

## **A Five-Star Decision: Yelp's Recent Victory Reaffirms Broad Protections of Section 230**

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In a closely watched decision with significant ramifications for online speech, earlier this week, the California Supreme Court struck down an injunction requiring Yelp, a popular online consumer review platform, to remove two allegedly defamatory reviews from its website. The decision is important because it rejected a potential procedural end-run around Section 230 of the Communications Decency Act (CDA), which broadly immunizes internet service providers like Yelp from state law claims based on third-party content posted on their websites.

The novel legal issues in the case find their origin in a unique procedural history. The plaintiff, Dawn Hassell, owned a law firm that provided legal services to a woman named Ava Bird. Dissatisfied with those services, Ms. Bird posted negative reviews about Ms. Hassell's firm on Yelp. In response, Ms. Hassell sued Ms. Bird—and only Ms. Bird—for defamation in California state court.

Ms. Hassell's decision to leave Yelp out of the case was no oversight. In subsequent proceedings, her attorneys conceded that it was a tactical decision because, if Yelp were named as a defendant, it could assert Section 230 immunity. Section 230 provides that an internet provider cannot be held liable as a publisher for content created by third-party users. As such, it is beyond dispute that Ms. Hassell could not have obtained any remedy against Yelp had she named the platform as a defendant. The question presented in this case was whether Ms. Hassell could obtain injunctive relief against Yelp if that relief was ancillary to relief awarded against a party that did not enjoy the protection of Section 230.

Ms. Hassell's gambit succeeded at the trial court level. She obtained a default judgment against Ms. Bird and was awarded monetary damages—to be paid by Bird—as well as injunctive relief. Importantly, the trial court's injunction not only required Ms. Bird to remove the reviews, it also required Yelp, a non-party, to remove them from its website.

One month later, Ms. Hassell served Yelp with the trial court's order, demanding that it remove Ms. Bird's reviews. That was when Yelp entered the case for the first time. Specifically, it filed a motion to set aside and vacate the judgment, arguing, among other things, that the injunction violated Section 230 of the CDA.

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The trial court denied Yelp's motion. Yelp then appealed to California's intermediate-appellate court—the Court of Appeal—but was unsuccessful there as well. The Court of Appeal held that Section 230 did not prohibit the injunction because that statute only precludes a court from imposing "liability" on Yelp for Bird's post. Here, the Court of Appeal reasoned, Yelp was not being held liable for anything because the default judgment was solely against Ms. Bird and it arose from a lawsuit in which only Ms. Bird had been named as a defendant.

The Court of Appeal's decision caused great consternation among internet service providers and advocates for online speech. Since becoming law in 1996, Section 230 has facilitated robust online speech by allowing websites like Yelp to operate without the risk of incurring liability for user-generated content. By condoning Ms. Hassell's procedural stratagem, the Court of Appeal signaled that other plaintiffs could employ similar maneuvers and, notwithstanding Section 230, successfully force internet service providers to remove user-generated content from their websites.

Yelp then appealed to the California Supreme Court. In a 3-1-3 decision, four of the seven Justices agreed that the injunction requiring Yelp to remove the reviews from its website violated Section 230. In reaching that conclusion, the plurality opinion, which was authored by Chief Justice Tani Cantil-Sakauye, first noted that the injunction would have been plainly invalid under Section 230 had Yelp been named as a defendant. The court then held that Ms. Hassell's tactical decision not to sue Yelp did not change that result. In so holding, the plurality reasoned that, by virtue of the injunction, Yelp was "being held to account for nothing more than its ongoing decision to publish the challenged reviews." In other words, that the relief against Yelp was achieved indirectly did not change the fact that the trial court's order treated it as the publisher of third-party content posted to its site—which is precisely what Section 230 forbids. The plurality held, therefore, that the trial court's injunction, as it applied to Yelp, could not stand.

Although she did not join the plurality opinion, Justice Leondra Kruger cast a fourth and deciding vote in favor of Yelp. Justice Kruger explained that in her view, the injunction was invalid for reasons independent of Section 230, specifically, that due process does not permit injunctive relief against a non-party absent some showing that the non-party was acting in concert with, or on behalf of, the party against which the relief ran (in this case, Ms. Bird).

Justice Kruger also expressed agreement with the plurality opinion's conclusion that, *on the facts of this particular case*, Section 230 bars the injunctive relief against Yelp because the relief treats Yelp as the publisher of Ms. Bird's comments. Nonetheless, Justice Kruger declined to weigh in as to whether Section 230 would bar injunctive relief in other contexts, warning that courts should "proceed cautiously" when addressing new questions about Section 230 immunity.

It remains to be seen whether plaintiffs will try to take advantage of the small sliver of daylight between Chief Justice Cantil-Sakauye's plurality opinion and Justice Kruger's concurrence to test out similar end-runs around Section 230 immunity. For now, the California Supreme Court's decision is undoubtedly good news not only for websites like Yelp, but also for all who value a free and open internet.

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