

20-2725, 20-2885

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

KAREN HEPP,

APPELLANT/CROSS-APPELLEE,

v.

FACEBOOK, INC. and WGCZ S.R.O.,

APPELLEES;

IMGUR INC. and REDDIT, INC.,

APPELLEES/CROSS-APPELLANTS.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
Case No. 2:19-cv-04034

The Honorable John Milton Younge, United States District Court Judge

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE
OF ELECTRONIC FRONTIER FOUNDATION, AMERICAN LIBRARY
ASSOCIATION, ASSOCIATION OF COLLEGE AND RESEARCH
LIBRARIES, ASSOCIATION OF RESEARCH LIBRARIES, CENTER FOR
DEMOCRACY AND TECHNOLOGY, COPIA INSTITUTE, ENGINE
ADVOCACY, FREEDOM TO READ FOUNDATION, IFIXIT, PUBLIC
KNOWLEDGE IN SUPPORT OF PETITION FOR REHEARING**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amici Curiae Electronic Frontier Foundation, American Library Association, Association of College and Research Libraries, Association of Research Libraries, Center for Democracy and Technology, Floor64, Inc. d/b/a/ The Copia Institute, Engine Advocacy, Freedom to Read Foundation, iFixit, Inc., and Public Knowledge state that they do not have parent corporations and that no publicly held corporation owns 10 percent or more of their stock.

Dated: October 28, 2021

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In accordance with Federal Rule of Appellate Procedure 29(b)(2), amici¹ respectfully move for leave to file the accompanying brief in support of Appellee’s petition for rehearing. Facebook, Reddit, Imgur, and WGCZ consent to the filing of this brief; Hepp does not oppose its filing.

Section 230 is the legal cornerstone of online speech, commerce and innovation. By vesting online service providers with immunity to claims based on the exercise of their publishing and editorial functions, Section 230 has promoted free speech and innovation for more than 20 years. Amici are public interest groups, library associations, small tech companies, and representatives of the start-up community who represent the diverse concerns and perspectives of libraries, nonprofits, small online businesses, and users. Accordingly, amici have a direct and substantial interest in ensuring that the legal rules governing online discourse are properly and consistently applied so that all can continue to enjoy an internet that promotes innovation, competition, and free speech—just as Congress intended.

The Electronic Frontier Foundation (“EFF”) is a member-supported, non-profit civil liberties organization that works to protect free speech and privacy in

¹ Pursuant to Federal Rule of Appellate Procedure Rule 29(c), amici certify that no person or entity, other than amici, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. Amicus iFixit notes that US Policy Lead Kerry Sheehan was formerly a Facebook employee.

the digital world. Founded in 1990, EFF has tens of thousands of active donors and dues-paying members across the United States. EFF represents the interests of technology users in both court cases and broader policy debates surrounding the development and application of law in the digital age. EFF has litigated or otherwise participated in a broad range of intermediary liability cases.

The American Library Association (“ALA”), established in 1876, is a nonprofit professional organization of more than 57,000 librarians, library trustees, and other friends of libraries dedicated to providing and improving library services and promoting the public interest in a free and open information society.

The Association of College and Research Libraries (“ACRL”), the largest division of the ALA, is a professional association of academic and research librarians and other interested individuals. It is dedicated to enhancing the ability of academic library and information professionals to serve the information needs of the higher education community and to improve learning, teaching, and research.

The Association of Research Libraries (“ARL”) is an association of 124 research libraries in North America. ARL’s members include university libraries, public libraries, government and national libraries. ARL programs and services promote equitable access to and effective use of recorded knowledge in support of teaching and research. Together, these three organizations represent more than

100,000 libraries and 300,000 individuals. Libraries provide Internet access for over 100 million Americans.

Public Knowledge is a non-profit public interest 501(c)(3) corporation, working to defend citizens' rights in the emerging digital culture. Its primary mission is to promote online innovation, protect the legal rights of all users of copyrighted works, and ensure that emerging copyright and telecommunications policies serve the public interest. Applying its years of expertise in these areas, Public Knowledge frequently files amicus briefs in cases that raise novel issues at the intersection of media, copyright, and telecommunications law.

The Freedom to Read Foundation is an organization established by the American Library Association to defend First Amendment rights, foster libraries as institutions that fulfill the promise of the First Amendment, support the right of libraries to include in their collections and make available to the public any work they may legally acquire, and establish legal precedent for the freedom to read of all citizens. It achieves these goals by promoting and protecting the freedom of speech and freedom of the press; protecting the public's right of access to information and materials stored in the nation's libraries; and supporting libraries and librarians in their defense of First Amendment rights.

Floor64, Inc. d/b/a The Copia Institute, is a privately-held small business that advises and educates innovative technology startups on policy issues, including those relating to platforms and the important free speech interests associated with their protection. Through the Copia Institute, Floor64 works directly with innovators and entrepreneurs to better understand the regulatory terrain, while Floor64's online publication, Techdirt.com, has published over 70,000 posts commenting on these subjects. The site regularly receives more than a million page views per month, and its posts have also attracted more than a million reader comments—user speech that advances discovery and discussion around these topics. Floor64 depends on Section 230 both to enable the robust public discourse found on its website and for its own speech to be shared and read throughout the Internet.

iFixit is an international, open-source, online repair manual for everything. iFixit's mission is to provide people with the knowledge they need to make their things work for as long as possible. iFixit represents the interests of a global community of makers, tinkerers, fixers, and repair professionals. In 2020, the iFixit community taught repair to over 100 million people from almost every country in the world. iFixit's strongly collaborative online community has published over 50,000 online repair guides. This massive, free resource has helped people fix everything from cellphones and game consoles to tractors and musical instruments.

Engine Advocacy (“Engine”) is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government representatives and a community of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship. Engine conducts research, organizes events, and spearheads campaigns to educate elected officials, the entrepreneur community, and the general public on issues vital to fostering technological innovation.

Center for Democracy & Technology (“CDT”) is a non-profit public interest organization. For more than 25 years, CDT has represented the public’s interest in an open, decentralized internet and worked to preserve civil rights and civil liberties in the digital age. CDT regularly advocates in support of the First Amendment, protections for online speech, and privacy, and works to balance those rights and protections where they intersect.

As organizations with direct, extensive experience both providing platforms for online speech and protecting the interests of the public in communicating online, amici have unique insights into the importance of Section 230’s safe harbor and its historical development and impact. Amici are deeply concerned that the panel opinion will significantly undermine the internet legal landscape, to the detriment of free expression, innovation, and competition. Amici’s brief also addresses Section 230’s role in a broader regulatory scheme that includes laws

such as Section 512 of the Digital Millennium Copyright Act, which provides a complementary safe harbor for copyright claims, the form of “intellectual property” that potentially threatened the viability of online intermediaries and was not covered under Section 230’s protections.

Both of the above issues help explain the extraordinary importance of the panel opinion and, by extension, the necessity for rehearing or rehearing en banc. Amici do not support rehearing because we are concerned about the effects of an adverse ruling on Facebook in particular, which can doubtless afford any liability it might incur. Instead, we are deeply concerned about the smaller entities that cannot afford that risk, or even the costs of defending a lawsuit. We are even more concerned about the users who rely on intermediaries to communicate with family, friends and the world, and who will be unable to share content that might include an image, likeness or phrase associated with a person should those intermediaries be saddled with defending against state publicity claims based on their users’ speech.

Accordingly, amici respectfully request leave to file the accompanying brief to assist the Court in its determination.

Dated: October 28, 2021

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CERTIFICATE OF COMPLIANCE

That I, Kit Walsh, counsel for amici curiae, hereby certify that the following statements are true:

The foregoing Motion for Leave to file Amicus Brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). The brief is printed in proportionally spaced 14-point Times New Roman font, using Microsoft® Word for Mac 365 and there are 1,287 words in the motion according to the word count of the word-processing system used to prepare the motion. The motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5), and with the type style requirements of Fed. R. App. P. 32(a)(6).

Dated: October 28, 2021

By: /s/ Kit Walsh
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Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on October 28, 2021 I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the CM/ECF system. All participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 28, 2021

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