



Barclay Damon Live Presents Cyber Sip™
Season 5, Episode 7: “The Kaley G. M. Social Media Trial: What Happened, and What Comes Next?”

Host: Kevin Szczepanski, Barclay Damon

[Kevin Szczepanski]: Kaley G. M. verdict. What happened? What happens next? Well, let’s start with a little story. A child starts watching YouTube when she’s only six years old. Not surprising, but maybe a little shocking to some of us. By nine years old, she’s already on Instagram. And what began as something innocent, mere entertainment, gradually devolves into something much worse—more time online, more comparison to others, fixation on her appearance, and emotional investment in whatever comes on that screen. In the bellwether trial Kaley G. M. brought against major social media platforms, including Google and Meta in Los Angeles, that gradual progression was at the heart of her case. Kaley testified that social media became, in her words, an around-the-clock presence in her life. She told the jury, “Every single day I was on it all day long.” She also said, “I just can’t be without it.” Why are these facts so powerful to us? Well, I think it’s because millions of parents and potential jurors have lived some version of that pattern. Haven’t we all and millions of children lived it too? Hours on hours, every day, day after day. And now the legal question is not so much whether those experiences are real or wise.

[Kevin]: Our collective experience suggests that they are very real and that they may not be so wise. But the legal question is whether those experiences can be fairly attributed to a platform, Google’s YouTube or Meta’s Instagram, as opposed to the many other physical, mental, and social forces operating on a young child’s life. That was the legal question that underlaid Kaley G. M., a very closely watched California trial that ended with a multimillion-dollar verdict against Google and Meta. And more important than the verdict is what it means for these social media platforms in future cases. But before we get to that, we need to talk a little bit more about the trial. What exactly happened? A Los Angeles jury found Google and Meta liable and awarded the plaintiff, who was known for privacy purposes as Kaley G. M., compensatory damages of \$3 million. And because they also found malice or fraud in what the platforms did, the jurors awarded Kaley another \$3 million in punitive damages. One of the jurors at the end of the case said she would have liked to have awarded even more. The jury allocated 70% of the award to Meta and 30% to Google, reflecting their belief that Instagram was a bigger culprit than YouTube in that case. Now, this isn’t just another lawsuit. It was the first bellwether trial in coordinated proceedings going on right now in Southern California. Those proceedings involve nearly 2,500 individual cases. TikTok and Snap Inc., the parent company of Snapchat, were involved in the Kaley G. M. case as well, but they settled before trial. And that is no good news for them because they’re still parties in the thousands of other cases that are still pending. So this verdict is important, not just because of the money awarded, \$6 million, but because it gives both sides—the plaintiffs on one hand and the platforms on the other—a preview of how dozens or even hundreds of other juries might react to a similar story.

[Kevin]: All right. So to understand the result, we have to talk about the trial. So let’s get right to it. The jury heard that Kaley began using YouTube at age six, and Instagram at age nine. Mentioned that up front. They also heard that social media kept her up late, isolated her from her friends, and contributed to depression, anxiety, and body dysmorphia. That’s when you look in the mirror and you don’t see the person you are. They also heard that even when Kaley experienced online bullying, she couldn’t stop. She stayed focused, addicted, you might say, to the platforms. It was a compelling narrative for sure, especially because it came



from a now–young adult who’s looking back on her childhood and describing it to jurors in crystal, compelling language. And if Kaley testimony weren’t enough, her lawyers had much more for the jury. They relied on internal documents and the platforms that cast them in a dark light. One Instagram employee wrote, “We’re basically pushers. We’re causing reward-deficit disorder, because people are bingeing on Instagram so much that they can’t feel the reward.” A YouTube strategy memo said, “If we want to win big with teens, we must bring them in as tweens.”

[Kevin]: Now, in any trial against a large company, internal communications like that can be devastating to the defense. Why? Because they give plaintiffs’ lawyers an angle to argue not just that something harmful happened, but that the company knew the harm was coming and let it happen. They also get to personalize the platforms in a negative way, just as they personalize their own client in a positive way. Trials are about people. Kaley G. M. on one side, and the big bad platform employees on the other. Who know something bad is coming, but they keep it to themselves. They conceal it. They commit a fraud on millions of viewers and adolescents who don’t know any better. They also give jurors memorable pictures to hold in their mind’s eye. You know, “we’re basically pushers” is the sort of phrase with staying power in a jury room. But beyond the plaintiff herself, in those damning internal communications, the trial also featured high profile testimony. Mark Zuckerberg took the stand and defended Instagram as a product with value in people’s lives. Fine as far as it goes, but the contrast between Meta’s powerful CEO on one hand and a young girl damaged by allegedly addictive social media on the other, played right into the plaintiff’s hands.

[Kevin]: Now there’s more than one side to every story, and that was certainly the case here. Meta’s lawyer, Paul Schmidt, argued that Kaley’s mental health struggles stemmed from many other causes in her life, including a learning disability and a difficult home life. The evidence showed, for example, that her parents divorced when she was young. Her father was largely absent. Her mother abused her physically and mentally, and her sister had attempted suicide and been hospitalized for an eating disorder. Not a good home life for Kaley G. M. Google lawyer Luis Li went on to argue that YouTube was not even “social media” in the same sense that Instagram was, and it wasn’t addictive in the way that the plaintiff’s lawyers said it was. Google also argued that Kaley’s use of YouTube peaked when she was young and petered out over time. So you can see how YouTube’s counsel was trying to say, in effect, hey, point the finger at Meta and Instagram over there, not at us over here. These defense arguments were effective to a point because they cut straight to the core question of causation.

[Kevin]: What really caused Kaley’s injuries? Was it the social media platforms that millions of children use every day, or was it something else closer to home, something unique in Kaley’s life? As Meta’s lawyer asked the jurors, “If you took Instagram away, would anything be different?” All right, so that’s a good question, isn’t it? Because it captures the legal problem in a single sentence. In a case involving anxiety, depression, and body dysmorphia how does a jury decide whether the platforms or confluence of other factors are to blame? Who’s to say what caused Kaley G. M. to suffer? All right. Now let’s talk about the closing arguments, because that’s often where it all comes together for one side or the other. Kaley’s lawyer, Mark Lanier, argued that Meta and Google were not neutral platforms passively waiting for children to use them.

[Kevin]: He argued that they were designed, *designed* to capture attention, especially the attention of young users, and to convert that attention into revenue. YouTube was Kaley’s gateway, Lanier argued, and he used that very term. YouTube helped create habits and the vulnerabilities that later made Instagram particularly powerful in Kaley’s life. From there, Lanier focused heavily on Instagram—the role of beauty filters, for example. The reinforcing nature of the algorithms recommending that Kaley go to this or that post, and the structure of the endless engagement loops. Click here. Download there. You know how it works. That allegedly kept Kaley scrolling even when it made her feel worse. She couldn’t stop. Something in the very design of the platforms made it impossible for her to turn away. Then, focusing on Meta’s sheer financial scale, Lanier homes in on what the plaintiffs really want. He’s speaking about punitive damages, telling the jury that only a very large number would be enough to get Meta’s attention. “You’ve got to talk to Meta in ‘Meta money,’” he said. Isn’t that compelling? It would take tens of billions of dollars to do that. So Lanier made very clear



what he wanted. Now, the defense pushed back with a story of its own and a warning to the jurors not to turn complex human problems into corporate liability merely because the companies involved are wealthy or maybe a little unpopular. We all have seen Mr. Zuckerberg testify before, and it doesn't always go as well as he might like it to. That's skepticism, though. The idea that we should stop and think carefully before holding corporations liable—it's important because it's one thing to say that social media can be unhealthy, manipulative or excessive. We know that in our own experience.

[Kevin]: It's another thing, though, to convert that social critique, that frustration with social media, into a large verdict against the platforms themselves. Now that brings us to another critical issue, and that is Section 230. What is that? Well, Section 230 of the Communications Decency Act is one of the strongest allies of the internet, maybe even the strongest. It protects an interactive computer service like Google's YouTube for Meta's Instagram from being treated as the publisher or the speaker of information provided by another content provider. In other words, platforms like Instagram and YouTube usually aren't liable for content placed there by you or me or retailers or those many guys who are trying to get you to buy their products. They're immune from liability, therefore, even if the content placed there by others—the you and me and retailers and all those other folks—is offensive, addictive, or otherwise perceived as harmful.

[Kevin]: Now, you may think this protection should go away, that it's served its purpose, and that we need to move in a different direction. But the reality is that Section 230 has shaped the internet and allowed it to explode as everyone's favorite place for information and commerce for decades. It's one reason that claims against platforms are often difficult to sustain when they focus directly on harmful user-generated content. The platforms can be heard to say it's not us, it's not our content. We're just putting it up there. Go after the people that make the harmful content.

[Kevin]: So why is this case any different? How were Kaley's lawyers able to get around that decades-old protection under Section 230? The answer: by reframing the issue. Issue framing is critical in our everyday lives, and it's especially critical in the legal world. Kaley's lawyers knew that Section 230 dropped a high hurdle into their case. So instead of running right into Section 230 by saying that the platforms posted harmful content, they got around Section 230 by saying that the platforms very design—their recommendation systems, engagement features, filters, loops, that algorithm we all talk about—was the culprit, the real culprit that caused Kaley's harm. Now that was the winning theory of Kaley G. M.'s lawyers. And they won. \$6 million. But is it right? Is it really true that this is a design question, or is it still really a content question that Kaley's lawyers simply repackaged for the jury so that they could get around Section 230 and win millions of dollars? This is a very important, practical question. Why? Because the platforms can appeal the decision against them in the Kaley G. M. case. And there are those other 2,500 cases that have not yet come to trial. So I guess one way of thinking about it is: the strategy worked in this case. But the real question is will it work in the coming cases? So meanwhile, while we're waiting for all those cases, while we're waiting for the appeal in Kaley G. M., what's the significance of this verdict?

[Kevin]: I think there are a few points that I want to leave you with. First, it definitely gives the plaintiffs momentum. They now have a jury verdict on their side of the ledger. They have internal documents with memorable lines. They have a finding of punitive damages and a bellwether result in this case that they can leverage in future cases and in fights for settlements in those cases. Second, the verdict increases the pressure on the platforms. Google and Meta have said they're evaluating their position. They could very well appeal, but do they really want to keep fighting in this case, and in the thousands of other cases that portend potentially billions of dollars of damages against them? Time will tell. Third, the verdict definitely changes the public conversation, and that will filter up to the platforms. The focus is shifting now from posts made by users...you and me, the retailers, everyone else we see, to how platforms use algorithms to drive and keep user attention. That shift is going to be a pivotal one, not only in the litigation that's going on in Southern California. It might also affect how Congress looks at Section 230's protection for the platforms, and how boards and executives at these companies evaluate how their products affect young people.



[Kevin]: Finally, and as we've been saying, the verdict ensures that more of these cases are coming. There are thousands of trials in the pipeline. And if plaintiffs continue to outshine their opponents by presenting sympathetic witnesses, damaging internal documents, and the design-based theory that jurors can grab on to, to blame the platforms like Google, Meta, Snap and TikTok. You can bet that these platforms will suffer sustained litigation risk and even financial pressure to settle. All right, so how is all of this going to end up? We don't know. But if you're a plaintiff, you're very happy because you think that eventually the platforms are going to pay one way or the other. If you're the platforms, you live to fight another day and hope that you'll win the next one to neutralize the threat. We'll be following it here at *Cyber Sip*. Thank you all for joining us. We're back soon with another episode.

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