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December 20, 2006

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Chief Justice Ronald M. George
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4783

RE: Amicus Letter in Support of Request for Depublication (Cal. Rule of Court 979(b))
Novartis Vaccines and Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty (2006) 143 Cal.App.4th 1284
California Supreme Court No. S148678
California Court of Appeal Numbers A107538 and A108292

To Chief Justice George and Associate Justices:

The ACLU of Southern California is submitting this letter in support of the request for depublication of the Court of Appeal's opinion submitted by the Electronic Frontier Foundation (EFF).

INTEREST OF AMICUS

The ACLU is a national organization, founded in the wake of the Palmer Raids after World War I, which is dedicated to protecting the civil rights and civil liberties guaranteed by the Bill of Rights of the United States Constitution. Throughout its history, the organization has vigorously fought to protect the right of freedom of speech. The ACLU has repeatedly worked to ensure that the broadest possible freedom of speech on the internet. For example, the ACLU was both plaintiff and lead counsel in *Reno v. American Civil Liberties Union* (1997) 521 U.S. 844, in which the United States Supreme Court invalidated numerous provision of federal law that restricted speech on the internet.

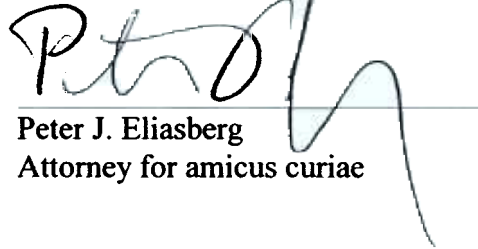
The ACLU of Southern California is one of three California affiliates of the national ACLU. The ACLU of Southern California was founded by Upton Sinclair in 1923, after he was arrested for reading the First Amendment to protest the Los Angeles Police Department's ban on meetings of striking San Pedro longshoremen. Since its inception, the ACLU of Southern California has also fought to protect the right to freedom of speech protected by the First Amendment of the United States Constitution and the Liberty of Speech Clause of the California Constitution. As part of those efforts, the ACLU of Southern California has appeared before this Court numerous times representing plaintiffs who alleged that their right of free speech had been violated and as an amicus curiae in cases involving the First Amendment and the Liberty of Speech Clause.

REASONS WHY THE DECISION BELOW SHOULD BE DEPUBLISHED

The ACLU of Southern California agrees with the reasoning of EFF's depublishation request. In particular, the decision below misstates the scope of the immunity under section 230 of the Communications Decency Act (CDA) by stating "[t]hat statute applies, however, *only to interactive computer services*, which are defined as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server." *Novartis*, 143 Cal.App.4th at 1301 (emphasis added). However, this statement is inconsistent with the language of section 230 of the CDA, which states "[n]o 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 this Court's interpretation of Section 230 in *Barrett v. Rosenthal* (2006) 40 Cal. 4th 33 (2006). Because the Court of Appeal opinion sets forth an overly narrow interpretation of the scope of Section 230, it creates the risk of confusion and impermissible restrictions on speech on the internet. Accordingly, the ACLU of Southern California respectfully request that the opinion be depublished.

Respectfully Submitted,

ACLU FOUNDATION OF
SOUTHERN CALIFORNIA



Peter J. Eliasberg
Attorney for amicus curiae

PROOF OF SERVICE

*Novartis Vaccines and Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty
California Supreme Court Case No. S148678
Court of Appeal Case Nos. A107538/A108292*

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and am not a party to the within action; my business address is 1616 Beverly Blvd., Los Angeles, California 90026. On December 20, 2006, I served the following document(s) described as:

AMICUS LETTER IN SUPPORT OF REQUEST FOR DEPUBLICATION

by placing a true copy thereof, enclosed in sealed envelopes, postage prepaid to all interested parties to this action, as follows:

California Court of Appeal
First District, Division 2
350 McAllister Street
San Francisco, CA 94612

(Original + 8 copies via Federal Express)

Honorable Judge Steven Brick
Alameda County Superior Court
201 13th Street, Dept. 31
Oakland, CA 94612

Daniel Bookin
O'Melveny & Myers, LLP
Embarcadero Center West
275 Battery Street, 26th Floor
San Francisco, CA 94111

Mark Goldowitz
California Anti-SLAPP Project
2903 Sacramento Street
Berkeley, CA 94702

Christine Garcia
The Animal Law Office
3824 18th Street, #201
San Francisco, CA 94114

Kurt B. Opsahl
The Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110-1914

BY MAIL: By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with the business' practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at , in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 20, 2006, at Los Angeles, California.


Evangeline F. Reyes