



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 17, 2017



I. Congressional Updates:

- On Monday, November 20th at 10:30 a.m. the Senate Finance Subcommittee on International Trade, Customs and Global Competitiveness will hold a field hearing on “Modernization of the North American Free Trade Agreement.” The hearing will be held at the San Antonio Marriott Plaza Hotel and will feature witnesses including Stephen Vaughn, general counsel in the Office of the United States Trade Representative (USTR); Jeff Moseley, CEO of the Texas Association of Business; and Paola Avila, chair of the Border Trade Alliance, amongst others. Read more [here](#).
- This week, the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights rescheduled their hearing on “The Consumer Welfare Standard in Antitrust: Outdated or a Harbor in a Sea of Doubt?” from Nov. 15th to Wednesday, Dec. 13th at 2:30 p.m. Read more [here](#).
- Democratic Reps. Ro Khanna of California, Rick Nolan of Minnesota, and Mark Pocan of Wisconsin announced this week the creation of the Congressional Antitrust Caucus. The caucus will focus on combatting economic concentration across industries including airlines and telecom as well as increasing scrutiny of tech mergers. “What Congress can do is really strengthen the enforcement agencies on these issues and make sure they are robust,” Khanna told POLITICO.
- At a Senate Commerce hearing about agriculture technology on Tuesday, an agricultural law attorney mentioned in his testimony that agriculture data “does not neatly fit into existing legal protections for intellectual

Headlines and Highlights:

- Senate Finance Subcommittee to hold field hearing on NAFTA Modernization.
- Antitrust Division chief Makan Delrahim says behavioral remedies in antitrust “often fail to let the competitive process play out,” in ABA speech.
- Reps. Khanna, Pocan and Nolan start Congressional Antitrust Caucus.
- TPP-11 countries make changes to IP chapter, agree to push ahead with deal.

In the Blogs:

[Online Piracy in Japan: How Big is the Problem—and what’s an Effective Solution?](#)

Hugh Stephens Blog
November 12 by Hugh Stephens

[Copyright Small Claims: A Solution for Many Creators](#)

Illusion of More
November 15 by David Newhoff

[Digital-Age Copyright: Photographs and the News](#)

Illusion of More
November 14 by David Newhoff

property, such as patents, trademarks, or copyrights.” He said that such data “ultimately may be deemed a trade secret...but that will depend upon whether courts interpret existing statutes to include information such as agronomic data.” Read the testimony [here](#).

- On Wednesday the House passed the *Foundations for Evidence-Based Policymaking Act* ([H.R. 4174/S. 2046](#)), a bill intended to spur agencies to make better use of data in their policymaking activities. The legislation includes a version of the *Open Government Data Act*, which contains provisions with implications for government-handled intellectual property. Read more [here](#).

II. Judicial Updates:

- Late last week, photographer Kristen Pierson Reilly filed a lawsuit against Twitter, claiming that the social networking site failed to promptly remove a copyright-infringing photo after she submitted a takedown request. Pierson Reilly is seeking damages from Twitter after she alleges they waited 90 days to remove one of her photos that a user posted without permission. “Twitter had actual knowledge of the direct infringement and contributory infringement. Pierson provided notice to Twitter in compliance with the DMCA, and Twitter failed to expeditiously disable access to or remove the Copyrighted Photograph from their servers,” the complaint notes. Read more [here](#).

III. Administration Updates:

- In a speech before the American Bar Association on Thursday, Department of Justice Antitrust Division head Makan Delrahim said that he finds behavioral remedies in antitrust enforcement generally problematic because, among other issues, they “often fail” to “let the competitive process play out.” He said that, “instead of protecting the competition that might be lost in an unlawful merger, a behavioral remedy supplants competition with regulation.” Delrahim said he agrees with skepticism a number of observers have expressed about certain Antitrust Division decisions to enter into “behavioral consent decrees to resolve vertical mergers it determined to be illegal” – naming the Comcast/NBCU, Google/ITA, and LiveNation/TicketMaster mergers as examples. Read the speech [here](#).
- On Thursday, the Federal Communications Commission (FCC) voted on party lines to loosen its media ownership rules, allowing broadcasters to own a newspaper in the same market and own two of the four top stations in the same city. Read more [here](#).

IV. International Updates:

- Last weekend, ministers from 11 countries agreed to push ahead with the Trans-Pacific Partnership (TPP) despite the U.S. withdrawal from the pact in January. The nations agreed to suspend just 20 items from the original text. The chapter on intellectual property received 11 of the 20 amendments overall. A copyright extension to 70 years after an author or artist’s death was suspended, as well as special protections for biologics. A ban on TPP countries allowing the manufacture of set-top boxes that decode encrypted cable or satellite signals was also dropped. At the request of Canada the countries agreed to change the name from TPP to CPTPP, or the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Read more [here](#).

- European Union Commissioner for Competition Margrethe Vestager said on Wednesday that she plans to bring more cases against Google, but did not provide any further details, according to *Reuters*. Read more [here](#).
- The Irish Music Rights Organisation (IMRO) has released a report calling for new European Union legislation to remedy the “value gap” whereby platform services like YouTube and Facebook pay music creators far less money than do streaming services such as Spotify. Read more [here](#).
- Stevan Dojcinovic, the editor in chief of a Serbian news outlet, has criticized Facebook in a *New York Times* op-ed for running an experiment in the country in which posts made by news organizations were removed from Facebook users’ regular news feed, and “segregated into a separate section called Explore Feed that users have to select before they can see” news stories. Dojcinovic writes that the move “crippled” his organization’s traffic from Facebook, which is the outlet’s “largest single source of traffic, accounting for more than half of [its] monthly page views.” Read more [here](#).

V. Industry Updates:

- Missouri’s attorney general Josh Hawley announced on Monday that his office is investigating potential antitrust and consumer protection violations by Google. Hawley has issued a subpoena to Google for information related to consumer privacy, the use of other services’ content on Google, and potential bias in search results. Read more [here](#).
- Eight technology industry groups, including the Internet Association, Engine Advocacy, the Computer & Communications Industry Association (CCIA), the Information Technology Industry Council (ITI), and the Digital Media Association (DiMA), have written a letter to U.S. Trade Representative Robert Lighthizer expressing concern that in North American Free Trade Agreement (NAFTA) renegotiations the administration “may be considering departing” from the “balanced” copyright language contained in the Trans-Pacific Partnership (TPP) agreement. Read the letter [here](#). Another document released on Wednesday, signed by lawyers and representatives of mainly tech-oriented groups, also calls for copyright “balance” in NAFTA, as well as certain “exceptions” to copyright; intermediary “safeguards;” and a number of other copyright provisions. Read that letter [here](#).
- *Intellectual Property Watch* reports that the World Intellectual Property Organization (WIPO) is discussing draft actions plans for copyright limitations and exceptions for libraries, archives, museums, educational research institutions, and persons with disabilities. The Standing Committee on Copyright and Related Rights (SCCR) is meeting this week. Read more [here](#).
- The Copyright Royalty Board is soliciting comments on proposed rates and terms of use of certain works under the section 118 license in connection with noncommercial broadcasting for the period commencing January 1, 2018, and ending on December 31, 2022. Read more [here](#).
- Data scientist and author Cathy O’Neil warns in a *New York Times* op-ed that “academics have been asleep at the wheel” when it comes to providing unbiased education to lawmakers about big data, artificial intelligence, and tech platforms, which “have huge

influence and power.” Instead, the responsibility for this education, vital for adequate regulation, has been left to “well-paid lobbyists and employees who’ve abandoned the academy.” Read more [here](#)