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February 3, 2021

Court Rejects Parler's Demand that Amazon Host Its Services

"Parler claimed (1) antitrust violations, (2) breach of contract, and (3) tortious interference."

Why this is important: Parler has tested the old adage that "there's no such thing as bad press." After its platform was used by insurrectionists attacking the U.S. Capitol on January 6, public pressure built against the defiantly "free speech" company until Amazon invoked its Acceptable Use Policy ("AUP") to remove it from its AW3 servers. Parler sued, seeking a temporary restraining order ("TRO") to restore its access to the AW3 servers. But a federal court recently made short work for those claims, denying the motion for TRO and expressing skepticism that Parler could prevail on the merits. The problems for Parler were two-fold. Its antitrust claim, which was based on a conspiracy between AW3 and Twitter to harm its business, failed to identify any facts supporting that theory. And, its other claims struggled against the discretion given to Amazon under the AUP in the parties' contract. Some commentators, even those without any particular sympathy to Parler, have expressed concern about the ability of dominant web hosting companies like Amazon to decide what they will and will not host. But as Professor Goldman notes in his own analysis, Parler has only itself to blame: it set out to create a platform that would be a lightning rod for controversy without implementing any content moderation capabilities and without any redundancy or backup plan. --- [Joseph V. Schaeffer](#)

British Airways Faces Major UK Class-Action Lawsuit After 2018 Data Breach

"More than 16,000 victims have now joined a case seeking compensation from the airline."

Why this is important: In October 2020, the Information Commissioner's Office ("ICO", the data regulator for the U.K.), fined British Airways the approximate equivalent of \$26 million for violating the European Union's General Data Protection Regulation (fondly known as "GDPR"). Since then, an "opt-in" class action lawsuit has accumulated a class of more than 16,000 people affected by the data breach. The breach leaked information of 420,000 individuals (both customers and staff) following a cyberattack on the company's data storage. This class action lawsuit, one of the first major privacy-related class actions brought in the U.K., could set the stage for future litigation and determine a framework for allocating liability among the company and its vendors, something the ICO has yet to consider. With increasingly large and public data breaches, there is a real possibility this case will spur the proliferation

of class actions in the U.K., which could have major economic impacts on the region's businesses. --- [Risa S. Katz-Albert](#)

CRISPR Technology Now Tracks When Cancer Would Spread in the Body

"This method would now look deep into the basis of a genetic strand and see the cells that are healthy and affected by cancer to see its growth."

Why this is important: This title overstates where this technology is, but it accurately states where it is aimed. A group of researchers, led by an MIT Professor, are using CRISPR-cas9 technology to study how DNA is affected as cancer metastasizes throughout the body. The group believes that studying cancer DNA at various stages will help it to predict where the cancer will move and where it originates, helping to develop more targeted treatments. This is not crazy. Current DNA analysis of breast cancer helps to identify the family of cancer and correct treatment protocol, saving hundreds of thousands of lives, including my wife's. CRISPR may provide a means to both identify and alter the DNA of the cancer to reduce its possibility of spread and damage. --- [Hugh B. Wellons](#)

Biden Plans to Replace Federal Fleet with American-Made Electric Vehicles

"The federal government maintains a fleet of 645,000 vehicles, according to the General Service Administration's 2019 Federal Fleet Report released in 2020."

Why this is important: The Biden administration's plan to overhaul the federal fleet with electric vehicles will have significant ripple effects. The direct impact will be to spur manufacturers to expand their electric vehicle development programs, which experience suggests will drive down price and increase availability for the average consumer. The indirect impact, though, might be even more significant: that federal fleet will be distributed across the country, and it will require charging stations and service. It's no surprise, then, that Transportation Secretary Buttigieg also announced plans to add a half-million charging stations nationwide. This represents a significant shift from the Trump administration's policy and puts the federal government in the pole position for pushing electric vehicle adoption. --- [Joseph V. Schaeffer](#)

Grindr Accused of Sharing Users' Personal Information to Advertisers, Ordered to Pay \$11.7M for Damages

"This is in breach of stringent privacy rules set by European Union."

Why this is important: The Norwegian privacy watchdog (Norwegian Data Protection Authority, "NDPA") has made initial findings that Grindr, a popular dating application specifically designed for gay, bisexual, transgender, and queer people, shared user data with at least five advertising technology companies without either user consent or a legal basis. The data sold included GPS location, user profile information, and that users are on Grindr, which indicates their sexual orientation. Additionally, the NDPA objected to the app's privacy policy, which did not allow users to opt-out of certain provisions, making their consent invalid.

Norway is not a member of the European Union, but its privacy protections closely mirror those of the General Data Protection Regulation. The NDPA has declared a preliminary fine, roughly the equivalent to \$11.7 million, pending the outcome of the final investigation. Grindr has until February 15, 2021 to contribute to the investigation before the NDPA makes its final decision. The substantial fine (roughly equivalent to 10 percent of the U.S.-based Grindr's annual global revenue), reflects the heightened risk for severe consequences associated with the data correlating users as LGBTQ, potentially increasing users' chances of being targeted for discrimination. --- [Risa S. Katz-Albert](#)

Coronavirus Mutations Posed Challenge to Vaccine Makers as Study Shows It Could Evade Antibodies

"James Naismith, a biologist from Oxford University, neutralization is not the only marker to measure a successful immune response on patients."

Why this is important: One reason viruses are successful is that they mutate, like living organisms. I say "like" living organisms, because it is not clear that viruses are "living," as most define the term, but that is a discussion for another time. Coronavirus seems to mutate frequently. It looks different. That may make it difficult for the body to identify and attack the virus. This article explains how the coronavirus mutation frequency is posing what may be continuous challenges for vaccine makers. --- [Hugh B. Wellons](#)

The Technological Hurdles of Onboarding New Employees in a Pandemic

"The challenge is building those personal relationships, those workplace relationships that develop a connection and rapport with your coworkers," says Julie Schweber, senior HR knowledge adviser at the Society for Human Resource Management."

Why this is important: How should companies navigate the need to adequately train and on-board new employees while also maintaining safe and healthy workplaces during the COVID-19 pandemic? Teleconferencing and video chat software allow for the one-on-one mentoring and guidance crucial to welcoming new hires into the company culture. In dramatically altering their on-the-job training programs, some workplaces are seizing this challenge as an opportunity. Chobani, the American food company well known for its yogurt, has embraced augmented reality as a tool not just in start-up training, but also in tasks such as maintenance and repair. A wearable headset allows plant employees to share what they see with remote persons and communicate with them. Wider adoption of this technology can lead to enhanced efficiencies, and reduced cost, in a wide array of job tasks by allowing expertise and knowledge to be shared across distances without the need for travel. --- [Brandon M. Hartman](#)

Tech Flight: Why Silicon Valley is Heading to Miami and Austin, Texas

"The desire for cheaper expenses and to avoid costly local laws drives business relocations."

Why this is important: There's no doubt that several high-profile technology companies have announced moves to Miami or Austin, Tesla being just the most well-known (though whether this was because of Musk's high-profile spats with California government or business reasons is uncertain). But it would be going too far to call this a mass exodus. For one thing, the growth in these locations still pales in comparison to that of Silicon Valley. For another thing, technology companies have been locating outside Silicon Valley for years—Denver and Pittsburgh are just two examples of cities that have experienced their own technology booms. To say that these moves have been motivated by corporate taxes is also to oversimplify the issue. There are certainly corporate tax and regulatory concerns, but employee considerations are also motivating these shifts. The notoriously high cost of living in Silicon Valley raises labor costs and affects employee satisfaction. There is also the key lesson from the pandemic—that distributed workforces can be every bit as productive as those collected in a single location. The takeaway, then, is that this represents a real trend, though on a smaller scale and for different reasons than the headline might suggest. --- [Joseph V. Schaeffer](#)

With Nanotechnology, Scientists Triple Efficacy of Breast Cancer Drug

"In India, one in 22 women develops breast cancer and this procedure could potentially help lakhs."

Why this is important: Docetaxel is an old and very effective drug at treating cancer -- except that it also is highly toxic. In the past, it became a treatment of last (or no) resort, because of the damage it did to the body. *Times of India* reports that Docetaxel is particularly toxic, because it is not water soluble. This causes it to build up in the kidneys and liver. An Indian doctor is experimenting with giving the drug with water soluble nanoparticles. This seems to reduce the build-up of the drug in the liver and kidneys and improve its efficiency in treating the site of the cancer. Use of water soluble nanoparticles may have far-reaching application in other cancer treatments and other drugs. --- [Hugh B. Wellons](#)

Secure Messaging App Signal Reportedly Toying with Crypto Payments

"Staff at the firm are said to be worried the addition would bring bad actors and unwanted regulatory attention."

Why this is important: Signal, the privacy-centric encrypted messaging app, is developing payment features relating to a "privacy-focused cryptocurrency called Mobilecoin." Mobilecoin will be built using blockchain technology from the company Stellar, a decentralized network for moving and storing money, and users will be able to use a "unique username" to send payments. While this sounds like great news for Signal, some are not so sure. Staff have expressed concerns that this move may lead to increased regulatory scrutiny against a company that prides itself on privacy. Signal's app allows people to send encrypted messages to one another with no one, including Signal itself, but the receiver being able to read it. Additionally, some are worried that the payment feature might attract a criminal element to the app. Mobilecoin is internally described as an easier way "for people in developing nations to move money around." When you combine that fact with the crypto feature's use of usernames, it seems like it could be a haven for scammers. With that in mind, some of their fears might be justified. --- [Kellen M. Shearin](#)

Australian Scientists Develop Technology to Print Bone-Like Structures with Living Cells

"Using a 3D-printer that deploys a special ink made up of calcium phosphate, the scientists developed a new technique, known as ceramic omnidirectional bioprinting in cell-suspensions, enabling them to print bone-like structures that harden in a matter of minutes when placed in water."

Why this is important: The University of South Wales, Australia reports that it has developed a method of combining cells in suspension with an ink-containing calcium phosphate to manufacture structures that harden quickly in water. This is the first technique to work at room temperature without radiation. This process has not been tested by clinical trials, but it holds promise possibly for recreating bone structures for repair or replacement in humans, especially in cases where large portions of bone have been lost to trauma or disease. This is promising, but, again, it is early in development. --- [Hugh B. Wellons](#)

Why Washington State Could Finally Pass Data Privacy Laws with a Bill Backed by the Tech Industry

"The Washington Privacy Act grants consumers the right to access, transfer, correct, and delete the data that companies such as Facebook or Google hold on them."

Why this is important: Washington State Senator Reuven Carlyle is making a third push to pass his proposed bill, the Washington Privacy Act ("the Act"). The Act draws on existing laws, like the European Union's GDPR and California's CCPA, hoping to allow companies already complying with those regulations to meet the Washington standards with relative ease. Amazon has thrown its support behind this iteration of the Act, but heavy criticism, including from the ACLU, surrounds the Act's lack of a private right of action, leaving enforcement entirely in the hands of the state Attorney General's Office. With several states considering following California's example and enacting their own privacy protections, the U.S. Congress might consider enacting federal regulation to override the patchwork of state guidance emerging in this arena. However, that unified framework is likely years away from enactment, so for the moment, state implemented protections (and industry-specific federal regulations) are the primary methods to enforce privacy rights. --- [Risa S. Katz-Albert](#)

Twitter Bets on Crowdsourcing to Help Combat Misinformation

"Twitter launched Birdwatch, an experiment that relies on the social network's users to provide context to tweets and to combat misinformation."

Why this is important: Twitter has recently been portrayed as both a villain and savior for its stance on fact-checking "tweets" and taking action against those it deems to disseminate false/misleading information. In the past few months alone, Twitter has banned a number of high-profile users accused of distributing questionable information, to include former President Trump and others. On January 25, 2021, Twitter launched "Birdwatch" to use crowdsourcing to provide factual context to tweets. Twitter calls Birdwatch "experimental," and is described as a community-driven pilot project. It allows some users in the U.S. to create notes related to tweets that are kept on a separate page. If there is enough consensus on a particular tweet based on those notes, the notes "may" be shown directly on the tweets. Birdwatch users are screened and approved by Twitter.

This move by Twitter is important considering the recent debate over Section 230 of the Communications Act of 1934. This law generally provides immunity from liability for website publishers, which may include Twitter. Section 230 also provides protection from liability if a company like Twitter removes posts that are obscene or violate some other term of service. Several politicians argue that the role of social media has changed over time, and companies such as Twitter and Facebook should be treated like any other publisher of third-party content.

The general rule under Section 230 is that a social media company may not be liable for defamation, for example, if it simply deletes content. However, if that same company modifies or changes the content, liability could attach. Some politicians insist on a good faith showing that these platforms do not censor certain people or groups and are seeking to intertwine rights under the First Amendment with regulations. Because the First Amendment requires an act of government to trigger its protections, the controversy over the scope of Section 230 needs to be closely watched. It also will be important to see how close platforms like Twitter can get to moderating content and crossing the line into publisher liability. --- [Julian E. Neiser](#)



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