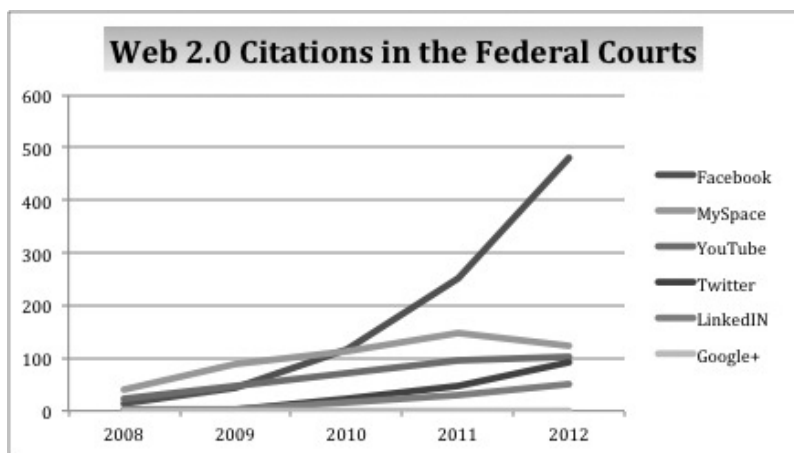


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WEB 2.0 CITATIONS IN THE FEDERAL COURTS

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A picture is worth a thousand words. But spelling things out also has its uses. The snapshot of federal court citations to Web 2.0 sites on the cover of this issue of the *Journal of Legal Metrics*, for example, merits a few words. (By Web 2.0, we mean websites that facilitate user-generated content.¹)

First, our method. It was simple. Or so we thought when we began the data collection. We searched the Westlaw “ALLFEDS” database for each of the terms listed above and the results are displayed in the graph at the front of this issue (and in the Appendix below). Follow-up searches of WestlawNext’s “All Federal” database using the same terms unexpectedly yielded different results depending on who the subscriber/end user was.² Searches using an academic subscription to WestlawNext yielded a number of false positives; other subscribers’ results were “clean.” We’ve gone through and scrubbed the results and the list of false positives appears in the Appendix.³

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¹ See generally Edward Lee, *Warming Up to User-Generated Content*, 2008 U. ILL. L. REV. 1459; but see Note, *Badging: Section 230 Immunity in A Web 2.0 World*, 123 HARV. L. REV. 981, 981 (2010) (observing that “[t]he concept of Web 2.0 is ‘a bit of a muddle’” (quoting Tim O’Reilly, *What Is Web 2.0: Design Patterns and Business Models for the Next Generation of Software*, O’REILLY (Sept. 30, 2005), available at oreilly.com/lpt/a/6228)).

² For concrete examples from our data set, see the Appendix.

³ What explains this phenomenon? Arbitrary algorithmic adjustment? Or is it deliberate? Stay tuned, faithful reader.

Additionally, our goal was not to create a comprehensive examination of all the well known websites cited in federal court⁴ but an illustration of trends over the past five years. And there, we think, the graph speaks for itself.

Facebook, Twitter, and LinkedIn citations are growing exponentially – cites to these sites have roughly doubled year-over-year since 2010.⁵ Eventually, each may go the way of MySpace, whose wave appears to have crested.⁶ But whatever befalls these particular websites, Web 2.0 appears to be in federal court for the foreseeable future. Privacy,⁷ free expression,⁸ intellectual property,⁹ and criminal law;¹⁰ tech giant versus tech giant¹¹ and user versus user – Web 2.0 continues to present fundamental and novel issues.

Finally, while we were looking into citations to Web 2.0 websites, we also looked at three tried-and-true Web 1.0 standbys: Google, Yahoo, and AOL. The results may not be surprising to those who follow the financial pages,¹² but they are still interesting enough to share.

⁴ Bittorrent, for example, was excluded from our data set, although it had 271 federal court citations in 2012. Wikipedia similarly was excluded, although it had 107 cites in 2012.

⁵ See *id.*

⁶ See generally, Felix Gillette, *The Rise and Inglorious Fall of Myspace*, BLOOMBERG BUSINESSWEEK, June 22, 2011, at 52, available at www.businessweek.com/magazine/content/11_27/b4235053917570.htm.

⁷ See, e.g., Mark Burdon, *Privacy Invasive Geo-Mashups: Privacy 2.0 and the Limits of First Generation Information Privacy Laws*, 2010 U. ILL. J.L. TECH. & POL'Y 1.

⁸ See, e.g., Kara D. Williams, Comment, *Public Schools vs. MySpace & Facebook: The Newest Challenge to Student Speech Rights*, 76 U. CIN. L. REV. 707 (2008).

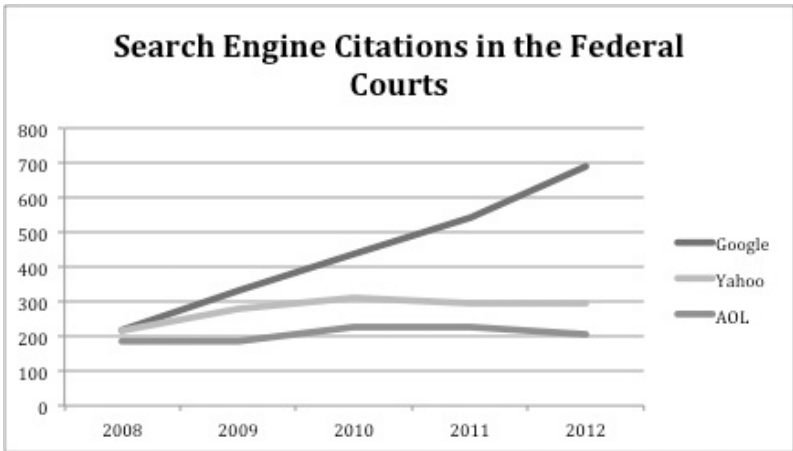
⁹ See, e.g., Matthew Sag, *Predicting Fair Use*, 73 OHIO ST. L.J. 47 (2012).

¹⁰ See, e.g., Mary Anne Franks, *Unwilling Avatars: Idealism and Discrimination in Cyberspace*, 20 COLUM. J. GENDER & L. 224, 238-39 (2011); Michael J. Henzey, *Going on the Offensive: A Comprehensive Overview of Internet Child Pornography Distribution and Aggressive Legal Action*, 11 APPALACHIAN J.L. 1, 29-30 (2011).

¹¹ See, e.g., Joseph Turow, *From: Concurring Opinions - The Disconnect Between What People Say and Do About Privacy*, 2 J.L.: PERIODICAL LABORATORY OF LEG. SCHOLARSHIP (1 THE POST) 479, 482 n.2 (2012) (citing Byron Acohido, Scott Martin, and Jon Swartz, "Consumers in the Middle of Google-Facebook Battle," USA TODAY, January 26, 2012, available at www.usatoday.com/tech/news/story/2012-01-25/google-facebook-competition/52796502/1).

¹² Alternatively, for an illustration of why Google continues its year-over-year growth while its peers do not, one need only . . . well, what site would you go to to start your search?

WEB 2.0 CITATIONS



APPENDIX

Web 2.0 Citations in Federal Court Cases

	2008	2009	2010	2011	2012
Facebook	14	44	118	252	480
MySpace	39	88	113	147	125
YouTube	23	47	70	95	103
Twitter	0	4	23	46	93
LinkedIn	3	3	15	30	50
Google+	0	0	0	0	0

Search Engine Citations in Federal Court Cases

	2008	2009	2010	2011	2012
Google	218	332	435	544	692
Yahoo	215	281	313	293	297
AOL	186	186	226	225	205

*Westlaw Search Discrepancies*¹³

Twitter

Twitter 2008: 0 (Academic subscription also has 0)

Twitter 2009: 4 (Academic has 5 because of false positive – *Lucent*¹⁴)

Twitter 2010: 23 (Academic has 24 because of false positive – *Quon*¹⁵)

Twitter 2011: 46 (Academic has 48 because of two false positives – *Patel*¹⁶ and *Offenback*¹⁷)

Twitter 2012: 93 (Academic has 94 because of false positive – *Glazer*¹⁸)

¹³ See *supra* notes 2-3 and accompanying text.

¹⁴ *Lucent Technologies, Inc. v. Gateway, Inc.*, 580 F.3d 1301 (Fed. Cir. 2009).

¹⁵ *City of Ontario, Cal. v. Quon*, 130 S. Ct. 2619 (2010).

¹⁶ *Patel v. Havana Bar, Rest. & Catering*, CIV.A. 10-1383, 2011 WL 6029983 (E.D. Pa. Dec. 5, 2011).

¹⁷ *Offenback v. L.M. Bowman, Inc.*, 1:10-CV-1789, 2011 WL 2491371 (M.D. Pa. June 22, 2011).

¹⁸ *Glazer v. Fireman's Fund Ins. Co.*, 11 CIV. 4374 PGG FM, 2012 WL 1197167 (S.D.N.Y. Apr. 5, 2012).

WEB 2.0 CITATIONS

Myspace

Myspace 2008: 39 (Academic has 40 because of false positive – *Chicago Lawyers*¹⁹)
Myspace 2009: 88 (Academic also has 88)
Myspace 2010: 113 (Academic also has 113)
Myspace 2011: 147 (Academic has 148 because of false positive – *Black*²⁰)
Myspace 2012: 125 (Academic also has 125)

Youtube²¹

“Youtube” 2008: 23 (Academic has 24 because of false positive – *UMG Recordings*²²). “You Tube” adds 2; so total: 25.
“Youtube” 2009: 47 (Academic has 48 because of false positive – *Iqbal*²³). “You Tube” adds 3; so total: 50.
“Youtube” 2010: 70 (Academic also has 70). “You Tube” adds 4; so total: 74.
“Youtube” 2011: 95 (Academic has 97 because of two false positives – *Maremont*²⁴ and *Facebook*²⁵). “You Tube” adds 7; so total: 102.
“Youtube” 2012: 103 (Academic has 104 because of false positive – *Cambridge University*²⁶). “You Tube” adds 11; so total: 113.

LinkedIn

LinkedIn 2008: 3 (Academic also has 3)
LinkedIn 2009: 3 (Academic also has 3)
LinkedIn 2010: 15 (Academic also has 15)
LinkedIn 2011: 30 (Academic has 32 because of two false positives – *Maremont*²⁷ and *In Re Facebook Privacy Litigation*²⁸)
LinkedIn 2012: 50 (Academic has 51 because of false positive – *In re iPhone Application Litigation*²⁹)

¹⁹ Chi. Lawyers’ Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666 (7th Cir. 2008).

²⁰ Black v. Google, Inc., 457 F. App’x 622 (9th Cir. 2011).

²¹ We also include “You Tube” in the data set, which explains many of the discrepancies.

²² UMG Recordings, Inc. v. Veoh Networks, Inc., 620 F. Supp. 2d 1081 (C.D. Cal. 2008).

²³ Ashcroft v. Iqbal, 556 U.S. 662 (2009).

²⁴ Maremont v. Susan Fredman Design Grp., Ltd., 10 C 7811, 2011 WL 6101949 (N.D. Ill. Dec. 7, 2011).

²⁵ Facebook, Inc. v. Teachbook.com LLC, 819 F. Supp. 2d 764 (N.D. Ill. 2011).

²⁶ Cambridge Univ. Press v. Becker, 863 F. Supp. 2d 1190 (N.D. Ga. 2012).

²⁷ Maremont v. Susan Fredman Design Grp., Ltd., 10 C 7811, 2011 WL 6101949 (N.D. Ill. Dec. 7, 2011).

²⁸ In re Facebook Privacy Litig., 791 F. Supp. 2d 705 (N.D. Cal. 2011).

²⁹ In re iPhone Application Litig., 844 F. Supp. 2d 1040 (N.D. Cal. 2012).

Google+

Not applicable.

Facebook

Facebook 2008: 14 (Academic also has 14)
Facebook 2009: 44 (Academic also has 44)
Facebook 2010: 118 (Academic also has 118)
Facebook 2011: 252 (Academic also has 252)
Facebook 2012: 480 (Academic also has 480)

Google

Google 2008: 218 (Academic has 219 because of false positive – *Jacobsen*³⁰)
Google 2009: 332 (Academic also has 332)
Google 2010: 435 (Academic also has 435)
Google 2011: 545 (Academic also has 545)
Google 2012: 692 (Academic also has 695)

Yahoo

Yahoo 2008: 215 (Academic also has 215)
Yahoo 2009: 281 (Academic also has 281)
Yahoo 2010: 313 (Academic has 314 because of false positive – *TradeComet.com*³¹)
Yahoo 2011: 293 (Academic also has 293)
Yahoo 2012: 297 (Academic also has 297)

AOL

AOL 2008: 187 (Academic also has 187)
AOL 2009: 186 (Academic also has 186)
AOL 2010: 226 (Academic has 227 because of false positive – *WiAV Solutions*³²)
AOL 2011: 225 (Academic also has 225)

#

³⁰ *Jacobsen v. Katzer*, 535 F.3d 1373 (Fed. Cir. 2008).

³¹ *TradeComet.com LLC v. Google, Inc.*, 693 F. Supp. 2d 370 (S.D.N.Y. 2010).

³² *WiAV Solutions LLC v. Motorola, Inc.*, 631 F.3d 1257 (Fed. Cir. 2010).