

No. 25-7916

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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IN RE: FACEBOOK SIMULATED CASINO-STYLE GAMES LITIGATION

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KATHLEEN WILKINSON, ET AL.,

*Plaintiffs-Appellees,*

v.

META PLATFORMS, INC., ET AL.,

*Defendants-Appellants,*

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On Appeal from the United States District Court  
for the Northern District of California

Case Nos. 5:21-cv-02777, 5:21-md-03001 | Hon. Edward J. Davila

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**OPENING BRIEF OF META PLATFORMS, INC.**

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## INTRODUCTION

Section 230 of the Communications Decency Act establishes broad federal protection from any cause of action that seeks to hold an online service provider liable as a publisher or speaker of third-party content. 47 U.S.C. § 230(c)(1). The question in this case is whether an online service provider loses that protection when it makes the third-party content available for a fee. The district court so held. But given its doubts, the court *sua sponte* certified its order for interlocutory appeal under 28 U.S.C. § 1292(b). The court had good reason for its uncertainty. Its ruling rested on the flawed premise that Section 230 is inapplicable where an online service provider can avoid liability for third-party content by changing how it displays third-party content—or ceasing to do so at all. Because that reasoning would gut Section 230, this Court should reverse.

Meta hosts a wide range of applications on its Facebook service that are designed, created, and operated by third-party developers. Many apps offer virtual content that is also created by the third-party developers and available for purchase within the app. When a person chooses to purchase that content on the Facebook website, Meta receives a portion of the payment and remits the balance to the third party.

This case concerns a specific category of third-party content: “social casino” video game apps that mimic a virtual casino with animated versions of traditional casino games. The games are played purely for entertainment and do not allow any payout. As part of the content provided to the player, the app displays virtual chips that appear as coins on a user’s screen. Players obtain these virtual chips by winning virtual games, waiting a period to receive free chips, or buying chips within the apps’ built-in stores. Unlike chips in real casinos, virtual chips do not represent actual money. Players cannot cash out the virtual chips or use them outside the game. But even though players cannot cash out, Plaintiffs allege that social casino games allow illegal gambling under various state laws.

Plaintiffs do not dispute that both the social casino games and the virtual chips constitute third-party content. But they have tried to avoid Section 230 by casting their claims as a challenge to Meta’s “payment processing.” Whatever function that label might imply in other contexts, Plaintiffs’ theory here is that Meta is liable for hosting social casino games, making in-app content (the virtual chips) available for purchase, accepting payment in exchange for the content, and remitting a portion

to the third-party developers. 2-ER-171 (¶ 9); 2-ER-176 (¶ 61). The district court held that this theory fell outside Section 230, reasoning that the claims did not “treat” Meta “as a publisher or speaker” of the third-party content (the games and virtual chips) because Meta could simply choose to stop processing payments for *all* third-party content—whether virtual seeds to plant at a virtual farm, virtual swords to defend a virtual castle, or virtual chips to play at a social casino. In so doing, the court acknowledged that this change would “cause dramatic upheaval” to Meta’s business and cost “millions if not billions in revenue.” 1-ER-13-14.

The district court’s unprecedented ruling is irreconcilable with the text of Section 230 and this Court’s precedents. Plaintiffs’ claims “treat[]” Meta “as the publisher or speaker of any information provided by” a third party. 47 U.S.C. § 230(c)(1). Plaintiffs agree that both the video games and the virtual chips are third-party content designed and created by third-party app developers, not Meta. Meta’s sole alleged role is to host the games on Facebook, including by making the virtual chips available to players who choose to purchase them. Such dissemination of third-party content is “quintessentially the province of a publisher,” *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 645 (9th Cir. 2025), whether or not

a person pays a fee to access that content. And the claims here are undeniably “related to th[e] content”—the virtual chips. *Id.* at 640. After all, Plaintiffs challenge Meta’s content-payment function only as applied to one kind of third-party content, on a theory that is inextricably intertwined with the content.

Removing any doubt that the claims would treat Meta as a publisher or speaker of third-party content, Plaintiffs’ claims would require Meta to monitor all apps on Facebook and identify the subset whose gameplay might be characterized as “gambling” on a state-by-state basis in a rapidly changing legal environment. Meta would then need to disable in-app purchases of virtual tokens for any allegedly noncomplying games. Section 230 was meant to prevent precisely that kind of onerous monitoring obligation, which would discourage providers from offering online services or allowing third-party content in the first place.

The district court’s contrary reasoning has no logical stopping point. Countless online services, such as Audible, Substack, Spotify, and WordPress, make third-party content—audiobooks, newsletters, podcasts, and more—available for a fee. And any of those services could theoretically choose to shut down their entire business to avoid having to monitor the



third-party content or risk ruinous liability. Section 230 does not require online services to shut down their content-providing functions to secure protection from liability for third-party content. This Court should reject that dangerous interpretation and reverse the district court's order to the extent that it refused to dismiss the claims under Section 230.

### **STATEMENT OF JURISDICTION**

The district court has jurisdiction under 28 U.S.C. § 1332(d) because the putative class meets the Class Action Fairness Act's minimal-diversity requirement and the complaint alleges claims that in aggregate exceed \$5 million. 2-ER-175 (¶ 49). The district court also has federal-question jurisdiction under 28 U.S.C. § 1331, because the complaint alleges violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), and supplemental jurisdiction under 28 U.S.C. § 1367 over the state-law claims. 2-ER-175 (¶ 50).

This Court has jurisdiction under 28 U.S.C. § 1292(b). On September 30, 2025, the district court certified for interlocutory appeal its order granting in part and denying in part Meta's motion to dismiss. 1-ER-35-36. On October 10, 2025, Meta timely petitioned this Court for permission



to appeal. No. 25-6436, Dkt. 1. And on December 13, 2025, the Court granted Meta’s petition and denied Plaintiffs’ cross-petition. 2-ER-77.

### **STATEMENT OF THE ISSUE**

Section 230 protects from liability (1) a “provider or user of an interactive computer service” (2) that a plaintiff seeks to “treat[] as the publisher or speaker” (3) of “any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). Plaintiffs do not contest that Meta provides an interactive computer service and that their claims concern information provided by another information content provider—specifically, social casino video games and virtual chips within those games. Plaintiffs nonetheless seek to impose liability on Meta for allowing third parties to sell just one kind of online content (the virtual chips) through Facebook’s content-payment tools. Do such claims impermissibly treat Meta as a publisher or speaker of third-party content?

### **STATUTORY PROVISION INVOLVED**

The pertinent statutory provision, 47 U.S.C. § 230, is reproduced in the addendum. *See* Cir. R. 28-2.7.

## **STATEMENT OF THE CASE**

### **A. Meta Hosts Third-Party Content in the Form of Social Casino Video Game Apps in Which Players May Purchase Virtual Currency**

Meta offers Facebook as a service to help people connect and share, find and build communities, grow businesses, and access entertainment, including online games. Some games are free, others cost money to play, and many are free to access and play but allow in-app purchases of third-party content to enhance the gaming experience and to avoid wait times for free credits. Meta hosts the games on Facebook and makes its content-payment tools, which allow players to purchase in-app content, available to third-party app developers on the same terms. 2-ER-320-21.

These online games include so-called social casino games, which simulate a casino—similar to how, say, “Madden NFL” simulates a football game. In the typical third-party social casino app, the player receives an initial allotment of virtual chips. 2-ER-176 (¶ 58). A video game called Double Down Casino, for example, displays a cartoon piggy bank that holds the player’s virtual chips, which are credits to play the games. 2-ER-168-69 (¶¶ 3-4). The player can use these virtual chips to play card games, bingo, or “animated slot machines,” where the outcome of a spin

determines whether the player receives more virtual chips. 2-ER-175-76 (¶¶ 54-58). If the player runs out of chips, the player can wait until the app automatically provides more free chips, or can buy more chips to keep playing right away. 2-ER-176 (¶¶ 58-60).

Across all of the social casino games at issue here, players cannot “cash out” their pretend chips for real money or otherwise use them outside the app. 2-ER-168 (¶ 3). The virtual chips are purely a visual and functional feature of the game—just like the gold coins Mario collects in “Super Mario Bros”—and can be used only to engage in or enhance the gameplay: to spin more animated slot machines, to play more card games or bingo, or to give to another player within the app. 2-ER-176 (¶¶ 62-63).

Many different third-party developers designed and produced the various social casino video games on Facebook. 2-ER-178 (¶ 71). In all, dozens of such games appear on the Facebook App Center (now called Facebook Gaming), similar to the Google Play Store and the Apple App Store. 2-ER-179-81 (¶¶ 74-75). When these third-party developers initially sought to publish their games on Facebook, Meta reviewed the games using the same process that it follows for all other apps and games on Facebook. 2-ER-181 (¶¶ 76-77); 2-ER-327-28.

For every app that it hosts on Facebook, Meta also offers tools that third-party developers can use to receive payment for certain types of in-app content. Meta does not require developers to offer any particular content, but it does have rules about what developers may *not* offer. For example, Meta’s policy prohibits the sale of “virtual currency or other stored-value items that can be used outside of the app where the transaction was completed,” and developers “must not allow users to cash out, redeem, or otherwise receive anything of value in exchange for anything purchased using Facebook Payments.” 2-ER-337.

When a person purchases third-party content through in-app purchases on the Facebook website, Meta charges a 30% service fee for hosting the content and remits the balance to the developer. 2-ER-171 (¶ 9); 2-ER-176 (¶ 61). The developers appoint a Meta subsidiary as their “limited payment collection agent for the sole purpose of accepting payment on [their] behalf . . . for content [they] offer on Facebook.” Meta, *Payments Terms* (Nov. 4, 2022), <https://tinyurl.com/2dc8waxn>. The same fee applies to all in-app transactions, regardless of the nature of the purchased content. So whether players purchase extra “lives” in Candy Crush, additional virtual currency to build their football team in Madden NFL, extra



gems in Scrabble GO, or virtual chips for social casino games, Meta uses the same tools to process the payment and make the purchased third-party content available to the player. 2-ER-178 (¶ 70); 2-ER-184 (¶ 89).

**B. Plaintiffs Seek to Hold Meta Liable for Hosting Third-Party Social Casino Video Games, Including Virtual Chips Available for Purchase in the Games**

Plaintiffs are current and former players of social casino video games who allege they have been harmed by these games. 2-ER-185-92 (¶¶ 96-127). In *Kater v. Churchill Downs Inc.*, 886 F.3d 784 (9th Cir. 2018), this Court ruled that one particular “virtual casino” game might constitute illegal gambling under Washington law if a player who “runs out of virtual chips and wants to continue playing” must purchase more, even though “virtual chips have no monetary value and cannot be exchanged ‘for cash or any other tangible value.’” *Id.* at 786-87. The defendant in *Kater* was the developer of that game, Big Fish Casino. *Id.* at 785. After that ruling, Plaintiffs turned their sights to the online services that host the various social casino video games: Meta, Apple, and Google.

Plaintiffs brought two putative class actions against Meta, claiming that it engaged in illegal gambling operations by hosting third-party social casino video games, allowing in-game purchases of third-party

content within those games, and providing advertising tools informed by data analytics. The district court consolidated the two class actions. 3-ER-454. The original master complaint asserted that Meta violated the gambling and consumer protection laws of 15 States—Alabama, Arkansas, California, Georgia, Illinois, Kentucky, Minnesota, Missouri, Montana, New Jersey, New York, South Carolina, Tennessee, Virginia, and Washington—and unjustly enriched itself as a result. 3-ER-399-442. Plaintiffs also asserted a federal RICO claim based on these alleged state-law predicates. 3-ER-442-47.

Plaintiffs brought these claims and sought wide-ranging relief on behalf of 15 putative statewide classes and a putative nationwide class defined to include anyone who purchased online content in any of 50 different social casino games hosted on Facebook. 3-ER-382-83; 3-ER-395-97. Plaintiffs requested damages that included not only Meta’s 30% service fee, but also the 70% that the third-party developers retained. 3-ER-448. And they sought an injunction requiring Meta to stop “illegally host[ing]” social casino video games in the Facebook App Center. 3-ER-336; 3-ER-449.

Other plaintiffs, represented by the same counsel, brought materially identical claims against Apple and Google. *In re Apple Inc. App Store Simulated Casino-Style Games Litig.*, No. 5:21-md-02985-EJD (N.D. Cal.); *In re Google Play Store Simulated Casino-Style Games Litig.*, No. 5:21-md-03001-EJD (N.D. Cal.). The district court coordinated the two class actions against Meta with the multidistrict litigation against Apple and Google. 3-ER-468. Given the multiplicity of claims, the district court ordered initial motions to dismiss limited to Section 230, which protects online services from being treated as the publisher or speaker of online third-party content.

### **C. Meta Moves to Dismiss the Entire Complaint Under Section 230**

Meta moved to dismiss all claims on the ground that Plaintiffs' allegations met all three elements for Section 230 protection.

First, as courts have uniformly held, Facebook is an “interactive computer service” that “provides or enables computer access by multiple users to a computer server.” 47 U.S.C. § 230(c)(1), (f)(2); *see, e.g., Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 738 (9th Cir. 2024).

Second, Plaintiffs' claims “treat[]” Meta “as the publisher or speaker” of third-party content. 47 U.S.C. § 230(c)(1). The complaint

challenged textbook publishing functions by alleging that Facebook served as a “center[] for distribution and payment” for third-party content offered through social casino video games. 3-ER-372. And under Plaintiffs’ theory, Meta’s liability would turn solely on the nature of that third-party content: Meta’s conduct in giving players access to virtual chips through in-app purchases could be unlawful only if, as Plaintiffs alleged, either the social casino games or the use of the virtual chips within the games was itself unlawful.

Third, the social casino video games (including the virtual chips used to play the games) are “information provided by another information content provider.” 47 U.S.C. § 230(c)(1), (f)(3). As Plaintiffs allege, third-party developers independently created the games and the virtual chips, only later making them available through Facebook. 3-ER-380.

In response, Plaintiffs did not dispute the first and third elements. They disputed only the second element: whether their claims treat Meta as a publisher of the social casino video games and the virtual chips. Plaintiffs argued that their claims treat Meta not as a “publisher,” but as a “bookie[]” that facilitates in-game sales of virtual chips that are then used in allegedly unlawful social casino games. 2-ER-284.



**D. The District Court Holds That Section 230 Bars Liability For Hosting and Promoting Online Games, but Not for Facilitating In-Game Purchases of Online Content**

On September 2, 2022, the district court granted in part and denied in part Meta’s motion to dismiss under Section 230 in a consolidated order that also addressed Apple’s and Google’s motions. The court “easily dismissed” Plaintiffs’ claims insofar as they sought to hold Meta liable for hosting social casino video games or promoting them via recommendations and notifications on Facebook. 1-ER-70. The court also rejected Plaintiffs’ theory that “sharing data” with third-party developers made Meta responsible for ads that the developers subsequently created and disseminated. 1-ER-72. In the court’s view, the “sharing of data is fairly seen as a classic editorial role,” and Meta’s generally applicable advertising analytics had not independently “contribute[d] to the alleged illegality” of the games. 1-ER-72-73.

The district court nonetheless held that Plaintiffs’ claims could proceed on the theory that Meta purportedly sold “gambling chips.” 1-ER-71. The court reasoned that Section 230 protects an online service only “from liability based on a third-party’s bad acts” but not for its “own bad acts.” 1-ER-67-68. Applying that principle, the court concluded that

certain of Plaintiffs’ allegations relied on Meta’s “own bad acts” of processing transactions for in-game sales of virtual chips, rather than the “content” of the games themselves. 1-ER-71.

The district court *sua sponte* certified its initial dismissal order for immediate appeal under 28 U.S.C. § 1292(b). The court recognized that “reasonable minds could differ” on how to read this Court’s precedent on “this complicated question.” 1-ER-74. And the court explained that this case “presents exceptional circumstances” warranting an interlocutory appeal because Section 230 could resolve this case “in its entirety.” 1-ER-74-75. This Court granted Meta, Apple, and Google permission to take an interlocutory appeal, and it also allowed Plaintiffs to cross-appeal.

### **E. This Court Dismisses the Appeals for Lack of Jurisdiction**

After briefing and argument on consolidated appeals, this Court ruled that it lacked appellate jurisdiction. *See In re Facebook Simulated Casino-Style Games Litig.*, 2024 WL 2287200, at \*1 (9th Cir. May 21, 2024). The Court concluded that the district court’s ruling did not qualify as an “order” under Section 1292(b) because it addressed only Plaintiffs’ “theories of liability” and did not apply those theories to specific causes of action in the complaint. *Id.* at \*2. The district court’s ruling was a

mere “‘opinion on an abstract question of law’” and not the kind of “final, definitive action affecting the substantial rights of the parties” that would be properly reviewable under Section 1292(b). *Id.*

This Court directed the district court, on remand, to conduct a “claim-specific analysis,” *Facebook Simulated Casino-Style Games*, 2024 WL 2287200, at \*2, including identifying “the underlying legal duty” for each claim and determining whether the claim “seek[s] to hold the defendant liable as a ‘publisher or speaker’ of third-party content.” *Id.*

This Court also recognized that, in a case of such complexity, “a district court may decide to address pivotal threshold issues—such as the viability of certain legal theories—before applying its reasoning to specific claims.” *Facebook Simulated Casino-Style Games*, 2024 WL 2287200, at \*2. The Court emphasized that “[t]here is nothing wrong with such an approach,” and that the district court again “may certify its order for interlocutory appeal” after ruling on Section 230’s applicability to the claims at issue here. *Id.*

**F. The District Court Follows This Court’s Instructions and Again Decides That Section 230 Does Not Protect Meta When Facilitating In-App Purchases of Third-Party Content**

On remand, the district court complied with this Court’s instruction and conducted a claim-by-claim analysis of Section 230’s applicability. The court first “distributed a template of a chart for the parties to use in sorting the claims in these cases into the three Section 230 theories” that Plaintiffs had raised—*i.e.*, the duty not to host the video games, the duty not to offer tools to promote the games, and the duty not to facilitate in-app purchases of virtual chips. 2-ER-275.

Plaintiffs insisted that “all of [their] claims are brought under a ‘processing virtual chip payments’ theory” and checked the corresponding box for that duty on the chart for each claim. 2-ER-260; *see* 2-ER-272-73. They disavowed any attempt to impose liability based on Meta’s “making [the games] available” or on Meta’s alleged provision of “development assistance to casino app developers.” 2-ER-259.

The district court also gave Plaintiffs leave to file an amended master complaint. 2-ER-255. That complaint added another plaintiff, 2-ER-192 (¶ 127), and asserted throughout—without additional explanation—that the claims rested on Meta’s “own conduct, including processing and



profiting from unlawful transactions for virtual chips and providing development assistance to social casino app developers,” *e.g.*, 2-ER-197 (¶ 141); 2-ER-200 (¶ 164); 2-ER-201 (¶ 175); 2-ER-203 (¶ 187); 2-ER-204 (¶ 194). But as the district court correctly observed, the “material allegations” in the amended complaint had “not changed.” 1-ER-9.

In a single order, the district court granted in part and denied in part Meta’s, Apple’s, and Google’s motions to dismiss raising Section 230 and state-specific arguments. 1-ER-2-38. The court explained that the applicability of Section 230 turned solely on whether Plaintiffs’ claims sought to treat Meta “as a publisher or speaker” because Plaintiffs did not dispute that the other requirements of Section 230 were met, including that the social casino apps and virtual chips constituted “information provided by another information content provider” under Section 230(c)(1). 1-ER-8-9. Referencing this Court’s precedents, the district court recognized that a claim treats a defendant as a publisher or a speaker of third-party content “*either* when a duty springs from status or conduct as a publisher *or* that duty compels monitoring.” 1-ER-9 (citing *Twitter*, 148 F.4th at 640, 642).

The district court first concluded that the alleged legal duties did not spring from Meta’s publishing status or activities because “[t]he crux of the statutory claims in these cases is that Defendants were prohibited from processing in-app payments for social casino apps.” 1-ER-12. The court acknowledged that “payment processing activities may be an important part of publishing activity.” 1-ER-12. But it concluded that, even though the claims center on a player’s purchase of third-party content offered by third-party casino apps on Facebook, they did not treat Meta as a publisher because “[p]ayment processing is not an act of publishing” but rather “a generic business activity common to virtually all companies, publishers or not.” 1-ER-12.

The district court next concluded that Plaintiffs’ claims would not treat Meta as a publisher by requiring Meta to monitor third-party content on Facebook. 1-ER-13. The court recognized that, because Plaintiffs challenged solely the processing of payments for a specific kind of third-party content (virtual chips) in a specific kind of third-party video game (social casinos), the “only way” for Meta to determine whether it “may or may not process a payment transaction is to cross-reference that transaction against the app it originated in.” 1-ER-13. But the court reasoned

that Meta “need not” monitor content at all because it could just “choose to stop offering [its] own payment processing” for *all* apps. 1-ER-13. In other words, Meta could avoid any liability for third-party content on its site—and thus eliminate any Section 230 issue—by taking the extraordinary step of ceasing the activity through which it was making third-party content available.

The district court deemed shutting down Meta’s content-payment function a valid means for it to “avoid all the issues raised by Plaintiffs’ claims,” even though “[t]aking such a course of action would no doubt cause dramatic upheaval in Defendants’ businesses” and “could cost each Defendant millions if not billions in revenue.” 1-ER-13-14. So long as ceasing those content-payment activities would not “pose an existential threat to Defendants” or “prevent Defendants from engaging in their publishing activities,” the court reasoned, Section 230 does not protect the way that Meta makes third-party content available on Facebook. 1-ER-14.

The district court next turned to the merits of the underlying state-law claims. The court granted Meta’s motion to dismiss as to the California claims, 1-ER-18, the loss-recovery claims under several States’

laws, 1-ER-29, the unjust enrichment claims, 1-ER-32, and RICO claims, 1-ER-35. The court declined to dismiss Plaintiffs' claims under Kentucky's loss-recovery statute, 1-ER-29, or their claims under several States' consumer protection laws, 1-ER-31.

The district court then *sua sponte* certified both this order and its earlier Section 230 ruling for immediate appeal under 28 U.S.C. § 1292(b). The court reasoned that “the issues involved [are] significant enough to warrant the Circuit’s immediate consideration.” 1-ER-35. And the court recognized that “[a]nother court may well have come out differently” because of the unanswered questions and “seeming contradiction[s]” in this Court’s Section 230 decisions. 1-ER-36.

This Court granted Meta and Google permission to take an interlocutory appeal while denying Plaintiffs’ request to cross-appeal from the dismissal of their California-law claims. 2-ER-77. The Court also granted a separate petition by Apple in *Custodero v. Apple*, No. 25-6437.

## **SUMMARY OF ARGUMENT**

I. Plaintiffs’ attempt to hold Meta liable for third-party content violates Section 230.



A. Section 230 bars claims against (1) a “provider or user of an interactive computer service” (2) that a plaintiff seeks to “treat[] as the publisher or speaker” (3) of “any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). Plaintiffs do not contest the first and third elements: Facebook is an interactive computer service and the social casino video games (including the virtual chips within those games) are “information” provided by third-party developers.

The only disputed question is whether Plaintiffs’ claims “treat” Meta “as a publisher or speaker” of the third-party content—specifically, the simulated games and the virtual chips. To implement the statutory text, this Court has developed certain analytical approaches for identifying claims that impermissibly impose liability for third-party content. One looks to the nature of the duty that the claim would impose on the provider and asks whether the claim challenges activities that “spring[] ‘from the defendant’s status as a publisher.’” *Twitter*, 148 F.4th at 642 (quoting *Calise*, 103 F.4th at 742). The status-of-publisher analysis turns on the conduct of offering, disseminating, removing, editing, reviewing, or promoting third-party content. Section 230 further protects against

claims that would “require[] the defendant to act as a publisher”—for example, by monitoring content—to avoid liability. *Id.*

Whatever the approach, the bottom line is that plaintiffs may not advance theories by which online services are “treated as the publisher or speaker” of third-party content. 47 U.S.C. § 230(c)(1).

B. The claims treat Meta as a publisher or speaker because Plaintiffs seek to hold Meta legally responsible for making third-party content available on Facebook and would require Meta to monitor all third-party content purchased on Facebook.

1. Section 230 applies because Plaintiffs allege that Meta, through the gaming apps on Facebook, “is disseminating content created by others” and thus “is functioning as a publisher” of that content. *Twitter*, 148 F.4th at 640. The duties they assert spring directly from third-party content. Plaintiffs allege that Meta acted unlawfully by making the in-game virtual chips (which are indisputably third-party content) available for purchase in a specific subset of video games. But the dissemination of allegedly harmful third-party content—including for a fee as part of a commercial business—is quintessential publishing activity.

This Court has repeatedly applied Section 230 to bar claims premised on unlawful third-party content, even where the defendant processed payments, charged fees, or took commissions in exchange for providing access to that content. *E.g.*, *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1173-74 (9th Cir. 2008) (en banc); *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118-19 (9th Cir. 2007); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124-25 (9th Cir. 2003). Nothing in the text of Section 230 or this Court’s precedents suggests that protection from liability hinges on whether an online service provider displays content for free or for a fee.

The district court erred in holding Section 230 inapplicable to Plaintiffs’ claims purporting to challenge Meta’s content-payment tools on the theory that the offering of such tools is not a publication function. Plaintiffs challenge Meta’s act of making content available for a fee—specifically, one type of third-party content (virtual chips in social casino games). Historically and legally, there is no difference between challenges to the *dissemination* of content and challenges to the *sale* of that very same content. The publication of third-party content has long “take[n] place under commercial auspices.” *Smith v. California*, 361 U.S. 147, 150

(1959). And the content is inextricable from Plaintiffs' liability theory. In fact, Plaintiffs do not challenge Meta's payment tools as applied to *any other* third-party content hosted on Facebook except virtual chips within social casino games.

This Court's decision in *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019), does not hold otherwise. That case involved a city ordinance that prohibited the rental of unregistered homes or units and correspondingly barred online home-sharing services from processing payments for unregistered rentals. The ordinance imposed liability only for processing transactions for *rental properties* and did not regulate any third-party content. *Id.* at 683-84. Here, by contrast, Plaintiffs' liability theory is based entirely on the nature of the third-party content that is being purchased.

2. Plaintiffs' claims also would treat Meta as a publisher or speaker because their liability theory would necessarily require Meta to monitor third-party content made available for in-app purchase on Facebook. *Calise*, 103 F.4th at 739. Plaintiffs challenge only a tiny slice of in-app purchases based on the *nature* of the content being purchased—allegedly illegal virtual chips—and *how* that content is used within third-



party video games. To avoid liability, Meta would have to review *all* third-party apps on Facebook to identify social casino games, scrutinize those games to determine whether developers included features that allegedly make the games unlawful, evaluate each game’s legality under the gambling laws of multiple jurisdictions, and then remove or block access to in-app purchases of virtual chips for each covered game.

The district court did not disagree that Plaintiffs’ claims would necessarily require Meta to monitor content on Facebook. But it refused to apply Section 230 because, in its view, Meta always has the “option” of eliminating its content-payment tools altogether—meaning it could stop allowing third-party content to be made available for a fee. 1-ER-13. That misguided holding conflicts with the imperative text of Section 230, which contains no exception for cases where the provider might have avoided any association with the challenged third-party content by declining to host or facilitate it. Such an exception also would raze wide swaths of protection under Section 230 because an online service provider can *always* avoid liability for third-party content by refusing to offer that content or by disabling online tools that allow access to the content (here, in-app purchases on third-party apps on Facebook).

C. The district court’s interpretation of Section 230 would invite an easy end-run around its plain text. Plaintiffs could repackage any content-based claims as challenges to the “processing” or “facilitating” of that same third-party content. The result would extend far beyond this particular case, threatening the many online marketplaces, subscription platforms, and digital storefronts that make third-party books, movies, games, podcasts, and other expressive works available for a fee. Congress enacted Section 230 to avoid precisely that outcome.

II. Section 230 bars all of Plaintiffs’ claims against Meta. Plaintiffs confirmed that “*all* of [their] claims are brought under a ‘processing virtual chip payments’ theory.” 2-ER-259 (emphasis added). So each claim rests on a theory under which Meta would be treated as a publisher of the social casino games and the virtual chips. The Court should reverse the order denying in part Meta’s motion to dismiss and remand with instructions for the district court to dismiss the complaint with prejudice.

### **STANDARD OF REVIEW**

This Court reviews de novo the district court’s interpretation of Section 230 and its order on Meta’s motion to dismiss. *Dyroff v. Ultimate*

*Software Grp., Inc.*, 934 F.3d 1093, 1096 (9th Cir. 2019). To survive a motion to dismiss for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Dismissal is appropriate when “the allegations, taken as true, show the plaintiff is not entitled to relief” because of a defense like Section 230. *Jones v. Bock*, 549 U.S. 199, 215 (2007). This Court regularly resolves the application of Section 230 at the pleadings stage. *E.g.*, *Doe v. Grindr Inc.*, 128 F.4th 1148, 1151 (9th Cir. 2025); *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1139 (9th Cir. 2022); *Dyroff*, 934 F.3d at 1101.

## ARGUMENT

### **I. Section 230 Bars Plaintiffs’ Attempt to Hold Meta Liable for Third-Party Content**

Plaintiffs do not dispute two of the three requirements for Section 230 protection—Meta is an online service provider, and both the social casino apps and the virtual chips used in those apps are “information provided by another information content provider.” 47 U.S.C. § 230(c)(1). The only contested question is whether Plaintiffs’ claims seek to “treat[]” Meta “as the publisher or speaker” of that third-party content. *Id.*

The answer is yes. Because Plaintiffs’ claims challenge Meta’s activities in “disseminating content created by others,” including allowing payments for access to that content, Meta “is functioning as a publisher” of that content for purposes of Section 230. *Twitter*, 148 F.4th at 640. This outcome follows from the statutory text and this Court’s precedents: The claims would “treat” Meta as a “publisher or speaker” because they would hold Meta responsible for the third-party content on theories that both derive from Meta’s dissemination of the virtual chips and would impose a duty for Meta to monitor all apps on Facebook, as well as third-party content made available for purchase within those apps. Either reason suffices for Section 230 protection. This Court should reverse and remand with instructions for the district court to dismiss the amended master complaint with prejudice.

**A. Claims Treat Online Services as Publishers by Imposing Liability for Third-Party Content or Requiring Monitoring of Third-Party Content**

Section 230 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). As this Court has noted, the statute “establish[es] broad



federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.” *Perfect 10*, 488 F.3d at 1118 (quotation marks omitted).

The statutory text has three components: (1) the defendant must be “a provider or user of an interactive computer service”; (2) the claim must “treat[]” the defendant “as the publisher or speaker” of “information”; and (3) that “information” must be “provided by another information content provider.” 47 U.S.C. § 230(c)(1). These elements apply regardless of “the name of the cause of action,” *Estate of Bride by & through Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1176 (9th Cir. 2024), and whether the claim arises under state law, *see, e.g., Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009), or federal statutes like RICO, *see, e.g., Roommates.com*, 521 F.3d at 1164.

Meta meets the first element because, as courts have uniformly held, Facebook is an “interactive computer service.” 47 U.S.C. § 230(c)(1); *see, e.g., Calise*, 103 F.4th at 738. This statutory term includes any “system” that “provides or enables computer access by multiple users to a computer server.” 47 U.S.C. § 230(f)(2). Plaintiffs do not contest that Facebook meets that definition by making third-party content (here,

video games and virtual chips) available to users via the internet. 2-ER-185 (¶ 96); 1-ER-8-9 (citing 2-ER-98).

Plaintiffs also do not dispute the third element: that the social casino video games (including any virtual chips used within them) are “information provided by another information content provider.” 47 U.S.C. § 230(c)(1); *see* 2-ER-98. Third-party app developers created dozens of social casino games without any involvement from Meta. 2-ER-178-81 (¶¶ 70-74). Facebook’s role is to host the games and facilitate access to paid third-party content within the games. *See* p. 8, *supra*. Meta engaged in “proliferation and dissemination of content”—actions that do “not equal creation or development of content” in a way that could make Meta responsible for the content. *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1271 (9th Cir. 2016).

Because the claims target third-party content (social casino games and virtual chips) on an interactive computer service (Facebook), the only question is whether Plaintiffs’ claims seek to “treat[]” Meta “as the publisher or speaker” of that content. 47 U.S.C. § 230(c)(1). The term “publisher,” when enacted in 1996 as now, means “one that makes [something] public” or “one whose business is publishing.” *Webster’s Third New*

*International Dictionary* 1837 (1993). To “treat” a party as a publisher means to “regard,” “act toward[,] or deal with accordingly.” *Id.* at 2434. So a claim treats a defendant as a publisher when it seeks to hold a defendant responsible for the third-party content, as though the content were the defendant’s own.

As this Court has explained, Section 230 “protect[s] internet-based publishers of third-party content from liability.” *Twitter*, 148 F.4th at 640. This straightforward reading of Section 230 addresses the concern that drove its enactment. Congress passed Section 230 as part of the Communications Decency Act of 1996, Pub. L. No. 104-104, Tit. V, § 509, 110 Stat. 133, 137-39. One year earlier, a New York court had held that an internet service provider could be held liable for failing to remove defamatory material from an online bulletin board because the service had taken steps to remove other “objectionable material.” H.R. Rep. No. 104-458, at 194 (1996) (Conf. Rep.) (citing *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995)). Congress enacted Section 230 to save online services from a “grim choice”: attempt the impossible and remove *all* content that is potentially unlawful under any state-law tort regime, or remain a passive conduit and do nothing to

combat harmful content. *Roommates.com*, 521 F.3d at 1162-63; *see* 47 U.S.C. § 230(b)(4).

To implement the textual prohibition on “treat[ing]” an online service as a “publisher or speaker” of third-party content, this Court has used various formulations to describe claims that impermissibly hold interactive service providers responsible for third-party content. One analytical approach asks whether the claims challenge activities that “spring[] ‘from the defendant’s status as a publisher.’” *Twitter*, 148 F.4th at 642 (quoting *Calise*, 103 F.4th at 742). “[I]f the provider is disseminating content created by others, it is functioning as a publisher” and is protected from liability “related to that content.” *Id.* at 640; *accord Dyroff*, 934 F.3d at 1098.

The actions of a “publisher” are not limited to the mere display of content but also include decisions related to the “reviewing” or “editing” of third-party content. *Barnes*, 570 F.3d at 1102. Such decisions include the *manner* in which the third-party content is displayed, such as the defendant’s use of “tools” like notifications and recommendations “to facilitate the communication and content of others.” *Dyroff*, 934 F.3d at 1098. By contrast, the statute does *not* apply to a claim alleging that a



service was “disseminating content that it created,” *Twitter*, 148 F.4th at 640, offered a product with dangerous qualities unrelated to third-party content, *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1092 (9th Cir. 2021), or breached a “separate” duty arising from “another source” like a contract between the plaintiff and defendant, *Calise*, 103 F.4th at 740. The ultimate question is whether liability springs from the nature of the third-party content or from some independent source.

This Court’s decisions on products-liability claims demonstrate how the test works in practice. Some claims challenge product design under a liability theory that does not turn on “the publication of any content” in a way that implicates Section 230. *Twitter*, 148 F.4th at 645. For example, Section 230 does not foreclose a challenge to a product feature designed and offered by the service itself (a speedometer feature) that “incentiviz[ed] young drivers to drive at dangerous speeds” and breached the manufacturer’s duty “to refrain from designing a product that poses an unreasonable risk of injury or harm to consumers.” *Lemmon*, 995 F.3d at 1189, 1092. But Section 230 *does* bar challenges to features related to the dissemination or promotion of third-party content—such as claims that an app developer allowed third-party users to post anonymously,

knowing that users would make “harassing and bullying posts,” while failing to “mitigat[e]” the harm, *Estate of Bride*, 112 F.4th at 1180, or that “content neutral” features of an app were used to “facilitat[e] communication among users for illegal activity,” *Grindr*, 128 F.4th at 1152-53.

Although publisher activities suffice for Section 230 protection, Section 230 is not limited to that context because the statute expressly applies whenever a claim “*treat[s]*” the defendant “as the publisher”—not just when the defendant *acts* as an online publisher. 47 U.S.C. § 230(c)(1) (emphasis added). As a practical test to implement that language, this Court has applied a separate approach that asks whether “the means to avoid liability requires the defendant to act as a publisher.” *Twitter*, 148 F.4th at 642. A prime example is a claim that “obliges the defendant to ‘monitor third-party content’” as the only way to avoid liability. *Calise*, 103 F.4th at 742.

Either showing—that the claim challenges Meta’s publication activities or seeks to impose a duty that would require Meta to act as a publisher by monitoring such content—suffices to establish that Plaintiffs’ claims would treat Meta as a publisher of third-party content. *Calise*, 103 F.4th at 742.

**B. Plaintiffs' Liability Theory Would Hold Meta Responsible for Third-Party Content in Games on Facebook and Would Require Meta to Monitor All Third-Party Content Purchased on Facebook**

The plain text of Section 230, applicable precedent, and common sense all establish that a provider is protected from claims based on allegedly illegal third-party content and does not lose that protection simply because it receives a fee for facilitating access to that content. Meta makes third-party content available through various tools, including tools that allow in-app purchases. That Meta allows payment for third-party content does not change the application of Section 230 because the payments are indisputably made for making the content available, not for some other purposes. And because Plaintiffs do not challenge those tools across the board but only as applied to virtual chips within social casino games, their claims necessarily turn on the nature of third-party content and would require Meta to monitor the content that players buy within the apps. That is exactly what it means to treat Meta as the publisher of third-party content in violation of Section 230.

# **1. Plaintiffs’ Claims Challenge Meta’s Activities as Publisher of Social Casino Video Games**

Plaintiffs allege duties that treat Meta as a publisher under the first analytical approach described above. Because liability turns solely on the allegedly illegal nature of the content being purchased, the duties spring from Meta’s publication of virtual chips through in-app purchases, not from any technical aspect of how Meta permits payments for access to that third-party content.

a. As Plaintiffs describe Meta’s “payment processing” function, Meta “collects the money players spend on virtual chips, takes a cut for itself, and remits the rest” to the third-party developers. 2-ER-176 (¶ 61). Their allegation that Meta had a duty not to perform this function flows directly from Meta’s “role as a facilitator and publisher of third-party content” that players can buy. *Grindr*, 128 F.4th at 1153.

This case indisputably concerns third-party content—“any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). This Court has equated third-party information with “content created by others,” *Twitter*, 148 F.4th at 640, or “Internet speech,” *Roommates.com*, 521 F.3d at 1175; *see* 47 U.S.C. § 230(f)(3). That covers online video games like the social casino apps, which both fit the ordinary



understanding of content and qualify as speech under the First Amendment. *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 790 (2011). And the statutory phrase “any information” confirms that Section 230 covers information “of whatever kind,” whether accessed for free or for a fee. *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. 226, 237 (2025).

The alleged duty Plaintiffs advance derives directly from Meta’s status as a “publisher or speaker” of third-party content. 47 U.S.C. § 230(c)(1). They allege, in substance, that Meta cannot act as the for-profit publisher of video games that offer content for purchase. 2-ER-176 (¶ 61). Meta hosts the social casino video games on Facebook and “disseminat[es]” the virtual chips to people who purchase that third-party content. *Twitter*, 148 F.4th at 640. In the context of these video games, Meta’s in-app content-purchase function is a “tool[] meant to facilitate the communication and content of others.” *Dyroff*, 934 F.3d at 1098. By seeking to impose liability on Meta based on the allegedly unlawful nature of the video games and virtual chips, Plaintiffs “attempt to hold [Meta] responsible for [others’] speech or [Meta’s] decision to publish it.” *Estate of Bride*, 112 F.4th at 1180.

The challenged activity of exchanging third-party content for money, including remitting part of the payment to the creator, is “quintessentially the province of a publisher.” *Twitter*, 148 F.4th at 645. Traditionally, sellers of “books, newspapers, and magazines” allowed customers access to the speech of others “for profit.” *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952). Such sellers of third-party content enjoyed First Amendment protection from liability theories based on the nature of that content, even though the “medium for the communication of ideas” was “operat[ed] for profit,” *id.* at 501-02, and took “place under commercial auspices,” *Smith*, 361 U.S. at 150.

Section 230 does not silently draw the distinction that the First Amendment rejects. A “publisher” is “one whose *business* is publication.” *Barnes*, 570 F.3d at 1102 (emphasis added). So an online service that provides access to third-party content and then remits payments to the content creator acts “as a facilitator and publisher.” *Grindr*, 128 F.4th at 1153. Contemporary examples of the movie distributors and booksellers from *Burstyn* and *Smith* abound on the internet: Just as Meta makes video games available with in-game content for purchase, Audible sells audiobooks written and recorded by others, and Substack does the same

for online newsletters. Audible, *Audiobooks*, <https://tinyurl.com/mr2hzzcv> (last visited Apr. 10, 2026); Substack, *Substack.com*, <https://tinyurl.com/326a35kc> (last visited Apr. 10, 2026). Claims that challenge this third-party content spring from the services’ capacity as publishers even though they conduct business “for private profit,” just like traditional publishers have always done. *Burstyn*, 343 U.S. at 501.

This Court’s decision in *Perfect 10* illustrates the point. A company sued an online service that “allow[ed] consumers to use credit cards or checks to pay for subscriptions or memberships to e-commerce venues.” 488 F.3d at 1108. Perfect 10 claimed that the online service was violating intellectual-property laws by processing payments for users that were “infringing Perfect 10 copyrights.” *Id.* There, as here, the claim was that the defendant processed payments that allowed people to access allegedly unlawful content—misappropriated photos in *Perfect 10* versus social casino content here. This Court held that Section 230 barred the state-law claims because they “would make [the service] liable for information originating with a third-party user.” *Id.* at 1118-19; *see id.* at 1118 (noting that federal intellectual-property claims could proceed as they were expressly exempted under Section 230(e)(2)).

*Roommates.com* is similar. There, the plaintiffs brought housing-discrimination claims against the operator of a “website designed to match people renting out spare rooms with people looking for a place to live.” 521 F.3d at 1161. The website offered only “paying subscribers” access to an “Additional Comments” page where renters could list preferences for their ideal roommates. *Id.* at 1173. Some comments on that page were alleged to constitute unlawful discrimination because the renters expressed their preferences in prohibited ways based on race, religion, sexual orientation, or family status. *Id.* But even though the service charged for access to those discriminatory statements, that did not remove Section 230 protection for the website’s hosting activities. This Court held that Section 230 barred that claim, which would have held the online service liable based on the unlawful nature of third-party content. *Id.* at 1174. That reasoning fully applies here, where Meta merely makes available content that third-party app developers decide to design and sell, and that players decide to purchase. *See pp. 9-10, supra.*

This Court’s decision in *Carafano* is another example of Section 230 protecting an online service even when it charged a fee for facilitating access to third-party content. The service there operated a dating



website where users could “post anonymous profiles” for “a fee.” 339 F.3d at 1121. One user, pretending to be a famous actress, shared the real actress’s contact information and exposed her to harassing messages. *Id.* at 1121-22. She sued the online service for defamation, negligence, and invasion of privacy. *Id.* at 1122. But again, this Court held that Section 230 protected the online service—without altering its analysis of the treats-as-a-publisher element because of the defendant’s pay-to-post model. *Id.* at 1124-25.

Other circuits likewise reject any distinction between payment-processing activities and publishing activities. In *Jane Doe No. 1 v. backpage.com, LLC*, 817 F.3d 12 (1st Cir. 2016), for example, sex-trafficking victims sued a website that “charge[d] a posting fee” for advertising space purchased by their traffickers. *Id.* at 17. The plaintiffs argued that Section 230 did not apply because the site’s “acceptance of anonymous payments” was “distinguishable from publisher functions.” *Id.* at 20. The First Circuit disagreed. The claims sought to treat the service as a publisher because they “challenge[d] features that are part and parcel of the overall design and operation of the website” and “reflect choices about what content can appear on the website and in what form, [which] are

editorial choices that fall within the purview of traditional publisher functions.” *Id.* at 21.\*

Following this Court’s precedents, district courts in this Circuit have applied Section 230 to bar claims against “websites that process payments and transactions in connection with third-party listings.” *La Park La Brea A LLC v. Airbnb, Inc.*, 285 F. Supp. 3d 1097, 1106-07 (C.D. Cal. 2017) (collecting cases); *see, e.g., Doe v. WebGroup Czech Republic*, 767 F. Supp. 3d 1009, 1018-20 (C.D. Cal. 2025) (challenge to defendant’s use of “advertisements” and “revenue-sharing” in connection with unlawful content); *YZ Productions, Inc. v. Redbubble, Inc.*, 545 F. Supp. 3d 756, 769 (N.D. Cal. 2021) (claim that e-commerce website processed sales of allegedly infringing website designs); *Federal Agency of News LLC v. Facebook Inc.*, 432 F. Supp. 3d 1107, 1119 (N.D. Cal. 2020) (challenge to use of data analytics for paid advertisements); *Evans v. Hewlett-Packard Co.*, 2013 WL 4426359, at \*1 (N.D. Cal. Aug. 15, 2013) (claim that HP

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\* Congress later enacted the Allow States and Victims to Fight Online Sex Trafficking Act, Pub. L. No. 115-164, 132 Stat. 1253 (2018), which exempted certain sex-trafficking offenses from subsection (c)(1). 47 U.S.C. § 230(e)(5). There is no exception for civil claims invoking anti-gambling statutes—much less claims seeking to hold services liable for displaying video games that simulate casino games but do not offer players the chance to win real money. *Cf. Perfect 10*, 488 F.3d at 1118.

distributed illegal app where HP had “control over the revenues generated from sales of the app”); *Goddard v. Google, Inc.*, 2008 WL 5245490, at \*1 (N.D. Cal. Dec. 17, 2008) (claim that Google engaged in money laundering through “receipt of payments” for ads from fraudulent subscription providers).

b. The district court broke with these rulings by holding that Plaintiffs’ claims relate to Meta’s status as a payment processor, not its status as a publisher of the social casino video games and virtual chips. In so doing, the court committed three related errors that allowed the semantics of “payment processing” to distract from the core publishing functions that Plaintiffs target.

First, the district court sidelined the key consideration under Section 230: the role of “information provided by another information content provider” in Plaintiffs’ liability theory. 47 U.S.C. § 230(c)(1). The court identified the “crux” of Plaintiffs’ claims as the allegation that Meta unlawfully “process[ed] in-app payments for social casino apps.” 1-ER-12. It then reasoned that “[p]ayment processing is not an act of publishing,” but “a generic business activity common to virtually all companies, publishers or not, just like hiring workers or paying taxes.” 1-ER-12.

And it suggested that limiting Meta’s “ability to process certain payments” would not “interfere with [its] ability to publish third-party apps by offering them in [its] app store[] or by making in-app content available.” 1-ER-12. On that basis, the court concluded that Plaintiffs’ claims do not treat Meta “as a publisher.” 1-ER-12.

The district court’s attempt to equate Meta with “dedicated payment processors such as PayPal, Square, and Stripe,” 1-ER-12, changes nothing. As an initial matter, Plaintiffs’ own allegations negate any suggestion that Meta is functioning as a “dedicated payment processor” or money transmitter like PayPal, Square, or Stripe. What they challenge is simply the act of a content merchant that collects money from a customer and remits some of the money to the creator. As they describe the complained-of “payment processor” function, Meta “collects the money players spend on virtual chips, takes a cut for itself, and remits the rest to the Illegal Slots.” 2-ER-176 (¶ 61). Plaintiffs themselves say that Meta charges a commission for “hosting the app” and “processing the payments for th[e] consumers’ virtual chip purchases.” 2-ER-172 (¶ 14). And their complaint incorporates by reference Meta’s terms, under which developers appoint a Meta subsidiary as their “limited payment collection agent



for the sole purpose of *accepting payment* on [their] behalf . . . for *content* [they] offer on Facebook.” *Payments Terms, supra*; see 2-ER-176 (¶ 61); 2-ER-179 (¶ 73); 2-ER-184 (¶ 89).

This is nothing more than a complaint about making content available for a fee. Plaintiff are *not* complaining that Meta somehow did something wrong in *how* it processed their credit cards or displayed receipts. *E.g.*, 15 U.S.C. § 1681c(g)(1) (credit-card receipts shall not list “more than the last 5 digits of the card number”); Cal. Civ. Code § 1747.09(a) (same); *cf. Simonoff v. Expedia, Inc.*, 643 F.3d 1202, 1209 (9th Cir. 2011) (Section 1681c does not apply to emailed receipts). Nor do Plaintiffs allege a duty not to transmit money to a specific entity where the liability theory does not “depend on the particular content [any third party] place[d]” on Facebook. *Gonzalez v. Google LLC*, 2 F.4th 871, 898-99 (9th Cir. 2021), *vacated on other grounds*, 598 U.S. 617, 622 (2023) (per curiam). If any such duties existed, they might spring from payment processing rather than the publication of the content being purchased.

The district court overlooked this key difference between Meta and companies like PayPal, Square, and Stripe that merely provide financial services. Plaintiffs allege that Meta has a duty not to display

*content* in exchange for money, with a portion remitted to the third-party developers. 2-ER-176 (¶¶ 60-61). And they assert that otherwise-lawful payment-processing activities (*i.e.*, accepting money in exchange for content) become unlawful when an online service allows a person to purchase and access a *particular kind* of third-party content—namely, virtual chips used in social casino games. 2-ER-260. Section 230 applies because the source of the alleged illegality is “the content posted on [an online provider’s] services,” not the payment processing itself. *Estate of Bride*, 112 F.4th at 1175.

That distinction exposes the district court’s error in citing *Home Away*. There, two online home-rental services brought a Section 230 challenge against a city ordinance that barred homeowners from renting unregistered properties in Santa Monica. 918 F.3d at 680. The ordinance also “prohibit[ed] processing transactions for unregistered properties” but did “not proscribe, mandate, or even discuss the content of the listings.” *Id.* at 682-83. The services nonetheless argued that the prohibition on rental transactions was a de facto ban on third-party *listings* of unregistered properties because there would be no point in listing the properties if no rental transaction could be consummated. *Id.* at 681.

This Court disagreed, noting that “[i]t is not enough that third-party content is involved” in this remote and indirect sense. *Id.* at 682. To comply with the law, the services could cross-reference proposed transactions against the City’s database of registered properties before allowing a booking to proceed—all without taking down any third-party listing or considering the content of that listing. *Id.* The ordinance, in short, imposed liability not for the online “content of the bookings” but solely for the unlicensed real property transactions that the services facilitated in the offline world. *Id.* at 684.

This case is the opposite of *HomeAway*. Plaintiffs seek to impose liability on Meta for accepting players’ payments for online access to third-party content. And that liability depends directly on the nature of the “proscribe[d]” gambling content within social casino video games—meaning it would apply only to the purchase of virtual chips used in such apps. *Cf. HomeAway*, 918 F.3d at 683. Unlike the duty in *HomeAway* (entirely unrelated to any online content) to refrain from facilitating payments for rental properties, the alleged duty here is “not independent” of Meta’s role as publisher. *Grindr*, 128 F.4th at 1153. *HomeAway* has no bearing on an online service that *accepts payments for access to third-*

*party content*—an issue that this Court and others have consistently placed in the heartland of Section 230. *Perfect 10*, 488 F.3d at 1118; *see* pp. 40-44, *supra*.

Second, the district court’s suggestion that Plaintiffs’ claims challenge only “a generic business activity common to virtually all companies” makes no sense in this context. 1-ER-12. Facilitating the sale of third-party content *is* a traditional publishing activity. Although the court correctly acknowledged that “payment processing activities may be an important *part* of publishing activity,” it sought to isolate “[p]ayment processing” from “publishing” and then analyze the former in the abstract. 1-ER-12 (emphasis added).

That reasoning defies the text of Section 230, which asks whether the online service provider would be “treated as the publisher or speaker of any information,” 47 U.S.C. § 230(c)(1), not whether the challenged activity is *exclusive* to publishers. Exchanging third-party content for money and then remitting the money to the content creator is a quintessential publishing activity. *See* pp. 39-40, *supra*. No one would argue that movie theaters cease to be “publishers” when they sell tickets using cash registers, simply because grocery stores and other retailers have



checkout lines. Allowing in-app purchases of content for use in gameplay is “part and parcel” of the publication of video games, *Backpage.com*, 817 F.3d at 21, even if *different* services use tools to allow payments for things other than third-party content, like clothes, furniture, or rental properties, *cf. HomeAway*, 918 F.3d at 682-83. Because publishing—whether of video games, books, or movies—has always been a for-profit enterprise, there is no material difference between claims that challenge the *dissemination* of particular content and claims that challenge the *sale* of that content.

Congress enacted Section 230 against a backdrop of judicial decisions treating dissemination and sale as interchangeable bases for both liability and affirmative defenses. Historically, state courts held that booksellers were publishers liable for the content of wares written and bound by others. *E.g., Dunn v. Hall*, 1 Ind. 344, 354-55 (1849). The Supreme Court later put constitutional guardrails on liability theories for point-of-sale publication, holding that “[i]t is of course no matter” under the First Amendment “that the dissemination takes place under commercial auspices.” *Smith*, 361 U.S. at 150. But commercial auspices is *all* that matters under the district court’s reading of Section 230—a plaintiff

could always repackage a challenge to online content offered for sale as a challenge to the taking payment in exchange for that content. Because Congress enacted Section 230 to protect “First Amendment values,” *Backpage.com*, 817 F.3d at 29; accord, e.g., *Patterson v. Meta Platforms, Inc.*, 244 A.D.3d 29, 32 (N.Y. App. Div. 2025), this Court should not interpret Section 230 to adopt such a uniquely ahistorical approach for internet publication, see pp. 39-40, *supra*.

Third, the district court’s reasoning invites word games by making Section 230 protection hinge on whether Plaintiffs frame their claim as a challenge to the payment function itself or to the content that the payments make available. This Court has repeatedly refused to allow Section 230 to turn on “creative pleading,” *Kimzey*, 836 F.3d at 1265, or the “name of the cause of action,” *Barnes*, 570 F.3d at 1101-02. Under either framing, Plaintiffs assert a duty not to make allegedly unlawful third-party conduct available for purchase—a duty that “springs from . . . the defendant’s status as a publisher.” *Calise*, 103 F.4th at 742.

## **2. The Alleged Duties Would Require Meta to Monitor Third-Party Content Made Available for In-App Purchase on Facebook**

Plaintiffs’ claims separately treat Meta as a publisher of the social casino video games and the virtual chips because Meta could avoid liability only by monitoring apps on Facebook and, more specifically, the nature of the content available for purchase within those apps. The district court agreed that such monitoring would likely be necessary, but reasoned that Section 230 did not apply because Meta could just stop accepting payments for *any* in-app purchases. That makes no sense. In every case involving Section 230, the online service could always close up shop or scrap the challenged third-party content. But that extreme action has always been the evil that Section 230 aims to prevent—not to require.

a. Plaintiffs’ claims would impermissibly require Meta to “act as a publisher” to avoid liability. *Twitter*, 148 F.4th at 642. The only way for Meta to avoid those claims would be to monitor all games and then remove one particular type of online third-party content (virtual chips) from its payment options for one particular type of game (social casinos). Such compelled monitoring of third-party content on pain of liability is what Congress meant to eliminate by enacting Section 230. *Carafano*,

339 F.3d at 1123. Section 230 bars liability on theories that would require an online service “to ‘remove any user content or otherwise affect how it publishes or monitors such content.’” *Calise*, 103 F.4th at 741 (quoting *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 851 (9th Cir. 2016)); accord, e.g., *Grindr*, 128 F.4th at 1153. Plaintiffs’ claims would impermissibly “oblige[] [Meta] to monitor third-party content to avoid liability.” *Twitter*, 148 F.4th at 640 (quoting *Calise*, 103 F.4th at 742).

As Plaintiffs describe their claim, Meta would first have a duty to identify social casino video games. Meta would have to “actively vet and evaluate” the myriad apps currently hosted on Facebook. *Calise*, 103 F.4th at 744. For each app, Meta would have to analyze the particulars of the gameplay—whether the game mimics a virtual casino, whether it offers virtual chips or similar content for purchase, how those chips can be used within the game, and so on.

Meta then would have to assess the jurisdictions where each social casino game could be accessed and the laws of each such jurisdiction. Gaming laws vary state-by-state, as shown in the district court’s analysis of the 21 different States Plaintiffs put at issue across these coordinated actions, 1-ER-18-29, to say nothing of the other 29 States and the District



of Columbia. For each State, Meta would need to analyze the relevant laws and apply them to the virtual chips within the games. *See, e.g., Kater*, 886 F.3d at 788 (distinguishing Washington’s “broad definition” of gambling from “different state statutes [and] state definitions”); *Mason v. Mach. Zone, Inc.*, 851 F.3d 315, 320 (4th Cir. 2017) (Maryland law does not recognize virtual currency that is “available and used only within” a game as a thing of value that can be gambled).

Once Meta identified all social casino games on Facebook and assessed their compliance with each jurisdiction’s laws, it then would have to prevent developers from making virtual chips—or whatever other digital content is supposedly being “gambled”—available through Meta’s in-app purchase function. This duty to remove content otherwise available for in-app purchase confirms that “the alleged duty would require [Meta] to monitor third-party content.” *Grindr*, 128 F.4th at 1153.

All this monitoring activity “can be boiled down to deciding whether to exclude material that third parties seek to post online”—the core conduct that Section 230 protects. *Roommates.com*, 521 F.3d at 1170-71. These monitoring duties leave no doubt that Plaintiffs’ claims would treat Meta as a publisher of the social casino games and the virtual chips.

b. The district court acknowledged that the duty Plaintiffs allege would require Meta to monitor third-party content, including by “cross-referenc[ing] [each] transaction against the app it originated in” to determine whether the transaction would be lawful. 1-ER-13. But the court dismissed this concern because, in its view, Meta had another option—it could avoid liability by “choos[ing] to stop offering [its] own payment processing and allow app developers to use the services of dedicated third-party processors.” 1-ER-13. So in the district court’s view, Section 230 put Meta to the choice of monitoring third-party content or ceasing to allow content for a fee on Facebook.

The district court recognized that this course of action would “no doubt cause dramatic upheaval in Defendants’ businesses” and “cost each Defendant millions if not billions in revenue.” 1-ER-13-14. But no matter: The theoretical possibility of not processing transactions purportedly proved that monitoring content was not Meta’s *only* way to avoid liability. 1-ER-14. The sole respite from that conclusion, the court suggested, was that Section 230 *might* apply if “the termination of [its] payment processing services would pose an existential threat” to Meta or “would prevent [Meta] from engaging in [its] publishing activities.” 1-ER-14.

The district court’s analysis contradicts the text of Section 230 and this Court’s precedents. Section 230 speaks in mandatory and forward-looking terms: “[N]o interactive computer service provider shall be treated as the publisher or speaker” of “any” information provided by a third party. 47 U.S.C. § 230(c)(1). It does not look backward and deny protection if the provider, in hindsight, might have just declined to host the challenged third-party content or disabled its tool for allowing content access. Nor does Section 230 allow *some* level of treatment as a publisher, so long as the resulting liability would not cause “an existential threat” to the provider. 1-ER-14. A defendant *always* can avoid liability by stopping the challenged conduct. But grafting such a requirement onto Section 230 is nonsensical. The whole point of an immunity is to “protect” conduct “from liability,” *Twitter*, 148 F.4th at 640, not to coerce the defendant into abandoning the protected activity.

The district court’s reasoning also conflicts with *Calise*, which reiterated that Section 230 bars an alleged duty that “obliges the defendant to ‘monitor third-party content’—or else face liability.” 103 F.4th at 742. There, the plaintiffs sought to impose liability on Meta because “certain parties [were] profiting by posting fraudulent third-party ads on its

website.” *Id.* at 743. This Court held that Section 230 applied because Meta “would need to actively vet and evaluate third party ads.” *Id.* at 744. But on the district court’s reasoning, Meta could have avoided monitoring by *abandoning* the publication of all third-party ads, eliminating any content that would otherwise require monitoring.

Or take *Twitter*, where the plaintiffs claimed that Twitter was liable for creating hashtag and search functions that supposedly enabled users to mark and identify child pornography. 148 F.4th at 646. This Court held that Section 230 barred the claims because, “upon designing neutral hashtag and search tools, Twitter would be required to monitor and act when its users adapt them to illicit ends.” *Id.* at 647. Yet the district court’s reasoning would deny Section 230 protection because Twitter could have ceased allowing any hashtags to avoid liability. If users had no option to use hashtags, Twitter would not have to monitor their content—just as if Meta did not allow in-app purchases, it would not have to monitor purchased content.

The district court highlighted (1-ER-14) a passing line in a footnote from *Estate of Bride*, where this Court stated that monitoring “must be the only option”—not just a “possible response[.]”—for Section 230 to



apply. 112 F.4th at 1177 n.3. The district court read this language out of context, without considering the rule that “the language of an opinion is not always to be parsed as though we [are] dealing with language of a statute.” *Abbey v. United States*, 112 F.4th 1141, 1149 (9th Cir. 2024) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979)). The proof is *Estate of Bride* itself, which held that the plaintiffs could not challenge features allowing anonymous messages because their claims were “essentially faulting [the defendant] for not moderating content in some way, whether through deletion, change, or suppression.” 112 F.4th at 1180. Although the defendant could have avoided monitoring by disabling the anonymous-speech function, this Court did not view that option as legitimate under Section 230, leaving monitoring there (as here) as the “only option.” *Id.* at 1177 n.3.

The district court’s misreading of *Estate of Bride* is even more apparent when one considers that the footnote described *HomeAway*. 112 F.4th at 1177 n.3; *see* p. 48, *supra*. The online rental companies in *Home Away* argued that the “most practical compliance option” to avoid booking rentals for unregistered properties would be to “remove noncompliant third-party listings.” 918 F.3d at 683. But the challenged ordinance did

not regulate third-party content at all and certainly did not require monitoring of such content. As this Court noted, the rental companies could comply with the ordinance without monitoring third-party listings *or* changing how they published the listings. *Id.* at 682-84. All they had to do was “cross-reference” proposed rental transactions against an external database maintained by the city. *Id.* at 682. For that reason, there was a readily available and practical alternative to monitoring that did not require the online service to change *what* third-party content was available or *how* the service disseminated that content.

This Court has already underscored the critical distinction between *HomeAway* and cases like this. *HomeAway* is irrelevant when a claim would require the defendant “to review the content provided by third parties.” *Calise*, 103 F.4th at 741 (quoting *HomeAway*, 918 F.3d at 682) (alteration omitted); *see also, e.g., L.W. v. Snap Inc.*, 675 F. Supp. 3d 1087, 1097-98 (S.D. Cal. 2023). That is the situation here: Meta cannot know what transactions are allegedly unlawful without considering the underlying third-party content. Monitoring that content *is* Meta’s “only option.” *Estate of Bride*, 112 F.4th at 1177 n.3. To hold that Section 230 does not apply because Meta could just stop allowing in-app purchases

would “casually eviscerat[e]” the statutory protection enacted by Congress. *Kimzey*, 836 F.3d at 1269.

**C. The District Court’s Reading of Section 230 Would Threaten the Online Availability of Third-Party Content**

The district court acknowledged that its decision “would no doubt cause dramatic upheaval in Defendants’ businesses” and “could cost each Defendant millions if not billions in revenue.” 1-ER-13. In fact, it would have far broader destabilizing effects. The district court’s erroneous ruling would severely restrict the availability of third-party content online and undermine Section 230’s enacted purpose.

When Congress granted statutory protection to online services that host third-party content, it codified its policy judgment that the “vibrant and competitive free market” for online services should remain “unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2). This Court has interpreted Section 230 to further this objective to “promote the development of e-commerce.” *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003), *superseded by statute on other grounds as stated in Breazeale v. Victim Servs., Inc.*, 878 F.3d 759, 766-67 (9th Cir. 2003).

That statutory purpose embraces virtual content sold by third parties through online services. *E.g.*, *Perfect 10*, 488 F.3d at 1108. Under the district court’s reasoning, there would be no shortage of “clever lawyer[s]” repackaging their claims as challenges to tools for *purchasing* content rather than the *hosting* of the very same content. *Roommates.com*, 521 F.3d at 1174. Plaintiffs’ wordplay of trying to isolate the transaction from the underlying content would eviscerate Section 230’s text and purpose, as well as the Court’s decisions—none of which suggests that protection turns on whether the service received compensation for making third-party content available online. The Court should not greenlight this kind of “creative pleading in an effort to work around § 230.” *Kimzey*, 836 F.3d at 1265.

Nor is it hard to imagine the many cases that the district court’s reading of Section 230 would allow. Americans turn to interactive media for “a variety of political, educational, cultural, and entertainment services.” 47 U.S.C. § 230(a)(5). Take the ebooks and newsletters available for a fee through Audible and Substack. *See* pp. 39-40, *supra*. Or consider other online services that process subscriptions for third-party podcasts (like Spotify) or blogs (like WordPress). *E.g.*, Carman, *Spotify*



*Launches Podcast Subscriptions, but You Can't Subscribe In-App*, The Verge (Apr. 27, 2021), <https://tinyurl.com/maj8vrt8>; WordPress.com, *Create Your Blog with the Best Blogging Platform*, <https://tinyurl.com/2pdsjkmt> (last visited Apr. 10, 2026). Under the district court's reasoning, any plaintiff alleging harm from this content could sue the online intermediary for its role in the "payment processing activities" related to the content—all the while disclaiming any attempt to impose liability for hosting the content itself. 1-ER-12.

The district court's approach also raises fundamental problems of administrability and fairness. Although the court suggested that Section 230 would not require an online service to discontinue features that trigger monitoring duties if that action "would pose an existential threat" to the service, 1-ER-14, courts are ill equipped to determine which aspects of an online service can be discarded with only "dramatic" (but not "existential") consequences. "Websites are complicated enterprises," and the district court's invitation to plaintiffs' lawyers to unravel websites on a feature-by-feature basis would "cut the heart out of section 230 by forcing websites to face death by ten thousand duck-bites." *Roommates.com*, 521 F.3d at 1174.

In the end, there is no principled distinction under Section 230 between making third-party content available by hosting it and accepting a fee for access to that content. Such semantics would place online services in an “impossible” situation where Meta would have to review every online game, Spotify would have to listen to every podcast, and Substack would have to read every newsletter “for possible problems” before making them available for purchase online—or face potentially devastating liability. *Carafano*, 339 F.3d at 1124; *accord Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997).

Worse still, online services may take the district court’s advice to stop developing and offering tools to display third-party content in the first place, shrinking and balkanizing the online marketplace for digital content. 1-ER-13. Burdening online services with this monitoring dilemma would hinder, not “promote,” the development of online commerce. 47 U.S.C. § 230(b)(1), (2); *see Batzel*, 333 F.3d at 1027. Under the district court’s reasoning, online services—like publishers throughout history—would be more likely to “severely restrict” third-party content that they make available given the “obvious chilling effect” of the “specter

of tort liability.” *Carafano*, 339 F.3d at 1124; *see Smith*, 361 U.S. at 153 (noting chilling effect as part of First Amendment analysis).

Correctly reading Section 230 would not leave Plaintiffs without a remedy for any alleged harms they have suffered. Section 230 ensures that “the original culpable party” cannot “escape accountability” for unlawful content. *Zeran*, 129 F.3d at 330; *accord Doe v. MySpace, Inc.*, 528 F.3d 413, 419 (5th Cir. 2008). If Plaintiffs are right that social casino games are illegal under some States’ laws, they can pursue claims against the third-party developers of those games. Plaintiffs’ counsel already has secured significant settlements from some developers. *E.g.*, *Benson v. DoubleDown*, No. 18-cv-0525-RSL (W.D. Wash.); *Thimmegowda v. Big Fish Games Inc.*, No. 2:19-cv-199 (W.D. Wash.). Yet they now seek duplicative recoveries against the online publishers through a shortcut that Section 230 forbids. This Court should reverse the district court’s judgment and restore the balance Congress struck.

## **II. Section 230 Bars Every Claim Asserted Against Meta**

Plaintiffs’ complaint asserts three categories of claims against Meta: (1) claims under state gambling statutes, which are then asserted as predicates for federal RICO claims, (2) claims under consumer-

protection statutes, and (3) claims under common-law principles of unjust enrichment. 2-ER-197-249 (¶¶ 137-541). For each category, the relevant question under Section 230 is “how Meta would comply with this obligation” and “avoid infringing on Plaintiffs’ purported rights.” *Calise*, 103 F.4th at 743 (applying this test to unjust enrichment); *see, e.g., Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d 1169, 1172-73 (9th Cir. 2009) (same for consumer-protection claims); *Roommates.com*, 521 F.3d at 1164 (same for federal-law claims).

Each claim targets the same conduct under the same alleged duty. When this Court dismissed Meta’s earlier appeal, it instructed the district court to focus its Section 230 analysis on “the underlying legal duty.” *Facebook Simulated Casino-Style Games*, 2024 WL 2287200, at \*2. On remand, the district court assessed the alleged duty giving rise to each of Plaintiffs’ claims. 2-ER-275. Plaintiffs confirmed that “*all* of [their] claims are brought under a ‘processing virtual chip payments’ theory.” 2-ER-259. And to leave no doubt, they checked the box associated with that alleged duty for all claims. 2-ER-272-73.

Under Plaintiffs’ own analysis, the same Section 230 analysis applies to all claims against Meta. Each would treat Meta as a publisher



or speaker of third-party content in social casino video games because liability would turn on the nature of the third-party content (the virtual chips) to which Meta provided access. *See* pp. 37-51, *supra*. Each claim also imposes an impermissible duty to monitor third-party content because Meta could avoid liability only by preventing third-party developers from selling and players from buying virtual chips in certain apps. *See* pp. 52-60, *supra*. Either conclusion means that Section 230 bars the claims.

### CONCLUSION

The Court should reverse the district court's order denying in part Meta's motion to dismiss and remand with instructions for the court to dismiss Plaintiffs' amended master complaint with prejudice.

Dated: April 10, 2026

Respectfully submitted,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.

*Counsel for Defendant-Appellant  
Meta Platforms, Inc.*

### **CERTIFICATE OF COMPLIANCE**

This brief complies with the word limit of Circuit Rule 32-1(a) because it contains 12,955 words, excluding the portions exempted by Rule 32(f) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)(A) and (a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point New Century Schoolbook font.

Dated: April 10, 2026

Respectfully submitted,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.

### **CERTIFICATE OF RELATED CASES**

Under Circuit Rule 28-2.6, Defendant-Appellant Meta Platforms, Inc. identifies *Custodero v. Apple, Inc.*, No. 25-7917 as a related appeal that was coordinated in the district court and raises the same or closely related issues.

Dated: April 10, 2026

Respectfully submitted,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.

# **STATUTORY ADDENDUM**



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**47 U.S.C. § 230 - Protection for private blocking  
and screening of offensive material**

**(a) Findings**

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

**(b) Policy**

It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

**(c) Protection for “Good Samaritan” blocking and screening of offensive material**

**(1) Treatment of publisher or speaker**

No 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.

**(2) Civil liability**

No provider or user of an interactive computer service shall be held liable on account of—

(A) 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, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

...

**(f) Definitions**

As used in this section:

**(1) Internet**

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

**(2) Interactive computer service**

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

**(3) Information content provider**

The term “information content provider” means 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.

**(4) Access software provider**

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

**(A)** filter, screen, allow, or disallow content;

**(B)** pick, choose, analyze, or digest content; or

**(C)** transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.