



Chief Justice Tani Gorre Cantil-Sakauye
and the Honorable Associate Justices of the Supreme Court
The Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

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AUG 15 2016

August 15, 2016

CLERK SUPREME COURT

Re: Support for Petition for Review in the matter of *Hassell v. Bird*, First Appellate
District, Division Four; Case No. A143233

Dear Chief Justice Cantil-Saukaye and Honorable Associate Justices:

The Wikimedia Foundation, Inc. ("Wikimedia") respectfully submits this letter in support of the petition for review filed by Yelp, Inc. in *Hassell v. Bird*, pursuant to California Rule of Court 8.500(g) (2016). The Wikimedia Foundation is a non-profit organization based in San Francisco, California, which operates Wikipedia, a free online encyclopedia that anyone can edit. The Wikimedia Foundation also hosts other popular websites, including Wiktionary, a free editable dictionary, and Wikimedia Commons, a free repository of photos and other media. These websites are built by thousands of people from around the world, and read by hundreds of millions of people, making Wikipedia one of the most visited websites in the world.

Wikipedia is a unique endeavor where individuals work together to build a public good—one of the largest collections of shared knowledge in human history. Volunteer contributors from across the globe create educational content through a collaborative process. Volunteers collectively write encyclopedia articles, share photos, and ensure that content meets Wikipedia's high quality standards. The ability to host users' free expression is crucial to the continued existence and success of Wikipedia and similar websites. We take the defense of this educational, user-created content and the free speech rights of contributors very seriously, and will act to support content and contributors, including in court, when necessary to protect Wikipedia and other sites. If the lower court ruling stands, it will have a detrimental impact on contributors' ability to create and share free knowledge.

Wikimedia shares Yelp's concerns about the effect this ruling could have upon well-established due process rights. Much like Yelp's website, Wikipedia is a platform that hosts content created by users. Websites that host content created by users should not be required to remove content when they did not receive notice of litigation over the legality of that content. In Wikimedia's case, as with many other platforms that host user-created content—including Yelp—users may choose to remove their own contributions from articles where they have posted them. Since the



person who posted the speech in question could be ordered to delete it, the court should not apply such an order to a website host, especially if it did not have the opportunity to participate in the underlying litigation.

That *Hassell* involved a default judgment is of further concern to Wikimedia. Websites may host content created by users from outside of California. Even if a user is properly served, they may be unable to defend their speech in a California court, due to expense, the inability to travel, and other factors. If plaintiffs are able to secure default judgments against users in suits filed without notice to the website host, and then demand the website host remove users' speech, it would mean website hosts have to remove valuable speech without a meaningful opportunity for the website or the user to defend it in court. This would erode the free speech rights that Wikipedia and similar websites rely on to make free knowledge widely available. Further, plaintiffs may engage in forum shopping in order to bring claims in California, hoping to take advantage of this precedent.

Wikipedia articles are written collaboratively by many different contributors, who are often building upon a foundation laid by other contributors. If speech by a single user is deleted, the work of several other users may also be harmed by the loss of the proper context. Therefore, the free expression rights of many others, beyond the individual speaker in question, may be impacted by the removal, and the intention and meaning of their expression lost along with the material that supported it. This effect is another reason why it is important that Wikimedia have notice of litigation over speech it may later be ordered to remove.

Wikimedia is concerned that this ruling not only harms the due process rights of website hosts, but also creates a way for plaintiffs to circumvent section 230 of the Communications Decency Act (47 U.S.C. §230) ("CDA"), in order to impose liability on a website host. Congress's passage of CDA section 230 reflects an important public policy decision. It allows websites to host content from a variety of voices, without fear of liability due to civil disputes over third-party content, including defamation. The present and future success of Wikipedia, which is dedicated to the global sharing of knowledge, could not be assured without this broad protection.

If a plaintiff secures a default judgment in a case in which the website host did not participate, obtains a removal order, and then seeks to enforce it against the website host, so that the website host faces potential contempt fines, the website host does indeed face liability. In such a case, the website host faces consequences due to the presence of user-created content on its servers, a circumstance that is repugnant to the intentions of CDA section 230.

The below proceedings in this case have created uncertainty about due process notice rights of non-parties who are made subject to injunctions, as well as the viability of the CDA section 230



safe harbor in California state courts. Wikimedia respectfully encourages this Court to grant the petition for review, in order to provide clarity in this crucial area of the law.

Sincerely,

A handwritten signature in black ink, appearing to be "MP", written over a horizontal line.

Michelle Paulson
Interim General Counsel
Wikimedia Foundation



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Case No.: CGC-13-530525

Court of Appeal
First Appellate District, Div. Four
350 McAllister Street
San Francisco, CA 94102

Case No.: A143233



PROOF OF SERVICE

I, Rachel Stallman, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

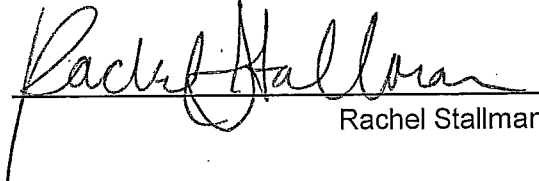
I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of the Wikimedia Foundation, 149 New Montgomery Street, 6th Floor, San Francisco, CA 94105.

I caused to be served a true and correct copy of this LETTER IN SUPPORT OF PETITION REVIEW on each person on the attached list by the following means:

- On August 15, 2016, I enclosed a true and correct copy of said document in a sealed envelope with postage fully prepaid for deposit in the United States Postal Service.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on August 15, 2016 in San Francisco, California.


Rachel Stallman



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