



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT FEBRUARY 8, 2019



I. Congressional Updates:

- On Thursday, the Senate Judiciary Committee announced its subcommittees for the 116th Congress, including the formation of a Subcommittee on Intellectual Property. Sen. Tillis (R-NC) will Chair the Subcommittee and Sen. Coons (D-DE) will serve as its Ranking Member. In addition, the following senators will serve on the Subcommittee: Graham (R-SC), Leahy (D-VT), Grassley (R-IA), Blumenthal (D-CT), Cornyn (R-TX), Harris (D-CA), Lee (R-UT), Whitehouse (D-RI), Sasse (R-NE), Hirono (D-HI), and Blackburn (R-TN). More info. [here](#).
- On Monday, members of the Creative Rights Caucus sent a letter urging United States Trade Representative (USTR) Robert Lighthizer to clarify that the cultural carveout provision in the U.S.-Mexico-Canada Agreement (USMCA) is unique to Canada and the USMCA and will not extend to any future free trade agreements or any current or future U.S. trading partner. The letter explains that the group is disappointed that the cultural carveout was included in the final text of the trade agreement and reasons that this provision “erroneously suggests that the creative economy is not worthy of the open market.”
- On Facebook’s 15th year anniversary, Sen. Josh Hawley (R-MO) expressed his concerns about the company’s practices and urged his colleagues to reconsider overly broad immunity granted to internet platforms by Section 230 of the Communications Decency Act. In a series of tweets on Monday, Sen. Hawley called for “an open, honest discussion on Section 230,” and characterized the provision that gives immunity from liability for providers and users of platforms a “sweetheart deal from the government” that allows the social media platform to

Headlines and Highlights:

- Senate Judiciary Committee IP Subcommittee announced.
- CRC writes to USTR to express disappointment with cultural carveout provision in USMCA.
- Sen. Hawley urges Congress to reconsider overly broad immunity granted to internet platforms by Section 230.
- GIPC releases 2019 international IP index.
- Authors and publishers raise concerns about summaries of original works on Amazon.

In the Blogs:

[Section 230: Fix It or Lose It?](#)

Illusion of More

February 5 by David Newhoff

[“Simsub” and SuperBowl Ads: Canadians, Enjoy Them While You Can](#)

Hugh Stephens Blog

February 4 by Hugh Stephens

[US IP Enforcement Coordinator Under Trump Asks, “What Can We Do Differently?”](#)

IP Watch

February 5 by William New

“avoid the usual checks and balances of liability.” The freshman senator has been a vocal critic of big tech and scored a spot on the Senate Judiciary Committee. Read more [here](#).

- A group of Democrats announced on Wednesday that they would not support the USMCA in its current form, citing concerns that the deal does not address issues pertaining to prescription drug costs, labor and environmental standards, and outsourcing incentives. The following Democrats issued statements on the matter: Reps. DeLauro (CT-03), Ryan (OH-13), Schakowsky (IL-09), Pascrell (NJ-09), Golden (ME-02), and Kaptur (OH-09). Read more [here](#).

II. Judicial Updates:

- An artist in Nevada filed a lawsuit in the U.S. District Court in Nevada late last week alleging that Ariana Grande infringed federal copyright through imagery in the pop star’s “God is a Woman” music video. Vladimir Kush claims that the image of a woman in a candle flame in the music video closely resembles paintings Kush created and copyrighted in 1999 and 2000. Read more [here](#).

III. Administration Updates:

- On Tuesday, during his second State of the Union address, President Trump mentioned IP twice in the context of trade. In a moment addressing the ongoing trade war with China, Trump asserted that “we are now making it clear to China that after years of targeting our industries, and stealing our intellectual property, the theft of American jobs and wealth has come to an end,” and touted the tariffs his administration recently imposed on \$250 billion dollars of Chinese goods. Second, Trump urged Congress to pass implementation legislation for the USMCA, briefly mentioning that the agreement will protect IP. Read more [here](#).
- Per the recently-enacted Orrin G. Hatch-Bob Goodlatte Music Modernization Act, the U.S. Copyright Office issued a notice of proposed rulemaking on Tuesday regarding the exception for certain noncommercial uses of Pre-1972 Sound Recordings. To qualify for this exemption, a user must file a notice of noncommercial use after conducting a good faith, reasonable search to determine whether the Pre-1972 Sound Recording is being commercially exploited, and the rights owner of the sound recording must not object within 90 days. Written comments must be received by the Copyright Officer by March 7, 2019. Read more [here](#).
- On Tuesday, the Copyright Royalty Judges commenced the captioned proceeding to set royalty rates and terms to license the copyrights of songwriters and publishers in musical works made and distributed as physical phonorecords, digital downloads, and on-demand digital streams. The rates and terms shall be effective from January 1, 2018, through December 31, 2022. Read more [here](#).
- POLITICO reported that USTR Robert Lighthizer told senators in a closed door meeting on Wednesday that the administration could use Section 301 of the Trade Act to enforce aspects of the U.S.-Mexico-Canada Agreement (USMCA). This could be part of the administration’s effort to appease Democrats who have argued that strong enforcement of the labor and environment provisions in the USMCA is crucial to their support. A congressional aide told POLITICO that the USTR did not discuss this idea in great detail with senators during the meeting. Read more [here](#).

IV. International Updates:

- On Thursday, the U.S. Chamber of Commerce Global Innovation Policy Center (GIPC) released the 7th addition of its International IP Index, which ranks the IP climate in 50 world economies. Category 2 of the report, titled Copyrights, Related Rights, and Limitations, notes how challenging the environment is for creators and copyright holders in the vast majority of sampled economies, asserting that the situation is “particularly dire” in regards to online enforcement. The United States, United Kingdom, and Singapore rank at the top of this category, with Egypt, Pakistan, and Vietnam falling at the bottom of the list. The report also notes that Russian authorities have introduced and implemented a range of new laws and regulations to help combat the high levels of online infringement over the past half-decade. Read more [here](#).
- The GIPC report asserts that the USMCA “raised the bar for IP in free trade agreements,” claiming that the provisions that provide a 10-year term of regulatory data protection for biologics, more effective trade secrets protection, and stronger enforcement mechanisms against counterfeit goods “lay the foundation for 21st century IP protection.” Read more [here](#).

V. Industry Updates:

- The Wall Street Journal reported this week that authors and publishers are concerned about the recent surge in summaries of their original work available on Amazon. Stakeholders are particularly concerned that some consumers mistakenly buy these summaries instead of the original works, diminishing sales and profits for authors and publishers. The article points out that these summaries sometimes even carry a “best-seller” label. Amazon removed several summary titles after being contacted by the Wall Street Journal. Read more [here](#).
- On Wednesday, music-streaming service Spotify announced it had agreed to buy Gimlet Media and Anchor, two startups specializing in producing podcast content. Spotify CEO Daniel Ek has said previously that he sees other kinds of audio content as critical to the company’s future success. “Ultimately, if we are successful, we will begin competing more broadly for time against all forms of entertainment and informational services, and not just music streaming services,” Mr. Ek wrote in a corporate blogpost. The financial details of the transaction were not disclosed, but Spotify had earmarked \$500 million for deals this year. Read more [here](#).
- Amazon identified the problem of counterfeits in its online marketplace as a risk factor to the company’s financial performance in its annual 10-K filing to the Securities and Exchange Commission (SEC). The regulatory filing cautions that Amazon “could be liable for fraudulent or unlawful activities of sellers” because the law relating to the liability of providers of online payment services is “unsettled.” CNBC reports that this is the first time the company has mentioned the problem of counterfeits in its marketplace in this annual filing to the SEC. Read more [here](#) and [here](#).
- In comments to advise the USTR on its upcoming Special 301 report, the Computer & Communications Industry Association (CIIA) urged the USTR to confront what they perceive as growth of trade barriers erected under the cover of copyright changes. In regards to the EU Copyright Directive, the comments claim that the proposal would “upend nearly

two decades of established law,” and threaten U.S. digital exports “by eliminating long-standing legal protections for online services that are a cornerstone of Internet policy.” Read more [here](#) and [here](#).