

## Media, Entertainment and First Amendment Newsletter, April 2020

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May 6, 2020 Thomas Williams, Lee Johnston

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**PRACTICES** Media Entertainment and Sports, Anti-SLAPP and First Amendment Rights, Litigation, AI and Deep Learning, Privacy and Cybersecurity, Media and Entertainment Litigation

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### **Transparency vs. Safety: Restrictions to Open Government During COVID-19**

Every part of life has been affected by the COVID-19 pandemic, and access to open government is no exception. The rise of COVID-19 has seen government agencies scrambling to modify ordinary procedures aimed at ensuring the transparency of government in light of federal, state, and local mandates to limit face-to-face contact. Almost without exception, these “temporary” measures have the effect of reducing, or at least making more difficult, public access to government information. For the time being, that may be a necessary price for society to pay to contain the pandemic; it will remain to be seen whether any of these new restrictions survive the current emergency.

All states have public information and open meetings law. According to a USA Today Network survey, as of early April 2020, at least 35 states, including Texas, have temporarily altered their public information and/or open meetings laws in response to COVID-19. Each state’s open government laws are different, and so the temporary changes to those laws vary, but the changes that have been seen so far in Texas illustrate the kinds of emergency measures that have been implemented across the country.

[Read more.](#)

### **Recent Cases Highlight Growing Conflict Between AI and Data Privacy**

No one can question the explosive growth in the use of artificial intelligence (“AI”). Seizing on its powerful predictive capabilities, private sector companies and government entities alike now employ machine-learning (“ML”) algorithms to assist in diverse applications ranging from detecting and preventing fraudulent online credit card transactions to optimizing traffic flow to blocking dangerous phishing attempts.

Against this backdrop of AI’s speed and efficiency, however, lies increasing concerns about the protection of personal data. Machine-learning algorithms are not born with the advanced predictive capabilities seen in products like Alexa or Google Maps. Rather, like their human counterparts, they require food, care and training that can only be provided by being fed vast amounts of real-life and experimental data about the experiences, perceptions and interactions of humans; i.e., personal data, to achieve deep learning.

[Read more.](#)

### **Second Circuit Will Not Rehear First Amendment Twitter Suit against President Trump**

On March 23, 2020, the Court of Appeals for the Second Circuit denied *en banc* review of a panel’s prior decision in the Knight First Amendment Institute’s ongoing lawsuit challenging, on First

Amendment grounds, President Donald J. Trump's practice of blocking certain users from accessing his @realDonaldTrump Twitter account in response to those users' criticism of his administration and policies. In May 2018, the United States District Court for the Southern District of New York sided with the Knight Institute, holding that President Trump's Twitter account constituted a "public forum," and as a result, that the President's practice of denying some users access to it based on their expressed viewpoints violated the First Amendment. In July 2019, a unanimous Second Circuit panel affirmed the lower court's decision.

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