reporters on a deadline who were seeking some local color or man-on-the-street commentary. Packer admits that he sometimes lies to create better quotes that are sure to make the papers. From August

8. See infra Part II.A.
9. See infra Part II.B.
10. See infra Part III.A.
11. See infra Part III.B.
12. See infra Part IV.
13. See infra Part V.
15. Id.
16. Id.
17. Id.
2006—when the iReport initiative was launched—until January 2008, CNN received more than 100,000 news-related photos and videos.\textsuperscript{18} The data suggests that this has grown exponentially in the two years since.\textsuperscript{19} CNN now has its legions of iReporters, but are they one million little Murrows\textsuperscript{20} or one million little Greg Packers? The iReport content suggests that it is a community bustling with both.

A. The Online Business Model

A tour of the iReport website suggests iReporting has become less an interactive bonus feature for consumers and has instead become an integral part of the business model for producing the news. On iReport.com, videos uploaded by users are organized by news category.\textsuperscript{21} Labels are placed on the video links, stating “Not vetted by CNN” or a logo with a red letter “I,” suggesting a CNN “stamp of approval.”\textsuperscript{22} The “Vetting explained” link on the website states, “[t]he stories in this section are not edited, fact-checked or screened before they are posted.”\textsuperscript{23} The explanation of the “CNN iReport” stamp in the corner of a video feed states that the submission has been “vetted and cleared”—“they’ve been selected and approved by a CNN producer to use on CNN, on air, or on any of CNN’s platforms.”\textsuperscript{24} Since CNN states that the vetting process does not include fact-checking,\textsuperscript{25} it seems most likely that the process only includes a content review for obscenity and general quality of content and relevance, and stories which are

\textsuperscript{19} See id. In January 2008 alone, there were more than 10,000 submissions. Id. Approximately ten percent of the user-submitted content appears on CNN.com or the cable network. Id.
\textsuperscript{22} See, e.g., Poland in Mourning, CNN iREPORT, http://www.ireport.com /ir-topic-stories.jspa?topicId=431625 (last visited Mar. 12, 2011) (providing a list of available stories showing Poland in mourning following a plane crash).
\textsuperscript{23} See, e.g., Clint Fowler, Mourning in Warsaw, CNN iREPORT (Apr. 14, 2010), http://www.ireport.com/docs/DOC-432252 (follow hyperlink to “Vetting explained”).
\textsuperscript{24} Id.
\textsuperscript{25} Id.
“compelling, important and urgent” are cleared for coverage. In its “Terms of Use” CNN states, “CNN does not verify, endorse or otherwise vouch for the contents of any submission.” The “stamp of approval,” then, perhaps means that CNN producers merely liked the submission.

CNN actively solicits user-generated content. In many ways, CNN directs and controls the content. In an explanation of the “vetting” or “stamping” system, CNN writes: “How can you get your story on CNN? Start with the assignment desk.” User responses to the assignment desk on iReport.com often drive much or most of the content on the primary site of CNN.com. For example, the Assignment Desk states, “Share your story about one of these topics in the news and it may end up on CNN!,” and accompanies that statement with a list of dozens of “newsworthy” topics—some of which are featured as topics of particular emphasis. On April 12, 2010, one featured question was, “Do you swear by your Neti Pot?” On April 15, 2010, a featured story on CNN.com was, “Why people swear by the neti pot.” The reciprocal relationship between iReport.com and CNN sister sites (and television broadcasts) suggests that CNN is “directing” the content of user submissions. Moreover, iReport.com provides an “iReport Toolkit” to help users “tell [their] story like a pro,” with tips and tutorials on storytelling, story selection, photos, video, and audio. CNN provides licensed music


28. About CNN iReport, supra note 26 (“iReport invites you to take part in the news with CNN.”).

29. Fowler, supra note 23 (follow hyperlink to “Vetting explained”).


clips and audio that iReporters “may download and use in videos.”

CNN requires iReporters to agree to a lengthy “Terms of Use” agreement to participate. iReporters who submit content must register for the website and confirm their email address. If they wish to create a submission, iReporters upload a file, input a title and description into an open response box, and select an “Assignment” from a drop-down list, which—at the time of writing—included sixty-nine assignments.

Most strikingly, CNN claims the work of its iReporters while simultaneously disclaiming all responsibility for accuracy or any subsequent damages. iReporters must consent to a standard “Terms of Use” agreement from CNN:

By submitting your material, for good and valuable consideration, the sufficiency and receipt of which you hereby acknowledge, you hereby grant to CNN and its affiliates a non-exclusive, perpetual, worldwide license to edit, telecast, rerun, reproduce, use, create derivative works from, syndicate, license, print, sublicense, distribute and otherwise exhibit the materials you submit, or any portion thereof in any manner and in any medium or forum, whether now known or hereafter devised, without payment to you or any third party.

Among many other things, the “Terms of Use” also state that the submitter warrants that CNN’s exercise of these rights will not constitute a tort (libel, slander, violation of a right of privacy, or copyright infringement) against any person or entity.

The model is not wholly unique to CNN. FOX News has a nascent yet similar (and similarly named) uReport feature that allows users to submit content that appears online and may appear on FOX News cable broadcasts. The FOX News uReport

35. Terms of Use, supra note 27.
36. See CNN iREPORT, supra note 21 (follow hyperlink to “upload” and you will be prompted to “sign up” before submitting content to iReport).
38. Terms of Use, supra note 27.
39. Id.
lacks CNN’s pervasive pop-up disclaimer on the main page, and each story or photo bears the “uReport” watermark or stamped logo in the upper left hand corner (as opposed to CNN’s stamping of only “vetted” pieces). However, FOX News’ uReport seems to have generated mostly still photos and text, although it accepts video and audio formats. The uReport’s “Terms of Use” contain many of the same disclaimers as CNN’s, and, despite FOX News pre-facing its terms by stating it does not claim ownership of uReport material, it does claim for itself a nearly unlimited license to the user-submitted material.


FOX News does not claim any ownership rights in the User Content that you post, upload, email transmit, or otherwise make available on, through or in connection with the FOX News Services; provided, however, that User Content shall not include any Content posted by a user that is already owned by FOX News or any Affiliated Company. By posting any User Content on, through or in connection with the FOX News Services, you hereby grant to FOX News and our Affiliated Companies, licensees and authorized users, a perpetual, non-exclusive, fully-paid and royalty-free, sublicensable, transferable (in whole or in part), worldwide license to use, modify, excerpt, adapt, create derivative works and compilations based upon, publicly perform, publicly display, reproduce, and distribute such User Content on, through or in connection with the FOX News Services or in connection with any distribution or syndication thereof to Third Party Services (as defined below), on and through all media formats now known or hereafter devised, for any and all purposes including, but not limited to, promotional, marketing, trade or commercial purposes. FOX News’ use of such User Content shall not require any further notice to you and such use shall be without the requirement of any permission from or payment to you or to any other person or entity. FOX News reserves the right to limit the storage capacity of User Content that you post on, through or in connection with the FOX News Services.

Id.
B. Format Integration

LEMON: So Iran’s government [is] clamping down on professional journalists. We are relying more than ever on video, photos, and information from our iReporters on the scene. They are taking huge risks to tell the story of what’s happening in Iran and all around the world...  
POYAN, iREPORTER'S FIANCE (via telephone): The problem is everybody’s life is at risk now in Iran. It doesn’t matter if it is my fiance or somebody else, there is—somebody is dying now in Iran.

LEMON: And your thoughts—have you had a chance to speak to her?

POYAN: I called her this evening. The government has closed down the Internet, the text service, the phone service. It is difficult to call Iran and get calls from Iran. I tried to call her and I talked to her like two minutes. And I told her about CNN and her pictures and she was very happy and she said, “Please CNN be our voice in—abroad.”

LEMON: What are you—what can you share with us besides that? Are there any personal moments? Her iReport page, her pictures really are right on the front—on the home page of the iReport page...  

From consumer product reviews, personal reports on how the health care changes will affect average Americans, local stories, and valuable “Witness to History” stories (such as the one excerpted above), iReport submissions do not only drive online content; they form an integral part of the day’s television content for CNN.

In the 24-hour cable news world, iReports and message board comments provide video footage, photographs, on-the-scene reporters, man-on-the-street opinions, questions for CNN experts, and even entire story segments adopted wholesale from online iReport submissions. The pervasiveness of iReport references in CNN broadcast transcripts demonstrates the degree of the CNN broadcast component’s reliance on iReporting. To create the numerous transcripts described below (transcripts often contain multiple mentions of iReporting or include multiple iReports), iReports must be referenced on the air multiple times per hour.

CNN RELIANCE ON iREPORT.COM

<table>
<thead>
<tr>
<th>Month</th>
<th>Transcripts Rebroadcasting or Soliciting iReports</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2010</td>
<td>111</td>
</tr>
<tr>
<td>December 2009</td>
<td>51</td>
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<tr>
<td>November 2009</td>
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<td>May 2009</td>
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<td>April 2009</td>
<td>167</td>
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<tr>
<td>March 2009</td>
<td>226</td>
</tr>
<tr>
<td>February 2009</td>
<td>143</td>
</tr>
<tr>
<td>January 2009</td>
<td>119</td>
</tr>
</tbody>
</table>

Although the primary focus of this paper is the CNN iReporting model, it is important to include yet another business model using format integration to decrease news reliance on professionals and increase incorporation of user-generated content. Professional photographers, like professional writers and reporters, are facing increased competition from amateurs and a top-down squeeze on the availability of opportunities and the funds available to compensate content providers. In less than ten years, ad pages have declined 41 percent, and 428 magazines closed altogether in 2009 alone. A reduction in editorial budgets makes user-provided images an attractive option, and amateur photographers are happy to have their photography included and often thrilled to be paid anything at all.

46. The number of transcripts represents the number of broadcast segments (as reported by CNN) in which iReports were mentioned, either by referencing an iReport or iReporter in the story or soliciting viewers to submit an iReport.


48. Id.

49. See id.
Getty Images (a stock-photography company) and Flickr (a photo uploading community) reached a deal in 2008; now Getty photo editors search community members’ uploaded images and attempt to reach license agreements with the individual amateur photographers. The quality of licensed imagery is virtually indistinguishable now from the quality of images they might commission. . . . [T]he price point that the client, or customer, is charged is a fraction of the price point which they would pay for a professional image. The extent of this change is astounding—in 2005, Getty Images licensed 1.4 million photos; in 2009, Getty Images licensed 22 million and all of the growth was through its user-generated business. Does this drastic change in photojournalism represent an early warning sign of how news will be produced in the future? If so, are libel and slander torts mere relics from a time when accuracy was paramount?

III. TRADITIONAL AND EVOLVING LIABILITY FOR NEWS ORGANIZATIONS

Libel and slander torts are valuable both because they protect private and public individuals from damages and also because they promote the socially beneficial interest in accuracy and truth in reporting. These default rules, and not just the market, have prevented large news organizations from causing harm to individuals with inaccuracies. This section provides a brief history of libel and broadcast liability for traditional news organizations and then provides an overview of the evolution of web immunity from tort liability for user-submitted content. Part IV discusses the

50. Id.
51. Id. (internal quotations omitted).
52. Id. Getty Images are used in newspapers and magazines in place of images that once would have been taken by photographers commissioned by the newspaper for each article. See Peter Haskell, The New York Times Begins Charging for Digital Access, CBS NewYork.com (Mar. 28, 2011), http://newyork.cbslocal.com/2011/03/28/the-new-york-times-begins-charging-for-digital-access (using a Getty Image as the main picture for the article); Bill Werde, Media: A Photo Agency’s Partnerships Leave Some Editors Uneasy, N.Y. Times (May 3, 2004), http://www.nytimes.com/2004/05/03/business/media-a-photo-agency-s-partnerships-leave-some-editors-uneasy.html (discussing newspapers using Getty Images for sports photography).

53. For an examination of market failure borne out in one-sided “take it or leave it” terms of use with online intermediaries, see Susan Freiwald, Comparative Institutional Analysis in Cyberspace: The Case of Intermediary Liability for Defamation, 14 Harv. J.L. & Tech. 569, 634–36 (2001).
difficulty of determining liability when these two media platforms converge.

A. Libel and Broadcast Liability

Common law defamation typically requires a showing of a defamatory statement of or concerning the plaintiff, publication to a third party, and damages. Generally, some showing of fault on behalf of the news media organization is required, but negligence will typically suffice. Constitutional law may impose a burden on the plaintiff for additional showings (i.e., “actual malice” based on First Amendment qualified privileges applicable to plaintiff public officials, public figures, or publications about matters of public concern.

For the written word, there were three common law categories of liability. Primary publishers and original authors were subject to the same liability, typically along the lines of the general common law liability discussed above (i.e., strict liability with constitutional limitations moving to a “some fault” or negligence standard over time). The rationale for the identical liability standards for publishers and authors was that publishers not only failed to prevent defamation and damage through lack of supervision and oversight, but, in fact, amplified those damages by widening the audience exposed to the author’s work.

Mere conduits, on the other hand, have relatively little liability for defamation. A telephone company or a system of passive unmonitored web servers has little opportunity to monitor, evaluate, or prevent publication in the course of its regular business practices. “In fact, as common carriers, telephone companies

54. Id. at 582.
55. Id. at 582–83.
56. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 280 (1964). Actual malice under common law requires either knowledge of a statement’s falsity or a reckless disregard for truth. Id.
57. See, e.g., id. (showing an example of a lawsuit involving a public official).
58. Freiwald, supra note 53, at 588.
59. Id. at 588–89.
60. Id. at 588. Freiwald also quotes the Restatement (Second) of Torts justifying publisher liability for radio and television broadcasts: “[T]hey ‘initiate, select and put upon the air their own programs; or by contract they permit others to make use of their facilities to do so, and they cooperate actively in the publication.” Id. at 589.
61. See id.
62. See id.
must provide service to all payers, and so they cannot even try to filter out messages based on their content.”

Distributor liability is a middle ground between publisher/author and mere conduits, requiring a heightened showing of fault to impose liability. Distributors—like booksellers, libraries, and news distributors—typically do not review the actual content of the publications they carry and would not typically evaluate materials for defamatory language through their business practices. Thus, to impose distributor liability, a plaintiff must show proof that the distributor “had knowledge or reason to know it was disseminating defamation.”

As new mediums emerged, broadcast defamation became “an unplanned child of decrepit parents.” However, it is undisputed that a defamation action can be based upon a publication by broadcast. Generally (and especially when read from a prepared script), libel is the most appropriate tort claim for a defamatory statement broadcast by radio or television. What gives claims of libel preference under common law is the perception of its permanence and the power of its potential damage; most courts have found that broadcasting defamatory statements is much closer to the damage envisioned by libel rather than the ephemeral and fleeting damage of slander. Additionally, imputations affecting business, trade, or profession are generally

63. *Id.* (emphasis added).
64. *See id.* at 590.
65. *Id.*
66. *Id.* “‘Reason to know’ has historically arisen, for example, when a disseminator was about to distribute the work of an author who was notorious for scandalous writing.” *Id.*
68. *Id.* § 13(b).
69. *Id.* § 3.
70. *Id.; see also First Indep. Baptist Church v. Southerland, 375 So. 2d 647, 650 (Ala. 1979) (holding that “if the statements which were broadcast were defamatory they would constitute libel”); Mercer v. Cosley, 110 Conn. App. 283 (2008) (holding that reading from a prepared manuscript during a broadcast would constitute libel because the words had been written down). California typically finds defamation by broadcast to be slander but has a strict state law on the subject. *See White v. Valenta, 44 Cal. Rptr. 241 (Ct. App. 1965)* (discussing state law that defines slander as communications by radio). Georgia and Pennsylvania both find defamation by broadcast to be a separate tort, or “defamacast.” *See, e.g., Am. Broad. Paramount Theatres, Inc. v. Simpson, 106 Ga. App. 230 (1999), cert. denied, (Oct. 22, 1999)* (holding that defamatory action against television companies was actionable as a defamacast).
defamation per se and “are actionable without proof of special damage if they affect [the business owner] in a manner that may, as a necessary consequence, or does, as a natural consequence, prevent him from deriving therefrom that pecuniary reward which probably otherwise he might have obtained.”

Companies may also be defamed through references to their products. Companies may also be defamed through references to their products. Because republishers or rebroadcasters are typically liable for third party defamatory words (unless the republication is privileged), rebroadcasters of user-generated content generally are liable and are considered to have “indorse[d]” the content. Moreover, radio stations or broadcast entities can potentially be liable for defamation by accusations of anonymous callers on “Call and Comment” radio programs or television segments. Station owners, writers, announcers, and station managers have all been found liable in specific cases, although sponsors generally have not. Even where there is little opportunity to censor the content, broadcasters assume a risk that their station or platform may be used by others for abusive ends.

The question of where to situate liability for websites and integrated multimedia platforms within these liability categories becomes a difficult one; its beginnings are discussed in Part IV of this article.

71. Ghent, supra note 67, § 9(a).
72. Id. § 12.
73. Id. § 15(a). See, e.g., Windsor Lake, Inc. v. WROK, 236 N.E.2d 913 (Ill. App. Ct. 1968) (noting that it is not a defense for a publisher of a libel to say that he is reporting another’s statement).
75. Ghent, supra note 67, § 2(b).
76. Coffey v. Midland Broad. Co., 8 F. Supp. 889, 890 (W.D. Mo. 1934) (“The owner of a broadcasting station knows that some time some one may misuse his station to libel another. He takes that risk. He too can insure himself against resulting loss.”).
77. Convergence is also a problem under regulatory frameworks. See generally Robert M. Frieden, Universal Service: When Technologies Converge and Regulatory Models Diverge, 13 HARV. J.L. & TECH. 395, 397 (2000) (“Regulatory dichotomies work when categories of technology remain discrete and absolute. However, they do not work when technological convergence results in porous service categories and diversification by providers.”).
B. Politics Makes Strange Roommates: Website Tort Liability under the Communications Decency Act

Two primary cases predate the Communications Decency Act: Cubby, Inc. v. CompuServe, Inc. and Stratton Oakmont, Inc. v. Prodigy Services Co. Cubby, in a nod to the traditional division of liability between publishers and distributors, treated CompuServe as a distributor, thus requiring a higher degree of fault (“knew or should have known”) for liability than for typical publishers. The structure of the CompuServe platform indicated that CompuServe’s link to the offending statements was highly attenuated with little chance for editorial review. Stratton, however, subsequently viewed Prodigy as a publisher because of its monitoring of content generated by third parties. Although the case settled before its final resolution, the court found that “Prodigy’s own policies, technology and staffing decisions . . . altered the scenario [of default distributor liability for online

81. CompuServe is an internet service provider (ISP). See About CompuServe, COMPU SERVE, http://webcenters.netscape.compuserve.com/menu/about.jsp?flc =DC-headnav1 (last visited Mar. 13, 2011) (“CompuServe Interactive Services provides complete and comprehensive products and access for Internet online users at . . .”). An ISP is “[a] business or other organization that offers Internet access, typically for a fee.” BLACK’S LAW DICTIONARY 893 (9th ed. 2009); see also Batzel v. Smith, 333 F.3d 1018, 1029 n.12 (9th Cir. 2003) (“An ISP provides its subscribers with access to the Internet.”).
82. Cubby, 776 F. Supp. at 140. Cubby held that CompuServe was held to the higher standard of “whether it knew or had reason to know of the allegedly defamatory Rumorville statements.” Id. at 141.
83. Id. at 137 (“CompuServe has no opportunity to review Rumorville’s contents before DFA uploads it into CompuServe’s computer banks, from which it is immediately available to approved CIS subscribers.”); see also Freiwald, supra note 53, at 591 (“[T]he company had contracted with a third party to manage the electronic forum on which the statements were made and that third party contracted with yet another party to supply the actual contents.”).
84. Stratton, 1995 WL 323710, at *5 ("Prodigy’s conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe [in Cubby] and other computer networks that make no such choice."); see also Freiwald, supra note 53, at 592 n.100 (“Although Stratton had sued for $200 million in damages, they ultimately settled for an apology from Prodigy . . . .")
bulletin boards] and mandated the finding that it is a publisher.\textsuperscript{85}

Courts thus seemed poised to impose a higher degree of liability on internet service providers (ISPs) that attempted to filter and remove inappropriate or tortious content, producing an anomalous result that provided a disincentive for socially desirable self-monitoring.\textsuperscript{86} As ISPs threatened to leave their services wholly unmonitored to prevent court imposition of the more punishing “publisher liability” standard, Congress intervened with legislation targeted to overturn \textit{Stratton}.\textsuperscript{87} Its solution was the Communications Decency Act (CDA),\textsuperscript{88} which offers protections for “interactive computer service[s].”\textsuperscript{89}

The Act 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.”\textsuperscript{90} The law draws a distinction between information content providers\textsuperscript{91} and interactive computer service providers,\textsuperscript{92} and it essentially refused to create liability for website owners or ISPs for third-party comments.\textsuperscript{93} The law does not bar all causes of action,\textsuperscript{94}

\begin{itemize}
  \item \textsuperscript{85} Stratton, 1995 WL 323710, at *5.
  \item \textsuperscript{86} See Freiwald, supra note 53, at 594; see also Band & Schruers, supra note 78, at 297 (“The \textit{Stratton Oakmont} holding meant that by monitoring its service, an ISP increased its exposure to liability for third party content.”).
  \item \textsuperscript{87} Freiwald, supra note 53, at 596; see also H.R. REP. NO. 104-458, at 194 (1996) (“One of the specific purposes of this section is to overrule \textit{Stratton-Oakmont v. Prodigy} and any other similar decisions . . .”).
  \item \textsuperscript{88} 47 U.S.C. § 230(c)(1) (2006).
  \item \textsuperscript{89} Freiwald, supra note 53, at 594–95. The Communications Decency Act (CDA) defines “interactive computer services” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” 47 U.S.C. § 230(f)(2) (2006). The term “interactive computer services” has been interpreted broadly by courts and includes ISPs. See Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1123 (9th Cir. 2003); Batzel v. Smith, 333 F.3d 1018, 1026–30 (9th Cir. 2003); Zeran v. Am. Online, Inc., 129 F.3d 327, 328–29 (4th Cir. 1997).
  \item \textsuperscript{90} 47 U.S.C. § 230(c)(1) (2006).
  \item \textsuperscript{91} “The term ‘information content provider’ means 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.” Id. § 230(f)(3).
  \item \textsuperscript{92} “[A]ny information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.” Id. § 230(f)(2).
  \item \textsuperscript{93} See Band & Schruers, supra note 78, at 297 (“Section 230, therefore, immunized ISPs from liability as content publishers even if they monitored their service.”).
\end{itemize}
but only those that require treating interactive computer services as the publisher of content supplied by third parties. Nevertheless, it provides broad immunity from tort suits initiated by private plaintiffs, diminishing the ability of parties to sue publishers under the law. The law was criticized as a "one-sided deal" favoring industry repeat players over the amorphous group of potential future defamation plaintiffs.

In Zeran v. America Online, Inc., the first case decided under § 230 of the CDA, the court collapsed the traditional distinctions between publisher and distributor liability under its reading of the statutory immunity provision. By finding that the expression "publisher or speaker" in the statute also encompassed causes of action that require treating the website or ISP as a distributor, Zeran's reading extended the statute's already broad immunity.

The Fourth Circuit affirmed, following the lower court's

95. Id. Many other claims can still be asserted against ISPs. See Michael L. Rustad & Thomas H. Koenig, Rebooting Cybertort Law, 80 WASH. L. REV. 335, 351 (2005) ("Repeat players such as ISPs have no qualms about protecting their rights through Internet lawsuits over intellectual property, tort, and contract rights, all of which are primarily resolved in federal courts.").
96. See Rustad & Koenig, supra note 95, at 370 ("Courts have flatly refused to strip CDA immunity even when the ISP has an active role in creating or distributing the content. As a result of [section] 230, AOL, CompuServe and Prodigy are immunized from publisher's liability so long as third parties create the content.") (footnotes omitted).
97. Freiwald, supra note 53, at 632.
98. See id. at 633; see also Rustad & Koenig, supra note 95 (discussing website immunity from a consumer fraud perspective and arguing that ISPs' and websites' status as repeat players allowed them to drive Congress towards the favorable immunity clause).
99. 129 F.3d 327 (4th Cir. 1997).
100. Band & Schruers, supra note 78, at 297.
101. Emily K. Fritts, Note, Internet Libel and the Communications Decency Act: How the Courts Erroneously Interpreted Congressional Intent with Regard to Liability of Internet Service Providers, 93 KY. L.J. 765, 777 (2004) ("[I]n Zeran the Fourth Circuit mixed distributor liability with publisher liability . . . . Rather than recognizing the distinct categories of 'publisher' and 'distributor' that are a traditional staple of defamation law, the court manipulated the term 'publication' . . . . instead of looking to cases for resolution of the distinction.").
102. See Freiwald, supra note 53, at 638. "It should be immediately clear that the court confused the common law use of 'publication' as a required element of all defamation actions with the term 'publisher,' which is short for 'primary publisher.'" Id.
103. See Band & Schruers, supra note 78, at 297 ("[C]ourts have construed it broadly in a wide range of contexts.").
reasoning.\(^{104}\)

The course for early interpretation of the immunity provision was thus already clear before the subsequent case of *Blumenthal v. Drudge*,\(^ {105}\) involving the claim by the infamous Matt Drudge that Sidney Blumenthal had abused his wife.\(^ {106}\) Drudge made the claim in a newsletter reprinted by America Online (AOL) through a licensing agreement with Drudge.\(^ {107}\) The case against AOL was dismissed through summary judgment by a reluctant court:\(^ {108}\)

If it were writing on a clean slate, this Court would agree with plaintiffs. AOL has certain editorial rights with respect to the content provided by Drudge and disseminated by AOL, including the right to require changes in content and to remove it; and it has affirmatively promoted Drudge as a new source of unverified instant gossip on AOL. Yet it takes no responsibility for any damage he may cause. AOL is not a passive conduit like the telephone company, a common carrier with no control and therefore no responsibility for what is said over the telephone wires. Because it has the right to exercise editorial control over those with whom it contracts and whose words it disseminates, it would seem only fair to hold AOL to the liability standards applied to a publisher or, at least, like a book store owner or library, to the liability standards applied to a distributor. But Congress has made a different policy choice by providing immunity even where the interactive service provider has an active, even aggressive role in making available content prepared by others. In some sort of tacit *quid pro quo* arrangement with the service provider community, Congress has conferred immunity from tort liability as an incentive to Internet service providers to self-policing the Internet for obscenity and other offensive material, even where the self-policing is unsuccessful or not even attempted.\(^ {109}\)

\(^{104}\) Susan Freiwald argues that the Fourth Circuit compounded the misreadings of the lower court, and that its decision represents a mistaken conflation of the previously distinct categories of publisher and distributor liability. *See* Freiwald, *supra* note 53, at 640.


\(^{106}\) *Id.* at 46.

\(^{107}\) *Id.* at 47.

\(^{108}\) *See* Freiwald, *supra* note 53, at 641–42.

\(^{109}\) *Blumenthal*, 992 F. Supp. at 51–52 (citations omitted).
and other cases have further immunized typical editorial functions and publication decisions: “[T]he exclusion of ‘publisher’ liability necessarily precludes liability for exercising the usual prerogative of publishers to choose among proffered material and to edit the material published while retaining its basic form and message.”

This turning point in the evolution of defamation liability for news organizations—broad-based website immunity under the Communications Decency Act in 1996—has coincided with the start of a trend towards format integration that collapses the traditional barriers between the media of television, radio, newsprint, news websites, and news discussion forums into a multi-platform news medium.

Roommates arguably provides a deviation from broad immunity granted under most § 230 case law. The case centers on a roommate-matching website, which typically requires the creation of an account to access advanced features. Users select roommate preferences from a drop-down menu (which included the objectionable material under the Federal Housing Act); users also have free-form answers and nicknames that can contain objectionable material. On appeal, the Ninth Circuit found that the website was not an “information content provider” with regard to the “additional comments” section, but that it was “responsible” for the drop-down questionnaires because it “created or developed” the forms and answers.

110. Batzel v. Smith, 333 F.3d 1018 (9th Cir. 2003).
111. Id. at 1031.
113. See, e.g., Lehrer, supra note 20, at 2 (“Today, we have cable TV pushing past a thousand digital channels . . . . Most important by far, we have the Internet, which really is changing everything. Even cell phones are now a factor in media democracy . . . .”).
115. Smyer, supra note 114, at 826.
116. Id. at 826–28.
117. Roommates, 489 F.3d at 926, 929.
The en banc decision agreed: “Roommate[s] becomes much more than a passive transmitter of information provided by others; it becomes the developer, at least in part, of that information. And § 230 provides immunity only if the interactive computer service does not ‘create[e] or develop[,]’ the information ‘in whole or in part.’”

The filtering and email notification increased the liability for Roommates.com due to its inclusion of discriminatory criteria. Yet no liability inhered in the “Additional Comments” section, with Chief Judge Alex Kozinski concluding that a “simple, generic prompt does not make it a developer of the information posted.”

The “Badbusinessbureau” cases represent the bulk of the few cases in which plaintiffs have prevailed in defamation and similar tort claims against websites or ISPs for user-generated content. In these cases, plaintiffs generally claimed that the role of the website publisher rose to the level of “creation or development,” with one court suggesting that merely being “responsible for the creation or development of the objectionable content is sufficient to impose liability.” “[T]he statute does not require a court to determine only whether a party creates or develops the information at issue. Being responsible for the creation or development . . . is sufficient.” Solicitation of the specific content (or perhaps even of a type of content that is likely to include tortious statements) may suffice to show “responsibility for” the content.

118. Roommates, 521 F.3d at 1166.
119. Smyer, supra note 114 at 831.
120. Roommates, 521 F.3d at 1174.
122. For a table of CDA § 230(c)(1) cases, see the Appendix to Ken S. Myers, Wikimmunity: Fitting the Communications Decency Act to Wikipedia, 20 HARV. J.L. & TECH. 163, 202 (2006). “Courts have avoided granting § 230(c)(1) immunity on the basis of the third prong on only five occasions. In four of the five, the plaintiff alleged ‘creation’ on the part of the defendant.” Id. at 197–98 (citation omitted).
125. Id. at *10. But see Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1124 (9th Cir. 2003) (finding that matchmaker.com did not create or develop content in user profiles merely because its questionnaire prompted users to create
Allegations of creation and development, or vague “responsibility for” the objectionable content, thus represent the frontlines in web immunity battles. Courts have taken several positions on creation or development, and the law in this area is largely unsettled. Many business practices or content presentation formats have yet to be adjudicated.

Before Roommates, there was almost no possibility that under such current law news websites as CNN could be held liable for torts derived from third-party “iReports” uploaded to the website and viewed only online. But there is some indication that the winds are starting to turn against interactive computer service providers who are similarly positioned to CNN; “partially user-generated content poses a more difficult problem” in a post-Roommates legal landscape. Without legislative change, the Roommates ruling would likely need to be extended before it would adequately cover CNN’s relationship with iReporters, but the early beginnings of increased tort liability are clearly visible.

IV. ANALYSIS OF POTENTIAL LIABILITY FOR USER-GENERATED NEWS CONTENT

With an extension and modification of the current law, it would be possible to reach news organizations in defamation torts involving user-generated news content. The two primary avenues for this liability are discussed below: first, via rebroadcast (applicable only to web-submitted content later re-used and re-broadcast on other platforms), and, second, through an extension of website liability under “creation or development.”

126. Myers, supra note 122, at 187–202 (providing descriptions of court positions on creation and development such as: the permissive approach, the broad responsibility approach, and the mutually exclusive approach with deconstructive/narrow sub-interpretations and constructive/broad sub-interpretations).


128. Smyer, supra note 114, at 812.
A. Liability for Format Integration Under Rebroadcast Theories

Liability for defamation for iReports and other user-generated content seems most likely in the iReport rebroadcast context. While this article is not intended to survey cases of defamation by broadcast, there is significant basis in case law for the finding that reports made by iReporters and rebroadcast by CNN could potentially include defamatory content for which CNN would be liable.

There are already numerous high-profile instances of rogue iReporters wreaking havoc. Girls across America grieved as they learned that teen pop star Justin Bieber, an “angel-faced 15-year-old singer,” died in a violent altercation outside a Manhattan nightclub. CNN subsequently removed the iReport, but not before the rumor spread throughout Internet forums, chat rooms, and gossip websites linking to CNN’s iReport page. The rumors persisted until they were adequately rebutted by a good-natured Tweet from the not-dead Bieber himself: “It feels so good to be alive. Haha.”

Although the pseudo-death of a young pop star had few immediate ramifications, CNN iReports have caused disruptions in stock prices. An October 2008 iReport claimed that Steve Jobs suffered a heart attack. Investors were already carefully watching the Apple CEO’s health, and rumors had previously impacted the stock price. Investors ignored the iReport.com “authenticity disclaimer” and connected the report to CNN’s news operation. Although, to paraphrase Mark Twain, the “reports of [Jobs’s] death

129. A brief history is discussed supra Part III.B.
130. See, e.g., Carafano v. Metrosplash.com, Inc., 339 F.3d 1119 (9th Cir. 2003) (concluding Matchmaker did not play a significant role in creating or altering information); Blumenthal v. Drudge, 992 F. Supp. 44, 50 (D.C. Cir. 1998) (indicating AOL would not have been immune had it acted on its own or jointly to create or develop information); Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997) (concluding AOL merely acted as a publisher); Schneider v. Amazon.com, Inc., 31 P.3d 37, 43 (Wash. Ct. App. 2001) (implying potential liability had Amazon helped create the allegedly defamatory information).
132. Id.
133. Id.
135. Id.
136. Id.
were greatly exaggerated.\footnote{137}{Louis J. Budd, \textit{Mark Twain as an American Icon}, in \textit{The Cambridge Companion to Mark Twain} 1, 7 (Forrest G. Robinson ed., Cambridge Univ. Press 1995).} The stock sank to a fifty-two-week low before Apple could deny the accusations.\footnote{138}{Kramer, \textit{supra} note 134.} The Securities and Exchange Commission subsequently contacted CNN.\footnote{139}{\textit{Id.}} CNN’s iReport was “vandalized” again with a report claiming that AT&T CEO Randall Stephenson was “found dead in his multimillion dollar beachfront mansion” with “male dancers everywhere” after a coke binge.\footnote{140}{Dan Frommer, \textit{CNN’s iReport Vandalized Again with False Report Claiming CEO’s Death, Coke Binge}, BUS. INSIDER (July 27, 2009) (internal quotation marks omitted), http://www.businessinsider.com/cnns-ireport-vandalized-again-with-false-report-claiming-ceos-death-2009-7.} The attack was in retaliation for AT&T allegedly blocking a hacker-prankster website, 4chan.com.\footnote{141}{Caroline McCarthy, \textit{AT&T Said to Block 4chan; Pranksters Fight Back}, \textit{The Social CNET News} (July 27, 2009), http://news.cnet.com/8301-13577_3-10296152-36.html.} Although extreme iReport vandalism regarding major CEOs or celebrities is unlikely to go undetected for long and unlikely to be rebroadcast without verification, local iReporters may be able to defame private persons, local politicians, companies, or company products without raising CNN editors’ suspicion.

Two paths exist to target CNN for liability for defamatory iReports under rebroadcasting or republication law. First, a defamed plaintiff could argue that CNN’s iReport.com is the original posting site and that it is the only one of the CNN websites that qualifies fully for CDA immunity under § 230. Under this argument, iReports subsequently selected by CNN for inclusion and publication on CNN.com or another area of the integrated site with CNN-produced content become republished in the act of moving the video from one website to another. Inclusion on CNN.com lends a separate air of legitimacy, and all videos shown on CNN.com are typically “endorsed” by CNN with the logo in the upper left-hand corner.\footnote{142}{See About CNN iReport, \textit{supra} note 26 (“Look for the red ‘CNN iReport’ stamp to see which stories have been vetted for CNN.”).} The cross solicitation and reporting across mediums further serves to prop up the claim that CNN has stepped beyond a mere background editorial role and into a creator/developer position. The success of this argument, however, is predicated upon the interpretation of CNN’s iReport
websites and CNN.com as “separate” sites (serving separate functions) and that the act of editing and reposting is a “republication” outside the typical website editor function for comments on discussion boards, or on an extension of the Roommates line of analysis.

The second path for targeting CNN for liability is through selective rebroadcast in other mediums. For this purpose, iReports would be treated as rebroadcast news segments from local affiliates when primarily factual or when serving a reporting function, but would be treated as letters to the editor or viewer calls on “Call and Comment” shows when primarily opinion. The practice of combing through third-party submissions on iReport.com and selecting iReports for television broadcast is already common.¹⁴³ This act is also explicitly envisioned in the iReport model—through tips on how to get online videos rebroadcast on-air, on-air solicitations, and the disclosures and “Terms of Use” on the website.¹⁴⁴ It is thus no great leap to conclude that developing and rebroadcasting iReports on-air as an integral part of a news-providing profit venture extends the liability to CNN, at least for rebroadcast iReport segments.

B. Website Liability for CNN as Content Creator or Developer

The question of whether § 230(c)(1) immunity is applicable requires a three-prong analysis: (1) is the website a “provider or user” of an interactive service, (2) would the claim require treating the defendant as the “publisher or speaker,” and (3) is the objectionable “information provided by another information content provider”?¹⁴⁵ The third prong is the most commonly litigated, due to the ambiguity and complexity inherent in its terms.¹⁴⁶ “Nearly all non-ISP defendants have successfully argued for ‘interactive computer service’ status,”¹⁴⁷ and the law seems settled that Zeran’s errant conflation of publisher and distributor

¹⁴³. See supra Part II.B.
¹⁴⁴. See, e.g., Terms of Use, supra note 27 (disclosing that, when submitting material, users “grant to CNN and its affiliates a non-exclusive, perpetual, worldwide license to edit, telecast, rerun, reproduce, use, create derivative works from, syndicate, license, print, sublicense, distribute and otherwise exhibit the materials” without payment).
¹⁴⁵. Myers, supra note 122, at 178–203 (discussing the three-prong analysis in detail).
¹⁴⁶. Id. at 187.
¹⁴⁷. Id. at 180.
liability falls within § 230(c)(1) immunity.\(^\text{148}\)

The third prong—"information provided by another information content provider"—raises two potential issues: (1) defining the relevant entity, and (2) creation or development issues. In his analysis of the potential for liability for Wikipedia, Ken S. Myers discusses the entity question, and argues that the "unique relationship" between Wikipedia proper and its inclusive user community creates some difficulty in discerning whether the information has been provided by members of the Wikipedia entity.\(^\text{149}\) Under the least likely view, all contributors may be viewed as part of the Wikipedia collaborative project.\(^\text{150}\) However, courts are somewhat more likely to be compelled by the process of initiating some members as community managers and giving them greater editorial and authorship powers; doing so may make these users part of the Wikipedia entity and their actions may create liability on Wikipedia’s behalf.\(^\text{151}\) Similarly, within the CNN context, community members who achieve special status are more likely to create liability for the news organization.\(^\text{152}\) Although CNN does designate special contributors, whose posts and stories receive the most views or are most frequently placed on air,\(^\text{153}\) it seems unlikely that these designations, without more, would create entity liability for their actions. Unlike Wikipedia, the news community contributors are not given particular content creation or editing authorization for the rest of the community; they are merely featured contributors.\(^\text{154}\)

The second sub-issue under the third prong—the issue of creation or development—is more difficult to resolve because of the unsettled nature of the case law. Under a Roommates analysis,

\(\text{\textsuperscript{148}}\) See supra notes 87–92 and accompanying text.
\(\text{\textsuperscript{149}}\) Myers, supra note 122, at 188–91.
\(\text{\textsuperscript{150}}\) See id. at 189 (discussing the unlikely possibility that a court would treat all contributors to Wikipedia as part of the Wikipedia “entity”).
\(\text{\textsuperscript{151}}\) See id. at 189–91 (hypothesizing that Wikipedia’s class of users termed “sysop,” under which the user has authority to edit protected pages, is analogous to the definition of agency in the Restatement (Third) of Agency § 2.01 (2006), increasing the likelihood of liability for these users’ contributions).
\(\text{\textsuperscript{152}}\) Compare id., with Superstars, CNN iREPORT, http://ireport.cnn.com/people?view=newest (last visited Feb. 27, 2011) (designating some contributors as “Superstars” based on a variety of factors, including members’ contributions, ratings, popularity, and site activity).
\(\text{\textsuperscript{153}}\) See Superstars, supra note 152.
\(\text{\textsuperscript{154}}\) See, e.g., Terms of Use, supra note 27, at § 5, (“CNN does not verify, endorse or otherwise vouch for the contents of any submission . . . .”).
merely advertising a feature and soliciting general comments is likely insufficient to render CNN.com or other websites with online commenting liable for third-party content. But it is important to note that the line between solicitation and creation can blur if newspapers “actively encourage[] and instruct[] a consumer to gather specific detailed information.” In one of the Badbusinessbureau.com cases, for example, the defendant website encouraged consumers to take photographs for inclusion on the defendant’s website, Badbusinessbureau.com; the federal district court found that the active solicitation exceeded a publisher’s role and potentially stepped over the line into creation and development.

These rulings suggest at least some judicial recognition that legislators creating broad immunity under § 230 likely did not anticipate the full shift to web-based or integrated models of content delivery. On CNN, iReporters are given ideas for assignments, tips for creation of the assignments, licensed music for videos, and specific iReporters are sometimes contacted and encouraged to contribute. CNN then endorses specific videos, placing its symbol in the upper left-hand corner of the user-provided content, and utilizes these videos as part of an online business model that is based upon outsourcing news creation to users. CNN arguably is becoming a creator, developer, and publisher of the content rather than merely an aggregator, bulletin board, or passive “meeting site” for third-party users providing their own separate content. Under the right circumstances, courts may be willing to extend the Badbusinessbureau.com or Roommates rationales to CNN or a comparable news site that actively “assigns” stories to citizen journalists, lends its name to or “endorses” the

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158. See id. Mere placement of a watermark on user-generated content, without more, did not create liability, based on a ruling in at least one (pre-Roommates.com) case. See Ramey v. Darkside Prods., Inc., No. 02-730 (GK), 2004 U.S. Dist. LEXIS 10107, at *19–20 (D.D.C. May 17, 2004). However, it seems likely that this “claiming” action could be a useful factor to employ in a content creation or development analysis.
159. See supra Part IV.A (discussing on-air rebroadcast).
content, and co-opts or absorbs the third-party content as part of its business model for news provision. Thus, the more like a “virtual newsroom” iReport.com (and its relationship to CNN.com) becomes, the less likely the website will be included under the broad § 230 immunity. In departing from the “online commenting function” model common to newspaper websites, iReport.com is sailing into uncharted and potentially perilous waters.

V. EXTENDING LIABILITY UNDER AN ADOPTION AND INCORPORATION THEORY

One potential framework for analyzing “creation or development” in converged media is through a multi-factor test under an “adoption and incorporation” theory. Rather than merely providing a platform or forum for users to submit content, these news organizations could be found to be adopting the user-generated work as its own. While mere generalized solicitation (in the form of broad public invitations to contribute) or mere publication would be insufficient to find “creation or development,” courts could more reliably find that the defendant website has developed or is responsible for the offending information by fully incorporating the user contribution into its own content production. The test would require the elements of (1) solicitation and (2) “claiming,” or adoption.

A. Solicitation

A generalized inexplicit public invitation to contribute in broad categories, such as a Craigslist or bulletin board model, would be insufficient to constitute solicitation. Similarly, providing a news story and then an opportunity for debate and discussion—online commenting features used by many newspapers in tandem with newspaper-provided story content—would also be insufficient to constitute solicitation. These are the kinds of forums most appropriate for CDA § 230(c)(1) immunity.

News organizations such as CNN, however, go beyond these vague solicitations in their interactions with iReporters. As discussed above, CNN provides specific prompts (through its virtual Assignment Desk) for desired content, as well as specific contribution invitations to frequent or high-quality contributors.160

160. See Assignment Desk, supra note 30; Superstars, supra note 152.
It provides detailed guides for creating content and tips for inclusion in CNN general news content.\textsuperscript{161} Moreover, CNN provides license-free music or audio clips for content creation to its users.\textsuperscript{162} Factors such as specific prompts, individualized invitations, instructions, and content provision or technical assistance (beyond a means for uploading or publishing purely user-created content) should be considered in finding solicitation.

B. “Claiming” or Adoption

In concert with solicitation, there are several factors that should be considered when deciding whether a website has adopted or claimed user-generated content. Liability for organizations that provide hallmarks of endorsement or approval beyond mere selection for publication are ripe for liability because of the additional credence granted to the user-submitted content and the appearance of adoption and endorsement of the user-generated content. For example, “vetting,” the placement of watermarks or stamping of logos on user-submitted content, and providing special status to certain content generators or specifically recommending their work represent a step beyond the traditional editorial function of publishers who provide only basic screening. Within CNN, the “vetting” and stamping represent that “[t]he content has] been selected and approved by a CNN producer to use on CNN, on air, or any of CNN’s platforms.”\textsuperscript{163} This second-level editing suggests to the users that beyond publishing vast quantities of content, the news organization is taking special responsibility for and claiming certain content for its own profit and use.

The use by the organization for other business purposes or on other platforms provides indicia of a business model that incorporates and profits from the use of “claimed” user-generated content. Reproduction of the stories across sites and on other entity-owned websites is a step beyond mere initial publication; republishing the content on other platforms (broadcast, e-reader, podcasts, radio, etc.) or in tandem with CNN-produced content (commingling iReports and CNN-produced reports on CNN.com, \textsuperscript{161} iReport Toolkit, supra note 33.
\textsuperscript{162} iReport Toolkit: Record the Sound of Your Story, supra note 34.
\textsuperscript{163} CNN iReport FAQ/Help, supra note 157 (follow “What does vetted mean?” hyperlink).
for example) also suggests that the content has been claimed and adopted by CNN or another plaintiff organization.

A final step of claiming is quite literally the rights that the news organization may claim to the user-submitted work, as allocated in the terms of service. CNN creates an agreement with the user, stating that the users have received some vague and undetermined good and valuable consideration, in exchange for which the user grants CNN a nearly limitless perpetual right to alter, edit, change, republish, and reproduce without payment.\footnote{Terms of Use, supra notes 27 and 35 and accompanying text.} Yet the organization’s terms of service with regard to refusal to accept liability should not control; rather, courts should consider the actual policy and practice, as well as the allocation of ownership and use rights within the terms of service. Therefore, a terms of service agreement could indemnify CNN or other news organizations against liability for user-generated work in relationship to its contributors; however, plaintiffs would be able to reach and recover from the most readily available defendant (the news organization), and courts could leave the news organization to resolve internal liability issues with its users and contributors.

VI. CONCLUSION

The extension of liability to organizations is no condemnation of user-submitted news or citizen journalists. It is in fact a recognition of the vital importance of citizen journalists and reflects an understanding that integrated news systems are here to stay. Newsweek’s Howard Fineman wrote, “[W]e should thank destiny or God or whomever or whatever for the unbelievable cacophony in which we exist. Now is the most important time to be a journalist. And my short answer to the question of who is a ‘journalist’ is that we all are journalists.”\footnote{Howard Fineman, Who is a “Journalist”? , 4 FIRST AMENDMENT L. REV. 1, 1–2 (2005) (emphasis added) (providing the keynote address at a First Amendment symposium).}

If we are indeed all journalists, then we all have an additional responsibility to the truth and to our subjects—journalism is not mere theater at which to play. Those who profit from our collective work as citizen journalists, and present it to the public as the “news,” should also bear additional responsibility for the content of the work produced by the organization’s free-labor
reporter corps, in its virtual newsrooms, and through its virtual assignment desks. This brief article has hopefully proposed some paths for attaching that solemn responsibility to those who are actively cultivating the iReport news industry.