

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

## Proper application of the CDA See: FYK vs. FACEBOOK #4:18-cv-05159

### California's "Good Samaritan" Health and Safety Code:

"No person who ***in good faith***, and ***not for compensation***, renders emergency medical or nonmedical ***care*** or assistance at the scene of an emergency shall be liable for civil damages resulting from ***ANY ACT or OMISSION*** other than an ACT or OMISSION constituting ***gross negligence or willful or wanton misconduct***

### Explanation:

A "Good Samaritan" is protected from civil liability for any ***act or omission*** if she/he/it voluntarily renders care (or omission - fails to render care), in Good Faith and NOT for compensation, gross negligence or willful or wanton misconduct.

### Analysis:

"Good Samaritan" Standards:

1. ***Act[ion]***
2. ***Omission*** (Failure to ACT)

Applied Principles:

1. Good Faith
2. *Not for Compensation*
3. *Not with Gross negligence*
4. *Not with willful or wanton misconduct*

### CDA section 230 (C):

"Protection for ***"Good Samaritan"*** blocking and screening of offensive material.  
(note: quotation emphasis)

### Legislative Intent:

"The Legislature placed emphasis on the phrase "Good Samaritan" (quotation marks) to draw a parallel between Subsection (c) and "Good Samaritan" laws / concepts." Pg. 10 Fyk vs. Facebook 9<sup>th</sup> Circuit reply brief

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

### Subsection C(1):

“No provider or user of an interactive computer service shall be **treated as** the **publisher or speaker** of any information provided by another information content provider.”

### C(1) **INACTION** Application standard:

1. No action (**Omission**) is taken on the part of the interactive computer service (Facebook).
2. Action (publish or speak) is entirely taken on the part of the “**information content provider**” (another).

### Subsection C(2):

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

(a):

“Any **ACTION** voluntarily taken in “**good faith**” to restrict access to, or availability of, material that the **provider or user** considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected”

(b):

“Any **action taken** to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph”

### C(2) **ACTION to restrict materials** Application standards:

1. C(2)(a) Provider voluntarily restricts materials (renders care)
2. C(2)(b) User voluntarily restricts materials (renders care)

“Good Samaritan” (**act / omission**) standards applied to CDA subsection (C):

C1: (**OMISSION**). Treatment of a Service Provider when it fails to ACT.

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

C2: **(ACTION) Civil Liability protection** when the “provider or user” “**takes any ACTION**” (renders care) to “block or screen offensive materials”.

***Protections are provided if the action or omission is done:***

- 1. in good faith***
- 2. not for compensation***
- 3. without “gross negligence***
- 4. without wanton or willful misconduct.***

**CDA section 230 (F3): Definition of an Information CONTENT Provider (NO “Good Samaritan” PROTECTIONS)** (see: Roomates vs. Fairhousing)

**CDA Subsection F(3):**

“The definition of the term ‘**information content provider**’ means **any person or entity** that is **responsible**, in whole or **in part**, for the **creation** or **development of information** provided through the Internet or any other interactive computer service.”

“[S]ection 230(c) uses both ‘**create**’ and ‘**develop**’ as **SEPERATE** bases for loss of immunity. ... We are advised by the Supreme Court that we **must give meaning to ALL statutory terms**, avoiding **redundancy or duplication** (surplusage) wherever possible. See Park ’N Fly, Inc. v. Dollar Park & Fly, Inc., 469 U.S. 189, 197, 105 S.Ct. 658, 83 L.Ed.2d 582 (1985).”

Giving **meaning to ALL** statutory terms, the definition of an **information CONTENT provider**, defined under CDA F(3), shall be interpreted as:

“Any... **Entity... Responsible...** in **Part** for the... **DEVELOPMENT** of Information provided through the internet.”

“Develop” Simplified Webster’s definition:

(to **make active** or **promote the growth** of; to **make available** or **usable**)

1. Make active
2. Promote growth
3. Make available
4. Make usable

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

### **Analysis of the CDA core principle:**

C(1): **INACTION** “omission” of rendered “care”.

C(2): **ACTION** to **Restrict** “blocking and screening of offensive material”  
(rendering care)

F(3): **ACTION** to **Advance** “responsible in part for development” (advance peril)

**“Good Samaritan”** protections are **VOIDED (LOST)** if done:

1. *In Bad Faith*
2. *For Compensation*
3. *With Gross Negligence*
4. *With Wanton or Willful Misconduct*

**No “Good Samaritan”** protections exist for a service provider if:

1. It **creates** information
2. **OR develops** (advances, promotes, increases, expounds, grows or progresses) information

Conclusive Analysis: Good Samaritan laws are applied based on two primary principle standards: ACTION or INACTION (omission of action). Therefore, “Good Samaritan” standards of INACTION and ACTION must be applied to C1 and C2 respectively, since there are only protections for two subsection categories (C1 and C2) of section (C).

“Good Samaritan” **INACTION** (omission) must apply to subsection C1

C1 does not contain any language referencing an ACTION of ANY type other than the action to publish or speak by the “another”.

C1 protects a “Service Provider” (not a content provider) from liability when it fails to act in other words it does NOTHING. This is the “Good Samaritan” **omission** prong of subsection (c) assuming the service provider is not the “publisher or speaker of the content of another”

Furthermore C(1) protections are only available if done in Good Faith, NOT for compensation, gross negligence or wanton and willful misconduct.

In simplified terms, if Facebook does not take any action (omission), allows or fails to remove content on its hosting platform, is not the publisher or speaker of the content

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

created by another, and it does or does not do any of this in bad faith, for compensation, negligence or wanton/willful misconduct then it is not liable for what that content IS.

As soon as a content provider takes any “Good Samaritan” **ACTION** (“any act”) then the “act” applies to section C2 assuming it is not “creating or developing” the information defined under F(3).

C2A contains the specific language “**any action voluntarily taken in good faith to restrict access** or availability or material...”

C2B contains the specific language “**any action taken** to enable or make available... the means to **restrict access** to material described in [C2A].

C2 provides protections to a Service Provider when it takes an **ACTION** to, or enables a user to “**restrict access** to or availability of **materials**”

C2A has a “Good Samaritan” measurable standard of “good faith” which applies to its actions.

C1 does not contain a measure of good faith because it is not an action taken by the service provider.

Again, under the Good Samaritan standards, this protection is available only if it also **NOT for compensation**, gross negligence or wanton and willful misconduct.

Facebook can take **ACTION** in “**Good Faith**” (**NOT for compensation**) to **Restrict Materials** considered **offensive**. **Materials are NOT individuals, domains or actors. In other words, social media sites can restrict materials but not users!**

**CDA section 230 F3 does not** apply to “**Good Samaritan**” law, it is instead the definition of an “**information content provider**”.

F3 does NOT offer a service provider or entity any protections for their actions.

An information content provider is NOT required to have published, spoken or created the information on the internet, it only need be “**responsible in part**” for the **ACTIVE DEVELOPMENT** of information provided online. Terms used for development: (“authentic, trusted sources, Fake/True news, sponsored, valued partners, quality content”)

In simple terms, **if Facebook takes any ACTION to DEVELOP (“to make active of promote the growth of”)** any information created by “another” provided, Facebook is then by definition, an Information CONTENT Provider and it **LOSES** its “**Good Samaritan**” protections.

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

### **Suggested Solution:**

**Emphasis precedent must be established by the Attorney General or the United States Supreme Court to define the correct legislative intent of the CDA subsection (C) and Subsection F(3) whereas a service provider has legal protections under:**

- 1. C(1) if it fails to act, omits action.**
- 2. C(2) if it acts to restrict “offensive” materials**

**Provided it is: done in Good Faith, not for compensation, gross negligence or wanton and willful misconduct.**

**Emphasis must also be established to define subsection F(3) whereas a Service provider can also become and Content provider through the development of information on the internet.**

**The proliferation of free speech and free market must be protected. Limits on what is considered “offensive” must be kept to an absolute bare minimum. The term “good faith” must be defined more specifically, so as to prevent the need for new regulations. The term “development” of information must also be emphasized and defined more specifically so as to prevent the unfair competition a website has to discriminatorily restrict distribution of users based on their financial incentives, political affiliation, accuracy, religion, quality or value.**

**The CDA MUST protect the PASSIVE hosting of content, not the ACTIVE DEVELOPMENT of winners and losers on the internet!**

### **FACEBOOK’S ILLEGAL STRATEGY EXPOSED:**

Facebook created deliberately vague and ambiguous rules so they could **selectively enforce them to hurt low value participants** and help to **develop information** for their **high-valued participants:**

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

***“What we intend to have happen is the spammy low quality content loses a lot of traffic, while the high-quality publishers continue to do well.” ~Tessa Lyons***

Facebook’s expressed “inten[tions]” are to unfairly **tip the playing field** away from some and in favor of others, based on “**quality publishers**” not based upon “**offensive**” content. See: Subsection (C)

Facebook’s business strategy, is to tortiously interfere with ANY competitive business’ ability to make money by reducing their reach and distribution.

Tortious interference: “when one entity, intentionally damages someone else's contractual or business relationship with a third party, causing economic harm”

***Facebook: “so, taking action against pages and domains who repeatedly share this type of content and reducing their distribution removing their ability to monetize and removing their ability to advertise is part of our strategy” ~Tessa Lyons***

Facebook is **intentionally** trying to damage users 3<sup>rd</sup> party advertising income relationships through the **removal, reduction and replacement** of information, so **they profit, not their users!**

Tessa Lyons has also said: ***“If we can reduce the spread of those links, we reduce the number of people who click through and we reduce the economic incentives that they have to create that content in the first place”***

Facebook is not restricting materials to remove offensive content, they are **actively restricting users’ ability to profit**, therefore they are deliberately and tortiously interfering with a user’s economic incentives in order to cause economic harm.

Another example “**The misinformation and fake news that we see on Facebook is financially motivated. It’s spammers... people who are trying to generate clicks to low quality websites covered in ads so they can generate impressions and ad revenue.” ~Sheryl Sandberg**

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

**Misinformation (fake news) is simply used as a pretext to remove financial incentives in order to justify causing economic harm. (Tortious interference)**

**Racketeering?**

When Facebook cannot find a rule to enforce or a pretextual label it will instead call it **“problematic content”**

Tessa Lyons explains: ***“when we say problematic content what we are talking about is content that violates the values that we hold but might NOT violate our community standards.”***

Content that violates Facebook’s **values, not their rules, can NOT be a good faith measure of “offensive” content!** Financially incentivized content is not “offensive” content. Political speech is not a good faith measure of “offensive content”. Spam is annoying but it is NOT a good faith measure of “offensive” content. See the pattern of pretextual abuse?

Violating values (**Economic, Ideological, Political**) is NOT “offensive” content under CDA subsection (C). The content may be objectionable but it falls under the main heading of “offensive” therefore it must be offensive objectionable content, not simply to object to what the content represents.

Simply put, Facebook created terms like **spam, click-bait, inauthentic, fake, low-quality, misinformation and even problematic content** as just a pretext for Facebook to tortiously interfere with **USERS** ability to **make money** from 3<sup>rd</sup> parties.

Does section 230 of the CDA protect companies from **tortiously interfering** with your business’ 3<sup>rd</sup> party relationships? **(NO it does not!)**

Facebook is waging a war of attrition through tortious interference, extortion, unfair competition and fraud!

The 9th Circuit court of appeals said, quote **“When Congress passed section 230 it [did NOT] intend to prevent the enforcement of all laws online”**.

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

Tortious interference has **nothing** to do with the “**quintessential publisher function**”, “**offensive content**” or the **passive hosting of content** and would need to be considered upon the facts of the case in court, not at the dismissal stage.

When Facebook it is tortiously interfering with monetization and advertising **it is breaking a different law** similar to Roommates vs. Fair housing where Roommates was breaking discrimination law (a different law) and had an active hand in developing information provided on the internet thus they LOST their CDA immunity.

### **IMPORTANT:**

The question has floated around, **are they a platform** or **are they a publisher?**

They are **both** and **it doesn't matter.**

The true delineation is not between **publisher** and **platform**, it is between an interactive computer **service** provider and information **content** provider.

The intention of the CDA section 230 was to protect children from harmful content and for the proliferation of the free market, **not to determine the quality or accuracy of content**, not to **restrict opposing political viewpoints** and **certainly not** to allow **tortious interference** of businesses relationships.

The 9<sup>th</sup> Circuit court held, “**If [the service provider] passively displays content that is created entirely by a third party, then it is only a service provider with respect to that content. But as to content that it is ‘responsible, in whole or in part’ for developing, the website is also a content provider,**”

Mark Zuckerberg said, “**...to dramatically increase the distribution and if successful, the monetization to high quality participants.**”

Facebook's efforts to, “**increase the distribution**” of information for high value participants makes them responsible in part for the development of that information and by legal definition they became **INFORMATION CONTENT PROVIDERS!**

The 9<sup>th</sup> Circuit court has also held “**where it is very clear that the website directly participates in developing... the immunity will be lost**”

**Facebook is not only developing information for “high value participants”.**

Tessa Lyons said quote “**if it says sponsored, that means someone spent money to increase its distribution**”

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

To “increase its distribution”, is to promote the growth of, or **DEVELOP** the information.

Promote the growth of: to “give it a higher position in organization”  
(organizational priority)

“the problem that the newsfeed algorithm is solving is, what order should I show your stories in newsfeed...”, “The newsfeed prioritizes them”

Facebook is **RESPONSIBLE** in whole and in part for the **organizational priority** of information. (DEVELOPMENT)

Mark Zuckerberg: “advertisers tell us who they want to reach and then **WE do the placement**”

Facebook is **PAID** to take **RESPONSIBILITY** in part for the **development** and **organizational priority** placement of partnered advertiser’s information in the newsfeed.

“I’ve asked our product teams to make sure we **prioritize** news that is trustworthy, informative, and local”

“newsfeed **promotes** high quality news”

“we’re working to set incentives that **encourage the creation** of these types of **content**” ~Mark Zuckerberg

“Prioritize”, “Promotes”, “encourages” is to promote the growth of, or **DEVELOP** the information.

**Facebook is directly responsible and paid to develop information that MUST displace its own users in newsfeed!**

“So, more content, displaces some of the content from publishers as well as from other pages” ~Tessa Lyons

**(Facebook in developing it’s advertising partners content is directly competing with its own users!)**

Provided by:

Jason Fyk [Fyk vs. Facebook](#)

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[www.twitter.com/jasonfyk](https://www.twitter.com/jasonfyk)

Facebook has acknowledged **more content (paid advertising)**, must **displace** other publishers and pages in the newsfeed. That's YOU!

Facebook is **responsible in part for promoting the growth of, increasing the distribution of and **developing the information** for paid advertising sponsors and their "valued", "high quality", "authentic", "trusted sources" and are by legal definition are **Information CONTENT** providers void of CDA immunity, **ENTIRELY!****

Jason Fyk

[www.jasonfyk.com](http://www.jasonfyk.com)

[Jason@jasonfyk.com](mailto:Jason@jasonfyk.com)

[www.facebook.com/jason.fyk](https://www.facebook.com/jason.fyk)

[twitter@jasonfyk](https://twitter.com/jasonfyk)