



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT DECEMBER 7, 2018



### I. Congressional Updates:

- Rep. David Cicilline (D-RI), the next Chairman of the House Judiciary Antitrust Subcommittee, vowed stricter oversight of Facebook when Democrats take control of the House next year. Cicilline's comments come on the heels of a *New York Times* report published last month revealing how Facebook's top executives ignored signs of Russia-linked activity on the site, and hired a public relations firm to pressure lawmakers to drop the inquiry into Facebook. "Rather than face the music and help develop solutions, Facebook is still avoiding important questions about privacy, competition, and threats to our democracy," Cicilline said in a video posted by *Now This News*. Watch the video [here](#).
- On Tuesday, incoming House Majority Leader Steny Hoyer (D-MD) said House Democrats are reserving support for the modernized trade agreement between the U.S., Mexico and Canada (USMCA) until they can further analyze the implications. "It's too early to tell whether we are going to be able to pass that or whether we make a determination that we should pass it," the Maryland Democrat said at the annual meeting of the WSJ CEO Council. Hoyer also criticized President Trump's stated intent to terminate the original NAFTA in an effort to pave the way for congressional approval of the reworked version, calling it "a big mistake" and "very disruptive of the international economy." Read more [here](#).
- On Tuesday, Sen.-elect Josh Hawley (R-MO) appeared on *Fox News* and discussed the "special immunity" that Section 230 of the Communications Decency Act gives tech companies from being held liable for the content on their platforms. "There are changes in the NAFTA

### Headlines and Highlights:

- Incoming House Majority Leader Steny Hoyer says House Democrats are reserving support for modernized NAFTA.
- Senate Judiciary Antitrust Subcommittee to hold hearing on competition law in US and EU.
- House Judiciary Antitrust Subcommittee oversight hearing for the antitrust enforcement agencies postponed until Dec. 12<sup>th</sup>.
- House Judiciary hearing featuring Google CEO postponed until Dec. 11<sup>th</sup>.

### In the Blogs:

[The Push for Platform Accountability is Going Global](#)

Hugh Stephens Blog  
December 4 by Hugh Stephens

[Another Inscrutable Attack on Copyright by CCIA](#)

Illusion of More  
December 3 by David Newhoff

[Google, YouTube Accused of Disinformation, Scaremongering By European Authors](#)

IP Watch  
December 5 by Catherine Saez

agreement to what is called section 230 of the communication decency act. What that is, Tucker, it's actually deal that the tech companies get from the government that says that they can't be sued like any other publisher. They can't be sued like a newspaper, they can't be sued like a TV station. Supposedly what they're supposed to do in return for that immunity, is they're not supposed to exercise editorial content, editorial control," Hawley said. "My question is, should they really be getting this special immunity from the government if they're also going to act like censors? I think we need to take a hard look at that." Read more [here](#).

- On Wednesday, December 19<sup>th</sup> at 2:30 p.m. the Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights will hold a hearing titled "Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU." Read more [here](#).
- The House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law announced this week that it would postpone its oversight hearing for the antitrust enforcement agencies due to the funeral of former President George H.W. Bush. The rescheduled date is Wednesday, December 12<sup>th</sup> at 2 p.m. Read more [here](#).
- The House Judiciary Committee postponed its hearing "Examining Google and its Data Collection, Use and Filtering Practices" until Tuesday, December 11<sup>th</sup> at 10 a.m. The sole witness at the hearing will be Google CEO Sundar Pichai. Read more [here](#).
- On Thursday, House Democratic Leader Nancy Pelosi met with U.S. Trade Representative Robert Lighthizer to discuss the USMCA. While noting that there are "positive things" in the proposed trade agreement, Pelosi cautioned that "it is just a list without real enforcement of the labor and environmental protections" in a statement issued after the meeting. She also added that Democrats are "waiting for Mexico to pass its promised law on the wages and working conditions of Mexican workers." As the expected speaker of the House in the 116<sup>th</sup> Congress, Pelosi's support will be critical to passing implementation legislation. Read more [here](#).
- On Monday, Senator John Kennedy (R-LA) announced that he will not run in the 2019 Louisiana gubernatorial election. Senator Kennedy had previously said that he was "really torn" as he agonized over the decision. Senator Kennedy is a member of the Senate Judiciary Committee and was an original cosponsor of the Music Modernization Act. Read more [here](#).

## II. Judicial Updates:

- Rapper "2 Milly" filed a copyright lawsuit against video game company Epic Games for using his dance move, the Milly Rock, in their game "Fortnite" without permission. While Fortnite is free to play, Epic Games generates millions of dollars a month by selling cosmetic items, like costumes and the dance emotes. The lawsuit alleges that Epic Games copies and codes the dances and movements directly from the source video without consent. Read more [here](#).

### III. Administration Updates:

- The White House confirmed this week that United States Trade Representative (USTR) Robert Lighthizer will lead negotiations with China over tariffs, market access and structural changes to intellectual property practices over the next 90 days. This comes on the heels of a trade truce agreed to by President Trump and Chinese President Xi Jinping, agreeing to hold off on new tariffs and to begin a 90 day negotiation. The White House said on Saturday that the talks would cover structural changes in China on forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft, services and agriculture. Read more [here](#).
- On Thursday, the Federal Trade Commission (FTC) held its eighth hearing in its Competition and Consumer Protection in the 21st Century series. Panelists examined concerns that acquisitions and holdings of non-controlling ownership interests in competing companies may have anti-competitive effects. As first raised by FTC Commissioner Noah Phillips in his opening remarks, there seemed to be a general consensus among participants that much more research needs to be done in order to confirm and understand the potential anti-competitive effects of common ownership. Commissioner Phillips also reminded participants that current proposals to stem potential anti-competitive effects would “transform the landscape of institutional investment,” which the Commission would not take lightly. More info. [here](#).

### IV. International Updates:

- On Tuesday, Swiss newspaper *Le Temps* interviewed Richard Gingras, the leader of Google News on the service’s relationship with print media. In the interview Gingras states that he does not feel any responsibility for the difficulties Google News has caused print media. “Why has the media industry been disrupted? Often, we hear that it is the fault of Google or Facebook. But it's wrong,” Gingras says. “It is the very existence of the internet that upsets the media, because it has put the printed press in all hands. The information market has become much more competitive.” Read more [here](#).
- On Thursday, Google News head Richard Gingras wrote a post on the Google Blog titled “Proposed copyright rules: bad for small publishers, European consumers and online services.” Gingras writes in the blogpost that the European Union’s proposed changes to copyright law—specifically Article 11 and its recital 32—will have “unintended consequences for smaller news publishers, limit innovation in journalism and reduce choice for European consumers.” Read more [here](#).
- Late last week, a coalition of representatives from the audiovisual and sports sector, including the Motion Picture Association, the International Union of Cinemas, the Premier League, and La Liga, sent a letter to members of the EU parliament expressing their concerns for the direction of ongoing trilogue discussions on Article 13 of the proposed Directive on Copyright in the Digital Single Market. Specifically, the letter cautions that recent proposals would “undermine current case law” of the Court of Justice of the European Union (CJEU), which they claim already “makes it clear” that online content sharing service providers (CSSPs) communicate to the public and are therefore not eligible for the liability privilege of Article 14 E-Commerce Directive. The letter also warns that the provision has been “mutated in such a way” that it would strengthen the role of OCSSPs to the “direct detriment of rights holders.” Read more [here](#).

## V. Industry Updates:

- According to emails obtained by *POLITICO*, Google, Amazon, and Snap. Inc. reached out to FTC commissioners appointed by President Donald Trump soon after they were sworn into office last May. Google appears to have been particularly eager to engage with officials that would play a critical role in any federal crackdown of big tech, inviting commission staff to coffees, and setting up a meeting with Republican chairman Joe Simmons, *POLITICO* reports. Amazon also requested meetings with commission staff, although inter-agency correspondence reveals that they were hesitant to meet with the e-commerce giant. Read more [here](#).
- On Thursday, the International Intellectual Property Alliance (IIPA) issued a report titled, *Copyright Industries in the U.S. Economy: The 2018 Report*, which quantifies the importance of copyright industries to the U.S. economy. Findings include that core copyright industries employed nearly 5.7 million American workers in 2017, which accounts for 3.85% of the entire U.S. workforce, and 4.54% of total private employment in the nation. Read more [here](#).