



Data Privacy Detective Podcast – Episode 24 – Internet Review Sites and Free Expression

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To address this very issue, the 1996 Act struck a balance between free expression and decency by exempting “interactive service providers” from liability for posting information provided by others. Thereafter, the explosive growth of internet communications systems – from Google, Yahoo, Facebook, to YELP – may not have happened without this U.S. law.

Twenty-two years later, the California Supreme Court faced a challenge to the Act’s application involving YELP, a review site with the moniker “Find the Best Businesses in Town,” based on posted ratings and comments generated by the public. The case centered on a San Francisco law firm that got a one-star YELP review from an unhappy former client, Ava Bird. Ms. Bird complained in her YELP review that her case had been mishandled by attorney Dawn Hassell. Ms. Hassell was enraged when her firm’s YELP rating dipped from 5.0 to 4.5 and demanded a retraction. After Ms. Bird refused, Ms. Hassell sued Ms. Bird – but not YELP itself – and obtained a default judgment against Ms. Bird based on a defamation claim that included an award of over \$500,000 in damages and an order that Ms. Bird take steps to remove the review. YELP was not a party to the case – not then at least. But the judgement also ordered unnamed parties to remove the information the court declared to be defamatory about both the law firm and Ms. Hassell.

YELP staff reviewed Ms. Bird’s comments and decided they were not libelous, despite the Court’s default judgment. The law firm served YELP with the Court’s order that directed removal of Ms. Bird’s comments and rating, albeit without naming YELP as a defendant. YELP responded that the 1996 Act made it essentially immune from such an order.

In a 4–3 decision, the California Supreme Court [agreed with YELP](#) in regard to *Hassell v. Bird*, 247 Cal.App.4th 1336 (July 2, 2018), citing

two sections of the Act: First, “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”; and second, “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.” 47 U.S.C. §§ 230(c)(1) and (e)(3).

The majority and concurring opinions saw the Court order as directly extending to YELP, as was its plain intention, and so violated section 230(e)(3). More broadly, the Chief Justice’s opinion expresses a pro-free-expression view that sees internet review sites as not required to review every post by a consumer related to their experience with a business. A person who posts a review remains personally liable for libel, a fate suffered by Ms. Bird, but a review site is not held to the standard of a writer of original content like a newspaper or magazine reporter and its employer. YELP simply posted Ms. Bird’s review, one of many, that resulted in a calculated rating of the Hassell law firm (5 being the top rating, 1 being the worst).

In a scathing dissent, other justices saw matters differently. Justice Cuéllar wrote, “The internet has the potential not only to enlighten but to spread lies, amplifying defamatory communications to an extent unmatched in our history.” The minority’s view was predicated on the concept that when an order against the loser of a court case requires other unnamed entities to cooperate in the judgment’s enforcement, a court has innate power to force compliance. For example, think of garnishment orders enforcing collection of judgments against individuals by requiring banks holding a judgment debtor’s funds to be paid to the judgment creditor).

Indeed, there are weighty issues at stake here. How can a rating site be objective and reflect a universe of opinion about a business if the business can threaten or obtain injunctions against those providing adverse reviews? Will society demand that internet platforms review every post about another person or business before publishing it? And wouldn’t such a requirement seriously jeopardize the whole point of review sites, effectively depriving consumers of substantial information? Free expression is at stake.

On the other side of the balance is the reality that if internet platforms are immune from defamation laws, there may be no effective control over the spread of lies and terribly injurious comments about people that can ruin careers and tarnish reputations. Here, the 1996 Act is explicit in calling for voluntary monitoring by internet platforms to screen out defamatory or obscene material; and if a platform gets a reputation for broadcasting fake, libelous or obscene comments, it faces serious, adverse business risks as a result.

Because *Hassell v. Bird* involved a San Francisco law firm, it lacked international implications. But internet sites are global virtually by definition. What happens if an internet platform gets an order from one country requiring it to delete information and a contrary order from another government? Take China, for example. China views Taiwan as part of China and has taken action against airlines and other businesses that list Taiwan in a manner that suggests it is a country. Taiwan has a different viewpoint. Is it possible, then, that website operators could get dueling orders from both governments? What if an Islamic republic orders any post it considers blasphemous removed from internet sites? That's certainly within the realm of possibility. So, what is the future of global communication?

A few weeks after the California decision, I checked YELP / San Francisco / Law firms. The Hassell law firm was back to a rating of 5.0. And Ms. Bird's post has disappeared. Whether this occurred at Ms. Bird's request or was a voluntary decision by YELP, it seems Ms. Hassell prevailed. But the debate of free expression versus truthful decency in communication will continue, enriched by the writings of California's justices.

For more information, please contact [Joe Dehner](#) or any attorney in Frost Brown Todd's [Privacy and Information Security Law Practice Group](#).

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