

FAMILIES OF PULSE NIGHTCLUB VICTIMS FACE OFF AGAINST TWITTER, FACEBOOK AND GOOGLE

I. INTRODUCTION

The families of Pulse Nightclub victims are seeking justice in federal court.¹ The families of three people killed during the Pulse massacre in Orlando—Tevin Crosby, Javier Jorge-Reyes, and Juan Ramon Guerro—are suing Twitter, Google, and Facebook, alleging the companies provided “material support” to terrorists by allowing groups like the Islamic State (ISIS) to spread propaganda, raise funds, and recruit new members.²

The Communications Decency Act of 1996 protects social media sites from being liable for the content their users post.³ Section 230 of the Act typically bars recovery for people harmed because of third-party content on social media.⁴ Prior attempts to hold tech and social media giants accountable for “internet trolls” have been consistently struck down because of the immunity § 230 grants to Internet sites.⁵

We are all aware of trolls. Unfortunately, these trolls do not guard bridges; instead they spew hateful and inflammatory comments online while they stay safe behind anonymous computer screens. The racist and sexist attacks on actress and comedian Leslie Jones are just one instance of Internet trolling. The attacks were so vicious and relentless Jones left Twitter for a couple of months.⁶ While the situations with Leslie Jones and other prominent liberals⁷ and conservatives alike are highlighted in the news, this type of online vitriol occurs every day and is aimed at every segment of the population.⁵

1. Crosby, Ruiz, & Reyes v. TWITTER, Google, & Facebook, 2016 WL 7383679 (E.D. Mich. Dec. 19, 2016).

2. Brendan O'Brien, *Orlando nightclub victims' families sue Twitter, Google, Facebook*, Reuters, (Dec. 21, 2016), <http://www.reuters.com/article/us-florida-shooting-lawsuit-idUSKBN14928Y>.

3. 47 U.S.C. §230.

4. *Id.*

5. Arthur Chur, *Mr. Obama, Tear Down This Liability Shield*, Tech Crunch, (Sep. 29, 2015), <https://techcrunch.com/2015/09/29/mr-obama-tear-down-this-liability-shield/>.

6. Andrea Mandell, *Leslie Jones fights back against racism on Twitter*, USA Today (July 19, 2016), <http://www.usatoday.com/story/life/people/2016/07/18/leslie-jones-fights-back-against-racism-twitter/87271984/>.

7. Caitlin Gibson, *Will leaving Twitter make life better for these outspoken liberals?*, The Washington Post (Jan. 10, 2017), https://www.washingtonpost.com/lifestyle/style/will-leaving-twitter-make-life-better-for-these-outspoken-liberals/2017/01/10/4255836c-d42a-11e6-945a-76f69a399dd5_story.html?utm_term=.48ad1456a7c6.

5. Joel Stein, *How Trolls are Ruining the Internet*, TIME Magazine (Aug. 18, 2016), <http://time.com/4457110/internet-trolls/>.

While some may consider trolls harmless and a cost of being on the Internet, what happens when these anonymous users are more than simple trolls out to mock or hurt other users? Real harm occurs when major social media sites are not held accountable for the actions of their users. In 2015, ISIS was estimated to have at least 46,000 active Twitter accounts alone.⁸ Twitter is known to delete these accounts but does nothing to prevent these same users from reactivating their accounts, instantly creating new or multiple accounts to continue to spread their terrorist propaganda.⁹

II. AN UPHILL BATTLE

Companies such as Facebook and Twitter are not legally responsible to their intermediaries. Section 230 of the Communications Decency Act of 1996 grants these websites immunity from liability for the actions of third-parties.¹⁰ Because of this freedom from liability, some websites are prone to handle content in a way that encourages online harassment.¹¹ Thus § 230 ensures social media sites are not liable for the content they allow on their websites and creates an uphill battle for anyone who wishes to hold these companies accountable.¹² Many attempts to circumvent § 230's protections have been consistently shut down.¹³ A California District Court judge threw out an earlier case brought by the family of an American contractor killed in Jordan against Twitter because § 230 protects these social media outlets.¹⁴

However, the families of the Pulse victims may have a viable work-around. The question is whether these companies can be held liable as their interaction with ISIS implies that these companies are not simply hosting third-party postings but are actively involved in promoting terrorist content. The suit alleges that these websites are facilitating terrorism by combining ISIS postings with targeted advertising to viewers.¹⁵ The suit also alleges these companies then share revenue with ISIS for its content and profit from the advertising revenue.¹⁶ The plaintiffs argue that for years these companies have knowingly and recklessly allowed

8. Rick Gladstone & Vinu Goel, *ISIS IS Adept on Twitter, Study Finds*, (Mar. 5, 2015), <https://www.nytimes.com/2015/03/06/world/middleeast/isis-is-skilled-on-twitter-using-thousands-of-accounts-study-says.html>.

9. O'Brien, *supra* note 2.

10. 47 U.S.C. §230. Eric Goldman, *Unregulating Online Harassment*, Den. L. Rev. (Feb. 22, 2010), <http://www.denverlawreview.org/how-to-regulate/2010/2/22/unregulating-online-harassment.html>.

11. Goldman, *supra* note 10.

12. O'Brien, *supra* note 2.

13. Goldman, *supra* note 10.

14. Dado Ruvic, *Terrorism victims' families sue Twitter, claiming it helped ISIS spread*, RT NEWS, (last accessed Jan. 10, 2017), <https://www.rt.com/usa/373255-terrorism-victims-families-sue-twitter/>.

15. O'Brien, *supra* note 2.

16. O'Brien, *supra* note 2.

ISIS to use their platforms to spread extremist propaganda, raise funds, and attract new recruits.¹⁷

Social media sites are not terrorist organizations simply because ISIS uses them as a platform to recruit and spread their message. However, Internet channels do have a duty to prevent such information from being distributed on their platforms.¹⁸ These companies may not have a legal duty to monitor the content of their users' posts; however, the plaintiffs' claims are not based on the content of ISIS's postings but on the infrastructure Twitter, Facebook, and Google provide ISIS.¹⁹ The plaintiffs argue that without this material support ISIS would not have been able to become the world's most feared terrorist group.²⁰ While this creative approach may allow the families to get around § 230, the families will need to show causation to have a chance to win the day. There is ample evidence to show ISIS uses social media to push its agenda and acquire funds.²¹ However, the families will also need to demonstrate that Omar Mateen (the shooter) was influenced by those accounts.

Mateen searched social media for references to ISIS in the three hours prior to the shooting. He also downloaded and watched videos of beheadings by ISIS.²² However, it is unclear how Mateen became radicalized and investigators have not released any information confirming if Mateen had contact with any of ISIS's social media accounts.²³

III. CONCLUSION

While the families of the Pulse victims are clearly sympathetic and have a bold and creative argument, from a purely pragmatic perspective, their case will end up like so many who have tried to challenge and take on social media giants. Section 230 provides judges with a clear guideline: Internet companies are not responsible for user content, period. Further, Internet freedom is often couched in terms of free speech and requiring social media sites to censor their users feels fundamentally unconstitutional.²⁴ The ultimate question to be resolved is how to define the role of social media sites in stopping the dissemination of terrorist propaganda and combatting vicious online harassment. While these families demand justice, realistically one can only hope that these suits en-

17. Crosby, Ruiz, & Reyes v. TWITTER, Google, & Facebook, 2016 WL 7383679 (E.D. Mich. Dec. 19, 2016).

18. Gal Tziperman Lotan, *Families of three Pulse victims sue Facebook, Twitter, Google*, Orlando Sentinel, (Dec. 20, 2016), <http://www.orlandosentinel.com/news/pulse-orlando-nightclub-shooting/os-pulse-social-media-lawsuit-20161220-story.html>.

19. Crosby, 2016 WL 7383679

20. *Id.*

21. Lotan, *supra* note 18.

22. Lotan, *supra* note 18.

23. Lotan, *supra* note 18.

24. Benjamin Good, *Google and Twitter Speak Up in Support of the First Amendment Rights of Their Users*, ACLU, (Jan 20, 2016), <https://www.aclu.org/blog/free-future/google-and-twitter-speak-support-first-amendment-rights-their-users>.

courage Facebook, Twitter and Google to become more rigorous in their efforts to curb the spread of terrorist propaganda online as well as reduce online abuse.

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