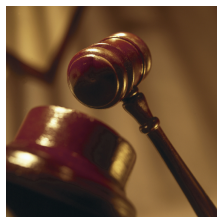


29 June 2009

By: Lucian Constantin, Web News Editor



Anti-malware
companies protected
from lawsuits
Kansas Association of
Realtors

[Content-Filtering Companies Granted Immunity from Lawsuits](#)

Court upholds decision that filtering vendors can't be held liable for blacklisted content

The 9th U.S. Circuit Court of Appeals has [ruled](#) (PDF) that companies providing content-filtering software, such as antivirus vendors, are protected from liability, under the Communications Decency Act of 1996. The decision comes in the case of Zango vs. Kaspersky, but the court expresses concern that, in a more general context, the current form of this law might open doors to abuse.

Back in 1997, in one of the industry's first lawsuits of this kind, adware developer Zango sued antivirus vendor Kaspersky for blacklisting its browser toolbar. The court ruled that Kaspersky was protected from liability under the Communications Decency Act, which grants such immunity to "interactive computer services" that filter content for the benefit of the users.

Zango appealed the decision, claiming that the Act was meant to only protect Internet service providers and not companies that developed access tools with content-filtering abilities, such as Kaspersky. Therefore, Zango maintains that such software developers cannot be granted "good samaritan" immunity.

That claim has now been settled by a panel of three judges in the 9th U.S. Circuit Court of Appeals, who have concluded that, "A provider of access tools that filter, screen, allow, or disallow content that a provider or user considers obscene, lewd, lascivious, filthy, or excessively violent, harassing or otherwise objectionable is protected from liability."

The court has explained that the status defines an "interactive computer service" as being "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server." According to the court, content-filtering and antivirus software are covered by this definition because they use update servers, which get accessed by clients in order to download definitions or blacklists.

However, the court has also called for Congress to review and clarify the status, because "Extending immunity beyond the facts of this case could pose serious problems if providers of blocking software were to be given free license to unilaterally block the dissemination of material by content providers under the literal terms [of the law]."

Eric L. Howes, director of malware research at Sunbelt Software, one of the companies that signed a friend-of-the-court (amici curiae) [brief](#) (PDF) filed in support of Kaspersky, [comments](#) that, "No anti-malware vendor can afford to promiscuously or arbitrarily block and remove content that their users actually want installed on their PCs."

He explains that, "The performance and detections of anti-malware software are simply under too much daily scrutiny from users, industry experts, testers, competitors, adware vendors, and, yes, malware developers and hackers themselves for unnoticed blocking to occur for any length of time."