Marquette Intellectual Property & Innovation Law Review

Volume 28 | Issue 1 Article 4

Winter 2024

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Elizabeth M. Jaffe

LOOKING FOR LIABILITY FOR HARMFUL SOCIAL MEDIA CONTENT AND CYBERBULLYING AFTER *GONZALEZ V. GOOGLE, LLC*

ELIZABETH M. JAFFE*

INTRODUCTION

Imagine scrolling through one of the many social media platforms, and finding disturbing images of you or someone you know. Attempting to block the images results in you no longer seeing them, but the images still remain on the internet for others to see. Consider that there is no liability on the part of the web host, as they are protected by Section 230 of the CDA. Who is liable for the harmful content now, and where can the law place liability?

THE HISTORY OF NO LIABILITY

It has been over a quarter of a century since the signing of Section 230 of the Communications Decency Act (CDA), which was signed into law in 1996.[1] The law was written by Senator Wyden and former Rep. Chris Cox.[2] Senator

*Associate Professor, Atlanta's John Marshall Law School. The author would like to thank Jacob Belcastro and Shinnay Richards for their invaluable assistance with this article.

1. John Villasenor, *The Supreme Court and social media platform liability,* BROOKINGS, https://www.brookings.edu/articles/the-supreme-court-and-social-media-platform-liability/ (last updated Oct. 10, 2022).

2. Emily Stewart, *Ron Wyden wrote the law that built the internet. He still stands by it — and everything it's brought with it.,* VOX (May 16, 2019, 9:50 AM), https://www.vox.com/recode/2019/5/16/18626779/ron-wyden-section-230-facebook-regulations-neutrality.

Wyden likes to refer to the law as "a shield and a sword, [meaning] platforms are shielded from liability, but they also get a sword to moderate the content they host."[3] Within Section 230, there is a statement that even with exceptions, has been at the forefront of all the key decisions made about holding internet intermediaries liable. The statement is that "[n]o 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."[4] Congress was aware that, with the increase in internet usage, it was going to be impossible for the internet intermediaries to review every individual speech.[5] Without Section 230, there was no doubt that user content would have been censored intensively, while many service providers may have simply not hosted user content at all.[6]

Section 230 is responsible for the creation of the internet as we know it today: a place where the most "prominent services—Google, Facebook, YouTube, Yelp, and Wikipedia—are filled with user-generated content."[7] However, due to this protection under the law, where only the third-party user is held liable and not the service providers, there is a broad interpretation by the United States Supreme Court that overlooks the conduct of the internet intermediaries and raises a serious conflict.[8] The issue at hand is whether lawmakers should reconsider the law that was created at the "internet's infancy and whether it was meant to help struggling websites and internet-based companies grow."[9] Many of those internet-based businesses are now some of the largest and most powerful sources of influence in the world, and the user's "ability to speak freely on them bears much bigger consequences."[10] However, the U.S. Supreme Court left the social media liability shield (as Senator Wyden would call it) intact and refused to narrow its scope after ruling in the Gonzalez & Twitter case.[11]

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3. *Id*.

4. 47 U.S.C.A. § 230.

5. *Section 230,* ELECTRONIC FRONTIER FOUNDATION, https://www.eff.org/issues/cda230 (last visited Nov. 16, 2023).

6. *Id*.

7. Corbin K. Barthold, *Four Things to Watch in Gonzalez v. Google,* THE FEDERALIST SOCIETY (Mar. 17, 2023), https://fedsoc.org/commentary/fedsoc-blog/four-things-to-watch-in-gonzalez-v-google.

8. Nina Totenberg, *Supreme Court unanimously sides with Twitter in ISIS attack case,* NATIONAL PUBLIC RADIO (May 18, 2023, 12:45 PM), https://www.npr.org/2023/05/18/1176856351/supreme-court-twitter-google-social-media.

9. Sara Morrison, *Section 230, the internet law that's under threat, explained*, VOX (last updated Deb. 23, 2023, 3:07 PM), https://www.vox.com/recode/2020/5/28/21273241/section-230-explained-supreme-court-social-media.

10. *Id*.

11. Greg Stohr & Emily Birnbaum, S*upreme Court Leaves Intact Social Media Liability Shield in Win for Google, Twitter,* BLOOMBERG (last updated Mat 18, 2023, 10:59 AM),

FREE SPEECH AT WHAT COST?

In 2023, two cases addressing Section 230's immunity clause were before the U.S. Supreme Court.[12] The first case, *Gonzalez v. Google*, was filed by Nohemi Gonzalez's father.[13] Nohemi was a U.S. citizen who was killed in a terrorist attack in Paris, France, in 2015, that was carried out by the Islamic State of Iraq and Syria (ISIS).[14] Mr. Gonzalez's complaint alleged that Google assisted ISIS with recruiting members by using computer algorithms that suggest content to users based on their viewing history.[15] He asserted that when platforms suggest content to users, using phrases such as "Up Next," "You Might Like," or "Recommended For You," those suggestions are not protected by Section 230.[16] Mr. Gonzalez argued that while a provider would remain immunized from liability for merely hosting content, they should be responsible for highlighting that content.[17] Lastly, he claimed that the platform aided and abetted international terrorism by failing to take actions to prevent terrorists from using its services, even though they did not play an active role in the specific act that actually injured Nohemi Gonzalez.[18] The U.S. Court of Appeals for the Ninth Circuit held that Section 230 barred liability, and the U.S. Supreme Court declined to rule on whether targeted recommendations by a social media company's algorithms would be protected by Section 230.[19] Instead, the Court said on the same day, that its ruling in *Twitter v. Taamneh* is sufficient to acknowledge that the plaintiffs' complaint is very similar in facts and may likely fail "independent of §230 because it stated little if any claim of relief."[20]

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https://www.bloomberg.com/news/articles/2023-05-18/supreme-court-rejects-terrorism-case-against-twitter-google.

12. Sara L. Zeigler and Deborah Fisher, *Communications Decency Act and Section 230 (1996),* FREE SPEECH CTR. AT MID. TENN. ST. UNIV. (last updated Dec. 1 2023), https://mtsu.edu/first-amendment/article/1070/communications-decency-act-and-section-230.

13. OYEZ, *Gonzalez v. Google LLC*, https://www.oyez.org/cases/2022/21-1333 (last visited Sept. 2, 2023).

14. *Id*.

15. *Id*.

16. *Id*.

17. Jennifer Stisa Granick, *Is This the End of the Internet As We Know It?,* ACLU (Feb. 22, 2023), https://www.aclu.org/news/free-speech/section-230-is-this-the-end-of-the-internet-as-we-know-it.

18. *Gonzalez v. Google LLC*, *supra* note 13.

19. *Id.*

20. Deborah Fisher, *Gonzalez v. Google (2023*), FREE SPEECH CTR. AT MID. TENN. ST. UNIV. (last updated May 23, 2023), https://www.mtsu.edu/first-amendment/article/2246/gonzalez-v-google#:~:text=The%20U.S.%20Supreme%20Court%20in,of%20the%20Communications%20Decency%20Act.

In *Twitter v. Taamneh*, the plaintiffs are family members of a victim who passed away during a terrorist attack at an Istanbul nightclub in 2017.[21] The individual who carried out the attack had received military training with al Qaeda in Afghanistan in 2011 and eventually became affiliated with ISIS.[22] ISIS ordered and instructed him on how to carry out the attack in the nightclub in Turkey, and he killed 39 people and injured 79 others.[23] The Plaintiffs' factual claims, though similar to those asserted in the *Google* case, were based on different legal grounds. They sought civil remedies under section 18 U.S.C. § 2333(d)(2) of the Anti-Terrorism Act, which states that "liability may be asserted [against] any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism."[24]

The plaintiffs argued that Twitter and one of Google's streaming platforms, YouTube, played a major role in assisting the groups responsible for the attacks.[25] The family alleged that the companies did more than merely provide the platforms for the users to communicate.[26] They contended that the companies were seeking to get more viewers and increase ad revenue, and as a result, they knowingly kept ISIS videos on their platform, which was then used by the group as a recruitment tool.[27] The plaintiffs also claimed that before the expansion of social media, "ISIS's predecessors were limited to releasing short, low-quality videos on websites that could handle only limited traffic."[28] However, ISIS, after recognizing the accessibility and power of social media platforms, decided to use them to spread their message faster and without cost.[29] The lawsuit further alleges that the defendants' social media platforms were instrumental in allowing ISIS to expand its reach and raise its profile beyond that of other terrorist groups."[30]

The Court ruled to reject the claims in both cases, simultaneously, by ruling in the Twitter case that the companies' own lack of action in removing ISIS content and the algorithms recommending the group's content was not enough

21. Deborah Fisher, *Gonzalez v. Google, Taamneh v. Twitter (9th Circuit) (2021),* FREE SPEECH CTR. AT MID. TENN. ST. UNIV. (last updated Aug. 12, 2023), https://www.mtsu.edu/first-amendment/article/2216/gonzalez-v-google-taamneh-v-twitter-9th-circuit.

22. Twitter, Inc. v. Taamneh, 598 U.S. 471, 478 (2023).

23. *Id*. at 479.

24. *Id*.; 18 U.S.C. § 2333(d)(2).

25. Totenberg, *supra* note 8.

26. *Id*.

27. *Id*.

28. Fisher, *supra* note 21.

29. *Id*.

30. *Id*.

to show that they aided and abetted the terrorists.[31] Justice Clarence Thomas, writing for the Court stated that "the family members made no allegations that the companies' relationship with ISIS was significantly different from their arm's length, passive and largely indifferent relationship with most users."[32] He went on to state that the families also provided no reason for the Court to conclude "that the companies were consciously trying to help or participate in the terrorist attack in Turkey."[33] Nor did they establish through other legal claims that the social media companies had any duty to terminate customers after discovering that the customers were using the service to post illegal or forbidden content.[34] Justice Thomas, specifically, noted that "[g]iven the lack of any concrete nexus between defendants' services and the Reina attack, plaintiffs' claims would necessarily hold defendants liable as having aided and abetted every ISIS terrorist act committed anywhere in the world."[35] This ruling may have left many people wondering if internet service providers will ever be held liable for passively promoting content that affects the lives of anyone. Kate Ruane, a senior legislative counsel for the American Civil Liberties Union, stated before that if the platforms did not have "immun[ity] under the law, they would not risk the legal liability that could come with hosting [contents that contain] lies, defamation, and threats."[36]

THE THIN LINE BETWEEN FREE SPEECH & HATE SPEECH

On July 31st, 2023, X, formerly known as Twitter, sued the Center for Countering Digital Hate, hereinafter referred to as CCDH.[37] The CCDH is a nonprofit group that has criticized the company's handling of hate speech.[38] The lawsuit stems from a media report that the CCDH published in June.[39] The report included findings from their research to support their claim that "hate speech had increased towards minority communities on the platform since

31. Fisher, *supra* note 20.

32. Fisher, *supra* note 21.

33. *Id*.

34. *Id*.

35. *Id*.

36. Barbara Ortutay, *What you should know about Section 230, the rule that shaped today's internet,* PBS (Feb. 21, 2023, 10:55 AM), https://www.pbs.org/newshour/politics/what-you-should-know-about-section-230-the-rule-that-shaped-todays-internet.

37. Brian Fung, *Twitter sues hate-speech watchdog, following through on its litigation threat*, CNN (last updated Aug. 1, 2023, 9:34 AM), https://www.cnn.com/2023/08/01/tech/twitter-sues-center-for-countering-digital-hate/index.html.

38. *Id*.

39. Ashley Belanger, *X sues hate speech researchers whose "scare campaign" spooked Twitter advertisers,* ARSTECHNICA (Aug. 1, 2023, 1:29 PM), https://arstechnica.com/tech-policy/2023/08/hate-speech-researchers-sued-by-x-accuse-musk-of-being-an-authoritarian/2/.

Musk acquired the company in October 2022."[40] The report also stated that Twitter failed to remove tweets containing racist, homophobic, neo-Nazi, antisemitic or conspiracy content in a timely manner.[41] As some may know, X, like many other social media platforms, are free public services that are funded largely by advertisers.[42] The Company has accused the CCDH of asserting false claims and encouraging advertisers to pause investment on the platform.[43]

However, if true, the fact that advertising businesses are halting their relationship with X fits neatly under the CCDH's goal to "increase[e] the economic and reputational costs for the platforms that facilitate the spread of hate and disinformation."[44] But X's lawsuit against the CCDH is not based on defamation over the publication of allegedly false information, or reputation-harming statements damaging its business, X's legal claims are that the CCDH engaged in unlawful conduct in gathering data and that their research method is flawed, and therefore the research cannot be trusted.[45] In a blog post, X asserted that "the CCDH had gained access to its data without authorization and accused [them] of scraping data from its platform," which was done in violation of X's terms.[46] Data scraping from publicly accessible data is generally not illegal, according to a ruling by the U.S. Ninth Circuit Court of Appeals.[47] However, X asserts that a third party improperly gave CCDH access to non-public data, violating X's terms and "sparking a claim under the Computer Fraud and Abuse Act."[48] Imran Ahmed, the CEO of Center for Countering Digital Hate, said that all the nonprofit does with its research is "hold up a

40. *Musk's X sues nonprofit that fights hate-speech*, REUTERS, (last updated Jul. 2023), https://www.reuters.com/legal/musks-x-sues-nonprofit-that-fights-hate-speech-2023-08-01.

41. Counter Hate, *Twitter Fails to Act on Twitter Blue Accounts Tweeting Hate*, CTR. FOR COUNTERING DIGITAL HATE (June 1, 2023), https://counterhate.com/research/twitter-fails-to-act-on-twitter-blue-accounts-tweeting-hate/.

42. Todd Spangler, *Twitter/X Sues Hate-Speech Research Group Over Claims That Hateful, Racist Content Has Proliferated Under Elon Musk's Ownership,* VARIETY (July 31, 2023, 9:05 PM), https://variety.com/2023/digital/news/twitter-musk-threatens-lawsuit-hate-speech-research-group-1235683325/.

43. *Musk's X sues nonprofit that fights hate-speech*, *supra* note 41.

44. Clay Calvert, *Free Speech Villain or Hero? Framing the Fight Between X Corp. and the Center for Countering Digital Hate*, AEIDEAS (Aug. 7, 2023), https://www.aei.org/technology-and-innovation/free-speech-villain-or-hero-framing-the-fight-between-x-corp-and-the-center-for-countering-digital-hate/.

45. *Id*.; Complaint at 1, X Corp. v. Ctr. For Countering Digital Hate, No. 3:23-cv-03836 (N.D.Cal. filed Jul. 31, 2023.).

46. *Musk's X sues nonprofit that fights hate-speech*, *supra* note 41.

47. Hayden Field, *Twitter, now called X, sues researchers who showed rise in hate speech on platform after Musk takeover,* CNBC (last updated Aug. 1, 2023, 2:20 PM), https://www.cnbc.com/2023/08/01/x-sues-ccdh-for-showing-hate-speech-rise-on-twitter-after-musk-deal.html.

48. Calvert, *supra* note 45.

mirror to the platforms and ask them to consider whether or not they like the reflection they see in it."[49] He then went on to add that what Elon Musk, the owner of X, has done is decided to "sue the mirror because [he] doesn't like what [he] sees."[50] Furthermore, the CCDH has stated on its website that the "failure of social media companies to act on known harmful and extremist content is a violation of their own terms and conditions . . . and their duty to protect their users."[51]

The framing of this lawsuit is extremely important because it speaks to the ongoing debate about when and how, if possible, should Internet companies be held liable for the content posted by their users. If it is not when companies use algorithms to suggest content that may be harmful to users, then should it be when harmful content is reported and neither the content nor the individual responsible for posting the content is removed from the site? While Section 230(c)(2), allows platforms to police their sites for harmful content, it also allows them to remove content from their sites that violate their policies, so long as they are acting in "good faith."[52] However, the law does not impose liability on companies that fail to remove such content.[53] This specific part of the law is in conflict because granting the internet platforms complete legal immunity for the content that their users post, "also reduces their incentives to proactively remove content causing social harm."[54] It has been discovered that socially harmful content can be economically valuable to many platform owners, and pose a relatively small economic harm to their public image or brand.[55] However, the consequences and harm that results takes a significant toll on society.

PERSISTENCE OF NEGATIVE CONTENT

Persistence of negative content online is not exclusive to Google or Twitter, and certainly not only affecting users within the United States. Malaysia stated on June 23, 2023, that they plan to take legal action against Meta for failing to remove "undesirable" content from its platform.[56] This comes after the

49. Fung, *supra* note 38.

50. *Id*.

51. Calvert, *supra* note 45.

52. Ortutay, *supra* note 37.

53. Michael D. Smith & Marshall Van Alstyne, *It's Time to Update Section 230,* HARVARD BUSINESS REVIEW (August 12, 2021), https://hbr.org/2021/08/its-time-to-update-section-230.

54. *Id*.

55. *Id*.

56. A. Ananthalakshmi, *Malaysia to take legal action against Meta over harmful content*, REUTERS (last updated June 26, 2023, 1:46 PM), https://www.reuters.com/technology/malaysia-take-legal-action-against-meta-harmful-content-2023-06-23/.

Malaysian Communication and Multimedia Commission (MCMC) said that Facebook has recently been plagued with "a significant volume of undesirable content" relating to sensitive issues on "race, religion, and royalty as well as defamation, impersonation, online gambling, and scam advertisements."[57]

It is not only the content existing on the platform that is the issue, but the persistence of such content after there have been attempts to remove it. The MCMC said they have made repeated efforts to contact Meta in order to remove the content, but such efforts were to no resolution.[58] Meta's response, which has been sluggish and unsatisfactory, has not met the urgency of the matter and has led to increasing public concern and scrutiny. . . . As there is no sufficient cooperation from Meta, MCMC has no option but to take defensive steps or legal action against Meta as a measure to ensure that people are secure and protected in the physical sphere.[59]

As contained within the Commission's statement, this negative online content can easily lead to real-life impacts or consequences if not promptly removed.[60]

One would think that these platforms, such as Google, Facebook, or Twitter, would want to remove such harmful content without governmental prompting simply because it would theoretically make using their product a more enjoyable experience. However, a leaked internal document from Facebook states that Facebook intentionally pushed harmful content onto young female users.[61] The document provides that staff at Facebook had been studying their product's impact on younger users' state of mind.[62] Slides from an internal presentation show that Facebook and Instagram, now both under the "Meta" umbrella, were studied and are aware that "[they] make body image

57. *Malaysia Says it will take legal action against Meta over harmful content on Facebook*, ASSOCIATED PRESS (June 23, 2023, 12:05 AM), https://apnews.com/article/malaysia-sue-meta-undesirable-content-9c2d8b2201b80adb29e27208da4516ce.

58. REUTERS, *Malaysia to take legal action against Meta over 'undesirable' content*, CNN (Last updated June 23, 2023, 5:35 AM), https://www.cnn.com/2023/06/23/tech/malaysia-meta-facebook/index.html.

59. *Malaysia Says it will take legal action against Meta over harmful content on Facebook*, *supra* note 58.

60. Lukas Grigas, *Online Negativity: How It Affects Us and How We Can Deal With It*, NORDPASS (August 23, 2021), https://nordpass.com/blog/how-to-deal-with-online-negativity/.

61. *Facebook knew Instagram was pushing girls to dangerous content: internal document*, CBS NEWS (December 11, 2022, 6:58 PM), https://www.cbsnews.com/news/facebook-instagram-dangerous-content-60-minutes-2022-12-11/.

62. Damien Gayle, *Facebook aware of Instagram's harmful effect on teenage girls, leak reveals*, THE GUARDIAN (Sept. 14, 2021, 2:40 PM), https://www.theguardian.com/technology/2021/sep/14/facebook-aware-instagram-harmful-effect-teenage-girls-leak-reveals.

issues worse for one in three teen girls."[63] The internal presentation also stated "[t]hirty-two percent of teen girls said that when they feel bad about their bodies, Instagram made them feel worse," and that "Teens blame Instagram for increases in the rate of anxiety and depression."[64]

Why knowingly allow such negative content to swarm the site? Researchers from DePaul University and Harvard Business School seek to answer this question through a study on Twitter that examined 140,000 tweets from forty-four different news organizations.[65] The researchers found that for the most part, negative content garners more attention and attracts more eyeballs than positive content.[66] Amit Goldenberg, one of the paper's authors from the study noted "Although people produce much more positive content on social media in general, negative content is much more likely to spread."[67] While the researchers are not exactly sure as to why negative content fuels engagement for these platforms, one possibility is that "negative information captures attention and motivates behavior to a greater extent than positive information."[68] This pattern of behavior is nothing novel or unique, as the classic mantra for journalism is "if it bleeds, it leads," referring to presenting negative or gruesome content predominantly before positive content in order to capture the reader or audience's attention as early as possible.[69]

There are consequences to this circulation of predominantly negative content on social media. A study from the University of Georgia discusses the correlation between social media use and cyberbullying.[70] The study found that "teenagers who are addicted to social media are more likely to engage in cyberbullying, as well as those who spend more time online."[71] An online presence provides abusers with the ability to keep their identities hidden on social media which allows a longer and harsher torment to be executed.[72]

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63. *Id*.

64. *Id*.

65. Irina Ivanova, *On Twitter, bad news spreads faster than good*, CBS NEWS (July 15, 2021, 8:09 AM), https://www.cbsnews.com/news/twitter-bad-news-spreads-study/.

66. Jonas P Schöne et. al., *Negative expressions are shared more on Twitter for public figures than for ordinary users*, PNAS NEXUS, July. 6, 2023, at 1, 1.

67. Ivanova, *supra* note 66.

68. *Id*.

69. *Id*.

70. *More Time on Social Media Increases the Risk of Cyberbullying in Teens*, EVOLVE ADOLESCENT BEHAVIORAL HEALTH, https://evolvetreatment.com/blog/social-media-cyberbullying/ (last visited Nov. 19, 2023).

71. Kathryn Kao, *Social media addiction linked to cyberbullying*, UGA TODAY (Mar. 30, 2021), https://news.uga.edu/social-media-addiction-linked-to-cyberbullying/.

72. Beverly Lickteig, *Social Media: Cyberbullying, Body Shaming, and Trauma*, THE CHILD ADVOCACY CENTER OF LAPEER COUNTY, https://caclapeer.org/social-media-cyberbullying-body-shaming-and-trauma/ (last visited Nov. 19, 2023).

Bullying and harassment are nothing new and were not created through an online existence. Classic films often portray a strong, jock-like character shoving a feeble, nerdy student into a large high school locker. While these various forms of physical, face-to-face bullying undoubtedly still take place, the rapid evolution of technology has introduced new forms of bullying.[73] Various websites, platforms, social media, gaming sites, etc. all have messaging capabilities. Cyberbullies utilize these sites, emails, or texting to target and harass other individuals.[74]

These interactions do not always have to be negative, however. In fact, twenty-one percent of students between the grades of 7th and 11th have reported that they have met a friend online and seventy-two percent have reported it to be a positive experience.[75] Ideally, this is how the internet and new technology should be used, to meet new people and to hold harmless, consensual conversation or interaction. Unfortunately, this is not the case as the internet offers the ability for almost anybody to remain in the shadows and hide behind anonymity.[76] This ability to remain anonymous has opened the door to harassment, impersonation, and other forms of bullying.[77] One study found that fifty-nine percent of internet users report having assumed a different virtual identity than that in real life.[78] Seventeen percent of these individuals have suggested that they use these different identities to "act mean to people and not get into trouble."[79]

This is a stark difference in cyberbullying from the formerly thought-of traditional forms of bullying. Cyberbullying allows perpetrators the comfort of feeling completely removed from their victims as well as the direct impact or consequences of their actions.[80] Further, the victims of cyberbullying may actually experience higher levels of distress than victims of traditional

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73. Lisa Ellis & Melissa Luhtanen J.D., *Cyber Bullying: Bullying Through Technology*, LAWNOW (November 15, 2012), https://www.lawnow.org/cyber-bullying-bullying-through-technology/.

74. Muthanna Samara et al., *Bullying and Cyberbullying: Their Legal Status and Use in Psychological Assessment*, Int J Environ R Public Health, Nov.24, 2017, at 1, 1.

75. Ellis, *supra* note 74. This is referring only to meeting somebody online and having a positive experience. This is not referring to meeting an online acquaintance in-person and having a positive experience.

76. Samara, *supra* note 75.

77. *Id*. This includes tactics such as gaining another individuals' trust and then proceeding to expose their secrets to the public as well as excluding other individuals.

78. Ellis, *supra* note 74.

79. *Id*.

80. *Bullying Prevention in the Technology Age*, COMMITTEE FOR CHILDREN, https://www.cfchildren.org/policy-advocacy/bullying-prevention-in-the-technology-age/ (last visited Nov. 19, 2023).

bullying.[81] This rapidly evolving form of bullying has been linked to a variety of issues such as "depression, social anxiety, reduced self-esteem, substance abuse, and poor academic performance."[82] In fact, adolescents who experienced cyberbullying were almost more than four times as likely to report suicidal thoughts and attempts as those who did not have such experiences.[83] Additionally, "students who experienced bullying or cyberbullying are nearly two times more likely to attempt suicide."[84]

The tragic story of Mallory Grossman is a direct example of the unfortunate consequences of cyberbullying. Mallory was described by her friends and family as an "all-American girl" who sold jewelry to donate proceeds to cancer research and was a cheerleader and gymnast.[85] Mallory was continuously bullied via text messages and Snapchat by fellow peers and classmates.[86] From being excluded to getting cold looks at school in the hallway, Mallory felt tormented by her classmates, and her grades drastically dropped.[87] Mallory took her own life shortly thereafter, at the age of twelve years old.[88] Her parents were searching for more to be done and claimed they had often shown school officials and administration the "horrible" messages being sent to Mallory.[89] After some time, these complaints fell on "deaf ears" as the school did nothing.[90]

Jack Reid is another example of a tragic, yet preventable, ending to a story involving cyberbullying. In the Spring of 2021, Jack was the subject of a false rumor claiming Jack had committed sexual assault by kissing a girl.[91] The

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81. *Id*.

82. *Id.*

83. Shay Arnon et al., *Association of Cyberbullying Experiences and Perpetration With Suicidality in Early Adolescence*, JAMA NETWORK, June 27, 2022, at 1, 5, e2218746.

84. *Resources, Bullying, Cyberbullying, Self-Harm & Suicide*, MEGAN MEIER FOUNDATION, https://www.meganmeierfoundation.org/facts-and-support (last visited Oct. 25, 2023).

85. *About Mallory*, MALLORY'S ARMY FOUNDATION, https://mallorysarmy.org/about/about-mallory/ (last visited Nov. 19, 2023).

86. Hurubie Meko, *School Will Pay $9.1 Million to Settle Lawsuit Over a Student's Suicide*, N.Y. TIMES (July 29, 2023), https://www.nytimes.com/2023/07/29/nyregion/new-jersey-student-suicide-settlement.html.

87. Gene Myers, *Mallory Grossman's parents say the school district didn't do enough to save their daughter*, NORTHJERSEY (last updated Aug. 2, 2017, 3:07 PM), https://www.northjersey.com/story/news/morris/rockaway-township/2017/08/01/parents-announce-lawsuit-against-rockaway-officials-after-suicide/526621001/.

88. *Id*.

89. *Id*.

90. *Id*.

91. Isabel Keane, *NJ boarding school student Jack Reid's parents reveal last conversation before suicide*, N.Y. POST (last updated May 2, 2023, 4:05 PM), https://nypost.com/2023/05/02/lawrenceville-school-student-jack-reids-parents-reveal-last-conversation-before-suicide.

untrue rumor was spread and posted onto an anonymous nationwide student app by September and claimed that Jack was a rapist.[92] During a Secret Santa exchange at school, Jack even received a rape whistle and a book to teach him how to make friends.[93] Lawrenceville School was aware of these untrue rumors and how Jack was being treated in school, prompting them to investigate the matter.[94] The rumors were found false, but such findings were never released to the public or shared with Jack.[95] One of Jack's father's biggest complaints is that the laws adopted within New Jersey that attempt to combat bullying largely only apply to public schools, leaving the families of those who were bullied in private schooling with little to no recourse.[96]

Nate Bronstein and his family's story is eerily similar to that of Jack Reid's. Nate Bronstein had been bullied relentlessly over Snapchat before receiving a message instructing him to take his own life—which he did.[97] The major similarities stem from how the school decided to handle the situation or lack thereof. Like Jack's Lawrenceville School, Nate's extremely prestigious Latin School of Chicago did little to nothing to protect him from relentless harassment.[98] Nate had met with the Dean of Latin to express what had been happening, and while the dean listened, no actions were taken.[99] Additionally, Nate's parents claim that they had no idea that any of this was happening to their son, even saying if somebody from the school had alerted them that "[w]e would have known, and we could have protected him, and he'd still be here today."[100] However, it was not until after Nate's untimely suicide that the family became aware of the texts and Snapchat messages that bombarded their son.[101]

Sixteen-year-old McKenna Brown is another, out of 5,000 teenagers annually, who took her own life.[102] McKenna's harassment started as what was

92. *Id*.

93. *Id*.

94. *Parents speak out after son's suicide at elite New Jersey boarding school*, ABC7 N.Y. (May 2, 2023), https://abc7ny.com/teen-death-the-lawrenceville-school-student-suicide-nj-boarding/13204599/.

95. *Id*.

96. Keane, *supra* note 92.

97. Megan Hickey, *A 15-year-old boy died by suicide after relentless cyberbullying, and his parents say The Latin School could have done more to stop it*, CBS NEWS CHI. (April 25, 2022, 10:44 PM), https://www.cbsnews.com/chicago/news/15-year-old-boy-cyberbullying-suicide-latin-school-chicago-lawsuit/.

98. *Id*.

99. *Id*.

100. *Id*.

101. *Id*.

102. Bailee Hill, *Florida parents sound alarm on cyberbullying after teen daughter's suicide*, FOX NEWS (October 26, 2022, 2:17 PM), https://www.foxnews.com/media/florida-parents-sound-alarm-cyberbullying-teen-daughters-suicide; *Teen Suicide Facts*, SUICIDE AND CRISIS CTR. OF N.

described as "girl drama" involving McKenna's group of friends and the boys they were talking to.[103] This drama escalated to McKenna being excluded from a sleepover and harmful messages being sent to McKenna before exposing a secret that McKenna had been raped three years prior.[104] After McKenna's suicide, like many other grieving families, the Browns felt as though nobody was able to be held accountable for their daughter's harassment and death.[105] McKenna's father, Hunter Brown, says "criminally, there will be no accountability."[106]

Hunter Brown's anger is partially directed toward the state of Florida for the lack of accountability or liability.[107] "Cyberbullying is not a crime in the state of Florida, stalking is a crime in the state of Florida," says Hunter Brown.[108] Thus, there is no one to hold criminally liable for McKenna's death. McKenna's mother, Cheryl, expressed hope that her daughter's tragedy educates those who may need it and that her daughter's passing "crystalizes the need to change cyberbullying laws, given the social media's immense power over the lives of children and teenagers."[109] "She's not here, but she's still helping people. That's our mission: To help her continue to help others."[110]

LOOKING FORWARD

Recently, in July 2023, Mallory Grossman's family reached a settlement of $9.1 million with the school district.[111] This settlement is symbolic of the cyberbullying problem in general. To begin, it is the largest amount ever paid in a bullying case in the United States—meaning no other victims have been similarly compensated.[112] Second, it is a rare case in which the school admitted wrongdoing.[113] Further, it took a whole six years after Mallory's death for such

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TEX., https://www.sccenter.org/programs-and-services/for-teens/teen-suicide-facts/ (last visited Nov. 19, 2023).

103. Hill, *supra* note 102.

104. *Id*.

105. *Id*.

106. Noah Kirsch, *Teen Hockey Player's Bullying Went Unchecked Before Her Suicide, Parents Say*, THE DAILY BEAST (last updated Oct. 22, 2023, 7:26 PM), https://www.thedailybeast.com/mckenna-browns-bullying-went-unchecked-before-her-suicide-parents-say.

107. *Id*.

108. Hill, *supra* note 102.

109. Kirsch, *supra* note 107.

110. *Id*.

111. Praveena Somasundaram, *N.J. family reaches $9.1M settlement after bullied girl dies by suicide*, THE WASHINGTON POST (July 28, 2023, 8:34 AM), https://www.washingtonpost.com/nation/2023/07/28/mallory-grossman-bullying-lawsuit-settlement/.

112. *Id*.

113. *Id*.

a settlement to be completed.[114] These tragic consequences of cyberbullying often leave the family with no clear answer as to who is liable or who can be called upon to answer for the death of the individual.[115] Sometimes, such a resolution is simply too late.

This is what happened after the suicide of Jack Reid. In reaching a similar settlement with the Lawrenceville School District as the Grossman family had with Mallory's school district, Lawrenceville School released a statement claiming that they "fell tragically short" in protecting Jack Reid.[116] The school stated that it had "been made aware of the bullying and 'cruel behavior' towards Jack and that 'there were steps that the school should have taken in hindsight, but did not.'"[117]

Perhaps the biggest strive for drastic change in the digital landscape came from *Reynaldo Gonzalez vs. Google, LLC*. While the Court considered altering the scope of the protections under Section 230 of the Communications Decency Act (DCA), the end result was not in Gonzalez's favor.[118] Section 230 provides web hosts such as Google, Bing, and Microsoft, with immunity from legal liability for the content being posted by its users.[119] Because these hosts have to make some choices in the order and organization of how information is disseminated on their platforms, such immunity is appropriate, says the ACLU.[120] The U.S. Supreme Court seemed to agree, apparently, as they declined to rule on a change of scope of what is protected under Section 230 of the DCA.[121]

Without a change to the relevant legislation, there will likely be no significant change in cyberbullying liability from web hosts and providers.[122] Much of the arguments in support of Section 230 center around the relationship between internet growth and free speech.[123] Wikimedia Foundation, providing arguments in support of Google, claims that the

online community needs the protection provided by Section 230 to properly flourish. Wikimedia argues that Section 230 allows small companies and non-

114. *Id*.

115. Kirsten Hallmark, *Death by Words: Do United States Statutes Hold Cyberbullies Liable for Their Victims' Suicide?*, 60 Hous. L. Rev. 727, 732 (2023).

116. *Parents speak out after son's suicide at elite new jersey boarding school*, *supra* note 95.

117. *Id*.

118. *Google v. Gonzalez LLC*, ACLU (last updated May 18, 2023), https://www.aclu.org/cases/google-v-gonzalez-llc.

119. *Id*.

120. *Id*.

121. Fisher, *supra* note 20.

122. Yue (Wendy) Wu & Wentao Yang, *Gonzalez v. Google LLC*, Cornell Law School, https://www.law.cornell.edu/supct/cert/21-1333 (last visited Nov. 19, 2023).

123. *Id*.

profits with limited funds to exist and thrive by ensuring their protection from the risk of litigation and high litigation costs. Wikimedia states that Section 230 promotes the development of the modern internet by permitting a diverse portfolio of companies, as opposed to an oligarchy of a few mega platforms, to thrive without the fear of litigation.[124]

CONCLUSION

This is the current landscape of the digital information sphere that contains cyberbullying. While it seems as though those in support of Section 230 of the DCA have valid arguments and reasonings for such beliefs, would they be able to make those arguments face-to-face with Mallory Grossman's family? In theory, it is easy to keep Section 230 of the DCA unchanged as the internet is exponentially growing and becoming more and more pivotal in everyday life. By implementing new systems such as how to assign liability in the face of tragedy, disruption to such growth or internet use is bound to occur.

However, this is an attractive solution compared to Nate Bronstein's family feeling as though they could have kept their son alive if they were aware of how he was being bullied. It is an attractive solution compared to Jack Reid's family looking for liability because their son was enrolled in a private school not governed by the anti-bullying laws that have been adopted by the state. Changing Section 230 is an attractive solution for anyone who has been adequately impacted by online content and is left searching for liability in the face of tragedy, such as Mallory Grossman's family before reaching a settlement with the school.

There are too many of these tragedies occurring where the families and loved ones are left wondering: "What now?" By adding some method of providing clear liability to the online providers or social media sites, these questions would be answered. While a change in Section 230 would not have prevented the cyberbullying or harassment from taking place, it would have allowed for some liability on the part of the web host. Unfortunately, the families continue to feel as though there was "no accountability" for their children's suicides or bullying.[125]

124. *Id*.

125. Hill, *supra* note 102.