

MARK WARNER'S INCONSISTENT SOCIAL MEDIA LAW-MONGERING

Remember when, three weeks ago, people were shooting off their baby cannons because two reports kind of sort of claimed that Robert Mueller used a criminal search warrant to obtain details on Facebook's ad sales to the Internet Research Association? I noted at the time that the logic behind those stories – that Facebook would have needed a warrant (as opposed to a 2703(d) order or a 702 directive) to obtain that information – was faulty. I've since become more certain that a D order was used in this case.

But since the stories were so dodgy, I assumed then they weren't actually reporting about the investigation, but rather pressure on the part of Mark Warner to force Facebook to share the same data with Congress, including leaving (rather than just showing) ads.

And it worked! Last week and this week, Facebook did share those ads, with all the more leaks about them.

Unsurprisingly, Mark Warner is back, now insisting that Facebook should release all those ads that he or someone close to him just weeks ago was suggesting could only be released with a criminal search warrant, but now wants released with neither legal process nor a congressional oversight claim to force it.

I get why he wants that to happen. Even on top of informing the public about what happened in last year's election, Warner would like to embarrass Facebook into accepting more sweeping regulation of political ads, which is a totally respectable goal.

But I find it amusing that the same people who, weeks ago, were certain that such materials were so private they could only be released with a search warrant are now arguing they should be

released with no process whatsoever.

And whatever the beneficial goal here, there's also the precedent of protection for private data. Do we really want it to be possible for (say) Russia to force Facebook to release all the information on the NGOs that target Russian users? Do we want Jeff Sessions' DOJ to be able to force Facebook to release the details of those who oppose Trump without legal process?

I don't expect Warner to be bound by those considerations – he's trying to win a political battle (and doing a remarkably effective job). But I'd expect those reporting on this story to show some awareness of the claims they made about the sensitivity of this data just weeks ago.