

California court: Defendants get crack at some social media

May 25 2018, by Janie Har



In this June 11, 2014, file photo, a man walks past a mural in an office on the Facebook campus in Menlo Park, Calif. The California Supreme Court will decide whether Facebook and other social media companies must turn over user content to criminal defendants. The justices are expected to rule Thursday, May 24, 2018, in a case that has pitted some of Silicon Valley's biggest companies against public defenders. (AP Photo/Jeff Chiu, File)

Facebook and other social media companies can be compelled to give criminal defendants preparing for trial user content that is already

public, California's highest court ruled Thursday.

The state Supreme Court's ruling gives an opening to defense lawyers whose requests for information have been ignored by [social media](#) companies that argue a federal privacy law prevents its release.

Specifically, the high [court](#) rejected an appellate court's ruling that providers were barred from disclosing communications that were set by the user to be public, and that remained public at the time defendants issued subpoenas to the companies.

The case has pitted some of Silicon Valley's biggest companies against public defenders, who say they need equal access to mount a proper defense. Attorneys for the companies have argued that defendants have other ways to get the material.

"The Supreme Court, by rejecting the idea that social media providers can simply ignore a defense subpoena is a huge step forward," said San Francisco Public Defender Jeff Adachi.

But the narrow ruling sidestepped the greater issue of leveling a playing field for criminal defendants whose attorneys do not have the powers of police and prosecutors to demand individual private records from social media companies, said Stephanie Lacambra, criminal defense staff attorney at the Electronic Frontier Foundation, a civil liberties nonprofit.

"The evidentiary field is still tilted, and the scales are still compressed and weighted in favor of the prosecution," Lacambra said.

Brielle Villablanca, a spokeswoman for Twitter, had no comment. Facebook and Instagram did not respond to a request for comment, nor did attorneys for the three companies.



In this June 20, 2013 file photo, a journalist makes a video of the Instagram logo using the new video feature at Facebook headquarters in Menlo Park, Calif. The California Supreme Court will decide whether Facebook and other social media companies must turn over user content to criminal defendants. The justices are expected to rule Thursday, May 24, 2018, in a case that has pitted some of Silicon Valley's biggest companies against public defenders. (AP Photo/Marcio Jose Sanchez, File)

The Supreme Court said it will instruct the appellate court to send the case back to the trial court to gather more information and determine the appropriate level of disclosure and address stickier questions, such as what to do with publicly posted tweets or posts that are later deleted.

Eric Goldman, co-director of the High Tech Law Institute at Santa Clara University School of Law, said he is unclear on the magnitude of the ruling, although it does force providers to at least go to court to argue

why they shouldn't have to turn over public information.

"This doesn't help the [defendant](#) a whole lot," he said. "It might be creating the possibility of having a fast lane to get certain information, but the information they're going to get isn't as interesting as the information they're not going to get."

At issue are requests by a defendant charged in a San Francisco killing who wants videos and other content posted to Facebook and Instagram by the victim and a witness. The defendant, Lee Sullivan, and a co-defendant, Derrick Hunter, also sought information from Twitter.

Prosecutors charged the two men with murder in an alleged gang-related drive-by-shooting in 2013. Sullivan said the witness was his former girlfriend, and her social media posts would show she was jealous and angry because he was involved with other women.

Janelle Caywood, an attorney for Sullivan, called the ruling "a huge deal." She sees it as a step toward compelling [information](#) sent to a limited audience.

"If there's a smoking gun, if there's a social media post that clearly shows our client is innocent and it's restricted access," she said, "we're going to come back and say the federal Constitution requires disclosure."

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