

**Statement of Aaron Schur
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Hearing before the U.S. House Subcommittee on Constitution and Civil Justice on H.R. 2304, the “SPEAK FREE Act.”

June 22, 2016

INTRODUCTION

Good afternoon Chairman Franks, Ranking Member Cohen, and members of the Subcommittee on Constitution and Civil Justice. Thank you for the opportunity to appear before you to discuss the SPEAK FREE Act of 2015.

My name is Aaron Schur, and I am the Senior Director of Litigation at Yelp, an online platform dedicated to connecting people with great local places. In this role, I am responsible for Yelp’s litigation caseload, which often involves Yelp being sued solely for its role in allowing consumers to speak out about local businesses online, including cases where users are named as our co-defendants. I am also responsible for making sure Yelp appropriately evaluates and makes proper objections to the several subpoenas we receive each month from plaintiffs seeking Yelp users’ personal information in order to press legal claims, most often without substance, against them. Additionally, I help our User Support team respond to users that have been sued, and occasionally aid them in finding counsel to take up their cases. Locating effective representation in these cases is particularly difficult, and sometimes impossible, when a defendant has limited or even average means.

People frequently share their opinions and experiences, including about local businesses, with their friends and family. For an “offline” example, imagine the following scenario: A new restaurant opens up in your neighborhood and you’re first in line to try it. After dinner, you leave the restaurant happy and full. The food was great, the staff was responsive, and the atmosphere was lively. A week later, when a few friends ask you where they should go for dinner, you tell them about your experience at this restaurant and recommend that they should go.

Online, this type of feedback is amplified. Your review of a restaurant or any number of services and products can now be read by hundreds (or even thousands or millions). Many of those readers will rely on that review to help them make a more informed purchasing decision. On Yelp, about 78% of the time, these reviews focus on what is being done right (and correspondingly are rated three stars or above). This immediate and direct consumer feedback also inserts transparency into the marketplace, allowing businesses to improve their products or services accordingly.

Just because users have access to a larger audience online, which sites like Yelp enable, does not mean they lose their free speech rights. Yet, some businesses use Strategic Lawsuits Against Public Participation (SLAPPs) to silence their critics, neutralizing their ability to speak freely.

Pamela Boling is a SLAPP victim.¹ In 2015, she left a Yelp review of a local tax prep company. The review was critical but represented Pamela's honest and first-hand experience with the company. For sharing her opinion, the business hit her with a SLAPP. Being from Nevada, a state with a recently strengthened anti-SLAPP law, Pamela was able to introduce a special motion to dismiss the case because it lacked merit. A judge found in her favor, and awarded her attorney's fees under Nevada's anti-SLAPP law.

Matthew White is another SLAPP victim.² He left a Yelp review of a flooring company in Colorado, sharing his complaints about the service he received. Six months later, he was hit with a SLAPP, and while he initially pursued the case, the exorbitant costs he incurred forced him to settle, although he continued to maintain his review was truthful. Colorado has no anti-SLAPP law, and so Matthew had no way to efficiently and cost-effectively resolve his case early on.

This discrepancy in options and outcomes is one reason why the SPEAK FREE Act is critical to ensuring that consumers nationwide are on equal footing when faced with lawsuits challenging their ability to publicly and honestly express their opinions.

Yelp regularly hears from users nationwide targeted for their honest opinions, here is a small sample of the threats our user community has reported to us over just the past few weeks, in their own words (I have anonymized these reports, and edited them for brevity):

June 16, 2016: Yelp User From New York

"I wrote a review on [a Dentist's] page. He sued me for that review for \$100,000. Although what I wrote was true, I agreed to take that review out because I [can't] afford [the] lawsuit fee. The dentist said he would stop [the] lawsuit if I remove the review."

May 18, 2016: Yelp User From Florida

"I have already spoken to my lawyer, and I will . . . keep [Yelp] in the loop. It is sad that some [Y]elpers might be naturally intimidated into removing a low star review after a threat by a business owner. I suppose that I have an unusual situation in that our family... already has a team of corporate lawyers that I can connect with."

¹ Techdirt (Apr. 12, 2016), <https://www.techdirt.com/articles/20160410/10523934143/tax-prep-company-tries-to-sue-unhappy-customer-into-silence-hit-with-damages-anti-slapp-order.shtml/>; Tim Cushing, *Tax Prep Company Tries To Sue Unhappy Customer Into Silence; Hit With Damages In Anti-SLAPP Order*.

² Fox31 Denver (May 18, 2015), <http://kdvr.com/2015/05/18/yelp-review-gets-couple-sued/>; Rob Low, *Yelp review gets couple sued*.

May 16, 2016: Yelp User From Virginia

“[A Dentist] has threatened me with a huge lawsuit if I don’t take the review down. Also, he is falsely accusing me of defamation . . . Everything I wrote in the review and updates are true. I have paid receipts from them for the work I originally came in for.”

This last reviewer from Virginia also flagged to Yelp the specific threat the business made through Yelp’s messaging system, which began as follows:

“The “truth” can be an expensive defense in a courtroom and the burden of proof is on you to prove what you write happened.”

This threat starkly shows the danger of SLAPPs, leveraging the threat of expensive proceedings to manipulate others. When we receive these kinds of reports, we try and connect the users with legal resources, but in cases like the above, where the forum state has no strong anti-SLAPP law, it is extremely difficult to obtain affordable legal assistance. Truth should not be an “expensive defense” for someone honestly exercising his or her right of free speech. Anti-SLAPP laws reduce the impact of threats like these by offering a mechanism to quickly end meritless cases, clearly articulate the relative burden for each party in the case, and greatly lessen the financial risks a speaker and their lawyer take to stand behind honest statements.

SLAPPs can also take the form of federal claims. In *Lee v. Makhenevich*, a 2013 case in the U.S. District Court for the Southern District of New York, a dentist hired a lawyer to send letters to a Yelp reviewer threatening copyright damages of \$100 for each day a critical review of her dental practice remained online. The Yelp reviewer brought a declaratory judgment action to shed light on this practice, and won.

In *Garruto v. Longo*, a 2012 case in U.S. District Court for the District of New Jersey, a Yelp reviewer who wrote a critical review of a pet store was targeted with a meritless claim under the Anticybersquatting Consumer Protection Act. That claim was ultimately dismissed.

And last year, in the California federal courts, Yelp obtained dismissal of *Jeung v. Yelp Inc.*, a meritless SLAPP brought under the Fair Labor Standards Act. The suit asserted that any consumer that posted a review on Yelp must be considered a Yelp employee and entitled to payment, which was a nonsensical litigation strategy designed to make Yelp’s review platform financially unsupportable.

SLAPPs are a large problem, TripAdvisor — a peer review site — estimates that about 2,500 of their users in 2015 reported wanting to remove a review in response to harassment from from

businesses. This number is undoubtedly low, as many more users likely removed their reviews without taking the time to inform TripAdvisor of their reasons for doing so.

The SPEAK FREE Act will ensure that honest speakers have a way to quickly and economically end meritless lawsuits targeting them for what they have said — regardless of where they live or whether the claims at issue are asserted under federal or state law. Protecting consumers from SLAPPs is essential to fostering a growing online economy and ensuring everyone is able to exercise their Constitutional right to free speech.

ABOUT YELP AND THE VALUE OF ONLINE REVIEWS

Yelp is a go-to source for finding great restaurants, doctors, mechanics, and more. Currently, our platform averages more than 21 million mobile app users, 69 million mobile web visitors, and 77 million desktops visitors each month. Yelp users have posted more than 100 million reviews, and with people writing and reading reviews at an increasing rate, over half of these were written in the last two years. On Yelp, businesses also have the opportunity to respond to their customers (publicly if they like), analyze consumer feedback, and, when necessary, share their own experiences and stories.

As a company that thrives on user participation, Yelp's success — and the success of other online user-generated platforms — highlights the reliance people place on access to the experiences and opinions of others. With increased access, people are able to make better informed decisions on how they're going to spend their money and time.

This is supported by a 2015 study, which concluded that nearly 70% of all American shoppers rely on online reviews before making a purchase.³ Additionally, in a study commissioned by Yelp in 2014, Nielsen found that 4 out of 5 of our users visit Yelp with the intention of buying a product or service. Of those who end up making a purchase, 85% do so within a week of viewing our site. Similar numbers can be found across review platforms and industries. When deciding which television to buy, restaurant to patronize, or company to work at, reviews serve an important role in the public's decision-making process.

HOW SLAPPS HURT CONSUMERS

In recent years, Yelp has observed an increase in the number of businesses using SLAPPs to silence their critics.

³ The Consumerist (Jun. 3, 2015), <https://consumerist.com/2015/06/03/nearly-70-of-consumers-rely-on-online-reviews-before-making-a-purchase/>; Ashlee Kieler, *Nearly 70% Of Consumers Rely On Online Reviews Before Making A Purchase*.

While statements of honest opinion and truthful experience are not bases for liability in this country, unfortunately, we've seen that even the simple threat of a lawsuit is highly effective at getting users to remove their reviews from consumer advocacy sites like ours. The specter of lopsided litigation against an opponent with better financial resources is simply more than the average person is willing to take on, especially as even a successful defense generally provides no mechanism to recoup legal expenses.

Consumers do not expect to be threatened with a lawsuit for sharing their opinion online, and they certainly are not prepared to take on the steep price tag that accompanies litigation. It is much easier for the average person to take down his or her review, a fact some businesses and their lawyers know full well and exploit accordingly. These businesses face very little risk in bringing meritless lawsuits with solely the goal of removal in mind. Such actions have a chilling effect on the targeted consumer who is less likely to share his or her experience in the future, and may also ward off other consumers. Further, by discouraging public discourse, these businesses artificially inflate their reputation, leading to a skewed and unbalanced marketplace.

Those people who are able and willing to defend their cases still must bear the burden of substantial legal fees before their words are vindicated in court, and there is seldom a mechanism to recover those fees, leaving them doubly harmed — first by the original poor service received, and second by the financial drain of the lawsuit. Thus, the fee shifting component of the SPEAK FREE Act, which mirrors similar provisions in several state anti-SLAPP laws, is of critical importance, as it deters meritless cases in the first instance, incentivizes attorneys to take cases on behalf of those who could not otherwise afford a defense of even a meritless case, and enables those who have the means to defend themselves an opportunity to be made whole when they prevail before the court.

When a business uses a SLAPP to threaten or intimidate a consumer, that business is discouraging public discourse and harming the online ecosystem. The benefit of transparency — which is what online review platforms provide — is having a more perfect feedback loop. Consumers are sharing their experiences with products and services, and businesses are engaging their consumers in efforts to understand what they're doing right or may need to improve.

For years, Yelp has been fighting to expand the protections of consumer free speech in courts and legislative bodies across the country. This is not only to protect our users from SLAPPs, but to protect the entire internet ecosystem from frivolous attacks against free speech. Any online speech can be the target of these meritless lawsuits, including speech shared on social media platforms, in blogs, and in news publications. With the intent of silencing a critic, businesses, powerful individuals, and even interest groups are throwing around their weight and abusing the legal system to their advantage. All of this comes at the expense of consumers and the online communities in which their opinions flourish.

CONCLUSION

In conclusion, Mr. Chairman, Yelp is dedicated to protecting free speech rights online. We strongly support the SPEAK FREE Act and look forward to working with you and other members of the Committee as this legislation moves forward.

I welcome your questions on this important topic.