

Enabling Modern Slavery *The Role of Social Media in The Sex Trafficking Industry*



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Sex Trafficking and Social Media

50 women sue Salesforce, claiming it helped Backpage in sex trafficking

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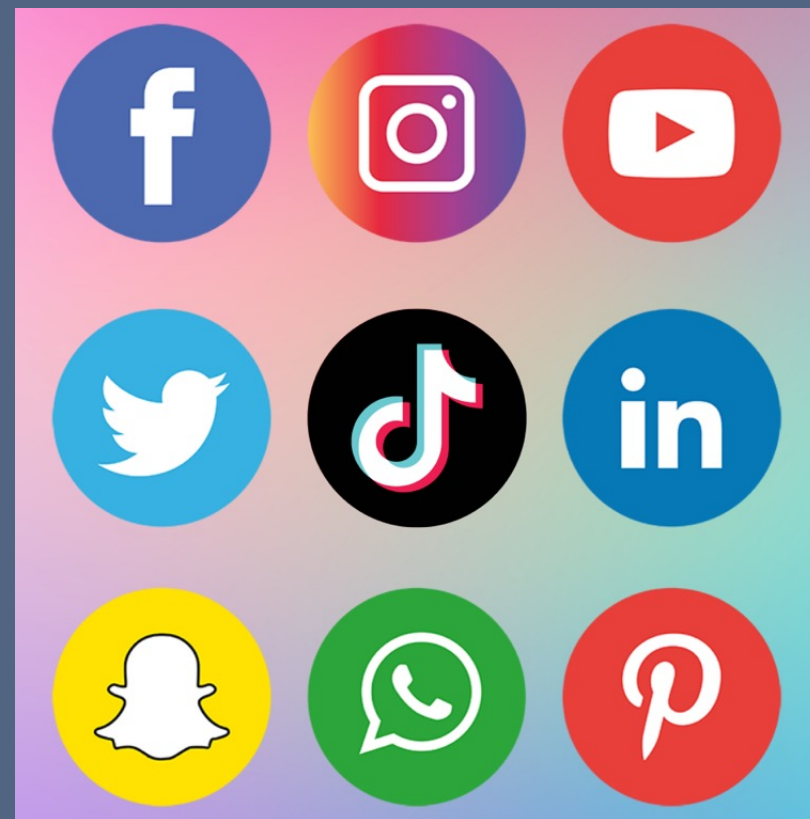
Texas Supreme Court Rejects Salesforce Attempt to Avoid Sex Trafficking Trial,

Ruling Against Facebook In Sex Trafficking Case Threatens Key Legal Shield For Social Media Platforms

USA: Judge denies Facebook's efforts to dismiss lawsuit for allegedly permitting sex traffickers to recruit through its platforms

June 2021 Federal Human Trafficking Report

- 83% of active 2020 sex trafficking cases involved online solicitation, which is overwhelmingly the most common tactic traffickers use to solicit sex buyers.
- 65% of underage victims recruited online in 2020 active criminal sex trafficking cases were recruited through Facebook, 14% were recruited through Instagram, and 8% were recruited through Snapchat.



In Re Facebook (Supreme Court of Texas)

UNDERLYING FACTS

- Plaintiff 1: The 15-year-old targeted as a “model” on Facebook and sold on Backpage
- Plaintiff 2: The 14-year-old targeted with promises of “love and a better future” on Instagram
- Plaintiff 3: The 14-year-old convinced to run away from her parents and sold on Backpage

In Re Facebook (Supreme Court of Texas)

DEFENDANTS



Facebook (D/B/A Instagram)



motel + studio

G6 Hospitality (Motel 6)

The Backpage logo, with the word 'backpage' in a blue, lowercase, serif font on a light blue background.

backpage

Backpage Defendants

- Michael Lacey
- James Larkin
- John Brunst

In Re Facebook (Supreme Court of Texas)

Facebook's Actions

- Minor Plaintiffs were not required to link a parent's email to their account;
- Facebook did nothing to verify Plaintiff being over 18;
- Instagram had nothing that prevented those over the age of 18 from contacting Plaintiff;
- Facebook did nothing to prevent a 30-year-old man from messaging underage Plaintiff and he was using language that should have triggered red flags.

In Re Facebook (Supreme Court of Texas)

Causes of Action Against Facebook

- Negligence (+ Gross Negligence)
- TEX. CPRC 98.002

**Facebook Moves to Dismiss
all Lawsuits under Section
230 of the Federal
Communications Decency
Act (CDA)**

Section 230(c)1

(c) Protection for “Good Samaritan” blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).¹

Section 230 – Immunities

- Immunity from being a publisher of third-party content;
- “Good Samaritan” provision which allows these platforms to moderate certain content without being automatically liable for other content that was not moderated.

Section 230 – Immunities

Section 230's protections were primarily a response to *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 32310 (N.Y. Sup. Ct. May 24, 1995).

- A New York court held that an online bulletin board could be held strictly liable for third parties' defamatory posts.

Section 230 – Immunities Operating in Tandem

Section 230's dual protections are commonly understood to operate in tandem, ensuring that a website is not discouraged by tort law from policing its users' posts, while at the same time protecting it from liability if it does not. *See Batzel v. Smith*, 333 F.3d 1018, 1027–28 (9th Cir. 2003); *Roommates.Com*, 521 F.3d at 1163”

In re Facebook, Inc., 625 S.W.3d 80, 89 (Tex. 2021), cert. denied sub nom. *Doe v. Facebook, Inc.*, 212 L. Ed. 2d 244, 142 S. Ct. 1087 (2022)

Section 230 and Sex Trafficking

- CDA – Established in 1996
- What happens when “interactive computer service” is used to traffic children?

Effective: April 11, 2018

18 U.S.C.A. § 1595

§ 1595. Civil remedy

Currentness

(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)(1) Any civil action filed under subsection (a) shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a “criminal action” includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under subsection (a) unless it is commenced not later than the later of--

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

(d) In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates [section 1591](#), the attorney general of the State, as *parens patriae*, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

Section 230 and the TVPRA

Jane Doe No. 1 v. Backpage.com, LLC, 817 F.3d 12, 15 (1st Cir. 2016): The Court found that Section 230(c)(1) barred liability as the lawsuit sought to treat Backpage as a “speaker” or “publisher.”

Section 230 and the TVPRA

“This is a hard case—hard not in the sense that the legal issues defy resolution, but hard in the sense that the law requires that we, like the court below, deny relief to plaintiffs whose circumstances evoke outrage. The result we must reach is rooted in positive law.

Congress addressed the right to publish the speech of others in the Information Age when it enacted the Communications Decency Act of 1996 (CDA). *See* 47 U.S.C. § 230. Congress later addressed the need to guard against the evils of sex trafficking when it enacted the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), codified as relevant here at 18 U.S.C. §§ 1591, 1595.

These laudable legislative efforts do not fit together seamlessly, and this case reflects the tension between them. Striking the balance in a way that we believe is consistent with both congressional intent and the teachings of precedent, we affirm the district court's order of dismissal.

Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA, 2018)

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes. <<NOTE: Apr. 11, 2018 – [H.R. 1865]>>

Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA, 2018)

SEC. 4. ENSURING ABILITY TO ENFORCE FEDERAL AND STATE CRIMINAL AND CIVIL LAW RELATING TO SEX TRAFFICKING.

(a) In General.—Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by adding at the end the following:

“(5) No effect on sex trafficking law.—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

“(A) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

“(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18, United States Code; or

“(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.”.

In Re Facebook (Supreme Court of Texas) – Section 230

“The meaning of section 230’s prohibition on treating an interactive computer service as the “publisher” or “speaker” of third-party content is not entirely clear on the face of the statute. Neither “publisher” nor “speaker” are defined terms, nor can those words’ common meanings tell us precisely what it means for a cause of action to “treat[]” a defendant “as a publisher or speaker” of third-party content.”

The Texas Supreme Court Applied the Following Standard:

The “national consensus,” is that “all claims” against internet companies “stemming from their publication of information created by third parties” effectively treat the defendants as publishers and are barred, *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008). As it has been interpreted, the provision “establishe[s] a **general rule that**” **web service providers may not be held “legally responsible for information created ... by third parties”** if such providers “**merely enable[d] that content to be posted online.**”

Texas Considers Justice Thomas' Approach

Publisher v. Distributor

Under Justice Thomas' view, although section 230 grants immunity only from 'publisher' or 'speaker' liability," cases interpreting the provision have incorrectly held "**that it eliminates distributor liability too**" by conferring immunity even when a company distributes content that it knows is illegal.

Plaintiffs' Attempt at applying the Interpretation of Justice Thomas were Rejected

"Plaintiffs' narrow view of section 230, while textually plausible, is not so convincing as to compel us to upset the many settled expectations associated with the prevailing judicial understanding of section 230."

In Re Facebook (Supreme Court of Texas) – Section 230

- We consider only whether Plaintiffs' claims, as pleaded, "treat" Facebook "as the publisher or speaker" of third-party content in conflict with section 230. If they do, the claims "may [not] be brought" and must be dismissed. 47 U.S.C. § 230(c)(1), (e)(3).

Plaintiff's Common Law Claims

Plaintiff's Common Law Claims

- Plaintiffs argue that their common-law claims do not treat Facebook as a “publisher” or “speaker” because they “do not seek to hold [it] liable for exercising any sort of editorial function over its users’ communications,” but instead merely for its own “failure to implement any measures to protect them” from “the dangers posed by its products.”
- “the duty that [Plaintiffs] allege[] [Facebook] violated” derives from the mere fact that the third-party content that harmed them was transmitted using the company's platforms, which is to say that it “derives from [Facebook's] status ... as a ‘publisher or speaker’ ” of that content.

Plaintiff's Common Law Claims

- These claims seek to impose liability on Facebook for harm caused by malicious users of its platforms solely because Facebook failed to adequately protect the innocent users from the malicious ones. All the actions Plaintiffs allege Facebook should have taken to protect them—warnings, restrictions on eligibility for accounts, removal of postings, etc.—are actions courts have consistently viewed as those of a “publisher” for purposes of section 230.
- Regardless of whether Plaintiffs’ claims are couched as failure to warn, negligence, or some other tort of omission, any liability would be premised on second-guessing of Facebook's “decisions relating to the monitoring, screening, and deletion of [third-party] content from its network.”

Plaintiffs' Common Law Claims

Section 230 Immunity Applies.

Plaintiffs' Statutory Claims

In Re Facebook (Texas Supreme Court)

- We do not understand section 230 to “**create a lawless no-man's-land on the Internet**” in which states are powerless to impose liability on websites that knowingly or intentionally participate in the evil of online human trafficking.
- Holding internet platforms accountable for the words or actions of their users is one thing, and the federal precedent uniformly dictates that section 230 does not allow it. **Holding internet platforms accountable for their own misdeeds is quite another thing.**
- Congress recently amended section 230 to indicate that civil liability may be imposed on websites that violate state and federal human-trafficking laws. *See **Allow States and Victims to Fight Online Sex Trafficking Act (“FOSTA”), Pub. L. No. 115-164, 132 Stat. 1253 (2018)***. Section 230, as amended, does not withdraw from the states the authority to protect their citizens from internet companies whose own actions—as opposed to those of their users—amount to knowing or intentional participation in human trafficking.

TVPRA

- **Section 1595 “opened the door for liability against facilitators who did not directly traffic the victim but benefitted from what the facilitator should have known was a trafficking venture.”** *A.B. v. Marriott Int'l, Inc.*, 455 F. Supp. 3d 171, 181 (E.D. Pa. 2020).

TEX. CIV. PRAC. & REM. CODE § 98.002(a)

Effective: June 19, 2009

V.T.C.A., Civil Practice & Remedies Code § 98.002

§ 98.002. Liability

Currentness

- (a) A defendant who engages in the trafficking of persons or who intentionally or knowingly benefits from participating in a venture that traffics another person is liable to the person trafficked, as provided by this chapter, for damages arising from the trafficking of that person by the defendant or venture.
- (b) It is not a defense to liability under this chapter that a defendant has been acquitted or has not been prosecuted or convicted under Chapter 20A, Penal Code, or has been convicted of a different offense or of a different type or class of offense, for the conduct that is alleged to give rise to liability under this chapter.

TEX. CIV. PRAC. & REM. CODE § 98.002(a). & The TVPRA

- The text of that law itself closely resembles a federal statute. See 18 U.S.C. § 1591(a).¹² Liability under these statutes requires a showing that a defendant acquired a benefit by “participat[ing]” in a human-trafficking “venture.”
- Such “participation” connotes more than mere passive acquiescence in trafficking conducted by others. Definitions vary, of course, but a common thread among them is the understanding that “participation” consists, at a minimum, of some affirmative act.

Facebook's "Active" Participation

- Facebook “creat[ed] a breeding ground for sex traffickers to stalk and entrap survivors”
- that “Facebook ... knowingly aided, facilitated and assisted sex traffickers, including the sex trafficker[s] who recruited [Plaintiffs] from Facebook” and “knowingly benefitted” from rendering such assistance
- that “Facebook has assisted and facilitated the trafficking of [Plaintiffs] and other minors on Facebook”
- that Facebook “uses the detailed information it collects and buys on its users to direct users to persons they likely want to meet” and, “[i]n doing so, ... facilitates human trafficking by identifying potential targets, like [Plaintiffs], and connecting traffickers with those individuals.” Read liberally in Plaintiffs’ favor, these statements may be taken as alleging affirmative acts by Facebook to encourage unlawful conduct on its platforms.

Common Law Claims v. Statutory Claims

- Here, Plaintiffs' statutory cause of action is predicated on allegations of Facebook's affirmative acts encouraging trafficking on its platforms. These allegations differ from Plaintiffs' common-law claims, under which Facebook is accused only of "providing *neutral* tools to carry out what may be unlawful or illicit" communication by its users. The common-law claims are "based on [Facebook's] passive acquiescence in the misconduct of its users," for which the company is "entitled to CDA immunity."
- Facebook's alleged violations of TEX. CIV. PRAC. & REM. CODE § 98.002(a) do not treat Facebook as a publisher who bears responsibility for the words or actions of third-party content providers. Instead, they treat Facebook like any other party who bears responsibility for its *own* wrongful acts.

Section 230 Immunity Does NOT apply

- We find it highly unlikely that Congress, by prohibiting treatment of internet companies “as ... publisher[s],” sought to immunize those companies from *all* liability for the way they run their platforms, even liability for their own knowing or intentional acts as opposed to those of their users.
- While “this view of section 230 conflicts directly with the First Circuit's 2016 decision in *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12.18 Congress, however, responded to the Backpage decision in 2018 by enacting the “Allow States and Victims to Fight Online Sex Trafficking Act” (“FOSTA”), Pub. L. No. 115-164, 132 Stat. 1253. FOSTA provides that “[n]othing in [section 230] (other than subsection (c)(2)(A)) shall be construed to impair or limit any claim in a civil action brought under section 1595 of Title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title.” 47 U.S.C. § 230(5)”

Facebook v. Plaintiffs' View of FOSTA

- As Facebook understands FOSTA, the 2018 amendments carved out particular causes of action from the scope of what section 230 otherwise covers. These carved-out claims include a civil action under 18 U.S.C § 1595 and certain state criminal prosecutions but not civil human-trafficking claims under state statutes.
- “First, what Facebook calls FOSTA's “exceptions” to section 230 are not introduced with statutory language denoting carve-outs (such as “notwithstanding” or “except that ...”). Instead, Congress instructed that “[n]othing in [section 230] ... shall be construed to impair” certain claims.
- The elements of the two claims are very similar. If liability under federal section 1595 would not treat defendants as “speakers or publishers” within the meaning of section 230, it is hard to understand how liability under Texas's section 98.002 could possibly do so.

Facebook v. Plaintiff's View of FOSTA

- The “Sense of Congress,” enacted as part of FOSTA's text, was that “section 230 of the [CDA] was never intended to provide legal protection to ... websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims.”

SCOTUS' Denial of Certiorari

- **Facebook Sought Certiorari on the Texas Supreme Court's ruling.**
- SCOTUS denied Certiorari, Justice Thomas issued a statement highlighting the ongoing battle in this litigation:
 - At the very least, before we close the door on such serious charges, “we should be certain that is what the law demands.”... As I have explained, the arguments in favor of broad immunity under § 230 rest largely on “policy and purpose,” not on the statute's plain text. Here, the Texas Supreme Court recognized that “[t]he United States Supreme Court—or better yet, Congress—may soon resolve the burgeoning debate about whether the federal courts have thus far correctly interpreted section 230.” Assuming Congress does not step in to clarify § 230's scope, we should do so in an appropriate case.

Issue of Textualism v. Public Policy

“As Justice Thomas has bemoaned, many judges are not quite so careful to color inside the lines of textualism with Section 230. Congress used specific words in Section 230 to provide limited protection for Internet companies. See *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 14–15 (2020) (Thomas, J., respecting denial of certiorari). Yet “[c]ourts have long emphasized nontextual arguments when interpreting § 230, leaving questionable precedent in their wake.” *Id.* at 14. Relying on the supposed “purpose and policy” of Section 230, they have liberally granted immunity to Internet platforms that “racially discriminate in removing content,” “recommend [] content by terrorists,” or knowingly host child pornography. Fortunately, this Court does not indulge that sort of purposivism. As Justice Blacklock has explained, “well-known problems” result from elevating “presumed legislative purpose” over the plain meaning of enacted text.”

Governor Abbott’s Amicus Brief for *In Re Facebook*.

Facebook – Case Updates

- Facebook Unsuccessfully Challenged Jurisdiction in April 2022
 - As noted, Doe's unchallenged allegations in her live pleading established that Facebook has exercised the privilege of doing substantial business within Texas and enjoys the benefits and protections of the laws of Texas; thus, the burden on Facebook to defend Doe's suit is not undue. Further, Texas has a strong interest in protecting citizens of the State by exercising jurisdiction over these types of claims. *Facebook, Inc. v. Doe*, 650 S.W.3d 748, 759 (Tex. App.—Houston [14th Dist.] 2022, pet. filed)

In Re Facebook is now part of the **Texas MDL 19-0991**

The Texas MDL – *In Re Jane Doe* Cases

- MDL Petitioned for by Salesforce in 2019 for claims against Backpage Defendants, Salesforce and Hotel Chains.
- MDL Addresses common claims of Section 230 Immunity, Defendants' Duties, Causation and interpretation of Texas' Sex Trafficking Statutory Claims.
- *In Re Facebook* was transferred to the MDL by a Hotel Defendant in April 2022, shortly after the order denying Facebook's jurisdictional challenge was filed.

Texas Salesforce Cases

In each case, Plaintiffs allege that Backpage employed Salesforce's software to grow Backpage's trafficking business.

In each case, Plaintiffs' claims against Salesforce arise from the allegation that Backpage used Salesforce's software to create a “trafficker and pimp database,” and then marketed advertising space to traffickers.

In each case, Plaintiffs allege that Backpage employed content policies and procedures through which it helped wrongdoers to “sanitize” ads to conceal their true nature as illegal sex trafficking ads.

In each case, Salesforce's alleged “negligent” conduct stems from (1) selling software to a Backpage affiliate and (2) failing to monitor the downstream use of that software.

In each case, Salesforce, Backpage, and the hotel defendants are alleged to be part of a sex trafficking “venture.”

In each case, Plaintiffs allege that the hotel defendants should be liable under a “premises liability” theory, and also as part of a trafficking “venture.”

Texas Salesforce Cases

- Salesforce enabled the success and continued operation and growth of Backpage's business, including its website. Salesforce argued that it cannot be held liable under Chapter 98 because it was not involved in the posting or editing of the sex trafficking advertisements on Backpage.com. But neither *In re Facebook* nor Chapter 98 requires that Salesforce be an actual sex trafficker.

The Texas MDL – *In Re Jane Doe* Cases

- The MDL court initially dismissed Plaintiffs' claims, concluding that they were barred by Section 230 of the Communications Decency Act
- The MDL court later vacated its dismissal order to await this Court's ruling in *In re Facebook* regarding the scope of Section 230.
- After *In re Facebook* was released, Salesforce again sought to dismiss Plaintiffs' claims.
- The MDL court denied that motion.
- Salesforce moved for reconsideration and for a permissive appeal. Plaintiffs filed a fourth amended petition. The MDL court denied Salesforce's motion for reconsideration and request for a permissive appeal. At Salesforce's request, the MDL court also treated Salesforce's prior motion to dismiss as applying to the fourth amended petition and denied the motion to dismiss.
- The court of appeals denied Salesforce's petition for writ of mandamus.

The MDL – *In Re Jane Doe Cases*

FILE COPY

RE: Case No. 22-0232

DATE: 12/16/2022

COA #: 01-22-00045-CV

TC#: 2020-28545-A

STYLE: IN RE SALESFORCE.COM, INC.

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case. The Motion for Temporary Relief is dismissed as moot.

**Other 230 Social Media Cases Across the
Country**

Illinois - *G.G. v. Salesforce.com, Inc.*, 603 F. Supp. 3d 626, 641 (N.D. Ill. 2022)

- **Status as Publisher:** “In effect, Salesforce could not satisfy its “alleged obligation” to Plaintiffs without altering either the content generated by Backpage by monitoring the use of its software and forbidding its use in certain ways, or by insisting that Backpage only hosted certain content on its own site. In other words, Plaintiffs claims are predicated on the notion that Salesforce should be held responsible for the existence of third-party content, her advertisements—that is, they treat Salesforce as a publisher.”
- **FOSTA Interpretation:** “And here, the text, both by its And here, the text, both by its plain terms and statutory structure, is clear that the FOSTA exemption applies only where the civil defendant's actions violated § 1591.”
- **TVPRA “KNOWINGLY BENEFIT”** “The Court first considers what it means to “knowingly benefit” from a violation of § 1591. The law as to the knowledge element for a § 1595 violation is currently unsettled, with the parties here unsurprising urging the Court to adopt the standard most in their favor.”

Illinois v. Texas

- **Status as Publisher:** Illinois – Claims were focused on status as monitor, in Texas, the claims against Facebook under Texas' statute were predicated on Facebook's affirmative actions:
- **FOSTA Interpretation:** Illinois – FOSTA created exemptions under which only a claim that violates Section 1591 (the criminal provision) brought under 1595 would be exempted, Texas found that these were not exemptions but clarifications that Section 230 never excluded these types of claims.
- **TVPRA:** Illinois – Plaintiffs could not meet burden that Defendants knew the venture violated 1591 as it related to Plaintiff, in Texas (S.D. Tex, *A.B. v. Salesforce*) the Court found that learning of the Backpage Venture was sufficient at pleading state.

California - *Does #1-50 v. Salesforce.com, Inc.*, No. A159566, 2021 WL 6143093, at *1 (Cal. Ct. App. Dec. 30, 2021)

Found to be Publishers under California's Demurrer Procedure: "They argue that their claims do not relate to any decisions about editing, monitoring, or removing third-party content, and therefore their claims do not treat Salesforce as a publisher of the advertisements. This argument is undercut by plaintiffs' allegations that Salesforce had, and breached, a duty to monitor the use of its platform and the activities of Backpage."

TVPRA UPDATE – Broadens Scope

1/5/2023

SEC. 102. TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY.

Section 1595(a) of title 18, United States Code, is amended by inserting “or attempts or conspires to benefit,” after “whoever knowingly benefits,”.

The “Abolish Trafficking Reauthorization Act of 2022, Pub. L. No. 117-347, § 102 broaden[s] the scope of civil liability to include anyone who “attempts or conspires to benefit” from a violation of Section 1595(a).” *Issouf COUBALY, et al., Plaintiffs-Appellants, v. CARGILL, INC., et al., Defendants-Appellees., 2023 WL 346284 (C.A.D.C.), 27 Amicus Brief of The Chamber of Commerce of the United States of America*

SCOTUS has Granted Certiorari in Two Cases Concerning Section 230 to be Heard On Feb 21, 2023

- *Gonzales v. Google* (9th Cir)
- *Twitter v. Taamneh* (9th Cir)

Both cases consider whether entities like Google and Twitter could be held liable under the Anti-Terrorism Act for the promotion of terrorism when those who viewed its content, pitched to them by algorithms, encourages them to cause deaths and damages of others (here, the ISIS Paris attacks in 2015)

CASE-IT Act 2023

Text: H.R.573 — 118th Congress (2023-2024)

[All Information](#) (Except Text)

As of 02/10/2023 text has not been received for H.R.573 - To amend section 230 of the Communications Act of 1934 to limit the immunity of providers and users of interactive computer services under such section, and for other purposes.

Bills are generally sent to the Library of Congress from GPO, the Government Publishing Office, a day or two after they are introduced on the floor of the House or Senate. Delays can occur when there are a large number of bills to prepare or when a very large bill has to be printed.

CASE-IT Act 2023

A BILL

To amend section 230 of the Communications Act of 1934 to limit the immunity of providers and users of interactive computer services under such section, and for other purposes.

Section 1. Short title

This Act may be cited as the “Curbing Abuse and Saving Expression In Technology Act” or the “CASE-IT Act”.

Sec. 2. Limitation of section 230 immunity

(a) In general.—

Section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)) is amended by adding at the end the following:

CASE-IT Act 2023

(3) Exceptions relating to illegal, exploitive, or harmful content.—

(A) In general.—

During a period described in subparagraph (D), paragraph (1) shall not apply to a provider or user of an interactive computer service that creates, develops, posts, materially contributes to, or induces another person to create, develop, post, or materially contribute to illegal online content.

(B) Certain contact between adult and minor.—

During a period described in subparagraph (D), paragraph (1) shall not apply to a provider of an interactive computer service that knowingly permits or facilitates an adult having contact through an interactive computer service of such provider with an individual that such adult knows or believes to be a minor, if such contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either such adult or such minor.

(D) Period of loss of immunity.—

For purposes of subparagraph (A), (B), or (C), a period described in this subparagraph is—

- (i) any 1-year period beginning on the date on which the provider engages in conduct described in such subparagraph; or
- (ii) in the case of such conduct that continues for more than 1 day, any 1-year period beginning on the date on which the provider ceases such conduct.

Social Media Defendant Practices

- Transferring Venue (MDL/California)
- Section 230 Immunity
- Failure to State a Claim under TVPRA
- Mandamus/Appeal
- Discovery Abuse

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE
LITIGATION,

This document relates to:

ALL ACTIONS

Case No. [18-md-02843-VC](#)

**ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
SANCTIONS**

Re: Dkt. Nos. 879, 1007-3

Discovery Abuse

VI

Facebook and Gibson Dunn are ordered to pay the plaintiffs \$925,078.51 in sanctions. They are jointly and severally liable for this amount, and they must compensate the plaintiffs within 21 days of this ruling. To be sure, this amount is loose change for a company like Facebook, and even for a law firm like Gibson Dunn. But it's important for courts to help protect litigants from suffering financial harm as a result of their opponents' litigation misconduct. And hopefully, this ruling will create some incentive for Facebook and Gibson Dunn (and perhaps even others) to behave more honorably moving forward.

IT IS SO ORDERED.

Dated: February 9, 2023



VINCE CHHABRIA
United States District Judge

Possible Facebook Changes

- Automatically making underage accounts private;
- Restricting and limiting the ability to use the data of under 16-year-olds by third parties;
- Restricting and limiting algorithm use under under 16-year-old accounts