

No. 21-1333

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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 AMICI CURIAE  
COUNTER EXTREMISM PROJECT (CEP)  
AND HANY FARID  
IN SUPPORT OF PETITIONERS**

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### INTEREST OF AMICI CURIAE<sup>1</sup>

Hany Farid is a Professor in Electrical Engineering & Computer Sciences and the School of Information at the University of California, Berkeley. He specializes in the field of digital forensics, image analysis and human perception, and was named a lifetime fellow of the National Academy of Inventors in 2016. Between 2008 and 2010, Prof. Farid worked with Microsoft to develop “PhotoDNA,” a technology used to stop the spread of content showing sexual exploitation involving children. Prof. Farid has also worked on technology to find and remove terrorism-related content. He advises many of the largest tech companies on content moderation, as well as government regulators in Australia, European Union, United Kingdom, and United States. He has testified before Congress five times on issues of online safety and regulation. Prof. Farid is also a member of TikTok’s Content Advisory Council and Snap’s Safety Advisory Board.

Counter Extremism Project (CEP) is a not-for-profit, non-partisan, international policy organization formed to combat the growing threat from extremist ideologies. CEP educates the public, policymakers, the private sector, and civil society actors about the threat

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no entity or person, other than *amici* and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief are on file with the Clerk.

of extremism. CEP has pioneered efforts to combat extremist radicalization and recruitment tactics online. In particular, CEP has highlighted how platforms use algorithms to promote divisive, extremist content to generate revenue<sup>2</sup> and has advocated against broad Section 230 immunity for tech companies that algorithmically amplify terrorist content.<sup>3</sup>

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

Google built what may be the biggest online attention economy ever through its YouTube platform.<sup>4</sup> For

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<sup>2</sup> CEP, *Algorithms Elevate Violence-Inspiring Conspiracies* (Feb. 13, 2019), available at <https://www.counterextremism.com/blog/algorithms-elevate-violence-inspiring-conspiracies>; CEP, *Industry Faces Criticism On Capitol Hill For Promoting Divisive Content* (June 24, 2020), available at <https://www.counterextremism.com/blog/industry-faces-criticism-capitol-hill-promoting-divisive-content>; CEP, *Facebook Whistleblower Testifies Before U.S. Congress* (Oct. 5, 2021), available at <https://www.counterextremism.com/blog/facebook-whistleblower-testifies-us-congress>.

<sup>3</sup> CEP, *CEP Statement On Section 230 Reform And The Justice Against Malicious Algorithms Act of 2021* (Oct. 14, 2021), available at <https://www.counterextremism.com/press/cep-statement-section-230-reform-and-justice-against-malicious-algorithms-act-2021>; CEP, *Tech Companies That Algorithmically Amplify Terrorist Content Should Not Receive Section 230 Immunity* (Mar. 10, 2021), available at <https://www.counterextremism.com/blog/tech-companies-algorithmically-amplify-terrorist-content-should-not-receive-section-230>.

<sup>4</sup> Bergen, Mark, *Like, Comment, Subscribe: Inside YouTube's Chaotic Rise to World Domination* (2022); Nilay Patel, *Everyone knows what YouTube is—few know how it really works*, The



years, just about everything on YouTube has been monetized, and all the data YouTube has learned about its users and videos has been plowed back into Google’s money engine. Platforms like YouTube have learned that outrageous, tortious, and divisive content drives users and profits.

The Ninth Circuit erred in accepting Google’s argument that its algorithms are “content-neutral.” Pet. App’x 41a. Google’s recommendation algorithms—and those of similar tech companies—are, from top to bottom, the sum of choices made by their profit-seeking owners, maintained for the purpose of aggressively monetizing their platforms. Artificial intelligence recommendation systems like YouTube’s necessarily rely on the engineers, managers, and executives that direct and control those systems.<sup>5</sup> YouTube is not a neutral arbiter—it makes decisions that influence what succeeds and what does not. The Ninth Circuit’s decision immunizes tech companies from conduct which would

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Verge (Sept. 13, 2022), *available at* <https://www.theverge.com/2022/9/13/23349037/mark-bergen-youtube-creators-tiktok-algorithm>; Kevin Lozano, *How YouTube Created The Attention Economy*, *The New Yorker* (Oct. 4, 2022), *available at* <https://www.newyorker.com/books/under-review/the-overlooked-titan-of-social-media>.

<sup>5</sup> Fountaine, Tim, *et al.*, *Building the AI-Powered Organization*, *Harv. Bus. Rev.* (Jul.-Aug. 2019), 62–73, *available at* <https://hbr.org/2019/07/building-the-ai-powered-organization> (“Having business and operational people work side by side with analytics experts will ensure that initiatives address broad organizational priorities, not just isolated business issues.”).

be otherwise be tortious. Its decision presents a real safety risk.<sup>6</sup> *Amici* are compelled to argue against sweeping immunity granted to internet service providers, ISPs, under Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230.

In the case at bar, the district court incorrectly ruled that Google was legally immune from liability for its own conduct in developing recommendation algorithms that pushed ISIS videos onto the devices of terrorists. Pet. App'x 203a. The court of appeals affirmed, on the basis that Google's recommendation algorithms are content-neutral.

*Amici* explain how Google uses its proprietary recommendation algorithms as sophisticated monetizing opportunities, and how technologically creates content within those algorithms giving rise to radicalism, addiction and other physical injuries.

Because ISPs like YouTube host massive amounts of user-generated content, and provide access to hundreds of millions of users, ISPs depend on recommendation algorithms in their business model to monetize content. "According to YouTube, although many users visit the platform to search for something specific, the company [has] expanded its recommendation system in

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<sup>6</sup> Penel, Olivier, *Algorithms, the Illusion of Neutrality*, Towards Data Science (Apr. 10, 2019), available at <https://towardsdatascience.com/algorithms-the-illusion-of-neutrality-8438f9ca8471> (algorithms learns from whatever they are given, including content and information generated by the content provider during the recommendation or amplification process).

order to also engage those who did not come to the platform with a specific idea of what they wanted to watch.”<sup>7</sup>

Monetization happens when partnerships are formed or ads otherwise intentionally appear prior to or in connection with user-generated content, including illegal or tortious material. Google is an advertising broker, selling attention to companies that will pay for it, and the longer people stay on YouTube, the more money it makes.

Recommendation algorithms are complex systems, which recommend content as established by Google engineers who dictate data points.<sup>8</sup> Algorithms ingest data originating from many sources, including data collected and curated by Google.<sup>9</sup> The use of targeted recommendations to achieve an ISP’s monetization goals creates user experiences that have real-

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<sup>7</sup> Singh, Spandana, *Why Am I Seeing This?, Case Study: YouTube* (Mar. 25, 2020), New America web site, *available at* <https://www.newamerica.org/oti/reports/why-am-i-seeing-this/case-study-youtube>.

<sup>8</sup> Fountaine, *supra* note 6 (“Having business and operational people work side by side with analytics experts will ensure that initiatives address broad organizational priorities, not just isolated business issues.”).

<sup>9</sup> Covington, Paul, *et al.*, Deep Neural Networks for YouTube Recommendations, Proceedings of the 10th ACM Conference on Recommender Systems (2016 preprint ed.), *available at* <https://research.google/pubs/pub45530/> (“YouTube represents one of the largest scale and most sophisticated industrial recommendation systems in existence.”)

world effects—keeping people in front of their screens longer, intensifying their experiences.

A recommendation algorithm’s purpose is to draw out content most likely to keep users engaged and coming back for more. YouTube’s recommendation system is responsible for generating over 70 percent of viewing time on the platform.<sup>10</sup> This process provides an ability for the site to aggressively monetize content through advertisements, enticing people to buy subscriptions into their premium service, become YouTube content partners, or otherwise deepen their involvement.

Google knows the most enticing and addictive content is often intense, violent, or tortious.<sup>11</sup> YouTube may be one of the most powerful radicalizing instruments of the 21st century, constantly increasing the stakes higher by taking a user to more extreme content than where the user started.<sup>12</sup> Sites that want to monetize their troves of content have an incentive to keep users coming back and to keep them on the site as long as possible.<sup>13</sup>

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<sup>10</sup> Singh, *supra* note 7.

<sup>11</sup> Zeynep Tufekci, *YouTube, the Great Radicalizer*, N.Y. Times (Mar. 10, 2018), at 6, available at <https://www.nytimes.com/2018/03/10/opinion/sunday/youtube-politics-radical.html>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Deepmind, an artificial intelligence lab owned by Google, put out research on the real-world impact of recommendation algorithms:

“Machine learning is used extensively in recommender systems deployed in products. The decisions made by these systems can influence user beliefs and preferences which in turn affect the feedback the learning system receives—thus creating a feedback loop. This phenomenon can give rise to the so-called ‘echo chambers’ or ‘filter bubbles’ that have user and societal implications.”<sup>14</sup>

Ultimately, these dangerous echo chambers can narrow a user’s exposure to content sources, and even shift their view of the world.

Some ISPs accumulate billions in profits from advertising—including YouTube, which saw \$20 billion in profits in 2020<sup>15</sup>—through programs and processes intentionally developed to elicit and entice users to engage. But if that conduct leads to real-world torts and crimes, the Ninth Circuit’s broad read of Section 230

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<sup>14</sup> Jiang, Ray, *Degenerate Feedback Loops in Recommender Systems*, ACM Conf. on AI, Ethics, and Soc. (Jan. 27–28, 2019), available at <https://arxiv.org/abs/1902.10730.pdf>.

<sup>15</sup> Graham, Megan, et al., *How Google’s \$150 billion advertising business works*, CNBC (Oct. 13, 2021), available at <https://www.cnbc.com/2021/05/18/how-does-google-make-money-advertising-business-breakdown-.html>.

would immunize those ISPs, leaving victims and survivors with no recourse. This Court should not expand Section 230 beyond where it started.

The combined experiences and research efforts of *amici* span over decades, and their work analyzes the intersection between recommendation algorithms like Google's and illegal, violent, and harmful conduct. *Amici* submit that Section 230 should not immunize ISPs, including Google, when they create and profit from non-neutral recommendation engines.

## ARGUMENT

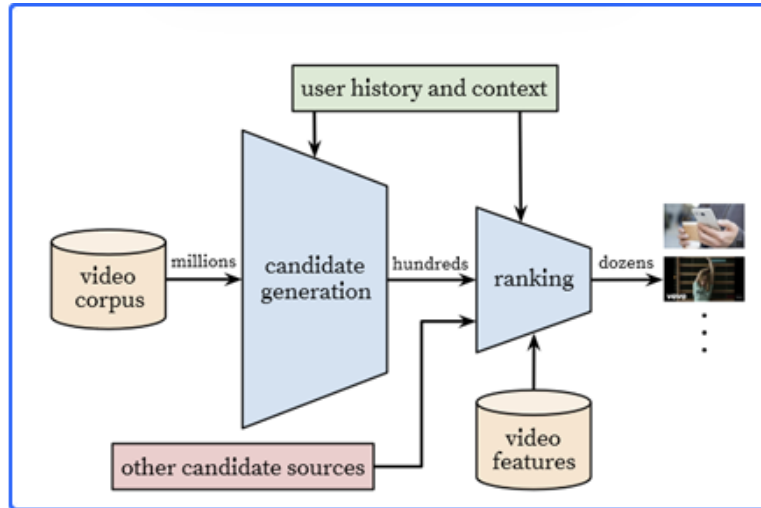
### **I. Google-Generated Recommendations are Not “Neutral Tools” and Should Not Be Protected by Section 230.**

#### **A. How YouTube's Recommendation Algorithms Work.**

YouTube identifies potential videos to recommend based on the immediate user's history and context. Then, YouTube ranks the videos based on user data, video data, and other data.<sup>16</sup> Covington gives this diagram:

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<sup>16</sup> Covington, *supra* note 10.



YouTube’s recommendation algorithms use privileged access to enormous amounts of information about users’ entire history of interaction with Google and YouTube and the history of others’ interaction with the video to generate video suggestions. The reviews are the result of complex algorithms and software used to funnel millions of pieces of content into a short, intentionally-ranked list. Rather than present raw calculations to a user, YouTube pulls together links to images and videos. Incidentally, those videos are represented by thumbnails, which YouTube creates. Then, using algorithms, YouTube selects the thumbnails and content to maximize user interaction.<sup>17</sup> Better thumbnails encourage more clicks and views.

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<sup>17</sup> Yang, Weilong et al., *Improving YouTube video thumbnails with deep neural nets*, YouTube Eng’g and Developers Blog (Oct.

## B. Google’s Algorithms Are Not Neutral.

Algorithms are intentionally-created programs and processes that are intended to influence and change user behavior. A former Google executive was quoted in the Wall Street Journal saying: “There’s this idea that the search algorithm is all neutral and goes out and combs the web and comes back and shows what it found, and that’s total BS.”<sup>18</sup> The more intense and dramatic a video, the more likely that video will receive a higher ranking from YouTube or another ISP. ISPs know that the more intense or shocking the content the more intense the mimicry, and the more likely the user will stay on the site.<sup>19</sup>

Another former YouTube insider has explained to the Guardian that YouTube’s recommendation algorithms are built with the understanding that edgy and

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8, 2015), available at [https://web.archive.org/web/20151012001728/http://youtube-eng.blogspot.com/2015/10/improving-youtube-video-thumbnails-with\\_8.html](https://web.archive.org/web/20151012001728/http://youtube-eng.blogspot.com/2015/10/improving-youtube-video-thumbnails-with_8.html).

<sup>18</sup> Grind, Kristen, et al, *How Google Interferes with Its Search Algorithms and Changes Your Results*, Wall Street J. (Nov. 15, 2019), available at <https://www.wsj.com/articles/how-google-interferes-with-its-search-algorithms-and-changes-your-results-11573823753>.

<sup>19</sup> Lang, Peter J., *The emotion probe: Studies of motivation and attention*, 50 Am. Psychologist 372–85, available at <https://psycnet.apa.org/record/1995-35822-001>.



hateful content is engaging.<sup>20</sup> Zeynep Tufekci, a sociologist who gave early warnings about the impact of YouTube may have had on the 2016 election, analogizes that the recommendation system is “a bit like an auto-pilot cafeteria in a school that has figured out children have a sweet tooth, and also like fatty and salty foods. So you make a line offering that food, automatically loading the next plate as soon as the bag of chips or candy in front of a young person has been consumed.”<sup>21</sup> As she has explained, once algorithmic determination sets in, more bizarre content becomes even more interesting. “So the food gets higher and higher in sugar, fat and salt—natural human cravings—while the videos recommended and auto-played by YouTube get more and more bizarre or hateful.”<sup>22</sup>

One Google executive told the Wall Street Journal, “[i]t’s very convenient for us to say that algorithms make all the decisions,” but clearly, Google people are making intentional choices to guide those algorithms.<sup>23</sup>

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<sup>20</sup> Lewis, Paul, *Fiction is Outperforming Reality: How YouTube’s Algorithm Distorts Truth*, The Guardian (Feb. 2, 2018), available at <https://www.theguardian.com/technology/2018/feb/02/how-youtubes-algorithm-distorts-truth>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Grind, *supra* note 18.

Google inserts a value judgment about content into its algorithms in the ordinary course of business.<sup>24</sup> The YouTube proprietary algorithm uses the following data points: 1) every other YouTube user's data; 2) a unique analysis of each video on YouTube; 3) the end-point desired by the YouTube; and 4) information about the user gathered or held by YouTube. Recommendations received by a user could shift dramatically based on other users or any data point, including those directed by YouTube. If a video starts skyrocketing or building views, there's no question YouTube determines that the video is worth promoting and its algorithm will do so.<sup>25</sup>

Google's (and by extension, YouTube's) algorithms are not neutral tools. This was illustrated after Google's search product was changed in a major update called Google Panda. With the Panda update, Google announced it would boost the rankings of certain "high quality sites." Google would decide which websites should be ranked higher based on a subjective evaluation in the following areas:<sup>26</sup>

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<sup>24</sup> Google, *More guidance on building high-quality sites*, Google Search Central Blog (May 6, 2011), available at <https://developers.google.com/search/blog/2011/05/more-guidance-on-building-high-quality>.

<sup>25</sup> Lewis, *supra* note 20; Madrigal, Alexis C., *How YouTube's Algorithm Really Works*, The Atlantic (Nov. 8, 2018), available at <https://www.theatlantic.com/technology/archive/2018/11/how-youtubes-algorithm-really-works/575212/>.

<sup>26</sup> Google blog post, *supra* note 24.

- Are the pages produced with great care and attention to detail vs. less attention to detail?
- For a health related query, would you trust information from this site?
- Does this article contain insightful analysis or interesting information that is beyond obvious?

Even while proprietary algorithms are presented as “neutral,” Google has a long history of tipping the scale of its search algorithms, nudging them toward desired aims.<sup>27</sup> For example, Google has made algorithmic changes to “tilt results to favor prominent businesses over smaller ones, based on the argument that customers were more likely to get what they wanted at larger outlets. One effect of the change was a boost to Amazon’s products, even if the items had been discontinued.”<sup>28</sup>

In another instance, the Media Manipulation Initiative at Data & Society Research Institute’s research project “uncovered that [YouTube’s] system concerningly combined communities associated with Fox News and GOP accounts with communities associated with conspiracy theory channels, such as those belonging to far-right commentator Alex Jones.”<sup>29</sup> Further, the re-

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<sup>27</sup> Grind, *supra* note 18.

<sup>28</sup> *Id.*

<sup>29</sup> Singh, *supra* note 7.

search indicated that the categorizations for conservative groups on the platform are only a few clicks away from content produced by extremist groups.<sup>30</sup>

The above are examples of the many ways in which Google and other ISPs have engineered their processes and services in ways that are *not* content-neutral. Google's pervasive recommendation engine is constantly suggesting content that is not neutral to all users or issues. What Google and YouTube can do is far beyond the initial intent of the Section 230 safe harbor.

### **C. Recommendation Algorithms Are Part of the Business Model Created by Google to Monetize Content.**

Between March 2020 and February 2021, the top 10 advertisers on YouTube spent over \$1 billion.<sup>31</sup> When you monetize the content, you own it. To put this in perspective, Facebook receives 95% of its revenue from selling ads. Ads associated with videos cannot be monetized unless the content, market, and level of interest is known. For YouTube, more than 70% of the videos watched are videos recommended by YouTube.<sup>32</sup> There are deliberate decisions being made about the

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<sup>30</sup> *Id.*

<sup>31</sup> Statista, *Leading YouTube advertisers in the United States between March 2020 and February 2021 by advertising spending* (May 31, 2022), available at <https://www.statista.com/statistics/1112288/us-youtube-advertisers-ranked-by-ad-spend/>.

<sup>32</sup> *E.g.*, M. Faddoul et al., *A Longitudinal Analysis of YouTube's Promotion of Conspiracy Videos*, arXiv: 2003.03318 (submitted Mar. 6, 2020), available at <https://arxiv.org/abs/2003.03318>.

characteristics of the content and how those characteristics are being added to their algorithms.

It is known that “radical videos are incorporated into [YouTube’s] recommender algorithm.”<sup>33</sup> In fact, one study found that for a significant number of users, comments on extreme content “migrated from milder content to commenting on more extreme content [as recommended by YouTube] support[ed] the idea that there is radicalization on YouTube.”<sup>34</sup>

In fact, there is proof that YouTube has monetized ISIS and jihadi videos before. YouTube aired Jennifer Aniston’s ad about the benefits of Aveeno in addition to Bud Light and Secret deodorant ads against ISIS and jihadi videos.<sup>35</sup> While reportedly YouTube later took down the ISIS video, the other jihadi video remained online with the ads disabled.<sup>36</sup>

YouTube has normalized the process of spreading illegal, violent and harmful content for its own gain—

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<sup>33</sup> Murthy, Dhiraj, *Evaluating Platform Accountability: Terrorist Content on YouTube*, 65(6) *Am. Behavioral Sci.* 800–24 (2021), available at <https://www.sciencegate.app/document/10.1177/0002764221989774>.

<sup>34</sup> Ribeiro, Manoel, et al., *Auditing Radicalization Pathways on YouTube* (Oct. 21, 2021), ArXiv, available at <https://arxiv.org/pdf/1908.08313.pdf>.

<sup>35</sup> Segall, Laurie, *These Ads Ran Before ISIS Videos*, CNN Business (Mar. 3, 2015), available at <https://money.cnn.com/2015/03/03/technology/isis-ads-youtube/index.html>.

<sup>36</sup> *Id.*

essentially, grooming the world. The harm from distributing illegal and violent content benefited Google and YouTube.

Google’s business model directly intends to maximize profits by keeping users consuming online content to collect user data and deliver ads based on that data. “In order to keep people consuming content, the curation of user preference promotes, recommends, and disseminates content, including terrorist content, in a manner that appears to constantly up the stakes.”<sup>37</sup> The two key objectives for providers like Google and other ISPs are to maximize reach (draw in as many people as you can) and maximize time (capture as much attention as possible).<sup>38</sup>

## **II. Algorithm Interrogation or Inspection Through Discovery Is Necessary to Reveal Decisions and Adjustments to Proprietary Programming Algorithms.**

Given the complexities involved in proprietary recommendation algorithms, it is impossible to understand and realize the extent to which Google has intentionally adjusted its YouTube recommendation

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<sup>37</sup> Már Maack, ‘*YouTube recommendations are toxic, says dev who worked on the algorithm*, The Next Web (Jun. 14, 2019), available at <https://thenextweb.com/news/youtube-recommendations-toxic-algorithm-google-ai>.

<sup>38</sup> 5Rights Foundation, *Pathways: How digital design puts children at risk* (Jul. 2021), available at <https://5rightsfoundation.com/uploads/Pathways-how-digital-design-puts-children-at-risk.pdf>.

algorithms without the benefit of an engineering evaluation—which limited discovery would have permitted. (The dissenter on the Ninth Circuit noted that discovery was never allowed in the district court. Pet. App’x 93a.) By beginning with the incorrect premise that algorithms are “neutral tools,” or essentially objective and fair, the courts below effectively circumvented the right of injured parties to even learn how a given algorithmic conclusion was reached.<sup>39</sup>

The Volkswagen diesel emissions scandal is an example of why software must be open to inspection. As the world now knows, Volkswagen crafted its cars’ software to secretly detect that an emissions inspection was taking place, and it would turn on pollution control equipment only during those inspections.<sup>40</sup> Columbia University professor Eben Moglen has famously argued that proprietary software like this is an “unsafe building material” because “you can’t inspect it.”<sup>41</sup> If Volkswagen knew that every customer who bought a vehicle could read the source code of all the software in

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<sup>39</sup> O’Neil, Cathay, *Interrogating Algorithms*, MathBabe (Sept. 24, 2015), *available at* <https://mathbabe.org/2015/09/24/interrogating-algorithms/>.

<sup>40</sup> Jim Dwyer, *Volkswagen’s Diesel Fraud Makes Critic of Secret Code a Prophet*, N.Y. Times (Sept. 22, 2015), *available at* <http://www.nytimes.com/2015/09/23/nyregion/volkswagens-diesel-fraud-makes-critic-of-secret-code-a-prophet.html>.

<sup>41</sup> Moglen, Eben, presentation to the Scottish Soc. for Computers and L. (Jun. 30, 2010), *available at* [https://softwarefreedom.org/events/2010/sscl/moglen-software\\_in\\_everything-transcript.html](https://softwarefreedom.org/events/2010/sscl/moglen-software_in_everything-transcript.html).

the vehicle, they would never consider cheating because of the certainty of getting caught.

Unfortunately, the cursory decisions of the courts below make it impossible for plaintiffs to determine how YouTube and other ISPs actually recommend content. Evaluation of the algorithms would demonstrate the extent to which recommendation algorithms generate data that is used for other business functions not protected by Section 230. It would also reveal the business relationship between Google's advertising placement algorithms and its recommendation algorithm, and how these two systems aggressively monetize or demonetize categories selected by Google management.

And without any of this evidence, this Court is flying blind—having to take Google's word for it as to whether its systems are truly content-neutral or not.

### **III. Inciting and Monetizing Illegal or Tortious Content Through Recommendation Algorithms Results in Substantial Societal Harm.**

Google hires design ethicists and product philosophers, who are essentially experts on how technology exploits consumers' psychological vulnerabilities.<sup>42</sup> Attention engineering is just another way to describe a company's way to drive up user engagement with a

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<sup>42</sup> Tristan Harris, *How Technology Hijacks People's Minds—From a Magician and Google's Design Ethicist*, Observer (Jun. 1, 2016), available at <https://bit.ly/3iyEa8Q>.



particular site.<sup>43</sup> More user engagement leads to more advertising dollars. “Emotional contagion is a phenomenon where the observed behavior of one individual leads to the reflexive production of the same behavior by others.”<sup>44</sup> It is well-established in laboratory experiments that emotional states can be transferred to others without direct interaction between people being exposed to an emotion.<sup>45</sup>

Advertisers can tailor positive or negative emotions to specific groups or periods of time, but the decisions about what videos are connected to what display ads often lie with the ISP and algorithm for that content.<sup>46</sup> Advertisers can choose a demographic, but it is Google who decides that a video is played to a particular demographic so that advertisement should be displayed. “Audience targeting methods let you define who you want to reach. Audiences are groups of people

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<sup>43</sup> Armstrong Williams, ‘*Attention Engineering: Why We Suffer in the Social Media Economy*’, Daily Signal (Feb. 25, 2019), available at <https://www.dailysignal.com/2019/02/25/attention-engineering-why-we-suffer-in-the-social-media-economy/>.

<sup>44</sup> Charlotte Nickerson, *Emotional Contagion*, SimplyPsychology (Nov. 8, 2021), available at <https://www.simplypsychology.org/what-is-emotional-contagion.html>.

<sup>45</sup> Kramer, Adam D.I., et al., *Experimental evidence of massive-scale emotional contagion through social networks*, 111 *Proceedings of Nat’l Acad. Sci.* 8788–90 (Jun. 17, 2014), available at <https://www.pnas.org/doi/pdf/10.1073/pnas.1320040111>.

<sup>46</sup> YouTube Help, *About targeting for Video campaigns*, undated, available at <https://support.google.com/youtube/answer/2454017>.

with specific interests, intents, and demographics, as estimated by Google.”<sup>47</sup>

Desensitization to violent content can cause a host of mental illnesses and reactions.<sup>48</sup> The district court below held that Section 230 protects provider-generated recommendations, so long as they are “content-neutral.” Pet. App’x 41a. But when technology recommends illegal, objectionable, or tortious material, that is not a “neutral” recommendation—it is a perverse way to influence behavior. ISPs receive the profit-making upside of the amazing technology they create, but hide behind Section 230 as a shield for all the harm it causes. ISPs are internalizing profits and externalizing costs onto individuals, families, and society.

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<sup>47</sup> *Id.*

<sup>48</sup> Hassan, Ghayda, *et al.*, *Exposure to Extremist Online Content Could Lead to Violent Radicalization: A Systematic Review of Empirical Evidence*, 12 Int’l J. Developmental Sci. 71–88 (Sept. 5, 2018).

#### IV. “Basic Organizational Decisions of Modern Internet”<sup>49</sup> are Not Threatened by a Proper Application of Section 230.

##### A. History

During the formative decades of the Internet, the core principle of “cyberlibertarianism” was to maximize online freedom for corporations.<sup>50</sup> Cyberlibertarianism is an ideology that imagines a factual and normative order in which it is not only impossible to regulate the Internet, but where such regulation is inherently authoritarian and unethical.<sup>51</sup> Google cited this ideology in its Opposition to Certiorari: “users post torrents of content on the internet, to such a degree that it is ‘impossible for service providers to screen’ all third-party content for illegal tortious material.”<sup>52</sup>

While technology companies have *recently* been vocal in their public commitment to protect against illegal content, their *historical* inactions related to illegal and violent content have put profits over safety, and companies have hidden behind blanket regulatory stances to protect their bottom lines, virtually ignoring the national harms they cause. Online harms involving

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<sup>49</sup> Google’s Br. in Opp. 3.

<sup>50</sup> Hanson, E., ‘*Losing track of morality: Understanding online forces and dynamics conducive to child sexual exploitation*, in *Child sexual exploitation: Why theory matters* 87–116 (Pearce, J., ed.).

<sup>51</sup> *Id.*

<sup>52</sup> Google’s Br. in Opp. to Cert. 3.

violence and illegal conduct are not “necessary evils” that must be tolerated or ignored if we want to have an Internet. Google suggests here that the Court should tread lightly in its reading of Section 230, and cautions that exempting immunity under Section 230 would “threaten the basic organizational decisions of the modern internet.”<sup>53</sup> This ideology is not accurate.

In 2003, the tech industry claimed it would begin a mission to “eradicat[e] online child sexual exploitation.”<sup>54</sup> But for years afterward, online platforms continued to ignore their responsibilities to users, and described their platforms as a neutral artifact beyond the control of any company or government.<sup>55</sup> Even if that were true, by 2008, the Ninth Circuit noted: “The Internet is no longer a fragile new means of communication that could easily be smothered in the cradle by overzealous enforcement of laws and regulations applicable to brick-and-mortar businesses.” *Fair Hous. Council of San Fernando Valley v. Roommates.com LLC*, 521 F.3d 1157, 1164 n.15 (9th Cir. 2008). “The Internet has outgrown its swaddling clothes and no longer needs to be so gently coddled.” *Id.* at 1175, n.39.

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<sup>53</sup> Google’s Br. in Opp. to Cert. 22.

<sup>54</sup> Hany Farid, *Technology sector should not be shielding sex traffickers online*, The Hill (Sept. 19, 2017), available at <https://thehill.com/opinion/technology/351315-technology-sector-should-not-be-shielding-sex-traffickers-online/>.

<sup>55</sup> *Id.*

Everyone knows that Google’s business model relies on constant surveillance of its users.<sup>56</sup> Because of their societal ubiquity and their pervasive influence, online platforms absolutely have the power to affect or constrain the behavior of others.<sup>57</sup> Allowing broad immunity for platforms while letting aggressive monetization occur is inconsistent with the purpose of the CDA.

As former Attorney General Barr argued: “The purpose of Section 230 was to protect the ‘good Samaritan’ [ISP] that takes affirmative steps to police its own platform for unlawful or harmful content. Granting broad immunity to platforms that facilitate illegal conduct occurring on the online spaces they create is not consistent with that purpose.”<sup>58</sup>

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<sup>56</sup> *E.g.*, Natalie Colarossi, *Google Accused of ‘Constant Surveillance’, Deceptive Methods to Maintain Access to User Data*, Newsweek (Jan. 24, 2022), available at <https://www.newsweek.com/google-accused-constant-surveillance-deceptive-methods-maintain-access-user-data-1672183>.

<sup>57</sup> Cobbe, J., *Algorithmic Censorship by Social Platforms: Power and Resistance*, 34 *Philosophy & Tech.* 739, 742–43 (2020), available at <https://link.springer.com/content/pdf/10.1007/s13347-020-00429-0.pdf>.

<sup>58</sup> U.S. Dep’t of Justice, *Attorney General William P. Barr Delivers Remarks at the National Association of Attorneys General 2019 Capital Forum* (Dec. 10, 2019), available at <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-national-association-attorneys-general>.

### **B. User Safety Systems Have Not Destroyed the Internet**

Google is far from powerless to screen and remove violent and illegal content from YouTube. In fact, Google uses extensive algorithms to reduce unwanted spam on its platforms. Similarly, Facebook and YouTube have deployed algorithms, technologies and policies to enforce their bans on pornography. Those bans are there because advertisers do not want ads running alongside sexually explicit material. And, following enactment of the Digital Millennium Copyright Act,<sup>59</sup> all major platforms deployed effective algorithms to remove copyright infringing materials.

This is proof that these enterprises do have the ability to control their platforms. What they lack is the will to do so. Section 230 provides them with a shield they do not deserve.

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<sup>59</sup> Digital Millennium Copyright Act, Pub L. 105-304.

**CONCLUSION**

The *amici* strongly urge reversal of the Ninth Circuit's decision broadly interpreting Section 230.

Respectfully submitted,

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