

The MLRC Digital Review

Reporting on developments in digital media law and policy

by Jeff Hermes

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Greetings, everyone! I hope you all had a wonderful summer.

There's been a lot of legislative activity this month. While federal bills on privacy and antitrust bills are struggling, there's a slate of bills headed to the governor's desk in California that could have a dramatic effect on how websites operate. It's not, of course, surprising that California should take the lead in regulating online activity (notwithstanding the benighted attempts in Texas and Florida), but it's getting to the point that other countries concerned about U.S. digital regulatory policy are bypassing the federal government to put pressure on California's state legislature. For example, California's Age-Appropriate Design Code Act has its origins in legislation [designed by a British peer's NGO](#), while the European Commission is [opening an office in San Francisco](#) at least in part because it feels that Congress is deadlocked on tech issues and it wants ready access to California legislators who are willing to act.

That...worries me. There's of course the issue of a single state passing wide-ranging and often poorly designed laws that will drive how the entire country experiences the internet. I do wonder whether California's latest, if Governor Newsom signs the bills, will finally trigger a serious dormant Commerce Clause challenge. But it's more disturbing that California might be used as an end run around Congress to shift U.S. tech policy toward the European model. If Congress is unmoved by the need for national uniformity on issues such as digital privacy ([thanks a bunch](#), Speaker Pelosi), it should at least consider preemption of state law as important for shutting down foreign influence at the state level and maintaining its primacy for formulation of international policy. If the Republican and Democratic parties' respective [Overton windows](#) don't overlap even by that much, then we're in very deep trouble.

Sigh. At least it's a beautiful day outside as I'm writing this. On with the show.

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I. Privacy

A. Anonymity

Nothing to report this month.

B. Personal Information

[Google](#) and [class counsel](#) both opposed the Supreme Court granting cert on the propriety of a cy pres settlement of claims related to data snarfing by Google Street View vehicles. The petition to the Court was filed by an individual member of the class who received no monetary relief and objected to the recipients of the cy pres funding.

Meta is facing a [pair of putative class action suits](#) in N.D. Cal. which allege that hospital websites using the Meta Pixel tracking tool are sending patient data to Facebook in violation of HIPAA. (The suits were filed earlier in the summer but just recently crossed our radar.) Meanwhile, in the same court Facebook reached a [proposed settlement](#) of claims that it tracked users via their mobile devices despite the users turning off Location Services, and also agreed to a [settlement](#) of the Cambridge Analytica case prior to current and former senior executives appearing for deposition.

Also in N.D. Cal., new lawsuits have been filed against [Twitter](#) (after personal data provided to enable security features were misused for targeted advertising) and [Oracle](#) (asserting the operation of a “worldwide surveillance machine” that compiled dossiers on more than half of the residents of planet Earth). In D. Idaho, we’ve got [dueling lawsuits](#) between the FTC and a data broker that is allegedly selling location data scraped from hundreds of millions of cell phones. The data in question includes information about medical visits and other sensitive behavior. And LexisNexis Risk Solutions is facing a [lawsuit](#) in Illinois state court over its own data brokerage services, in which it is accused of selling personal information to immigration authorities.

Bloomberg is the latest publisher accused of sharing user data from its website with Facebook, in a [new lawsuit](#) filed in the Southern District of New York.

The American Data and Privacy Protection Act, the bipartisan data privacy bill which moved out of the Energy and Commerce Committee with broad support, [continued to make progress](#) throughout August until it [hit a wall on September 1st](#) – namely, Speaker Nancy Pelosi’s objection that the bill would preempt the more burdensome provisions of California’s data privacy laws. Seems to me like support for the bill could fall apart over that issue, but what do I know?

Ah, but what about the Federal Trade Commission? Well, the FTC on a 3-2 partisan vote [launched a rulemaking process](#) targeting commercial surveillance, collection, analysis and sale of personal data.

And over at the Supreme Court, Sen. Ron Wyden [warned](#) Chief Justice Roberts about the long-standing and pervasive vulnerability of personal information stored in openly available federal court records in violation of court rules imposed by Congress.

Finally, comments are [starting](#) to [roll](#) in on the California Privacy Protection Agency’s proposed regulations under the state’s Privacy Rights Act.

C. Children’s Privacy & Safety

The Ninth Circuit [heard argument](#) this month in a case against Google which could turn on the extent of COPPA’s preemption of state law claims over alleged violations of children’s privacy.

A judge in C.D. Cal. [denied](#) Visa’s motion to dismiss claims that it knowingly processed credit card payments permitting the monetization of child pornography on PornHub. Visa subsequently [suspended](#) all use of its service to purchase advertising on PornHub and other websites affiliated with PornHub owner MindGeek.

Meta, Snap and TikTok are the targets of a [trilogy of new lawsuits](#) filed in California state court by the Social Media Victims Law Center, an organization that has filed similar suits around the United States alleging that the defendants’ platforms are intentionally or negligently designed to prevent parents from protecting their children from addiction and harmful content. The design claims are tailored to skirt Section 230, of course.

Children’s and teens’ mental health issues are a prime focus [for newly confirmed FTC Commissioner Alvaro Bedoya](#), per his first public address in the role.

The California legislature [rejected a bill](#) that would have imposed liability on social media services for product features that cause children to become addicted to their platforms. (A [brief](#)

[reminder](#) of why the bill’s demise is a good thing.) However, that wasn’t the only “protect the kids” bill [in the California pipeline](#), with the legislature [passing three other bills](#).

The bill now heading to the Governor’s desk that is [receiving the most attention](#) is the “Age-Appropriate Design Code Act,” which would require a [broad range of apps and websites](#) to implement special protections for users under the age of 18. That, in turn, begs the question of [how sites are supposed to identify users under 18](#) without the sort of [burdensome verification processes and collection of detailed personal data](#) that would make using the internet a never-ending exercise in negotiating barriers and raise even greater privacy concerns. If it makes you feel better (it shouldn’t), there’s a group of companies that would be more than happy [to scan your facial biometrics to guess at your age](#) every time you access a site. (There’s also the bit about how the bill was [drafted by a British baroness’ organization](#), but that’s water under the bridge.)

If you’re curious, the [other two bills](#) included a mandatory transparency law (more on that under Content Moderation, below) and a cyberbullying bill (more under Threats, Intimidation & Harassment).

D. Rights of Publicity

The Eleventh Circuit [held](#) that the managers of a Miami swingers club were not automatically liable as a result of the club’s being found liable for the unauthorized use of models’ images in online advertisements. Meanwhile, we have a [new lawsuit](#) asserting similar claims against a club owner in the Atlanta area.

Clint Eastwood and Mayim Bialik might be the two most different actors one can imagine, but they now have something in common: Both have received an injunction blocking CBD companies from using their names without permission to promote their products online. Eastwood also picked up a damages award of over \$2 million following a [default judgment](#) in his favor in the Central District of California.

We’ve got two more cases finding that right-of-publicity claims survive against “people search” services, [one from S.D. Cal.](#) and [one from C.D. Ill.](#); in both cases, a Section 230 defense foundered on allegations that the defendants themselves gathered third-party material and compiled it into teaser advertisements for their services. But as Prof. Goldman [points out](#), Section 230 just requires that content originate with third parties, not that the third parties supply it to the site in question – these courts, like so many others, seem hung up on the erroneous idea that Section 230 only applies to “neutral conduits.”

E. Biometrics

A judge in N.D. Ill. [granted final approval](#) to a \$92 million BIPA lawsuit against TikTok, while a [new BIPA suit](#) in S.D. Ill. alleges that YouTube improperly maintained facial biometric data for people who appear in videos. In Illinois state court, Snap has reached a [proposed settlement](#) of BIPA claims for \$35 million; the lawsuit relates to the operation of Snapchat's lens and filter features.

F. Manipulated Media

Nothing to report this month.

G. Hacking, Scraping & Data Breach

In N.D. Cal., a former manager of Twitter's media partnerships in the Middle East and North Africa was [convicted on six charges](#) related to allegations that he used his access to obtain personal information about users who were Saudi dissidents, which he then passed along to the Saudi government in exchange for assorted compensation. Interestingly, there was no CFAA charge; although one must imagine the defendant's acts exceeded the scope of his employment, that might not have struck prosecutors as "exceeding authorized access" under *Van Buren*.

Speaking of which, in the same court, a district judge [dissolved the injunction](#) obtained by data scraper hiQ Labs that forced LinkedIn to allow access to its site. There was no great change of heart on the underlying merits, but the plaintiff, after five years and two trips to the Ninth Circuit, has gone out of business (so there's no further need for an injunction). Never mind, there's always another CFAA claim to debate – such as [this new case](#) in N.D. Cal. in which the founder and ex-CEO of Black Girls Code was alleged to have seized control of the organization's website, locked out the current leadership, and redirected visitors to her own protest site.

In other news, the FCC has [gathered and shared information](#) from 15 of the country's leading mobile providers on how they protect consumer information.

Finally, a former head of security at Twitter has [turned whistleblower](#), calling out the company in a report sent to Congress and to federal agencies for widespread data security threats and failures, and for misleading the government and board about those issues. (The report was sent to Congress in July and obtained by the press in August.) The whistleblower, Peiter 'Mudge' Zatkó, is [scheduled to testify](#) before the Senate Judiciary Committee at a hearing in September.

H. Other Privacy Issues

Not quite sure whether this one belongs up in “Personal Data,” but anyway: A federal jury in C.D. Cal. [found](#) that the L.A. County Sheriff and Fire Departments unlawfully inflicted emotional distress and infringed the California constitutional privacy rights of Kobe Bryant’s widow Vanessa and her co-plaintiff Christopher Chester, whose spouse and child also died in the same helicopter crash. The jury awarded \$31 million in damages for county employees’ taking and sharing of grisly photos of the crash site. I mention the verdict in this article because the ease of taking and sharing photos with digital devices was critical to the plaintiffs’ case, which included unending apprehension that photos thought deleted could still surface online.

A judge in N.D. W. Va. [certified a plaintiff class](#) in a class action against DirecTV over unwanted robocalls. Meanwhile, all fifty state attorneys general have [formed a coalition](#) focused on stemming the robocall plague by “investigat[ing] and tak[ing] legal action against the telecommunications companies responsible for bringing a majority of foreign robocalls into the United States,”

And last but not least, [a heads up to New York attorneys](#): As of July 1, 2023, you’re going to need to scrounge up a credit of cybersecurity, privacy and data protection training for your yearly CLE requirements.

II. Intellectual Property

A. Copyright

The interaction of Copyright Act preemption and license restrictions on the use of copyrighted works is the subject of a [new petition](#) to the U.S. Supreme Court, on appeal from a decision of the Second Circuit ending a contract suit brought by the operators of a lyrics website against Google.

We’ve a fair bit of activity in the federal Courts of Appeals this month. The Fifth Circuit [affirmed](#) a jury verdict in favor of Activision on claims that the game company copied the plaintiff’s comic book character for a character in “Call of Duty: Black Ops 4.” The court held that the district court properly excluded two exhibits that purported to show similarities between game characters and other fictional characters not at issue in the case.

The Ninth Circuit [reversed](#) a grant of summary judgment for an online publisher, holding that its publication of a photographer’s image of an ephemeral lake in Death Valley was not a fair use. Meanwhile, a coalition of photographers’ associations filed an [amicus brief](#) with the Ninth Circuit in a copyright lawsuit against real estate website Zillow, asking the Court of Appeals to affirm a ruling that photographs used by Zillow should be treated as separate works and not, as

Zillow argued, as a single composite work based on the plaintiff's registration of the photographs as part of a database.

In the Eleventh Circuit, we saw something rarer than an original May 13, 2005, issue of the *Times Higher Education Supplement*: an appellate ruling [affirming](#) a § 512(f) win. But if you have been following § 512(f) case law, you know there must be a catch, and there is: the decision turned on an unusual stipulation as to the scienter applicable to bogus takedown notices, so its utility in future cases might be limited. (And if you're scratching your head over my very obscure reference to a UK educational journal, don't sweat it – but if you happen to come across this issue, [I'm prepared to make a generous offer for it.](#))

In another case, the Eleventh Circuit [affirmed](#) a defense win on claims that an online intermediary for travel websites violated the DMCA by removing copyright metadata from a photographer's work. The plaintiff, held the court, failed to establish that the intermediary “knew, or had reasonable grounds to know, that its actions would induce, enable, facilitate, or conceal a copyright infringement.”

A judge in N.D. Cal. [refused to dismiss](#) a lawsuit brought by a Grammy winner who alleged that YouTube's ContentID system fails to protect creators who are not “powerful copyright owners” against infringement of their work.

In C.D. Cal., a judge [held](#) that a UK-based distribution platform sued by rapper Lil Yachty over allegedly unauthorized use of his music was subject to jurisdiction in the United States. In the same court: comedian George Lopez joined the growing roster of comedians [suing Pandora](#) over streams of comedy routines; a judge [ruled](#) that a dance emoji in video game “Fortnite” was not substantially similar to protectible elements of a choreographer's work; and Peloton is facing [another lawsuit](#) over unauthorized use of [music](#), this time from a former member of Cypress Hill.

Speaking of Peloton, a consumer class-action lawsuit alleging that the company lied to consumers about its increasing number of on-demand classes, when it was actually cutting classes because of copyright infringement claims, [survived a motion to dismiss](#).

Charter Communication and its subsidiary Bright House Networks [settled](#) infringement actions brought by the major recording labels in D. Colo. and M.D. Fla. over music piracy by users. No word on the dollar value of the settlement, but with the \$1 billion Cox Communications verdict hanging out there one imagines it was substantial.

A judge in S.D. Fla. [held](#) that an author of a motivational book had stated a claim against an NFL assistant coach who quoted a passage from the work in a tweet, finding that the alleged infringement was not clearly a fair use on the face of the pleadings. In S.D. Miss., a judge [granted](#) partial summary judgment to a newspaper publisher in a claim against the developers of an app that scraped its articles verbatim, holding that the app's display of full articles was not a

fair use but that a fair use defense as to the app's use of snippets could not be determined at that stage; a permanent injunction was also denied as unnecessary in light of a low risk of future infringement.

A new [lawsuit](#) from Sony Music in S.N.D.Y. alleges that video social media app Triller is in breach of its license agreement for non-payment and that its continued use of Sony's music catalog is infringing.

On the legislative side, Rep. Rashida Tlaib is [reportedly working on a bill](#) that would compensate music composers with royalties on a per-stream basis. Meanwhile, the Copyright Office has [stated its opposition](#) to an idea floating around in Congress to allow authors to file for registration of a work and receive an effective date of registration, allowing them to file suit, while deferring the Office's examination of the actual eligibility of the work and paying a reduced fee. Think about that one for a minute and see if you can come up with at least four reasons why the Office was not thrilled with the concept.

B. Trademark

The Federal Circuit summarily [affirmed](#) a decision of the TTAB that a domain name owner did not have standing to challenge the Seventh-Day Adventist Church's registration for the mark "Adventist."

Oprah's Harpo, Inc., [sued](#) the co-hosts of podcast "Oprahdemics" in S.D.N.Y. for use of a mark similar to the company's signature "O" trademark.

A [complex decision](#) in a complex trademark dispute in E.D. Pa. between fastener companies denied summary judgment for the defendant with respect to an online comparison chart between the company's products, with the court noting that the defense carries the burden of establishing nominative fair use in the Third Circuit. However, the defendant defeated claims based on keyword advertising.

More bad news for Truth Social, with the USPTO [denying](#) a TM registration for the name based on other companies already using it. So many comments I could make here, but I won't.

C. Patent

Hardly a surprise, but the Federal Circuit [held](#) that inventors must be human in a case asserting the right of artificial intelligences to hold patents.

Google filed a [new suit](#) against Sonos in N.D. Cal. asserting infringement of patents related to its voice-operated Google Assistant technology. The developers of video editing app Playvuu [sued](#) Snap in C.D. Cal. for allegedly infringing its patents for adding overlays to video. In D. Del., a

judge [bounced](#) a case between podcast-recording companies alleging infringement of a patent for media storage on mobile devices. And in S.D. Tex., a patent infringement case over image animation apps [ran square](#) into the jaws of *Alice*.

D. Trade Secrets/Misappropriation/Conversion

Nothing to report this month.

III. Platform Management

A. Section 230

I continue to be torn about whether to include right-of-publicity cases that turn on Section 230 in this section or the appropriate section up under Privacy; usually I'll put them up above if the case goes into the underlying merits of the ROP claim and here if it's a straight-up 230 analysis. But for those of you who protest that rights of publicity are intellectual property rights, I give you [this decision](#) from S.D. Fla. holding that a publicity claim against dating apps Match and Tinder falls into the IP exception.

Alabama's Supreme Court [held](#) that the Huffington Post qualified for Section 230 protection with respect to third-party contributions submitted to the site's "Voices" section, notwithstanding editorial review and minor edits to the submission in question.

And finally, a highly publicized lawsuit in Cal. Super. by an animal rights group against Google over animal cruelty videos on YouTube [ran afoul](#) of Section 230.

B. Elections & Political Advertising

So, you'll recall that Republicans [complained](#) that their campaign spam was being blocked at a greater rate than Democratic spam, with the usual unproven allegations of political bias for a phenomenon more easily and plausibly explained by technical issues. You'll also recall that Google asked the FEC to confirm that letting political spam skip its filter would not be considered an "in-kind contribution" to the candidates who benefit (after Republicans repeatedly claimed that Google's systems provided such "contributions" in other circumstances). Well, the FEC [stated the obvious](#) this month, that Google could let the spam flow without running afoul of election law. This should be fun.

Meanwhile, the midterms are rapidly approaching, and social media sites are getting ready. Meta announced its [updated ad policy](#), including putting limits on edits to ads in the last week before the election. TikTok is also [tightening up](#) its control of political advertising, and has launched an [Elections Center](#) to provide accurate information about the election process.

C. Content Moderation

Donald Trump's lawsuit in N.D. Cal. against YouTube over his indefinite suspension from the service has been [stayed](#) pending the resolution of his appeal to the Ninth Circuit of the dismissal his parallel lawsuit against Twitter. The district court also struck YouTube's pending motion to dismiss and Trump's pending motion for a preliminary injunction without prejudice to refiling after the Court of Appeals does its thing. Makes sense, I suppose, though I equally could see the court granting the motion to dismiss so that the inevitable appeal could be consolidated with the Twitter case.

Anyway, while we're waiting, here are [two articles](#) explaining why treating online platforms as common carriers makes no sense.

Meanwhile, other content moderation lawsuits continue to fail. Facebook obtained [dismissal](#) of a jawboning lawsuit in N.D. Cal. brought by a fellow who claimed that the platform's labeling and/or removal of his posts about COVID were the result of government pressure. In S.D. Fla., Google was [awarded](#) more than \$145K in attorneys' fees for shutting down a [RICO lawsuit](#) alleging the blacklisting of a conservative website.

The Department of Homeland Security's poorly thought-out and even more poorly named Disinformation Governance Board [officially shuttered its operations](#) in August after months of criticism and mockery. In completely unrelated but oddly coincidental news, Twitter and the Meta family of platforms [identified and shut down](#) a five-year-old influence operation designed to advance U.S. policy interests in other countries. Meanwhile, the FBI publicly [denied](#) a recent suggestion by Mark Zuckerberg that it had warned or pressured Facebook to take down the Hunter Biden laptop story.

While we're talking about the FBI, members of the House Oversight Committee [asked](#) eight social media services to share data about, and to detail their response to, threats against law enforcement after the Mar-a-Lago raid.

With renewed scrutiny by federal legislators of TikTok's relationship with China, Oracle – which now handles TikTok's data on U.S. users in response to concerns about overseas data processing – has [started an audit](#) to ensure that TikTok's content moderation model is independent of the Chinese government.

Turning to the states, one of the other bills that California's legislature [passed this month](#) was one mandating [detailed transparency obligations](#) regarding platform terms of service, content moderation policies, and policies regarding five categories of content in particular: "Hate speech or racism," "Extremism or radicalization," "Disinformation or misinformation," "Harassment," and "Foreign political interference." You say transparency, I say compelled speech.

Gov. Henry McMaster of South Carolina has [stated](#) that he believes a pending state bill restricting a range of speech that could assist women to obtain abortions is unconstitutional and that he does not believe the measure will pass. Speaking of speech facilitating abortions, Google has [announced](#) that it will begin labeling clinics that actually provide abortions so that women are not deceived into going to anti-abortion facilities. Google has been [under pressure](#) from Democrats in Congress to protect women seeking abortions from being misled to such facilities, while Republicans have leaned on Google not to suppress pro-life search results; the labeling approach is a clever solution to the problem even if not perfect from either perspective.

Finally, Meta Platforms has [released data](#) on how many times it has overridden its usual moderation policies for content that it determined to be newsworthy.

D. Terms of Service & Other Contracts

A convoluted dispute over ownership of social media accounts used to promote bridalwear during the term of an agreement between the parties has been ticking along for a while now in S.D.N.Y.; the latest [order](#) in the case extends a preliminary injunction preserving one party's control of the sites, which were created by the other party.

A judge in D. Or. [held](#) that a forum selection clause in Snapchat's terms of service was unconscionable and unenforceable against a minor who was allegedly addicted to the site.

IV. Other Content Liability

A. Defamation

I don't know why, but August was a huge month for news in defamation cases.

The Second Circuit [rejected](#) an argument that the collateral judgment rule applied to create appellate jurisdiction over an interlocutory of an appeal from an order denying the defendants' motion to dismiss a defamation case on the basis of the "church autonomy doctrine." The case involved an internecine dispute within the Russian Orthodox Church Outside Russia.

The Ninth Circuit issued a pair of rulings affirming anti-SLAPP wins in federal court, upholding in the [first case](#) a decision that the plaintiff was a limited-purpose public figure and finding in the [second case](#) that a 2010 Supreme Court decision did not abrogate Ninth Circuit precedents holding that California's anti-SLAPP law was not inconsistent with the Federal Rules of Civil Procedure.

A YouTube user whacked with a \$4 million judgment in a defamation case brought by rapper Cardi B has [appealed](#) the verdict to the Eleventh Circuit, arguing inter alia that the evidence at trial failed to establish actual malice.

Multiple discovery and procedural failures netted a defamation defendant in S.D. Fla. an [order](#) striking his answer, entering a default, and topping that off with an award of attorneys' fees to the plaintiff. The dispute between rivals in the cryptocurrency industry involved the defendant calling the plaintiff a terrorist on social media. Time for him to cash in those Dogecoin holdings.

And if that's not enough crypto defamation for you, we've got a [new suit](#) in N.D. Ga. in which one crypto influencer sued another over a YouTube video accusing the plaintiff of pumping a new coin to scam his viewers.

The fight between former Rep. Devin Nunes and reporter Ryan Lizza in N.D. Iowa [trundles along](#) with Nunes filing a [third amended complaint](#) after a magistrate ruled that Nunes had failed yet again to trim his suit back to the narrow claim about a single tweet left open by the Eighth Circuit earlier in the case. Meanwhile, Lizza went to court in S.D. Fla. and scored an [order](#) compelling Nunes' new employer, Trump Media & Technology Group (operators of Trump Social), to turn over information relating to how Nunes managed to land a high-profile CEO job while allegedly suffering \$75 million in reputational harm.

Speaking of things Donald Trump has touched, former Trump campaign chair Corey Lewandowski filed a defamation [lawsuit](#) against a former client who ran for governor in Kentucky over a YouTube video cataloging the client's complaints about Lewandowski's performance. The dispute subsequently spun out with the defendant filing his own defamation [suit](#) against Lewandowski's attorney in Kentucky state court.

Project Veritas' former COO lost a defamation lawsuit in D. Mass. over the online circulation of a "Look Book" published to help the Massachusetts Teachers Association identify Project Veritas agents attempting to conduct sting operations. The court [held](#) that the statements at issue were not false, defamatory, or negligent (on summary judgment, no less), and there's even a footnote rejecting the "republishing by hyperlink" theory. God, I used to enjoy fighting defamation cases in Massachusetts.

In N.D.N.Y., we have a defamation [case](#) filed by the ex-fiancé of an actor on "Law & Order: SVU" accusing the actor of, inter alia, defaming him in several podcasts. The case, of course, stems from a relationship gone very sour.

In S.D.N.Y., a judge [denied](#) a motion to reconsider an earlier decision to allow a false light claim filed by relatives of ex-General Michael Flynn against CNN over the network's labeling them as "QAnon followers" to proceed. A case against CNN ordinarily wouldn't be included in this article, and ugh, false light, but it's interesting for our purposes here because the court [found](#) that the plaintiffs' bare retweeting of QAnon content did not support the conclusion that they necessarily endorsed those ideas. That's a ruling that could be useful to defend against future defamation cases filed over retweets.

Also in S.D.N.Y., Alec Baldwin has been [sued](#) by a woman whom he called an “insurrectionist” on Instagram based on her presence at the January 6 riot at the Capitol; she claims that she was trapped there when violence broke out and couldn’t leave, and was cleared of wrongdoing by the FBI.

A judge in M.D.N.C. [held](#) that a North Carolina statute criminalizing libelous statements made about candidates with actual malice was constitutional, refused to enjoin enforcement of the law, and then subsequently [denied](#) an injunction pending appeal. But a panel of the Fourth Circuit then stepped in and [granted](#) an injunction pending appeal, finding a strong likelihood of success on the plaintiff’s First Amendment challenge.

A magistrate judge in N.D. Ohio [held](#) that the court lacked jurisdiction over a defamation case stemming out of a live stream from a Kentucky megachurch; applying the *Calder* test, the magistrate found that while the plaintiff, the ex-wife of a church leader, lived in Ohio and suffered harm there, the live stream was not focused on Ohio.

Stanford University won an [award](#) just shy of \$150K in fees from Project Veritas after a judge in W.D. Wash. granted the school’s anti-SLAPP motion to dismiss claims arising out of a blog post by the school’s Election Integrity Partnership.

Here’s a troubling one: An appellate panel in California [held](#) that the state’s anti-SLAPP law did not apply to a negative online review of a doctor, because her comments “did not invite or promote public discussion about any broader issue of public interest.”

Delaware’s Supreme Court [affirmed](#) a ruling tossing out an attorney’s lawsuit over an email to his firm that opined that a lawsuit he filed in his own name was “shockingly racist.”

The Kansas Court of Appeals [held](#) that the state’s law did not recognize an entitlement to presumed damages in the absence of proof of harm, in the case of a plastic surgeon suing over a negative review.

The president of the Louisiana Association of School Librarians is [suing](#) the conservative group Citizens for a New Louisiana over accusations on Facebook that she wants children to have access to “sexually erotic and pornographic material.” Y’know, it’s in cases like these, where the pearl-clutchers are facing off against people who actually want to educate children rather than cover them in bubble wrap, that I sometimes forget which side I want to win. My free speech compass is being pulled in multiple directions.

Politician Dennis Kucinich has [filed a lawsuit](#) in Ohio state court against the unidentified hosts of dennispaidapredator [dot] weebly [dot] com, a website accusing him of hiring an accused child abuser to collect signatures for his most recent run to once more become the mayor of Cleveland.

(Note: That link might take you to a search page rather than the complaint; if so, you're looking for *Kucinich v. Does 1-10*, No. CV 22 967913, filed Aug. 25, 2022.)

A judge in South Carolina [granted](#) summary judgment to Charleston animal rights advocate groups on a lawsuit brought by a horse & carriage company over a social media video showing a horse collapsed on a Charleston street, and denied motions to reconsider.

A Texas appellate panel [affirmed](#) an anti-SLAPP ruling against an anime voice actor who sued over online statements by a production company explaining why it cut ties with the actor due to multiple accusations of sexual harassment, holding that the plaintiff failed to present sufficient evidence of falsity or actual malice. It's also worth noting the [numerous procedural and substantive gaffes](#) made by the plaintiff during the litigation.

And last but not least, Alex Jones was found liable in one of the Sandy Hook cases in Texas state court, with a jury awarding the parents [over \\$4 million in compensatory damages](#) and [over \\$45 million in punitives](#). The punitive award is [likely to be severely pared back](#) due to limitations under Texas law, but the case has certainly given us as First Amendment lawyers [plenty to think about](#). And, of course, Jones is still facing trial on similar claims in Connecticut, where a gambit to file for bankruptcy in the middle of jury selection [has not delayed the trial](#) thanks to a bankruptcy judge holding the state court case should proceed.

B. Commercial & Professional Speech

A new [petition](#) to the Supreme Court asks the justices to decide the limits on state licensing requirements for professional speech, in the case of a health coach who alleges that state limitations on provision of dietary advice are a violation of her First Amendment rights.

The Second Circuit [went deep](#) this month on how to determine, in false advertising cases, whether a statement is puffery as a matter of law; the case involves a dispute between providers of model building code databases.

Red alert, hipsters – a [new lawsuit](#) in N.D. Ill. accuses a vinyl record company of using digital processing techniques when it advertised itself online as using only analog tape. The horror.

Real estate tech firm Opendoor has [settled](#) FTC accusations of false advertising for \$62 million in a proceeding before the Commission.

In a [complaint](#) threatening Tesla's California motor vehicle dealer license and/or other discipline, the California's DMV has accused Tesla of misleading consumers visiting its website about the autonomous capabilities of its advanced driver assistance system. And while we're in the Golden State, a bill [passed](#) by the legislature as a whole mandates the disclosure of hourly pay or salary range on job postings by companies with more than 15 employees. and the state Senate passed a

[bill](#) to impose discipline on medical professionals who promulgate misinformation about COVID-19.

C. Threats, Harassment, and Incitement

And that last item lets us segue neatly into this section, where we'll begin with a Fifth Circuit [decision](#) holding that April 2020 Facebook posts threatening to lick groceries in two San Antonio grocery stores with COVID-infected saliva were not protected speech. Thus, held the court, the defendant's conviction for perpetrating a hoax bioweapons attack was constitutional and the idiot will spend fifteen months in prison.

A judge in E.D. Mich. [held](#) that the First Amendment permitted a 14-year-old who created a fake Instagram profile of his biology teacher to be disciplined by his school, even though he did it while away from school grounds and his friends added the worst parts.

Remember [Elonis v. United States](#), the true threats case from back in 2015 involving some poor rap lyrics posted online? Well, the petitioner in that case, Anthony Elonis, has been [convicted again](#) in E.D. Pa. of cyberstalking a prosecutor, his ex-wife, and a former girlfriend. Just a quick reminder that not everyone who nominally wins a Supreme Court speech case is someone you'd want to have in your house.

While we're thinking about lyrics, I wanted to mention that we have proposed legislation at both the [federal level](#) and in [California](#) that would limit the use of rap lyrics in prosecutions. The latter measure has already passed the state legislature and is headed to the governor's desk.

And as I mentioned above, California's legislature has also [passed](#) a new law requiring social media sites to provide a mechanism for individuals to report cyberbullying and to disclose reporting procedures for cyberbullying in the site's terms of service.

V. Infrastructure

A. Accessibility

In a precedential opinion, a California appellate panel [held](#) that a "place of public accommodation" under the Americans with Disabilities Act does not include "retail websites without any connection to a physical space." The panel also expressed its frustration with a failure on the part of Congress and the Department of Justice to provide guidelines on this issue.

B. Antitrust

A digital advertising company will get another shot at Google in an antitrust case about online ad markets, after the Eleventh Circuit [reversed](#) the district court's dismissal of the plaintiff's complaint as a shotgun pleading and found that the plaintiff had adequately pleaded standing.

In a pending case in N.D. Cal., Google obtained an [order](#) to compel arbitration of claims that it colluded with Apple to divvy up the online search business between them; however, Apple was denied a stay of antitrust claims against it while the Google arbitration proceeds. In the same court, Apple is facing a [new lawsuit](#) from French app developers over its App Store fees.

The FTC [dropped](#) Mark Zuckerberg from a [lawsuit](#) it filed in July in N.D. Cal. to block Meta Platforms' acquisition of a VR company after the Meta CEO agreed not to buy the target company personally. Meanwhile, the judge in the FTC's case against Meta in D.D.C. [ordered](#) the parties to work together to define the market for "personal social networking," with Meta listing the features of its services that it does or does not want included in the market and the FTC then informing Meta whether it agrees.

A magistrate judge in S.D.N.Y. recommended dismissing [two separate](#) putative antitrust class actions against Amazon and the five largest book publishers alleging a price-fixing scheme for books. Amazon also held on to an antitrust win in D.C. Super., with a judge [denying](#) reconsideration of his ruling that the District's AG had failed to support the claims with factual allegations rather than conclusory statements.

There were also reports this month that the DOJ is preparing additional antitrust lawsuits against [Apple](#) and [Google](#); details on the former are still vague while the latter appears focused on the digital ad market.

As expected, the American Innovation and Choice Online Act [failed to reach a Senate vote](#) before the recess, with debate to resume in the fall. In the interim, we've got a [revised version](#) of the Journalism Competition and Preservation Act (the one that would let news organizations negotiate collectively with platforms); critical commentary on the bill is [here](#) and [here](#), noting that the revised bill could have unintended consequences for employed journalists.

C. Net Neutrality

We've also got some [new commentary](#) on the recently introduced [bill](#) to codify the FCC's authority over broadband under Title II, arguing that the bill was not expected to pass.

D. Domain Name System

Nothing to report this month.

E. Taxation

A group of twenty-five Texas municipalities has [sued](#) Disney, Hulu and Netflix in Texas state court in an effort to compel the streaming services to pay municipal franchise fees backdated to 2007.

F. Wire & Wireless Deployment

The D.C. Circuit [held](#) that Dish and Viasat failed to state valid objections to the FCC's decision to allow SpaceX to position more than 2,800 Starlink broadband satellites at a lower altitude than originally proposed. But Starlink did have a setback this month with the FCC [cancelling](#) an \$886 million grant awarded during the term of Chair Ajit Pai; the current FCC found that Starlink's proposal was risky and failed to meet the requirements of the Rural Digital Opportunity Fund. Other grant recipients are still in line to receive [more than \\$6 billion](#) in funding.

G. Artificial Intelligence & Machine Learning

We've got a [pair](#) of [articles](#) this month which touch on the complex copyright implications of increasingly more powerful AI-based image generation tools. (Oh, and while we're on the topic, AI-generated artwork is [starting to win awards](#) in human-focused art competitions, and artists are seeking [a little demarcation](#).)

H. Blockchain, Cryptocurrency, & NFTs

A judge in N.D. Cal. [held](#) that a plaintiff plausibly alleged that a cryptocurrency lending service misled consumers into believing that it would not seize their digital assets as collateral. Which, okay, but how else was the loan supposed to be secured?

A new lawsuit that blends NFTs and appropriation art is the subject of a recently filed [anti-SLAPP motion](#) in the Central District of California; the case involves claims that the defendant knocked off the mystifyingly popular "Bored Ape Yacht Club" NFT line, while the defendant claims he was critiquing the ennui-ridden simians. Also in C.D. Cal., it looks like Miramax and Quentin Tarantino are [nearing a settlement](#) in a dispute over the latter's right to tokenize scenes from "Pulp Fiction."

Still wondering whether the whole NFT thing is a flash in the pan after [the market took a nosedive](#)? Well, Meta still [takes NFTs seriously](#), as does [Fox](#); [Reddit](#) and [Pearson](#) both see potential in blockchain tech (though the suggestion by Pearson's CEO makes me think we really need a digital first sale doctrine), and journalism outlets have been [actively hiring reporters](#) to cover the topic.

A man who lost \$800K worth of cryptocurrency after he downloaded a scam wallet app from the Google Play store has [sued](#) Google in California state court to recover his losses. And if you could use a primer on the simmering dispute over whether cryptocurrencies should be considered securities offerings, with all that entails, Wired [has an interesting article](#) discussing recent cases on the issue.

VI. Government Activity

A. Data Surveillance, Collection, Demands, and Seizures

Fears about a [threat to online privacy](#) in the wake of the Supreme Court overturning *Roe v. Wade* became reality this month when [Nebraska prosecutors](#) used direct messages obtained from Facebook via a warrant to charge a mother and her daughter with criminal violations related to the daughter's abortion in April. Facebook was not informed of the full nature of the investigation, and it is not clear what, if anything, the company could have done to resist the warrant had it known. (In that regard, note a [holding](#) out of D.D.C. this month that volitional conduct in sharing data with Facebook eliminates any expectation of privacy).

Nevertheless, Facebook took a lot of heat for turning over the DMs (and it did not help that some poorly drafted headlines about the event could even have been read to suggest that Facebook had voluntarily provided the information with the intent of aiding an abortion prosecution). Those criticisms quickly morphed into criticism that Facebook did not offer end-to-end encryption for direct messages, and possibly in response Meta is [testing expansion of E2EE protection](#).

Meta is not, of course, the only company of which consumers are demanding more privacy protection in light of this vulnerability. Mobile phone companies also amass a great deal of information that prosecutors could seek, and these companies are [considering a variety of approaches](#) either to keep that information hidden or to delete it proactively.

In other news, *Jewel v. NSA* might have failed to catch the Supreme Court's attention, but the Wikimedia Foundation is giving it another shot with a [petition](#) in its own case over NSA mass surveillance tactics.

The D.C. Circuit [upheld](#) the FAA's Remote ID rule this month, stating that "[r]equiring a drone to show its location and that of its operator while the drone is aloft in the open air violates no reasonable expectation of privacy." Yeah, I can be okay with that one.

I'm not so okay with this: The U.S. Attorney's office in Massachusetts [announced](#) the launch of a telephone hotline to rat out anyone "believed to be espousing .. hate-filled views" among other thought crimes and unpleasant exercises of freedom of speech.

In S.D.N.Y., the Brennan Center for Justice [sued](#) the Department of Homeland Security for records on its relationship with three vendors of social media surveillance services.

A judge in N.D. Ohio [held](#) that a public university violates the Fourth Amendment when it requires students to allow visual scans of their home environments before administration of a test in a remote learning scenario. Once can understand the reason for the scans, sure, but it is after all pretty clearly a search without probable cause.

Another challenge to warrantless searches and seizures of cellular devices at the border [failed](#) in the Northern District of Texas this month; this time, the case involved an immigration lawyer whose cellphone was seized by Customs and Border Protection at Dallas-Fort Worth International Airport.

A budget amendment [approved by the House](#) would require the Pentagon to reveal to the public when it purchases Americans' location data from a data broker.

- B. [Encryption](#)
- C. [Biometric Tracking](#)
- D. [Domain Seizure](#)

Nothing to report in these sections this month.

E. [Content Blocking & Prior Restraints](#)

The Ninth Circuit [heard argument](#) this month on whether an injunction blocking the distribution of footage secretly recorded at abortion industry conferences was an unconstitutional prior restraint. Before August was done, we had [the answer](#): No, because the person shooting the footage waived his First Amendment rights to disclose what happened there as a condition of his entry into the events.

So, here's a [new suit](#) out of D. Or. that's a twist on the usual "state official blocks constituent on Facebook" case, asking what if it's an employee of a state university that blocks you? Hmm.

We have a development in Mississippi somewhat related to the South Carolina anti-abortion speech law discussed under Content Moderation. A nonprofit that put up billboards redirecting viewers in Jackson, Mississippi, to a website where they could find information about obtaining at-home abortion medication was [served with a subpoena](#) by Mississippi's attorney general. The subpoena pretty clearly seems like an attempt to chill the nonprofit's speech, though the nonprofit doesn't seem to be knuckling under.

On the other side of the political fence, a conservative nonprofit is fighting state government efforts in New Mexico and Virginia to [stop it from publishing voter data](#) on its website.

Finally, the U.S. Defense Department for the first time issued a [comprehensive policy](#) on use of social media within the Department and on ensuring that personal accounts are not confused with official accounts.

F. [Online Access to Government Information](#)

Nothing to report this month.

VII. Global

A. Europe

- [ECJ: Sensitive data ruling by Europe's top court could force broad privacy reboot](#), *TechCrunch*
 - [Judgment: OT v. Chief Official Ethics Commission, Lithuania](#)
- [From the 'Right to Delisting' to the 'Right to Relisting'](#), *Medialaws - Rivista di diritto dei media*
- [EU found evidence employee phones compromised with spyware](#), *Reuters*
- [EU antitrust regulators quiz developers on Google app payments](#), *Reuters*
- [EU Code of Practice on Disinformation](#), *Brookings Institution*
- [Hold-outs targeted in fresh batch of noyb GDPR cookie consent complaints](#), *TechCrunch*
- [Twitter faces privacy scrutiny from EU watchdogs after Mudge report](#), *TechCrunch*

B. Africa

- [ECOWAS: Nigerian Twitter Ban Declared Unlawful by Court](#), *Electronic Frontier Foundation*

C. Albania

- [Cyberattack on Albanian government suggests new Iranian aggression](#), *Ars Technica*

D. Australia

- [Clive Palmer and Mark McGowan ordered to pay damages to each other in defamation case](#), *The Guardian*
- [Lachlan Murdoch sends legal threat to Crikey over January 6 article](#), *Sydney Morning Herald*
 - [Crikey: small independent news website challenges Lachlan Murdoch to sue it for defamation](#), *The Guardian*
 - [Lachlan Murdoch launches defamation proceedings against Crikey](#), *Sydney Morning Herald*

- [Crikey and Murdoch stoush a bonfire of inanities, *Sydney Morning Herald*](#)
- ['Press freedom isn't being served', *Crikey*](#)
- [Google scores major win in High Court defamation battle, *Sydney Morning Herald*](#)
 - [Judgment: *Google v. Defteros*](#)
 - [Google wins defamation battle as Australia's high court finds tech giant not a publisher, *AAP*](#)
 - [Australian High Court confirms Google defamation immunity, *Press Gazette*](#)
- [Google fined \\$40M+ for misleading location-tracking settings on Android, *TechCrunch*](#)
- [Blockade Australia climate activist can't use encrypted apps, must let police access phone, *ABC.net.au*](#)
- [Australia's News Media Bargaining Code led the world. It's time to finish what we started, *Canberra Times*](#)
 - [Australia's news media bargaining code pries \\$140 million from Google and Facebook, *Poynter*](#)
- [National defamation reform for search engines and social media opens for comment, *NSW Government*](#)

E. Bangladesh

- [Tuneless Bangladeshi social media star grilled by police, *AFP*](#)

F. Canada

- [Tim Hortons Doles Out Some Coffee Pocket Change In Response To Location Data Scandal, *Techdirt*](#)
- [B.C. company wins defamation case against customer who posted bad Google, Yelp reviews, *CTV News*](#)
 - [Judgment: *Premier Finance v. Ginther*](#)

G. China

- [TikTok owner ByteDance quietly launches search app Wukong in China, where Google is banned](#), *South China Morning Post*
- [Dozens of fake news websites and social media accounts pushed pro-China talking points](#), *NBC News*
- [China's Taiwan drills accompanied by wave of misinformation](#), *AFP*
- [Chinese internet giants hand algorithm data to government](#), *BBC News*
- [China 'wild trip' deaths put social media influencers under spotlight](#), *Guardian*
- [A huge Chinese database of faces and vehicle license plates spilled online](#), *TechCrunch*

H. France

- [Google faces 'spam ads' ePrivacy complaint in France](#), *TechCrunch*
 - [Complaint](#)
- [Cambodian opposition figure faces French defamation trial](#), *AFP*

I. Germany

- [German Chambers of Industry and Commerce hit by 'massive' cyberattack](#), *Bleeping Computer*

J. Greece

- [PM's Ex-Aide Hits Journalists With Spyware SLAPP Suits](#), *National Herald*
- [Greek phone-hacking scandal: investigative media's key role](#), *AFP*
 - [Intelligence chief resigns amid spyware allegations](#), *Courthouse News Service*

K. Hungary

- [Not chill with Netflix, Hungary probes kids' cartoon over same-sex kiss](#), *Politico*

L. India

- [Govt issued 105 orders to block social media content under new IT rules](#), *Mint*

- [India withdraws personal data protection bill that alarmed tech giants](#), *TechCrunch*
- [Game firms request India PM Modi provide 'uniform and fair treatment to all' following BGMI ban](#), *TechCrunch*

- [VLC says India internet providers blocking site poses threat to users](#), *TechCrunch*

M. Indonesia

- [Indonesia opens temporary access to PayPal after blocking sparks backlash](#), *Reuters*
- [Classic Internet Censorship](#), *New York Times*
- [Indonesia's New Draft Criminal Code Restrains Political Dissent](#), *Electronic Frontier Foundation*

N. Iran

- [Iran Further Limiting Access To Western Social Media](#), *Iran International*

O. Ireland

- [DPC decision on Facebook data transfers is delayed as other watchdogs object](#), *Business Post*
- [Instagram faces big EU privacy decision on kids' data within weeks](#), *TechCrunch*

P. Italy

- [Italy's communication authority fines Google over gambling advertising](#), *Reuters*
- [Vimeo Must Pay \\$8.6MM In Copyright Infringement Fines Rules](#), *Digital Music News*

Q. Japan

- [Internet provider ordered to reveal person who defamed Virtual Tuber](#), *Asahi Shimbun*

R. Kenya

- [Kenya election: The influencers paid to push hashtags](#), *BBC News*
- [Kenya election: Deep fakes, propaganda, libel inundate social media](#), *The East African*
- [Kenyan ministers rally around Meta's Facebook after watchdog's ultimatum](#), *Reuters*

- [Startups among entities to face tougher laws as Kenya moves to protect personal data, TechCrunch](#)
 - S. Mexico
- [Administrators of popular Facebook page Tijuana 664 gunned down outside their home, San Diego Union-Times](#)
 - [Mexico records deadliest year yet for journalists, with 18 murders so far, Reuters](#)
- [US issues rare security alert as Montenegro battles ongoing ransomware attack, TechCrunch](#)
 - T. Montenegro
- [US issues rare security alert as Montenegro battles ongoing ransomware attack, TechCrunch](#)
 - U. New Zealand
- [RNZ among media to secure news content deal with Google, Radio New Zealand](#)
 - V. Nigeria
- [Nigeria asks Google to block banned groups from YouTube, Reuters](#)
 - W. Philippines
- [Ex-VP aspirant Walden Bello arrested for libel, cyber libel, CNN](#)
- [Radio commentator nabbed for cyberlibel, Inquirer.net](#)
- [Philippines Legislator Offers Up Bill That Would Criminalize ‘Ghosting’, Techdirt](#)
- [‘Golden age’: Marcos myths on Philippine social media, France24](#)
- [Facebook took down 5 million pieces of content leading up to PHL elections, BusinessWorld](#)
 - X. Russia
- [Tycoon Deripaska Sues Ex-Banker Tinkov for Defamation, Moscow Times](#)
- [Russian Tech Giant Unloads News Business as Censorship Grows, Bloomberg](#)
- [Yandex’s sale of media assets to VK includes yandex.ru homepage, TechCrunch](#)
- [The Telegram-Powered News Outlet Waging Guerrilla War on Russia, Wired](#)

Y. Saudi Arabia

- [Saudi Doctoral Student Gets 34 Years in Prison For Tweets](#), *Associated Press*

Z. South Korea

- [S. Korean regulator to probe Google, Apple, ONE store over alleged in-app billing irregularities](#), *Yonhap News Agency*

AA. Ukraine

- [How Russia Took Over Ukraine's Internet in Occupied Territories](#), *New York Times*

BB. United Kingdom

- [New Scottish libel law shifts balance in favour of free expression](#), *The Times*
- [Liz Truss vows to strengthen Boris Johnson's social media law to protect free speech](#), *The Sun*
 - [Online Safety Bill campaigners join forces to urge next prime minister to prioritise new legislation](#), *Sky News*
 - [Our view on the Online Safety Bill: A Threat to Freedom](#), *The Times*
 - [The hidden harms in the Online Safety Bill](#), *The Spectator*
- [Law Commission proposes revolutionary rules for ownership of crypto tokens and NFTs](#), *TechCrunch*
- [UK mobile and broadband carriers face fines of \\$117K/day, or 10% of sales, if they fail to follow new cybersecurity rules](#), *TechCrunch*
- [Avowed bitcoin creator Craig Wright is not happy with £1 win in UK libel lawsuit](#), *Ars Technica*
 - [Judgment: *Wright v. McCormack*](#)
- [Rachel Riley wins latest libel court battle with ex-Jeremy Corbyn aide](#), *Evening Standard*
- [UK's ShortsTV files lawsuit against Google's YouTube Shorts over trademark](#), *City A.M.*
- [British judge rules dissident can sue Saudi Arabia for Pegasus hacking](#), *The Guardian*

- [UK competition litigation against Meta will proceed to class-certification hearing](#), *TechCrunch*
- [Parliament shuts TikTok account after MPs' fears over firm's links to China](#), *Independent*
- [WhatsApp boss says no to AI filters policing encrypted chat](#), *Register*
- [Legal options running out for WikiLeaks founder Julian Assange](#), *Deutsche Welle*
 - ['He's not well': Julian Assange's family 'living in fear' he won't survive extradition process](#), *SBS*
 - [Julian Assange's family urge Anthony Albanese to intervene before US extradition](#), *The Guardian*
 - [Julian Assange case raises media freedom concerns, says UN rights chief Michelle Bachelet](#), *South China Morning Post*

CC. Vietnam

- [Court of Appeal reduces journalist's prison term by 18 months](#), *Radio Free Asia*
- [Vietnamese journalist loses appeal against nine-year sentence](#), *Radio Free Asia*

DD. Zimbabwe

- [Arrest of Journalists 'Out of Sync' With Press Freedom Norms](#), *VOA*

VIII. Miscellaneous

As I mentioned at the top of this article, the European Commission is [opening an office](#) in San Francisco to serve as a contact point for U.S. tech companies subject to EU regulation. Is this a bona fide attempt to streamline the communication process by going where many of these companies live? Some sort of power move to demonstrate that the EU can't be ignored (i.e., showing the companies that the EU knows where they live)? An acknowledgment that for all the breadth of EU regulations what's really important are the U.S. giants? A way to stick the EU's oar into California's very active legislative environment? All of the above? Maybe I'm just cynical, but after the spate of laws that were passed by the Cali legislature this month I find the following statement from the new office's chief, Gerard de Graaf, to be very disturbing: "California has often been a trailblazer in the U.S. It's difficult to get anything passed in Washington, D.C."

The American Bar Association has [weighed in](#) with an amicus brief in *303 Creative v. Elonis*, the pending Supreme Court case on whether Colorado anti-discrimination law violates the First Amendment by not letting a web designer refuse to produce websites for gay weddings. The [brief](#) argues, inter alia, that many business activities can be described as expressive in nature and that a ruling for the web designer would gut the applicability of antidiscrimination laws in many different fields. It also specifically discusses the constitutional rights of “commercial artisans,” arguing that the First Amendment applies differently when one holds out one’s creative skills for sale on the open market.

In another pending Supreme Court case, Google, Apple, and Meta are among a long list of companies who [appeared as amici](#) to urge the justices not to block affirmative action programs at Harvard and UNC.

Facebook posts can relate to a matter of public concern even if they’re mocking and hostile to a particular faith, [ruled](#) the Ninth Circuit in a decision reinstating a police sergeant’s First Amendment retaliation claim based on his being disciplined for denigrating Muslims and Islam.

Let’s see, in Delaware Chancery Court, Elon Musk has [countersued](#) Twitter for fraud, Twitter [denied](#) Musk’s claims, and...you know what? Enough of this. Too much ink has been spilt for Musk already. I’ll come back to this case if and when there’s an actual decision on the merits.

* * *

And there we go, Summer 2022 more or less wrapped up. Before I sign off, I’d like to extend my condolences to my UK readers on the passing of the Queen. As is the case for most of us, I’ve never known a United Kingdom without Queen Elizabeth II, and even here across the pond there is a true sense of loss and the end of an era.

Till next time.