

BROKEN SHIELDS: HOLDING SOCIAL MEDIA GIANTS ACCOUNTABLE FOR THE YOUTH MENTAL HEALTH CRISIS

Abstract: The United States is experiencing a youth mental health crisis associated with the rise in social media pervasiveness. As a result, state attorneys general, school districts, and individuals across the nation have sued major social media companies, alleging that their platforms are harmful to youth and are defective by design. These suits have culminated in a large multi-district litigation against the social media companies that operate the world's largest social media platforms: Meta (Facebook and Instagram), Snap (Snapchat), ByteDance (TikTok), and Google (YouTube). In November of 2023, in *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, the U.S. District Court for the Northern District of California granted in part and denied in part the defendant social media companies' motion to dismiss the plaintiffs' product liability claims. The court held that § 230 of the Communications Decency Act of 1996 and the First Amendment of the U.S. Constitution barred some of the plaintiffs' products liability claims but did not preclude others. Although § 230 has traditionally shielded social media companies from liability, products liability theory is an alternate cause of action that could help regulate online platforms. This Note argues that products liability law is an appropriate avenue for holding social media companies accountable for their role in the youth mental health crisis.

INTRODUCTION

Distressed families gathered in the audience for the January 2024 U.S. Senate Judiciary Committee hearing on social media and child safety.¹ As Meta CEO Mark Zuckerberg addressed the crowd, apologizing for what the families had been through, parents held up photographs of their children who took their own lives due to harassment on social media.² The crowd applauded as

¹ See Kerry Breen, *Meta CEO Mark Zuckerberg Apologizes to Parents of Victims of Online Exploitation in Heated Senate Hearing*, CBS NEWS, <https://www.cbsnews.com/news/mark-zuckerberg-apologizes-parents-victims-online-exploitation-senate-hearing/> [<https://perma.cc/NT8J-7CNH>] (Jan. 31, 2024). The hearing addressed online child sexual exploitation, and CEOs of major social media platforms, including Instagram, TikTok and Snapchat answered questions on social media's impact on children. *Id.*

² See Cheyenne Haslett & Alexandra Hutzler, *Mark Zuckerberg Apologizes to Families as Senate Grills Tech CEOs*, ABC NEWS (Jan. 31, 2024), <https://abcnews.go.com/Politics/social-media-ceos-face-grilling-senators-child-safety/story?id=106825984> [<https://perma.cc/D2ZN-UGZP>] (showing Zuckerberg apologizing to families in the audience, some of whom held up photographs of their children who took their own lives).

multiple U.S. senators admonished Zuckerberg for failing to ensure child safety on Meta platforms Facebook and Instagram.³

The parents in the audience emblemize widespread concerns over the impact of social media on children's well-being.⁴ To the dismay of parents, guardians, and other caregivers across the nation, the United States is currently enduring a "youth mental health crisis."⁵ Levels of clinical depression among teenagers doubled between 2011 and 2019.⁶ The increase in adolescents struggling with mental health tracks closely to the rising proliferation of social media usage, and this correlation has ignited widespread concern for the impact of social media on youth⁷ mental health.⁸

³ See Kate Gibson, *Mark Zuckerberg Accused of Having "Blood on His Hands" in Fiery Senate Hearing on Internet Child Safety*, CBS NEWS, <https://www.cbsnews.com/news/mark-zuckerberg-meta-x-child-exploitation/> [<https://perma.cc/W8QX-BJD2>] (Jan. 31, 2024) (reporting that the audience applauded and cheered when Senator Lindsey Graham accused Zuckerberg of having a "product that's killing people"); Haslett & Hutzler, *supra* note 2 (recounting how various senators critiqued Zuckerberg at the Senate Judiciary Committee Hearing). Senator Lindsey Graham was not Zuckerberg's only critic; rather, the Chair of the Committee, Senator Dick Durbin, criticized social media platforms for their failure to protect children. Breen, *supra* note 1. Furthermore, Senator Jon Ossoff prompted Zuckerberg to admit to the danger his platforms pose to young people, Senator John Kennedy questioned Zuckerberg's ability to run his company, and Senator Josh Hawley asked Zuckerberg if he would "like to apologize for what [he had] done to these good people," referring to the grieving parents in the crowd. Haslett & Hutzler, *supra* note 2.

⁴ See Alli Aldis, *New Survey Explores Parent Concerns on Social Media Usage and Absenteeism*, EDCHOICE (Oct. 12, 2023), <https://www.edchoice.org/engage/new-survey-explores-parent-concerns-on-social-media-usage-and-absenteeism/> [<https://perma.cc/VVA9-749Q>] (finding that about "[h]alf of parents" are "extremely or very concerned" about social media's impact on child mental health).

⁵ See *Fact Sheet: Biden-Harris Administration Announces Actions to Protect Youth Mental Health, Safety & Privacy Online*, AM. PRESIDENCY PROJECT (May 23, 2023), <https://www.presidency.ucsb.edu/documents/fact-sheet-biden-harris-administration-announces-actions-protect-youth-mental-health> [<https://perma.cc/FJN4-P6PY>] (proclaiming an "unprecedented youth mental health crisis" in the United States); Janelle Chaves, *Children's Mental Health Tops List of Parent Worries, Survey Finds*, CNN (Jan. 31, 2023), <https://www.cnn.com/2023/01/31/health/mental-health-parenting-survey/> [<https://perma.cc/G5W9-W5WX>] (reporting that 40% of parents in the United States are "extremely" or "very" concerned that their children will suffer from depression or anxiety); see also Erika Edwards, *CDC Says Teen Girls Are Caught in an Extreme Wave of Sadness and Violence*, NBC NEWS, <https://www.nbcnews.com/health/health-news/teen-mental-health-cdc-girls-sadness-violence-rcna69964> [<https://perma.cc/KEU4-ACPC>] (Feb. 13, 2023) (finding that a large percentage of teenagers could not partake in their regular activities due to feeling hopeless or sad).

⁶ See The Ezra Klein Show, *Transcript: Ezra Klein Interviews Jean Twenge*, N.Y. TIMES. (May 19, 2023), <https://www.nytimes.com/2023/05/19/podcasts/transcript-ezra-klein-interviews-jean-twenge.html> [<https://perma.cc/T53E-M5KB>] (discussing the trends in survey data on youth mental health). Psychologist Jean Twenge suggests that social media use, and the resulting changes in how teens spend their time outside school, temporally aligns to the rise in youth mental health struggles. *Id.*

⁷ This Note refers to children and adolescents collectively as "youth." Although social media platforms set a minimum age requirement of thirteen, research suggests that social media use is growing among eight-to-twelve-year-olds. VICTORIA RIDEOUT, ALANNA PEEBLES, SUPREET MANN & MICHAEL B. ROBB, COMMON SENSE MEDIA, THE COMMON SENSE CENSUS: MEDIA USE BY TWEENS AND TEENS 5 (2021), https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf [<https://perma.cc/542Y-CG5H>]; see, e.g., *Report a Child Under 13 on Instagram*, INSTAGRAM, <https://help.instagram.com/517920941588885> [<https://perma.cc/>

Although youth use social media extensively, research on its safety remains limited in scope.⁹ Nevertheless, studies suggest that, although social media can provide a space for youth to express themselves and connect with others, it can also negatively impact their mental health and well-being.¹⁰ On a fundamental level, social media use displaces other healthy activities and alters how youth connect with the world around them.¹¹ Furthermore, excessive so-

4Y95-L3G2] (stating that Instagram mandates that users be at least thirteen-years-old to create an account). In 2021, researchers found that 38% of eight to twelve years olds used social media, which marked a 7% increase from 2019. RIDEOUT ET AL., *supra*. The same study found that, on average, teenagers ages thirteen to eighteen-years-old spend approximately an hour and a half on social media per day. *Id.*

⁸ See U.S. PUB. HEALTH SERV., SOCIAL MEDIA AND YOUTH MENTAL HEALTH: THE U.S. SURGEON GENERAL'S ADVISORY 13 (2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf> [<https://perma.cc/4GYP-S35E>] (declaring that there is currently a "national youth mental health crisis" and noting that prompt action must be taken to protect youth from the harmful risks that social media poses). The youth mental health emergency has widely been associated with the rise of social media and the risks social media poses to adolescents. See, e.g., *Is Social Media Threatening Teens' Mental Health and Well-Being?*, COLUM. UNIV. IRVING MED. CTR. (May 20, 2021), <https://www.cuimc.columbia.edu/news/social-media-threatening-teens-mental-health-and-well-being> [<https://perma.cc/G2GT-E4BK>] (reporting that spending more time on social media results in a greater chance that a person will confront mental health struggles, including hopelessness, isolation, and anxiety); Erika Edwards & Hallie Jackson, *Social Media Is Driving Teen Mental Health Crisis, Surgeon General Warns*, NBC NEWS (May 23, 2023), <https://www.nbcnews.com/health/health-news/social-media-mental-health-anxiety-depression-teens-surgeon-general-rcna85575> [<https://perma.cc/2PP8-XWT5>] (noting that, in 2023, then Surgeon General Vivek Murthy warned that there is not enough evidence to show that social media is "sufficiently safe for our kids").

⁹ See U.S. PUB. HEALTH SERV., *supra* note 8, at 4 (noting that researchers have not conducted "robust independent safety analyses" regarding social media's impact on adolescents, despite a majority of teenagers using it). Evidentiary gaps are, in part, driven by a lack of transparency and data from social media companies. *Id.* at 11.

¹⁰ See AM. PSYCH. ASS'N, HEALTH ADVISORY ON SOCIAL MEDIA USE IN ADOLESCENCE 3 (2023), <https://www.apa.org/topics/social-media-internet/health-advisory-adolescent-social-media-use.pdf> [<https://perma.cc/FNX3-R8Y6>] (examining the positive and negative effects of social media use on teenagers); Chris Hollis, Sonia Livingstone & Edmund Sonuga-Barke, *The Role of Digital Technology in Children and Young People's Mental Health—A Triple-Edged Sword?*, 61 J. CHILD PSYCHY. & PSYCHIATRY 837 (2020) (explaining that although social media allows for learning and development, it simultaneously opens youth up to a range of serious mental health risks); see also Yalda T. Uhls, Nicole B. Ellison & Kaveri Subrahmanyam, *Benefits and Costs of Social Media in Adolescence*, 140 PEDIATRICS S67 (2017) (noting that the benefits of social media use include social support, self-exploration, and self-disclosure); Kirsten Weir, *Social Media Brings Benefits and Risks to Teens. Here's How Psychology Can Help Identify a Path Forward*, 54 MONITOR ON PSYCH. 46 (Sept. 1 2023) (explaining how adolescents are especially vulnerable to social media's "charms and harms" because "brain regions associated with the desire for attention, feedback, and reinforcement from peers become more sensitive" as adolescents' brains develop and at the same time "brain regions involved in self-control have not fully matured").

¹¹ See Caroline Miller, *Does Social Media Use Cause Depression?*, CHILD. MIND INST. (2023), <https://childmind.org/article/is-social-media-use-causing-depression/#> [<https://perma.cc/N4FS-Z4H6>] (noting that a possible source of youth depression may be the displacement of physical activity and activities that "generate a sense of accomplishment" like developing new skills and talents and that this displacement may be caused by the prevalence of social media screen-time); Jean M. Twenge, Thomas E. Joiner, Megan L. Rogers & Gabrielle N. Martin, *Corrigendum: Increases in Depressive*

cial media use is linked to attention and sleep problems, and it can result in individuals feeling as if they are being excluded by their peers.¹²

Social media use is also associated with content- and user-related risks.¹³ Even seemingly benign content on social media is potentially harmful as it may promote social comparison.¹⁴ On the other end of the spectrum, youth may encounter manifestly harmful content, including hate-based, self-harm, and suicide-related content.¹⁵ Moreover, social media sites provide an open forum for cyberbullying and predatory interactions.¹⁶

Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time, 6 CLINICAL PSYCH. SCI. 3, 13 (2017), <https://doi.org/10.1177/2167702617723376> (finding that the rise in screentime correlates to declines in non-screen activities and thus time spent on social media can be understood as a critical risk indicator for depression and suicide).

¹² See U.S. PUB. HEALTH SERV., *supra* note 8, at 10 (discussing the consequences of excessive social media use by adolescents).

¹³ See *infra* notes 14–16 and accompanying text (discussing risks to mental health connected to social media use).

¹⁴ See Qiuyu Han, *Social Media and Well-Being Under Social Media Influence*, 664 ADVANCES SOC. SCI., EDUC. & HUMANS. RSCH. 633, 633 (2022) (noting that social media may augment social comparison “by continuously providing users with information about others”). When using social media platforms, youth inevitably compare themselves to others, which can lead to feelings of inferiority and low self-esteem. See *Is Social Media Threatening Teens’ Mental Health and Well-being?*, *supra* note 8 (discussing the “culture of comparison” that arises from social media use and the corresponding tendency to view oneself through a negative lens which puts youth at risk of increased depression and isolation). Social comparison perpetuates body image struggles and disordered eating. See Han, *supra*, at 635 (noting that especially in young women, social comparison is related to body dissatisfaction). One teenage girl noted that models on social media promote “unhealthy beauty expectations” for teenagers, and because teenagers are “just trying to fit in,” these expectations “get to us.” Common Sense Educ., *Teen Voices: Who Are You on Social Media*, YOUTUBE (Sept. 16, 2019), <https://www.youtube.com/watch?v=cLFMBT1Ayls> [<https://perma.cc/V6DJ-FC33>].

¹⁵ VICTORIA RIDEOUT & MICHAEL B. ROBB, COMMON SENSE MEDIA, SOCIAL MEDIA, SOCIAL LIFE: TEENS REVEAL THEIR EXPERIENCES 15 (2018), <https://www.commonsensemedia.org/sites/default/files/research/report/2018-social-media-social-life-executive-summary-web.pdf> [<https://perma.cc/9HJ7-4NZ7>] (reporting that 64% of teenagers often or sometimes encounter sexist, racist, religious-based, or homophobic hate content on social media); Aksha M. Memon, Shiva G. Sharma, Satyajit S. Mohite & Shailesh Jain, *The Role of Online Social Networking on Deliberate Self-Harm and Suicidal-ity in Adolescents: A Systematized Review of Literature*, 60 INDIAN J. PSYCH. 384 (2018) (discussing a study in which participants aged thirteen to twenty receiving treatments for depression reported encountering self-harm, disordered eating, and cyberbullying content on “online social networks” and felt encouraged to emulate the behavior); U.S. PUB. HEALTH SERV., *supra* note 8, at 8 (noting that youth deaths have been associated with self-harm and suicide-related content); JACQUELINE NESI, SUPREET MANN & MICHAEL B. ROBB, COMMON SENSE MEDIA, TEENS AND MENTAL HEALTH: HOW GIRLS REALLY FEEL ABOUT SOCIAL MEDIA 12 (2023), https://www.commonsensemedia.org/sites/default/files/research/report/how-girls-really-feel-about-social-media-researchreport_web_final_2.pdf [<https://perma.cc/2BMK-8NGH>] (finding that roughly four in ten girls on Instagram and TikTok report finding damaging suicide-related content on these platforms at least monthly).

¹⁶ See Memon et al., *supra* note 15, at 385 (noting that social media sites present a space for cyberbullying). Cyberbullying is bullying inflicted through technology and includes name calling, exclusion of others, and sharing of embarrassing or private photos. Ashely Abramson, *Cyberbullying: What Is It and How Can You Stop It?*, AM. PSYCH. ASS’N (Sept. 7, 2022), <https://www.apa.org/topics/bullying/cyberbullying-online-social-media> [<https://perma.cc/7HN9-UX3M>]; see Emily A. Vogels,

On May 23, 2023, U.S. Surgeon General Vivek Murthy released an advisory, calling for urgent action from stakeholders to better understand the impact of social media on young people.¹⁷ Without directly admonishing social media companies, the Surgeon General expressed concern for how social media apps are designed and utilized by youth in the United States.¹⁸ Although the creators of social media platforms are not legally responsible for the content posted by third parties, app features may perpetuate the harm caused by social media use.¹⁹

Social media platforms profit from attention, but design efforts to garner such attention have adverse effects on youth.²⁰ Social media applications are

Teens and Cyberbullying, PEW RSCH. CTR. (Dec. 2022), <https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022/> [<https://perma.cc/G4PL-52GC>] (reporting that 46% of teens aged thirteen to seventeen have experienced cyberbullying). Cyberbullying is linked with various mental health struggles, including low self-esteem, increased levels of depression, substance abuse, and suicidal thoughts. *See* Memon et al., *supra* note 15, at 385 (discussing the impacts of cyberbullying on mental health). Notably, 74% of teens say that social media sites are doing a poor job, or only doing a fair job, at addressing online harassment. *See* Vogels, *supra* (presenting data on teen perceptions of whether cyberbullying is being adequately addressed). Furthermore, social media sites allow adolescents to be targets for predators, which can have adverse mental health consequences, such as anxiety, sadness, and worry. *See* U.S. PUB. HEALTH SERV., *supra* note 8, at 9 (noting that social media sites allow children and adolescents to be targets of predatory interactions); David Finkelhor, Heather Turner & Deirdre Colburn, *Which Dynamics Make Online Child Sexual Abuse and Cyberstalking More Emotionally Impactful: Perpetrator Identity and Images?*, 137 CHILD ABUSE & NEGLECT 144 (2023), <https://doi.org/10.1016/j.chiabu.2023.106020> (affirming that online predatory offenses are linked with negative emotions). One study indicates that over half of all girls who spend time on Instagram or Snapchat have been contacted by strangers on those platforms in a manner that makes them uncomfortable. Nesi et al., *supra* note 15, at 15.

¹⁷ *See Surgeon General Issues New Advisory About Effects Social Media Use Has on Youth Mental Health*, U.S. DEP'T HEALTH & HUMAN SERVS. (May 23, 2023), <https://www.hhs.gov/about/news/2023/05/23/surgeon-general-issues-new-advisory-about-effects-social-media-use-has-youth-mental-health.html> [<https://perma.cc/FBC4-9U2M>] (announcing the advisory and discussing key takeaways). The advisory was connected to the Department of Health and Human Services' efforts to aid President Biden's strategy to "transform mental health care for all Americans." *Id.*

¹⁸ *See* U.S. PUB. HEALTH SERV., *supra* note 8, at 13 (suggesting that by using platforms designed for adults, youth are at risk of harm); *see also* Candice L. Odgers et al., *Engaging, Safe, and Evidence-Based: What Science Tells Us About How to Promote Positive Development and Decrease Risk in Online Spaces*, UCLA CTR. DEVELOPING ADOLESCENT 17 (Nov. 30, 2022), <https://doi.org/10.31234/osf.io/rvn8q> (noting that when social media apps designed for adults are used by adolescents, adolescents are at high risk of "using [them] in ways that are unsupervised, developmentally inappropriate, and potentially harmful").

¹⁹ *See* 47 U.S.C. § 230(c)(1) (providing that "interactive computer services" are not responsible for content posted by users of their sites); Nesi et al., *supra* note 15, at 2 (indicating that social media design features result in both negative and positive experiences for youth online); *infra* notes 140–166 and accompanying text (discussing how § 230 protects social media companies against defect allegations related to publishing user content but, conversely, does not protect them from content-neutral defect allegations).

²⁰ *See Pathways: How Digital Design Puts Children at Risk*, 5 RIGHTS FOUND. 4 (2021), <https://5rightsfoundation.com/uploads/Pathways-how-digital-design-puts-children-at-risk.pdf> [<https://perma.cc/UGG7-LRT7>] (highlighting design professionals who are pressured by commercial objectives to produce features that maximize user engagement). Efforts to maximize engagement adversely impact

commonly designed to maximize time spent on the platforms and to increase user activity, which can result in excessive and compulsive use.²¹ One example of these potentially harmful design features are beauty filters.²² Beauty filters are one way that apps encourage users to present an idealized version of themselves online, and they do so at the detrimental expense of the user's concept of reality.²³ These filters can create a distorted sense of beauty and make reality especially challenging for adolescents, as they are concurrently enduring developmental changes and forming their own unique identity.²⁴

In his advisory, Surgeon General Murthy suggested that social media companies should take responsibility for the adverse effects their products have on young users, and he is not alone in his attempt to hold social media companies responsible for the youth mental health crisis.²⁵ In October of 2023,

adolescents by making it difficult to spend time off social media. *Id.* Moreover, they promote network growth to a damaging extent by facilitating interactions between youth and inappropriate adults. *Id.*

²¹ See *id.* (citing interview data from a thirteen-year-old who suggested that it is difficult to stay off social media, noting that “[they] kept turning it off and then going back and still using it”); U.S. PUB. HEALTH SERV., *supra* note 8, at 9 (suggesting that features of social media apps perpetuate excessive use); see also Mark D. Griffiths, *Adolescent Social Networking: How Do Social Media Operators Facilitate Habitual Use?*, 36 EDUC. & HEALTH 66–69 (2018), <https://sheu.org.uk/sheux/EH/eh363mdg.pdf> [<https://perma.cc/QH72-DGDV>] (suggesting that features that promote user engagement result in habitual behavior given the phenomena they create, including fear of missing out, reciprocal liking, and social competition). Examples of efforts to maximize user engagement include push notifications, infinite scroll, autopay, quantified popularity (i.e., number of likes), and algorithm-based content recommendations. See U.S. PUB. HEALTH SERV., *supra* note 8, at 9 (listing design features that maximize engagement).

²² See Tara Well, *The Hidden Danger of Online Beauty Filters*, PSYCH. TODAY (Mar. 25, 2023), <https://www.psychologytoday.com/us/blog/the-clarity/202303/can-beauty-filters-damage-your-self-esteem> [<https://perma.cc/VU87-ADUA>] (discussing the mental health harm of beauty filters). Beauty filters are editing tools that alter features in photographs. *Id.* Common examples include TikTok's “skinny filter” which artificially slims down a person's face, and Instagram's “perfect face filter” which uses an ideal ratio to adjust facial features. *Id.*

²³ See *The Social Dilemma: Social Media and Your Mental Health*, MCLEAN HOSP. (Jan. 18, 2023), <https://www.mcleanhospital.org/essential/it-or-not-social-medias-affecting-your-mental-health> [<https://perma.cc/T2PB-7CJC>] (describing how beauty filters put “a distorted lens on appearances and reality”).

²⁴ See *id.* (noting how filters make it difficult for adolescents to decipher what is real during a time in their development that is already emotionally and physically challenging).

²⁵ See U.S. PUB. HEALTH SERV., *supra* note 8, at 16 (stating that social media companies “have a fundamental responsibility” to mitigate the risks associated with social media use); Emma Roth, *Social Media Giants Must Face Child Safety Lawsuits, Judge Rules*, THE VERGE (Nov. 14, 2023), <https://www.theverge.com/2023/11/14/23960956/meta-google-tiktok-snap-social-media-addiction-lawsuits> [<https://perma.cc/XY5Y-JL9Y>] (reporting that plaintiffs have filed various lawsuits against major social media companies). Across the country, individuals, school districts, and states have sued major social media companies for their role in the youth mental health crisis. See Roth, *supra* (stating that forty-two states sued Meta in 2023 alleging Facebook and Instagram's adverse impact on the psyche of young Americans, school districts across the country sued various social media companies for alleged emotional and physical harm to adolescents, and individuals have also filed suit); Makena Kelly, *Dozens of States Sue Meta Over Youth Mental Health Crisis*, THE VERGE (Oct. 24, 2023),

attorneys general across the United States sued Meta, the parent company of Instagram and Facebook, alleging that it knowingly created physiologically manipulative and harmful features and deceptively assured the public that their features were safe and appropriate for young users.²⁶

School districts across the nation have also sued the parent companies of YouTube, Facebook, Instagram, TikTok, and Snapchat for the alleged harm their platforms inflict on the physical and emotional well-being of adolescents.²⁷ These school districts assert that administrators and teachers spend valuable time addressing cyberbullying, counseling students whose social media use has manifested in anxiety or depression, and creating new training and policies related to social media use.²⁸

On November 14, 2023, the U.S. District Court for the Northern District of California ruled on a motion to dismiss arising from a multi-district litigation (MDL) encompassing hundreds of individual suits, joint filings by more than thirty state attorneys general, and over 140 actions filed by school districts.²⁹ The court allowed a novel legal strategy to proceed: social media com-

<https://www.theverge.com/2023/10/24/23930408/meta-instagram-facebook-child-safety-lawsuit-states-kosa> [https://perma.cc/F7QX-YFPA] (reporting broadly on the lawsuits against Meta).

²⁶ See Complaint at 1, *Arizona v. Meta Platforms, Inc.*, No. 4:23-CV-05448 (N.D. Cal. Oct. 24, 2023) (alleging that Meta has “profoundly altered the psychological and social realities of a generation of young Americans,” has deceived the public of the dangers of its social media sites, and has ignored the harm that its social media platforms inflict on the mental and physical health of youth). Meta maintains that they are committed to fostering safe online spaces; however, Meta whistleblower leaks indicate that company executives knew from internal studies that their platforms harm young users’ well-being yet ignored these concerns. See *id.* at 19, 21, 73–74, 80, 100 (stating that Meta’s internal user experience studies elucidate that users encounter damaging content on its platforms more frequently than Meta suggests in its “Community Standard Enforcement Reports,” noting that employees have alerted senior management regarding these discrepancies, yet Meta continued to conceal the data, and alleging that in response to documents leaked by a whistleblower, Meta downplayed the findings of their internal research); Kelly, *supra* note 25 (discussing the whistleblower leaks that revealed documents indicating that internal studies found that “Instagram undermined the confidence of young users”).

²⁷ See Roth, *supra* note 25 (reporting that school districts across the nation sued Meta, ByteDance (TikTok’s parent company), Alphabet (Google’s parent company), and Snap (Snapchat’s parent company) due to their products’ alleged adverse impacts on youth well-being).

²⁸ See Sara Randazzo & Ryan Tracy, *Schools Sue Social-Media Platforms Over Alleged Harms to Students*, WALL ST. J. (July 23, 2023), <https://www.wsj.com/articles/schools-sue-social-media-platforms-over-alleged-harms-to-students-ebca91a5> [https://perma.cc/6QPK-RHTK] (stating that nearly 200 school districts sued social media companies and reporting on their reasons for doing so).

²⁹ See *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 817 (N.D. Cal. 2023) (stating that the order on the defendants’ motion to dismiss addresses the initial wave of arguments following the filing of hundreds of cases, over 140 actions by school districts, and over thirty actions by Attorneys General against “some of the world’s most used social media platforms”). Multi-district litigations (MDLs) allow for the consolidation in a single district court of multiple civil actions sharing a common question of fact and pending in different federal districts. *Information About Multi-District Litigation (MDL)*, U.S. DIST. CT. N. DIST. CAL., https://cand.uscourts.gov/multidistrict_litigation/ [https://perma.cc/BQ9S-3KA6]. The Judicial Panel on MDL approves the coordination of MDL cases and decides the appropriate district to transfer the MDL. *Id.*; see 28 U.S.C.

panies may be held responsible under products liability law for features deemed “defective.”³⁰ This prospective extension of liability was limited, however, by 47 U.S.C. § 230 and the First Amendment of the U.S. Constitution—two potent immunity shields for social media platforms.³¹

This Note evaluates the extent to which products liability may attach to design defects associated with social networking platforms, and it traces a potential route to hold social media companies accountable for the harm their apps inflict on youth mental health.³² Part I of this Note provides background on the allegations leveraged against the defendant companies and the legal theories at play in this unique litigation.³³ Part II examines how § 230 and the First Amendment influence products liability theory within the context of social media, preventing some defect claims while allowing others to prevail.³⁴ Part III contends that products liability theory provides a salient approach for holding social media companies accountable for how their features contribute to the youth mental health crisis.³⁵

I. THE SEARCH FOR ACCOUNTABILITY: IMMUNITY BARRIERS TO ALLEGING DEFECTIVE PRODUCTS

Social media companies have largely been shielded from liability under § 230 of the Communications Decency Act (CDA) for content-based harms stemming from the use of their apps.³⁶ The holding from the U.S. District Court for the Northern District of California in 2023 in *In re Social Media Ad-*

§ 1407 (codifying that civil actions sharing common questions of fact may be consolidated in a single district). In *In re Social Media*, the MDL represents over 400 lawsuits. Isaiah Poritz, *Social Media Addiction Suits Take Aim at Big Tech’s Legal Shield*, BLOOMBERG (Oct. 25, 2023), <https://news.bloomberglaw.com/tech-and-telecom-law/hundreds-of-social-media-addiction-suits-face-first-legal-hurdle> [<https://perma.cc/RCF7-SAJR>].

³⁰ See *In re Soc. Media*, 702 F. Supp. 3d at 818 (denying in part the defendants’ motion to dismiss plaintiffs’ products liability claims). Notably, since the court issued this order, MDL plaintiffs have advanced several other theories of liability, which are beyond the scope of this Note. See, e.g., First Amended Master Complaint at 306, *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, No. 4:22-MD-0347 (N.D. Cal. Mar. 27, 2024) (asserting public nuisance and negligence claims against the social media company defendants).

³¹ See generally *In re Soc. Media*, 702 F. Supp. 3d at 830, 837 (granting in part the defendants’ motion to dismiss the plaintiffs’ products liability claims based on protections offered by § 230 and the First Amendment).

³² See *infra* notes 36–231 and accompanying text.

³³ See *infra* notes 36–129 and accompanying text.

³⁴ See *infra* notes 130–200 and accompanying text.

³⁵ See *infra* notes 201–231 and accompanying text.

³⁶ See 47 U.S.C. § 230(c)(1) (promulgating that providers of “interactive computer services” cannot be held responsible for content posted by users of their sites); KATHLEEN ANN RUANE, CONG. RSCH. SERV., LSB10082, HOW BROAD A SHIELD? A BRIEF OVERVIEW OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT 1–2 (2018), <https://fas.org/sgp/crs/misc/LSB10082.pdf> [<https://perma.cc/3989-3CMX>] (stating that § 230 typically protects internet service providers—such as Facebook, Twitter, and Google—from liability based on content created by their users).

olescent Addiction/Personal Injury Products Liability Litigation (In re Social Media) represents an innovative attempt to surmount § 230 immunity and hold social media companies accountable for their role in the youth mental health crisis.³⁷ Grounded in an argument that the defendants knowingly created products that harm adolescents' mental health and exploit them for profit, the plaintiffs brought a variety of product defect allegations.³⁸ In pleading that certain features of the defendants' social media platforms are defective, the plaintiffs leveraged existing products liability theory.³⁹ Part A of this Section discusses § 230 and the First Amendment, including the protections they offer to social media companies.⁴⁰ Part B explores existing products liability theory.⁴¹ Part C introduces the alleged social media defects at issue.⁴²

A. Traditional Shields: § 230 and the First Amendment

Social media companies enjoy robust protection against liability under § 230 and the First Amendment.⁴³ Subsection 1 provides an overview of § 230 and outlines how it provides a powerful shield for social media companies

³⁷ See Ruth Reader, *Social Media Is a Defective Product, Lawsuit Contends*, POLITICO (Jan. 26, 2023), <https://www.politico.com/news/2023/01/26/social-media-lawsuit-mental-illness-00079515> [<https://perma.cc/MKL8-BW7T>] (suggesting that the plaintiffs are testing a “novel legal theory” by arguing that the defendants’ algorithms are defective products).

³⁸ See *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 819 (N.D. Cal. 2023) (stating that the plaintiffs allege that through their platforms defective designs the defendants have “created a youth mental health crisis” because adolescents are especially vulnerable to the harms of compulsive use (quoting Amended Master Complaint at 26, *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, No. 4:22-md-03047 (N.D. Cal. Mar. 14, 2023))). The plaintiffs assert that the defendants knowingly injure adolescent users’ mental health given the availability of scientific and medical studies showing the connection between social media and adverse mental health impacts. *Id.* Moreover, the plaintiffs allege that “[a]t least some defendants also knew about these harms from internal data and studies.” *Id.*

³⁹ See generally Amended Master Complaint, *supra* note 38, at 237–56 (putting forth products liability allegations, including strict liability design defect allegations, negligent-based design allegations, and failure to warn allegations). The plaintiffs’ 288-page master complaint asserted a total of eighteen claims, including, but not limited to, various negligence causes of action, violations of unfair trade practices and consumer production, fraudulent concealment and misrepresentation, and wrongful death. See generally *id.* at 237–77 (stating the plaintiffs’ claims). Given the length of the complaint, and the number of claims, the court asked the plaintiffs to identify five priority claims and their preferred state law for each, and the court limited its ruling to those. *In re Soc. Media*, 702 F. Supp. 3d at 818. The plaintiffs identified the following priority claims: (1) strict products liability design defect; (2) strict products liability failure to warn; (3) product-based negligent design defect; (4) product-based negligent failure to warn; and (5) negligence per se. *Id.* Leveraging product liability theory in attempt to hold social media companies responsible for their algorithms is a fairly new legal strategy. Reader, *supra* note 37.

⁴⁰ See *infra* notes 43–83 and accompanying text.

⁴¹ See *infra* notes 84–119 and accompanying text.

⁴² See *infra* notes 120–129 and accompanying text.

⁴³ See *infra* notes 46–83 and accompanying text.

against liability for third-party content.⁴⁴ Subsection 2 discusses how the First Amendment protects social media companies' conduct that constitutes speech.⁴⁵

1. Protection Against Liability for Third-Party Content: § 230

Congress promulgated the CDA in 1996 with the goal of controlling minors' access to offensive and obscene material online.⁴⁶ Although aspects of the CDA have been deemed unconstitutional based on their limitations of free speech, § 230 has defeated constitutional challenges and is still a viable defense for social media companies.⁴⁷

Section 230(c)(1) provides internet service providers with immunity from liability for content posted by third parties.⁴⁸ In 1997, in *Zeran v. America Online, Inc.*, the U.S. Court of Appeals for the Fourth Circuit interpreted § 230(c)(1) as barring claims that seek to hold internet service providers liable for exercising their "traditional editorial functions," including making decisions regarding the publishing, withdrawing, postponing, or altering of content on their platforms.⁴⁹

Congress enacted the provision for two policy reasons: to encourage the exchange of information and ideas online, and to promote voluntary regulation

⁴⁴ See *infra* notes 46–71 and accompanying text.

⁴⁵ See *infra* notes 72–83 and accompanying text.

⁴⁶ See *Batzel v. Smith*, 333 F.3d 1018, 1026 (9th Cir. 2003) (discussing the background of § 230(c) and stating that the primary objective of the Communications Decency Act (CDA) was to "control the exposure of minors to indecent material"); Paul Ehrlich, *Communications Decency Act § 230*, 17 BERKELEY TECH. L.J. 401, 401 (2002) (stating that Congress promulgated the CDA to "address the myriad problems surrounding the regulation of obscene, illegal, or otherwise tortious content found on the Internet").

⁴⁷ See *Reno v. ACLU*, 521 U.S. 844, 874 (1997) (holding that certain provisions of the CDA were unconstitutional violations of the First Amendment due to their overly broad content-based restrictions of free speech); *Batzel*, 333 F.3d at 1026 (explaining that parts of the CDA have been held unconstitutional but noting that § 230(c) "remains intact").

⁴⁸ See 47 U.S.C. § 230(c)(1) (promulgating 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"); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003) (explaining that § 230(c)(1) grants internet service providers with immunity for defamatory or false material provided by third parties). Section 230(f)(2) defines "interactive computer service" as any provider of information services, systems, or access software that enables or provides multiple users with access to a computer server, including a server that provides internet access. 47 U.S.C. § 230(f)(2).

⁴⁹ See 129 F.3d 327, 330 (4th Cir. 1997) (finding that § 230 establishes federal immunity against causes of action that risk holding internet service providers liable for third-party content and interpreting the provision to mean that service providers cannot be held liable for exercising their "traditional editorial functions"); see also *Klayman v. Zuckerberg*, 753 F.3d 1354, 1355, 1359 (D.C. Cir. 2014) (dismissing a lawsuit against Facebook alleging that the social media platform was negligent when it failed to timely remove a threatening page based on the *Zeran* "traditional editorial functions" because deciding whether to retract content is essential to publishing); VALERIE C. BRANNON & ERIC N. HOLMES, CONG. RSCH. SERV., R46751, SECTION 230: AN OVERVIEW 1, 10 (2024) (asserting that *Zeran* is an influential case for its interpretation of § 230(c)(1) and that other courts have largely adopted the *Zeran* court's broad construction of the statute).

of obscene or offensive material.⁵⁰ The statute explicitly focuses on child safety in its policy framework.⁵¹ First, the statute articulates the policy goal of promoting technologies that increase schools, families, and individual's autonomy over information received via the internet.⁵² Second, the statute removes disincentives for innovation regarding features that allow parents to block and filter any unfavorable online material accessed by their children.⁵³

Courts have interpreted the text of § 230(c) broadly, making the scope of its immunity protection robust.⁵⁴ Although scholars have criticized the breadth of § 230(c) immunity, it serves to protect interactive internet services, including social media companies, against a range of alleged harms.⁵⁵ Critically, it

⁵⁰ See *Carafano*, 339 F.3d at 1122 (stating the policy goals behind § 230). Before Congress promulgated the CDA, whether an internet platform or website was liable for third-party content depended in part on whether it was considered a publisher or distributor. Matthew Feuerman, Note, *Court-Side Seats? The Communications Decency Act and the Potential Threat to Stubhub and Peer-To-Peer Marketplaces*, 57 B.C. L. REV. 227, 231 (2016). Publishers were liable for third-party defamatory remarks they had control over when publishing. *Id.* Distributors, on the other hand, evaded liability if they were not aware of the defamatory comments they disseminated. *Id.* Because having knowledge of or exercising control over third-party defamatory comments engendered liability, this framework incentivized internet service providers to abstain from monitoring user content. *Id.* The CDA removes this perverse incentive by protecting internet service providers from liability for third-party content. See *id.* at 232 (explaining that § 230 of the CDA protects internet platforms from liability for third-party content to the extent they are not responsible for creating that content).

⁵¹ See 47 U.S.C. § 230(b)(4) (indicating that “empower[ing] parents” to monitor their children’s access to inappropriate online content is a policy objective of § 230); *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 825 (N.D. Cal. 2023) (citing the policy goals in § 230(b) and stating that adolescent well-being and safety are central tenets behind various policy goals).

⁵² See 47 U.S.C. § 230(b)(3)–(4) (outlining the policy goals of § 230).

⁵³ See *id.* § 230(b)(4) (stating that it is a policy goal “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”).

⁵⁴ See *Carafano*, 339 F.3d at 1123 (stating that courts have interpreted § 230(c) immunity as robust by offering interactive service providers immunity if they do not themselves provide the content of the statement at issue).

⁵⁵ See, e.g., *Klayman v. Zuckerberg*, 753 F.3d 1354, 1355 (D.C. Cir. 2014) (declining to hold Facebook accountable for failing to take down a threatening page); *Doe v. MySpace, Inc.*, 528 F.3d 413, 416, 422 (5th Cir. 2008) (affirming a dismissal of a claim purporting that MySpace was negligent in failing to implement safety features that would bar sexual predators from reaching out to minors on its site); see also RUANE, *supra* note 36, at 1 (stating that critics fault § 230 immunity for facilitating criminal behavior, including sex trafficking, by allowing internet service providers to post advertisements for such activity without concern for potential liability). Courts have broken the provision down into a conjunctive three-part test to evaluate whether § 230 immunity bars liability claims. See *In re Soc. Media*, 702 F. Supp. 3d at 825 (introducing the three-part test for determining whether § 230(c)(1) provides immunity for a claim); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100–01 (9th Cir. 2009) (establishing the three-part test as part of the Ninth Circuit’s precedent). Courts ask: (1) whether the defendant is a user or provider of an interactive internet service; (2) whether the claim seeks to treat the defendant as the speaker or publisher; and (3) of information offered by another content provider. See, e.g., *Jones v. Dirty World Ent. Recordings LLC*, 755 F.3d 398, 409 (6th Cir. 2014) (stating the three-prong test); *Universal Comm’n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir. 2007) (same). The first prong limits § 230(c) immunity to interactive computer service providers. See *Blumenthal v. Drudge*,

bars claims that seek to treat interactive online services as publishers or speakers of content provided by users of the service.⁵⁶ Protected acts include a platform's decision whether to publish third-party content, as well as editorial decisions relating to making content available to consumers.⁵⁷

During the early days of social media, in 2009, in *Barnes v. Yahoo!, Inc.*, the U.S. Court of Appeals for the Ninth Circuit held that § 230 immunized Yahoo!, Inc. (Yahoo) from liability for the content on a user's profile page.⁵⁸ Without her authorization, the plaintiff's ex-boyfriend created a profile claiming to be her and posted nude photos of the plaintiff along with posts that insinuated her openness to sexual intercourse.⁵⁹ After the plaintiff continuously contacted Yahoo to remove the profile to no avail, she sued for negligent un-

992 F. Supp. 44, 49 (D.D.C. 1998) (stating that "Congress decided not to treat providers of interactive computer services like other information providers such as newspapers, magazines or television and radio stations"). Courts have broadly interpreted § 230's definition of interactive computer service to include myriad online entities, including, but not limited to, online retail services, internet access providers, search engines, and social media platforms. *E.g.*, *Marshall's Locksmith Serv. v. Google, LLC*, 925 F.3d 1263, 1268 (D.C. Cir. 2019) (indicating that Google is an internet service provider); *Klayman*, 753 F.3d at 1357 (D.C. Cir. 2014) (indicating that Facebook is an online service provider); *see Chi. Laws.* Comm. for C.R. Under L., Inc. v. Craigslist, Inc., 519 F.3d 666, 671 (7th Cir. 2008) (indicating that Craigslist is an internet service provider); *e360Insight, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605, 606 (N.D. Ill. 2008) (indicating that Comcast is an internet service provider); *see also* RUANE, *supra* note 36, at 1 (highlighting courts' broad interpretations of § 230(f)(2)'s definition of internet service provider); BRANNON & HOLMES, *supra* note 49, at 9 (same). Given this broad interpretation, cases often turn on the second and third prongs. *See* BRANNON & HOLMES, *supra* note 49, at 9 (stating that because of the broad construction of interactive computer service, cases are often decided on the second two questions and depend on the specific facts).

⁵⁶ *See* 47 U.S.C. § 230(c)(1) (providing that "interactive computer service" providers shall not be treated as publishers or speakers of information provided by "another information content provider"); *see also supra* note 48 and accompanying text (explaining the details of § 230(c)(1) and defining "interactive computer service" provider).

⁵⁷ *See In re Soc. Media*, 702 F. Supp. 3d at 827 (discussing the kinds of practices that "publishing" refers to); *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1089 (9th Cir. 2021) (interpreting publishing to refer to the decision of whether or not to publish third-party content); *Barnes*, 570 F.3d at 1102 (finding that publishing involves editing and reviewing material for publication). A classic example of online publishing protected by § 230(c)(1) is third-party content posted on message boards. *In re Soc. Media*, 702 F. Supp. 3d at 827; *see* Dyroff v. Ultimate Software Grp., Inc., 934 F.3d 1093, 1097-100 (9th Cir. 2019) (holding that the defendant was immune from the plaintiff's claim that they contributed to the drug-caused death of her son, who purchased laced drugs from a fellow user of their message board, because the defendant was simply a publisher of third-party content).

⁵⁸ 570 F.3d at 1103 (finding that § 230 protected Yahoo!, Inc. (Yahoo) from liability for third-party content posted on a user profile profile). Yahoo ran a website where members had profiles in which they would "post information about yourself that you want to share with the world" such as pictures, their location, and their hobbies. *Id.* at 1098.

⁵⁹ *Id.* at 1098. The plaintiff's ex-boyfriend further posed as her in chatrooms and responded to male users. *Id.* The fraudulent profile included the plaintiff's real phone number, email, and address, and soon after the profile launched, the plaintiff received unwanted calls, emails, and visits from men expecting sexual intercourse. *Id.*

dertaking.⁶⁰ Finding that the plaintiff sought to hold Yahoo liable for publishing “conduct,” the court held that § 230 barred the plaintiff’s suit.⁶¹

Although an interactive computer service provider cannot be held liable as a publisher or speaker of third-party content, the mere relevance of third-party content to a plaintiff’s claim does not in itself create immunity.⁶² A court may deny § 230 immunity if a liability claim is based on a duty that does not require the defendant to alter how they publish or monitor content, even if related to third-party content.⁶³ For example, in 2021, in *Lemmon v. Snap, Inc.*, the U.S. Court of Appeals for the Ninth Circuit held that a negligent design claim for Snap’s “Speed Filter” was not barred by § 230 because the cause of action did not seek to hold the company liable for third party content—in other words, it was the design of the filter, not the content posted using it, that was harmful.⁶⁴

Because a website or platform operator can be both an information content provider and an information service provider, a website or platform operator may be held liable for some content despite § 230 providing a liability shield for other content.⁶⁵ Section 230(f)(3) defines “information content pro-

⁶⁰ *Id.* at 1099. The district court dismissed the plaintiff’s claim on grounds of § 230 immunity, leading to an appeal. *See id.* (stating the district court’s holding and indicating that § 230 immunity was the issue on appeal).

⁶¹ *See id.* at 1103 (noting that failing to remove content is publishing conduct, and thus § 230 prevents imposing liability); *see also* *Ginsberg v. Google Inc.*, 586 F. Supp. 3d 998, 1006 (N.D. Cal. 2022) (holding that Google could not be held accountable for failing to remove offensive content).

⁶² *See In re Soc. Media*, 702 F. Supp. 3d at 826 (explaining that the relevant inquiry as to whether a claim is seeking to hold an interactive service provider liable as a publisher or speaker is whether the defendant could have satisfied its alleged duty to the plaintiff without changing the content posted to its website).

⁶³ *See Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1089, 1094 (9th Cir. 2021) (holding that § 230 did not grant Snap immunity for creating a “Speed Filter” that allowed users to record themselves while the filter displayed their speed because the plaintiffs did not attempt to hold them liable as a speaker or publisher of third-party content, even though the motive of the filter was to post third-party content); *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 848, 851 (9th Cir. 2016) (holding that § 230 did not bar the model plaintiff’s claim when the defendants website was used by third parties to create a fake audition and proceed to assault the plaintiff because the defendants knowledge of the plan and duty to warn the plaintiff did not require them to remove any content or change how they published or monitored content).

⁶⁴ *See* 995 F.3d at 1094 (holding that § 230 does not provide Snap with immunity for claims that they designed Snapchat in ways that “allegedly encourages dangerous behavior” and that the claim did not depend on “what messages, if any, a Snapchat user employing the Speed Filter actually sends”). In *Lemmon*, two seventeen-year-old boys and one twenty-year-old boy died in a car accident after speeding and crashing into a tree. *Id.* at 1088. The boys were speeding “as fast as 123 MPH” while recording their speed using a Snapchat filter. *Id.* The parents of the two seventeen-year-olds sued Snap “alleging that it encouraged their sons to drive at dangerous speeds and thus caused the boys’ deaths through its negligent design of its smartphone application Snapchat.” *Id.* at 1087.

⁶⁵ *See Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) (stating that a website operator can “be both a service provider and a content provider”); *In re Soc. Media*, 702 F. Supp. 3d at 826 (stating the same but referring to “platform[s]”); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003) (holding that when determining whether § 230 immunity applies to the content at issue, courts must inquire as to whether the service provider is also a content

vider[s]” as people or entities wholly or partially responsible for the development or creation of information transmitted on the internet or on an interactive computer service.⁶⁶ If the website merely displays content produced by third parties, it is only a service provider; however, if it is wholly or partially responsible for developing or creating the content, it is also a content provider.⁶⁷

For example, in 2008, in *Fair Housing Council of San Fernando Valley v. Roomates.com, Inc.*, the U.S. Court of Appeals for the Ninth Circuit held that a roommate-matching website enjoyed § 230 immunity from a Fair Housing Act discrimination claim in regard to some, but not all, of its content.⁶⁸ The court determined that “neutral tools” employed by a platform to create or disseminate content do not impair § 230 immunity; however, if a platform directly develops or materially alters content in a way that contributes to its alleged illegality, the company loses § 230 immunity.⁶⁹ Here, the court found the website liable to the extent that it created category choices that violated the Fair Housing Act, but it was not liable for content posted in the “Additional Comments” box.⁷⁰

In sum, § 230 provides a potent defense for social media companies, but this defense is limited to conduct relating to the publishing of third-party content.⁷¹

2. Endowing Social Media Platforms with First Amendment Rights

The First Amendment provides another potential defense to liability in tort suits.⁷² The First Amendment prevents the government from restricting expression because of the ideas or message conveyed, and it protects freedom

provider “for the portion of the statement or publication at issue”); RUANE, *supra* note 36, at 2 (stating that “Section 230’s shield only protects defendants when they do not act as ‘information content providers’ with respect to disputed content”).

⁶⁶ See 47 U.S.C. § 230(f)(3) (defining information content provider).

⁶⁷ *Roomates.com*, 521 F.3d at 1162.

⁶⁸ See *id.* at 1166 (holding that § 230 only provides immunity if the computer service does not wholly or partially create or develop the information).

⁶⁹ See *id.* at 1171–72 (highlighting that providing neutral tools without encouraging defamatory content is exactly the conduct that Congress intended provide immunity for by passing § 230, but developing or enhancing illegal content is beyond the scope of § 230 immunity).

⁷⁰ See *id.* at 1169–70, 1172–74 (holding that Roomates.com: (1) directly contributed to a discriminatory questionnaire and filtering process and thus was not entitled to § 230 immunity; and (2) published comments in the additional space provided as written and did not directly contribute to the content, and thus was entitled to § 230 immunity); see also *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096–99 (9th Cir. 2019) (holding that recommendations and notifications on a message board were “content-neutral tools used to facilitate communications” that did not “materially contribute . . . to the alleged unlawfulness of the content” and thus the platform was protected under § 230).

⁷¹ Compare *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009) (holding that Yahoo could not be held liable for third-party content posted on a user’s profile), with *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093 (9th Cir. 2021) (holding that § 230 did not protect Snap from liability for the design of a “Speed Filter” because the plaintiffs did not seek to hold them liable for publishing third party content).

⁷² *Snyder v. Phelps*, 562 U.S. 443, 451 (2011).

of press and speech that individuals may find harmful.⁷³ Only limited classes of content-based speech are not protected by the First Amendment, including obscenity, fighting words, threats, and incitement.⁷⁴

The Supreme Court has made clear that Free Speech Clause principles do not deviate when a new means of communication emerges.⁷⁵ In 2011, in *Brown*

⁷³ U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech, or of the press . . .”); see *Snyder*, 562 U.S. at 458 (elucidating that under the First Amendment, speech may not be restricted merely because it is considered harmful); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., Inc.*, 515 U.S. 557, 574 (1995) (same); *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 790–91 (2011) (stating that the government does not have the “power to restrict expression because of its message, its ideas, its subject matter, or its content” (citing *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002))). Whether restrictions on speech are content-based or content-neutral determines the level of scrutiny that will be applied. *Amndt I. 7.3.1 Overview of Content-Based and Content-Neutral Regulation of Speech*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/amdt1-7-3-1/ALDE_00013695/\[https://perma.cc/J4AE-YQKB\]](https://constitution.congress.gov/browse/essay/amdt1-7-3-1/ALDE_00013695/[https://perma.cc/J4AE-YQKB]). Laws restricting speech can be facially content-based or deemed so because of a discriminatory justification or purpose. *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015). Restrictions on content-based speech must satisfy strict scrutiny: the government must demonstrate that the law is narrowly tailored to serve a compelling government interest. See *Brown*, 564 U.S. at 799 (indicating that restrictions on the content of protected speech must pass strict scrutiny). Content-neutral restrictions on speech are independent of the views or ideas expressed speech and are not subject to strict scrutiny. See *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 643 (1994) (stating that “laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral”). Rather, content-neutral restrictions are subject to intermediate scrutiny. *Id.* at 642; see *Ward v. Rock Against Racism*, 491 U.S. 781, 798–800 (1989) (holding that content-neutral time, place, and manner restrictions on speech are subject to strict scrutiny and clarifying that regulations on such speech will not be held invalid merely because “the government’s interest could be adequately served by some less-speech-restrictive alternative”).

⁷⁴ See *Brown*, 564 U.S. at 791 (providing the exceptions to protected content-based speech); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–72 (1942) (asserting that there are “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem” and categorizing fighting words that “by their very utterance inflict injury or tend to incite an immediate breach of the peace” as unprotected speech); *Virginia v. Black*, 538 U.S. 343, 359 (2003) (establishing that “true threats” are an unprotected category of speech (quoting *Watts v. United States*, 394 U.S. 705, 708 (1969) (per curiam))); *Miller v. California*, 413 U.S. 15, 23–25 (1973) (declaring that the Court has categorically established that “obscene material is unprotected by the First Amendment” and narrowly defining obscene material under a three-part test). If speech falls within a content-based but unprotected speech category, the government action restricting it is subject to rational basis review. See *R.A.V. v. City of St. Paul*, 505 U.S. 377, 406 (1992) (White, J., concurring) (elucidating that restrictions on unprotected categories of speech must be “rationally related to a legitimate government interest”). In recent years, the Supreme Court has made clear that it is unwilling to expand the unprotected categories of speech. See *United States v. Stevens*, 559 U.S. 460, 468 (2010) (rejecting that depictions of animal cruelty constitute a class of unprotected speech); *Brown*, 564 U.S. at 791 (reaffirming that “new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated”). The Court in *Stevens* vehemently refused to adopt a cost-benefit balancing test for whether speech warrants First Amendment protection. See 559 U.S. at 470 (stating that “[t]he First Amendment’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits”).

⁷⁵ See *Brown*, 564 U.S. at 790 (explaining that First Amendment principles of free speech and press do not differ “when a new and different medium for communication appears”).

v. Entertainment Merchants Ass'n, the Court declined to expand the categories of unprotected speech to include violent speech and thus allow for the regulation of violent video games.⁷⁶ Siding with video game producers and distributors, the Court found that a California law that sought to restrict and regulate the sale or rental of violent video games to minors violated the First Amendment.⁷⁷

Pertinent to the question of what constitutes “speech” for purposes of social media companies, the Court has held that disclosing and publishing information constitutes speech.⁷⁸ Moreover, in 2011, in *Sorrell v. IMS Health Inc.*, the Supreme Court held that “creation and dissemination of information” is protected speech under the First Amendment.⁷⁹ In this way, state action to penalize truthful publications of information is likely unconstitutional.⁸⁰

In 2024, in *Moody v. NetChoice, LLC*, the Supreme Court explicitly established that social media platforms are entitled to First Amendment rights to the extent they engage in expression.⁸¹ Confronted with facial challenges to laws from Florida and Texas restricting internet platforms’ content-moderation capacities, the Court clarified that social media companies make expressive choices protected by the First Amendment when moderating and curating user content.⁸² It is

⁷⁶ See *id.* at 790–91 (holding that video games “communicate ideas” and are entitled to First Amendment protection and reaffirming that the Court is unwilling to add new categories of unprotected speech just because a legislature deems the speech harmful).

⁷⁷ See *id.* at 804–05 (finding that the California legislation regulated a content-based protected category of speech, did not pass strict scrutiny, and thus violated the First Amendment).

⁷⁸ See *Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001) (agreeing with the reasoning from the Third Circuit’s opinion below that publishing and disclosing information are undoubtedly forms of speech).

⁷⁹ 564 U.S. 552, 570 (2011).

⁸⁰ See *Bartnicki*, 532 U.S. at 527 (stating that “state action to punish the publication of truthful information seldom can satisfy constitutional standards” (quoting *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 102 (1979))).

⁸¹ See 144 S. Ct. 2383, 2393 (2024) (affirming that social media platforms are entitled to First Amendment protection “[t]o the extent [they] create expressive products” and that government action aimed at altering the “edited compilation” of social media user content must survive judicial review). Previously, circuits were split as to whether First Amendment protections allow social media companies to censor what users post on their platforms by removing, blocking, or deprioritizing content based on the viewpoint put forth in a social media post. Compare *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1210 (11th Cir. 2022) (stating that social media platforms are “private companies with First Amendment rights” and endowing social media companies with First Amendment rights to censor content), *vacated*, *Moody*, 144 S. Ct. 2383, with *NetChoice, LLC v. Paxton*, 49 F.4th 439, 445 (5th Cir. 2022) (rejecting the idea that social media companies have a “a freewheeling First Amendment right to censor what people say”), *vacated*, *Moody*, 144 S. Ct. 2383. The Court clarified that the same principles that extend First Amendment protection to traditional publishers when they curate other parties’ expression for their own products apply to virtual publishers. *Moody*, 144 S. Ct. at 2393.

⁸² *Moody*, 144 S. Ct. at 2406 (explaining that when social media platforms decide *what* content will appear on their feed—such as Facebook’s News Feed or YouTube’s homepage—and *how* this content will appear, “they are making expressive choices” protected by the First Amendment). By way of background, social media companies curate the content users receive by removing content, prioritizing content, and even adding labels or warnings. *Id.* at 2394–95. Some platforms, including Facebook and YouTube, refer to their own community standards policies when making content-moderation decisions. *Id.* at 2395. Although differing in the entities and activities they regulate, both the Florida

important to note, however, that although the First Amendment may shield social media companies in some contexts, products liability law provides an avenue for holding them accountable when the harm at issue does not involve speech.⁸³

B. Products Liability: A Potential Avenue to Accountability

For defects that do not warrant protection under § 230 or the First Amendment, products liability doctrine offers a route to accountability.⁸⁴ Subsection 1 provides a brief background on products liability law.⁸⁵ Subsection 2 discusses the threshold requirement that a “product” exists for a claim to proceed.⁸⁶ Subsection 3 explains broadly what a *prima facie* case for products liability entails.⁸⁷

and Texas laws contained provisions “restricting covered platforms’ choices about whether and how to display user-generated content to the public” and both contain provisions mandating individualized explanations for moderation actions. *Id.* In response to First Amendment facial challenges, district courts in Texas and Florida preliminarily enjoined the laws. *Id.* at 2396. The Eleventh Circuit upheld this injunction, concluding that the statutes’ restrictions run afoul of Supreme Court precedent protecting “editorial decisions” under the First Amendment. *Id.*; see *NetChoice*, 34 F.4th at 1210 (holding that when social media platforms decide to remove users’ posts, impose consequences for breaches of platform community standards, or decrease the priority of a post in user’s feeds, they are engaging in First Amendment protected behavior). Conversely, the Fifth Circuit reversed the preliminary injunction, reasoning that content-moderation decisions are do not fall within First Amendment protection as they are “not speech.” *Moody*, 144 S. Ct. at 2396 (quoting *Paxton*, 49 F.4th at 466, 494). The Fifth Circuit further reasoned that even if these activities are expressive conduct protected by the First Amendment, the State could nonetheless regulate them to “advance its interest in ‘protecting a diversity of ideas.’” *Id.* (quoting *Paxton*, 49 F.4th at 482). Because neither party adequately analyzed the scope of laws to the extent required by facial challenges, the Supreme Court vacated the judgments and remanded the cases. *See generally id.* at 2397–99 (discussing the flaws in each court’s facial analysis). Nevertheless, fearing the Fifth Circuit would repeat its same doctrinal mistakes, the Court laid out the relevant First Amendment principles. *See id.* at 2398–99 (highlighting that the Fifth Circuit erred in concluding that restrictions on content-moderation do not infringe on expression and stating that to prevent further error, “it is necessary to say more about how the First Amendment relates to the laws’ content-moderation provisions”). In doing so, it elucidated that (1) social media companies are protected by the First Amendment when they make expressive choices regarding what content they display and how the content will be ordered, and (2) states do not have an interest in regulating “the mix of speech” social media platforms display to “advance its own vision of ideological balance.” *Id.* at 2405–07.

⁸³ *See In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 836 (N.D. Cal. 2023) (indicating that when alleged defects relate to user interaction with the platforms and would not require the defendants to alter how they disseminate speech, social media companies cannot invoke First Amendment protection).

⁸⁴ *See generally id.* at 849–54 (holding that products liability may be used to hold the defendants liable for alleged defects not barred by § 230 and First Amendment).

⁸⁵ *See infra* notes 88–95 and accompanying text.

⁸⁶ *See infra* notes 96–111 and accompanying text.

⁸⁷ *See infra* notes 112–119 and accompanying text.

1. A Primer on Products Liability Law

Products liability law establishes legal responsibility for harm caused by a defective product.⁸⁸ Defects from manufacturing or design, and failure to warn are all encompassed by product liability law.⁸⁹

Products liability theory has evolved with society.⁹⁰ Early products liability cases were largely limited by a privity requirement, which mandated that liability for a harm-causing product arise from a contractual relationship between the manufacturer and the purchaser.⁹¹ As society and manufacturing developed, products liability law began to change, and the privity requirement vanished.⁹² As time progressed, a negligence requirement replaced the privity

⁸⁸ See AMERICAN LAW OF PRODUCTS LIABILITY (Westlaw) § 1:1 (3d ed. Feb. 2024 update) (defining products liability).

⁸⁹ See RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 2 (AM. L. INST. 1998) (listing the categories of product defects); DAN B. DOBBS, PAUL T. HAYDEN & ELLEN M. BUBLICK, TORTS AND COMPENSATION, PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY 799 (9th ed. 2022) (explaining that courts have attached liability to design defects, manufacturing defects, and information defects). As with all torts, product liability is typically a matter of state law. See Model Uniform Product Liability Act, 44 Fed. Reg. 62714, 62714 (Oct. 31, 1979) (stating that under the current system, state courts take a case-by-case basis to developing product liability law, and that this is inconsistent with “commercial necessity”); AMERICAN LAW OF PRODUCTS LIABILITY, *supra* note 88, § 46:2 (explaining that “the law of the place of the wrong . . . governs the substantive rights of the parties to products liability actions”); see also *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 839 (N.D. Cal. 2023) (stating that the plaintiffs’ preferred law for their products liability claims are Georgia and New York law). The Department of Commerce published the Model Uniform Product Liability Act (MUPLA) in 1979 for states to voluntarily adopt. Model Uniform Product Liability Act, 44 Fed. Reg. at 62714. Among other things, the MUPLA proscribes basic norms of responsibility for manufacturers and sellers, defines “unavoidably dangerous aspect[s] of a product,” and promulgates standards of “useful safe life.” AMERICAN LAW OF PRODUCTS LIABILITY, *supra* note 88, § 1:3 (quoting Model Uniform Product Liability Act, 44 Fed. Reg. at 62727). It should be noted, however, that the MUPLA has not been broadly adopted. *Understanding the Interplay Between Strict Liability and Product Liability*, LEXISNEXIS (Jan. 6, 2021), <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/understanding-the-interplay-between-strict-liability-and-products-liability> [https://perma.cc/W8YN-LUVV].

⁹⁰ See LEWIS BASS & THOMAS PARKER REDICK, PRODUCTS LIABILITY: DESIGN AND MANUFACTURING DEFECTS (Westlaw) § 2:1 (2d ed. 2023) (stating that product liability is a “creature of social policy” and that the extent of a producer’s responsibility “has changed as society’s value system has changed”); Catherine M. Sharkey, *Products Liability in the Digital Age: Online Platforms as “Cheapest Cost Avoiders,”* 73 HASTINGS L.J. 1327, 1330–34 (2022) (chronicling the evolution of product liability law).

⁹¹ See Sharkey, *supra* note 90, at 1330 (discussing early products liability law and explaining how liability was “restrained by a strict privity requirement that restricted recovery to parties in a direct relationship”); DOBBS ET AL., *supra* note 89, at 777–78 (explaining the privity requirement in early product liability cases and stating that courts recognized exceptions in extreme cases).

⁹² See *MacPherson v. Buick Motor Co.*, 111 N.E. 1050, 1053 (N.Y. 1916) (rejecting the privity requirement); DOBBS ET AL., *supra* note 89, at 778 (discussing *MacPherson* and the cessation of the privity requirement); Sharkey, *supra* note 90, at 1331 (noting that the privity requirement ceased to make sense when automobiles were created because retailers became intermediaries between manufacturers and consumers).

requirement, and, subsequently, a strict liability standard emerged.⁹³ Today, the liability standard is multifold—claims may be brought under negligence or strict liability theories.⁹⁴ Academics suggest subjecting manufacturing defects to a strict liability standard and applying a negligence-like standard to design and warning defects.⁹⁵

⁹³ See *MacPherson*, 111 N.E. at 1053 (describing a negligence standard for product liability); DOBBS ET AL., *supra* note 89, at 778–80 (discussing the trajectory of product liability theory from a privity standard to a negligence standard, to a strict liability standard). In 1963, in *Greenman v. Yuba Power Products, Inc.*, the Supreme Court of California was the first court to hold a manufacturer strictly liable for a defective product. See 377 P.2d 897, 900 (Cal. 1963) (holding that “[a] manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being”). The *Restatement (Second) of Torts* § 402A explains that sellers are strictly liable for products that cause physical harm, and strict liability attaches to products deemed defective for being unreasonably dangerous to consumers. RESTATEMENT (SECOND) OF TORTS § 402A (AM. L. INST. 1965); see DOBBS ET AL., *supra* note 89, at 780 (discussing *Greenman* and the development of strict product liability and stating that the *Greenman* decision was impactful in drafting the *Restatement (Second) of Torts* and discussing its effect on the law); STUART M. SPEISER, CHARLES F. KRAUSE & ALFRED W. GANS, AMERICAN LAW OF TORTS § 18:2 (database updated Dec. 2024), Westlaw (stating that *Greenman* was the first case “to render a manufacturer strictly liable in tort for marketing a defective product”).

⁹⁴ See *Burton v. E.I. du Pont de Nemours & Co.*, 994 F.3d 791, 818 (7th Cir. 2021) (explaining that strict liability and negligence are “separate avenues of recovery” under Wisconsin products liability law (quoting *Godoy ex rel. Gramling v. E.I. du Pont de Nemours & Co.*, 768 N.W.2d 674, 681 n.7 (Wis. 2009))); *Connelly v. Hyundai Motor Co.*, 351 F.3d 535, 540 (1st Cir. 2003) (holding that, under New Hampshire law, a “strict liability action based upon a theory of defective design [may] be joined with an action grounded in negligence” (quoting *Trull v. Volkswagen of Am., Inc.*, 761 A.2d 477, 481 (N.H. 2000))); DAVID G. OWEN & MARY J. DAVIS, OWEN & DAVIS ON PRODUCTS LIABILITY § 1:14 (database updated May 2024), Westlaw (stating that negligence remains an important theory of liability in products liability law, but that strict liability has become the dominant theory). Plaintiffs can bring products liability claims under multiple theories of liability. See *DiBlasi v. Smith & Nephew, Inc.*, No. 3:20CV566 (MPS), 2021 WL 619509, at *2 (D. Conn. Feb. 17, 2021) (indicating that under the Connecticut Products Liability Act, a claim can be brought under strict liability, negligence, or breach of warranty); AMERICAN LAW OF PRODUCTS LIABILITY, *supra* note 88, § 10:2 (stating that many state statutes allow products liability claims to be brought under several theories of liability); see also *Understanding the Interplay Between Strict Liability and Product Liability*, *supra* note 89 (stating that most states apply a strict liability standard, but others apply negligence standards, or breach of warranty standards); AMERICAN LAW OF PRODUCTS LIABILITY, *supra* note 88, § 16:8 (stating that a majority of jurisdictions have adopted the *Restatement (Second) of Torts*’s strict liability standard but noting that drafters of the *Restatement (Third) of Torts* stated that this standard was “created to deal with liability for manufacturing defects and is not appropriately applied to design defect or warnings cases”).

⁹⁵ See RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 2 (AM. L. INST. 1998) (indicating a strict liability standard for manufacturing defects, and a negligence-like standard for design and information defects); DOBBS ET AL., *supra* note 89, at 781 (stating that “the Products Restatement essentially retains strict liability only for products flawed in manufacture, and adopts a negligence standard or something very like it for design and warning defects”).

2. Establishing Product Liability Claims: A “Product” Is Required

As a preliminary matter, products liability law requires that the defendant be a *product* distributor for all three kinds of claims.⁹⁶ The Restatement (Third) of Torts (Third Restatement) defines products as items of “tangible personal property” commercially distributed for consumption or use, and other items, including intangible items, that are sufficiently analogous.⁹⁷ Importantly, services are not products even if they are provided commercially.⁹⁸

The comments to the Third Restatement elucidate that in some unique cases intangible property has received strict product liability treatment when harm has been caused by (1) information found in media, and (2) electricity.⁹⁹ Nevertheless, courts have held that content, ideas, and free expression cannot establish a products liability claim.¹⁰⁰

In 1991, in *Winter v. G.P. Putnam’s Sons*, the U.S. Court of Appeals for the Ninth Circuit held that false information contained in a book was not a product.¹⁰¹ After purchasing a book on mushrooms published by the defendant, the plaintiffs consumed wild mushrooms they believed were safe to eat based on the defendant’s aforementioned reference book.¹⁰² In affirming the lower court’s grant of summary judgment to the defendant publisher, the court in *Winter* cautioned that applying strict products liability to words and ideas would significantly inhibit those wishing to share thoughts and theories and would not align with the goals of strict products liability.¹⁰³

⁹⁶ See DOBBS ET AL., *supra* note 89, at 792 (explaining that there has to be a product for a defendant to be held liable under strict product liability and noting that typically whether a product is at issue is not litigated because the parties involved do not challenge the existence of a product).

⁹⁷ RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 19(a) (defining products as “tangible personal property distributed commercially for use of consumption” and providing that intangible things may be products based on the “context of their distribution”).

⁹⁸ See *id.* § 19(b) (stating that “[s]ervices, even when provided commercially, are not products”).

⁹⁹ See *id.* § 19 cmt. d. (providing that courts have attached products liability to information found in navigational charts and maps providing false information and to “intangible forces” such as x-rays and electricity); *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 841 (N.D. Cal. 2023) (discussing the *Restatement (Third) of Torts* and its analysis of when strict products liability has been attached to intangible things).

¹⁰⁰ See *infra* notes 101–106 and accompanying text.

¹⁰¹ See 938 F.2d 1033, 1036 (9th Cir. 1991) (declining to apply strict product liability to the content contained in a reference book about foraging for mushrooms); see also *Birmingham v. Fodor’s Travel Publ’ns, Inc.*, 833 P.2d 70, 75 (Haw. 1992) (holding that a travel guide that asserted that a beach was safe was not a product under products liability law and thus the plaintiff who was injured by rocks while swimming could not recover under product liability theory); *Jones v. J.B. Lippincott Co.*, 694 F. Supp. 1216, 1216–18 (D. Md. 1988) (holding that a nursing student who self-treated constipation using a remedy provided by nursing textbook and was subsequently injured did not have a product liability claim because the *Restatement (Second) of Torts* does not cover the “dissemination of an idea or knowledge”).

¹⁰² *Winter*, 938 F.2d at 1034.

¹⁰³ See *id.* at 1034–35 (stating that the threat of strict product liability being applied to “words and ideas” would restrict those wishing to share such thoughts and explaining that, when applied correctly,

In 2002, in *James v. Meow Media, Inc.*, the U.S. Court of Appeals for the Sixth Circuit extended the *Winter* principles to the digital world.¹⁰⁴ After a high school student shot several of his classmates, the parents of the victims brought a products liability suit against the developers and distributors of violent video games, alleging that their “products” were defective based on how they influenced the shooter to kill the victims.¹⁰⁵ Citing Sixth Circuit precedent, the court found that “words and pictures” are not products, and that although the video games were transmitted through cartridges and cassettes, the alleged product at issue related to the content of the games, which was not tangible enough to form the basis of a products liability claim.¹⁰⁶

Some courts treat online platforms as products in which liability can attach when the alleged harms arise out of design choices.¹⁰⁷ For example, in 2022, in *Brooks v. Lyft Inc.*, a Florida intermediate appellate court held that Lyft, the popular ridesharing platform, could face liability under products liability law because the alleged harms arose out of the design of their application.¹⁰⁸ Similarly, in 2021, in *Lemmon v. Snap, Inc.*, the U.S. Court of Appeals for the Ninth Circuit held that the plaintiffs sufficiently alleged a product-based negligence claim when they challenged a feature on Snap’s app that allowed users to record themselves while displaying the speed at which they were traveling.¹⁰⁹ Furthermore, in 2022, in *A.M. v. Omegle.com, LLC*, the U.S. District Court for the District of Oregon held that the plaintiff adequately al-

strict product liability facilitates accident prevention and ensures that the costs of injury is borne by manufactures and sellers of products). The court in *Winter* cautioned that applying strict liability principles to products already risks inhibiting innovation, which is tolerable, but applying the theory to content would be “disturbing” as “we might be deprived of the latest ideas and theories.” *Id.*

¹⁰⁴ See *James v. Meow Media, Inc.*, 300 F.3d 683, 701 (6th Cir. 2002) (citing *Winter* for the proposition that when deciding whether products liability applies to thoughts and ideas “courts have been willing to separate the sense in which the tangible containers of those ideas are products from their communicative element for purposes of strict liability”); *In re Soc. Media*, 702 F. Supp. 3d at 842 (stating that the court in *James* applied the *Winter* framework to a claim involving the digital world).

¹⁰⁵ See *James*, 300 F.3d at 700–01 (explaining the plaintiff’s theory of product liability).

¹⁰⁶ *Id.* The court noted that strict products liability would attach if a “video cassette exploded” and caused physical injury, but video games are not products “in the sense of their communicative content.” *Id.* at 701; see *Watters v. TSR, Inc.*, 904 F.2d 378, 381 (6th Cir. 1990) (indicating that “words or pictures” involved in a board game did not represent a product to which strict liability could attach).

¹⁰⁷ See *infra* notes 108–110; see also *In re Soc. Media*, 702 F. Supp. 3d at 847 (stating that “products claims focused on the design of digital platforms, as opposed to their content, may be cognizable”).

¹⁰⁸ See *Brookes v. Lyft Inc.*, No. 50-2019-CA-004782-XXXX-MB, 2022 WL 19799628, at *3 (Fla. Cir. Ct. Sept. 30, 2022) (holding that “Lyft should be responsible for any harm caused by its digital application in the same way the designer of any defective physical product is held accountable”).

¹⁰⁹ See *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093–94 (9th Cir. 2021) (finding for the plaintiffs and stating that the plaintiffs’ negligent design claim was independent of the content posted while using the filter); *In re Soc. Media*, 702 F. Supp. 3d at 846 (stating that the Ninth Circuit assumed in *Lemmon* that the “plaintiffs adequately alleged a product-based negligence claim against Snap”).

leged that Omegle's website design was defective by its process of connecting minors to adults without any prior contact.¹¹⁰

In contrast, in 2022, *Estate of B.H. v Netflix, Inc.*, the U.S. District Court for the Northern District of California held that the plaintiffs failed to establish a strict products liability claim because their complaint was based "on the content and dissemination of [a] show."¹¹¹

3. Prima Facie Case for Design Defects Claims

Under both negligence and strict liability theories, manufacturers and sellers are liable for defective designs.¹¹² According to the Third Restatement, a design is defective when "foreseeable risks of harm" presented by a product could have been avoided or mitigated by a reasonable alternative design (RAD).¹¹³ Courts invoke two major tests to evaluate design defect claims: the "consumer expectations" test and the "risk-utility" test.¹¹⁴ The consumer expectations test analyzes whether the design satisfies an ordinary user's safety expectations.¹¹⁵ The risk-utility test focuses on the costs and benefits of a proposed alternative design feature—essentially comparing the risks and benefits of a design to a RAD.¹¹⁶

¹¹⁰ See *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814, 819–21 (D. Or. 2022) (reasoning that Omegle could have designed a product that did not connect adults and minors, and that they could have achieved this without needing to monitor or edit third-party content, and, consequently, products liability attached).

¹¹¹ No. 4:21-CV-06561-YGR, 2022 WL 551701, at *3 (N.D. Cal. Jan. 12, 2022), *aff'd* Est. of Herndon v. Netflix, Inc. No. 22-15260, 2024 WL 808797 (9th Cir. Feb. 2, 2024), *vacated* Est. of Herndon v. Netflix, Inc., 2025 WL 581589 (Mem) (Feb. 24, 2025). In this case, the plaintiffs sued Netflix for their "production, dissemination, and recommendation" of a show where a young girl committed suicide. See *In re Soc. Media*, 702 F. Supp. 3d at 845 (describing the *Netflix* case and citing the facts in the complaint).

¹¹² See OWEN & DAVIS, *supra* note 94, § 8:2 (stating that under each major theory of liability, manufacturers and sellers are liable for defective designs).

¹¹³ RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 2(b) (AM. L. INST. 1998).

¹¹⁴ See OWEN & DAVIS, *supra* note 94, § 8:2 (introducing the two tests for design defect claims and noting that all courts use one of the two tests, or a combination of both); DOBBS ET AL., *supra* note 89, at 810 (noting that there are two tests for design defects: (1) the consumer expectation test and (2) the risk-utility test).

¹¹⁵ See OWEN & DAVIS, *supra* note 94, § 8:2 (indicating that the consumer expectations test asks whether a design "meets the safety expectations of users and consumers"); see also DOBBS ET AL., *supra* note 89, at 807 (indicating that the consumer expectations test is rooted in the *Restatement (Second) of Torts*' assertion that a product is defective if it is more dangerous than expected by an "ordinary consumer").

¹¹⁶ See OWEN & DAVIS, *supra* note 94, § 8:11 (stating that the basic risk-utility test asks whether a product "reasonably could have been designed more safely so as to prevent the plaintiff's harm without unduly increasing the product's cost, decreasing its utility, or introducing other hazards").

All theories of liability require that the product defect must have proximately caused the injury at issue.¹¹⁷ When a design defect is alleged under a theory of negligence, the plaintiff must also establish duty.¹¹⁸ The plaintiff has the burden to prove that the manufacturer or seller owed them a duty and that the breach of that duty caused their harm.¹¹⁹

C. Design Features in Social Media Applications

Scientific research indicates that compulsive and addictive use of social media engenders negative physical and mental consequences for youth.¹²⁰ Drawing upon this research, the plaintiffs in *In re Social Media* allege that the defendant social media companies have created a mental health crisis among youth by designing platforms that cause detrimental effects on their users, including depression, anxiety, body dissatisfaction, compulsive use, addiction, and self-harming behaviors.¹²¹ The plaintiffs further allege that defendants specifically target children to establish their core market, even though the companies are aware of the harm their platforms cause to child users.¹²²

¹¹⁷ See SPEISER ET AL., *supra* note 93, § 18:36 (stating that proximate causation “is a prerequisite to any recovery for product-caused injury in every product liability case”). Proximate cause is defined in myriad ways, and some courts define it as the “cause which, in a natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury and without which the result would not have occurred.” *Id.* Others define it as “as a substantial contributing factor in bringing about the harm in question.” *Id.*

¹¹⁸ See OWEN & DAVIS, *supra* note 94, § 2:1 (stating that to prove a negligence-based design defect claim, a plaintiff must establish duty and causation).

¹¹⁹ See *id.* (discussing a plaintiff’s burden under a negligence theory).

¹²⁰ See, e.g., Twenge et al., *supra* note 11, at 9 (discovering that youth who spend additional periods of time on screen activities were “significantly” more likely to suffer from depressive symptoms or result in increased chances of “suicide-related” outcomes).

¹²¹ See Amended Master Complaint, *supra* note 38, at 26 (stating that almost a decade of scientific studies demonstrates that features on the defendants’ platforms have detrimental effects on the health of the mental health of their users); see also *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 804, 819 (N.D. Cal. 2023) (stating that the defendants knew that their platforms are harmful to child users based on research accessible from at least 2014 onwards and, in some cases, internal data indicating potential harm to youth); see also Georgia Wells, Jeff Horwitz & Deepa Seetharaman, *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show*, WALL ST. J. (Sept. 14, 2021), <https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739> [<https://perma.cc/23ZX-E6MV>] (reporting that Facebook, now Meta, knew that Instagram made teenage girls feel worse about their bodies). The plaintiffs further allege that the defendants’ platforms can cause a variety of behavioral issues such as neglecting other responsibilities because of the magnitude of usage. Amended Master Complaint, *supra* note 38, ¶ 97.

¹²² See Amended Master Complaint, *supra* note 38, at 12, 27–28 (alleging that the defendants designed and marketed their platforms to increase the quantity of children who download and use them compulsively and that the defendants knew that their platforms cause harm to child users).

The complaint puts forth a multitude of ways that the social media platforms cause harm to adolescent users.¹²³ Many of the alleged design defects relate to the ways that the defendants' platforms maximize user engagement at the expense of promoting addictive and compulsive use.¹²⁴ Some of these design defects relate to how the platforms allow for the sexual exploitation of adolescents.¹²⁵ Specific design defect allegations are important to the overall legal analysis, as some defect claims are barred by § 230 and others are not.¹²⁶

The design defects highlighted by the plaintiffs that allegedly contribute to compulsive and addictive use include: endless-content feeds, lack of screen limitations, ephemeral content, limitations on content length, and algorithmic prioritization of content.¹²⁷ In addition, the complaint alleges that the defendants use intermittent variable rewards, also referred to as "IRV"—strategically timed dopamine-triggering rewards—to maximize engagement.¹²⁸ Moreover, the plaintiffs contend that by providing users with filters, social media apps proliferate idealized content, which has adverse effects on adolescents' body image.¹²⁹

¹²³ See *In re Soc. Media*, 702 F. Supp. 3d at 819–22 (listing functions of the defendants' platforms that allegedly cause harm to adolescents).

¹²⁴ See *id.* at 819 (stating that the master amended complaint "describes myriad ways in which the design of defendants platforms" cause harm to adolescents' well-being by encouraging addictive and compulsive use). It should be noted that the plaintiffs' complaint also alleges failure to warn defects, however, this Note focuses on the design defects allegations in order to provide a more succinct analysis of the interplay between design-based products liability, and § 230 and the First Amendment. See *id.* at 818 (listing the plaintiffs' priority claims, which include "Product-Based Negligent Failure to Warn" and "Strict Products Liability Failure to Warn" claims).

¹²⁵ See *id.* at 819 (discussing how the defendants' platforms facilitate the sexual exploitation of adolescents and the online dissemination of child sex abuse materials (CSAM)).

¹²⁶ See *infra* notes 140–176 and accompanying text.

¹²⁷ See *In re Soc. Media*, 702 F. Supp. 3d at 819–21 (describing alleged defective features). Endless-content feeds include Facebook's "News Feed" which represents a continuous and never-ending feed of content, YouTube's "Autoplay" function, and TikTok's "For You" page. *Id.* at 819–20. Ephemeral content refers to the defendants' time limits on how long content can be viewed for. *Id.* at 820. Algorithmic prioritization describes the defendants' use of algorithms that promote specific content to individual users based on the likelihood that it will maintain their engagement on the platform. *Id.* at 821.

¹²⁸ See Amended Master Complaint, *supra* note 38, at 19–20 (explaining how intermittent variable rewards (IVR) function and suggesting that they have highly addictive effects). An example of IVR is TikTok delaying showing a video a user is expected to connect with "until the moment before it anticipates the user would otherwise log out." *Id.*

¹²⁹ *In re Soc. Media*, 702 F. Supp. 3d at 821; see Amended Master Complaint, *supra* note 38, ¶ 88 (claiming that the defendants' filters "turbocharge" unhealthy upward comparison by allowing their users to post content that idealizes their life and results in "harmful body image comparisons"). The complaint further identifies the following design defects: (1) barriers to deleting accounts; (2) "quick add" recommendation functions that facilitate connections between child and adult users; (3) private chats (which may enable communications with "adult predators"); (4) sharing adolescents' location through geolocation; (4) ineffective age verification technology; and (5) lack of parental controls. *In re Soc. Media*, 702 F. Supp. 3d at 821–22.

II. DEFECTIVE PLATFORMS: FINDING POTENTIAL ACCOUNTABILITY IN PRODUCTS LIABILITY THEORY

In 2023, in *In re Social Media*, the U.S. District Court for the Northern District of California evaluated whether the defendant social media giants were immune from the MDL plaintiffs' product defect claims.¹³⁰ The court analyzed the functionalities of the alleged defects under § 230, the First Amendment, and the products liability doctrine to determine whether to grant or deny the defendants' motion to dismiss.¹³¹ Chastising the parties' "all or nothing" approach, the court examined each defect for its manifest functionality.¹³² Part A of this Section details the court's § 230 and First Amendment analysis.¹³³ In doing so, it outlines the design defects barred by § 230 and the First Amendment, and the defects beyond the reach of such immunity.¹³⁴ Part B of this Section expounds upon whether the remaining design defect claims could proceed on product liability theory, which requires that the features constitute products.¹³⁵

A. Immunity Shields: § 230 and the First Amendment

In *In re Social Media*, the defendant social media giants attempted to avoid all liability by invoking § 230 and the First Amendment as blanket defenses to all of the plaintiffs' defect claims.¹³⁶ The court rejected these "all or nothing" approaches, finding that § 230 and the First Amendment barred some claims, but not others.¹³⁷ Subsection 1 examines the § 230 defense through the

¹³⁰ See *In re Soc. Media.*, 702 F. Supp. 3d at 817 (explaining that the court will address the MDL plaintiffs' initial wave of arguments against the "world's most used social media platforms"). The MDL case represents individual actions, over 140 actions from school districts, and over thirty actions by attorneys general. *Id.*

¹³¹ See generally *In re Soc. Media*, 702 F. Supp. 3d at 829–34, 836–37, 849–54 (assessing whether the plaintiffs' defect claims are barred or may proceed based on the specific functionality of each alleged defect).

¹³² See *id.* at 818 (stating that the parties' "all or nothing" approach is insufficient to "address the complexity of the issues facing this litigation" and that the court must evaluate each alleged defect in light of its "actual functionality"). During a hearing, Judge Yvonne Gonzalez Rogers denounced the parties' blanket approach, asserting to the parties that it was not "clear" to her "that the entire thing is thrown out" and that she believes the issue is "much more complicated" than either party made out in their briefs. Isaiah Poritz, 'All-or-Nothing' Social Media Addiction Stances Panned by Judge, BLOOMBERG (Oct. 27, 2023), <https://www.bloomberglaw.com/product/blaw/bloombergtterminalnews/bloomberg-terminal-news/S37LF7T0AFB4> [<https://perma.cc/FE3U-WJ6V>].

¹³³ See *infra* notes 136–176 and accompanying text.

¹³⁴ See *infra* notes 136–176 and accompanying text.

¹³⁵ See *infra* notes 177–200 and accompanying text.

¹³⁶ See *In re Soc. Media*, 702 F. Supp. 3d at 829, 835 (noting that the defendants put forth "all or nothing" arguments that § 230 and the First Amendment bar all the plaintiffs' product claims).

¹³⁷ See generally *id.* at 829–34, 836–37 (evaluating whether § 230 and the First Amendment bar specific defect claims). Because this Note focuses on the arguments addressed in the motion to dismiss, it refers to the court's holdings and parties' arguments in the past tense; however, seeing as the

lens of social media platform defect claims.¹³⁸ Subsection 2 explores the applicability of a First Amendment defense to social media defects.¹³⁹

1. Invoking § 230 Immunity: Do the Alleged Defects Involve Publishing Third-Party Content?

On the premise that their allegedly harmful features cannot be separated from their role as publishers of third-party content, the defendants argued that § 230 provides them immunity for all the plaintiffs' claims.¹⁴⁰ Conversely, the plaintiffs contended that their product defect claims do not attack the defendants' role as publishers of content.¹⁴¹ Given the nuances of § 230, the court fundamentally disagreed with both arguments.¹⁴² The court considered each alleged defect in turn, and analyzed whether the plaintiffs were impermissibly seeking to hold the defendants liable for third-party content.¹⁴³

Although the functions of individual defects barred by § 230 varied, they shared a common plight: all barred defects were inseparable from the social media companies' role as publishers of third-party content.¹⁴⁴ The court observed that multiple alleged defects would ultimately require the defendants to publish less third-party content.¹⁴⁵ For example, if the court found screentime-centered features to be defective, the defendants would be required to alter

court denied granting the defendants' motion to dismiss on various defect claims, the litigation is ongoing. *See id.* at 818 (denying in part the defendants' motion to dismiss).

¹³⁸ *See infra* notes 140–166 and accompanying text.

¹³⁹ *See infra* notes 167–176 and accompanying text.

¹⁴⁰ *See In re Soc. Media*, 702 F. Supp. 3d at 829, 835 (explaining the defendants' "all or nothing" approach that § 230 and the First Amendment bar all the plaintiffs' product claims). The defendant social media companies meet the threshold requirement of § 230 because they constitute interactive computer service providers. *See* 47 U.S.C. § 230(f)(2) (defining interactive computer service providers as providers of "information services, system, or access software" that allows multiple users to access a computer server); *Marshall's Locksmith Serv. v. Google, LLC*, 925 F.3d 1263, 1268 (D.C. Cir. 2019) (indicating that Google is an internet service provider); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014) (indicating that Facebook is an online service provider).

¹⁴¹ *See In re Soc. Media*, 702 F. Supp. 3d at 829 (introducing the plaintiffs' "all or nothing" argument that § 230 shields none of their product claims).

¹⁴² *Id.*

¹⁴³ *See* 47 U.S.C. § 230(c)(1) (providing that interactive service providers shall not be treated as publishers or speakers of third-party content); *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (interpreting § 230 to mean that service interactive providers cannot face liability for exercising their "traditional editorial functions"). *See generally In re Soc. Media*, 702 F. Supp. 3d at 829–34 (analyzing each alleged defect claim in light of § 230 restrictions on liability). Critically, publishing includes making editorial decisions.

¹⁴⁴ *See In re Soc. Media*, 702 F. Supp. 3d at 830–34 (discussing alleged design defects barred by § 230 due to their direct connection with the defendants' roles as publishers); *see also Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009) (holding that § 230 prevents internet service providers from being held liable for failing to remove third-party content because "removing content is something publishers do" and imposing liability "involves treating the liable party as a publisher of the content it failed to remove").

¹⁴⁵ *See infra* notes 148–149 and accompanying text.

their platform designs and limit consumer usage, thereby requiring that they publish less user content.¹⁴⁶ Likewise, limiting geolocation features would require the defendants to post less content.¹⁴⁷

Invoking analogous reasoning, courts have held that failing to remove content is a publishing function entitled to § 230 protection.¹⁴⁸ Censoring user content and creating screen or geolocation limits inherently relates to deciding whether or not third-party content gets published.¹⁴⁹ Therefore, the *In re Social Media* court determined that these defects are inextricably related to the defendants' role as publishers, and thus barred by § 230.¹⁵⁰

The court also found that recommendation and notification functions fall squarely within § 230 immunity.¹⁵¹ Notification and recommendation features

¹⁴⁶ See *In re Soc. Media*, 702 F. Supp. 3d at 831 (explaining that unlike opt-in screen time limits—that allow users to decide whether to receive less content—built in screen time and feed restrictions inherently restrict the content the defendants can publish). Specifically, the plaintiffs accused the defendants of failing to provide default limits to the frequency and length of sessions and block use during particular hours of the day. *Id.* Further, they identified a defect in the defendants' endless feed designs, in which a user's feed has no beginning or end. *Id.* Addressing this defect would also impermissibly require the defendants to restrict their publishing of content provided by third-parties. See *id.* (indicating that § 230 bars the plaintiff's endless feed defect claim).

¹⁴⁷ See *id.* (stating that restricting the defendants' ability to post geolocation content plainly targets their role as publishers of third-party content). The geolocation defect stems from the plaintiffs' contention that the publication of geolocations of minors is defective by design as it can be used by predators. See *id.* at 821 (introducing the alleged geolocation design defect).

¹⁴⁸ See, e.g., *Barnes*, 570 F.3d at 1103 (holding that failing to remove content is publishing conduct protected by § 230); *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1091 (9th Cir. 2021) (indicating that publishing decisions include deciding whether to post third-party content).

¹⁴⁹ See *In re Soc. Media*, 702 F. Supp. 3d at 831 (suggesting that implementing default limits sharing geolocation data and default screen-time limits would unequivocally require the defendants to reduce the third-party content they publish).

¹⁵⁰ See *id.* at 831, 834 (granting the defendants' motion to dismiss the geolocation design defect claim and design defect claims centered on their failure to limit screen time by default); see also *Ginsberg v. Google Inc.*, 586 F. Supp. 3d 998, 1006 (N.D. Cal. 2022) (finding that the second prong of the test from *Barnes* was satisfied when the plaintiff attempted to hold Google accountable for failing to remove offensive content). In a similar vein, using algorithms to determine the length and target audience of third-party content constituted traditional editorial functions protected by § 230. *In re Soc. Media*, 702 F. Supp. 3d at 832 (indicating that traditional editorial functions protected by § 230 include making decisions regarding the length of third-party content and using algorithms to inform when and to whom third-party content is posted); see also *Barnes*, 570 F.3d at 1102 (stating that publishing functions involve "reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (stating that a "publisher's traditional editorial functions" include "deciding whether to publish, withdraw, postpone or alter content"); *Force v. Facebook, Inc.*, 934 F.3d 53, 66–68 (2d Cir. 2019) (holding that under § 230, Facebook could not be held liable for their use of an algorithm that recommended terrorist content to users); *M.P. ex rel. Pinckney v. Meta Platforms Inc.*, 127 F.4th 516, 520–21 (4th Cir. 2025) (holding that § 230 barred plaintiff's tort law claims against Facebook for its algorithm that "recommend[s] harmful content" and allegedly "led to radicalization and offline violence").

¹⁵¹ See *In re Soc. Media*, 702 F. Supp. 3d at 831–33 (finding that recommendation and notification features are barred by § 230); *Dyoff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019) (holding that "recommending user groups and sending email notifications" was within the defendant internet service providers role as a publisher of third-party content).

are not content themselves, but merely a means to facilitate third-party content and communication between users.¹⁵² User accounts constitute third-party content, and recommendation functions involve the publishing of their content.¹⁵³ By the same token, social media companies do not create content themselves when alerting users to third-party content.¹⁵⁴

Notably, the court differentiated the *In re Social Media* defendants' recommendation functions from those present in the U.S. District Court for the District of Oregon's 2022 decision in *A.M. v. Omegle.com, LLC* where chat partners were recommended before any content or conversation existed, and thus the recommendation defects were beyond the scope of § 230 immunity.¹⁵⁵

¹⁵² See *Dyroff*, 934 F.3d at 1098 (holding that recommendations and notifications are not content in themselves, but instead, are "tools meant to facilitate the communication and content of others"); see also *L.W. ex rel. Doe v. Snap Inc.*, 675 F. Supp. 3d 1087, 1097, 1100 (S.D. Cal. 2023) (finding that § 230 barred claims related to the "'Quick Add' function" on Snapchat which allows users to friend other users); *Doe v. Grindr Inc.*, 128 F.4th 1148, 1152–53 (9th Cir. 2025) (ruling that § 230 barred a design defect claim against Grindr, a dating app for gay and bisexual men, for connecting minors with predators and allowing the underaged plaintiff to "communicate with abusive" adults). Under a similar rationale, private messaging features fall within the kind of publishing activity protected by § 230. See *In re Soc. Media*, 702 F. Supp. 3d at 833 (holding that private messaging-based defects are barred by § 230). Private messaging features involve publishing third-party content, and § 230 immunity is not pierced simply because such content is only published to one other user. See *id.* (finding that private messaging features "fall within the publishing umbrella"); see also *Fields v. Twitter, Inc.*, 217 F. Supp. 3d 1116, 1128 (N.D. Cal. 2016) (finding that "[p]ublishing activity under [S]ection 230(c)(1) extends to Twitter's Direct Messaging capabilities"), *aff'd*, 881 F.3d 739 (9th Cir. 2018). The *In re Soc. Media* court rejected the plaintiffs' argument that *Fields* does not govern because in that case the plaintiffs alleged that Twitter should be held liable for the "substance of ISIS's private messages." *In re Soc. Media*, 702 F. Supp. 3d at 833 n.21 (quoting Plaintiffs' Opposition to Defendants' Supplemental Motion to Dismiss Pursuant to Rule 12(b)(6) Plaintiffs' Priority Claims Under Section 230 and the First Amend. at 13, *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, No. 4:22-md-03047-YGR (N.D. Cal. July 25, 2023)). The court clarifies that the *Fields* decision applied § 230 to private messaging features generally, "regardless of the content of those messages." *Id.*

¹⁵³ See *In re Soc. Media*, 702 F. Supp. 3d at 832 (stating that the essence of the recommendation function is "indistinguishable from publishing" as it is plainly a "means through which defendants publish third-party content to users"). The plaintiffs do not suggest that recommendation functions are innately dangerous, but rather that they are risky because they recommend adult profiles; moreover, they do not offer solutions to this alleged defect that would not require the defendants to alter how they publish recommendation-based content. *Id.*

¹⁵⁴ See *Dyroff*, 934 F.3d at 1097–98 (indicating that the defendant acted as a publisher when sending notifications alerting users to posts on a message board as it did not develop or create the content itself). The plaintiffs do not contend that the defendant social media companies develop or create content when sending notifications to users. *In re Soc. Media*, 702 F. Supp. 3d at 833 n.22. Instead, they allege that their strategic decisions regarding when to send notifications to users are design defects. *Id.* The court notes that if the defendants "altered the content in a material way, that would constitute development." *Id.*

¹⁵⁵ See *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814, 820–21 (D. Or. 2022) (distinguishing recommending chat partners from recommending content on the basis that no conversation or content exists at the time chat partners are matched and thereby holding that plaintiff's claim did not rest on publishing third-party content). The *In re Social Media* court distinguished the case from *A.M. v. Omegle.com, LLC* and *Lemmon v. Snap, Inc.* on the basis that in those cases "the plaintiffs alleged the

This illustrates the stark bounds of § 230 immunity: defendants can only escape liability for the publishing functions as they relate to third-party content.¹⁵⁶

Multiple design defects did not involve the defendants' monitoring or publishing of third-party content, and the defendants could fix them without modifying how they publish third-party content; therefore, the court declined to extend § 230 immunity to these defects.¹⁵⁷ For example, age-verification and parental control related defects do not inevitably implicate the publication of third-party content.¹⁵⁸ The defendants could leverage age-verification data in ways unrelated to third-party content by simply notifying parents that their child is using a social media platform, which could empower the parent to regulate and supervise their child's use of the platform.¹⁵⁹

Similarly, the court determined that filter-related defects did not necessarily implicate the defendants' protected role as publishers or speakers of

defendants had violated their duty to plaintiffs through conduct other than publishing third-party content and could have met their duty without changes to publishing conduct." *In re Soc. Media*, 702 F. Supp. 3d at 832; *see* *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1092 (9th Cir. 2021) (finding that the speed-filter feature defect claim was not barred by § 230 because Snap's duty was completely independent from "its editing, monitoring, or removing of the content that its users generate through Snapchat").

¹⁵⁶ *Compare Dyroff*, 934 F.3d at 1098 (indicating that § 230 immunity extends to recommendations and notifications based on third-party content), *with Omegle.com*, 614 F. Supp. 3d at 820–21 (finding that § 230 did not extend to chat recommendation functions where no third-party content existed at the time of the recommendation).

¹⁵⁷ *See* 47 U.S.C. § 230(c)(1) (indicating that providers of interactive computer services shall not be treated as a *publisher* or *speaker* of information provided by third party content providers); *In re Soc. Media*, 702 F. Supp. 3d at 829 (holding that the plaintiffs' defect claims that do not seek to hold the defendants liable for publishing or speaking are not barred by § 230). These alleged defects include: (1) failing to provide effective parental controls; (2) failing to provide functions that allow users to self-restrict their time spent on a platform; (3) making it difficult for users to delete their accounts; (4) insufficient age verifications; (5) making it difficult for users to "report predator accounts and content"; (6) providing filters that alter users' appearance; (7) failing to label filtered content; (8) strategically clustering and timing "notifications of *defendants' content* to increase addictive use"; and (9) failing to implement protocols that allow users to report child sexual abuse material and adult predators. *Id.*

¹⁵⁸ *See In re Soc. Media*, 702 F. Supp. 3d at 830 (noting that the plaintiffs' allegations go beyond claiming that the defendants should have limited child access based on age-verification data, the court rejected the defendants' argument that other courts have applied § 230 immunity to age verification-based claims); *Doe v. MySpace, Inc.*, 528 F.3d 413, 417, 422 (5th Cir. 2008) (holding that § 230 barred the plaintiff's claims that MySpace was negligent for not using age-verification data to restrict children's access to the platform).

¹⁵⁹ *See In re Soc. Media*, 702 F. Supp. 3d at 830 (holding that the defendants could utilize parental controls in ways "that would not impact their publication of third-party content"). Following this, the court found that the harm emanating from the defendants' failure to sufficiently verify the age of users is distinguishable from young users' interaction with third-party content on their platforms. *See id.* (suggesting that the harms associated with insufficient age-verification procedures are distinct from harms emanating from third-party content). Likewise, the defendants could reasonably take action besides removing content to address child sexual abuse material, such as providing adequate warnings or reporting the content to government agencies. *Id.* Thus, § 230 does not immunize them from the plaintiffs CSAM-reporting based claims. *Id.*

third-party content, and thus § 230 fails to provide immunity.¹⁶⁰ The plaintiffs argued that simply using social media beauty filters harms adolescents, regardless of whether the filtered photo is posted.¹⁶¹ Therefore, the claims do not rely on third-party content and are thus not protected by § 230 immunity.¹⁶²

Lastly, § 230 did not offer total immunity for claims relating to the timing and clustering of notifications.¹⁶³ The availability of immunity depends on whether the notifications concern content created by the defendants or by third-parties.¹⁶⁴ In *Lemmon v. Snap, Inc.*, decided in 2021 by the U.S. Court of Appeals for the Ninth Circuit, the court held that defendants are unprotected by § 230 and liable for internet content that they create or develop themselves.¹⁶⁵ Applying this standard, notification-based claims relating to content defendants create were not barred by § 230.¹⁶⁶

2. Pleading the First (Amendment): What Constitutes Platform “Speech”?

Like their all-or-nothing § 230 defense, the defendant social media companies in *In re Social Media* offered the First Amendment as a blanket defense to the plaintiffs’ product-defect allegations.¹⁶⁷ This approach was flawed, however, as the success of the defense turns on whether the plaintiffs seek to im-

¹⁶⁰ See *id.* (rejecting the defendants’ argument that holding social media companies liable for filters is inseparable from holding them liable for content published using filters); *Lemmon*, 995 F.3d at 1092 (holding that the speed-filter defect claim was not barred by § 230 because the harm alleged had “nothing to do with” Snap’s role in monitoring third-party content (quoting *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 852 (9th Cir. 2016))).

¹⁶¹ See *In re Soc. Media*, 702 F. Supp. 3d at 830 (explaining how the plaintiffs’ filter-related defect claims are independent and distinct from the publication of third-party content because the harms do not depend on the filter-content being posted).

¹⁶² See *id.* (accepting as plausible the plaintiffs’ argument that filter-content does not need to be published for filters to be harmful and finding that the filter-related defects are not barred by § 230). In reaching this conclusion, the court cited *Lemmon*, building on the proposition that social media design defects may survive § 230 immunity when there is a harm “separate and apart from publication” of user content. *Id.*; see *Lemmon*, 995 F.3d at 1093 (stating that a design-based claim following a car accident precipitated by the passengers’ use of Snap’s “Speed Filter” exemplifies a claim “that simply does not rest on third-party content”).

¹⁶³ See *In re Soc. Media*, 702 F. Supp. 3d at 830 (stating that § 230 does not completely immunize the defendants from notification-based claims).

¹⁶⁴ See *id.* (noting that defendants are liable to the extent that notifications relate to content they created).

¹⁶⁵ See *Lemmon*, 995 F.3d at 1093 (stating that “internet companies remain on the hook when they create or develop their own internet content”); see also *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1166–67 (9th Cir. 2008) (holding that § 230 did not protect Roommates.com for content they developed).

¹⁶⁶ See *In re Soc. Media*, 702 F. Supp. 3d at 830 (holding that defendants are liable for notifications relating to content they create themselves). An example of notifications relating to content that social media companies create themselves are the “‘awards’ allegedly given by Snap.” *Id.* Snap allegedly collects user data and sends “awards” to user based on this data—notably, not at the request of third parties. *Id.*

¹⁶⁷ *Id.* at 835.

pose liability for protected speech, which requires a defect-specific approach.¹⁶⁸

When addressing a defect would not require the defendants to alter what speech they publish or how, the court noted that the First Amendment did not provide a shield.¹⁶⁹ As such, the First Amendment did not protect defects that relate to users' interaction with the platforms.¹⁷⁰ For example, notifying parents that their children are using a platform could allow parents to discuss social media use with their children or limit their child's access with no impact on the defendants' speech and, thus, there is no basis for First Amendment protection of parental notification based defects.¹⁷¹

Under parallel reasoning, the court determined that filter-related defects are not necessarily protected by the First Amendment.¹⁷² According to the defendants' own explanations, filters are non-expressive, neutral tools.¹⁷³ In this

¹⁶⁸ See *id.* (stating that the defendants' "all or nothing" First Amendment defense fails because multiple allegations do not seek to hold them accountable for protected speech). The court only considered the First Amendment defense regarding claims not barred by § 230, finding it unnecessary to dismiss claims on both § 230 and First Amendment grounds. See *id.* at 836 (stating that because the court has barred myriad defect claims under § 230, "it only addresses those that remain").

¹⁶⁹ See *id.* at 836 (elucidating that defects that would not require defendants to alter how they disseminate speech and not protected by the First Amendment).

¹⁷⁰ See *id.* (denying the defendants' motion to dismiss as to defects that relate to user interaction). Such alleged defects include: (1) failing to provide effective parental controls; (2) failing to enable users to self-restrict the time they spend on a platform; (3) making it difficult for users to delete their accounts; (4) having weak age verification systems; and (5) failing to facilitate the reporting of adult predator accounts and CSAM without requiring individuals to create accounts or log into the platforms. *Id.*

¹⁷¹ See *id.* (explaining the possible impact of parental notifications in the context of defects that do not require changing how or what speech the defendants disseminate). Under analogous logic, providing users with options to self-restrict their time spent on a platform does not impact what the defendants publish for users who decide to visit their platforms. See *id.* (stating that supplying users with tools to self-limit their screen time on a platform does not change what the platform can publish).

¹⁷² See *id.* at 836–37 (declining to provide First Amendment protection to filter-related defects). The court specifically notes that the defendants do not address how the First Amendment "protects them from having to label filtered content." *Id.* at 836. Interestingly, after this Order, in 2024, in *Moody v. NetChoice LLC*, the Supreme Court suggested that social media companies' content-moderation decision to label posts when they deem appropriate based on the content expressed constitutes protected speech. 144 S. Ct. 2383, 2399, 2405 (2024) (stating that the Fifth Circuit erred in finding that "restrictions on the platforms' selection, ordering, and labeling of third-party posts do not interfere with expression" and explaining that regulations like these "profoundly [alter] the platforms' choices about the views they convey" and thus "interfere with protected speech"). The Court did not, however, opine on whether social media companies may be required to label content or whether requiring them to do so infringes on their First Amendment rights. See generally *id.* at 2403–05 (not discussing whether requiring labels interferes with protected expression). Under existing First Amendment doctrine, free speech protections extend to the right *not* to speak. See 303 Creative LLC v. Elenis, 143 S. Ct. 2298, 2313 (2023) (explaining that under Supreme Court precedent compelling an individual to deliver a message they do not wish to convey unconstitutionally abridges their First Amendment rights).

¹⁷³ See *In re Soc. Media*, at 836 (stating that the defendants do not contend that they developed filters with "any expressive intent or that the filters are in any way their own [form of] 'speech'"). The

way, filters simply add to the ways that users interact with the platforms, and they do not represent content themselves; therefore, they do not represent protected speech.¹⁷⁴

In contrast, the court extended First Amendment protection to alleged defects relating to how the defendants time and cluster notifications of their own content.¹⁷⁵ Because the content of the notifications is speech, and the defendants' timing and clustering of these notifications involve decisions about how they publish content, holding the defendants liable would inevitably require them to modify how they publish speech.¹⁷⁶

B. Seizing on Immunity Gaps: Can Products Liability Attach?

The *In re Social Media* court performed a bifurcated analysis to determine whether the defendants may be held accountable for the surviving design defects under products liability theory.¹⁷⁷ First, it determined whether, broadly speaking, the defendants' platforms can be treated as products.¹⁷⁸ Then, it analyzed the functionalities of the individual challenged defects to determine if the claims alleged a product.¹⁷⁹

As a preliminary matter, the court refused to simply rest its inquiry on whether the defendants' platforms are "services," and thus incapable of being

court distinguishes these filters from computer-altered magazine images that were protected by First Amendment. *Id.*; cf. *Hoffman v. Cap. Cities/ABC, Inc.*, 255 F.3d 1180, 1183, 1189 (9th Cir. 2001) (finding that when a magazine used computer technology to modify film stills, the images were considered speech and protected by the First Amendment).

¹⁷⁴ See *In re Soc. Media*, 702 F. Supp. 3d at 836 (finding that filters are not a form of protected speech).

¹⁷⁵ See *id.* at 837 (finding that the "timing and clustering of notification of defendants' content to increase addictive use is entitled to First Amendment protection").

¹⁷⁶ See *id.* (stating that there is "no way to interpret plaintiffs' claim with respect to the frequency of the notifications that would not require defendants to change when and how much they publish speech").

¹⁷⁷ See *id.* at 842 (laying out the framework that the court uses to analyze the design defect claims). The MDL plaintiffs' selected Georgia and New York for their preferred law for their products liability claims. See *id.* at 839 (noting that the court applies the plaintiffs' preferred law for the product liability claims).

¹⁷⁸ See *id.* at 842 (indicating that as a threshold matter the court must determine whether the defendants' platforms can be treated as products); see also *DOBBS ET AL.*, *supra* note 89, at 792 (stating that there must be a product for a defendant to be held strictly liable under product liability theory). Neither Georgia nor New York defines "products" and instead defer to the *Restatement (Third) of Torts*; therefore, the court uses the *Restatement (Third) of Torts* to guide its analysis. *In re Soc. Media*, 702 F. Supp. 3d at 839–40. To determine whether the platforms are products, the court considered whether they are: "(1) services; (2) tangible; (3) analogous to tangible personal property; (4) akin to ideas, content, and free expression upon which products liability claims cannot be based; and/or (5) akin to 'software,' and should, on that basis, be treated as products." *Id.* at 842.

¹⁷⁹ *In re Soc. Media*, 702 F. Supp. 3d at 842 (noting that after determining whether the platforms are products, the court must analyze the functionalities of the challenged features).

products.¹⁸⁰ The court further declined to categorize the platforms as tangible, and thus products, on the basis that they make noises, vibrate, and prompt users to physically interact with the interface through swiping and clicking.¹⁸¹ Likewise, the court rejected the plaintiffs' global arguments that the platforms themselves are analogous to tangible personal property.¹⁸²

To determine whether the platforms are equivalent to ideas, free expression, or content and thus not cognizable as products, the court considered existing precedent on the distinction between content-based and design-based defects.¹⁸³ In 2022, in *Estate of B.H. v. Netflix, Inc.*, the U.S. District Court for the Northern District of California held that the plaintiffs could not prevail on a products liability claim against Netflix based on Netflix's dissemination of a specific show.¹⁸⁴ In contrast, other courts have allowed platform-based product

¹⁸⁰ See *id.* at 843 (stating that the "parties' global arguments as to whether defendants' platforms are services do not resolve this dispute"); RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 19(b) (AM. L. INST. 1998) (stating that "[s]ervices, even when provided commercially, are not products"). The defendants argue that their platforms are merely "interactive communication services" and thus cannot be products. *In re Soc. Media*, 702 F. Supp. 3d at 842–43 (quoting Defendants' Joint Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6) Plaintiffs' Priority Claims Asserted in Amend. Master Complaint at 3, *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, No. 4:22-md-03047-YGR (N.D. Cal. Apr. 17, 2023)). In contrast, the plaintiffs argue that the platforms are products regardless of whether the defendants also provide services. *Id.* at 843. The plaintiffs further suggest that the defendants themselves describe their platforms as products. *Id.* The court rejected both the arguments on both sides, noting that although a label may be a factor, without more supportive evidence it "is hollow" and that cases indicating that apps are services offered "minimal, if any" basis for the classification. *Id.*

¹⁸¹ See *id.* at 843–44 (stating that although the plaintiffs' argument that the platforms are tangible is "creative," the court does not believe that the platforms are tangible). The court explained that "it is the phones that vibrate, make sounds, or otherwise manifest, physically, defendants' design choices" and thus the connection between these physical manifestations and the defendants' platforms is "too attenuated" for the platforms to be considered tangible products. *Id.*

¹⁸² See *id.* at 844–45 (stating that the plaintiffs fail to establish that the defendants' platforms are products because they are analogous to tangible personal property); RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 19(a) (including in the definition of "products" things that are "sufficiently analogous to the distribution and use of tangible personal property"). The plaintiffs unsuccessfully attempted to suggest that "[t]here is no functional difference between downloading an app from the App Store and using it on your phone, and buying a container from the Container Store and using it on your countertop." See *In re Soc. Media*, 702 F. Supp. 3d at 844 (stating that a "social media platform is not like a container" and rejecting the plaintiffs' analogy).

¹⁸³ See *In re Soc. Media*, 702 F. Supp. 3d at 845–47 (leveraging key cases discussing the difference between design and content-based claims to determine whether either parties' "all-or-nothing" arguments regarding whether the platforms are equivalent to ideas, free expression, or content can prevail).

¹⁸⁴ See *Est. of B.H. v. Netflix, Inc.*, No. 4:21-CV-06561-YGR, 2022 WL 551701, at *3 (N.D. Cal. Jan. 12, 2022) (declining to allow a strict products liability claim against Netflix when the plaintiffs' allegations were based in the content and publication of a specific show), *aff'd* *Est. of Herndon v. Netflix, Inc.* No. 22-15260, 2024 WL 808797 (9th Cir. Feb. 2, 2024), *vacated* *Est. of Herndon v. Netflix, Inc.*, 2025 WL 581589 (Mem) (Feb. 24, 2025). In *Netflix*, after receiving a recommendation for a television show where a teenage girl committed suicide, a young girl committed suicide. *In re Soc. Media*, 702 F. Supp. 3d at 845. The *In re Social Media* court distinguished the defects at issue from

defects claims to prevail when they focus on design aspects of the platform unrelated to content.¹⁸⁵

Following this, the *In re Social Media* court found that platform-centered products claims may be cognizable when they focus on the design of the platform, rather than its content.¹⁸⁶ In this way, at a global-level, products liability can be applied to the defendants' platforms for the plaintiffs' design-based claims; however, the court determined that each alleged defect required a distinct analysis regarding whether the claim can attach to a "product."¹⁸⁷

Multiple of the surviving alleged defects involve allegedly insufficient age verification measures and parental controls.¹⁸⁸ First, the court determined that in the context of their use and distribution, these purported defects are "analogous to tangible personal property" and thus may qualify as products.¹⁸⁹ Then, the court considered whether these features are akin to content, ideas, and free expression, and thus not capable of forming the basis of products liability.¹⁹⁰ Because the challenged characteristics principally relate to how ado-

the products liability claim in *Netflix*. *Id.* In *Netflix*, the "plaintiffs' injuries were inseparable from a specific show," whereas here the plaintiffs' alleged harms are based on the design of the defendants' platforms. *Id.*

¹⁸⁵ See *In re Soc. Media*, 702 F. Supp. 3d at 846–47 (indicating that *Brookes*, *Lemmon*, and *OmeGLE.com* support applying products liability to design-based defects); *Brookes v. Lyft, Inc.*, No. 50-2019-CA-004782-XXXX-MB, 2022 WL 19799628, at *2–4 (Fla. Cir. Ct. 2022) (concluding that because the alleged harms were based in design choices, Lyft could be held liable under products liability); *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093 (9th Cir. 2021) (holding that claims that focused on Snapchat's functionalities rather than third-party content could form the basis of a product-based negligence claim); *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814, 819 (D. Or. 2022) (holding that the plaintiff sufficiently pled products liability when her claim was based on the websites design and not third-party content).

¹⁸⁶ See *In re Soc. Media*, 702 F. Supp. 3d at 847 (noting that existing caselaw supports the conclusion that "products claims focused on the design of digital platforms, as opposed to their content, may be cognizable"); *OmeGLE.com*, 614 F. Supp. 3d at 819 (allowing products liability to attach to a platform when the defect claim was design-based and not content-based); *Brookes*, 2022 WL 19799628, at *4 (same).

¹⁸⁷ See *In re Soc. Media*, 702 F. Supp. 3d at 847, 849 (indicating that although the court has found potential in applying products liability theory to social media platforms, it must consider whether products liability may attach to each alleged defect).

¹⁸⁸ See *id.* at 849 (stating that three of the design defects at issue involve age verification systems and parental controls). Specifically, the alleged age verification practice and parent control defects are a failure to implement (1) "robust age verification processes to determine users' ages"; (2) "effective parental controls"; and (3) "effective parental notifications." *Id.*

¹⁸⁹ *Id.* at 850; see RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 19(a) (AM. L. INST. 1998) (stating that something is a product if it is "sufficiently analogous to the distribution and use of tangible personal property"). The court analogized parental controls and notifications to tangible products with parental controls of locks, such as caps on medicine bottles and "locks on televisions" that allow parents to determine which shows are appropriate for their children to watch. *In re Soc. Media*, 702 F. Supp. 3d at 849.

¹⁹⁰ *In re Soc. Media*, 702 F. Supp. 3d at 849; see *Winter v. G.P. Putnam's Sons*, 938 F.2d 1033, 1036 (9th Cir. 1991) (standing for the proposition that ideas and content should not form the basis of a

lescent users are able to access the platforms, the court found that the defects were better characterized as interface and experiential choices rather than content, words, or images.¹⁹¹ In this way, the court characterized age-verification and parent-control defects as “content-agnostic” and thereby elucidated that these defects can be classified as products.¹⁹² Following the same reasoning, the court determined that defects relating to application session duration are analogous to tangible personal property and content-agonistic, and, thus, are product components subject to products liability.¹⁹³

In accordance with the precedent set by the Ninth Circuit in *Lemmon*, the *In re Social Media* court allowed filter-related defects to proceed under products liability theory to the extent that they focus on the design of filter features.¹⁹⁴ The

products liability claim); *James v. Meow Media, Inc.*, 300 F.3d 683, 701 (6th Cir. 2002) (holding that products liability cannot be applied to the content, words, or images of digital media).

¹⁹¹ *In re Soc. Media*, 702 F. Supp. 3d at 849. The court indicated that the defects do not derive from content, words, or images because they primarily relate to platform access, specifically “whether [young users’] age is accurately assessed during the sign-up process and whether, subsequent to signing up, [young users’] activity and settings can be accessed and controlled by their parents.” *Id.*

¹⁹² *Id.*; see also *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814, 821 (D. Or. 2022) (finding that products liability could attach to defects involving minor’s access to an online platform). Defects related to inadequate processes for reporting CSAM, as well as unnecessarily complicated procedures for account deletion, are also content-agnostic and may be treated as products. See *In re Soc. Media*, 702 F. Supp. 3d at 851, 853 (finding that CSAM reporting processes and account-deletion processes are content-neutral and may be treated as product components). Although acknowledging that account deletion ostensibly parallels situations in which consumers may close an account with a service provider, such as a bank, the court drew the distinction that the social-media account deletion procedure is a “user-directed process” done with no assistance from the defendants’ employees. *Id.* at 851. The way users can report content and delete accounts relates to the structure of the platforms’ account settings and reporting systems—features undeniably distinct from the content users’ post and access. See *id.* at 851, 853 (stating that CSAM reporting procedures are “quintessentially a matter of design” and the ways in which a user can delete or deactivate an account “[do] not pertain directly to ideas, content, or free expression”).

¹⁹³ See *In re Soc. Media*, 702 F. Supp. 3d at 850–51 (holding that features pertaining to the defendants’ “failure to implement default protective limits” to frequency and length of use sessions, and failure to provide in-app options to limit the frequency and length of use sessions “appropriately fall within a product liability claim”). The court likened defects relating to the defendants’ failure to offer options to assist users in limiting screen time to physical alarms and timers, specifically discussing functions on phones themselves that provide notifications that users have exceeded self-established screen-time limits. *Id.* at 850. The court also explained that these defects are unrelated to content as they involve user access to the apps. *Id.*; cf. *James*, 300 F.3d at 701 (indicating that products liability does not govern the content, words, or images of digital media).

¹⁹⁴ See *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093 (9th Cir. 2021) (holding that the functionality of Snapchat’s “Speed Filter” falls within the purview of product liability theory); *In re Soc. Media*, 702 F. Supp. 3d at 852 (finding that the filter-related defects can be categorized as products to “the extent that plaintiffs’ allegations center on the design of the filter”). Filter-related defects include: (1) failing to label filtered content; (2) enabling users to manipulate content in ways that facilitate social comparison and promote unachievable beauty standards; and (3) Snapchat’s “Speed Filter.” *In re Soc. Media*, 702 F. Supp. 3d at 851–52. Regarding Snapchat’s “Speed Filter,” the court deferred to *Lemmon*, finding that the “plaintiffs challenge essentially the same functionality as was at issue in that case” and thus may prevail on product liability theory regarding this product component. *Id.* at 853.

court reasoned that labeling photos as having been “filtered” assists users in better understanding photos and does not change the underlying image.¹⁹⁵ Moreover, the social media defendants describe filters as “tools” that allow users to modify their images, which suggests a distinction between the function of the feature and the underlying content itself.¹⁹⁶

Because myriad alleged platform defects constitute products, or product components, the plaintiffs advanced on their products liability theory.¹⁹⁷ Whether the defendants are held liable for the alleged defects depends on whether the plaintiffs prevail at trial in proving their strict products liability and product-based negligence claims under the relevant standards.¹⁹⁸ Notably, the court denied the defendants’ motion to dismiss for failure to establish causation regarding the alleged design defects.¹⁹⁹ Moreover, regarding the plaintiffs’ negligence-based product defect claims, the court found that defendants owe users a duty to protect them from the harms associated with the alleged defects.²⁰⁰

¹⁹⁵ *In re Soc. Media*, 702 F. Supp. 3d at 852. The court noted that whether these defects are products is a “closer question” given the connection of filters to the underlying content but ultimately determined that the specific alleged defects are content-agnostic. *Id.*

¹⁹⁶ *Id.* at 852–53. The court characterizes the defendants’ description of filters as a “concession” that benefits the plaintiffs “as it bolsters their contention that this alleged defect is really about design, not content.” *Id.* at 852.

¹⁹⁷ *See id.* at 854, 862–63 (holding that the plaintiffs “adequately plead the existence of product components” regarding the surviving claims and denying the defendants’ motion to dismiss the plaintiffs’ products liability claims to the extent that they are not barred by § 230 and the First Amendment).

¹⁹⁸ *See infra* notes 213–219.

¹⁹⁹ *See In re Soc. Media*, 702 F. Supp. 3d at 860 (holding that the plaintiffs “adequately[] alleged causation for purposes of their strict products liability and product-based negligence claims”). The court found the plaintiffs’ theories of causation sufficient based on research revealing causal connections between social media use and the range of mental, physical, and emotional harms the plaintiffs allege, as well as the plaintiffs’ descriptions of how “the mechanics of the platforms . . . are designed to induce compulsive use by minors, such as MDL plaintiffs.” *Id.* at 860–61. Because the alleged harms are a foreseeable consequence of the alleged defects given these ties, the plaintiffs’ sufficiently alleged proximate causation. *See id.* (stating that the *Restatement (Third) of Torts* suggests that proximate causation is the appropriate standard here, and “whether proximate cause exists hinges on whether the harm alleged is a foreseeable result of the at-issue conduct”).

²⁰⁰ *See id.* at 860 (holding that “plaintiffs’ product-based negligence claims may proceed to the extent they are (i) based on the product defects identified in the preceding section of this Order; and (ii) arise out of defendants’ duty to design reasonably safe products and to warn users of known defects”). In contrast, the court dismissed with leave to amend the plaintiffs’ negligence-based product liability claims pertaining to duties owed by the defendants with respect to third-party conduct on their platforms. *Id.* at 859.

III. IMPOSING PRODUCT LIABILITY ON SOCIAL MEDIA COMPANIES FOR THE DESIGN OF THEIR PLATFORMS IS APPROPRIATE AND PARAMOUNT TO FACILITATING YOUTH’S WELLBEING

Section 230 and the First Amendment provide robust liability shields to social media companies.²⁰¹ These shields, however, have defined boundaries: § 230 immunity is limited to third-party content and the First Amendment only insulates protected speech.²⁰² Thus emerges a liability aperture: the content-agnostic ways in which users interact with social media platforms.²⁰³ Section A of this Part argues that products liability theory appropriately fills this gap without undermining the policy rationales for protecting social media companies.²⁰⁴ Section B demonstrates how products liability would not impose unfettered liability.²⁰⁵ Section C suggests that establishing a route to social media company accountability is paramount, and that subjecting platforms to products liability is a prudent first step.²⁰⁶

A. Staying Within the Bounds of the Immunity Shield Gap: The James Restriction on Digital “Products”

It is well established that content, whether represented by words or pictures, cannot form the basis of a products liability claim.²⁰⁷ Reasserting this

²⁰¹ See *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (interpreting § 230 to provide that interactive providers cannot face liability for exercising their “traditional editorial functions”); *Ginsberg v. Google Inc.*, 586 F. Supp. 3d 998, 1006 (N.D. Cal. 2022) (holding that Google could not be held accountable for failing to remove offensive content from the Google Play Store due to § 230 immunity); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009) (finding that § 230 protected Yahoo! from liability for not removing problematic third-party content posted on a user profile page); see also *Moody v. NetChoice, LLC*, 144 S.Ct. 2383, 2393 (2024) (affirming that the First Amendment protects social media companies “to the extent [they] create expressive products”).

²⁰² See *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1092 (9th Cir. 2021) (holding that the Snapchat “Speed Filter” product defect claim was not barred by § 230 because the harm alleged was not connected to Snap’s role in monitoring third-party content); *In re Soc. Media*, 702 F. Supp. 3d at 829, 835–37 (holding that § 230 does not bar the plaintiffs’ defect claims that do not seek to hold the defendants liable for publishing or speaking, and the First Amendment does not protect defects that relate to user interaction with the platforms and thus would not require the defendants to alter how they disseminate speech).

²⁰³ See *In re Soc. Media*, 702 F. Supp. 3d at 849 (holding that products liability can attach to content-agnostic defects); *Lemmon*, 995 F.3d at 1093 (holding that claims that rooted in feature functionalities rather than third-party content can form the basis of product-based negligence claims); *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814, 819 (D. Or. 2022) (holding products liability can attach when claims are based on website design and not third-party content).

²⁰⁴ See *infra* notes 207–212 and accompanying text.

²⁰⁵ See *infra* notes 213–219 and accompanying text.

²⁰⁶ See *infra* notes 220–231 and accompanying text.

²⁰⁷ See *Winter v. G.P. Putnam’s Sons*, 938 F.2d 1033, 1036 (9th Cir. 1991) (establishing that strict product liability cannot apply to words and ideas); *Birmingham v. Fodor’s Travel Publ’ns, Inc.*, 833 P.2d 70, 79 (Haw. 1992) (holding that a travel guide was not a product under products liability

basic tenet, in 2002, in *James v. Meow Media, Inc.*, the U.S. Court of Appeals for the Sixth Circuit inaugurated in digital contexts this firm boundary for the definition of products.²⁰⁸ Extending products liability to social media platforms therefore does not create a slippery slope for holding social media companies liable for content posted on their platforms.²⁰⁹

Products liability does not clash with § 230 or the First Amendment—rather, it complements them.²¹⁰ Because content is carved out of the definition of products, products liability theory is harmonious with the bedrock principles of § 230 and the First Amendment.²¹¹ Furthermore, seeing as products liability can only attach to content-agnostic defect claims, which lie beyond the bounds of § 230 and the First Amendment, this doctrine serves an important accountability function within the overwhelmingly protective framework endowed on social media companies.²¹²

B. Categorizing Social Media Features as Products Is Just the Beginning of the Liability Inquiry

Merely establishing that a social media feature is a product component does not create liability.²¹³ Generally, for a design to be defective, it must pre-

law); *Jones v. J.B. Lippincott Co.*, 694 F. Supp. 1216, 1217–18 (D. Md. 1988) (stating that § 402A of the *Restatement (Second) of Torts* does not cover the “dissemination of an idea or knowledge”).

²⁰⁸ See *James v. Meow Media, Inc.*, 300 F.3d 683, 701 (6th Cir. 2002) (holding that the words and pictures of video games are not products); see also *In re Soc. Media*, 702 F. Supp. 3d at 842 (explaining that *James* applied the *Winter* limits to products to a claim involving the digital world).

²⁰⁹ See *In re Soc. Media*, 702 F. Supp. 3d at 845 (analyzing whether, from a global perspective, the “defendants’ platforms are akin to ideas, content, and free expression upon which products liability claims cannot be based”); see also *Est. of B.H. v. Netflix, Inc.*, No. 4:21-CV-06561-YGR, 2022 WL 551701, at *3 (N.D. Cal. Jan. 12, 2022) (declining to allow a strict products liability claim against Netflix when the plaintiffs’ allegations were based in the content and publication of a specific show), *aff’d* Est. of Herndon v. Netflix, Inc. No. 22-15260, 2024 WL 808797 (9th Cir. Feb. 2, 2024), *vacated* Est. of Herndon v. Netflix, Inc., 2025 WL 581589 (Mem) (Feb. 24, 2025).

²¹⁰ See *infra* notes 211–212.

²¹¹ See 47 U.S.C. § 230(c)(1) (providing immunity to internet service providers for third-party content). See generally *In re Soc. Media*, 702 F. Supp. 3d at 849–54 (ensuring that the defects that survived § 230 and First Amendment protections did not involve content or ideas which cannot be categorized as products).

²¹² See generally *In re Soc. Media*, 702 F. Supp. 3d at 849–54 (applying products liability theory only to alleged defects that survived § 230 and First Amendment protections, and providing that the surviving claims were content-agnostic). In effect, the court’s analysis functioned as a funnel: first disposing of defect claims barred by § 230, then applying the First Amendment to the remaining defects and denying claims as appropriate, and lastly considering whether the surviving claims were products, which required finding that they were content-agnostic. See generally *id.* at 829–54 (ruling on whether the alleged defects could prevail by applying § 230, the First Amendment, and precedent concerning the definition of products).

²¹³ See RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 2(b) (AM. L. INST. 1998) (indicating that a design is defective when “foreseeable risks of harm” presented by a product could have been avoided or mitigated by a reasonable alternative design).

sent unreasonable risks of harm when compared with other designs.²¹⁴ As a result, social media companies are not liable for alleged design defects if a safer alternative design does not exist.²¹⁵

In the case of *In re Social Media*, the MDL plaintiffs allege that the defendant social media companies could have utilized various alternative designs to minimize the alleged harms.²¹⁶ These alternative designs would have to hold up under the relevant tests, namely, the consumer expectation test or the risk-utility test.²¹⁷ Given the posture of the litigation, the U.S. District Court for the Northern District of California did not address the plaintiffs' arguments regarding alternative designs.²¹⁸ Applying these tests is beyond the scope of this Note; however, the reality that the inquiry just begins when a platform feature is deemed a product illustrates that allowing products liability to apply to social media platforms does not automatically release a flood of liability.²¹⁹

²¹⁴ SPEISER ET AL., *supra* note 93, § 18:69. This is true under both strict liability and negligence-based theories of product liability. *Id.* Liability is then imposed if the product is used in a reasonably foreseeable manner and the defect is a substantial factor in producing the plaintiffs' harm. *Id.*; see *Barker v. Lull Eng'g Co.*, 573 P.2d 443, 455–56 (Cal. 1978) (holding that a product is defective in design if either (1) “the plaintiff establishes that the product failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner,” or (2) “the plaintiff demonstrates that the product’s design proximately caused his injury and the defendant fails to establish, in light of the relevant factors, that, on balance, the benefits of the challenged design outweigh the risk of danger inherent in such design”); *Genie Indus., Inc. v. Matak*, 462 S.W.3d 1, 6 (Tex. 2015) (stating that for liability to be imposed for design defects, the plaintiffs must prove that “(1) the product was defectively designed so as to render it unreasonably dangerous; (2) a safer alternative design existed; and (3) the defect was a producing cause of the injury for which the plaintiff seeks recovery”).

²¹⁵ *Cf. Honda of Am. Mfg., Inc. v. Norman*, 104 S.W.3d 600, 608–09 (Tex. Ct. App. 2003) (holding that there was not sufficient evidence to find that a seatbelt was defectively designed because there was no evidence of a safer alternative design).

²¹⁶ See Amended Master Complaint, *supra* note 38, ¶ 845 (listing “cost-effective, reasonably feasible alternative designs” that the defendants could utilize to mitigate the alleged harms). For example, the plaintiffs suggest “[w]arning of health effects of use and extended use upon sign-up,” and “[s]elf-limiting tools, including but not limited to session time notifications, warnings, or reports.” *Id.* Moreover, very broadly, they suggest “[d]esigning products that did not include the defective features listed in this Complaint while still fulfilling the social networking purposes of a social media product.” *Id.*

²¹⁷ See DOBBS ET AL., *supra* note 89, at 810 (noting that there are two tests for design defects: the consumer expectation test and the risk-utility test); see OWEN & DAVIS, *supra* note 94, §§ 8:2, 8:11 (indicating that the consumer expectations test asks whether design “meets the safety expectations of users and consumers” and the basic risk-utility test asks whether a product “reasonably could have been designed more safely so as to prevent the plaintiff’s harm without unduly increasing the product’s cost, decreasing its utility, or introducing other hazards”).

²¹⁸ See generally *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 849–54 (N.D. Cal. 2023) (not discussing whether the alleged design defects are defective under the consumer expectations test or risk-utility test).

²¹⁹ See SPEISER ET AL., *supra* note 93, at § 18:69 (indicating that under both strict liability and negligence-based theories of products liability, a design must be unreasonably dangerous when compared to other designs).

C. The Clock Is Ticking: Assuaging the Impact of Social Media on Youth Mental Health Cannot Wait for Lawmaker Reforms

Research elucidates unequivocal connections between social media use and adolescent mental health suffering.²²⁰ As such, social media companies have a moral responsibility to address how to mitigate their platforms' adverse impacts on youth.²²¹ The threat of products liability actions could push social media companies themselves to set interface-based reforms into action.²²² Importantly, products liability offers a timely route to accountability—albeit limited to features not associated with content—without stepping on lawmakers' terrain to reconsider traditional protections for social media companies under § 230 and the First Amendment.²²³

Although imposing accountability on social media giants could gain traction with products liability theory, it is limited to content-agnostic features and, thus, cannot address many of the ways that social media harms adolescents' mental health.²²⁴ Thus, to truly address the negative impact of social media on youth mental health, more profound change in how the law treats social media companies is needed.²²⁵

Nevertheless, although bipartisan discussions of limiting parts of § 230 offer hope of reform on a more profound level, changing the law recognized as

²²⁰ See, e.g., Kira E. Riehm et al., *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, 76 JAMA PSYCH. 1266, 1266 (2019) (finding that spending longer than three hours a day on social media correlates to heightened risk for youth mental health problems); Twenge et al., *supra* note 11, at 13 (finding a correlation between increased social media screentime and depression and suicide).

²²¹ See U.S. PUB. HEALTH SERV., *supra* note 8, at 16 (stating that social media companies “play a central role and have a fundamental responsibility in designing safe online environments and in preventing, minimizing, and addressing the risks associated with social media”).

²²² Cf. Claire Andre & Manuel Velasquez, *Who Should Pay? The Product Liability Debate*, MARKKULA CTR. FOR APPLIED ETHICS (Nov. 20, 2025), <https://www.scu.edu/ethics/focus-areas/business-ethics/resources/who-should-pay-the-product-liability-debate/> [<https://perma.cc/LJ8B-RGYF>] (stating that “[w]ithout the threat of liability, manufacturers would have little incentive to ensure product safety”).

²²³ See generally *In re Soc. Media*, 702 F. Supp. 3d at 849–54 (limiting design defect analysis to defect claims not barred by § 230 and the First Amendment). As evidenced by the court's methodical approach to the alleged defect claims in *In re Social Media*, allowing products liability claims against social media companies to prevail does not involve re-interpreting or restricting § 230. See generally *id.* at 829–34 (strictly applying § 230 to all alleged defects claims).

²²⁴ See *id.* at 849–54 (analyzing whether the alleged defects that survived the court's § 230 and First Amendment analysis were content-agnostic in order to determine whether they could constitute products in which products liability theory may attach); see, e.g., *Is Social Media Threatening Teens' Mental Health and Well-being?*, *supra* note 8 (indicating that content on social media promotes social comparison which can lead to increased depression in youth); NESI ET AL., *supra* note 15, at 12 (finding that on a monthly basis approximately four in ten girls on Instagram and TikTok report finding damaging suicide-related content); Memon et al., *supra* note 15, at 384 (indicating that encountering self-harm related content online motivates youth to emulate such dangerous practices).

²²⁵ See *In re Soc. Media*, 702 F. Supp. 3d at 834, 837 (granting the defendants motion to dismiss multiple defect claims based on § 230 and the First Amendment).

creating the internet as we know it is a much thornier endeavor.²²⁶ Not all lawmakers are onboard with amending § 230 to limit social media company immunity.²²⁷ Moreover, ambivalence seemingly permeates beyond the legislature, as the Supreme Court has also shied away from limiting the scope of § 230.²²⁸

Given the upsurge in youth mental health struggles, society cannot wait for the law to change.²²⁹ Despite its limits, products liability presents a salient route to accountability grounded in an existing, and widely accepted, legal doctrine.²³⁰ This route to accountability lies well within the boundaries of the social media immunity landscape; as such, applying products liability to content-agnostic social media defects is not only appropriate, but prudent.²³¹

²²⁶ See Will Oremus, *Child Safety Hearing Puts Key Internet Law Back in Congress's Crosshairs*, WALL ST. J. (Feb. 1, 2024), <https://www.washingtonpost.com/technology/2024/02/01/csam-hearing-section-230-reform/> [<https://perma.cc/D7KQ-7WTU>] (discussing how Senators on both sides of the aisle indicated support for reforming § 230 during January 2024 Senate Judiciary Committee hearings on child exploitation and social media); Stephen Engelberg, *Twenty-Six Words Created the Internet. What Will It Take to Save It?*, PROPUBLICA (Feb. 9, 2021), <https://www.propublica.org/article/nsu-section-230> [<https://perma.cc/SUX4-SVVW>] (acknowledging a “growing impetus for both political parties to do something to improve Section 230” and suggesting that the social media platforms would “look[] very different without Section 230”). The then-Chairman of the Senate Judiciary Committee, Dick Durbin, stated that Congress should “look in the mirror” and acknowledge their shared failure with regulating social media companies’ impact on children online. Oremus, *supra*. Notably, even social media giants themselves have shown support for § 230 reform. See Michael D. Smith & Marshall Van Alstyne, *It's Time to Update Section 230*, HARV. BUS. REV. (Aug. 12, 2021), <https://hbr.org/2021/08/its-time-to-update-section-230> [<https://perma.cc/XLQ5-D53V>] (discussing how Mark Zuckerberg told Congress that Facebook “would benefit from clearer guidance from elected officials”).

²²⁷ See Oremus, *supra* note 226 (noting that members of Congress “argue that the changes proposed to Section 230 would create more problems than they would solve”). Congress did in fact legislate a § 230 carveout in recent years: the SESTA-FONSTA bill from 2018. *Id.* The bill limited liability protections regarding content that facilitates sex trafficking. *Id.* The bill has been criticized, however, for making “sex workers less safe without denting the sex trafficking business.” *Id.* Thus, “[t]he next bill that seeks to chip away at Section 230 will have to reckon with [these] critics.” *Id.*

²²⁸ See Adam Liptak, *Supreme Court Won't Hold Tech Companies Liable for User Posts*, N.Y. TIMES (May 18, 2023), <https://www.nytimes.com/2023/05/18/us/politics/supreme-court-google-twitter-230.html> [<https://perma.cc/W2CP-V7CY>] (suggesting that the Supreme Court declined to limit § 230 in cases attempting to impose liability on Twitter and Google for facilitating terrorism).

²²⁹ See Brian Tsai, *Suicide and Homicide Rates Increase Among Young Americans*, CDC (June 15, 2023), <https://blogs.cdc.gov/nchs/2023/06/15/7396/> [<https://perma.cc/QA6Y-J7EX>] (reporting that “the suicide rate among young people ages 10-24 increased 62% from 2007 through 2021”).

²³⁰ See Reader, *supra* note 37 (indicating that if *In re Social Media* was allowed to proceed it would “test a novel legal theory, that social media algorithms are defective products that encourage addictive behavior and are governed by existing product liability law”).

²³¹ See 47 U.S.C. § 230(c)(1) (providing immunity to social media companies for third-party content). See generally *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 849–54 (N.D. Cal. 2023) (evaluating each defect that survived § 230 and First Amendment protections to ensure it could be categorized as a product, which requires that it does not involve content or ideas).

CONCLUSION

In 2023, in *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, the U.S. District Court for the Northern District of California considered whether features of social media platforms, allegedly defective because of their adverse impact on youth mental health, could proceed on a products liability claim. The court determined that § 230 and the First Amendment, traditional liability shields, did not provide a complete defense. Rather, the court held that social media companies are responsible for defects that do not relate to their role in publishing third-party content and may be liable for defects related to how users interact with the platforms. In this way, the court found that certain “content-agnostic” features were not protected by § 230 or the First Amendment and constituted products that could proceed on a liability claim. By limiting products liability to content-agonistic claims, this design-defect path to accountability complemented, without disrupting, the existing immunity framework. Considering the current youth mental health crisis and abundant research illustrating the ways in which social media adversely affects youth mental health, allowing social media companies to be held legally accountable for their impact on young users’ well-being is paramount. Regardless of the limits of products liability law as an avenue for holding social media companies accountable, any accountability is necessary to limit the damage social media imposes on youth mental health.

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