***Twitter Inc. v The Superior Court for the City and County of San Francisco* |**

**Columbia Global Freedom of Expression**

***Meta-Data*:**

* **Case Number**: A154973
* **Corresponding Law Reference**: Not found
* **Date of decision**: August 17, 2018
* **Featured case**: N/A
* **Region**: North America
* **Country**: USA
* **Type of expression**: Electronic/internet-based communication
* **Judicial Body**: Appellate Court
* **Type of law**: Civil Law
* **Main Themes**: Content regulation/censorship
* **Outcome**: Remanded for Decision in Accordance with Ruling
* **Status**: In progress
* **Tags**: Twitter, intermediaries liabilities

***Analysis:***

* **Summary and Outcome**:

On August 17, 2018, the Court of Appeal for the State of California ordered the lower instance court to issue an alternative writ of mandate in the case of Jared Taylor et al. v. Twitter, Inc. The case originated after Twitter suspended the accounts of two users because they allegedly infringed the Violent Extremists Group Rule. However, the Court held that the users' claims were precluded under Section 230 of the Communications Decency Act (CDA), which protects providers of interactive computer services by barring courts from treating service providers like Twitter as the publishers or speakers of speech created by others. The proceedings have been stayed until Court’s further order and remain pending for consideration of the petition of writ of mandate.

* **Facts**:

In 2011, the parties in interest, Jared Taylor and New Foundation, joined Twitter and created user accounts. When they joined Twitter, they agreed to the Twitter user agreement, including Twitter's terms of Service (TOS) and Twitter Rules (Rules). At times the parties during the platform in 2011, Twitter "reserve[d] the Rights are all times…to remove or refuse to distribute any Content to the Services and to terminate users or reclaim user names". [p 194] A later version of the TOS incorporated an additional provision which pointed that the platform could “suspend or terminate accounts or cease to provide all or part of the Services at any time for any or no reason.” [p.194]

The parties alleged that on October 2, 2017, the previous provision was amended to read, "We may also remove or refuse to distribute any Content on the Services, suspend or terminate users, or reclaim usernames without liability to you." [p. 194].

On June 2011, the rules were a three page document which pointed that Twitter “will not censor user content, except in specific listed limited circumstances: impersonation, trademark and copyright violations, and the misuse of others' private information.” The exceptions had no inclusion of any “affiliation with a violent extremist group as a basis for suspension.”[p. 194]

On November 17, 2017, Twitter released an announcement on the “updated …rules around abuse, hateful conduct, violence, and physical harm to be enforced starting December 18.” [p.194] The update included the Violent Extremist Group Rule, which stated that users "may not affiliate with organizations that-whether by their own statements or activity both on and off the platform-use or promote violence against civilians to further their causes" [p.194].

The parties alleged that on December 18, 2017, Twitter suspended their accounts because they violated the Violent Extremists Group Rule.

On March 14, 2018, the parties filed a first amended complaint (FAC), raising three claims, one of which also contained Twitter’s violation of California's Unfair Competition Law (UCL)

On April 24, 2018, Twitter submitted an objection, claiming that the First Amendment and Section 230 of the Communications Decency Act (CDA) prohibited the party’s claims.

On June 4, 2018, the Superior Court for the City and County of San Francisco sustained Twitter's demurrer to the parties' first two causes of action yet overruled the UCL's cause of action. The same day, Twitter filed a “notice for supplemental authorities” to support its demurrer, holding that the Court had failed to consider the California Supreme Court's recent decision in [Hassell v. Bird](https://www.courts.ca.gov/opinions/archive/S235968.PDF).

On August 6, Twitter filed a petition claiming that Section 230 (c) (1) states that "[n]o provider…of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider". More, Twitter claimed that subsection (e) (2) states that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section" [p. 195].

* **Decision Overview**:

The main issue for the Court to examine was if, by suspending the petitioner's accounts, Twitter acted as a publisher and, thus, was protected from liability under Section 230 of the CDA.

*The Court’s Findings*

The Court first highlighted that there did not appear to be a dispute that Twitter was “the provider of an interactive computer service,” [p.195] nor that the parties' postings were “information provided by another information content provider.” [p.195] Rather, the Court believed that the main issue was whether or not Twitter was being held liable because it was a publisher.

The Court cited the case of [Barett v. Rosenthal](https://advance.lexis.com/api/document/collection/cases/id/4MCX-GNS0-0039-427N-00008-00?cite=Barrett%20v.%20Rosenthal%2C%2040%20Cal.%204th%2033%2C%20146%20P.3d%20510%2C%2051%20Cal.%20Rptr.%203d%2055%2C%202006%20Cal.%20LEXIS%2013529%2C%202006%20Cal.%20Daily%20Op.%20Service%2010651%2C%202006%20Daily%20Journal%20DAR%2015188%2C%2034%20Media%20L.%20Rep.%202537&context=1000516)to emphasize that “Section 230 precludes courts from entertaining claims that would place a computer service provider in a publisher's role….and thus lawsuits which seek to hold any service provider liable for its exercise of a publisher’s traditional editorial function – as deciding whether to publish, withdraw, postpone or alter content are barred.” [p. 195]

Furthermore, referring to Barett, which quoted [Zeran v America,](https://www.ca4.uscourts.gov/opinions/971523.P.pdf) one of the vital purposes of section 230 is “to encourage service providers to self-regulate the dissemination of offensive material over their services;” [p 195] hence, the immunity provided by the CDA which aims to protect them liability fears that will prevent them from blocking and filtering offensive material.

The Court remarked that in the case of Hasell, the Supreme Court examined judicial interpretations of section 203 and found that courts had outlined the section’s immunity as “broad and robust” [p 195] Likewise, it stressed that in Hassell, the Supreme Court had concluded that the intent of Section 230 is "to shield Internet intermediaries from the burdens associated with defending against state-law claims that threat them as the publisher or speaker of third party content, and from compelled compliance with demands for relief that, when viewed in the context of a plaintiff's allegations, similarly assign them the legal role and responsibilities of a publisher qua publisher "[p. 196]. The Court therefore examined whether the duty which was an allegation of Twitter’s violation derives the position or mode as a “publisher or speaker.” [p 196] If affirmed, then as held in the case of [Cross v. Facebook, Inc.,](https://www.courts.ca.gov/opinions/archive/A148623.PDF)and [Barnes v. Yahoo!, Inc](https://cdn.ca9.uscourts.gov/datastore/opinions/2009/06/22/05-36189.pdf)., Section 230 (c)(1) rules out liability.

The Court observed from previously held in cases: [Doe II. v. MySpace](https://www.ca5.uscourts.gov/opinions/pub/07/07-50345-CV0.wpd.pdf) Inc., [Fields v. Twitter, Inc](https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2017/11/Fields-v.-Twitter.pdf)., [Sikhs for Justice "SFJ" v. Facebook and Inc.](https://www.govinfo.gov/content/pkg/USCOURTS-cand-5_15-cv-02442/pdf/USCOURTS-cand-5_15-cv-02442-0.pdf), the decision to restrict or make available certain content was expressly covered by Section 230. Additionally, it highlighted that as determined in the [Fair Housing Council of San Fernando Valley v. Roommates.com](https://cdn.ca9.uscourts.gov/datastore/opinions/2012/02/02/09-55272.pdf) case that “any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under Section 230.” [p.195]

Furthermore, the Court emphasized that although the parties had alleged a cause of action under the UCL, a claim outside the scope of immunity provided by the CDA was not placed. However, the Court esteemed that, as held in the Cross case, "[i]n evaluating whether a claim treats a provider as a publisher or speaker of user-generated content, 'what matters is not the name of the cause of action; instead, what matters is whether the cause of action inherently requires the Court to treat the defendant as the "publisher or speaker" of content provided by another." [p. 197].

In light of the previous, the Court considered that the parties alleged Twitter's violation is derived from its status or conduct as a publisher activity. Therefore, it ordered an alternative writ of mandate to be issued commanding the San Francisco County Superior Court in the case of Jared Taylor et al. v. Twitter, Inc, to set aside and vacate its order of July 10, 2019, and to enter a new and different order sustaining Twitter's complaint in its entirety. Subject to the respondent superior court compiling with the directive on or before September 2018, the court will “dissolve the stay imposed, discharge the writ and dismiss the petition.” [p. 197]

***Direction:***

* **Outcome**: Contracts Expression.
* **Information**:

Though there is no mention of information on the suspension of the users’ accounts on Twitter, the Court reiterated the Communications Decency Act's immunity for interactive platforms from liability. The Court did not address the impact of removing the content for the user as means of allowing interactive platforms to over-moderate and censor content in the light of national standard for freedom of expression and speech.

***Perspective***:

* **Outcome**: National Perspective
* **National law or jurisprudence**:

U.S., 47 U.S.C. §230 (Communications Decency Act of 1996).

U.S., CA Bus. & Prof. Code § 17200

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U.S., Barnes v. Yahoo!, Inc., 570 F.3d 1096 (2009)

US., Stephen J. Barett et al., v. Ilena Rosenthal, Cal.4th 33 (Cal. 2006)

U.S., Fair Hous. Council v. Roommates.com, LLC, 521 F.3d 1157 (9th Cir. 2008)

U.S., Sikhs for Justice "SFJ" Inc. v. Facebook, Inc., 144 F. Supp. 3d 1088 (2015)

U.S., Cohen v. Facebook Inc., 252 F. Supp. 2d 140, 158 (E.D.N.Y. 2017)

U.S., Doe II v. Myspace Inc., 175 Cal. App.4th 561, 96 Cal. Rptr. 3d 148 (Cal. Ct. App. 2009)

U.S., Cross v. Facebook, Inc., S244412 (Cal. Oct. 25, 2017)

U.S., Hassell v. Bird, S235968 (Cal. Sep. 14, 2016)

U.S., Fields v. Twitter, Case No. 16-cv-00213-WHO (2016).

U.S, Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997)

* **Other national law or jurisprudence**: N/A.

***Significance***:

* **Significance:** Cannot conclude as the decision is in progress.
* **Related Cases**: None found

***Documents:***

* **Official Case Documents**: [Twitter v. Superior Court ex rel Taylor (1)](https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/08/Twitter-v.-Superior-Court-ex-rel-Taylor-1.pdf)