

## **Crabtree Published an OpEd Piece on Concern for Internet Regulation**

### **Houston Chronicle**

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[Travis Crabtree](#) published an OpEd in the Houston Chronicle on the recent "poll" posted on Facebook that asked users whether President Obama should be assassinated?.

Travis Crabtree brings a unique perspective to his internet marketing, online media and commercial litigation practice. Travis graduated from the University of Missouri School of Journalism and spent several years in television news before taking on a law career. Travis explores the emerging legal issues and trends for internet marketing and online media on his blog, eMediaLaw.com, which you can visit by clicking here. In addition, Travis represents plaintiffs and defendants in complex business matters including cases involving defamation, open records issues, antitrust, RICO, the False Claims Act, shareholder derivatives, minority shareholder oppression, corporate officer/director fiduciary cases, partnership disputes, trade secrets, the DTPA, the UCC, employment and class actions in both state and federal court. He provides advice and counsel to clients at all stages of conflict from avoiding disputes, to alternative dispute resolution, trials and appeals.

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### **Don't Let Abuses Stifle Innovation on Web**

*By Travis Crabtree, Gray Reed & McGraw  
Houston Chronicle*

As you have probably heard by now, a poll on the social networking Web site Facebook just recently asked whether President Barack Obama should be killed. The available answers were "Yes," "No," "Maybe," or "Yes if he cuts my health care." Facebook removed the poll and blamed the debacle on third-party developers. The Secret Service found a juvenile responsible, and no charges were filed.

Should you post a poll on Facebook or other Web sites asking people to vote whether they want to see the president assassinated? Of course not. It's the sort of hateful behavior that contributes to a poisonous, perhaps even dangerous, atmosphere. But should there be a law against it? No. You cannot legislate against being a bitter idiot. And aside from that, no specific threat was made in this case.

The real question, then, is should incidents such as this be used as an excuse to further regulate the Internet?

Here, the answer for now should be "no."

True, there are victims when the World Wide Web is abused, sometimes with tragic results. Thirteen-year-old Megan Meier of Missouri was told by someone she thought was her male friend on My-Space she was so unlikable she should take her own life. Megan did. The "boy" was actually the mother of Megan's rival.

As the father of a young daughter, I know Web safety is a new area of grave concern for parents and the like. But as a lawyer, I also know legislation or heavy-handed regulation is not the answer.

Of course, the authors of the First Amendment could not envision Facebook. Nevertheless, that same amendment to our Constitution guarantees our right to even the most distasteful of speech in today's debate over health care, immigration policies and other hot-button issues.

Indeed, rather than regulating all speech on the Internet, Congress passed the Communications Decency Act in 1996, which featured a political quid pro quo whereby Internet service providers agreed to allow Congress to pass restrictions dealing with access to pornography by minors in exchange for a "safe harbor" granting Web sites immunity for content posted by others.

The pornography measures were eventually struck down as unconstitutional, but the safe harbor provision remains.

Specifically, section 230 of that legislation states: "No 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."

This includes Facebook and other social sites. But, it also includes all of the other Web sites that allow for user-generated content like Amazon, EBay, CNet, Citysearch and TripAdvisor.

These protections are broader than those provided to traditional newspapers such as this one that can be liable for "republishing" defamatory statements. The Web is given additional protections to encourage entrepreneurs to invest in the emerging technology. Many lawsuits against Web sites are efficiently dismissed at the outset.

Think of it this way: If Web site operators were sued each time a defamatory statement was posted online at Google, Yahoo, Facebook, MySpace, Twitter, YouTube, Craigslist, Angie's List, or this paper's online version, would they be here? The Web would be stuck back in the mid-1990s with nothing but static corporate Web sites selling Beanie Babies.

The political left will flood the talk shows to say how preposterous the Facebook poll was and demand new laws. Political pandering is not the answer. Last year, for example, one Kentucky state legislator, from the right, suggested we make all anonymous posting illegal.

Instead of making bad law as a result of bad cases, patience should prevail. Existing laws and the marketplace will handle out-of-bounds conduct. Assume someone at Starbuck's suddenly asked everyone whether President

Obama should be assassinated. The caffeine-deficient patron has done nothing worse than the Facebook poll creator - only his audience is smaller. The Secret Service is investigating whether the law has been broken and could likewise raid the Starbucks if there was a threat on the president's life.

Although the wheels of justice and the market grind slowly, they do grind. Criminal proceedings are being brought for unlawful online activity using existing laws that do not infringe free speech rights. Civil courts require Web sites to reveal the identities of anonymous posters only after showing the speech goes beyond what is protected by the First Amendment.

The law has never been able to keep up with technology. At the same time, the law should not get in the way of technology. Legislation will merely stifle innovations - innovations we all enjoy. Because of market dominance and the oppressive enforcement of intellectual property rights, the days of software and application developments coming out of one man's garage could be coming to an end.

Despite this most recent - and heinous - transgression on Facebook, let's not allow the law to do the same thing to social media and Web discourse, too.