

The MLRC Digital Review

Reporting on developments in digital media law and policy

by Jeff Hermes

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Greetings, everyone!

So, I've been musing on a problem highlighted by the Supreme Court's decisions in social media cases this past term. Across three cases, the justices were confronted with calls for them to resolve how the First Amendment applies to certain fundamental aspects of online communication: user-controlled spaces on digital platforms, and those operated by public officials in particular (*Lindke*); government pressure on social media companies to remove content (*Murthy*); and voluntary content moderation by digital platforms (*Moody*).

These are sweeping issues that became the object of sweeping lawsuits. In the case of *Moody*, the claims arose out of sweeping statutes promulgated by states that believed they had identified sweeping problems. And more are coming – a wave of state laws attempting to protect children online have relied upon blunderbuss solutions that could restrict speech and privacy for all users, both adults and children. These have triggered facial First Amendment lawsuits questioning their basic consistency with fundamental Supreme Court decisions of the digital age. The Supreme Court granted cert in one of these cases, out of Texas and the Fifth Circuit, at the tail end of the past term.

But if there's one through line in *Lindke*, *Murthy*, and *Moody*, it's that this particular set of justices isn't comfortable making sweeping pronouncements about First Amendment principles in digital space. Moreover, when they do address those principles (as opposed to taking an off-ramp via standing, as in *Murthy*), they are wreathed about with caveats on how slight changes in circumstances or technology might compel different results about which the Court is not prepared to opine. On that point, I recommend Clay Calvert's [recent article](#) about Justice Barrett's role in these cases.

And sure, to some extent that caution makes sense. Facts do matter, the justices have famously acknowledged that they are not technologists, and there is merit to the idea of the Court not resolving issues that have not been briefed by the interested parties. On that last point, Justice Thomas went so far in his concurrence in *Moody* as to call into question whether facial or overbreadth challenges are unconstitutional because they necessarily involve determinations with respect to the rights of parties not before the Court.

On the other hand, the Supreme Court does not do its job if it fails to grapple with the obvious and broad constitutional issues presented by a sweeping piece of legislation. As-applied challenges provide limited guidance to lower courts in other cases, especially when the Court is itself hung up on factual variations, leaving bad laws in place and those burdened by them in the position of having to defend their constitutional rights one-by-one. At worst, this creates a situation where the First Amendment is a right only for those who can afford to demand it.

The solution is for the Court to do a better job explaining how the principles behind a constitutional provision like the First Amendment intersect with the facts of a case to produce legal rules. Justice Barrett's decision in *Lindke* did the best job of this, articulating the various (and at times conflicting) speech interests of the parties and explaining how those interests refract through factual prisms to illuminate a result. [Even though](#) some of the Court's explanation of the framework was internally contradictory and it did not give lower courts the benefit of the Court actually applying the framework to the case at bar, the framework itself is a strong attempt at providing a reasoned basis for lower courts to move forward in other cases without deciding those cases itself.

In contrast, when the majority tried to do the same thing in *Moody*, it did so not so much by reference to underlying principle as by reliance on its prior analysis in analogous factual circumstances. This left [the explanation open to caveat and criticism](#) based on the strength of the analogies, and the rights enunciated open to mischief in the lower courts. It would have been a much stronger and more useful analysis had the Court followed the *Lindke* model, explained the speech interests at stake (e.g., those of the online service, those who might speak on the platforms, and those who might use the platforms to receive information), and explained how to analyze a case depending on whether and how those interests are implicated by the facts.

In other words, the Court can at least give us its algorithm for deciding cases without actually ruling on factual circumstances that are not before it – but that requires the Court itself to know what the algorithm is. Unfortunately, that is not always the case, as demonstrated by my least favorite First Amendment decision this term, *Vidal v. Elster*. That ruling, which should have been a relatively straightforward analysis of the constitutionality of a provision of the Lanham Act, was a fragmented mess because the Court lacked (or at least experienced collective amnesia regarding) any underlying theory of the First Amendment. The end result was unanimous but there was no clear agreement on why the case should come out that way. [In my opinion](#), that led to the decision being unanimously wrong.

Hopefully, the Court will follow the *Lindke* rather than the *Moody* or *Murthy* model when it decides the online age-gating case, [Free Speech Coalition v. Paxton](#), in the next term. In the meantime, we at the MLRC will do our best to make sense of what we have. On with the show!

(Oh, and what with the 4th of July and all, I skipped a month of the *Digital Review*. I'm catching up here, so this will be a round-up calling out top stories in each section with links to the rest.)

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I. Privacy

A. Anonymity/Pseudonymity

Are music groups attempting to unmask online accusers becoming a thing now? Because I feel like they're becoming a thing.

- [N.D. Cal.: Court Allows K-Pop Group to Subpoena YouTuber's Identity from Google, 404 Media](#)
 - [Order: *In re Ex Parte Application of Min-ji Kim*](#)
- [Cal. Super.: All Time Low Still Seeking to Unmask Social Media User Who Alleged Sex Abuse, Rolling Stone](#)

B. Personal Information

The biggest news in this section comes out of the D.C. Circuit, where the TikTok ban looms large with a new petition challenging the ban from a group of users of the site and briefing from TikTok, a collection of amici supporting the site, and the Department of Justice. (Amici

supporting the DOJ will be included in next month's issue; argument in the case is scheduled for September 16.) Oh, and while we'll get to *Moody v. NetChoice* properly later, it's worth noting Justice Barrett's concurrence in *Moody*, which sure makes it seem like she's anticipating the TikTok reaching the Supreme Court.

Speaking of the Supreme Court, other items worth calling out include the justices' decision in *SEC v. Jarkesy*, involving the application of the Seventh Amendment to civil penalties in administrative proceedings. While *Jarkesy* is not itself a digital privacy case, pending disputes in the D.C. Circuit and D.D.C. between Meta Platforms and the FTC over the latter's attempt to modify a \$5 billion privacy settlement might turn on *Jarkesy*.

Oh, and it looks like the latest attempt at a national data privacy bill is dead for now.

- [Supreme Court strikes serious blow against the administrative state](#), *Axios*
 - [Opinion: SEC v. Jarkesy](#)
 - [D.C. Cir.: Meta And FTC Want Privacy Fight Kept Paused](#), *Law360*
 - [Motion: Meta Platforms v. FTC](#)
- [9th Cir. Judge Open To Reversing Google's Privacy Win](#), *Law360*
 - [Video of Oral Argument: Calhoun v. Google](#)
- [D.C. Cir.: Right wing TikTokers sue Biden admin, challenging TikTok action on First Amendment grounds: 'A ban on speech'](#), *Fox Business*
 - [Petition: BASED Politics Inc. v. Garland](#)
- [D.C. Cir.: In legal filings, TikTok blasts potential US ban](#), *Courthouse News*
 - [Brief in Support of Injunction: TikTok v. Garland](#)
 - [TikTok makes its First Amendment case](#), *The Verge*
 - [D.C. Cir.: Free speech and digital rights groups argue TikTok law would infringe on the First Amendment](#), *Associated Press*
 - [Brief: TikTok v. Garland](#)
 - [D.C. Cir.: Justice Dept. Defends TikTok Law That Forces App's Sale or Ban](#), *New York Times*

- [Opposition to Petition for Review: *TikTok v. Garland*](#)
- [Justice Department says TikTok collected US user views on issues like abortion and gun control, *Associated Press*](#)
- [Justice Barrett's *Netchoice* Concurrence Raises Questions Relevant to TikTok Case, Volokh Conspiracy](#)
- [D.C. Cir.: Court will hear challenges to TikTok ban on Sept. 16, *Axios*](#)
- [N.D. Cal.: Google can't escape class action claiming it collected, read private tax information, *Courthouse News*](#)
 - [Order: *Smith v. Google*](#)
- [N.D. Cal.: Google defends itself in proposed class action, says it never collected users' personal information, *Courthouse News Service*](#)
- [N.D. Cal.: Lawsuit Claims Microsoft Tracked Sex Toy Shoppers With 'Recording in Real Time' Software, *404 Media*](#)
 - [Complaint: *Tatola v. Barnaby Ltd.*](#)
- [N.D. Cal.: OnlyFans Dupes Users With Chatty Impersonators, Suit Says, *Law360*](#)
 - [Complaint: *N.Z. v. Fenix International*](#)
- [D.D.C.: Justice Department reaches \\$2M in settlements with FBI officials whose texts infuriated Trump, *Politico*](#)
- [N.D. Ill.: Fubo Loses Bid To Toss Consumer's Privacy Suit, *Law360*](#)
 - [Order: *Burdette v. FuboTV*](#)
- [Ark. Cir.: Shopping app Temu is "dangerous malware," spying on your texts, lawsuit claims, *Ars Technica*](#)
 - [Complaint: *State v. PDD Holdings*](#)
- [Ill. Cir.: Sinclair Accused Of Violating Video Privacy Law, *Law360*](#)
- [Data privacy bill markup canceled after House leadership opposition, *The Hill*](#)
- [The House Ban On DJI Drones Is Mindless Anticompetitive Fear Mongering, *Techdirt*](#)

- [FTC is investigating how companies are using AI to base pricing on consumer behavior](#), *TechCrunch*
- [Google makes changes to privacy oversight, worrying policymakers](#), *Politico*
- [Texas AG Ken Paxton launches new team to prosecute online privacy and security cases](#), *Click2Houston.com*
- [Vermont: Despite broad support in the Legislature, Phil Scott vetoes data privacy legislation](#), *VT Digger*

C. Children's Privacy & Safety

At the very end of its term, the Supreme Court granted cert in *Free Speech Coalition v. Paxton* on a petition out of the Fifth Circuit. The case, as you might recall, involves a First Amendment challenge to Texas' mandatory age-gating of websites containing "more than one-third ... sexual material harmful to minors," a challenge that the Fifth Circuit rejected. I've railed previously about the idiocy of the "one-third" measurement (what does that even mean?!), but that's really just one of the constitutional problems with this law.

Given the wave of similar statutes being churned out by state legislatures (including two whose enforcement was enjoined this month in S.D. Ind. and S.D. Miss.), it's not too surprising that the Supreme Court decided to take up the case. Also, it's worth keeping an eye on the FTC, which is dabbling with age verification in a case in C.D. Cal. in a case alleging COPPA violations.

In other news, the Ninth Circuit heard argument on appeal from an injunction blocking enforcement of California's Age-Appropriate Design Code, with at least one judge on the panel wondering whether *Moody* (again, wait for it) made the sweeping block of the law inappropriate. And in Cal. Super., a judge dismissed school district complaints alleging common law nuisance theories against the major social media platforms over the alleged knock-on effects to the schools of students' social media addiction.

On the legislative side, the Kids Online Safety Act (KOSA) blew through the Senate to much fanfare only to stall out in the House. Meanwhile, U.S. Surgeon General Vivek Murthy called for warning labels for children on social media.

- [Supreme Court to hear challenge to Texas pornography restriction](#), *NBC News*
 - [Petition & Briefs: Free Speech Coalition v. Paxton](#)
 - [Supreme Court Will Decide: May States Require Age Verification to Access Porn Sites?](#), *Volokh Conspiracy*

- [9th Cir.: Appeals Panel Mulls Top Court’s Influence on Kids Safety Law](#), *Bloomberg Law*
 - [Video of Oral Argument: *NetChoice v. Bonta*](#)
- [N.D. Cal.: Google can’t shake children’s privacy lawsuit](#), *Courthouse News*
 - [Order: *A.B. v. Google*](#)
- [N.D. Cal.: Roblox Likely To Face Trimmed Suit Over Gambling By Kids](#), *Law360*
 - [Docket: *Colvin v. Roblox*](#)
- [N.D. Cal.: YouTube Beats Kids Privacy Suit, But Plaintiffs Get 7th Shot](#), *Law360*
 - [Order: *Hubbard v. Google*](#)
- [N.D. Cal.: Facing national class action, social media giants return to court](#), *Courthouse News*
- [C.D. Cal.: FTC Opens a Backdoor Route to Age Verification on Social Media](#), *Reason*
 - [Stipulation: *FTC v. NGL Labs*](#)
- [S.D. Ind.: Porn site operators sue Indiana attorney general over user age verification law](#), *Courthouse News*
 - [Complaint: *Free Speech Coalition v. Rokita*](#)
 - [S.D. Ind.: Indiana’s Anti-Online Porn Law “Is Not Close” to Constitutional](#), *Technology & Marketing Law Blog*
 - [Order: *Free Speech Coalition v. Rokita*](#)
- [S.D. Miss.: Mississippi is the latest state sued by tech group over age verification on websites](#), *Associated Press*
 - [Complaint: *NetChoice v. Fitch*](#)
 - [S.D. Miss.: Mississippi law restricting children’s social media use blocked](#), *Reuters*
 - [Order: *NetChoice v. Fitch*](#)

- [Mississippi AG Pushes Back on Block of Kids' Social Media Law](#), *Bloomberg Law*
- [Cal. Super.: Court Dismisses School Districts' Lawsuits Over Social Media "Addiction"](#), *Technology & Marketing Law Blog*
 - [Opinion: Social Media Cases](#)
- [Mobile Game App Settles with California AG in Privacy Case](#), *Bloomberg Law*
- [Iowa AG moves to block TikTok claims about mature content](#), *Courthouse News*
- [Me.: Eggplant Emoji Means What You Think It Means](#), *Technology & Marketing Law Blog*
 - [Opinion: State v. Farley](#)
- [N.H. Super.: New Hampshire sues TikTok, saying platform hurts kids' mental health](#), *CBS News*
 - [Complaint: State v. TikTok](#)
- [N.M. Dist.: New Mexico AG Beats Meta's Bid To Toss Child Abuse Suit](#), *Law360*
 - [Docket: State v. Meta Platforms](#)
- [Utah Dist.: New Utah lawsuit claims TikTok Live feature puts children at risk](#), *CNN*
 - [Complaint: Utah Div. of Consumer Protection v. TikTok](#)
- [FTC refers TikTok complaint to Justice Department](#), *NBC*
- [Senate to consider bills that aim to protect children and teenagers online](#), *Associated Press*
 - [KOSA Will Come To The Senate Floor On Tuesday, Senators Paul & Wyden Explain Why It's Still Bad](#), *Techdirt*
 - [How the Kids Online Safety Act Was Dragged Into a Political War](#), *New York Times*
 - [Kids Online Safety Act passes Senate despite concerns it will harm kids](#), *Ars Technica*

- [Advocates blast House for holding Kids Online Safety Act ‘hostage’, *The Hill*](#)
- [Kids Online Health and Safety Task Force Announces Recommendations and Best Practices for Safe Internet Use, *U.S. Dept. of Health and Human Services*](#)
- [Surgeon General demands warning label on social media apps, *CNN*](#)
 - [Surgeon general’s proposed social media warning label for kids could hurt kids, *Ars Technica*](#)
 - [The Constitutional Problems with Social Media Warning Labels, *AEIdeas \(Clay Calvert\)*](#)
- [Cal.: Gavin Newsom Jumps On Moral Panic Bandwagon To Ban Phones In School Despite Evidence Suggesting It Doesn’t Work, *Techdirt*](#)
- [Florida moves forward on a social media law, *WUSF*](#)
- [Md.: Meta says it won’t support suit against major child safety law, *Washington Post*](#)
- [New York moves to limit kids’ access to ‘addictive feeds’, *TechCrunch*](#)
 - [S. 7694](#)
 - [New York Gov. Kathy Hochul to sign bill targeting social media platforms’ algorithm toward teens: “Our kids are in distress”, *CBS News*](#)
 - [NY’s ‘SAFE For Kids Act’: A Lesson in How Not to Regulate The Internet, *Techdirt*](#)

D. Rights of Publicity

The federal NO FAKES Act, which would grant individuals a right to control the use of their images, voices, or virtual likenesses in “digital replicas,” won the support of the MPA this month after the group had voiced concerns about an earlier draft. Meanwhile, the U.S. Copyright Office has thrown its weight behind federal regulation of digital replicas, but not to the extent of prohibiting their creation entirely or preemption of state rights of publicity, while the USPTO is seeking public input on the issue. Is it just me, or are both of those agencies overreaching by getting involved in a question beyond their scope?

- [Studios Throw Support Behind SAG-AFTRA-Backed, Bipartisan Bill Regulating AI Digital Replicas Upon Senate Introduction, *Deadline*](#)
 - [NO FAKES Act 2023](#)

- [Copyright Office tells Congress: ‘Urgent need’ to outlaw AI-powered impersonation](#), *TechCrunch*
 - [Report: Copyright and Artificial Intelligence Part 1: Digital Replicas](#)
- [USPTO Asks Public For Input On Addressing AI Deepfakes](#), *Law360*
 - [Notice: Public Roundtable on Protections for Name, Image, Likeness, Other Indicia of Identity, and Reputation](#)
- [9th Circuit Affirms Right of Publicity Class Action Not a SLAPP](#)
 - [Opinion: *Batis v. Dun & Bradstreet*](#)
- [C.D. Cal.: Reusing Social Media Photos for Ads? Be Careful!](#), *Technology & Marketing Law Blog*
 - [Opinion: *Khachatryan v. 1 Hotel West Hollywood*](#)
- [Del.: Mike Huckabee Sues Meta Over Fake CBD Gummy Endorsement Ads](#), *Bloomberg Law*
 - [Complaint: *Huckabee v. Meta Platforms*](#)
- [S.D.N.Y.: AI Firm Seeks to End Actors’ Voiceover Generator Class Action](#), *Bloomberg Law*
 - [Motion: *Lehrman v. Lovo*](#)

E. Biometrics

Some interesting developments this month in cases under Illinois’ Biometric Information Privacy Act. Among others, we’ve got: the Ninth Circuit holding that “face signatures” collected by Meta from uploaded photographs of non-users cannot identify a person and thus aren’t biometric identifiers under BIPA; an order in N.D. Ill. dismissing on similar grounds a lawsuit against X Corp over its hashing of photos in the course of fighting CSAM; also in N.D. Ill., an unusual settlement of a face-scanning lawsuit against Clearview AI; and a \$1.4 billion settlement between Meta and the Texas AG over face-scanning claims in Texas state court.

- [Ninth Circuit upholds Meta’s victory over privacy claims from plaintiffs who don’t use Facebook](#), *Courthouse News*
 - [Opinion: *Zellmer v. Meta*](#)

- [N.D. Ill.: OnlyFans beats privacy claims](#), *Courthouse News*
 - [Opinion: Doe v. Fenix](#)
- [N.D. Ill.: Clearview AI Used Your Face. Now You May Get a Stake in the Company.](#), *New York Times*
 - [Motion: In re Clearview AI Consumer Privacy Litigation](#)
- [N.D. Ill.: Will Biometric Privacy Laws Undermine the Fight Against Child Sexual Abuse Material](#), *Technology & Marketing Law Blog*
 - [Opinion: Martell v. X Corp.](#)
- [N.D. Ill.: Avatar-Maker Draws Facial-Scan BIPA Suit](#), *Law360*
 - [Removed Complaint: Crawley v. Ready Player Me](#)
- [N.D. Ill.: Samsung gets biometric privacy claim dismissed](#), *Courthouse News*
 - [Order: G.T. v. Samsung](#)
- [Tex. Dist.: Meta to settle Texas lawsuit over Facebook facial recognition data](#), *Reuters*

F. Manipulated Media

The issue of deepfakes has led to this issue blurring with the right of publicity section, above, and I was torn about where to put certain developments. I decided that I'd use this section for developments that aren't focused on commercial/IP issues related to names and likenesses. In this batch, I'll highlight Senator Ted Cruz's TAKE IT DOWN Act, which would impose liability on platforms that fail to remove deepfake non-consensual sexual imagery within 48 hours of a request, as well as the ACLU's warnings about crossing a First Amendment line in the effort to respond to the abuse of AI technology.

- [Nev. Dist.: GOP Candidate Claims Incest Arrangement Audio Is a 'Deepfake' Meant to Smear Him](#), *404 Media*
 - [Complaint: Lee v. Colagiovanni](#)
- [Ted Cruz Wants Platforms To Be Liable for Deepfakes](#), *404 Media*
- [The ACLU Fights for Your Constitutional Right to Make Deepfakes](#), *Wired*

- [YouTube now lets you request removal of AI-generated content that simulates your face or voice](#), *TechCrunch*

G. Hacking, Scraping & Data Breach

We've got an interesting decision out of the Hunter Biden laptop lawsuit in C.D. Cal. on the definition of a "protected computer" under the CFAA, holding that allegations that the defendants accessed Biden's hard drive and transferred that information to an online database sufficed under the statute. There is also some disturbing news out of N.D. Cal. about an attempt by the Israeli government to interfere with WhatsApp's lawsuit against NSO Group (developer of the infamous Pegasus spyware).

- [N.D. Cal.: Israel tried to frustrate US lawsuit over Pegasus spyware, leak suggests](#), *The Guardian*
- [C.D. Cal.: Ex-Trump Aide Must Face Hunter Biden's Data Hack Suit](#), *Law360*
 - [Order: *Biden v. Ziegler*](#)
- [C.D. Cal.: Quinn Emanuel Barred From Repping X In Scraping Case](#), *Law360*
 - [Order: *X Corp. v. Bright Data*](#)
- [D. Del.: Jury Finds Booking.com Owes Ryanair \\$5K For Data Scraping](#), *Law360*
 - [Verdict: *Ryanair DAC v. Booking Holdings*](#)
- [D. Nev.: Scammer Allegedly Makes \\$600,000 a Month Holding Instagram Accounts Hostage](#), *404 Media*
 - [Complaint: *U.S. v. Qibaa*](#)
- [E.D.N.Y.: Ex-Ticketmaster Exec Pleads Guilty In Hacking Case](#), *Law360*
 - [Indictment: *U.S. v. Mead*](#)
 - [Change of Plea](#)
- [Cal. Super.: Tom Sandoval Sues Ariana Madix for Invasion of Privacy Over Moment That Launched Scandoval](#), *Hollywood Reporter*
- [FCC Floats New Rules On ISPs To Protect Internet Security](#), *Law360*
 - [Press Release](#)

- [7,000 LockBit decryption keys now in the hands of the FBI, offering victims hope](#), *Ars Technica*
- [After breach, senators ask why AT&T stores call records on “AI Data Cloud”](#), *Ars Technica*
- [US cyber agency CISA says malicious hackers are ‘taking advantage’ of CrowdStrike outage](#), *TechCrunch*
- [Cyber and data privacy insurance trends in an era of increased regulation](#), *Reuters*

H. Other Privacy Issues

Nothing to report in this issue.

II. Intellectual Property

A. Copyright

The summer kicked off with a lot of activity in the federal Courts of Appeal, with the First Circuit interpreting the term “featured artists” in the Digital Performance Right in Sound Recordings Act of 1995, the Second Circuit hearing oral argument in the major publishers’ lawsuit against the Internet Archive over its digital lending library, the Eighth Circuit weighing in on the cooption of memes by political campaigns, the Ninth Circuit kicking a video game lawsuit out of the country, the Eleventh Circuit holding that a voluntary dismissal without prejudice in a copyright case does not render the defendant a “prevailing party,” and the D.C. Circuit flipping a Library of Congress determination on fair use.

There were also, of course, plenty of ongoing developments in litigation around AI training, including a pair of new lawsuits (in D. Mass. and S.D.N.Y.) over AI music generators. And we’ve got good news for all you online news organizations out there, with the Copyright Office streamlining registration of your work.

- [Monday’s Orders List](#)
 - The Supreme Court denied cert in, inter alia, *Nat’l Religious Broadcasters v. Copyright Royalty Board* (D.C. Cir., First Amendment challenge to alleged religious discrimination in royalty rates for webcast sound recordings)
- [First Circuit clarifies “featured artists” under Digital Performance Right in Sound Recordings Act of 1995](#)
 - [Opinion: *Ithier v. Aponte-Cruz*](#)

- [2d Cir.: Internet Archive fights to preserve digital libraries in Second Circuit hearing](#), *Courthouse News*
 - [Audio of Oral Argument: Hachette Book Group v. Internet Archive](#)
- [8th Cir.: Ex-US congressman Steve King's campaign loses appeal in meme copyright case](#), *Reuters*
 - [Opinion: Griner v. King](#)
- [9th Cir. Backs Moving Video Game IP Suit To South Korea](#), *Law360*
 - [Memorandum: Nexon Korea v. Ironmace](#)
- [11th Cir. affirms denial of fees to plaintiff in copyright case](#)
 - [Opinion: Affordable Aerial Photography v. Property Matters USA](#)
- [D.C. Cir. Undoes Library Of Congress Win In Fair Use Fight](#), *Law360*
 - [Opinion: Medical Imaging & Technology Alliance v. Library of Congress](#)
- [N.D. Cal.: Google defeats class action over AI training data for now](#), *Reuters*
 - [Order: J.L. v. Alphabet](#)
- [N.D. Cal.: Authors Suing OpenAI Must Turn Over Investigation Materials](#), *Bloomberg Law*
 - [Order: Tremblay v. OpenAI](#)
 - [N.D. Cal.: Judge tosses authors' unfair competition claim against OpenAI](#), *Courthouse News*
 - [Order: Tremblay v. OpenAI](#)
- [N.D. Cal.: TikTok source code stolen?](#), *Courthouse News*
 - [Order: Beijing Meishe v. TikTok](#)
- [C.D. Cal.: DMCA 512\(c\) Helps Redbubble Defeats Copyright Lawsuit](#), *Technology & Marketing Law Blog*
 - [Order: Wallster v. Redbubble](#)

- [C.D. Cal.: Apple, Google Settle IP Suit Over Knockoffs Of PUBG Game](#), *Law360*
 - [Stipulation: Krafton v. Apple](#)
- [S.D. Fla.: YouTube Gets \\$92K In Costs Over Nixed Anti-Piracy Suit](#), *Law360*
 - [Report & Recommendation: Athos Overseas Ltd. v. YouTube](#)
 - [Order Adopting R&R](#)
- [D. Haw.: Porn Producer Is Waging War In Honolulu Against Alleged Copyright Pirates](#), *Civil Beat*
- [N.D. Ill.: SAD Scheme Leads to Another Massively Disproportionate Asset Freeze](#), *Technology & Marketing Law Blog*
 - [Order: Powell v. Schedule A](#)
- [D. Mass. / S.D.N.Y.: Music record labels sue AI song-generators Suno and Udio for copyright infringement](#), *Associated Press*
 - [Complaint: UMG Recordings v. Suno](#)
 - [Complaint: UMG Recordings v. Uncharted Labs](#)
 - [Listen to the AI-Generated Ripoff Songs That Got Udio and Suno Sued](#), *404 Media*
 - [What the RIAA lawsuits mean for AI and copyright](#), *The Verge*
- [D. Nev.: Five Men Convicted of Operating Massive, Illegal Streaming Service That Allegedly Had More Content Than Netflix, Hulu, Vudu and Prime Video Combined](#), *Variety*
- [S.D.N.Y.: Google sued by top textbook publishers over ads for pirated e-books](#), *Reuters*
 - [Complaint: Cengage Learning v. Google](#)
- [S.D.N.Y.: Microsoft, OpenAI Call Papers' Suit A 'Copycat' Of NYT's Case](#), *Law360*
 - [Motion \(OpenAI\): Daily News v. Microsoft](#)
 - [Motion \(Microsoft\)](#)

- [S.D.N.Y.: News nonprofit sues ChatGPT maker OpenAI and Microsoft for ‘exploitative’ copyright infringement](#), *Associated Press*
 - [Complaint: *Center for Investigative Reporting v. OpenAI*](#)
- [S.D.N.Y.: ChatGPT’s Owner Asks For Proof That ‘New York Times’ Articles Are Original. Here’s the Media Company’s Response.](#), *Entrepreneur*
 - [Opposition to Motion to Compel: *New York Times v. OpenAI*](#)
- [S.D.N.Y.: Two 80-something journalists tried ChatGPT. Then, they sued to protect the ‘written word’](#), *Associated Press*
- [S.D.N.Y.: Verizon Hit With \\$2.6B Anti-Piracy Lawsuit From Major Record Labels](#), *Hollywood Reporter*
 - [Complaint: *UMG Recordings v. Verizon Communications*](#)
- [S.D.N.Y.: Miami Heat Among 14 Teams Being Sued For Alleged Musical Copyright Violations](#), *Sports Illustrated*
 - [Complaint: *Kobalt Music Publishing v. Miami Heat*](#)
- [S.D. Ohio: Anna’s Archive Faces Millions in Damages and a Permanent Injunction](#), *TorrentFreak*
 - [Order: *OCLC v. Anna’s Archive*](#)
- [M.D. Tenn.: Judge Moves Music Publishers’ IP Suit Against AI Co. To Calif.](#), *Law360*
 - [Order: *Concord Music Group v. Anthropic*](#)
- [E.D. Va.: SiriusXM Must Face Suit Over \\$150M In Unpaid Royalties In NY](#), *Law360*
 - [Order: *SoundExchange v. Sirius XM Radio*](#)
- [W.D. Wash.: Nintendo sues Switch modchip seller and Switch piracy Reddit moderator](#), *Videogames Chronicle*
 - [Complaint: *Nintendo of America v. Daly*](#)
 - [Complaint: *Nintendo of America v. Williams*](#)

- [‘Landmark Victory’: Copyright Office Finalizes Rule Change On Streaming Royalties](#), *Billboard*
- [Copyright Office Streamlines Registration Process For Online News](#), *MediaPost*
- [The AI-focused COPIED Act would make removing digital watermarks illegal](#), *The Verge*
 - [COPIED Act](#)
- [Congress Wants To Let Private Companies Own The Law](#), *Techdirt*
 - [Pro Codes Act](#)
- [It May Soon Be Legal to Jailbreak AI to Expose How it Works](#), *404 Media*
- [Google Search Processed a Billion DMCA Takedowns in Four Months](#), *TorrentFreak*
 - [Link-Busters Sent a Billion DMCA Takedown Requests to Google Search](#), *TorrentFreak*
- [When the Terms of Service Change to Make Way for A.I. Training](#), *New York Times*
- [The Push to Develop Generative A.I. Without All the Lawsuits](#), *New York Times*
- [Twitch DJs will now have to pay music labels to play songs in livestreams](#), *TechCrunch*

B. Trademark

The Supreme Court decided *Vidal v. Elster* in June, a case involving the “names clause” of the Lanham Act, which prohibits federal registration of trademarks incorporating a living individual without their permission. It’s not, strictly speaking, a digital media case, but the Court’s fragmented First Amendment analysis is emblematic of the problems that the Court has with reconciling IP law with freedom of expression. I’ve [got my own analysis](#) in the *MediaLawLetter*, in which I blame the Court’s lack of a fundamental theory of the First Amendment on its siloing of First Amendment questions into discrete categories.

- [Supreme Court rules California man can’t trademark ‘Trump too small’](#), *Associated Press*
 - [Opinion: Vidal v. Elster](#)
 - [Justices Agree on Constitutionality of Trademark Restriction, Disagree on How to Approach Such Questions](#), *Volokh Conspiracy*

- [The Supreme Court Continues To Struggle With How To Apply The First Amendment In Intellectual Property Cases](#), *Techdirt*
- [Federal Circuit Closes Book on TRUMP TOO SMALL Trademark Saga](#), *Patently-O*
 - [Order: *In re Elster*](#)
- [High Court Rejects Bid for Clarity on Trademark Confusion](#), *IP Watchdog*
 - [Petition & Briefs: *Relish Labs v. Grubhub*](#)
- [N.D. Cal.: Yelp Trademark Suit Against Reputation-Control Firm Goes Forward](#), *Bloomberg Law*
 - [Order: *Yelp v. ReviewVio*](#)
- [N.D. Cal.: Google settles trademark lawsuit over Vizier software](#), *Reuters*
- [N.D. Cal.: X Corp hit with lawsuit from PR firm over ‘X’ trademark](#), *Reuters*
 - [Complaint: *DB Communications v. X Corp.*](#)
- [C.D. Cal.: Calif. Firm Beats Rival’s Claims In ‘Sweet Justice’ TM Fight](#), *Law360*
 - [Order: *Sweet James v. Sweet Justice*](#)
- [M.D. Fla.: Judge Keeps Most Of TM Suit Against Musk’s X Corp. Intact](#), *Law360*
 - [Order: *X Social Media v. X Corp.*](#)
- [N.D. Ill.: Pink Floyd Secures TRO Against Site In Counterfeit Merch Suit](#), *Law360*
 - [Order: *Pink Floyd \(1987\) Limited v. The Owner and/or Operator of Pinkfloydmerch.com*](#)
- [N.D. Ill.: Competitor Isn’t Responsible for Google Knowledge Panel’s Contents](#), *Technology & Marketing Law Blog*
 - [Order: *International Star Registry of Illinois v. RGIFTS*](#)
- [S.D. Ind.: ‘Hot Girl Walk’ Says Rival Infringed, Set An ‘Army’ On Brand](#), *Law360*
 - [Complaint: *Hot Girl Walk v. Springer*](#)

- [S.D.N.Y.: Trademark law and LinkedIn resumes: watch out?](#), *Rebecca Tushnet's 43(B)log*
 - [Order: *Portkey Technologies v. Venkateswaran*](#)
- [S.D. Tex.: TIL: "Texas Tamale" Is an Enforceable Trademark](#), *Technology & Marketing Law Blog*
 - [Order: *Texas Tamale Co. v. CPUSA2*](#)

C. Patent

As regular readers know, I often find it difficult to get excited about patent cases. Yeah, it's a flaw in my character. But I suppose I'll flag a nine-figure jury verdict in June against Amazon in W.D. Tex. over personalized ad targeting patents.

- [Fed. Cir. Gives Netflix Second Chance To Challenge Broadcom IP](#), *Law360*
 - [Opinion: *Netflix v. Avago Technologies International Sales*](#)
- [Fed. Circ. Judges Skeptical Broadband IP Is Patentable](#), *Law360*
 - [Recording of Oral Argument: *Broadband iTV v. Amazon.com*](#)
- [Fed Cir.: Dish Faces Appeal After Beating Jury's \\$469M Verdict](#), *Law360*
 - [Brief: *ClearPlay v. Dish Network*](#)
- [Fed. Cir.: Calif. Alice Invalidations Block Koss' PTAB Appeal At Fed. Circ.](#), *Law360*
 - [Opinion: *Koss Corp. v. Bose Corp.*](#)
- [Federal Circuit Panel Urges Extension of Newman's Suspension](#), *Bloomberg Law*
 - [Report & Recommendation: *In re Complaint No. 23-90015*](#)
- [N.D. Tex.: VidStream Can't Block X Features That Allegedly Infringe IP](#), *Law360*
 - [Order: *VidStream v. Twitter*](#)
- [W.D. Tex.: Amazon hit with \\$122 mln US verdict in internet-advertising patent case](#), *Reuters*

D. Trade Secrets/Misappropriation/Conversion

This issue, we've got an order out of N.D. Cal. turning down TikTok's motion for more clarity on trade secrets that it allegedly misappropriated (more on this suit under Copyright, above), a TRO out of E.D.N.Y. against terrible human being Martin Shkreli's online dissemination of copies of a unique Wu-Tang Clan album that he previously owned, and Ozy Media dropping a trade secrets case in E.D.N.Y. against Ben Smith, BuzzFeed, and Semafor.

- [N.D. Cal.: TikTok Loses Bid To Have Chinese Co. Identify Trade Secrets](#), *Law360*
 - [Order: *Beijing Meishe Network Technology v. TikTok*](#)
- [E.D.N.Y.: Martin Shkreli copied one-of-a-kind Wu-Tang Clan album, lawsuit claims](#), *Reuters*
 - [Complaint: *PleasrDAO v. Shkreli*](#)
 - [Temporary Restraining Order](#)
- [E.D.N.Y.: Ozy Media Ends Trade Secrets Suit After Ex-CEO's Conviction](#), *Law360*
 - [Notice: *Ozy Media v. Smith*](#)

III. Platform Management

A. Section 230

The Supreme Court denied cert on a petition for review of a decision of the Fifth Circuit, in which a panel of the Court of Appeals affirmed that Snap was insulated by § 230 from liability for harm suffered by a teenager at the hands of her teacher. The panel decision narrowly avoided en banc review, and Justice Thomas (joined by Justice Gorsuch) wrote an opinion dissenting from the denial of cert.

Meanwhile, the Ninth Circuit continues to chip away at § 230's protection (this time, on contract-based claims), and a judge in D. Utah rejected § 230's application in a case challenging the legality of Utah's new online kids' safety law. (I'm including the latter case here rather than under Children's Privacy and Safety because the decision was solely about § 230; a broader First Amendment challenge remains very much alive.)

- [A teenager was abused by her teacher. The Supreme Court declined to weigh Snapchat's role](#), *USA Today*
 - [Opinion \(Thomas, J., dissenting from denial of certiorari\): *Doe v. Snap*](#)

- [Ninth Circuit Does More Damage to Section 230](#), *Technology & Marketing Law Blog*
 - [Opinion: Calise v. Meta Platforms](#)
- [D. Ariz. / Mass.App.: Section 230 Preempts Two More Harassment Lawsuits](#), *Technology & Marketing Law Blog*
 - [Order: Benedict v. Google](#)
 - [Opinion: Todino v. Twitter](#)
- [N.D. Cal.: Instagram Defeats Lawsuit Claiming It Was a “Breeding Ground” for Sex Traffickers](#), *Technology & Marketing Law Blog*
 - [Order: Doe \(K.B.\) v. Backpage.com](#)
 - [Amended Complaint](#)
- [N.D. Cal.: Google, TikTok Fight Potentially Harmful Video Claims](#), *MediaPost*
 - [Motion: Bogard v. TikTok](#)
- [N.D. Cal.: Meta tells court it won’t sue over Facebook feed-killing tool—yet](#), *Ars Technica*
 - [Motion: Zuckerman v. Meta Platforms](#)
- [C.D. Cal.: Section 230 Preempts FOSTA Claim](#), *Technology & Marketing Law Blog*
 - [Order: Doe v. WebGroup Czech Republic](#)
- [D.S.C.: ‘Scruff’ App Qualifies for Section 230 Immunity](#), *Technology & Marketing Law Blog*
 - [Report & Recommendation: J.R. v. Mancino](#)
 - [Order on R&R](#)
- [D. Utah: Federal judge dismisses claim in lawsuit against Utah’s social media laws](#), *KSL*
 - [Opinion: Netchoice v. Reyes](#)

- [Cal. App.: YouTube Isn't Liable for User Uploads of Animal Abuse Videos](#), *Technology & Marketing Law Blog*
 - [Opinion: *Freethinker v. Google*](#)
- [N.M. Dist.: New Mexico AG Beats Meta's Bid To Toss Child Abuse Suit](#), *Law360*
 - [Docket: *State v. Meta Platforms*](#)
- [Tech group asks Trump to clarify Section 230 stance](#), *Washington Post*

B. Elections & Political Advertising

A judge in N.D. Cal. held that the Republican National Committee, in its lawsuit against Google over alleged discrimination in Gmail's spam-blocking of RNC emails, managed to plead around a § 230(c)(2)(a) defense but still failed to state a claim on the underlying merits. Meanwhile, the FCC and others are taking steps against AI-generated material in political advertising.

- [N.D. Cal.: GOP suit against Google tossed](#), *Courthouse News*
 - [Order: *RNC v. Google*](#)
- [Proposed FCC rules would require public disclosure when political ads use AI-generated content](#), *Courthouse News*
 - [Notice of Proposed Rulemaking](#)
- [Google to require disclosures for digitally altered content in election ads](#), *Reuters*
- [Elon Musk Wants People on X to Police Election Posts. It's Not Working Well.](#), *New York Times*

C. Content Moderation

So, no surprise, the most important developments in this section (and this article as a whole) are the Supreme Court's decisions in *Moody v. NetChoice* and *Murthy v. Missouri*.

As I'm sure you know, in *Moody* the Court unanimously held that the record before the Fifth and Eleventh Circuits was insufficient to support NetChoice's facial First Amendment challenge to the Texas and Florida content moderation laws. Thus, it vacated the preliminary injunctions below and remanded for further proceedings. But beyond that, a fragile majority led by Justice Kagan (reportedly after Justice Alito pushed his luck and lost the majority) opined on the First Amendment standards to be applied on remand and declared that content moderation is protected in at least some circumstances by the First Amendment. I say fragile, because Justice Jackson

declined to join the majority's analysis of how the First Amendment applies to Facebook and YouTube's moderation on the record before the Court and Justice Barrett speculated about how the use of automated technology might alter the analysis. There's been lots of commentary, of course, [including my own](#) in the *MediaLawLetter*.

In *Murthy*, by contrast, the Court avoided the underlying First Amendment issues in holding that the plaintiffs suing the Biden administration for pressuring social media platforms had failed to establish Article III standing. Specifically, it held that the plaintiffs had failed to establish a through-line from particular acts of censorship by the executive branch with respect to particular content that caused particular harm to a particular plaintiff. Admittedly, the Court grappled with similar First Amendment questions relating to government pressure in its earlier decision this term in *NRA v. Vullo*, so it didn't leave us entirely without guidance. Nevertheless, as I discussed at the beginning of this article, all three of the Court's big social media cases this term, *Moody*, *Murthy*, and *Lindke* (decided in March), demonstrated that the Court is skeptical of sweeping First Amendment lawsuits relating to online activity.

- [Supreme Court allows White House contacts with social media firms](#), *Washington Post*
 - [Opinion: *Murthy v. Missouri*](#)
 - [Supreme Court Rejects Challenge to Biden Administration's Contacts With Social Media Companies](#), *New York Times*
 - [What Does *Murthy v. Missouri*, The Government/Social Media Case, Tell Us About First Amendment Law?](#), *Volokh Conspiracy*
 - [The Lack of Standing in *Murthy v. Missouri*](#), *Volokh Conspiracy*
 - [Murthy Decision Should Not Foreclose Cases Against Actual First Amendment Violations](#), *Techdirt*
 - [FBI should clean up its interactions with online platforms, DOJ watchdog says](#), *Washington Post*
- [Supreme Court rules in major internet speech cases](#), *The Verge*
 - [Opinion: *Moody v. NetChoice*](#)
 - [How Samuel Alito got canceled from the Supreme Court social media majority](#), *CNN*
 - [Supreme Court Social Media Ruling Is a Free-Speech Landmark](#), *Bloomberg*

- [Speech Nirvanas on the Internet: An Analysis of the U.S. Supreme Court’s *Moody v. NetChoice* Decision](#), *Santa Clara Research Papers* (Prof. Eric Goldman)
- [Court Recognizes Platforms’ Right to Choose What Appears in “Curated Feeds.” Doesn’t Resolve Other Content Moderation Questions](#), *Volokh Conspiracy*
- [When May Law Require Social Media Platforms to Disclose Basis for Moderation Decisions?](#), *Volokh Conspiracy*
- [Four Justices in *NetChoice* Flag Question Whether First Amendment Protects AI-Curated Materials](#), *Volokh Conspiracy*
- [NetChoice and Calvinball: Initial thoughts](#), *Rebecca Tushnet’s 43(B)log*
- [The aftermath of the Supreme Court’s *NetChoice* ruling](#), *The Verge*
- [Tuesday’s Order List](#)
 - The Court denied cert. in *Changizi v. Dep’t of Health & Human Services* (6th Cir., Article III standing to challenge alleged federal pressure to remove social media content), and *O’Handley v. Weber* (9th Cir., state action question re government pressure on Twitter to remove content and suspend user).
- [5th Cir.: RFK Jr. Suit Claiming Online Censorship Sent Back to Trial Court](#), *Bloomberg Law*
 - [Opinion: *Kennedy v. Biden*](#)
- [Ninth Circuit questions why California’s social media ‘transparency’ law isn’t compelled speech](#), *Courthouse News*
 - [Video of Oral Argument: *X Corp. v. Bonta*](#)
- [D.D.C.: Google Can Terminate Account Based on CSAM Allegations](#), *Technology & Marketing Law Blog*
 - [Order: *Baker v. Google*](#)
- [Fla. Cir.: Jacksonville anti-abortion activist sues Google, saying she was censored, deplatformed](#), *First Coast News*
 - [Complaint: *Perez-Poveda v. Google*](#)
- [Senate lawmakers turn to online content creators to push legislation](#), *Washington Post*

- [N.Y.: YouTube revises guidelines to try and limit gun-related content, Manhattan DA says](#), *Gothamist*
- [How small claims court became Meta’s customer service hotline](#), *Engadget*
- [Meta created a ‘Supreme Court’ for content. Then it threatened its funds.](#), *Washington Post*
- [Oversight Board wants Meta to refine its policies around AI-generated explicit images](#), *TechCrunch*
- [The Stanford Internet Observatory is being dismantled](#), *Platformer*
- [Trump allies crush misinformation research despite Supreme Court loss](#), *Washington Post*

D. Terms of Service & Other Contracts

We’ve got another batch of contract formation cases this month involving terms of service. In particular, I’d call your attention to the Uber case out of Massachusetts, which is the sequel to a remarkable 2021 decision in which the Commonwealth’s Supreme Judicial Court held that Uber’s TOS presentation failed to form a contract.

Perhaps more interesting is a decision out of California Superior Court in which the plaintiff attempted an end-run around defamation law by suing a TikTok critic for breaching non-party TikTok’s terms of service, and ran smack into California’s anti-SLAPP law.

- [N.D. Cal.: Coursera Wins a TOS Formation Battle, But With Heavy Losses](#), *Technology & Marketing Law Blog*
 - [Opinion: Ghazizadeh v. Coursera](#)
- [S.D.N.Y.: It’s Hard to Bind Former Subscribers to TOS Amendments](#), *Technology & Marketing Law Blog*
 - [Opinion: Brooks v. WarnerMedia Direct](#)
- [Cal. Super.: Judge Tosses Kline & Specter’s California Claims Against Bosworth](#), *Legal Intelligencer*
 - [Minute Order: Kline & Specter v. Bosworth](#)
 - [Motion to Strike](#)

- [MA Supreme Court Blesses Uber’s TOS Clickthrough Formation](#), *Technology & Marketing Law Blog*
 - [Opinion: Good v. Uber Technologies](#)

IV. Other Content Liability

A. Defamation

Let’s see...we’ve got a decision from the Eleventh Circuit in a lawsuit filed by Roy Moore about being labeled a pedophile, a settlement in the long-running duel in N.D. Fla. between an ex-Big Law partner and an online influencer, a summary judgment ruling in D. Idaho against an online psychic who accused a university professor of murder based on “intuitive tarot readings,” Donald Trump’s libel claim against the Pulitzer Prize Board surviving a motion to dismiss in Florida state court, and lots more.

Really, the only decision that implicates any interesting digital-specific issues is the dismissal of a curious lawsuit in N.D. Ala. alleging defamation by the ranking of Google Search results, but it’s fine if you come to this section just for the drama.

- [11th Circuit Affirms Dismissal of Roy Moore Defamation Case](#)
 - [Opinion: Moore v. Cecil](#)
- [N.D. Ala.: Defamation claim against Google over allegedly biased search results dismissed](#)
 - [Order: Garmon v. Google](#)
- [N.D. Fla.: Lawyer and Influencer Settle \\$150 Million Defamation Case With TikTok Apology](#)
 - [Stipulation of Dismissal: Kassenoff v. Harvey](#)
- [D. Idaho: Plaintiff’s Idaho Murder Libel Claim Beats Defendant’s “Tarot Readings” and “Psychic Intuition”, Reason](#)
 - [Order: Scofield v. Guillard](#)
- [S.D.N.Y.: Misidentified Person Loses Defamation Claim Against Tabloid](#), *Technology & Marketing Law Blog*
 - [Order: Bloom v. A360 Media](#)

- [W.D. Tex.: Logan Paul Says YouTuber’s ‘Scam’ Series Defamed Him](#), *Law360*
 - [Complaint: *Paul v. Findeisen*](#)
- [Ark. Cir.: Defamation suit against state Senate president amended to add constitutional challenge](#), *Arkansas Times*
- [Cal. App.: Panel Affirms Quashing of Service in Defamation Case for Lack of Personal Jurisdiction](#)
 - [Opinion: *Safieddine v. MBC FZ*](#)
- [Cal. Super.: Rebel Wilson sued for defamation by producers from ‘The Deb’ after actor called them out](#), *Los Angeles Times*
 - [Cal. Super.: Rebel Wilson Slammed by Producers of Her Directorial Debut in Amended Defamation Suit That Invokes Her ‘False’ Claims About Sacha Baron Cohen](#), *Variety*
- [Cal. Super.: Jill Ellis sues ex-Wave FC employee for defamation after accusations of toxic environment](#), *USA Today*
- [Cal. Super.: Soulja Boy Sues Tasha K and William the Baddest for Defamation Over Claim He and William Had an Affair](#), *Complex*
- [Fla. Cir.: Trump wins round in libel suit against Pulitzer Prize Board over Russia stories](#), *Politico*
 - [Opinion: *Trump v. Pulitzer Prize Board*](#)
 - [Order Denying Motion to Dismiss for Lack of Personal Jurisdiction](#)
- [Idaho App.: Blogger appeals defamation decision](#), *Coeur d’Alene Press*
- [Mass. Super.: “Someone Must Have Taken the Bar Exam for You” Was Just Insult, Not Libel](#), *Volokh Conspiracy*
- [Mo. Cir.: Case Dismissed: Gypsy Rose Defamation Lawsuit Against Blogger Comes to Screeching Halt](#), *Radar*
- [Va. Cir.: Joshua Wright’s \\$108M Defamation Case Against Former Students to Proceed to Trial](#), *Law.com*

- [Ohio Senate acts to crack down on SLAPP lawsuits](#), *The Blade*
 - [SB 237](#)

B. Commercial Speech

The Supreme Court granted cert in June on Facebook’s appeal of a Ninth Circuit decision involving an investor Securities Exchange Act claim over the company’s allegedly false and misleading disclosures about privacy policy violations. We’ve also got more briefing in D.D.C. and the D.C. Circuit on Media Matters for America’s efforts to shut down “consumer protection” probes by the Texas and Missouri AGs into its reporting on X Corp.

- [Supreme Court to Hear Facebook Bid to Scuttle Shareholder Lawsuit](#), *Reuters*
 - [Petition and Briefs: Facebook v. Amalgamated Bank](#)
- [D.C. Cir.: Texas AG Urges D.C. Cir. To Revive Media Matters Probe](#), *Law360*
 - [Brief: Media Matters for America v. Paxton](#)
 - [D.C. Cir.: Another Texas consumer-protection inquiry threatens First Amendment rights](#), *Reporters Committee for Freedom of the Press*
 - [Amicus Brief: Media Matters for America v. Paxton](#)
- [D.D.C.: Media Matters Wants Order Blocking Missouri AG’s X Probe](#), *Law360*
 - [Brief in Support of Preliminary Injunction vs. Bailey: Media Matters for America v. Paxton](#)
- [N.D. Cal.: Is a free trial version “commercial speech”?](#), *Rebecca Tushnet’s 43(B)log*
 - [Order: Enigma Software v. Malwarebytes](#)
- [N.D. Cal.: U.S. sues Adobe for ‘deceiving’ subscriptions that are too hard to cancel](#), *The Verge*
 - [Complaint: United States v. Adobe](#)
- [S.D. Cal.: Roblox advertising lawsuit dismissed](#), *Courthouse News*
 - [Order: Murphy v. Roblox](#)

- [N.D. Ill.: Bad influence: claims against vodka producer proceed, including failure to disclose endorser payments](#), *Rebecca Tushnet's 43(B)log*
 - [Order: Sava v. 21st Century Spirits](#)
- [D.N.J.: Lawsuit: T-Mobile must pay for breaking lifetime price guarantee](#), *Ars Technica*
 - [Complaint: Oddo v. T-Mobile USA](#)
- [S.D.N.Y.: "#1 Brand" claim was literally false because of apples-to-oranges comparison](#), *Rebecca Tushnet's 43(B)log*
 - [Order: Zesty Paws LLC v. Nutramax Labs](#)
- [S.D.N.Y.: "Fair and skill-based" may falsely imply absence of bots in online gaming](#), *Rebecca Tushnet's 43(B)log*
 - [Order: Skillz Platform v. Papaya Gaming](#)
- [E.D.N.Y.: GameStop investor retracts suit accusing Roaring Kitty of pump-and-dump scheme](#), *Ars Technica*
 - [Notice: Radev v. Gill](#)
- [W.D. Wash.: Sirius XM Made Millions Off Hidden Royalty Fee, Suit Alleges](#), *Law360*
 - [Complaint: Balmores v. Sirius XM Radio](#)
- [Succor borne every minute](#), *FTC Business Blog*
- [SEC's AI Crackdown Signals Trickle of Cases Will Turn to Flood](#), *Bloomberg*
- [N.Y. Trading Platform Fined \\$250K By FINRA For 'Exaggerated' Social Media Claims](#), *Financial Advisor*
 - [Letter of Acceptance, Waiver, and Consent: In re TradeZero America](#)
- [Texas Ethics Commission will require influencers to disclose when they're paid for advertisement](#), *Texas Tribune*

C. Professional Speech

Just because *Murthy* is behind us doesn't mean that the Fifth Circuit has let go of that particular bone. We've got a new decision this month that revives allegations that the federal government

unconstitutionally pressured medical certification boards to threaten physicians with discipline for failing to toe the Biden administration's line on Covid.

Out of Indiana, we've got a reminder to attorneys to keep their cool online in response to negative reviews from clients. As opposed to, say, posting confidential client information.

- [5th Cir. revives First Amendment claims regarding physicians whose certification was threatened](#)
 - [Opinion: Association of American Physicians and Surgeons Educational Foundation v. American Board of Internal Medicine](#)
- [Ind.: Negative Client Reviews, Lawyer Responses Revealing Damaging Information about Clients, and "Offensive Personality", Volokh Conspiracy](#)
 - [Order: In re Wruble](#)

D. Threats, Harassment, and Incitement

Hard to pick a top story here, but let's go with the Ninth Circuit holding that sexist and threatening posts by a Federal Bureau of Prisons correctional officer about a psychologist could amount to workplace harassment.

- [9th Circ. Says Online Posts Can Count As Work Harassment, Law360](#)
 - [Opinion: Okonowsky v. Garland](#)
- [E.D. Cal.: 'Local Residents' Terrorizing City Council Meetings Were Actually Overseas, Feds Allege, 404 Media](#)
 - [Criminal Complaint: U.S. v. Alhashemi](#)
- [D. Mass.: Final Defendant in eBay Cyberstalking Case Sentenced, U.S. Attorney's Office, District of Massachusetts](#)
- [Oklahoma S. Ct. Vacates Restraining Order Against Self-Described Pastor Who Was Sharply Condemning Pro-Gay-Equality Activists, Volokh Conspiracy](#)
 - [Opinion: Hayes v. Penkoski](#)

V. Infrastructure

A. Accessibility, Affordability & Discrimination

In this section, the Ninth Circuit reminds us that Facebook, like other online services not associated with physical places, is not a place of public accommodation subject to the Americans with Disabilities Act.

- [2d Cir.: Industry Groups End Case Over New York Broadband Law](#), *Law360*
 - [Letter: New York State Telecommunications Association v. James](#)
- [9th Cir.: Facebook Isn't Subject to the ADA](#)
 - [Memorandum: Lloyd v. Facebook](#)
- [Justice Department's Final Rule to Improve Web and Mobile App Access for People with Disabilities](#), *U.S. Department of Justice*
- [Republicans Are Angry The FCC Admitted Broadband Deployment Discrimination Exists](#), *Techdirt*

B. Antitrust

Most of the updates in this section involve interim activity in pending antitrust suits. Of particular note is Google's successful evasion of a jury trial over its adtech practices in E.D. Va. by sending a check to the DOJ; however, it will still face a bench trial as dueling summary judgment motions in the case were denied.

I'll also note X Corporation's announcement that it plans to sue the Global Alliance for Responsible Media, after Elon Musk's buddies on the House Judiciary Committee issued a report accusing GARM of antitrust violations for calling on advertisers to avoid X because of its placement of ads alongside hateful content. More on that next issue.

- [Fourth Circuit says South Carolina must answer Google's subpoena in antitrust case](#), *Courthouse News*
 - [Opinion: S.C. Dept of Parks, Recreation and Tourism v. Google](#)
 - [4th Circ. Won't Rethink Google Ad Subpoena Decision](#), *Law360*
 - [Order: S.C. Dept of Parks, Recreation and Tourism v. Google](#)

- [N.D. Cal.: Google dodges antitrust suit over mapping services](#), *Courthouse News*
 - [Order: *Dream Big Media v. Alphabet*](#)
- [D.N.J.: Apple iPhone Antitrust MDL Heads To NJ, Where DOJ Is Suing](#), *Law360*
 - [Transfer Order: *In re Apple Smartphone Antitrust Litigation*](#)
- [D.N.J.: Four more states join DOJ’s antitrust lawsuit against Apple](#), *UPI*
 - [Amended Complaint: *U.S. v. Apple*](#)
- [S.D.N.Y.: Judge Denies Fubo Bid For Texts On Streaming Bundle](#), *Law360*
 - [Order: *FuboTV v. Walt Disney Co.*](#)
- [E.D. Va.: Google avoids jury trial by sending \\$2.3 million check to US government](#), *Ars Technica*
 - [E.D. Va.: Judge says trial is required to decide government’s antitrust case over Google’s advertising tech](#), *Associated Press*
 - [Minute Entry: *U.S. v. Google*](#)
- [W.D. Wash.: Amazon Sued For Locking Up Audiobooks, Charging Up To 75%](#), *Law360*
 - [Complaint: *Reiss v. Amazon.com*](#)
- [W.D. Wash.: Bookstores Can’t Step Into FTC’s Antitrust Fight With Amazon](#), *Law360*
 - [Order: *FTC v. Amazon.com*](#)
- [FTC Opens Antitrust Probe of Microsoft AI Deal](#), *Wall Street Journal*
- [U.S. Clears Way for Antitrust Inquiries of Nvidia, Microsoft and OpenAI](#), *New York Times*
- [YouTube critics ask US to probe video site’s ‘living room dominance’](#), *Reuters*
- [X Calls For Legal Action Against GARM](#), *MediaPost*

C. Net Neutrality & Data Throttling

The court challenges to the FCC's new net neutrality rule are now in full swing. Various industry associations representing ISPs sued to block the rules in various Courts of Appeal; these challenges were consolidated by random assignment in the Sixth Circuit, which subsequently rejected a petition to transfer the cases to the D.C. Circuit.

Meanwhile, the Supreme Court decided *Loper Bright Enterprises v. Raimondo*, overturning *Chevron* deference to agency interpretations of their own enabling statutes. Justice Gorsuch in particular pointed to the FCC's flip-flopping around net neutrality (following the Supreme Court's application of *Chevron* deference to the FCC's interpretations of the Telecommunications Act in *Brand X*) as a prime example of the unpredictability caused by *Chevron*. The Sixth Circuit then temporarily stayed enforcement of net neutrality while the parties briefed the impact of *Brand X* as filtered through *Loper Bright*.

Naturally, the ISPs claimed that *Loper Bright* changed everything while the FCC claimed it changed nothing. The FCC argued that neither *Brand X* nor *Loper Bright* spoke to which approach to broadband, Title I or Title II, was the proper interpretation of the statute, only whether Title I was a permissible reading under *Chevron*. The ISPs argued that *Brand X*'s Title I statutory interpretation was entitled to the weight of *stare decisis* under *Loper Bright* and that the FCC lacked authority to reclassify broadband. [LATE UPDATE: In early August, the Sixth Circuit [held](#) that the ISPs were likely to succeed in their challenge and preliminarily enjoined FCC enforcement.]

- [D.C. Cir. et al.: ISPs seek halt of net neutrality rules before they take effect next month](#), *Ars Technica*
 - [Petition: CTIA-The Wireless Association v. FCC](#)
 - [Petition: ACA Connects v. FCC](#)
 - [Petition: Wireless Internet Service Providers Association v. FCC](#)
- [Sixth Circuit to Hear Challenges to FCC's Net Neutrality Ruling](#), *Bloomberg Law*
- [FCC Asks 6th Cir. To Transfer Net Neutrality Cases To DC](#), *Law360*
 - [Motion: Ohio Cable Telecommunications Association v. FCC](#)
- [Supreme Court strikes down Chevron, curtailing power of federal agencies](#), *SCOTUSblog*
 - [Opinion: Loper Bright Enterprises v. Raimondo](#)

- [Supreme Court Ruling Deals Blow to FCC's Regulatory Authority](#), *NextTV*
- [Sixth Circuit to Keep Net Neutrality Case in Cincinnati, a Win for ISPs](#), *Broadband Breakfast*
 - [Order: *In re MCP No. 185*](#)
- [6th Cir.: Net neutrality rules reinstatement temporarily halted](#), *Reuters*
- [Sixth Circuit Blocks Popular Net Neutrality Rules From Taking Effect](#), *Techdirt*
 - [Order: *In re MCP No. 185*](#)
- [6th Cir.: FCC, Industry Debate If Brand X Case Set Broadband In Stone](#), *Law360*
 - [FCC Brief: *In re MCP No. 185*](#)
 - [Industry Brief](#)

D. Domain Name System

Nothing to report in this issue.

E. Taxation & Compelled Payments

Things are afoot in California, with two separate measures to tax tech companies to benefit journalism moving forward. SB 1327, which taxes data collection from users and uses the revenue to fund a tax credit for employing full-time journalists, passed the state Senate. Meanwhile, AB 886 (a/k/a the "California Journalism Protection Act"), which requires platforms to pay a fee when they sell ads alongside news content, passed the state's Senate Judiciary Committee after amendments regarding how the fees were calculated and paid out.

- [ISPs ask FCC for tax on Big Tech to fund broadband networks and discounts](#), *Ars Technica*
- [California lawmakers revive debate over bill requiring tech platforms to pay for news](#), *Los Angeles Times*
- [Will Google strike a deal with California news outlets to fund journalism?](#), *Los Angeles Times*
- [California lawmakers advance tax on Big Tech to help fund news industry](#), *Los Angeles Times*

F. Wire & Wireless Deployment

Which one of the following stories matters more to you really depends on where you stand, but the second one involves the new Democratic candidate for vice-president, so there's that.

- [D.C. Cir. rejects challenge to FCC approval of SpaceX satellite system](#)
 - [Opinion: *International Dark-Sky Association v. FCC*](#)
- [Minnesota Kills Ignorant Ban On Community Broadband Bought By The Telecom Lobby](#), *Techdirt*

G. Artificial Intelligence

As usual as of late there's plenty going on in this section, but it's probably worth checking out the reports on how the presidential candidates are looking at AI, and I was personally interested by an article discussing whether training AI models on AI-generated materials is an ouroboros.

Government & Voluntary Regulation

- [New U.S. Commerce Department report endorses 'open' AI models](#), *TechCrunch*
- [OpenAI endorses Senate bills that could shape America's AI policy](#), *TechCrunch*
- [FTC Chair Lina Khan shares how the agency is looking at AI](#), *TechCrunch*
- [CIA AI director Lakshmi Raman claims the agency is taking a 'thoughtful approach' to AI](#), *TechCrunch*
- [Biden's top tech adviser says AI is a 'today problem'](#), *The Verge*
- [What Kamala Harris has said about AI, tech regulation, and more](#), *TechCrunch*
- [A Kamala Harris Presidency Could Mean More of the Same on A.I. Regulation](#), *New York Times*
- [Trump allies draft AI order to launch 'Manhattan Projects' for defense](#), *Washington Post*
- [AI Maxers Thrilled with Trump's Vice President Pick JD Vance](#), *404 Media*
- [States Take Up A.I. Regulation Amid Federal Standstill](#), *New York Times*
- [Inside the fight over California's new AI bill](#), *Vox*

- [From sci-fi to state law: California’s plan to prevent AI catastrophe](#), *Ars Technica*
- [Adobe to update vague AI terms after users threaten to cancel subscriptions](#), *Ars Technica*
- [Microsoft, Apple Drop OpenAI Board Plans as Scrutiny Grows](#), *Bloomberg*
- [OpenAI pledges to give U.S. AI Safety Institute early access to its next model](#), *TechCrunch*
- [Apple signs on to Biden’s responsible AI guidelines](#), *Politico*
- [Google releases new ‘open’ AI models with a focus on safety](#), *TechCrunch*

Legal Industry

- [5th Circuit scraps plans to adopt AI rule after lawyers object](#), *Reuters*
- [Texas Supreme Court Chief Justice on How AI Can Help Fill the Justice Gap](#), *Law.com*
- [Law Clerk vs. AI? Courthouse Test Highlights Judicial Curiosity](#), *Bloomberg Law*
- [The Rule of Law or the Rule of Robots? Nationally Representative Survey Evidence from Kenya](#), *Flanagan, Almeida, Chen & Gitahi*
- [Generative AI’s challenge to legal sector’s alternative providers](#), *Financial Times*
- [Daddy Kev unveils AI-powered app for music contracts, royalty audits](#), *Resident Advisor*
- [In AI we trust](#), *Adam’s Legal Newsletter*

News Industry

- [AI in investigative journalism: mapping the field](#), *Online Journalism Blog*
- [After the Yahoo News app revamp, Yahoo preps AI summaries on homepage, too](#), *TechCrunch*
- [The Latest Addition to NBC’s Paris Olympics Coverage? Google’s AI Tech](#), *Hollywood Reporter*
 - [“It Was Astonishing”: How NBC Convinced AI Michaels to Embrace His AI Voice for Olympics Coverage](#), *Vanity Fair*

- [The Washington Post debuts AI chatbot](#), *Axios*
 - [Why “Sorry, I don’t know” is sometimes the best answer: The Washington Post’s technology chief on its first AI chatbot](#), *Nieman Lab*
- [A Beloved Tech Blog Is Now Publishing AI Articles Under the Names of Its Old Human Staff](#), *404 Media*
- [Learning new tricks: How the 102-year Harvard Business Review is leaning into GenAI](#), *FIPP*
- [GB News Radio rolls out AI-generated sports news bulletins](#), *Press Gazette*
- [Who’s suing AI and who’s signing: Publisher deals vs lawsuits with generative AI companies](#), *Press Gazette*
- [“If it’s good for the company now, work with them”: The Atlantic CEO on signing a deal with OpenAI](#), *Nieman Lab*
- [Business Insider’s owner signed a huge OpenAI deal. ChatGPT still won’t credit the site’s biggest scoops](#), *Nieman Lab*
- [Time strikes licensing deal with OpenAI](#), *Axios*
- [Why The Atlantic signed a deal with OpenAI](#), *The Verge*
- [What AI Companies Want From Journalism.](#), *New York Magazine*
- [‘Devastating’ potential impact of Google AI Overviews on publisher visibility revealed](#), *Press Gazette*
- [AI took their jobs. Now they get paid to make it sound human](#), *BBC*
- [‘What’s in it for us?’ journalists ask as publications sign content deals with AI firms](#), *TechCrunch*
- [AI Doesn’t Kill Jobs? Tell That to Freelancers](#), *Wall Street Journal*
- [Mashable, PC Mag, and Lifehacker win unprecedented AI protections in new union contract](#), *Nieman Lab*
- [The Life, Death and Rebirth of an A.I.-Generated News Outlet](#), *New York Times*
- [Top news app caught sharing “entirely false” AI-generated news](#), *Ars Technica*

- [Buzzy AI search engine Perplexity is directly ripping off content from news outlets, Forbes](#)
 - [AI search engine Perplexity launches revenue sharing with six news publishers, Nieman Lab](#)
- [Smashing, from Goodreads' co-founder, curates the best of the web using AI and human recommendations, TechCrunch](#)
- [ChatGPT is hallucinating fake links to its news partners' biggest investigations, Nieman Lab](#)
- [I Paid \\$365.63 to Replace 404 Media With AI, 404 Media](#)
- [Meta is tagging real photos as 'Made with AI,' say photographers, TechCrunch](#)
- [OpenAI testing prototype search engine with news publishers, Press Gazette](#)

Entertainment Industry

- [As Apple and OpenAI Grow Partnership, Studios Stand on Sidelines of AI Battle, Hollywood Reporter](#)
- [Union game performers strike over AI voice and motion-capture training, Ars Technica](#)
- [Adobe scolded for selling 'Ansel Adams-style' images generated by AI, The Verge](#)
- [Toys "R" Us riles critics with "first-ever" AI-generated commercial using Sora, Ars Technica](#)
- [Hollywood Nightmare? New Streaming Service Lets Viewers Create Their Own Shows Using AI, Hollywood Reporter](#)
- [This AI App Lets You Create Your Own TV Episodes That Look Just Like 'South Park', IndieWire](#)
- [Can artists use their own deepfakes for good?, Vox](#)

Technical Developments & Challenges

- [The Data That Powers A.I. Is Disappearing Fast, New York Times](#)
 - [Companies crave fresh data to train AI models. This startup's recipe? Data made from scratch—by AI, Fortune](#)

- [‘Model collapse’: Scientists warn against letting AI eat its own tail](#), *TechCrunch*
- [Making AI models ‘forget’ undesirable data hurts their performance](#), *TechCrunch*
- [Reddit’s upcoming changes attempt to safeguard the platform against AI crawlers](#), *TechCrunch*
- [Everything Apple announced at its big AI event](#), *CNN*
- [Meet “Apple Intelligence,” the iPhone maker’s flavor of AI](#), *Axios*
- [Apple shelved the idea of integrating Meta’s AI models over privacy concerns, report says](#), *TechCrunch*
- [Anthropic has a fast new AI model — and a clever new way to interact with chatbots](#), *The Verge*
- [Anthropic looks to fund a new, more comprehensive generation of AI benchmarks](#), *TechCrunch*
- [Google claims math breakthrough with proof-solving AI models](#), *Ars Technica*
 - [A.I. Can Write Poetry, but It Struggles With Math](#), *New York Times*
- [Gemini’s data-analyzing abilities aren’t as good as Google claims](#), *TechCrunch*
- [LinkedIn leans on AI to do the work of job hunting](#), *TechCrunch*
- [Zuckerberg disses closed-source AI competitors as trying to ‘create God’](#), *TechCrunch*
- [Meta plans to bring generative AI to metaverse games](#), *TechCrunch*
- [Meta releases its biggest ‘open’ AI model yet](#), *TechCrunch*
- [Meta is rolling out its AI Studio in the U.S. for creators to build AI chatbots](#), *TechCrunch*
- [Siri and Google Assistant look to generative AI for a new lease on life](#), *TechCrunch*
- [OpenAI Insiders Warn of a ‘Reckless’ Race for Dominance](#), *New York Times*
- [OpenAI Offers a Peek Inside the Guts of ChatGPT](#), *Wired*
- [OpenAI Scale Ranks Progress Toward ‘Human-Level’ Problem Solving](#), *Bloomberg*

- [OpenAI working on new reasoning technology under code name ‘Strawberry’](#), *Reuters*
- [OpenAI debuts mini version of its most powerful model yet](#), *CNBC*
- [OpenAI releases ChatGPT’s hyper-realistic voice to some paying users](#), *TechCrunch*
- [A Question About Disputed South China Sea Sends Perplexity AI Into a Sanitized Infinite Loop](#), *404 Media*
- [Stability AI releases a sound generator](#), *TechCrunch*
- [Stable Diffusion 3’s Disastrous Launch Could Change the AI Landscape Forever](#), *404 Media*
- [An AI Bot Is \(Sort of\) Running for Mayor in Wyoming](#), *Wired*
- [This Viral AI Chatbot Will Lie and Say It’s Human](#), *Wired*
- [What, if anything, is AI search good for?](#), *Vox*
- [Study finds that AI models hold opposing views on controversial topics](#), *TechCrunch*
- [Hackers Target AI Users With Malicious Stable Diffusion Tool on Github to Protest ‘Art Theft’](#), *404Media*
- [Tool preventing AI mimicry cracked; artists wonder what’s next](#), *Ars Technica*

H. Blockchain, Cryptocurrency, & NFTs

So, in this section we’ve got the Second Circuit smacking down a defamation lawsuit arising out of a cryptocurrency crash, FOIA lawsuits in D.D.C. against the SEC and FDIC over documents regarding their past crypto enforcement activity, new IRS rules on tax reporting for cryptocurrency exchanges, and a ruling in S.D.N.Y. holding that expert testimony offered by Nike in its trademark lawsuit over the defendant’s NFTs was premised on a valid legal theory. You know, the typical legal shadows of an industry flailing.

- [2nd Cir.: New York Times Article About Crypto Crash Not Defamatory](#)
 - [Order: *Dfinity v. New York Times*](#)
- [D.D.C.: Coinbase sues SEC and FDIC over document requests related to past crypto industry actions](#), *Axios*
 - [Complaint: *History Associates v. FDIC*](#)

- [Complaint: *History Associates v. SEC*](#)
- [S.D.N.Y.: Court allows Nike’s legal theories and most of its expert testimony against StockX’s resales/NFTs, *Rebecca Tushnet’s 43\(B\)log*](#)
 - [Order: *Nike v. StockX*](#)
- [IRS finalizes new regulations for crypto tax reporting, *TechCrunch*](#)

VI. Government Activity

A. Data Surveillance, Collection, Demands, and Seizures

Smartphones are at the center of three cases out of the federal Courts of Appeal in this issue, with the Fourth Circuit holding that a warrantless seizure of a cellphone following a suspect’s arrest was unconstitutional (but harmless), the Seventh Circuit upholding a warrantless border search of a phone at O’Hare, and the ACLU filing an amicus brief at the Ninth Circuit arguing that searching an “abandoned” phone is different from searches of other abandoned property. The Seventh Circuit ruling contrasts with another smartphone search ruling out of E.D.N.Y. in July, in which a judge rejected the “border search” exception at ports of entry.

The Fourth Circuit also held this month that the government doesn’t need a warrant to access location information voluntarily shared with Google (which probably came from the defendant’s phone, but the specific device wasn’t at issue in the case). Meanwhile, a California appellate panel held that the Stored Communications Act does not shield online platforms against sharing mined and monetized consumer data with the government.

- [X Corp. asks Supreme Court to review process that led Jack Smith to obtain Trump Twitter files, *Politico*](#)
 - [Petition: *X Corp. v. United States*](#)
- [4th Cir.: Accessing Google Location History Records Is Not a Search — At Least When Limited, *Volokh Conspiracy*](#)
 - [Opinion: *U.S. v. Chatrue*](#)
- [4th Cir.: Warrantless cellphone seizure following arrest was unconstitutional](#)
 - [Opinion: *U.S. v. Horsley*](#)
- [7th Cir. upholds warrantless border search of electronics](#)
 - [Opinion: *U.S. v. Mendez*](#)

- [9th Cir.: ACLU Asks 9th Circuit Not To Treat Abandoned Phones Like Any Other Abandoned Property](#), *Techdirt*
 - [Amicus Brief: U.S. v. Hunt](#)
- [E.D.N.Y.: US border agents must get warrant before cell phone searches, federal court rules](#), *TechCrunch*
 - [Order: U.S. v. Sultanov](#)
- [Cal. App.: Social media platforms that mine user data aren't shielded by federal communications law, California court says](#), *Courthouse News*
 - [Opinion: Snap v. Superior Court](#)
- [Del.: Court Reverses Conviction After Cops Lied To Suspect About Having A Warrant To Search His Phone](#), *Techdirt*
 - [Opinion: Matthews v. State](#)
- [Cops Released a Car's Travel History to a Total Stranger](#), *404 Media*

B. Encryption

This month, it's all about how much the cops can hack from your phone and their angst over what they can't.

- [It's never been easier for the cops to break into your phone](#), *The Verge*
- [Leaked Docs Show What Phones Celebrite Can \(and Can't\) Unlock](#), *404 Media*
- [FBI Back To Complaining About Encryption Making It Difficult To Scrape All Data From A Dead Person's Phone](#), *Techdirt*
- [Georgia Prosecutors Stoke Fears Over Use Of Encrypted Messengers And Tor](#), *Techdirt*

C. Biometric Tracking

Nothing to report in this issue.

D. Domain Seizure

Just one story, about an international effort to shut down servers used by terrorist networks.

- [Major takedown of critical online infrastructure to disrupt terrorist communications and propaganda](#), *Europol*

E. Social Media Posts & Blocking

We are beginning to see the repercussions of the Supreme Court's decision in *Lindke* (and its parallel vacatur in *O'Connor-Ratcliff v. Garnier*). We've also got an interesting decision from the D.C. Circuit holding that the official Facebook and Instagram pages of the National Institutes of Health were a limited purpose public forum, but that NIH's effort to automate blocking of "off-topic" posts using keywords was unreasonable and unconstitutional.

- [Sixth Circuit takes up officials' use of social media following Supreme Court clarity](#), *Courthouse News*
- [Ninth Circuit dismisses conservative journalist's First Amendment lawsuit against San Francisco Supervisor Dean Preston](#), *Courthouse News*
 - [Opinion: Reynolds v. Preston](#)
 - [9th Circuit revives part of journalist's lawsuit against S.F. Supervisor Dean Preston](#), *San Francisco Chronicle*
 - [Order Amending Opinion: Reynolds v. Preston](#)
- [DC Circuit guts federal social media rules blocking animal testing comments](#), *Courthouse News*
 - [Opinion: PETA v. Tabak](#)
- [Minn.: Rochester Shuts Down Comments on City Social Media Pages](#), *KROC*

F. Prior Restraint

These days, I feel it's pretty rare for a court to identify a "textbook First Amendment violation" – which is not to say that such violations are infrequent, only that most courts seem to struggle to realize the obvious problems. That's why it was refreshing to see the First Circuit decision below about school committee members who threatened legal action if a parent (and citizen journalist) did not take down a First Amendment-protected video.

Oh, and Donald Trump's ongoing efforts to get the gag order in his New York criminal trial vacated were unavailing, though Judge Merchan did narrow it somewhat.

- [1st Cir.: No Qualified Immunity When “Public Officials ... Baselessly Threaten a Citizen-Journalist With Legal Action”](#), *Volokh Conspiracy*
 - [Opinion: *Berge v. School Committee*](#)
- [Cal. App.: New California Precedent on Anti-Harassment Orders and Public Speech About People](#), *Volokh Conspiracy*
 - [Opinion: *Luo v. Volokh*](#)
- [Cal. Super.: Judge Orders Removal of Reddit Criticism of Scientist / Consultant Who Publicly Criticized English Lucy Letby Murder Trial](#), *Volokh Conspiracy*
 - [Order: *Adams v. Gulley*](#)
- [Miss. Ch.: A grieving mom's TikTok videos spark online speech battle](#), *Washington Post*
- [N.Y. Sup.: Trump asks judge to lift gag order after conviction in hush money case](#), *Reuters*
 - [Trump's N.Y. trial gag order remains after latest failed appeal](#), *Axios*
 - [N.Y. Sup.: New York judge lifts parts of Trump gag order, allowing him to comment on jury and witnesses](#), *CBS News*

G. Online Access to Government Information

Nothing earthshaking here, I'm afraid, but voting records requesters in the Eleventh Circuit got a tough break.

- [11th Cir.: National Voter Registration Act does not establish fee structure for electronic records](#)
 - [Opinion: *Greater Birmingham Ministries v. Secretary of State for State of Alabama*](#)
- [Tex.: New criminal database taken offline after confidential, false information published](#), *News4SA*

VII. Global

It's more or less futile to attempt to call out "top stories" for the entire world beyond the United States, but for most readers I think the first two items under Europe below will be particularly relevant.

A. Europe

- [CJEU: Top EU Court Says There's No Right To Online Anonymity, Because Copyright Is More Important](#), *Techdirt*
 - [Judgment: *La Quadrature du Net v. Premier Ministre*](#)
- [EU's AI Act gets published in bloc's Official Journal, starting clock on legal deadlines](#), *TechCrunch*
 - [EU calls for help with shaping rules for general-purpose AIs](#), *TechCrunch*
 - [In world first, sweeping AI law enters into force](#), *AFP*
- [The EU just re-elected its president for another five years — here's what that means for tech](#), *TechCrunch*
 - [Europe's elections test a landmark social media law](#), *Washington Post*
- [Elon Musk does not grasp EU fears about disinformation on X, official says](#), *The Guardian*
 - [EU charges X with deceiving users via blue checkmark, draws Musk's ire](#), *Reuters*
- [Apple is first company charged with violating EU's DMA rules](#), *The Verge*
 - [Apple Intelligence won't be available in Europe because Tim's terrified of watchdogs](#), *The Register*
- [Meta uses "dark patterns" to thwart AI opt-outs in EU, complaint says](#), *Ars Technica*
 - [Meta Faces Legal Complaints Over New AI Training Data Plans](#), *Forbes*
 - [Meta halts plans to train AI on Facebook, Instagram posts in EU](#), *Ars Technica*
 - [Meta's 'pay or consent' model fails EU competition rules, Commission finds](#), *TechCrunch*

- [Meta defends charging fee for privacy amid showdown with EU](#), *Ars Technica*
- [Meta given weeks to tell EU consumer protection authorities how it'll fix 'pay or consent'](#), *TechCrunch*
- [LinkedIn to limit targeted ads in EU after complaint over sensitive data use](#), *TechCrunch*
- [EU accuses Microsoft of competition breach over Teams bundling](#), *TechCrunch*
- [AI deals between Microsoft and OpenAI, Google and Samsung, in EU crosshairs](#), *Reuters*
- [Following raft of consumer complaints, Shein and Temu face early EU scrutiny of DSA compliance](#), *TechCrunch*
- [EU States Push for Access to Encrypted Data and Increased Surveillance](#), *Netpolitik.org*

B. Algeria

- [Algerian journalists arrested for publishing video showing businesswomen protesting](#), *Associated Press*

C. Argentina

- [Javier Milei's government will monitor social media with AI to 'predict future crimes'](#), *El País*

D. Australia

- [Australia's eSafety commissioner waters down child abuse detection rules in online safety standards](#), *The Guardian*
- [Porn crackdown amid fears Australia is facing 'harmful sexual socialisation of entire generation'](#), *The Australian*
- [New defamation legislation aims to provide better protections for online communities in NSW and ACT](#), *ABC*
- [Meta threatens to block news from Facebook in Australia again](#), *Reuters*
 - [Australia should force Meta to pay for news, News Corp executive says](#), *Reuters*
 - [Facebook's potential news ban already affecting smaller media outlets, inquiry told](#), *The Guardian*

- [If Meta bans news, what will happen? Canada’s experience is telling](#), *Nieman Lab*
- [Australian publishers say ‘catastrophic’ if Meta follows through on news ban](#), *Press Gazette*
- [Google inks renewed media bargaining code deals – with a catch](#), *Australian Financial Review*
- [Media workers take to the streets as industry experiences seismic shift](#), *SBS*
- [Australian online watchdog drops court case against X over stabbing video](#), *Associated Press*
 - [Australian Censors Back Down, Highlighting the U.S. as a Free Speech Haven](#), *Reason*
- [Elon Musk chases ‘overpayments’ from Australia’s sacked Twitter staff](#), *Sydney Morning Herald*
- [Robert Irwin threatens to sue One Nation leader Pauline Hanson for defamation over Please Explain cartoon](#), *News.com.au*
- [Trial date set for Linda Reynolds’ defamation case against Brittany Higgins](#), *The Guardian*
 - [Linda Reynolds’ lawyers pore over Brittany Higgins phone download ahead of defamation trial](#), *AAP*

E. Austria

- [A complaint was filed against Google in the EU for collecting user data without adequately asking for consent](#), *Medianama*
 - [Complaint: Redacted v. Google](#)
- [Microsoft hit with EU privacy complaints over schools’ use of 365 Education suite](#), *TechCrunch*
- [How one of the world’s oldest daily newspapers reinvented itself – overnight](#), *WAN-IFRA*

F. Belgium

- [Belgian Court Penalizes Meta For Failing To Boost & Promote Far-Right Politician](#), *Techdirt*

G. Brazil

- [Brazil Judge Closes Coordination Probe Into Google, Telegram](#), *Reuters*
- [Meta puts a halt to training its generative AI tools in Brazil](#), *TechCrunch*

H. Canada

- [Huge Win for Copyright User Rights in Canada: Federal Court Rules Digital Lock Rules Do Not Trump Fair Dealing](#), *Michael Geist*
 - [Opinion: Blacklock's Reports v. Attorney General of Canada](#)
- [Canada's Extremist Attack on Free Speech](#), *The Atlantic*
- [Canada demands 5% of revenue from Netflix, Spotify, and other streamers](#), *Ars Technica*
- [AI chatbots use Canadian news, but Ottawa won't say if they should be paying for it](#), *Canadian Press*
- [Will the AI chatbot wave come for the federal government?](#), *CBC*
- [Embassy takes down AI-generated Canada Day social media post](#), *CBC*
- [A free online library celebrating diverse stories wants to know why it's been banned by the Vancouver School District](#), *The Georgia Straight*
- [How an Officer's Social Media Posts About Work Harassment Led to Her Firing](#), *New York Times*

I. China

- [Hong Kong arrests eighth person for Tiananmen social media posts](#), *AFP*
- [Guilty Verdict for Activists Who Gave #MeToo Victims a Voice](#), *New York Times*
- [New Tactic in China's Information War: Harassing a Critic's Child in the U.S.](#), *New York Times*
- [Censorship slows AI advances](#), *Axios*
- [Hong Kong government to adopt city's own ChatGPT-style tool after OpenAI further blocks access](#), *South China Morning Post*

- [A new Chinese video-generating model appears to be censoring politically sensitive topics](#), *TechCrunch*

J. Denmark

- [Danish Media Threatens to Sue OpenAI](#), *Wired*

K. France

- [Women who falsely claimed Brigitte Macron is transgender go on trial](#), *France 24*
- [IOC to use AI to block social media abuse during Paris 2024 Olympics](#), *SportsProMedia*
- [At the Olympics, AI is watching you](#), *Ars Technica*

L. Germany

- [German woman given harsher sentence than rapist for calling him ‘pig’](#), *Daily Telegraph*

M. India

- [News Broadcasters & Digital Association Expands Regulatory Framework to Include Digital News Media](#), *Medianama*
- [Wikipedia parent responds to ANI defamation suit, says content by volunteer editors](#), *The Hindu*
- [Indian social network Koo is shutting down as buyout talks collapse](#), *TechCrunch*
 - [The rise and fall of Koo, India’s once-thriving Twitter alternative](#), *Rest of World*

N. Indonesia

- [Indonesia is trying to block LGBTQIA content from the internet](#), *Rest of World*

O. Iran

- [Iranian rapper’s death sentence overturned](#), *BBC News*

P. Ireland

- [Denis O’Brien seeks damages from Meta for defamation over ‘false and malicious’ ads](#), *Irish Examiner*

- [Trump VP pick JD Vance hits out at proposed ‘authoritarian’ hate speech laws](#), *Irish Examiner*

- [Hackers and fake accounts thwarted in lead-up to elections](#), *Irish Examiner*

Q. Italy

- [Italian journalist ordered to pay PM Meloni 5,000 euros for mocking her height](#), *Reuters*
- [Italy claims 1 billion euros in unpaid taxes from Google](#), *Reuters*
- [Google accused of misleading consumers to grab more data for ads](#), *TechCrunch*

R. Japan

- [Apple and Google won’t be able to stop third-party app stores in Japan](#), *The Verge*
 - [Japan enacts law to curb Apple, Google’s app dominance](#), *The Mainichi*
- [Japan’s copyright rules draw AI groups — and alarm from creators](#), *Financial Times*
- [Damages trial begins in Tokyo over Google Maps reviews](#), *NHK World Japan*
- [Tokyo medical group warned over ‘stealth marketing’ with fake Google reviews in Japan 1st](#), *The Mainichi*
- [25-year-old arrested over fake rescue requests on social media](#), *The Japan Times*

S. Jordan

- [Jordanian reporter gets one year in prison under draconian new cybercrime law](#), *RSF*

T. Kenya

- [Internet goes dark in Kenya in the wake of major protests over finance bill](#), *TechCrunch*
- [Gen-Z anti-tax protests drive social media usage to record levels](#), *Business Daily Africa*

U. Kosovo

- [Advocates sound alarm over new media law](#), *VOA*

V. Malaysia

- [Social media owners to be held responsible in new cyberbullying law](#), *Malaysiakini*

- [Malaysia's new cyber law stirs fears of 'death knell' for free speech](#), *SCMP*

W. Mongolia

- [Mongolia sentences prominent journalist to nearly 5 years in prison](#), *VOA*

X. Netherlands

- [DSA Ruling: ExTwitter Must Pay Up For Shadowbanning; Trolls Rejoice](#), *Techdirt*

Y. New Zealand

- [New Zealand to press ahead with media content pay law](#), *Reuters*

Z. Nigeria

- [Nigeria fines Meta \\$220 million for violating data protection and consumer rights laws](#), *Associated Press*

AA. Pakistan

- [Caretakers banned X on issues of 'compliance', says info minister Tarar](#), *Dawn*
- [Pakistan to launch home-grown messaging app amid internet disruptions](#), *Al Jazeera*

BB. Russia

- [Russian American Sentenced Is Sentenced Over Social Media Posts](#), *New York Times*
- [Russia 'Jails' Journalist Masha Gessen 8 Years in Absentia for Ukraine Comments](#), *Moscow Times*
- [Russia sentences journalist Zygar in absentia to 8-1/2 years in jail for army "fakes"](#), *Reuters*
- [Russia Fines Google, TikTok Over Banned Content](#), *Reuters*
- [Russia Demands Google Restore 200 Pro-Kremlin YouTube Channels](#), *Moscow Times*
- [Apple bows to Kremlin pressure to remove leading VPNs from Russian AppStore](#), *Novaya Gazeta Europe*
- [Traffic speeds reveal that Russia's YouTube slowdown is targeted throttling, not Google Global Cache 'equipment failure'](#), *Meduza*

- [YouTube speeds may drop by up to 40% this week to pressure company, says senior lawmaker, Reuters](#)
- [Russian agents deploy AI-produced Tom Cruise narrator to tar Summer Olympics, Ars Technica](#)
- [The Secret Telegram Channels Providing Refuge for LGBTQ+ People in Russia, Wired](#)

CC. Saudi Arabia

- [Fresh scrutiny of free speech after brothers' convictions over tweets, The Guardian](#)

DD. Singapore

- [Singapore orders social media sites to block 95 accounts, in first such use of foreign interference law, The Star](#)

EE. South Africa

- [High court grants Russian Orthodox Church permission to seize Google South Africa's assets, Daily Maverick](#)

FF. Spain

- [Spain proposes tightening rules on media to tackle fake news, Reuters](#)
- [Apple's App Store hit with antitrust probe, TechCrunch](#)
- [Court ordered penalties for 15 teens who created naked AI images of classmates, Ars Technica](#)

GG. Switzerland

- [Switzerland now requires all government software to be open source, ZDNet](#)

HH. Thailand

- [Love royal gossip? That could land you behind bars, ABC](#)

II. Tunisia

- [Tunisia president pardons prisoners detained over social media posts, Middle East Monitor](#)

JJ. Turkey

- [Turkey competition board fines Google 482 million lira over hotel searches](#), *Reuters*

KK. United Arab Emirates

- [Writing a negative Google or social media review? You could land in legal trouble](#), *Khaleej Times*

LL. United Kingdom

- [New government facing battle with Google and Facebook](#), *Press Gazette*
- [Encouraging signs on freedom of expression after Starmer's first week](#), *Index on Censorship*
- [Disappointment for publishers as Artificial Intelligence Bill missing from King's Speech](#), *Press Gazette*
- [On AI, new UK gov't to work on 'appropriate' rules for 'most powerful' models and beef up product safety powers](#), *TechCrunch*
- [The big question - how to regulate the net?](#), *Irish News*
- [£13.6bn damages claim against Google on behalf of UK publishers to go to trial](#), *Press Gazette*
- [UK antitrust body probes Google's ties with AI rival Anthropic](#), *TechCrunch*
- [UK retailers file a £1.1B collective action against Amazon over claims of data misuse](#), *TechCrunch*
- [Amazon hit with fresh class action-style suit in UK — \\$3.4B in competition damages sought for 200,000+ sellers](#), *TechCrunch*
- [Microsoft faces UK antitrust probe after hiring Inflection AI founders and employees](#), *TechCrunch*
- [UK and Canada privacy watchdogs investigating 23andMe data breach](#), *TechCrunch*
- [Bankers allowed to sue Dow Jones under GDPR over 'missing \\$1bn' article](#), *Press Gazette*
 - [Judgment: *Pacini v. Dow Jones*](#)

- [Andrew Bridgen libelled to ‘devastating extent’ by Matt Hancock, High Court told](#), *Sky News*
- [Joey Barton pays Jeremy Vine £75,000 to settle ‘bike nonce’ libel claim](#), *PA Media*
- [Hugh Grant ‘determined’ to get ‘justice’ from tabloids](#), *RTÉ*
- [Washington Post CEO accused in court of deceiving police about hacking scandal](#), *NPR*
- [U.K. police reviewing accusations against ‘Washington Post’ publisher](#), *NPR*
- [UK Police Arrest Suspect in MGM Ransomware Attack](#), *404 Media*

MM. Venezuela

- [Site blocking and impersonation threaten media in Venezuela, according to IPYS report](#), *LatAm Journalism Review*

NN. Vietnam

- [Vietnam arrests prominent journalist over Facebook posts](#), *AFP*

VIII. Miscellaneous

The major news in this section is that Julian Assange cut a plea deal with the United States government and is now free, having returned to Australia after his plea hearing in Saipan. Assange pleaded guilty to a single count of “conspiracy to obtain and disclose national defense information,” and was then released. While this saga is now over, most commentators have lamented that the result sheds no light on serious questions at the intersection of the First Amendment, the Espionage Act, and journalism.

Beyond that, most of the stories below relate to people getting themselves in some form of trouble for their (mostly ill-considered) social media posts. Lobster? Really?

- [7th Circ. Says Ex-Officer’s Offensive Posts Not Protected](#), *Law360*
 - [Opinion: *Hicks v. Illinois Department of Corrections*](#)
- [10th Cir.: Influencer’s Forest Pics Not ‘Work Activity,’ Court Rules](#), *Law360*
 - [Opinion: *U.S. v. Lesh*](#)

- [C.D. Cal.: Federal Low-Security Inmate Punished Based on Public TikTok Video Showing Him Making Contraband Lobster](#), *Volokh Conspiracy*
 - [Report & Recommendation: Perez v. Engleman](#)
 - [Order on R&R](#)
- [D. Colo.: Claim That Public School Employee Was Unconstitutionally Fired for Sharp Pro-COVID-Vaccine Post Can Go Forward](#), *Volokh Conspiracy*
 - [Order: Webb v. Aspen View Academy](#)
- [S.D.N.Y.: What Should Photo Repositories Do About Blackface Photos?](#), *Technology & Marketing Law Blog*
 - [Order: Thompson v. Shutterstock](#)
- [D.N.M.I.: Julian Assange agrees to plea deal with Biden administration that will allow him to avoid imprisonment in US](#), *CNN*
 - [Information: U.S. v. Assange](#)
 - [Letter re Plea Hearing](#)
 - [Order re Media Access to Hearing](#)
 - [Julian Assange Pleads Guilty to Espionage, Securing His Freedom](#), *New York Times*
 - [Julian Assange's release is still a lose-lose for press freedom](#), *Vox*
 - [At last, Julian Assange is free. But it may have come at a high price for press freedom](#), *The Guardian*
 - [Assange plea deal blemishes Biden record](#), *Washington Post (Erik Wemple)*
- [W.D. Wash.: Mobile Game Maker Ruled Liable For Illegal Gambling In Wash.](#), *Law360*
 - [Order: Larsen v. PTT](#)
- [D.C.: Deleting an Instagram Post Was Evidence-Tampering](#), *Technology & Marketing Law Blog*
 - [Opinion: Webb v. United States](#)

- [Amazon forced to recall 400K products that could kill, electrocute people](#), *Ars Technica*
- [Social Media Influencers Can Now Cover the Democratic Convention](#), *U.S. News & World Report*

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That's all for me this time around, folks – enjoy the rest of the summer and I'll be back with another issue after Labor Day!

Jeff Hermes is a Deputy Director with the Media Law Resource Center. While not wishing to make light of the Assange case, he was thrilled to be able to cross off the U.S. District Court for the Northern Mariana Islands on his media law bingo card. He also particularly enjoyed the opportunity to use the word “ouroboros” in this issue. You know the type – he would have enjoyed being [Judge Selya's vocabulary clerk](#).