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## Apple Co-Founder's Scam Suit Against YouTube Gets New Life

By Allison Grande

Law360 (March 18, 2024, 11:17 PM EDT) -- A California appeals court has revived Apple co-founder Steve Wozniak's lawsuit accusing YouTube and its parent company, Google, of contributing to a cryptocurrency scam that fraudulently used his image, finding that the tech giants' provision of verification badges to corrupted channels could put them outside the scope of a federal tech liability shield law.

In a published ruling issued Friday, a three-judge panel of the Court of Appeal, Sixth Appellate District reversed the trial court's decision that Section 230 of the Communications Decency Act — which immunizes online platforms from liability for user-posted content — barred claims being pressed by Wozniak and 17 individuals who fell victim to the scam that YouTube and Google had been knowingly hosting, promoting, and profiting from the con for years.

While the appellate panel agreed with the lower court that most of the plaintiffs' claims were precluded by Section 230 because they sought to treat the tech giants as publishers or speakers of third-party content, it concluded that "one of plaintiffs' claims — that defendants created their own content and materially contributed to the unlawfulness of the scam by providing verification badges to hijacked YouTube channels — includes allegations which potentially could fall outside the scope of Section 230 immunity."

However, the appellate court stressed that, as currently pleaded, it could not definitively say these allegations saved the lawsuit. Instead, in remanding the dispute, the panel directed the lower court to allow the plaintiffs to revise their pleadings, finding that "because there is a reasonable possibility plaintiffs could cure the defects," the trial court had "abused its discretion in not granting leave to amend the claims related to verification badges."

Brian Danitz of Cotchett Pitre & McCarthy LLP, who represents Wozniak and 17 other plaintiffs, told Law360 Monday that, with courts having "given Section 230 immunity for social media platforms an extraordinarily broad scope" in recent years, the California appellate panel's ruling marks "an important decision recognizing that there are limits to Section 230 immunity."

"Online platforms, like YouTube, cannot rely on blanket immunity when their own actions and speech materially contribute to the harm suffered by their users," Danitz said.

He added that during oral arguments in January, the appellate panel "focused many of its questions" on YouTube's issuance of the verification badges that signaled to its users that the hijacked channels were authentic.

The panel's decision "recognizes that plaintiffs adequately allege that YouTube is responsible for the information it provided in its verification badges and that plaintiffs should be allowed to amend

to allege that these verification badges materially contributed to the fraudulent content," Danitz said.

A representative for Google and YouTube could not be reached for comment Monday.

The lawsuit, which Wozniak and the other plaintiffs first filed in July 2020, centers on a common cryptocurrency scheme that involves scammers using YouTube channels to broadcast "live" videos using existing footage of a well-known person, like Wozniak, who promotes a cryptocurrency "giveaway." Viewers are told if they transfer cryptocurrency to a designated account, they'll receive double the amount back — but the giveaway is a hoax, according to the plaintiffs.

They claimed in the complaint that YouTube has known security flaws that allow popular channels to be "hijacked" by these scammers and that YouTube and Google place targeted ads online that draw viewers to the videos.

Wozniak has also asserted that he had tried to get YouTube to take action to stop such scams that use his likeness. But, he said in the complaint, the Silicon Valley behemoth "consistently failed or refused to timely intervene, or even to have a human being respond, to stop the scam videos and promotions, and to stop selling ads to the scammers."

In a June 2021 decision, Santa Clara County Superior Court Judge Sunil R. Kulkarni held that the immunity provided by Section 230 protects Google and YouTube against the complaint.

The plaintiffs appealed this decision, arguing that their claims are not subject to Section 230 immunity because they seek to hold the tech giants liable for engaging in actions they knew would further criminal activity rather than casting them as the type of online publisher of third-party content that the law was meant to shield.

The appellate panel mostly rejected the plaintiffs' contention, finding that their claims based on the tech giant's alleged negligence in failing to implement reasonable security measures to protect popular YouTube channels from being hijacked to broadcast scam videos or to warn users of these risks were subject to Section 230 immunity because they were attempting "to treat defendants as a publisher and speaker of information provided by another information content provider."

However, the panel was persuaded by the argument that YouTube contributed to the fraud by handing out verification badges to these corrupted channels, which helped assure viewers that these channels have been vetted.

The appellate judges stressed that existing precedent instructs that "where a website operator either creates its own content or requires users to provide information and then disseminates it, thereby materially contributing to the development of the unlawful information, it may be considered responsible for that information, and thus be an 'information content provider'" that falls outside Section 230's reach.

The plaintiffs' operative complaint "includes allegations potentially fitting within this category," namely in its assertions that YouTube has continued to support verification of channels that have been taken over to broadcast fraudulent bitcoin giveaways and that these verifications confirm to users that the channels are official.

"It can reasonably be inferred from these allegations that YouTube is wholly responsible for creating the information concerning the authenticity of the channel owners in the verification badges," the panel wrote in its opinion Friday. "Unlike the scam videos themselves, the third-party scammers did not create or develop the verification badges — defendants allegedly did."

However, while the plaintiffs have adequately alleged that YouTube is responsible under Section 230 for creating the information in the verification badges, the panel found that it "cannot conclude that defendants are 'information content providers' within the meaning of section 230" because the operative complaint, as currently presented, doesn't adequately allege that this information "materially contributed" to the third parties' illegal conduct or content.

Despite this conclusion, the panel ultimately elected to revive and remand the dispute, holding that "because there is a reasonable possibility that this defect could be cured by amendment, plaintiffs must be given leave to amend those particular claims."

The panel also recognized that the grounds on which the trial court had based its denial of the plaintiffs' motion to lift the discovery stay "have now shifted" and directed the lower court and the parties to consider on remand "the appropriate scope of discovery in light of our decision and subsequent developments in the trial court."

Judges Charles E. Wilson, Allison M. Danner and Daniel H. Bromberg sat on the appellate panel.

Steve Wozniak and the other plaintiffs are represented by Joseph W. Cotchett, Brian Danitz, Andrew F. Kirtley and Gia Jung of Cotchett Pitre & McCarthy LLP.

Google and YouTube are represented by Amit Q. Gressel, David H. Kramer, Mark R. Yohalem, Ariel C. Green Anaba and Carmen Sobczak of Wilson Sonsini Goodrich & Rosati PC.

The case is Steve Wozniak et al. v. YouTube LLC et al., case number H050042, in the Court of Appeal of the State of California, Sixth Appellate District.

--Editing by Vaqas Asghar.