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Steve Wozniak Case Cues Test of Internet Liability Shield Limit

- Lax platform security measures fuel Bitcoin scam, Wozniak said
- Judges weigh if verification badges are YouTube-created speech

By Maia Spoto

(Bloomberg Law) --

A panel of California state justices probed the limits of a federal law that shields online platforms from lawsuits Tuesday, as Apple Inc. co-founder Steve Wozniak argued that YouTube negligently failed to protect its users from scammers that doctored footage of him and other tech icons to sell a fake Bitcoin giveaway.

At the heart of the debate are YouTube's verification badges, which appear as check marks next to a user's name to signal that the user is who they say they are. Wozniak's attorney argued before a panel of justices in California's Sixth Circuit Court of Appeal that YouTube lent credibility to the scam by giving check marks to accounts that ran the hoax videos.

"Are you saying that [YouTube] had any involvement in developing the content of the scam videos?" Associate Justice Daniel H. Bromberg asked, questioning whether the check marks should be viewed as part of the scam's content or as separate content created by YouTube.

Associate Justice Charles E. Wilson also questioned what content is third-party and what is YouTube's.

"Help me wrap my mind around the concept that, obviously, Section 230 doesn't deal with content created by" YouTube and other providers, he said, referring to Section 230 of the Communications Decency Act, which is a liability shield for online platforms that publish third-party content.

Verification badges are always initiated by user requests, Wilson Sonsini Goodrich & Rosati attorney Mark Yohalem responded for YouTube. He pointed to *Gentry v. eBay, Inc.*, in which a 2002 California appellate panel ruled that eBay wasn't liable for a "power sellers" label given to fraudulent dealers.

"What a publisher does is enhance the visibility of third-party content," Yohalem said. "That is the very essence of publishing. And that's what's immune."

Cotchett, Pitre & McCarthy LLP attorney Brian Danitz argued for Wozniak that because YouTube profited from the hoax, Section 230's liability shield doesn't stretch far enough to protect YouTube and its parent, Alphabet Inc.

In addition to Wozniak's bid to revive the suit, Danitz wants permission to investigate how YouTube creates targeted ads and verification badges.

"A 'growing chorus' of federal appellate judges and justices" have recently said expansive interpretations of the liability shield depart from the law's original purpose, to foster the internet's growth, Wozniak's opening brief said.

The hoax also used videos of other celebrities, such as Tesla Inc. CEO Elon Musk and Microsoft Corp. co-founder Bill Gates, Wozniak's suit said.

Cotchett, Pitre & McCarthy LLP is representing Wozniak. Wilson Sonsini Goodrich & Rosati is representing Youtube.

The case is *Wozniak v. YouTube*, Cal. Ct. App., 6th Dist., No. H050042, oral arguments 1/9/24.

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