

# The MLRC Digital Review

*Reporting on developments in digital media law and policy*

by Jeff Hermes

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So, you might have noticed that my introductions to these articles have been pretty brief over the last few months. Some of that is because we've all been very busy at the MLRC with keeping the virtual shop running and I haven't had extensive leisure time to ruminate on things. Mostly, however, it's because I've been struggling to wrap my mind around the zeitgeist as far it relates to digital media.

Those of you who know me well know that I'm a big-picture kind of guy; I study the infrastructure of speech and how it drives, and is shaped by, the law. In more than twenty years as an attorney, I don't think I've ever seen such bitter divisions between different sectors of the information ecosystem. I am constantly concerned that the extremely serious challenges facing news, entertainment, and tech will overwhelm common sense when it comes to the First Amendment and the other vital protections on which all of us depend, particularly when those issues become radically politicized. It is far too easy to cheer for the legal woes of those whom we view as political rivals or economic threats and lose sight of the fact that erosion of their speech rights always and inevitably injures us too.

It is for that reason that I urged George in March to offer the MLRC's support to Twitter in an amicus filing in *Twitter, Inc. v. Paxton* in the Northern District of the California, and why George agreed. As we wrote in explanation of the decision,

As a membership organization that spans the entire range of media organizations (and media technologies) from local outlets to the largest tech companies, the MLRC recognizes there are significant political, economic, and other tensions between different sectors of the media landscape. However, we believe that government interventions that run roughshod over core First Amendment rights are a threat to all media regardless of which entities are targeted, and must be rejected by our community as a whole.

To that end, the MLRC ... joined a coalition of organizations including the Reporters Committee for Freedom of the Press, PEN America, the Center for Democracy & Technology, and the Electronic Frontier Foundation in filing an amicus brief in *Twitter, Inc. v. Paxton* in the U.S. District Court for the Northern

District of California. The case, which involves an attempt by the Attorney General of Texas to investigate Twitter under deceptive trade practices laws in retaliation for its banning of former president Donald Trump, raises serious First Amendment issues of relevance to all media with respect to the ability of a privately owned organization to choose for itself which messages to amplify and which to reject. The MLRC takes no position in the amicus brief on the propriety of Twitter's ban, but supports injunctive relief barring a government official from taking retaliatory action in response to such decisions.

To be clear, this wasn't about supporting a particular MLRC member; Twitter isn't a member yet. (Indeed, things can become tricky when a membership organization purports to appear as an amicus on behalf of one of its own members.) Nor was this about the MLRC taking a stand on social media or regulation of big tech. Instead, it's about whether any of us can exercise editorial discretion without fear of being second guessed by a government official.

I am extremely fortunate and grateful to be serving a community of attorneys who, despite any philosophical and analytical differences and regardless of where we specifically work, uniformly appreciate the need to defend freedom of expression. That's always what has made us a community despite the business differences between our clients, and that is what will see us through the challenges we are now facing.

Moving on...

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## I. Privacy

### A. Anonymity

A freelance journalist [sued the FBI and the Department of Justice](#) in D.D.C. over a request for records designed to reveal whether Rep. Devin Nunes had leveraged the power of the Department to identify the anonymous user behind the @DevinCow parody Twitter account. The FBI had provided a Glomar response, which is just weird when you think about it.

A state court judge in Arkansas [held](#) that a blogger was not protected by the state's shield law with respect to her sources regarding a post critical of a former Little Rock school board president, and has been ordered to answer questions at deposition.

### B. Personal Information

The Supreme Court [denied cert](#) in March on Facebook's petition from a Ninth Circuit ruling that revived a claim alleging that the company violated the federal Wiretap Act by tracking user visits to third-party sites which include Facebook plug-ins.

At [a hearing in February](#), a Ninth Circuit panel seemed inclined to uphold a \$13 million settlement (including a \$9 million cy pres award to privacy groups) in the long-running case over the collection of information by Google Street View cars. Meanwhile, the Ninth Circuit [held](#) that a case over passive recording of communications by Google's Alexa devices had to go to arbitration, with the arbitrator to determine whether various permutations of recording situations are covered by the arbitration agreement.

We have a pair of decisions in N.D. Cal. going opposite directions on whether acceptance of a privacy policy waived a claim over collection of data, with one case against Alphabet involving data collected on Android phones being [allowed to proceed](#) while another case involving an insurance quote service [was dismissed](#). The difference, broadly speaking, had to do with how clearly the policies addressed the specific conduct at issue. In the same court, Google's motion to dismiss a claim that it gathered personal data from users using Incognito mode [was denied](#), and a [new complaint](#) was filed against Google over its alleged sharing of user data in connection with its Real-Time Bidding system for advertising auctions. Also in N.D. Cal., Thomson Reuters [has been accused](#) of unlawfully selling personal data of California residents to the U.S. government via the company's CLEAR database; the case was filed in state court in December but only recently removed to federal court.

In D.D.C., the Biden administration [sought a pause](#) in one of the court cases arising out of the Trump administration's effort to ban TikTok from the United States, saying that the new folks at the Commerce Department need some time to figure out precisely how many of Trump's claims

about privacy and security risks posed by the platform actually hold water. In W.D. Wash., a magistrate judge [recommended](#) that a class action complaint against Twitter over its allegedly unlawful collection of user telephone numbers be dismissed, finding that the complaint did not sufficiently allege wrongful intent for the purposes of the Washington law at issue.

In California, we are looking at [a wave of cases](#) testing the parameters of the California Consumer Privacy Act, as different sectors [map out different routes to compliance](#). The [latest iteration](#) of the regulations under the CCPA takes specific aim at so-called “dark patterns” designed to push users to give up their information. Meanwhile, Virginia is second out of the gate with a [new consumer privacy law](#), with Governor Northam’s signature in March. The Virginia law is perceived as being friendlier to tech, lacking the private enforcement mechanism that has been spinning up cases in California. [Other states](#) continue to work on their own measures, and there’s a [new federal bill](#) as well from Rep. Suzan DelBene entitled the “Information Transparency and Personal Data Control Act.”

In Cal. Super., Katie Hill’s lawsuit against the Daily Mail over a story featuring nude photos of the former U.S. Representative hit the rocks, with the judge [tentatively ruling](#) that the images were themselves a matter of public concern. [Late update: And indeed that’s [what the judge did.](#)]

Some activity on revenge porn laws this month. At the federal level, the House [passed an amendment](#) to the Violence Against Women Reauthorization Act of 2021 that would allow for sentences of up to two years’ imprisonment for the nonconsensual distribution of, or threats to distribute, nude or sexually explicit images. We also have activity on similar bills in [Mississippi](#), [Utah](#), and [Wyoming](#).

### C. Children’s Privacy

A judge in N.D. Ill. [denied final approval](#) of a \$1.1 million settlement of claims that TikTok unlawfully gathered and disclosed information from users under the age of thirteen, finding that the plaintiffs failed to extend the period for members of the proposed settlement class to submit claim forms or object as required by the court’s general orders extending civil case deadlines in response to the COVID-19 pandemic. Not to worry, they’ll get to try again.

On a motion for reconsideration filed by Google, a judge in D.N.M. [agreed](#) that an ad network cannot be held liable under COPPA if it did not have actual knowledge that its ads appeared in apps whose “primary target audience” was children; however, the judge also found that the plaintiff had still stated a claim under the correct standard and denied Google’s motion to dismiss.

#### D. Rights of Publicity

Former wrestler Lenwood “Hard Rock” Hamilton [petitioned for cert](#) from a decision of the Third Circuit that Epic Games was within its First Amendment rights to use Hamilton’s voice and likeness in its *Gears of War* video game series.

The Second Circuit [vacated a defense summary judgment verdict](#) in a case brought by professional models and actresses alleging that the defendants used their likenesses in advertising for strip clubs without their permission, and directed the district court to enter summary judgment for the plaintiffs instead.

In California state court, a confrontation over a woman’s refusal to wear a mask at Starbucks has evolved into a [right-of-publicity lawsuit](#), after the woman’s photo was used as part of a third party’s GoFundMe to support the barista who declined to serve the woman.

#### E. Biometrics

So, the bizarre saga of Clearview AI’s efforts to keep an Illinois Biometric Information Privacy Act lawsuit in federal court continue, with the company [seeking a stay](#) pending a petition for certiorari to the U.S. Supreme Court after the Seventh Circuit upheld an order remanding the case. As you might recall, Clearview AI is arguing that the [plaintiffs have Article III standing](#), while the plaintiffs persuaded the Seventh Circuit that they have pleaded standing under state law but not Article III standing (thus depriving federal but not state courts of jurisdiction). The Seventh Circuit [denied](#) Clearview AI’s motion to stay.

There’s also a [new case](#) against Clearview AI in California state court, alleging that the company improperly provided third parties including government agencies with their biometric information – including in locations where law enforcement use of facial recognition is banned.

The \$650 million settlement of claims against Facebook in N.D. Cal. over use of facial recognition in its photo-tagging feature [has received final approval](#). Illinois residents and Shutterfly asked a district court judge in N.D. Ill. to remand the plaintiffs’ Illinois biometric privacy claim to state court, where court approval of a settlement reached by the parties would be sought; the judge [agreed](#). Finally, TikTok [reached a \\$92 million settlement](#) in a case in N.D. Ill. over the use of facial scans in its app.

#### F. Manipulated Media

A woman who attempted to eliminate her daughter’s rivals in a cheerleading program through the distribution of deepfake videos that purported to show the rivals nude, vaping, and/or drinking [has been charged](#) with multiple counts of cyber harassment of a child in Bucks County, Pennsylvania. The idiot parent in question narrowly avoided child pornography charges because the fake nude photos weren’t realistic.

## G. Hacking, Scraping & Data Breach

The Eleventh Circuit [held](#) that a customer of a restaurant which suffered a data breach lacked Article III standing to sue absent a claim that the breach resulted in fraudulent use of his information or identity theft; a risk of potential harm was not sufficient. The decision [could have an impact](#) on a pending review of the \$380 million settlement of claims over the mammoth Equifax data breach.

A judge in N.D. Cal. [dismissed counterclaims](#) filed by software developer BrandTotal over its ban from Facebook; Facebook had kicked BrandTotal off of Facebook and Instagram for scraping data from the services and sued for CFAA violations.

In W.D. Wash., the Satanic Temple of Washington [failed in its attempt](#) to invoke the CFAA to compel former members to relinquish control of Facebook pages that they had access to as former administrators of the pages. Also in W.D. Wash., the DOJ has [charged](#) a Swiss hacker with CFAA violations for his unauthorized demonstration of security weaknesses in surveillance camera systems sold by a U.S. tech startup.

Speaking of hackers, the Florida teenager who hacked into high-profile Twitter accounts and scammed people into sending him over \$100,000 in cryptocurrency [will spend three years in prison](#).

Finally, the FTC [approved a settlement](#) with Zoom over alleged misrepresentations regarding its data security practices.

## H. Other Intrusion

We have a handful of developments involving sexting and cyber flashing that don't really seem to belong anywhere else, so here they are.

An Illinois appellate panel [held](#) that for the purposes of criminal charges involving indecent exposure in the virtual presence of a child, sharing a photo via Snapchat “did not create the illusory environment of presence that the legislature had in mind by its use of the term ‘virtual presence.’”

Maryland's legislature [passed a bill](#) that would prevent consenting teens engaged in run-of-the-mill sexting from being branded as sex offenders for the rest of their lives.

Virginia's Senate Judiciary Committee [killed a cyber flashing bill](#) due to “herculean constitutional problems.” Well, best to nip those in the bud now, I suppose.

## II. Intellectual Property

### A. Copyright

So, *Google v. Oracle America* was [decided](#) at the start of April, and we'll deal with that further next month after the dust settles. My hot take is that the most important section can be found on p. 25 of the opinion, where the Court rejects a narrow reading of the "purpose and character of the use" to be considered in a transformative use analysis in copyright cases.

In other Supreme Court news, we have a [new petition](#) from the organizer of the U.S. Sumo Open (I would make a "weighty case" joke, but I'm bigger than that) seeking certiorari on a [ruling](#) by the Ninth Circuit that the Copyright Act does not grant jurisdiction over the unauthorized downloading and redistribution of its videos from YouTube, where the allegedly infringing acts took place in Japan.

The Second Circuit [affirmed](#) Getty Images' summary judgment win in a lawsuit alleging that it posted certain photographs to its website without authorization. The Court of Appeals found that there was indeed a license, and that Getty had not removed copyright management information in violation of the DMCA. The Sixth Circuit similarly [held](#) that the International Digital Publishing Forum had a license from e-reader platform OverDrive that allowed it to transfer the licensed IP rights to the World Wide Web Consortium.

The Eighth Circuit [upheld the conviction](#) of attorney Paul Hansmeier, who was fined in excess of \$1.5 million for unlawfully coercing settlements from defendants in copyright claims over online pornography.

The Ninth Circuit [held](#) that a Doe defendant in an infringement action retained standing to pursue a counterclaim for declaratory relief after the plaintiff's claim was voluntarily dismissed without prejudice, and upheld the district court's award of attorneys' fees to the defendant.

The Eleventh Circuit [held](#), unsurprisingly, that distribution of a blog's content via RSS does not grant subscribers an implied license to redistribute that content. Frankly, I'm surprised that someone even tried to float that argument in this day and age.

A misunderstanding on the part of the U.S. Navy as to whether it had permission to install software on more than 500,000 computers could prove very costly, with the Federal Circuit [holding](#) that no such license was ever granted in the course of negotiations with the software developer that did not culminate in a signed contract. As a result, the United States is facing a judgment for mass copyright infringement.

Google's motion to dismiss a claim in N.D. Cal. that it reproduced, made available, and sold bootlegs of the plaintiffs' songs was [denied](#); while Google argued that it should not be liable for songs it did not sell, the court found that the complaint alleged the sale of all of the songs at issue



and that whether or not Google actually did so was an issue that could be addressed at summary judgment. Also in N.D. Cal., Pinterest [won dismissal](#) of a contributory infringement claim with respect to allegedly infringing “pins” posted by users; the court found that the plaintiff had failed to plead knowledge or willful blindness as to specific acts of infringement.

In C.D. Cal.: A photographer’s claim against online art marketplace Pixels.com [was tossed](#) after a bench trial for lack of volitional copying and because the DMCA foreclosed monetary liability; a lawsuit brought by music publisher Wixen against video app Triller was [dismissed](#) with leave to amend for failure to plead publication dates for allegedly infringed songs (thus preventing the court from determining whether the songs were governed by the 1909 or the 1976 Copyright Act); and a DMCA 512(f) claim against a company that was allegedly using bogus infringement notices to shake down social media users [survived a motion to dismiss](#).

A judge in D. Colo. [issued an order to show cause](#) why Richard Liebowitz should not be sanctioned after repeatedly filing suit in inappropriate courts, allegedly to avoid jurisdictions where he has run into afoul of local rules. In D. Del., a judge [held](#) that Thomson Reuters had stated claims against a competitor for scraping copyrighted material from Westlaw, while noting potential issues with the copyrightability of the legal content at issue. In D.D.C., Tara Reade (who came forward with sexual assault allegations against Joe Biden) [filed an infringement complaint](#) against social media users who allegedly distributed her memoir online with the intent of injuring the book’s economic prospects. In S.D. Fla., a VPN provider finds itself [accused](#) of marketing directly to users who will use the service to pirate copyrighted content.

Let’s see, what else...aha, we’ve got some photo cases from New York. A blogger was [held](#) in E.D.N.Y. to have infringed a photo of Xena, Warrior Princess, to illustrate a post about a possible reboot of the show, with the judge finding that the use was not transformative but that the infringement was only worth \$750 with no attorneys’ fees. LeBron James [settled](#) with a photographer in S.D.N.Y. in another one of those “celeb posts pic of self to social media” cases; in the same court, Mashable [settled](#) with a photographer in a highly watched case involving the embedding of photos from Instagram. If you were waiting for a fair use defense in the Instagram embedding cases, don’t worry – the issue was raised by [Hearst](#) and [Sinclair](#) in two motions to dismiss in another photo embedding case in the same court.

In E.D.N.C., a copyright case over the defendant minor’s use of a cheat code in video game “Fortnite” [settled](#) in [utmost secrecy](#). In S.D. Tex., DISH Networks [notched a \\$16.8M default judgment](#) plus extensive injunctive relief against a passel of pirate streaming sites; the injunctive relief includes transferal of the defendants’ domain names to DISH as well as an order prohibiting third parties from providing a wide range of hosting, storage, and advertising services to the defendants. In W.D. Tex., a photographer won summary judgment against a blogger who used a photo licensed under a CC-BY-SA license without the necessary attribution; Professor Goldman has [interesting commentary](#) on the case. In E.D. Va., the \$1 billion judgment against



Cox Communications in a case involving user infringement of music has been [stayed pending appeal](#), subject to posting of a bond. (Does anyone actually issue \$1 billion bonds?) And in W.D. Wash., after the Ninth Circuit wiped out an earlier jury verdict that Zillow had willfully infringed copyrighted real estate photos, the district court [ordered](#) a retrial on damages including whether the infringement was innocent but rejected an argument that the plaintiff's registrations had been procured by fraud.

In other matters, newly minted Attorney General Merrick Garland is already [being pressed for answers](#) by the Chair and Ranking Member of the Senate IP subcommittee on how the DOJ will enforce a new law criminalizing certain forms of unauthorized digital streaming.

## B. Trademark

The Second Circuit [affirmed](#) a win for Gimlet Media in a trademark lawsuit filed by a tech company called Reply All over Gimlet's "Reply All" podcast, finding no likelihood of confusion. The Sixth Circuit [revived](#) trademark claims filed by Ohio State University against online print shop Redbubble over its sale of merchandise bearing Ohio State trademarks, distinguishing Redbubble's business model from other e-tailers that serve as "neutral intermediaries" between consumers and third-party vendors. Online porn service FyreTV appeared before the Eleventh Circuit asking it to reverse a ruling that Amazon's Fire TV service created no likelihood of confusion.

In D. Ariz., a cybersecurity firm [filed suit](#) to block Facebook from seizing lookalike domain names that the firm was using to teach people about online scams. Zoom [sued](#) frenemy corporation RingCentral in N.D. Cal., filing a partially redacted complaint that appears to allege infringement of Zoom's trademarks arising out of a failed partnership between competitors. In S.D.N.Y., a bridal company successfully leveraged trademark law to [recover control](#) of its Instagram account from a former designer for the company. And in E.D. Va., we have [a new fight](#) between a greeting card company and an online news startup over the mark "Punchbowl."

## C. Patent

At [oral argument](#) in March, the Supreme Court seemed dubious as to whether the 250+ plus judges on the Patent Trial and Appeal Board had been properly appointed under the Appointments Clause of the U.S. Constitution, a question that could have dramatic repercussions for technology companies.

The Federal Circuit [upheld](#) a district court ruling that a patent for an online chat system that Facebook was alleged to have infringed was too abstract to be valid. Pinterest won a motion for summary judgment in a case in N.D. Cal. over a content-display patent, with a magistrate [holding](#) that the plaintiff had introduced a new theory of infringement too late in the case. A judge in C.D. Cal. [narrowed](#) patent infringement claims filed by Xerox's Palo Alto Research

Center against Snap and Twitter, finding that two of the patents asserted (one dealing with determining the authoritativeness of a document and one dealing with dissemination of tagged content) covered only abstract ideas.

Two big verdicts in Texas, with a [jury award](#) of more than \$308 million against Apple in E.D. Tex. for infringement of a patent for digital rights management technology and a [jury award](#) of almost \$2.2 billion against Intel in W.D. Tex. for infringement of two patents relating to power consumption by computer chips.

Also in W.D. Tex., Match Group [sued](#) the developer of a “Tinder-like app for Muslims” for infringement of its patents.

#### D. Trade Secrets/Misappropriation/Conversion

Snap defeated a vague claim in D. Del. alleging that it misappropriated a mapping feature from the plaintiff’s app, with a magistrate [ruling](#) that the plaintiff’s shifting story as to exactly what had been copied could not sustain a Defend Trade Secrets Act claim.

### III. Platform Management

#### A. Section 230

If you’re wondering about Justice Thomas’ [latest exposition](#) on Section 230 and content moderation, that will be covered next month. One comment for now: Public accommodation laws say you have to let people into the theater; they don’t say you have to let them on stage.

In any event, the parade of Section 230 reform bills continues unabated. Perhaps the highest profile entry is the [SAFE TECH Act](#) from Senators Warner, Hirono and Klobuchar, which would make numerous amendments throughout the statute including the following:

- In § 230(c)(1), “...shall be treated as the publisher or speaker of any information,” it now becomes “...the publisher or speaker of *any speech*.” Think about the speech/conduct distinction and how that’s been argued by plaintiffs in cases involving harassment, cyberstalking, and other content liability cases.
- § 230(c)(1)’s protection would not apply “to the extent the provider or user has *accepted payment to make the speech available* or, in whole or in part, created or *funded the creation of the speech*.” Think about comment sections on news websites with paywalls, or sites like YouTube that allow users to derive ad revenue from their content.
- § 230(c)(1) is explicitly declared an affirmative defense, potentially limiting the statute’s use in motions to dismiss even in cases where it will plainly kill a case at summary

judgment, and allowing discovery into the financial arrangements mentioned in the prior bullet.

- New categorical exceptions, including: state or federal civil rights laws (think about all of the First Amendment lawsuits against platforms over content moderation that invoke § 1983); state or federal antitrust laws (likely in reaction to the *Malwarebytes* case but also plausibly related to some theory in pending antitrust lawsuits); state and federal stalking, harassment, or intimidation laws (look for people to replead their libel, invasion of privacy, and other tort claims under these labels); international human rights claims under the Alien Tort Claims Act (lots of potential mischief here); and wrongful death claims (think about product liability cases and cases like *Model Mayhem* and *Daniels v. Armslist*).

Then there's the [Stop Shielding Culpable Platforms Act](#), introduced in the House, which would revive the whole “publisher vs. distributor” debate by explicitly stating that Section 230 does not foreclose distributor liability. Ugh.

We also a couple of bills returning from the last Congress, including the [PROMISE Act](#) (which would require interactive computer services to post specific “information moderation policies” with the FTC responsible for enforcement), the [PACT Act](#) (which covers some of the same ground as the PROMISE Act but also requires notice-takedown-review processes and other transparency requirements, mandates removal of content on receipt of a court order, and adds exemptions for federal civil law as well as state laws that parallel federal and civil laws), and the [Abandoning Online Censorship Act](#) (a straight repeal of Section 230).

Slate has a helpful [running summary](#) of the legislative proposals, if you want to place these latest developments in context. I should also mention that Facebook CEO Mark Zuckerberg [submitted written testimony](#) in advance of an appearance before the House in March suggesting that the company was okay with the idea of conditioning at least some aspects of Section 230 protection on platforms meeting established best practices for content moderation. [Alphabet CEO Sundar Pichai](#) and [Twitter CEO Jack Dorsey](#) took, shall we say, a different position. More on the House hearing later.

The big picture, though, is that Congress seems to be focused on [amending rather than repealing](#) the law. And as Professor Jeff Kosseff pointed out at the MLRC's Entertainment Conference in March, any amendment of the statute is likely to need bipartisan support while Section 230 champion Ron Wyden is still in the Senate; with wide divisions between the parties on this issue, that's quite a hurdle.

By the way, the Justice Department [took an interesting position](#) in a case brought by content creators in N.D. Cal. against YouTube over the restriction and demonetization of certain videos. Specifically, the DOJ argued that content moderation decisions by YouTube do not violate the

plaintiffs' First Amendment rights and that Section 230 therefore does not conflict with the First Amendment by insulating YouTube from liability for those decisions. Which is 100% correct, and a remarkable change from the noise the DOJ was making under the last guy in the White House.

Meanwhile, § 230 continues to tick along doing what it was intended to do:

- We had a [major win](#) for Vimeo in the Second Circuit, which held that § 230(c)(2) provides “significant subjective discretion” as to what material a provider considers objectionable; the court ruled that Vimeo was protected by the statute in banning content advocating for gay-conversion therapy.
- Google escaped liability in N.D. Cal. for third-party video games on its Google Play store that included loot boxes (thus allegedly violating gambling laws), with the court [holding](#) that an app can be third-party content under the statute.
- Zoom mostly succeeded on a Section 230 defense in N.D. Cal. in privacy claims arising out of the phenomenon of “zoombombing”; the court [found](#) that Zoom was an “access software provider” and that the zoombombers were third party providers of the intrusive content. Section 230 did not, however, foreclose plaintiffs’ contract claims or claims not deriving from the nature of the intrusive content.
- Ancestry.com secured dismissal of claims brought in N.D. Cal. by a class of individuals who alleged that their yearbook data were scraped by the genealogy website without their permission. The court [held](#) that § 230 protected the display of the images, which were provided by the third parties who gave Ancestry the yearbooks, and that it did not matter that the third parties did not create that content.
- A claim against TripAdvisor over injuries suffered on a vacation [survived a motion to dismiss](#) in E.D. Pa.; notably, the complaint alleged misrepresentations by TripAdvisor itself, which would not be protected by § 230 if the allegations were substantiated.
- A Delaware state judge [held](#) that § 230 protects Oath against liability for Huffington Post articles that were contributed by third parties.
- The Texas Supreme Court [heard argument](#) in February on whether Section 230 protects Facebook from liability for injuries suffered by three women who claim they were lured into prostitution by people who reached them through the social media site.

Oh...and § 230 turned 25 years old in February. For ruminations on the positive benefits of the statute, see [here](#) and [here](#).

## B. Elections & Political Advertising

The United States is [prosecuting](#) an individual who allegedly conspired in 2016 to publish a message falsely attributed to the Hillary Clinton campaign that was intended to mislead her supporters into thinking that they could vote by posting to Twitter or Facebook. Prof. Volokh has a [First Amendment analysis](#) of the charges.

Washington State has [sued](#) Google for failing to maintain information regarding political advertising; this is the second such lawsuit, with a prior suit settling in December 2018.

Twitter has issued an [open call for comments](#) as to whether world leaders should be subject to the same rules as everyone else on the service, and how if at all they should be disciplined for rule violations.

## C. Content Moderation

Professor Kate Klonick had a [fascinating look](#) inside the formation of the Facebook Oversight Board in the *New Yorker* in February. The FOB is drawing [increasing scrutiny](#) as it approaches a ruling on the suspension of Donald Trump following the January 6 riot at the Capitol; meanwhile, we have seen the [first results](#) as to how Facebook is responding to the FOB's policy recommendations. The FOB is actively negotiating with Facebook [for additional powers](#), including the ability to review decisions *not* to remove material, and is contemplating [opening its services](#) to other social networks.

A [new lawsuit](#) filed in N.D. Ala. by victims of sex trafficking and rape alleges that MindGeek and its Pornhub website knowingly hosted and profited from videos of sexual assault without verifying the ages or consent of the victims. In N.D. Cal., another lawsuit over an account suspension [failed](#), with the court rejecting IIED and First Amendment claims against LinkedIn, as well as a truly bizarre claim alleging that the site somehow violated anti-SLAPP laws. The California Court of Appeal [bounced](#) a similar set of scattershot claims against Facebook over alleged “shadowbanning,” that is, restricting the reach of a user's content without telling the user.

In New Hampshire state court, prosecutors are [pursuing charges](#) against a woman who allegedly forged a court order to persuade Google to remove unwanted search results.

Up above, we mentioned that the House hosted yet another command appearance by the CEOs of Alphabet, Facebook, and Twitter. Honestly, the statements by the CEOs as to their current positions on § 230 reform was perhaps the most interesting part, but Ars Technica has made a [valiant effort](#) to wring a few drops of relevance from the hearing (including Jack Dorsey's demonstrating vividly that he thought the whole thing was a joke), while Recode [highlighted one particular idea](#) about a new agency to regulate social media.

Meanwhile, we have any number of Republican legislators at the state level [deciding](#) to [ignore](#) the whole “Supremacy Clause” and “First Amendment” thing and just impose their own vision of content moderation on platforms. Particularly egregious examples include bills in [Florida](#) (First Amendment problems discussed [here](#)), [Kansas](#), [North Dakota](#), [South Carolina](#), [Texas](#), and [Utah](#) (which was egregious enough for the governor to [veto it](#)).

Meanwhile, a [new Colorado bill](#) would create a state commission to “investigate and ... hold hearings on claims” that social media sites failed to stop people from: engaging in hate speech; undermining elections; disseminating disinformation, conspiracy theories, or fake news; or authorize, encourage, or carry out violations of user privacy. The hearing officer would be authorized to issue orders to social media sites. So, basically, the Democratic version of the fundamental legal errors that the Republican bills mentioned above demonstrate. I’d almost think that this wasn’t a serious bill (it seems like a prank designed to show how ridiculous the Republican bills are), but I’ve lost all respect for state legislators on these issues.

We have a new and disturbing thread of arguments from respectable academics who look like they’re starting to buy into the idea that social media platforms’ First Amendment rights could be regulated around on a common carrier-like theory or under a resurgence of the fairness doctrine. See this back and forth between [Eugene Volokh](#) and an [appalled Eric Goldman](#), and [this piece](#) with Erwin Chemerinsky’s name on it. And yes, I know Justice Thomas is picking up on this, as well as somewhat wackier theories, but again – next month. Or sooner if I accede to my colleague Jake’s invitation to write separately about Thomas’ concurrence in the *Knight Institute* case.

While we’re talking about regulation, I also wanted to flag [this article](#), which I found interesting, regarding the legal resources that are required to implement changes to tech policy and the question of where the lawyers are supposed to come from.

I’ll close this section by noting that Parler [has found a way around](#) its being kicked off of Amazon, though the legal wrangling continues (see under Defamation below), and it [still hadn’t returned](#) to Apple’s App Store as of mid-March. Parler is also [under investigation](#) by the House Committee on Oversight and Reform as to whether it has financial ties to Russian entities and with respect to negotiations between Parler and the Trump Organization regarding Trump taking an ownership stake in the company.

#### D. Terms of Service & Other Contracts

In N.D. Cal., a judge [held](#) that a user’s agreement to an arbitration clause in terms of service was enforceable; the court went through the whole “browsewrap” versus “clickwrap” analysis only to find it irrelevant. Meanwhile, a group of advertisers on Facebook alleged in a [new complaint](#) in N.D. Cal. that the company violated a representation in its terms of service that it would not



reject advertisements without providing an explanation sufficient for advertisers to create compliant ads.

#### IV. Other Content Liability

##### A. Defamation

During [oral argument](#) in March in *TransUnion v. Ramirez*, the Supreme Court struggled with the question of whether Article III injury had been suffered by a class of individuals who claimed in a Fair Credit Reporting Act case that their reputations had been damaged after a credit reporting agency mistakenly flagged their reports as belonging to individuals on a terrorist watch list. This isn't strictly speaking a defamation case, but it does involve an analysis of reputational injury from erroneous online reports.

The Supreme Court passed on an [invitation](#) to resolve the question of whether state anti-SLAPP laws apply in federal court, [denying cert](#) in Stormy Daniels' defamation case against Donald Trump.

The Sixth Circuit [held](#) that Kentucky's long-arm statute was not long enough to drag comedian Kathy Griffin and a New York doctor into court in the Bluegrass State based on tweets following the incident involving Covington Catholic students. In a case involving online defamation, the D.C. Circuit [held](#) that the district court erred in resolving a challenge to the venue in which the case was filed before resolving a personal jurisdiction question.

In M.D. Fla., George Zimmerman's libel suit against Pete Buttigieg and Elizabeth Warren over tweets regarding Trayvon Martin was [dismissed](#) with leave to amend for failure to plead personal jurisdiction, but the court rejected substantive defenses that the tweets did not mention Zimmerman by name and were pure opinion. In S.D. Fla., the Delaware-based computer repairman behind the Hunter Biden laptop story [tried again to sue](#) Delaware corporation Twitter in Florida over the company's statement that the story had been removed from the platform as the product of computer hacking; this time, the plaintiff added an allegedly Florida-based defendant.

We have two decisions to report in the Eastern District of New York. In the first, a doctor was [denied](#) a default judgment in a defamation claim over a negative Yelp review, with the court going point-by-point to explain why the statements weren't actionable. In the second, a judge [granted](#) a pox-on-both-your-houses summary judgment ruling on cross-claims for defamation arising out of a #metoo style dispute; notably, the court invoked the actual malice standard under New York's new anti-SLAPP law.

In W.D. Tex., a witness from a murder trial [sued Spotify](#), alleging that a podcast about the case distributed on Spotify defamed her. In W.D. Wis., a judge [granted](#) summary judgment for



Gannett in a case alleging that a headline and hyperlink caption defamed a financial advisor, with the court ruling that any inaccuracies were minor and did not affect the gist or sting of the statements.

Speaking of hyperlinks, the Delaware Supreme Court [heard argument](#) in March in a lawsuit against Vox on whether the wording of an online article linking to a prior article was sufficient to restart the statute of limitations; the case had been dismissed below. A Michigan appellate panel [held](#) that a one-star wordless review of a lawyer posted to Google was not actionable as opinion, regardless of whether the review was left by a client, a competitor, or anyone else; the court rejected the idea that readers expected reviews to be left only by clients. The Oregon Supreme Court has [agreed to consider](#) whether non-media speakers are entitled to the same First Amendment protections in libel cases as media defendants. A Texas appellate court [held](#) that a libel plaintiff had signed away his claim against a bad Yelp review left by a vendor as part of a settlement of an underlying dispute with the vendor.

Actress Hilary Duff [has been sued](#) in California state court for posting a complaint on Instagram about a photographer who took pictures of her son. And in Washington state, right-wing website Parler dropped earlier claims against Amazon Web Services over being kicked off the platform and [filed new claims](#) including defamation and breach of contract.

## B. Commercial Speech

If it wasn't clear before, the SEC is watching social media carefully for fraud and other securities violations. The agency filed a [lawsuit](#) in C.D. Cal. against a trader who allegedly tweeted false statements in an attempt to pump the stock of a company in which he had just invested heavily, and [shut down trading](#) in the stock of 15 companies based on unusual social media activity. Meanwhile, we have a [new lawsuit](#) filed by an investor in Delaware against Elon Musk and the board of Tesla over what the complaint calls “erratic tweets” in violation of an earlier settlement with the SEC.

## C. Threats, Harassment, and Incitement

An Ohio woman who was charged with criminal harassment and stalking charges for criticizing a nursing home employee on Facebook and picketing the facility was [at least temporarily let off the hook](#) after a municipal court magistrate found the criminal complaints to be defective because neither a prosecutor nor a police officer signed them. Hopefully the town thinks twice before refile, because there are [serious First Amendment problems](#) here.

We have an [unfortunate decision](#) from the Northern District of Ohio rejecting a First Amendment claim against the City of Parma for arresting the creator of an obvious parody page on Facebook of the Parma PD on trumped-up charges of “disrupting police services.” This, even after the

Sixth Circuit [was pretty clear](#) in denying qualified immunity to the cops that there was a problem here.

Speaking of protecting the cops, we have a [new legislative effort](#) in Oklahoma to protect police and other government officials against harassment, threats, and more serious crimes by shutting down speech. Unlike a [wildly overbroad law](#) passed last November in New Jersey, this bill is limited to the online publication of “the information of a law enforcement officer with the intent to threaten, intimidate, harass, or stalk,” but I still see a gap between, say, publication of an officer’s name online with “intent to threaten” and speech that is actually punishable as a true threat.

Sens. Amy Klobuchar (D-MN) and Lisa Murkowski (R-AK) have [asked the FTC](#) to take action with respect to “people search sites” that have been used to stalk and harass people.

## V. Infrastructure

### A. Accessibility

The FCC has [proposed](#) an emergency benefit program to subsidize broadband access for low-income families, as the pandemic demonstrated the desperate need for broadband access for work, healthcare, and educational purposes.

This next case seems positively petty in contrast, but we have a [new suit](#) in S.D.N.Y. filed by a class of international football fans against the NFL over technical difficulties with the \$200/yr. Game Pass service that interrupted viewing of Super Bowl LIV.

### B. Antitrust

Facebook has [filed motions to dismiss](#) the government antitrust lawsuits against it in D.D.C., one brought by the FTC and one by a coalition of states. The [motion to dismiss the FTC suit](#) challenges the agency’s market definitions, among other issues, while the [motion to dismiss the states’ case](#) also raises questions of standing and unexcused delay. Meanwhile, eight antitrust actions brought by private parties against Facebook [have been consolidated](#) in the Northern District of California.

Meanwhile, four additional states and Puerto Rico [joined](#) Texas AG Ken Paxton’s antitrust suit in E.D. Tex. against Google. The complaint in the case was [amended](#) in March to include new allegations regarding Google’s “Privacy Sandbox,” a system intended to supersede the use of tracking cookies. The Sandbox has [drawn the attention](#) of DOJ investigators as well; the DOJ also dropped a [massive document request](#) on Google in its own antitrust action against the company, which was followed up with a [request for specific data](#) on the operation and monetization of Google Search.

Apple [won dismissal](#) of an antitrust case in N.D. Cal. over its App Store mobile gaming services, with the court finding that the plaintiff failed to define the product market properly but granting leave to amend. A [new lawsuit](#) filed by a bookseller against Amazon in S.D.N.Y. alleges that the company colluded with major publishers to fix prices on print books.

A [new antitrust bill](#) from Sen. Klobuchar would strengthen the Clayton Act to allow the government to take action against a broader range of potential threats to competition, with the specific goal of allowing earlier intervention into deals such as big tech mergers. Sen. Hawley, never one to use a scalpel where a sledgehammer will do, presented [his own proposal](#) that would impose a "presumptive prohibition on all mergers and acquisitions by companies that operate market dominant online platforms."

The House Judiciary Committee [met with](#) FTC commissioners in March to discuss how to enhance its ability to police antitrust issues. Antitrust is also a priority at the White House, with to antitrust hawks nominated for prominent positions; Columbia's [Timothy Wu](#) was named for the White House National Economic Council and Columbia's [Lina Khan](#) was tapped for the FTC.

Arizona's House of Representatives [passed a bill](#) targeting Apple and Google's control of the mobile app market through their respective app stores; a similar bill died in North Dakota.

### C. Net Neutrality

As anticipated (or at least hoped by many), the Biden DOJ [withdrew](#) the Trump DOJ's challenge to California's state net neutrality law. That just leaves a lawsuit in E.D. Cal. brought by ISPs to block the law; but that effort was dealt a setback when the judge [denied](#) a preliminary injunction against the law going into effect.

Meanwhile, we're likely to see a [federal net neutrality proposal](#) in Congress in the not-too-distant future, while a coalition of online services including the likes of Mozilla, Wikimedia, and Reddit [wrote](#) to acting FCC Chair Jessica Rosenworcel asking her to restore net neutrality.

### D. Domain Name System

Okay, this is trivial, but [oversight of the .gov top-level domain](#) is now within the responsibilities of the Cybersecurity and Infrastructure Agency. Woo-hoo.

### E. Taxation

The Sixth Circuit smacked Tennessee Emergency Communications Districts for failing to distinguish between internet services and voice services for the purposes of taxation. The Court of Appeals [held](#) that when internet trunk provider Level 3 reported the number of total lines that

it operates to Tennessee, including both data and voice lines of various types, there was no basis to assume that all of those lines could be used for 911 VoIP calls and taxed accordingly.

Arkansas has [a new bill](#) that would tax advertising revenue from social media. Maryland's legislature [overrode](#) Gov. Hogan's veto of a similar bill, and now a coalition of internet service groups has [sued](#) in D. Md. to block the law.

#### F. Wire & Wireless Deployment

The FCC is [taking steps](#) to improve the data used to map out broadband availability in the United States, although the improved map won't be available until at least next year. The improvements are necessary to identify areas that are unserved or underserved by broadband providers. Meanwhile, House Republicans want to [prevent municipalities from providing broadband networks](#) themselves to close such gaps.

#### G. Artificial Intelligence & Machine Learning

The Consumer Product and Safety Commission recently and publicly [staked out its authority](#) to regulate AI and machine learning as they relate to consumer product safety. I'm not sure I would have volunteered for that duty, given the current state of the internet of things.

#### H. Blockchain & Cryptocurrency

The SEC [sued](#) peer-to-peer network LBRY in D.N.H. over its sale of \$11 million worth of cryptocurrency tokens, which it calls unregistered securities.

In E.D.N.Y., an Instagram influencer is [being prosecuted](#) for fraudulently inducing followers to transfer him millions of dollars' worth of bitcoin in exchange for cash payments that never materialized.

### VI. Government Activity

#### A. Data Surveillance, Collection, Demands, and Seizures

The First Circuit [upheld](#) the constitutionality of warrantless electronic device searches at the border, including the ability of law enforcement to keep your device for up to fifteen days without any supervisory approval. The decision also approved searches of texts and emails for evidence of a crime, as opposed to targeted searches for suspected digital contraband. Buy your burner phones before you fly into Logan, folks. (We're starting to see a circuit split here, with the Ninth Circuit disagreeing on several points; we'll also see what happens with a [recent lawsuit](#) filed in N.D. Tex. by a lawyer whose iPhone was seized upon his return to the United States.)

Twitter [sued](#) Texas AG Ken Paxton over a massive document demand that was plainly issued in retaliation for the platform's decision to ban Donald Trump, alleging that the decision was an exercise of its editorial discretion under the First Amendment. The MLRC [joined](#) an amicus effort on the part of journalism and media organizations in support of Twitter's request for injunctive relief, highlighting the fact that these are the same First Amendment rights that any news organization or publisher depends upon.

Reporter Sharyl Attkisson's ongoing crusade to hold the U.S. government for allegedly surveilling her communications hit another wall, with a judge in D. Md. [tossing out](#) claims against former deputy AG Rod Rosenstein on the basis of qualified immunity and holding that the amended complaint failed to allege any conduct in Maryland.

The Massachusetts Supreme Judicial Court [held](#) that certain documents demanded from Facebook by the Commonwealth's AG were shielded from disclosure as work product. The documents were sought in connection with a probe into the Cambridge Analytica privacy breaches; the SJC suggested that further proceedings in the trial court could reveal other records subject to production.

The Treasury Department's Inspector General for Tax Administration [warned](#) that the IRS's warrantless use of a commercial platform to track cell phones might violate the Fourth Amendment. Meanwhile, the FBI's internal rules about monitoring U.S. citizens' activity on social media [are confused](#) at best.

Government demands for data from Amazon [nearly nonupled](#) in the second half of 2020 as compared to the first half, according to the company's latest transparency report. Reddit [also](#) has a new transparency report out, showing much less government interest.

## B. Encryption

In S.D. Cal., the DOJ [indicted](#) the CEO of encrypted phone company Sky Global and another individual on charges that they intentionally marketed and sold devices to drug traffickers to facilitate illegal activity.

## C. Biometric Tracking

After Gov. Baker threatened to veto a near-total ban on government use of facial recognition, Massachusetts enacted a [law](#) restricting (but not prohibiting) the use of facial recognition by government agencies. Virginia's legislature has similarly [passed](#) a sweeping ban on use of the technology, and law enforcement officials are asking Gov. Northam to veto it.

At the local level, Minneapolis has [voted](#) to ban its police from using facial recognition.

Ancestry.com [continues to fight](#) police demands for DNA data from its genealogy database, fending off two demands in the past six months.

#### D. Domain Seizure

Following verdicts in France in favor of the French government in connection with the ownership of the “France.com” domain, the U.S.-based registrant for the domain sued in the Eastern District of Virginia. The Fourth Circuit [threw out](#) the case, holding that the French Republic was immune from suit in federal court.

#### E. Content Blocking & Prior Restraints

So, the Supreme Court vacated the Second Circuit’s decision under *Trump v. Knight First Amendment Institute* as moot, which was utterly predictable but to my mind a totally wrong decision. But that happened in April, so more on that next month.

In the meantime, we have a Florida representative failing to convince a judge in N.D. Fla. that state representatives aren’t state actors for the purposes of a First Amendment claim for his blocking people on social media; however, the court [denied](#) summary judgment for the plaintiff because the evidence was equivocal as to whether the social media account in question was used for official purposes. A New Mexico county commissioner was [denied](#) qualified immunity in D.N.M. on a similar claim.

We also have two cases involving social media blocking by school officials, one in W.D. Va. [denying](#) a motion to dismiss a claim against a school board and a [new complaint](#) in W.D. Wis. against the University of Wisconsin-Madison.

A quick note that a number of defendants in the various prosecutions arising out of the January 6 Capitol riot [have been enjoined](#) from using social media or using the internet at all. Expect to see First Amendment challenges in these cases going forward.

Turning to another aspect of content blocking, an Illinois legislator has orbited back to the idea of [banning](#) the sale of violent video games. [Jeff quickly reviews *Brown v. EMA*.] Yeah, nope. Meanwhile Utah has [passed a law](#) requiring porn filters on all smartphones and tablets in the state, but the rule only goes into effect if five other states pass similar laws. [Jeff quickly reviews *Reno v. ACLU*.] Again, nope.

#### F. Online Access to Government Information

A new [report](#) suggests that costs to access Florida’s court e-filing portal has been a financial windfall for court clerks’ retirement funds. As for how you feel about that, YMMV.

## VII. Global

### A. International

So, I suppose we should talk about the wave of activity around the globe regarding the relationship between tech and journalists. At the start of February, Microsoft [came out in favor](#) of a proposed Australian law compelling Facebook and Google to pay domestic news organizations for the right to link Facebook's NewsFeed and Google Search to their content. Google predictably [shot back](#) at its rival over that statement, but shortly thereafter cut deals with Rupert Murdoch's [News Corp](#) and Australia's largest domestically owned media company, [Nine Entertainment](#).

Facebook [took a harder line](#), blocking the sharing and viewing of news in Australia; the ban resulted in traffic to news sites [dropping 20 percent](#) or more. The global reaction to the move by news commentators was predictably – but not [entirely](#) – [negative](#), but Facebook's [willingness to pull the trigger](#) succeeded in compelling the Australian government to make [changes to the law](#) including extending the time period in which the companies must make deals with news companies. The amended law [eventually passed](#), and Facebook joined Google in [committing to invest \\$1 billion](#) in news and in [reaching a deal](#) with News Corp.

That might mark a pause in the drama in Australia, but it's hardly an end to the story as [regulators and news outlets elsewhere](#) have scented blood in the water. In Europe, the EU's top antitrust cop [warned tech platforms](#) against trying to withdraw services from the region, [French news outlets](#) not covered by a \$76 million deal that Google cut with publishers in the country are pursuing legal action, Denmark is [developing legislation](#) similar to Australia's law, Axel Springer [drew a line in the sand](#) against participating in the launch of Facebook News in Germany, and Google is in [talks with news publishers](#) about a deal to bring Google News back to Spain.

In Canada, there's a [new legislative effort](#) to leverage the country's copyright law to force payments to news companies. In India, the Indian Newspaper Society is [pushing](#) Google to give publishers an 85% cut of ad revenue, and the country's News Broadcasters Association [followed suit](#) shortly thereafter. And in the United States, we have seen the reappearance of the [Journalism Competition and Preservation Act](#) in Congress, which would create an antitrust exemption to allow news organizations to bargain collectively with digital platforms.

Moving on, we have two other quick items before we go region-by-region for a link roundup. First, bad news, as Rappler [has a disturbing report](#) on how more than 80 countries have used the pandemic as an excuse to crack down on freedom of speech, including online criticism of government and sharing of information.

Second, good news, as the U.S. Agency for Global Media under new leadership has [reinstated](#) five whistleblowers who had been ousted under Trump-appointed CEO Michael Pack.



## B. Europe

- [EU High Court Finds Embedded Images Can Violate Copyright Rules](#)
- [Civil rights groups urge EU lawmakers to rebuff online terrorist content law](#)
- [Google faces ‘very large’ EU Ad probe](#)
- [EU’s top privacy regulator urges ban on surveillance-based ad targeting](#)
- [TikTok targeted over ‘misleading’ privacy practices and ‘ambiguous’ terms in Europe](#)
- [Epic Games Files EU Antitrust Complaint Against Apple](#)

## C. Australia

- [Political ads, fake news targeted in newly formed misinformation code](#)
  - [Facebook and Twitter say Australia wants to give regulator too much power in bid to combat online bullying](#)
- [ACCC examining whether choice screens for search engines on smartphones should be compulsory](#)

## D. Bangladesh

- [Bangladesh Court Sentences Five to Death for Killing American Blogger](#)
- [Bangladeshi Writer, Detained Over Social Media Posts, Dies in Jail](#)
- [How Bangladesh agencies are suspected of taking down websites, YouTube channels of dissidents abroad](#)

## E. Brazil

- [Brazilian sports blogger faces 5-month prison sentence over 2016 defamation case](#)

## F. Cambodia

- [Cambodia's new internet gateway decried as repression tool](#)

## G. Canada

- [‘An Affront to Individuals’ Privacy Rights’: Canada’s Growing Online Discomfort](#)

- [Canadians strongly support more enforcement of online hate speech on social media platforms, new poll finds](#)
- [University professors develop proposed legislation to strengthen provincial ‘revenge porn’ remedies](#)
- [Clearview AI ruled ‘illegal’ by Canadian privacy authorities](#)
- [Facebook’s Mark Zuckerberg summoned to testify before parliamentary committee](#)
- [Canadian Woman Cited in Online Attacks Is Arrested in Toronto](#)

#### H. China

- [In China, An App Offered Space for Debate. Then the Censors Came.](#)
- [China Punishes Microsoft’s LinkedIn Over Lax Censorship](#)
- [Rising encrypted app Signal is down in China](#)
- [China to ban apps from collecting excessive user data starting May 1](#)
- [Beijing sours on facial recognition, unless it’s the one doing it](#)
- [How China’s pandemic propaganda muzzles citizen journalists](#)
- [Chinese blogger Qiu Ziming charged over ‘malicious’ India border casualty posts](#)

#### I. France

- [France’s competition authority declines to block Apple’s opt-in consent for iOS app tracking](#)
- [Facebook Hit by French Lawsuit Over Hate Speech](#)
- [Google slapped in France over misleading hotel star ratings](#)
- [France’s privacy watchdog probes Clubhouse after complaint and petition](#)
- [French Far-Right Leader Le Pen on Trial Over IS Tweets](#)

#### J. Germany

- [Competition challenge to Facebook’s ‘superprofiling’ of users sparks referral to Europe’s top court](#)

## K. India

- [India introduces new rules to regulate online content](#)
  - [Facebook, Twitter, WhatsApp face tougher rules in India](#)
  - [‘Wolf in watchdog’s clothing’: India’s new digital media laws spark fears for freedoms](#)
- [India warns Twitter over lifting block on accounts and noncompliance of order](#)
  - [Twitter suspends over 500 accounts in India after government warning](#)
- [Behind Twitter's Tricky Balancing Act In India](#)
- [India’s Top Court Tackles Social Media in Free Speech Case](#)
- [India’s Government and Supreme Court Send Conflicting Messages About Streaming Regulation](#)
  - [Supreme Court orders to pause all cases against Netflix, Amazon Prime and others in High Courts across India](#)
- [India asks court to block WhatsApp’s policy update, says new change violates laws](#)
- [India antitrust body orders investigation into WhatsApp’s privacy policy changes](#)
- [Google’s definition of not including bum as ‘private part’ may not be acceptable in Indian context: Mumbai Court](#)
- [Searching porn on Google in UP? Govt will now monitor and send messages to internet users](#)
- [Lawsuits seen having 'chilling effect' on #MeToo movements in South Asia](#)
- [India to propose cryptocurrency ban, penalising miners, traders](#)

## L. Ireland

- [EU-U.S. data flows could face 'massive disruption' - Irish regulator](#)
- [Ireland’s online safety bill could clash with EU law, says Facebook](#)
- [Dozens of Facebook moderators sue social media giant for severe mental trauma after being exposed to violent images at work](#)
- [Businessman plagued by adverts declaring his death takes Facebook to court](#)

## M. Italy

- [TikTok will recheck the age of every user in Italy after DPA order](#)
- [Facebook fined again in Italy for misleading users over what it does with their data](#)
- [Dolce & Gabbana Is Suing an Instagram Account for Defamation](#)
- [Mafia fugitive caught after posting cooking show on YouTube](#)

## N. Japan

- [Japan Man Charged Over Insults After Netflix Star's Suicide](#)

## O. Malaysia

- [Malaysia Unveils Misinformation Law, Stoking Free Speech Fears](#)
- [Malaysian news site fined \\$124,000 for five reader comments](#)

## P. Mexico

- [Mexico to require appeals on social media account blocking](#)

## Q. Myanmar

- [Myanmar military blocks Facebook, social media as pressure grows](#)
- [After Facebook ban, thousands in Myanmar take to Twitter to plead #RespectOurVotes](#)
- [Myanmar's new military government orders to temporarily block internet access](#)
- [Myanmar army hunts protest backers over social media comments](#)
- [Google has pulled down a propaganda blog backing the military coup in Myanmar after outcry by online activists](#)
- [US cuts trade ties to Myanmar, leaving internet access uncertain](#)

## R. Oman

- [Oman blocks audio app Clubhouse citing lack of permit, but some fear censorship](#)

## T. Pakistan

- [Pakistan bans TikTok again over ‘immoral and objectionable’ videos](#)

## U. Philippines

- [Ressa, Rappler journo seek dismissal of cyber libel case over 'thesis for sale' story](#)

## V. Poland

- [Polish government to pass law that will allow it more control over the Internet content and legitimize blocking access to certain websites](#)
- [Poland’s ‘anti-censorship’ social media platform gets off to rough start](#)

## W. Russia

- [Putin Tightens Fines for Protesters, ‘Biased’ Social Media Giants](#)
- [Desperate Putin Resorts to Jailing Journalists for Retweeting Jokes](#)
- [The Kremlin’s Latest Target Is Online Media](#)
- [Russia Accuses Twitter of Breaking Law by Failing to Delete Content](#)
  - [Russia sues Google, Facebook, Twitter for not deleting protest content](#)
  - [Russia Throttles Twitter Access After Dispute Over Protests](#)
  - [Russian attempt to throttle Twitter appears to backfire](#)
- [Yandex Accused of Anti-competitive Practices in Russia](#)
- [Apple will abide by Russian law by offering government-approved apps](#)

## X. Saudi Arabia

- [Saudi Arabia is persecuting a peaceful blogger — again. Silence could be disastrous.](#)

## Y. Singapore

- [Singapore Blogger Ordered to Pay Damages in PM Defamation Suit](#)
- [Singapore opposition politician ordered to pay PM Lee Hsien Loong US\\$99,000 in defamation case](#)

## Z. Spain

- [Rapper holes up in university to avoid jail for tweets](#)
  - [Thousands take to Barcelona's streets to demand release of arrested rapper](#)
  - [Dozens arrested as rapper's imprisonment for tweets sparks angry protests over free speech in Spain](#)

## AA. Thailand

- [Thai Activist Arrested After Burning King's Portrait](#)
- [Thai Billionaire Charged With Royal Insult Over Vaccine Video](#)

## BB. Tunisia

- [Tunisia Cracks Down on Social Media 10 Years After Arab Spring](#)

## CC. Turkey

- [Twitter to establish legal entity in Turkey, comply with law](#)
- [Turkish Presidency's ambition to counter global tech giants mocked on social media](#)

## DD. United Kingdom

- [Sharing 'deepfake' porn images should be a crime, says British law body](#)
- [Man jailed after threatening to shoot journalist in Facebook messages](#)
- [Tough love for law firms who get bad reviews](#)
- [Julie Burchill agrees to pay Ash Sarkar 'substantial damages' in libel case](#)
- ['Wagatha Christie' heading for libel trial in autumn despite legal costs](#)
  - [Judge urges Rooney and Vardy to settle 'Wagatha Christie' case as costs soar](#)
- [Apple's App Store is now also under antitrust scrutiny in the UK](#)
- [UK antitrust regulator prepares to investigate Facebook](#)
- [TuneIn loses appeal against judgment in Sony and Warner copyright infringement lawsuit in the UK](#)

## EE. Vietnam

- [Vietnamese State Media Bloggers Held on Defamation Charge for Criticizing Officials](#)

## VIII. Miscellaneous

The Biden administration [filed an amicus brief](#) supporting the Manahoy Area School District in a case pending before the Supreme Court on the question of whether a high school can discipline a student for using profanity on social media, posted outside of school hours but with respect to a dispute about school activities. Frank LoMonte has an [analysis of the case](#), *Manahoy Area School District v. B.L.*, which will be heard by the Court on April 28; the student's brief is [here](#).

A [similar lawsuit](#) at the graduate student level was recently filed in W.D. Tenn. by a pharmacy grad student at U. Tenn. who faced expulsion for racy Twitter and Instagram posts. Meanwhile, FIRE has [reported](#) a surge in pleas for assistance from students and faculty claiming that their speech rights have been curtailed during the pandemic.

In other news, we have new lawsuits seeking to recover money lost by app users, with Techdirt reporting on a [series of cases](#) in N.D. Cal. against Google and Apple alleging losses to users of third party gambling apps, a [similar case](#) in N.D. Miss. against Apple, and a minor [suing](#) Epic Games in N.D. Cal. over in-game transactions in Fortnite. (With all the cases involving Fortnite, I can stop constantly reminding you that it's a video game, right?)

What else, what else...we have a [ruling](#) in D.D.C. that demands to internet services from members of Congress backed up by threats of legislative action do not threaten First Amendment rights. Soft power for the win. And in Wash. App., a panel [held](#) that providing first-hand online reviews of prostitution services can be prosecuted as promoting prostitution.

Finally, the FBI [released](#) its 2020 Internet Crime Report, showing a dramatic increase in complaints of crime in 2020 as compared to 2019. Which, let's face it, is only to be expected, when we're all trapped inside and many people under severe economic duress received insufficient support from their communities and governments.

\* \* \*

Aaaaand done. For the first time in as long as I can remember, we have at least one development in every single category of this article – and I even added a section for rights of publicity. Thanks once again for coming along for the ride, and I'll see you all next time!