No. S235968
(Court of Appeal No. A143233)
(Superior Court of California — San Francisco County No. CGC-13-530525, The Honorable Ernest H. Goldsmith)

# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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DAWN HASSELL, *et al.*
*Plaintiffs and Respondents,*

vs.

AVA BIRD,
*Defendant,*

YELP, INC.
*Appellant.*



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## BRIEF OF AMICUS CURIAE XCENTRIC VENTURES, LLC IN SUPPORT OF NON-PARTY APPELLANT YELP, INC.

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*David S. Gingras (CSB - 218793)
GINGRAS LAW OFFICE, PLLC
4802 E. Ray Rd, #23-271
Phoenix, Arizona 85044
T: (480) 264-1400
F: (480) 248-3196
david@gingraslaw.com

Anette J. Beebe (AZ – 029417)
XCENTRIC VENTURES, LLC
P.O. Box 310
Tempe, Arizona 85280
T: (602) 518-4357
anette@ripoffreport.com

*Counsel for Amicus Curiae*

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## I. INTRODUCTION

Xcentric owns and operates a website called www.RipoffReport.com ("Ripoff Report"). Founded in December of 1998, Ripoff Report is one of the largest and oldest consumer complaint websites in existence. Ripoff Report's website allows consumers to post free complaints (known as "reports") about businesses and/or individuals who they believe have wronged them in some way.

Any business or person who is the subject of a complaint may always respond, at no cost, to offer their own side of the story, including uploading documents which may support their position. In this way, Ripoff Report is analogous to a "virtual" online dispute resolution forum. But rather than issuing judgments and decreeing winners and losers, Ripoff Report itself takes no position as to the facts. Instead, the site allows the public to view the uncensored arguments and evidence offered by both sides, thus allowing readers to reach their own conclusions about who and what to believe.

As of April 2017, Ripoff Report's website contains in excess of 2,000,000+ individual reports and many tens of millions of responses, replies, rebuttals and related comments. In terms of subject matter, reports span nearly unlimited range of topics from complaints about automobile clubs[1] to allegations of misconduct by zoo staff[2] and everything in between.

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[1] *See* http://www.ripoffreport.com/reports/automobile-club-of-southern-california/santa-ana-california-92799-5449/automobile-club-of-southern-california-tried-to-rip-me-off-harassed-me-over-the-telephon-1273743

[2] *See* http://www.ripoffreport.com/reports/brookfield-zoo/brookfield-illinois-60513/brookfield-zoo-treatment-of-disabled-veterans-brookfield-illinois-1260785

In its capacity as administrator of the Ripoff Report website, Xcentric monitors the content on Ripoff Report for obscenity, vulgarity, threats, and similar prohibited content, but generally makes no attempt to determine the veracity of the statements in the posts because to doing so would be technically impossible and obviously cost prohibitive. Nevertheless, Ripoff Report works closely with all levels of federal, state, and local law enforcement, including, but not limited to, various state attorneys general, local and federal prosecutors, Homeland Security, the United States Justice Department, United States Secret Service, FBI, FTC, SEC, U.S. Postal Inspectors, and local police, providing them with information used to locate victims, detect patterns of deceptive business practices, and to prosecute violations of consumer protection laws, among other things.

Despite providing a valuable public service, Xcentric has been the target of some occasional criticism due to some of its policies and practices. This criticism, as well as Xcentric's long history of litigation success, underscores the unusual importance of the issues raised in this appeal, both in terms of the lower court's misapplication of existing law, and its breathtaking expansion of well-settled limits of judicial authority.

Specifically, since its inception nearly 20 years ago, much in the same way that courts maintain permanent records of disputes even after a case is resolved and even where an allegation or charge has been proven untrue, Ripoff Report has always maintained a permanent record of all reports. Like many courts and other dispute resolution forums such as the American Arbitration Association, Ripoff Report permanently preserves and allows its readers to access a complete record of complaints, including those which have been resolved, even when a claim has been proven untrue.

Pursuant to this general policy: 1.) Ripoff Report does not remove reports from its database in response to legal threats; 2.) Ripoff Report does not remove reports for money; 3.) Ripoff Report does not permit authors to remove their own reports (authors can always update their reports, at no cost, to explain how the matter was resolved or provide other information regarding the situation); and 4) Ripoff Report does not remove reports in response to stipulations by parties/court orders/injunctions.[3]

The goal of this policy is simple – for the same reason that courts do not destroy their files, Ripoff Report offers a permanent record of disputes so the public can view a complete history of complaints, including information showing how the dispute was resolved. This policy furthers the important public purpose of giving consumers the "whole picture" including both truthful complaints *and* discredited ones. Both are worthy of protection and historical preservation because "[e]ven a false statement may be deemed to make a valuable contribution to public debate, since it brings about "the clearer perception and livelier impression of truth, produced by its collision with error." *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 279 n.19 (quoting Mill, *On Liberty* (Oxford: Blackwell, 1947), at 15).

In addition to the important public policy reasons underlying Ripoff Report's "permanent record" policy, the Court of Appeal's decision here violated well-settled federal law. Specifically, 47 U.S.C. § 230(c)(1) prohibits courts from treating any

[3] Ripoff Report does, however, have a Court Order policy that will allow, for free, specific word redaction when both parties appear and defend a case and the court, based upon evidence, identifies specific content to be false and/or defamatory in its order. See http://www.ripoffreport.com/legal#courtorders.

"provider...of an interactive computer service...as the publisher or speaker of any information provided by another content provider. Separately, 47 U.S.C. § 230(e)(2) declares that " [n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

The lower courts' decisions in this matter violated both aspects of the CDA. First, by ordering Yelp not to publish information provided by a third party, the lower courts necessarily treated Yelp as the "publisher or speaker" of information provided by a third party. This is precisely the type of editorial discretion protected by the CDA; "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." Fair Housing Council of San Fernando Valley v. Roommates.com, LLC (9th Cir. 2008) 521 F.3d 1157, 1170–71.

Additionally, this Court has recognized that a non-party to litigation must receive notice and an opportunity to be heard prior to an order being entered against it unless it was otherwise found to be operating in concert with others. *See In re Lippel* (1990) 51 Cal.3d 1160, 1166. The decision below fundamentally ignored prior precedent and strips away the congressional protection provided to websites which not only impacts website operators' ability operate and preserve third-party speech in similar fashion to that of the modern judicial system, but also impacts anonymous authors' free speech rights, arguably a website's free speech rights without due process, conflicts with existing law in California, and provides an open door for a flood of abuse of the judicial process.

As discussed in Appellant Yelp's pleadings, companies who operate online forums are entitled to notice and an opportunity to be heard before they are ordered to remove

content; and Section 230 bars injunction against websites like Yelp in situations such as the one presented in *Hassell*. Xcentric concurs with the positions set forth in Appellant's Opening and Reply Briefs on these points and will not repeat them here.

This brief is submitted to address the troubling implications of the Court of Appeal's decision for affirming the Trial Court's decision in that: 1) *Hassell* is inconsistent with existing California Privilege Law; 2) Removal orders are inconsistent with remedies for libel in print mediums such as newspaper magazines; 3) Removal Orders constitute government coercion as to content and is therefore unconstitutional; 4) Removal Orders are inconsistent with existing judicial system procedures; 5) removal orders are not effective; 6) *Hassell* opens the gate for illegal acts; 7) Hassel's overbreadth steps on an author's First Amendment rights; and 8) *Hassell* overlooks a website's own First Amendment rights. For these reasons, Xcentric urges this Court reverse the Court of Appeal's decision.

## II. ARGUMENT

### A. *HASSELL* IS INCONSISTENT WITH EXISTING CALIFORNIA PRIVILEGE LAW

As explained in Xcentric's Amicus Letter to this Court, the lower courts' decisions here directly conflict with (and, indeed, significantly alter) existing California privilege law. Specifically, under both the First Amendment and by California statute, the public enjoys a broad right to access court proceedings. *See* Cal. Code Civ. P. § 124 (with only narrow exceptions, "the sittings of every court shall be public.") The public also enjoys a broad privilege to publish information contained in court records, even when those records contain defamatory statements. *See J-M Manufacturing Company, Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 98, 201 Cal. Rptr.3d 782, 791 (holding California's statutory fair report privilege, Civ. Code § 47(d), bars defamation and trade libel claim based on publication of information contained in court records), *review denied* (July 27, 2016); *see also Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 496 (1975) (explaining, "At the very least, the First and fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records.")

The Court of Appeal's decision in this case—approving a sweeping order forcing a non-party to purge the Internet of information contained in court records—necessarily conflicts with this rule. This is so because notwithstanding the public's right to publish information contained in court records, the lower courts here both held that only one website—Yelp.com—must remove certain speech from its website, but under existing

California privilege law, anyone else may freely publish exactly the same statements either as part of a report about this case, or simply by republishing the pleadings and orders issued by the court. Indeed, this has already occurred. *See, e.g.,* http://law.justia.com/cases/california/court-of-appeal/2016/a143233.html (quoting, *verbatim*, the same speech which Yelp has been enjoined from publishing by publishing the court documents); http://caselaw.findlaw.com/ca-court-of-appeal/1738164.html (quoting, *verbatim*, the same speech which Yelp has been enjoined from publishing by publishing the contents of court documents).

Thus, purely as a practical matter, based on existing California legal principles treating court records and information about legal proceedings as privileged speech, an injunction or any other type of order requiring a website to remove third party speech is a self-defeating paradox. In such a case, the enjoined website could comply with the injunction by "removing" the original speech, but the same website (or any others) could then immediately republish a copy of the court's order (or a fair summary thereof) containing exactly the same speech with complete impunity.

This perhaps unfortunately reality of modern litigation has not gone unnoticed by other courts in analogous circumstances. For example, a federal court in New York recently discussed this issue at some length in a case involving the denial of Social Security benefits. *See Nelson* v. *Commissioner of Soc. Security* (E.D.N.Y., Apr. 6, 2017) 2017 WL 1314118. In that case, certain private information about the plaintiff was published in a court order which was subsequently posted online by third parties. After learning of this, the "plaintiff filed a letter motion, which requested that the Court seal her

casefile because some 'law research blogs' had posted the Order online and the publication of this information was frightening her." *Nelson* 2017 WL 1314118, *1.

While expressing some level of concern for the harm suffered by the plaintiff, her request to remove the "law research blogs" by sealing the court docket was denied. In passing on this request, the court explained its reasons as follows:

> The denial of [Ms. Nelson's] motion in no way suggests that the Court does not take Nelson at her word that the availability of the Order online has caused her great distress. *The public availability of such orders is, unfortunately for her, the consequence of a public dispute resolution system financed with taxpayer funds.* Electronic access, moreover, is not unique to Nelson's case; nor, surely, is Nelson alone in unhappiness. In Social Security cases, orders regularly include sensitive personal health information regarding a claimant's disability. *But, we do not have Star Chamber justice in the United States.* Access by the media, the legal profession and the public at large to courts deciding cases openly on the public record helps solidify that arrangement ... .

2017 WL 1314118, *2 (emphasis added).

In another example, the Sixth Circuit Court of Appeals recently noted (in a case arising from Google's allegedly misleading publication of information contained in court records), filing a lawsuit in an attempt to remove online speech can backfire. Because so many court records are now indexed and republished online, each new lawsuit produces a quasi-metastatic effect, inadvertently yet foreseeably causing the production of more links for the plaintiff's name[4], which may or may not be helpful:

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[4] This is often referred to as the "Streisand Effect" which is defined as follows: "The Streisand effect is the phenomenon whereby an attempt to hide, remove, or censor a piece of information has the unintended consequence of publicizing the information more widely, usually facilitated by the Internet." https://en.wikipedia.org/wiki/Streisand_effect (last visited April 14, 2017).

> In most respects, [the plaintiff] O'Kroley didn't accomplish much in suing Google and the other defendants. He didn't win. He didn't collect a dime. And the search result about "indecency with a child" remains publicly available. All is not lost, however. Since filing the case, Google users searching for "Colin O'Kroley" no longer see the objectionable search result at the top of the list. Now the top hits all involve his case (there is even a Wikipedia entry on it). So: Even assuming two premises of this lawsuit are true – that there are Internet users other than Colin O'Kroley searching "Colin O'Kroley" and that they look only at the Google previews rather than clicking on and exploring the links – it's not likely that anyone will ever see the offending listing at the room of this lawsuit. Each age has its own form of self-help.

*O'Kroley v. Fastcase, Inc.* (6th Cir. 2016) 831 F.3d 352, 356 (finding lawsuit based on publication of statements in court records was barred by the CDA).

For better or worse, because court records are public and privileged, attempting to use a court order or injunction to remove online speech is like trying to extinguish a fire by smothering it with gasoline. Court proceedings are *per se* matters of public record. Thus, when a party chooses to voluntarily commence legal action and place the veracity of speech at issue in an attempt to recover damages—as Ms. Hassell did here—that choice carries with it several known consequences. One such consequence, as the cases above demonstrate, is the likelihood that information about the case (including embarrassing and/or harmful information) will become public and may thereafter be freely published online, either by courts themselves or by third parties. Given that reality, it is simply not possible for *Hassell* to co-exist peacefully alongside the First Amendment or the existing open court system required by California privilege law and the First Amendment.

## B. REMOVAL ORDERS ARE PROHIBITED BY THE CDA

Many courts around the country, including within the state of California, have determined that injunctive relief is barred by the Communications Decency Act.[5] This rule is entirely consistent with longstanding First Amendment doctrine; "While responsible press is undoubtedly a desirable goal, press responsibility is not mandated by the Constitution and like many other virtues it cannot be legislated." *Miami Herald Pub. Co. v. Tornillo*, (1974) 418 U.S. 241, 256, 94 S. Ct. 2831, 41 L. Ed. 2d 730. "Governmental restraint on publishing need not fall into familiar or traditional patterns to be subject to constitutional limitations on governmental powers." *Id.*, (citing *Grosjean v. American Press Co.* (1936) 297 U.S. 233, 244—245, 56 S.Ct. 444, 446, 80 L.Ed. 660). In fact, arguably websites 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 generally Heller v. New York* (1973) 413 U.S. 483, 489-490; *Marcus v. Search Warrants of Property* (1961) 367 U.S. 717, 731-732; *see also Glassdoor, Inc. v. Superior Court* (Cal. Ct. App. 2017) 9 Cal. App. 5th 623, at n.3

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[5] *See Medytox Solutions, Inc. v. Investorshub.com, Inc.* (Fla. 4th DCA 2014) 152 So. 3d 727; *Giordano v. Romeo* (Fla.App. 3rd Dist. 2011) 2011 WL 6782933; *Blockowicz v Williams* (7th Cir. 2010) 630 F.3d 563; *Bobolas v. Does 1-100* (D. Ariz. Oct. 1, 2010) 2010 WL 3923880; *Eckert v. Microsoft Corp.* (E.D. Mich. 2007) Not Reported in F. Supp.2d, 2007 WL 496692, citing *Chicago Lawyers' Committee for Civil Rights under the Law, Inc. v. Craigslist, Inc.* (N.D. Ill. 2006) 461 F.Supp.2d 681, 2006 WL 3307439, 6 and mentioning *Zeran v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 330; *Noah v. AOL Time Warner, Inc.* (E.D.Va. 2003) 261 F.Supp.2d 532 (citing *Smith v. Intercosmos Media Group, Inc.* (E.D.La. Dec. 17, 2002) 2002 WL 31844907 (holding that § 230 provides immunity for claims for injunctive relief); *Kathleen R. v. City of Livermore* (2001) 87 Cal.App.4th 684, 104 Cal.Rptr.2d 772; and *Blumenthal v. Drudge* (D.D.C. 1998) 992 F. Supp. 44, 49-53.

(discussing Glassdoor may have an argument for protecting its own First Amendment rights suggesting "after all, Glassdoor is itself a publisher of the speech at issue and the present matter [regarding standing to raise objections in the shoes of an author] threatens its ability to continue to publish speech supplied to it b anonymous content providers.")

Consistent with the sentiment of prior United States Supreme Court cases relating to libel and not limiting news outlets as to what content they would allow, Congress enacted the CDA to supply website operators with broad protection for their editorial choices in order to further these policy choices; "It is the policy of the United States...to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*" 47 U.S.C. § 230(b)(2) (italics added). Regardless of whether a court agrees with the policy choices made by Congress, "it is not the role of the ... courts to second-guess a clearly stated Congressional policy decision." *Noah v. AOL Time Warner, Inc.* (E.D. Va. 2003) 261 F.Supp.2d 532, 539, aff'd sub nom. *Noah v. AOL-Time Warner, Inc.* (4th Cir. 2004, No. 03-1770) 2004 WL 602711.

Mindful of chilling free expression, Congress barred States from forcibly dragging online intermediaries into expensive litigation seeking to remove content that a plaintiff deems inappropriate or harmful. Instead, the CDA limits victims to only seeking redress from those who originally created that content. *See Barrett v. Rosenthal* (2006) 40 Cal. 4th 33, 40, 146 P.3d 510, 513 ("We acknowledge that recognizing broad immunity for defamatory republications on the Internet has some troubling consequences. Until Congress chooses to revise the settled law in this area, however, plaintiffs 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[.]"); *Doe v. MySpace, Inc.* (5th Cir. 2008) 528 F.3d 413, 419 ("Parties complaining that they were harmed by a Web site's publication of user-generated content have recourse; they may sue the third-party user who generated the content, but not the interactive computer service that enabled them to publish the content online.")

The overwhelming weight of authority, both from this Court and elsewhere, clearly shows that the CDA imposes a *per se* restriction against exactly what occurred in this case—a plaintiff who is unhappy with online speech drags a website operator into protracted and expensive litigation simply because the website refused to remove the challenged speech. As this Court has previously recognized, this is precisely the scenario Congress sought to avoid though the CDA; "[t]he volume and range of Internet communications make the 'heckler's veto' a real threat … . The United States Supreme Court has cautioned against reading the CDA to confer such a broad power of censorship on those offended by Internet speech." *Barrett* 40 Cal.4th at 57 (citing *Reno v. ACLU* (1997) 521 U.S. 844, 880, 177 S.Ct. 2329.

## C. REMOVAL ORDERS ARE NOT EFFECTIVE

Understandably individuals and businesses are concerned with their online reputations. However, just because something written online is critical or negative does not mean always deprive that speech of protection, even when a claim is proven false. To again borrow words from the United States Supreme Court in *New York Times v. Sullivan*: "Even a false statement may be deemed to make a valuable contribution to public debate, since it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error.'" *New York Times Co.*, 279 n. 19. Notwithstanding this wisdom, with the advent of the Internet and recognized social utility of review websites[6], Internet reputation management has become big business.

Search engines like Google will often voluntarily comply with Court Orders requiring the removal of information from their search engine listings[7] even when the search engine itself is not named as a party to the underlying case, even when the publication of the speech is protected under the Communications Decency Act, and even

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[6] *See Edwards v. District of Columbia* (D.C. Cir. 2014) 755 F.3d 996, 1006 ("[f]urther incentivizing a quality consumer experience are the numerous consumer review websites, like Yelp..., which provide consumers a forum to rate the quality of their experiences").

[7] *See, e.g.* Removing Content From Google - Legal Help, GOOGLE, https://support.google.com/legal/troubleshooter/1114905?hl=en#ts=1115655%2C1282900 (last visited Apr 11, 2017); Eugene Volokh, OPINION | GOOGLE STILL DEINDEXING SOME MATERIAL FOUND BY COURTS TO BE DEFAMATORY — BUT IT'S BEING MORE SKEPTICAL, THE WASHINGTON POST (2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/09/google-still-deindexing-some-material-found-by-courts-to-be-defamatory-but-its-being-more-skeptical/?utm_term=.3021f5b322b1 (last visited Apr 11, 2017);

when no compulsory legal duty exists to remove the content.[8] Many plaintiff's lawyers have found this an effective method for removal of unwanted content online.[9]

However, even when Google "removes" material (also known as "de-indexing") based upon a court order, the original content on the original website (such as Yelp or Ripoff Report) may still exist. Further, even when it purports to "remove" content from its index, Google will often replace the original content with a link to the order/injunction describing (and often repeating) the same challenged speech.[10] Based on this, even when Google voluntarily "removes" information from its index pursuant to a court order, the same forbidden speech remains readily available as part of the published court order/injunction that took its place. Again, this reality demonstrates the inherent inconsistency in using a public/privileged court order to "remove" online speech.

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[8] *See Jones v. Dirty World Entertainment Recordings LLC* (6th Circ. 2014) 755 F.3d 398, 42 Media L. Rep. 1984; *Medytox Solutions, Inc. v. Investorshub.com, Inc.* (Fla. 4th DCA 2014) 152 So. 3d 727; *Giordano v. Romeo* (Fla.App. 3rd Dist. 2011) 2011 WL 6782933; *Blockowicz v Williams* (7th Cir. 2010) 630 F.3d 563; Bobolas v. Does 1-100 (D. Ariz. Oct. 1, 2010) 2010 WL 3923880; *Eckert v. Microsoft Corp.* (E.D. Mich. 2007) Not Reported in F. Supp.2d, 2007 WL 496692, citing *Chicago Lawyers' Committee for Civil Rights under the Law, Inc. v. Craigslist, Inc.* (N.D. Ill. 2006) 461 F.Supp.2d 681, 2006 WL 3307439, 6 and mentioning *Zeran v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 330; *Noah v. AOL Time Warner, Inc.* (E.D.Va. 2003) 261 F.Supp.2d 532 (citing *Smith v. Intercosmos Media Group, Inc.* (E.D.La. Dec. 17, 2002) 2002 WL 31844907 (holding that § 230 provides immunity for claims for injunctive relief); *Kathleen R. v. City of Livermore* (2001) 87 Cal.App.4th 684, 104 Cal.Rptr.2d 772; and *Blumenthal v. Drudge* (D.D.C. 1998) 992 F. Supp. 44, 49-53.

[9] *See, e.g.* How to Remove URLs from Google after Obtaining a Court Order, INTERNET DEFAMATION REMOVAL ATTORNEYS (2017), http://www.defamationremovalattorneysblog.com/2014/12/how-to-remove-urls-from-google-after-obtaining-a-court-order/ (last visited Apr 11, 2017).

[10] *See* Removing Content From Google - Legal Help, GOOGLE, https://support.google.com/legal/troubleshooter/1114905?hl=en#ts=1115655%2C1282900 (last visited Apr 11, 2017)

## D. *HASSELL* PROVIDES INCENTIVE FOR ILLEGAL ACTS

The Court of Appeal's decision in this matter provides a very obvious roadmap to anyone seeking to suppress online speech. First, the plaintiff commences litigation against a defendant who may be real, or may be fictional. Next, after the defendant fails to appear in court, the plaintiff obtains an order granting what amounts to worldwide injunctive relief. Finally, the plaintiff contacts each and every online service where the challenged speech is found, demanding immediate compliance with the *ex parte* injunction.

Aside from the lack of due process and the fact that the relief in question is impermissible under the CDA, one major problem with this process is that it provides virtually no safeguards against abuse. Indeed, the process approved by the lower courts here offers unscrupulous plaintiffs with a virtually perfect and irrefutable method for suppressing truthful and lawful speech.

Without in any way suggesting that Ms. Hassell acted improperly here, the likelihood of abuse and fraud is not a hypothetical concern. Indeed, within the last year strong evidence has been developed showing that the methods allowed by the lower courts in this case have already been exploited by criminals attempting to censor online speech, and to profit from doing so.

Among others, UCLA School of Law professor Eugene Volokh and Public Citizen Litigation Group attorney Paul Alan Levy have recently reported a disturbing trend of fraudulently-obtained court orders being used to suppress online speech. In October

2016, Professor Volokh noted: "There are about 25 court cases throughout the country that have a suspicious profile:

- All involve allegedly self-represented plaintiffs, yet they have similar snippets of legalese that suggest a common organization behind them. (A few others, having a slightly different profile, involve actual lawyers).

- All the ostensible defendants ostensibly agreed to injunctions being issued against them, which often leads to a very quick court order (in some cases, less than a week).

- Of these 25-odd cases, 15 give the addresses of the defendants – but a private investigator couldn't find a single one of the ostensible defendants at the ostensible address."

*See* Eugene Volokh & Paul Alan Levy, OPINION | DOZENS OF SUSPICIOUS COURT CASES, WITH MISSING DEFENDANTS, AIM AT GETTING WEB PAGES TAKEN DOWN OR DEINDEXED, THE WASHINGTON POST (2016), 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=.1831b16f3b36 (last visited Apr 11, 2017); *see also* Paul Alan Levy, RICHART RUDDIE SETTLES ANTI-SLAPP CLAIMS, MAKES RESTITUTION; BUT THE GUILTY COMPANIES REMAIN UNPUNISHED (March 14, 2017); http://pubcit.typepad.com/clpblog/2017/03/richart-ruddie-settles-anti-slapp-claims-makes-restitution-but-the-guilty-companies-remain-unpunishe.html; Eugene Volokh, ANALYSIS | APPARENTLY-FAKE-DEFENDANT LIBEL LAWSUIT WATCH: RICHART RUDDIE & SEO PROFILE DEFENDER NETWORK LLC PAYING $71,000 TO SETTLE CLAIM, THE WASHINGTON POST (2017), 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=.323bc7b27d50 (last visited Apr 11, 2017).

As explained by Professor Volokh and attorney Levy, there is already troubling proof that the "honor system" for online censorship endorsed by the lower courts in this case is not only subject to abuse, but it in fact is being abused. This is just one such example and investigations are continuing.[11]

Put simply, the *ex parte* process approved by the lower courts in this case makes it much too easy for anyone (both honest victims and dishonest criminals) to obtain an injunction requiring the removal of *any* online speech regardless of actual merit. Even more disturbingly, once such an order is obtained, it is effectively unreviewable. This leaves websites owners such as Yelp, Google, Ripoff Report and others essentially powerless to stop criminals from obtaining fraudulent orders and using them to suppress protected speech. This result is directly contrary to the substantial concerns expressed by this Court over a decade ago. *See Barrett* 40 Cal.4th at 62 (warning that an improperly narrow construction of the CDA could open the door to excessive censorship, and would "chill the free exercise of Internet expression, and could frustrate the goal of providing an incentive for self-regulation.")

[11] Ripoff Report has assisted Professor Volokh with his research efforts into questionable court orders.