



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036
Tel: (202) 327-8100 | Fax: (202) 327-8101

CONTENT & TECHNOLOGY POLICY REPORT DECEMBER 21, 2018



I. Congressional Updates:

- On Tuesday, Arizona Governor Doug Ducey (R) appointed Rep. Martha McSally to the Senate seat being vacated by GOP Sen. Jon Kyl. McSally will serve out the remainder of former Sen. John McCain's term, which runs until 2020. Jon Kyl had only been filling in on an interim basis. Read more [here](#).
- Sen.-elect Josh Hawley (R-MO) announced on Wednesday that he has been selected to serve on the Senate Judiciary Committee. Hawley has been a staunch [critic](#) of tech companies—particularly Google—and made policing them a central tenet of his election campaign. Read more [here](#).
- On Monday, Senator Lamar Alexander (R-TN) announced that he does not intend to seek re-election to the U.S. Senate in 2020. Senator Alexander is the Chairman of the Senate Health, Education, Labor and Pensions Committee and was an original cosponsor of the Music Modernization Act (MMA). Read more [here](#).
- On Wednesday, Sen. Blumenthal (D-CT), a member of the Senate Judiciary Antitrust Subcommittee, wrote two letters to Federal Trade Commission Chairman [Joseph Simons](#) and Assistant Attorney General [Makan Delrahim](#) expressing concern about Amazon's price parity provisions in contracts with third-party sellers. Blumenthal writes that these contracts could "stifle market competition and artificially inflate prices on consumer goods that millions of Americans are planning to buy this holiday season." Blumenthal urged both the FTC and DOJ to investigate these provisions to gauge the impact they have on the marketplace.

Headlines and Highlights:

- **Note:** There will not be a Content & Tech report published on Dec. 28th.
- Sen.-elect Hawley, fierce tech critic, will serve on Senate Judiciary Committee.
- In letter, Sen. Blumenthal urges DOJ and FTC to probe Amazon price parity contract provisions.
- Lawmakers express anger over report that Facebook allowed companies access to user data without consent.

In the Blogs:

[Canadian Copyright Review: My Submission on International Site Blocking](#)

Hugh Stephens Blog
December 17 by Hugh Stephens

[Internet Platforms Above the Law? Illusion of More](#)
December 19 by David Newhoff

[Second Circuit Rules Against ReDigi in Major Decision](#)
Illusion of More
December 13 by David Newhoff

II. Judicial Updates:

- Late last week, the U.S. Court of Appeals for the Second Circuit affirmed a lower court ruling that the online music service ReDigi infringed Capitol Records' copyright by allowing users to resell legally purchased iTunes files. The court found that throughout the course of transferring the digital music file, each transfer fixed the file in a new material object, thus creating "new phono-records." Further, the court supported its ruling by citing a 2001 U.S. Copyright Office conclusion that the resale of digital files is infringing. Read more [here](#).

III. Administration Updates:

- POLITICO reported this week that the Office of the United States Trade Representative (USTR) has not indicated when it will publish its negotiating objectives for trade talks with the European Union and Japan. The objectives must be published at least 30 calendar days before beginning trade talks, and with the holiday approaching, it could be January until the objectives are released. This decision would push the first round of talks into February. Read more [here](#).

IV. International Updates:

- The European parliament's think tank published a paper late last week on the potential impact of the United States-Mexico-Canada Agreement (USMCA) on companies in the European Union (EU). The document claims that the provisions in the agreement on rules of origin, geographic indications and voluntary export restraints "may affect" EU car manufacturers, food and drink exporters, and dairy producers. The paper also flags several provisions in the final text that "risk being at odds" with World Trade Agreement (WTO) rules, including the voluntary export restraints prohibited under the Safeguard Agreement. Read more [here](#).

V. Industry Updates:

- On Thursday, Robert Levine, a contributor for *Billboard*, wrote an op-ed titled "Crazy About Copyright: Why the Debate Over the Register of Copyrights Doesn't Make Much Sense." Levine's article outlines the debate surrounding the Register of Copyrights Selection and Accountability Act of 2017, legislation that would make the Register of Copyrights a presidentially-appointed, Senate confirmed position. Currently, the position is selected unilaterally by the Librarian of Congress. It is "hard to understand the hysteria" the bill has generated amongst online activists, including the EFF, Levine writes. The Register "doesn't pass legislation—just advises Congress, studies existing law and supervises various rulemaking procedures," Levine adds. "One imagines the job is a bit like being the Prime Minister of Luxembourg: It's incredibly important, but only within a fairly small part of the world." Read more [here](#).
- Following a New York Times [report](#) on Tuesday that uncovered Facebook's longstanding agreements with Spotify, Google, Amazon and other companies that allowed them to gain access to people's timelines, friend lists, private messages without the users' consent, lawmakers expressed anger at Facebook CEO Mark Zuckerberg and questioned whether he misled them in his congressional testimony. "Mr. Zuckerberg told us that this kind of nonsense would end and it didn't," Sen. John Neely Kennedy (R-LA), a Senate Judiciary

Committee member, said Wednesday. "Now the first time, you can argue it's a mistake, but the second time, it's a choice." A host of lawmakers, both Republican and Democrat, echoed Kennedy's comments and said it was further proof that Congressional action on data privacy is required. "It has never been more clear. We need a federal privacy law," Sen. Schatz (D-HI) said. "They are never going to volunteer to do the right thing." Read more [here](#).