Google case at Supreme Court risks upending the internet as we know it

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An upcoming Supreme Court case could answer one of the toughest questions of the internet age: Should online companies be held responsible for promoting harmful speech?

The case, Gonzalez v. Google, could upend the modern internet economy, sparing no online business. A ruling against Google will likely leave internet companies—from social media platforms to travel websites to online marketplaces—scrambling to reconfigure their businesses to avoid costly lawsuits.

The case, which will be argued Feb. 21, tests whether Google's YouTube can be held liable for automated recommendations of Islamic State terrorism videos. The company is being sued by the family of Nohemi Gonzalez, a 23-year-old U.S. citizen who was among the at least 130 people killed in coordinated attacks by the Islamic State in Paris in November 2015.

Since 1996, the statute at the center of the case, Section 230 of the Communications Decency Act, has protected online platforms from facing lawsuits for hosting toxic content and enabled the companies to remove posts as they saw fit. The Gonzalez case focuses on whether platforms are protected by the Section 230 shield when their own algorithms boost toxic material, videos and photos.

The possibility of a serious Section 230 overhaul has frightened internet companies across the country. It could result in less speech online and fewer recommended playlists, podcasts, product reviews, social media posts and more, the companies warned in briefs to the court. YouTube says a ruling in favor of the Gonzalez family could force it to filter out more content from its video-streaming platform. It could also threaten lucrative profits from online advertising.

It's possible that the Supreme Court justices could choose to hand down a narrow ruling that doesn't have widespread impacts. Eric Schnapper, the Gonzalez family's lead lawyer at the Supreme Court, said they have "tried to stake out a position which will not wreak havoc on the industry."

Supporters of the Gonzalez family say the social media companies are exaggerating how much of an impact it could have.

"When the tech industry raises these concerns, what they're basically saying is: 'We shouldn't get treated like everybody else,'" said Mary Anne Franks, a lawyer with the Cyber Civil Rights Initiative. "Universities, publishers, they can all get sued and they don't have Section 230 immunity."

Here is a look at how several companies might be affected by a ruling in Gonzalez v. Google. All the companies sided with Google either in their own briefs or by joining others:

Meta Platforms Inc.

Even as it confronts an economic downturn, Meta Platform's Facebook is still one of the most popular social media platforms in the world, boasting nearly 3 billion monthly active users. In order to help viewers sift through its vast amount of content, Meta uses a network of algorithms that work to recommend relevant posts.

If the Supreme Court pares back Section 230's broad protections, it could expose Meta to lawsuits about posts, photos, advertisement and updates that its algorithms recommend. Though the company has thousands of employees moderating the content, and more than 90 fact-checking partners, it still faces challenges in policing every post from its billions of users.

Meta rang up roughly $9.82 billion on legal costs in 2021, according to its filings with the Securities and Exchange Commission, and the company predicts that number will rise if it has to face lawsuits over algorithmic recommendations across its platform.

In order to avoid lawsuits in the first place, Meta would likely significantly pare back the amount of speech allowed on its platforms. An unfavorable ruling could "incentivize online services to remove important, provocative, and controversial content on issues of public concern," Meta wrote in its Supreme Court brief.

Some activists say it's time for Meta to get sued for crimes occurring on its website, including drug sales, cyber stalking, abuse and violent threats. But in order to stave off legal costs, Meta could choose to reduce the number of people allowed to post on its platforms.

"They'd let the big brands, celebrities, and politicians be on the site because those are the people that drive most of the activity and are least likely to create liability," said Eric Goldman, a law professor at Santa Clara University. "Google and Facebook will curb who gets access to their tools and it's going to be a much smaller universe."

Most of Meta's revenue comes from its online advertising business, which could also be threatened by a broad ruling on Gonzalez v. Google. Meta and Alphabet Inc.'s Google, which place about 50 percent of all digital ads, could be forced to litigate a wave of lawsuits over the reams of advertisements they target at users every day.

Reddit Inc.

Most of the people calling for Section 230 reform from both political parties focus their criticism on Google, Facebook and Twitter Inc. But narrowing the statute could have an even bigger impact on smaller internet platforms.

Reddit, an online forum that has roughly 50 million monthly active users, relies on volunteer moderators to decide what posts stay up and which are removed. Community moderators sometimes use Reddit's "auto-moderator" tools, which allow them to automatically remove posts that violate their rules, such as comments with slurs and violent language.

Reddit also recommends content to its users based on which posts they have "up-voted" in the past.

"Section 230 enables smaller platforms that don't have the litigation budget of Facebook or Google to compete," said Benjamin Lee, Reddit's general counsel, in an interview. "It allows Reddit to have this unique, community-based approach to moderation."

Reddit is no stranger to litigation. The company recently fought off a lawsuit over a volunteer moderator's decision to ban someone who referred to a Star Trek character as a "soy boy," a pejorative term for effeminate men.

The case was among about a dozen lawsuits over content that were dismissed last year, most thanks to Section 230 protections, Lee said. He's concerned that number would skyrocket if plaintiffs took advantage of narrower legal protections. Each case might have to go through a full trial, which could become costly for the company, he added.

Etsy Inc.

Etsy, an e-commerce company focused on handmade craft items, uses algorithms to help users find products that are similar to those they have bought or searched for in the past. For example, if a person searches for Converse shoes, Etsy's algorithm could help lead them to sellers on the platform who specialize in sneakers and similar types of fashion.

Without Section 230, online marketplaces could face lawsuits if their algorithms recommended dangerous products. And Etsy could be discouraged from hosting user reviews because they leave the platform vulnerable to defamation claims.

Etsy relies on sellers' descriptions of their own products. Right now, if products don't exactly match their descriptions, Etsy doesn't have legal liability. But the Gonzalez case could create judicial uncertainty around whether Etsy is legally responsible for every description on its website.

Spotify U.S.A Inc.

Spotify has maintained its spot as the largest music streaming service in part thanks to its personalized playlists, which recommend songs and podcasts to users based on their listening behavior.

Under a new legal framework, Spotify could be exposed to lawsuits over audio it promotes in playlists such as Discovery Weekly and Your Daily Podcasts.

"Every single way in which fans interact with audio streaming services is in some way implicated by the algorithms they are using to help organize the content and provide you with things you want to hear," said Garrett Levin, the CEO of the Digital Media Association, which counts Spotify as a member alongside Apple Inc. and Amazon.com Inc., which both operate music streaming services.

Spotify has already dealt with controversy over the content of its podcasts. Activists and Spotify staff criticized the company last year over its No. 1 podcaster Joe Rogan, who hosted a series of guests that spread misinformation about COVID-19. Losing Section 230's protections could mean that Spotify would become the target of more lawsuits over controversial content. Even though it's likely most of that speech would be protected by the First Amendment, the lawsuits alone could create thorny issues for the company and create huge legal costs.

Startups

One of the most prominent arguments from Section 230 advocates is that startup founders might be discouraged from creating online companies under a new legal regime.

"The smaller companies I care about are the ones that aren't even born yet," Goldman said.

The cost of defending against even one lawsuit can easily exceed a startup's valuation, according to research from Engine, a group that represents startups and receives money from Google, Amazon, Meta and smaller tech companies.

Startup founders typically face a complex web of legal requirements when they create a new company. And adding on the risk of litigation over its recommendation algorithms would only add another layer of uncertainty.

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