

High Court Won't Review \$20M Facebook Deal Over Kids' Info

By **Kat Sieniuc**

Law360, New York (October 3, 2016, 2:00 PM EDT) -- The U.S. Supreme Court will not consider whether a Ninth Circuit panel erred in approving a \$20 million settlement over Facebook's use of user likenesses to promote sponsored posts, denying certiorari on Monday to the parent of two of the site's young users.

The high court petition marked the latest privacy concern hurled at Facebook from parents seeking to prevent the use of their children's images, despite the deal reached in California federal court that outlined new terms for Facebook's "sponsored stories."

The settlement allows Facebook to republish photos of more than 10 million teenage users without parental consent in violation of California privacy laws, Michael Depot told the high court in May, adding that the Ninth Circuit ignored "forced collusion" used to reach the settlement when it declined to rehear an appeal of the settlement earlier this year.

Depot's attorney, Robert Fellmeth, called the court's decision perhaps the worst in a decade: "It signs off on a 'term and condition' in Facebook that provides that teens have received parental approval to cede to Facebook the right to republish anything they post, photos or comments, to anyone they choose — not only without parental permission, but without any prior notice whatever to the parents or the teen," he told Law360 in an email on Monday.

"It is the most serious infringement of privacy rights in human history," he added, saying "there are 1.1 billion Facebook subscribers now available for receipt as determined by a commercial third party."

The case began in 2011 in a lawsuit filed against the social network giant on behalf of all users in the U.S. who had their name or likeness used in "sponsored stories," which create ads that incorporate such information after the users click on the site's "Like" feature for a particular company.

While a settlement was reached, parents of some teenage users said it didn't go far enough to protect minors' privacy by asking teenage users to self-verify parental consent, and violated seven state laws about minors' pictures in ads.

The Ninth Circuit upheld the settlement in January, saying the award was reasonable, and then in February issued an unpublished decision declining to rehear arguments, shooting down Depot's allegations that the court was letting Facebook off the hook for violating California law.

Depot's petition argued that the settlement was reached in an unfair manner in part because the subclass of child users did not have their own attorney and also because Facebook asked the teenage subclass representatives during depositions if they knew they were responsible for fees in the case.

He also urged the court to review whether a privacy provision granting third parties permission to use a minor's posting with parental consent violates the Fourteenth Amendment, and whether Facebook's privacy waiver is legal under California privacy and child protection laws.

An attorney representing Facebook declined to comment on Monday.

Depot and his two children are represented by Robert C. Fellmeth and Christina Riehl of the Children's Advocacy Institute at the University of San Diego School of Law.

Facebook was represented by Daniel Benjamin Levin, Kristin Linsley and Joshua Patashnik of Munger Tolles & Olson LLP, and Matthew D. Brown, Jeffrey M. Gutkin and Michael Graham Rhodes of Cooley LLP.

The case is K.D., et al., v. Facebook Inc., case number 15-1404, filed in the Supreme Court of the United States.

--Additional reporting by Melissa Daniels. Editing by Jack Karp.