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The internet is a modern town square with unpoliced content, social media addiction case will not change this

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A jury in California is now hearing a case in which a plaintiff has accused large social media platforms of causing harmful social media addiction in teens.[1] Some of the platforms have settled, and only two platforms remain as defendants in the case. The platforms are facing claims of failure to warn, negligence, and concealment of information.

While these causes of action may carry with them heavy damages, and a judge may ultimately enjoin the platforms from some behaviors, the issues in this case go far beyond social media addiction, encompassing today's entire internet model where anyone is free to speak their mind as if in an unpoliced town square.

The lawsuit accuses the platforms of causing addiction by offering features such as infinite scroll and autoplay. The plaintiff has tried to include claims against the content itself, but those claims have been dismissed based on the platforms' defense that Section 230 of the Communication Decency Act (CDA)[2] of 1996 shields them from liability based on content that third parties posted.

Even if the anonymous plaintiff prevails in this case, the verdict may affect some functions of the accused platforms, but the content itself will remain unchanged and unpoliced.

Section 230 enables the internet to function and grow

Section 230 is widely credited with enabling the internet to function as we know it. The statute immunizes social media platforms like Facebook and user review sites from liability based on content that users post.

Without this and other statutory protections, any website that permits users to post content is subject to repeated lawsuits for defamation, invasion of privacy, false advertising, and other claims based on content posted by users. With the shield of Section 230, the platforms have freedom to operate without censorship.

Section 230 encourages internet platforms to police posted content as little as possible. The more the platform contributes to the content, the less likely it will be immunized from liability under this statute.

This means that platforms may not routinely screen for content that can include defamatory and/or body-shaming statements before publishing a post. (Note: many platforms do have some level of content screening to catch obvious issues, such as cursing on a children's channel. A platform's decision to take down or leave up a post entirely, as opposed to editing it, does not make the platform ineligible for immunity.)

Courts have repeatedly upheld this protection. Platforms have successfully invoked Section 230 in cases involving celebratory ads on AOL about the bombing of a federal building in Oklahoma City[3] and defamatory reviews and false online accusations.[4]

Section 230 encourages internet platforms to police posted content as little as possible.

Plaintiffs often plead causes of action in ways that creatively try to avoid the defense of Section 230, as in the case in the pending social media addiction litigation in which the claims are failure to warn, negligence, and concealment. With few exceptions,[5]any claim directed solely to content posted by internet users will likely fail.

Calls to police internet content and amend Section 230 are controversial

Section 230 has been on the books for 30 years and, during that time, the internet has grown exponentially. Many, including the U.S. Supreme Court, have compared the internet to a "town square," in which any private citizen can "make his or her voice heard."[6]

By making his or her voice heard, however, any private citizen can also injure others, and, due in part to Section 230, an injured party may have no practical redress.

When an internet user posts any content online, for example, on a social media platform or review site, that user is liable for any damages caused by the content.

Sometimes, however, it may be impractical or a waste of resources for an injured party to sue the person who posted that content. The person may be anonymous, the person may be judgment proof (*i.e.*, not have the resources to pay any judgment), or potential monetary damages may not be sufficient to justify the expense of a lawsuit.

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Injured parties, therefore, often look elsewhere when seeking redress for their injuries. Sometimes, as in the pending lawsuit, an injured party chooses to sue the internet platform itself, such as Facebook. Large companies like Facebook present attractive defendants due to their resources and the ability to consolidate multiple claims in a single lawsuit.[7] Section 230, however, remains a formidable defense.

While we cannot predict the outcome of the pending litigation, Section 230 has done its job. Even if the plaintiff in the pending addiction litigation succeeds on claims directed at platform design or algorithms, any ruling will not impose liability for user generated content. Section 230 has already foreclosed that avenue.

Many lawmakers have proposed changes to the scope of Section 230 that would require large internet platforms to police harmful or unlawful content in some way. These proposals are, as expected, controversial due to first amendment and political issues among other reasons.

For non-controversial matters, however, Congress has had some limited success in changing the CDA. For example, in 2018, the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA)[8] as enacted, limiting protections for platforms for content related to sex trafficking of minors.

Changes to the availability of online content may come from sources other than legal authorities. Earlier this month, social media platform Discord announced that all user accounts will default to "teen" status, restricting access to age-gated spaces and content filtering that preserves the privacy and "meaningful connections that define Discord."[9]

By age-gating some content, Discord may be protecting itself from reputational harm that may arise from inappropriate content but, legally, this change is not needed because Discord is largely protected by Section 230, at least for now.

Legislating for new technologies is a balancing act

The aforementioned cases currently before California juries have more at issue than Section 230, but they illustrate the balance that lawmakers try to achieve when legislating.

Too much oversight of the internet in the 1990s would have prevented its growth. Too much oversight now would stifle creativity and commerce and change the way we communicate. But, too little oversight of the internet and we are left with tangible harms to individuals who may have no way to be compensated.

Notes:

[1] Social Media Cases, case number JCCP5255 and lead case number 22STCV21355, in the Superior Court of the State of California, County of Los Angeles.

[2] 47 U.S.C. § 230.

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

[4] *Hassell v. Bird*, 420 P.3d 776 (Cal. 2018).

[5] Section 230 includes five exceptions, directed to federal criminal law, intellectual property law, state laws that are consistent with Section 230, some electronic communications privacy laws, and some sex trafficking laws.

[6] *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017).

[7] In some cases, an injured party may be able to find a different and exposed defendant. For example, copyright owners may choose to sue large companies whose hired influencers use copyrighted music without license. (See my previous article, "Copyright infringement litigations based on influencer posts — how to protect your business," available at 2025 PRINDBRF 0425).

[8] 47 U.S.C. § 230(e)(5).

[9] *See* https://bit.ly/4b3P8fn

About the author

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