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**NOT FOR PUBLICATION**

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Global Royalties, Ltd., et al.,

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No. CV-07-0956-PHX-FJM

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Plaintiffs,

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**ORDER**

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vs.

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Xcentric Ventures, LLC, et al.,

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Defendants.

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In our order of October 10, 2007 (doc. 20), we granted defendants' motion to dismiss with leave for plaintiffs to amend the complaint. Plaintiffs filed an amended complaint (doc. 22) on November 1, 2007. Now the court has before it defendants' motion to dismiss the first amended complaint (doc. 23), plaintiffs' response (doc. 25), and defendants' reply (doc. 27 ex. A). The court also has before it plaintiffs' motion to stay (doc. 28), defendants' response (doc. 29), and plaintiffs' reply (doc. 30). For the following reasons, defendants' motion to dismiss the first amended complaint is granted, and plaintiffs' motion to stay is denied.

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**I**

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This is a defamation action. Plaintiffs ("Global") broker investments in gemstones. Defendants operate a website called Ripoff Report (www.ripoffreport.com), where visitors are invited to post consumer complaints. On March 27, 2006, Ripoff Report visitor Spencer

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1 Sullivan, who is not a party to this action, posted a message on the site referring to Global's  
2 operation as a "scam." Am. Complaint at 3. The amended complaint alleges that consumers  
3 who post on defendants' site "must answer several questions created and developed by  
4 [defendants]." Id. at 4. The complaint gives only one example: When posting on  
5 defendants' site, consumers are required to chose a "category" with which to label their  
6 message. For the first statement, Sullivan chose "Con Artists" from a list. Id. Further,  
7 plaintiffs allege that defendants encourage defamatory postings in order to use them as  
8 leverage "to coerce businesses and individuals to pay for [defendants'] Corporate Advocacy  
9 Program, which purports to provide assistance in investigating and resolving the posted  
10 complaints." Id. at 3.

11 Sullivan posted a second entry on June 8, 2006, which he said was in response to a  
12 threat of legal action from plaintiffs' counsel. Id. at 4. Sullivan wrote that he was not aware  
13 of any bad business practices on the part of Global itself, but that two individuals "involved  
14 with" Global had treated him dishonorably and had engaged in criminal acts. Id. Sullivan  
15 added that anyone looking to invest in gemstones should first call the Royal Canadian  
16 Mounted Police, Commercial Crime Unit.

17 Sullivan posted a third and final entry about Global on June 16, 2006. He again  
18 claimed that he had been "threatened" by plaintiffs' counsel, who advised him to discontinue  
19 the postings. Id. at 4-5. His message ends, "I think that any upstanding commercial  
20 operation could bear the scrutiny of a crime unit without any issue." Id. at 5. At some point,  
21 Sullivan allegedly contacted defendants and asked that his entries be removed from the  
22 website, but defendants refused. Id.

## 23 II

24 In our order of October 10, 2007, dismissing the original complaint, we concluded  
25 that plaintiffs' defamation action was barred by the Communications Decency Act ("CDA"),  
26 47 U.S.C. §§ 230, 560-61. At common law, publishers are liable along with authors for  
27 defamatory content. The CDA immunizes website operators ("providers of an interactive  
28 computer service") by exempting them from the publisher role:

1 No provider or user of an interactive computer service shall be treated as the  
2 publisher or speaker of any information provided by another information  
3 content provider.

4 47 U.S.C. § 230(c)(1). Defendants contend that the allegations of the amended complaint  
5 still do not overcome CDA immunity.

### 6 III

7 Plaintiffs contend that CDA immunity does not protect defendants because they failed  
8 to remove the defamatory content after Sullivan, the author, asked them to do so. They rely  
9 principally on Batzel v. Smith, 333 F.3d 1018 (9th Cir. 2003). In Batzel, an individual sent  
10 a defamatory e-mail to a private organization that added the contents to its website. Id. at  
11 1021–22. The author of the message claimed that he never intended its publication on the  
12 internet. In addressing the impact on the website operator’s liability, the court turned to the  
13 statute. Under 230(c)(1), a website operator is not treated as the publisher or speaker “of any  
14 information *provided* by another information content provider.” (emphasis added). The court  
15 concluded that “provided” means “provided for publication,” so a website operator cannot  
16 disclaim liability for content that the author never intended to post. Id. at 1034. Here,  
17 plaintiffs acknowledge that Sullivan initially provided his statements for publication. But  
18 they contend that once Sullivan requested their removal, the statements were no longer  
19 “provided for publication,” and defendants’ CDA immunity ceased at that point.

20 However, in Batzel, the court did not interpret “provided” as an ongoing process.  
21 The focus was on expectations regarding communications when they are made. The court  
22 was concerned that technology users would be discouraged from sending e-mails if website  
23 operators have no incentive to evaluate whether the content they receive is meant to be  
24 broadcast over the internet or kept private. Id. There are no similar concerns in this action;  
25 Sullivan obviously meant his messages to appear on the website. Whether website operators  
26 have a duty to withdraw content when an author later changes his mind is another  
27 question—one that is not addressed by Batzel.

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1           The most analogous cases address whether CDA immunity continues to protect  
2 a website operator who is on notice that a posting is potentially defamatory. It is well  
3 established that it does. Universal Commc'n Sys., Inc. v. Lycos, 478 F.3d 413, 420 (1st Cir.  
4 2007). In light of Congress' goals to encourage development of the internet and to prevent  
5 the threat of liability from stifling free expression, CDA immunity has been interpreted very  
6 broadly. Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122–23 (9th Cir. 2003).  
7 Website-operator liability based on notice has been rejected, because each “notification  
8 would require a careful yet rapid investigation of the circumstances surrounding the posted  
9 information, a legal judgment concerning the information's defamatory character, and an on-  
10 the-spot editorial decision whether to risk liability by allowing continued publication.”  
11 Zeran v. America Online, Inc., 129 F.3d 327, 333 (4th Cir. 1997). The sheer number of  
12 internet postings, perhaps combined with the anonymity of many contributors, makes this  
13 unworkable for website operators, and the incentive would be simply to remove all  
14 questionable content. See id.

15           Plaintiffs contend that the same difficulties are not presented when the author of the  
16 defamatory content himself requests that it be taken down. The situation does present fewer  
17 problems. However, as defendants point out, any time anyone *purporting* to be the author  
18 of particular content requested retraction, website operators would still have an incentive to  
19 simply remove the speech, rather than “conduct an investigation to determine (if possible)  
20 whether or not the person making the request was the [actual] author and then make an  
21 editorial decision on whether to continue publication.” Defendants' Reply at 4.

22           We conclude that liability based on an author's notice, workable or not, is without  
23 statutory support and is contrary to well-settled precedent that the CDA is a complete bar  
24 to suit against a website operator for its “exercise of a publisher's traditional editorial  
25 functions—such as deciding whether to publish, withdraw, postpone or alter content.” Zeran,  
26 129 F.3d at 330. The United States Court of Appeals for the Ninth Circuit has contrasted the  
27 CDA with the Digital Millennium Copyright Act, which, “unlike the [CDA], provides  
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1 specific notice, take-down, and put-back procedures,” and has suggested that it is up to  
2 Congress to provide similar procedures for the CDA. Batzel, 333 F.3d at 1031 n.19.

#### 3 IV

4 The CDA immunizes website operators from liability for content provided “by  
5 *another* information content provider.” 47 U.S.C. § 230(c)(1) (emphasis added). Plaintiffs’  
6 next contend that defendants themselves constitute an “information content provider” with  
7 respect to the posted content. If that is so, the CDA does not protect them. Batzel, 333 F.3d  
8 at 1031.

9 An “information content provider” is defined as “any person or entity that is  
10 responsible, in whole or in part, for the creation or development of [the content].” 47 U.S.C.  
11 § 230(f)(3). Plaintiffs allege only the most minor participation by defendants in actually  
12 composing the allegedly defamatory postings: Defendants provided a list of categories  
13 from which Sullivan selected the title “Con Artists” for his post. As in our order dismissing  
14 the original complaint, we conclude that this participation is insufficient as a matter of law  
15 to make defendants information content providers with respect to the postings. See Batzel,  
16 333 F.3d at 1035 (“[A] central purpose of the [CDA] was to protect from liability some  
17 service providers and users who take some affirmative steps to edit the material posted.”).

18 However, plaintiffs have another theory. They allege that defendants use Ripoff  
19 Report messages as leverage to coerce targeted businesses to pay for defendants’ Corporate  
20 Advocacy Program, which purports to help investigate and resolve posted consumer  
21 complaints. Essentially, plaintiffs allege that defendants encourage defamatory postings  
22 from others for their own financial gain and, therefore, are partly responsible for the  
23 “creation or development” of the messages.

24 It is obvious that a website entitled Ripoff Report encourages the publication of  
25 defamatory content.<sup>1</sup> However, there is no authority for the proposition that this makes the

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28 <sup>1</sup> Here we use “defamatory” in the strict sense of tending to harm one’s reputation  
regardless of truth or falsity. See Dan B. Dobbs, The Law of Torts §§ 401, 403 (2000).

1 website operator responsible, in whole or in part, for the “creation or development” of every  
2 post on the site. Essentially, that is plaintiffs’ position. After all, plaintiffs have not  
3 alleged that defendants solicited Sullivan’s postings in particular, or that they specifically  
4 solicited any postings targeting Global. Nor have they alleged that defendants altered  
5 Sullivan’s comments, or had any more than the most passive involvement (providing a  
6 list of possible titles) in composing them.

7 Unless Congress amends the statute, it is legally (although perhaps not ethically)  
8 beside the point whether defendants refuse to remove the material, or how they might use it  
9 to their advantage. Through the CDA, “Congress granted most Internet services immunity  
10 from liability for publishing false or defamatory material so long as the information was  
11 provided by another party.” Carafano, 339 F.3d at 1122. Here, the material was  
12 unequivocally provided by another party.

13 In their responsive memorandum, plaintiffs rely on Fair Housing Council of San  
14 Fernando Valley v. Roommates.com, LLC, 489 F.3d 921 (9th Cir. 2007), reh’g granted, 506  
15 F.3d 716 (9th Cir. 2007). As the case is scheduled for an en banc rehearing, that opinion  
16 currently cannot be cited as precedent. Believing that Fair Housing is analogous to this  
17 action, plaintiffs have filed a motion to stay until the Ninth Circuit issues its en banc opinion.  
18 We reject that suggestion. There is no reason for this action to remain on our docket until  
19 another court issues an opinion which may or may not be binding, or even persuasive, on  
20 these issues. Plaintiffs may always appeal from this court’s judgment.

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For the foregoing reasons, **IT IS HEREBY ORDERED GRANTING** defendants’ motion to dismiss the amended complaint (doc. 23) and **FURTHER ORDERED** denying plaintiffs’ motion to stay (doc. 28). The clerk is instructed to enter final judgment for defendants.

DATED this 28<sup>th</sup> day of February, 2008.

*Frederick J. Martone*  
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Frederick J. Martone  
United States District Judge