

The MLRC Digital Review

Reporting on developments in digital media law and policy

by Jeff Hermes

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Greetings, everyone!

So, I'd like to open this issue by addressing a recent development that has disturbed me greatly. As always, I speak for myself in this article and not the MLRC or its members, but I do hope that you share my disquiet.

You will all be familiar with NetChoice, the nonprofit tech trade organization known for its prolific litigation challenging unconstitutional state laws targeting social media – most notably the *Moody* and *Paxton* cases at the Supreme Court. On May 9th, Politico [reported](#) that NetChoice withdrew membership in its organization from TikTok in response to communications from the office of Republican House Majority Leader Steve Scalise:

The two people familiar with the matter said NetChoice ... came under pressure from Scalise's office to dump TikTok. A third person, who requested anonymity for the same reason, said that while no threat was made, NetChoice was told that the House Select Committee on China would be investigating groups associated with TikTok and chose to sever ties as a result.

As the deputy director of a membership organization that includes TikTok, I am outraged at this. Not at NetChoice, mind you; while I might have wished that NetChoice had told Scalise's office to pound sand, it was placed in an impossible position as a lobbying organization that depends on its contacts with government. But the message from Scalise's office, which—direct threat or not—amounts to “nice place you have here, by the way we're lighting matches,” interfered with both NetChoice's and TikTok's First Amendment rights. Rights plural, including their rights to associate with one another as well as their rights to speak with one voice on public issues and to petition the government.

This isn't the first time that NetChoice's associations have been the target of pressure from the Hill. In a Senate Judiciary Committee hearing on January 31st, Sen. Marsha Blackburn [pressured](#) Mark Zuckerberg about Meta's association with NetChoice for the latter's temerity to challenge bills that sacrifice freedom of speech for dubious gains and called on Meta to defund NetChoice:

You have an army of lawyers and lobbyists that have fought us on this every step of the way. You work with Net Choice [*sic*], the Cato Institute, Taxpayers Protection Alliance and Chamber of Progress to actually fight our bipartisan legislation to keep kids safe online. So are you going to stop funding these groups? Are you going to stop lobbying against this and come to the table and work with us? Yes or no?

Targeting an organization's relationships with third parties in an effort to undermine its speech...that sounds oddly familiar, doesn't it? Almost as if the Supreme Court were considering that very issue?

All joking aside, on the morning I wrote this, the Court dropped [NRA v. Vullo](#) and we're awaiting the decision in *Murthy v. Missouri*. While Blackburn's bluster probably doesn't cross the line, consider the reported pressure from Scalise's office in the context of this statement in *Vullo*:

Considerations like who said what and how, and what reaction followed, are just helpful guideposts in answering the question whether an official seeks to persuade or, instead, to coerce. ... To state a claim that the government violated the First Amendment through coercion of a third party, a plaintiff must plausibly allege conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress the plaintiff's speech.

NRA v. Vullo, No. 22-842, 602 U.S. ____ (May 30, 2024), slip op. at 12. Now, I suppose that Scalise might have intended the communication as a warning rather than a threat, as he doesn't sit on this House Select Committee and might not be in a position himself to direct an investigation into NetChoice. However, the focus is on the reasonable understanding of the communication, and (as reported at least) NetChoice felt Scalise's office to be exerting pressure, not providing a friendly heads-up. Moreover, neither *Vullo* nor *Bantam Books*, on which *Vullo* heavily relies, require that the person making a threat to be able to carry it out. *See Vullo*, slip op. at 10, *quoting Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 66-68 (1963) ("Although the commission lacked the 'power to apply formal legal sanctions,' the distributor 'reasonably understood' the commission to threaten adverse action, and thus the distributor's 'compliance with the [c]ommission's directives was not voluntary.'").

It's also interesting that the Republican House Majority Leader would lean on the First Amendment lawyers at NetChoice at this particular time, in light of the fact that 45 Republicans in Congress (but not including Scalise) filed an [amicus brief](#) in *Murthy* supporting a broad understanding of unlawful coercion as applied to the Biden administration. But then again, a lack of consistency among politicians isn't exactly a surprise.

I should say that I don't really expect that the MLRC will come under scrutiny because of TikTok's membership. Obviously, we do not have as public a profile as NetChoice. In one of my interviews for this job approximately 10 years ago (after 17 years of being an MLRC member myself, mind you), I described the MLRC in tongue-in-cheek fashion as the most important free speech organization that no one had ever heard of. Beyond its membership, of course.

But at the same time, there are few if any MLRC members who have not, at one time or another, seriously irritated the very, very powerful. The thought that the irritated might, in retaliation, attempt to isolate a member from the support of our community is infuriating to me, and I hope to all of you.

Now, on with the show.

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I. Privacy

A. Anonymity/Pseudonymity

A Korean entertainment company focused on the training and management of K-pop singers and other related businesses has [sought discovery](#) from X Corp. in N.D. Cal. for use in a foreign defamation proceeding against an anonymous user of the platform. Meanwhile, a New York appellate panel [quashed](#) a German company's subpoenas to Google and GoDaddy to identify the anonymous operator(s) of an allegedly defamatory website that the tech companies hosted and registered, respectively.

You might recall that Robert F. Kennedy, Jr., has been involved in a convoluted defamation spat involving an anonymous commenter on the Daily Kos, suing the Daily Kos in New York state court to identify the commenter and then, having later found that identity through other means, suing for defamation in federal court in the District of New Hampshire – where his case was promptly kicked out for lack of personal jurisdiction. [Now](#), his appeal from the D.N.H. decision has been bounced for blowing the filing deadline and his attempt to shut down the New York case as moot has failed, with the Daily Kos persuading an N.Y. appellate panel to keep the case alive to resolve its anti-SLAPP motion.

The battle in Nevada state court over police access to the digital devices of murdered Las Vegas Review-Journal reporter Jeff German appears to be drawing to a close, with an attorney for the news organization [telling the court](#) that the Review-Journal has reached an understanding with law enforcement. Meanwhile, the Second Circuit [heard argument](#) this month on a former Project Veritas employee's claim that the contents of his digital devices should be protected under New York's reporters privilege in connection with the law enforcement investigation into the theft of Ashley Biden's diary.

Finally, the U.S. government [outed](#) a Russian national as the pseudonymous figure behind ransomware gang LockBit and offered a \$10 million bounty for his arrest.

B. Personal Information

[TikTok](#) and a [group of its users](#), as well as a [passel of amici](#), filed briefs this month with the Ninth Circuit in defense of a district court injunction against enforcement of Montana's TikTok ban.

But of course the real action is in the D.C. Circuit, where [TikTok](#) and a [group of creators](#) have filed separate challenges to the federal TikTok divestiture/ban law signed in April. And no, "D.C. Circuit" is not a typo, because the law gives the Court of Appeals original jurisdiction over challenges to its constitutionality. I placed these cases in the Privacy section on the basis that, to the extent that Congress has given any hint as to its motivations for the law (which itself contains

no findings or statement of reasons), they relate to data privacy and national security. However, it's far from clear that there aren't [censorious motives at work](#), and in any event, the whole question might be moot because it's tough to imagine a wholesale ban surviving First Amendment scrutiny [based on speculative harms](#).

TikTok, the users, and the government have agreed to [fast-track the challenges](#), and the court [signed off](#) on a plan leading up to a hearing in September. However, it's anyone's guess whether that holds when factual disputes and claims that evidence must be sealed to protect national security hit the court. In the meantime, TikTok is [disputing](#) a report that it is preparing a U.S.-only version of its algorithm (a necessary step should TikTok attempt to separate its U.S. business in anticipation of a sale), and [Donald Trump](#), who has never missed a chance to contradict himself for political gain, has joined the social media site he previously attempted to shut down. Of course, in this case the hypocrisy [isn't limited to the Republican camp](#).

Also in the D.C. Circuit, the court [granted](#) Meta's unopposed motion to stay its appeal in its challenge to an FTC effort to modify an earlier \$5 billion privacy settlement, pending the Supreme Court's disposition of [SEC v. Jarkesy](#) (which involves the constitutionality of administrative enforcement proceedings).

The Ninth Circuit has [granted en banc rehearing](#) on a panel decision from last year in a privacy case against Shopify, holding that "[w]hen a company operates a nationally available e-commerce payment platform and is indifferent to the location of end-users, the extraction and retention of consumer data, without more, does not subject the defendant to specific jurisdiction in the forum where the online purchase was made." One to watch.

In N.D. Cal.: a judge [granted](#) final approval to a class action settlement over Google's collection of smartphone users' location data; another judge dismissed a prolix privacy claim against OpenAI and Microsoft with leave to amend to see if plaintiffs can "adequately state a claim once all the mud is scraped off the walls of the complaint"; and a new [complaint](#) was filed against Google over its alleged collection of sensitive driver information from the California DMV via analytics and tracking tools.

A claim in E.D. Mich. against the publisher of Realtor magazine over the sale of subscriber data to data aggregators was [settled](#) this month. In D.N.J., a judge [dismissed](#) a Video Privacy Protection Act pixel tracking claim against Caesars Entertainment, holding that the VPPA did not extend to online video games. And in W.D. Wash., a complaint against Amazon.com over the allegedly unlawful recording of text chats with customer support was [dismissed](#) because it stated only California claims while the case was governed by Washington law.

In Cal. Super., a judge [trimmed](#) an IIED claim from "Vanderpump Rules" cast member Rachel Leviss' complaint against co-star Tom Sandoval over allegedly unauthorized recordings of intimate FaceTime calls, but let the remainder of the case continue.

The latest attempt at a federal comprehensive data privacy bill [made it out](#) of the U.S. House Committee on Energy and Commerce Subcommittee on Data, Innovation and Commerce after a markup, although not without some controversy among legislators. Meanwhile, state AGs are predictably [voicing displeasure](#) about the bill's preemption of state laws and limitations on state investigations.

Speaking of which, Maryland joins the ranks of states with data privacy laws with a [new measure](#) signed by Gov. Moore, while [Minnesota](#) and [Vermont](#) sent their own data privacy bills to their governors' desks. However, Vermont's bill is [facing a veto threat](#) from Gov. Scott due to its private enforcement mechanism.

C. Children's Privacy & Safety

A new [lawsuit](#) in N.D. Ga. adds to the growing list of child addiction cases against technology companies, this time against a slew of video game companies accused of snagging a teenaged gamer in nets of addictive features. A recent [article](#) from Clay Calvert (who appeared on a panel at our Digital conference in May to address the issue) explores the psychological and policy underpinnings of these suits.

The estate of a 13-year-old who committed suicide after being victimized through a sextortion scheme perpetrated via Snapchat [sued](#) Snap in D.S.C. for its failure to implement safety features to prevent such crimes.

A Wisconsin man was [arrested](#) and indicted in W.D. Wis. for creating and distributing AI-generated images of child sexual abuse, with the deputy AG in the case stating "CSAM generated by AI is still CSAM." But...is it? As I discussed in the September 2023 issue of the *Digital Review*, with regard to a state AG letter about this kind of abuse of AI tools, AI-generated CSAM potentially falls in a First Amendment gap between Supreme Court precedents:

The result in *New York v. Ferber* was premised largely on the need to choke off child pornography in order to stop the physical abuse of children involved in its creation and the perpetuation of the record of their involvement in such abuse. That premise was reinforced in *Ashcroft v. Free Speech Coalition* in 2002, in which the Supreme Court distinguished *Ferber* to hold that "virtual child pornography" not involving actual children could be protected by the First Amendment.

The AG's letter addresses material outside of both boxes, with a focus on AI-generated material created based in part on the images of real children but not involving direct physical abuse of children. Even though it lies beyond the precise logic of *Ferber*, I have little doubt that the Court would find a ban on CSAM deepfakes depicting real, identifiable children to be constitutionally sound based

on psychological harm to the child depicted (possibly with a detour through defamation law to recognize the damage of the false representation). *See U.S. v. Williams*, 128 S.Ct. 1830, 1840-41 (2008) (distinguishing simulated sexual conduct involving real children from the “virtual” material discussed in *Ashcroft*). What’s less clear is the constitutional status of child pornography that seems real but depicts a non-existent child, created using an AI tool that has non-CSAM images of real children in its training set. *Ashcroft* grappled with the question of virtual child pornography that seems real but isn’t, but obviously not involving this technology[.]

Hopefully, though, that’s an issue with which the feds are prepared to engage; they’ve got [strong policy arguments](#) on their side. It’s also notable that the [indictment](#) in the case alleges that the images in question are not just child pornography but legally obscene, which if true would obviate the need to thread a technological needle here.

And if AI-generated CSAM *has been* trained on non-AI CSAM, I see no real reason that the former should be treated differently from the latter, because it derives from the same abuse. But that raises another question...if non-AI CSAM creeps into a training set, what does that do to the legality of its outputs as a whole? Even if imagery generated by an AI tool does not appear to be CSAM, does the inclusion of CSAM images in training perpetuate the underlying abuse? This might also get back to the question of whether retaining data derived from an image in a training set is the equivalent of retaining a copy of the image, a question on which reasonable minds can and do differ. Let me quote myself again from the September 2023 issue: “Ugh, ick, ick, ick, enough.”

Social media companies [appeared](#) in California state court this month to argue motions to dismiss the bulk of a consolidated case in which hundreds of school districts have alleged that the platforms created a public nuisance by addicting minors. Meanwhile, Nebraska’s AG filed a [new suit](#) in the state’s courts accusing TikTok of deliberately subjecting minors to dangerous and age-inappropriate content.

In federal legislation, President Biden [signed](#) the REPORT Act, which modifies requirements for electronic communication service providers or remote computing services to report crimes to the National Center for Missing and Exploited Children by, among other things, imposing fines for failure to report, expanding reporting to include crimes related to federal trafficking, grooming, and enticement of children, and extending the period for which evidence of crimes must be kept. For the most part, it seems to be a [sensible approach](#) to fixing some structural problems with NCMEC’s operation.

Other developments are...less sensible. We’ve got the new First-Amendment-be-damned “The Kids Off Social Media Act,” or “KOSMA,” a bipartisan measure that would [ban users under 13](#) from social media. (Why include the “The” in the formal title, just to cut it from the acronym?)

Then there's the not-to-be-confused "Kids Online Safety Act," or "KOSA," which has been kicking around the Senate for a while; the Senate version now looks like it has [filibuster-proof support](#). Meanwhile, a companion bill [introduced in the House](#) last month was [approved](#) by a subcommittee voice vote and is [headed to the Energy and Commerce Committee](#) in June. Then there's also the Children and Teens' Online Privacy Protection Act (a/k/a "COPPA 2.0"), which has been [wound into](#) the broader American Privacy Rights Act discussed in the prior section.

The leaders of the House Select Committee on the Chinese Communist Party (the same bunch that Steve Scalise's office invoked in pressuring NetChoice, I believe) has [called on the FTC](#) to investigate whether TikTok violated COPPA through in its online solicitations for users to contact Congress to oppose the TikTok ban. The solicitation asked users to provide some personal information such as ZIP codes to help identify their representatives in Congress. If deemed to be a COPPA violation, I'd have questions about whether that application of the law would be constitutional. TikTok denies that the solicitations went to users under 18 in any event.

In similar news, the Senate Committee on Health, Education, Labor and Pensions [announced](#) an investigation into Tutor.com, a Chinese-owned student tutoring platform, to assess potential threats to student safety and privacy.

So...apropos of nothing, when does legitimate concern over foreign surveillance and influence efforts cross the line into political leveraging of xenophobic paranoia? Asking for a friend. Or, really, about [336 million friends](#) as of the date I'm writing this sentence.

California's Senate [approved](#) SB 976 this month, a bill that would prohibit platforms from exposing minors to "addictive" social media feeds without parental consent, while the state's Assembly [passed](#) AB 3172, which imposes liability on platforms with more than \$100 million in annual revenue for failing to use "ordinary care and skill" with juveniles. Maryland Gov. Moore [signed](#) the Maryland Kids Code, which mirrors the constitutionally deficient California Age-Appropriate Design Code. Pennsylvania's House [passed](#) a bill requiring age verification and parental consent for social media users under 16, while Tennessee's governor [signed](#) an age verification bill for sites comprised of more than one-third content that is "harmful to minors."

I continue to be baffled by how anyone is supposed to measure the "one-third" in these laws. That's unconstitutional vagueness right there, even before you get to the more fundamental First Amendment problems. I know, I know, looking to state legislatures for logic these days is a fool's errand. And the really crazy thing is that I'm kind of sympathetic to what they're trying to do...not about blaming platforms, but for stepping in to try to protect kids whose parents/guardians are either unwilling or unable to supervise and to make decisions about their children's media consumption. (Note that I'm not judging, because I'm not a parent.) The problem, of course, is that the government isn't a parent and absolutely shouldn't become one (or even a big brother). The First Amendment is, primarily, what keeps that from happening.

D. Rights of Publicity

Changing gears, a French subsidiary of Ancestry.com [escaped](#) an ROP lawsuit in N.D. Ill. for lack of personal jurisdiction. A new [lawsuit](#) filed by voice actors in S.D.N.Y. accuses AI startup LOVO of misappropriation of their voices. (Hold that thought, we'll get to ScarJo in just a moment.) A judge in E.D. Pa. [denied](#) a motion to dismiss yet another models' ROP claim against strip clubs for unauthorized use of their images in promotions. And a New York appellate panel [held](#) that a woman whose image was captured in the background of an Instagram photo of Kim Kardashian had no ROP claim under New York statute, because there was no allegation that her likeness was used for advertising purposes.

So, yes, there was a flap this month over a new personal assistant voice for OpenAI's ChatGPT that many thought sounded like Scarlett Johansson (who provided the voice of an AI in the 2013 film "Her"). These people included Scarlett Johansson herself, whose legal team [demanded to know](#) how this came to pass. [Turns out](#) that OpenAI had sought Johansson's permission, been turned down, sought her permission again, and then released the AI voice before getting another response. It was [revealed a couple of days](#) later that the AI voice was trained on another actress's voice, which calls to mind the cases about [celebrity look-alikes and sound-alikes](#).

E. Biometrics

A judge in S.D.N.Y. [held](#) that Madison Square Garden Entertainment did not violate NYC's Biometric Identifier Information Code by using facial recognition to identify attorneys banned from entering its venues. In W.D. Wash., a magistrate [recommended](#) denying Amazon's motion to dismiss an Illinois BIPA claim over its provision of cloud computing services to game company Take-Two Interactive; Take-Two allegedly used Amazon's servers to store biometric data gathered by its NBA 2K videogames.

F. Manipulated Media

The White House [called on](#) tech companies this month to take voluntary measures to curb the use of AI to generate fake nudes and other sexual imagery of real people. Google has [downranked](#) sites hosting such content in its search results, though the measure has been [criticized](#) as insufficient to the problem.

G. Hacking, Scraping & Data Breach

We have a [striking ruling](#) out of N.D. Cal. this month shutting down X Corp.'s lawsuit against data scraper Bright Data, dismissing X's trespass to chattels, fraud, and tortious interference claims for lack of any damage or misrepresentations, and dismissing its contract claims on the basis that its user agreement, which did not bind Bright Data, gave X no rights to exclude others from use of user-generated content. In a particularly interesting twist, the judge held that

allowing X to leverage tort law and a contract of adhesion to block scraping would be preempted by the Copyright Act.

Meanwhile, in X Corp.'s failed scraping lawsuit in the same court against the Center for Countering Digital Hate, CCDH [dropped](#) its demand for attorneys' fees under California's anti-SLAPP law after the parties reached an agreement to resolve the motion.

Meta Platforms had more luck in its scraping lawsuit in N.D. Cal. against AI company Voyager Labs, with the court [ruling](#) that Meta adequately pleaded that Voyager was bound by Facebook's terms of service and was prohibited from scraping under those terms.

In C.D. Cal., a judge [heard](#) a Trump White House aide's motion to dismiss Hunter Biden's CFAA claim over the alleged accessing of data from a copy of Biden's laptop. The judge asked whether the copy of Biden's hard drive was a protected computer under the federal statute; I initially thought, "well, of course it is," then fell down an ontological rabbit hole.

The U.S. Department of the Treasury's Office of Foreign Assets Control [sanctioned](#) three individuals and three corporate entities for their roles in using a botnet to compromise personal devices, which were then used by criminals as a VPN to carry out fraud and transmit threats. The sanctions effectively freeze the targeted individuals' and entities' property interests in the United States. The FBI subsequently [shut down the botnet and arrested its administrator](#).

H. Other Privacy Issues

In a Telephone Consumer Protection Act case against GoDaddy, the Eleventh Circuit [ruled](#) that the district court improperly granted approval for a class, settlement, and fees sought by class counsel, who were in a rush to tie up the case before a then-pending Supreme Court ruling on the definition of an autodialer that had the potential to destroy their claims.

II. Intellectual Property

A. Copyright

Well, the prognosticators got this one backwards, it seems. There was significant speculation after oral argument in *Warner Chappell Music v. Nealy* (involving whether the discovery rule in copyright actions applies to claimed damages more than three years old) that the Supreme Court would bounce the case as an improvident grant of cert, and then grant cert in *Hearst Newspaper v. Martinelli*, which questioned whether the discovery rule applies in copyright cases in the first place. Instead, the Court [issued a 6-3 opinion](#) in *Nealy* holding that the discovery rule does apply to damages, and [denied cert](#) in *Martinelli*. Huh.

The Supreme Court also [denied cert](#) in a copyright infringement case against the notorious online forum Kiwi Farms, in which the Tenth Circuit revived a contributory infringement claim

premised on the site's refusal to honor a takedown notice from an author whose book was allegedly uploaded to the forum without authorization.

Cox Communications is taking another shot at flipping the mammoth judgment against it over infringement of music recordings by its users, [appealing](#) to the Fourth Circuit from a district court's denial of a motion for a new trial based on alleged litigation misconduct by the recording company plaintiffs. Also in the Fourth Circuit, a three-judge panel [denied](#) a photographer's motion for attorneys' fees following his win on appeal over a news site's use of his photo of Ted Nugent.

The D.C. Circuit [heard argument](#) this month on a First Amendment challenge to the Copyright Office's discretion to authorize circumvention of technological copyright-protection measures for some purposes but not others.

In N.D. Cal.: A judge [denied](#) the Internet Archive's motion to dismiss claims from major record companies over the Archive's "Great 78 Project," an effort to digitize sound recordings on 78 rpm records. We've got [two new](#) complaints against machine learning companies from artists who allege that their works were using in training sets without authorization. And in a different AI training suit, Stability AI and Midjourney [argued](#) their motions to dismiss claims from 10 artists, with the judge ruling tentatively in the plaintiffs' favor.

German companies who allegedly infringed the code for Activision's Call of Duty games in the course of selling cheat codes were whacked with a [\\$14.4 million default judgment](#), plus attorneys' fees, in C.D. Cal. after they stopped defending themselves in court. Meanwhile, a jury in W.D. Wash. [awarded](#) Bungie a little over \$63K for infringement of its copyright in its game Destiny 2 by a cheat code seller.

Raw Story Media and AlterNet Media have filed their [opposition](#) to OpenAI's motion to dismiss their lawsuit in S.D.N.Y. alleging that their copyright management information was stripped from their work in the course of training OpenAI's large language models. Also in S.D.N.Y., the Mechanical Licensing Collective [sued](#) Spotify in a dispute over the latter's alleged recharacterization of its Premium music service and accompanying reduction in royalty payments.

Prof. Goldman [rounds up four cases](#) from recent months, some of which slipped through the cracks here, in which plaintiffs in § 512(f) cases over bogus DMCA takedown notices had some notable successes. The decisions are from [D. Ariz.](#), [N.D. Ill.](#), [S.D.N.Y.](#), and [W.D. Wash.](#), and came down in March and April.

In other news: Sen. Mark Warner (D-VA) [continues to lobby](#) the Copyright Office to adopt a DMCA exemption for circumvention of technical measures to allow researchers to test bias in LLMs. TikTok and Universal Music Group have [resolved their dispute](#) over music on the

platform, while Sony Music has [blanketed](#) AI companies and streaming companies with letters telling them not to use its artists' work to train their AIs.

B. Trademark

The Sixth Circuit [held](#), 2-1, that a home movie digitization company sued for trademark infringement subjected itself to the jurisdiction of the federal district courts in Tennessee by providing services to approximately 20 customers in the state each year for three years, with the number incrementing upward each year. The dissent argued that the majority focused on the conduct of consumers, not the company, and allowed jurisdiction to be premised on "random, fortuitous, or attenuated contacts." Gotta say, I'm with the dissent on this one.

Word game enthusiasts will be unsurprised that The New York Times has [opposed](#) the registration of "Worldle" for an online geography game. I got one in 2, recently, and I'm pretty darned proud of myself. My streak on the NYT Crossword stands at 1,560 as of June 9. I might play too many word games.

C. Patent

The Federal Circuit, sitting en banc, has [overturned](#) its circuit precedent on the non-obviousness test for design patents, holding that its past approach comported neither with the Patent Act's application of the same requirements to design and utility patents nor the Supreme Court's flexible approach to the question. In another case, a split panel of the Federal Circuit [held](#) that Dish Network and Sirius XM were not entitled to attorneys' fees expended in successfully persuading the PTAB to invalidate a patent that was the foundation of an "objectively baseless" infringement lawsuit against them.

A jury in D. Del. hit Activision Blizzard with a [\\$23.4 million judgment](#) this month, finding that the company infringed patents in its games "World of Warcraft" and "Call of Duty." In W.D. Wash., a judge [held](#) that Valve was estopped by its conduct before the PTAB from raising certain arguments in an infringement lawsuit over a video game controller, leading to an entry of partial summary judgment against the company. In the same court, Nintendo obtained a [stay](#) of an infringement case pending inter partes review of the patents in question, with the exception of limited discovery that the court allowed to proceed.

Finally, an administrative law judge at the International Trade Commission [ruled](#) that DivX had failed to establish that an array of devices imported by Amazon infringed four of its patents.

D. Trade Secrets/Misappropriation/Conversion

Nothing to report this month.

III. Platform Management

A. Section 230

The Ninth Circuit [bounced](#) an interlocutory appeal from a consolidated ruling that Section 230 protects Google, Apple, and Meta against some claims that they allow illegal “social casino” games on their respective platforms, finding that the district court’s decision was an “opinion on an abstract question of law,” not a resolution of any of the plaintiffs’ claims, and so did not support appellate jurisdiction.

In N.D. Cal., Professor Ethan Zuckerman (hey, I know that guy!) has [sued](#) Facebook seeking a declaration that his “Unfollow Everything 2.0” tool, which “would allow [Facebook] users to unfollow their friends, groups, and pages, and, in doing so, to effectively turn off their newsfeed,” is protected by Section 230 against the legal threats that shut down Unfollow Everything 1.0. If that puzzles you a bit, let all become clear: Zuckerman is invoking the rarely-used [§ 230\(c\)\(2\)\(B\)](#), which states, “No provider or user of an interactive computer service shall be held liable on account of . . . any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).”

If you go look for “paragraph (1),” it makes no sense; that’s because there’s actually a typo in the statute. It’s supposed to say “paragraph (A),” which refers to “material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.” So, essentially, Zuckerman says he’s constructed an interactive computer service that provides the technical means to turn off the Facebook newsfeed, which a user might see as falling into one of the categories above (probably “otherwise objectionable”). Sounds logical, but I wonder whether it will fall through one of the contract-related cracks the Ninth Circuit has been widening recently in 230’s protection.

Prof. Goldman [rounds up](#) two recent FOSTA cases, [one from N.D. Cal.](#) involving YouTube and [one from N.D. Tex.](#) involving Salesforce, citing the Seventh Circuit’s ruling last year that § 230 did not shield Salesforce in a FOSTA case because the claims arose out of its status as a vendor of services rather than as a publisher. The judge in N.D. Cal. distinguished the Seventh Circuit ruling on the basis that YouTube’s only business relationship with the producer of content at issue was its standard revenue sharing agreement for videos, while the judge in N.D. Tex. held that the Seventh Circuit ruling applied but that the complaint failed to state the necessary scienter for the underlying FOSTA claim.

A judge in S.D. Fla. [held](#) that § 230 shielded Google against claims over allegedly defamatory statements made by Washington’s Department of Health that made their way into Search and YouTube. A judge in N.D.N.Y. [held](#) that § 230 precluded product design claims against Meta

which were clearly based in alleged harm from third-party posts. A California appellate panel [held](#) that § 230 precluded claims against online repositories of court documents that allegedly failed to withdraw copies of records later redacted by the original court (like much later – six years or so). And out of Minnesota state court, we have a [disturbing ruling](#) that § 230 does not apply to a Facebook user who boosted allegedly defamatory third-party content, without regard to whether any editorial content added by the user was unlawful.

Speaking of disturbing, we've got a [new House bill](#) that would sunset § 230 at the end of 2025 in order to force tech companies to come to the table and to capitulate to more restrictive legislation. This was followed by a [subcommittee hearing](#) on the bill. [Many](#), [many](#), [many](#), [many](#) people think this is a bad idea.

B. Elections & Political Advertising

The FCC has [proposed a rule](#) that would require all creators of political advertisements disclose any use of AI-generated content. Meanwhile, Colorado [passed a new law](#) requiring much the same thing, and Microsoft and OpenAI are [putting \\$2 million](#) towards a “societal resilience fund” that would support education about AI among voters.

C. Content Moderation

In [NRA v. Vullo](#), the Supreme Court unanimously held that the NRA adequately pleaded a First Amendment jawboning claim against a former New York state official, based on her pressure on third-party insurance services to cut off the NRA because of its message. It wasn't an internet case, but it's interesting to review the decision for any hints about *Murthy v. Missouri*. I've got a [full write-up of Vullo](#) in this month's *MediaLawLetter*.

The Ninth Circuit [affirmed](#) the dismissal of an account termination case against Google over the plaintiff's YouTube channel, finding that the plaintiff's interpretation of Google's terms of service was unreasonable.

Meanwhile, the Ninth Circuit [heard oral argument](#) on Robert F. Kennedy, Jr.'s appeal from the denial of an injunction to compel YouTube to restore videos that he claims the government ordered removed. One more time – even if Kennedy were right about the government pressure, the remedy is not for another government entity to compel YouTube to do anything. [Especially not in the Ninth Circuit](#).

Oh, and look, RFK Jr. is at it again! He's got *another lawsuit*, this one in N.D. Cal. against Meta over the blocking of users' watching, sharing, or linking to one of his campaign videos. Meta reports that the block was a glitch, but regardless of what happened the claims are so much argle-bargle.

Um, I'm just gonna say this: "perpetually aggrieved" is not a good look for a presidential candidate, IMNSHO.

We've got a [roundup](#) of account termination cases from Prof. Goldman, this one picking up a [decision](#) out of M.D. Ga. transferring a case against Meta to N.D. Cal., and a case out of D. Kan. in which a § 1983 claim against various social media companies [failed](#) for the obvious reasons and then [failed again](#) on a motion to reconsider.

A judge in E.D. Tex. [denied](#) the U.S. Department of State's motion to dismiss a claim over its alleged funding of anti-disinformation tools, which the plaintiffs allege were used against conservative content on online forums.

Meta Platforms, Instagram, Activision Blizzard, Microsoft, and more are facing a [new lawsuit](#) in Cal. Super. on negligence and product liability theories arising out of the alleged promulgation of firearms marketing and advertising on their games and platforms. The complaint accuses the companies of responsibility for the deaths of the Uvalde shooting victims.

Meta's Oversight Board took on a contentious issue this month, [agreeing](#) to review a decision to leave up three Facebook posts using the phrase "from the river to the sea." The Oversight Board has also [extended its jurisdiction](#) to Threads, Meta's rival to X.

D. Terms of Service & Other Contracts

In [Coinbase v. Suski](#), a case involving a conflict between an arbitration/delegation clause in a cryptocurrency exchange's general terms of service and a forum selection clause in the rules for a sweepstakes run by the exchange, the Supreme Court held that it is up to a court—not an arbitrator—to decide which contract applies.

In N.D. Cal., a judge [compelled arbitration](#) in a lawsuit against Google and Meta over private information allegedly shared with them by H&R Block. In Cal. App., a panel [held](#) that WeChat users claiming breach of contract by Tencent in its alleged censorship of their speech cannot argue that they did not agree to an arbitration clause in that same contract. Finally, North Carolina's Supreme Court [held](#) that if a user has agreed to a unilateral change-of-terms provision, that provision is enforceable so long as any amendment is within the "universe of terms" of the original agreement and complies with the implied covenant of good faith and fair dealing.

IV. Other Content Liability

A. Defamation

It was a rough month for defamation defendants arguing that their statements were opinion:

- A judge in E.D. Pa. [held](#) that an official email sent by the University of Pennsylvania “to the full Penn community,” describing a professor’s conduct in connection with the handling of human remains as “unprofessional,” was a statement of unfitness for her profession rather than a subjective opinion (and that the professor adequately pleaded actual malice).
- A judge in M.D. Tenn. also came down on the fact side of the fact/opinion divide in [denying](#) a motion to dismiss a libel case against a true crime podcaster, who accused the family of a dead California teen of perpetrating a hoax in what the court found to be “terms of absolute certainty.”
- A judge in W.D. Tex. [held](#) that an email to a fraternity’s board member accusing a frat member of sexual abuse was “not engaging in a debate about the legality or morality of [plaintiff’s] conduct. He ... stated plainly that [plaintiff] sexually assaulted [his daughter] in high school.”

What else...well, a new [lawsuit](#) filed in N.D. Tex. by beverage company Prime Hydration accuses boxer Ryan Garcia of engaging in “calculated online ‘rants’ falsely claiming and without support that Prime’s hydration drink contains ‘horrible chemicals,’ will ‘kill your guys’s brains,’ ‘mess up your guys’s liver,’ and will ‘hurt you big time.’”

In state courts, a California appellate panel [reversed](#) the dismissal of an attorney’s defamation lawsuit over a YouTuber’s comments about her family’s connections to the Vietnamese Communist Party, finding that the lower court improperly found the plaintiff to be a limited purpose public figure. Me, I’m wondering how statements about the affiliations of other members of the plaintiff’s family satisfy the “of and concerning” requirement...in context, maybe there’s an implication as to the plaintiff herself, but I would have liked to see the court connect those dots.

A jury in Idaho state court [awarded](#) a drag performer \$1.1 million in damages for a blogger’s false accusations that he exposed himself to the public during a performance in a city park. Maryland’s intermediate appeals court [affirmed](#) the dismissal of a defamation claim over private text messages between the plaintiff and defendant for lack of publication to a third party (pretty rare you see a plaintiff trip over that requirement nowadays). Missouri’s AG is [stepping in](#) to defend state senators accused of libel after they took to social media to condemn a Kansas man falsely accused of being the shooter at the Chiefs’ Super Bowl parade – the pols are claiming

legislative immunity. In Texas state court, Rapper 50 Cent is [suing](#) an ex-girlfriend over Instagram allegations that he raped and otherwise physically abused her.

Finally, you might remember the recent libel lawsuits filed by a disgruntled fish in the dating pool after women who had the misfortune to go out with him warned others not to via the “Are We Dating the Same Guy” Facebook group. Well, ladies, good news – he was hooked by the feds for tax fraud and has been [sentenced](#) to a year in the federal cooler.

B. Commercial Speech

Tesla will face fraud and negligence claims over its advertising of the 2017 Tesla Model S as being fully self-driving after a judge in N.D. Cal. [denied](#) the company’s motions to dismiss as to those claims.

Football star Rob Gronkowski has [settled](#) claims in S.D. Fla. arising out of his role as an influencer supporting collapsed cryptocurrency lender Voyager Digital, agreeing to pay \$1.9 million to escape an investor lawsuit. In the same vein, a judge in W.D. Tex. [denied](#) a crypto influencer’s motion for summary judgment in an SEC lawsuit accusing him of unlawfully promoting and reselling unregistered securities.

Ingredient lists on the back of a package? Good way to dispel misunderstandings about what’s in the food product you’re buying. Ingredient list on a separate website? Not so much. At least, that’s what a judge in E.D.N.Y. [found](#) when denying a motion to dismiss a claim against Cold Stone Creamery over pistachio ice cream that had never seen a real pistachio. The horror...

A judge in W.D. Wash [denied](#) Amazon’s motion to dismiss an FTC lawsuit accusing it of tricking consumers into enrolling in Prime and then making it difficult to cancel. A new [lawsuit](#) filed by Arizona’s AG in the state’s superior court makes similar allegations.

Finally, ticket resellers will face the wrath of the Swifties in Minnesota after Gov. Tim Walz [signed a bill](#) requiring expanded fee disclosures and imposing other restrictions in the wake of the Taylor Swift Eras Tour ticket debacle. The number of the bill? 1989, of course.

[Shake that one off.](#)

C. Professional Speech

In a case challenging the application of North Carolina’s land surveyor licensing requirement to a drone company’s sale of aerial maps and 3D digital models, the Fourth Circuit [held](#) that the law was not content-based and thus subject only to intermediate scrutiny.

D. Threats, Harassment, and Incitement

The Seventh Circuit [rejected](#) a First Amendment challenge from a man sentenced to four years in prison for a Facebook post inciting a riot in the wake of George Floyd's murder, holding that the federal Anti-Riot Act is not overbroad.

V. Infrastructure

A. Accessibility, Affordability & Discrimination

The Second Circuit [held](#) that New York's Affordable Broadband Act, which compels ISPs to offer broadband at discount prices to certain households, was not preempted by the Communications Act of 1934 nor by the FCC's 2018 order classifying broadband as an information service.

B. Antitrust

The Supreme Court [denied cert](#) in *Coronavirus Reporter v. Apple* out of the Ninth Circuit, in which the courts below rejected the antitrust claims of app developers whose apps related to COVID-19 or cryptocurrency were rejected from the App Store.

The Ninth Circuit [denied](#) Apple leave to appeal a decision certifying a class of App Store users in an antitrust action. Similarly, an effort by Sony to short-circuit class certification in a lawsuit over the prices it charged on the PlayStation Store was [rejected](#) by a judge in N.D. Cal., because the record did not yet support Sony's claim that the plaintiffs were bound by class waivers or arbitration clauses.

The judge in Epic Games' successful antitrust lawsuit in N.D. Cal. against Google over the Play Store held a [hearing](#) this month on how to sculpt appropriate injunctive relief. Video platform Rumble has filed a [new lawsuit](#) against Google in N.D. Cal. alleging anticompetitive activity in the ad technology market. In the same court, the developer of a virtual reality fitness app who alleged antitrust claims against Meta Platforms [voluntarily dismissed](#) its case.

Props to Google this month for a [bold move](#) to force a bench trial in E.D. Va. by sending the DOJ a check covering the government's maximum possible monetary recovery, thus resolving any non-equitable claims that might have justified a jury trial. The maneuver [seems to have worked](#). [LATE UPDATE: [It did.](#)]

Finally, FTC Chair Lina Khan has [announced](#) that the Commission is examining whether companies engaging in data scraping to train AI systems have committed antitrust or privacy violations.

C. Net Neutrality & Data Throttling

The FCC has now released the [final text](#) of its order restoring net neutrality principles; the final order [expressly prohibits “fast lanes”](#) for certain applications, closing a loophole identified in an earlier draft version.

Unsurprisingly, the ISP industry has [headed to the federal Courts of Appeals](#) to challenge the FCC’s order, with petitions in multiple federal circuits. [LATE UPDATE: The Sixth Circuit has been [randomly assigned](#) to hear the positions.]

D. Domain Name System

Nothing to report this month.

E. Taxation & Compelled Payments

We have a [new journalism funding bill](#) in California, SB 1327, that would impose a “data extraction mitigation fee” on large platforms – basically a tax on tech companies that make their money from digital advertising. The new bill is receiving [mixed reviews](#) from the technorati, who overall seem to prefer it to the still-pending California Journalism and Preservation Act. Google, however, has [responded](#) to SB 1327 by telling smaller news outlets that the proposal would threaten the viability of its journalism grant program under the Google News Initiative.

Meanwhile, Illinois’ legislature is [considering](#) its own tax on tech companies triggered when journalism content is shared and keyed to the number of journalists involved rather than clicks. Still early days on that one, though.

F. Wire & Wireless Deployment

Minnesota this month joined the ranks of states tearing down barriers to municipal broadband projects, [repealing two laws](#) that (1) required a supermajority vote to authorize municipal broadband and (2) prohibited municipal broadband if a private provider might offer service “in the reasonably foreseeable future.”

The FCC is [seeking additional comments](#) on proposed changes to its rules about mitigating orbital debris. Take only high-resolution surveillance images, leave only ion trails.

G. Artificial Intelligence

As usual, we have a link roundup in this section, but I wanted to call out [this article](#) as potentially of interest to anyone trying to make sense out of what we’re talking about when we discuss generative AI.

Government & Voluntary Regulation

- [Chuck Schumer and bipartisan group of senators unveil plan to control AI – while investing billions of dollars in it](#), *CNN*
 - [Driving U.S. Innovation in Artificial Intelligence](#)
- [National Archives Bans Employee Use of ChatGPT](#), *404 Media*
- [Colorado governor signs sweeping AI regulation bill](#), *The Hill*
- [AI safety becomes a partisan battlefield](#), *Axios*
- [Regulations For Generative AI Should Be Based On Reality, Not Hallucinations](#), *Techdirt*
- [Tech giants pledge AI safety commitments — including a ‘kill switch’ if they can’t mitigate risks](#), *CNBC*
- [Meta’s Zuckerberg Creates Council to Advise on AI Products](#), *Bloomberg*
- [OpenAI adds new safety committee as it begins training next big model](#), *Axios*
- [OpenAI considers allowing users to create AI-generated pornography](#), *The Guardian*
- [TikTok will automatically label AI-generated content created on platforms like DALL·E 3](#), *TechCrunch*
- [N.D. Ga.: University Suspends Students for AI Homework Tool It Gave Them \\$10,000 Prize to Make](#), *404 Media*
 - [Order: Craver v. Emory University](#)
- [N.H.: Democratic consultant indicted for Biden deepfake that told people not to vote](#), *Ars Technica*
 - [The First Amendment Gives You The Right To Lie, Even With AI](#), *Techdirt*
- [You searched Google. The AI hallucinated an answer. Who’s legally responsible?](#) *Vox*

Legal Industry

- [11th Cir.: US judge makes 'unthinkable' pitch to use AI to interpret legal texts](#), *Reuters*
 - [Concurring Opinion \(Newsom, J.\): *Snell v. United Specialty Insurance*](#)
- [Judicial Council of California looking into use of generative AI in courts](#), *Courthouse News*
- [Neuro-Symbolic AI Could Redefine Legal Practices](#), *Forbes*
- [Quinn Emanuel Adopts AI-Powered Tool to Predict Judicial Rulings](#), *Bloomberg Law*
- [Voice-cloning technology bringing a key Supreme Court moment to 'life'](#), *Associated Press*

News Industry

- [Licensing deals, litigation raise raft of familiar questions in fraught world of platforms and publishers](#), *Columbia Journalism Review*
 - [News industry divides over AI](#), *Axios*
 - [The media bosses fighting back against AI — and the ones cutting deals](#), *Washington Post*
- [OpenAI inks licensing deal with Dotdash Meredith](#), *Axios*
- [OpenAI, WSJ Owner News Corp Strike Content Deal Valued at Over \\$250 Million](#), *Wall Street Journal*
- [FT CEO: News orgs 'have leverage and should insist on payment' from AI companies](#), *Press Gazette*
- [The Atlantic, Vox Media ink licensing, product deals with OpenAI](#), *Axios*
 - [Journalists "deeply troubled" by OpenAI's content deals with Vox, The Atlantic](#), *Ars Technica*
 - [This article is OpenAI training data](#), *Vox*
- [Deadspin's New Owners Reveal Their Plans: Betting Content—but No AI](#), *Wired*

- [Newspaper conglomerate Gannett is adding AI-generated summaries to the top of its articles](#), *The Verge*
 - [Gannett’s new contract language around AI unsettles local union](#), *Digiday*
- [For the first time, two Pulitzer winners disclosed using AI in their reporting](#), *Nieman Lab*
- [Early signs show Google AI Overviews won’t mean ‘dramatic downward dive’ for news traffic](#), *Press Gazette*
 - [News publishers sound alarm on Google’s new AI-infused search, warn of ‘catastrophic’ impacts](#), *CNN*
 - [Web publishers brace for carnage as Google adds AI answers](#), *Washington Post*
 - [Google’s A.I. Search Leaves Publishers Scrambling](#), *New York Times*
- [Meet AdVon, the AI-Powered Content Monster Infecting the Media Industry](#), *Futurism*
- [A national network of local news sites is publishing AI-written articles under fake bylines. Experts are raising alarm](#), *CNN*
- [This journalism professor made a NYC chatbot in minutes. It actually worked.](#), *Nieman Lab*

Entertainment Industry

- [Washed Out’s new music video was created with AI. Is it a watershed moment for Sora?](#), *Los Angeles Times*
 - [Washed Out Made an AI Music Video. The Backlash Was Swift](#), *Rolling Stone*
- [Sony Pictures to Use AI to Produce Movies and Shows In “More Efficient Ways”](#), *Hollywood Reporter*
- [Alphabet, Meta Offer Millions to Partner With Hollywood on AI](#), *Bloomberg*
- [Drake and Sexyy Red’s Use of ‘BBL Drizzy’ Sets a New Precedent for AI Sample Clearances](#), *Billboard*

Technical Developments & Challenges

- [We Can’t Imagine the Future of AI](#), *Reason*

- [Google and OpenAI Are Battling for AI Supremacy](#), *The Atlantic*
- [Google and OpenAI are racing to rewire the internet](#), *The Verge*
- [OpenAI unveils newest AI model, GPT-4o](#), *CNN*
- [OpenAI inks deal to train AI on Reddit data](#), *TechCrunch*
- [OpenAI says it's building a tool to let content creators 'opt out' of AI training](#), *TechCrunch*
- [OpenAI Says It Can Now Detect Images Spawned by Its Software—Most of the Time](#), *Wall Street Journal*
- [OpenAI offers a peek behind the curtain of its AI's secret instructions](#), *TechCrunch*
- [Google shows off astonishing vision for how AI will work with Gmail, Photos and more](#), *CNN*
 - [Google's broken link to the web](#), *Platformer (Casey Newton)*
- [Google unveils Veo, a high-definition AI video generator that may rival Sora](#), *Ars Technica*
- [Google's call-scanning AI could dial up censorship by default, privacy experts warn](#), *TechCrunch*
- [Google CEO Sundar Pichai on AI-powered search and the future of the web](#), *The Verge*
 - [People are dunking on Google search AI's nonsensical answers](#), *Business Insider*
 - [Google's AI Overview is flawed by design, and a new company blog post hints at why](#), *Ars Technica*
 - [Google Rolls Back A.I. Search Feature After Flubs and Flaws](#), *New York Times*
- [New Microsoft AI model may challenge GPT-4 and Google Gemini](#), *Ars Technica*
- [Microsoft Edge will translate and dub YouTube videos as you're watching them](#), *The Verge*
- [Discord has become an unlikely center for the generative AI boom](#), *TechCrunch*

- [Reddit tests automatic, whole-site translation into French using LLM-based AI](#), *TechCrunch*
- [Using memes, social media users have become red teams for half-baked AI features](#), *TechCrunch*

H. Blockchain, Cryptocurrency, & NFTs

A new [lawsuit](#) by Dolce & Gabbana shareholders in S.D.N.Y. of misrepresenting the value of “essentially worthless” NFTs and then bailing out on the project.

A new [bill](#) in the U.S. House would shift some responsibility for regulation of cryptocurrency from the SEC to the Commodity Futures Trading Commission, which is perceived to exercise a somewhat lighter hand. The White House [opposes](#) the bill, but perhaps not so much as another House Joint Resolution targeting the SEC’s approach to crypto, which President Biden [vetoed](#).

VI. Government Activity

A. Data Surveillance, Collection, Demands, and Seizures

While the fight of the reauthorization of Section 702 is now behind us, we’ve recently learned a couple of interesting facts about the FBI’s use of the tool to surveil American citizens without a warrant. First, the number of searches on U.S. citizens [fell](#) in 2023. Second, FBI Deputy Director Paul Abbate urged the Bureau in April to beef up those numbers to justify the continued existence of Section 702. Sigh.

Oh, and a [reminder](#) this month that the cops are on social media too, looking out for anyone they might consider to be troublemakers.

B. Encryption

Nothing to report this month.

C. Biometric Tracking

Microsoft has placed [new limitations](#) on U.S. police departments using the Azure OpenAI Service for facial recognition. But let’s not pretend that just because you tell law enforcement not to use particular tech, they won’t find a way. Case in point, [this story](#) about cops in Austin and San Francisco calling on other agencies to run their facial recognition searches for them as an end-run around municipal prohibitions on police use of the technology.

D. Domain Seizure

An international law enforcement team has [revived the seized website](#) of ransomware gang LockBit and stated that it would use the site to share information about the group. (See the Anonymity/Pseudonymity section, *supra*, for an example.)

The FBI [seized](#) the website of BreachForums, an online marketplace for malware and stolen data.

Finally, U.S. law enforcement collaborated with an international operation that [seized more than 2,000 domains](#) and shut down more than 100 servers providing access to “droppers,” software tools used to install malware of various types.

E. Social Media Posts & Blocking

Nothing to report this month.

F. Prior Restraint

A brief note here...I know that *technically* a prior restraint is a court order directed at a particular person or entity prohibiting the target from certain future speech. However, I also include in this section laws that directly prohibit the communication of particular information, because the chilling effect of such specific legislative prohibitions on speech is virtually the same, and the proof of a violation is almost identical to proof of violation of a “classic” prior restraint. And, of course, the Supreme Court itself has been a bit loose with the definition of a prior restraint – see, e.g., *Bantam Books*’ discussion of Rhode Island’s creation of a “system of prior restraints” and the old obscenity cases where “prior” meant “prior to a judicial determination on legality.” So, bear with me.

Anyway, a New Jersey journalist has [petitioned](#) the state’s supreme court for review of an appellate decision holding that Daniel’s Law, which prohibits the disclosure of the residential addresses of judges and other public officials, does not violate the First Amendment. It *so* does violate the First Amendment. Meanwhile, the N.J. Supreme Court [held](#) that a non-disparagement clause in a sexual discrimination and harassment settlement between a former police officer and a New Jersey police department violated public policy, because it conflicted with a state law enacted in the wake of #metoo giving survivors of abuse the right to tell their stories.

So, that’s Jersey...what about across the river in New York? Did anything prior-restrainty or gag-order-related happen in May? [Nope, not that I recall!](#)

Finally, a Washington appeals court [heard argument](#) this month on the constitutionality of a state law prohibiting the posting of video of state workers' compensation medical exams to social media.

G. Online Access to Government Information

This isn't the kind of "online access" that I usually cover in this section, but so be it. The USPTO has acknowledged [another inadvertent disclosure](#) of the private addresses of thousands of filers in datasets made available to researchers. The culprit? That old scapegoat, the "new IT system." Computers, who understands 'em, amirite?

VII. Global

A. International

- [More than half world without freedom of expression as India falls into 'crisis', report](#), *Press Gazette*
- [Female journalists under attack as press freedom falters](#), *The Guardian*

B. Europe

- [CJEU: Google, Amazon win EU court backing in Italian rule dispute](#), *Reuters*
 - [Judgment: Airbnb Ireland v. Autorità per le Garanzie nelle Comunicazioni](#)
 - [Judgment: Expedia v. Autorità per le Garanzie nelle Comunicazioni](#)
 - [Judgment: Google Ireland v. Autorità per le Garanzie nelle Comunicazioni](#)
 - [Judgment: Amazon Services Europe v. Autorità per le Garanzie nelle Comunicazioni](#)
- [EU Council gives final nod to set up risk-based regulations for AI](#), *TechCrunch*
 - [With the EU AI Act incoming this summer, the bloc lays out its plan for AI governance](#), *TechCrunch*
- [EU plan to force messaging apps to scan for CSAM risks millions of false positives, experts warn](#), *TechCrunch*
- [EU's ChatGPT taskforce offers first look at detangling the AI chatbot's privacy compliance](#), *TechCrunch*
 - [EDPB Report](#)
- [EU warns Microsoft it could be fined billions over missing GenAI risk info](#), *TechCrunch*

- [EU opens child safety probes of Facebook and Instagram, citing addictive design concerns](#), *TechCrunch*
- [EU ‘closely’ monitoring X in wake of Fico shooting as DSA disinfo probe rumbles on](#), *TechCrunch*
- [EU queries X over cut to content moderation resources](#), *AFP*
- [EU Explores Whether Telegram Falls Under Strict New Content Law](#), *Bloomberg*
- [Chinese e-commerce marketplace Temu faces stricter EU rules as a ‘very large online platform’](#), *TechCrunch*
 - [Temu accused of breaching EU’s DSA in bundle of consumer complaints](#), *TechCrunch*
- [Europe Banned Russia’s RT Network. Its Content Is Still Spreading.](#), *New York Times*
- [Critics of Putin and his allies targeted with spyware inside the EU](#), *The Guardian*
- [EU Commission launches new mastodon instance: a step towards digital Europe](#), *Das Netz Und Ich*

C. Africa

- [Africa's internet vulnerability and how to fix it](#), *BBC News*
- [CJID to launch two Artificial Intelligence tools to aid journalism practice](#), *The Nation Ng*

D. Argentina

- [Argentine President Milei to meet Apple, Google, Meta CEOs in US](#), *Reuters*

E. Australia

- [An expert warns age verification for porn 'doesn't work'](#), *SBS*
 - [Hours After Aussie Gov’t Greenlights Online Age Verification Pilot, Breach Of Mandated Verification Database For Bars Is Revealed](#), *Techdirt*
- [Australian judge extends ban on X sharing video of Sydney bishop’s stabbing](#), *Associated Press*
 - [Australian regulator wants to dictate what the whole world can see online](#), *FIRE*

- [Elon Musk's Broken Clock Moment: Standing Up To Australia's Censorship Overreach](#), *Techdirt*
- [Australian judge rules that social media platform X must answer to hate speech complaint](#), *Independent*
- [Lawyer linked to 'parasitic' AI content network identified](#), *ABC*
 - [Media lawyer resigns after ABC investigation reveals his links to plagiarism websites](#), *ABC*
- [Federal Court hears Mark Latham's tweet 'went as low as possible' as independent MP Alex Greenwich sues the former One Nation leader](#), *ABC*
 - [Mark Latham refused to pay Alex Greenwich \\$20,000 to avoid defamation lawsuit over graphic tweet](#), *AAP*
- [Google releases new tool to enable Australians to find their personal information and request removal](#), *The Guardian*
 - [Young people share their experiences of being doxxed — from 50 food deliveries a day to being 'terrified'](#), *ABC.net.au*

F. Austria

- [Can ChatGPT Violate Your Privacy Rights If It Doesn't Store Your Data?](#), *Techdirt*

G. Canada

- [Google suing CRTC to have YouTube video ad revenue exempted from regulatory fees](#), *Canadian Press*
- [Screenshots are one big winner of Meta's news ban in Canada](#), *Nieman Lab*
 - [Canada's media industry warns Australia on Meta news ban](#), *AdNews*
- [Ontario wants meeting with social media execs to battle classroom distractions](#), *Global News*
- [Canada's CBC On European Charm Offensive To Rally Support For Social Media Detox Initiative](#), *Deadline*
- [Defamation lawsuit against Canadaland to go to trial](#), *Toronto Star*

- [YouTuber fined \\$350,000 for defamation](#), *Vancouver Sun*
- [NSO Group Continues To Use The Lawsuit Filed Against It By WhatsApp To Harass Canadian Security Researchers](#), *Techdirt*

H. China

- [How China is using AI news anchors to deliver its propaganda](#), *The Guardian*
- [Chinese journalist imprisoned for her Covid reporting due to be released after four years. But will she be free?](#), *CNN*
 - [A citizen journalist imprisoned for 'provoking trouble' by reporting on COVID in China is released](#), *Associated Press*
- [Chinese social media companies remove posts 'showing off wealth and worshipping money'](#), *The Guardian*
- [China's latest AI chatbot is trained on President Xi Jinping's political ideology](#), *Associated Press*
- [Deepfakes of your dead loved ones are a booming Chinese business](#), *MIT Technology Review*

I. France

- [France accuses Azerbaijan of meddling in New Caledonia with social media campaign](#), *Reuters*
 - [French government bans TikTok in overseas territory amid violent protests](#), *Politico*
 - [Why did France block TikTok to quell unrest in New Caledonia?](#), *France 24*
- [French media progress against X in legal battle over payments](#), *AFP*

J. Germany

- [Far-right party can still be kept under surveillance, says court](#), *Washington Post*
- [Michael Schumacher's family win case against publisher over fake AI interview](#), *Associated Press*

K. India

- [India's YouTubers take on Narendra Modi](#), *The Economist*
 - [Indian journalists turned to YouTube to dodge Modi's censorship. Some of their channels are now being blocked](#), *Reuters Institute*
- [Indian Voters Are Being Bombarded With Millions of Deepfakes. Political Candidates Approve](#), *Wired*
 - [Fake videos of Modi aides trigger political showdown in India election](#), *Irish Times*
 - [Election Commission asks political parties to remove fake content from social media within 3 hours](#), *Indian Express*
 - [Indian journalists are on the frontline in the fight against election deepfakes](#), *Nieman Lab*

L. Indonesia

- [A Web of Surveillance – Unravelling a murky network of spyware exports to Indonesia](#), *Amnesty International*

M. Ireland

- [Elections watchdog casts doubt on its ability to police online content](#), *Irish Times*

N. Japan

- [Japan enacts revised law for swift removal of defamatory online posts](#), *Japan Today*
- [Panel compiles discussion points to stop scam ads on social media](#), *Asahi Shimbun*
- [Japan aims to curb Apple and Google's smartphone app duopoly](#), *Japan Times*
- [LDP Draft Proposal Aims for Japanese Content Industry to Reach ¥20 Trillion by 2030; Draft Calls to Double Investment and Train Talent](#), *Japan News*

O. Mexico

- [Disinformation war engulfs Mexican presidential race](#), *AFP*

P. Nigeria

- [Nigerian journalist's arrest last week triggers criticism of worsening press freedoms](#), *Associated Press*

Q. Norway

- [Sex offender asks Norway's Supreme Court to declare social media access is a human right](#), *Associated Press*

R. Pakistan

- [Pakistan drafts new social media regulatory law amid free speech concerns from digital activists](#), *Arab News*

S. Russia

- [Russian journalist arrested for years-old social media posts amid intensifying crackdown](#), *National Post*
- [Medvedev threatens reprisals against Yandex bosses over GPT chatbot](#), *The Bell*

T. Singapore

- [Former PM's brother ordered to pay \\$296,000 in defamation suit](#), *Reuters*

U. South Africa

- [Influencers are using TikTok to encourage voting in South Africa](#), *Rest of World*

V. South Korea

- [Korea to establish AI copyright system by year-end](#), *Korea Times*
- [Gov't will launch 'K-info Hub' to correct misinformation about Korea](#), *Korea JoongAng Daily*

W. Spain

- [Spain bans Meta from launching election features on Facebook, Instagram over privacy fears](#), *TechCrunch*
- [Encrypted services Apple, Proton and Wire helped Spanish police identify activist](#), *TechCrunch*

X. Switzerland

- [Swiss public broadcasters withdraw from X/Twitter](#), *Swiss Info*

Y. Taiwan

- [Who's actually using Threads? Young protesters in Taiwan](#), *Rest of World*

Z. Thailand

- [Former Prime Minister Thaksin Shinawatra will be indicted for royal defamation, prosecutors say](#), *Associated Press*

AA. Tunisia

- [2 journalists in detention as authorities launch wave of arrests against critics](#), *Associated Press*

BB. Turkey

- [Automattic's Turkish Delight: A Rare Win Against Erdogan's Censorship](#), *Techdirt*
- [Turkish competition board fines Google over failure to comply with regulation](#), *Reuters*

CC. Ukraine

- [As Telegram's Popularity Soars, Is It 'A Spy In Every Ukrainian's Pocket'?](#), *Radio Free Europe / Radio Liberty*
- [Ukraine's Foreign Ministry Introduces AI Spokesperson Modeled After Ukrainian Influencer](#), *Kyiv Post*

DD. United Kingdom

- [UK MPs In Full Moral Panic Decide To Ignore The Research, Push For Dangerous Ban On Phones For Kids](#), *Techdirt*
- [Ofcom to push for better age verification, filters and 40 other checks in new online child safety code](#), *TechCrunch*
 - [Tech firms must 'tame' algorithms under Ofcom child safety rules](#), *The Guardian*
 - [OnlyFans hits UK regulator's radar for age-verification failures around porn access](#), *TechCrunch*

- [UK data protection watchdog ends privacy probe of Snap’s GenAI chatbot, but warns industry](#), *TechCrunch*
- [UK opens office in San Francisco to tackle AI risk](#), *TechCrunch*
- [‘Pro-competition’ rules for Big Tech make it through UK’s pre-election wash-up](#), *TechCrunch*
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- [Prince Harry hacking claim: Mail files ‘trenchant defence of its journalism’ to the High Court](#), *Daily Mail*
 - [Daily Mail publisher ‘denies under oath’ Prince Harry hacking claim](#), *Press Gazette*
 - [Harry barred from adding claims against Rupert Murdoch to unlawful reporting trial](#), *Press Gazette*
- [Judge: Craig Wright forged documents on “grand scale” to support bitcoin lie](#), *Ars Technica*
 - [Judgment: Crypto Open Patent Alliance v. Wright](#)
- [Joey Barton calling Jeremy Vine ‘bike nonce’ had defamatory meaning, judge rules](#), *Press Gazette*
- [UK mother of boy who killed himself seeks right to access his social media](#), *The Guardian*
- [UK parties face off on TikTok battleground](#), *AFP*

VIII. Miscellaneous

A [wide array of amici](#) across the political spectrum have filed briefs supporting citizen journalist Priscilla Villarreal's petition to the Supreme Court from review of a Fifth Circuit en banc ruling that police were entitled to qualified immunity for arresting Villarreal. The "crime"? Asking a police source a question, the answer to which had not yet been officially made public.

A [complaint](#) removed this month to N.D. Ga. accuses online game websites of offering gambling games that are illegal in Georgia.

A new [putative class action](#) was filed against Spotify in S.D.N.Y. over its decision to brick its "Car Thing" automobile interface devices.

Finally, the fraught relationship between the NYPD and city politicians was [on full display](#) this month after a New York City Council member criticized arrests of protesters on the Columbia University campus, the Chief of Patrol responded by using the NYPD's official X account to accuse the councilor of hating the city, and the councilor called for an independent probe into the NYPD's use of social media.

* * *

On that head-desking note, thanks for reading, everyone! As we segue into summer, I hope you're all looking forward to some time in the sun. After the *NetChoice* decisions drop, that is, because I know we're all waiting sleeplessly to see what happens.

What, just me?

Jeff Hermes is a Deputy Director with the Media Law Resource Center. He collects rare science fiction and fantasy ephemera as a hobby, which should come as no surprise to anyone who's met him. He seems like the type. By the way, if any of you hotshot researchers know where to obtain an original physical issue of the May 13, 2005, edition of the Times Higher Education Supplement, Jeff would love to speak with you – but that's a much harder puzzle than it seems.