

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JANE DOE No. 14,

Plaintiff-  
Appellant,

v.

INTERNET BRANDS, INC.,

Defendant-  
Appellee.

**MOTION FOR LEAVE TO FILE  
BRIEF OF AMICI CURIAE  
FLOOR64, INC. D/B/A THE COPIA  
INSTITUTE IN SUPPORT OF  
APPELLEE INTERNET BRANDS,  
INC. PETITION FOR REHEARING  
AND REHEARING EN BANC**

9th Circuit Case No. 12-56638

On Appeal from the United States  
District Court for the Central District of  
California

3:14-cv-00764-PK

Honorable J. Walter

**INTRODUCTION**

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, Amicus Floor64, Inc. d/b/a The Copia Institute requests leave to file the accompanying amicus curiae brief in support of Appellee Internet Brands. Pursuant to Ninth Circuit Rule 29-3, Amicus attempted to obtain the consent of all parties before moving for permission to file the proposed brief. Appellee consented to the filing of this brief, but Appellant refused consent.

**IDENTITY AND INTEREST OF AMICUS CURIAE**

Amicus Floor64, Inc., d/b/a the Copia Institute, is a corporation that regularly advises and educates innovative technology startups on a variety of

issues, including intermediary liability and the important free speech interests associated with their protection. The Copia Institute works directly with innovators and entrepreneurs to better understand innovation and policy issues, while Floor64's online publication, Techdirt.com, has published over 60,000 posts on these topics which have received more than one million third party comments, and is regularly viewed over 2-million times a month. The site depends on the statutory protection for intermediaries to enable the robust public discourse found on its pages. As an enterprise that relies on the statutory protection itself and that advises others who depend on it as well our interest here is to ensure that the judicial interpretation of the important statutory protection at 47 U.S.C. § 230 lets it continue to protect the individuals, businesses, and related speech interests that depend on it.

**THE AMICUS BRIEF WILL ASSIST THE COURT  
AND IS RELEVANT TO THE DISPOSITION OF THE CASE**

Amicus Floor64, Inc. d/b/a/ The Copia Institute offers this brief to explain how the Court's interpretation of 47 U.S.C. § 230 conflicted with precedent in this circuit and others, undermined the important statutory protection that Internet platforms depended on, and did so in a way that contravened the interests Congress intended to advance when it enacted the law.

Resolution of this case therefore is likely to have significant legal impact, and Amicus Floor64, Inc. d/b/a The Copia Institute hopes to provide useful

background for the Court as it considers the case.

**CONCLUSION**

For the reasons stated herein, Amicus requests that this Court accept the attached brief as filed.

Dated: July 11, 2016

RESPECTFULLY SUBMITTED,

By: /s/ Catherine R. Gellis  
CATHERINE R. GELLIS, ESQ.  
P.O. Box 2477  
Sausalito, CA 94966  
(202) 642-2849  
cathy@cgcounsel.com

*Counsel for Amicus Curiae  
Floor64, Inc. d/b/a The Copia Institute*

NO. 12-56638

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

JANE DOE No. 14,

PLAINTIFF-APPELLANT,

v.

INTERNET BRANDS, INC.,  
d/b/a ModelMayhem.com,

DEFENDANT-APPELLEE,

---

On Appeal From The United States District Court  
for the Central District of California  
D.C. No. 12-cv-3626-JFW

The Honorable John F. Walter, District Court Judge

---

***BRIEF OF AMICUS CURIAE FLOOR64, INC. D/B/A THE COPIA  
INSTITUTE IN SUPPORT OF DEFENDANT-APPELLEE'S PETITION  
FOR REHEARING AND REHEARING EN BANC***

---

Catherine R. Gellis, Esq.  
P.O. Box #2477  
Sausalito, CA 94966  
Telephone: 202-642-2849  
Email: cathy@cgcounsel.com

*Counsel for Amicus Curiae*

**DISCLOSURE OF CORPORATE AFFILIATIONS AND  
OTHER ENTITIES WITH A DIRECT FINANCIAL INTEREST IN  
LITIGATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* Floor64 Inc. d/b/a The Copia Institute states that it does not have a parent corporation, and that no publicly held corporation owns 10% or more of the stock of it.

**TABLE OF CONTENTS**

STATEMENT OF INTEREST .....1

INTRODUCTION .....2

ARGUMENT .....4

I. The Panel's decision contravened Congress’s intent to foster the growth of the Internet by undermining the statutory protection all platforms depend on to be platforms. ....4

    A. Platforms, and the speech they carry, depend on Section 230 being construed more broadly than the Panel allowed. ....4

    B. Because Model Mayhem’s role as a platform intermediating Ms. Doe’s profile content was the basis for the “special relationship” Section 230 should have applied. ....7

    C. Allowing the “duty to warn” claim to go forward frustrated Congress’s intent to protect platforms from myriad state and local liability.....9

II. The Panel's decision contravened how Congress intended to protect the public when it passed Section 230.....11

III. The effect of this decision creates chilling ambiguity for platforms of all sizes and services at the expense of the public interest Section 230 is designed to protect.....15

CONCLUSION.....17

**TABLE OF AUTHORITIES**

**Cases**

*Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009) .....15

*Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003) ..... passim

*Ben Ezra Weinstein and Company, Inc. v. America Online, Inc.*, 206 F.3d 980  
(10th Cir. 2000) .....14

*Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir. 2003) ..... 6, 9, 14

*Delfino v. Agilent Techs., Inc.*, 52 Cal. Rptr. 3d 376 (Ct. App. 2006) .....10

*Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561 (2009) .....4, 6

*Doe v. MySpace Inc.*, 528 F.3d 413 (5th Cir. 2008) .....4, 9

*Fair Housing Council of San Fernando Valley v. Roommate.com*, 666 F.3d 1216  
(9th Cir. 2012). .....12

*Fair Housing Council of San Fernando Valley v. Roommates.com LLC*, 521 F.3d  
1157 (9th Cir. 2008) ..... 11, 12

*Garcia v. Google*, 786 F.3d 727 (9th Cir. 2015) .....7

*Garcia v. Google*, 786 F.3d 733 (9th Cir. 2015) .....7

*Gentry v. eBay*, 99 Cal.App.4th 816 (2002) .....6

*Reno v. ACLU*, 521 U.S. 844 (1997).....2

*Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710 at \*3 (N.Y.Sup.  
May 24, 1995).....12

*Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413 (1st Cir.2007)  
.....6

*Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir.1997) ..... 11, 14

**Statutes**

47 U.S.C. § 230(a)(1).....5

47 U.S.C. § 230(a)(3).....5

47 U.S.C. § 230(b)(1).....9

47 U.S.C. § 230(b)(2).....9  
47 U.S.C. § 230(e)(2).....6  
47 U.S.C. § 230(e)(3).....9

**Other Authorities**

141 Cong. Rec. H8460-01, H8470 (1995).....12  
Eric Goldman, *47 USC 230 Retrospective Conference Recap*, Technology &  
Marketing Law Blog (Mar. 21, 2011),  
[http://blog.ericgoldman.org/archives/2011/03/47\\_usc\\_230\\_retr.htm](http://blog.ericgoldman.org/archives/2011/03/47_usc_230_retr.htm).....13

## **STATEMENT OF INTEREST**

Floor64, Inc., d/b/a the Copia Institute, is a corporation that regularly advises and educates innovative technology startups on a variety of issues, including intermediary liability and the important free speech interests associated with their protection. The Copia Institute works directly with innovators and entrepreneurs to better understand innovation and policy issues, while Floor64's online publication, Techdirt.com, has published over 60,000 posts on these topics which have received more than one million third party comments, and is regularly viewed over 2-million times a month. The site depends on the statutory protection for intermediaries to enable the robust public discourse found on its pages.

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), no one, except for undersigned counsel, has authored the brief in whole or in part, or contributed money towards the preparation of this brief.

## INTRODUCTION

What happened to Ms. Doe is abhorrent, but efforts to hold others legally accountable for it must be carefully aimed at the true culprits. To instead target Internet Brands for having hosted the ModelMayhem.com (“Model Mayhem”) site misdirects the anger her story inspires, and it does so in a way that, if allowed to proceed, will result in its own harm to important public interests.

The Internet is a “unique and wholly new medium of worldwide human communication” bringing together millions and millions of people. *Reno v. ACLU*, 521 U.S. 844, 850 (1997). Sometimes bad things happen when people are brought together. But there have always been miscreants looking to harm the people that they meet, and they did not need the Internet to create and exploit these opportunities. What has changed with the Internet is that now we can accentuate the upsides to the interconnectivity the Internet enables. With the Internet’s unprecedented ability to bring people together we can build new businesses (including many that could never before have been imagined), stimulate a robust marketplace of ideas, and develop new marketplaces that can allow people to profit from their own individual offerings of goods and services more easily and efficiently than they ever could before.

But for all these upsides to be realized the platforms that facilitate this interconnectivity need to have robust, predictable protection from the liability that

might arise from the interconnectivity they enable. Without that protection, the vibrant speech, innovation, and communities they foster will be chilled.

Congress enacted 47 U.S.C. § 230 (“Section 230”) to provide this protection. It understood its critical importance in ensuring that these upsides to the Internet could be realized, and it purposefully enacted an expansive, flexible law to provide it. The Panel’s decision significantly erodes that protection, however, in large part because it did not correctly recognize how it was applicable. The Panel’s decision contextualized Internet Brands’s relationship with Ms. Doe as something apart from its relationship as a platform brokering her content in order to deny it the statutory protection to which it should have been entitled. By doing so the Panel undermined this important statutory immunity that all platforms depend on.

The decision also upended the balance Congress had deliberately struck to best protect the public overall when it codified Section 230. By allowing this claim to go forward the Panel has displaced the policy Congress had written into Section 230 to encourage platforms to look out for the public by specifically shielding those efforts from judicial review, instead replacing it with a policy that now threatens platforms with the costly sanction of *ex post* judicial review. Although the Panel’s decision is couched in the alleged facts of this particular case, its decision effectively requires all platforms, now and in the future, regardless of their size or the service that they provide, to preemptively police against all sorts of

claims that might potentially arise from their existence as platforms intermediating others' content – even claims they might not be able to anticipate.

Creating this burden also contravenes Congress's intent. The petition for rehearing or rehearing *en banc* ("Petition") should therefore be granted to ensure that platforms are protected by Section 230 as fully as Congress intended, and with them, the public that benefits from them.

## ARGUMENT

**I. The Panel's decision contravened Congress's intent to foster the growth of the Internet by undermining the statutory protection all platforms depend on to be platforms.**

**A. Platforms, and the speech they carry, depend on Section 230 being construed more broadly than the Panel allowed.**

The Panel in this case erred in assuming that the immunity could only apply to cases where the question of liability applied to specific content that the platform hosted (Op. 11-12), despite courts having found otherwise, including in cases with similar facts as this one. *See, e.g., Doe v. MySpace Inc.*, 528 F.3d 413 (5th Cir. 2008); *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561 (2009). The consequence of it doing so, however, transcends this particular case because, by limiting the situations where Section 230 may apply, it opens the door to more attacks on platforms and the valuable activity they enable.

The importance of protecting platforms generally has been particularly self-evident in recent weeks: events at the U.S. Capitol have been streamed via the

Periscope platform and the aftermath of police shootings shown via Facebook. In the wake of these and other matters of public concern there have been tweets, blog posts, comments on articles, and countless more examples of online discourse, diversion and discovery shared among the interconnected public. None of this information, knowledge, and experience sharing could happen, however, without the intermediary platforms that carry, store, and serve every speck of information that makes up the Internet. From the banal to the erudite, every single thing the world relies on the Internet to provide exists only because some site, server, or system has intermediated that communication so the world can have access to it.

Congress understood the unprecedented social value of the Internet and the platforms that delivered it. *See e.g.*, 47 U.S.C. § 230(a)(1) and 47 U.S.C. § 230(a)(3). To ensure that intermediaries could continue to develop<sup>1</sup> to provide this benefit Congress enacted Section 230, which fostered online discourse by shielding intermediaries from liability arising from what others use their systems to disseminate. *See Batzel v. Smith*, 333 F.3d 1018, 1026-1030 (9th Cir. 2003) (summarizing the history of Section 230 and its policy goals). For this protection to be meaningful, however, it needs to be robust, predictable, and flexible. *Carafano v. Metroplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003); *Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st

---

<sup>1</sup> Most of the platform technologies listed above post-date the passage of Section 230, which created a legal terrain where they have been free to develop.

Cir.2007). Robust, predictable, and flexible does not mean that Section 230 inherently create a “no-man's land” where no liability can ever touch a platform. (Op. 14). But Section 230 must be expansively applicable to have any overall protective effect.

If Section 230's protection is too limited it will allow litigants, including those driven by a desire to censor, to re-contextualize their complaints in whatever way Section 230's inapplicability lets them target the platform intermediating the content they dislike and thus chill the online activity it facilitates. See *Doe II*, 175 Cal. App. 4th at 572 (discussing rebuffed attempts in *Gentry v. eBay*, 99 Cal.App.4th 816 (2002), to plead around Section 230). This concern is not hypothetical: already countless people have tried to exploit the few limitations built into Section 230, including the exemption from its protection for “intellectual property”-based claims at 47 U.S.C. § 230(e)(2), and used this lack of coverage as an opportunity to target the platform and the speech it carried. A relevant example from this Circuit of this sort of artful pleading is *Garcia v. Google*, where a plaintiff used an imagined copyright claim to target an otherwise immune intermediary. *Garcia v. Google*, 786 F.3d 733, 740-41 (9th Cir. 2015). This Court, sitting *en banc*, ultimately found her claim invalid, but not before the targeted platform had to extensively litigate its defense and protected speech had long been chilled. See *Garcia v. Google*, 786 F.3d 727, 729 (9th Cir. 2015)

(Rheinhart, J. dissenting from decision to deny emergency rehearing *en banc*) (“I dissent from this court's earlier refusal to go *en banc* immediately on an emergency basis. Only by doing so could we have prevented the irreparable damage to free speech rights in the lengthy intervening period until we could take the case *en banc* under our regular procedure. The unconscionable result is that our court allowed an infringement of First Amendment rights to remain in effect for fifteen months before we finally issued our opinion dissolving the unconstitutional injunction issued by a divided three-judge panel.”).

In order to ensure that further chilling effects born by artful pleading around weakened Section 230 immunity cannot occur, and that Congress’s attempt to protect platforms and the human interconnectivity they enable will not be frustrated, the Petition should be granted.

**B. Because Model Mayhem’s role as a platform intermediating Ms. Doe’s profile content was the basis for the “special relationship” Section 230 should have applied.**

In addition to construing Section 230’s claim coverage too narrowly, the panel also erred by not seeing how the platform, having acted as a platform with respect to Ms. Doe, was why Section 230 should apply to it. While the Panel correctly observed that “[p]ublishing activity is a ‘but for’ cause of just about everything Model Mayhem is involved in” (Op. 15) it did not credit the publishing activity it engaged in as a platform as the “but for” cause of the “special

relationship” the Panel then tried to find between Internet Brands and Ms. Doe. In cases such as this one, where there has been a defense predicated on Section 230, the essential “but for” question to first examine is whether any liability could have arisen “but for” the defendant’s role as an intermediary publisher.

As Internet Brands argues in its petition, the “special relationship” the Panel identifies as the one upon which a duty to warn could be predicated is one that would not have existed “but for” Model Mayhem’s role as an intermediary platform handling user-provided profiles such as Ms. Doe’s. (Petition 9-11). No relationship at all between Internet Brands and Ms. Doe would have arisen but for her having communicated her profile information through the Model Mayhem website. *See Doe*, 528 F.3d at 419-20.

There is some question as to whether Ms. Doe and her attackers became connected through the Model Mayhem website or through alternate means. (Op. 7 n.2). As the Panel correctly noted the answer to this question should not change the analysis, *id.*, but the reason it should not affect the analysis is because it only matters that Ms. Doe had used the website to host a profile that her attackers responded to. As Ms. Doe herself argues, had Ms. Doe not uploaded her profile to Model Mayhem the attack might not have occurred. Her having uploaded the profile is the very reason she seeks to hold Model Mayhem liable. But her having done so, her having uploaded the profile and in doing so her treating Model

Mayhem as a platform, is exactly why Section 230 precludes her claim. *Carafano*, 339 F.3d at 1124 (“So long as a third party willingly provides the essential published content, the interactive service provider receives full immunity.”).

The Petition should be granted to ensure that the Panel decision does not fracture the precedent platforms depend on by introducing a more convoluted analysis to determine whether they will be protected by it.

**C. Allowing the “duty to warn” claim to go forward frustrated Congress’s intent to protect platforms from myriad state and local liability.**

In crafting Section 230’s statutory immunity Congress specifically preempted state law claims. § 230(e)(3) (“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.”). The ability for Section 230 immunity to trump state claims is particularly important to furthering Section 230’s language and legislative goals because the Internet inherently extends across every state jurisdiction. Were each state permitted to interfere with this immunity intermediaries would be subject to myriad and potentially conflicting legal requirements. Forcing platforms to navigate this legal minefield would undermine Congress’s intent to “to promote the continued development of the Internet and other interactive computer services and other interactive media,” § 230(b)(1), by letting them be “unfettered by Federal or State regulation.” § 230(b)(2); *see also Delfino v. Agilent Techs., Inc.*, 52 Cal.

Rptr. 3d 376, 387 (Ct. App. 2006) (“[The purpose of Section 230 is to] avoid the chilling effect upon Internet free speech that would be occasioned by the imposition of tort liability upon companies that do not create potentially harmful messages but are simply intermediaries for their delivery.”); *Zeran v. America Online, Inc.*, 129 F.3d 327, 330-31 (4th Cir.1997).

The fact that Internet Brands might ultimately be found not liable under a duty to warn does not make the Panel’s decision less concerning. The concern for platforms does not lie exclusively with a potential finding of liability but also with whether it will need to face the mere question of it. *Batzel*, 333 F.3d at 1027 (citing *Zeran*, 129 F.3d at 330). *See also Fair Housing Council of San Fernando Valley v. Roommates.com LLC*, 521 F.3d 1157, 1175 (9th Cir. 2008) (“[Section 230 was designed] to protect websites not merely from ultimate liability but from having to fight costly and protracted legal battles.”).<sup>2</sup>

It is this legal uncertainty that is so chilling to these platforms and the new businesses they have spawned. Particularly given the sheer volume of content platforms intermediate it would be crippling for them to have to constantly look over their proverbial shoulder out of fear of being forced to account for any

---

<sup>2</sup> *Roommates.com* is itself a cautionary tale of how taxing it can be on an intermediary to have to litigate questions of liability. In that case Section 230 immunity was disallowed with respect to certain content alleged to be illegally discriminatory, which after four more years of litigation was ultimately found not to be illegal after all. *Fair Housing Council of San Fernando Valley v. Roommate.com*, 666 F.3d 1216, 1223 (9th Cir. 2012).

possible legal consequence any local jurisdiction might invent to target how it handled others' content. *See Roommates.com*, 521 F.3d at 1163 (citing *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710 at \*3 (N.Y.Sup. May 24, 1995) regarding the impossibility of reviewing all user-provided content)). The inevitable result would be censorship of content and fewer innovative ideas for connecting people – which is exactly the sort of outcome Congress tried to foreclose when it passed Section 230.

The Panel therefore erred in allowing this state-based tort claim to go forward, and the Petition should be granted to reverse the decision in order to ensure that other intermediaries will not be vulnerable to other state and local laws targeting the effects of their intermediating, as Congress had intended.

## **II. The Panel's decision contravened how Congress intended to protect the public when it passed Section 230.**

The Panel's assertion that a duty to warn claim does not amount to a duty to monitor, (Op. 13), and its assumption that any burden that results will only be “marginally more expensive” (Op. 14), are in conflict with the policy values Congress sought to advance when it codified Section 230. With its statutory language Congress intended to accomplish two things. *Batzel*, 333 F.3d at 1027. First, Congress wanted to insulate intermediaries from liability to encourage the unfettered and unregulated development of free speech on the Internet, and to promote the development of e-commerce. *Id.* At the same time, it similarly

intended for Section 230 to protect the public by ensuring that these same intermediaries were in the position to help minimize the unwelcome consequences of the less beneficial uses of the Internet. *Id.* at 1028.

What is notable about how Congress sought to achieve this publicly beneficial, protective end is that it instead of threatening intermediaries with sanction, it encouraged them to take whatever steps they could to protect the public. The wisdom of structuring the statute in this way is evidenced in several ways: for one thing, it encourages a platform to help police the Internet by ensuring that it will not be worse off than one that does not bother to. *Id.* at 1029. Second, had Congress not structured Section 230 this way it would have discouraged platforms from doing all they could to protect users because they would have needed to conserve resources to deal with unanticipated liability that might arise should they not do it in a way that would have satisfied an *ex post* judicial review. *Ben Ezra Weinstein and Company, Inc. v. America Online, Inc.*, 206 F.3d 980, 986 (10th Cir. 2000) (citing *Zeran*, 129 F.3d at 331 and 141 Cong. Rec. H8460-01, H8470 (1995) (statement of Rep. Barton) (“Congress enacted 230 to give interactive service providers “a reasonable way to ... help them self-regulate themselves without penalty of law.”)).

As discussed in Section II.C *supra* the ability of Section 230 to serve as a mechanism for promoting Internet hygiene is predicated on platforms not being

depleted by an infinite number of specific policing demands raised by 50+ jurisdictions. *Carafano*, 339 F.3d at 1123 (“The specter of tort liability in an area of such prolific speech would have an obvious chilling effect. It would be impossible for service providers to screen each of their millions of postings for possible problems.”). From a practical standpoint, if there can be one duty then there will be more, and these varied duties may apply to incalculable amounts of material. Attempts by platforms to mitigate their legal risk even with respect to just this particular duty will lead to further diversion of resources by platforms away from policing activities that might be more valuable, less availability of platforms to host speech or other innovative services, and more censorship of the speech they still intermediate.

*Barnes v. Yahoo* itself is instructive with regard to this policy balance. *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009). Although this Court took pains to preclude a finding of liability based on Yahoo’s Section 230-protected role as an intermediary, *id.* at 1102-1106, because it was a platform that had made a promise to delete undesirable content, the consequence of allowing the case to go forward is that now few well-advised platforms will ever make similar promises. *See, e.g.*, Eric Goldman, *47 USC 230 Retrospective Conference Recap*, Technology & Marketing Law Blog (Mar. 21, 2011), [http://blog.ericgoldman.org/archives/2011/03/47\\_usc\\_230\\_retr.htm](http://blog.ericgoldman.org/archives/2011/03/47_usc_230_retr.htm) (“*Barnes v.*

Yahoo prompted her to look at the company's processes. Linden Labs won't make any representations about what LL will do for a complaining user until LL has actually done the work, even though that approach frustrates users." So rather than supporting Congress's objective to have platforms play that sort of proactive, helpful role, the threat of liability outside what Section 230 could shield them from has instead deterred platforms from trying to go that extra mile, which is exactly the opposite result from what Congress had intended. *See Batzel*, 333 F.3d at 1029-30. *Barnes v. Yahoo* therefore serves as a cautionary tale for why courts should be reluctant to find exceptions to Section 230's immunity because those exceptions allowing for liability to attach directly undermine the policy values Congress was trying to advance with it.

The Panel's decision to allow the duty to warn claim to go forward is an example of *ex post* judicial review a platform is now having to face for potentially not having done enough to minimize the negative effects of Internet connectivity. Yet this is exactly the kind of punitive disincentive Congress sought to avoid. It effectively replaces the "carrot" approach Congress intended to use with Section 230 to address the negative externalities of the Internet with one that is stick-based in its punitive approach. This approach directly contravenes the language of the statute and the effect Congress sought to achieve by structuring it as it did.

The Petition should therefore be granted in order to ensure that the public is protected as well as Congress intended it to be.

**III. The effect of this decision creates chilling ambiguity for platforms of all sizes and services at the expense of the public interest Section 230 is designed to protect.**

For Ms. Doe there may be little more important to her than her ability to hold responsible anyone she can for what has happened to her. It is justly tempting for a court to want to help blaze a clear path for her to achieve whatever may make her feel made whole again. But there is more at stake in this case than just her claim, and the Panel's decision, if let to stand, threatens to do harm to more of the health of the Internet ecosystem as a whole than may necessarily be readily apparent.

If Ms. Doe's claim is allowed to go forward it will not just be Internet Brands that will be affected by this precedent: any intermediary platform, big or small, will also be affected. For it is not just large companies that benefit from Section 230; individuals can also act in the role of intermediaries, and when they do they also rely on Section 230's protection. For example, any blogger that allows comments on his or her blog depends on this protection with respect to those comments. Every social media user that allows discussion on their updates similarly depends on it. Every person who forwards an email depends on it. While it may be tempting to look at an Internet business and decide that a large,

apparently well-capitalized business should be liable for whatever may result from the use of their platforms, by ignoring Section 230's bar against this sort of assignment of liability it means that Section 230 will not be available to protect any of these individuals. Nor will it be available for any smaller business with an innovative idea that wants to be able to afford to grow into a bigger business, including one that might be even more proactively protective of users than current large players.

Furthermore, in any situation involving one intermediary there may in fact be multiple nested intermediaries, with one depending on the services of another to support the same underlying intermediary act. Fortunately, rather than burdening intermediaries with costly litigation necessary to navigate which of these interconnected platforms should bear the burden of liability arising from an intermediating act, Section 230 avoided these perniciously unanswerable questions entirely by providing the immunity to all the intermediaries involved. *See Batzel*, 333 F.3d at 1031.

It is because these questions are such thorny knots to untangle that Section 230 exists to bar the exercise, because without that bar platforms and courts would be awash in incalculable, and perhaps also uncontrollable, legal risk. That risk would then chill everyone, from the largest to the smallest intermediary, from providing those intermediary services and with it the benefit Congress intended all

to realize by them. To stave off that undesirable end, the petition should be granted.

### CONCLUSION

Because the Panel's decision is inconsistent the statutory protections afforded intermediaries by Section 230 and contravenes Congress's clear intent to provide them with generous legal protection to preserve the public benefit of online activity overall, this case should be reheard so the court ensure that intermediaries will retain this important protection and the public will benefit accordingly.

Dated: July 11, 2016

By: /s/ Catherine R. Gellis  
Catherine R. Gellis, Esq.  
P.O. Box #2477  
Sausalito, CA 94966  
Telephone: 202-642-2849  
Email: cathy@cgcounsel.com

*Counsel for Amici Curiae  
Floor64., Inc. d/b/a The Copia  
Institute*

**CERTIFICATE OF COMPLIANCE  
WITH TYPE-VOLUME LIMITATION,  
TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS  
PURSUANT TO FED. R. APP. P. 32(a)(7)(C)**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify as follows:

1. This Brief of Amicus Floor64, Inc. d/b/a The Copia Institute In Support Of Defendant-Appellee complies with the word limit of Fed. R. App. P. 29(c)(2) because this brief contains 3792 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010, the word processing system used to prepare the brief, in 14 point font in Times New Roman font.

Dated: July 11, 2016

By: /s/ Catherine R. Gellis

Catherine R. Gellis

*Counsel for Amicus  
Curiae*\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 11, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 11, 2016

By: /s/ Catherine R. Gellis

Catherine R. Gellis

*Counsel for Amicus Curiae*