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Bad Review Online? California Court Says Pursue the Poster not the Platform



You see it and your heart sinks: a one-star review with negative feedback for your business on an online review site.

You think it's unlawful and want it taken down. What do you do? The California Supreme Court recently considered a case showing what not to do. In *Hassell v. Bird*, Ava Bird left one-star reviews for her lawyer, Dawn Hassell, on Yelp. Ms. Hassell wanted the reviews taken down so she sued Ms. Bird for libel in California. As part of the suit, Ms. Hassell obtained an injunction directing Yelp (who was not a party) to remove the reviews. Reviewing the five years of litigation through which Ms. Hassell pursued the injunction against Yelp, the California Supreme Court concluded that the website was the wrong target:

"Nevertheless, on this record, it is clear that plaintiffs' legal remedies lie solely against Bird, and cannot extend — even through an injunction — to Yelp."

The Court's decision was grounded in the federal Communications Decency Act ("CDA"), 47 U.S.C. § 230. In the CDA, Congress decided more than 25 years ago that online platforms that host users' speech cannot be liable for what people say on their websites. It provides that:

"No provider ... 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). Further, "[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." *Id.* § 230(e)(3). As applied in this case, the CDA immunized Yelp from liability for publishing (i.e. hosting) the reviews in question, and it could not be forced to remove Ms. Bird's reviews. The decision in *Hassell* not only reaffirmed this core principle underlying the CDA, but also addressed Ms. Hassell's attempted "end-run" on CDA immunity by rejecting the following arguments:

- Ms. Hassell argued that because Yelp was not a party, it was not entitled to CDA immunity. The Court disagreed, holding that because Yelp was "being held to account for nothing more than its decision to publish the challenged reviews," it was entitled to immunity even as a non-party.
- Ms. Hassell argued the injunction did not impose liability on Yelp. Again, the Court disagreed, holding that the CDA was meant to "shield Internet intermediaries from the burdens associated with defending against state-law claims that treat them as the publisher or speaker of third party content, and from compelled compliance with demands for relief that ... similarly assign them the legal role and responsibilities of a publisher qua publisher."

So what should Ms. Hassell have done? The Court set out her legal remedies: enforce against Ms. Bird the existing judgment, which required Ms. Bird to take efforts to remove the reviews. And then explore civil contempt remedies against Ms. Bird if she failed to comply with the court order entering judgment. [In a blog post](#), Yelp's deputy general counsel also suggests that "litigation is never a good substitute for customer service and responsiveness, and had the law firm avoided the courtrooms and moved on, it would have saved time and money, and been able to focus more on the cases that truly matter the most — those of its clients."

Authors

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