No. 21-1333

IN THE

Supreme Court of the United States

REYNALDO GONZALEZ, *et al.*,

Petitioners,

v.

GOOGLE LLC,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF TAWAINNA ANDERSON, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF NYLAH ANDERSON, A DECEASED MINOR, AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Does section 230(c)(1) immunize interactive computer services when they make targeted recommendations of information provided by another information content provider, or only limit the liability of interactive computer services when they engage in traditional editorial functions (such as deciding whether to display or withdraw) with regard to such information?

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INTEREST OF *AMICUS CURIAE*[1]

In December 2021, Tawainna Anderson's 10-year-old daughter, Nylah Anderson, was killed when she attempted to perform the viral "Blackout Challenge." The dangerous Blackout Challenge video was recommended to Nylah by TikTok and sent directly to Nylah by TikTok through her TikTok "For You Page" in the app. This viral TikTok challenge has been linked to at least 15 deaths within the last 18 months for children age 12 or younger.[2] The "Blackout Challenge" is one of dozens of viral challenges which TikTok and its algorithms have consistently thrust upon minors, resulting in scores of child deaths.[3] Despite these known dangers, TikTok persists in forcing this dangerous content in front of minor users for two reasons: (1) doing so results in enhanced user engagement and

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1. No counsel for a party authored any part of this brief, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund its preparation or submission. All parties have filed blanket consents or specifically consented to the filing of this brief.

2. Olivia Carville, TikTok's Viral Challenges Keep Luring Young Kids to Their Deaths, Bloomberg, November 30, 2022, available at https://www.bloomberg.com/news/features/2022-11-30/is-tiktok-responsible-if-kids-die-doing-dangerous-viral-challenges

3. Seren Morris, 21 Dangerous TikTok Trends Every Parent Should Be Aware of, Newsweek, March 6, 2021, available at https://www.newsweek.com/21-dangerous-tiktok-trends-that-have-gone-viral-1573734; Linh Bui, 'They are terrifying:' Risky TikTok trends continue to put people in danger, CBS Baltimore, October 24, 2022, available at https://www.cbsnews.com/baltimore/news/they-are-terrifying-risky-tiktok-trends-continue-to-put-people-in-danger/.

thus greater profits; and (2) as long as courts hold that section 230 of the Communications Decency Act ("CDA") immunizes TikTok, there is no disincentive for its behavior.

In May 2022, Anderson filed suit against TikTok, Inc. and its parent company, ByteDance, Inc. (collectively "TikTok") in the United States District Court for the Eastern District of Pennsylvania, bringing negligence and strict products liability claims. *See Anderson, et al. v. TikTok, Inc., et al.*, No. 2:22-cv-01849-PD (E.D. Pa.). The *Anderson* lawsuit is believed to be the first lawsuit in the United States filed against TikTok seeking to hold TikTok responsible for deliberately sending dangerous content to upon unsuspecting minors by way of deadly viral challenges and thus encouraging life-risking behavior amongst vulnerable children.

On October 25, 2022, the district court dismissed the *Anderson* case under an overly broad reading of section 230 of the CDA and the case is now on appeal before the Third Circuit.

In *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, 141 S.Ct. 13, 18 (2020), Justice Thomas presciently warned that "[e]xtending immunity [under section 230] beyond the natural reading of the text can have serious consequences." Nylah Anderson's death and her family's inability to hold TikTok responsible is the embodiment of the "serious consequences" predicted by Justice Thomas. Amicus Curiae has a tremendous interest in the outcome of the pending case because an overbroad reading of section 230 may deny her justice for her daughter's death and have a similar impact on the hundreds, if not thousands, of similarly situated victims

that exist now and will exist in the future if TikTok's predatory behavior is permitted by this Court and immunized by section 230.

TIKTOK'S RECOMMENDATION CAUSED NYLAH ANDERSON'S DEATH

On December 7, 2021, 10-year-old Nylah Anderson was asphyxiated when she attempted to perform a viral TikTok challenge known as the "Blackout Challenge" which encouraged Nylah to choke herself until passing out and then to post her experience. Nylah suffered in the pediatric intensive care unit and eventually succumbed to her injuries and died five days later. TikTok sent the dangerous Blackout Challenge directly to 10-year-old Nylah through her For You Page on the TikTok app. The "Blackout Challenge" videos sent to Nylah were essentially a "How To" guide on self-asphyxiation.

TikTok's app utilizes sophisticated algorithms which act as a "system that delivers content to each user" that TikTok determines "is likely to be of interest to that particular user."[4] TikTok boasts that "each person's feed [also known as the For You Page] is unique and tailored to that specific individual." *Id.* TikTok's algorithms accomplish these targeted recommendations by utilizing staggering amounts of data harvested from each user. This data includes, for example, a user's name, age, location, demographics, interests, habits, personal contacts, device information, network information, and

4. How TikTok recommends videos #ForYou, June 2018, available at https://newsroom.tiktok.com/en-us/how-tiktok-recommends-videos-for-you.

much, much more.[5] TikTok even automatically collects "biometric identifiers and biometric information…such as faceprints and voiceprints." *Id.*

Thus, TikTok undoubtedly knew that Nylah was a 10-year-old minority female living in a working-class neighborhood who tended to watch challenge videos that were put in front of her and she would then attempt to mimic the challenges and record it. After collecting this data, TikTok's algorithms (1) determined that the dangerous and deadly Blackout Challenge was likely to be of interest to 10-year-old Nylah, and (2) recommended the challenge to Nylah Anderson by directly putting it on her For You Page. After Nylah viewed the Blackout Challenge recommended and sent to her by TikTok, she took the bait, attempted the challenge, and lost her life in the process.

TikTok recommended the dangerous challenge to Nylah for self-serving financial reasons. As Judge Gould explained in his dissent to the Ninth Circuit's majority opinion, "algorithms [are] devised by these companies to keep eyes focused on their websites…. '[T]hey have been designed to keep you online' …." Pet. App. 97a n. 3 (Gould, J., dissenting) (quoting Anne Applebaum, *Twilight of Democracy—The Seductive Lure of Authoritarianism* (1st ed. 2020)). TikTok's algorithms determined that the best way to keep impressionable 10-year-old Nylah Anderson glued to the screen and hooked to the TikTok app (and thus generate increased advertising revenues) was to recommend the Blackout Challenge and place it directly in front of her.

5. TikTok Privacy Policy, June 2, 2021, available at https://www.tiktok.com/legal/page/us/privacy-policy/en.

On May 12, 2022, Tawainna Anderson, individually and as Administratrix of the Estate of Nylah Anderson, filed suit against TikTok in the United States District Court for the Eastern District of Pennsylvania. *See Anderson*, No. 2:22-cv-01849-PD. Anderson's claims against TikTok are grounded in Pennsylvania strict products liability law, alleging that the TikTok app and its associated algorithms were defectively designed products in that they functioned to knowingly recommend the Blackout Challenge to an impressionable 10-year-old. Anderson sought to hold TikTok responsible not as a "publisher" of the Blackout Challenge that killed Nylah, but instead as designers and "sellers"[6] of defective and dangerous products (the TikTok app and its algorithms).

In ruling on TikTok's motion to dismiss in *Anderson*, the district court applied an overly broad reading of section 230 and found that section 230 applied to TikTok's targeted and deliberate recommendation of the Blackout Challenge to Nylah Anderson. Recommendations of the kind made by TikTok in *Anderson*, and by Google/YouTube in the instant case, are not publisher actions protected by section 230.

Amicus Curiae is not seeking to have this Court adjudicate the *Anderson* case at this time. However, the Court's ruling in this case will impact the future of all litigation in which Section 230 is invoked as a defense. Should this Court side with Respondent in the instant matter, it may negatively impact the ability of parents like Tawainna Anderson to hold social media giants like TikTok accountable for causing their children's deaths.

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6. As used in the Restatement (Second) of Torts § 402A.

SUMMARY OF THE ARGUMENT

Section 230 immunizes interactive computer services from claims which treat the service providers "as the publisher" of third-party content. 47 U.S.C. § 230(c)(1). Section 230(c)(1) only bars claims seeking to hold a service provider liable for its exercise of a "publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter" third-party content. *Force v. Facebook, Inc.*, 934 F.3d 53, 81 (2d Cir. 2019) (Katzmann, J., dissenting) (quoting *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 174 (2d Cir. 2016)). However, any claims which are premised on allegations that the recommendation *itself*, and not necessarily the third-party content, caused harm very clearly do not seek to impose liability on the service provider as a "publisher" of the third-party content. These claims, which have nothing to do with the service provider's "traditional editorial functions" are not barred.

Further, a recommendation carries with it an implicit message to the recipient that the content being provided should be viewed or engaged with because it is likely to be of interest to the recipient. This is the entire point behind TikTok's For You Page. By placing a video on a user's For You Page, TikTok is telling the user "Click here. This is cool. Try this. You will like this." Recommendations, such as TikTok's For Your Page, are therefore not "information provided by another information content provider" as used by section 230(c)(1) but rather information provided by the service provider itself, which are not shielded by section 230.

The inapplicability of the CDA's immunity provisions to a service provider's recommendations is underscored by

CDA's own stated findings and policies. *See e.g.,* 47 U.S.C. § 230(b)(3) (stating that it is the policy of the United States "to encourage the development of technologies which maximize *user control* over what information is received by individuals, families, and schools[.]") (emphasis added). Recommendation algorithms are not the technology Congress intended to encourage as this technology removes any control by the user over what information is received. Recommendations should thus be afforded no protections.

In *Force*, Chief Judge Katzmann noted that Senator James J. Exon described that "[t]he heart and the soul" of the CDA was "its protection for families and children." 934 F.3d at 78 (Katzmann, J., dissenting). Allowing the CDA to be contorted to protecting the recommendations TikTok places on users' For You Page has the opposite effect, as experienced by the dozens of families whose children have been killed due to viral challenges, such as the Blackout Challenge. Instead of providing protection for families and children, the CDA has tragically been applied to protect goliaths of the technology industry *from* families and children. Respectfully, the "heart and soul" of the CDA must be restored and this Court should hold that deliberate recommendations of third-party content is not protected by section 230(c)(1). This is especially true where the recommendation itself is the cause of harm and even more true when the target of the recommendation is a child, more susceptible to being influenced by such recommendations.

ARGUMENT

I. Claims founded on allegations that an interactive computer service's recommendation of third-party content itself caused harm do not treat the service provider as a "publisher."

Section 230(c)(1) provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Accordingly, in order to enjoy the protections of section 230, the service provider must show "the duty that the plaintiff alleges the [service provider] violated derives from the [service provider's] status or conduct as a 'publisher or speaker.'" *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009). The Ninth Circuit defines "publication" as "reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." *Id.* (citing *Fair Housing Council of San Fernando Valley v. Roommates.Com*, 521 F.3d 1157, 1170-71 (9th Cir. 2008) (en banc) ("[A]ny activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is performance immune under section 230.")).

Any action premised upon an allegation that the recommendation *itself* caused harm on its face does not treat the service provider as the "publisher" of the underlying third-party content and is thus not barred. Judge Berzon, in her concurring opinion below, distinguished between the act of "simply distributing the content to anyone who chooses to engage with it[]" and sites that "use their algorithms to connect users to specific

content and highlight it as recommended[.]" *Gonzalez v. Google LLC*, 2 F.4th 871, 914 (9th Cir. 2021). The types of "targeted recommendations and affirmative promotion" of third-party content, according to Judge Berzon, "are well outside the scope of traditional publication." *Id.* This is especially true where a plaintiff's claims do not allege liability on the basis of the third-party content itself but instead on the service provider's own independent actions in recommending or affirmatively promoting said third-party content.

The *Anderson* case does not seek to hold TikTok responsible merely because certain Blackout Challenge videos were created on TikTok or could be accessed using the platform by someone intending to access them. Instead, the *Anderson* case seeks to hold TikTok accountable because its product (the app and its algorithms) knowingly utilized the For You Page of a 10-year-old to recommend she view the Blackout Challenge. The backbone of TikTok's commercial success is the For You Page. Granting this page unfettered immunity under the CDA, as the tech industry seeks, poses grave danger to unsuspecting and innocent children. The *Anderson* action is premised on TikTok's independent actions which caused Nylah's death, not merely on the third-party content itself and TikTok should therefore not be immunized.

As Petitioners point out, the Ninth Circuit itself in other cases has applied this reasoning. In *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093 (9th Cir. 2021), the Ninth Circuit held that the plaintiffs' claims did not implicate the defendant's traditional publisher functions and instead was premised on a "duty to exercise due care in supplying products that do not present an unreasonable risk of

injury…." 995 F.3d at 1092. The alleged duty underlying the plaintiffs' claims in *Lemmon* "differ[ed] markedly from the duties of a publisher as defined in [section 230(c)(1)]." Similarly, in *Doe v. Internet Brands*, 824 F.3d 846, 850-51 (9th Cir. 2016), the Ninth Circuit held that a plaintiff's claim alleging violation of a duty to warn did not treat the defendant as a publisher of third-party content because satisfying the "duty to warn allegedly imposed by California law would not require [the defendant] to remove any user content…[or] change[]…the content posted by the website's users…." *Id.*

The very same is true in cases like *Anderson*, where the plaintiff's claims are completely divorced from any traditional publisher or editorial functions TikTok may have. The *Anderson* plaintiff did not allege that TikTok was merely liable because the Blackout Challenge video was available on the TikTok app and Nylah Anderson came across it or otherwise chose to access it. Indeed, the Blackout Challenge may exist on the TikTok app without necessarily exposing TikTok to liability. However, when TikTok's product (the app and its algorithms) functioned to target users – and especially minor users – a duty is bestowed on TikTok outside of any claim that TikTok was a publisher.

The fact that claims like those in *Lemmon*, *Internet Brands*, and *Anderson* rely, to some extent, on the underlying third-party content is immaterial. TikTok's, YouTube's or other social media giants' algorithms' fundamental incorporation of the third-party content is not enough to cloak them with the protections of section 230(c)(1). The CDA does not mandate "a 'but-for' test that would provide immunity…solely because a cause of action

would not otherwise have accrued but for the third-party content." *Force*, 934 F.3d 53, 82 (Katzmann, J., dissenting) (quoting *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019)). Instead, to fall within the scope of section 230(c)(1)'s grant of immunity, "the claim at issue must inherently fault the defendant's activity as a publisher of specific third-party content." *Id.* The claims in *Lemmon*, *Internet Brands*, and *Anderson* do not do this, and *any* claim which faults a service provider not for the third-party content itself, but for the act of recommending it falls outside the radius of section 230(c)(1). Again, Amicus Curiae does not ask this Court, at this time, to rule on the *Anderson* case but raises these issues now to point out the damage that would occur to society and specifically to children if the overbroad reading of section 230 urged by Respondent were adopted.

Understandably, Petitioners advance arguments specific to Petitioners' case, which differs on its facts from *Anderson* and other cases where a challenge was thrust upon a minor via TikTok's For You Page and its algorithms. Petitioners argue that "[u]nder section 230(c)(1) so construed, some recommendation-based claims would treat the defendant as the publisher of third-party content, but others would not." Pet. Br. at 26.

Amicus curiae must respectfully part company with Petitioners when Petitioners state:

> On the other hand, as noted above (pp. 16-17), website operators sometimes characterize as "recommendations" the practice of sending users third-party material selected by the website itself. If a claim asserted that the

> plaintiff was injured by harmful content disseminated in that manner, it would be treating the defendant website as a publisher.

Id. at p. 33. Petitioners' argument, which if adopted would potentially put cases like *Anderson* within the protections of the CDA, overlooks that a plaintiff may bring a claim alleging that the act of recommending itself was violative of a non-publisher related duty by the defendant. This is the case in *Anderson*, where the plaintiff's claim is grounded in TikTok's alleged violation of its duty under Pennsylvania strict products liability law by designing a product which determined it was appropriate to recommend the Blackout Challenge to a user it knew to be only 10 years old. This claim is precisely the type of "targeted recommendations and affirmative promotion" of third-party content that is "well outside the scope of traditional publication[]" according to Judge Berzon. *Gonzalez*, 2 F.4th at 914. Permitting such a claim is aligned with "[t]he heart and the soul" of the CDA which was "its protection for families and children." *Force*, 934 F.3d at 78 (Katzmann, J., dissenting).

Petitioners' concession of this point (at p. 33) also overlooks the principle that the CDA does not mandate "a 'but-for' test that would provide immunity…solely because a cause of action would not otherwise have accrued but for the third-party content." *Id.* at 82 (Katzmann, J., dissenting) (quoting *HomeAway.com*, 918 F.3d at 682. Petitioners' concession is akin to the "but-for" test which does not automatically confer immunity under section 230(c)(1).

Recommending is not a publisher action. The New York Times is a quintessential publisher and it publishes thousands of articles each year, but The New York Times doesn't tell its readers which articles to read. The New York Times doesn't send one reader a different newspaper than another reader because it thinks certain articles are more likely to be of interest to one particular reader and not the other. When TikTok and other social media giants stray from merely deciding whether or not to display and make available certain third-party content and affirmatively tell its users *which* third-party content to consume or engage with, these service providers are not acting as publishers of that third-party content. Worse, users, especially minors, are unaware that TikTok and others are in fact telling them *which* content they should consume because users are generally ignorant to the sophisticated and large-scale ways in which these tech companies harvest a user's own data just to use it against them. This lopsided balance of knowledge and power between interactive service providers and their respective users is why failure to warn claims should be (and have been) carved out from the ambit of section 230 immunity. *See, e.g., Internet Brands*, 824 F.3d at 850-51 (holding that claims alleging a violation of California's duty to warn were not barred by section 230).

Accordingly, where a service provider like TikTok or YouTube recommend third-party content and the act of targeting a user with such a recommendation causes harm, the service provider does not enjoy the immunities of section 230(c)(1).

II. Recommendations are not "information provided by another information content provider" and service providers are thus not immune from liability premised on recommendations.

It is axiomatic that section 230(c)(1) immunity is not available for material that the service provider itself creates. *See* 47 U.S.C. 230(c)(1) (stating that an interactive computer service is immune when it is treated as a publisher or speaker of "information provided by another information content provider."). If TikTok were to supply a video created by a third-party to another user, such as a Blackout Challenge video, and overlay text on the video which read, "Click here. This is cool. Try this. You will like this." there is little doubt that this overlayed text is not "information provided by another information content provider." However, even where TikTok recommends a video, like the Blackout Challenge, to a user without *any* added text or information, the recommendation itself carries an inherent message to the user that was not created or derived from "another information content provider." The very function of the TikTok For You Page is the technological equivalent of overlaying text on a video that says, "Click here. This is cool. Try this. You will like this."

In *Force*, Chief Judge Katzmann correctly observed that Facebook uses recommendation algorithms "to create and communicate its own message: that it thinks you, the reader—you, specifically—will like this content." *Force*, 934 F.3d at 82 (Katzmann, J., dissenting). The exact same is true of TikTok when it recommends any video to a user, including the Blackout Challenge it recommended to Nylah Anderson. TikTok boasts that its recommendation

algorithms act as a "system that delivers content to each user" that TikTok determines "is likely to be of interest to that particular user."[7] TikTok represents that "each person's feed [also known as the For You Page] is unique and tailored to that specific individual." *Id.* Thus, when TikTok recommends a video to a user, it carries with it the message that the video "is likely to be of interest" to that user and that the video is "unique and tailored" to that user. This is a message created and pushed *by TikTok,* not by the third-party creator of the video recommended by TikTok.

Accordingly, the recommendation itself does not fall within the scope of section 230(c)(1) because the fundamental message communicated—that the particular user should watch the video because it will be interesting for that user—is not "information provided by another information content provider."

Chief Judge Katzmann also opined that Facebook should not be shielded from the consequences of its recommendations because the recommendations "contribute to the creation of real-world social networks." *Force*, 934 F.3d at 82 (Katzmann, J., dissenting). According to Chief Judge Katzmann,

> The result of at least some suggestions is not just that the user consumes a third party's content. Sometimes, Facebook's suggestions allegedly lead the user to become part of a unique global

7. How TikTok recommends videos #ForYou, June 2018, available at https://newsroom.tiktok.com/en-us/how-tiktok-recommends-videos-for-you.

> community, the creation and maintenance of which goes far beyond and differs in kind from traditional editorial functions.

Id. The same is true of TikTok's "challenge" culture. There are dozens, if not hundreds, of "challenges" that have been circulated on TikTok and gone "viral" and many of them are dangerous.[8] TikTok "challenges" involve users filming themselves engaging in behavior that mimics and often times "one-ups" other users posting videos performing the same or similar conduct.

The Blackout Challenge is one such highly dangerous challenge. The Blackout Challenge has resulted in at least fifteen children, aged twelve or younger, dying in the last eighteen months alone.[9] By recommending a "challenge" video, TikTok, like Facebook in *Force*, "lead[s] the user to become part of a unique global community" of users performing the activity involved in the challenge. *Force*, 934 F.3d at 82 (Katzmann, J., dissenting). Recommending challenge videos to users which encourage and entice users to engage in the conduct that is the subject of the challenge "goes far beyond and differs in kind from traditional editorial functions." *Id.* TikTok recommended the Blackout Challenge to Nylah Anderson, thereby encouraging her participation in the behavior that ultimately caused her death.

The inherent message carried with even an otherwise bare recommendation is unquestionably a message created by the service provider making the

8. *See* n. 3, *supra*.

9. *See* n. 2, *supra*.

recommendation, and not from the third-party which created the underlying content. Accordingly, claims premised on the recommendation itself are not barred as *no* recommendations made by interactive computer service providers are "information provided by another information content provider."

III. The CDA was never intended to immunize interactive computer service providers from harm caused by recommendations.

The CDA itself explicitly lays out the policies which Congress sought to further in enacting the CDA. Section 230(b)(3) states that it is the policy of the United States "to encourage the development of technologies which maximize *user control* over what information is received by individuals, families, and schools who use the Internet and other interactive computer services[.]" 47 U.S.C. § 230(b)(3) (emphasis added).

Recommendation algorithms of the kind utilized by TikTok, Facebook, Google/YouTube and others, accomplish exactly the opposite. The purpose behind recommendation algorithms is to strip users of the need (and ability) to decide for themselves what content to consume. The recommendation algorithms analyze copious amounts of data collected from each individual user to attempt to predict or guess what content "is likely to be of interest" to each particular user. The algorithms do so with the user largely unaware of what is happening behind the scenes of their own devices.

TikTok's For Your Page quintessentially encapsulates the reasons that Recommendations should not be afforded

protections and why this technology is not the type which Congress sought to encourage. Unbeknownst to users, the never-ending stream of recommended content is designed to trigger miniature dopamine hits in pleasure center of users' brains, "[s]o you want to keep scrolling."[10] Scientists and researchers have found that platforms like TikTok rely on "random reinforcement" and are "exactly like a slot machine." *Id.* A user's interaction with TikTok changes the user's brain chemistry, and young, developing brains are particularly at risk. *Id.* This addiction-driving nature of TikTok's and other platforms' recommendation practice fuels their ever-increasing corporate revenues.

A third-party creator has no control over where their video is sent or which user's For You Page it lands upon. That control is maintained exclusively by TikTok. The same is true of other service providers which recommend content using recommendation algorithms. The exclusive control over to whom videos are shown highlights that recommendations by a service provider are entirely divorced from the third-party content creator and that the recommendation *itself* is not "information provided by another information content provider." TikTok's exclusive control also amplifies its duty to warn—not just to the recipient of the video but also the creator of a video. Surely, the creator of the TikTok Blackout Challenge which ended up on Nylah Anderson's For You Page would have thought twice about uploading such a video had they been warned that it would end up on a 10-year-old's For You Page.

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10. John Koestier, Digital Crack Cocaine: The Science Behind TikTok's Success, Forbes, January 18, 2020, available at https://www.forbes.com/sites/johnkoetsier/2020/01/18/digital-crack-cocaine-the-science-behind-tiktoks-success/?sh=169d112378be.

It is simply not possible to square recommendation algorithms with the "technologies which maximize *user control*" that the United States Congress sought to encourage the development of. 47 U.S.C. § 230(b)(3) (emphasis added). Recommendation algorithms are intended to feed users limitless videos that the algorithms predict will keep users engaged and glued to their screens for the purpose of maximizing corporate profits, at the expense of "user control." Recommendation algorithms do not "maximize user control," they eliminate it. Immunizing interactive computer service providers from liability arising from their use of sophisticated recommendation algorithms thwarts, rather than promotes, the stated policy goals of the CDA.

CONCLUSION

This Court should hold that section 230(c)(1) does not immunize interactive computer services when they make deliberate and targeted recommendations of information and content to users who are then harmed by such recommendations. To shield technology behemoths from liability for harmful recommendations is counter to the purpose and policy underlying the CDA and would only incentivize increasingly predatory recommendation systems. Allowing such a system to go unchecked by the civil justice system removes any incentives for the tech industry to create needed safety features that are vital to protecting children. Respectfully, the "heart and soul" of the CDA must be restored to protect the families and children it was intended to protect.

December 7, 2022

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