

Civil Liability for Facebook

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Abstract

Platform companies such as Facebook escape liability for content on their websites because of the immunity provided by Section 230 of the Communications Decency Act. They claim that they are not publishers of content. Instead, they argue, they merely provide a platform for the distribution of content created by others and connect people. As mere platforms, courts have held that they are not responsible for defamatory or harmful content on their websites, even if they occasionally exercise removal or moderation power over it.

In the absence of regulation, the public depends upon private citizens to claim their rights and redress their wrongs in a court of law. When companies deploy new technology and new business models, legislators and regulators are often slow to react. Consequently, the legality of these new practices is often litigated in court, typically in a class action lawsuit brought against the company.

In this Essay, I argue that there are several possible bases for civil liability for platform companies and focus specifically on Meta, which owns the Facebook and Instagram platforms and which I will refer to in this Essay as “Facebook.” Not all platform companies are the same, and Facebook is unique in many ways that make it a particularly inviting object of discussion regarding the imposition of tort liability. Notably, it has repeatedly made promises to the public about the nature of its products and services and has repeatedly broken those promises. As a result, it has earned a special place of distrust in the hearts of many despite its billions of users.

Many lawsuits focus on Facebook’s content and are dismissed because of the broad immunity provided by §230 of the Communications Decency Act. This Essay explores ways that Facebook might be civilly liable without implicating § 230’s protections. Part I explores the potential tort liability claims. Part II discusses the potential warranty and contract related claims. This Essay concludes that the imposition of civil liability is especially critical in Facebook’s case because the company has been famously evasive about its internal research and what it knows about its products. Given the lack of regulation in this area, a lawsuit may be an important way to compel Facebook to disclose some of that information.