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August 10, 2016

Honorable Tani Cantil-Sakauye,
Chief Justice and the Associate Justices Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

**Re: Amicus Letter of Avvo, Inc. in Support of Petition for Review of Hassell,
et al v. Bird, Court of Appeal First Appellate District Case No. A143233,
Supreme Court of the State of California Case No. S.235968**

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Court:

Avvo submits this amicus letter pursuant to Rule 8.500(g) of the California Rules of Court. We urge this Court to grant review of the above-entitled case. Avvo supports the arguments made by Appellant Yelp, Inc. in the Petition for Review and Reply.

Avvo is a Seattle-based company dedicated to providing consumers of legal services with more information about lawyers and legal services than they've ever had before. To that end, Avvo rates and profiles nearly every lawyer in the country (including every California-licensed lawyer). These profiles include licensing status, disciplinary history, biographical details, and more. The profiles also include a forum for clients to leave reviews of attorneys. Since its founding in 2007, Avvo has grown to the point where over 8 million people visit the site every month, and those users have posted hundreds of thousands of lawyer reviews on Avvo.

We take a special interest in this case, given Avvo's unique position as a forum for consumer information about lawyers. There will always be lawyers – particularly those who have been sanctioned or who have poor reviews – who do not appreciate the transparency with which Avvo publishes information. We were sued the week we launched.¹ We continue to be sued, and threatened with suit, by attorneys upset over Avvo's first-amendment-protected publishing activities. The fact that none of these cases have made it past the pleadings – and that far more have been threatened but never filed – is due in large measure to what we call “the law that makes the internet go:” 47 U.S.C. § 230 (“CDA 230”).

¹ See *Browne v. Avvo, Inc.*, 525 F. Supp. 2d 1249 (W.D. WA, 2007)

That law, and the open internet it enables, is deeply threatened by the lower court decision here. This court should grant review, and reinforce the primacy of the immunity granted by CDA 230, as well as the importance of due process rights for non-parties to litigation.

We are not writing to reiterate the legal arguments, already ably made by Appellant, for why the Court of Appeal erred in its decision. However, we can add some perspective regarding the importance of this issue for online publishers like Avvo or Yelp, and why this Court taking up review is so vital.

1. The Broad Immunity Offered by CDA 230 Enables Online Publishers to Have More Responsive & Responsible Forums.

The fact that CDA 230 immunizes Avvo from liability for its publishing and moderation decisions is critically important. It allows us to moderate our forums (we read every review prior to posting), apply our Community Guidelines, and operate an escalation-and-dispute process for review content – all without worrying about being sued for how we handle these activities. In the absence of this immunity, we would likely need to have rigidly open forums – to avoid allegations of abuse of some standard of care – or simply stop providing the public with a resource in which people could read and post about experiences with legal representation. By creating a judicial “back door” around the immunity – casting liability for judicial sanctions as somehow different than ordinary civil liability – the lower court decision casts a long shadow on the continued vitality of the “law that makes the internet go.”

2. Due Process is an Important Part of Running a Responsible and Balanced Forum.

Avvo’s success, like that of Yelp, is dependent in large measure on maintaining a balanced and credible forum for user feedback. While the law of large numbers dictates that there will always be examples of extreme and hyperbolic reviews, ultimately success is based on the usefulness of the reviews in the aggregate. Inherent in this is ensuring both that the forum is relatively open for feedback, and that at the same time processes exist to protect the legitimate reputational interests of the businesses being reviewed.

For Avvo, these processes include taking a review down if Avvo is notified that a court has found – in a contested proceeding – that the review is defamatory.² Avvo also provides attorneys and law firms with the opportunity to write public responses to reviews. For anonymous reviewers whose identities have been subpoenaed, Avvo provides notice and an opportunity to push back on the subpoena if appropriate.³

² See, e.g., *Blake, et al v. Giustibelli*, No. 4D14-3231 (Fla. 4th DCA, Jan. 6, 2016). The Respondent notified Avvo of the trial court’s finding, and Avvo removed the review.

³ See, e.g., *Thomson v. Doe*, 356 P.3d 727 (Wash. 1st CA, 2015).

These processes can be invoked on request by an attorney or consumer, or if Avvo is served with process or made a party to an action. Yelp, like all reputable online publishers of user-generated content, has similar processes and procedures. It is deeply ironic then, and fundamentally offensive to the concept of due process, that a court would issue an order directly impacting a non-party review site with no process whatsoever. Without notice and an opportunity to be heard, Yelp could not advocate on its own behalf or for the benefit of its users.

In conclusion, this case presents important issues impacting both the fundamental nature of due process and – in the nation’s largest jurisdiction and home to much of the online industry – the broad immunity that has allowed the internet to grow and thrive. For these reasons, this Court should grant review of this case and resolve the issues presented to ensure the preservation of the due process rights of non-parties and the immunities guaranteed by CDA 230.

Respectfully Submitted,



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