



May 19, 2011

Via Fax and US Mail

Randall E. Turner
Turner & McKenzie, PC
Attorneys at Law
1800 Norwood, Suite 100
Hurst, Texas 76054
Fax: 817-268-1563

Re: *Bat World Sanctuary et al. v. Cummins*, No. 352-248169-10

Dear Mr. Turner:

I am writing on behalf of San Francisco Bay Area Indymedia (“Indybay”) and the American Civil Liberties Union of Northern California. It has come to our attention that you have sent a demand to Indybay that it remove a webpage¹ from its website – a webpage that includes texts, photos, and videos concerning Ms. Amanda Lollar and Bat World Sanctuary, as well as links to comments on that initial posting – and have threatened to add Indybay as a defendant in your lawsuit against Ms. Mary Cummins if it does not immediately comply.

Indybay will not remove these materials. Under § 230 of the Communications Decency Act, operators of websites such as Indybay cannot be forced to censor articles and other information that, like the materials here at issue, originate with a third party, even if those materials are defamatory or otherwise objectionable. *Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157 (9th Cir. 2008) (en banc); *Milo v. Martin*, 311 S.W.3d 210 (Tex.App. 2010); *Doe II v. MySpace Inc.*, 175 Cal.App.4th 561 (2009). As the Texas Court of Appeal has specifically observed, “section 230 does not provide a right to request a website's owner to remove false and defamatory posts placed on a website by third parties, and does not provide the injured person with a remedy in the event the website's owner then fails to promptly remove defamatory posts from its site.” *Id.* at 218.

¹ Specifically, <http://www.indybay.org/newsitems/2011/05/01/18678593.php>.

Randall E. Turner

May 19, 2011

Page 2

Moreover, Indybay has a First Amendment right to display factually accurate materials, including videos and photographs, even if they were acquired unlawfully by a third party. *Bartnicki v. Vopper*, 532 U.S. 514 (2001). Your demand that Indybay remove the entire webpage, which includes not just the initial post but also links to material supporting and disputing the accuracy of that post as well as information relating to your clients' lawsuit against Ms. Cummins, is clearly overbroad; complying with it would result in the censorship of materials that are clearly protected by the First Amendment, including materials that support Ms. Lollar and Bat World Sanctuary.

In short, whatever the merits of your clients' dispute with Ms. Cummins, Indybay may properly maintain its webpage under § 230 and the First Amendment. Please let me know if you if you continue to believe that Indybay has any duty to remove these materials from its website or have any questions or concerns about this. My direct phone number is (415) 293-6373; my email is mrisher@aclunc.org.

Sincerely,



Michael T. Risher
Staff Attorney

cc: ACLU of Texas