

No. 21-1333

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**In the Supreme Court of the United States**

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REYNALDO GONZALEZ, ET AL., PETITIONERS

*v.*

GOOGLE LLC

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

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**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE  
IN SUPPORT OF VACATUR**

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### QUESTION PRESENTED

Whether 47 U.S.C. 230(c)(1), which states 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,” bars petitioners’ claims alleging that Google LLC violated the Antiterrorism Act of 1990, 18 U.S.C. 2331 *et seq.*, by hosting on its YouTube platform, and providing targeted recommendations for, videos created by a foreign terrorist organization.

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**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE  
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**INTEREST OF THE UNITED STATES**

This case concerns a federal statute commonly known as Section 230 of the Communications Decency Act of 1996,<sup>1</sup> which prohibits courts from treating a provider of an interactive computer service as the “publisher or speaker” of third-party content posted on its platform. 47 U.S.C. 230(c)(1). The United States has a substantial interest in the proper interpretation of that provision. Congress enacted Section 230 “to promote the continued development of the Internet,” 47 U.S.C. 230(b)(1),

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<sup>1</sup> That common name is technically a misnomer, as the provision appeared in Section 509 of the Telecommunications Act of 1996 (of which the Communications Decency Act was one title), and was enacted as a new Section 230 of the Communications Act of 1934. See Communications Decency Act of 1996, Pub. L. No. 104-104, Tit. V, § 509, 110 Stat. 137-139.



by protecting online service providers and users from unwarranted liability. But an overly broad reading of Section 230(c)(1) would undermine the enforcement of other important federal statutes by both private plaintiffs and federal agencies.

#### STATEMENT

##### A. Section 230

Congress enacted the Communications Decency Act of 1996 (CDA) as part of the Telecommunications Act of 1996. Pub. L. No. 104-104, Tit. V, 110 Stat. 133; see *Reno v. American Civil Liberties Union*, 521 U.S. 844, 857-858 (1997). One CDA provision, entitled “Protection for private blocking and screening of offensive material” and commonly referred to as Section 230, establishes protections for online service providers, including websites and other online platforms. CDA § 509, 110 Stat. 137-139 (47 U.S.C. 230).

A “specific purpose[]” of the provision was to respond to a state trial-court decision, *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. 1995). H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 194 (1996). *Stratton Oakmont* involved a defamation suit against an online service provider, Prodigy, based on messages a third party had posted on one of Prodigy’s online bulletin boards. 1995 WL 323710, at \*1. Under common-law defamation principles, one who “publishes” a defamatory statement—*i.e.*, communicates it to someone other than the person defamed—can be held liable without proof that he knew the statement was defamatory, resulting in a form of strict liability. See Dan B. Dobbs et al., *Hornbook on Torts* 938 (2d ed. 2016) (Dobbs). And subsequent publishers can likewise face strict liability under the general rule that “one who repeats or otherwise republishes

defamatory matter is subject to liability as if he had originally published it.” *Cianci v. New Times Publ’g Co.*, 639 F.2d 54, 61 (2d Cir. 1980) (Friendly, J.) (quoting Restatement (Second) of Torts § 578 (1977) (Restatement)).<sup>2</sup>

The *Stratton Oakmont* court used the term “publisher” to refer to the kind of entity who could be held strictly liable in this way, and understood the term to include entities like newspapers, which are presumed to have editorial control over what they print. 1995 WL 323710, at \*3. The plaintiffs had argued that Prodigy maintained that kind of control over the content on its bulletin boards because Prodigy screened postings in some respects and sometimes removed postings it deemed objectionable. *Id.* at \*2-\*3. The court agreed that those attempts at content moderation rendered Prodigy a “publisher” of, and thus liable for, any defamatory speech that remained. *Id.* at \*4-\*5.

In the legislative findings accompanying Section 230, Congress recognized that the Internet “represent[s] an extraordinary advance in the availability of educational and informational resources” and “offer[s] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.” 47 U.S.C. 230(a)(1) and (3). Congress declared it the “policy of the United States” to “promote the continued development of the Internet and other interactive computer services,” 47 U.S.C. 230(b)(1), and to “remove disincentives for the development and utilization of blocking and filtering

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<sup>2</sup> Notwithstanding these common-law principles, the First Amendment limits the imposition of strict liability in this context. See, e.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974); see also Dobbs 938-940.

technologies” that could better restrict access to objectionable material online, 47 U.S.C. 230(b)(4).

To that end, Section 230(c) establishes two complementary protections. Section 230(c)(1) directs 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). And Section 230(c)(2) states that “[n]o provider or user of an interactive computer service shall be held liable on account of \* \* \* any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” 47 U.S.C. 230(c)(2)(A). The statute expressly preempts any “cause of action” or “liability” “under any State or local law that is inconsistent with” those provisions. 47 U.S.C. 230(e)(3).

#### **B. The Present Controversy**

1. Plaintiffs (petitioners here) are relatives of No-hemi Gonzalez, an American citizen who was murdered in a November 2015 terrorist attack in Paris, France, for which the Islamic State of Iraq and Syria (ISIS) claimed responsibility. J.A. 14, 19-20. In 2016, plaintiffs sued respondent Google LLC under the Antiterrorism Act of 1990 (ATA), 18 U.S.C. 2331 *et seq.* The ATA authorizes American nationals injured “by reason of an act of international terrorism” to bring a civil action for treble damages in federal court. 18 U.S.C. 2333(a). In 2016, Congress amended the ATA to impose secondary civil liability on “any person who aids and abets, by knowingly providing substantial assistance” to, “an act of international terrorism.” Justice Against Sponsors

of Terrorism Act, Pub. L. No. 114-222, § 4(a), 130 Stat. 854 (18 U.S.C. 2333(d)(2)).

In their operative complaint, plaintiffs allege that Google is liable under the ATA for providing resources and assistance to ISIS through Google's ownership of the YouTube video-sharing platform. J.A. 18. YouTube allows users to register an account, establish a "channel," post videos, and post comments on other users' videos. J.A. 59, 62. According to plaintiffs, ISIS and its adherents have used YouTube "to disseminate its videos and messages and execute its propaganda, recruitment, and operational campaigns." J.A. 72. Plaintiffs allege that, notwithstanding YouTube's policies prohibiting terrorist content, J.A. 65, "[p]rior to the Paris attacks, [YouTube] refused to actively monitor" the site "to block ISIS's use of" the platform, J.A. 157-158. Plaintiffs further allege that, even after identifying ISIS content, YouTube took inadequate steps to remove those accounts or to prevent blocked accounts from being reestablished. J.A. 158.

Plaintiffs also allege that YouTube supplies its users with videos that other users have posted. First, a user can "subscribe[]" to another user's "channel," and YouTube will "distribute" new videos on that channel to the channel's subscribers. J.A. 172. Second, plaintiffs allege that YouTube implements "computer algorithms" to "suggest[]" to particular users "videos and accounts" that are "similar" to those the user has previously watched and that play automatically when another video ends. J.A. 173; see J.A. 170 (screenshot of this feature showing a sidebar titled "Up next" with five videos listed). Plaintiffs allege that, by using the algorithms and related features to "recommend[]" ISIS

videos,” YouTube “assists ISIS in spreading its message.” J.A. 169.

Plaintiffs additionally allege that Google maintains a commercial service called “AdSense,” which allows users to “share in the revenue” from advertisements placed alongside the users’ YouTube videos. J.A. 163. Plaintiffs allege that ISIS-affiliated users have received revenue from Google for participating in AdSense. J.A. 164-165.

2. The district court dismissed plaintiffs’ complaint for failure to state a claim. Pet. App. 172a. The court held that Section 230(c)(1) barred plaintiffs’ ATA claims except to the extent they were premised on revenue sharing through AdSense. *Id.* at 193a-207a. The court further held that the revenue-sharing claims did not plausibly allege an ATA violation. *Id.* at 214a-215a.

3. A divided panel of the Ninth Circuit affirmed. Pet. App. 1a-169a.

a. The court of appeals agreed with the district court that plaintiffs’ non-revenue-sharing ATA claims were barred by Section 230(c)(1). Pet. App. 17a-44a. The court of appeals first held that YouTube provides an “interactive computer service” and is thus eligible for Section 230 protection. *Id.* at 29a-30a. The court then held that most of plaintiffs’ ATA claims seek “to treat YouTube as a publisher or speaker” of ISIS content within the meaning of Section 230(c)(1). *Id.* at 30a-31a. The court stated that “[p]ublishing encompasses ‘any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online.’” *Id.* at 31a (citation omitted). And it concluded that, “[b]ecause the non-revenue sharing claims seek to impose liability for allowing ISIS to place content on the

YouTube platform, they seek to treat [YouTube] as a publisher.” *Ibid.*

The court of appeals further held that YouTube had not acted as an “information content provider” with respect to ISIS videos. Pet. App. 31a-44a. Plaintiffs had argued that YouTube “develop[s] the ISIS content that appears on YouTube, at least in part,” *id.* at 32a (brackets in original), by recommending ISIS content to other users through its algorithms, *id.* at 38a. The court disagreed. It emphasized the absence of allegations that YouTube’s algorithms treated ISIS-created content more favorably than any other content type. *Id.* at 37a. The court concluded that, because YouTube recommends content “based upon users’ viewing history and what is known about the users,” its recommendations reflect the same “core principle” as “a traditional search engine.” *Id.* at 38a.

Finally, the court of appeals held that Section 230(c)(1) did not apply to plaintiffs’ AdSense-related claims because those claims were premised on Google “giving ISIS money,” not on “the publication of third-party information.” Pet. App. 46a (emphasis omitted). The court agreed with the district court, however, that the revenue-sharing allegations did not state a claim for either direct or aiding-and-abetting liability under the ATA. *Id.* at 47a-68a.

b. Judge Berzon concurred. Pet. App. 81a-92a. She viewed circuit precedent as dictating the conclusion that Section 230(c)(1) bars claims based on YouTube’s recommendations. *Id.* at 81a-82a. She explained, however, that if she were writing on a clean slate, she would hold that the term “publisher” in Section 230(c)(1) “does not include activities that promote or recommend content.” *Id.* at 82a.

c. Judge Gould concurred in part and dissented in part. Pet. App. 92a-110a. He agreed with the majority that Section 230(c)(1) protects YouTube from liability for “carrying the posts from ISIS on its platform.” *Id.* at 102a. He would have held, however, that Section 230(c)(1) does not immunize YouTube from claims based on conduct that “that goes beyond merely publishing” ISIS videos, such as “recommending terrorism-related content based on past content viewed.” *Ibid.* Judge Gould endorsed the views articulated by Chief Judge Katzmann’s separate opinion in a similar case, *Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019), cert. denied, 140 S. Ct. 2761 (2020). Pet. App. 98a.

#### SUMMARY OF ARGUMENT

Section 230(c)(1) directs 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). That text is typically analyzed in three elements: (1) the defendant must be a provider of an “interactive computer service,” and (2) the plaintiff’s claim must seek to treat the defendant as a “publisher or speaker” of (3) “information provided by another information content provider.” Section 230(c)(1) precludes a plaintiff’s claim only if all three elements are met.

A. Section 230(c)(1)’s text is most naturally read to prohibit courts from holding a website liable for failing to block or remove third-party content, but not to immunize other aspects of the site’s own conduct.

1. The statute’s definition of “interactive computer service” covers most interactive websites and other providers of online services. 47 U.S.C. 230(f)(2).

2. A claim “treat[s]” an online-service-provider defendant “as the publisher or speaker” of information if

it seeks to hold the defendant liable for the presence of unlawful content on the defendant's platform. 47 U.S.C. 230(c)(1). "Publisher" is best read in this context to refer to one who commits the common-law act of "publication": the communication or dissemination of expressive material to another. Claims alleging liability based on a platform operator's failure to block or remove material created and posted by third parties meet this element, regardless of the precise cause of action. This includes claims alleging that the defendant was negligent or reckless with respect to, or had actual or constructive knowledge of, the disseminated material's objectionable character. Challenges to other aspects of the defendant's conduct, however—such as certain kinds of claims targeting the platform's own design choices—do not treat the defendant as a "publisher or speaker" of content provided by others and therefore do not trigger Section 230(c)(1) protection.

3. The third required element is that the disseminated material must have been "provided by another information content provider." 47 U.S.C. 230(c)(1). The statute defines "information content provider" to include anyone who "is responsible, in whole or in part, for the creation or development of information." 47 U.S.C. 230(f)(3). A website operator therefore loses Section 230(c)(1) protection when it is partially responsible for the content at issue. But a website does not become a co-developer (and thus an "information content provider") of third-party content merely by taking actions to display it or make it more accessible or usable.

B. Section 230(c)(1) bars plaintiffs' ATA claims to the extent those claims are premised on YouTube's alleged failure to block or remove ISIS videos from its



site, but the statute does not bar claims based on YouTube's alleged targeted recommendations of ISIS content. The judgment below therefore should be vacated.

1. Plaintiffs' broadest theory of direct and secondary ATA liability is that YouTube is liable for allowing ISIS-affiliated users to create accounts and post videos on the site. The court of appeals correctly held that Section 230(c)(1) precludes liability on that basis. YouTube is undoubtedly a provider of an interactive computer service, and plaintiffs do not allege that YouTube edited or otherwise contributed to the creation of the videos at issue. To the extent plaintiffs allege that YouTube violated the ATA by allowing its platform to be used for the dissemination of videos, Section 230(c)(1) bars their claims.

2. Plaintiffs' allegations regarding YouTube's use of algorithms and related features to recommend ISIS content require a different analysis. That theory of ATA liability trains on YouTube's own conduct and its own communications, over and above its failure to block or remove ISIS content from its site. Because that theory does not ask the court to treat YouTube as a publisher or speaker of content created and posted by others, Section 230(c)(1) protection is not available.

That does not mean that YouTube should be deemed an information content provider with respect to the videos themselves. Although Section 230(c)(1) does not preclude liability premised on YouTube's recommendations if the elements of a private ATA suit are otherwise met, liability must be determined without regard to the fact that the recommended videos appeared on YouTube's own platform. Because the court of appeals did not consider whether plaintiffs have adequately

pleaded the elements of ATA liability on that theory, the case should be remanded so that the court may do so in the first instance.

3. Plaintiffs' other arguments lack merit. YouTube acts as a provider of an interactive computer service when it displays content on its site to users, even in the absence of an affirmative request. An online platform does not become an information content provider by taking the technical steps necessary to render user-generated content available to others on the site, such as creating URLs for videos and embedding them in hyperlinks. Finally, plaintiffs suggest that a platform becomes an information content provider by "notifying" users about new content. But to the extent they are challenging YouTube's distribution of new videos on a channel to the channel's subscribers, that feature is not meaningfully different from YouTube hosting the channel in the first place, and it does not justify treating YouTube as a co-creator of that content.

#### ARGUMENT

Section 230(c)(1) directs that a website operator may not be "treated as the publisher or speaker" of content provided by others. 47 U.S.C. 230(c)(1). This Court has never construed that provision. Over the last quarter century, however, the courts of appeals have developed a substantial body of precedent applying Section 230(c)(1) to disparate factual settings.

Congress's most immediate objective in enacting Section 230(c)(1) was to protect online service providers from possible defamation liability when they remove some objectionable third-party content but allow other postings to remain. The lower courts have correctly recognized that Section 230(c)(1)'s text goes beyond that immediate objective. Many courts, however, have

concluded that Section 230 should be construed “broadly, so as to effectuate Congress’s ‘policy choice’” to protect the operators of interactive websites. *Universal Commc’n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir. 2007); see, e.g., *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003). And they have applied that approach to foreclose claims even when platform operators’ allegedly wrongful conduct went well beyond a failure to block or remove objectionable third-party content.

That approach to Section 230(c)(1) contradicts this Court’s admonition that, absent some contrary “‘textual indication,’” a court’s views about the policy Congress sought to achieve provide “no license” to give statutory provisions “anything but a fair reading.” *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018) (citation omitted). The Court should give Section 230(c)(1) a fair reading, with no thumb on the scale in favor of either a broad or a narrow construction. Properly construed, Section 230(c)(1) protects YouTube from asserted ATA liability for hosting or failing to remove ISIS-related content, but not for claims based on YouTube’s own conduct in designing and implementing its targeted-recommendation algorithms.

**A. Section 230 Prohibits Courts From Holding A Website Liable For Failing To Block Or Remove Third-Party Content, But It Does Not Immunize The Site’s Own Conduct**

Section 230(c)(1) states 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). That text is typically analyzed in three elements, all of which must be present for Section 230(c)(1)

to bar the claim: (1) the defendant must be a provider of an “interactive computer service,” and (2) the plaintiff’s claim must seek to treat the defendant as a “publisher or speaker” of (3) “information provided by another information content provider.” We address those elements in turn.

**1. *The defendant must be a provider of an interactive computer service***

Section 230 defines “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.” 47 U.S.C. 230(f)(2). That definition encompasses early online service providers like Prodigy and America Online. See, e.g., *Zeran v. America Online, Inc.*, 129 F.3d 327, 328-329 (4th Cir. 1997), cert. denied, 524 U.S. 937 (1998). It also includes interactive websites such as dating or housing services, see, e.g., *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1162 n.6 (9th Cir. 2008) (en banc); search engines that reproduce content from other websites, see, e.g., *Marshall’s Locksmith Serv., Inc. v. Google, LLC*, 925 F.3d 1263, 1268 (D.C. Cir. 2019); and social media services like YouTube, Facebook, and Twitter, see, e.g., *Force v. Facebook, Inc.*, 934 F.3d 53, 64 (2d Cir. 2019), cert. denied, 140 S. Ct. 2761 (2020). In most Section 230(c)(1) cases, this element is not disputed.

**2. *The plaintiff’s claim must seek to treat the defendant as a “publisher or speaker” of third-party content***

In the view of the United States, a plaintiff’s claim seeks to “treat[]” a website provider as “the publisher or speaker” of third-party content, 47 U.S.C. 230(c)(1), if liability turns on the provider’s failure to block or

remove unlawful content from its platform, so that avoiding liability would require the defendant to withdraw or refuse to publish that content. By contrast, if the plaintiff's claim seeks to hold the defendant liable for other aspects of its own conduct, imposing liability does not "treat" the defendant as a "publisher or speaker," even if third-party speech is essential to the plaintiff's cause of action.

a. Section 230 does not define the term "publisher." As a matter of ordinary usage, that term can refer broadly to "one that makes [something] public," or more narrowly to "one whose business is publishing." *Webster's Third New International Dictionary of the English Language 1837 (1993) (Webster's Third)*. Several clues suggest that Section 230(c)(1) uses "publisher" in its broader sense. The word is paired with "speaker," which carries the more general sense of "one that speaks." *Id.* at 2185. The broader sense of "publisher" also accords with the word's common-law meaning and Section 230(c)(1)'s origin. As noted above, "publication" is an element of the tort of defamation that encompasses all "communication intentionally or by a negligent act to one other than the person defamed." Restatement § 577(1). In that context, the term is not limited to persons whose business is publishing. See Dobbs § 37.4, at 940. And at common law, publication specifically includes a failure to remove speech exhibited on one's property. See Restatement § 577(2).

b. The more difficult interpretive task is to identify the types of legal claims that would "treat[]" an entity like YouTube "as the publisher or speaker" of third-party content displayed on its site. 47 U.S.C. 230(c)(1). Section 230(c)(1) reflects Congress's recognition that "imposing tort liability on companies that serve as

intermediaries for other parties’ potentially injurious messages” could substantially impede the development of online platforms. *Zeran*, 129 F.3d at 330-331. “It would be impossible for service providers to screen each of their millions of postings for possible problems.” *Id.* at 331. And if (as in *Stratton Oakmont*, see p. 3, *supra*) the provider’s removal of *some* content triggered potential legal liability for any unlawful third-party content that remained, providers would have a strong incentive to eschew screening mechanisms—the opposite of Congress’s intent in enacting the CDA. See *Zeran*, 129 F.3d at 331; see also 47 U.S.C. 230(b)(4). Alternatively, “providers might choose to severely restrict the number and type of messages posted,” *Zeran*, 129 F.3d at 331, to the detriment of Americans who have turned to the Internet for “a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity,” 47 U.S.C. 230(a)(3).

Section 230(c)(1) represents Congress’s effort to avoid those harms. The provision most obviously applies to causes of action, like defamation, that allege the violation of legal duties imposed on publishers and speakers as such. But other causes of action may likewise “be premised on the publication or speaking of what one might call ‘information content.’” *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101 (9th Cir. 2009). “[W]hat matters is not the name of the cause of action—defamation versus negligence versus intentional infliction of emotional distress—but “whether the cause of action inherently requires the court to treat the defendant as the ‘publisher or speaker’ of content provided by another.” *Id.* at 1101-1102.

Section 230(c)(1) applies, however, only when a plaintiff’s theory of liability seeks to hold the defendant

liable for allowing unlawful third-party information to remain on its platform. “[T]o hold someone liable as a publisher at common law was to hold them responsible for the content’s improper character.” *Henderson v. The Source for Public Data, L.P.*, 53 F.4th 110, 122 (4th Cir. 2022). The protection is not triggered merely because “there is a ‘but-for’ causal relationship between the act of publication and liability.” *Ibid.*

For instance, Section 230(c)(1) should not bar a products-liability claim against an online marketplace, even if a third-party retailer creates the product’s online listing, if the plaintiff’s claim is based on the product’s defect. Cf. *Erie Ins. Co. v. Amazon.com, Inc.*, 925 F.3d 135, 139-140 (4th Cir. 2019). Section 230(c)(1) should not insulate a review website from claims that it manipulated third-party reviews to extort businesses. But see *Levitt v. Yelp! Inc.*, No. C-10-1321, 2011 WL 5079526, at \*6-\*9 (N.D. Cal. Oct. 26, 2011). And, as the courts below recognized here, Section 230(c)(1) should not immunize Google from plaintiffs’ ATA claims based on Google sharing revenue from advertisements that accompany ISIS-created videos. Pet. App. 45a-46a.

As those examples show, Section 230(c)(1) protects an online platform from claims premised on its dissemination of third-party speech, but the statute does not immunize a platform’s *other* conduct, even if that conduct involves the solicitation or presentation of third-party content. The Ninth Circuit’s *Roommates.com* decision illustrates the point in the context of a website offering a roommate-matching service. 521 F.3d at 1161. As a condition of using the service, Roommates.com “require[d] each subscriber to disclose his sex, sexual orientation and whether he would bring children to a household,” and to “describe his preferences

in roommates with respect to the same three criteria.” *Ibid.* The plaintiffs alleged that asking those questions violated housing-discrimination laws, and the court of appeals agreed that Section 230(c)(1) did not shield Roommates.com from liability for its “own acts” of “posting the questionnaire and requiring answers to it.” *Id.* at 1165.

Imposing liability in such circumstances does not treat online platforms as the publishers or speakers of content provided by others. Nor does it obligate them to monitor their platforms to detect objectionable postings, or compel them to choose between “suppressing controversial speech or sustaining prohibitive liability.” *Zeran*, 129 F.3d at 333. Illustrating that distinction, the *Roommates.com* court held that although Section 230(c)(1) did not apply to the website’s discriminatory questions, it *did* shield the website from liability for any discriminatory third-party content that users unilaterally chose to post on the site’s “generic” “Additional Comments” section. 521 F.3d at 1174-1175.

c. In a statement respecting the denial of certiorari in *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13 (2020), Justice Thomas suggested a narrower interpretation of Section 230(c)(1)’s “publisher or speaker” element. Drawing on the provision’s origin as a response to *Stratton Oakmont*, the statement suggested that Section 230(c)(1) may have had only one “modest” effect: to “indicate[] that an Internet provider does not become the publisher of a piece of third-party content—and thus subjected to strict liability—simply by hosting or distributing that content.” *Id.* at 14-15. On that understanding, Section 230(c)(1) would shield a website operator from a cause of action that seeks to impose strict liability for third-party



content, but not from allegations that the defendant acted with actual or constructive knowledge. *Ibid.*

Justice Thomas’s *Malwarebytes* statement correctly noted two respects in which lower courts have extended Section 230(c)(1) beyond its proper bounds. First, some courts have misconstrued Section 230(c)(1) to confer immunity whenever an online service provider’s allegedly unlawful conduct can be analogized to actions traditionally performed by a book or newspaper publisher. *Malwarebytes*, 141 S. Ct. at 16. Those decisions rest on the mistaken premise that the term “publisher” refers to companies whose *business* is publishing. See p. 14, *supra*. And courts have compounded that error by extending Section 230(c)(1)’s protections to activities beyond the “publication” of the third-party content itself. These courts have read Section 230(c)(1) to “protect[] the ‘exercise of a publisher’s traditional editorial functions,’” including even the *alteration* of content. *Malwarebytes*, 141 S. Ct. at 16 (quoting *Zeran*, 129 F.3d at 330).

Second, as Justice Thomas further explained, some lower courts have read Section 230(c)(1) to immunize website operators whose platforms are knowingly designed to facilitate their use for unlawful activity. In *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12 (2016), cert. denied, 137 S. Ct. 622 (2017), for example, the First Circuit considered a claim that a classifieds website had violated federal prohibitions on sex trafficking. The plaintiffs alleged that Backpage.com—which allowed users to post ads for “Escorts”—had “deliberately structured its website to facilitate illegal human trafficking” by, among other things, “accept[ing] anonymous payments, fail[ing] to verify e-mails, and stripp[ing] metadata from photographs to make crimes

harder to track.” *Malwarebytes*, 141 S. Ct. at 17. The First Circuit held that the website’s actions were shielded by Section 230(c)(1) because they amounted to “choices about what content can appear on the website and in what form,” and thus fell “within the purview of traditional publisher functions.” *Backpage.com*, 817 F.3d at 21.

Under the principles articulated above, the *Backpage.com* decision was erroneous. The plaintiffs did not seek to treat Backpage.com as the publisher or speaker of the ads through which others carried out sex trafficking. Rather, they sought to hold the operator liable for its own policies and platform-design choices that facilitated sex trafficking. Where a website operator’s conduct in furthering unlawful activities goes well beyond failing to block or remove objectionable third-party content from its platform, holding the operator liable does not “treat” it “as the publisher or speaker of” the third-party posts.<sup>3</sup>

Justice Thomas correctly identified ways in which some lower courts have unduly expanded Section 230(c)(1), and he rightly emphasized that the terms “publisher” and “speaker” should be construed in light

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<sup>3</sup> In 2018, Congress responded to *Backpage.com* by enacting the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (FOSTA), Pub. L. No. 115-164, 132 Stat. 1253. FOSTA amended Section 230 to add new exceptions to Section 230(c)(1) for certain civil and criminal sex-trafficking and prostitution laws. See § 4(a), 132 Stat. 1254 (47 U.S.C. 230(e)(5)). FOSTA’s “Sense of Congress” provision states that Section 230 “was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution” or “facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims.” § 2(1), 132 Stat. 1253. Congress described the amendment as a “clarification” of the statute, not as a change to its original scope. § 2(3), 132 Stat. 1253.

of their common-law roots. But it does not follow that Section 230(c)(1) should be limited to claims based on strict-liability theories. As explained above, in defamation law, “publication” refers broadly to the communication of expressive material to another. See Restatement § 577; see also p. 14, *supra*. And although the common law set a different standard of liability for distributors and others “who perform a secondary role in disseminating defamatory matter,” *Prosser and Keeton on the Law of Torts* § 113, at 810-811 (W. Page Keeton ed., 5th ed. 1984) (Prosser), those entities likewise communicate content to others and therefore are “publishers.” See *id.* at 799 (“[E]very one who takes part in the publication \* \* \* is charged with publication.”); see also Dobbs § 37.4, at 940 (“Anyone who participates in publication can be a publisher.”); *Zeran*, 129 F.3d at 334. Accordingly, leading torts authorities refer to both kinds of actors as “publishers.” See Prosser § 113, at 803-804 (referring to the original speaker and entities like newspapers as “primary publishers,” and to entities like libraries and newsstands as “secondary publishers” and “disseminator publisher[s]”); see also Dobbs § 37.4, at 942 (distinguishing between “primary publishers” and other “publishers \* \* \* called transmitters, distributors, or secondary publishers”).

Thus, where a website operator’s alleged wrongful act is the failure to block or remove objectionable third-party content from its site, imposing liability would “treat” the operator as “the publisher or speaker” within the meaning of Section 230(c)(1), even if the plaintiff alleges that the operator acted negligently, recklessly, or with actual or constructive knowledge.<sup>4</sup>

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<sup>4</sup> Justice Thomas’s *Malwarebytes* statement also stated that another CDA provision, 47 U.S.C. 223(d)(1)(B), “expressly imposed

**3. *The content must be provided by another information content provider***

Section 230 defines “information content provider” to mean “any person or entity that is responsible, *in whole or in part*, for the creation or development of information provided through the Internet or any other interactive computer service.” 47 U.S.C. 230(f)(3) (emphasis added). The italicized language makes clear that, when two (or more) entities are jointly responsible “for the creation or development of” particular online content, each is an “information content provider” with respect to that content. See, e.g., *FTC v. Accusearch Inc.*, 570 F.3d 1187, 1197 (10th Cir. 2009) (explaining that “there may be several information content providers with respect to a single item of information”). And by limiting the provision’s application to claims based on “information provided by *another* information content provider,” 47 U.S.C. 230(c)(1) (emphasis added), Section 230(c)(1) instructs that an online platform “remains liable for its own speech.” *Lycos*, 478 F.3d at 419.

Determining what qualifies as “creation or development” of content under Section 230(f)(3) therefore can be integral to the Section 230(c)(1) analysis. The word “create” is straightforward: “to bring into existence” or

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distributor liability” enforceable by a civil cause of action at 47 U.S.C. 207, and observed that it would be “odd” for Congress to have created such liability in one provision while eliminating it in another. 141 S. Ct. at 15. But it is not clear that Section 223(d)(1)(B) (which this Court held unconstitutional in *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997)) was civilly enforceable. Section 207 provides a cause of action for a person “claiming to be damaged by any common carrier,” 47 U.S.C. 207, and Section 223(e)(6) states that “nothing in [Section 223] shall be construed to treat interactive computer services as common carriers,” 47 U.S.C. 223(e)(6).

“make out of nothing and for the first time.” *Webster’s Third* 532. But the meaning of “develop” in this context is less clear-cut. On the one hand, the transitive verb can be used as a close synonym of “create,” though usually to refer to a drawn-out process. See *Oxford English Dictionary Online* (3d ed., modified Sept. 2022) (“[t]o formulate or create by successive stages of improvement or advancement”). But the word can also mean to “cause to increase or improve,” “promote the growth of,” or “expand by a process of growth.” *Webster’s Third* 618; see also *Oxford English Dictionary Online* (“[t]o bring (something) to a fuller or more advanced state; to improve, extend”). In this sense, the word conceivably could encompass a website operator’s efforts to augment third-party content generally, or to make it more readily available or viewable.

Contextual considerations indicate that Congress did not intend “development” to carry its broadest “definitional possibilities.” *FCC v. AT&T Inc.*, 562 U.S. 397, 407 (2011). Within Section 230(f)(3), “development” is paired with “creation,” a term that unambiguously excludes measures platforms employ to make third-party information more available to users without altering its content. Section 230(f)(3) also refers to one who is “*responsible*” for the information’s development. That term typically connotes more than being a but-for cause or making an incidental contribution to an end result. See *Accusearch*, 570 F.3d at 1199 (“We would not ordinarily say that one who builds a highway is ‘responsible’ for the use of that highway by a fleeing bank robber.”).

Adjacent subsections likewise indicate that “development” does not include actions a website takes to better display preexisting third-party content or make it more usable. Section 230’s definition of “interactive

computer service” includes an “access software provider,” 47 U.S.C. 230(f)(2), which the statute defines as a provider of “software” or “enabling tools” that “filter, screen, allow, or disallow content,” “pick, choose, analyze, or digest content,” or “transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.” 47 U.S.C. 230(f)(4)(A), (B), and (C). It would make little sense for Congress to specifically include entities that provide “enabling tools” that “filter,” “organize,” and “reorganize” content as among those to which Section 230(c)(1) applies, only to categorically withdraw that protection through the definition of “information content provider.” Rather, the statute’s structure suggests that content development must go beyond the mere provision of basic organizational or display tools that Congress viewed as inherent in an interactive online service.

More fundamentally, deeming a website an “information content provider” whenever it enhances user access to third-party content would produce a “self-defeating” result. *Quarles v. United States*, 139 S. Ct. 1872, 1879 (2019). Interactive websites invariably provide tools that enable users to create, and other users to find and engage with, information. A chatroom might supply topic headings to organize posts; a photo-sharing site might offer a feature for users to signal that they like or dislike a post; a classifieds website might enable users to add photos or maps to their listings. If such features rendered the website a co-developer of all users’ content, Section 230(c)(1) would be a dead letter.

By contrast, other actions may implicate website operators more deeply in objectionable content. If, for example, a website seeks out information from third parties and compiles that information into background-

check reports, Section 230(c)(1) protection should not be available for the reports. Cf. *Henderson*, 53 F.4th at 128-129; but see *Dennis v. MyLife.Com, Inc.*, No. 20-cv-954, 2021 WL 6049830, at \*6 (D.N.J. Dec. 20, 2021) (holding that a background-check site could not face liability for a “reputation score” it generated, because the score was based on information originating from others). The same is true if a classifieds website solicits advertisements for illegal services and edits third-party postings to make their unlawful nature more difficult to detect. See H.R. Rep. No. 572, 115th Cong., 2d Sess. Pt. 1, at 5 (2018) (noting that Backpage.com had been “soliciting” sex-related content and “systematically editing” ads to “delete incriminating words”). Thus, when an online service provider substantially adds or otherwise contributes to a third party’s information—such that the resulting content can fairly be deemed the joint product of the provider and that party—both may be viewed as “information content providers” with respect to that content, and both may be held accountable even on claims that would treat the platform as the “publisher or speaker” of that content.

**B. The Judgment Of The Court Of Appeals Should Be Vacated**

The court of appeals correctly held that Section 230(c)(1) bars plaintiffs’ claims to the extent they allege that YouTube violated the ATA by publishing videos created by ISIS. But plaintiffs also allege that YouTube violated the ATA by providing targeted recommendations of ISIS content to others in a way that radicalized viewers or recruited them to ISIS’s cause. That theory of liability does not seek to hold YouTube liable for hosting, or failing to remove, unlawful third-party content. Rather, it challenges YouTube’s own conduct in

designing and implementing recommendation algorithms that result in the communication of a distinct message from YouTube. Whatever its viability under the ATA, that theory does not implicate Section 230(c)(1) because it does not seek to hold YouTube liable as the “publisher or speaker” of ISIS content.

***1. Section 230(c)(1) bars plaintiffs’ claims to the extent they are premised on YouTube’s failure to block or remove third-party content***

Plaintiffs assert claims against Google, as the owner of YouTube, for direct and secondary liability under the ATA. They allege that YouTube—an undisputed provider of an interactive computer service, see Pet. App. 29a; see also *id.* at 193a n.8—provided resources to, and aided and abetted, ISIS and its terrorist activities. J.A. 176-183. The communication of content is not an essential element of an ATA violation. See 18 U.S.C. 2333(a) and (d). But many of the allegations in plaintiffs’ operative complaint assert that the specific *way* YouTube assisted ISIS’s terrorist activities was by disseminating ISIS content on its platform.

Plaintiffs allege that ISIS “openly maintained and used official YouTube accounts with little or no interference,” J.A. 18, and thereby utilized the “YouTube platform and services to distribute high-production-quality videos, images, and recordings,” J.A. 17. Plaintiffs further allege that ISIS used those videos “to issue terroristic threats, attract attention to its terror attacks and atrocities, instill and intensify fear from terror attacks, intimidate and coerce civilian populations, take credit for terror attacks,” and “communicate its desired messages about the terror attacks.” J.A. 64. In this manner, ISIS allegedly “use[d] YouTube to actually carry out essential communication components of ISIS’s



terror attacks,” *ibid.*, and to recruit new adherents, J.A. 75-79. ATA claims based on this theory necessarily target YouTube’s role as a publisher of harmful or otherwise objectionable third-party content.

Moreover, the videos themselves are “information provided by another information content provider.” 47 U.S.C. 230(c)(1). Plaintiffs allege that ISIS and its affiliates filmed, edited, and posted the videos that appeared on their user channels. *E.g.*, J.A. 17, 61, 69, 172. And plaintiffs do not allege that YouTube altered the videos. See J.A. 61 (“Google does not preview or edit content published by users to their own YouTube channels or accounts.”).

By asserting ATA claims premised on such allegations, plaintiffs asked the district court to “treat[]” YouTube as a “publisher or speaker” by holding the platform liable for allowing (or failing to remove) unlawful content provided by “another information content provider.” 47 U.S.C. 230(c)(1). The court of appeals correctly held that Section 230(c)(1) foreclosed those theories of ATA liability. See Pet. App. 29a-31a, 33a.

**2. Section 230(c)(1) does not preclude plaintiffs’ claims based on YouTube’s targeted recommendations**

a. In addition to alleging that YouTube has failed to remove ISIS-related content from its platform, plaintiffs allege that YouTube has violated the ATA by using “computer algorithms” and related features to “suggest[]” to particular users “YouTube videos and accounts” that are “similar” to videos and accounts those users have previously watched. J.A. 173; see J.A. 169. These “suggestions” are located on “the side margin of the user’s YouTube page,” and suggested videos “automatically load and play when a selected video ends,” J.A. 173; the complaint includes a screenshot showing a

sidebar entitled “Up next” with multiple videos listed, J.A. 170. Plaintiffs allege that, through this feature, YouTube has “recommended ISIS videos” to other users, J.A. 169, thereby enabling ISIS to “use[] YouTube as a tool to connect with others and promote its terrorist activity,” J.A. 173. Plaintiffs’ recommendation-based claims under the ATA would face obstacles on the merits. See p. 32 & n.5, *infra*. But Section 230(c)(1) does not shield YouTube from any liability it might otherwise face for recommending ISIS content.

The distinction between a recommendation and the recommended content is particularly clear when the recommendation is explicit. If YouTube had placed a selected ISIS video on a user’s homepage alongside a message stating, “You should watch this,” that message would fall outside Section 230(c)(1). Encouraging a user to watch a selected video is conduct distinct from the video’s publication (*i.e.*, hosting). And while YouTube would be the “publisher” of the recommendation message itself, that message would not be “information provided by another information content provider.” 47 U.S.C. 230(c)(1).

Here, plaintiffs do not contend that YouTube’s recommendations take that explicit form. Rather, plaintiffs allege that YouTube “has recommended ISIS videos” by causing ISIS-affiliated content to appear on a user’s “Up next” sidebar. J.A. 169-170. But the effect of YouTube’s algorithms is still to communicate a message from YouTube that is distinct from the messages conveyed by the videos themselves. When YouTube presents a user with a video she did not ask to see, it implicitly tells the user that she “will be interested in” that content “based on the video and account information and characteristics.” J.A. 173. The appearance

of a video in a user's queue thus communicates the implicit message that YouTube "thinks you, the [user]—you, specifically—will like this content." *Force*, 934 F.3d at 82 (Katzmann, C.J., concurring in part and dissenting in part). And because YouTube created the algorithms that determine which videos will be recommended to which users, the recommendations are bound up with YouTube's own platform-design choices.

A claim premised on YouTube's use of its recommendation algorithms thus falls outside of Section 230(c)(1) because it seeks to hold YouTube liable for its own conduct and its own communications, above and beyond its failure to block ISIS videos or remove them from the site. See pp. 16-17, *supra*. To be sure, those algorithms operate in conjunction with YouTube's display of third-party content. But as explained above, Section 230(c)(1) does not immunize providers from all claims in which third-party content plays a role. See pp. 15-16, *supra*. If a third party unaffiliated with YouTube recommended ISIS videos posted on YouTube, Section 230(c)(1) would not insulate that party from any liability those recommendations otherwise might create. See *Force*, 934 F.3d at 82 (Katzmann, C.J., concurring in part and dissenting in part). Section 230(c)(1) would be likewise inapplicable if YouTube recommended ISIS content posted on a different media platform. Cf. Pet. Br. 30. So too here: a claim premised on YouTube's recommendations, even for content posted on its own platform, does not "seek to punish [YouTube] for the content others post" or "for deciding whether to publish third parties' content." *Force*, 934 F.3d at 77 (Katzmann, C.J., concurring in part and dissenting in part).

b. The court of appeals analyzed the issue differently. The court considered whether, by recommending ISIS videos through the “Up next” feature, YouTube became a creator or developer (and thus an information content provider) of the videos it suggested. Pet. App. 31a-39a. If that were so, Section 230(c)(1) would not protect YouTube from liability even for allowing the videos to remain on the site. The court held that YouTube’s recommendation feature does not have that effect, reasoning that the “Up next” algorithm is analogous to a “more sophisticated” search engine. *Id.* at 38a.

The court of appeals was correct in holding that YouTube is not an “information content provider” of any ISIS videos it recommends. That term encompasses persons who participate in the “creation or development of” online “information.” 47 U.S.C. 230(f)(3). YouTube’s algorithms direct content to particular users only *after* that content has been created, developed, and posted (by third parties) on YouTube’s platform. And the larger statutory context reinforces the conclusion that a website’s choices about the organization and presentation of user-generated content do not constitute the “creation or development” of that material. See pp. 22-23, *supra*.

For essentially the same reason, courts of appeals have consistently recognized that a website does not act as an information content provider by offering a method to search or filter third-party content. See *Marshall’s Locksmith*, 925 F.3d at 1269; *O’Kroley v. Fastcase, Inc.*, 831 F.3d 352, 354-355 (6th Cir. 2016), cert. denied, 137 S. Ct. 639 (2017); *Getachew v. Google, Inc.*, 491 Fed. Appx. 923, 925-926 (10th Cir. 2012); *Roommates.com*, 521 F.3d at 1175. To be sure, YouTube’s algorithms

operate differently from many search engines in that they generate targeted recommendations without specific user queries. But in determining whether YouTube is an “information content provider” of the videos it recommends, the salient point is that the algorithms simply direct to particular users videos that were created and developed without YouTube’s involvement.

Thus, YouTube’s use of recommendation algorithms does not make it an “information content provider” of the videos it recommends. A court determining YouTube’s ATA liability therefore could give no weight to YouTube’s hosting of the videos. It does not follow, however, that Section 230(c)(1) shields YouTube from possible ATA liability for making the targeted recommendations themselves. Even if YouTube plays no role in the videos’ creation or development, it remains potentially liable for its own conduct and its own communications, to the extent those go beyond allowing third-party content to appear on the site. Such claims fall outside Section 230(c)(1) because they do not seek to hold YouTube liable as a “publisher or speaker.” See pp. 16-19, *supra*.

c. An online platform’s potential liability in these circumstances is subject to important limitations. Three related limits are especially significant.

First, as this case illustrates, determining Section 230(c)(1)’s application to a particular case is not an all-or-nothing choice. Section 230(c)(1) generally does not shield a website operator from liability for its own communications or other conduct. But despite YouTube’s use of allegedly unlawful revenue-sharing and targeted-recommendation features, Section 230(c)(1) continues to protect YouTube from liability for failing to remove

third-party content, including the content it has recommended. See pp. 25-26, 29-30, *supra*; see also *Force*, 934 F.3d at 85 (Katzmann, C.J., concurring in part and dissenting in part).

Second, for purposes of determining whether YouTube can be held liable for the targeted recommendations at issue here, Section 230(c)(1) precludes the court from giving weight to the fact that the recommended videos appear on YouTube's own site. As suggested above (see p. 28, *supra*), the court instead should analyze plaintiffs' claims as it would if YouTube had recommended ISIS videos posted on *other* sites. In particular, in determining whether plaintiffs have adequately alleged an ATA claim, the court can consider the alleged content of the recommended videos, as it would if YouTube's recommendations of videos on another platform were alleged to constitute prohibited assistance to ISIS. But Section 230(c)(1) would still preclude the court from considering, as a possible form of assistance giving rise to ATA liability, either YouTube's provision of a platform for the posting of the videos or YouTube's failure to block or remove them.

Third, the court of appeals concluded that Section 230(c)(1) precludes liability based on YouTube's targeted recommendations because YouTube is not alleged to give any preference or priority to ISIS content, Pet. App. 37a, but instead "matches what it knows about users based on their historical actions and sends third-party content to users that [YouTube] anticipates they will prefer," *id.* at 38a. That understanding of Section 230(c)(1) was flawed, because the recommendations' status as YouTube's own conduct does not depend on the criteria YouTube considers in directing particular videos to particular users. Those criteria may be

directly relevant, however, in determining YouTube’s liability under specific causes of action, including whether plaintiffs have plausibly alleged the elements of aiding-and-abetting liability under the ATA. See U.S. Br. at 17-26, *Twitter, Inc. v. Taamneh*, cert. granted, No. 21-1496 (Oct. 3, 2022).

d. Because the court of appeals held that Section 230(c)(1) precluded any ATA claim based on a non-revenue-sharing theory, it did not examine whether plaintiffs could state a claim based on YouTube’s recommendation function. Because this Court is “a court of review, not of first view,” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005), the Court should vacate the judgment below and remand the case to allow the court of appeals to conduct that analysis in the first instance, informed by the Court’s decision in *Taamneh*.<sup>5</sup>

### 3. *Plaintiffs’ alternative theories lack merit*

Plaintiffs offer additional rationales for concluding that their recommendation-based ATA claims fall outside Section 230(c)(1). Those theories are unpersuasive.

a. In the courts below, plaintiffs did not dispute that YouTube is a provider of an interactive computer service. See p. 25, *supra*. But in this Court, plaintiffs

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<sup>5</sup> Because the two cases were dismissed on different grounds, Pet. App. 4a, 17a-18a, the court of appeals evaluated the allegations against the *Taamneh* defendants (including Google) without considering whether Section 230 narrowed the potential theories of ATA liability, see *id.* at 68a-75a. As explained in the government’s amicus brief in that case, see U.S. Br. at 13-30, *Taamneh, supra* (No. 21-1496), even when Section 230 is put to the side and all of the allegations against the *Taamneh* defendants are considered, those allegations are insufficient to state a claim for secondary liability under the ATA. Unlike this case, however, *Taamneh* does not present a direct-liability claim.

argue that YouTube does not act as such a provider when it recommends content to others. Specifically, plaintiffs argue (Br. 44) that YouTube “provides or enables” a user’s “access” to a “server,” 47 U.S.C. 230(f)(2), only when a user makes a “specific request” to the server, such as by clicking on a video link. And they contend that YouTube is no longer “acting as” a provider of an interactive computer service when it “sends a user third-party material which the recipient had not requested.” Br. 43-44.

That argument reflects a misunderstanding of what the statute requires. When a user directs her browser to the youtube.com website, or opens the YouTube app on an Internet-enabled smartphone, YouTube has provided the user with access to its server. And plaintiffs allege that YouTube provides the recommendations at issue on its online platform. See J.A. 169-170, 173.

b. Plaintiffs also argue (Br. 34-39) that YouTube acts as a content creator—and therefore an information content provider—because it generates URLs for user videos and embeds those URLs in hyperlinks and hyperimages. But the creation of navigational hyperlinks is inherent in the provision of an online platform; a URL is an address where content can be located. See *Reno*, 521 U.S. at 852. A website does not act as an information content provider by taking the technical steps necessary to render user-generated online content visible to others.

A related federal statute enacted a year after the CDA reflects this commonsense understanding. See Child Online Protection Act, Pub. L. No. 105-277, Div. C, Tit. XIV, § 1403, 112 Stat. 2681-736 (1998) (47 U.S.C. 231). Section 231 criminalizes certain “communication[s]” of obscene material “by means of the World



Wide Web.” 47 U.S.C. 231(a)(1). The statute specifies that providing “an Internet information location tool”—defined to include “hypertext links” that “refer[] or link[] users to an online location”—does not constitute a “communication.” 47 U.S.C. 231(b)(3) and (e)(5). Similarly here, YouTube’s creation of location tools does not render it a creator or developer of the linked speech.

c. Plaintiffs also suggest (Br. 34) that a platform becomes a content creator by “notifying a user that something new is available on the website.” Although plaintiffs do not specify a YouTube feature they have in mind, their complaint alleges that YouTube automatically “distribute[s]” new videos posted on a channel to that channel’s subscribers. J.A. 172. But that mechanism simply implements the user’s decision to subscribe to a particular channel and thus to request material from that channel as it becomes available in the future. Such a feature is no different from YouTube hosting the channel in the first place—an act that plaintiffs appear to agree is protected by Section 230. See Br. 26, 42; see also Pet. 2.

**CONCLUSION**

The judgment of the court of appeals should be vacated.

Respectfully submitted.

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\* The Solicitor General is recused in this case.