
IN THE SUPREME COURT OF CALIFORNIA

DAWN HASSELL, *ET AL.*

Plaintiffs-Respondents,

v.

AVA BIRD,

YELP, INC.,

SUPREME COURT

FILED

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Defendant,

Deputy

Appellant.

Appeal from a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A143233
Superior Court of the County of San Francisco
Case No. CGC-13-530525, The Honorable Ernest H. Goldsmith

**APPLICATION OF AIRBNB, INC., AUTOMATTIC INC.,
CRAIGSLIST, INC., FACEBOOK, INC.,
IAC/INTERACTIVECORP, REDDIT, INC., SNAP INC.,
PINTEREST, INC., THUMBSTACK, INC., TWITTER, INC.,
AND YAHOO! INC. FOR LEAVE TO FILE AS AMICI
CURIAE AND BRIEF AS AMICI CURIAE IN SUPPORT OF
APPELLANT**

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APPLICATION FOR LEAVE TO FILE AS AMICI CURIAE

Pursuant to California Rule of Court 8.520(f), Airbnb, Inc., Automattic Inc., craigslist, Inc., Facebook, Inc., IAC/InterActiveCorp, Pinterest, Inc., Reddit Inc., Snap Inc., Thumbtack, Inc., Twitter, Inc., and Yahoo! Inc. (collectively “Amici”) request leave to file the attached brief as amici curiae urging reversal.

Airbnb, Inc. (“Airbnb”) provides an Internet platform through which persons desiring to book accommodations, and persons listing unique accommodations available for rental, can locate each other and enter into direct agreements with each other to reserve and book travel accommodations on a short- and long-term basis. Airbnb’s North American headquarters are located in San Francisco, CA.

Automattic Inc. (“Automattic”) is a company with a singular mission: make the web a better place. All of Automattic’s products and services are designed to democratize online publishing so that anyone with a story can tell it. Automattic is best known for WordPress.com. WordPress.com allows anyone, from bloggers, to photographers, plumbers, doctors and restaurant owners, to easily create a website on the web platform that powers more thoughts,

musings and businesses than any other in the world. Automattic's headquarters are in San Francisco, CA.

craigslist, Inc. ("craigslist") provides online classifieds worldwide, where hundreds of millions of people have found jobs, housing, goods, services, personal connections, and local community information. craigslist is headquartered in San Francisco, CA.

Facebook, Inc. ("Facebook") provides a free Internet-based social media service that enables more than 1.8 billion people to share and make the world more open and connected. People use Facebook to stay connected with friends and family, to discover what is going on in the world, and to express what matters to them. Facebook's headquarters are located in Menlo Park, CA.

IAC/InterActiveCorp ("IAC") is a diversified online media company with more than 150 brands and products. IAC's businesses are leaders in numerous sectors of the Internet economy. Many of these businesses, including Match.com, OkCupid, Ask.com, The Daily Beast, and Vimeo, provide users with the ability to post, search for, and/or view a wide variety of user-generated content. IAC's family of websites receive more than 2.5 billion visits each month from users in over 200 countries.

Pinterest, Inc. (“Pinterest”) is an online platform that allows users to discover, save, and share ideas that they love. Pinterest’s 175 million global users save images, articles, recipes, and other ideas (each known as a “Pin”) from across the Internet and organize them in themed collections called “boards.” A board may relate to an infinite variety of topics based on a given user’s interests. As users browse the Internet, including the more than 100 billion Pins available on Pinterest, they can add the content they find to their own boards, and they can follow the Pinterest users and boards they find most interesting, useful, or inspiring. Pinterest thus provides a way for people to express themselves, engage with others who share their interests, and discover new ideas. Pinterest’s headquarters are located in San Francisco, CA.

Reddit, Inc. (“Reddit”) operates the [reddit.com](https://www.reddit.com) platform, which is a collection of thousands of online communities attracting over 270 million monthly unique visitors that create, read, join, discuss, and vote on conversations across a myriad of topics. Reddit is based in San Francisco, California.

Snap Inc. (“Snap”) is a camera company whose products empower people to express themselves, live in the moment, learn

about the world, and have fun together. Snap's first product, Snapchat, is one of the world's leading camera applications. More than 150 million people use Snapchat each day to capture images and send messages. Snap is based in Venice, CA.

Thumbtack, Inc. ("Thumbtack") is a local services marketplace platform where customers can find service professionals in more than 1,000 categories, and professionals can find customers whose project matches their skills. Thumbtack has more than 250,000 active service professional users in the U.S. and helps facilitate millions of projects per year. Customer reviews of service professionals are a critical part of trust on the platform. Thumbtack's headquarters are in San Francisco, CA.

Twitter, Inc. ("Twitter") operates a global platform for self-expression and communication, with the mission of giving everyone the power to create and share ideas and information instantly. Twitter's more than 300 million active monthly users use the platform to connect with others, express ideas, and discover new information. Hundreds of millions of short messages (known as "Tweets") are posted on Twitter every day. Twitter has headquarters in San Francisco, California.

Yahoo! Inc. (“Yahoo”) is a guide to digital information discovery, focused on informing, connecting, and entertaining users through its search, communications, and digital content products. By creating highly personalized experiences, Yahoo helps users discover the information that matters most to them around the world—on mobile or desktop. Yahoo connects advertisers with target audiences through a streamlined advertising technology stack that combines the power of Yahoo's data, content, and technology. Yahoo is headquartered in Sunnyvale, California.

Amici have a substantial interest in the legal rules governing whether providers of interactive computer services may be enjoined from hosting third-party content on their platforms without notice or right to be heard. Since they serve as platforms for communication among billions of users, amici have been and will continue to be immune from the burdens of litigation under Section 230 of the Communications Decency Act, 47 U.S.C. § 230 (“Section 230”). The success of amici’s businesses—and the vitality of online free speech that these businesses support—depends on their being able to host myriad types of content, including content that others may find objectionable, while being shielded from the risks, burdens, and

uncertainty of lawsuits that seek to hold them responsible for content originated by their users or other third parties. Amici, as distributors of speech, also have an interest in defending the missions of their platforms and the integrity of their editorial processes against alteration by a court order issued without the benefit of an adversarial proceeding.

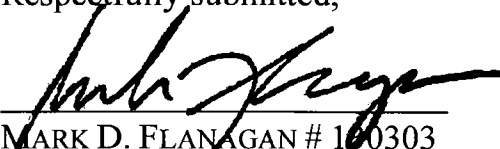
In particular, amici rely on the settled interpretation of Section 230 granting broad immunity to online intermediaries from litigation concerning third-party content. The breadth and robustness of this immunity has been recognized for more than twenty years by courts across the country, including this one, and the Court of Appeal's decision threatens to erode this settled interpretation. If allowed to stand, the decision would contravene Congress's policy choices and undermine a law that has been crucial to the growth and success of the Internet, and has become a prerequisite for the provision of services upon which the public has come to rely.¹

¹ Pursuant to California Rule of Court 8.520(f)(4), counsel certify that this brief was authored solely by attorneys for amici curiae; no party contributed either to the authorship or the financing of the time spent on the brief or the out-of-pocket expenses connected with the filing.

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BRIEF FOR AMICI CURIAE SUPPORTING APPELLANT

Each day, billions of individuals use amici's platforms to speak on every conceivable topic—from the presidential election in America, to an attempted coup in Turkey; from rumors about who the biggest celebrities are dating, to accusations that a captain of industry has engaged in sexual harassment; from snapshots from a picture-perfect vacation, to sharply critical reviews of hotels and restaurants; and from the announcement of the birth of a child, to an obituary about the passing of a loved one. Posts on these and so many other topics excite, inform, inspire, entertain, educate—and sometimes offend, enrage, and provoke.

Amici's platforms and tools enable modern communication. Unsurprisingly, amici receive thousands of requests every day seeking removal of content on their platforms. Requesters seek to block speech because they disagree with or do not like it or because they contend it is threatening, obscene, fraudulent, or, as in the present case, defamatory. To preserve the richness and diversity of speech on their platforms, amici typically avoid removing content without first determining it violates the community standards they have adopted.

Although amici are not parties to this case, each has a vital stake in the proper resolution of two key questions of federal law that the Court of Appeal decided, and which directly impact both amici's platforms and users' speech on those platforms: (1) whether Section 230 permits a plaintiff to circumvent the protections that the statute provides by electing to sue only the speaker while obtaining a broad nonparty injunction against the interactive computer service provider hosting the speech; and (2) whether the Due Process Clause and the First Amendment guarantee an interactive computer service provider the right to notice and an opportunity to be heard before being ordered to remove content from its platform.

The Court of Appeal's opinion in *Hassell* should be reversed because it erroneously applies a narrow construction of Section 230 immunity that conflicts with the plain meaning of the statute and radically departs from a large, unanimous, and settled body of federal and state court precedent—including published decisions from this Court, the California Courts of Appeal, and the Ninth Circuit. Disregarding the many appellate court decisions that have broadly and correctly construed the reach of Section 230's protections, the court

below entered an injunctive order against Yelp that imposed obligations entirely inconsistent with Section 230.

The *Hassell* decision should be reversed also because it purports to allow courts to deprive interactive computer service providers of their First Amendment rights and applicable immunities without the minimal procedural protections long required by the United States Supreme Court under the Due Process Clause. Long-settled U.S. Supreme Court precedent prohibits such deprivation without notice and an opportunity to be heard, without a court having made any finding of liability against the service provider, and solely on the basis of factual determinations made in a non-adversarial, default judgment proceeding.

If left standing, the Court of Appeal's decision would provide a dangerous roadmap for plaintiffs to evade Section 230 and silence valuable and protected speech on the Internet without meaningful procedural protections. The misguided opinion should be reversed in its entirety.

SUMMARY OF ARGUMENT

Amici urge this Court to reverse the Court of Appeal's decision on Section 230 as well as due process grounds. The Section 230

holding alone, if not reversed, would threaten to eviscerate the protections of Section 230.

Section 230(c)(1) commands that interactive computer service providers like amici should not be treated as the publisher or speaker of any content created by third parties that is transmitted through their services, subject to a few narrow exceptions not applicable here. Every court to address Section 230 has concluded that its mandate precludes courts from issuing an injunction ordering a service provider to remove defamatory third-party content. The Court of Appeal nonetheless upheld an injunction doing exactly that: ordering Yelp to remove reviews created by two users from its website that a trial court had found defamatory following a default proceeding. The Court of Appeal's decision was premised on the erroneous conclusion that Section 230 bars such an injunction only when the platforms are named as defendants in the suit. That conclusion deviates from the text of the statute and well-established federal and state precedent holding that Section 230 broadly prohibits Internet service providers from being treated as the publishers of third-party content and shields them from the burdens of litigation over that content. And it grossly contravenes Section 230's framework—which requires parties to seek

relief from the users who create allegedly tortious content, rather than from the online platforms that host that content.

The Court of Appeal further erred by upholding an injunction against Yelp that was issued after a default proceeding to which Yelp was not a party and of which Yelp had no advance notice. To this day, Yelp has *never* been afforded a hearing at which it could challenge Hassell's assertion that the speech at issue in this case is defamatory. Moreover, the court explicitly rejected the principle that Yelp has a First Amendment right to distribute speech authored by others, wrongly claiming that Yelp acted as only the administrator of a forum, not as the distributor of the content at issue, and further wrongly concluding that such an administrator lacks any First Amendment rights in speech carried on that forum. Because Yelp's own First Amendment rights as a distributor in fact were at stake, the Due Process Clause prohibited the lower courts from imposing an injunction on Yelp without notice and an opportunity to be heard.

The Court of Appeal's decision would provide a dangerous roadmap for those who object to online speech to accomplish indirectly what Section 230 prevents them from accomplishing directly: holding Internet platforms responsible for allegedly

defamatory third-party content posted on their sites. The specter of such liability and litigation would undermine the growth and development of free expression on the Internet—the very free expression that Congress sought to promote. The court’s decision frustrates congressional intent, contradicts precedent, violates due process, and should be overturned.

ARGUMENT

I. THE COURT OF APPEAL ADOPTED AN IMPERMISSIBLY NARROW INTERPRETATION OF SECTION 230 IMMUNITY

A. Section 230 Shields Internet Providers From The Burdens Of Any Litigation That Treats Them As Publishers Of Third-Party Content

Section 230(c)(1) issues a sweeping command to state and federal courts: “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.” (47 U.S.C. § 230(c)(1).) Another provision of the statute further provides: “No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” (*Id.* § 230(e)(3).) Given the expansive reach of this language and the important interests at stake (*see infra* pp. 32-37), courts across the country have consistently—and for more than two decades—“treated

§ 230(c) immunity as quite robust.” (*Carafano v. Metrosplash.com, Inc.* (9th Cir. 2003) 339 F.3d 1119, 1123; *see also Barrett v. Rosenthal* (2006) 40 Cal. 4th 33, 56 [“The provisions of section 230(c)(1), conferring broad immunity on Internet intermediaries, are themselves a strong demonstration of legislative commitment to the value of maintaining a free market for online expression.”]; *Zeran v. America Online Inc.* (4th Cir. 1997) 129 F.3d 327.)

Because Section 230(c)(1) prohibits “treat[ing]” any provider of interactive computer services as the “publisher” of third-party content, the statute bars courts from requiring a service provider to perform any “traditional editorial function” with respect to such content. (*Barrett v. Rosenthal, supra*, 40 Cal. 4th at p. 64.) That includes the traditional editorial function of “remov[ing]” or not removing “user generated content.” (*Doe No. 14 v. Internet Brands, Inc.* (9th Cir. 2016) 824 F.3d 846, 852; *see also Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC* (9th Cir. 2008) (en banc) 521 F.3d 1157, 1170-1171 (hereafter *Roommates.com*) [Section 230(c)(1) precludes courts from imposing on service providers a duty to perform “any activity that can be boiled down to deciding whether

to exclude material that third parties seek to post online.”]; *Doe II v. MySpace, Inc.* (2009) 175 Cal. App. 4th 561, 572-573.)¹

In particular, courts in California and across the country uniformly have read Section 230 as prohibiting courts from issuing an injunction ordering interactive computer service providers to remove third-party content from their platforms. (E.g., *Kathleen R. v. City of Livermore* (2001) 87 Cal. App. 4th 684, 692, 697-698.) As one court explained in dismissing claims for declaratory and injunctive relief, “[a]n action to force a website to *remove* content on the sole basis that the content is defamatory is necessarily *treating the website as a publisher*, and is therefore inconsistent with [S]ection 230.” (*Medytox Solutions, Inc. v. Investorshub.com, Inc.* (Fla. Dist. Ct. App. 2014) 152 So. 3d 727, 729, 730-731, italics added.) The court of appeal in *Kathleen R.* recognized, moreover, that a request for injunctive relief “contravenes [S]ection 230’s stated purpose of promoting unfettered development of the Internet no less than damages claims.” (87 Cal. App. 4th at pp. 692, 697-698; see also *Ben Ezra, Weinstein, & Co. v.*

¹ Section 230 includes a few narrow exceptions not applicable to Hassell’s defamation claim. See 47 U.S.C. § 230(e)(1) (federal criminal prosecution); *id.* § 230(e)(2) (intellectual property law); *id.* § 230(e)(4) (federal Electronic Communications Privacy Act and similar state law).

America Online Inc. (10th Cir. 2000) 206 F.3d 980; *Noah v. AOL Time Warner* (E.D. Va. 2003) 261 F. Supp. 2d 532, 538-539; *Optinrealbig.com, LLC v. Ironport Sys., Inc.* (N.D. Cal. 2004) 323 F. Supp. 2d 1037, 1047; *Giordano v. Romeo* (Fla. Dist. Ct. App. 2011) 76 So. 3d 1100, 1102.)

Breaking from this consensus, the Court of Appeal read Section 230 narrowly, holding that issuing an injunction against Yelp to remove third-party content was consistent with Section 230 because, in its view, such enforcement “does not impose any liability on Yelp.” (Op. 29.) This conclusion is wrong for three reasons.

First, the Court of Appeal improperly treated subsection 230(e)(3) as the sole source of immunity under Section 230. It read subsection 230(e)(3)’s reference to “liability” as limiting the scope of Section 230’s immunity to the party against whom judgment is entered. (See 47 U.S.C. § 230(e)(3) [providing, in part, that “no liability may be imposed under any State or local law that is inconsistent with this section”].) This reading misconstrues not only subsection 230(e)(3) (*see infra* pp. 13-14), but also the entire framework of Section 230 immunity. Section 230’s immunity derives not from subsection 230(e)(3)’s express preemption provision alone.

It derives also from subsection 230(c)(1), which independently prohibits “treat[ing]” interactive computer service providers as the “publishers” of third-party content. Courts, including this Court, have recognized that *subsection 230(c)(1)* provides the primary source of immunity under the statute. The Ninth Circuit, for example, has explained that “**Section 230(c)(1)** ... provide[s] webhost ‘immunity[.]’ ... We have characterized this immunity under § **230(c)(1)** as ‘quite robust.’” (*Roommates.com, supra*, 521 F.3d at p. 1179, emphases added, quoting *Carafano v. Metrosplash.com, Inc., supra*, 339 F.3d at p. 1123.). And in *Barrett*, this Court described the statute similarly: “**Section 230(c)(1)** provides immunity from claims by those offended by an online publication.” (*Barrett v. Rosenthal, supra*, 40 Cal. 4th at p. 49, emphasis added.)

There is further statutory evidence that Section 230(c)(1) is a separate source of immunity. Because subsection 230(e)(3) refers only to “State or local law,” an immunity that derived only from that provision could not possibly apply to federal claims. Every court to consider the question, however, has applied Section 230 to both state *and* federal claims. (E.g., *Roommates.com, supra*, 521 F.3d at pp. 1170-1171 [applying section 230 to claims under the federal Fair

Housing Act]; *Jane Doe No. 1 v. Backpage.com, LLC* (1st Cir. 2016) 817 F.3d 12, 21 [federal Trafficking Victims Protection Reauthorization Act]; *Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.* (7th Cir. 2008) 519 F.3d 666, 670-671 [Fair Housing Act].) Those decisions plainly are correct, as confirmed by several exceptions that Congress included in Section 230 for certain federal laws, which presume *a fortiori* that the statute generally covers federal claims. (See 47 U.S.C. § 230(e)(1) [federal criminal prosecutions]; *id.* § 230(e)(2) [intellectual property laws]; *id.* § 230(e)(4) [federal Electronic Communications Privacy Act].) The only provision from which this immunity against federal claims could derive is subsection 230(c)(1).

Subsection 230(c)(1), in short, provides immunity to interactive computer service providers. And the injunction entered against Yelp clearly violates subsection 230(c)(1)'s command not to "treat" any provider of interactive computer services as the "publisher" of third-party content. Courts have adopted a "capacious conception of what it means to treat a website operator as the publisher or speaker of information provided by a third party," in keeping with the "broad construction accorded to section 230 as a whole." (*Jane Doe No. 1 v.*

Backpage.com, LLC, supra, 817 F.3d at p. 19.) Here, such a capacious conception is not even necessary: As noted earlier, “removing content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove.” (*Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1103.)

Respondents’ argument (at 38-39) that the injunction does not treat Yelp as a publisher because it simply “prohibits Yelp from continuing to be the conduit through which Bird violates her injunction” is without merit. The Ninth Circuit’s opinion in *Barnes v. Yahoo! Inc.* is instructive. In that case, the Ninth Circuit explained that “what matters” in the Section 230 analysis is “whether the duty that the plaintiff alleges the defendant violated derives from the defendant’s status or conduct as a ‘publisher or speaker.’ If it does, section 230(c)(1) precludes liability.” (*Id.* at pp. 1101-1102.) The court went on to hold that Barnes’s negligent undertaking claim was barred by Section 230 because the “duty that Barnes claims Yahoo violated derives from Yahoo’s conduct as a publisher,” namely, Yahoo’s decision not to de-publish certain third-party content. (*Id.* at 1103.) Similarly, “prohibit[ing] Yelp from continuing to be the

conduit through which Bird violates her injunction” imposes a duty on Yelp that derives from its conduct as a publisher—its decisions not to de-publish certain third-party content—and therefore is inconsistent with Section 230.

Second, even if the sole source of immunity under Section 230 were subsection 230(e)(3) (and it is plainly not), the Court of Appeal’s decision would still be wrong. As an initial matter, an order directing Yelp to remove reviews *does* impose liability on Yelp (Op. 17): It imposes on Yelp a legal obligation to remove posts from its site that is enforceable through contempt proceedings. (*See, e.g., Black’s Law Dictionary* 1053 (10th ed. 2014) [defining “liability” as the “condition of being legally obligated” or the “legal responsibility to another or to society, enforceable by civil remedy or criminal punishment.”].)

Further, subsection 230(e)(3) not only prohibits the imposition of “liability,” but it also mandates that “[n]o *cause of action* may be brought ... under any State or local law that is inconsistent with this section” (italics added). Section 230 therefore protects Internet service providers “not merely from ultimate liability, but [also] from having to fight costly and protracted legal battles.” (*Roommates.com, supra*, 521 F.3d at pp. 1174-1175.) Beyond adverse final judgments,

in other words, the statute shields Internet service providers “*from the burdens of litigation.*” (*Ben Ezra, Weinstein, & Co. v. American Online, Inc.* (D.N.M. July 16, 1998, No. 97-485) 1998 WL 896459, at *2, italics added; *see also Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.* (4th Cir. 2009) 591 F.3d 250, 254-255; *Jones v. Dirty World Entm’t* (6th Cir. 2014) 755 F.3d 398, 417.) The Court of Appeal thus also erred because enjoining Yelp and exposing it to the threat of a contempt proceeding saddle Yelp with the very burdens of litigation Section 230 was designed to eliminate. Indeed, the enforcement of the injunction against Yelp *has* imposed on it a costly and protracted legal battle, beginning with its motion to quash in the trial court and continuing through the Court of Appeal and, ultimately, the present appeal.

Third, the Court of Appeal’s decision conflicts with Section 230’s fundamental purpose. Section 230 advances a national policy of promoting the continued growth of the Internet “unfettered” by state or federal law. (47 U.S.C. § 230(b)). Congress weighed the costs and benefits of allowing government to press online intermediaries into service to remove harmful content from their platforms. Congress determined that the Internet had “flourished” and

become an incredibly valuable “forum” for a diverse array of expression because of “*a minimum of government regulation.*” (47 U.S.C. § 230(a)(3), (4), italics added; *see also Barrett v. Rosenthal, supra*, 40 Cal. 4th at pp. 42 n.6, 56 [relying on congressional findings and statements of purpose in construing scope of Section 230].) Wary of squelching online expression, Congress barred States and the federal government from forcibly enlisting online intermediaries to root out content that the government deems harmful, and instead steered plaintiffs and policymakers to focus their efforts exclusively on the individuals who originally created that content. (*See Barrett v. Rosenthal, supra*, 40 Cal. 4th at p. 40 “[P]laintiffs who contend they were defamed in an Internet posting may only seek recovery from the original source of the statement.”]; *M.A. ex rel. P.K. v. Village Voice Media Holdings, LLC* (E.D. Mo. 2011) 809 F. Supp. 2d 1041, 1055 [“Congress has decided that the parties to be punished and deterred are not the [I]nternet service providers but rather are those who created and posted the illegal material[.]”].)

Yet that is exactly what Respondents and the courts below sought to do by enjoining Yelp: They attempted to use government regulation to require Yelp to remove content. Respondents

themselves explain in their brief to this Court that they requested an order enjoining Yelp because “if Bird refused to comply with the requested injunction, the only way to remove the posts would be a court order requiring Yelp to do so.” (Hassell Br. 8.) The Court of Appeal noted that “Hassell requested that the injunction contain a provision requiring Yelp to remove the defamatory reviews in the event that Bird failed to do so, which was likely[.]” (Op. 5.) And the record does not reflect any effort by Hassell to require *Bird* to comply with the judgment, such as through a contempt proceeding. Instead, immediately after the trial court issued the injunction against Yelp, Hassell urged non-party Yelp to comply with the trial court’s order “in light of the fact[] that Bird had refused to comply with the judgment.” (Op. 7.) These attempts to deputize Yelp to carry out the court’s judgment flatly conflict with Congress’s considered policy judgment that commandeering Internet service providers in this way would impose too great a cost to free speech.

B. This Court Should Reach, And Overturn, The Court Of Appeal’s Section 230 Holding

Beyond its grave error in misconstruing Section 230, the Court of Appeal further erred in upholding a procedure (or rather a lack of procedure) that violates Yelp’s rights under the Due Process Clause,

as explained below and in Yelp's briefs to this Court. Amici strongly believe that the Court of Appeal's due process analysis was wrong and that it should be reversed. (*See infra* pp. 21-32.) Amici are concerned, however, that a decision reversing the Court of Appeal on due process grounds alone would be a pyrrhic victory for the critically important free speech interests Congress enacted Section 230 to protect. Amici therefore urge this Court to overturn the Court of Appeal's erroneous Section 230 ruling, rather than deciding only the due process issues presented by this appeal.

When Congress enacted Section 230 “[i]nteractive computer services ha[d] millions of users.” (*Zeran v. American Online, Inc., supra*, 129 F.3d at p. 331.) That number has now risen into the billions, due in no small part to Section 230 itself enabling U.S.-based online platforms to flourish. Many of those platforms are here in California. Given the “staggering” amount of information communicated by these platforms’ users, Congress recognized that even the “specter” of litigation over “each message republished by their services” might induce “interactive computer service providers ... to severely restrict the number and type of messages posted.” (*Ibid.*) “Congress considered the weight of the speech interests

implicated and chose to immunize service providers to avoid any such restrictive effect.” (*Ibid.*)

As noted above, the sheer volume of litigation that interactive computer service providers might face, combined with the chilling effect that that litigation would cause, led Congress to immunize service providers not only from liability but also “from having to fight costly and protracted legal battles” over user-created content. (*Roommates.com, supra*, 521 F.3d at pp. 1174-1175.) Merely reversing the Court of Appeal’s due process holding, while upholding (or even not addressing) the Court of Appeal’s Section 230 ruling, could unleash precisely the flood of litigation Section 230 is intended to avoid. Each time a default judgment is entered against a user of an interactive computer service provider’s services, the provider would face a Hobson’s choice: either remove user-generated content, even prior to the crucible of adversarial litigation, or “face death by ten thousand duck-bites, fighting off claims” in scores upon scores of due process hearings. (*Id.* at p. 1174.) Foisting such a choice on interactive computer service providers would “cut the heart out of [S]ection 230.” (*Ibid.*) Only by reaching the Section 230 issue and

reversing the ruling of the court below can such an outcome be avoided.

Beyond the imperative to preserve Section 230's design, fundamental tenets of judicial decisionmaking further counsel in favor of reaching the Section 230 issue. *First*, it is a “well-established principle that this Court will not decide constitutional questions where other grounds are available and dispositive of the issues of the case.” (*Santa Clara Cty. Local Trans. Auth. v. Guardino* (1995) 11 Cal. 4th 220, 230, quoting *Palermo v. Stockton Theaters, Inc.* (1948) 32 Cal. 2d 53, 66; *see also Ashwander v. Tennessee Valley Auth.* (1936) 297 U.S. 288, 347; *Harvey v. Brewer* (9th Cir. 2010) 605 F.3d 1067, 1078.) This principle is “itself an application of the larger concept of judicial self-restraint, succinctly stated in the rule that ‘we do not reach constitutional questions unless absolutely required to do so to dispose of the matter before us.’” (*Santa Clara Cty. Local Trans. Auth. v. Guardino, supra*, 11 Cal. 4th at p. 230, quoting *People v. Williams* (1976) 16 Cal. 3d 663, 667.) Here, reversing the Court of Appeal on Section 230 grounds would dispose of this case and avoid the need to reach the constitutional due process question.

Second, judicial efficiency weighs in favor of deciding the case on Section 230 grounds. Where reversing on only one of two issues would afford complete relief, courts “first decide the issue which would afford complete relief.” (*United States v. \$405,089.23 U.S. Currency* (9th Cir. 1994) 33 F.3d 1210, 1215, *rev’d on other grounds sub nom. United States v. Ursery* (1996) 518 U.S. 267.) Reversing the Court of Appeal’s decision on only Due Process grounds would entitle Yelp to a hearing when this case is remanded to the trial court. By contrast, reaching and deciding the Section 230 question will afford the parties complete relief and bring this case to an end. Amici urge this Court to decide the issues presented in a way that brings this litigation to a swift and proper resolution.²

² Reversing on only Section 230 grounds, however, would not provide complete relief in all cases that might follow *Hassell’s* lead. For example, a plaintiff could sue the author of online content for copyright infringement—a claim that falls within Section 230’s intellectual property exception, 47 U.S.C. § 230(e)(2)—and seek an injunction against the interactive computer service provider who published the allegedly infringing content. In such a case, the interactive computer service provider could not vindicate its rights without the protection of the Due Process Clause. Amici therefore urge this Court to overturn the Court of Appeals on both Section 230 and Due Process grounds.

II. THE COURT OF APPEAL UPHELD A PROCEDURE THAT VIOLATES YELP'S RIGHTS UNDER THE DUE PROCESS CLAUSE AND THE FIRST AMENDMENT

A. The Due Process Clause Requires That Yelp Have Notice And An Opportunity To Be Heard Prior To Deprivation Of Its First Amendment Rights

The Court of Appeal compounded its error in stripping Yelp of its statutory immunity by also permitting Hassell to deprive Yelp of its First Amendment rights through gamesmanship, rather than the fundamental procedures ordinarily required by the Due Process Clause—notice and an opportunity to be heard. Yelp was purposefully given *no advance notice* that the trial court was considering entering an injunction against it. Hassell sued Bird for defamation, not naming Yelp as a defendant because she knew that Section 230 barred such defamation claims against Yelp. (*See* A00837.) Hassell then sent Yelp a copy of the Complaint—which did not demand that Yelp remove the defamatory statement and so provided no hint of the relief that Hassell ultimately would seek. (*See* A00013 ¶¶ 58-60.) And when Hassell first requested that the injunction be enforced against Yelp, she again provided Yelp with no notice. (*See* A00051 ¶ 6.) Not once before the trial court issued its order was Yelp informed of the possibility that it might be enjoined.

Nor was Yelp *ever* afforded a hearing at which to challenge the default judgment's treatment of the speech as defamatory. Yelp obviously could not have obtained such a hearing before the injunction issued, since it had received no advance notice. But to this day, Yelp still has been given no hearing to challenge the premises on which the injunction is based. Instead, the Court of Appeal authorized the trial court to order removal of content based entirely on the result of an *uncontested, ex parte* hearing, held after Bird failed to appear. Such procedural short-cuts flatly contradict the Supreme Court's admonition in *Freedman v. Maryland* that "because only a judicial determination *in an adversary proceeding* ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint." (*Freedman v. Maryland* (1965) 380 U.S. 51, 58, italics added, internal quotation marks omitted.)

The Court of Appeal justified these inadequate procedures, in part, based on an erroneous view that only the author of a review, and not Yelp as well, has a First Amendment interest in keeping a consumer's review online. According to the Court of Appeal, Yelp is but "the administrator of the forum that Bird utilized to publish her

defamatory reviews.” (Op. 22.) This crabbed reading of the First Amendment is wrong. Much like a bookseller, a newsstand, or a movie theater, Yelp and amici have their own First Amendment rights to distribute content through their platforms that is independent of the First Amendment rights of the original content-creators. (See *Freedman v. Maryland* (1965) 380 U.S. 51; *Marcus v. Search Warrants* (1961) 367 U.S. 717; see also *Smith v. People of the State of California* (1959) 361 U.S. 147, 152-155; *Zhang v. Baidu.com Inc.* (S.D.N.Y. 2014) 10 F. Supp. 3d 433 [finding First Amendment right in publishing search results]; *Search King Inc. v. Google Tech., Inc.* (W.D. Ok. May 7, 2003, No. 02-1457-M) 2003 WL 21464568 [same]; *Langdon v. Google, Inc.* (D. Del. 2007) 474 F. Supp. 2d 622 [same].) These rights are distinct from the First Amendment rights of the content-creators like Bird, and are not extinguished by a finding in litigation brought solely against the content-creator that the content at issue is false and defamatory. To the contrary, because of the importance of such rights, the United States Supreme Court has held that distributors cannot be permanently deprived of this right to distribute speech without distributors-themselves being given notice and an opportunity to be heard. (See *Freedman v. Maryland, supra*,

380 U.S. at p. 58 [“[B]ecause only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint.”]; *Marcus v. Search Warrants*, *supra*, 367 U.S. at pp. 731-732 [finding due process violation where newsstands were afforded “no opportunity ... to argue against the propriety of the seizure [of publications] to the issuing judge”].)

The significance of Yelp’s independent First Amendment rights cannot be overstated. Like many online platforms, Yelp has a unique and strong interest in creating and preserving a vibrant forum where strong views (both positive and negative) can be freely shared. Yelp shapes the expression that emerges from that forum by maintaining rules about what content may be posted on its platform that Yelp enforces by, among other means, removing content that violates the rules. And Yelp highlights and aggregates content on the platform using algorithms it designed to present as much helpful information to the public in as user-friendly a form as possible. These curatorial and editorial choices place Yelp itself squarely within the heartland of the First Amendment.

Indeed, an online platform, like Yelp, often is the party best-positioned to defend its own and the public's strong interest in preserving speech. As the Supreme Court recognized in *Freedman*, for some individuals, "it may prove too burdensome to seek review" of a determination that content is objectionable since the "stake in any one [communication] may be insufficient to warrant a protracted and onerous course of litigation." (*Freedman v. Maryland, supra*, 380 U.S. at p. 59.) In such circumstances, Yelp's interest in maintaining the overall integrity of its platform likely gives it an even stronger incentive to defend speech than the original speaker. In addition, where anonymous or pseudonymous online speech is at issue, there is a significant risk in a default proceeding that a plaintiff could—either innocently or in bad faith (*see infra* Part III)—target the speech of persons other than the named defendant. If the defendant is not the speaker, the defendant will have no reason to defend the speech.³

Where that is the case, the online platform may be the only bulwark

³ This case exemplifies that risk. The reviews written by "J.D." have never been tied in any meaningful way to Bird. (*See* Op. 3 ["Hassell believed that Bird was 'J.D.' because Hassell never represented a client with the initials J.D., and because the February 2013 review was posted shortly after the January 2013 review and used similar language."].) Yet, the Court of Appeals held that Yelp lacked standing to challenge that aspect of the trial court's ruling. (Op. 25-26).

against content being removed without any adjudication of its legality in any contested proceeding.

The First Amendment interests at stake are especially strong where, as here, consumer reviews are involved. Such reviews nearly always contain opinion speech—the heart of First Amendment-protected speech. (*See Partington v. Bugliosi* (1995) 56 F.3d 1147, 1152-1153, citing *Milkovich v. Lorain Journal Co.* (1990) 498 U.S. 1). The distinction between statements of fact and opinion “frequently is a difficult one,” (*Gregory v. McDonnell Douglas Corp.* (1976) 17 Cal. 3d 596, 601), and one not suited to quick and cursory decisions. This is especially true in the context of online consumer reviews, which may be written from a mobile phone in the midst of a negative experience. (*See ibid.* [“[W]here potentially defamatory statements are published ... in a[] setting in which the audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole, language which generally might be considered as statements of fact may well assume the character of statements of opinion.”].) Extra care must be taken in this important and sensitive arena not to authorize procedures that risk running roughshod over core First Amendment values.

B. The Narrow Exception For Binding Non-Parties To Injunctions Does Not Apply Here

To justify depriving Yelp of the most basic procedural protections, the Court of Appeal pointed to an exception permitting injunctions to run to persons “acting in concert with the enjoined party.” (Op. 19, internal quotation marks omitted.) The Court of Appeal’s application of this exception to Yelp without any actual determination that Yelp acted in concert with two of its tens of millions of users radically expands the exception far beyond its heretofore narrow boundaries. Its approach should be rejected.

In general, courts “may not grant an ... injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to the law.” (*Regal Knitwear Co. v. NLRB* (1945) 324 U.S. 9, 13; see also *Taylor v. Sturgill* (2008) 128 S. Ct. 2161, 2166-2167, quoting *Hansberry v. Lee* (1940) 311 U.S. 32, 40 [“It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.”]).⁴

⁴ While the federal cases discussed in this section arise under the Federal Rules of Civil Procedure (particularly Rule 65(d)(2)(C)), they

Courts have recognized a narrow exception to this rule, however, that allows an injunction to bind a non-party “identified with [the defendants] in interest, in ‘privity’ with them, represented by them[,] or subject to their control.” (*Regal Knitwear Co. v. NLRB, supra*, 324 U.S. at p. 14; *see also id.* at pp. 14-15 [this exception applies to “[s]uccessors and assigns ... [serving as] instrumentalities through which defendant seeks to evade an order or ... persons in active concert or participation with them in the violation of an injunction.”].)

Given the extraordinary due process costs of depriving a party of its own day in court, courts have applied this exception *only* in the most limited circumstances: where there is actual evidence and a determination that the enjoined party and nonparty acted together to evade the injunction, or where the enjoined party and nonparty have a particularly close relationship. (*See Ross v. Superior Court* (1977) 19 Cal. 3d 899, 906-910 [finding enforcement of injunction issued in action against California Department of Health and Welfare against County Board of Supervisors consistent with due process because

raise fundamental issues of fairness that are universally applicable and are rooted in principles of Due Process. (*See Institute of Cetacean Research v. Sea Shepherd Conservation Soc’y* (9th Cir. 2014) 774 F.3d 935, 953; *National Spiritual Assembly of Baha’is of U.S. Under Hereditary Guardianship, Inc. v. National Spiritual Assembly of Baha’is of U.S., Inc.* (7th Cir. 2010) 628 F.3d 837, 840-841.)

Department of Health and County Board, by statute, had a principal-agent relationship]; *Ex Parte Lennon* (1897) 166 U.S. 548 [employee properly subject to injunction issued against employer]; *cf. Taylor v. Sturgill, supra*, 128 S. Ct. at p. 893-895 [describing categories of narrow exceptions to the rule against nonparty claim preclusion].) And courts have refused to apply the exception where such evidence is lacking. For example, the court of appeal has held that non-parties could *not* be bound by an injunction, notwithstanding their actual notice of the injunction, where there was no evidence the non-parties “acted together with or on behalf of parties enjoined.” (*Planned Parenthood Golden Gate v. Garibaldi* (2003) 107 Cal. App. 4th 345, 358, italics added.) Similarly, the court found insufficient evidence to bind a non-party to an injunction where there was no evidence of non-parties’ “membership in, or affiliation with, any enjoined organization or person,” “a connection between [an enjoined organization]” and the non-parties, or that non-parties “were playing ... ‘shell games.’” (*People v. Conrad* (1997) 55 Cal. App. 4th 896, 904; *cf. Taylor v. Sturgill, supra*, 128 S. Ct. at 2178-2179 [no basis for nonparty claim preclusion where there is “no indication that [non-party] agreed to be bound by [party’s] suit, that [non-party and party] have any legal

relationship, that [non-party] exercised any control over [party's] suit, ... that [non-party] was adequately represented in [party's suit,] ... [or that] nonparty ... has brought suit as a representative or agent of a party who is bound by the prior adjudication.”.)

The rationale for enforcing an injunction against a non-party in those few instances simply does not apply in this case. As with other rules of “privity,” the exception at issue here assumes that the non-party is so closely aligned with the party that unsuccessfully challenged the injunction that “it would be reasonable to conclude that [the non-party's] rights and interests ha[d] been represented and adjudicated in the original injunction proceeding.” (See *National Spiritual Assembly of Baha'is of U.S. Under Hereditary Guardianship, Inc. v. National Spiritual Assembly of Baha'is of U.S., Inc.*, *supra*, 628 F.3d at 849, quoting Wright et al., *Federal Practice and Procedure* § 2956, at 340-341 (2d ed. 1995).) That assumption plainly does not hold true in the case of interactive computer service providers and their millions of users—who, as explained above (pp. 22-26), have meaningfully distinct First Amendment rights and interests in the speech distributed through the service provider's platform. (See also *Blockowicz v. Williams* (7th Cir. 2010) 630 F.3d

563 [holding that websites were not acting in concert with users who posted defamatory comments].)

Courts have, as they must, exercised great care in determining privity. And with good reason: once that finding has been made, the non-party cannot collaterally attack the underlying judgment. “The respondent may only deny any knowledge of the decree, or that his act was within it. The unlawfulness of his conduct has been determined, and, if he has not been a party and has had no day in court, he is condemned without hearing.” (*See Alemite Mfg. Corp. v. Staff* (2d Cir. 1930) 42 F.2d 832, 833.) The need to narrowly constrain this exception is especially great in this case to reduce the immense due process and First Amendment costs of this deficient procedure. This exception to the ordinary requirements of Due Process cannot justify restraining speech without affording an intermediary advance notice or *any* opportunity to challenge factual determinations made in an *uncontested* hearing. (*See also Zenith Radio Corp. v. Hazeltine Research, Inc.* (1969) 395 U.S. 100, 112 [finding it “error to enter the injunction against” a non-party where court made determination that non-party acted in concert with defendant in a proceeding to which non-party was not a party].) The Court of Appeal’s astonishing

expansion of what had previously been an exceedingly narrow exception to due process creates a grave threat to freedom of speech on the Internet. It must be rejected.

III. IF UPHELD, THE COURT OF APPEAL'S DECISION WOULD HAVE FAR-REACHING NEGATIVE EFFECTS ON AMICI AND OTHER PROVIDERS OF INTERACTIVE COMPUTER SERVICES

The Court of Appeal's decision is not only incorrect but also threatens to smother the robust marketplace of ideas on the Internet and cripple the growth and innovation of the Internet industry. If both the court's Section 230 and Due Process Clause holdings were upheld, then Yelp and amici would be forced to remove potentially huge amounts of third-party content that has never been defended in a contested proceeding, or absorb the costs of being held in contempt. The situation would be nearly as bad if this Court were to reverse the Court of Appeal on Due Process grounds but leave the Section 230 decision undisturbed; then Yelp and amici would again and again face the choice between removing any content that a user deems objectionable or bearing the costs of defending the content's lawfulness. (See *supra* pp. 16-19). Either result would directly contravene Congress's express purpose in enacting Section 230: "to encourage the unfettered and unregulated development of free speech

on the Internet.” (*Batzel v. Smith* (9th Cir. 2003) 333 F.3d 1018, 1027; *see also Barnes v. Yahoo!, Inc.*, *supra*, 570 F.3d at p. 1099, quoting *Carafano v. Metrosplash.com, Inc.*, *supra*, 339 F.3d at p. 1122 [Section 230 is designed “to promote the free exchange of information and ideas over the Internet...”]; *Zeran v. American Online, Inc.*, *supra*, 129 F.3d at p. 331 [“The specter of tort liability in an area of such prolific speech would have an obvious chilling effect.”].) To avoid these unacceptable results, this Court should overturn the decision below in its entirety.

Particularly troubling to amici, the Court of Appeal’s decision creates a roadmap that could empower those who object to online speech to accomplish indirectly what Section 230 prevents objectors from accomplishing directly:

- Step One:** Sue the content-creator for defamation in California state court. Do not name the interactive computer service provider hosting the content.
- Step Two:** When the content-creator fails to appear—as they so often do—apply for entry of a default judgment. Do not notify the host about the application for default judgment, as the host might actually contest the underlying facts.
- Step Three:** Obtain a default judgment based on a wholly one-sided presentation about why the objected-to

speech is false and defamatory or otherwise unprotected.

Step Four: Obtain an injunction ordering removal of the objected-to speech that names not only the content-creator, but also the host. Serve the injunction on the host who is now powerless to contest whether the speech is in fact defamatory.

Presto—a court-blessed technique to eviscerate Section 230. Countless claims that courts previously have held to be barred by Section 230 could be refashioned as actions against the original speaker and, under the Court of Appeal’s reasoning, seek the enforcement of injunctions to remove content against non-party providers. This is not mere speculation. At least two interactive computer service providers have already begun receiving demand letters citing the Court of Appeal’s decision as grounds for demanding that they remove reviews and other content deemed objectionable. (*See Amicus Letter of Google, Inc.*, at 3 (Aug. 10, 2016); *Amicus Letter of Glassdoor, Inc.*, at 2 (Aug. 15, 2016).)

This roadmap, moreover, could be expanded through the use of fraudulently obtained court orders. A variety of fraudulent methods can be used to obtain a court order finding online content defamatory. A complainant might perform insufficient service on the actual author of the content—or sue a fictitious person falsely alleged to be the

author of the content—and then receive a default judgment. Or a complainant might entirely fabricate a court document.

This, too, is not mere speculation. Since October 2016, Eugene Volokh and Paul Levy have reported on dozens of court orders with “suspicious profile[s]” that had been submitted to Google and other Internet platforms in support of requests to remove material. These suspicious cases come from all over the country, including California, Florida, Illinois, Maryland, Nevada, Pennsylvania, and Texas. (*See Volokh & Levy, Opinion, Dozens of Suspicious Court Cases, With Missing Defendants, Aim At Getting Web Pages Taken Down Or Deindexed*, Wash. Post, Oct. 10, 2016.⁵)

Just last month, the owner of several “reputation management companies” agreed to settle a claim brought by a company whose posts were targeted for deindexing by one of these orders. This settlement followed a decision by a federal judge that the relevant order was procured through fraud on the court. (Volokh, *Opinion, Apparently-Fake-Defendant Libel Lawsuit Watch: Richard Ruddle & SEO Profile Defender Network LLC Paying \$71,000 to Settle Claim*,

⁵ https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/10/10/dozens-of-suspicious-court-cases-with-missing-defendants-aim-at-getting-web-pages-taken-down-or-deindexed/?utm_term=.33a893cec8b9.

Wash. Post, Mar. 14, 2017.⁶) This reputation management company is not alone in using fraudulent means to obtain court orders declaring content online defamatory. For example, a consumer opinion website recently sued two attorneys and other defendants alleging that they had colluded to illegally acquire court orders to submit to Google and other internet platforms to de-index web pages. (See Mapes, *Lawsuit Identifies Sham Lawsuits, Stooage Defendants Used To Hide Negative Online Review*, N. Cal. Record, Oct. 30, 2016;⁷ see also *Consumer Opinion LLC v. ZCS, Inc.*, Dkt. No. 1, No. 3:16-cv-06105 (N.D. Cal. Oct. 21, 2016).)

If the Court of Appeal's decision were upheld, and an interactive computer service provider received an order that it suspected was fake, the provider would have to choose between: (1) removing third-party content *that is not defamatory*, (2) facing contempt proceedings for refusing to remove the content, or—if only the Court of Appeal's due process holding were overturned—(3)

⁶ https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/03/14/apparently-fake-defendant-libel-lawsuit-watch-richart-ruddie-seo-profile-defender-network-llc-paying-71000-to-settle-claim/?utm_term=.bd8745f586ea.

⁷ <http://norcalrecord.com/stories/511036328-lawsuit-identifies-sham-lawsuits-stooage-defendants-used-to-hide-negative-online-review>.

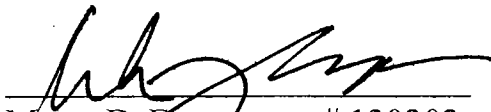
embarking on a costly legal battle challenging the order. New and smaller companies, for whom such litigation is cost-prohibitive, would not even have this choice. Instead, they would have to either remove the third-party content or shut down altogether.

Amici's services, and others like them, have revolutionized how people advertise goods, locate services, engage with their own and other communities, communicate with friends, share opinions, run for every level of public office, and otherwise interact. Section 230 plays a critical role in keeping these services viable and promoting the development of revolutionary new services. If service providers were faced with bearing the costs of litigation in every instance in which they host third-party content that is critical of or otherwise not to the liking of someone else—or were required to remove all such content after uncontested default proceedings—they might well be forced to limit what information can be shared on their services, change the structure and operation of their online platforms, or shutter some aspects of their services. Innovative business people and computer programmers might be deterred from founding companies and developing services that would benefit the public. Section 230 is intended to prevent this very outcome.

CONCLUSION

For the foregoing reasons, the Court of Appeal's opinion denying Yelp's order to vacate the judgment should be reversed on both Section 230 and Due Process grounds.

Respectfully submitted,



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CERTIFICATE OF WORD COUNT

Pursuant to Rule of Court 8.204(c), I hereby certify that, including footnotes, the foregoing brief contains 7,585 words. This word count excludes the exempted portions of the brief as provided in Rule of Court 8.204(c)(3). As permitted by Rules of Court 8.204(c)(1), the undersigned has relied on the word count feature of Microsoft Word, the computer program used to prepare this brief, in preparing this certificate.

DATED: April 14, 2017


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CERTIFICATE OF SERVICE

I, the undersigned, declare:

I am employed in Palo Alto, CA. I am over the age of 18 and not a party to the within action. My business address is 950 Page Mill Road Palo Alto, California 94304.

On April 14, 2017, I served the foregoing document described as:

**APPLICATION OF AIRBNB, INC., AUTOMATTIC INC.,
CRAIGSLIST, INC., FACEBOOK, INC.,
IAC/INTERACTIVECORP, REDDIT, INC., SNAP INC.,
PINTEREST, INC., THUMBSTACK, INC.,
TWITTER, INC., AND YAHOO! INC.
FOR LEAVE TO FILE AS AMICI CURIAE AND
BRIEF AS AMICI CURIAE SUPPORTING APPELLANT**

On the interested parties in this action as follows:

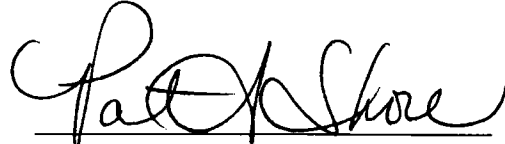
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PATRICIA SHORE

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