Supreme Court to Decide if Tech Giants Should be Liable for What Users Post

In February 2023, the Supreme Court heard oral arguments for two cases that have the full attention of tech giants, such as Facebook, Twitter, and Google – to name just a few.[1] The cases at hand are *Gonzales v. Google* and *Twitter v. Taamneh*.[2] The issue at hand in both cases are similar and address a question that has perplexed legal experts throughout the 21st century; can tech companies be held liable for the content published by its users? The arguments of both sides hinge on the interpretation of 47 U.S.C. § 230, or Section 230 of the Communications Decency Act of 1996 ("the CDA"). The CDA historically shielded companies from any legal liability for what their users post, specifically:

> "(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."[3]

The Court recently agreed to hear arguments to decide on two unique developments. The first being what happens when a company's algorithm recommends content detrimental to its users; and the second question of is there liability regardless of the statute if the content shared by users aids and abets international terrorism?[4]

In *Gonzales v. Google* the court will dispose of the issue of whether the CDA shields tech companies from liability when their constructed algorithms target specific users and recommend harmful content.[5] The case was brought forth after the family of Nohemi Gonzales, a 23-year-old American woman who was killed in a 2015 ISIS terrorist attack in Paris, brought an action against Google, alleging that YouTube (a Google subsidiary) encouraged the spread of ISIS ideals by allowing ISIS members to post content freely.[6]

The Gonzales family alleged that YouTube promoted the spread of the content by allowing their algorithm to push the content to vulnerable users.[7] The plaintiff's argument hinges on the fact that Google's actions are not protected under the CDA, as the act of recommending content to users goes beyond "acting as a provider of an interactive computer service".[8]

---

[1] Adam Liptak & David McCabe, *Supreme Court Take Up Challenge to Social Media Platforms' Shield*, NEW YORK TIMES, https://www.nytimes.com/2022/10/03/us/supreme-court-social-media-section-230.html.
[2] *Gonzales v. Google*, 143 S.Ct. 80 (2022); *Twitter v. Tamneh*, 143 S.Ct. 81 (2022).
[3] 47 U.S.C. § 230
[4] Amy Howe, *Justices will consider whether tech giants can be sued for allegedly aiding ISIS terrorism*, SCOTUSBLOG, https://www.scotusblog.com/2023/02/justices-will-consider-whether-tech-giants-can-be-sued-for-allegedly-aiding-isis-terrorism/.
[5] *Gonzales v. Google*, 335 F.Supp.3d 1156 (N.D. Cal. 2018).
[6] *Id*.
[7] *Id*.
[8] *Id*.

On the other hand, Google argued that YouTube is simply a publishing platform for public videos, and therefore falls squarely in line with who the CDA was trying to protect with its provisions.[9] They also defended their use of algorithms with the notion that as a publisher, it should direct users to videos that may interest them "so that they do not confront a morass of billions of unsorted videos."[10]

At the district court level, Google's motion to dismiss under Fed. R. Civ. P. 12(b)(6) was granted, on the reasoning that the Gonzales family had no legal standing as the claim does not overcome the CDA.[11] The Ninth Circuit affirmed the decision, and the Supreme Court granted certiorari.[12] Google has implored the court to consider the case with *Twitter v. Taamneh* in mind, as they believe it has a "materially identical" fact pattern.[13]

In *Twitter v. Taamneh*, the court will similarly address the issue of whether the CDA shields tech companies from liability for what their users post. This case also arises as the result of an ISIS attack, this time at a nightclub in Istanbul which resulted in the death of Jordanian citizen Nawras Alassaf (the "Reina attack").[14] The Taamneh family brought an action against Twitter under the Antiterrorism Act, which is an avenue for individuals to sue anyone who "aids and abets, by knowingly providing substantial assistance" to international terrorism.[15]

The Taamneh family alleges that Twitter knew that ISIS members used their platform to spread their message but did nothing to censor or moderate their content.[16] They asserted their belief that the CDA does not shield tech companies from actions brought under the Antiterrorism Act.

In response, Twitter has consistently urged that a defendant can only be held liable under the Antiterrorism Act if they have "provided substantial assistance for a specific act of international terrorism, and that their platform did not intentionally set out to promote or support the Reina attack.[17] Additionally, Twitter argues that their actions do not meet the "knowingly" element required for liability, as they did not know of any posts concerning the Reina attack before it occurred.[18]

At the district court level, Twitter's motion to dismiss under Fed. R. Civ. P. 12(b)(6) was granted, on the reasoning that the Taamneh family failed to show any proximate cause between Twitter's actions and the Reina attack.[19] However, the Ninth Circuit reversed the decision and allowed the claim to move forward, holding that social media companies had an obligation, proven

---

[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Gonzales v. Google*, 2 F.4th 871 (9th Cir. 2021); *See* supra note 2, *Gonzales* (2022).
[13] *See* supra note 4.
[14] *See* supra note 5.
[15] *Taamneh v. Twitter*, 343 F.Supp.3d 904 (N.D. Cal. 2018).
[16] *Id*.
[17] *Id*
[18] *Id*.
[19] *Id*.

by the conduct of other companies (including Twitter), to remove terrorist content, and that Twitter failed to act.[20] The Supreme Court granted certiorari for Twitter's appeal.[21]

Looking at the actions of the conservative-majority Court would imply an intention to rule in favor of Google and Twitter in both cases. New laws continue to arise in conservative states, such as Texas and Florida, which are aimed towards removing all liability of tech companies for their user's content.[22] These laws are in response to the belief that social-media platforms are actively censoring the views of far-right users, which they believe unfairly punishes conservative users.[23] If the court decided that the actions of Google and Twitter were not protected under the CDA, it would likely result in even stricter moderation and censoring of user content.

These decisions will have a major impact on the operations of tech companies and future legislation behind the ever-evolving internet landscape in the continuing 21st century. The decisions in these cases could be the turning point for what exactly is allowed to be shared on major websites or could instead open the internet to an even more lenient free-for-all content sharing space.

[20] *Taamneh v. Twitter*, 2 F.4th 871 (9th Cir. 2021).
[21] *See* supra note 2, *Taamneh* (2022).
[22] Texas House Bill 20; Florida Senate Bill 7072
[23] Adam Liptak, *Supreme Court Puts Off Considering State Laws Curbing Internet Platforms*, NEW YORK TIMES, https://www.nytimes.com/2023/01/23/us/scotus-internet-florida-texas-speech.html.