

The MLRC Digital Review

Reporting on developments in digital media law and policy

by Jeff Hermes

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Hi folks! Sorry this one's a bit later than usual – I hope you all enjoyed our *Legal Frontiers in Digital Media* conference in May (and our follow-on session about the *Van Buren* case). If you missed it, the recordings are coming.

This was a fairly light month and I thought about just wrapping May into next month's article, but we do have a few developments I thought worth noting sooner rather than later. The biggest of these is that Florida has veered into full-on political theater with the passage of a new law prohibiting social media platforms from blocking certain political candidates and news organizations and restricting moderation efforts as to other users. The likelihood of the law surviving a pending Section 230/First Amendment challenge is extraordinarily slim, but of course that's not the point of this exercise.

The point (besides virtue signaling to the anti-tech crowd) is to provide a clear test case arguing the Trumpian interpretation of Section 230 (see last year's social media executive order) and/or the wacky theory that Section 230 violates the First Amendment as state-sponsored censorship, as well as the various theories that have been floated to limit platforms' editorial discretion under the First Amendment.

To be clear, those theories have never succeeded in any lower court and there's no sign that any Supreme Court justice other than Justice Thomas would be open to them. Nevertheless, a Supreme Court decision that upholds Section 230 preemption and punts on the First Amendment – to my mind the most likely result if the Court were to take the case – would be the perfect fuel for Congress to push through 230 reform. At the very least, we'd get yet another lengthy piece from Thomas about his particular view of digital space, which might even relate to the case actually before the Court.

Anyway, let's begin.

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I. Privacy

A. Anonymity

Court documents unsealed this month [revealed](#) that the Trump DOJ had issued a subpoena to Twitter last November for the identity of the operator of Devin Nunes parody account @NunesAlt; Twitter [moved to quash](#) in D.D.C. in March, and the DOJ withdrew the request. It later came out that the DOJ was interested not in the operator of the account, but another user who [allegedly posted a threat](#) to Sen. McConnell that was amplified on the parody account.

After a blogger was compelled to reveal her sources following a ruling in Arkansas state court that she was not protected by the state’s shield law, the [sources are being drawn into discovery](#) in the underlying defamation case against the blogger.

B. Personal Information

Plaintiffs failed for the fourth time to state claims against Facebook related to the alleged surreptitious collection of metadata related to users’ calls and texts, with a judge in N.D. Cal. [ruling](#) that the California Invasion of Privacy Act covers only the content of communications and not metadata; nevertheless, the plaintiffs were given a shot at yet another amended complaint. In the same court, a federal magistrate [ruled](#) that a plaintiff had sufficiently alleged that Google deceptively failed to disclose its data collection processes with respect to Android users' use of

non-Google apps, but privacy claims that were bounced in a prior iteration of the complaint and not amended were again dismissed.

Prof. Goldman has a [roundup](#) of decisions under California's relatively new California Consumer Privacy Act, including a May [decision](#) in N.D. Cal. denying a motion to dismiss a CCPA claim against stock-trading app Robinhood over a security breach allegedly leading to a theft of funds.

A radio host who was briefly sued by former Rep. Katie Hill for allegedly participating in a conspiracy to violate California's revenge porn law (by receiving photos and informing the public about their content) was [awarded](#) almost \$30,000 in attorneys' fees in Los Angeles Superior Court. The fees relate to a motion to dismiss that the radio host filed but was not heard because Hill dropped him from the case.

Mississippi [passed](#) a new revenge porn law that will take effect on July 1st. A Texas appellate panel flipped a lower court ruling that the Lone Star state's revenge porn law violated the First Amendment, [holding](#) in an unsigned opinion that the law survived strict scrutiny.

Senator Amy Klobuchar led a bipartisan group in reintroducing the Social Media Privacy Protection and Consumer Rights Act, a [bill](#) that would allow users to opt out of data tracking and collection and require platforms to provide plain language explanations of how customers' information is used. Meanwhile, last year's anxiety over TikTok as a potential national security threat persists in a new bill to bar federal employees from downloading the app onto government devices; the bill recently received the [unanimous approval](#) of the Senate Homeland Security and Governmental Affairs Committee.

C. Children's Privacy

A [new federal bill](#) would expand the protection of the Children's Online Privacy Protection Act, by among other things enlarging the covered age range to include 13 to 15-year-olds and changing the knowledge standard that triggers the statute from actual knowledge that children are present to "reasonable knowledge."

State and territory attorneys general are not happy with Facebook's development of a version of Instagram for users under 13 years old, as over 40 AGs [made clear](#) to the company. Facebook responded that it was trying to provide a space for children who were already online that allowed parents greater oversight and control.

D. Rights of Publicity

In February, former professional athlete Lenwood Hamilton [petitioned](#) the U.S. Supreme Court for a writ of certiorari on a decision of the Third Circuit [holding](#) that the use of his persona in

video game franchise Gears of War was protected by the First Amendment as a transformative use. Microsoft has now [opposed](#) the petition.

A judge in N.D. Ill. [held](#) that insurer First Mercury had a duty to defend the operator of a strip club against claims that it used models' images without their permission to promote the club on Facebook and Instagram. The court found that the claims arguably fell within the operator's coverage for "personal and advertising injury."

E. Biometrics

F. Manipulated Media

Nothing to report in these sections this month.

G. Hacking, Scraping & Data Breach

Yes. *Van Buren*. Next month.

A Russian hacker was [sentenced](#) in S.D. Cal. to 2½ years in prison for running an online market for stolen credit card information and other hacked data.

Fullerton, California, has [dropped](#) a hacking lawsuit against two bloggers. The city filed the suit in California state court in the false belief that files the city had posted online and that were obtained by the defendants had been protected by access restrictions. Turns out that wasn't the case, oops. The city paid \$350,000 to the defendants and their lawyers in settlement.

Sometimes you just need to exercise the right to publish works that were created by employees of the federal government and that are therefore in the public domain, see 17 U.S.C. § 105(a), so I'm just going to quote [this press release](#) from the DOJ out of E.D. Mich.: "Four Eastern European nationals have pleaded guilty to conspiring to engage in a Racketeer Influenced Corrupt Organization ... arising from their providing 'bulletproof hosting' services between 2008 and 2015, which were used by cybercriminals to distribute malware and attack financial institutions and victims throughout the United States." In this context, "bulletproof" means aiding and abetting their clients by helping them to evade detection by law enforcement.

Finally, the ransomware hack of Colonial Pipeline drew attention to how serious these profit-driven attacks on infrastructure are becoming. This has led to law enforcement urging victims not to pay in order to dry up the profits, and even [proposals](#) that paying ransom should be made illegal.

H. Other Intrusion

Nothing to report this month.

II. Intellectual Property

A. Copyright

The Supreme Court [denied cert](#) in a case involving the question of jurisdiction under the Copyright Act where material is stored in the U.S. but downloading is initiated in another country and all infringing activity takes place there. We also have a pair of articles in the Nevada Law Review reflecting on the copyright and other IP jurisprudence of Justices [Thomas](#) and [Ginsburg](#).

The Ninth Circuit [held](#) that a district court judge properly refused to certify a class in a lawsuit against Warner Music over streaming royalties, holding that the lead plaintiff's contract was not representative of the asserted class.

A bunch of new lawsuits in C.D. Cal. this month. ISP Cox Communications [sued](#) two rights management and enforcement companies, alleging that they abused DMCA copyright notices to build an exaggerated impression of copyright infringement by Cox's users. A proposed class of photographers [sued](#) Instagram, alleging that a surprise announcement last year by a company representative that its terms of service do not grant a license to embed user content established that the company was secondarily liable for facilitating user infringement via the embed function. Finally, social video app Triller [filed](#) a trio of lawsuits against entities that it alleges illegally streamed a boxing match; the separate suits reinstate claims that were dismissed after a court held that it would be prejudicial to bundle all of the defendants into one case.

A judge [awarded](#) the defendant in a Richard Liebowitz case more than \$20K in attorneys' fees following a ruling that the case was filed in D. Colo. without any good-faith basis for asserting personal jurisdiction over the defendant there. Meanwhile, a Liebowitz client in M.D. Pa. dodged an award of attorneys' fees after his case was dismissed following the revelation that Liebowitz was not actually admitted to practice in the district; the court [held](#) that dismissal was sanction enough, noting that fee awards in other cases had not curbed Liebowitz's bad behavior. The court separately [refused](#) to reconsider dismissal, holding that the fact the client might have been unaware of Liebowitz's history of misconduct was no excuse.

The holder of a massive library of Mexican and Latin American movies [sued](#) YouTube in S.D. Fla., alleging that the company is liable for infringement by users.

In S.D.N.Y., a member of a prolific content piracy group who cut a deal with prosecutors was [sentenced](#) to time served, supervised release, and \$54,000 in restitution to the MPA. In the same court, Richard Liebowitz and his firm outsourced a copyright [lawsuit](#) brought on behalf of Rachel Dolezal against CBS Interactive over a photo to another law firm (presumably because Liebowitz himself can't appear there for the time being).

Finally, in S.D.N.Y., we have a [summary judgment ruling](#) in the extraordinarily long-running copyright dispute between Capitol Records and video platform Vimeo; the decision applies the “red flags” standard established by the Second Circuit earlier in the case (in 2016) and finds that Capitol for the most part failed to meet its burden. The only videos still at issue are 26 items uploaded directly by Vimeo employees.

B. Trademark

The Eighth Circuit recognized the initial interest confusion doctrine in a dispute between mattress companies over online marketing, in an [opinion](#) that led Prof. Goldman to [comment](#): “This exposes the Achilles heel of common law jurisprudence—it’s apparently perfectly acceptable to cite decades-old cases that were based on judicial intuition for empirically testable propositions that aren’t actually empirically supportable.” Amen.

Heading over to the Tenth Circuit, the Court of Appeals [revived](#) some trademark claims against Bank of America over a mobile banking app called "ERICA," holding that the district court applied an improper "actual use" test to the plaintiff's use of the mark.

C. Patent

Affirming a PTAB post-grant review decision, the Federal Circuit [held](#) in a case against Tencent’s Supercell gaming subdivision that the claims of a GREE patent for a computer gaming control interface were directed toward an abstract idea and did not include any inventive step. On the other hand, GREE scored a [jury verdict](#) in E.D. Tex. in excess of \$92 million against Supercell in another case over “freemium” technology in video games.

The Federal Circuit [held](#) that a district court judge should have granted a motion to dismiss in a case over a patent for targeting advertisements based on TV watching across multiple screens because the patent claims were directed to an abstract idea.

In D. Del., we have a new [throwdown](#) against World Wrestling Entertainment over technology that smooths out the rough patches in streaming video for folks with reduced connection speed. In D. Mass., a district judge [ruled](#) that five patents covering methods of allowing multiple users to interact in virtual spaces were directed toward abstract ideas and therefore invalid, letting defendant Activision Blizzard off the hook in a lawsuit over its multiplayer videogames.

In W.D. Tex., TikTok pulled off a near-miracle by persuading a judge to [transfer a patent case](#) against the company to the Northern District of California. Texas, voluntarily letting go of a patent case? Oh my.

Finally, in W.D. Wash., the judge in the first patent jury trial conducted on Zoom, involving a claim against Valve Corp. over the design of a video game controller, [held](#) that a verdict against the company was supported by the evidence.

D. Trade Secrets/Misappropriation/Conversion

Nothing to report this month.

III. Platform Management

A. Section 230

The Ninth Circuit [held](#) that Snap was not protected by Section 230 on a defective design claim, in a case brought by the families of people who died in a car accident while recording themselves using Snapchat's "Speed Filter." The Court held that the claim was explicitly not premised on content published by the deceased, as opposed to the design of the app which allegedly led them to undertake reckless behavior. Shortly thereafter, Snap was again [sued](#) on a defective design theory in N.D. Cal. over two apps available on the platform which enabled anonymous messaging and were allegedly used to bully a teenager into suicide; Snap suspended the apps in the wake of the suit.

A judge in E.D. Va. [ruled](#) that Section 230 precluded a Fair Credit Reporting Act claim against a website that aggregates government records and allegedly failed to comply with FCRA.

President Biden [revoked](#) President Trump's executive order on social media, which as you will recall attempted to undermine Section 230 by calling on the FCC to "interpret" the statute. While Trump's order had few direct results thanks to his loss in November, that [doesn't mean](#) it had no effect at all.

We also have a [new bill](#) to amend Section 230. The Online Consumer Protection Act would bring concepts from privacy policy regulation to the field of content moderation, requiring websites to post a "Consumer Protection Policy" containing all sorts of information about a site's moderation practices and opening websites up to liability for failure to comply with what they post. Mike Masnick would, as usual, be pleased to explain the [problems with the bill](#).

B. Elections & Political Advertising

Nothing to report this month.

C. Content Moderation

Alas, a judge in N.D. Cal. has [ruled](#) that Twitter's lawsuit against Texas AG Ken Paxton was premature. As you might recall, Twitter sued claiming that Paxton's attempt to demand

documents from the company was in retaliation for the company's exercise of its First Amendment rights in kicking Donald Trump off the platform. The court found that since Paxton could not directly enforce his demand and had not yet attempted to go to court to do so, Twitter's claim was not yet ripe. The MLRC joined an amicus brief in the case arguing that government retaliation for moderation decisions threatens editorial discretion across all media.

That's not the last time that the MLRC will be making that argument. Florida has passed a [new law](#) that would compel social media platforms with more than 100 million monthly users (but, in a very Florida twist, not including companies that own theme parks) to host the speech of political candidates, backed up by state AG enforcement under Florida's unfair trade practices statute and with a private right of action to boot. The law also bans restrictions on "journalistic enterprises" and limits the "shadow-banning" of other users.

The law is, of course, [blatantly unconstitutional](#) (and also [preempted](#) by Section 230), though we're seeing some [confused invocation](#) of the government's ability to regulate broadcast frequencies in defense of the measure. The law has already triggered a [lawsuit](#) from the tech industry in N.D. Fla.; the media amici who weighed in on *Twitter v. Paxton* (including the MLRC) will be back to make a similar point here. Louisiana's Senate decided not to follow Florida down the rabbit hole, [rejecting](#) a similar bill. Legislators in [New Jersey](#) are still pursuing the white rabbit.

Speaking of banning politicians, Facebook's Oversight Board [found](#) that the company properly excluded Donald Trump from the platform; however, it said that an "indefinite" ban was problematic, giving the company six months to let him back on, ban him permanently, or set a specific duration on the ban. (Spoiler for next month: Facebook [continued the ban](#) in response, subject to review after two years.) For more commentary on the decision we have: an [internal report](#) from a member of the FOB; Prof. Goldman [discussing](#) the FOB's analysis of remedies; a [view](#) of the FOB proceeding as a model for private governance of online spaces; and a [comparison](#) of the FOB's role to that of the European Court of Human Rights rather than the U.S. Supreme Court. I rather like that last one.

Trump, of course, [launched](#) his own blog in order to keep talking online, which some commenters analyzed as a workaround for his social media bans by offering bite-sized items that others could repost or tweet. It [didn't work](#), and (though we're getting ahead of ourselves slightly again) the blog was [shuttered](#) less than a month after its launch in the face of strikingly low readership.

Finally, Parler [will return](#) to Apple's App Store, having vowed to create a more heavily moderated version of its app for iOS devices. Great, so now we're politicizing the iPhone/Android divide too. Sigh.

D. Terms of Service & Other Contracts

Nothing to report this month.

IV. Other Content Liability

A. Defamation

A magistrate judge [denied](#) a preliminary injunction in a libel lawsuit over allegedly defamatory material posted to social media, holding that injunctive relief is not available until after a final adjudication on the merits. I remain not entirely convinced that injunctive relief is permitted under the First Amendment even after trial (my objections have to do with the limited capacity of a jury to adjudicate truth, and what that means for permissible remedies), but I recognize that the tide is turning against me on that one.

Former Trump spokesperson Jason Miller is [on the hook](#) for \$42,000 in attorneys' fees expended by G/O Media in defending a libel suit in S.D. Fla., over a story that the Eleventh Circuit held in April was protected by the fair report privilege.

In a default judgment in D.N.J., a judge [ordered](#) the defendant to stop posting online that the plaintiff was engaged in "high witchcraft" and other associated unsavory practices involving people and pieces thereof. Huh. Been a while since I've seen a case involving allegations of sorcery.

Infowars, Alex Jones, and Roger Stone [secured the dismissal](#) of a libel suit in W.D. Tex. filed by lawyer Larry Klayman and political pundit Jerome Corsi over statements that Klayman "could be the single worst lawyer in America" and that Corsi "seemed to be extremely mentally degraded to the point of . . . dementia," among other comments. If you're thinking rhetorical hyperbole/opinion with a dash of truth and a side order of failing to plead actual malice, you're right.

Iowa's Court of Appeals [affirmed](#) a jaw-dropping \$11 million verdict in favor of an automotive tuning company and its CEO on claims that they were, among other things, defamed by social media posts by a former employee. Well, that's what happens when the defendant persists in defying court orders and is sanctioned by not being allowed to present a defense. Prof. Volokh [notes](#) an interesting twist in the case involving the defendant's threat to create a "social media stink" if he did not receive a severance payment, for which the jury awarded the plaintiff \$250,000 on a claim for extortion.

In New York's trial court, a judge [ruled](#) on summary judgment in a libel suit filed by a construction company against a blogger that the state's new anti-SLAPP law is retroactive. Cool. In the same court, we have a [new lawsuit](#) alleging that it was defamatory to say on Twitter that a disbarred lawyer (and self-described "rapper and activist") was working with police at a protest.

The Supreme Court of Ohio has [granted review](#) on the question of whether a Cincinnati cop can sue for libel under a pseudonym, after the plaintiff obtained orders below prohibiting the defendant from naming him publicly.

In the state courts of Pennsylvania, a psychologist won a [\\$5 million libel verdict](#) against a dominatrix who instructed one of her clients to defame the plaintiff online; as it turns out, the dominatrix and the psychiatrist had previously dated before what one can only imagine was a bad breakup. Also in Pennsylvania, we have a [new suit](#) filed by a New Jersey jewelry store against a Philly competitor over alleged defamation in a TikTok video. Is this the first TikTok defamation suit we've seen? I can't recall. If Twitter libel is, ugh, "twibel," what does that make this? (No, don't tell me, I don't want to know.)

A Republican candidate for Virginia's lieutenant governor filed a [new lawsuit](#) in state court alleging that he was defamed by a text message calling him a "gay Democrat." Wonder which offends him more. He's also seeking to uncover the identity of the anonymous sender, so we might be seeing this case again soon up under Anonymous Speech.

Finally, and happily, Washington state has a [new anti-SLAPP law](#), the first such law based on the Uniform Public Expression Protection Act. Woo-hoo!

B. Commercial Speech

No, it [doesn't violate the Lanham Act](#) when Facebook labels your pages as "Russia state-controlled media," when you fail to plead how Facebook's labels were in any sense commercial speech. It might be defamation, but that's a state claim over which a judge in N.D. Cal. declined to exercise supplemental jurisdiction.

The FTC has [sued](#) Frontier Communications in C.D. Cal. for advertising and indeed selling internet service at higher speeds than it was actually capable of providing. Ah, yes, I love my aspirational broadband connection. The FTC has also been [taking action](#) recently to encourage Amazon to crack down on fake review schemes on its site.

C. Threats, Harassment, and Incitement

A Connecticut teen was [arrested](#) under a statute prohibiting advertisements that "ridicule[] ... any person .. on account of ... color ... or race" for posting a photo on Snapchat including a racist comment about a Black classmate. I believe the term is *headdesk*.

A case of doxing led a Washington court to prohibit a defendant from posting "defamatory and harassing" posts about state judicial officials; this month, an appellate panel [reversed](#) the order, finding it an unconstitutional prior restraint.

V. Infrastructure

A. Accessibility

New York passed a new law requiring ISPs to offer \$15/month broadband service to low income households, and was [sued](#) in E.D.N.Y. by cable groups alleging that this was rate-setting preempted by federal law. (Spoiler: The court [preliminarily enjoined](#) the law from going into effect.) But if that doesn't work, then at least there might be some relief from high broadband bills from [\\$10B in aid](#) that the federal government has made available to folks in financial difficulty through two programs administered by the FCC.

B. Antitrust

Epic's antitrust lawsuit against Apple [went to trial](#) this month in N.D. Cal.; the case involves both the market for in-app purchases through the App Store and the restrictive nature of the App Store itself, which is the only way for most users to get apps for iPhones. Epic [argued](#) that Apple's walled garden was an attempt to monopolize the app market for its devices; Apple [argued](#) that it was necessary to ensure the quality of iOS apps and the safety of users, saying that customers had a choice between its curated environment and the free-for-all of the Android platform. The [mid-trial commentary](#) seemed to suggest Apple had the upper hand, and Tim Cook himself [testified](#) as the last witness in the case about Apple's privacy and safety goals and the economics of its business model. The [closing arguments](#) presented two separate dire visions of the future, market domination by a digital behemoth or a privacy nightmare for Apple customers.

Sony is now facing a similar claim in N.D. Cal. with a putative class action [lawsuit](#) accusing it of monopolizing the market for digital PlayStation video games. Meanwhile, an [amended complaint](#) against Valve over its Steam video game marketplace will be [transferred](#) from C.D. Cal. to the Western District of Washington after certain game developers were dropped from the suit.

Google's motion to transfer venue in an antitrust lawsuit filed against it in E.D. Tex. by state attorneys general was [denied](#), with the judge ruling that Google hadn't shown that California was more convenient and that attempts to combine the case with other pending antitrust actions filed by private parties could cause unnecessary delay. Meanwhile, in N.D. Cal., a judge [found](#) in a putative class action over Google's role in the online advertising market that the plaintiffs' definition of the market required additional explanation to avoid being too narrow and that the complaint did not set forth how Google engaged in anticompetitive acts; the court dismissed the case with leave to amend.

Finally, Amazon is facing a new antitrust [suit](#) in D.C. Superior Court alleging that the company prevents third-party sellers from offering the same products at lower prices on other sites.

C. Net Neutrality

A challenge by ISPs to Vermont's net neutrality law has been [stayed again](#) in D. Vt., with the parties agreeing to wait and see what happens with the pending lawsuit over California's net neutrality law.

New York's AG [issued a report](#) this month finding that an industry group representing the nation's largest ISPs funded and coordinated a campaign to flood the FCC with 8.5 million fake comments against net neutrality during the open comment period on the Restoring Internet Freedom Order (the FCC order that did away with Wheeler-era net neutrality).

D. Domain Name System

E. Taxation

Nothing to report in these sections this month.

F. Wire & Wireless Deployment

The White House has been [haggling](#) with Republicans in Congress to get to yes on President Biden's massive infrastructure bill, which, among other goals, is intended to address the digital divide in broadband service across the country. There's a [question](#), however, as to whether there's actually consensus as to how to solve that problem even if Congress can agree on the numbers.

G. Artificial Intelligence & Machine Learning

Nothing to report this month.

H. Blockchain & Cryptocurrency

The cryptocurrency frenzy has led to an [explosion of new media websites](#) covering the topic. eBay is [getting in on the NFT craze](#), becoming the first major platform to allow NFT sales across its site, while Fox is [launching](#) its own NFT company in conjunction with a new animated series "curated on the blockchain." (No, I don't know what it means either.)

And finally, the estate of Jean-Michel Basquiat [stepped in to shut down](#) the sale of an NFT version of one of the famed artist's drawings, noting that the estate retained the copyright to the original work. (Never mind that the NFT seller offered to destroy the original, leaving the NFT the only extant authenticated version – something that could cause VARA problems given that the work was created before 1990, *see* 17 U.S.C. §§ 106A(a)(3)(B), 106A(d)(2).)

VI. Government Activity

A. Data Surveillance, Collection, Demands, and Seizures

An Illinois appellate panel [held](#) that police violated the Fourth Amendment rights of the defendant in a drug/gun case where they seized his phone and held it for sixteen months before obtaining a warrant to search the device.

Yahoo News has a deeper and more surprising [dive](#) into the tools used by the U.S. Postal Service to surveil the online activities of American citizens. The U.S. Postal Inspection Service defends the pervasive surveillance program as a method of protecting its postal workers, which of course does not cure the looming First and Fourth Amendment issues.

Not that USPS is the only branch of the federal government snooping on U.S. citizens' online behavior, of course; a [letter](#) recently sent by Sen. Ron Wyden indicates that the Pentagon has also been engaged in a little warrantless data mining lately.

B. Encryption

Nothing to report this month.

C. Biometric Tracking

After negotiating a threatened veto from Governor Charlie Baker, Massachusetts' legislature [passed a law](#) placing limits on police use of facial recognition, which now requires a court order in certain circumstances. Gov. Baker had promised to veto an earlier version of the bill that he interpreted as a "ban."

Amazon has [indefinitely continued its moratorium](#) on selling facial recognition to law enforcement, and is urging Congress to create rules around government use of the technology.

D. Domain Seizure

Nothing to report this month.

E. Content Blocking & Prior Restraints

Facing a lawsuit in W.D. Tex., Texas AG Ken Paxton [unblocked](#) nine plaintiffs whom he had blocked on Twitter. He didn't unblock anyone else, of course, suggesting that this is less about complying with the First Amendment and more about attempting to pull the teeth from the pending complaint.

eBay is [now offering](#) certain trusted government authorities the direct power to remove listings for unsafe items from its marketplace without consulting with eBay. I know I'm jumping ahead,

but I wonder whether the ruling in *Van Buren* will give the company pause about this decision, given what occurred in that case with a government official abusing access to a digital tool.

F. Online Access to Government Information

The Massachusetts Supreme Judicial Court [held](#) that conducting an evidentiary hearing on Zoom in a criminal matter does not violate the defendant's various constitutional trial rights, though the SJC suggested that waiting for a live hearing probably wouldn't have posed a problem in the case at bar. There's plenty of interesting stuff in here about the differences in evaluating witnesses that appear in person as opposed to by video link.

(Random historical note: Why is Massachusetts' high court called the Supreme *Judicial* Court? Well, the Massachusetts legislature is formally named the "General Court of Massachusetts" for reasons dating back to the colonial era, so without getting too deep into the weeds it's a way of distinguishing the branch of government in question...the SJC dates back to 1692 when it was established as the Massachusetts Superior Court of Judicature. Alternatively, you can blame John Adams, who drafted the Commonwealth's constitution and is responsible for the formal names of both the SJC and the Mass. legislature.)

A [contract](#) cut by the State of Maine with a private contractor to move its court records online is raising eyebrows, because it gives the contractor a cut of fees charged for downloading the records and thus drives up the price significantly.

VII. Global

A. International

- [New laws requiring social media platforms to hire local staff could endanger employees](#)

B. Europe

- [ECHR: GCHQ's mass data interception violated right to privacy, court rules](#)
- [European Parliament amps up pressure on EU-US data flows and GDPR enforcement](#)
 - [EU bodies' use of US cloud services from AWS, Microsoft being probed by bloc's privacy chief](#)
- [Europe Wants Social Media Giants To Do More To Stop Disinformation](#)
 - [Europe to press the adtech industry to help fight online disinformation](#)
- [Clearview AI hit with sweeping legal complaints over controversial face scraping in Europe](#)

- [Apple's antitrust problems in Europe just went from bad to worse](#)
- [Facebook marketplace faces EU antitrust probe](#)
- [EU to review TikTok's ToS after child safety complaints](#)

C. Australia

- [News Corp formalises Google and Facebook deals, announces hiring spree](#)
- [ABC does deals with Google and Facebook that could see millions spent on regional news](#)
- [Defamation reform could see a 'significant deviation' from how tech giants operate](#)
 - [High court casts doubt on media companies' claim of not being responsible for defamatory comments on social media posts](#)
- [NSW Deputy Premier John Barilaro sues YouTube comedian Friendlyjordies and Google for defamation](#)
- [Australian authorities investigate OnlyFans for possible links to financial crime](#)

D. Belarus

- [Belarus Raids, Shuts Down Main Independent News Site](#)
- [Belarus hijacking reveals what dictators fear most: Free speech](#)

E. Canada

- [MPs agree to legal review of broadcasting bill over free speech concerns](#)
 - [Minister backtracks comments on Bill C-10, says social media users 'will never' be regulated](#)
 - [Justin Trudeau's Plan to Control the Internet](#)
 - [Canada wants YouTube and TikTok to prioritize Canadian content](#)
- [Facebook deal the result of Liberal inaction on web giants, says opposition](#)
- [Canadian appeals court upholds the country's first web-block](#)

F. China

- [China jails blogger for 'defaming' dead soldiers in India border clash](#)
- [2 on trial as China enforces online control amid pandemic](#)
 - [Two plead guilty in case highlighting China's online control](#)
- [Hong Kong protests: former RTHK journalist Bao Choy to appeal conviction over database search, fearing lifelong regret if she gives up 'pursuit of justice'](#)
- [Hong Kong leader flags 'fake news' laws as worries over media freedom grow](#)
- [How China is sweeping up its own social media mess](#)
- [Hong Kongers are using blockchain archives to fight government censorship](#)

G. Germany

- [German Article 17 implementation law sets the standard for protecting user rights against overblocking](#)
- [Google's data terms are now in Germany's competition crosshairs](#)
- [Amazon's market power to be tested in Germany in push for "early action" over antitrust risks](#)
- [Facebook ordered not to apply controversial WhatsApp T&Cs in Germany](#)

H. India

- [A major battle over free speech on social media is playing out in India during the pandemic](#)
- [Online freedom of speech under threat](#)
- [India objects to 'manipulated' label on politicians' tweets; asks removal of reference to 'Indian variant' of coronavirus](#)
 - [Police in India visited Twitter offices over 'manipulated media' label](#)
- [India tells WhatsApp to withdraw its new policy terms](#)
- [India asks social media firms if they have complied with the new regulations](#)

- [WhatsApp sues Indian government over new rules it says break encryption](#)
- [India says WhatsApp's lawsuit over new regulations a clear act of defiance](#)
- [Twitter says concerned with intimidation, requests 3 more months to comply with new IT rules](#)
- [Facebook, WhatsApp, Google and other internet giants comply with India's IT rules](#)
- [Social media influencers will now have to add labels for paid content, new guidelines out](#)
- [Right to be forgotten: Delhi HC orders removal of link to its own ruling](#)
 - I. Ireland
 - [Bill to regulate online harmful content 'damages' constitutional rights](#)
 - [Facebook loses last-ditch attempt to derail DPC decision on its EU-US data flows](#)
 - [Law firm demands Twitter hand over user details of anti-Sinn Féin accounts](#)
 - [Secondary school takes case to unmask authors of Instagram page that ridiculed staff](#)
 - J. Israel
 - [Israeli TV reporters face attacks and threats from Jewish extremists](#)
 - [Israeli media urges Facebook, Twitter to act on incitement against reporters](#)
 - [Gaza-based journalists in Hamas chat blocked from WhatsApp](#)
 - K. Italy
 - [Google hit with \\$123M antitrust fine in Italy over Android Auto](#)
 - [TikTok removes 500k+ accounts in Italy after DPA order to block underage users](#)
 - L. Malaysia
 - [News site seeks Federal Court review of its conviction for contempt](#)
 - M. Mauritius
 - [Mauritius Is Considering an Unprecedented Attack on Online Freedom](#)

- [Mozilla, Google Ask Gov't To Abandon Its Plan To Intercept, Decrypt All Social Media Traffic Originating In The Country](#)
 - N. Mexico
- [Mexico legislature approves 'Olimpia' revenge porn law](#)
 - O. Myanmar
- [Myanmar charges Japanese journalist with "fake news" as protests against coup leaders drag on](#)
 - P. Russia
- [Russia Raises Heat on Twitter, Google and Facebook in Online Crackdown](#)
 - [Russia's censorship agency seeks new fines for Twitter, Google, and Facebook](#)
 - [YouTube feels heat as Russia ramps up "digital sovereignty" drive](#)
 - [Russia Gives Google 24 Hour Ultimatum to Remove Banned Content](#)
- [Russian Repression of Navalny and His Supporters Intensifies](#)
 - Q. Singapore
- [Singapore Orders Facebook And Twitter To Correct False Claims About A Non-Existent Covid Variant](#)
- [PM Lee in court in defamation suit against absent TOC writer](#)
 - R. Syria
- [Syria releases hundreds of social media critics ahead of election](#)
 - S. Thailand
- [Thai Government Seeks to Link Peoples ID to Social Media Accounts](#)
 - T. Turkey
- [Recep Tayyip Erdogan's monitoring of the digital realm](#)

U. Uganda

- [How Ugandans used VPNs to beat a social media tax](#)

V. United Kingdom

- [UK publishes draft Online Safety Bill](#)
 - [Online Safety Bill: New law will protect journalism from tech giant censorship](#)
 - [Online Safety Bill: Peers 'remain to be convinced' protections for journalism are enough](#)
 - [Porn blocker 'missing' from Online Safety Bill prompts concern](#)
- [What The New Domestic Abuse Act Means For Women](#)
- [Facebook loses appeal over watchdog's investigation into Giphy takeover](#)
- [Sun leads publisher boycott of social media with four-day Twitter suspension in protest over racism](#)
- [Reporters expose 'fake' website that lifted their colleagues' stories](#)
- [Blogger jailed for 'abhorrent' contempt of court over Alex Salmond trial coverage](#)
- [Journalist takes legal action against sacked columnist in bid to reveal fake Twitter trolls](#)
- [Mail Online pays substantial damages after revealing actress' rape allegation against French director](#)
- [TV doctor launches online appeal to cover Arlene Foster defamation case costs](#)

W. Zimbabwe

- [Hopewell Chin'ono wins court battle, but not yet the war](#)

VIII. Miscellaneous

We'll end this issue with a single case that I couldn't squeeze in anywhere else. Washington state's supreme court [held](#) that the operator of a YouTube channel with around 18,000 subscribers was not a member of the news media under the state's public records law. Accordingly, he was not entitled to obtain certain records including "photographs and the month and year of birth of people who work in state criminal justice agencies," access to which is limited to news media. Ah, the "who is a journalist?" problem – that one never gets old, though some statutory definitions certainly do.

* * *

Okay! That's all from me until after the Fourth of July, so I hope that all of you have a great and safe holiday with friends and family, and that the only fireworks are in the sky!