Social media platforms have become integral to the way Americans not only interact with friends, but also how we connect with businesses and even political candidates. So, with so much social, political, and economic activity happening on social platforms, what rights, if any, do individuals have to access social media. In this interview, we discuss deplatforming and individual rights with Professor Eric Goldman.

Goldman shares results from his study of civil cases and breaks down the legal arguments that plaintiffs banned from social media have made against the likes of Twitter and Meta. Generally, courts have widely rejected plaintiff claims ranging from free speech, to common carrier arguements, to anti-discrimination, to breach of contract claims. Professor Goldman explores and evaluates deplatforming lawsuits and how courts have responded. Finally, Goldman goes to the cutting edge of internet law and evaluates controversial new state laws that attempt to impose obligations on internet companies such as "must-carry" and "digital due process" requirements and shares insights on how appellate courts are treating such laws to date .

See below for Prof. Goldman's insights in his piece, Online Account Terminations/Content Removals and the Benefits of Internet Services Enforcing Their House Rules. *Journal of Free Speech Law 191 (2021)* *Santa Clara Univ. Legal Studies Research Paper*

ONLINE ACCOUNT TERMINATIONS/CONTENT REMOVALS AND THE BENEFITS OF INTERNET SERVICES ENFORCING THEIR HOUSE RULES

Eric Goldman[*] *& Jess Miers*[**]

This article reviews a dataset of U.S. judicial opinions involving Internet services' user account terminations and content removals. The Internet services have prevailed in these lawsuits, which confirms their legal freedom to enforce their private editorial policies ("house rules"). Numerous regulators have proposed changing the legal status quo and restricting that editorial freedom. Instead of promoting free speech, that legal revision would counterproductively reduce the number of voices who get to speak online. As a result, laws imposing "must-carry" requirements on Internet services will exacerbate the problem they purport to solve.

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[*] Associate Dean for Research, Professor of Law, and Co-Director of the High Tech Law Institute, Santa Clara University School of Law. Website: http://www.ericgoldman.org. Email: egoldman@gmail.com. This project was partially supported by a grant from the John S. and James L. Knight Foundation.

[**] J.D., Santa Clara University School of Law, 2021. Government Affairs & Public Policy analyst at Google. All opinions are her own and do not represent her previous or current employers. Thanks to Daphne Keller, Mark Lemley, Irina Raicu, Rebecca Tushnet, and the *Journal of Free Speech Law* symposium participants for their helpful comments. This project benefited from research done by Brian Pettis and supplemented by Lauren Turner.

Introduction

Internet services[1] routinely terminate users' accounts and remove their content. These decisions sometimes generate substantial attention and controversy, such as the "deplatforming" of Donald Trump[2] and the Daily Stormer,[3] and Twitter's decision to remove some tweets referencing a *New York Post*'s article about Hunter Biden.[4] For each of those high-profile decisions, many thousands of other account termination and content removal ("termination/removal") decisions generate minimal attention.

This article addresses two interrelated questions. First, do Internet services currently have the legal discretion to engage in terminations/removals? Second, what would happen if the government restricted or removed that discretion?

To answer the first question, this article analyzes a dataset of court rulings in cases against Internet services for their termination/removal decisions. The dataset shows that Internet services have won essentially all of the lawsuits to date brought by terminated/removed users. Accordingly, Internet services currently have unrestricted legal freedom to make termination/removal decisions.

Numerous regulators have proposed changing this status quo. The opposite

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[1] Internet services are also commonly called "user-generated content"/UGC services or "platforms."

[2] Trump v. Twitter, Inc., 1:21-cv-22441 (S.D. Fla. complaint filed July 7, 2021); Trump v. Facebook, Inc., 1:21-cv-22440 (S.D. Fla. complaint filed July 7, 2021); Trump v. YouTube, LLC, 1:21-cv-22445 (S.D. Fla. complaint filed July 7, 2021).

[3] *E.g.* Talia Lavin, *The Neo-Nazis of the Daily Stormer Wander the Digital Wilderness*, New Yorker, Jan. 7, 2018, https://www.newyorker.com/tech/annals-of-technology/the-neo-nazis-of-the-daily-stormer-wander-the-digital-wilderness.

[4] *See* Kate Conger & Mike Isaac, *In Reversal, Twitter Is No Longer Blocking New York Post Article*, N.Y. Times, Oct. 16, 2020.

rule would give Internet services limited or no discretion to make termination/removal decisions.[5] Treating Internet services as common carriers is one such approach.[6] We refer to these regulatory proposals as "must-carry" laws,[7] because they would require Internet services to provide services to users, and "carry" user content, when the Internet service would otherwise choose not to.[8]

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[5] Three examples:

- Preventing Online Censorship, Exec. Order 13,925, 85 Fed. Reg. 34,079 (May 28, 2020), attempted to remove Section 230's immunity when an Internet service exercised its editorial discretion beyond the scope contemplated by Section 230(c)(2)(A). President Biden subsequently revoked this executive order. Revocation of Certain Presidential Actions and Technical Amendment, Exec. Order 14,029, 86 Fed. Reg. 27,025 (May 14, 2021).
- 21st Century FREE Speech Act, S.B. 1384, 117th Cong. (2021), proposes to repeal Section 230 and categorize "public" online services with 100,000,000 worldwide active monthly users as common carriers.
- Protecting Constitutional Rights from Online Platform Censorship Act, H.R. 83, 117th Cong. (2021), proposes to remove Section 230 protection for any Internet platform that "takes an action to restrict access to or the availability of protected material of a user of such platform." The bill would also create a private right of action for users whose content was restricted by the service.

[6] *See* Fla. SB 7072 §1(6) (2021) ("Social media platforms . . . should be treated similarly to common carriers"); State v. Google LLC, No. 21 CV H 06 0274 (Ohio Common Pleas Ct. complaint filed June 8, 2021), https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=3473&context=historical (Ohio's Attorney General Dave Yost sued Google to establish "that Google's provision of internet search is properly classified as a common carrier and/or public utility under Ohio common law"); *see also* Biden v. Knight First Amendment Inst., 141 S. Ct. 1220 (2021) (Thomas, J., concurring) ("In many ways, digital platforms that hold themselves out to the public resemble traditional common carriers."); *see generally* Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. FREE SPEECH L. 377 (2021) (analogizing social media to phone and mail services); Daphne Keller, *Who Do You Sue? State and Platform Hybrid Power over Online Speech* (Hoover Institution Working Group on National Security, Technology, and Law, Aegis Series Paper No. 1902, 2019), https://www.hoover.org/sites/default/files/research/docs/who-do-you-sue-state-and-platform-hybrid-power-over-online-speech_0.pdf (recapping various must-carry regulatory efforts).

[7] *See* Keller, *Who Do You Sue? State and Platform Hybrid Power over Online Speech*, *supra* note 6, at 2 (also adopting the "must-carry" terminology); Jess Miers, *Must Carry Reforms Won't Fix the Internet, But They Could Destroy It,* JURIST – Student Commentary, Feb. 1, 2021, https://www.jurist.org/commentary/2021/02/jess-miers-section-230-must-carry/.

[8] The label "common carrier" does not itself define the scope of must-carry obligations. For

To understand the implications of must-carry rules for Internet services, it's necessary to distinguish three categories of online content: illegal content, "objectionable" content, and unobjectionable content.[9]

Typically, Internet services are obligated to remove illegal and some types of tortious content, at least once the Internet service obtains the required scienter.[10] Thus, "must-carry" laws do not mean that the service literally must carry *all* content. Instead, such laws typically would require the service to carry *all legal* content.[11]

Must-carry laws do not affect any content that services subjectively consider unobjectionable, because Internet services would have chosen to carry it even in the absence of legal compulsion.

Accordingly, must-carry laws primarily affect activity and content that are legal but that services nevertheless consider objectionable. A lot of that material qualifies as "lawful, but awful,"[12] though services sometimes voluntarily restrict non-awful

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example, common carriers often offer multiple service tiers, each with different prices. The proposed must-carry laws often do not anticipate these business models (or would categorically ban them).

[9] Jess Miers, *Your Problem Is With the First Amendment, Not Section 230*, TECHDIRT, Nov. 2, 2020, https://www.techdirt.com/articles/20201030/09165945621/your-problem-is-not-with-section-230-1st-amendment.shtml.

[10] For example, Section 230's immunity does not apply to prosecutions of federal crimes, 47 U.S.C. § 230(e)(1), and some types of intellectual property claims. 47 U.S.C. § 230(e)(2).

[11] However, Florida's must-carry law (SB 7072) doesn't expressly exclude illegal content from its compulsory obligations.

[12] *E.g.*, Sabri Ben-Achour & Candace Manriquez Wrenn, *There's a Bipartisan Effort to Change Laws That Govern Speech on the Internet,* NPR MARKETPLACE, Sept. 28, 2020, https://www.marketplace.org/2020/09/28/internet-lability-law-section-230-social-media-twitter-facebook-congress-trump/ (quoting Daphne Keller of Stanford Law); Jon Skolnik, *Ron DeSantis' Big Tech "Censorship" Law is Meant to Create a Safe Space for Conservatives Online*, SALON, May 24, 2021, https://www.salon.com/2021/05/24/ron-desantis-big-tech-censorship-law-is-meant-to-create-a-safe-space-for-conservative-online/ (quoting Carl Szabo of NetChoice); Jess Miers, *Section 230 Isn't Why Omegle Has Awful Content, and Getting Rid of 230 Won't Change That*, TECHDIRT, Aug. 10, 2020, https://www.techdirt.com/articles/20200807/08085845071/section-230-isnt-why-omegle-has-awful-content-getting-rid-230-wont-change-that.shtml. "Lawful-but-awful" content is sometimes called "lawful but harmful" content.

material idiosyncratically.[13] We refer to an Internet service's policies restricting users' legal but objectionable activity or content as the service's "house rules."[14]

Virtually every media enterprise has adopted house rules,[15] but the specifics of those rules can vary widely among Internet services. In other words, each service decides for itself what it subjectively considers "awful" or "objectionable" content, and Internet services don't necessarily agree on that classification. As a result, Internet services have not adopted a single universal standard for what's prohibited by house rules, though certain types of problematic content have trended towards industry-wide convergence.[16] Differences in house rules creates a key point of competitive differentiation as services customize their offerings to the needs of their users.[17] Must-carry obligations would eliminate those differences—dictating that

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[13] For example, at one point, Google banned third-party ads promoting hard liquor. *Google Guys*, PLAYBOY, Sept. 2004, 55, 56–57 (quoting Google founder Sergey Brin as saying "we don't accept ads for hard liquor, but we accept ads for wine. It's just a personal preference"). At another point, Google kicked "cougar" dating services out of its ad network. Sarah Kershaw, *Google Tells Sites for 'Cougars' to Go Prowl Elsewhere*, N.Y. TIMES, May 15, 2010.

[14] Synonyms for "house rules" include "terms of service," "terms of use," "community guidelines," "community standards," and "acceptable use policies."

[15] For example, many broadcasters have departments, often called "Standards and Practices," that develop and enforce their editorial standards. Publishers who accept ads also usually have specific rules for acceptable advertisements. *See, e.g.*, *Ad Acceptability Guidelines*, N.Y. TIMES, https://nytmediakit.com/general-resources?id=ad-acceptability-guidelines.

[16] evelyn douek, *The Rise of Content Cartels*, KNIGHT FIRST AMENDMENT INST. AT COLUMBIA UNIV., Feb. 11, 2020, https://knightcolumbia.org/content/the-rise-of-content-cartels.

[17] *See* Matt Perault, *Section 230 Reform: A Typology of Platform Power*, CPI ANTITRUST CHRON., May 2021, at 18 ("Different approaches to content moderation enable users to make choices based on their moderation preferences."); David McGowan, *The Internet and the Limping Truth,* San Diego Legal Studies Paper No. 21-013, at 16–17, March 19, 2021, https://ssrn.com/abstract=3808232; Rory Van Loo, *Federal Rules of Platform Procedure*, 88 U. CHI. L. REV. 829, 868 (2021) ("There are dangers in pushing platforms toward homogeneity and virtues in allowing them to compete by trying to solve similar problems in different ways"); Mark A. Lemley, *The Contradictions of Platform Regulation*, 1 J. FREE SPEECH L. 303, 325–26 (2021) ("The fact that people want platforms to do fundamentally contradictory things is a pretty good reason we shouldn't mandate any one model of how a platform regulates the content posted there"); Jack M. Balkin, *How to Regulate (and Not Regulate) Social Media*, 1 J. FREE SPEECH L. 71, 84 (2021) ("you don't want a monoculture of content moderation"); *cf.* Eric Goldman, *Content Moderation Remedies*, 28 MICH. TECH. L. REV. __ (forthcoming 2021); *but see* Keller, *Who Do You Sue? State and Platform Hybrid Power over Online Speech*, *supra* note 6, at 2 ("while platforms appear to exercise their own discretion when they take

every service permit all lawful material, no matter how awful. As a result, must-carry rules would functionally dictate a single uniform standard for content moderation across the entire Internet.[18]

Must-carry rules would cause other dramatic and unwanted changes to the Internet. In particular, must-carry rules would force services to abandon their user-generated content offerings because their business models would become unsustainable. This widespread shift away from user-generated content would remove, not expand, the opportunity for people to speak online. Counterproductively, must-carry rules would produce the opposite of the rules' purported objectives—the worst kind of policy reform.

I. DESCRIPTION OF THE DATASET

This article contains three appendices. Appendix A enumerates the citations for the termination/removal court opinions in the dataset—a total of 62 cases.[19] A

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down legal speech . . . , their decisions are often profoundly influenced by governments").

[18] douek, *The Rise of Content Cartels*, *supra* note 16.

[19] The dataset excludes lawsuits over:

- the removal of someone else' account/content, such as Rutenberg v. Twitter, Inc., 2021 WL 1338958 (N.D. Cal. April 9, 2021) (Twitter isn't liable for removing the @realdonaldtrump account), and Belknap v. Alphabet, Inc., 2020 WL 7049088 (D. Ore. Dec. 1, 2020) (Google and YouTube aren't liable for deleting user comments to Breitbart);
- the service's failure to remove someone else's accounts or content, such as Constituents for Thoughtful Governance v. Twitter, Inc., Case No. CGC-20-583244 (Cal. Super. Ct. San Francisco County July 13, 2020) (Twitter isn't liable for not removing the @realdonaldtrump account); Klayman v. Zuckerberg, 753 F.3d 1354 (D.C. Cir. 2014) (Facebook isn't liable for delays in removing third parties' anti-Semitic pages); and Barnes v. Yahoo!, Inc., 570 F.3d 1096 (9th Cir. 2009) (evaluating Yahoo's potential liability for promising to remove a third party's e-personation);
- commercial in-licensing agreements, such as Varga v. Twitch Interactive, Inc., No. CGC-18-564337 (Cal. Super. Ct. Sept. 15, 2020);
- lawsuits over politicians removing constituents' content from their social media accounts—typically, those lawsuits are brought against the politician, but occasionally the social media services are named as defendants, *e.g.*, Fehrenbach v. Zeldin, 2018 U.S. Dist. LEXIS 132992 (E.D.N.Y. 2018);
- site-wide changes, such as Facebook's partial deprecation of its API, that restricted user access, *see* Six4Three, LLC v. Facebook, Inc., 2017 WL 657004 (N.D. Cal. 2017); Six4Three, LLC v. Facebook, Inc., 49 Cal. App. 5th 109 (Cal. App. Ct. 2020);

majority of the dataset cases involve as defendants the three most prominent social media services, Facebook, YouTube, and Twitter, but smaller services and other types of Internet services are also represented. Appendix B provides the detailed data values for each dataset case. Appendix C cases involve lawsuits over content removals or downgrades where the plaintiff didn't have contractual privity with the service,[20] which affects the relationship's structure and applicable law. Appendix C cases were not included in the dataset, though we don't believe that their inclusion would materially change our inferences.

Appendix A distinguishes termination cases from removal cases, but that distinction isn't rigid. For example, sometimes the Internet service removed or downgraded content items before removing the account entirely. If a case involved both termination and removal, we classified it as a termination case. We struggled to classify claims, especially in pro se cases, where the plaintiff's grievances were not entirely clear. In those circumstances, we followed the judge's characterizations.

Services' termination/removal decisions remain an active field of litigation. To avoid having to update our analysis during the publication process, we set a dataset cutoff date of March 15, 2021. We do not believe that any post-March 15 rulings materially change our analysis.[21]

- domain name registrations, *e.g.*, Seven Words LLC v. Network Solutions, Inc., 260 F.3d 1089 (9th Cir. 2001); Name.Space, Inc. v. Network Solutions, Inc., 202 F.3d 573 (2d Cir. 2000); Island Online, Inc. v. Network Solutions, Inc. 119 F. Supp. 2d 289 (E.D.N.Y. 2000); Nat'l A-1 Adver. v. Network Solutions, Inc., 121 F. Supp. 2d 156 (D. N.H. 2000); Beverly v. Network Solutions, Inc., 1998 U.S. Dist. LEXIS 20453 (N.D. Cal. Dec. 30, 1998).

[20] *Langdon v. Google* involved both rejected search engine ads and reduced organic search indexing, so it's included in both Appendices A and C. *Kinderstart v. Google* covered a wide range of issues, but we classified it exclusively as a search engine indexing case.

[21] Post-March 15 cases include Millan v. Facebook, Inc., 2021 WL 1149937 (Cal. Ct. App. Mar. 25, 2021); Daniels v. Alphabet Inc., 2021 WL 1222166 (N.D. Cal. Mar. 31, 2021); Lewis v. Google LLC, 851 F. Appx. 723 (9th Cir. 2021) (the unsuccessful appeal of a case in the dataset); King v. Facebook, Inc., 2021 WL 1697038 (9th Cir. April 29, 2021) (the unsuccessful appeal of a case in the dataset); Loveland v. Facebook, Inc., 2021 WL 1734800 (E.D. Pa. May 3, 2021) (venue transfer); Brock v. Zuckerberg, 2021 U.S. Dist. LEXIS 119021 (S.D.N.Y. June 25, 2021); Newman v. Google LLC, 2021 WL 2633423 (N.D. Cal. June 25, 2021); Children's Health Defense v. Facebook, Inc., 2021 WL 2662064 (N.D. Cal. June 29, 2021); Domen v. Vimeo, Inc., 2021 WL 3072778 (2d Cir. July 21, 2021) (amendment of an opinion in the dataset without changing the outcome), and Strauss v. U.S. Post. Serv., 2021 WL 3129455 (N.D. Cal. July 23, 2021) (court dismisses claim over YouTube's removal of plaintiff's video).

We compiled the dataset over the years. Since roughly 2005, Goldman has maintained Westlaw alerts to track litigation involving many Internet companies. (These alerts pick up cases where the company names appear in the opinion body, not just the case caption.) That process produced many of the cases in the dataset. We also reviewed case citations in other identified cases and received blog reader tips.

Despite our efforts, we do not believe the dataset comprehensively covers rulings involving termination/removal decisions. Among other limitations, many rulings are not indexed in the legal databases and remain functionally invisible. Furthermore, we made numerous judgment calls about whether the ruling addressed substantive aspects of the termination/removal.[22] For example, in forma pauperis (IFP) cases may fail for reasons unrelated to the merits of the termination/removal. For this and other reasons, we don't believe the dataset supports statistically reliable conclusions.

II. Dataset Analysis

Some insights we gathered from the dataset:

What Plaintiffs Argue. The plaintiffs' claims fit into four categories: (1) claims that the service's action constituted unconstitutional censorship, (2) anti-discrimination claims based on allegedly impermissibly biased content moderation, (3) breach of contract and consumer protection claims, and (4) miscellaneous other claims. Plaintiffs often asserted claims in more than one category—sometimes all four.

Defendants Win Early. Internet service defendants win lawsuits challenging

[22] Cases that settled before reaching substantive issues are an example. *See, e.g.*, We Are the People, Inc. v. Facebook, Inc., 2020 WL 2908260 (S.D.N.Y. 2020).

their termination/removal decisions.[23] Every case in the dataset that reached a dispositive outcome had a defense-favorable resolution.[24] Furthermore, defendants achieve those favorable outcomes early in the litigation lifecycle. About 90% of the cases resolved in the defense's favor on a motion to dismiss (or a similarly early procedural stage, such as a demurrer or anti-SLAPP motion) rather than a later procedural stage, such as on summary judgment or after a trial.

However, "early" defense wins do not mean that all of the cases were cheap or quick to defend. Some cases took years to resolve due to multiple amended complaints and appeals. Nevertheless, the fact that plaintiffs can't get past a motion to dismiss—even with claims like contract breach, which usually require factual determinations—shows the overall lack of legal merits in the lawsuits.

Pro Se Litigants Are Overrepresented. Across all litigation in federal courts, pro se plaintiffs bring about a quarter of all civil cases.[25] In the dataset, pro se plaintiffs brought more than half of the cases.[26]

The high percentage of pro se cases surely contributes to the high defense win rate. Pro se litigants aren't skilled litigators and sometimes advance dubious arguments that lawyers would not try. Then again, plaintiffs represented by lawyers have not had greater litigation success.

The overrepresentation of pro se plaintiffs in the dataset suggests what the future of termination/removal litigation could look like. Plaintiffs currently bring

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[23] *See* Keller, *Who Do You Sue? State and Platform Hybrid Power over Online Speech*, *supra* note 6, at 2 ("speakers in the United States have few or no legal rights when platforms take down their posts"); Daphne Keller, *If Lawmakers Don't Like Platforms' Speech Rules, Here's What They Can Do About It. Spoiler: The Options Aren't Great.*, TECHDIRT GREENHOUSE, Sept. 9, 2020, https://www.techdirt.com/articles/20200901/13524045226/if-lawmakers-dont-like-platforms-speech-rules-heres-what-they-can-do-about-it-spoiler-options-arent-great.shtml ("Must-carry claims have consistently been rejected in U.S. courts").

[24] The rare exceptions aren't encouraging for plaintiffs. The Second Life cases (*Bragg* and *Evans*) and *Crawford* case didn't reach final judicial resolution. The *Teatotaller* case remains pending as of March 15, 2021.

[25] *Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019*, U.S. COURTS, Feb. 11, 2021, https://www.uscourts.gov/news/2021/02/11/just-facts-trends-pro-se-civil-litigation-2000-2019 (especially fig. 3). Also, the substantial majority of pro se litigants are prisoners. *Id.* fig. 4. If those cases are subtracted, it means the percentage of civil cases brought by pro se plaintiffs would be substantially lower.

[26] This comparison is imperfect because about 20% of the dataset involves cases in state court.

their cases despite the low odds of success. If regulators create more favorable conditions for plaintiffs—such as a new private right of action with statutory damages[27]—the quantity of pro se litigation would undoubtedly soar. In addition, the cases' increased financial value might attract lawyers to take plaintiffs' cases, boosting the caseload further. It could also create the preconditions for class formation, which would further spur lawyers to take these cases. Thus, the current volume of litigation is a small fraction of the expected litigation volume if plaintiffs believed they could win.

Section 230's Role. 47 U.S.C. § 230 ("Section 230") played an important, but not dominant, role in dataset cases. Less than half of the dataset cases involved a successful Section 230 defense,[28] with Section 230(c)(1) and Section 230(c)(2)(A) both invoked by defendants.

Section 230 played no role in a majority of cases in part because plaintiffs assert a wide range of claims. Section 230 is simply irrelevant for some claims, such as claims that the service violated the U.S. Constitution.

Section 230's non-dominant role in the dataset might cast some doubt on whether reforming Section 230 would reduce the volume of terminations/removals by Internet services, because Internet services do not rely only on Section 230 to justify their decisions. Instead, Internet services rely on a mixture of three different legal tools—the First Amendment (or the related state action doctrine),[29] Section 230, and protective provisions in their terms of service—to create an impenetrable wall of protection against liability for their termination/removal decisions.[30] Nev-

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[27] *See, e.g.*, Fla. SB 7072, codified at FLA. STAT. § 501.2041(6)(a), which creates statutory damages of up to $100,000 for inconsistent content moderation decisions or failure to notify a user of deplatforming, "censoring," or "shadow banning." The law was preliminarily enjoined by NetChoice, LLC v. Moody, 2021 WL 2690876 (N.D. Fla. June 30, 2021).

[28] We counted Section 230 as playing a role even when it only applied to some of the plaintiff's claims.

[29] *See* Jonathan Peters, *The Sovereigns of Cyberspace and State Action: The First Amendment's Application—or Lack Thereof—to Third-Party Platforms*, 32 BERKELEY TECH. L.J. 989, 993 (2017) ("the state action doctrine, under its latest reformulation by the Supreme Court, *does* foreclose the First Amendment's application to private Internet companies like Facebook and Twitter"); Keller, *Who Do You Sue? State and Platform Hybrid Power over Online Speech*, *supra* note 6.

[30] *See* Andrew Tutt, *The New Speech*, 41 HASTINGS CON. L.Q. 235, 282 (2014).

ertheless, even if all three doctrines would independently support a favorable defense resolution, Section 230 offers important procedural benefits to defendants compared to the other legal doctrines,[31] and that boosts the rate of cases resolved via a motion to dismiss.

What Content Gets Blocked, and Why. Many of the dataset's opinions do not clearly specify why the Internet service took action against the plaintiff's account or content. Among the opinions that provided some insight on the service's motivations, it appeared that the Internet service usually based its termination/removal decision on its house rules, not because the users' content or actions were illegal or tortious.[32] In other words, the Internet services probably did not have a legal obligation to take action, but they did so anyway to protect their community or their interests. If the blocked content was indeed lawful-but-objectionable, must-carry rules would likely reverse the outcomes of many or most of the dataset cases, preventing the Internet service from taking the termination/removal action that prompted the lawsuit, or imposing liability for doing so.

The content that spurred Internet services to take action ranges from automated activity to crackdowns on #MAGA/QAnon content. Some examples of material that we think most people would want—and, indeed, expect—Internet services' house rules to prohibit:[33]

- *Enhanced Athlete v. Google*.[34] The plaintiff posted videos to YouTube that discussed Selective Androgen Receptor Modulators (SARMs),[35] which are

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[31] Eric Goldman, *Why Section 230 Is Better Than the First Amendment*, 95 NOTRE DAME L. REV. REFLECTION 34 (2019).

[32] However, a few cases involve claims that the targeted material infringed a third party's intellectual property, in which case the Internet service's failure to act may have exposed the service to tort liability. For example, Lancaster v. Alphabet Inc., 2016 WL 3648608 (N.D. Cal. 2016), apparently involved YouTube's response to notices of claimed copyright infringement. If YouTube had failed to honor the takedown notices sent for Lancaster's content, YouTube would have waived any protections under the Digital Millennium Copyright Act's (DMCA) online safe harbor (17 U.S.C. § 512(c)) and faced substantial claims of contributory and vicarious copyright infringement.

[33] For additional examples, *see* Joe Mullin, *Changing Section 230 Won't Make the Internet a Kinder, Gentler Place*, EFF, June 17, 2021, https://www.eff.org/deeplinks/2021/06/changing-section-230-wont-make-internet-kinder-gentler-place.

[34] Enhanced Athlete, Inc. v. Google LLC, 479 F. Supp. 3d 824 (N.D. Cal. 2020).

[35] *Id.* at 827.

similar to anabolic steroids. We don't know exactly what the videos said,[36] but videos encouraging viewers to consume SARMs create substantial public health risks. According to the U.S. Food & Drug Administration (FDA), "[l]ife threatening reactions, including liver toxicity, have occurred in people taking products containing SARMs. SARMs also have the potential to increase the risk of heart attack and stroke, and the long-term effects on the body are unknown."[37]

- *Murphy v. Twitter*:[38] As part of a Twitter beef, the accountholder Murphy engaged in "misgendering"[39] and "deadnaming."[40] Misgendering and deadnaming can cause emotional and psychological harm to their targets,[41] so both practices are types of hate speech.[42]

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[36] However, we know that the FDA raided Enhanced Athlete's facilities, and its CEO was sentenced to three years in prison. Felicia Alvarez, *Enhanced Athlete CEO Sentenced to 3 Years in Prison*, SACRAMENTO BUS. J., May 29, 2019, https://www.bizjournals.com/sacramento/news/2019/05/29/enhanced-athlete-ceo-sentenced-to-3-years-in.html.

[37] *FDA In Brief: FDA Warns Against Using SARMs in Body-Building Products*, U.S. FOOD & DRUG ADMIN., Oct. 31, 2017, https://www.fda.gov/news-events/fda-brief/fda-brief-fda-warns-against-using-sarms-body-building-products.

[38] Murphy v. Twitter, Inc., 60 Cal. App. 5th 12 (2021).

[39] Misgendering is the deliberate referral to a trans person using incorrect pronouns. *See, e.g.*, California Health & Safety Code § 1439.51(a)(5) (making it criminal to, in some circumstances, "willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns").

[40] Deadnaming is the use of a transgender person's prior name. *See, e.g.*, Lucas Waldron & Ken Schwencke, *Deadnamed*, PROPUBLICA, Aug. 10, 2018, http://www.propublica.org/article/deadnamed-transgender-black-women-murders-jacksonville-police-investigation (deadnaming is "calling a trans person by the name they no longer use").

[41] *E.g.*, Kevin A. McLemore, *Experiences with Misgendering: Identity Misclassification of Transgender Spectrum Individuals*, 14 J. SELF & IDENTITY 51, 52 (2014); Maureen D. Connolly et al, *The Mental Health of Transgender Youth: Advances in Understanding*, 59 J. ADOLESCENT HEALTH 489 (2016); Sam Riedel, *Deadnaming A Trans Person Is Violence—So Why Does The Media Do It Anyway?*, HUFFINGTON POST, Mar. 17, 2017, https://www.huffpost.com/entry/deadnaming-a-trans-person-is-violenceso-why-does_b_58cc58cce4b0e0d348b3434b.

[42] Twitter characterizes these activities as "Hateful Conduct." *Hateful Conduct Policy*, TWITTER RULES AND POLICIES, https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy.

- *Wilson v. Twitter*:[43] Wilson tweeted insults about "gayness/Homos/Fagots[sic]/Dykes/Low Down Bi-Bisexuals [sic]/Queer Dogs/Trans Mutants." Anti-gay content can increase the targeted individuals' risks of suicide and homicide.[44] Like Murphy's tweets, Wilson's tweets constituted hate speech.

These examples demonstrate why we should speak specifically and concretely, and not abstractly, about the lawful-but-awful content that Internet services currently restrict via their house rules. Implicitly or explicitly, advocates of must-carry rules are working to ensure the proliferation and wider availability of content like the content at issue in *Enhanced Athlete*, *Murphy*, and *Wilson*.

Entrenching Existing Privilege. A number of dataset cases involve plaintiffs who allege that the defendant Internet service discriminated against them based on their protected classifications, such as race, religion, or sexual orientation. Perhaps unexpectedly, some of those plaintiffs alleged the discrimination was attributable to their majority characteristics, such as Caucasian race, Christian religion, or heterosexual orientation.[45] These lawsuits might be within the scope of anti-discrimination laws, but they turn the rationale of the laws on its head.[46] Anti-discrimination laws typically seek to protect minority communities from being oppressed or disregarded by the majority.

These lawsuits thus seek to perpetuate the existing privilege of people in the

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[43] Wilson v. Twitter, Inc., 2020 WL 3410349 (S.D. W.Va. 2020), *adopted by* 2020 WL 3256820 (S.D. W. Va. 2020).

[44] *E.g.*, Fabio Fasoli et al., *Not 'Just Words': Exposure to Homophobic Epithets Leads to Dehumanizing and Physical Distancing From Gay Men: Homophobic Epithets and Dehumanization*, 46 EURO. J. SOC. PSYCH. 237 (2016) ("homophobic epithets foster dehumanization and avoidance of gay people, in ways that other insults or labels do not"); David Plummer, *Homophobia and Health: Unjust, Anti-Social, Harmful and Endemic*, 3 HEALTH CARE ANALYSIS 150 (1995) (homophobia "results in substantial health and welfare effects").

[45] *See* Mathew Ingram, *The Myth of Social Media Anti-Conservative Bias Refuses to Die,* COLUM. JOURNALISM REV., Aug. 8, 2019, https://www.cjr.org/the_media_today/platform-bias.php.

[46] For these reasons, legislative attempts to apply anti-discrimination claims to content moderation—such as the SAFE TECH Act's proposal to remove anti-discrimination claims from Section 230's immunity—are likely to backfire if the goal is to benefit minority populations. *See* Eric Goldman, *Comments on the 'SAFE TECH' Act*, TECH. & MKTG. BLOG, Feb. 9, 2021, https://blog.ericgoldman.org/archives/2021/02/comments-on-the-safe-tech-act.htm. Counterproductively, people with majority characteristics will enthusiastically embrace these extended legal rights to entrench their existing privileges to the detriment of minority communities.

majority. For example, in the *Murphy* and *Wilson* cases, speakers with majority attributes direct abuse towards minority populations (transgender and LGBTQ+) in ways that are likely to harm or exclude the targets.

The *Lewis v. Google* and *Domen v. Vimeo* cases also illustrate how plaintiffs seek to capitalize on their privileges. In *Lewis v. Google*, Lewis claimed YouTube discriminated against him for being a "patriotic American citizen" and promoting "Christian beliefs."[47] In *Domen v. Vimeo*, Domen claimed Vimeo discriminated against Domen because he was heterosexual and Christian.[48] In other words, the plaintiffs seek to place their material beyond any moderation efforts, regardless of how hateful or anti-social their content is. Must-carry laws would mandate that outcome—and, as a result, reward majority speakers' existing privileges.

III. Policy Implications of Restricted House Rule Enforcement

Part II described how courts are resolving lawsuits over terminations/removals. It showed how Internet services currently enjoy broad legal freedom to enforce their house rules against lawful-but-awful material.

This part now addresses the logical follow-up: What would happen if regulators change the legal status quo? Specifically, this part considers the consequences if regulators adopt must-carry rules that legally restrict Internet services from enforcing their house rules.[49] The likely outcomes are deeply troubling, as well as counterproductive to the regulators' purported goals.

A. The Illusory Standard of "Illegality"

Must-carry rules would require Internet services to precisely distinguish illegal material—which the services must remove to avoid liability—from legal material—which the services would be legally required to carry. Superficially, the distinction between "legal" and "illegal" material sounds simple enough, but in practice there is a significant zone of uncertainty where it's not clear if the material is legal or illegal—a zone that would further expand if a must-carry rule overwrites or replaces Section 230. Currently, Internet services use their house rules to sidestep

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[47] Lewis v. Google LLC, 461 F. Supp. 3d 938, 945 (N.D. Cal. 2020), *aff'd*, 851 F. Appx. 723 (9th Cir. 2021).

[48] Domen v. Vimeo, Inc., 991 F.3d 66 (2d. Cir. 2021), *amended*, 2021 WL 3072778 (2d Cir. 2021).

[49] *See* Eric Goldman, *Speech Showdowns at the Virtual Corral*, 21 Santa Clara Computer & High Tech. L.J. 845 (2005) (discussing concerns about virtual world account terminations).

this classification challenge. In effect, their house rules empower them to take action against material in the grey area as they see fit.[50]

Must-carry rules would eliminate that cushion for acting upon material in the legal grey area, leaving Internet services exposed to substantial legal risks if they make errors in either direction. However, Internet services can't achieve the required level of precision when evaluating grey area material,[51] for several reasons:[52]

First, many laws are not written in clear and unambiguous terms, which can make their application to specific material uncertain. Furthermore, even a clearly-expressed and unambiguous law will encounter a wide range of novel and unprecedented facts where the application of the law won't be conclusive.

For example, Facebook discovered that it experienced increased content volume adjacent to the borders created by Facebook's house rules, regardless of where the rules were set.[53] Accordingly, if Internet services are required to remove all illegal content and keep all legal content, the quantity of content right at that border will likely grow. Yet, borderline materials pose the greatest risks of classification errors.

Second, Internet services run lightweight processes to "adjudicate" the legitimacy of content items.[54] Among other things, Internet services typically make their decisions without various elements of judicial due process, such as advocacy from the affected parties or discovery. As a result, Internet services often make decisions without fully understanding the factual and social context. Furthermore, Internet

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[50] Keller, *Who Do You Sue? State and Platform Hybrid Power over Online Speech*, *supra* note 6, at 3 ("Erring on the side of removing controversial speech can spare platforms legal risk and the operational expense of paying lawyers to assess content").

[51] This is true despite Internet services' substantial efforts to improve automated content moderation. *See* Daphne Keller, *Amplification and Its Discontents: Why Regulating the Reach of Online Content is Hard*, 1 J. FREE SPEECH L. 227, 245 (2021) ("neither experience nor research suggests that algorithms can reliably distinguish legal from illegal content, outside of very limited cases").

[52] These reasons also explain why classifying grey-area material is a harder compliance challenge than standard business compliance obligations.

[53] Mark Zuckerberg, *A Blueprint for Content Governance and Enforcement*, FACEBOOK, Nov. 15, 2018, https://m.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and-enforcement/10156443129621634/.

[54] *E.g.*, Rory Van Loo, *The Corporation as Courthouse*, 33 YALE J. REG. 547 (2016).

services make these decisions quickly, within days or even hours.[55] With these structural limitations, Internet services cannot achieve the accuracy rates that we expect from courts. Nor would we want them to try[56] because that would lead to insurmountable costs and adjudication delays.

Third, some illegality determinations will change as facts evolve over time. For example, there is no magic number of contacts directed to a victim before legal interactions become illegal harassment.[57] If Internet services could redress material only once it becomes illegal, they would be powerless to redress a perpetrator's troubling and unsettling contacts until the moment it crosses the illegality line.[58] At that moment, they may be legally required to take action.[59] Such precisely timed

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[55] For example, Indonesia's Ministerial Regulation 5 (MR5) requires Internet services to remove "prohibited content" in 24 hours and "urgent" requests within four hours of the request. Regulation of the Minister of Communication and Information Technology Number 5 of 2020 (Nov. 2020). In the United States, the DMCA's online safe harbor (17 U.S.C. §512) is available only when services remove allegedly infringing items "expeditiously." *See* Kinsley v. Udemy, Inc., 2021 WL 1222489, at *5 (N.D. Cal. March 31, 2021) ("Courts have determined that response times to remove infringing material from entities' websites or systems ranging from 5 to 14 days are expeditious"); Seide v. Level-(1) Glob. Sols., LLC, 2016 WL 4206076, at *5 n.5 (N.D. Ill. Aug. 10, 2016); IAN C. BALLON, 1 E-COMMERCE AND INTERNET LAW 4.12[9][B] (2020 update); *see also* Debra Weinstein, Note, *Defining Expeditious: Uncharted Territory of the DMCA Safe Harbor Provision A Survey of What We Know and Do Not Know About the Expeditiousness of Service Provider Responses to Takedown Notifications*, 26 CARDOZO ARTS & ENT. L.J. 589 (2008).

[56] *E.g.*, Van Loo, *Federal Rules of Platform Procedure*, *supra* note 17, at 867.

[57] *E.g.*, IAN C. BALLON, 5 E-COMMERCE AND INTERNET LAW 58.07[4] (2020 update). With respect to subtweeting and analogous circumstances, Internet services may also not be sure of the targeted victim's identity. *But see* Craft v. Fuller, 298 So.3d 99 (Fla. Dist. Ct. App. 2020) ("if one or more of the tweets may have been an indirect reference to Fuller, such indirect references posted on a private Twitter feed are insufficient as a matter of law to support a conclusion that the tweets were 'directed at' Fuller").

[58] For example, in a case involving both offline and online contacts directed towards a Twitch streamer, law enforcement officers on the scene could not decide whether or not to arrest the alleged harasser who regularly emailed the streamer and attempted to visit her home, because they weren't sure that an illegal act had been committed yet (the officers gave the suspect a warning instead). People v. Jackson, 2021 Cal. App. Unpub. LEXIS 1233 (2021).

[59] Section 230 preempts civil claims and state law prosecutions predicated on third-party stalking and harassment, but a federal must-carry rule may replace Section 230's existing immunity. Furthermore, Section 230's exclusion for federal criminal prosecutions still leaves the Internet ser-

interventions would be impossible; and Internet services might deploy privacy-degrading monitoring if they had to try.

Fourth, it is often unclear which jurisdiction's laws govern an item of online content, so an Internet service may not be sure which legal rule to apply. Internet services may have to navigate conflicts between laws, where the material may be legal under some potentially applicable laws (and thus, under must-carry rules, not allowed to be removed) while illegal under others (and thus possibly required to be removed). Those circumstances would create a Hobson's Choice.[60]

Today, Section 230 largely moots this conflicts-of-law issue by setting a single national standard for the legality of many materials.[61] In practice, Internet services simply need to satisfy the prima facie elements of a Section 230 defense; if they do, they can ignore the heterogeneous details of state laws.[62] If changes to Section 230 remove that single national standard, Internet services would face much higher costs and legal uncertainty due to the need to analyze potentially many different state laws for each contested content item.

For these reasons, if legally required to moderate content with precision, Internet services will routinely make mistakes in classifying content as illegal or legal. The legal exposure they face from those inevitable errors poses an existential threat.

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vices potentially exposed under federal anti-harassment/anti-stalking crimes, though Internet services may rarely possess the requisite scienter.

[60] *See Choice*, definition 2.c., *Hobson's Choice*, Oxford English Dictionary (2d ed. 1989). This example is a Hobson's Choice because any choice the Internet service makes would expose it to legal liability, so it has no real choice.

[61] Eric Goldman, *The Implications of Excluding State Crimes from 47 U.S.C. §230's Immunity*, Santa Clara Univ. Legal Studies Research Paper No. 23-13, July 2013, https://ssrn.com/abstract=2287622.

[62] Several legal doctrines excluded from Section 230's immunity are also governed by a single national standard, including federal crimes, the ECPA, and federal intellectual property claims in the Ninth Circuit. Eric Goldman, *The Defend Trade Secrets Act Isn't an Intellectual Property Law*, 33 SANTA CLARA HIGH TECH. L.J. 541 (2017). The (relatively minor) situations where Section 230 leaves Internet services exposed to variations in state law are: state IP claims outside the Ninth Circuit, the state law analogues to the ECPA, and state claims exposed by FOSTA. Eric Goldman, *The Complicated Story of FOSTA and Section 230*, 17 FIRST AMEND. L. REV. 279 (2019).

B. A Lot of Internet Content Is Terrible

People are awful to each other, online and off.[63] That isn't surprising. The Internet reflects our society. All of the terrible things that people do to each other in the offline world also occur online.[64]

Given that the Internet mirrors the bad aspects of society, Internet services encounter a high volume of problematic material. For example, in Q1 2021, Facebook removed 8.8 million pieces of "bullying and harassment content," 9.8 million pieces of "organized hate content," and 25.2 million pieces of "hate speech content."[65] It also took action against 1.3 billion fake accounts.[66] Also, since the beginning of the COVID-19 global pandemic, YouTube has removed more than half a million videos that contain health misinformation;[67] and in April 2021, as one of its many crackdowns against coordinated influence operations, YouTube removed 728 channels that "mostly uploaded spammy content in Chinese about music, entertainment, and lifestyle."[68]

Currently, Internet services rely on their house rules to actively combat these problems and other forms of anti-social behavior that the laws don't currently regulate (or, because of Constitutional limits, may never be able to regulate).[69] Must-carry rules would remove this suppression mechanism. Thus, without any house rules, the volume of terrible content would soar.[70] If Internet services had to comply

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[63] Eric Goldman & Jess Miers, *Why Can't Internet Companies Stop Awful Content?*, ARS TECHNICA, Nov. 27, 2019, https://ssrn.com/abstract=3518970.

[64] Keller, *Amplification and Its Discontents*, *supra* note 51 ("People on the internet are terrible.").

[65] *Community Standards Enforcement Report, First Quarter 2021*, FACEBOOK, https://about.fb.com/news/2021105/community-standards-enforcement-report-q1-2021/.

[66] *Id.*

[67] Susan Wojcicki, *Letter from Susan: Our 2021 Priorities,* YOUTUBE OFFICIAL BLOG, Jan. 26, 2021, https://blog.youtube/inside-youtube/letter-from-susan-our-2021-priorities/.

[68] *TAG Bulletin: Q2 2021*, GOOGLE THREAT ANALYSIS GROUP, https://blog.google/threat-analysis-group/tag-bulletin-q2-2021/.

[69] For example, YouTube's community guidelines prohibit content that endangers the physical and emotional well-being of children, including content that depicts harmful or dangerous acts involving minors and content that misleadingly indicates it's family-friendly. *Harmful or Dangerous Content Policies*, YOUTUBE, https://support.google.com/youtube/answer/2801964?hl=en.

[70] *See* Annemarie Bridy, *Remediating Social Media: A Layer-Conscious Approach*, 24 B.U. J. SCI.

with must-carry obligations, they would be overwhelmed by an onslaught of material reflecting the worst aspects of the human condition.

C. Terrible Internet Content Makes Services Unsustainable

As the prior subpart showed, Internet services undertake substantial and socially beneficial efforts to reduce lawful-but-awful content.[71] They actively combat trolls, spammers, state-sponsored attackers,[72] and other highly determined malefactors. They also often choose to restrict adult content, such as Constitutionally-protected pornography, so that their communities remain family-friendly and comfortable for more users. If Internet services don't make these "trust & safety" efforts, problematic content producers will overrun any undefended service, flooding it with material that other users don't want.[73] As malefactors dominate the material on a service, they crowd out legitimate conversations.[74] Instead, legitimate

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& TECH. L. 193, 213 (2018) ("Responsible, systematic moderation on social media platforms is arguably needed now more than ever to limit the spread of disinformation and to curb such forms of abuse as revenge porn, threats of violence, targeted harassment, and doxing"); *Americans Support Free Speech Online but Want More Action to Curb Harmful Content*, KNIGHT FDN., June 16, 2020, https://knightfoundation.org/press/releases/americans-support-free-speech-online-but-want-more-action-to-curb-harmful-content/ (for example, "Most people support the removal of false or misleading health information from social media. Amid the pandemic, 85% of Americans are in favor of this, and 81% support removing intentionally misleading information on elections or other political issues.").

[71] "[W]hen social media platforms are being exploited by foreign agents and domestic troll armies to heighten social conflict and spread disinformation, a must-carry rule for social media platforms is precisely the wrong prescription." Bridy, *Remediating Social Media: A Layer-Conscious Approach*, *supra* note 70, at 219.

[72] *State-Sponsored Trolling: How Governments Are Deploying Disinformation as Part of Broader Digital Harassment Campaigns*, INSTITUTE FOR THE FUTURE, 2018, https://www.iftf.org/fileadmin/user_upload/images/DigIntel/IFTF_State_sponsored_trolling_report.pdf.

[73] *E.g.*, Aaron Mak, *It Took One Day for Byte to Be as Spammy as the Rest of the Internet*, SLATE, Jan. 27, 2020, https://slate.com/technology/2020/01/byte-vine-spam-ios-android-fake-accounts.html; Shirin Ghaffary, *Trump is Nowhere to be Found on the Twitter Clone His Former Spokesperson Launched*, RECODE, July 1, 2021, https://www.vox.com/recode/22559493/gettr-jason-miller-trump-app-social-media-facebook-twitter-free-speech-cancel-culture (shortly after the launch of new right-leaning social media app Gettr, it was flooded with overtly racist and anti-Semitic hashtags); Ed Nightingale, *Team Trump's New Social Network GETTR Has Been Flooded with Sonic the Hedgehog Furry Porn*, YAHOO NEWS, July 5, 2021, https://uk.news.yahoo.com/team-trump-social-network-gettr-143011590.html.

[74] *E.g.*, Joel Stein, *How Trolls Are Ruining the Internet*, TIME, Aug. 18, 2016, https://time.com/

users will move their conversation elsewhere—or disengage entirely.[75]

As a service's signal-to-noise ratio degrades, advertisers will flee. Even in the best of circumstances, when Internet services regularly remove lawful-but-awful content, advertisers are concerned about having their advertising appear next to user-generated content because the content quality is unpredictable.[76] When a service has too much problematic user content, advertisers justifiably worry about unfavorable associations[77] and whether their ads are reaching qualified prospective customers. These concerns often trigger advertiser boycotts of services that adver-

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4457110/internet-trolls/ ("When sites are overrun by trolls, they drown out the voices of women, ethnic and religious minorities, gays—anyone who might feel vulnerable. Young people in these groups assume trolling is a normal part of life online and therefore self-censor.").

[75] This explains why Internet services that are insufficiently aggressive about content moderation are not destined for long-term success. *See* Eric Goldman, *An Overview of the United States' Section 230 Internet Immunity*, THE OXFORD HANDBOOK OF ONLINE INTERMEDIARY LIABILITY 155 (Giancarlo Frosio ed. 2020) ("As a practical matter, cyber cesspools tend to quickly fail in the market, despite Section 230's protection," citing JuicyCampus, People's Dirt, and Yik Yak).

[76] The Interactive Advertising Bureau (IAB) says:

> Brand Safety solutions enable a brand to avoid content that is generally considered to be inappropriate for any advertising, and unfit for publisher monetization regardless of the advertisement or brand . . . . For example, content that contains hate speech directed at a protected class would be inappropriate for any advertising. Likewise, content that promotes or glamorizes the consumption of illegal drugs would be inappropriate for any advertising.

Understanding Brand Safety & Brand Suitability in a Contemporary Media Landscape, IAB, Dec. 2020, at 8–9, https://www.iab.com/wp-content/uploads/2020/12/IAB_Brand_Safety_and_Suitability_Guide_2020-12.pdf,

[77] "The majority of U.S. consumers (81%) find it annoying when a brand appears next to low-quality content. Of those consumers, 52% feel less favorably toward a brand that does this. The most concerning issue though is the discovery that 62% will stop using the brand altogether if its ads appear adjacent to low-quality content." *Id*. at 10.

For examples of unfortunate ad juxtapositions, *see, e.g.*, Eugene Kim, *23 of the Worst Online Advertising Fails Ever*, BUS. INSIDER, Apr. 7, 2015, https://www.businessinsider.com/worst-online-advertising-fails-2015-4; Mallory Russell, *Here Are The Most Hilarious, Unfortunate Online Ad Placements Ever*, BUS. INSIDER, Apr. 22, 2012, https://www.businessinsider.com/here-are-the-most-hilarious-unfortunate-online-ad-placements-ever-2012-4.

tisers view as not doing enough content moderation to protect advertisers, including YouTube[78] and Facebook.[79] Advertiser concerns have also spurred industry-wide initiatives promoting more content moderation.[80]

Must-carry rules would eliminate the ability of Internet services to create advertiser-friendly environments. As the quality of user content drops, advertiser dollars will migrate to safer advertising venues. Thus, must-carry rules guarantee that Internet services' advertising revenues will drop or disappear.[81]

Services won't be able to replace those lost advertising revenues with subscription revenues for their user-generated content functions. After all, how many consumers will want to pay for services overrun by lawful-but-awful content? If faced with that choice, consumers will prefer to spend their money on curated subscription services offering professionally produced content.

When Internet services can't generate profits from user-generated content, the UGC ecosystem will collapse. Because must-carry rules undermine Internet services' business models, they would dramatically reconfigure the Internet.

D. Terrible Internet Content Hurts Society

If the unrestrained proliferation of lawful-but-awful content does not eliminate the viability of Internet services, it will hurt our society by degrading pro-social interactions and the proper functioning of communities, both online and off.

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[78] YouTube has been the target of several advertiser boycotts, including in 2017 and 2019. *See* Daisuke Wakabayashi and Sapna Maheshwari, *Advertisers Boycott YouTube After Pedophiles Swarm Comments on Videos of Children*, N.Y. TIMES, Feb. 20, 2019. To resolve the 2017 boycott, YouTube mass-purged problematic videos in what became known as the "adpocalypse." Sweet v. Google, Inc., 2018 WL 1184777 (N.D. Cal. March 7, 2018).

[79] Facebook has been subject to advertiser boycotts, most recently in 2020. *See* Brian Fung, *Verizon is Pulling its Advertising from Facebook*, CNN BUSINESS, June 25, 2020, https://www.cnn.com/2020/06/25/tech/verizon-pulls-facebook-ads/index.html; Tiffany Hsu & Eleanor Lutz, *More Than 1,000 Companies Boycotted Facebook. Did It Work?*, N.Y. TIMES, Nov. 17, 2020.

[80] For example, in 2020, over 1,200 advertisers (including Coca-Cola, Patagonia, Unilever, and Verizon) joined the "Stop Hate for Profit Campaign" and pledged to boycott social media services that failed to clean up hateful content. https://www.stophateforprofit.org/; *see also* Global Alliance for Responsible Media, https://wfanet.org/garm.

[81] Declaration of Carl Szabo, NetChoice LLC v. Moody, 4:21-cv-00220-RH-MAF (N.D. Fla. June 3, 2021), ¶¶ 7–10, https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?filename=1&article=3471&context=historical&type=additional.

Widespread incivility degrades behavioral norms in online communities.[82] Those reduced baselines for socially acceptable behavior will bleed over to the offline world as well.[83] We can expect coarser offline interactions as people internalize the negative "role-modeling" they witness online[84] and as these interactions become normalized. The unabated flow of lawful-but-awful content will make our entire society less civil.

Reductions in acceptable social behavior will disproportionately affect members of already-marginalized communities. The turmoil in the FetLife social media service, which caters to users with "kinky" interests, provides a preview of what we can expect from a world governed by must-carry rules.[85] Initially, FetLife adopted

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[82] *See, e.g.*, Justin Cheng et al, *Anyone Can Become a Troll: Causes of Trolling Behavior in Online Discussions*, CSCW '17: Proceedings of the 2017 ACM Conference on Computer Supported Cooperative Work and Social Computing, Feb. 2017, https://dl.acm.org/doi/10.1145/2998181.2998213 ("seeing troll posts by others significantly increases the probability of a user trolling"). As one of the co-authors explained: "It's a spiral of negativity . . . . Just one person waking up cranky can create a spark and, because of discussion context and voting, these sparks can spiral out into cascades of bad behavior. Bad conversations lead to bad conversations. People who get down-voted come back more, comment more and comment even worse." Taylor Kubota, *Stanford Research Shows That Anyone Can Become an Internet Troll*, Feb. 6, 2017, STANFORD NEWS, https://news.stanford.edu/2017/02/06/stanford-research-shows-anyone-can-become-internet-troll/ (quoting Prof. Jure Leskovec).

The online disinhibition effect inherently prompts increased uncivil behavior online, but Internet services currently partially compensate for that effect through positive norm-setting and enforcement of their house rules.

[83] *E.g.*, Stein, *How Trolls Are Ruining the Internet*, *supra* note 74 ("When people think it's increasingly O.K. to describe a group of people as subhuman or vermin, those same people are likely to think that it's O.K. to hurt those people") (quoting Susan Benesch).

Coarse online interactions can prompt or exacerbate real-life physical violence, such as the Jan. 6 insurrection and the shooting in response to the #Pizzagate conspiracy theory. *See* Marc Fisher, John Woodrow Cox, & Peter Hermann, *Pizzagate: From Rumor, to Hashtag, to Gunfire in D.C.,* WASH. POST, Dec. 6, 2016; *see also* Richard A. Wilson & Molly K. Land, *Hate Speech on Social Media: Content Moderation in Context*, 52 CONN. L. REV. 1029 (2021) (discussing ways online hate speech translated into offline violence).

[84] *Cf.* Dawn Beverley Branley & Judith Covey, *Is Exposure to Online Content Depicting Risky Behavior Related to Viewers' Own Risky Behavior Offline?*, 75 COMP. IN HUMAN BEHAV. 283 (2017) (people viewing risky online behavior were more likely to engage in riskier offline behavior).

[85] Fancy Feast, *Users on a Site for Kinky People Say the Racism Has Become Unsustainable,* BUZZFEED, Oct. 16, 2020, https://www.buzzfeednews.com/article/fancyfeast/fetlife-racism-kink-

a "laissez-faire content policy"—perhaps close to the approach that would be required by must-carry rules. In response to complaints, the service eventually banned hate speech. However, some users took advantage of an exception for "race play," "a category of fetish where participants play out negotiated scenes that explicitly address race and power."[86] Due to the prevalence of hateful content that remained onsite based on that exception, users of color felt excluded. It drove them off the service.[87]

Must-carry obligations create an illusion of "equal treatment" for all speakers. All content gets carried, but this does not ensure equal outcomes for minority speakers in practice. Instead, majority speakers will "crowd out" minority speakers by overshadowing their conversations and disseminating exclusionary content that inhibit participation. So, giving an equal voice to everyone essentially replicates and reifies existing imbalances in privilege and power.[88] If we aspire to improve social equity, mandating that everyone get an "equal" voice actually pushes the Internet in the wrong direction.

Must-carry rules would also make our society less well-informed. To the extent that consumers trust the Internet services, lawful-but-awful content will get unwarranted credibility boosts from being carried on reputable services and gaining the implicit imprimatur of their brands.[89] (Of course, consumer trust in an Internet

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alt-right-anti-semitism.

[86] *Id.*

[87] *Id.* ("Engagement from far-right users has driven some people off the platform entirely").

[88] The requirements of "equal" carriage also fosters the majority's sense of entitlement. *See id.* (on FetLife, "When people are called out on their racist behaviors, they cry, 'Don't kink-shame me! This is supposed to be a safe space!'").

[89] *E.g.*, Kristin Page Hocevar, Andrew J. Flanagin, & Miriam J. Metzger, *Social Media Self-Efficacy and Information Evaluation Online*, 39 COMP. IN HUMAN BEHAV. 254 (2014), https://escholarship.org/content/qt4d42x2x9/qt4d42x2x9.pdf ("as people accrue social media self-efficacy they tend to find information from social media to be more trustworthy, in comparison to information from offline sources").

Studies show that a search engine's brand affects consumer assessment of search engine result quality. *See* Bernard J. Jansen, Mimi Zhang & Carsten D. Schultz, *Brand and Its Effect on User Perception of Search Engine Performance*, 60 JOURNAL AM. SOC. FOR INFO. SCI. & TECH. (JASIST) 1572 (2009), https://asistdl.onlinelibrary.wiley.com/doi/full/10.1002/asi.21081; Ahmed A. Ataullah & Edward Lank, *Googling Bing: Reassessing the Impact of Brand on the Perceived Quality of Two Contemporary Search Engines*, Proceedings of HCI 2010 (Sept. 2010), https://www.scienceopen.com/

service will likely erode as lawful-but-awful content overruns it).[90] These credibility boosts will harm consumers who act on untrustworthy information, and it will harm our society's overall intellectual health and ability to properly superintend our government.

Conclusion

Many proponents of must-carry rules incorrectly anticipate how Internet services will respond to the obligation (assuming such obligations aren't struck down in the courts as unconstitutional).[91] In general, they expect that Internet services will maintain their current operations but just dial down their content screening.

This is dangerously naïve. After must-carry rules, the Internet will not be business-as-usual. As Internet services are overrun by terrible content and their business models fail, the services will exit the user-generated content industry.

Instead of shutting down their businesses, some Internet services will switch to offering professionally produced content to their users, which the services will fund by installing paywalls.[92] As freely available user-generated content gets replaced by

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hosted-document?doi=10.14236/ewic/HCI2010.39. Jansen et al. summarized their survey design and findings:

> Regardless of which search engine a participant used for a particular domain, the results for each query were the same. However, there were dramatic differences in how participants rated the performance of each search engine using relevance of retrieval results. Brand was found to have significant influence on number of all links examined, organic links examined, sponsored links examined, all links clicked, and sponsored links clicked. Brand also appeared to have significant effects on all links and sponsored links relevance rating. In addition, brand's effect seemed to have the trend to be significant on organic links clicked and organic links relevance evaluation. . . .

[90] *See* Yang Cheng & Zefei Fan Chen, *Encountering Misinformation Online: Antecedents of Trust and Distrust and Their Impact on the Intensity of Facebook Use*, 45 Online Info. Rev. 372, 383 (2020) ("in a posttruth online environment where misinformation prevails, users' distrust in the platform may result from higher levels of misinformation elaboration and prescriptive expectancy toward information platforms.").

[91] *E.g.* NetChoice, LLC v. Moody, 2021 WL 2690876 (N.D. Fla. June 30, 2021); Ashutosh Bhagwat, *Do Platforms Have Editorial Rights?*, 1 J. Free Speech L. 97, 117 (2021) ("it seems unexceptional that social media platforms are entitled to First Amendment editorial rights").

[92] Eric Goldman, *The U.K. Online Harms White Paper and the Internet's Cable-ized Future*, 16 Ohio State Tech. L.J. 351 (2020).

paywalled professional content, we'll all pay more for Internet experiences we currently enjoy for free. These increased costs will deepen the digital divide and exacerbate dichotomies in access to information. It will have regressive wealth effects by further impoverishing those who can least afford it.

The likely transition from the user-generated content era to paywalled professional content negates the main purported justification for must-carry rules.[93] Counterintuitively, must-carry rules won't actually expand access to more voices. Instead of expanding the right to speak online, must-carry rules will shrink the number and scope of venues willing to let anyone speak at all. In other words, the free-speech "pie" will shrink for everyone. Furthermore, the limited opportunities to become a professional content producer will inevitably go to people with majority characteristics who can best cater to majority interests, again entrenching existing privileges. Thus, a must-carry Internet will reduce the number and diversity of voices we'll actually hear[94]—especially minority voices.

If we think it's important to have online spaces that carry all content,[95] we could achieve this result by having the government run its own online speech venues[96]—

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[93] *Cf.* Lemley, *supra* note 17 (discussing how many proposals to regulate the Internet lead to irreconcilable tradeoffs).

[94] McGowan, *The Internet and the Limping Truth*, *supra* note 17, at 16–17.

[95] There is some basis to doubt this. In fact, many politicians may actually care more about ensuring "free reach" (i.e., no-cost access to the large audiences currently aggregated at Internet services) than protecting "free speech" for everyone. *See* Renee DiResta, *Free Speech is Not the Same as Free Reach*, WIRED, Aug. 30, 2018, https://www.wired.com/story/free-speech-is-not-the-same-as-free-reach/.

[96] The idea of turning social media services into state actors has inspired many op-ed think-pieces over the years. *E.g.*, Phillip N. Howard, *Let's Nationalize Facebook*, SLATE, Aug. 16, 2012, https://slate.com/technology/2012/08/facebook-should-be-nationalized-to-protect-user-rights.html; Nick Srnicek, *We Need to Nationalise Google, Facebook, and Amazon. Here's Why*, GUARDIAN, Aug. 30, 2017, https://www.theguardian.com/commentisfree/2017/aug/30/nationalise-google-facebook-amazon-data-monopoly-platform-public-interest; Diane Coyle, *We Need a Publicly Funded Rival to Facebook and Google*, FIN. TIMES, July 9, 2018, https://www.ft.com/content/d56744a0-835c-11e8-9199-c2a4754b5a0e.

A decade ago, the European Union unsuccessfully tried to build its own government-supported search engine called Quaero. *See December 31, 2013: the Quaero Program Ends*, Jan. 28, 2014, http://www.quaero.org/31-decembre-2013-le-programme-quaero-sacheve/. *See* Eric Goldman, *What Would a Government-Operated Search Engine Look Like in the US?*, TECH. & MKTG. L. BLOG, June

just like the government historically has operated streets, parks, and other public forums. As public forums, the Constitution will severely restrict the scope of any house rules in those government-operated services. In those venues, then, all legal voices can be heard, even those producing lawful-but-awful content.

Of course, citizens may choose not to engage with a government-operated online speech venue. It will suffer the same signal-to-noise degradation that private Internet services experience when the spammers, trolls, and malefactors take over. Furthermore, every termination/removal decision by the government could turn into a costly and high-risk constitutional lawsuit, and many government entities won't want to spend their citizens' dollars that way.[97] Still, if governments can't successfully navigate the tricky decision-making necessary to comply with must-carry rules, it's ridiculous to think private Internet services can do any better.

23, 2011, https://blog.ericgoldman.org/archives/2011/06/a_thought_exper.htm (discussing the limitations of a government-run search engine).

[97] Balkin, *supra* note 17 ("you really don't want governments to provide social media services").

APPENDIX A: DATASET OF TERMINATION/REMOVAL CASES

Cutoff Date: March 15, 2021

Account Termination/Suspension

- DeLima v. Google, Inc., 2021 WL 294560 (D.N.H. 2021); DeLima v. YouTube, LLC, 2018 WL 4471721 (D.N.H. 2018); DeLima v. YouTube, LLC, 2018 WL 4473551 (D.N.H. 2018)
- Domen v. Vimeo, Inc., 991 F.3d 66 (2d Cir. 2021), *amended*, 2021 WL 3072778 (2d Cir. 2021); Domen v. Vimeo, Inc., 433 F. Supp. 3d 592 (S.D.N.Y. 2020)
- Moates v. Facebook, Inc., 2021 WL 229484 (E.D. Tex. 2021)
- Murphy v. Twitter, Inc., 60 Cal. App. 5th 12 (2021); Murphy v. Twitter, Inc., 2019 Cal. Super. LEXIS 129 (2019)
- Parler, LLC v. Amazon Web Services, Inc., 2021 WL 210721 (W.D. Wash. 2021)
- Doe v. Google LLC, 2020 WL 6460548 (N.D. Cal. 2020)
- Enhanced Athlete, Inc. v. Google LLC, 479 F. Supp. 3d 824 (N.D. Cal. 2020)
- Federal Agency of News LLC v. Facebook, Inc., 432 F. Supp. 3d 1107 (N.D. Cal. 2020); Federal Agency of News LLC v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019)
- Freedom Watch Inc. v. Google, Inc., 816 F. Appx. 497 (D.C. Cir. 2020); Freedom Watch, Inc. v. Google, Inc., 368 F. Supp. 3d 30 (D.D.C. 2019)
- Gomez v. Zuckenburg, 2020 U.S. Dist. LEXIS 130989 (N.D.N.Y. 2020)
- Jones v. Twitter, Inc., 2020 U.S. Dist. LEXIS 197548 (D. Md. 2020)
- Mishiyev v. Alphabet, Inc., 444 F. Supp. 3d 1154 (N.D. Cal. 2020)
- Perez v. LinkedIn Corp., 2020 WL 5997196 (S.D. Tex. 2020)
- Teatotaller LLC v. Facebook, Inc., 173 N.H. 442 (2020)
- Tulsi Now, Inc. v. Google, LLC, 2020 WL 4353686 (C.D. Cal. 2020)
- Wilson v. Twitter, Inc., 2020 WL 3256820 (S.D. W. Va. 2020); Wilson v. Twitter, Inc., 2020 WL 3410349 (S.D. W. Va. 2020)
- Zimmerman v. Facebook, Inc., 2020 WL 5877863 (N.D. Cal. 2020)

- Brittain v. Twitter, Inc., 2019 WL 2423375 (N.D. Cal. 2019)
- Cox v. Twitter, Inc., 2019 U.S. Dist. LEXIS 105476 (D.S.C. 2019), *aff'd*, 2019 U.S. Dist. LEXIS 105478 (D.S.C. 2019)
- Dipp-Paz v. Facebook, Inc., 2019 WL 3205842 (S.D.N.Y. 2019)
- Ebeid v. Facebook, Inc., 2019 WL 2059662 (N.D. Cal. 2019)
- Green v. YouTube, LLC, 2019 WL 1428890 (D.N.H. 2019)
- Illoominate Media, Inc. v. CAIR Found., 2019 U.S. Dist. LEXIS 201419 (S.D. Fla. 2019)
- King v. Facebook, Inc., 2019 WL 4221768 (N.D. Cal. 2019)
- O'Hara-Harmon v. Facebook, Inc. 2019 WL 1994087 (N.D. Cal. 2019)
- Johnson v. Twitter, Inc., 2018 Cal. Super. LEXIS 8199 (2018)
- Kimbrell v. Twitter Inc., 2018 WL 6025609 (N.D. Cal. 2018)
- Kinney v. YouTube, LLC, 2018 WL 5961898 (Cal. Ct. App. 2018)
- Mezey v. Twitter, Inc., 2018 WL 5306769 (S.D. Fla. 2018)
- Nyabwa v. FaceBook, 2018 WL 585467 (S.D. Tex. 2018)
- Quigley v. Yelp, Inc., 2018 WL 7204066 (N.D. Cal. 2018); Quigley v. Yelp, Inc., 2017 U.S. Dist. LEXIS 103771 (N.D. Cal. 2017)
- Twitter v. Superior Court *ex rel.* Taylor, 2018 Cal. App. LEXIS 1248 (Cal. App. Ct. 2018); Taylor & New Century Found. v. Twitter, Inc., 2019 Cal. Super. LEXIS 92 (Cal. Super. Ct. 2019)
- Shulman v. Facebook, Inc., 2017 WL 5129885 (D. N.J. 2017); Shulman v. Facebook, Inc., 2018 U.S. Dist. LEXIS 113076 (D. N.J. 2018)
- Lewis v. YouTube LLC, 244 Cal. App. 4th 118 (Cal. App. Ct. 2015)
- Evans v. Linden Research, Inc., 2014 WL 1724891 (N.D. Cal. 2014)
- Fteja v. Facebook, Inc., 841 F. Supp. 2d 829 (S.D.N.Y. 2012)
- Buza v. Yahoo !, Inc., 2011 WL 5041174 (N.D. Cal. 2011)
- Kamango v. Facebook, Inc., 2011 WL 1899277 (N.D.N.Y. 2011)
- Young v. Facebook, Inc., 790 F. Supp. 2d 1110 (N.D. Cal. 2011)
- Crawford v. Consumer Depot, Inc., No. 05C-3242 (Tenn. Cir. Ct. 2009)

- Estavillo v. Sony Computer Entertainment America, 2009 WL 3072887 (N.D. Cal. 2009)
- Mehmet v. Add2Net, Inc., 886 N.Y.S.2d 397 (App. Div. 2009)
- Bragg v. Linden Research, Inc., 487 F. Supp. 2d 593 (E.D. Pa. 2007)

Content Removal/Restriction (Hosted Content)

- Divino Group LLC v. Google LLC, 2021 WL 51715 (N.D. Cal. 2021)
- Atkinson v. Facebook Inc., No. 20-cv-05546-RS (N.D. Cal. Dec. 7, 2020)
- Elansari v. Jagex Inc., 790 Fed. Appx. 488 (3d Cir. 2020)
- Fyk v. Facebook, Inc., 808 F. Appx. 597 (9th Cir. 2020); Fyk v. Facebook, Inc., 2019 U.S. Dist. LEXIS 234960 (N.D. Cal. 2019)
- Lewis v. Google LLC, 461 F. Supp. 3d 938 (N.D. Cal. 2020); Lewis v. Google LLC, 851 F. Appx. 723 (9th Cir. 2021)
- Maffick LLC v. Facebook Inc., 2020 WL 5257853 (N.D. Cal. 2020).
- Prager University v. Google LLC, 951 F.3d 991 (9th Cir. 2020); Prager University v. Google LLC, 2019 Cal. Super. LEXIS 2034 (2019)
- Davison v. Facebook, Inc., 370 F. Supp. 3d 621 (E.D. Va. 2019)
- Williby v. Zuckerberg, 2019 U.S. Dist. LEXIS 101876 (N.D. Cal. 2019)
- Abid v. Google LLC, 2018 WL 3458546 (N.D. Cal. 2018)
- Darnaa v. Google LLC, 756 F. Appx. 674 (9th Cir. 2018); Darnaa, LLC v. Google Inc., 236 F. Supp. 3d 1116 (N.D. Cal. 2017); Darnaa, LLC v. Google, Inc., 2016 WL 6540452 (N.D. Cal. 2016); Darnaa LLC v. Google, Inc., 2015 WL 7753406 (N.D. Cal. 2015)
- Song Fi v. Google, Inc., 2018 WL 2215836 (N.D. Cal. 2018); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876 (N.D. Cal. 2015); Song Fi, Inc. v. Google Inc., 72 F. Supp. 3d 53 (D.D.C. 2014) (there are other rulings in this case)
- Bartholomew v. YouTube, LLC, 17 Cal. App. 5th 1217 (2017)
- Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 697 F. Appx. 526 (9th Cir. 2017); Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F. Supp. 3d 1088 (N.D. Cal. 2015)
- Lancaster v. Alphabet Inc., 2016 WL 3648608 (N.D. Cal. 2016)

- Ouellette v. Viacom Int'l, Inc., 2012 WL 850921 (D. Mont. 2012)
- Riggs v. MySpace, Inc., 444 F. Appx. 986 (9th Cir. 2011)
- Williams v. Life's Rad, 2010 WL 5481762 (N.D. Cal. 2010)
- Langdon v. Google, Inc., 474 F. Supp. 2d 622 (D. Del. 2007)

APPENDIX B: DATASET COMPILATION

Case Name	Year	Pro Se?	Defense Win?	Resolution Stage	230 Applied?	Content at Issue
Account Terminations/Suspensions						
DeLima v. Google	2021	1	1	MTD	1	#MAGA
Domen v. Vimeo	2021	0	1	MTD	1	Sexual Orientation Change Efforts
Moates v. Facebook	2021	1	1	TRO denied	0	QAnon
Murphy v. Twitter	2021	0	1	Demurrer	1	Deadnaming and mis-gendering
Parler v. Amazon	2021	0	1	PI denied	0	Violent content
Doe v. Google	2020	0	1	TRO denied	0	"extremely controversial" "conservative news" (QAnon)
Enhanced Athlete v. Google	2020	0	1	MTD	0	Drug supplements
Federal Agency of News v. Facebook	2020	0	1	MTD	1	Russian election interference
Freedom Watch v. Google	2020	0	1	MTD	0	Anti-Muslim content
Gomez v. Zuckenburg	2020	1	1	MTD	0	Unspecified
Jones v. Twitter	2020	1	1	MTD	1	Unspecified offensive content
Mishiyev v. Alphabet	2020	0	1	MTD	0	Copyright infringement
Perez v. LinkedIn	2020	1	1	MTD	0	Unspecified
Teatotaller v. Facebook	2020	1	0	MTD reversed	0	Unspecified
Tulsi Now v. Google	2020	0	1	MTD	0	Political ads

Wilson v. Twitter	2020	1	1	MTD	1	insults against "gayness/Homos/Fagots[sic]/Dykes/Low Down Bi-Bisexuals [sic]/Queer Dogs/Trans Mutants"
Zimmerman v. Facebook	2020	1	1	MTD	1	Unspecified
Brittain v. Twitter	2019	1	1	MTD	1	Unspecified
Cox v. Twitter	2019	1	1	MTD	1	Unspecified
Dipp-Paz v. Facebook	2019	1	1	MTD	1	Unspecified
Ebeid v. Facebook	2019	0	1	MTD	1	Political ads, repetitive content
Green v. YouTube	2019	1	1	Failed preliminary review	1	Unspecified
Illoominate v. CAIR	2019	0	1	MTD	1	Unspecified
King v. Facebook	2019	1	1	MTD	1	F-bombs, N-words
O'Hara-Harmon v. Facebook	2019	1	1	MTD	0	Advocacy advertisement
Johnson v. Twitter	2018	0	1	Anti-SLAPP	1	Unspecified
Kimbrell v. Twitter	2018	1	1	MTD	0	#MAGA
Kinney v. YouTube	2018	0	1	SJ	0	Used bot software
Mezey v. Twitter	2018	1	1	MTD	1	Unspecified
Nyabwa v. FaceBook	2018	1	1	IFP lack of merit	0	Unspecified
Quigley v. Yelp	2018	1	1	MTD	0	Unspecified derogatory content
Twitter v. Superior Court *ex rel.* Taylor	2018	0	1	Demurrer	1	Unspecified
Shulman v. Facebook	2017	1	1	MTD	0	"Spam" (really fake news)

Lewis v. YouTube	2015	0	1	Demurrer	0	Impermissible marketing
Evans v. Linden Research	2014	0	0	Settled	0	Virtual property
Fteja v. Facebook	2012	0	1	Failure to prosecute	0	Unspecified
Buza v. Yahoo!	2011	1	1	MTD	0	Unspecified political content
Kamango v. Facebook	2011	1	1	IFP lack of merit	0	Possibly spamming
Young v. Facebook	2011	1	1	MTD	0	Spamming
Crawford v. Consumer Depot	2009	0	0	MTD partially denied	0	Shill bidding
Estavillo v. Sony Computer Entertainment America	2009	1	1	MTD	0	Unspecified
Mehmet v. Add2Net	2009	1	1	MTD	0	Abuse of customer support reps
Bragg v. Linden Research	2007	0	0	Arbitration denied	0	Virtual property
Content Removals/Downgrades						
Divino v. Google	2021	0	1	MTD	1	LGBTQ+ content
Atkinson v. Facebook	2020	0	1	MTD	1	Naming a whistleblower
Elansari v. Jagex	2020	1	1	IFP lack of merit	1	Unspecified
Fyk v. Facebook	2020	0	1	MTD	1	Pissing videos
Lewis v. Google	2020	0	1	MTD	1	"Misandry" content
Maffick v. Facebook	2020	0	1	TRO denied	0	Russian advocacy
Prager University v. Google	2020	0	1	MTD	0	Material inappropriate for kids
Davison v. Facebook	2019	1	1	MTD	0	School board criticism

Williby v. Zuckerberg	2019	1	1	IFP lack of merit	0	Unspecified
Abid v. Google	2018	1	1	MTD	0	Ads for cancer-curing honey
Darnaa v. Google	2018	0	1	MTD	1	Automated bot activity
Song Fi v. Google	2018	0	1	SJ	0	Automated bot activity
Bartholomew v. YouTube	2017	0	1	Demurrer	0	Automated bot activity
Sikhs for Justice v. Facebook	2017	0	1	MTD	1	Unspecified
Lancaster v. Alphabet	2016	1	1	MTD	1	Copyright infringement
Ouellette v. Viacom	2011	1	1	IFP lack of merit	0	Copyright infringement
Riggs v. MySpace	2011	1	1	MTD	1	Bullying and harassment
Williams v. Life's Rad	2010	1	1	MTD	0	Trademark infringement
Langdon v. Google	2007	1	1	MTD	1	Political advertising

APPENDIX C: TERMINATION/REMOVAL CASES NOT INCLUDED IN THE DATASET

Spam/Spyware Filtering Cases[98]

- Asurvio LP v. Malwarebytes Inc., 2020 WL 1478345 (N.D. Cal. 2020)
- Enigma Software Group USA v. Malwarebytes, Inc., 946 F.3d 1040 (9th Cir. 2019)
- PC Drivers Headquarters LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019); PC Drivers Headquarters LP v. Malwarebytes Inc., 2018 WL 2996897 (W.D. Tex. 2018)
- Spy Phone Labs LLC v. Google Inc., 2016 WL 6025469 (N.D. Cal. 2016)
- Holomaxx Techs. Corp. v. Microsoft Corp., 2011 WL 3740813 (N.D. Cal. 2011)
- Holomaxx Techs. Corp. v. Yahoo!, Inc., 2011 WL 3740827 (N.D. Cal. 2011)
- Smith v. Trusted Universal Standards in Elec. Transactions, 2011 WL 900096 (D.N.J. 2011)
- Zango, Inc. v. Kaspersky Lab, Inc., 568 F.3d 1169 (9th Cir. 2009)
- e360Insight, LLC v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008)
- Pallorium, Inc. v. Jared, 2007 WL 80955 (Cal. Ct. App. 2007)
- White Buffalo Ventures, LLC v. Univ. of Tex. at Austin, 420 F.3d 366 (5th Cir. 2005)
- Hall v. EarthLink Network, Inc., 396 F.3d 500 (2d Cir. 2005)
- Optinrealbig.com, LLC v. Ironport Sys., Inc., 323 F. Supp. 2d 1037 (N.D. Cal. 2004)
- MonsterHut, Inc. v. PaeTec Communs., Inc., 294 A.D.2d 945 (N.Y. App. Div. 2002)

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[98] There are several cases involving the anti-spam "RBL" (the "Real-Time Black Hole") run by Mail Abuse Prevention System, including Mail Abuse Prevention Sys. LLC v. Black Ice Software, Inc., 2000 WL 34016435 (Cal. Super. Ct. Santa Clara County 2000); Media3 Techs., LLC v. Mail Abuse Prevention Sys., LLC, 2001 WL 92389 (D. Mass. 2001); Exactis.com, Inc. v. Mail Abuse Prevention Sys., LLC, No. 1:00-cv-02250 (D. Colo. 2000); Yesmail.com, Inc. v. Mail Abuse Prevention Sys., LLC, No. 1:00-cv-04245 (N.D. Ill. 2000), and others.

- America Online, Inc. v. GreatDeals.Net, 49 F. Supp. 2d 851 (E.D. Va. 1999)
- Hartford House, Ltd. v. Microsoft Corp., No. CV 778550 (Cal. Super. Ct. Santa Clara County Dec. 8, 1998)
- Cyber Promotions, Inc. v. America Online, Inc., 948 F. Supp. 456 (E.D. Pa. 1996)

Search Engine Indexing Cases[99]

- DJ Lincoln Enterprises, Inc. v. Google LLC, 2021 WL 3079855 (S.D. Fla. 2021), 2021 WL 184527 (S.D. Fla. 2021)
- Dreamstime.com, LLC v. Google LLC, 470 F. Supp. 3d 1082 (N.D. Cal. 2020), 2019 WL 2372280 (N.D. Cal. 2019), 2019 WL 341579 (N.D. Cal. 2019)
- e-ventures Worldwide, LLC v. Google, Inc., 2017 WL 2210029 (M.D. Fla. 2017), 2016 WL 4409339 (M.D. Fla. 2016), 2016 WL 4409338 (M.D. Fla. 2016), 188 F. Supp. 3d 1265 (M.D. Fla. 2016), 2015 WL 6154481 (M.D. Fla. 2015)
- ICF Tech., Inc. v. Google, Inc., 2013 WL 6728826 (W.D. Wash. 2013)
- Langdon v. Google, Inc., 474 F. Supp. 2d 622 (D. Del. 2007)
- KinderStart.com, LLC v. Google Inc., 2007 WL 9810898 (N.D. Cal. 2007), 2007 WL 831811 (N.D. Cal. 2007), 2007 WL 831806 (N.D. Cal. 2007), 2006 WL 3246596 (N.D. Cal. 2006), 2006 WL 1766789 (N.D. Cal. 2006)
- Search King Inc. v. Google Technology, Inc., 2003 WL 21464568 (W.D. Okla. 2003)

[99] We also note some antitrust-focused cases over Google's high ad prices. *E.g.*, Google, Inc. v. myTriggers.com, Inc., 2013 Ohio Misc. LEXIS 11743 (Ohio Ct. Comm. Pleas July 3, 2013); TradeComet.com LLC v. Google, Inc., 693 F. Supp. 2d 370 (S.D.N.Y. 2010); Person v. Google, Inc., 2007 WL 1831111 (N.D. Cal. June 25, 2007).