



August 10, 2016

Honorable Tani Cantil-Sakauye, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Amicus Letter of the Computer & Communications Industry Association (CCIA) in Support of Petition for Review of *Hassell v. Bird*, Court of Appeal First Appellate District, Division Four, Case No. A143233, Superior Court of the County of San Francisco Case No. CGC-13-530525, Supreme Court Case No. S235968*

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, the Computer & Communications Industry Association (“CCIA”) submits this *amicus* letter urging this Court to grant Yelp’s petition for review of *Hassell v. Bird*, 247 Cal. App. 4th 1336 (2016).

I. Interest of *Amicus Curiae*

CCIA represents companies of all sizes in the high technology products and services sectors, including Internet products and services, as well as providers of computer hardware and software, electronic commerce, and telecommunications. CCIA members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion,¹ and depend on strong intermediary liability limitations, including those embodied in 47 U.S.C. § 230.

II. Why This Court Should Grant Review

The lower court decision provides an avenue for litigants to circumvent a crucial statutory protection for the Internet industry. Congress enacted Section 230 in order to promote the development of the Internet, and the Internet economy has grown substantially under this regime that limits intermediary liability for the conduct of Internet users. Federal and state courts have consistently upheld broad immunity for Internet services under Section 230. The Court of Appeal’s interpretation of Section 230 departed from this established consensus. The consequences of this decision extend far beyond the instant case, threatening Internet commerce and free expression, and will invite routine attempts for injunctions against non-party intermediaries. This Court should therefore grant Yelp’s petition for review.

A. The Internet Economy Has Flourished Under Section 230, Which Congress Enacted to Promote the Development of the Internet.

As part of the 1996 Communications Decency Act, Congress granted online intermediaries broad immunity from liability for all claims arising from user actions except federal criminal and intellectual property infringement claims (codified at 47 U.S.C. § 230). One

¹ A list of CCIA members is available at <http://www.cciainet.org/members>.

of Congress's main legislative objectives for Section 230 was "to encourage the unfettered and unregulated development of free speech on the Internet, and to promote the development of e-commerce." *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003). This Court has recognized that intent, noting that "Congress sought to 'promote the continued development of the Internet and other interactive computer services'" by granting broad immunity to "Internet intermediaries." *Barrett v. Rosenthal*, 40 Cal. 4th 33, 56 (2006) (citing § 230(b)(1)).

Today, the U.S. Internet sector's global success is due in part to Congress's foresight in establishing a unique legal regime that appropriately manages intermediary liability online. The value of this global Internet economy is projected to reach \$4.2 trillion.² There is a growing international consensus that this economic growth is due to liability limitations such as Section 230; the OECD has stated that "[l]imitations on their liability for the actions of users of their platforms have encouraged the growth of the Internet."³

B. Courts Have Consistently Upheld Broad Intermediary Liability Limitations.

The resounding consensus among federal circuit courts is to interpret Section 230 broadly,⁴ consistent with Congressional intent to promote the development of the Internet by providing unambiguous immunity to online services. State courts have also supported this approach. For example, California courts have noted "the general consensus to interpret section 230 immunity broadly." *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561, 572-73 (2d Dist. 2009). The Court of Appeal's ruling is an outlier in this regard, and should not stand.

C. The Court of Appeal's Interpretation of Section 230 Threatens Internet Commerce and Free Expression.

Despite clear Congressional intent and consistent judicial interpretation, the Court of Appeal concluded that a remedial order on a non-party did not violate Section 230's broad immunity. This holding invites litigants to seek relief against non-parties that Congress expressly sought to protect from liability, and thus calls for review by this Court.

² David Dean *et al.*, *The Internet Economy in the G-20: The \$4.2 Trillion Growth Opportunity*, Boston Consulting Group (Mar. 19, 2012), at 3, https://www.bcgperspectives.com/content/articles/media_entertainment_strategic_planning_4_2_trillion_opportunity_internet_economy_g20/. The Internet has accounted for 21% of the GDP growth in mature economies over the past 5 years. Matthieu Pélissier du Rausas *et al.*, *Internet Matters: The Net's sweeping impact on growth, jobs and prosperity*, McKinsey & Company (May 2011), at 9, http://www.mckinsey.com/insights/high_tech_telecoms_internet/internet_matters.

³ See Organization for Economic Cooperation and Development, *The Role of Internet Intermediaries in Advancing Public Policy Objectives* (Sept. 2011), at 15, <http://www.oecd.org/internet/ieconomy/theroleofinternetintermediariesinadvancingpublicpolicyobjectives.htm>.

⁴ See, e.g., *Universal Commc'n Sys. v. Lycos, Inc.*, 478 F.3d 413 (1st Cir. 2007); *Ricci v. Teamsters Union Local 456*, 781 F.3d 25 (2d Cir. 2015); *Green v. America Online, Inc.*, 318 F.3d 465 (3d Cir. 2003); *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997); *Doe v. MySpace, Inc.*, 528 F.3d 413 (5th Cir. 2008); *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398 (6th Cir. 2014); *Chicago Lawyers' Committee for Civil Rights Under Law v. Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2008); *Johnson v. Arden*, 614 F.3d 785 (8th Cir. 2010); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir. 2003); *Ben Ezra, Weinstein & Co. v. America Online, Inc.*, 206 F.3d 980 (10th Cir. 2000); *Dowbenko v. Google Inc.*, 582 F. Appx. 801 (11th Cir. 2014); *Klayman v. Zuckerberg*, 753 F.3d 1354 (D.C. Cir. 2014). This includes every federal circuit court except for the specialized Federal Circuit, which has not had the opportunity to consider the matter.

This Court has previously interceded when a Court of Appeal gave inadequate consideration to the impact of its ruling on Internet users. *See, e.g., Barrett*, 40 Cal. 4th at 56 (“The Court of Appeal gave insufficient consideration to the burden its rule would impose on Internet speech.”). One key objective of Section 230 “was to avoid the chilling effect upon Internet free speech that would be occasioned by the imposition of tort liability upon companies that do not create potentially harmful messages but are simply intermediaries for their delivery.” *Delfino v. Agilent Technologies, Inc.*, 145 Cal. App. 4th 790 (6th Dist. 2006). Congress recognized that “[m]aking interactive computer services and their users liable for the speech of third parties would severely restrict the information available on the Internet. Section 230 therefore sought to prevent lawsuits from shutting down websites and other services on the Internet.” *Batzel*, 333 F.3d at 1027-28.

III. Conclusion

California courts should not substantially depart from settled interpretation of Section 230, which has long provided unambiguous protection to local online businesses from liability for the actions of Internet users. Furthermore, if the Court of Appeal’s ruling were to stand, it would invite litigation against intermediaries which Congress explicitly sought to avoid, potentially aimed at suppressing communication that Congress expressly intended to encourage. Accordingly, CCIA respectfully requests that this Court grant Yelp’s petition for review.

Respectfully submitted,



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PROOF OF SERVICE BY MAIL

**Re: HASSELL V. BIRD
Supreme Court of the State of California Case No. S235968**

I, Matt Schruers, declare that I am over the age of 18 and that neither I nor *amicus* Computer & Communications Industry Association are a party to this action. My business address is 900 17th Street NW, Suite 1100, Washington, DC 20006.

I caused a true copy of the attached *Amicus* Letter of the Computer & Communications Industry Association in Support of Non-Party Appellant Yelp to be served on the following parties by placing them in an envelope sealed by me, which was deposited in the United States Mail, postage prepaid, at Washington, DC on August 10, 2016.

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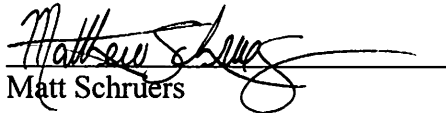
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Counsel for Non-Party Appellant Yelp

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I declare under penalty of perjury that the foregoing is true and correct. Executed on August 10, 2016 at Washington, DC.


Matt Schruers