The MLRC Digital Review

Reporting on developments in digital media law and policy

by Jeff Hermes

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Hello, everyone, and welcome to the first *Digital Review* of 2022! The beginning of the year was too hectic to get out a December issue, so we're going to start of the year with a double-header issue – and what an issue it is! As you can tell from my page count, you all certainly hit the ground running this year.

The biggest news this issue has to be Justice Breyer's retirement. Trying to summarize Justice Breyer's technology, IP, and First Amendment jurisprudence after more than 27 years on the Court would take longer than this article, let alone this introduction – but let's at least recognize a handful of the cases in which Breyer authored significant opinions (whether for the majority, or in concurrence or dissent):

- *Google v. Oracle America* (majority opinion regarding copyright protection for APIs)\
- *Manahoy Area School District v. B.L.* (majority opinion regarding student discipline for off-campus online speech)
- *Denver Area Educational Telecommunications Consortium v. FCC* (highly fractured majority/plurality opinion regarding application of First Amendment to regulation of "patently offensive" sexual material on cable television)
- *Bartnicki v. Vopper* (concurrence regarding publication of illegally obtained information)
- *United States v. Alvarez* (concurrence regarding First Amendment protection for false speech)
- *Golan v. Holder*/*Eldred v. Ashcroft* (dissents regarding copyright term extensions)
- *Brown v. Entertainment Merchants Association* (dissent regarding application of First Amendment to violent video games)
- *Holder v. Humanitarian Law Project* (dissent regarding application of First Amendment strict scrutiny to communication with designated foreign terrorist organization)
- *National Institute of Family and Life Advocates v. Becerra* (dissent regarding application of compelled speech doctrine to mandatory disclosures by pregnancy clinics)

As many of the opinions above demonstrate, Justice Breyer is hardly a First Amendment absolutist and has often tried to walk a middle path balancing First Amendment interests against other concerns. However, he has also challenged laws that would impair the public's need for information, in particular articulating concern about the overextension of copyright principles in

a manner that he believed would undermine copyright's goal to promote learning and knowledge.

I haven't always agreed with Breyer myself, but I've always respected his analysis and gave a full-throated cheer to a few of his opinions above (one of which was his dissent in *Holder*, but I'll let you guess the others).

Enough on that for now. There's a lot to get through, so let's get started.

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TABLE OF CONTENTS

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I. Privacy

A. Anonymity

We'll start this issue with a pair of § 512(h) subpoena decisions reaching opposite results: one from N.D. Cal. in which the judge ordered Twitter to disclose the identity of a user who failed to appear in court to advance a fair use defense (Twitter, which fought the subpoena on an interesting First Amendment defense, has sought reconsideration); and one from S.D.N.Y. relying on fair use to quash a subpoena to YouTube for the identity of a user who used clips from Jehovah's Witnesses videos in a new video critical of the organization.

A judge of Delaware's Court of Chancery ordered Twitter to identify the users behind four accounts alleged to have been operated by the defendant company in a defamation case. And in

N.D. Cal., Meta Platforms has filed suit in an attempt to discover the identity of people allegedly running a phishing scam across its platforms; the complaint alleges that the scammers used a service that allowed them to create phishing websites without needing to disclose their identities to a domain registrar.

B. Personal Information

The Ninth Circuit affirmed district court approval of a cy pres settlement in the long-running lawsuit over Google's alleged illegal collection of Wi-Fi data through its Street View project, holding that the district court did not err by concluding that the injunctive relief, together with the indirect benefits conferred by the cy pres provisions, was "fair, reasonable, and adequate" compensation to the class members under Fed. R. Civ. P. 23(e)(2).

In N.D. Cal., a lawsuit against Google alleging that the company harvested data from Chrome users in "private browsing" mode survived a motion to dismiss, while Meta obtained dismissal with prejudice of an investor class action over the Cambridge Analytica scandal. In D.D.C., a district judge vacated a magistrate's order to Facebook (yes, I know, the names will be a bit confusing while legacy cases work their way through) to grant the Gambian government access to deleted communications of Myanmar officials who allegedly attempted to enable the Rohingya genocide; the judge found that the Stored Communications Act barred the disclosure. And in a weird case in S.D.N.Y., a judge held that, while the UK's version of the GDPR authorizes private rights of action in the courts of the United States, the UK was the proper venue for the plaintiff's putative class action.

We have a quartet of new state (and D.C.) lawsuits filed by the attorneys general of the District of Columbia, Indiana, Texas and Washington against Google, alleging that the company implemented "dark patterns" and misled users about the degree to which their account settings could protect their information.

Indiana's Supreme Court upheld the state's law against non-consensual disclosure of intimate images against a First Amendment challenge, finding that the statute survived strict scrutiny. Notably, the court rejected recognizing a new category of speech excluded from constitutional protection, and was not distracted by ill-founded arguments (which have led other courts down the garden path) that the law was content-neutral. In the past, I've received criticism from those who support "revenge porn" laws for my objections to sloppy decisions upholding statutes drafted with varying levels of skill, so please note that I have no objections to this ruling in which the court conducted the correct analysis of a carefully drafted statute.

A very popular bill intended to protect the privacy and safety of judges cleared the Senate Judiciary Committee without any votes in opposition, despite the fact that it has obvious First Amendment problems (such as the fact that it permits judges to issue mandatory takedown orders

with respect to the publication of basic biographical facts about those judges). Didn't we go through this nonsense already with IMDb and actors' ages?

Another new bill is purported to prevent targeted advertising based on "protected class information, such as race, gender, and religion, and personal data purchased from data brokers," although it's not clear that it's actually likely to achieve those ends.

Finally, a new report from the Information Technology & Innovation Foundation delves into the recent wave of state legislative activity around data privacy, warning of the substantial costs to small businesses of a nationwide patchwork of inconsistent regulations.

C. Children's Privacy

We have a new putative class action in N.D. Ala. against Facebook alleging a "digital conspiracy" to harvest images of minors "in violation of their privacy rights and through back-door antitrust processes." If you don't know what "back-door antitrust processes" are, you're not alone, and it gets odder from there.

D. Rights of Publicity

While we're in N.D. Ala., let's mention a new lawsuit against Noom by a fitness instructor who alleges that her name and likeness was exploited to promote the popular health app without her permission. Bit saddened to hear about that one, because I'm a fan of Noom myself.

We've got developments in a small bunch of cases regarding the use of yearbook photos. In N.D. Cal., a judge threaded the needle of PeopleConnect's § 230 defense to hold that plaintiffs had stated a ROP claim over the use of their photos for promotional purposes, finding that the compilers of the yearbooks were not the third parties who created the photos. In N.D. Ill., Ancestry.com's § 230 defense likewise failed against similar claims. And in D. Nev., another claim against Ancestry.com was stayed pending the outcome of a Ninth Circuit appeal of an earlier claim against Ancestry (the earlier case having been filed by the same plaintiff that brought the N.D. Cal. claim against PeopleConnect mentioned above).

Actress Vanessa Hudgens has sued a beauty brand in C.D. Cal., alleging that they misappropriated her name and likeness and falsely claimed her endorsement of their products.

E. Biometrics

Controversial facial recognition search service Clearview AI has received new and favorable results in federal testing of its accuracy. This round of testing responds to earlier concerns that its capability to identify a correct face out of its entire database – i.e., the primary anticipated use of its service – was not specifically evaluated in the prior round.

F. Manipulated Media

Nothing to report this month. Is that because the relevance of this issue is fading or because we're having a tougher time identifying manipulated media? (Side note – the improvements in the use of this technology in *The Book of Boba Fett* were greatly appreciated by this author. Thank you, Disney!)

G. Hacking, Scraping & Data Breach

The Ninth Circuit denied rehearing of a panel decision rejecting NSO Group Technologies' rather bold attempt to invoke the sovereign immunity of Israel in a lawsuit over the use of its notorious Pegasus spyware to hack WhatsApp accounts. Speaking of which, Israel has now banned the sale of cyber technology to 65 countries with "questionable human rights records" and NSO is reportedly considering shuttering its Pegasus business.

In N.D. Cal., Meta Platforms sued a scraper alleging violations of Instagram's terms of use and California's computer hacking law. In S.D.N.Y., Morgan Stanley reached a tentative $60 million settlement in a data breach case; the parties have moved for court approval.

Also in S.D.N.Y., Google has sued two Russians who, it alleges, misused Google services in the course of operating a botnet to infiltrate Windows machines. Facebook and Microsoft also announced steps against spyware services and hackers, with the former kicking seven companies off of its services and the latter suing in E.D. Va. to seize control of the servers of China-based hackers. And the Electronic Frontier Foundation sued spyware company DarkMatter in D. Or., alleging that the company hacked the iPhone of a Saudi advocate for women's rights.

A judge in N.D. Tex. issued a permanent injunction against Kiwi.com's scraping of flight pricing information from Southwest Airlines' website, enforcing a provision of Southwest's TOS prohibiting such data collection.

The FCC has proposed extending data breach reporting requirements to include inadvertent disclosures as well as malicious attacks. The FTC has reached a settlement with a mortgage data company over a 2019 security leak, and has warned companies about the risk of liability if they fail to patch a serious zero-day vulnerability in the Log4j Java logging library.

Ransomware is still a thing, even though larger-scale attacks seem to be less common, and state and local authorities are investigating ways to cooperate against the scourge.

Finally, we have a new article from Orin Kerr on the CFAA after *Van Buren*, so of course we're including it here.

H. Other Privacy Issues

Plaintiffs in a privacy class action in N.D. Cal. failed to plead actionable common law fraud or violations of consumer protection law arising out of Google Assistant's response to events such as glass breaking or smoke alarms, despite claims that the system responded only to user controls.

II. Intellectual Property

A. Copyright

The Second Circuit affirmed a judgment that Ace American Insurance was not liable for the defense costs incurred by Dish Network in the course of defending a copyright lawsuit brought by the major broadcast networks over its "Hopper" service, which allows viewers to skip over television commercials in recorded content.

In a substituted opinion, the Fifth Circuit, for want of jurisdiction, dismissed a Texas A&M employee's appeal from a denial of summary judgment in a case involving the alleged republication of an author's work without permission. The court found that the employee's appeal on a qualified immunity defense was untimely and that his challenge to the genuineness of a factual dispute was improper.

The Ninth Circuit ruled that a district court judge erred in how she divvied up plaintiffs in a putative class action against music database Wolfgang's Vault into two separate classes, noting the lead plaintiff's gamesmanship in defining the classes in order to avoid problems with his own licensing of his works. The case was subsequently dropped by the plaintiff classes.

The EFF filed its opening brief at the D.C. Circuit in an attempt to revive its First Amendment challenge to the anti-circumvention and anti-trafficking provisions of the DMCA. Copyright professors Pamela Samuelson and Rebecca Tushnet filed an amicus brief arguing that the provisions were content-based regulations subject to strict scrutiny.

In C.D. Cal, major studios sued two streaming sites for infringement, and Netflix was itself sued for allegedly undermining the English-version film script rights for a Korean-language film by releasing the film with computer-generated English subtitles.

In the same court, we have several new video game lawsuits: Activision sued a cheat code site over cheats for "Call of Duty"; the developers of "PUBG: Battlegrounds" sued Apple and Google for allegedly selling infringing clones of the game on their respective app stores; and Riot Games sued Imba Technology for lifting text, character designs, and other elements from "League of Legends."

In S.D. Cal., victims of GirlsDoPorn's fraudulent inducement scheme were awarded the copyrights in the videos in which they appeared in order to facilitate online takedown requests. Sigh. I get it, I really do. But all sorts of alarm bells go off in my head when copyright is transferred for the sole purpose of facilitating content-removal demands, because copyright is supposed to facilitate speech rather than suppress it (remember *Katz v. Chevaldina*?). To make things worse, the only reason this transfer makes sense is because it's far easier to let the victims invoke copyright and use existing DMCA tools than to issue a removal order/prior restraint that legitimately applies to third party platforms. Think about what would happen if plaintiffs could obtain copyright transfers as a remedy in defamation cases.

Actually, precisely that happened in at least one case that I know of, though in that case the subsequent copyright lawsuit failed because it turned out the libel defendant had previously granted the third-party platform the irrevocable license to display the allegedly defamatory posts. I wonder whether the copyright transfers in the GirlsDoPorn case will, sadly, similarly fail to achieve their objective for that reason.

An assistant coach for the Miami Dolphins was sued in S.D. Fla. over a Twitter post that allegedly included an unauthorized excerpt from a sports psychologist's text. Also in S.D. Fla., a § 512(f) plaintiff alleging that it was adversely affected by a fraudulent DMCA takedown notice scored a very rare but small-dollars win after a bench trial.

In N.D. Ill, Malibu Media is facing increasing penalties following its failure to pay a defendant who was found to have been wrongfully accused of movie piracy.

In D. Md., the Association of American Publishers sued Maryland's attorney general, alleging that a statute in the Old Line State compelling publishers to sell digital works to public libraries on favorable terms violates the Copyright Act. The lawsuit was one reason why N.Y. Governor Kathy Hochul vetoed a similar (and popular) measure making its way through that state's legislature, while Massachusetts and other states are still contemplating legislation.

In D.N.J., a publisher of online textbook answer guides filed its answer in a lawsuit brought by Pearson Education alleging infringement of its textbooks.

In S.D.N.Y., a claim over the online posting of recipes failed for the obvious reasons; a breach of contract claim in a royalty dispute with McGraw Hill over electronic textbooks was dismissed, while a good faith/fair dealing claim will continue; and Bleacher Report is facing a new lawsuit over its allegedly unauthorized use of a photo of the New York Giants' Evan Engram.

A judge in W.D.N.Y. awarded DISH Network over $4.4 million and injunctive relief pursuant to an agreed motion for judgment in a case against two streaming companies accused of infringing content exclusively licensed to DISH.

In D. Or., two video journalists briefly had a claim against a right-wing provocateur who allegedly used their work without permission in his videos; the complaint was withdrawn without prejudice less than two weeks later.

In E.D. Va., Shopify was hit with a lawsuit by a coalition of educational publishers alleging that the e-commerce platform knowingly facilitated the sale of pirated copies of their textbooks and other educational products. In the same court, an operator of stream-ripping websites has objected to a magistrate's recommendation that record companies be awarded approximately $83 million in damages. Cox Communications, also in E.D. Va., sought post-trial discovery (is that a thing? I didn't know that was a thing) in aid of its argument that music company plaintiffs had misrepresented that data it used to secure its $1 billion infringement verdict were contemporaneous when they were created years after the fact.

In W.D. Wash, Amazon, Penguin Random House (it could have been "Random Penguin," it *should* have been "Random Penguin"), and famous authors won a $7.8 million judgment against the operators of Ukrainian pirate eBook services. One imagines collecting might be an issue, though assets were restrained earlier in the case. Also in W.D. Wash., Zillow was able to get a jury award of $8 million for infringement of the plaintiff's real estate photos reduced on remand after appeal to an award of $1.9 million for innocent infringement plus three years of post-judgment interest.

The Copyright Office has been busy lately, announcing a new series of consultations on technical measures that identify or protect copyrighted works, receiving comments and testimony on the feasibility of "ancillary copyright" protection along the lines of Australian and European "link taxes," issuing proposed rules for its Small Claims Board, and announcing a new "strategic plan" for its goals over the next five years.

In other news, the International Intellectual Property Alliance (think film, TV, and videogame companies) submitted comments for the U.S. Trade Representative's annual Special 301 report that identified stream-ripping services and digital devices that enable privacy as major threats to copyright protection. YouTube's first biannual copyright transparency report states that only 0.5% of claims of infringement were disputed by the uploader, but about 60% of the claims that were disputed were decided in favor of the uploader. Popcorn Time, a streaming service widely accused of rampant infringement, is shutting down.

And for those of you following the Instagram embedding cases, Instagram has implented a technological solution – an option that blocks others from embedding your photos.

B. Trademark

The Second Circuit, interpreting an employment agreement, held that a preliminary injunction properly entered against a bridal designer and social media influencer to prevent her from

competing with her former employer and using her name in trade or commerce, but that the district court erred in transferring control over disputed social media accounts to the employer. (As Venkat Balasubramani points out, the more interesting piece of this case deals with who owns the social media accounts, but this seemed like as good a section as any in which to include the case.)

In the Ninth Circuit, a law professors' amicus brief argues that a Doe defendant's use of ASU trademarks in offensive but non-commercial social media posts was not covered by Lanham Act, and that accepting the university's dilution claim would also violate the First Amendment.

In C.D. Cal., a judge held that a counterclaim plaintiff did not sufficiently allege consumer confusion in a claim over the purchase of the c-c plaintiff's name as a keyword for search engine advertising. Also in C.D. Cal., Snap sued the USPTO to compel registration of its SPECTACLES mark for smart glasses.

In M.D. Fla., we have a new trademark spat between rival competitive cheerleading organizations ("Give me a T! Give me an M!") over the use of various marks on social media and in other online contexts. In S.D. Fla., the Argentinian holder of rights in late soccer player Diego Maradona's name dropped a lawsuit against Facebook over control of Maradona's Instagram account.

The House of Representatives crammed the SHOP SAFE Act, which purports to take action against the sale of counterfeit goods online but has many, many issues, into the 2,900-plus page America COMPETES Act of 2022. You can find it around page 1,672.

C. Patent

The Supreme Court denied cert in January in WhitServe v. Dropbox, a case out of the Federal Circuit involving the validity of a patent for a data backup system.

The Federal Circuit ordered Judge Gilstrap in E.D. Tex. to transfer a Broadcom lawsuit against Netflix to the Northern District of California. A patent case against Roku was transferred from W.D. Tex. to N.D. Cal. (by Judge Yeakel in Austin, not Judge Albright in Waco, in case you were wondering). Showing how much the ability to bring a case in the plaintiff-friendly Texas venues matters, the transfer of case Broadband iTV's lawsuit against DISH Network from W.D. Tex. to D. Colo. appears to have triggered the voluntary dismissal of the case with prejudice.

The whole controversy about patent cases in Texas has led to the Judicial Conference Committee on Court Administration and Case Management undertaking a review of the system by which plaintiffs are able to game the system by ensuring that their cases are heard by Judge Albright as the single federal judge in the Waco Division. (By the way, if you're concerned about Judge

Albright's perceived bias toward patent plaintiffs, you might check out these concerns about the new magistrate judge he recently hired.)

A judge in D. Del. adopted a magistrate's recommendation denying Google's motion for summary judgment on the invalidity of audio patents in an infringement action filed by Personal Audio; Google did not file objections to the R&R. Speaking of Google and audio patents, the U.S. International Trade Commission issued a final ruling that Google infringed five Sonos patents for audio tech, barring the importation of infringing products.

Facebook obtained the first ruling ever from Judge Albright in W.D. Tex. holding that a patent (in this case for navigation of websites) was invalid under *Alice*. Blizzard Entertainment was not so lucky, with Judge Yeakel in W.D. Tex. denying Blizzard's motion for summary judgment in which it argued that plaintiff's networking patent was invalid as indefinite.

Finally, Clearview AI received a Notice of Allowance from the USPTO on its application for a patent for its "methods of providing information about a person based on facial recognition." The development is leading privacy advocates to ring alarm bells yet again, though as I recall the Federal Circuit has rejected moral or ethical concerns with respect to the issuance of a patent.

D. Trade Secrets/Misappropriation/Conversion

A grouper fisherman accused of hacking a company's computers to obtain trade secrets – specifically, the location of artificial fishing reefs – had his conviction for theft of trade secrets vacated by the Eleventh Circuit on the basis that he was tried in the wrong venue. (If you're curious, the defendant wasn't convicted on a separate charge under the CFAA, and the Court of Appeals held that a separate extortion claim was properly tried in the original venue.)

III. Platform Management

A. Section 230

The Ninth Circuit denied rehearing en banc in *Gonzales v. Google*, in which a panel decided last year that platforms were protected by § 230 against claims for facilitating terrorist attacks.

Section 230 also defeated a claim against a Chatroulette-style service in M.D. Fla. over a minor's being manipulated into disrobing for another user, and a claim against a background report service in D.N.J. over repackaging and sale of the plaintiffs' personal data from third-party sources.

On the other hand, § 230 was held not to protect Armslist in two cases in E.D. Wis. involving guns purchased through the service that were later used in murders, although Armslist nevertheless escaped liability on the underlying tort claims. A Massachusetts state court judge

rejected TripAdvisor's § 230 motion to dismiss a claim that it misrepresented the COVID safety measures of an airport shuttle service, but held that the complaint failed to allege that the company had the necessary mental state for the underlying claims.

And then we've got an appellate decision in Oregon finding that § 230 protected Airbnb against a claim over injuries sustained in a hot tub; Prof. Goldman discusses the case and its odd failure to mention the 9th Circuit's decision in *HomeAway*.

The House Committee on Energy and Commerce heard testimony on five pending bills and their intersections with Section 230: H.R. 2154, the "Protecting Americans from Dangerous Algorithms Act"; H.R. 3184, the "Civil Rights Modernization Act of 2021"; H.R. 3421, the "Safeguarding Against Fraud, Exploitation, Threats, Extremism, and Consumer Harms Act" or the "SAFE TECH Act"; and H.R. 5596, the "Justice Against Malicious Algorithms Act of 2021." The bills focus on limiting protection for automated algorithmic amplification of particular content on online platforms rather than wholesale repeal of § 230 protection; however, there are concerns that this could lead to more aggressive removal of content.

Finally, Prof. Goldman has a sweeping review of FOSTA cases in the past few recent months, including a California appellate opinion from December holding that state sex trafficking claims against Salesforce did not fit within the FOSTA exceptions.

B. Elections & Political Advertising

Nothing to report this month.

C. Content Moderation

The Supreme Court denied cert in *Shortes v. Google*, a case on appeal from a Florida intermediate court over rejection of content that the plaintiff submitted to the Google News Publisher Center.

The Ninth Circuit held oral argument in January on Twitter's attempt to revise a lawsuit against Texas AG Ken Paxton for dropping investigative demands on the company in retaliation for its decision to ban Donald Trump. As you'll recall, the case was dismissed as premature because Paxton hasn't sought to enforce his demands, but as Prof. Goldman explained recently on one of the MLRC's Zoom calls, that just gives every random government official with the power to issue a subpoena the ability to hang a Sword of Damocles over a company's First Amendment rights. The D.C. Circuit, meanwhile, affirmed the dismissal of a lawsuit against House Rep. Adam Schiff alleging that his inquiry regarding vaccine misinformation led to various platforms blocking the plaintiffs and/or their content, finding that the plaintiffs had failed to allege enough evidence of causation to show standing.

With the Trump v. Social Media cases now all firmly settled in N.D. Cal., Twitter has moved to dismiss Trump's suit and filed its opposition to Trump's demand for injunctive relief. Meanwhile, the U.S. Department of Justice has jumped in, only slightly ironically, to defend the constitutionality of § 230 against Trump's First Amendment challenge in these cases. Trump suffered another setback after the judge in the YouTube case rejected his motion to consolidate the three cases (which, let's remember, he chose to file separately in the first place).

Also in N.D. Cal., we have:

- Twitter facing a new lawsuit from an anti-vaxxer booted from the platform for violating its COVID-19 misinformation policy;
- Apple and Google successfully fighting off separate lawsuits over their distribution of third party apps featuring "loot boxes" that were alleged to be the equivalent of gambling; and
- Twitter scoring a First Amendment win against a claim that its fact checking and moderation decisions were entangled with government policy.

We've got a huge win in W.D. Tex. in *NetChoice v. Paxton*, with the plaintiffs obtaining an injunction against Texas' social media moderation and transparency law and an opinion from the court that contains an extended, clear, and thoughtful discussion of platforms' First Amendment rights. The court, unsurprisingly, then rejected a motion by Texas to let the statute take effect while it appealed to the Fifth Circuit. Meanwhile, Prof. Goldman has a recap of where things stand in the Eleventh Circuit regarding the parallel litigation over Florida's social media law.

I also want to call your attention this piece in *The New York Times* from our friends at the Knight First Amendment Institute challenging the application of First Amendment protection for the editorial judgments of traditional media outlets to the moderation decisions of social media sites. Their position is one that has raised controversy within our community, and one with which I personally disagree (see also here and here), but ultimately, I think, the question is not whether there are differences between traditional media and social media (of course there are), but whether those distinctions have constitutional relevance. To answer that question, you actually need to get behind the case law and take a look at what the First Amendment is supposed to be protecting and whether depriving platforms of First Amendment protection would injure those interests. I believe it would – but, whether you agree with me or not, that's the level at which the discussion needs to take place.

In any event, if the Florida and Texas cases haven't provided enough context for that discussion, we have another social media bill making its way through the Georgia legislature. So here's a question for you: Is a common carrier a pre-existing type of service that can be regulated because of its particular characteristics, or can a legislature define a common carrier to be whatever it

wants in order to give itself the ability to regulate? The folks in the Peach State seem to think the latter.

We've got a bunch of cases at the state/district level to discuss as well. In Cal. Super., Rohingya refugees from Myanmar have sued Meta Platforms over its alleged role in allowing hate speech against the persecuted Muslim minority to spread, and the sister of a murdered police officer has sued Meta over extremist content related to the right-wing "boogaloo" movement alleged to be behind the attack. Also in Cal. Super., a judge has allowed an app developer to proceed with a lawsuit on false advertising, unfair competition, and good faith/fair dealing claims against Apple over its app's rejection from the App Store.

Meanwhile, over in D.C. Super., Muslim Advocates' lawsuit against Facebook executives for allegedly deceiving lawmakers and the public regarding their hate speech policies is facing a motion to dismiss, but the plaintiff has picked up amicus support from the District of Columbia (arguing against the application of § 230 to the plaintiff's claims) and Yale's Tech Accountability & Competition Project (arguing that D.C. consumer protection law applies to the relationship between Facebook and its users). I am definitely sensing a turn in academia in favor of government regulation of the internet, which is odd and not just a little distressing given the anti-regulatory positions that prevailed in the not-too-distant past. I won't go so far as to say that academic thought on the subject seems rudderless and to shift with prevailing winds, but let's say I'm curious what map is being followed.

Turning to Capitol Hill, legislators' concerns with content moderation continues unabated. The House select committee on the events of January 6 (which the House GOP now describes as "legitimate political discourse") has subpoenaed major social media companies for information about their role in the organization of the attack, claiming that their responses to voluntary inquiries has been insufficient. These subpoenas raise, in a different form with different stakes, the same question raised by pending legislation as to whether the First Amendment allows the government to compel disclosure of information about the process by which social media companies filter and publish content. For a more detailed discussion of this issue, check out the recording of my interview with Eric Goldman regarding his forthcoming article on the subject.

(Speaking of January 6, I wanted to flag this article from the *Washington Post*, which discusses Sen. Josh Hawley's near-disappearance from bipartisan tech regulation efforts after the riot. I know we all truly miss his contributions.)

What else…well, we have a new Senate bill, the Platform Accountability and Transparency Act, which would compel social media platforms to share data about their operations with researchers qualified by the National Science Foundation, or lose Section 230 protection. (Think the compelled disclosure question discussed above crossed with the unconstitutional conditions doctrine.) A House committee has asked online services for information about how they might have been used by a website that provides instructions on how to commit suicide. Instagram

CEO Adam Mosseri appeared before a Senate Commerce subcommittee to testify about how the service protects teens, facing questions arising out of the Frances Haugen disclosures. Unfortunately, senators on both sides of the aisle have been hampered by their own technological misunderstandings, leading to some incidents that would be darkly amusing if so much weren't at stake.

The Verge also has an interesting piece about what the departure of Jack Dorsey from Twitter at the beginning of December, following Jeff Bezos' earlier departure from Amazon, signals for Congress' interaction with social media companies.

Over at the White House, President Biden continued his criticism of vaccine misinformation across all media, including social media sites.

A quick side trip to New York, where a new state bill purports to punish the promotion of content that advocates self-harm or includes false or fraudulent medical theories. Um, no.

Finally, we've got two decisions from Meta's Oversight Board. The first reversed an Instagram decision to remove a post promoting ayahuasca as medicine, on the bases that (1) the applicable community guidelines were confusing and inconsistent and (2) concerns about the poster's "voice" and dignity should have outweighed safety concerns. The second reinstated an initial automated decision (that was later reversed manually by Facebook) to remove a post accusing the Tigray People's Liberation Front of atrocities in the Amhara region of Ethiopia, and called on Meta to order an independent assessment of its role in ethnic violence in the country and to evaluate its capacity for content moderation in the country's languages.

D. Terms of Service & Other Contracts

A new House bill (the "TLDR Act," cute) would require websites to display an easy-to-comprehend summary of their terms of service alongside data breach and privacy information.

The Ninth Circuit issued an amended dissent from Judge Berzon (exciting, I know) from a majority decision reversing a district court order denying enforcement of Comcast's arbitration clause in a case over the company's privacy and data collection practices.

A judge in N.D. Cal. held that plaintiffs were not bound by an arbitration clause in a lawsuit over a sweepstakes operated by Coinbase; the sweepstakes had separate rules from the Coinbase terms of service. Maine's Supreme Judicial Court held that Uber's contract formation process failed with respect to its terms of service, letting a blind user off the hook for Uber's arbitration clause.

In separate cases, New Jersey's Appellate Division upheld LinkedIn's forum selection clause and Sirius XM's arbitration clause.

IV. Other Content Liability

A. Defamation

We have another petition to the Supreme Court seeking to overturn *New York Times v. Sullivan*, in the case of a Christian ministry that sued over being labeled a hate group by the Southern Poverty Law Center. The Court has called for a response to the petition.

In a case alleging that defamatory posts on Facebook led to a U. Tex. student's suicide, the Fifth Circuit held that the district court erred at the summary judgment stage in relying upon school officials' credibility determinations related to a separate Title IX claim as a basis to grant judgment for the defendant. In another case, the Fifth Circuit called into question the landmark *Zippo* case on online jurisdiction, holding that the "interactivity" of a website is not sufficient by itself to show that the site has "exploited" a particular forum or that its contacts with the forum "produced the plaintiff's claim."

Another professional suing over negative online reviews has lost his case, with the Seventh Circuit affirming a decision that reviews of a lawyer triggered by the lawyer's provocative Facebook comment were statements of opinion.

The Court of Appeals affirmed a win for *Coupons in the News* in a defamation case about an article regarding the plaintiff's alleged behavior in response to a dispute over – you guessed it – coupons, holding that the district court did not need to accept allegations that conflicted with the actual publication at issue.

A judge in D. Ariz. denied a motion to dismiss a defamation claim between two companies in the "red-light therapy products" business, arising out of an alleged online campaign by one to accuse the other of scamming customers. Curiously, although the plaintiff's CEO and founder was not named in any of the allegedly defamatory posts, the court also allowed a false light claim by the CEO as an individual to proceed.

A judge in M.D. Fla. gave George Zimmerman one more chance to amend his complaint against Pete Buttigieg and Elizabeth Warren over tweets allegedly accusing him of being a racist. The court held that, while Zimmerman had amended his complaint sufficiently to establish jurisdiction over the defendants, he failed to separate claims regarding the tweets at issue into separate counts and thus muddled the elements of the claims.

Rapper Cardi B won her defamation case against a YouTube rumormonger in N.D. Ga., scoring a jury verdict of $1.25 million in compensatory damages, plus $1.5 million in punitives and $1.3 million in attorneys' fees. Yowch.

Applying New York's actual malice requirement in its new anti-SLAPP law, a judge in D. Md. dismissed a defamation claim brought by a New York imam against the Investigative Project on Terrorism for an article erroneously stating that plaintiff operated an extremist website.

A judge in S.D. Miss. confronted by a mess of an online feud denied injunctive relief to the plaintiff (as well as a motion t seal), denied the defendant's motion to dismiss, and stayed other pending motions to send the parties to mediation.

A former girlfriend of Jeffrey Epstein is suing Virginia Giuffre in S.D.N.Y. over tweets accusing her of participating in Epstein's abuse of minors.

A judge in D. Vt. held that there were sufficient contacts with the forum to allow a defamation case over an extended series of allegedly defamatory social media posts arising out of a romantic relationship that went spectacularly bad. In W.D. Va., the court distinguished the Eighth Circuit's ruling in *Nunes v. Lizza*, and noted that the decision isn't binding in the Fourth Circuit anyway, in holding that retweets did not extend the limitations period for a libel suit over a Reuters story.

In California: An appellate panel affirmed the denial of Elon Musk's anti-SLAPP motion over claims that he sent an email defaming a Tesla critic; a Superior Court judge dismissed a weird case in which rapper Drake was sued for defamation by a woman accused of breaking into his home; singer-songwriter Phoebe Bridgers was sued by a producer over tweets accusing the plaintiff of a pattern of abusive behavior shortly before the producer's lawsuit against a different musician was dismissed; and social video app Triller lost its defamation claim against a pair of podcasters who allegedly coordinated an attack on the app's Apple and Google app store ratings.

Facebook has been subpoenaed for data in one of the Sandy Hook lawsuits against Alex Jones in Conn. Super., with the plaintiffs seeking information to establish damages from the spread of Jones' accusations.

The Supreme Court of Delaware affirmed the dismissal of Carter Page's lawsuit against Oath relating to articles about the "Steele dossier," finding that the statements at issue were true or at least substantially true. In a separate order, the court also reversed the trial court's decision to revoke attorney Lin Wood's pro hac vice admission in the case on the basis of as-yet-unadjudicated misconduct allegations in other states regarding Wood's conduct in other courts or his alleged relationship to the events of January 6.

I'm guessing this next case was pending in Maryland state court, because I couldn't find it on D. Md.'s PACER site, but really people – when you're reporting on a case, please tell us in which court it's pending! It's more frustrating because the reporting *does* tell us where other related cases were brought. In any event, wherever the suit was brought, it's over now, because the

University of Maryland agreed to pay $450K to settle claims over an online article published by the school paper accusing three students of rape.

The owner of and a writer for right-wing website Gateway Pundit are facing a new suit in Mo. Cir. from two Georgia election workers whom the defendants accused of tilting the presidential ballot counts in the state.

Nevada's anti-SLAPP law shut down a defamation lawsuit in the state's courts against TikTok publishers who accused the plaintiff of sexual assault, with a judge ruling that the accusations did not need to meet the rigorous standards for sexual assault under Nevada law.

New York's new general-purpose actual malice requirement scuppered another lawsuit, this one in N.Y. state court brought by the publisher of the Epoch Times against Politico over an article stating that the plaintiff's website was the new home of MAGA voters. In the same court, we have a new lawsuit filed by leaders of Cayuga Nation against a former employee over social media criticism; Prof. Volokh notes an interesting wrinkle in the case that one plaintiff is seeking additional remedies for violations of N.Y.'s civil rights law based on allegations that he was targeted for defamation based on his race, color, national origin, ancestry, or religion.

Finally, a former elected official has sued a writer for the South Texas Journal website in Texas district court over accusations of an extramarital affair.

B. Commercial & Professional Speech

The Third Circuit reversed a district court's holding that an insurer did not have to defend a trademark lawsuit relating to advertising liquid energy shots, finding that there were sufficient allegations of disparaging statements regarding the plaintiff's products to trigger "advertising injury" coverage.

In N.D. Cal.: A putative class action against GrubHub over its promise to provide "Unlimited Free Delivery" hit the shoals, with a judge ruling that injunctive relief that would benefit only the plaintiff class but not the public at large was "private injunctive relief" subject to GrubHub's arbitration clause; advertisers were denied certification of a class in a click-fraud lawsuit against Google, with the court finding that the small business owner who was the name plaintiff was not representative of the class; and Facebook settled a lawsuit alleging that it misrepresented its targeted advertising services.

In C.D. Cal., a real estate agent's Lanham Act claim against website HomeLight's ranking of realtors was dismissed for failure to plead proximate cause and/or actionable statements that were not mere puffery. In the same court, various celebrities were sued over allegedly false statements that they made promoting the EthereumMax cryptocurrency on social media and elsewhere.

A judge in S.D. Fla. granted summary judgment for Microsoft on a claim that it falsely hyped its Safe Links service, which scans web links to identify potential security threats.

Texas AG Ken Paxton found something else to sue Big Tech over, this time with a lawsuit in Texas state court claiming that Google induced local radio DJs to promote smartphones that they'd never tried using. As media-related claims go, that's a little old-school, Ken, but whatever.

We'll end this section by checking in with the FTC. There doesn't seem to have been much immediate change in the subscription news business following the Commission's warning that it would begin cracking down on services that allow subscription online but require a phone call to cancel. (I can personally testify to that, after my wife was required to call to cancel a newspaper subscription – and for those of you aghast at the idea that we'd cancel a subscription, we have others, and may I remind you that I work for a non-profit.) Meanwhile, the FTC is contemplating developing a new rule against algorithmic discrimination and pervasive user tracking, and fined an online fashion retailer $4.2 million for suppressing reviews below 4 stars for products on its site.

C. Threats, Harassment, and Incitement

The Ninth Circuit held that an email to Sen. Mitch McConnell threatening that his throat would be slashed if he moved forward with particular action could be found to be a true threat, despite the fact that the sender did not indicate he personally would do the slashing as opposed to members of an unnamed "resistance."

The Eleventh Circuit rejected a First Amendment challenge to the federal cyberstalking statute in a case involving the defendant's conviction for posts and messages on Instagram under the names of various mass murderers. A judge in N.D. Ill. similarly rejected a First Amendment challenge to the federal Anti-Riot Act in a case over Facebook posts that allegedly incited rioting and looting in August 2020.

In a state court threats prosecution, the North Carolina Supreme Court held that the "true threats" exception to the First Amendment applies only when the speaker subjectively intends to convey a threat; as Prof. Volokh notes, in the absence of a Supreme Court ruling on the subject, lower courts go different ways on the issue.

Finally, a man who threatened journalists, politicians, and others via texts and voice messages following Donald Trump's election loss was sentenced in S.D.N.Y. to three years in prison.

V. Infrastructure

A. Accessibility

Three podcasting platforms are facing an ADA lawsuit in S.D.N.Y. by the National Association of the Deaf for failing to provide transcripts or captions on their programming.

Comcast, under pressure from state lawmakers concerned about the essential role internet access plays during the pandemic, have delayed enforcement of data caps in the northeastern U.S. until at least 2023.

The Federal Communications Commission is revisiting a proposal that was dropped during the Pai era to require broadband providers to display "nutrition labels" that would disclose actual costs of internet service as well as information about data caps and performance. The FCC is also poised to crack down on ISPs responding to government subsidies for internet access during the pandemic by allowing the subsidies to be used only on services more expensive than consumers already have – i.e., upselling customers to new tiers of service so that for the time being they pay the same amount, not less, and will presumably be charged more when the subsidies lapse. Finally, the FCC has a new proposal to prevent apartment complexes from being locked in to a single choice for broadband service.

B. Antitrust

In Apple's lawsuit with Epic Games, the Ninth Circuit stayed pending appeal a district court judgment compelling Apple to allow App Store developers to link to other payment websites from within their apps. Meanwhile, 34 state AGs and D.C.'s AG jumped into the case with an amicus brief supporting Epic. Meanwhile, in an app developer case against Facebook alleging antitrust violations from their being cut off from Facebook's network, the Ninth Circuit ordered supplemental briefing on the question of the developers' standing to sue. Not a good sign for the plaintiffs, I think.

State AGs filed their opening brief on appeal in the D.C. Circuit of the dismissal of their antitrust lawsuit against Facebook, arguing that "sovereign states" may not be blocked from filing suit based upon an "unreasonable delay" when the action is intended to protect the public interest. The U.S. Department of Justice has filed an amicus brief in support.

In D.D.C., the FTC's revised lawsuit against Meta Platforms survived a motion to dismiss, with the judge finding that the Commission had buffed up its claims sufficiently to get over the hurdle. The FTC is also investigating other antitrust fronts against Meta, particularly in connection with its VR business. More broadly, the FTC and the DOJ have announced a review of their rules for approval of mergers among free services.

The DOJ's antitrust case in D.D.C. against Google will be bifurcated into liability and remedy phases, after the parties agreed that was the way to go. Makes sense to me. There have been reports that other DOJ antitrust actions against Apple and Google have been put on hold due to budget issues at the Department.

In N.D. Cal., a private antitrust claim against Facebook alleging that the company acquired monopoly power through false representations about its data privacy practices survived a motion to dismiss. In the same court, a judge rejected a developer's attempt to use antitrust law to sue Apple for rejecting its app from the App Store; given that this was, essentially, a content moderation case, it's good to see that the court didn't get confused by the end run.

The state AG coalition suing Google in S.D.N.Y. for antitrust violations in the digital advertising market has filed its Third Amended Complaint, and the newly-unsealed document contains some fairly striking accusations about a deal between Facebook and Google to split the ad market between them. Google has moved to dismiss four counts of the new complaint.

In state court, Washington state's AG reached a consent decree with Amazon to put the final nail in the coffin of the previously-suspended "Sold by Amazon" program, resolving antitrust accusations regarding alleged price-fixing.

So, the newspaper lawsuits against tech platforms can justifiably be called a wave at this point; more on what's happening here. Along the same lines, the Senate antitrust subcommittee scheduled a hearing for February 2 on the Journalism Competition and Preservation Act, which would create a two-year antitrust exemption for publishers to negotiate collectively with platforms. [UPDATE: Here's the video of the hearing.]

The Senate Judiciary Committee voted to advance a bill intended to prevent dominant tech firms from self-preferencing their services over those of competitors. Apple and Google have argued that pending antitrust reform legislation could undermine their efforts to provide data security for their customers, while small business owners are split on whether the proposed reforms would help or hinder their businesses.

C. Net Neutrality

The Ninth Circuit affirmed a district court denial of an injunction against California's net neutrality rules, holding that the FCC's attempt to preempt states from enacting such rules was invalid.

The Senate confirmed a new term for FCC chair Jessica Rosenworcel and confirmed Alan Davidson to the National Telecommunications and Information Administration. That fifth seat at the FCC remains open, however, as nominee Gigi Sohn faces ongoing challenges and opposition (though she found some surprising support as well). President Biden didn't back down and

renominated Sohn after her nomination did not progress during the last session of Congress, and she agreed to recuse herself from certain decisions on which she was alleged to have conflicts of interest. A Commerce Committee vote scheduled for February 2nd was rescheduled to allow another hearing on the alleged conflicts.

D. Domain Name System

The Supreme Court denied certiorari in *France.com, Inc. v. French Republic*, in which the Fourth Circuit held that France was protected by the Foreign Sovereign Immunities Act when it seized the plaintiff's lucrative "France.com" domain name.

An company that sells strong-privacy phones with custom encryption software and was accused of facilitating illegal drug transactions has launched a legal effort in S.D. Cal. to reclaim web domains that it alleges were unlawfully seized by the U.S. government.

E. Taxation

Add Austin, Texas, to the list of U.S. cities suing streaming services to recover taxes on their use of public utility poles and rights-of-way to deliver services; the City of the Violet Crown joined a pending Texas state court action.

F. Wire & Wireless Deployment

The D.C. Circuit held that the FCC had the authority to make decisions on spectrum allocation and claims of interference, a ruling that has been hailed as facilitating deployment of improved Wi-Fi.

Two GOP senators introduced a bill to reform the National Telecommunications and Information Administration and grant it more power over broadband infrastructure.

The spat between the FAA and the FCC over the rollout of 5G networks continues, with six former FCC chairs issuing a public reprimand to the FAA for complaints about spectrum allocation determined to be safe by the FCC. Nevertheless, AT&T and Verizon agreed to delay their rollout near airports for two weeks, and the FAA agreed not to seek further delays – but that didn't stop airlines from leveraging the companies into a further delay by threatening to cancel flights.

We have more developments in the scuffle at the FCC between SpaceX and Amazon over broadband satellite deployment, with the former backing off of a plan that drew Amazon's objection but still moving forward with other plans.

G. Artificial Intelligence & Machine Learning

A new local law adopted by New York's City Council requires algorithms used by private businesses to hire employees or to make decisions regarding promotion to be audited by outside services for bias based on sex, race, or ethnicity, and to disclose to job applicants when AI is involved in hiring decisions.

H. Blockchain, Cryptocurrency, & NFTs

So, folks have been talking for a while about using blockchain technology to verify the source of, and history of changes to, digital media in an effort to fight disinformation in the form of manipulated images and video. Now, we have the first technical specification designed to achieve that goal, which is exciting.

In C.D. Cal., a rapper filed trademark and publicity claims against NFT seller Opulous alleging unauthorized use of his name and likeness to promote upcoming offerings. Quentin Tarantino is moving forward with the sale of "Pulp Fiction" NFTs despite the pendency of litigation in C.D. Cal. over the copyright. In S.D.N.Y., an art collection has sought a declaratory judgment to confirm its right to offer NFTs based on a massive mural that it purchased; the artist has threatened a copyright lawsuit. In another case in S.D.N.Y, my namesake fashion designer has sued an individual over sales of NFTs of digital replicas of Hermès handbags.

So, let's see who else is diving into the world of NFTs…we have Dr. Seuss Enterprises, Nike, and Walmart working on offerings, while Meta and Twitter are riding the trend. But reports of rampant copyright infringement on NFT marketplaces continue, while – like many other forms of art – NFT sales can also serve as a tool for money laundering.

Wow, that section ended on a bummer note. Here, read this article comparing blockchain to torrents, which I found interesting. And these two discussing legal issues in the metaverse. (I'm aware that eventually I'll add a "Metaverse" section, or rename this section, but I'm not there yet.)

VI. Government Activity

A. Data Surveillance, Collection, Demands, and Seizures

The New York Times filed a lawsuit in S.D.N.Y. seeking to compel the Department of Defense to turn over records regarding the Defense Intelligence Agency's purchase and use of bulk data regarding the domain name system and internet traffic (such as commercially available location data).

A magistrate in D.D.C. upheld a geofence warrant directed to Google in connection with a crime, the details of which are not disclosed in the public version of the court's decision. Meanwhile, the Supreme Judicial Court of Massachusetts heard oral argument on the constitutionality of cell phone tower data sweeps for similar location data. For more on the topic, retired U.S. magistrate judge Stephen Wm. Smith has a new article in the Federal Courts Law Review examining the role of cell phones as tracking devices.

A newly-revealed FBI document details the ease with which data can be obtained from encrypted messaging services, specifically Apple's iMessage and Meta's WhatApp, through judicial process. For an overview of how the FBI leveraged data demands to online services and private crowdsourced investigations to track the January 6 rioters, see this article from Recode. (Politico, meanwhile, revealed that the Capitol Police began surveilling the social media activity of people meeting with legislators after the attack.) A new report details the wide range of information that the FBI was able to gather through those backdoored cell phones that it managed to seed around the criminal world, and we've also learned that the FBI purchased the infamous Pegasus spyware from NSO Group in order to obtain the capability to crack the encryption of iPhones and Android devices.

Then we have our friends over at Customs & Border Protection, whose "Operation Whistle Pig" conducted suspicionless searches of government databases for information about journalists, politicians, and others. The revelations by Yahoo News led to an internal review at the agency.

We've also got the U.S. Army sweeping TikTok for likely recruits, which presents a bit of a problem because it's fairly creepy, but in the view of Sen. Rubio is a problem because there's a ban on use of the app on U.S. government devices for security reasons.

On January 1, a new law in Illinois took effect, restricting law enforcement access to privately owned networked devices without a warrant. Meanwhile, a New York bill that would limit the use of geofence and keyword search warrants has been reintroduced.

B. Encryption

An Illinois appellate panel has apparently created a split between the state's appellate districts with respect to the application of the Fifth Amendment to compelled disclosure of passwords to encrypted devices; the Fourth DCA held that there was no such issue, after the Third held in 2019 that there were constitutional concerns.

C. Biometric Tracking

D. Domain Seizure

Nothing to report in these sections this month.

E. Content Blocking & Prior Restraints

A Florida appeals court reversed a trial court's denial of a protective order under the state's cyberstalking law, ruling that a YouTube user who allegedly rallied his audience to bombard another user with hostile messages could be subject to an injunction.

A Congressperson from Kentucky came under fire from the Knight First Amendment Institute for blocking Twitter users.

The Pentagon has issued new rules prohibiting service members from supporting extremist groups and views on social media.

F. Online Access to Government Information

The Omicron surge at the turn of the year prompted several of the federal Courts of Appeals to return to remote oral arguments, though how long that will last with rates apparently dropping rapidly is anyone's guess. A bigger question is how much of the newly-discovered online access to court proceedings during the pandemic will survive into the post-pandemic era (however we define that).

Courthouse News scored a win in E.D. Va., with a judge finding that the outlet had stated a valid First Amendment claim against the Commonwealth of Virginia over restricted online access to its civil court records system.

The Open Court Act of 2021, which would expand free access to PACER to most users, passed out of the Senate Judiciary Committee. The MLRC racks up a considerable PACER bill bringing you links to all of those federal pleadings, and I must admit I enjoy the dopamine hit every time I upload a document to RECAP.

The Iowa Supreme Court held that the state's public records law does not require the Polk County Assessor's office from disclosing the identities of property owners who asked for their properties not to turn up in searches of online county records.

Oh, and that stupidity is still continuing in Missouri where the governor got pissed off at a journalist for revealing a security flaw in the state's online systems. As it turns out, before the governor decided that this was somehow a hacking incident (it absolutely, positively, wasn't, showing why Gov. Parson is a Dangerously Uninformed Decisionmaker, a/k/a "DUD"), other state officials quite reasonably planned to thank the journalist publicly. The state's tech-illiterate chief executive still thinks this will end up with a criminal prosecution of the journalist, and given how idiotic things have been so far, who's to say he's wrong? Hopefully, however, the state prosecutors will recognize the serious First Amendment problems in indulging a man who

can't tell the difference between looking at a website's publicly accessible HTML and *WarGames*.

Seriously, the first question at every press conference that Parson holds from now until eternity should be "How about a nice game of chess?"

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- Russia fines investigative website for breaking 'foreign agent' law, *Reuters*
- Google Faces Huge Fines in Russia as Putin Ally Wins Lawsuit, *BNN Bloomberg*
- How Russia tries to censor Western social media, *BBC News*
- Russia demands YouTube unblock German-language RT channel, *AFP*
- Russia blocks website of group that tracks political arrests, *Associated Press*
- Google reportedly threatens to delete video from U.S.-based blogger after Russian censor flags it as 'illegal gay propaganda', *Meduza*
- Putin Is Ramping Up His War on Google, *Slate*
- Russia says it has neutralized the cutthroat REvil ransomware gang, *Ars Technica*
- Russia's turnover-based fines for Google, Meta amount to 5% of income, *TASS*
- Russia fines Google for not deleting banned content, *WSAU*

GG. South Korea

- Appellate court finds operator of parent-naming website guilty of defamation, *Yonhap News*

HH. Sweden

- Sweden sets up Psychological Defense Agency to fight fake news, foreign interference, *Washington Post*

II. Switzerland

- Court allows U.S. extradition of Russian businessman, *Reuters*

JJ. Thailand

- Hotels are Suing Guests for Leaving Poor Reviews, *Vice*

KK. Turkey

- Turkey's Erdogan says social media a 'threat to democracy', *Euronews*
- 40 arrested in Twitch corruption probe in Turkey, *Daily Sabah*
- Journalist jailed on suspicion of insulting Erdogan, *Deutsche Welle*
    - Journalist 'will not go unpunished' for insult, says Erdoğan, *The Guardian*

LL. Uganda

- Ugandan author charged for criticizing President Museveni on social media, *Deutsche Welle*

MM. United Arab Emirates

- Harsher penalties for creating fake social media accounts, emails, websites in UAE, *Gulf News*

NN. United Kingdom

- Online Safety Bill needs 'stronger' protections for news publisher content, MPs and peers say, *Press Gazette*
- UK lawmakers push for Online Safety Bill to have a tighter focus on illegal content, *TechCrunch*
- Online Safety Bill fails to protect journalists' freedom of speech, MPs and editors warn, *Press Gazette*

- UK Gov't Plans Publicity Blitz to Undermine Privacy of Your Chats, *Rolling Stone*
    - UK Government Apparently Hoping It Can Regulate End-To-End Encryption Out Of Existence, *Techdirt*
    - End-to-end encryption protects children, says UK information watchdog, *Guardian*
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- UK class action lodged against Meta seeks $3.1B for breach of competition law, *TechCrunch*
- UK's antitrust watchdog is taking a look at Microsoft-Nuance, *TechCrunch*
- Apple and Google's mobile duopoly likely to face UK antitrust action, *TechCrunch*
- Now tech giants Google and Facebook could be forced to pay British newspapers for their stories, *Daily Mail*
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- US Reporters Must Face Security Pro's Libel Suit, *Law360*
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- Prince Harry: Is the Duke of Sussex about to become the unlikely champion of media standards?, *iNews*
- US TV Studios Win Another Suit Against Pirate Websites, *Law360*
- Match.com's Owner Sues Muslim Dating App for Trademark Violation, *Bloomberg*
- Fifteen high-profile figures and celebrities settle phone hacking claims against News of the World, *Sky News*
- Rachel Riley awarded £10,000 damages over ex-Corbyn aide's tweet, *PA Media*

- Judge urges Laurence Fox to settle libel claim over 'unattractive Twitter spat' after he called three people 'paedophiles' during online rant, *Daily Mail*

- 'I did not think I was saying anything controversial', journalist Carole Cadwalladr tells court in Arron Banks libel case, *Press Gazette*

- Inside the influencer scam 'crimewave' flooding Instagram as Brits conned out of thousands thanks to reality stars, *The Sun*

OO. Vietnam

- Vietnam: Activists in land dispute jailed for criticising government on social media, *Thaiger*

VIII. Miscellaneous

This has already been a massive article (we went through over 1.5 alphabets in just the last section), so I'm going to run through the miscellany as quickly as I can:

- The First Circuit rejected a First Amendment challenge to school discipline pursuant to Massachusetts' anti-bullying law.

- The First Circuit upheld Maine's law requiring pro rata refunds when customers cancel cable service.

- The Fifth Circuit held that archival copies of webpages on the Internet Archive's Wayback Machine are not self-authenticating.

- The Tenth Circuit held that a public university's order to a student not to discuss a professor with other students in the professor's classes violated the student's First Amendment rights. Duh.

- Two defendants were charged in D. Ariz. with siphoning royalties from recording artists by sending forged letters to YouTube claiming to represent those artists.

- Netflix won its anti-SLAPP motion against a lawsuit in N.D. Cal. alleging that the show "13 Reasons Why" triggered a teenager's suicide.

- A new case in N.D. Cal. blames Meta and Snap's "addictive" nature for the death of an 11-year-old.

- A former showrunner dropped his lawsuit in C.D. Cal. against the Writers Guild of America West and various Viacom entities over streaming royalties.

- In S.D. Cal., the podcasting companies behind true crime podcast "Fat Leonard" have been ordered, over their attempt to invoke reporters' privilege, to turn over unaired interviews with the subject of the podcast to defense lawyers in prosecutions following the Navy bribery scandal.

- A teacher has sued school officials in D. Mass. after she was allegedly fired for posting TikTok videos on controversial issues.

- Along the same lines, a professor at Collin College in Texas will walk away with $70,000 in settlement of her lawsuit in E.D. Tex. after she was fired for her tweets about the college and about Mike Pence.

- Louisiana's attorney general demanded that a professor at LSU be held "accountable" for his tweets criticizing the AG, triggering First Amendment concerns.

- Pennsylvania's Commonwealth Court reversed the expulsion of a high school student for his off-campus Snapchat post.

- A new bill with Democratic sponsors in the House and Senate would prohibit the practice of using bots to buy out retailer inventories of popular holiday toys to sell at a markup. (Mike Masnick thinks Congress has more important things to do, which is true, but I can't say that I object to what they're trying to do here.)

- Everyone's favorite defamation plaintiff Devin Nunes was hired as the CEO of Donald Trump's new media and technology company, and left Congress in January. This is so sadly, awfully, ridiculously perfect that I have nothing else to say – until they try to join the MLRC, at which point I will have LOTS to say.

- The FTC tells us that losses from social media scams have gone through the roof since 2017, which really isn't all that surprising.

- And since this issue does cover the end of 2021, I'll end with links to three year-in-review articles from Professor Goldman.

* * *

And that's the end. Thanks as always, folks, and I'll see you next month!