November 20, 2023

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

Re: ***Amicus Curiae* Letter of the Computer & Communications Industry Association (CCIA) in Support of Petition for Review of *Liapes et al. v. Facebook, Inc.*, Court of Appeal First Appellate District, Division Three, Case No. A164880, Superior Court of the County of San Francisco Case No. 20CIV01712, Supreme Court Case No. S282529**

Dear Chief Justice Guerrero 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 curiae* letter urging this Court to grant the petition for review in the above-mentioned case, *Liapes v. Facebook*, 95 Cal. App. 5th 910 (Cal. Ct. App. 2023).

I. Interest of *Amicus Curiae*

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, contribute trillions of dollars in productivity to the global economy,[1] and depend on strong intermediary liability limitations—including those provided in 47 U.S.C. § 230 ("Section 230").

II. Why This Court Should Grant Review

The Court of Appeal's decision provides an avenue for litigants to circumvent a crucial statutory protection that has been foundational to the Internet economy for decades. 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 rejected, pursuant to Section 230, attempts to impose civil liability on Internet services for the third-party content they display and disseminate, and how they do so. The Court of Appeal's interpretation of Section 230 departed from this settled jurisprudence. The consequences of this decision extend far beyond

[1] A list of CCIA members is available at https://www.ccianet.org/members. Meta Platforms, Inc. (formerly known as Facebook, Inc.) is a member of CCIA, but took no part in the preparation of this letter.

the instant case, threatening Internet commerce and free expression. This Court therefore should grant Facebook's petition for review.

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

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

This Court has recognized that core feature of Section 230, noting that "Congress sought to 'promote the continued development of the Internet and other interactive computer services'" by granting broad protections to "Internet intermediaries." *Barrett v. Rosenthal*, 40 Cal. 4th 33, 56 (Cal. 2006) (citing § 230(b)(1)).

Today, the U.S. Internet sector's global success is due in part to Congress' foresight in establishing a legal regime that appropriately manages intermediary liability. The real gross output of the digital economy in the U.S. grew at an annual rate of 5.6% between 2016 and 2021, much faster than the overall economy's growth rate of 1.9 % over the same period.[2] According to U.S. Department of Commerce estimates, the digital economy generated $2.41 trillion of value added to U.S. GDP, or 10.3% of total U.S. GDP.[3] 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."[4]

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[2] Bureau of Econ. Analysis, *New and Revised Statistics of the U.S. Digital Economy, 2005–2021* (Nov. 2022), https://www.bea.gov/system/files/2022-11/new-and-revised-statistics-of-the-us-digital-economy-2005-2021.pdf.

[3] *Id.*

[4] *See* Org. for Econ. Cooperation & Dev., *The Role of Internet Intermediaries in Advancing Public Policy Objectives* (Sept. 2011), at 15, https://www.oecd.org/digital/ieconomy/theroleofinternetintermediariesinadvancingpublicpolicyobjectives.htm. *See also* Trevor Wagener, *A Ruling Against Google in Gonzalez Could Create a "World of Lawsuits" and "Economic Dislocation"*, Disruptive Competition Project (Feb. 27, 2023), https://www.project-disco.org/competition/gonzalez-v-google-could-create-a-world-of-lawsuits-and-economic-dislocation/.

B. Courts Have Consistently Applied Section 230 to Limit Online Intermediary Liability.

The resounding consensus among all federal circuit courts has been to interpret Section 230 broadly,[5] consistent with Congressional intent to promote the development of the Internet by providing intermediary protections to online services. Other California appellate courts have also supported this approach, observing that it is "the general consensus to interpret section 230 immunity broadly." *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561, 572-73 (Cal. Ct. App. 2009). 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 Techs., Inc.*, 145 Cal. App. 4th 790 (Cal. Ct. App. 2006). And this Court, in a case in which we previously filed an amicus letter, held that "the Court of Appeal adopted too narrow a construction of section 230." *Hassell v. Bird*, 5 Cal. 5th 522, 527 (Cal. 2018).

Further, as this Court has noted, *Hassell* at 542, these protections apply even when plaintiffs try to "plead around section 230 immunity," typically "by framing . . . website features as content." *Prager Univ. v. Google LLC*, 85 Cal. App. 5th 1022, 1033-34 (Cal. Ct. App. 2022) (citing *Dyroff v. Ultimate Software Grp., Inc.*, 34 F.3d 1093, 1098 (9th Cir. 2019)); *see also Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1174-75 (9th Cir. 2008) (explaining that there can be liability only when a site "require[s] users to input illegal content," not "in cases of enhancement by implication or development by inference."). 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 failed to apply Section 230 as it should have done. This holding invites litigants to seek

[5] *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. Am. Online, Inc.*, 318 F.3d 465 (3d Cir. 2003); *Zeran v. Am. 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' Comm. 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. Am. 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). *Cf. ClearCorrect Operating v. Int'l Trade Comm'n*, 810 F.3d 1283, 1303 (Fed. Cir. 2015) ("Congress has enacted laws and debated bills whose intent is to balance an interest in open access to the Internet and the need to regulate potential abusers. . . . [including] statute enacting immunity from liability for Internet service providers in order to 'promote the continued development of the Internet and other interactive computer services and other interactive media'") (citing 47 U.S.C. § 230(b)(1), (c)(1)).

relief against parties that Congress expressly sought to protect from liability, and thus calls for review by this Court.

Stripping Section 230 protections from digital services companies would irreparably harm the Internet. The burden of litigating intermediary-liability claims, which undoubtedly would spring up in the hundreds in trial courts throughout California, would be crushing. Innovation in the Internet ecosystem would cease and scores of service providers would have to close their doors. Congress warned against this result in 1996, and that warning is no less needed today.

This Court has previously reversed Courts of Appeal that 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."); *Hassell*, 5 Cal. 5th at 546 ("[P]laintiffs' maneuver, if accepted, could subvert a statutory scheme intended to promote online discourse and industry self-regulation."). The same result is warranted, and indeed necessary, here.

III. Conclusion

California courts should not 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. 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 Facebook's petition for review.

Respectfully submitted,

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PROOF OF SERVICE

Re: LIAPES V. FACEBOOK
Supreme Court of the State of California Case No. S282529

I, Stephanie A. Joyce, declare that I am over the age of 18 and not a party to the above-named action. My business address is 25 Massachusetts NW, Suite 300C, Washington, DC 20001.

I caused a true and correct copy of the attached *Amicus Curiae* Letter of the Computer & Communications Industry Association in Support of Respondent Facebook, Inc. to be filed with the Court and served on the following parties by TrueFiling.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on November 20, 2023 in Washington, DC.

/s/Stephanie A. Joyce
Stephanie A. Joyce