



Twitter v. Taamneh: Comparative Approaches

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Introduction

Can social media apps be liable for “aid[ing] and abet[ting]” terrorist organizations by said organizations using their services to disseminate their propaganda under the Justice Against Sponsors of Terrorism Act (JASTA)?¹ That is the question that is currently being answered in the Supreme Court of the United States in *Twitter v. Taammneh*, where Twitter is being sued by relatives of a deceased citizen who was killed by a terrorist organization in Turkey.² The moving

¹ 31 A.L.R. Fed. 3d Art. 4 (Originally published in 2018)

² *Twitter, Inc. v. Taamneh*, 214 L. Ed. 2d 12, 143 S. Ct. 81 (2022)

party is alleging that Twitter and other social media companies provided “material support” to terrorist organizations by using their services.³ While ultimately the issue comes down to social media companies being non-feasant by not doing anything to address these communications, it’s possible to analyze this approach under an European Union (EU) law perspective and compare the outcomes of legal analysis.

Comparative Approaches

Under United States Law, the social media companies are being charged “aiding and abetting” the terrorist organization by providing material support.⁴ Material support has been defined as “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment...”⁵ The list is incredibly broad and seems to be not exhaustive; material support to a terrorist organization could almost be offered in any way. Similarly, under an EU law directive, material support has been defined as “terrorism through persons engaging in or acting as intermediaries in the supply or movement of services, assets and goods, including trade transactions involving the entry into or exit from the Union...”⁶ Thus both definitions of material support encapsulate almost any type of “support.”

Though the case is currently being litigated in the United States, a lower court has determined that the plaintiff[s] “plaintiffs failed to adequately allege that social media companies

³ *Id.*

⁴ *Id.* at 907

⁵ 18 U.S. Code § 2339A

⁶ Council Directive 2017/541 art. 1, 2017 O.J (L88/6)

were generally aware that, through their actions, they were playing or assuming a role in terrorist organization's activities, or that companies provided substantial assistance to terrorist organization, as required to state aiding and abetting indirect liability claim under JASTA.”⁷ The court determined that “the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance,” putting emphasis on general awareness.⁸ It is to be seen whether the Supreme Court will agree with the lower courts holding.

Under EU law, the material support analysis could truly go either way. If there is no emphasis on general awareness, then there is a good argument to be made that the social media companies acted as “intermediaries” through the terrorist’s organization use of their services.⁹ However, if there is an emphasis of “general awareness” or an intent prong, then it could seemingly go the other direction. This seems unlikely in context, as the EU has already made directives to prevent “radicalisation” through social media.¹⁰ Radicalisation is essentially defined as the “dissemination of terrorist content online.”¹¹ Thus compared to the United States, the EU has already taken a more dynamic approach to anti-terrorism through social media and most likely would already have steps to prevent this.

Conclusion

⁷ Twitter, *supra* note 2, at 919

⁸ *Id.* at 917

⁹ Council Directive, *supra* note 6

¹⁰ <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/preventing-radicalisation/> (wasn’t sure how to cite this)

¹¹ *Id.*

The comparative approaches could yield different results. Compared to the United States, the EU seems to be slightly more proactive in drafting preventive legislation from stopping the dissemination of terrorist propaganda through social media rather than letting it go to court. However under a policy lens, the issue becomes whether we want our respective governments to be monitoring every aspect of our online presence. Will social media apps in the United States be held liable? The answer will come in time.