**Legal Implications of Misrepresentation and Product Liability in the Context of Facebook**

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In this new age of digital technology, legalities have been a growing concern in the digital space. The digital space has created a virtual world with seemingly no boundaries and certainly limited legalities. Tech giants such as Facebook amongst many others have exploited the lack of a legal system within the virtual space for profiteering without too much accountability. A former Facebook product manager that has become a whistleblower and goes by the name of Frances Haugen stated: "The thing I saw at Facebook over and over again was there were conflicts of interest between what was good for the public and what was good for Facebook, and Facebook over and over again chose to optimize for its own interests, like making more money" (Duffy, 2021). Making “more money” includes consuming more content for the general user of the platform as stated by Haugen, which in turn, means more data is collected (Duffy, 2021). Collecting Big Data does pose a big risk for these tech companies, and Facebook knows no bounds when it comes to collecting personal data for their own profiteering; however, the risk factor is starting to show, as more civil lawsuits are being filed against the big tech company.

These lawsuits pertain to tort laws, specifically civil lawsuits concerning misrepresentation and product liability, which in turn can give compensation to injured parties. Misrepresentation can be defined as “an untrue statement of fact; an incorrect or false representation” (Black et al., 1990) to the product or service offered from the company. Whereas product liability is the product or service itself that may be negligent by design, be negligent on how it is manufactured, and/or may breach the duty to warn (nscc.ca, 2020). Although these tort laws may be mostly practiced outside the digital realm, they are starting to become realized and more relevant in the digital world as our society is transforming and depending more on the digital universe.

There have been many accounts of lawsuits towards Facebook, specifically focused on Facebook’s negligence in architectural design. One account in *Fraley, et al. v. Facebook,* focuses on privacy concerns, as the data collected can be shown public facing to others. Fraley has claimed that Facebook had committed four torts according to Californian law (Melodia & Bond, 2020):

* + Intrusion upon the plaintiff’s seclusion or solitude, or into his private affairs;
  + Public disclosure of embarrassing private facts about the plaintiff;
  + Publicity which places the plaintiff in a false light in the public eye; and
  + Appropriation, for the defendant’s advantage, of the plaintiff’s name or likeness. that the data being collected can.

Which subsequently won in favor of the plaintiff. On another account of a privacy concern was a class-action lawsuit that involved Facebook violating an Illinois privacy law by failing to get consent before using facial-recognition technology to scan photos uploaded by users to create and store faces digitally (theguardian.com, 2021), which afterword won in favor of the plaintiffs.

With the recently discovered leaks from Facebook’s whistleblower, Haugen, it is apparent that a misrepresentation civil lawsuit may be plausible. Facebook failed to uphold their statement to combat misinformation and violent extremism relating to the 2020 election. Haugen stated, that in reality, Facebook knew its algorithms and platforms promoted this type of harmful content, and it failed to deploy internally recommended or lasting countermeasures (Dent, 2021). The negligence to initiate these counter measures contributed to an attempted insurrection, which holds Facebook liable. Haugen also stated "one of the consequences of how Facebook is picking out that content today is that it is optimizing for content that gets engagement, a reaction, but its own research is showing that content that is hateful, that is divisive, that is polarizing, it's easier to inspire people to anger than it is to other emotions," (Duffy, 2021) which is the catalyst of political polarization today.

With privacy concerns as well as political polarization, Facebook should take responsibility and claim to be a publisher, since they are making editorial decisions on their behalf already with censoring certain content, banning certain individuals from their platform and throttling or blocking certain types of content by using algorithms, which makes them no different from traditional publishers (Zilles, 2020). Being considered a publisher instead of a platform will make the platform liable for any content that may be exposed on it, which brings forth major legal implications. This will rid of any misinformation and conspiracy theory posts that may go viral, and may stop future incidences comparable to the January 6th, 2020 insurrection. However, Charlie Angus from the NDP party wants to crack down on Facebook as he calls on Ottawa to establish an independent watchdog to address disinformation, hateful posts and algorithm transparency (Reynolds, 2021). Angus states: "I think it's probably better for us to establish a stand-alone officer of Parliament -- who reports to Parliament, who understands tech, who understands algorithms -- than to turn it over to the schlimazel that is the CRTC" (Reynolds, 2021). With the transparency and understanding of algorithms, this approach may also help stop the political polarization that Facebook enables. Most importantly, Facebook should tighten their privacy policies, as it is apparent that many are not satisfied with how and why the data is collected.

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