

Facebook nude-painting case can face trial in France (Update)

February 12 2016, by Philippe Sotto



A visitor takes a picture with a phone of Gustave Courbet's 1866 "The Origin of the World," painting which depicts female genitalia at Musee d'Orsay museum, in Paris, France, Friday, Feb. 12, 2016. Facebook lost a crucial legal battle Friday as a Paris court ruled the social network can be sued in France over its decision to remove the account of a French user who posted a photo of Courbet's famous 19th-century nude painting. (AP Photo/Francois Mori)

If you post a 19th-century nude painting on Facebook, is it art or

impermissible nudity? That question is now cleared for trial in France, after an appeals court there ruled that an aggrieved user can sue the social network over the issue.

Five years ago, Facebook suspended the account of Frederic Durand-Baissas, a 57-year-old Parisian teacher and art lover, without prior notice. That was the day he posted a photo of Gustave Courbet's 1866 painting "The Origin of the World," which depicts female genitalia.

Durand-Baissas wants his account reactivated and is asking for 20,000 euros (\$22,550) in damages. He said he's "glad" he has been given the chance to get some sort of explanation from the powerful social network.

"This is a case of free speech and censorship on a social network," Durand-Baissas told The Associated Press in a phone interview. "If (Facebook) can't see the difference between an artistic masterpiece and a pornographic image, we in France (can)."

The case is an illustration of the tricky line social media sites walk globally when trying to police explicit content.

"It's another hole in the fabric, at least in Europe, when it comes to users' rights running counter to the way these companies operate in the U.S.," said Steve Jones, a communications professor at the University of Illinois at Chicago.



In this Nov. 6, 2007 file photo, the Facebook logo is displayed at a Facebook announcement in New York. Facebook lost a crucial legal battle Friday Feb. 12, 2016 as a Paris court ruled the social network can be sued in France over its decision to remove the account of a French user who posted a photo of a famous 19th-century nude painting. (AP Photo/Craig Ruttle, File)

"Social networks are going to have to be much more careful about how they interact with users and how they summarily make decisions about those users' accounts," he said.

Facebook has never provided any specific explanation for the suspended account.

"This case dates back more than five years and Facebook has evolved considerably since then," spokeswoman Christine Chen said in an emailed response to a request for comment. "While we are disappointed by today's ruling on jurisdiction, we remain confident that the court will find the underlying case itself to be without merit."

The social network's current "Community Standards" page, which Facebook revised in March 2015 to provide "more detail and clarity," states: "We restrict the display of nudity because some audiences within our global community may be sensitive to this type of content—particularly because of their cultural background or age."



A visitor looks at Gustave Courbet's 1866 "The Origin of the World," painting which depicts female genitalia at Orsay museum, in Paris, France, Friday, Feb. 12, 2016. Facebook lost a crucial legal battle Friday as a Paris court ruled the social network can be sued in France over its decision to remove the account of a French user who posted a photo of Courbet's famous 19th-century nude painting. (AP Photo/Francois Mori)

But Facebook's current policy—revised well after Durand-Baissas' suspension—also now appears to allow postings such as a photo of the Courbet painting. Facebook's standards page now explicitly states: "We

also allow photographs of paintings, sculptures, and other art that depicts nude figures."

Facebook's nudity policy has not yet been aired in French court. So far, Facebook lawyers have argued that under its terms of service, lawsuits like the one filed by Durand-Baissas could only be heard by a specific court in California, where Facebook is headquartered. The social network also argued that French consumer-rights law doesn't apply to its users in that country because its worldwide service is free.

The Paris appeals court dismissed those arguments. The ruling could set a legal precedent in France, where Facebook has more than 30 million regular users. It can be appealed to France's highest court.

The appeals court said the small clause included in Facebook's terms and conditions requiring any worldwide lawsuits to be heard by the Santa Clara court is "unfair" and excessive. In addition, the judges said the terms and conditions contract signed before creating a Facebook account does fall under consumer rights law in France.



Visitors look at Gustave Courbet's 1866 "The Origin of the World," painting which depicts female genitalia at Orsay museum, in Paris, France, Friday, Feb. 12, 2016. Facebook lost a crucial legal battle Friday as a Paris court ruled the social network can be sued in France over its decision to remove the account of a French user who posted a photo of Courbet's famous 19th-century nude painting. (AP Photo/Francois Mori)

"This is a great satisfaction and a great victory after five years of legal action," lawyer Stephane Cottineau, who represents the teacher, told The Associated Press. He said it sends a message to all "web giants that they will have now to answer for their possible faults in French courts."

"On one hand, Facebook shows a total permissiveness regarding violence and ideas conveyed on the social network. And on the other hand, (it) shows an extreme prudishness regarding the body and nudity," he said.

The French government has lobbied Silicon Valley tech giants to take

down violent extremist material, notably after deadly attacks in Paris last year.

Facebook has had a tough week in France.

France's independent privacy watchdog said Facebook is breaching user privacy by tracking and using their personal data, and set a three-month limit ahead of eventual fines. And the government's anti-fraud agency issued a formal notice giving the company two months to comply with French data protection laws or risk sanctions. It notably accused Facebook of removing content or information posted by users without consultation.

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Citation: Facebook nude-painting case can face trial in France (Update) (2016, February 12) retrieved 27 April 2024 from

<https://phys.org/news/2016-02-court-facebook-sued-france-nude.html>

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