

Oh Twitter — the omnipresent social media leviathan where comedy is once again legal¹ and speech will now, allegedly, be regulated by the government’s standard --² what would we have without you? According to parties in two cases granted cert in October, we’d at least have fewer terrorist attacks.³ While these cases (*Twitter v. Taamneh* and *Gonzalez v. Google*) ask the Court to determine social media’s level of responsibility for terroristic rhetoric and radicalization that happens on their platforms, they also give the Court a chance to tackle one former president’s occasional nemesis:⁴ 47 U.S.C. §230.

So what exactly is §230, and how does it tie into terrorism on Twitter? Consider you’re back in 1996, the year §230 was passed. After downloading the latest from *NSYNC on Napster, you hop on the Nickelodeon forums to discuss their new hit show *SpongeBob Squarepants*. Once on the forum though, you find yourself reading a recruitment post for Al-Qaeda. You’re partly surprised as you know that Nickelodeon closely moderates their forums. Does this mean they’re endorsing — or more specifically the publisher of — these horrifying messages? One New York court thought so. In *Stratton Oakmont v. Prodigy Servs. Co.* a forum company was held liable for defamation due to a post on their moderated site.⁵ Congress saw a worrying trend emerging with cases such as *Prodigy* and passed §230 in response. Under §230, a provider of an “interactive computer service” cannot be considered liable as a result of any action “voluntarily taken in good faith to restrict access to” content it considers “lewd, lascivious, filthy, excessively violent,

¹ Elon Musk (@elonmusk), TWITTER (Oct. 28, 2022, 5:16 PM), <https://twitter.com/elonmusk/status/1586104694421659648>.

² Elon Musk (@elonmusk), TWITTER (Apr. 26, 2022, 3:33 PM), <https://twitter.com/elonmusk/status/1519036983137509376>.

³ See *Twitter, Inc., v. Mehier Taamneh, et al.*, No. 18-17192 *cert granted* (Oct. 3, 2022); see *Reynaldo Gonzalez, et al., v. Google LLC*, No. 18-16700 *cert granted* (Oct. 3, 2022).

⁴ Anshu Siripurapu, *Trump and Section 230: What to Know*, COUNCIL ON FOREIGN RELS. (Dec. 2, 2020, 7:00 AM), <https://www.cfr.org/in-brief/trump-and-section-230-what-know>.

⁵ *Stratton Oakmont v. Prodigy Servs. Co.*, INDEX No. 31063/94, 1995 N.Y. Misc. LEXIS 229 (Sup. Ct. May 24, 1995).

harassing, or otherwise objectionable.”⁶ With §230 in place, Nickelodeon, or the real-life defendant, Prodigy Servs. Co., won’t be considered publishers of comments they host just because they engage in moderation.

Since 1996, the law has mostly remained the same and social media companies are generally protected from liability even when rogue users find themselves able to drop company stocks by 4%.⁷ However, the internet never remains the same, and one major way it’s changed since 1996 is the implementation of algorithmic content.⁸ It seems unfair to say that the lawmakers of 1996 could predict algorithmic social media content. Is this type of content covered by §230? Social media companies want the answer to be yes, and the briefs in *Taameh* and *Gonzales* outline their persuasive arguments.⁹ But beyond the black letter law, is this statute from 1996 still a good policy for the technology of today?

In both cases, the injured parties illustrate how ISIS was able to use social media to radicalize and recruit. The algorithms, facially neutral to what a post says, would find individuals who were most likely to be radicalized and continue to feed them extremist content. This, the parties allege, places social media companies beyond the protection of §230.¹⁰ Additionally, this radicalization death spiral is not unique to ISIS. The rise of white nationalism in the United

⁶ 47 U.S.C. §230(c)(2)(A).

⁷ Bruce Y. Lee, *Fake Eli Lilly Twitter Account Claims Insulin Is Free, Stock Falls 4.37%*, FORBES (Nov. 12, 2022 9:50 AM), <https://www.forbes.com/sites/brucelee/2022/11/12/fake-eli-lilly-twitter-account-claims-insulin-is-free-stock-falls-43/>.

⁸ See generally Ann Kammerer, *The Effects of Algorithms on Internet Behaviors*, MICH. STATE UNIV. (Nov. 30, 2017), <https://comartsci.msu.edu/about/newsroom/news/effects-algorithms-internet-behaviors> (blog post discussing one researcher’s dive into how social media algorithms work and how they then impact their users); see John Oliver, *Data Brokers*, LAST WEEK TONIGHT (Apr. 11, 2022), https://www.youtube.com/watch?v=wqn3gR1WTcA&ab_channel=LastWeekTonight (segment discussing how internet sites collect data about individuals through algorithmic content and use that to serve them even more personalized advertisements and content).

⁹ See Brief in Opposition, *Reynaldo Gonzalez, Et Al., v. Google LLC*, No. 18-16700 *cert granted* (Oct. 3, 2022); see Conditional Petition for a Writ of Certiorari, *Twitter, Inc., v. Mehier Taamneh, et al.*, No. 18-17192 *cert granted* (Oct. 3, 2022).

¹⁰ See Petition for a Writ of Certiorari, *Reynaldo Gonzalez, Et Al., v. Google LLC*, No. 18-16700 *cert granted* (Oct. 3, 2022); see Brief in Opposition, *Twitter, Inc., v. Mehier Taamneh, et al.*, No. 18-17192 *cert granted* (Oct. 3, 2022).

States has gone hand-in-hand with extremist groups using these algorithms to grow their numbers.¹¹ While the social media companies may not have realized their algorithms would be used in such a way, Cambridge Analytica and Steve Bannon certainly did.¹²

¹¹ Innuendo Studios has done a series of videos called “The Alt-Right Playbook” that dives into how far right extremist spaces have changed their tactics in the internet age. The video “How to Radicalize a Normie” discusses how these movements use social media algorithms to slowly draw people into their extremist spaces and then isolate them from normal discourse. *The Alt-Right Playbook: How to Radicalize a Normie*, INNUENDO STUDIOS (Oct. 21, 2019), https://www.youtube.com/watch?v=P55t6eryY3g&t=317s&ab_channel=InnuendoStudios.

¹² See generally Sam Meredith, *Here’s Everything You Need to Know About the Cambridge Analytica Scandal*, CNBC (Mar. 21, 2018 6:16 AM), <https://www.cnbc.com/2018/03/21/facebook-cambridge-analytica-scandal-everything-you-need-to-know.html> (discussing how Cambridge Analytica used Facebook data to target specific users and manipulate the 2016 US presidential election); Sean Burch, *How Steve Bannon Mined ‘Intense Young Men,’ From ‘World of Warcraft’ to the White House*, THE WRAP (Aug. 21, 2017 5:03 PM), <https://www.thewrap.com/how-world-of-warcraft-propelled-steve-bannon-to-the-white-house/>.