

**Amicus Letter of Online Service Providers
Supporting Writ Petition
of craigslist, Inc.**

September 1, 2010

Court of Appeal for the State of California
First Appellate District
350 McAllister Street
San Francisco, CA 94102

**Re: *craigslist, Inc. v. The Superior Court of San Francisco County*, No. A129536
Online Service Providers' Amicus Letter Supporting Writ Petition of craigslist, Inc.**

Dear Justices of the Court of Appeal:

This letter is submitted by a broad collection of the country's leading online and Internet service companies as amici in support of Defendant Petitioner craigslist, Inc.'s petition for a writ to this Court (the "Amici").

The undersigned Amici provide people around the world with a consistently growing range of interactive computer services that, among other things, enable users to post content – political, personal, professional, commercial, factual, fictional, opinion or otherwise – to the Internet and make that content available to interested viewers locally, regionally and internationally.

To date, the Amici and other interactive computer service providers ("online service providers") have been guided by Congress's encouragement of freedom of expression on the Internet, discouragement of broad-based censorship by online service providers, and encouragement of self-regulated cooperation and control of objectionable content by online service providers. Congress articulated and codified these important federal policies in Section 230 of the federal Communications Decency Act, 47 U.S.C. § 230 ("Section 230"). Section 230 eased online service providers' fear of potential liability and therefore removed the potentially overwhelming (if not impossible) burden on online service providers to pre-censor third-party content and the impetus to over-censor posted content on receipt of any complaint from a disgruntled user or member of the public. Instead, Section 230 encourages online service providers to be "good Samaritans" and endeavor to help, assist and cooperate to resolve concerns or complaints about third-party content on their services, and enables online service providers to make reasonable and sometimes difficult determinations about when, whether and how to address complaints about content.

The lower court in this case, *Scott P. v. craigslist, Inc., et al.*, S.F. Sup. No. CGC-10-496687, held on the facts alleged that Section 230's protections did not apply when the plaintiff called craigslist customer service to complain about third-party content and the customer service representatives responded cooperatively and endeavored to resolve his concerns. According to the lower court, these alleged calls with customer service pleaded agreements sufficient to support promissory estoppel and such promissory estoppel claims were outside the scope of Section 230's protection. The trial court's ruling relied strictly on the controversial *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009), decision by Ninth Circuit.

The Amici request and encourage this Court to grant craigslist's writ petition because, as the Superior Court acknowledged, this case poses an issue of significant first impression in California and throughout the country for online service providers. Specifically, by permitting the plaintiff to proceed against an online service provider on the basis of an affirmative, positive or cooperative response to a complaint or concern about third-party content (even by just a phone call or email to customer service), the ruling undermines Section 230's purpose and effect.

Section 230 was designed to encourage cooperation by online service providers, providing that "no cause of action" shall be brought and "no liability" may be imposed that treat the service provider as the publisher of third-party content or for actions that the service provider took voluntarily in good faith to restrict access to objectionable content. *See* 47 U.S.C. § 230(c)(1), (c)(2) and (e). The lower court's ruling threatens to annul the carefully-considered regime Congress put into place with Section 230. If the lower court's ruling stands, rather than encouraging online service providers to acknowledge and cooperate to resolve complaints about content, online service providers are encouraged to do the opposite – to prohibit, ignore or refuse complaints from users or members of the public – for fear that a cooperative or constructive response could be deemed an "agreement" to help that would eliminate their Section 230 protection.

Specifically, unless reversed, the lower court's decision could pressure or influence online service providers to:

1. Cease providing services that permit users to post content on the Internet;
2. Censor and restrict the nature and scope of user content posted to the Internet to avoid any possible liability for potentially objectionable content;

3. Cease all customer service – without any customer service, no putative plaintiff could allege (as the plaintiff Scott P. did here) that a customer service representative purportedly made a legally binding commitment on behalf of the company;
4. Continue customer service but deny and refuse to act on all complaints, concerns and requests for assistance with respect to objectionable third-party content; or
5. Continue customer service and possibly take action with respect to certain complaints but *only after* expressly disclaiming in writing any and all intentions and obligations to provide assistance with respect to the purportedly objectionable third-party content.

These options contravene the explicit aims and purposes of Section 230. They would discourage constructive self-regulation by the Internet industry and would impede the freedom of expression on the Internet that Congress determined should be protected. The State of California has wisely rejected restrictions on Section 230 that could have such deleterious effects, holding instead that “the plain language of Section 230 creates a federal immunity to *any cause of action* that would make service providers liable for information originating with a third-party user of the service.” *Barrett v. Rosenthal*, 40 Cal.4th 33, 43 (2006) (citation and internal quotation marks omitted, emphasis added).

This writ proceeding provides the present Court with the opportunity to settle this critical issue for California online service providers and for out-of-state providers who serve California residents. By correcting the Superior Court’s erroneous ruling below, the Court will provide clear guidance that the Ninth Circuit’s *Barnes* opinion was misconstrued and misapplied, is itself inconsistent with and erroneous pursuant to more than a decade of precedent, and has not supplanted California law as determined by the California Supreme Court’s *Barrett* analyses and holdings.

For the foregoing reasons, the Amici who are signatories to this letter request that this Court grant craigslist, Inc.’s petition for a writ and reverse the decision below.

Very truly yours,

Online Service Provider Amici Curiae in Support of Petitioner craigslist, Inc.

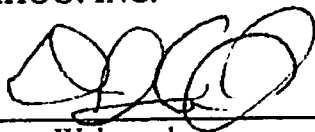
Justices of the Court of Appeal

No. _____

July 30, 2010

Amicus Signature Page

YAHOO! INC.



Darren Weingard

Vice President and Associate General Counsel, Commercial Litigation
Yahoo! Inc.

475 Sansome Street, 9th Floor

San Francisco, CA 94111

Telephone: (415) 262-7063

Facsimile: (415) 262-7129

Amicus Curiae in Support of Petitioner craigslist, Inc.

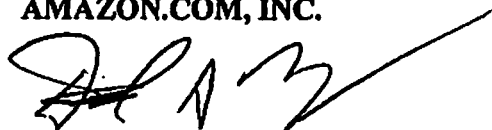
Justices of the Court of Appeal

No. _____

July 30, 2010

Amicus Signature Page

AMAZON.COM, INC.

A handwritten signature in black ink, appearing to read 'D. Zapolsky', written over a horizontal line.

David A. Zapolsky, Esq.
Vice President and Associate General Counsel
Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210
Telephone: (206) 266-1323
Facsimile: (206) 266-7010

Amicus Curiae in Support of Petitioner craigslist, Inc.

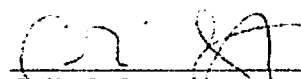
Justices of the Court of Appeal

No. _____

July 30, 2010

Amicus Signature Page

FACEBOOK, INC.



Colin S. Stretch

Deputy General Counsel, Litigation

Facebook, Inc.

1601 S California Ave.,

Palo Alto, California 94304

(650) 485-6271

(650) 472-9259

Amicus Curiae in Support of Petitioner craigslist, Inc.

Justices of the Court of Appeal

No. _____

July 30, 2010

Amicus Signature Page

TWITTER, INC.



Timothy Yip

Legal Counsel

Twitter, Inc.

795 Folsom Street, Suite 600

San Francisco, CA 94107

Amicus Curiae in Support of Petitioner craigslist, Inc.

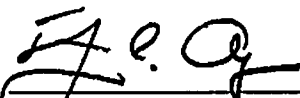
Justices of the Court of Appeal

No. _____

July 30, 2010

Amicus Signature Page

GOOGLE INC.

A handwritten signature in black ink, appearing to read "T.L. Alger", written over a horizontal line.

Timothy L. Alger

Deputy General Counsel

Google Inc.

1600 Amphitheatre Parkway

Mountain View, CA 94043

Telephone: (650) 253-0000

Facsimile: (650) 253-0001

Amicus Curiae in Support of Petitioner craigslist, Inc.

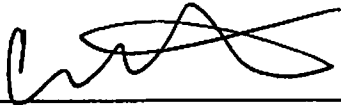
Justices of the Court of Appeal

No. _____

July 30, 2010

Amicus Signature Page

LINKEDIN CORPORATION


_____ 8/25/10

Erika Rottenberg
Vice President, General Counsel and Secretary
LinkedIn Corporation
2029 Stierlin Court
Mountain View, CA 94043
Telephone: (650) 810-2845
Facsimile: (650) 810-2897

Amicus Curiae in Support of Petitioner craigslist, Inc.

PROOF OF SERVICE

I, Lisa DeCosta, am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Perkins Coie, LLP, Four Embarcadero Center, Suite 2400, San Francisco, California 94111-4131. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On September 1, 2010 I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

Amicus Letter of Online Service Providers Supporting Writ Petition of craigslist, Inc.

in a sealed envelope, postage fully paid, addressed as follows:

Attorneys for Plaintiff

Scott P.

Thomas A. Cifarelli
THE CIFARELLI LAW FIRM, LLP
200 West Santa Ana Blvd., Suite 300
Santa Ana, CA 92701
(714) 547-3992

Defendant

Michael Odell Simpson
10900 Dapple Way
Bakersfield, CA 93312-4147
(661) 699-6636
z1rdreamer@hotmail.com

Attorneys for Defendants

Albert Carreno and Foster Daily Farms

Michael S. Helsey
JONES HELSLEY PC
265 East River Park Circle, Suite 310
P.O. Box 28340
Fresno, CA 93729
(559) 233-4800

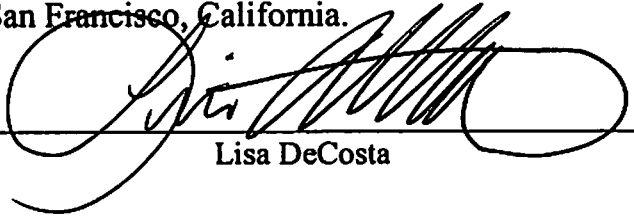
Superior Court

Hon. Peter J. Busch
San Francisco Superior Court
400 McAllister Street
Department 301
San Francisco, CA 94102

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

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

Executed on September 1, 2010, at San Francisco, California.



Lisa DeCosta