What Happens When You Condense a Month (or Two) of the MediaLawDaily into a Single Article?

The Monthly Daily

An Ongoing Experiment in Drinking from the Firehose

By Jeff Hermes

Ordinarily this article is written in fun
With plenty of time to get the work done
But this month at my desk I was feeling oppressed
Eighty pages of news clips I had to digest
I thought to myself, “How could it be worse?”
And then it occurred to me – I’d write it in verse!

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Supreme Court

Pending Cases

Conservatives question compelled speech at clinics

Trump's support for state sales tax thrills internet cynics

Will a case on state gambling affect video games?

To find the “narrowest ground” how do you count names?

Elbridge Gerry leads the Court to wonder aloud

While the Microsoft case is dispersed in the cloud

And for the next term the Court granted cert

On whether a cy pres settlement was permissible

In a privacy case in which the class hit paydirt

But the payout was not practically feasible

Decisions

We still wait for decisions in many more cases

But amidst the dry spell there’s one small oasis

Patent reviews inter partes at the PTAB

Do not, the Court held, offend Article III

Petitions

How to define public figures in the age of #metoo

The effect of Williams-Yulee on what candidates do

Empires real and in fiction fight o’er a trademark

And patients in pregnancy clinics kept in the dark

But so many more cases were blocked at the door

Hayes’ claim versus Viacom lingers no more

Oath Holdings is left with a ruling from Mass.

On what happens to data when a user doth pass

A streaming patent case dried up to dust

As did one from the First on pay-TV antitrust

The First they also let stand on content neutrality

Seven too, on Blagojevich and his criminality

No review of the Ninth on copyright standing

Or two prior restraints against video stings

Three FCC rulings!

Baiul and NBC Sports!

None of them fit for this highest of courts!

But they couldn’t decide

To keep or let go

A case about Tribune

So it continues below

Reporters’ Privilege

Alabama wanted testimony

from Tuscaloosa News

A Granite State judge won’t compel

Unpublished interviews

Old Blighty says Chris Steele
May yet take the stand  
No objection, says BuzzFeed,  
‘Cause we have a plan

But in Cali a journo is still a reporter  
If to call someone aid he spends his own quarter

Defamation

New Cases

Clifford tells Cohen and Trump, my tale’s not a myth  
(With his problems growing, Cohen’s pleading the Fifth)

Bill O’Reilly’s denials another claim drew --

A million in hush money says you’re the liar, claims Dhue

A third case versus Roy Moore survived 12(b)(6)

Moore himself claimed and counterclaimed; we’ll see if it sticks

Ashley Judd alleges Weinstein told

Peter Jackson terrible things  
And cost her an important role

In The Lord of the Rings

A few Facebook posts alleging “corruption and scandal”

Caused a Jordanian airline to fly off the handle  
And from a series of Instagram posts by Cardi B

Her former manager has claimed injury

A “courtroom escape attempt”? Never happened, says Patterson  
He claims ESPN got the core of the matter wrong

[A note from the author, a TNG fan:  
My rhymes don’t all work out the way that I plan.]

In Kansas we noticed a claim most bizarre

A musician (or con man?) has sued NPR

Did his album exist? That is a key question

Did he buy it himself? That is the suggestion

“Me leer at performers?”

Quoth Steve Wynn, “Couldn’t be!  
I was legally blind, you see!

And I never sexually harassed

Any former employee!  
(And forget that wild story

Run by the AP)

Doc Delashaw claims the Seattle Times erred

About profit, not patients, the paper said that he cared

Nieman Nix was a ball player ever so briefly

Then he sold supplements (derived from elk antlers chiefly)

MLB: These are drugs, Nix

Nix: You’re wrong so I’ll sue

And when the media reported Nix sued them all too
A Smith County, Tex. woman sued KLTV
Saying she wasn’t a suspect in that burglary

In Georgia Joe Mullins took to the courts
To challenge a few insulting reports
“Con artist” and “rat fink,”
“Floatie,” “slum lord,” “herpes,”
He alleges they called him a loathsome disease!

Lifehacker cautioned its readers about dental aligners
Then they were sued by dental product designers

Roger Stone might regret accusing of crime
A billionaire exile with nothing but time
Stone did it on InfoWars, which has its own troubles
Claiming Sandy Hook victims were body doubles
And accusing a fellow from Charlottesville
Of staging unrest as a deep state shill
While blaming poor Parkland on an innocent man
Whom it labeled a “commie,” Red-baiting its fans

And a troika of businessmen sued Christopher Steele
Claiming the report in his dossier was simply unreal

Plaintiff Wins
Though media losses might rarely impress us
Let’s take a quick look at some plaintiffs’ successes

A grad student sufficiently pleaded actual malice
A professor was jailed for not removing his posts
Trump isn’t safe in his golden palace
A contract allows a claim by a reality show host

New Mexico’s anti-SLAPP law here doesn’t apply
Said a district court judge, espousing a theory
With which the Tenth Circuit agreed by and by
Citing once and again to that old chestnut Erie

The Second Circuit confirmed that for reports of extortion
Claims against Bloomberg were not out of proportion
And Janice Dickinson has been allowed to bring her
Claims after Cali’s top court blew off Cosby and Singer

The Idaho Supreme Court (I know, shocking)
Held a mayor and her spouse could be defamed
By suggesting the pair was guilty of stalking
Through the selection of a WiFi network name
Two plaintiff’s wins from N.Y.’s Appellate Division
An ex-Times columnist can sue for cinematic derision
And a billionaire’s lawsuit would be unduly suppressed
If moved to the Bahamas with its weak court process

Who cares about shoplifting, said the folks at Cal. App.
Without public interest, this case isn’t a SLAPP

We have noted a settlement with Charlie Sheen
And the same’s true for billionaire land baron Jeff Greene
Keeper Security and Ars Technica made peace
(though that’s only a plaintiff’s win ‘cause they avoided the fees)

Defense Wins
Though few of us weep for Cosby and Trump,
We’re on the defendants’ side of the v.
So now that we’ve gotten over the hump
Let’s talk about cases that kept our speech free

Carter Page said that a story on Yahoo
Was a terrorist act and libelous too
The court found no basis for a federal claim
And without that the state claim was treated the same

Anti-SLAPP fee awards are always good news
Richard Simmons was hit with a six-figure bill
As was an inventor who sued over reviews
In S.D.N.Y., Adelson owes nearly $2 mill
‘Cause Lee Levine said Nevada state law should be used

“Patent troll” and “sugar daddy,”
“Fat cats” and rhetorical excess
The words sting but it’s all hyperbole
Suing for libel won’t cure your distress

Debtwire’s reporting on SEC filings
A judge’s book that was claimed to be fiction
And Rhode Island reporting on ticket enforcement
Will suffer no further judicial affliction

Real Housewives of New Jersey is rife with conflicts dramatic
It’s not surprising a libel suit cropped up from the show
But NBC planned ahead with a contract pragmatic
The terms say to arbitrate, and a court agreed so

A judge was also a plaintiff and was out of sorts
He wanted his libel claim in his own court
But a federal judge found the parties diverse
And denied certification so the Third won’t reverse
Oh, and Cohen’s two suits over a Trumpian Dossier

Versus BuzzFeed and Fusion have suddenly gone away

On appeal the First held D.N.H. got it right
Telling out-of-state parties to get out of its sight
The Second savaged a claim by a Venezuelan pol
Calling his legal theory “patently unbelievable”
And the Third found that Norman Mailer’s paramour
Admitted the basic facts in her own memoir
While Eleven upheld an anti-SLAPP smack
To a doc another doc once called a quack
And Oregon App. held a mean campaign flyer
Did not clear a recently raised anti-SLAPP wire

Miscellaneous

And lastly we’ll mention our old friend Bob Murray
Who argued that Oliver shouldn’t have won
In an ex parte letter the court released in a hurry
Saying that’s something Bob really shouldn’t have done

Privacy

Rights of Publicity

De Havilland’s feud over Bette & Joan

Gravano and Lohan versus GTA Five
The holder of Guinness’s hacky sack throne
After appeal none of these cases survive

But the Seventh decided to let Indy’s high court
Speak to the rules governing fantasy sport
And an astronaut’s lawsuit will continue quite soon
‘Bout ads for a watch that he wore to the moon
As will that of a model whose photos were sold
Without her permission (or so we are told)

Disclosure of Private Facts

Howard Stern did broadcast during one of his shows
A call ‘twixt the IRS and a taxpayer
This, held the court, did not disclose
Information “sufficiently personal or intimate in nature”
**Texas’ law on revenge porn** was really quite strong
But under strict scrutiny it did not last long
Scienter requirements were phrased with a disjunction
So it wasn’t narrowly tailored to serve its core function

**Infliction of Emotional Distress**
A [DNC staffer killed for a leak](#)?
The story of the day, if not the week
But then Fox News issued a retraction
And the staffer’s parents filed a civil action
No claim for infliction of emotional distress
For a [mental health advocate’s words to the press](#)
What’s more the advocate deserved her fees
For defending against a free speech freeze

**Intrusion**
Composing a trite verse [about robocalls](#)
Would bore me to tears so we’ll just move on
To a case in which a lad in a coma
Supposedly awoke to report a journey beyond
He met God and the devil and the angelic hierarchy
At least so a book said, [but the book was malarkey](#)
The kid sued the publisher in Illinois
Saying his peace and quiet has been destroyed

In E.D. Pa.,
Some spyware they say
Was [found on computers offered for lease](#)
Choice of law dictated
That Wyoming’s law rated
The judge’s respect so the case it did cease
Yet later the ruling
Required retooling
When Wyoming’s top court
Acknowledged the tort

**False Light**
An ex-Idol sued E! alleging false light
For [disputing an affair with Paula Abdul](#)
The court put an end to Corey Clark’s fight
Holding judgment was proper per *Sullivan’s* rule

**Access/FOIA**

**New Cases**
[Ohr’s meeting](#) with Chris Steele
Records on the [Fox-Disney deal](#)
Cali’s [lethal injections](#)
Mueller’s [Russia inspections](#)
[Obama-Comey](#) entanglement
An [ex-coach’s settlement](#)
A [stalking complaint](#) to make the heart faint
Firms [lobbying for Russia and for Ukraine](#)
[Police body cams](#) and [excessive force claims](#)
[Access to jurors](#) along with their names
Access Granted

We’ve got the usual crop from D.D.C.

Immigration data that should have been free
Sealed court records on electronic surveillance
And the names of monitors for corporate compliance

Cohen’s case files were the subject of hearing
A request to stream sound was to the judge not endearing
So there’s no audio of any courtroom insanity
But thanks to Rob Balin we heard the name Hannity

A bit further south Robert Mueller’s in court
But could not seal discov’ry on Paul Manafort

The proceedings at FISC are often obscure
The public is often denied at the door
But its sealing of records can yet be reviewed
Now that outside groups have standing to sue

O’Reilly’s travails we already have mentioned
His denying harassment a source of contention
With this latest ruling his troubles increase:
An order his settlements shall be released

Said the Cal. Appeals Court in a ruling
The Superior Court erred in refusing
To award fees the LA Times spent in suing
For an unredacted report on a shooting

Access Denied

A filmmaker’s demand was premature, said a judge,
For depo records to be used in a Theranos flick
Depositions are part of discovery’s trudge
Said the judge
But ‘til they’re filed they don’t become public

Charlottesville tactics for containing hate
Health plan information from the Garden State
Stoneman Douglas outdoor security video
A murder case docket complete ab initio
UNC findings on sexual assault
All of these have been released from the vault

“Show me,” said Flynt to Missouri
The records of your executioners’ deeds
Said the Eighth Circuit, “No hurry.
Their safety’s a paramount need.”

FOIA star Jason Leopold
By a judge in D.C. has been told
He’ll wait in frustration
For Trump’s tax information
Which the feds may continue to withhold

The CIA can be selective
About disclosing its methods and means
So its FOIA response isn’t defective
If it withholds info some reporters have seen
Stearns County had FBI docs
On Jacob Wetterling’s disappearance
The media sued for the box
But the court held the feds control clearance
(But other records an order unlocks
Thanks to the media’s perseverance)

A Glomar response is permitted
For the police in N.Y.
Could it possibly go wrong?
Well, you might ask
But we can neither confirm nor deny

In the Laquan McDonald case
The docket might have been unsealed
But under a blanket impoundment order
The actual pleadings won’t be revealed

Pending Cases & Appeals
Other cases we watch with impatient restraint
Seventh Circuit briefing on e-filed complaints
Eleven considers privacy in driver photos
Connecticut, the Sandy Hook killer’s childhood prose
In Illinois, a murder trial with pre-trial verbosity
In Nevada, police recordings re: October’s atrocity
[But wait, we’ve got a late-breaking update –
Nevada’s Supreme Court ordered release of the tapes]

And a rare FOIA trial made the headlines
Over FDA records on henhouse designs

Legislation
A new bill in Cali would provide
Protection against second-guessing
Should an agency later decide
It shouldn’t have complied
It can’t sue for a record’s repossessing

Another bill from the Golden State will once more attempt
To make police misconduct investigations non-exempt
But under an Illinois bill if arrest details you seek
You could find yourself waiting for many a week

Using personal devices for public deeds
Does not allow politicians
To keep their work hidden
At least that’s what most states have agreed
But a Kentucky bill unwisely written
Would allow access to be forbidden

Miscellaneous
Maryland court records won’t be the same
After the judiciary completed a purge
Removing from case files all the cops’ names
Nor can they be used to search
High fees for PACER we abhor
They make a cash-strapped user nervous
But a judge says courts can’t use them for
Tech that’s unrelated to the service

Newsgathering

Persecuting Journalists
The Department of Homeland Security
Wants to relieve journalists
Of their obscurity

In Texas, charges were nixed against
Lagordiloca
In Connecticut, Esty was by disclosures enraged
And for fleeing death threats south of the border
Reporter Gutierrez-Soto was wrongfully caged

In New York’s Senate lobby cell phones are prohibited
A rule which is most often honored in breach
But a reporter was jailed when his phone he exhibited
Then Cuomo stepped in, protecting freedom of speech

Californians have the right to record open meetings
Of that prerogative they’re rightly proud
But then why was a county meeting held
At a venue where cameras were not allowed?

Problems for Trump might give some folks a thrill
A new DNC lawsuit undoubtedly will
But be careful of how far the law’s being stretched
Claims versus WikiLeaks are perilous and far-fetched

Did a TV crew try to get a fake bomb
Past the TSA in Newark’s airport?
No, said the prosecutor, no need to lose calm
‘Twas just luggage, though a newfangled sort

Prosecuting Sources
The DOJ charged Agent Albury
For leaking a doc to the Intercept
Said the agent’s attorney JaneAnne Murray
Full responsibility he will accept
And he did

Trump Administration
New York’s federal Southern District
Considered Trump’s right to restrict
User access to his Twitter screeds
The judge to ranting prez suggested
Your right to block need not be tested
Just mute those you don’t want to read
(Maryland’s governor has just settled a suit
His use of the block button given the boot
While a Kentucky federal judge has just ruled
That the governor is allowed to use blocking tools)

Meanwhile, Trump just can’t seem to leave alone
Those with assets greater than his own
His consuming envy of higher echelon
Compels inane rants about Amazon
And the separately owned Washington Post
Because he’s a far poorer man than Bezos

Lawsuits
In the Sixth Circuit cops received no immunity
For jailing citizens with cameras on account of their race
Eleven held a deputy could not seize with impunity
A bystander recording to prevent its erase
But Ten found no established right to request
The chance to record one’s own arrest

Prior Restraint
Autopsy reports
Said Nevada’s high court
Were fair game for reporting

West Virginia’s ban from the whole Internet while on parole
The First Amendment is thwarting

Broad limits on net information
During a convict’s probation
Indiana’s top court was aborting

Down south in Georgia
A trial judge’s gag order
Was held to be quite unsporting

And the parties may speak
About a case in Twin Peaks
Their rights a Texas app. court is supporting

(I’m sorry Lynch fans
I don’t think that I can
Make a joke ‘bout a dwarf that’s cavorting)

We’ll also mention some bumps
In the attempts of D. Trump
To force silence about his crude courting

While former senior officials
Are banned from blowing the whistle
(Or so their NDAs are purporting)

And that’s just a few
Of the matters that drew
Our attention during this month’s assorting
Information Infrastructure

Net Neutrality

In a lottery reminiscent of Shirley Jackson
The Ninth Circuit was picked to hear attacks on
The FCC’s repeal of the Open Internet Order
“No thanks,” said the Ninth, “we’ll forward ‘er
To the D.C. Circuit for determination
Where agency law will cause less frustration.”

And everyone wants to be in on the show
Free Press, Mozilla and Vimeo
Santa Clara County and twenty-three state AGs
Internet and online gaming groups and even small ISPs
Say please, please, please let us in
While broadband industry groups hope the FCC wins

And out in the states new state legislation
Requiring neutrality could bind the nation
Washington is first to the scene with its own rules
Oregon’s version is popular in middle schools
While California brews up a strict regulation
Cable lobbyists strategize for fierce litigation

But the entirety of this complex dispute
Might in the end wind up entirely moot
No benefit to fighting with tooth and with claw
If Congress somehow manages to pass a new law

Federal Communications Commission

For the first time in a generation
The House reauthorized the FCC
The bill also funds translations
Along with radio and low power TV

Long-serving Commissioner Mignon Clyburn
Has stepped down amidst Democratic concern
Chuck Schumer wants Geoffrey Starks in the position
Assuming the president follows tradition

The FCC lifted national reach
And revived the UHF discount
Now the D.C. Circuit’s got claims about each
And what the agency took into account

The D.C. Cir. also opined on robocalls
Finding that Wheeler-era rules must fall
While the regs were aimed at spamming abusers
They could have swept in all smartphone users

Meanwhile the FCC looks to spaceflight
Approving a plan
For orbital broadband
And the launch of four thousand satellites

And down on the ground the agency decided
That Philly’s ordinance on dish installations
Misread federal law and thus was misguided
Oh, and in the last issue I mentioned a dispute
Between Comcast and Wave over sports stations
Forget it – due to procedural flaws the merits are moot

Mergers & Antitrust

For weeks now the grand battle has raged
O’er AT&T and Time Warner on D.D.C.’s stage
Too many details to describe now in verse
There are plenty of articles if you wish to immerse

Sinclair’s merger with Tribune seems to be favored
Especially with Trump’s tweeted support
Though demands for divestiture have not yet wavered
It seems this one won’t be headed to court
(But Sinclair’s mandatory and conservative-flavored
Attacks on the media drew some retorts)

A new bill could permit publishers to bargain collectively
So with Internet giants they can deal more effectively
And Google’s been sued by Dreamstime dot com
It says the search engine disfavors those who don’t play along

Litigation

Good news for New Yorkers, or at least so it seems
To settle litigation, Verizon’s patching the seams

When doth a Sky Angel run afoul of good faith?
When Discov’ry hath contract rights, the Fourth Circuit saith

Miscellaneous

The White House blocked Broadcom’s bid to buy Qualcomm
To keep China away from 5G mobile standards
And on east coast and west Charter’s run into issues
Unions and carriage fees and promised broadband hertz

To ensure media talent can change their jobs freely
A new law on contracts in Utah has passed
But can a state bar the use of noncompete clauses
When the law is restricted to those who broadcast?

Digital Content

Section 230

The California Supreme Court has finally heard Yelp’s important appeal in Hassell v. Bird
Defending Yelp’s speech was our old friend Tom Burke
Untangling the mess below with a nice piece of work
Congress passed FOSTA and ‘fore Trump even signed

The feds shut down Backpage and its founder confined

He later pled guilty, and there were other effects

Reddit dumped a bunch of its forums on sex

And Craigslist shut down every personal ad

On Kindle, erotica can scarcely be had

In two cases where Backpage had asserted 230

Courts denied the protection enjoyed by The Dirty

Though in one case the plaintiff did later amend

To rely upon FOSTA after Trump used his pen

Yet how can it be that a law ex post facto

Constitutionally applies to earlier acts so?

Emboldened perhaps by FOSTA’s significant changes

The Wisconsin Appeals Court helped platforms’ accusers

When it allowed website Armslist to be sued for exchanges

Of guns through ads created and posted by users

Ripoff Report

Was lucky, said the court

That the plaintiff didn’t think it worthwhile

To amend to allege a scheme to extort

Before an anti-SLAPP motion was filed

Following the model of Airbnb

Santa Monica defined short-term rental infractions

It didn’t offend 230, you see

It focused on rental transactions

The Second Circuit’s got a case about terror

The death of a man in a Hamas attack

The lower court held blaming Facebook was error

Now the family’s moved to send the case back

They point to Mark Zuckerberg’s words on the Hill

Responsibility for user behavior he admitted

But that doesn’t mean the company’s liable

As a matter of law for crimes they’ve committed

Hate, Terror, and Other Internet Nastiness

Digital platforms defeated a claim in Michigan

From victims of Pulse nightclub gunfire

But in Florida survivors are trying again

Hoping that different results transpire

Terms of Service

An anti-fraud guarantee’s not a representation

That HomeAway listings are screened to be sure they’re exact

Zombie video makers met with frustration

YouTube’s switch of its algorithm breached no contract
A plaintiff inadvertently bound itself to arbitration

While inspecting the contents of defendants’ website

And Google succeeded at recalibration

Of its Adwords contract to arbitrate fights

Miscellaneous

The Fourth Circuit held that a DA’s blog

Wasn’t state action but private activity

Nor was YouTube a public forum analogue

Banned from content selectivity

And Google had the right to remove

An ad for honey claimed to cure cancer

While an allegation

Of housing discrimination

Facebook will soon have to answer

Digital Privacy

Anonymity

A Philadelphia law firm embarked on a path

To unleash on a Glassdoor user its wrath

For describing the firm’s managing partner

As an “incompetent sociopath”

To Texas’ top court Glassdoor is appealing

(With other tech companies’ support)

A ruling that it must stop concealing

The author of an anonymous report

CFAA/Hacking

Said Nine, an increase in risk of identity theft

Gave data breach victims standing to sue

In another case in the Ninth, LinkedIn said ‘twas bereft

Due to data scraping by plaintiff HiQ

Meanwhile in D.D.C. some professors succeeded

In stating a claim for judgment declaratory

The First Amendment protects scraping, they pleaded,

When used for research or a news story

Against Barnes & Noble and Yahoo, ‘twas held,

In Seventh Circuit and N.D. Cal, respectively,

Data breach lawsuits should not be quelled

For protecting data ineffectively

Control of Personal Information

Cambridge Analytica took us all by surprise

With how data was collected from Facebook

In response to demand Zack himself testifies

While Congressfolk spout gobbledygook
Amidst their nonsense we could see a weird thread

_Cruz, then others_, Section 230 misread

To create a “fairness doctrine” for social media

That’s _not what it says_, guys -- just check Wikipedia

And then the whole thing took a surreal turn

With Diamond & Silk invited to give Facebook a burn

As for other consequences we’ve noticed so far

Four _data abuse_ cases brought to the bar

_Senate and FTC and state AG_ probes

And _new privacy measures_ proposed

Entertainment somehow leveraged the scandal to say

Congress should _rethink the DMCA_

And _management of data for folks near and far_

Is complicated with the impending GDPR

In other news, plaintiffs were _held to have standing_

To sue over Facebook’s biometric face scanning

But then the class lawsuit was forced to disband

Because it hinged on a photo _that never was scanned_

Unfortunately for Facebook

It’s not quite off the hook

‘Cause the FTC’s just received _an investigation demand_

On a different note entirely, in mid-April we saw

The _first lawsuit_ under New York’s new revenge porn law

_Trespassing_

It’s too soon to dismiss a case versus Niantic

Makers of timewaster Pokémon Go

For _trespassing by users_ while they run around frantic

So held federal judge James Donato

_Encryption_

Well, here’s a surprise, the OIG found

That an FBI attempt to force Apple

To unlock an iPhone was _meant as a showpiece_

And with other options it didn’t grapple

The stunt has caused bipartisan consternation

Legislators are _demanding an explanation_

_Insurance Surveillance_

The _search of a cellphone at our nation’s border_,

Requires reasonable suspicion not probable cause

Reliance on _warrants issued by magistrate’s order_

Supersedes exegesis of an SCA clause

Speaking of stored communications, a judge in D.C.

Held that a _cruise line was an ISP_
Transatlantic Privacy

The GDPR takes effect in May
Media and tech companies are bustling
To square user protections away
And avoid regulatory tussling

But folks here at home and elsewhere in the world
Wonder why just the EU’s affected
And ask why when updated rules are unfurled
They’re going to remain less protected

Overall, Europe’s trust in U.S. privacy’s waning
They’re skeptical of recent developments
The Department of Commerce is having trouble explaining
Why data localization laws do not make sense

Copyright – New Cases

“Deathcamp” wonders “Why Can’t There Be Love”
“Justice & Glory” wilts Oprah’s “Greenleaf”

A case on Brooklyn graffiti is quickly disposed of
A streaming gizmo’s allegedly made for a thief

Infowars’ use of Pepe-like frogs
A Take-Two game shows a wrestler’s tattoos
Black Panther download codes sold by Redbox
VFX software that Hollywood used

E-celebrity Poppy and YouTuber Mars Argo
“Breaking Bud” brewer and “Breaking Bad”
“The Judy Garland Show” and Barry Manilow
Chick-fil-A and ESPN and “Best I Had”

“Rules of Survival” on Playerunknown’s “Battlegrounds”
A Puerto Rican anthem used by Coke and T-Mobile
Artwork displayed in porn videos’ backgrounds
“American Pie” played at a bar in Danville

“We Run Things” and “We Can’t Stop”
Another month of copyright hilarity
‘Bama and LeBron will talk barbershop
While we debate fair use and similarity

Copyright – Plaintiffs’ Victories

At the Ninth Circuit, Gaye’s family did well
No new trial and damages held not inflated
At least with respect to Thicke and Pharell
The defense verdict for T.I. was reinstated

If you don’t have the right to stream TV to the States
Don’t turn off geoblocking
Lest copyright law come a-knocking
That’s the important lesson the D.C. Circuit relates
There’ll be a third trial in Oracle v. Google
Though it probably would have been more frugal
Had the Fed. Circuit judges who twice remanded the case
Simply evicted the jury and sat in their place

Thirty-four million awarded for counterfeit textbooks
For pirate TV, forty-six million in a DJ
Claims survived over game characters’ looks
And a tattoo in NBA 2K

“Anastasia” the musical might be infringing
It copies more than historical facts
And Wolfgang’s Vault, a court held, was impinging
On streaming rights for rock stars’ classic acts

Fraudulent takedowns? That’s really too bad
But forget about state law solutions
Old 512(f) was the best chance you had
The statute preempts any and all substitutions

Copyright – Defense Victories
A CC license dubbed “noncommercial”
Permits copying material for school districts’ use
So, held the Second Circuit, it was not controversial
When FedEx charged fees for the copies produced

No written policy for repeat infringement
Is required by the DMCA
Its application just needs to be stringent
So a Ninth Circuit panel did say

The Ninth Circuit this month did also decree
(Despite a joint motion to end the fight)
That Naruto might have standing under Article III
But no standing to claim copyright
It said PETA wasn’t a friend but just using the monkey
To bring its preferred causes to light

A judge sorting claims multifarious
Against an ISP for user outlawry
Held liability wasn’t vicarious
But could perhaps be contributory

Zazzle was let off the hook for attorney’s fees
For a defense that was novel but not demented
And a copyright troll who from a case tried to flee
Found itself stuck in the case as if cemented
And a journalist dropped his suit over All Eyez on Me
For copying of “facts” it turned out he’d invented

No, you can’t copyright the idea of a book based on quotations
You can’t use state claims to dodge the DMCA
The fair use doctrine protects transformations
Whether in rap lyrics or a news site’s front page
Copyright – Appellate Activity

Before the Second Circuit for consideration

TVEyes sought rehearing on its recent loss

And the embedding of tweets by news organizations

Is an issue they’ve not come across

The Third Circuit heard argument on Fox’s hit “Empire”

Which an actor claimed his earlier project inspired

In “Blurred Lines” and “Jumpman” in the Ninth Circuit

Amici sought rehearing or en banc review

In three oral arguments the parties worked it “Stairway” and Walk of Shame and Sotheby’s too

The Eleventh Circuit affirmed a fifteen month sentence

For a scheme to sell discs to reinstall Windows

The defendant challenged the lower court’s acceptance

Of the disc value from which his prison term flows

Copyright – Miscellaneous

The fight over “Mockingbird” is causing some stress

About whether Sorkin’s play strays from Harper Lee’s text

Separate cases in New York and Alabama are a mess

An accelerated trial is coming up next

The Music Modernization Act was passed by the House

It revamps how royalties are handled online

As with everything copyright some people did grouse

While others claim everything’s perfectly fine

Idea Theft

Parties in Hollywood are treacherous affairs

Be wary of screenwriters hawking their wares

If you’re unlucky the next morning brings

A lawsuit like this one about “Stranger Things”

Commercial Speech

Trademark

The court said you can’t use the Grand Funk name

And the new mark you applied for is nearly the same

So we, your former bandmates, are forced to pursue

Trademark claims for judicial relief against you

A former TV host sued Boston’s PBS station

For using his name and catch phrase after his termination
And another new case examines just who owns the famed Ball/Arnaz trademark “Desilu.”

A French-born American owned “France.com.” At least, until recently he did. The French government seized it from le pauvre homme. Now he’s trying to reclaim it in a court bid.

Han Solo won the Falcon in a hand of sabacc. But the fact a game’s fictional doesn’t mean Lucasfilm in the name can’t hold a trademark. Per a recent court order we’ve seen but a delay in filing belied irreparable harm.

But a game-maker who brought sabacc to life countersued Lucasfilm, extending the strife. (Still, I’m happy to write ‘bout this back-and-forth.)

We needed a Star Wars case for May the Fourth. Revleap agreed to limit its contacts with Yelp and avoid skewing net surfing. A $2 million judgment for breach should help.deter Revleap from astroturfing.

You’d think a review site can’t possibly be blamed. Because in certain reviews its users identified businesses that, to the plaintiff, are similarly named. Yet on a 12(b)(6) motion the court was satisfied. That contributory infringement was sufficiently framed.

DVD rental company Redbox sought an injunction with a show of alarm against alleged use its trademarks. But a delay in filing belied irreparable harm.

The “Serial” podcast has many listeners. It holds them a thrall that’s mesmeric. But not the TTAB’s practitioners. Who ruled that the name is generic. And a trademark claim about Scrat. An Ice Age rodent akin to a squirrel. Must, said the Ninth Circuit, fall flat.

A prior judgment warrants deferral.

Compelled Commercial Speech

Montana ranchers or the federal government. The Ninth Circuit will decide the winner. In a dispute over compulsory payments For ads that say “Beef: It’s What’s for Dinner.” Coffee drinkers need a warning about cancer. A judge in California has said. Don’t worry – if you drink enough to be in danger. You won’t stop moving just ‘cause you’re dead.

Restricted Subject Matter

If Happy Hour is legal, says a chef’s new complaint. Then ads for cheap drinks should not be restrained.
False Advertising

You can’t avoid *Sullivan, Janice D.*, by asserting that “Shahs of Sunset” was *falsely advertised as “reality TV”* because your depiction has you upset.

If you *license your photo for use in commercials*, the product you might be seen to endorse and that impression does not become untruthful just because the license is no longer in force.

A Lanham Act claim over *sock puppet reviews* went by the wayside for failure to prove that any consumers were actually confused or that damages were caused by the deceptive move.

Customer *complaints in online forums* are not commercial promotions or ads though they might lack truth or decorum. Under the Lanham Act relief can’t be had.

A *guide to nutritional supplements* should not as commercial speech be defined despite arguably commercial elements that were with its noncommercial purpose entwined.

Professional Speech

An ethics opinion from the ABA reminds us to be careful about what we publicly say. The duty to not speak about representation isn’t limited to confidential communication. The obligation should not be ignored even if discussing a matter of public record.

Miscellaneous

Academia

A private university isn’t bound by the First Amendment. But what if it guarantees free speech by contracts? Before Wisconsin’s top court that question is pendent. On a professor’s appeal from disciplinary acts and likewise in the courts of New Jersey an adjunct has sued, claiming her termination for defending Black Lives Matter on TV. Was an act of unlawful retaliation?

UC Berkeley, a court held, must defend its decision not to expend resources to protect speakers who toward the conservative tend.
But in Washington state a new law protects Reporting by students in many respects

Government Licensing & Public Fora
Ohio blocked funding based on a clinic’s abortion position

Held the Sixth Circuit: That’s an unconstitutional condition

A judge in D.C. held the WMATA was allowed to reject what Milo Y. had to say

Political Speech
You can ban sanctuary cities, the Fifth Circuit told Texas
But you can’t ban the views politicians wish to express

The government of Sibley (that’s an Iowa town) was mad at a website; it made them all frown

We can’t abide criticism! Take it down or we’ll sue

Instead the site called in the ACLU
And what do you know, a court agreed with the site

And enjoined Sibley from threatening or suing in spite

Threats & Incitement
Massachusetts’ Supreme Judicial Court has agreed to decide

The case of a woman convicted for encouraging suicide

Abuse of a student via tweetstorm is awful
You might justifiably feel the defendants were jerks

But a Minnesota court holding that behavior unlawful

Sort of screwed up the facts about how a tweet works

Hollywood Hijinks
A TV producer’s landlord sent master tapes to a landfill

He’s now on the hook for a $2.5 million bill

Adults Only
The case of “bikini baristas” that I’ve mentioned before
Has now made its way to the Ninth Circuit’s door

New Orleans censored a mural with a vulgar Trump quote

The ACLU sued. (Oh, and vote, vote, vote, vote, vote.)

A Florida judge held that videos of breastfeeding might to child pornography be leading

When posted on porn sites in order to titillate
Is context everything in this debate?

And speaking of online pornography
Rhode Island briefly flirted with an idea to tax access to explicit photography
As some kind of moral panacea
The True Miscellany

Is discrimination by a printer any different from discrimination at a cakeshop?

An Arizona appeals court recently heard argument

But don’t look for a ruling before Masterpiece drops

Finally, the right of a private organization to control the content of its publication is not a matter for disputation

But somehow a New York judge managed to hold that the awards dinner playbill of the National Lawyers Guild was a public accommodation as to the ad space they sold

Conclusion

My meter is awful, my rhymes not much better

And ev’ry now and again I’ve elided a letter

So let’s bring to a close this off-beat review

Too much time on my hands? That doesn’t ring true

We’re busy preparing for our conference in May

This year it’s in Frisco, at Mission Bay

I’ll welcome you there with my ukulele*

Till then, thank you for reading this odd Monthly Daily!

*Any promise of uke playing not guaranteed, because there are lines even I won’t exceed.