Case No. 18-55367

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HOMEAWAY.COM, INC. AND AIRBNB, INC., *Plaintiffs-Appellants,*

v.

CITY OF SANTA MONICA, *Defendant-Appellee*,

On Appeal from the United States District Court
for the Central District of California,
Nos. 2:16-cv-06641-ODW (AFM), 2:16-cv-06645 ODW (AFM)

BRIEF OF *AMICUS CURIAE* INTERNET ASSOCIATION IN SUPPORT OF PLAINTIFFS-APPELLANTS' PETITION FOR REHEARING *EN BANC*

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1, *Amicus Curiae* Internet Association certifies that it is not a subsidiary or affiliate of any other entity, and no publicly held corporation owns 10% or more of its stock.

Dated: May 3, 2019

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INTERESTS OF AMICUS CURIAE

A. Identity and Interests of *Amicus Curiae*

Internet Association ("IA") is a national not-for-profit trade organization representing America's leading Internet companies and their global community of users. IA is dedicated to fostering innovation, promoting economic growth, and empowering people through the free and open internet, and its members[1] operate many of the world's largest and most popular online services.

B. This *Amicus Curiae* Brief is Relevant to and Will Assist This Court's *En Banc* Determination

IA offers this brief to demonstrate that the panel opinion: (i) creates a circuit split with this Court's prior rulings, which broadly construe the term *publication* within the meaning of the Communications Decency Act, 47 U.S.C. § 230, ("CDA"); and (ii) contravenes statutory language, legislative history, and inter-circuit decisions construing the CDA, thus thwarting the development of e-commerce, which Congress enacted the statute to promote.

I. SUMMARY OF ARGUMENT

This Court should grant appellants' petition for rehearing *en banc* of the *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019) decision because the panel opinion: (i) creates an intra-circuit split with this Court's prior

[1] A complete list of IA member companies is available at: https://internetassociation.org/our-members/.

rulings, which broadly construe the term *publication* within the meaning of the CDA; and (ii) contravenes statutory language, legislative history, and decisions from other circuits construing the CDA, thus thwarting the development of e-commerce, which Congress enacted the statute to promote.

Before the panel opinion, this Circuit uniformly held that the CDA broadly "protects websites from liability for material posted on the website by someone else." *Doe No. 14 v. Internet Brands, Inc.*, 824 F.3d 846, 850 (9th Cir. 2016); *see also Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1268 (9th Cir. 2016). But in affirming a decision upholding an ordinance making online platforms liable for "booking transactions" that result from user listings of ostensibly unlicensed properties, the panel opinion "treats" platforms as "the publisher or speaker" of information "provided by another information content provider." 47 U.S.C. § 230(c)(1). This is precisely the result Congress enacted the CDA to avoid. *See id.* § 230(e)(3) ("No 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 panel's decision contravenes this Court's precedent interpreting the CDA. The holding is inconsistent with *Internet Brands*, which ruled the CDA shields interactive computer service providers from a state law imposing a duty to warn *premised* on online content. 824 F.3d at 849. The *Internet Brands* court clarified in an amended opinion that a claim premised on a platform's alleged failure to warn

plaintiff of a danger associated with its website did not implicate the CDA because (and only because) the information forming the basis for the claim was allegedly acquired by defendant "from an outside source, not from monitoring postings on the [platform's] website." *See Doe No. 14 v. Internet Brands, Inc.*, 767 F.3d 894 (9th Cir. 2014), *reh'g granted, op. withdrawn*, 778 F.3d 1095 (9th Cir. 2015), *replaced by*, 824 F.3d 846 (9th Cir. 2016). By contrast, where, as here, liability is premised on *user content posted online*, the CDA provides immunity from any obligation to publish, not publish, or remove the material. *See, e.g.*, *Internet Brands*, 834 F.3d at 850; *see also Kimzey*, 836 F.3d at 1269-70 (affirming dismissal of defamation claim brought against Yelp over negative customer reviews submitted by third-party users); *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118-19 (9th Cir. 2007), *cert. denied*, 522 U.S. 1062 (2007) (holding that the CDA preempted a state right of publicity claim brought against a membership-based subscription platform); *Carafano v. Metrosplash.com. Inc.*, 339 F.3d 1119, 1120 (9th Cir. 2003) (holding online dating site immune under the CDA from liability for various claims arising out of third party's submission of phony profile purporting to belong to plaintiff).

Further, in holding that "processing" online transactions takes a platform outside the scope of the CDA, the panel decision departs from preexisting case law. The commercial nature of an interactive computer service has never before been grounds for denying CDA immunity. *See, e.g.*, *Fair Housing Council v.*

Roommates.com, *LLC*, 521 F.3d 1157, 1174-75 (9th Cir. 2008) (en banc) (partially immunizing website "which seeks to profit by collecting revenue from advertisers and subscribers"); *Perfect 10,* 488 F.3d at 1108 (immunizing platform that "allows consumers to use credit cards or checks to pay for subscriptions or memberships to e-commerce venues"); *Carafano*, 339 F.3d at 1124-25 (immunizing a commercial online dating service). Where, as here, an ordinance seeks to hold a platform liable for "exercis[ing] a publisher's 'traditional editorial functions—such as deciding whether to publish, withdraw, post-pone, or alter content" (which necessarily means monitor and review content)—the platform is entitled to CDA immunity. *Roommates.com*, 521 F.3d at 1184 (citation omitted); *see also Kimzey*, 836 F.3d at 1266 (prohibiting parties from "plead[ing] around the CDA to advance the same basic argument that the statute plainly bars").

To say the ordinance "does not require the Platforms to review the content provided by the hosts of the listings on their websites" (*HomeAway.com*, 918 F.3d at 682) is simply untrue. The City admits the ordinance requires platforms to "determine whether [a] unit is properly licensed for rental" before processing a transaction (ECF No. 30 at 20), which can be done only by actually *reviewing* each listing requested for booking. Further, platforms have no practical means of compliance other than *removing* potentially unlawful listings. Both review and removal are quintessential *publishing* activities. As this Court explained, the CDA

"shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties," and insulates both "affirmative acts of publication [and] . . . the refusal to remove . . . material." *Barnes v. Yahoo! Inc.*, 570 F.3d 1096, 1105 & n.11 (9th Cir. 2009).

Although the ordinance purports to impose liability on platforms only for processing "booking transactions" of unregistered properties, its operation and effect "hold [appellants] liable as the 'publisher or speaker'" of rental listings by penalizing platforms for enabling third-party booking transactions that violate the ordinance, and is thus barred by the CDA. *Cf. Internet Brands*, 824 F.3d at 850-51 (holding that the CDA did not bar a claim for failure to warn under California law because the claim "d[id] not seek to hold Internet Brands liable as the 'publisher or speaker of any information provided by another information content provider'").

En banc review of the panel's decision is further warranted because both the ordinance and the panel's underlying rationale, if left to stand, would frustrate the CDA's legislative aims and chill the development of e-commerce—the very thing Congress enacted the CDA to promote. Curtailing the CDA's broad protections by distinguishing between hosting and *processing* user content (under a statute that immunizes platforms from any liability for user content), would stifle innovation by threatening a basic and ubiquitous e-commerce business model that exists for the purpose of facilitating user transactions. Creating a *de facto* judicial exception to the

CDA by allowing municipalities to punish internet companies for failing to enforce local regulations by monitoring and removing or not publishing potentially objectionable user content, also imposes an undue burden on platforms given the volume of content online (illustrated by the fact that appellants themselves hosted a combined 1,700 live listings in Santa Monica in a single month, *see HomeAway.com*, 918 F.3d at 679). Absent a reversal, the panel opinion creates barriers to entry for e-commerce businesses, forces out smaller companies that lack the resources to comply with local regulatory schemes, and harms the millions of users who depend on services provided by platforms.

Amicus curiae respectfully requests this Court to rehear the panel decision *en banc*.[2]

II. ARGUMENT

A. The Panel Decision Creates an Intra-Circuit Split with This Court's Prior Decisions Broadly Construing the CDA

This Circuit has held the CDA "precludes liability that *treats* a website as the publisher or speaker of information users provide on the website." *Internet Brands*,

[2] Both parties have consented to the filing of this brief; no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than IA contributed money that was intended to fund preparing or submitting this brief. *See* Fed. R. App. P 29(a)(4)(e).

824 F.3d at 850 (emphasis added).[3] As such, "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." *Roommates.com*, 521 F.3d at 1170-71. Where a platform publishes third-party content, this Court has recognized the CDA establishes "broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user . . . ." *Perfect 10*, 488 F.3d at 1118 (citation omitted).

Here, the panel held the ordinance does not implicate the CDA because it does not expressly require platforms "to review the content provided by the hosts of listings on their websites," but rather to "monitor[] . . . incoming requests to complete a transaction—content that, while *resulting from* the third-party listings, is distinct, internal and nonpublic." *HomeAway.com*, 918 F.3d at 682. But these so-called "incoming requests" are actually computerized transactions that are processed online

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[3] The CDA shields interactive computer service providers, including platform providers, from liability for publishing third-party content by mandating that:

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

47 U.S.C. § 230(c)(1). Section 230 further states that:

> No cause of action may be brought and no liability may be imposed under any State or local law *that is inconsistent with this section*.

Id. § 230(e)(3) (emphasis added).

by the platforms "hundreds of times daily" (Dkt. 12 at 11) as a result of a process driven completely by third-party users, where a user views a property listing and responds to the host by inputting data on appellants' websites. In addition, this Court makes no distinction between the outward- and inward-facing nature of third-party content. *See, e.g.*, *Internet Brands*, 824 F.3d at 853 (ruling that the CDA immunizes platforms from liability for "failure to adequately . . . monitor internal communications"); *Caraccioli v. Facebook, Inc.*, 700 F. App'x 588, 590 (9th Cir. 2017) (affirming dismissal, under the CDA, of various tort claims arising out of Facebook's refusal to remove private images and videos "because the basis for each of these claims is Facebook's role as a 'republisher' of material posted by a third party"); *Fields v. Twitter, Inc.*, 217 F. Supp. 3d 1116, 1127-29 (N.D. Cal. 2016) (holding that Twitter acted as a publisher of private direct messages sent by users and broadly construing the term *publisher* under the CDA), *aff'd on other grounds*, 881 F.3d 739 (9th Cir. 2018). Indeed, the statute itself creates no such distinction between internal/external and public/non-public content.[4]

[4] As one commentator noted, "there would have been no need to statutorily exclude ECPA claims from Section 230's reach," *see* 47 U.S.C. § 230(e)(4), if the CDA is construed to "not apply to private messaging functions," as the panel's distinction suggests. *See* Eric Goldman, *Ninth Circuit Chunks Another Section 230 Ruling—HomeAway v. Santa Monica (Catch-up Post)*, TECHNOLOGY & MARKETING LAW BLOG (May 1, 2019), https://blog.ericgoldman.org/archives/2019/05/ninth-circuit-chunks-another-section-230-ruling-homeaway-v-santa-monica-catch-up-post.htm.

Because a substantial number of modern platforms do not publish sensitive information in view of privacy concerns, excluding "internal" or "nonpublic" content from CDA immunity would have the unintended effect of encouraging platforms to publish information at the expense of protecting consumer privacy to avoid losing CDA protection.

The panel erred by narrowly construing the CDA and holding that the ordinance falls outside of the CDA's immunity because it does not *on its face* "require the Platforms to monitor third-party content" or "expressly mandate" that platforms remove unlawful listings. *HomeAway.com*, 918 F.3d at 682-83. This is not the relevant inquiry. Rather, Ninth Circuit jurisprudence instructs that "courts [] ask whether the duty that the plaintiff alleges the defendant violated *derives from the defendant's status or conduct as a publisher* or speaker. If it does, section 230(c)(1) precludes liability." *Barnes*, 570 F.3d at 1102 (emphasis added).

This Court's decision in *Internet Brands* is instructive. 824 F.3d at 850-51. In that case, the Court held the CDA did not bar plaintiff from alleging a failure to warn claim against a platform that obtained information "from an outside source about how third parties targeted and lured victims" through that platform, because plaintiff's claim did not seek to impose liability for the platform's role as a "publisher or speaker" of third-party content. *Id.* at 851. It explained "[t]he duty to warn allegedly imposed by California law would not require [the platform] to

remove any user content *or otherwise affect how it publishes or monitors such content*," because "[a]ny obligation to warn could have been satisfied without changes to the content posted by the website's users." *Id.* (emphasis added). *Internet Brands* makes clear however that the "essential question" is not whether the ordinance expressly regulates content, but whether it "inherently requires" treating platforms "as a publisher or speaker" of the rental listings. *Id.* at 850. Indeed, the CDA expressly prohibits local laws that are "inconsistent" with its broad protections. 47 U.S.C. § 230(e)(3).

This Court's own CDA framework compels reversing the district court opinion because compliance with the ordinance by platforms is premised on a duty to monitor user content and the exercise of "'traditional editorial functions—such as *deciding* whether to publish, withdraw, post-pone, or alter content.'" *Roommates.com, LLC*, 521 F.3d at 1184 (emphasis added); *Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir. 2003) (citing *Zeran v. America Online, Inc.*, 129 F.3d 327, 330-33 (4th Cir. 1997)). The ordinance imposes on platforms a duty to verify that online bookings occur only for licensed properties. Unlike the duty to warn, which *Internet Brands* held could be satisfied by posting a warning instead of removing third party content, platforms cannot comply with the duty to verify without first determining whether the rental listings are compliant. This in turn requires platforms to monitor, review, and "cross-reference" against the City's property registry, *HomeAway.com*,

918 F.3d at 682, and "decid[e] whether to publish or [] withdraw" or deactivate user listings that are unlicensed—all of which constitute traditional editorial functions. *Barnes*, 570 F.3d at 1102 (reiterating "that publication involves reviewing . . . third-party content"); *see also Batzel* 333 F.3d at 1031 (ruling that "the exclusion of 'publisher' liability necessarily precludes liability for exercising the usual prerogative of publishers to choose among proffered material"); *Roommates*, 521 F.3d at 1170-71 (holding the CDA immunizes activity "that can be boiled down to deciding whether to exclude material that third parties seek to post online"); *Fields*, 217 F. Supp. 3d at 1123 ("Courts have repeatedly described publishing activity under section 230(c)(1) as including decisions about what third-party content may be posted online;" holding that "providing accounts to ISIS is publishing activity, just like monitoring, reviewing, and editing content"), *aff'd on other grounds*, 881 F.3d 739 (9th Cir. 2018). Hence, under this Circuit's own standard, the activity regulated by the ordinance falls squarely within CDA immunity.

The distinction drawn by the panel between platforms like Airbnb and HomeAway.com and websites like Craigslist that do not provide booking services, is—and must be—irrelevant under the CDA. The statute draws no distinction between platforms that merely host user content and those that facilitate user transactions (which include a myriad of online marketplaces)—and imposing such an arbitrary dichotomy is antithetical to Congress's intent to develop e-commerce

through enacting the CDA. *See, e.g.*, *Roommates.com*, 521 F.3d at 1174-75 (immunizing Roommate.com under the CDA for some activities, even though it collected revenue from advertisers and subscribers); *Godard v. Google, Inc.*, No. C 08-2738 (PVT), 2008 WL 5245490, at *3 (N.D. Cal. 2008) (applying Ninth Circuit law in holding "the fact that a website elicits online content for profit is immaterial; the only relevant inquiry is whether the interactive service provider 'creates' or 'develops' that content"). Courts have routinely found the CDA does not depend on whether a site is operated for profit or involves the processing of transactions; for example, the CDA has been held to shield both non-transactional and transactional platforms alike from liability arising out of user listings.[5] Numerous courts have also recognized that *conduct* on the internet is often inextricably intertwined with *content*, and thus efforts to impose liability on online businesses for alleged user misconduct

[5] *See, e.g.*, *Kimzey*, 836 F.3d at 1269 (Yelp); *Barnes*, 570 F.3d at 1100-01 (Yahoo!); *Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 27-28 (2d Cir. 2015) (GoDaddy.com); *Bennett v. Google, LLC*, 882 F.3d 1163, 1167 (D.C. Cir. 2018) (Google); *Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007) (RagingBull.com); *Zeran*, 129 F.3d at 330-31 (AOL); *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703, 717-18 (Ct. App. 2002) (eBay); *Schneider v. Amazon.com*, 31 P.3d 37, 42-43 (Wash. App. 2001) (Amazon); *Hill v. StubHub, Inc.*, 727 SE 2d 550 (N.C. Ct. App. 2012) (StubHub); *La Park La Brea A LLC v. Airbnb, Inc.*, 285 F. Supp. 3d 1097, 1103-04 (C.D. Cal. 2017) (Airbnb).

(or to require those businesses to police and prevent misconduct) often amount to treating a platform as the publisher or speaker of user content.[6]

En banc review is therefore appropriate because the panel decision adopted an impermissibly narrow reading of the CDA that conflicts with this Circuit's own decisions interpreting the statute. *See, e.g.*, *Barnes*, 570 F.3d at 1102.[7]

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[6] *See, e.g.*, *Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 18-24 (1st Cir. 2016) (affirming dismissal of civil claims brought under human trafficking statutes as preempted by CDA); *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008), *cert. denied*, 555 U.S. 1031 (2008) (immunizing MySpace under the CDA for failing to implement measures to prevent minor from being contacted by predator); *Green v. America Online (AOL)*, 318 F.3d 465 (3d Cir. 2003), *cert. denied*, 540 U.S. 877 (2003) (rejecting plaintiff's claim that allegedly defamatory material posted about him in a chat room and a computer virus sent to him from a third party were not preempted by section 230(c)(1) because they involved AOL's own misconduct); *Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003) (affirming dismissal of a claim by college athletes who were secretly video-recorded against platforms who hosted and sold the videos).

[7] The few instances when the CDA was found inapplicable by this Court involved unique fact patterns—not judicial exceptions to the broad sweep of the CDA or restrictions on what constitutes *publication*. *See, e.g.*, *Batzel*, 333 F.3d at 1031 (remanding to district court on whether CDA immunity applied where a communication that was republished online may not have been intended for publication); *Barnes*, 570 F.3d at 1105, 1109 (affirming dismissal of negligence claims but not a promissory estoppel claim based on the service provider's alleged affirmative undertaking to provide assistance in removing material that it would not otherwise have been required to remove under the "baseline rule" of CDA); *Internet Brands*, 824 F.3d at 851 (ruling that the CDA did not bar negligence claim where defendant failed to warn plaintiff about the risks of being raped by a user of Model Mayhem, where the information was allegedly acquired by the defendant offline, and not based on monitoring user content posted on the website).

B. The Panel Decision Contravenes Statutory Language, Legislative History, and Decisions From Other Circuits, Thus Thwarting the Development of E-Commerce

In enacting the CDA, Congress made a "legislative choice" to shield platforms and intermediaries from content-based liability because it "wanted to encourage the unfettered and unregulated development of free speech on the Internet, and to promote the development of e-commerce." *Batzel*, 333 F.3d at 1027; *see also* 47 U.S.C. § 230(b). Congress was concerned 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. By shielding websites from liability originating from third-parties, Congress also sought to encourage, and not penalize, self-regulation and "voluntary monitoring" by intermediaries. *Barnes*, 570 F.3d at 1110-11; *see also Zeran*, 129 F.3d at 330-31 (holding that the CDA reflects Congress's intent "not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties' potentially injurious messages"). Further, because the CDA, by its plain terms, protects both providers *and users* of interactive computer services, a judicially created exception to allow Santa Monica to penalize Airbnb and HomeAway for not reviewing and deleting allegedly noncompliant listings would also justify similar punitive measures against

individual users for republishing third party content, thereby chilling free speech. *See, e.g., Jones v. Dirty World Entertainment Recordings, LLC*, 755 F.3d 398, 407-08 (6th Cir. 2014) (noting the CDA was also enacted to protect "against the 'heckler's veto' that would chill free speech . . .") (citation omitted).

In asserting the ordinance would not hinder Congressional policy underlying the CDA, the panel ignores these animating principles. *See HomeAway.com*, 918 F.3d at 683. Weakening the CDA's broad protections for platforms that profit from facilitating user transactions would jeopardize a business model that has led to "economic empowerment and social change."[8] Under the panel's narrow reading of the CDA, platforms—including new start-ups—would be deterred from offering more innovative transaction processing services for fear of being subject to myriad

[8] Devin Wenig, *The Sharing Economy Pays it Forward* (Mar. 24, 2016) (explaining that marketplaces "are driving utilization and using technology to unlock hidden value—the hidden value in unused inventory, empty rooms and shared transportation"), https://www.ebayinc.com/stories/news/the-sharing-economy-pays-it-forward/; *see also* Kevin Wright, *Along for the ride: Tracking the sharing economy's impact on GDP*, Ten Magazine, The Federal Reserve Bank of Kansas City (November 15, 2017) ("Industry analysts say the popularity of sharing services has grown because they are simple to use and provide customers options that traditional industries have made more difficult to obtain or use"), https://www.kansascityfed.org/publications/ten/articles/2017/fall/ridesharing; Organization for Economic Co-operation and Development, *The Economic and Social Role of Internet Intermediaries*, 40 (2010), http://www.oecd.org/dataoecd/49/4/44949023.pdf ("[O]nline platforms are more efficient at matching supply and demand than their offline counterparts.").

local regulations from across the country.[9] This would undermine the CDA's protections that are expressly aimed at future growth . *See, e.g.*, *Jones*, 755 F.3d at 408 ("The protection provided by § 230 has been understood to merit expansion.").

The panel also failed to give adequate consideration to the problem that platforms subject to the ordinance are afforded no meaningful "choice" but to engage in editorial functions to either remove or de-activate noncompliant rental listings. *See HomeAway.com*, 918 F.3d at 683. Indeed, the panel "acknowledge[d] that. . . removal of [ostensibly noncompliant] listings would be the best option "from a business standpoint." *Id.* Platforms can hardly innovate or further develop if they host listings that cannot be booked, as doing so would defeat the utility of platforms and erode business from consumers who would otherwise assume those listings are available. This outcome hardly promotes the CDA's express findings and policy 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); *see also Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d 1169, 1177 (9th Cir. 2009) ("Recourse to competition is consistent with the

[9] *See* Goldman, *supra n.2* (noting that the panel's "approval of verification obligations will open the door for other pernicious regulatory efforts," such as incentivizing cities to "deputize online services as their law enforcement operators for business licenses" to "generate net incremental revenues to the city" despite the "horrible transaction costs socially"). https://blog.ericgoldman.org/archives/2019/05/ninth-circuit-chunks-another-section-230-ruling-homeaway-v-santa-monica-catch-up-post.htm.

statute's express policy of relying on the market for the development of interactive computer services.").

As this Court has acknowledged, platform providers are not in a position to police activity for a multiplicity of municipal violations across the country. *Perfect 10*, 488 F.3d at 1118 ("Because material on a website may be viewed across the Internet, and thus in more than one state at a time, permitting the reach of any particular state's [local laws] to dictate the contours of this federal immunity would be contrary to Congress's expressed goal of insulating the development of the Internet from the various state-law regimes."). But for the statutory immunity provided by section 230, myriad internet platforms would be required to either contend with enforcement actions in multiple jurisdictions based on independent and varied regulatory regimes or err on the side of removing content and censoring speech—a "grim choice" Congress sought to "spare interactive computer services." *Roommates.com*, 521 F.3d at 1163. The costs and complexities associated with deputizing platforms to enforce local laws requiring content removal would be detrimental to internet commerce.

III. CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully requests this Court grant appellants' petition for rehearing *en banc*.

Dated: May 3, 2019 GREENBERG TRAURIG, LLP

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a) AND LOCAL RULE 29-2

Pursuant to Federal Rule of Appellate Procedure 32(a) and Local Rule 29-2, I certify the following:

This brief complies with the type-volume limitation of Circuit Rule 29-2(c)(2) because this brief contains 4,200 words.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **BRIEF OF *AMICUS CURIAE* INTERNET ASSOCIATION IN SUPPORT OF PLAINTIFFS-APPELLANTS** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 3, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: May 3, 2019 GREENBERG TRAURIG, LLP

By: */s/ Ian C. Ballon*

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