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Glassdoor Inc. Urges Texas Justices to Protect Online Anonymity

Major internet technology companies and advocates were backing Glassdoor's arguments urging the Texas Supreme Court, which heard argument Wednesday, to protect the anonymity of online reviews.

By Erin Mulvaney | September 19, 2018

A lawyer for the online forum Glassdoor told the Texas Supreme Court on Wednesday that a company's attempt to unmask anonymous users who posted critical job-related reviews would violate speech and privacy laws.



Glassdoor is fighting to overturn a court order that would force the San Francisco-based company to reveal the identities of posts about the online clothing retailer Andra Group LP. Lawyers

for Andra contend the company wants to investigate whether certain posts, which included claims about alleged labor violations and bad business practices, are defamatory.

A lower appeals court, ruling in favor of Andra under a state procedural rule, said Glassdoor must reveal two out of 10 anonymous writers whose reviews are disputed. The discovery rule, known as Rule 202, states that a court can be petitioned for information allowing one party to investigate a potential claim. Glassdoor argued Andra is attempting to abuse the procedural rule to limit free speech.

“Both users were obviously constitutionally protected. They wrote criticisms of their work conditions,” Peter Kennedy, a shareholder in Austin, Texas, at Graves Dougherty Hearon & Moody, argued Wednesday on behalf of Glassdoor. “Most of these reviews you would hear from anyone unhappy about their job: It’s disorganized. The person who runs the company scares me. He treated me like a slave. These are things you typically hear, even if they might be strong opinions.”

The argument marked the latest fight for Glassdoor, and tech companies at large, to defend the anonymity of their users. Glassdoor, which is not a defendant in Andra’s case, has faced numerous attempts to reveal its anonymous users by companies and law enforcement agencies during investigations in recent years. Last year, a federal appeals court said Glassdoor

could not shake compliance

(<https://www.law.com/therecorder/sites/therecorder/2017/11/08/glassdoor-inc-cant-shake-grand-jury-subpoena-unmasking-anonymous-users/>) with

grand jury subpoenas seeking to unmask the identities of anonymous reviewers.

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The Texas Supreme Court case attracted friend-of-the-court briefs from technology companies and privacy advocates. The tech companies, including Twitter Inc., Yelp Inc. and Reddit Inc., represented by Haynes and Boone, **told the justices** (<https://drive.google.com/file/d/13JwsQ-UjPFHOYuAqF8HBfVvjNc2TvAs4/view>) that Andra is “wielding Rule 202 as a means of robbing speakers of their constitutionally protected anonymity because it disagrees with the content of their speech.”

The Electronic Frontier Foundation, a digital rights advocate, **said in an amicus brief** (<https://drive.google.com/file/d/1fr17GqWmu1pC1udrAt4So5qTyX4Ahokj/>) that courts across the country have recognized “the potential for abuse of their discovery tools in cases where litigants seek to unmask anonymous speakers, often to intimidate or silence them rather than vindicate legitimate legal claims.”

The technology companies, in a joint brief, said, “Preventing such abuse is critical in cases like this one, where the ramifications for protected speech rights loom large. Courts throughout the United States have repeatedly recognized the importance of preventing unnecessary attempts to compel disclosure of anonymous speakers’ identities and its implications for the protection of citizens’ First Amendment rights.”

Andra’s attorney W. Alan Wright, a Dallas-based partner at **Kilpatrick Townsend & Stockton** (<https://www.law.com/law-firm-profile?id=171&name=Kilpatrick-Townsend>), on Wednesday read the posts the

company found defamatory to the court. The two posts included criticisms that the managers were “racist and sexist,” the warehouse amounted to slavery and hiring practices violate labor law.

Justice Debra Lehrmann asked Wright to address whether the statute of limitations for Andra to file a defamation claim had expired and whether a ruling for the company would have a stifling effect on major media outlets that publish online. Wright said Glassdoor is a restricted access website, unlike a mass media publication.

During one exchange, Justice Nathan Hecht said: “If you could get discovery in this situation, there would be no end to it.”

Wright responded that only statements that were “objectively verifiable fact”—as opposed to opinions or hyperbole—were identified in the lower court’s decision.

“Bad food in a restaurant or something like that could be opinion or hyperbole. When there are objective statements being made and violating the law, they could be actionable on that basis,” Wright said.

In Andra’s **brief to the court**

(<https://drive.google.com/file/d/13sLLJM5HXWSWOUeuz7parKcxYoVVPwxt>)

the company said the negative Glassdoor posts damaged the company’s reputation and caused a “drop in candidate interest.” The company said its employment practices forbid discrimination and that the company does not sanction any illegal business practices.

Glassdoor said in a statement Wednesday that the company “actively promotes and defends the First Amendment rights of people to speak freely about their opinions and experiences at work, without fear of intimidation or

retaliation, and we will continue to do so. We typically prevail in these types of cases: to date, we have succeeded in protecting the anonymity of our users in more than 80 cases filed against our users.”

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