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News Item

Free Speech vs. Free Ride: Navigating the Supreme Court's Social Media Paradox | Communications of the ACM

By Marshall Van Alstyne
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> The Supreme Court has an analogy problem. Are social media more like publishers, who have free speech editorial rights and liability for their decisions? Or are they more like common carriers, who serve everyone and hold no liability for what their users post? The need for content moderation inclines the Court toward the publisher analogy but this trade-off is hard, so hard that it just sent a second pair of cases back for lower courts to clarify.
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> Social media firms want the best of both. They want publishers' freedom to exclude users and control over editorial decisions but common carrier protection from user content liability. They argue the former in *Moody v. NetChoice* and *NetChoice v. Paxton*, where Florida and Texas sought to prevent them from discriminating against conservative speech. They argue the latter in *Twitter v. Taamneh* and *Gonzalez v. Google*, where they stand accused of failing to take meaningful action to thwart terrorists who use their services to "recruit members, plan … attacks, [and] issue … threats." No other industry is so privileged—free to decide how it operates yet free of decision consequences. Unlike the print and broadcast industries, and most others, they do not even incur production costs; you and I as users and content creators do.
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