

Source: Electronic Commerce & Law Report: News Archive > 2014 > Latest Developments > Lead Report > What's Past Is Prologue: Snowden Leaks, New Domains, Global Jockeying For Internet Governance Role Still Dominate Cyberlaw Hot Topics in 2014

*Bloomberg BNA asked leading attorneys, government officials, and online experts for their views on the most important legal developments in online law during 2013 and on what policy areas they believed would be the most important to their practices in 2014. We asked that the responses be short and to the point, similar to a "tweet" or status update. The result is the collection of brief insights published below, many of which have been lightly edited and categorized by subject matter.*

*The leading cyberlaw development in 2013 was the revelation by former National Security Agency contractor Edward Snowden of the extent of the NSA's global electronic surveillance operation. The Snowden leaks figured in predictions regarding several cyberlaw fields: they highlighted the need for private companies to enhance their network security technologies; they were seized upon by some countries as an indication of the need to wrest Internet governance dominance from the U.S.; they bolstered the hand of Europeans who would like to use privacy laws as trade barriers; and they impaired the ability of the U.S. government to maintain leadership in the global cybercrime-fighting effort.*

*Commenters, looking to 2014, saw on the horizon important policy debates on digital copyright reform, consumer protection and privacy issues arising from the emergence of "big data" and "Internet of things" technologies, ramifications from the continued rollout-out hundreds of new top-level domains by the Internet Corporation for Assigned Names and Numbers and, of course, a continuing shadow cast by the Snowden leaks over cybersecurity and Internet governance policymaking efforts.*

*The comments below—each attributed to the author, the author's law firm or organization, website, Twitter username and blog—are published for informational purposes only and do not constitute legal advice.*

## **What's Past Is Prologue: Snowden Leaks, New Domains, Global Jockeying For Internet Governance Role Still Dominate Cyberlaw Hot Topics in 2014**



### **Cloud Computing**

Regulation will be increasingly seen as a positive and logical way forward as we grapple with privacy and security in the cloud. *Hamadoun Touré*, Secretary-General, International Telecommunication Union, Geneva.

As more and more software applications move from physical servers to the cloud, legal issues surrounding cloud computing will come to the forefront. In China, we anticipate greater regulation in this space in the coming year. *Grace Chen* (@ChinaTechLawyer), Partner, Bird & Bird LLP, Beijing.

### **Computer Crime**

Sidley Austin LLP, Washington, D.C.

Law enforcement shines in 2013 with arrests of key players in global hacking groups, digital currency operations, and botnet infrastructure. Hopefully 2014 will bring signs of much needed success in state-sponsored cybercrime, notwithstanding the delays brought on by the Snowden leaks. *Kimberly Kiefer Peretti*, Partner, Alston & Bird LLP, Washington, D.C. Blogs at Privacy and Data Security.

Brazilian Laws on cybercrime (Law nrs. 12.735 and 12.737) and on electronic commerce (Decree nr. 7.962/2013) entered into force in 2013. Considering that we still do not have a large number of cases decided based on these Laws, we still do not know exactly how courts will rule situations regarding the new legislation. In spite of this, it is important to be aware that some legal loopholes are not covered by these laws, mainly on civil matters. That is why Brazilian Congress is struggling on debates

### **Leading Observations for 2014**

Several broad themes emerged from the hundreds of contributions received in response to

about the "Civil Rights for Framework for Internet in Brazil" ("Marco Civil da Internet"). Indeed, it is also important to remain vigilant about the Draft Bill on Data Privacy, since discussions about these topics will probably increase during the year of 2014. *Renato Opice Blum* (@opiceblum), Partner, Opice Blum Advogados Associados, Sao Paulo.

CEOs and GCs heard the message in 2013 that cybersecurity isn't just about domestic consumer data any more. In 2014, more board rooms and audit committees are going to make sure that cyber-risks get the internal (and international) controls they deserve. *Alan Charles Raul*, Global Coordinator of Privacy, Data Security and Information Law Group, Sidley Austin LLP, Washington, D.C.

### Consumer Protection

No room is no excuse: FTC issues Dot Com guidance for advertisers, making clear that disclosures must be clear, conspicuous and unavoidable, even when space limited. *Terri Seligman* (@FrankfurtKurnit), Partner, and Co-Chair of Advertising, Marketing and Public Relations Group, Frankfurt Kurnit Klein & Selz PC, New York.

Privacy policies must consider the global marketplace, focus on preventing harm, and support consumer choice. Overreaching regulations can remove valuable tools from the hands of consumers. Respect for different business models and a dedication to transparency is key to ensuring consumers benefit from rapid innovation. *John Doherty*, VP, State Policy & Politics and General Counsel, TechNet, Washington, D.C.

"Native advertising," sponsored content in digital #marketing, will be tamed as #FTC scrutiny demands more transparency #ContentMarketing *Glen Gilmore* (@glengilmore), Founder, Gilmore Business Network, Hamilton, N.J.

China's ecommerce market is growing rapidly, and is expected to overtake the U.S. this year. Recognizing the potential of ecommerce, China has revised its consumer protection law to expand the scope of protection for online consumers. *Grace Chen* (@ChinaTechLawyer), Partner, Bird & Bird LLP, Beijing.

It's going to be harder to settle website-related class actions where class members suffered no real damages. These cases previously have been settled with modest cy pres contributions in lieu of payments to individual class members, but courts this year have been very skeptical of those arrangements. *Jeffrey S. Jacobson*, Partner, Debevoise & Plimpton LLP, New York, N.Y.

TCPA litigation will continue to escalate due to massive liability for technical interpretations of the rule. Consumers will get annoyed by repeated requests for consent for messages they want to get. *Jules Polonetsky* (@julespolonetsky), Co-chair and Director, Future of Privacy Forum, Washington, D.C.

### Data Breaches

About ten years ago, the Choicepoint data breach split history, by creating the expectation and eventual legal necessity for notifying individuals of the unauthorized access or acquisition of their personal data. The Target and related retail payment card breaches will similarly split history on the inadequacy of "PCI Compliance" or related audits as an assumed answer to the need to secure payment credentials, giving rise to expectations and eventual legal requirements to more fully regulate and monitor the security of payment system data in the U.S. *Jennifer C. Archie*, Partner, Latham & Watkins LLP, Washington, D.C.

As a result of high profile cyber-attacks on critical infrastructure companies, the implementation of the Cyber-Security Executive Order and enforcement actions arising from the SEC Guidance on Cyber-risk Disclosures, the corporate focus on cyber-security will shift from concern about the loss of personally identifiable information to concern about

Bloomberg BNA's call for short, expert takes on noteworthy cyberlaw developments in 2013 and policy hotspots to watch for in 2014. Here are 10 of the most frequently mentioned predictions for the coming year:

1. 2014 will see a continuation of disclosures regarding the extent of NSA electronic surveillance, creating headaches abroad for U.S. companies and impairing the government's ability to maintain a leadership role on cybersecurity issues.
2. The next round of copyright reform debates in Congress will be more nuanced, and feature a broader range of stakeholders, than the last one.
3. The Snowden leaks prompted an international outcry against U.S. dominance in Internet governance, perhaps opportunistically.
4. Disparate outcomes in similar cases arising under ICANN's several dispute resolution policies highlights a need for ICANN to tighten controls over these proceedings.
5. The time for federal data breach legislation may finally have arrived, ushered in by large-scale data thefts, litigation losses by company defendants, and heightened attention by the Federal Trade Commission and the Securities and Exchange Commission.
6. Privacy and data security issues raised by the emergence of the "Internet of Things" will

cyber-vandalism, hacktivism, and theft of trade secrets. The National Institute of Standards and Technology "Cyber-security Framework," issued under the Executive Order, will be adopted as an industry standard against which corporate cyber-security programs are measured. *Gerald Ferguson* (@JerryFergusonNY), Partner and Co-Leader, Privacy and Data Protection Team, Baker Hostetler, New York, N.Y. Blogs at Data Privacy Monitor.

Cyberattacks were a real menace in 2013. They will get ever more sophisticated, dangerous and prevalent. *Jonathan Armstrong* (@armstrongjp), Partner, Duane Morris LLP, London.

Cybersecurity will continue to dominate the news. Significant data breaches will continue and be more widespread (including revelations in countries outside of the U.S.). *Miriam Wugmeister*, Partner, Morrison & Foerster, New York, N.Y.

Ever more robust cybersecurity: best practice, a legal obligation, or both? Regulators and the class action bar will call the question. *Jeremy Feigelson*, Partner, Debevoise & Plimpton LLP, New York, N.Y.

Mandatory breach notification for electronic service providers is here. Others get ready for cyber security incident reporting and broad breach notification requirement under the new Data Protection Regulation. *Karin Retzer*, Partner, Morrison & Foerster, Brussels.

The SEC will continue to sharpen its focus on the materiality of cybersecurity related risks in 2014 as a steady drum beat of public companies grapple with large scale data breach. *Andy Roth* (@ndyroth), Partner, Dentons US LLP, New York, N.Y.

We can continue to expect an active and evolving cyber threat landscape in 2014, despite significant efforts in 2013 to attribute sophisticated attacks to specific threat groups. Key to victims continues to be conducting an effective and efficient investigation to create a defensible response. *Kimberly Kiefer Peretti*, Partner, Alston & Bird LLP, Washington, D.C. Blogs at Privacy and Data Security.

## Digital Copyright

2014 could be the year of the "next great copyright act." Commentary and ideas will come from an array of stakeholders that, in many ways, are quite different from those who participated in hearings for the current act in the 1970s, and anything and everything may be on the table for discussion. *Eleanor M. Lackman* (@EMLackman), Partner, Cowan DeBaets Abrahams & Sheppard LLP, New York. Blogs at CDAS IP, Media and Entertainment Law Blog.

Significant in 2013: *Author's Guild v. Google* (the Google Books case), which the SDNY finally decided on summary judgment this fall after 8.5 years. *Mark Lemley* (@marklemley), Professor of Law, Stanford Law School, Stanford, Calif.

Judge rules Google Books is fair use. Rest of world says, wait, the Google Books lawsuit was still going on? *James Grimmelman* (@grimmelm), Professor of Law, University of Maryland, Baltimore. Blogs at The Laboratorium.

Copyright law handles large issues fairly well, but the digital world has revealed its inadequacy regarding smaller disputes. Hopefully, by this time next year, real strides will have been made towards an inexpensive and efficient solution to such micro-disputes. Copyright small claims, anyone? *Brad R. Newberg* (@bradnewberg), Partner, Reed Smith, Falls Church, Va.

Copyright, linking, site blocking, jurisdiction, metasearch, intermediaries, right to browse, all pending in ECJ. Interesting times. *Graham Smith* (@cyberleagle), Partner, Bird & Bird LLP, London. Blogs at Cyberleagle.

Significant in 2013: *Fox v. DISH Network* (the 9th Circuit holding that DISH's Hopper DVR was not copyright infringement) *Mark Lemley* (@marklemley), Professor of Law, Stanford Law School, Stanford, Calif.

In view of the ongoing anti-SOPA/PIPA atmosphere, it is unlikely that Congress will introduce any new

continue to attract the attention of the Federal Trade Commission.

7. ICANN's new top-level domains will either be a bust, an explosion of interest in the Internet, a boon to developing countries seeking a voice in the online world, an entrepreneur's dream, a trademark owner's nightmare, a hacker's paradise, or some combination or some or all of these things.

8. The pressure brought by governments to regulate the Internet will is not going away, raising the stakes for proponents of the multistakeholder governance model. The U.S. government will be called upon to defend the multistakeholder model throughout 2014.

9. Class actions and judicial attention to privacy issues have made cybersecurity missteps a potentially devastating liability for U.S. companies.

10. The Federal Trade Commission will step in and attempt to tame "native advertising."

bills addressing online piracy in 2014. *James L. Bikoff*, Partner, Silverberg, Goldman & Bikoff, LLP, Washington, D.C.

Russia plans to amend its "Internet anti-piracy" law in 2014 to broaden its scope of application. The law allows to block on-line content upon a request from an owner alleging copyright infringement. However it currently applies only to movies and TV series. *Igor Motsnyi* (@MotsnyiLegal), Partner, Motsnyi Legal Services, Moscow.

The dialogue on DMCAv2 will broaden with greater nuance and detail, but new legislation will not be enacted in this Congress. *Philip Corwin* (@vlawdc), Founding Principal, Virtualaw LLC, Washington, D.C. Blogs at Internet Commerce Association.

The Ninth Circuit revised its earlier DMCA decision in *UMG v. Shelter Partners* to conform to Second Circuit law, avoiding a potential circuit split on the issue of what constitutes right and ability to control within the meaning of the DMCA. *Ian Ballon* (@ianballon), IP & Internet Litigation Shareholder, Greenberg Traurig LLP, Silicon Valley & Los Angeles.

The question for all of us is how to structure an intellectual property framework for the Internet age—one that respects the needs of creators, is consistent with the global nature of the Internet, and is inclusive of a broader range of stakeholders. *Konstantinos Komaitis* (@kkomaitis), Policy Advisor, The Internet Society, Geneva.

The rewards for timely registration of digital copyrights will continue. A jury in *Agence-France v. Morel* just awarded a photographer \$1.2 million in statutory damages even though actual damages and infringer's profits were \$303,889. *Andrew Berger* (@IPInBrief), Counsel, Tannenbaum Helpen Syracuse & Hirschtritt LLP, New York. Blogs at IP In Brief.

There is a significant split of authority over what constitutes a public performance in cases involving the transmission of over-the-air television over the Internet which will be addressed by the Ninth Circuit and possibly the Supreme Court in 2014. *Ian Ballon* (@ianballon), IP & Internet Litigation Shareholder, Greenberg Traurig LLP, Silicon Valley & Los Angeles.

Two important 2013 decisions highlight a stark contrast in the ability to re-sell physical and digital goods. In *Kirtsaeng*, the U.S. Supreme Court held that the copyright first sale doctrine applies to physical objects (books), even those manufactured abroad. But in *ReDigi*, the trial court held that the first sale doctrine does not apply to digital files (music). How to lawfully alienate or re-sell "digital chattels" remains unclear. *John Ottaviani* (@jottaviani), Counsel, Partridge Snow & Hahn LLP, Providence, R.I. Blogs at Business + Intellectual Property + Internet Law: A View From the Ocean State.

## Digital Divide

In 2014 the wireless revolution will continue, breaking new records for deployment and adoption worldwide, connecting more of the world's neediest communities to the global Internet, enabling innovation, education, and wealth creation. *Julie Zoller*, Senior deputy Coordinator, State Department (International Communications & Information Policy), Washington, D.C.

More than 100 internationalized domain names — names in native language script — will bring millions of new Internet participants. The Internet is about to significantly expand. *Jon Nevett*, Co-Founder & EVP, Donuts Inc., Bellevue, Wash.

## Domain Name Disputes

Circuit splits on interpretation of the ACPA will continue to grow as claims against domain name service providers increase *David E. Weslow* (@davidweslow), Partner, Wiley Rein LLP, Washington, D.C.

The intersection of new rights protection mechanisms (RPMs) and new gTLDs will produce a proliferation of inconsistent and irreconcilable UDRP and URS decisions that may finally compel ICANN to take some responsibility to assure arbitration provider quality control. *Philip Corwin* (@vlawdc), Founding Principal, Virtualaw LLC, Washington, D.C. Blogs at Internet Commerce Association.

## Electronic Surveillance

American cloud computing providers will continue to take hits as a result of the Snowden leaks. Foreign competitors and their governments will keep arguing that American-owned providers can't be trusted to keep customers' data secure from the "prying eyes" of the NSA and FBI. But 2014 will reveal that the foreign critics live in glass houses, as European and other foreign governments have easier access, with fewer legal restrictions, to data stored on their territory than the U.S. government does. *Michael Vatis*, Partner, Steptoe & Johnson LLP, New York, N.Y.

Even though we already know that the NSA is gathering every shred of digital data we produce, in 2014 I predict that most people will continue to be viscerally shocked when they learn specific details of how the NSA is abusing the public's trust. *Eric Goldman* (@ericgoldman), Professor of Law, Santa Clara University School of Law, Santa Clara, Calif. Blogs at Technology & Marketing Law Blog.

In order to find out what the NSA was up to in 2013, we'll need to wait for more Snowden disclosures in 2014. *James Grimmelmann* (@grimmelm), Professor of Law, University of Maryland, Baltimore. Blogs at The Laboratorium.

Supreme Ct ducks NSA challenge with *In re EPIC* non-decision. #issueisnotgoingaway *Marc Rotenberg* (@MarcRotenberg), Executive Director, Electronic Privacy Information Center, Washington, D.C. Blogs at Electronic Privacy Information Center.

The 800-pound-elephant Internet law story of 2013 is, without question, Edward Snowden's revelations that our own government has been engaged in a massive campaign of Internet surveillance over U.S. and foreign citizens for many years. The implications of these revelations will be felt for many, many years. *David Post*, Professor, Temple University Law School, Philadelphia. Blogs at The Volokh Conspiracy.

The Snowden leaks about U.S. intelligence activities have gutted the U.S. government's campaign to focus international opprobrium on China's hacking of government and private sector systems to steal sensitive military information and company trade secrets. But the threat posed by China and other foreign governments and non-governmental actors is not going away—indeed, the problem gets worse by the day. Is your company as secure as it needs to be? *Michael Vatis*, Partner, Steptoe & Johnson LLP, New York, N.Y.

Understandable and well meant reactions against widespread surveillance can have unintended consequences and impose new borders on the Internet. Data localisation is not an answer! *Markus Kummer*, Vice President, Public Policy, Internet Society, Geneva.

### **Emerging Payment Technologies**

Regarding cyberlaw developments in Brazil in 2013, it is important to pay attention to the Law Nr. 12.865/2013, that, among many other topics, regulates the use and issue of electronic currency and the establishment of payment arrangements and payment agents, i. e., electronic payment mechanisms in general, trying to reduce regulatory asymmetries. In this same context, two Resolutions and four Circular Letters, all regulating the procedure that must be followed by businesses that want to operate in Brazil with electronic currency, were issued by both the National Monetary Council (CMN) and the Central Bank of Brazil. Considering that referred rules are not yet in force, it is hard to forecast how they will impact operations in Brazil, but the Central Bank will monitor the Brazilian market on this topic. *Renato Opice Blum* (@opiceblum), Partner, Opice Blum Advogados Associados, Sao Paulo.

### **Entrepreneurship**

Emerging e-commerce businesses like subscription services, flash sales, social curation, re-commerce, and collaborative consumption sites are transforming sectors of the fashion industry like instant download did to music. The question for 2014 is which ones will learn to monetize, and which will fall by the wayside like Napster by failing to account for IP issues. *Howard S. Hogan*, Partner, Gibson, Dunn & Crutcher LLP, Washington, D.C. Blogs at Fashion Law and Business Report.

### **Intermediary Liability**

Internet intermediaries are private bodies that do not possess the legitimacy nor the legal tools to engage in legal content determinations; expecting them to do so on the basis of liability inevitably creates an environment of fear and costs, as they explore ways to comply with this regime. *Konstantinos Komaitis* (@kkomaitis), Policy Advisor, The Internet Society, Geneva.

The French high court held that Google is not liable for defamation due to key words produced by Google Suggest, because the service is automatic, which excludes intent to defame. *Bradley L. Joslove*, Partner, Franklin Societe D' Avocats, Paris.

### **Internet Freedom**

State bar associations will continue to struggle with the conflict between attorney speech rights and bar regulation. *Josh King* (@joshuamking), General Counsel, Avvo, Seattle, Wash. Blogs at Socially Awkward.

### **Internet Governance**

2014 will be a pivotal year for the future of the Internet. The open question is whether there will be an international consensus on the multistakeholder Internet governance model or a shift towards a

more intergovernmental model. *Markus Kummer*, Vice President, Public Policy, Internet Society, Geneva.

2014 will play host to yet another crossroads for Internet freedom. A fall treaty negotiation in Korea will determine the global Net's fate. Lots of struggling until then *Robert M. McDowell*, Former FCC Commissioner, Visiting Fellow at the Hudson Institute, Hudson Institute, Washington, D.C.

After the world spent 2013 recovering from WCIT, 2014 will be the year of major events and potential decisions at the UN, the ITU, and elsewhere (Brazil, London, etc.). Those meetings may determine the future course of Internet governance — hopefully reflecting an inclusive, positive vision that will continue to encourage new and innovative technologies and services that can serve the world. *David A. Gross*, Partner, Wiley Rein LLP, Washington, D.C.

Brazil took very relevant steps in 2013 aiming at enacting the legal framework for the Internet, expected for 2014. Recently, the President has requested the Bill of Law to be expedited and voted by the National Congress on an urgent basis. There are major expectations in the country as regards the enactment of said Bill due to its unique character and the fact that it touches upon several conflicting issues, such as net neutrality, log retention, third party generated content and data protection. *Fabio Periera*, Partner, and *Ieda Dutra*, Associate, *Veirano Advogados*, Sao Paulo, Brazil.

Every CEO should ask “Will we be better off if a foreign power has the ability to control not only who gets a domain name but even who gets or keeps IP addresses that make all our computers and mobile devices work?” If not, that company should be watching ICANN like a hawk. *Paul D. McGrady*, Partner, *Winston & Strawn*, Chicago.

Governments are looking for greater authority over the domain name system and 2014 will be a year of intensive discussion about governments' roles. We will need to think very carefully on this subject. *Paul Stahura* (@stahura), CEO, *Donuts Inc.*, Bellevue, Wash.

In 2014 the global Internet community will proactively redouble its efforts to ensure that the Internet's multistakeholder governance system become more inclusive of the developing world's views and its representatives from civil society, industry, government, and academia. And we will all be better off for it *Daniel Sepulveda* (@DSepDC), Ambassador and Deputy Assistant Secretary, State Department (International Communications & Information Policy), Washington, D.C.

In 2014, a new international consensus will emerge on the future of Internet governance. We'll see a greater focus on the role of Internet public policy and stronger leadership from emerging economies such as Brazil and India. *Sally Wentworth*, Senior Director of Strategic Public Policy, Internet Society, Reston, Va.

In light of recent revelations regarding pervasive unilateral government surveillance, there can be little doubt that changes are needed in Internet governance, in particular to protect human rights which include the right to privacy. Contrary to what has been commonly stated, WCIT was not about controlling the Internet, it was about creating a level playing field, see my forthcoming book *The New International Telecommunication Regulations: A Commentary and Legislative History* (Schulthess/Springer). An agreed international framework is needed, but of course it will take time, and more discussions, to come to global agreement. WCIT was a first step, albeit one that did not fully succeed. More steps will surely be taken in 2014. *Richard Hill*, Principal, *Hill & Associates*, Geneva, Switzerland.

Perhaps the perfect storm of Snowden revelations, pressure from world governments, and the desire for greater globalization led to the Montevideo Statement where ICANN along with the other technical Internet organizations identified the need for an ongoing effort to address Internet Governance challenges. Regardless of how it happened, here we are with the newly formed 1Net initiative which many believe was designed to be mechanism for ICANN to participate in Internet Governance. How things play out over the next year is anyone's guess. *Elisa Cooper*, Director of Product Marketing, *MarkMonitor*, Boise, Idaho. Blogs at *The MarkMonitor Blog*.

Predict major issue for 2014: ICANN's role in Internet governance. The seductive combination of huge sums of money and potential increased governmental power, as well as ICANN's own challenges, poses a serious threat to the “multi-stakeholder bottom-up” model – and will require proactive vigilance to protect. *Ellen Shankman*, Principal, Advocate, Notary, *Ellen B. Shankman & Associates*, Rehovot, Israel.

The big question in 2014 – whither IANA? The big red herring in 2014 – Snowden's revelations as an issue in Internet Governance. *David Maher*, Senior Vice President - Law & Policy, Public Interest Registry, Reston, Va.

The internet has transformed the manner in which information is exchanged and business is conducted, arguably more than any other communications medium; its economic and social value will continue to extend to the developed and developing world in 2014, along with the recognition that its growth is attributable to a multi-stakeholder model of governance that ensures it remains uncontrolled by any one government or organization. *Terry D. Kramer (@terrykramer)*, former Ambassador, head of U.S. WCIT delegation.

The Internet is our first global utility; we all have a responsibility to ensure that it continues to spur innovation and economic prosperity while being managed in a way that respects the rule of law and human rights. *Hamadoun Touré*, Secretary-General, International Telecommunication Union, Geneva.

The trending topic of the coming year: Internet governance. We stand on the brink of a major shift in Internet power. The US has more or less held the reigns up to now. Events in 2014 could lead that to change. Everyone needs to keep a close eye on this, lest the Internet become less about empowering users, and more about regulating uses. *Stephane Van Gelder (@stephvg)*, Chairman and Managing Director, Stephane Van Gelder Consulting Ltd., United Kingdom/France. Blogs at Stephane Van Gelder Consulting Ltd..

## Internet of Things

#BigData from the "Internet of Things," connected refrigerators to cars, will make NSA spying seem inept. Personalization vs #privacy #IoT *Glen Gilmore (@glengilmore)*, Founder, Gilmore Business Network, Hamilton, N.J.

As more and more things in our houses are connected to the internet, criminals will be able to break into our houses and cause havoc without ever opening a door or window. *Marc H. Trachtenberg (@winstonadvlaw)*, Partner, Winston & Strawn LLP, Chicago.

Data from drones, surveillance cameras, mobile apps, geo-location monitors, wearable devices, electric vehicles, smart appliances and other data generation/collection technologies will be fed into the Internet of Things, massaged by Big Data analytics, and be used to establish accurate biographies on demand of each tech-using individual's life. Such individual life data will be used by more marketing companies, tech companies, insurance companies, retailers, government agencies, etc., in ways that will make the 2013 NSA surveillance revelations pale in comparison. We are all technology frogs sitting in a slowly warming pot where we will soon be boiled by our own data, but most don't see it happening. The lawmakers will only see the need to control the (mis)use of data after many bad things have happened, and revolts have occurred. *Rebecca Herold (@PrivacyProf)*, Chief Executive Officer / Adjunct Professor, Privacy Professor & Compliance Helper / Norwich University, Des Moines, Iowa. Blogs at The Privacy Professor.

For 2014, FTC enforcement on the Internet of Things is likely to continue to focus on data security while the FTC thinks through substantive policy issues. *D. Reed Freeman Jr.*, Partner, Morrison & Foerster, Washington, D.C.

Look for increasing regulatory activity and more disputes surrounding The Internet of Things. *John Slafsky*, Partner, Wilson Sonsini Goodrich & Rosati, Palo Alto, Calif.

Look for interconnected wearable computing devices to really hit their stride in 2014 — and to raise a host of new privacy issues for consumers and businesses. *Yaron Dori (@yarondori)*, Partner, Covington & Burling LLP, Washington, D.C.

The "Internet of Things" is the new term referring to electronic connectivity between people and other tangible devices for the purpose of gathering data and information. Examples include turning on your car at your computer, adjusting your home thermostat from an iPhone, or transmitting real-time vital health information (blood pressure, heart rate) to your doctor. The FTC is examining these issues with an eye toward protecting consumer privacy and security. Expect FTC regulations and guidance in 2014. *Neel Chatterjee*, Partner, Orrick, Silicon Valley.

The Internet of Things has the potential to transform dozens of industries and create innovative ways of working, manufacturing, learning and managing complex systems. America has historically been the leading driver of technological change, and the U.S. needs to best position our country for this next wave of technological innovation, job creation and economic growth. *Dan Turrentine*, VP, Government Relations, TechNet, Washington, D.C.

## New Top-Level Domains

New gTLDs are already far safer for registrants and end-users than are legacy gTLDs. That statement will be borne out by metrics we collect in 2014. *Paul Stahura (@stahura)*, CEO, Donuts Inc., Bellevue, Wash.

2013 was the year new gTLDs finally became a reality with, at the time of writing (December), already more than 30 new suffixes active on the Internet. Everyone will now have to adjust. Users and innovators, to make the best of the new virtual real estate opportunities, and corporations the world over, to adapt their offensive (commercial) and defensive (legal) strategies accordingly. *Stephane Van Gelder (@stephvg)*, Chairman and Managing Director, Stephane Van Gelder Consulting Ltd., United Kingdom/France. Blogs at Stephane Van Gelder Consulting Ltd..

2014 will be the year the Internet truly becomes a global marketplace with limitless possibilities. With new extensions, brands, terms, languages, cities, and businesses all converging into the New gTLD space and vying to establish themselves as natural identifiers and traditional search alternatives. The way we explore the Internet could take a dramatic shift. *David Mitnick (@domainskate)*, Founder and President, Domain Skate LLC, New York.

2014 will bring a digital transformation with the big bang of the internet exploding as 1,000 + new top level domains expand the internet landscape, led by Google, Amazon and half of the world's top brands. Every CEO needs to understand this will impact how consumers use and navigate the internet. *Jen Wolfe (@JenWolfe)*, President, Wolfe Domain, Cincinnati.

2014 will see the Internet evolve to allow the 5 billion non-English speakers around the world access to the Internet in their native script. *Adrian Kinderis (@AdrianKinderis)*, Chief Executive Officer, ARI Registry Services, Melbourne & Los Angeles. Blogs at ARI Registry Services Blog.

2014 will see the launch of direct registrations under.uk (instead of.org.uk and.co.uk). Many British charities and non-profits may get a nasty surprise if they want to convert to.uk. Under Nominet's revised rules, thousands of non-profits are predicted to lose out to.co.uk holders of the same name. *Emily Taylor (@etaylaw)*, Consultant, Emily Taylor Consultancy Limited, Oxford, United Kingdom.

As of ICANN 48 in November 2013, new gTLD applicants prevailed in 86% of all objections resolved by panel decisions. While these seem like good odds, inconsistency and lack of clarity, particularly in the string confusion arena, have applicants seeking more specific determination criteria and some form of appellate review. In addition, delays continued to plague the community objection process. ICANN's New gTLD Program Committee will likely need to review these results and ensure concerns are addressed in order to refine objection procedures before any future new gTLD application rounds. *Brian Winterfeldt*, Head of Internet Practice, Katten Muchin Rosenman LLP, Washington, D.C.

As soon as the first Chief Marketing Officer of a non-applicant Brand sees the competitor's Brand on a bus or billboard, a top priority of many have-nots will be to get ICANN to open Round 2. *Paul D. McGrady*, Partner, Winston & Strawn, Chicago.

Ask a non-lawyer if he/she knows that new gTLDs are about to launch. Then wonder if the only purpose of this program was to keep trademark owners up at night. By the end of 2014, we may know the answer. *Brad R. Newberg (@bradnewberg)*, Partner, Reed Smith, Falls Church, Va.

Brand Owners will begin to fully realize that, ready or not, the new gTLD trains have left the station, and they're here to stay. *Joanne Ludovici (@jobrandlady)*, Partner, McDermott Will & Emery, Washington, D.C.

Dotless domains, odd objection outcomes, "new" name collision concerns, confidential Board resolutions, international Internet governance gambits. Not a dull year in ICANNland. *Kristina Rosette (@kristinarosette)*, Of Counsel, Covington & Burling LLP, Washington, D.C.

Everyone says 2014 will be the year of the new gTLDs. I say it will be a dud. Lots of angst and drama; few registrants and little traffic. The big winners will be .com (which will be confirmed as the Park Avenue of the Internet) and search engines (which will grow even more in importance as confusion reigns in the TLDs). *David H. Bernstein*, Partner, Debevoise & Plimpton LLP, New York.

Expect to see many gTLDs implode in the first year when they realize after delegation that their business plans are not permitted by ICANN rules. *Marc H. Trachtenberg (@winstonadvlaw)*, Partner, Winston & Strawn LLP, Chicago.

Huh; you don't have an online brand protection strategy? With more than 1,000 new gTLDs (generic top-level domains) becoming available for registration you'll need one. *Andrew Berger (@IPInBrief)*, Counsel, Tannenbaum Helpert Syracuse & Hirschtritt LLP, New York. Blogs at IP In Brief.

ICANN required new gTLD registries to require registrars to make registrants sign contracts saying that their domain names can be taken away if they "violate any applicable law." *David Johnson*, New York, N.Y.

In 2013, ICANN completed its initial evaluations of new gTLD applications, with the first new registries

being delegated towards the end of the year. With some sunrise periods now underway and many more Registry Agreements executed, the stage is set for a major Internet expansion in 2014. *Brian Winterfeldt*, Head of Internet Practice, Katten Muchin Rosenman LLP, Washington, D.C.

In June 2011, the Internet Corporation for Assigned Names and Numbers announced that it was allowing registrants to expand the Internet beyond the traditional top-level domains, such as .com, .net, and .org, and to submit their own invented suffixes for registration. In the first round of this expansion, nearly 2,000 applications were submitted for over 1,400 distinct new generic top-level domains (gTLDs)—including, for example, .tech, .fashion, .youtube, and .samsung. The launch of these new gTLDs began in the last quarter of 2013, and the bulk of these new gTLDs will be delegated and launched over the course of 2014. *James L. Bikoff*, Partner, Silverberg, Goldman & Bikoff, LLP, Washington, D.C.

New gTLDs will catch on slowly as the culture absorbs the opportunities they hold. But they will catch on..BRANDS will light the fire, and the introduction of the most popular of Google's 98 new gTLDs and Amazon's 76 will fuel the fire. *Josh S. Bourne*, Managing Partner, FairWinds Partners, Washington, D.C. Blogs at gTLD Strategy Blog.

New gTLDs will reshape online brand protection efforts and will require more targeted & deliberative trademark enforcement by brand owners *David E. Weslow* (@davidweslow), Partner, Wiley Rein LLP, Washington, D.C.

The Uniform Rapid Suspension (URS) system is another new rights protection mechanism created for the gTLD expansion that is designed to give trademark owners a faster, cheaper alternative to the UDRP in clear-cut cases of domain name-related trademark infringement. The sole remedy available through URS is suspension of the domain name for the balance of its registration period. Based on the only case filed thus far, involving the domain facebook.pw, this new tool appears to function as efficiently and effectively as intended. Trademark owners are sure to take increasing advantage of the URS in 2014. *James L. Bikoff*, Partner, Silverberg, Goldman & Bikoff, LLP, Washington, D.C.

New gTLDs will start to make an impact on the market, and the new rights protection mechanisms such as URS will start to be road-tested. The first case indicates that URS can be useful in obvious typosquatting cases, especially if you don't want to end up managing huge domain portfolios that are irrelevant to your business. *Emily Taylor* (@etaylaw), Consultant, Emily Taylor Consultancy Limited, Oxford, United Kingdom.

The future is here - New gTLDs were open for business in 2013. TM owners must stay vigilant and watch for new Sunrise announcements to ensure their most valuable marks are protected. *Jamila Enta* (@jamilaenta), Senior Manager, BrandProtect, Ontario, Canada.

The gradual expansion of the gTLD namespace has not caused the world to come to its end. *John Slafsky*, Partner, Wilson Sonsini Goodrich & Rosati, Palo Alto, Calif.

The introduction of hundreds of new gTLDs provides for both opportunities and challenges. Do you have a sound strategy in place to get your premium piece of new virtual property and yet minimize risks for your brand? *Thomas Rickert* (@thomasrickert), Managing Partner, Schollmeyer & Rickert Law Firm, Germany.

The new namespace will be cleaner and safer and than existing gTLDs. New protections, like Uniform Rapid Suspension, mandatory trademark sunrise and registry services like Donuts' Domains Protected Marks List will be effective tools in discouraging cybersquatting. *Jon Nevett*, Co-Founder & EVP, Donuts Inc., Bellevue, Wash.

The rights protection mechanisms (RPMs) for social vs. economic spheres are of necessity different and sometimes clashing. Since the Internet is BOTH, unless there is clearer recognition of the need to create appropriate RPMs for each, ineffective debate and power-struggles persist and brand protection will continue to suffer backlash." *Ellen Shankman*, Principal, Advocate, Notary, Ellen B. Shankman & Associates, Rehovot, Israel.

The word of the year in internet law in 2013 was an acronym: gTLDs. Trademark owners have been registering their brands with the TMCH and cautiously watching the "sunrise" launches of new generic top-level domains. *Eleanor M. Lackman* (@EMLackman), Partner, Cowan DeBaets Abrahams & Sheppard LLP, New York. Blogs at CDAS IP, Media and Entertainment Law Blog.

There will be a flurry of activity as brand owners allocate more resources to get their trademarks registered with the TMCH. *Joanne Ludovici* (@jobrandlady), Partner, McDermott Will & Emery, Washington, D.C.

Trademark Clearinghouse, Sunrise, Trademark Claims, URS. Trademark enforcement budget busters

or valuable new gTLD RPMs? Still an open question and a critical challenge for brand owners in 2014. *Kristina Rosette* (@kristinarosette), Of Counsel, Covington & Burling LLP, Washington, D.C.

Trademark owners planning to register their marks with the Trademark Clearinghouse can expedite the process, and achieve dramatic cost savings, by conducting a preliminary internal audit of their marks to locate proof of use for filing with the Trademark Clearinghouse and to determine which registrations will be valid for the longest period of time. *Lynne Boisineau*, Partner, McDermott Will & Emery, Irvine, Calif.

While 2014 will be the year new domains are launched, we won't see critical mass adoption for many years to come. Brands will lead the way on awareness & education. *Adrian Kinderis* (@AdrianKinderis), Chief Executive Officer, ARI Registry Services, Melbourne & Los Angeles. Blogs at ARI Registry Services Blog.

With new gTLDs moving through the pipeline toward public launch, ICANN's focus will shift to Internet governance. That will be a tricky maneuver to accomplish gracefully, given the organization's adherence to the "multi-stakeholder model." *Josh S. Bourne*, Managing Partner, FairWinds Partners, Washington, D.C. Blogs at gTLD Strategy Blog.

### Online Contracts

As more and more merchants link apps to their products, generating data by and about the user and use of the product, there will be enormous pressure on drafting enforceable online contract provisions to address ownership of and rights to use the data. *John Ottaviani* (@jottaviani), Counsel, Partridge Snow & Hahn LLP, Providence, R.I. Blogs at Business + Intellectual Property + Internet Law: A View From the Ocean State.

Cases in 2013 seemed to establish that consumers who never read their terms of service will have an uphill battle in alleging that a company's data privacy policies are material to their purchasing decisions. *Howard S. Hogan*, Partner, Gibson, Dunn & Crutcher LLP, Washington, D.C. Blogs at Fashion Law and Business Report.

Doing business in Germany? Laws for distance selling will change in 2014. *Thomas Rickert* (@thomasrickert), Managing Partner, Schollmeyer & Rickert Law Firm, Germany.

Will 2014 be the year when cloud service contracts become truly negotiable? *Bradley L. Joslove*, Partner, Franklin Societe D' Avocats, Paris.

### Privacy Regulation

A strong privacy agenda for FTC at 100: Mobile location privacy, alternative scoring products, and customer-controlled health data seminars on tap for the spring. *Julie Brill* (@JulieBrillFTC), Commissioner, Federal Trade Commission, Washington, D.C.

Privacy lawsuits gained traction in 2013, with landmark decisions against companies that collect consumer data. Look for an uptick in privacy suits in 2014. *Jay Edelson* (@JayEdelson), Partner, Edelson LLC, Chicago.

From a policy perspective, FTC work on big data will provide key lessons not just for data brokers (the current focus of attention), but also for the users of big data, which will affect a much larger group of companies than are now the center of regulatory attention. *D. Reed Freeman Jr.*, Partner, Morrison & Foerster, Washington, D.C.

Global privacy laws will continue to plague digital giants who rely upon data to drive their product and service offerings. As digital marketing collides with differing privacy laws around the world, careful attention should be paid to how marketing is developing and deploying their strategies. In particular, vendors should be audited and monitored for their policies since most companies outsource many of these functions. *Jen Wolfe* (@JenWolfe), President, Wolfe Domain, Cincinnati.

Big data and data analytics will reach their full potential only if we address pressing privacy needs such as providing more transparency, greater accuracy, and more consumer control. *Julie Brill* (@JulieBrillFTC), Commissioner, Federal Trade Commission, Washington, D.C.

Businesses will enrich the data ecosystem by continuing to develop standards for responsible data collection and use, and as part of this, stakeholders will resolve the DNT debate by rolling out browser-based choice mechanisms. Dialogue on data brokers will also increase with the expected release of an FTC report. *Stuart P. Ingis*, Partner, Venable LLP, Washington, D.C.

2014 may be the year Europe's wide-ranging data protection reforms come in. Will privacy law change for good? *Jonathan Armstrong* (@armstrongjp), Partner, Duane Morris LLP, London.

Companies doing business in Mexico: pay attention! A sophisticated self-regulatory system will launch in 2014 and enable you to more flexibly comply with the country's data protection rules. *Cedric Laurant* (@cedric\_laurant), IT & Copyrights Manager, DUMONT BERGMAN BIDER, Mexico City. Blogs at Cedric's Privacy Blog.

Companies frustrated by conflicting state privacy laws and, in particular, by California's efforts to raise the threshold for consumer privacy protection will consider supporting federal consumer data privacy legislation. *Nancy C. Libin*, Partner, Wilkinson Barker Knauer, LLP, Washington, D.C.

Developments: (1) Snowden; (2) lack of meaningful privacy legislation and numerous failed lawsuits; (3) CA's attempts to step in on the privacy front; (4) continuing litigation activity in the area of intermediary liability; (5) stresses on Sec. 230 (Backpage; revenge porn); (6) overall, no rampant liability for companies on social media. *Venkat Balasubramani* (@vbalasubramani), Partner, Focal PLLC, Seattle. Blogs at Technology & Marketing Law Blog.

Dozens of new data protection laws came in to force in 2013 (Taiwan, Malaysia, Peru, Colombia), many more on the horizon for 2014 (South Africa, Mali). *Miriam Wugmeister*, Partner, Morrison & Foerster, New York, N.Y.

Edward Snowden's leaks about NSA's intelligence collection activities did more than catalyze a public policy debate; they also hurt U.S. technology companies by bolstering the EU's efforts to use U.S. privacy laws as a non-tariff barrier to trade. *Nancy C. Libin*, Partner, Wilkinson Barker Knauer, LLP, Washington, D.C.

For 2014, the privacy laws of the U.S. will be revised to reflect the thinking of Europeans (under the Data Protection Directive of 1995) and California's new requirement (Sept. 27, 2013) that all websites targeting Californian customers must have a privacy policy disclosing whether, and how, the website tracks the user online. This could come as federal legislation, or as part of the Transatlantic Trade and Investment Partnership trade negotiations that target non-tariff barriers such as privacy laws. If the US does nothing, it will lose a lot of Cloud services business, as well as transaction processing. *William B. Bierce* (@wbierce), Partner, Bierce & Kenerson, P.C., New York, N.Y.

In 2013, the California legislature recognized the value of modest privacy protections by passing SB-568, known as the "online eraser law." Because the law explicitly exempts information posted by a third party, California teenagers can only delete their own posts. The statute represents deference to free speech principles while giving users the option of erasing heaps of problematic disclosures that no one found interesting enough to share. *Woodrow Hartzog* (@hartzog), Assistant Professor of Law, Samford University Cumberland School of Law, Birmingham, Ala.

In 2014, school vendors will be banned from being able to data mine student digital content and information for commercial purposes. *Bradley Shear* (@bradleyshear), Managing Partner, Law Office of Bradley S. Shear, LLC, Bethesda, Md. Blogs at Shear on Social Media Law.

Inadvertently collecting data that you don't want or need can still create liability under ECPA. Don't believe me? Read the Ninth Circuit's decision *Joffe v. Google*, decided September 2013. *Neel Chatterjee*, Partner, Orrick, Silicon Valley.

Lawmakers will introduce several bills to create privacy standards for IPv6 to govern the use and privacy protection of the associated static IP addresses. In the meantime, fraudsters and crooks will use those static addresses in new ways to commit new types of identity fraud. *Rebecca Herold* (@PrivacyProf), Chief Executive Officer / Adjunct Professor, Privacy Professor & Compliance Helper / Norwich University, Des Moines, Iowa. Blogs at The Privacy Professor.

Mexico has rolled out over the past two years Latin America's most comprehensive data privacy enforcement program; the IFAI, Mexico's Data Protection Authority, has already fined companies for more than USD4 million and is reaching its cruising speed. *Cedric Laurant* (@security-breach), Editor, N/A, Mexico City. Blogs at Information Security Breaches & The Law.

Mobile apps and tracking dominated 2013. In 2014, watch *In re Hulu* class action re VPPA exposure for websites and CA DNT law AB 370. *Dominique Shelton* (@Dominique2010), Partner, Alston & Bird LLP, Los Angeles. Blogs at Alston Privacy + Security Blog.

Multiple European data protection authorities have ruled that Google's 2012 privacy policy change that increases its data mining capabilities violates EU law and that Google must change its privacy policy or face sanctions. Google's privacy policy change has fueled its unfettered data collection capabilities and made it easier for governments around the world to spy on their citizens. *Bradley Shear* (@bradleyshear), Managing Partner, Law Office of Bradley S. Shear, LLC, Bethesda, Md. Blogs at Shear on Social Media Law.

Next year will most likely be focused on: continued debate over the EU Data Privacy Regulation, amplified by the mainstreaming of wearable technology; increased domain name disputes; and further implementation of cloud computing solutions in both private and public sector. *Cesar Bessa Monteiro*, Partner, PBBR — Pedro Pinto, Bessa Monteiro, Reis, Branco, Alexandre Jardim & Associados, Lisbon, Portugal.

Russia pushes Twitter and Facebook to take into account Russian personal data law and amend their privacy policies. Russia believes global Internet business should respect local privacy laws and process personal data of Russian users in accordance with Russian personal data law. Further negotiations are expected to take place in 2014 *Igor Motsnyi* (@MotsnyiLegal), Partner, Motsnyi Legal Services, Moscow.

So 2013 was indeed the year in which we remembered that the state is more threatening than a cookie. #Snowden *Graham Smith* (@cyberleagle), Partner, Bird & Bird LLP, London. Blogs at Cyberleagle.

The direct marketing paradigm has now shifted from notice and opt-out to opt-in. With the new confusing TCPA requirements and Canada's new can-spam law, marketers need to be thinking how can to get a valid opt-in to market to consumers and what to do about my existing contacts? *Andrew Lustigman* (@advlaw), Partner, Olshan Frome Wolosky LLP, New York. Blogs at Advertising Law Blog.

The Federal Trade Commission continued to embrace its role as the de facto privacy regulatory agency in the United States in 2013. It signaled the emergence of baseline standards for data security and notice requirements for certain activities such as collecting location information. By extending consumer protections to the "Internet of Things," the design of technologies that collect and use personal information will more important than ever in 2014. *Woodrow Hartzog* (@hartzog), Assistant Professor of Law, Samford University Cumberland School of Law, Birmingham, Ala.

Whether the FTC has the lead in protecting consumer privacy will be decided in 2014 – either in the courts or by legislation. *Scott D. Delacourt*, Partner, Wiley Rein LLP, Washington, D.C.

The FTC has long been well regarded as Washington's de facto privacy leader. Going forward, the White House will designate a coordinator to guide privacy policy on the home front to ensure cost-effective protection as well as technological innovation, and also to represent U.S. data protection interests more effectively abroad to prevent a digital trade war. *Alan Charles Raul*, Global Coordinator of Privacy, Data Security and Information Law Group, Sidley Austin LLP, Washington, D.C.

The Obama response to Snowden concerns will sweep more broadly than NSA reforms. New consumer technologies will continue to be adopted, but privacy missteps will continue rock companies large and small. *Jules Polonetsky* (@julespolonetsky), Co-chair and Director, Future of Privacy Forum, Washington, D.C.

This year has been marked by: the advances and setbacks in the negotiation of the EU Data Privacy Regulation; the debate over specific regulations for the protection of intellectual property and related rights in internet-delivered works; and the European Parliament resolution on a roaming-free Europe by 2015 which will bring about a single digital market. *Cesar Bessa Monteiro*, Partner, PBBR — Pedro Pinto, Bessa Monteiro, Reis, Branco, Alexandre Jardim & Associados, Lisbon, Portugal.

## Social Media

As social media continues to be the channel that everyone wants to play in, advertisers must develop processes to better monitor what is being said about them and their products, particularly on pages that they host or moderate. Claims that an advertiser could not make on their own, shouldn't be made indirectly through a third-party post. *Andrew Lustigman* (@advlaw), Partner, Olshan Frome Wolosky LLP, New York. Blogs at Advertising Law Blog.

Be aware of social media risks in 2014 – in particular, mobile apps. More and more people are using their mobile devices & applications (over 1 billion and counting) so monitor for unauthorized apps and know where your apps live on third party market sites. *Jamila Enta* (@jamilaenta), Senior Manager, BrandProtect, Ontario, Canada.

Gezi protests in Turkey started a whole new discussion for regulation of social media, when the government stated that a "tweet with false information may be more dangerous than a bomb". Finishing 2013 and facing upcoming elections, it is unclear whether the government will proceed with their regulation plans or not. If they will, it is also unclear how they will manage to introduce such regulation in the first place. *Ceylin Beyli* (@CeylinB), Founder & Managing Lawyer, CBL Law Office, Istanbul, Turkey.

Going native: Regulators worry about blurring of lines between editorial and advertising but consumer

perceptions still unknown and rules yet to be developed. Also, FTC holds workshop on native advertising but not wanting to wait for rules, NAD steps in and begins to issue decisions to guide advertisers. More to come. *Terri Seligman* (@FrankfurtKurnit), Partner, and Co-Chair of Advertising, Marketing and Public Relations Group, Frankfurt Kurnit Klein & Selz PC, New York.

More attorneys will be disciplined for misuse of social media. *Josh King* (@joshuamking), General Counsel, Avvo, Seattle, Wash. Blogs at Socially Awkward.

New legislation has prevented the promotion of cultural, artistic, recreational and sports contests through social media. It is likely that companies in Brazil will no longer use a huge number of contests to promote their brands through social media and will have to adapt their online advertising strategies from now on. *Fabio Periera*, Partner, and Ieda Dutra, Associate, Veirano Advogados, Sao Paulo, Brazil.

Social media and privacy: are you Liking it? Case law limits websites' responsibility for social media marketing and confirms importance of well-crafted social media policies *Karin Retzer*, Partner, Morrison & Foerster, Brussels.

### **Software Patents**

Congress passes litigation-based patent reform; emboldened activists and tech community move on to next target—software patents. *Julie Samuels* (@juliepsamuels..), Senior Staff Attorney and Mark Cuban Chair to Eliminate Stupid Patents, Electronic Frontier Foundation, San Francisco.

Patent plaintiffs will pick up on comments made this year by Federal Circuit judges and raise arguments that the latest Congressional reforms aimed at reducing patent litigation abuse unconstitutionally rip power away from the judiciary *Stuart P. Meyer*, Partner, Fenwick & West LLP, Mountain View, Calif.

### **Technology in the Workplace**

Issues concerning technology in the workplace started to have a new dimension with the introduction of new generations, who wish to work more from home than from office, to the work life. “Bring your own device” may no longer be an issue, but information security may still be. *Ceylin Beyli* (@CeylinB), Founder & Managing Lawyer, CBL Law Office, Istanbul, Turkey.

### **Telecom Regulation**

From my perspective, the most significant development during 2013, and one that will carry over into 2014, is the DC Circuit's consideration of Verizon's appeal of the FCC's Open Internet (aka net neutrality) order. Based on the oral argument, it seems likely the court will reverse the FCC's order, at least in part. If this is what happens, it will be a positive development for the Internet, because the FCC's net neutrality regulations, over time, are likely to chill investment and innovation in broadband Internet networks. And if the court does hold the FCC's net neutrality order invalid and send it back to the agency, FCC Chairman Tom Wheeler will be faced with some very important decisions as to the way forward. My advice: Do nothing to resurrect the regulations and keep a watchful eye on the broadband marketplace. *Randolph May*, President, Free State Foundation, Potomac, Md. Blogs at Free State Foundation Blog.

### **Trademarks**

In the world of smartphone apps, it is becoming increasingly difficult to achieve trademark clearance, as the goods and services of trademark owners come into much closer contact than in the past “brick and mortar” model. Specifically, the marks and logos of apps that may perform widely different functions can still appear side-by-side in online app stores and on smart devices, thus complicating the traditional trademark clearance analysis. *Lynne Boisineau*, Partner, McDermott Will & Emery, Irvine, Calif.

Since everyone else will mention Google Books, I'll say that a development with longterm significance is the emerging judicial consensus that *eBay v. MercExchange*'s rule that presumptions of irreparable harm are insufficient to grant a preliminary injunction applies to the Lanham Act no less than to copyright and patent. Because trademark owners have often coasted on a routine equation of likely confusion and irreparable injury, litigation will have to change to recognize this new reality. Another notable development is increasing empirical knowledge about consumer reaction to trademark keywords and other common online advertising strategies (e.g., sponsored links). This empirical work was not done for litigation purposes, and it exposes old trademark confusion concerns as overrated but raises new questions about how much consumers understand about search generally. *Rebecca Tushnet* (@rtushnet), Professor, Georgetown University Law Center, Washington, D.C.

Two cases of note from 2013 are *Chloe SAS v. Sawabeh, Inc.* (the Tradekey case) and *Petroliam Nasional Berhad v. GoDaddy, Inc.* (the PETRONAS case). In Tradekey, a California district court held an

intermediary secondarily liable for online sales of counterfeit goods. In *PETRONAS*, the Ninth Circuit held GoDaddy was not secondarily liable for cybersquatting under the ACPA even though it sold domain forwarding services to the cybersquatter. The Ninth Circuit held broadly that the ACPA provided no cause of action for "contributory cybersquatting." *James L. Bikoff*, Partner, Silverberg, Goldman & Bikoff, LLP, Washington, D.C.

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