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amazon was not the seller of the headlamp and therefore did not have liability for its defective condition. It also held that Amazon was immune from suit under the Communications Decency Act, or CDA, a federal law protecting internet intermediaries in the online publication of a third-party's information.

#### Analysis

Erie argues that the CDA does not apply, positing that if its claims "sought to hold Amazon liable for a misrepresentation made by Dream Light in its Amazon advertisement, then the Communications Decency Act might apply." But, it notes, its claims were "based, not on ... internet content, but on Amazon's own affirmative actions as a seller (or distributor) of products. ... The Communications Decency Act does not insulate Amazon from liability for its own tortious acts and seller warranties."

To implicate the immunity of § 230(c)(1), a claim must be based on the interactive computer service provider's publication of a third party's speech. The products liability claims asserted by Erie in this case are not based on the publication of another's speech. The underpinning of Erie's claims is its contention that Amazon was the seller of the headlamp and therefore was liable as the seller of a defective product. Accordingly, we reverse the district court's ruling applying the Communications Decency Act's immunity to this case.

On the merits, Erie contends that Amazon is a seller of products and therefore is liable under Maryland law for the defective products that it sells. While it acknowledges that the document evidencing the transaction in this case indicated that Dream Light was the seller, it argues that Amazon, through its fulfillment services program, took so much control over the transaction that it effectively became the seller.

In this case, no one has presented evidence to dispute that when Dream Light shipped its headlamp to Amazon's warehouse in Virginia, it was the owner of the headlamp. And when it transferred possession of the headlamp to Amazon, without Amazon's payment of the headlamp's price or an agreement transferring title to it, Amazon did not, by that simple transfer, receive title.

Indeed, even as Amazon possessed the headlamp in its warehouse, Dream Light set the price for the sale of the product to purchasers, designed the product description for the website, paid Amazon for its fulfillment services and ultimately received the purchase price paid by the purchaser. In these circumstances Dream Light was the seller. Moreover, the agreement between Dream Light and Amazon governing their relationship confirms this, as it repeatedly specifies and contemplates that Dream Light, not Amazon, retained title to the goods it stored in Amazon's warehouses as part of the fulfillment program. We conclude that Amazon was not, in this particular transaction, a seller — one who transfers ownership of property for a price — and therefore does not have the liability under Maryland law that sellers of goods have.

Affirmed in part, reversed in part.

#### Concurring opinion

Motz, C.J., concurring:

I concur fully in the court's opinion rejecting Erie's claims that Amazon is a "seller" under Maryland law. I write separately to emphasize why this may not always be so.

*Erie Insurance Co. v. Amazon.com Inc.*,

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### Tort

#### Amazon was not a 'seller' of allegedly defective product

Although the allegedly defective product was shipped to Amazon's warehouse before being shipped to the customer, because title to the product was never transferred to Amazon, and all other evidence indicated another party remained the seller, Amazon could not be held liable for the allegedly defective product under legal theories applicable only to sellers.

#### Background

Trung Cao of Maryland purchased a headlamp on Amazon's website and then gave it to friends as a gift. The headlamp's batteries apparently malfunctioned, igniting the friends' house and causing over \$300,000 in damages. Erie Insurance Company, which insured the house, paid the loss and now, as subrogee, is pursuing this action to obtain reimbursement from Amazon for negligence, breach of warranty and strict liability in tort, arguing that Amazon has liability under Maryland law because it was the "seller" of the headlamp.

The district court granted summary judgment to Amazon, concluding that Am-

*Appeal No. 18-1198, May 22, 2019. 4th Cir. (Niemeyer), from DMD. at Greenbelt (Titus). John Kerry Weston for Appellant, William Brendan Murphy for Appellee. VLW No. 019-2-147, 20 pp.*