



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 14, 2018



I. Congressional Updates:

- On Wednesday, October 3rd at 2:30 p.m. the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights will hold a hearing on “Antitrust Law Enforcement” featuring Assistant Attorney General for Antitrust Makan Delrahim and FTC Chairman Joseph Simons. Read more [here](#).
- On Monday, seven Democratic members of the House Ways and Means Committee, led by Rep. DelBene (D-WA), sent a letter to United States Trade Representative Robert Lighthizer indicating that his office’s notification of a trade deal with Mexico—“and with Canada if it is willing,”—may not be compliant with Trade Promotion Authority, the law that gives the White House flexibility in trade negotiations. “[T]he negotiating objectives you published were specific to a trilateral deal and your office never released any negotiating objectives regarding a bilateral deal with either Mexico or Canada,” the Democrats wrote. “While we appreciate that it takes time to iron out the final details and text, we believe that it is not in the spirit of TPA to send Congress an official notification letter until all three parties have formally agreed to move forward together with an updated trilateral agreement.” Read more [here](#).
- On Wednesday, September 26, at 2:30 p.m. the Senate Committee on Commerce, Science, and Transportation, will hold a hearing titled, “Examining Safeguards for Consumer Data Privacy.” Witnesses will include representatives from AT&T, Amazon, Google, Twitter, Apple, and Charter Communications. Read more [here](#).

Headlines and Highlights:

- European Parliament approves changes to the EU Copyright Directive.
- Seven House Ways and Means Democrats send letter to USTR indicating they may not be compliant with TPA.
- FTC begins highly anticipated hearings on Competition and Consumer Protection in the 21st Century.
- USTR Lighthizer and EU trade minister meet as part of new Working Group.

In the Blogs:

[Tips for e-Book Authors: When the Pirates Get Nasty, Reach for “Blasty”](#)

Hugh Stephens Blog

September 9 by Hugh Stephens

[Internet Activists Clinging to Old Models in EU Copyright Fight](#)

Illusion of More

September 11 by David Newhoff

[European Parliament Approves Negotiating Stance on Copyright Reform](#)

IP Watch

September 12 by Dugie Standeford

II. Judicial Updates:

- This week, TickBox, a manufacturer of streaming TV device, agreed to a \$25 million judgment to settle a copyright infringement case brought by the Alliance for Creativity and Entertainment (ACE). ACE is comprised of the major studios as well as Netflix and Amazon. Read more here. TickBox retailed for \$150 and the company advertisements promised customers “virtually all the channels you get from your local cable company...without you having to worry about paying rental fees or monthly subscriptions.” Read more [here](#).

III. Administration Updates:

- On Monday, U.S. Trade Representative (USTR) Robert Lighthizer and EU Trade Commissioner Cecilia Malmström met in Brussels as part of the new Executive Working Group envisioned by President Trump and President Juncker in the July 25th joint statement on reducing tensions stemming from the steel and aluminum tariffs. In a statement on the matter, the Office of the USTR offered some insight into the timing of these efforts. Notably, according to the document, the Ministers are slated to meet in November to “finalize outcomes,” after which the USTR will begin consultations with Congress. Read more [here](#).
- Canada Foreign Minister Chrystia Freeland and USTR Lighthizer wrapped up another day of talks on Tuesday without reaching a breakthrough on the renegotiated agreement. When asked about the goal of striking a deal before September 30th, Freeland insisted that Canada’s “only focus” is achieving a deal that’s good for Canadians. President Trump also weighed in on the matter on Tuesday, [telling](#) reporters, "With Canada, they want to make a deal very much. Me? If we make it, that's good. And if we don't make it, that's OK too."
- On Thursday, September 13th, the FTC began its highly anticipated set of hearings on “Competition and Consumer Protection in the 21st Century” with three panels at Georgetown University Law Center. The panel discussions were conducted at a very high level, intended to simply begin the process of engaging with new ideas on competition law and consumer privacy, as opposed to discussing details of specific policy proposals. FTC Chairman Joseph Simons gave [opening remarks](#) to begin the day and frame the discussion for all of the hearings going forward. Chairman Simons primarily discussed competition issues, but also mentioned that privacy and data security will be an important topic for later hearings as well. Notably, he clearly stated that he has an open mind to new ideas and methods to apply in antitrust law, and specifically stated that recent economic studies have shown that less competition and more market concentration have correlated with the beginning of the broad antitrust consensus that developed with the Chicago-school style of thinking in the 1980s.

IV. International Updates:

- On September 12, the European Parliament approved changes to the EU Copyright Directive, including two more controversial provisions found in Articles 11 and 13. Article 11 would require news aggregation and search sites such as Google and Facebook to pay news publishers for showing news snippets or linking to news stories on other sites. Article 13 would have required sites to filter for uploaded content that would infringe copyright(s). The new rules must get final approval from the European Commission and EU member

states later this year, although experts say it is unlikely it will be rejected. More information is available [here](#).

V. Industry Updates:

- On September 26th from 1:15-6:00 p.m., Concurrences Review & The George Washington University Law School will hold a conference titled “Where is Antitrust Policy Going?” The event will feature three panelists including Barry Lynn, Executive Director of the Open Markets Institute; Maureen Ohlhausen, FTC Commissioner; and Rebecca Slaughter, FTC Commissioner. Read more [here](#).
- On Wednesday, Mitch Glazier, President of the Recording Industry Association of American (RIAA) wrote an op-ed in *Billboard* criticizing SiriusXM for its opposition to the Music Modernization Act (MMA). Instead of accepting the “give a little get a little” deal under the MMA, SiriusXM has instead focused its efforts on “special carve-outs and legal chicanery,” Glazier writes. SiriusXM’s reasons for opposing the MMA are threefold, Glazier claims: “1) They had to pay to settle litigation they lost because they didn’t want to pay legacy artists and don’t want to pay after those agreements expire in a few years; 2) They want to pay less than their competitors and deny fair market value for the recordings they play; and 3) they want to deny songwriters the chance to make a case for better rates in court.” Read more [here](#).
- On Tuesday, September 11, 2018, the Digital Citizens Alliance hosted a panel discussion about the intersection of online business models and policies. The event provided context for the Federal Trade Commission’s (FTC) [Competition and Consumer Protection in the 21st Century hearings](#) on Thursday, September 13, 2018. There was lively discussion amongst the panelists about political manipulation of the public, illicit sale of goods and services, and the overall lack of privacy for consumer data gathered from digital platforms. The political manipulation is created from people getting their news from an algorithm created by the tech companies that own the digital platforms. Thus, the news provided to a user is tailored to their beliefs or viewpoints not accounting for alternative perspectives. When discussing the sale of illicit goods and services a large part of the conversation revolved around whether digital platforms like Google or Facebook know about what is on their platforms or instead these platforms are absentee owners. Furthermore, both audience members and panelists remarked that § 230 gives liability protections to digital platforms to say we did not know to escape liability for illegal activities found on their platforms. Finally, the panel agreed that digital platforms need more accountability when it comes to protecting consumer data and making the consumers aware of what data is collected.
- On Wednesday, September 12, the Federalist Society for Law and Public Policy Studies held a [panel discussion](#) titled “Competition and Consumer Protection: Focusing on Antitrust and Consumer Protection Issues.” The panel featured three guests: Noah Phillips, Commissioner of the Federal Trade Commission (FTC); Debbie Feinstein, partner at Arnold & Porter and head of the firm’s Global Antitrust Group; and John Yun, Associate Professor of Law at the Antonin Scalia Law School and Director of Economic Education at the Global Antitrust Institute. Commissioner Phillips provided more background regarding the upcoming set of hearings and the current state of the national antitrust discussion. He said that he hoped the hearings would open a productive forum for public discussion of antitrust and consumer protection issues, giving the FTC the opportunity to hear from those

impacted by these rules with the goal of gathering sufficient information to then adjust enforcement priorities accordingly.