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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TWITTER, INC.,

Plaintiff,

vs.

KEN PAXTON, in his official capacity as
Attorney General of Texas

Defendant.

Case No. 3:21-cv-01644-MMC

**INTERNET ASSOCIATION'S AMICUS
CURIAE BRIEF IN SUPPORT OF
PLAINTIFF TWITTER'S MOTION
FOR A PRELIMINARY INJUNCTION**

Hon. Maxine M. Chesney

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Cases

Brown v. Ent. Merchs. Ass’n,
564 U.S. 786 (2011)8

Bullfrog Films, Inc. v. Wick,
847 F.2d 502 (9th Cir. 1988).....8

Goldblum v. Nat’l Broad. Corp.,
584 F.2d 904 (9th Cir. 1978).....8

Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.,
515 U.S. 557 (1995).....2, 8

Joseph Burstyn, Inc. v. Wilson,
343 U.S. 495 (1952).....8

Knight First Amendment Inst. at Columbia Univ. v. Trump,
928 F.3d 226 (2d Cir. 2019).....8

Med. Lab’y Mgmt. Consultants v. Am. Broad. Companies, Inc.,
306 F.3d 806 (9th Cir. 2002).....8

Miami Herald Pub. Co. v. Tornillo,
418 U.S. 241 (1974).....2, 8

Nieves v. Bartlett,
139 S. Ct. 1715 (2019).....9

Reno v. ACLU,
521 U.S. 844 (1997).....8

Turner Broadcasting System, Inc. v. FCC,
512 U.S. 622 (1994).....8

Other Authorities

Account and Community Restrictions - Do Not Post Sexual of Suggestive Content
Involving Minors, REDDIT, INC., <https://www.reddithelp.com/hc/en-us/articles/360043075352>.....4

Alison Grace Johansen, *Deepfakes: What they are and why they’re threatening*,
NORTONLIFELock, <https://us.norton.com/internetsecurity-emerging-threats-what-are-deepfakes.html>7

1 Community Guidelines - Developing Policies, YOUTUBE, <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/#developing-policies>4

2

3 Community Guidelines, SNAP, INC., <https://www.snap.com/en-US/communityguidelines>3

4

5 Community Standards – Account Integrity & Authentic Identity, FACEBOOK, <https://www.facebook.com/communitystandards/misrepresentation>4

6 Community Standards – Bullying & Harassment, FACEBOOK, <https://www.facebook.com/communitystandards/bullying>3, 5

7

8 Community Standards - Authenticity, AIRBNB, INC., <https://www.airbnb.com/trust/standards>.....5

9

10 Community Standards, AIRBNB, <https://www.airbnb.com/trust/standards>4

11 Daisy Soderberg-Rivkin, *Five myths about online content moderation, from a former content moderator*, R STREET INSTITUTE (Oct. 30, 2019), <https://www.rstreet.org/2019/10/30/five-myths-about-online-content-moderation-from-a-former-content-moderator>3

12

13 *Daly Kos: Rules of the Road*, KOS MEDIA, LLC, <https://www.dailykos.com/rules-of-the-road>.....5

14

15 *Facebook by the Numbers*, OMNICORE, <https://www.omnicoreagency.com/facebook-statistics>.....6

16

17 General Guidelines and Policies - Abusive Behavior, TWITTER, INC., <https://help.twitter.com/en/rules-and-policies/abusive-behavior>3

18

19 Guidelines for Traveler Reviews, TRIPADVISOR, LLC, <https://www.tripadvisor.com/hc/en-us/articles/200614797-Our-guidelines-for-traveler-reviews>5

20

21 Jason A. Gallo & Clare Y. Cho, CONG. RSCH. SERV. R46662, SOCIAL MEDIA: MISINFORMATION AND CONTENT MODERATION ISSUES FOR CONGRESS 1 (2021), <https://crsreports.congress.gov/product/pdf/R/R46662>.....7

22

23 Laura Hanu, James Thewlis & Sasha Haco, *How AI Is Learning To Identify Toxic Online Content*, SCIENTIFIC AMERICAN (2021)6

24

25 LinkedIn Professional Community Policies, LINKEDIN, <https://www.linkedin.com/help/linkedin/answer/34593/linkedin-professional-community-policies>.....4

26

27 Mind-Blowing LinkedIn Statistics and Facts, KINSTA, INC.: KINSTA BLOG (Mar 18, 2021), <https://kinsta.com/blog/linkedin-statistics>6

28

1 Pew Research Center, Social Media Fact Sheet,
2 [https://www.pewresearch.org/internet/fact-sheet/social-media/#social-media-](https://www.pewresearch.org/internet/fact-sheet/social-media/#social-media-use-over-time)
3 use-over-time (last visited Mar. 24, 2021) 1

4 Platform Manipulation and Spam Policy, General Guidelines and Policies,
5 TWITTER, INC., [https://help.twitter.com/en/rules-and-policies/platform-](https://help.twitter.com/en/rules-and-policies/platform-manipulation)
6 manipulation..... 5

7 Professional Community Policies, LINKEDIN,
8 <https://www.linkedin.com/legal/professional-community-policies> 3, 5

9 PWC, The quest for truth: content moderation in action,
10 [https://www.pwc.com/us/en/-industries/tmt/library/content-moderation-quest-](https://www.pwc.com/us/en/-industries/tmt/library/content-moderation-quest-for-truth-and-trust.html)
11 for-truth-and-trust.html (last visited Mar. 24, 2021)..... 7

12 Reddit Content Policy, REDDIT,
13 <https://www.redditinc.com/policies/contentpolicy-1> 4

14 Trust & Safety - Community Standards, AIRBNB, INC.,
15 <https://www.airbnb.com/trust/standards> 3

16 YouTube For Press, YOUTUBE: OFFICIAL BLOG, <https://blog.youtube.com/press/> 6

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