

## AI chatbots may have a liability problem



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**Happy Wednesday!** It's **Will Oremus**, along with **Cristiano**, bringing you today's newsletter. You can reach us at: [will.oremus@washpost.com](mailto:will.oremus@washpost.com) and [cristiano.lima@washpost.com](mailto:cristiano.lima@washpost.com).

Below: European regulators narrow their antitrust charges against Apple, and **Elon Musk** is scolded by Chinese media. First:

## AI chatbots may have a liability problem

During oral arguments last week for [Gonzalez v. Google](#), a case about whether social networks are liable for recommending terrorist content, the Supreme Court stumbled on a separate cutting-edge legal debate: Who should be at fault when AI chatbots go awry?

**While the court may not be, as Justice Elena Kagan quipped, “the nine greatest experts on the internet,” their question could have far-reaching implications for Silicon Valley, according to tech experts.**

Justice **Neil M. Gorsuch** posited at the session that the legal protections that shield social networks from lawsuits over user content — which the court is directly taking up for the first time — might not apply to work that's generated by AI, like the popular ChatGPT bot.

“Artificial intelligence generates poetry,” he said. “It generates polemics today that would be content that goes beyond picking, choosing, analyzing or digesting content. And that is not protected. Let's assume that's right.”

**While Gorsuch's suggestion was a hypothesis, not settled law, the exchange got tech policy experts debating: Is he right?**

**Entire business models, and perhaps the future of AI, could hinge on the answer.**

The past year has brought a profusion of AI tools that can craft pictures and prose, and tech giants are racing to roll out their own versions of OpenAI's ChatGPT.

Already, Google and Microsoft are [embracing a near future](#) in which search engines don't just return a list of links to users' queries, but generate direct answers and even converse with users. Facebook, Snapchat and [Chinese giants Baidu and Tencent](#) are hot on their heels. And some of those AI tools are [already making mistakes](#).

In the past, courts have found that Section 230, a law shielding tech platforms from being liable for content posted on their sites, applies to search engines when they link to or even [publish excerpts of content](#) from third-party websites.

But there's a case to be made that the output of a chatbot would be considered content developed, at least in part, by the search engine itself — rendering Google or Microsoft the “publisher or speaker” of the AI's responses.

**If judges agree, that could expose tech companies to a flood of lawsuits accusing their chatbots of everything from providing libelous descriptions to offering faulty investment advice to aiding a terrorist group in crafting its recruiting materials.**

In a post on the legal site Lawfare titled, “[Section 230 won't protect ChatGPT](#),” **Matt Perault** of the University of North Carolina argued just that. And he thinks it's going to be a big problem, unless Congress or the courts step in.

“I think it's a massive chill on innovation” if AI start-ups have to worry that they could be sued for artificially generated content, said Perault, a former policy official at Facebook who now directs a tech policy center at UNC.

He suggested that a better approach might be for Congress to grant AI tools temporary immunity, allowing the booming sector to grow unfettered, while studying a longer-term solution that provides partial but not blanket immunity.

**Not everyone agrees that Section 230 wouldn't apply to AI tools, however.**

“Just because technology is new doesn't mean that the established legal principles underpinning the modern web should necessarily be changed,” said **Jess Miers**, legal advocacy counsel for the left-leaning trade group Chamber of Progress. The group receives funding from tech companies including Google, Apple and Amazon. (Amazon founder Jeff Bezos owns The Washington Post.)

Miers noted that generative AI typically produces content only in response to prompts or queries from a user; these responses could be seen as simply remixing content from the third-party websites, whose data it was trained on.

**How the Supreme Court rules in [Gonzalez v. Google](#) could offer clues as to the future of tech company liability for generative AI.**

If the court heartily affirms that Section 230 protects YouTube's recommendation software, that could clear a path for an expansive interpretation of the law that covers tools like Bing, Bard and ChatGPT, too. If the court looks to draw limits on Section 230 here, that could be a sign that Gorsuch got it right — and AI makers should start bracing for legal headwinds.

Google and Microsoft declined to comment for this story.

## Our top tabs

## E.U. narrows antitrust charges against Apple

The European Union narrowed the scope of its antitrust allegations against Apple in a revised charge sheet on Tuesday, the Wall Street Journal's **Kim Mackrael** reports.

The bloc said “its concerns now focus on contractual restrictions that Apple imposed on app developers, which the commission said prevented them from informing iPhone and iPad users about other ways to subscribe to music-streaming services,” according to the report. “The regulator said it no longer takes a position on the company imposing its own in-app payment technology on music-streaming app developers.”

Apple said it was pleased with the move and that they “hope the European Commission will end its pursuit of a complaint that has no merit.” Spotify, which originated the complaint against the tech giant and competes with Apple in the music-streaming market, said the charge sheet “sent a clear message that Apple’s anti-competitive behavior and unfair practices have harmed consumers and disadvantaged developers.”

## Chinese state media hits Musk over coronavirus tweet

Chinese state media called out tech mogul **Elon Musk** this week for a tweet about the origin of the coronavirus, “potentially signaling strained relations between the Tesla CEO and the country where many of the cars’ parts are manufactured,” my colleagues **Rachel Lerman** and **Cate Cadell** report.

The Global Times, a state-backed newspaper known for its hawkish takes on U.S.-China relations, posted an essay on social media criticizing Musk for advancing a “conspiracy theory” that has been “used by those US right-wing and anti-China media hostile to China as material to frame China.”

“Musk was responding to a tweet that brought up an unfounded conspiracy theory that **Anthony S. Fauci**, the former chief medical adviser to President Biden, funded the creation of the coronavirus,” my colleagues wrote. Musk did not immediately respond to a request for comment.

## FCC challenge to \$5.4 billion Tegna TV deal spells trouble for future buyers

The Federal Communications Commission’s decision to bring a proposed acquisition of broadcast media company Tegna to a hearing will likely complicate prospects for future media deals, Bloomberg News’s **Todd Shields** reports.

The pending transaction initiated by hedge fund Standard General was slated for completion in May, but will likely be delayed after the FCC’s media bureau ordered a judicial review of the transaction over concerns that the combined entity may artificially raise prices for consumers and result in job losses.

Standard General Managing Partner **Soo Kim** said that the deal going to court review would effectively kill the acquisition altogether. “If we let this stand, we let whoever is in charge of the media bureau, typically the chair, decide any renewal or licensing decision,” Kim told Bloomberg News. The FCC declined to comment.