

The MLRC Digital Review

Reporting on developments in digital media law and policy

by Jeff Hermes

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Well, it's 2021. As you know, I ordinarily start an issue by talking about things that I've been pondering lately, but between the bitter and violent end of the Trump administration and the ongoing pandemic, that section of my mind has been reduced to a haze of grey static.

You know what gets me through these times? Getting down to work. We've got the [MLRC's Entertainment Conference](#) coming up at the beginning of March ([register now!](#)), and I'm excited about our sessions. And we've got a lot to review this month, so let's break it down.

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TABLE OF CONTENTS

I.	Privacy	2
II.	Intellectual Property	5
III.	Platform Management	7
IV.	Other Content Liability	13
V.	Infrastructure	16
VI.	Government Activity	18
VII.	Global	21
VIII.	Miscellaneous	29

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I. Privacy

A. Anonymity

The Third Circuit [rejected](#) an interpretation of the CAN-SPAM Act that would have “compel[ed] individuals and businesses to disclose their identity in every commercial email they send and every domain name they register,” instead adopting an interpretation that “reflects and reinforces longstanding norms” by looking to whether the convictions at issue in the case at bar involved deceit.

B. Personal Information

Nine social media platforms and streaming companies are the [subject of a new FTC study](#) into how they collect and use personal information; the agency has ordered them to disclose relevant information. The FTC also [settled claims](#) with health tracking app Flo over its alleged unauthorized sharing of user data.

A [new lawsuit](#) in N.D. Cal. alleges that genealogy website Ancestry.com is unlawfully gathering and selling personal information drawn from U.S. school yearbooks. I don’t really know what one would make of my yearbook photos...the leather jacket and shades look has not, I think, aged well.

In D.D.C., we have a [second ruling](#) blocking the Trump administrations attempted ban of TikTok, supplementing an earlier order from September that had blocked provisions taking effect immediately. The D.C. Circuit [heard oral argument](#) in December on the earlier ruling and the Trump administration [appealed the second ruling](#) shortly thereafter. Meanwhile, the Ninth Circuit [heard oral argument](#) on the government’s appeal of an injunction against the parallel ban of WeChat. No word quite yet on whether the Biden administration will stop fighting the injunctions.

A magistrate judge in S.D.N.Y. recommended against issuing an injunction that would block a podcaster from [using the plaintiff’s likeness or name](#) in the thumbnails, titles, or descriptions of a free podcast.

California tech companies are bracing for a new privacy law that was passed in November, but we’re still seeing developments under the last major privacy law, the California Consumer Privacy Act. Specifically, we have a [new set of proposed regulations](#) from the state AG’s office that include rules about opt-out buttons for use of personal data.

Minnesota’s high court [upheld a state revenge porn statute](#). As some of you might recall, I’ve been critical of past opinions upholding laws like these because they either relied on a misguided distinction between speech and conduct or tortured the constitutional analysis to treat the laws in question as content-neutral. This opinion, however, [confronts the strict scrutiny analysis directly](#)

and engages in a careful analysis of the tailoring of the law (including a bunch enumerated exceptions). I tend to believe that when a law needs lots of exceptions to make it constitutional, there's probably an issue with how the core of the law was designed (for example, because you're trying to punish speech as a proxy for some other kind of wrongdoing and the fit is approximate) ... but this isn't bad.

I don't ordinarily cover motion practice in this article, but where it's Donald Trump [arguing in N.Y. state court](#) for his right to retweet a meme in a privacy case, I'll make an exception.

C. Children's Privacy

A kids' privacy claim in N.D. Cal. against YouTube and operators of video channels on the site [was bounced](#) because it sounded in COPPA, which provides no private cause of action. The judge distinguished the claim from other cases in which plaintiffs alleged deceptive conduct with respect to use of children's information.

A judge in C.D. Cal. [authorized a settlement](#) under which major media companies agreed to restrictions on data gathering from children's video games and apps.

Finally, in a story from the COVID-19 trenches, the Electronic Information Privacy Center has [filed a complaint with D.C.'s attorney general](#) raising privacy concerns regarding the manner in which five online test-proctoring companies supervise students.

D. Biometrics

A clever ploy by a BIPA plaintiff that exploited a distinction between state and federal standing requirements resulted in a case against Clearview AI being remanded to state court and the Seventh Circuit [upholding the remand](#). The plaintiff sufficiently alleged standing to satisfy Illinois state court requirements but not federal requirements; thus, even though there was complete diversity, the district court found that it lacked Article III jurisdiction.

A judge in N.D. Cal. [approved the final version](#) of a \$650 million BIPA settlement with Facebook; the attorneys' fees [look like they'll come in](#) around \$110 million.

A defunct photo app [entered into a consent order](#) with the FTC requiring it to delete biometric data that it gathered from users, in a settlement stemming from claims that the app deceived customers regarding its data practices.

E. Manipulated Media

New Jersey's legislature is [working on a bill](#) that would prohibit the undisclosed use of deepfake audio or video of opponents in campaign advertising. The bill seems to be a bit of a First

Amendment hodgepodge, combining an intent to injure requirement with an actual malice requirement. Does it get over a First Amendment hurdle? Good question.

F. Hacking, Scraping & Data Breach

This one should probably go in International, but I want to highlight it: Dutch prosecutors determined that a security researcher [actually did manage to hack Donald Trump's Twitter account](#) last October, but declined to press charges on the basis that the researcher engaged in “responsible disclosure” of the hack. Again, if true, this is one of the most appalling security failures on the part of the U.S. government of which I’ve ever heard; a few moments imagining what a black hat could do with access to Trump’s Twitter provides enough nightmare fuel for weeks. Just one reason why I was totally fine with Trump being banned from Twitter, but more on that later.

A Stored Communications Act claim against Facebook over an account hacked in April 2020 [was kicked out](#) by a judge in N.D. Cal., because of a failure to plead that Facebook “knowingly” disclosed the information at issue. Plaintiffs in a class action against Google over a data breach on Google+ have netted a pot of \$7.5 million after another judge in the same court [approved a class settlement](#).

A journalist for Al Jazeera [sued the crown princes of Saudi Arabia and the United Arab Emirates](#), alleging in a complaint filed in S.D. Fla. that they conspired to hack her cell phone and dox her. Not, you know, personally, but through a network of agents.

A data scientist fired by the state of Florida [has been arrested](#) for alleged illegal access to the state’s emergency responder system. A tricky hurdle for prosecutors is the fact that thousands of employees share the same log-in credentials, and they’re also widely available on the Internet.

Well, here’s an interesting examination of the horse/barn door principle. An [appellate panel in Georgia held](#) that plaintiffs whose personal information was stolen from the defendant clinic and sold on the dark web had no recourse under Georgia’s unfair & deceptive practices law. However, the law provides only prospective relief, and no such relief is possible where the information has already left the building.

G. Other Intrusion

The Supreme Court [heard argument](#) in *Facebook v. Duguid*, a case involving the interpretation of the TCPA robocalling ban and its application to robotexts sent to cell phones; the primary takeaway from the argument is that the ban hasn’t aged well in the face of technological development.

II. Intellectual Property

A. Copyright

The Supreme Court [denied cert](#) in *Kurbanov v. UMG Recordings*, which was on petition from a ruling of the Fourth Circuit finding jurisdiction over a foreign citizen based on his online activity.

The Ninth Circuit [held](#) that a photographer's complaint over an online magazine's unauthorized use of his promotional photo for "The X-Files" alleged sufficient facts regarding the difficulty of detecting online infringement to survive a 12(b)(6) motion under the statute of limitations.

ROSS Intelligence, which has been fighting a long-running copyright battle in D. Del. with Thomson Reuters over copyrights in material that ROSS allegedly scraped from Westlaw, [announced that it would shutter its doors](#) in January. However, it seems that the case will continue, at least for now.

Software developer Corellium, which created virtual instances of Apple's iOS environment for use in research and development, [scored a win](#) in S.D. Fla. against Apple with a summary judgment ruling that the virtual environments constituted a fair use; however, a § 1201 circumvention claim survived.

A judge in N.D. Ga. [ruled](#) that hip-hop streamer Spinrilla was liable for infringement in a lawsuit filed by the RIAA, denying the platform the protection of the DMCA on the basis that unauthorized streaming is a direct infringement of a copyright holder's performance right.

Prolific copyright plaintiff Malibu Media managed to [put itself on the hook for attorneys' fees](#) in N.D. Ill., by refusing to provide discovery regarding its investigation of a copyright claim that it subsequently voluntarily dismissed while a counterclaim for a declaratory judgment was still pending.

Well, sure, the digital revolution hit video stores hard, but that's not an excuse to go ripping movies from your stock and selling copies online. That's the lesson from the prosecution in D. Me. of the former owner of Bangor's Edge Video, who will [serve five years in prison](#).

We have a somewhat rare [fair use win](#) for the defendant on Rule 12(b)(6) in D. Mass., with a judge ruling that the alleged mass transfer of content from a social network to an archive site for purposes of preservation did not violate a user's copyright. As a bonus, the court also invoked § 230 to dismiss a defamation claim based on the defendant's copying of allegedly defamatory user posts during the transfer process.

Another tweeted-photo case against a celebrity [has settled](#) in S.D.N.Y., with Ellen Barkin reaching an agreement with a photog who snapped the actress flipping off Harvey Weinstein.

Also in S.D.N.Y., a judge [ruled](#) that the unauthorized posting of a photo to Instagram in the UK could give rise to a U.S. copyright action because of the mirroring of the data file on Instagram's domestic servers.

Another loss for Richard Liebowitz in E.D. Tenn., with a [ruling](#) that a newspaper's publication of a drone photo displayed at a Board of Education meeting was a fair use. In E.D. Tex., a case involving the alleged infringement of a pro wrestler's persona/character by a videogame character [will go to trial](#).

In S.D. Tex., we have a case that could stand as a warning to anyone who forwards the MLRC MediaLawDaily to non-members, with judgment rendered against a defendant who forwarded a digital newsletter to non-subscribers. However, the precise amount of the verdict [will be the subject of a new trial](#) due to an erroneous jury instruction on the effects of mitigation.

Meanwhile, in E.D. Va. we have a [dramatic ruling](#) illustrating the dangers of failing to preserve your summary judgment arguments at trial, with a judge ruling that Cox Communications is on the hook for the entirety of a \$1 billion copyright judgment despite successfully arguing at summary judgment that it might have been liable for only about 75% of that amount due to possible duplication in the list of allegedly infringed musical works. Cox never presented testimony to the jury on that duplication, said the judge, which led to the award of the full amount.

We have two significant legislative updates to report. The omnibus spending bill passed by Congress and signed by President Trump in December included both the [CASE Act](#), which creates a small claims copyright procedure, and the [Protecting Lawful Streaming Act](#), which criminalizes unauthorized streaming of copyrighted works for profit. The latter bill was the brainchild of Sen. Thom Tillis (R-NC), who has also [proposed substantial revisions to the DMCA](#) that would, among other changes, tie the handling of takedown notices to CASE Act procedures. The full discussion draft [is here](#).

We also have two new resources for copyright information. The Copyright Office launched a [new online portal](#) with improved search and user interfaces, and ASCAP and BMI launched a [new database](#) for copyright information about musical works called Songview.

Finally, another Public Domain Day has passed; the [magic date this year is 1925](#).

B. Trademark

The Fourth Circuit [affirmed judgment](#) in favor of Apple in an infringement suit over its "ipad" trademark, holding that the district court did not err in granting summary judgment for Apple despite a somewhat intricate timeline with respect to the parties' respective uses of the mark.

GEICO [settled trademark claims](#) that it was pursuing in D. Md. against a financial news site that allegedly misled consumers by suggesting that it could provide or compare GEICO insurance quotes, with an agreement that the defendant would remove the pages in question.

Two attempts to reframe claims of trademark infringement as other torts failed this month, with a Georgia appeals court [rejecting a conversion claim](#) based on the sale of keyword advertising and the Supreme Court of Ohio [treated a false designation of origin claim](#) involving a battle over a domain name as a trademark case and rejected a claim of initial interest confusion.

C. Patent

The Supreme Court is [gearing up to hear argument](#) in *Arthrex v. Smith & Nephew* on the constitutionality of the method by which PTAB judges are appointed. However, it [denied cert](#) in another case, *Thermolife International v. Iancu*, that raised similar issues.

A bunch of rulings from the Federal Circuit: BlackBerry [loses to Facebook](#) with a ruling that four patents were invalid under *Alice*; Comcast [salvaged one claim](#) over TV voice recognition technology but [lost others](#); patents for certain uses of social networking were held to be invalid in suits against [Match](#), [Quora](#), and [Oath](#); and Nintendo [won affirmance](#) of a ruling flipping a \$10.1 million jury verdict in a case involving motion detection technology.

In district court, a judge in N.D. Cal. [found](#) that a patent for augmented reality tech was invalid under *Alice*, a judge in C.D. Cal. [declined](#) to freeze defunct streaming service Quibi's assets in a fight over a method to rapidly switch between portrait and landscape orientations for video on mobile, and a judge in W.D. Tex. [denied](#) a new trial after Roku defeated a case involving a streaming patent.

D. Trade Secrets/Misappropriation/Conversion

Nothing to report this month.

III. Platform Management

A. Section 230

Despite Justice Thomas' recent solicitation of petitions in Section 230 cases, the Supreme Court denied two petitions for cert on 230 dismissals in cases against Facebook, [Igbonwa v. Facebook](#) and [Fyk v. Facebook](#).

A panel of the Second Circuit [took a dim view](#) during oral argument of a pastor's attempt to flip Vimeo's § 230 win in a case over the site's removal of the plaintiff's conversion therapy videos. Meanwhile, the Third Circuit [will hear an appeal](#) of a case brought by a news anchor who sued

Facebook over advertising and memes on the site that allegedly exploited her likeness; the case will test the scope of § 230's IP exception in the circuit.

Surprise, surprise, Justice Thomas' solo comments about § 230 [don't provide a basis for a motion for reconsideration](#) of Craigslist's win in a case in N.D. Cal. involving alleged sex trafficking on the site. In a case in S.D. Cal. involving "free trials" of cosmetic products, the court [held](#) that § 230 did not support a motion to dismiss filed by a defendant who provided back-end customer relationship management software services, finding that the complaint sufficiently alleged that it was not merely providing "neutral tools." We have a [split decision](#) for Amazon in S.D.N.Y., with the court holding that the site could be liable for negligence related to a dangerous ingredient in a food product but that § 230 prevented false advertising claims based on the third party manufacturer's ad copy. No surprise in a case in W.D. Pa., where the court [shut down](#) a lawyer's lawsuit against Google over an allegedly fraudulent negative review. And finally, in a criminal prosecution in N.D. Tex. involving a website allegedly involved in commercial sex advertising, a judge [rejected](#) a First Amendment challenge to FOSTA.

We also have a [rare published opinion](#) from the California Court of Appeal that invokes § 230 to smack down state law class action claims against Twitter over its enforcement of its hateful conduct rules. As to which, yeah.

The flap over Section 230 at the FCC seems to be over. Although anti-230 Trump appointee Nathan Simington [was confirmed](#) and current Commissioner Brendan Carr [continues railing](#) against the statute, the outcome of the Georgia run-offs for the U.S. Senate [doomed any chance](#) of the FCC taking action before [Ajit Pai departed](#) his seat. President Biden will be able to fill the open FCC chair with the Senate controlled by his party, and in the interim he [tapped](#) Commissioner Jessica Rosenworcel as acting chief. Thus, it doesn't matter quite so much that a judge in D.D.C. [held](#) that the Center for Democracy & Technology had no standing to challenge Trump's executive order that kicked off the whole mess. (As a side note, though, there's a [new FOIA lawsuit](#) in D.D.C. seeking records from the Commerce Department on communications from either Simington or Commerce official Adam Candebub relating to Section 230.)

So, we turn back to Congress for developments in this debate. At the tail end of the last Congress, we had the "[Break Up Big Tech Act of 2020](#)" introduced in the House, another misbegotten attempt to compel platforms to be viewpoint-neutral, and saw Lindsey Graham pull his "[Online Content Policy Modernization Act](#)" from committee consideration after another 230 reform bill was rejected. Graham then [proposed a sunset provision](#) for Section 230 that would have killed the law on January 1, 2023, if Congress did not act before then. It did not pass before the end of the 116th Congress, but see below.

More dramatic was President Trump's ham-fisted attempt to ram a Section 230 repeal into a major military funding bill by threatening a veto if the repeal wasn't included. Congress didn't

cave, Trump used his veto, and Congress [overrode the veto](#) while the Senate was still controlled by Republicans. Which gave me a warm fuzzy feeling. Which, unfortunately, quickly evaporated when Mitch McConnell inserted a full repeal of 230 into a pandemic relief bill [as a poison pill](#), killing that effort.

Now that we're in the 117th Congress, we can expect new versions of last term's bills as well as brand new 230 reform bills. An [example of the latter](#) is Rep. DesJarlais' "Protecting Constitutional Rights from Online Platform Censorship Act," which is another bill purporting to require platforms to conform their moderation to First Amendment standards (while trampling platforms' own First Amendment rights); it also would delete § 230(c)(2)(B), which is just a terrible idea unless you for some reason like viruses on your computer. There's also a discussion draft circulating of the "[Civil Rights Modernization Act of 2021](#)," which is a fairly narrow and well-intentioned attempt to address targeted advertising that violates civil rights law with a new exception to § 230, but is also not without its issues.

Bottom line, § 230 reform is still very much on folks' minds, whether that's Biden's new top tech advisor [Bruce Reed](#), senior Republican on the House Energy & Commerce Committee [Rep. Cathy McMorris Rodgers](#) (who likes that whole sunset idea that Lindsey Graham floated), or nominee for Secretary of Commerce [Gina Raimondo](#),

Major tech companies know which way the wind is blowing and are [showing signs](#) of bending before the gale so they do not break. Smaller tech companies have [banded together](#) to have their voices heard about the importance to their businesses of intermediary protection. Meanwhile, more than seventy human rights and social justice organizations have [written to Congress](#) about the ways in which § 230 protects people and allows platforms to fight misinformation and incitement to violence.

B. Elections & Political Advertising

Okay, it's time to talk about the big news this month: the deplatforming of Donald Trump following the Capitol riot on January 6. Twitter, Facebook, and Snapchat [quickly imposed temporary bans](#) after the violence to stem further incitement. Facebook then [extended the ban](#) indefinitely ([subject to the review](#) of its new Oversight Board, which will be [accepting public comment](#) on the decision and I'm totally sure that will be a smooth process without any drama whatsoever), and Snapchat [followed suit](#) by making its ban permanent. Other platforms taking action against Trump and his supporters included [YouTube](#), [Shopify](#), [TikTok](#) (guess they're really not concerned about that whole U.S. ban thing anymore), [Twitch](#), [Reddit](#), and [Telegram](#).

The biggest blow, however, was Twitter's decision to [kick Trump off for good](#), taking away the 45th president's favorite megaphone. (At least, mostly; Trump [found ways around the ban](#), even if not at full volume.) Twitter also booted attorney [Lin Wood](#) and My Pillow CEO [Mike Lindell](#), as well as [Michael Flynn and other QAnon proponents](#). (Seriously, I owe my marriage to *The X-*

Files, but I wonder sometimes if that was a gateway drug to people taking the whole shadowy government conspiracy trope a bit too seriously.)

For more on Jack Dorsey’s reasoning re: Trump, [see here](#); see also [this piece](#) from Mike Masnick that I quite like with respect to the different considerations at play in the decision. For the obligatory handwringing about Trump’s First Amendment rights and whether Twitter had the legal right to do that, see [here](#), [here](#), [here](#), and [here](#). (TL/DR: Of course Twitter could.) For the obligatory debate about what it all means and whether the rest of us are for the chop now that Twitter has decided to flex its muscle against the loudest mouth of all, see [here](#), [here](#), [here](#), and [here](#). [European voices](#) reacted to the move with alarm, as did officials in the [UK](#) and [Mexico](#). House Democrats want Facebook, Twitter, et al. to [do even more](#).

The bottom line, though, is that once Trump was gone, misinformation about election fraud on Twitter [dropped by almost three-quarters](#).

My own position on this is pretty straightforward. From a legal perspective, Twitter can do what it likes with its platform and doesn’t owe anyone an explanation. Since when have mass media providers been required to allow anyone who walks in off the street to amplify their message to the world? Amplification is not the same as speech: You have a right to speak, but you have always had to earn your audience. The power of others to choose not to amplify what you say is fundamental to the marketplace of ideas.

Now, you can of course debate how well Twitter, et al., perform their editorial function and whether you’d have done things differently. We do that all the time with the traditional news media, too. You can also debate whether many-to-many communications platforms naturally tend towards monopoly and whether the market share of particular platforms creates problems for alternative channels that moderate differently, but that’s better addressed through market responses rather than by intruding into editorial choice. Anyway, comments over, because now we get to a trickier issue.

That issue is Amazon’s [termination of hosting services](#) to right-wing website Parler, as well as Google and Apple [kicking Parler’s app off](#) of their respective app stores. Tim Cook’s [explanation](#) of Apple’s decision is very similar to other platforms’ comments about restricting Trump and his followers, but it’s important to recognize that [there is a difference](#) between kicking a user off of a website and kicking an entire website off of a hosting platform. It may be that there’s no speech of socially redeeming value on Parler – I wouldn’t know – but it strikes me as more likely that there was at least some communication there that wasn’t of the “let’s kill us some Dems” type (maybe [an FBI probe into Parler](#) will prove me wrong).

As you get deeper into the infrastructure of the internet, the controls that providers can exercise over speech are more powerful and less nuanced. Also, it is less likely that a service provider in the middle will be associated with end user speech, such that its own First Amendment rights are

implicated; have you ever seen [a video like this](#) about a web hosting service? It could therefore be fair to be more concerned about these kinds of decisions than about discrete moderation choices made by edge services.

But absent net neutrality regulation, the folks in the middle of the internet have as much right to control their services as the folks at the edge, and so it's no particular surprise that Parler's [lawsuit against Amazon](#) over the ban has [met with little success](#). That said, Parler does [seem to be finding a way back](#), as did other controversial services such as Gab and 8chan before it, and those chased off of Parler have [turned to services such as Gab](#) and even [gone truly old-school](#). That hasn't stopped embattled Texas AG Ken Paxton from [using Parler's plight](#) as the latest distraction from his own problems.

In other news, we saw Google and Facebook reworking their political advertising rules on the fly in response to changing events. Google [lifted](#) a post-election ban on political ads in December, then [reimposed](#) it following the Capitol siege. Facebook [lifted](#) its post-election ban, but only for Georgia in light of the Senate run-offs, then [resumed](#) it as soon as the polls closed. Facebook is also looking into [reducing political content generally](#) in users' news feeds.

Before we leave this section, I also want to note that January saw the [arrest of a social media influencer](#) for spreading election disinformation to suppress voting, such as by indicating that people could vote by texting or via online portals. The prosecution is taking place in the Eastern District of New York.

C. Content Moderation

We have the [first set of opinions](#) from Facebook's Oversight Board, with four reversals and one affirmance on content removal decisions. These panels have stated that they recognize the "supremacy of free speech," while at the same time implementing Facebook's content policies, which raises so many questions such as [whose conception of free speech principles applies and whether when push comes to shove it will be the Terms of Service that really control](#). I'm very interested in how these will turn out, because content moderation decisions like these will probably be the most direct experience that most people have with even a quasi-judicial evaluation of their rights to freedom of expression, and thus could shape public attitudes toward free speech in a way that actual judicial decisions do not. My own instinct is that we could start to see a more European-style proportionality test for free speech start permeating the U.S. consciousness, but who knows what exactly that would look like when framed by Facebook's choices as a private company.

Turning now to judicial cases. The Fifth Circuit [heard oral argument](#) on appeal from the dismissal of claims against Twitter, Google and Facebook stemming from the July 2016 killings of five police officers; as in other cases, the question is whether the platforms provided material support for the attack. The Eleventh Circuit [rejected a renewed attempt](#) by Laura Loomer to

blame someone else for her Twitter ban, holding that a tortious interference claim against CAIR failed because “no cause of action exists for interference with Loomer’s relationship with the general public” and “Loomer did not have legal or contractual rights in the continued use of her account.” Boom.

In M.D. Ala., a man cleared of rape allegations has [sued Facebook](#) for negligence in failing to remove the outdated accusations.

A judge in N.D. Cal. [rejected a novel attempt](#) to treat Facebook as a “constructive public trust” subject to the First Amendment; the plaintiff had argued that Congress’ grant of § 230 protection had entwined its moderation decisions with government action. (You might recognize that as being similar to an argument that was recently floated as to why Donald Trump could not be kicked off Twitter; [it doesn’t work](#) in that context either.) A different judge of the same court [rejected a similar argument](#) in claims over alleged censorship of LGBTQ content creators, though leave was granted to amend false advertising claims; I find this decision particularly interesting for its discussion of the distinctions between the legal regimes governing social media sites and cable system operators. The plaintiff in a third lawsuit in N.D. Cal. asserting First Amendment violations [failed to secure a TRO](#), and a fourth lawsuit alleging discrimination in Facebook’s presentation of information on housing looks like it will [need some pretty substantial amendments](#) to satisfy the court.

In other courts: A complaint against Google in S.D. Fla. asserting RICO and fraud claims stemming from alleged censorship of conservatives [failed to satisfy particularized pleading standards](#), but plaintiff was granted leave to amend. In D.N.H., First Amendment claims against Google and Twitter over account suspensions [failed](#), as did a claim attempting to recast moderation or deletion of content as defamation. A [similar result](#) was reached in D. Or. in a case alleging censorship of comments on Breitbart content, including the dismissal of a bizarre claim based on § 230(d). If you don’t know what § 230(d) says, don’t worry about it – it’s kind of like the internet’s Third Amendment in terms of its current relevance.

Back in December, all GOP members of the House Oversight Committee [demanded](#) (but failed to receive) a hearing on Twitter and Facebook’s “unjustifiable censorship” of the N.Y. Post’s Hunter Biden stories. And again, I dream of the platforms showing up to such a hearing and saying, “Because we felt like it.”

State legislators continue to be under the misimpression that they can ban platforms from “censoring” users, with doomed bills in [Kentucky](#) and [North Dakota](#). An internet provider in northern Idaho decided [to take matters in its own hands](#), blocking its customers from accessing Facebook and Twitter in retaliation for the site’s supposed anti-conservative censorship. My initial sarcastic reactions: (1) “So you blocked everything? That makes sense why?” and (2) “Northern Idaho? So, what, a million trees and the occasional stray Canada lynx won’t be able to

access Twitter?” But apparently this provider serves Spokane, Washington, as well, which means that a significant number of people were affected; moreover, the move could run afoul of Washington’s net neutrality law. Pair this with the Parler blocking and you could have an interesting discussion.

By the way, I’ve decided that systemic censorship of conservatives online (“SCOCO,” or more familiarly, “Scoccie”) is actually a [cryptid](#): Thousands of people claim to have seen Scoccie, but no one seems to be able to come up with anything that looks like proof. So, if you hear this myth, tell them to take it up with Bigfoot.

What else...we’ve got some stories about how [Facebook](#), [YouTube](#) (see also [here](#)), [Twitter](#) (see also [here](#) and [here](#)), and [Twitch](#) have recently amended or implemented policies to deal with hate speech and other problematic content such as vaccine misinformation.

Finally, if you’ve wondered about the power of the traditional media to curb online abuses, we must consider [Nick Kristoff’s exposé in The New York Times](#) about child abuse videos on online porn giant Pornhub and the response thereto. Within days, Pornhub [shut down](#) its download functions and limited the uploading of new content. Within less than three weeks, Visa and Mastercard [cut off payment processing](#) for the site, Pornhub [deleted millions of videos](#) on the site, a [lawsuit in S.D. Cal.](#) filed by 40 Doe plaintiffs accused Pornhub’s parent MindGeek of profiting from partnership with a sex trafficking venture, and a [bipartisan bill](#) was introduced in Congress to impose new verification regulations and functionality restrictions on adult content sites.

D. Terms of Service & Other Contracts

This is a case was decided last October but only crossed our radar this month: The Ninth Circuit [held](#) that a user of Experian’s website who visited the site briefly before filing a FCRA and unfair competition claim did not thereby bind herself to updated terms related to compulsory arbitration.

More recently, the Supreme Judicial Court of Massachusetts [held](#) that Uber cannot enforce an arbitration clause against a blind man who probably never read terms and conditions that were linked to a registration page but were not required to be reviewed.

IV. Other Content Liability

A. Defamation

The D.C. Circuit revived a lawsuit against UK financier and political activist Bill Browder brought by a former Soviet counterintelligence officer, now working in the District of Columbia as a lobbyist, over tweets referring to him as a “Russian GRU officer” and a “Russian

intelligence asset.” The case had been dismissed for lack of jurisdiction, but the Court of Appeals decided there should be limited discovery on the issue.

A libel lawsuit filed in S.D. Fla. by the computer repairman behind the New York Post’s Hunter Biden laptop story against Twitter (which explained its removal of posts on the topic as violating a ban on publication of “hacked materials”) was [dismissed for lack of diversity](#). Both the plaintiff and the defendant are domiciled in Delaware, which begs the question of what they were doing in Florida in the first place.

Illinois’ shield law was [held](#) to protect against compelled disclosure of a travel blogger’s resource materials in a defamation case pending in the Eastern District of Illinois.

In S.D.N.Y., a judge [held](#) that while The New York Times could not be held liable for republication merely for hyperlinking to another source, repeating an allegation in the linked text in conjunction with a hyperlink can be republication; however, in the case at bar the statement at issue was one of opinion and there was no proof of actual malice.

In Colorado, an employee of Dominion Voting Systems who was subjected to death threats and fled into hiding has [filed suit](#) against figures associated with Trump’s voting fraud hoax as well as various online news outlets that alleged he helped rig the election for Joe Biden. In Iowa, calling someone a “slum lord” in the midst of a Facebook spat was [held](#) to be opinion. Amici are [urging](#) the Oregon Supreme Court to overturn an appellate ruling in a defamation case holding that online speakers are not entitled to the same First Amendment protections as the institutional media. Finally, the Texas Supreme Court [denied review](#) of rulings allowing four lawsuits to proceed against Alex Jones and InfoWars related to his comments on the Sandy Hook killings.

B. Commercial Speech

Although not itself a digital media case, we need to note that the Supreme Court [heard argument](#) in January on the question of whether the Federal Trade Commission has the authority to compel restitution as part of its powers to sue for injunctive relief under the FTC Act. That’s a big deal, of course, for the FTC’s ability to flex its muscle at digital platforms. Speaking of which, the FTC [settled](#) claims this month with a mobile ad company which offered in-app rewards that its partner organizations wouldn’t fulfill, and [provided some puzzling guidance](#) about the moderation of consumer reviews by online merchants.

The Fifth Circuit [held](#) that a vet’s ability to practice telemedicine implicated his First Amendment rights and therefore, per *NIFLA v. Becerra*, called for greater scrutiny as to whether Texas’ regulations targeted speech or mere conduct.

The Ninth Circuit [revived](#) a Lanham Act claim against a publisher of nominally independent product reviews for allegedly rigging one of the reviews in exchange for payment, holding that a

reviewed company who had not been so favored could sue despite the fact that the reviews were not commercial promotions for any of the defendant's own products. For another case allowing a case to proceed over fake "independent" reviews, see [this decision](#) from the Western District of New York.

A handful of court rulings from N.D. Cal.: A retail website's statement that a product has been verified for quality [does not convey](#) that it has been verified for authenticity; a plaintiff whose Lanham Act false advertising claims against a sales platform failed because he was a customer and not a competitor was [granted leave](#) to assert state law claims; and a St. Louis restaurant [was allowed to pursue](#) false advertising claims against online food delivery service DoorDash for deceiving customers into avoiding restaurants that refuse to kick back up to 30% in commissions to the service.

In D. Del., we have what might be the [first published decision](#) to hold that an influencer's failure to disclose receipt of a material benefit can give rise to Lanham Act liability for false or misleading representations. In D. Minn., a judge [found a jury question](#) as to whether a ladder manufacturer could be held liable for statements it claimed that it made only to Home Depot, not to the public, but which wound up on Home Depot's website.

Rensselaer Polytechnic Institute [fought off](#) a false advertising claim in N.D.N.Y., with a holding that the public could not reasonably expect advertised classes to be held in person at the height of the global pandemic.

C. Threats, Harassment, and Incitement

The Sixth Circuit [heard oral argument](#) in an appeal by Covington Catholic students of the dismissal, on jurisdictional grounds, of their lawsuit against comedian Kathy Griffin for allegedly soliciting others on Twitter to dox the students. The Tenth Circuit [held](#) that sending a threat by email is not by itself evidence of transmission in interstate commerce.

So here's a thing: A former U.S. ambassador [sued](#) Apple and Google in N.D. Cal. over anti-Semitic content posted by Telegram users because Apple and Google refused to remove the Telegram app from their app stores. Um. Then there's [this interesting case](#) from E.D.N.Y., in which an executive for Zoom in China is being prosecuted for conspiracy to commit cyberstalking by disrupting and/or infiltrating Zoom meetings commemorating the Tiananmen Square massacre. Huh.

In California state court, Devin Nunes has [filed a new lawsuit](#) against Twitter claiming that it is abetting an online stalker. In Ohio, a woman who criticized her deceased mother's former retirement community online and engaged in some light picketing is [being prosecuted](#) for harassment. And if that's not bad enough, the Tennessee Bureau of Investigation [arrested](#) a man on charges that he posted an allegedly fake photo of two men urinating on the grave of a

deceased police officer. Offensive and tasteless? Sure. Illegal? Well, let me refer you to [my favorite review](#) of Spice Girls film vehicle *Spice World*.

V. Infrastructure

A. Accessibility

A [new lawsuit](#) in W.D. Pa. alleges an Americans with Disabilities Act claim against movie company AMC over its on-demand streaming services because of a lack of audio descriptions for its video content.

Recognizing the essential nature of broadband data services during the pandemic, legislators in Massachusetts have [introduced a bill](#) to prohibit data caps, additional fees, and price increases for home internet for the duration of the emergency. Charter Communications, which is already subject to a ban on data caps as part of FCC approval of its merger with Time Warner Cable, [gave up an attempt](#) to persuade the FCC to lift the ban early in light of Ajit Pai's departure.

B. Antitrust

If there wasn't enough going on already this issue, the big antitrust lawsuits against Facebook have now dropped. We have lawsuits from [forty-six states and two territories](#) and from [the FTC](#) alleging that Facebook's acquisitions of WhatsApp and Instagram were unlawful efforts to shut down emerging competitors. For an analysis of the legal hurdles the government faces, [see here](#), and for a discussion of the free speech implications, [see here](#). It's unlikely that the transition in control at the FTC will soften the Commission's position; if anything, new acting Chair Rebecca Kelly Slaughter has [shown a more aggressive approach](#) to tech enforcement than her Republican predecessor.

Texas and nine other states filed a [new antitrust lawsuit](#) against Google in E.D. Tex., this time focusing on competition for digital advertising. Shortly thereafter, thirty-eight states and territories led by Colorado and Nebraska's AGs [filed a similar suit](#) in D.D.C., and three states sought to join the DOJ's pre-existing case from October. Apparently, there are already moves to consolidate the whole mess, so don't worry too much about the different moving parts right now. Recode [has a summary here](#), and you've got some time to sort it all out with trial scheduled in the DOJ case for September 2023 at the very earliest. I'm thinking more like September 2033, myself.

We've also got some activity with lawsuits filed by private parties. In two [separate cases](#) in N.D. Cal., Facebook is the target of putative class actions under the Sherman Act claiming that it dominated the social media market by using its users' data to crush rivals. Also in N.D. Cal., Apple is [facing a challenge](#) over its App Store from a company that launched a competing

iPhone app store before Apple locked down the environment, Google [has been sued](#) by a YouTube rival claiming that Google search results illegally prioritize YouTube videos, and Google is [facing another lawsuit](#) claiming that it leveraged its power in the advertising market to force unfair terms on advertisers.

In D. Del., Apple [obtained dismissal](#) of a claim that it monopolized the email software market. In S.D.N.Y., [two complaints](#) allege that Amazon colluded with major publishers to fix prices for e-books through a deal that prohibited publishers from charging other retailers less. And in S.D. W. Va., a local newspaper publisher has [asserted claims](#) that Google and Facebook's dominance of digital advertising is unlawfully crushing smaller news rivals.

C. Net Neutrality

So, with a 3-2 Democratic majority on the FCC [guaranteed](#) thanks to the Democrats winning Congress, we're likely to see an attempt to reinstate net neutrality principles. However, that will have to wait until the third Democratic FCC commissioner is appointed, with the Commission still currently deadlocked at 2-2. However, as [Techdirt points out](#), acting Chair Jessica Rosenworcel can still take steps, such as dropping FCC support for the lawsuit initiated by the Trump DOJ seeking to block California's net neutrality law on the basis of federal preemption. Of course, the new Attorney General appointed by President Biden could simply scuttle that suit, as 13 members of California's congressional delegation [have asked](#) nominee Merrick Garland to consider.

D. Domain Name System

Nothing to report this month.

E. Taxation

A lawsuit brought by three Georgia municipalities against Netflix, Hulu, and other streamers in an attempt to force them to pay franchise fees similar to those paid by cable companies [has been removed](#) to the Northern District of Georgia. Meanwhile, a Missouri state judge [has held](#) that the Internet Tax Freedom Act does not prevent the imposition of such fees, while a judge in E.D. Tex. [heard argument](#) on a claim that imposition of such fees violates the First Amendment.

The United States Trade Representative [voiced objections](#) to efforts in India, Italy and Turkey to impose what it views as discriminatory taxes on U.S. companies, but is holding fire for the time being as to what actions it might take.

F. Wire & Wireless Deployment

The FCC has [announced the results](#) of its multibillion-dollar giveaway of funds to broadband providers to connect underserved rural areas; the big winners include Charter and SpaceX, the

latter of which netted \$885 million to deploy its Starlink satellite service. Meanwhile, the [new COVID-19 relief bill](#) included \$7 billion to address the problem of affordable broadband services.

That said, there's a difference between giving out money and actually deploying services. CenturyLink and Frontier [missed their deployment deadlines](#) under FCC grants yet again, and now are on a one-year clock before they have to return the money. Which is a definition of "deadline" only the U.S. government or George R.R. Martin's publisher could love.

G. Artificial Intelligence & Machine Learning

Nothing to report this month.

H. Blockchain & Cryptocurrency

A brief note that the Libra Association [is now](#) the Diem Association. As in "carpe diem," I suppose. Meh.

VI. Government Activity

A. Data Surveillance, Collection, Demands, and Seizures

The First Circuit [heard argument](#) in January on the constitutionality of warrantless searches of electronic devices by border agents when U.S. citizens return from international travel. Away from the border, the Fifth Circuit [held](#) that the Fourth Amendment requires that warrants for searches of smartphones be based on probable cause to search each category of information on the device – so, for example, probable cause to search text messages and call logs would not support a search of photographs.

The Arizona Supreme Court [held](#) that law enforcement doesn't need a warrant to obtain IP addresses or subscriber information that was voluntarily provided to internet service providers. The Supreme Judicial Court of Massachusetts [debated](#) whether the Commonwealth's AG could enforce a civil investigative demand for the results of an internal probe conducted by Facebook's attorneys regarding apps that might have misused customer data.

Newly disclosed records [reveal](#) that the FBI has been invoking the Patriot Act as authorization to collect website visitor logs. Other agencies [simply buy the data](#) they can't legally collect directly, raising red flags in Congress. For example, we have [DHS](#) and the [DIA](#) buying cell phone location data, while the DEA suddenly [cut off a contract](#) with a vendor supplying app location data.

And then we have the folks who commit what is colloquially known as a self-own, by posting evidence of their own illegal conduct on publicly accessible websites. Case in point, the rioters at the U.S. Capitol who have [made it relatively easy](#) for the FBI to find and arrest them at leisure. It doesn't help that the rioters' preferred platform Parler was apparently [coded in such a way](#) as to make scraping of this data quite simple.

Finally, we have a [fascinating article](#) from Orin Kerr on the Fourth Amendment implications of the routine copying and preservation of internet accounts by service providers for the benefit of law enforcement.

B. Encryption

A [new petition](#) to the Supreme Court from a New Jersey Supreme Court ruling squarely frames the question of whether the compelled disclosure of cellphone passcodes violates the Fifth Amendment's protection against self-incrimination. There's a clear split in authority and folks expect that the Court might actually take this one. Again, Prof. Kerr is there for you with some [helpful commentary](#), this time reaching all the way back to the treason trial of Aaron Burr for illumination.

Remember President Trump's [Presidential Commission on Law Enforcement](#)? No? Well, why would you. In any event, the PCLE has [released its report](#) at the most irrelevant time possible, in part calling for legislation to ban strong encryption. Not that law enforcement [really has problems](#) with encryption any more, due to, for example, [security weaknesses](#) in how most users interact with dominant operating systems.

C. Biometric Tracking

Legislation to impose statewide limits on government use of facial recognition technology hit a wall in [Massachusetts](#); there's a new bill on the subject in [New York](#).

D. Domain Seizure

Nothing to report this month.

E. Content Blocking & Prior Restraints

So, Trump is no longer a public official and, moreover, he's been kicked off Twitter indefinitely if not permanently. Is his petition to the Supreme Court from the Second Circuit's ruling in the *Knight Institute* case about his Twitter blocking of citizens [now moot](#)? Both sides seem to think so, but the [DOJ wants the Supremes](#) to vacate the Second Circuit decision under the so-called [Munsingwear doctrine](#). However, that only applies if Trump himself was not responsible for mooting the case, which is an interesting question. (For my part, I question the premise that the case is moot because (1) real relief was already obtained by the plaintiffs in the case when they

were unblocked and (2) the lower court decisions entitle the victorious plaintiffs below to their attorneys' fees and costs; the outcome of the Supreme Court's review would also determine whether the Biden administration needs to pay up.)

The Eighth Circuit [held](#) that a state representative did not violate the First Amendment when she blocked an individual from her campaign's Twitter account, distinguishing the use and content of that account from an official account. Strikes me as a pretty fine line to walk, but there you go. A judge in S.D. Cal. [reached the opposite result](#) in a case involving school board members, but noted that certain conduct could warrant a temporary block as a "time, place, or manner" restriction. And a [new lawsuit](#) in D. Colo. accuses a state representative of violating the First Amendment rights of an individual she blocked on Twitter.

In other news, amici are [weighing in](#) on a fight in the Second Circuit over a gag order from the U.S. government to Microsoft forbidding the company from informing a cloud services customer about a federal demand for the customer's data.

A judge in S.D.N.Y. who issued an order that required search engines and websites to scrub docket information regarding an employment discrimination lawsuit apparently remembered that we're not governed by the European GDPR and [reversed her own order](#). Troublingly, the judge seems like she was still conceptualizing the issue [as one of access to judicial records](#) as opposed to a straight-up prior restraint on publication by third parties of information already in the public eye.

As usual, we have a bunch of cases involving orders forbidding people from talking about litigation or opposing parties online. Florida's appeals court [flipped](#) a wildly overbroad injunction, the Ohio Supreme Court [agreed to hear argument](#) on another such order, the Pennsylvania Supreme Court somehow [decided](#) that such an order was "content-neutral" (easily winning this month's [Inigo Montoya Award](#)), and a Washington appellate panel [held](#) that disseminating public records is not conduct that can support an antiharassment order.

F. Online Access to Government Information

In a [new pilot program](#), 13 federal district courts will start livestreaming hearings in cases "of public interest." Of course, we've already had a taste of that multiple times in 2020 thanks to the pandemic.

Speaking of live-streamed proceedings, I share [Mike Masnick's puzzlement](#) as to how a judge in the Northern District of Georgia can stream the audio of a hearing live on YouTube and think it is legal to prohibit the public from recording or using the audio. It's not copyrighted (as a work of the federal government – and in any event there would be a strong fair use argument), there's no possible interference with the proceeding itself (as has justified other courtroom restrictions

on recording), the information contained in the recording is now a matter of public knowledge...can anyone think of a reason that this doesn't violate the First Amendment?

Finally, lawmakers and judges are [butting heads](#) over the idea of providing free access to federal court records. The House, meanwhile, passed a [bill](#) back in December that would require public online access to such records at the time they are received and reduce prices (though of course this legislative effort will need to be restarted in the new Congress).

VII. Global

This issue is running very long, so I'll be doing a link roundup for our international section this month. However, before I do, I want to note what seems like a major turning point in one story that I've been following for quite a while now – the saga of the Open Technology Fund, which supports technological resources to fight censorship around the world.

With time running out on the clock before the Biden administration took over, Trump-appointed head of the U.S. Agency for Global Media Michael Pack [issued a notice](#) in December that USAGM would terminate federal funding for OTF; he later [withdrew and reissued that notice](#) at the end of the month without explanation, putting OTF's deadline to appeal the notice beyond the end of President Trump's term in office. Pack then [resigned](#) at President Biden's request on January 20.

A. Europe

The big news this month is the drop of the [Digital Services Act](#) and the [Digital Markets Act](#), two new proposals that would [dramatically rework digital policy](#) in the EU with a focus on reining in tech giants.

Other stories:

- [A New CJEU Judgment on Copyright-Related Geoblocking – One Step Forward or One Step Back in the EU Commission's Fight Against Geoblocking?](#)
- [Europe will push to work with the US on tech governance, post-Trump](#)
 - [EU chief warns over 'unfiltered' hate speech and calls for Biden to back rules for big tech](#)
 - [EU lawmakers want Amazon, Apple, Facebook, Google CEOs at Feb. 1 hearing](#)

- [Europe to put forward rules for political ads transparency and beef up its disinformation code next year](#)
- [Automatic, Mozilla, Twitter and Vimeo urge EU to beef up user controls to help tackle 'legal-but-harmful' content](#)
- [E.U. Privacy Rule Would Rein In the Hunt for Online Child Sexual Abuse](#)
- [EU member states, MEPs agree to take terror content down](#)
- [EU Council wants secure encryption and lawful data access](#)
- [Google and IAB adtech targeted with more RTB privacy complaints](#)
- [Europe clears Google-Fitbit with a ten-year ban on using health data for ads](#)
- [WhatsApp-Facebook data-sharing transparency under review by EU DPAs after Ireland sends draft decision](#)
- [Valve and five PC games publishers fined \\$9.4M for illegal geo-blocking](#)

B. Algeria

- [Algerian Jailed for 3 Years for Political Protest Memes](#)

C. Australia

- [High Court to hear appeal over controversial Facebook defamation ruling](#)
- [73-year-old man awarded \\$120,000 for defamatory Facebook posts by churchgoer](#)
- [Dustin Martin's manager sued for tweet](#)
- [Australian MP targeted by conspiracy posts calls for Facebook to be treated as publisher](#)
 - [Australian MP seeks prison term over Northland woman's 'heinous' Facebook posts](#)
- [ABC, SBS included in news media code as tech giants win concessions](#)
 - [Google says Australian law on paying for news is unworkable](#)

- [Are you part of Google's search experiment? Thousands are secretly blocked from reading Australian news sites as tech giant gears up for a huge fight to avoid paying for content](#)
- [US attacks Australia's 'extraordinary' plan to make Google and Facebook pay for news](#)
- [Facebook asks Australia to let it make content deals with news outlets before being hit with media code](#)
- [An Australia With No Google? The Bitter Fight Behind a Drastic Threat](#)
- [Google 'could launch a news website in Australia within weeks in bid to dodge new laws forcing them to pay for content'](#)
- [Researchers, librarians, filmmakers and teachers are waiting for the copyright reforms the government has promised](#)
- [Facebook claims it does not conduct business in Australia in Cambridge Analytica appeal](#)

D. Brazil

- [Swift backlash for students targeting misinformation](#)
- [Bolsonaro's Son Ordered to Pay Damages to Journalist](#)

E. Canada

- [Trudeau wants to turn back clock on free speech](#)
 - [Heritage Minister says takedown rules coming, welcomes calls for new social-media regulator](#)
- [Blanchet's choice to block critics on Twitter limits free speech: experts](#)
- [Court Dismisses Domain Name Conspiracy Case](#)
- [B.C.'s top court can hear Twitter defamation case after jurisdiction battle](#)

F. China

- [China Orders Removal of 105 Apps, Including Tripadvisor](#)
- [China fines Alibaba, Tencent's e-book subsidiary over anti-trust violations](#)
- [Thousands of internal documents reveal how China censored its internet in the early days of the pandemic](#)
- [China's internet regulator takes aim at forced data collection](#)
- [China is introducing tighter regulations for livestreaming](#)
- [Hong Kong police use national security law for first time to block access to website recording anti-government protests, officers' details](#)
- [A Hong Kong Website Gets Blocked, Raising Censorship Fears](#)
- [China Includes State Journalists' Social Media Posts in Vetting Process](#)

G. Cuba

- [Cuban authorities harass journalists, block social media amid protests](#)

H. Czech Republic

- [Google faces \\$417 million claim from Czech search engine Seznam](#)

I. Democratic Republic of Congo

- [A security researcher commandeered a country's expired top-level domain to save it from hackers](#)

J. Egypt

- [Prison sentences overturned for TikTok influencers](#)

K. France

- [French watchdog fines Google, Amazon for breaching cookies rules](#)
- [Google, French publishers sign copyright news payment deal](#)
- [Macron Tells Google and Microsoft to Get On Board With EU Rules](#)

L. Germany

- [German regulators launch new Facebook investigation over VR](#)
- [German secure email provider Tutanota forced to monitor an account, after regional court ruling](#)
- [The Doctor vs. #MeToo](#)

M. Hungary

- [Hungary mulls sanctions against social media giants](#)

N. India

- [Court Restrains Shehla Rashid's Father, Media From Publishing Defamatory, Private Content About Her](#)
- [WhatsApp faces legal challenge over privacy in its biggest market](#)
- [How farmers are reclaiming their narrative through social media](#)
- [India retains ban on TikTok, UC Browser and 57 other Chinese apps](#)
- [Twitter restricts over a dozen high-profile accounts in India following 'legal demand'](#)

O. Iran

- [Iranian teenager who posted distorted pictures of herself is jailed for 10 years](#)

P. Ireland

- [Facebook's EU-US data transfers face their final countdown](#)
- [Twitter fined ~\\$550k over a data breach in Ireland's first major GDPR decision](#)
- [Social media giants could face hefty fines amounting to billions of euro under new online safety rules](#)

Q. Italy

- [TikTok has until Friday to respond to Italy's order to block users it can't age-verify after girl's death](#)

R. Kazakhstan

- [Kazakhstan spies on citizens' HTTPS traffic; browser-makers fight back](#)

S. Myanmar

- [Myanmar Satire Performer Gets Six Months Added to Sentence For Mocking Army](#)
- [Internet connectivity drops in Myanmar after the military detains Aung San Suu Kyi and other leading politicians](#)

T. New Zealand

- [Lawyer acquitted of serious charges loses bid to keep name secret](#)

U. Norway

- [Grindr Fined in Europe Over Sharing of User Data](#)
- [Can't figure out how to end your Amazon Prime sub? These complaints could help...](#)

V. Pakistan

- [Pakistani Court Sentences 3 Men to Death for Blasphemous Online Content](#)

- [Pakistan journalists face charges for criticizing military](#)

W. Philippines

- [Maria Ressa again charged with cyber libel, seeks case dismissal](#)
- [Ressa, Rappler reporter charged with cyber libel over ‘Thesis for sale’ story; post bail](#)

X. Poland

- [Poland proposes social media 'free speech' law](#)

Y. Russia

- [Russia Fines Google for Failing To Remove Banned Content](#)
- [Russia moves to curb internet following investigative reports on Navalny poisoning](#)

Z. Singapore

- [Court awards \\$60,000 in damages to blogger in defamation suit](#)

AA. South Korea

- [Korea to tighten grip on global internet giants amid service complaints](#)

BB. Thailand

- [Twitter suspends Thai royalist account linked to influence campaign](#)
- [Woman Is Sentenced to 43 Years for Criticizing Thai Monarchy](#)
- [Dozens Face Criminal Complaints in Thailand, Accused of Insulting the King](#)

CC. Turkey

- [Turkey’s Spat With Social-Media Heavyweights Brings Ad Ban Fears](#)

- [Turkey fines social media giants for not complying with new law](#)
- [Turkey slaps ad ban on Twitter under new social media law](#)
- [YouTube bows to pressure to set up Turkey office](#)
- [TikTok joins social media platforms appointing representatives in Turkey](#)
- [Facebook starts process of appointing Turkey representative](#)

DD. Uganda

- [Uganda Blocks Facebook Ahead of Contentious Election](#)

EE. United Kingdom

- [UK Judge Blocks Assange's Extradition to U.S., Citing Mental Health Concerns](#)
 - [British court rejects U.S. extradition request for WikiLeaks' Julian Assange](#)
- [UK Online Harms Bill, coming next year, will propose fines of up to 10% of annual turnover for breaching duty of care rules](#)
 - [Online Safety Bill: Social media companies face big fines for unsafe content, but news media exempt](#)
 - [Why the Online Harms Bill could lead us into a new era of sinister state censorship](#)
- [Facebook to move UK users to California terms, avoiding EU privacy rules](#)
- [Competition watchdog to investigate Google's plans to build cookie-less web after publisher revolt](#)
- [GDPR Watchdog warns all UK companies involved in adtech to 'urgently assess how they use personal data'](#)
- [Rachel Riley wins libel case against blogger over 'harassment campaign' article](#)
- [Channel 4 Deepfake Queen complaints dropped by Ofcom](#)

- [Mother who called transgender woman a ‘pig in a wig’ wins appeal case](#)

FF. Venezuela

- [Venezuela wields a powerful 'hate' law to silence Maduro's remaining foes](#)

GG. Vietnam

- [Vietnam Arrests Journalists for Tollbooth Scheme Criticism](#)
- [Vietnam Jails Blogger and Critic Pham Chi Dung for 15 Years](#)
- [Facebook and YouTube accused of complicity in repression](#)

HH. Zimbabwe

- [Zimbabwe journalist Chin'ono vows 'fight' for media rights from prison](#)

VIII. Miscellaneous

The Supreme Court has [agreed to hear an appeal](#) in the case of a cheerleader who was disciplined by her school after posting a Snapchat story in which she complained about not making the varsity squad by flipping off the school and saying “Fuck cheer, fuck everything.” The cheerleader won her First Amendment case at both the district court and the Third Circuit.

The Supreme Court [denied cert](#), however, on a [First Amendment claim](#) related to a rent-bidding website for landlords and prospective tenants.

The Fifth Circuit [certified a question](#) to the Texas Supreme Court in a product liability case as to whether Amazon places products into the stream of commerce or merely facilitates the stream. Meanwhile, the Ninth Circuit [held](#) that “[w]hile Amazon provides a website for third-party sellers and facilitates sales for those sellers, it is not a ‘seller’ under Arizona’s strict liability law” for the purposes of a product liability-related claim related to so-called hoverboards.

The Tenth Circuit held that a trial court properly admitted [evidence of six memes](#) posted by the defendant praising “pimping culture” in his prosecution for enticement into, and facilitation of, prostitution.

We'll end with the tales of two lawyers in trouble, one in Nevada for [allegedly forging a court order](#) to suppress online criticism, and one in Tennessee for [posting instructions on Facebook](#) on how to make one's exercise of deadly force look like self-defense.

* * *

That's all, folks, both for 2020 and for this issue. Ordinarily, for an issue that wraps up a year, I'd include some retrospective links here. But as the myth of Orpheus teaches us, sometimes it's a bad idea to look back.

See y'all next time.