

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 20-2725 & 2885

KAREN HEPP,
Appellant in 20-2725

v.

FACEBOOK; IMGUR INC; REDDIT INC; GIPHY INC,
WGCZ S.R.O.

Imgur Inc.; Reddit Inc., Appellants in 20-2885

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-19-cv-04034)
District Judge: Honorable John M. Younger

Argued on June 2, 2021

Before: HARDIMAN, PHIPPS, and COWEN, *Circuit
Judges.*

(Filed: September 23, 2021)

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OPINION OF THE COURT

HARDIMAN, *Circuit Judge*.

Section 230 of the Communications Decency Act of 1996 bars many claims against internet service providers. *See* 47 U.S.C. § 230(c). But Section 230 does not bar intellectual property claims. § 230(e)(2). The question presented in this appeal is whether a Philadelphia newscaster’s state-law claims for violating her right of publicity are precluded by § 230. Because those claims are encompassed within the intellectual property carve-out, § 230(e)(2), we hold they are not precluded.

I

Appellant Karen Hepp has worked in the news industry her entire adult life. Presently, she hosts FOX 29’s *Good Day Philadelphia*. As is often the case for television personalities, Hepp’s professional success as a newscaster depends in part on her reputation and social media following. She has built an “excellent reputation as a moral and upstanding community

leader” and has amassed a sizeable social media following. *See* App. 59–61. So Hepp’s endorsement can be valuable. Naturally, that value depends on her ability to control the use of her likeness.

In 2018, Hepp was told by coworkers that her photograph was making its way around the internet. The image depicts Hepp in a convenience store, smiling in the center of the frame’s foreground. But the photograph was taken without Hepp’s knowledge or consent. She knows neither the convenience store’s location nor how the image was posted online. And she never authorized the image to be used in online advertisements for erectile dysfunction and dating websites.

Hepp’s allegations included two sets of posts featuring her photograph. She alleged each violated her right of publicity under Pennsylvania law.

The first post—which was an advertisement to a dating app, FirstMet—appeared on Facebook, which is one of the world’s largest social media companies. The advertisement used Hepp’s image to promote its dating service. And it encouraged Facebook users to “meet and chat with single women near you.”

Second, a Reddit thread linked to an Imgur post of the photo. Reddit is an online forum that allows users to create communities organized around topics. Within each community, users can start conversations by making an initial post. Other users can note their approval by “upvoting” the post. *See generally* <https://www.redditinc.com/>; <https://www.reddithelp.com/hc/en-us/categories/200073949-Reddit-101>. Imgur is a photo sharing website where users share digital images. *See generally* <https://imgurinc.com/>. In this

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