



Law firm petitions Supreme Court to address defamatory online user reviews

By Leslie Hartford

How much control do we really have over what is written about us online? A recent Supreme Court petition may define the lengths to which a party can control what is published about it on the Internet. *Hassell et al. v. Yelp, Inc.* asks the Supreme Court to find that Section 230 of the Communications Decency Act (47 U.S.C. § 230 *et seq.*) does not grant Internet content aggregators immunity from all legal process, including injunctive relief.

Section 230 prohibits holding “interactive computer services” providers liable for content created by third parties. In theory, then, a host website is not liable for allegedly defamatory content created and posted by users on that site. See *Hassell v. Bird*, 5 Cal. 5th 522, 532 (2018). The dispute lies in what constitutes being “liable” and what relief, if any, a court may order against a provider of interactive computer services.

The *Hassell* case arose from a Yelp review written by a disgruntled former client of Hassell’s, which Hassell claimed was libelous and painted her, and her law firm, in a false light. Hassell’s original complaint against the former client sought both monetary damages and injunctive relief, including the removal of each and every allegedly defamatory review, but did not name Yelp as a defendant. Nevertheless, after finding the content to be defamatory, the California state court issued an order not only instructing the former client to rescind all of her reviews but also requiring that Yelp remove the specific reviews under the former client’s username. Yelp challenged this order under Section 230, but the California Court of Appeals upheld the portion of the order requiring the removal of the specific defamatory reviews, finding that such an order did not “impose liability” on Yelp, which was never named as a defendant in the action.

Yelp petitioned the California Supreme Court for review of this decision, arguing that an order requiring an interactive computer services provider to remove user content violated both Yelp’s due process rights and Section 230. The California Supreme Court agreed, finding that although “plaintiffs did not name Yelp as a defendant, their action ultimately treats it as ‘the publisher or speaker of ... information provided by another information content provider,’” which is unlawful pursuant to Section 230(c)(1). *Hassell*, 5 Cal. 5th at 541. The court held that when an Internet intermediary merely publishes content, including refusing to remove previously published content upon demand, Section 230 prohibits this type of removal order. The court identified several policy

interests behind this protection, including avoiding the “substantial burdens” imposed by removal orders on an Internet intermediary and the fact that “compliance still could interfere with and undermine the viability of an online platform.” *Id.* at 545.

Naturally, Hassell (and presumably many of those in her place, pursuing judgment-proof individual defendants) disagrees, arguing that Section 230 only bars the “imposition of liability” and is not a total ban on legal process, including injunctive relief. Hassell argues that there is no evidence of any congressional intent to shield Internet sites from all responsibility, citing courts’ inconsistent construction of Section 230 to date and the increasing threats to personal safety online, including revenge porn, doxing, physical threats and sexual harassment.

Hassell may be correct that allowing removal orders against content sites is the most effective means of removing content found to be unlawful, but at what cost? Section 230’s protections have been utilized to shield a message board host from liability resulting when a plaintiff’s phone number was falsely associated with offensive paraphernalia sales and to bar liability against a public library when a minor patron downloaded explicit images on the library’s computers. In cases such as these, does it matter that the actual creator of the unlawful content is unlikely to ever be found or identified? And if so, at what point may the provider be forced to act? Should the Supreme Court grant *certiorari*, businesses and individuals will likely gain some additional clarity on their rights in response to negative online content.

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