



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 JUNE 28, 2019



I. Congressional Updates:

- On Wednesday, July 17th, at 2:30 p.m. ET, the Senate Judiciary IP Subcommittee will hold a hearing on “Oversight of the United States Copyright Office.” Register of Copyrights and Director of the U.S. Copyright Office Karyn A. Temple is slated to testify before the Subcommittee. More info. [here](#).
- On Wednesday, the House Judiciary Committee held a hearing titled “[Oversight of the U.S. Copyright Office](#).” Register Karyn Temple was the lone witness. The hearing focused on Copyright Office modernization efforts (emphasis on IT), Copyright Office registration process and pendency times, the Copyright Alternative in Small-Claims Enforcement Act of 2019 (CASE Act, [H.R. 2426](#), [S. 1273](#)), implementation of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA), compulsory license for satellite retransmission of broadcast television distant signals (STELA) reauthorization, section 512 study of the Digital Millennium Copyright Act (DMCA), and digital piracy. Chairman Nadler (D-NY) outlined the focus of the hearing in his opening remarks, touching on the topics listed above. In particular, the Chairman noted that the *Fourth Estate* case underscores the need for the modernization of the Copyright Office’s IT systems. Ranking Member Collins (R-GA) joined the Chairman’s call for a greater emphasis on Copyright Office modernization. The Ranking Member also mentioned the CASE Act and acknowledged the creators in the hearing room. Register Temple touched on the Copyright office’s progress on the focus areas highlighted in its [Strategic Plan](#). She also expressed support for a voluntary small claims tribunal within the Copyright Office, and in response to a line of questioning from Rep. Jeffries (D-

Headlines and Highlights:

- Senate Judiciary IP Subcommittee to hold Copyright Office oversight hearing on Wednesday, July 17th.
- Register of Copyrights Karyn A. Temple testifies at House Judiciary Committee oversight hearing.
- House Ways & Means Trade Subcommittee considers Mexico’s labor reform in the context of the USMCA at hearing.
- Lawmakers consider platforms’ content moderation policies, with a particular emphasis on the role of algorithms and AI in filtering out harmful content.
- Supreme Court grants certiorari to hear the *Georgia v. PublicResorce.Org* case.

In the Blogs:

[Copyright Review in Canada: INDU Committee Issues Clumsy and Tone-Deaf “We’re in Charge” Press Release](#)

Hugh Stephens Blog

June 24 by Hugh Stephens

NY) and Ranking Member Collins, supported the framework for the tribunal in the CASE Act. In response to several questions, Register Temple testified that Copyright Office modernization is of the utmost importance. Temple noted that it is working on improving three main areas: (1) recordation modernization (2) public records system, and (3) registration system. In response to questioning from Chairman Nadler and others, Register Temple stated that the Copyright Office supports letting the compulsory license for satellite retransmission of broadcast television distant signals (STELA), found in section 119, to expire. She claimed that the marketplace has addressed this issue and it is no longer needed.

- On Tuesday, the House Ways & Means Trade Subcommittee held a hearing on “Mexico’s Labor Reform: Challenges for an Improved NAFTA.” The purpose of the hearing was for members to discuss the opportunities and challenges posed by Mexico’s recently-passed labor reform legislation in the context of the United States–Mexico–Canada Agreement (USMCA). There seemed to be a consensus among panelists that Mexico will face significant challenges to realize its ambitious four-year implementation plan, especially given that policymakers in Mexico are facing severe spending cuts and entrenched institutions that benefit from the current system have already launched legal challenges against the reforms. During the question and answer portion of the hearing, Democrats asked witnesses how the U.S. government can help Mexico stay on track on its implementation timeline, monitor the implementation process, and enhance enforcement mechanisms in the new pact to keep Mexico accountable for the labor standards enshrined in its labor annex. On the other side of the aisle, there seemed to be an increased sense of urgency from Republican members to put legislation to implement the renegotiated agreement to a vote. Ranking Member Buchanan (R-FL), for instance, cautioned that delaying the ratification of the agreement will harm American workers. Reps. Jason Smith (R-MO), George Holding (R-NC), Tom Rice (R-SC), and Ron Estes (R-KS) reiterated the need to put the USMCA to a vote as soon as possible. Of note, when speaking about the USMCA’s many perceived benefits, Rep. Estes touted that the new pact protects IP, saying “The USMCA strengthens some of those patents, copyrights, and trademarks.” Watch online [here](#).
- On Tuesday, a group of 27 freshmen Democrats sent United States Trade Representative (USTR) Robert Lighthizer outlining a number of pending concerns they would like resolved before they will consider voting “yes” on legislation to implement the USMCA. Specifically, the letter urges the administration to axe the provision providing ten years of data exclusivity for biologic drugs, strengthen the text’s labor and environmental standards, and add “swift and certain” enforcement mechanisms. The letter also calls on the Administration to restore the Country of Origin (COOL) meat-labeling program passed by Congress and affirmed by U.S. courts in the USMCA. The diverse list of signatories includes progressives such as Alexandria Ocasio-Cortez (D-NY) and Ilhan Omar (D-MN), to more centrist lawmakers like Debbie Mucarsel-Powell (D-FL) and Katie Hill (D-CA). Furthermore, seven of the signatories represent districts Trump won in 2016 and nine are members of the New Democrats Coalition. Read more [here](#).
- This week, committees in both chambers of Congress held hearings to consider platforms’ content moderation policies, with a particular emphasis on the role of algorithms and artificial intelligence (AI) in filtering out harmful content. On Tuesday, the Senate Subcommittee on Communications, Technology, Innovation, and the Internet held a hearing on “Optimizing for Engagement: Understanding the Use of Persuasive Technology on Internet Platforms.” During his opening statement, Ranking Member Brian Schatz (D-HI) cautioned that algorithms utilized by YouTube, the successful deepfake of Speaker of the

House Nancy Pelosi (D-CA), and the propaganda video of the Christ Church shooting all demonstrate how platforms sometimes incentivize engagement at the expense of responsibility, safety, or morality. During the question and answer portion of the hearing, senators asked the panel of witnesses, including technology industry representatives, technologists, and thought leaders, about the interaction between Artificial Intelligence (AI) and platforms' persuasion-centered optimization methods. Panelists reinforced the need for the tech industry to work with legislators to create equitable regulations for platforms. More info. [here](#).

- Meanwhile, the House Homeland Security Subcommittee on Intelligence and Counterterrorism heard from a panel of witnesses on Tuesday about how social media platforms can use AI to aid in counterterrorism efforts, as well as the possible limitations of AI technology in this area. Subcommittee Chairman Max Rose (D-NY) seemed particularly skeptical about the efficacy of AI in taking down extremist content, noting that despite assurances from big tech platforms such as Google, Twitter, and Facebook that AI is improving content moderation practices, egregious problems continue to arise. Chairman Rose called claims that AI can accomplish everything “highly disturbing.” Witnesses seemed to agree with the Chairman that there are some significant limitations with AI technology’s ability to weed out bad content. For instance, Ben Buchanan, an assistant teaching professor at Georgetown University, pointed out that “context is vitally important, and context can often be hard for algorithms to detect.” After the hearing, full Committee Chairman Bennie Thompson (D-MS) told reporters that lawmakers are in an exploratory phase, and are not in the process of drafting legislation to combat the potential problems discussed during the hearing. “After we conduct all of our oversight, if the companies demonstrate that without government regulation, they can do this, then I would that there’s no need,” Thompson explained. More info. [here](#).
- Finally, the full House Homeland Security Committee heard from witnesses representing Facebook, Google, and Twitter, about their efforts to counter online terror content and misinformation during a hearing on Wednesday. Chairman Thompson kicked off the hearing by expressing his skepticism about the effectiveness of the Global Internet Forum to Counter Terrorism ([GIFCT](#)), which is industry-led initiative formed by Facebook, Twitter, Google, and Microsoft several years ago. Witnesses defended their content moderation policies and attempted to dispel concerns from certain members on the Committee that the platforms are restricting free speech. More info. [here](#).
- During a press conference on Thursday, House Speaker Nancy Pelosi (D-CA) told reporters that although the USMCA might need to be reopened to sufficiently mitigate Democrats’ outstanding concerns, she clarified that “It wouldn’t be like we’re opening it up,” adding “No, it would be surgical.” She also indicated that she thinks the USMCA might only need to be reopened to fix the provision’s enforcement mechanisms. “I could see a scenario where we would just, for the singular purpose of doing enforcement, that we would suggest that they should open,” Speaker Pelosi stated. Read a full transcript of Pelosi’s remarks [here](#).

II. Judicial Updates:

- On Monday, the U.S. Supreme Court granted certiorari to hear *Georgia v. Public.Resource.Org*. The open government activist group, Public.Resource.Org, published an annotated version of the State of Georgia’s legal code, and the state sued the group claiming that the annotated version was not legal edict, but rather a commentary on the law.

The District Court for the Northern District of Georgia originally sided with the State of Georgia. However, in October 2018, the U.S. Court of Appeals for the Eleventh Circuit held that the text in question is ineligible for copyright protection because it is “inherently public domain material.” Read more [here](#).

III. Administration Updates:

- On Wednesday, at a meeting organized by House Speaker Pelosi, Democrats met with USTR Lighthizer to discuss the USMCA. Democrats leaving the hour-long meeting seemed enthusiastic about the possibility of the caucus working with Lighthizer on a solution to some of their outstanding concerns. For instance, Representative Veronica Escobar (D-TX) told reporters that “Both the ambassador and speaker are doing everything they can do address the areas of concern.” Read more [here](#).
- Late last week, senators Amy Klobuchar (D-MN), Corey Booker (D-NJ), Patrick Leahy (D-VT), Richard Blumenthal (D-CT), Tammy Baldwin (D-WI), Ed Markey (D-MA), and Tina Smith (D-MN), sent letters to the Federal Trade Commission (FTC) and the Department of Justice (DOJ) asking for information about the agencies’ antitrust prods into big tech companies, beyond what has been leaked by the media. Earlier this month, reports surfaced that the agencies had divided the responsibilities for antitrust oversight over tech behemoths; the FTC is apparently taking the lead on investigating Facebook and Amazon, while the DOJ handles Apple and Google. The letter asserts that while the senators were “encouraged” by the recent media reports about the prods, they were also “somewhat troubled that such inquiries were not already underway.” Furthermore, the senators exclaim that they still have not confirmed whether “these investigations have actually been initiated.” Read more [here](#).

IV. International Updates:

- President Trump and Chinese President Xi Jinping are slated to meet on the sidelines of the G-20 summit on Saturday, June 30th. Reports surfaced this week that the leaders plan to announce a cease-fire in their ongoing trade dispute, which would avert the next round of U.S. tariffs on \$300 billion worth of Chinese imports, although the timing and details of any such deal are forthcoming. President Trump previously threatened to impose tariffs on the remaining products that were not covered by the first tranches at a rate as high as 25 percent if talks went poorly with President Xi. However, nothing has officially been confirmed by the Administration and President Trump told reporters on Wednesday that he was still willing to levy these tariffs on Chinese tariffs if talks this weekend were not satisfactory, while adding the caveat that he might opt for a level of ten percent instead of the originally-threatened 25 percent. China and the U.S. are expected to make this announcement in two coordinated press releases following the summit, instead of through a joint statement. Read more [here](#).

V. Industry Updates:

- On Thursday, the Association of American Publishers (AAP) filed a 12 page statement with the Federal Trade Commission (FTC) urging the Commission to more closely scrutinize the behavior of dominant online platforms that “pervade every aspect of the economy.” AAP argues that Amazon’s concentration of market power allows it to dictate terms to publishers, resulting in publishers paying more for Amazon’s services each year and receiving less in return. AAP argues that the FTC needs to take a closer look at dominating platforms that act both as a producer and seller in the marketplaces in which they operate. AAP also adds that

Google's complete dominance in online searching is highly problematic, "because its business model is largely indifference to whether consumers arrive at legitimate or pirated goods." On this topic, AAP calls for the FTC to investigate dominant platforms' use of nontransparent and manipulated search algorithms and discovery tools. Read more [here](#) and read the statement [here](#).

- Late last week, *Bloomberg* published an article written by journalist Vernon Silver titled "The Legal Loophole That May Leave Some of Rock's Greatest Riffs Up for Grabs." In the article, Silver discusses the ongoing copyright infringement lawsuit between representatives of the band Spirit and Led Zeppelin. Spirit alleges that Jimmy Page, guitarist for Led Zeppelin, stole the riff from their famous song "Stairway to Heaven" from an obscure Spirit song called "Taurus." However, the crux of the article has less to do with the lawsuit itself and more with the potential impact it could have on pre-1978 copyrighted songs. In June 2016 in Los Angeles federal court, the judge presiding over the case stipulated that it was irrelevant whether the songs' album recordings sounded alike; what really mattered was whether Page had lifted the Spirit song as it had been written on the sheet music submitted to the U.S. Copyright Office in 1967. However, the "deposit copy" as it's called, is a spare document often handwritten by a record company scribe who listened to the record and distilled it into only 124 notes of piano music. Many of the pre-1978 deposit copies do not contain all the nuances of the song, such as guitar solos. The author alleges that if the court confirms this interpretation it could lead to a number of famous guitar riffs—from Marvin Gaye, Carlos Santana and Donna Summer—being without protection. Read more [here](#).
- In an article published on *The Verge* on Monday, Ashley Carman explains how a current copyright infringement case between model Gigi Hadid and an agency Xclusive-Lee could have implications for how celebrities treat pictures of themselves and paparazzi culture, as well as what images fan accounts on Instagram are permitted to post. Xclusive-Lee alleges that Hadid infringed its copyright by posting one of the agency's pictures to her Instagram account. However, Hadid's team contends that the model did not infringe any copyright "because Ms. Hadid posed for the camera and thus herself contributed many of the elements that the copyright law seeks to protect." The team further argues that Hadid's post constitutes fair use because she contributed to the photo from smiling and her outfit. The article notes that the lawsuit challenges the long-held assumption that "photographers have full copyright when they capture an image, particularly in public." Read more [here](#).
- On Tuesday, NetChoice hosted a discussion, "Don't Shoot the Message Board - Section 230's Importance to American Jobs." Carl Szabo, Vice President and General Counsel at NetChoice, moderated the conversation with Mike Masnick (CEO of the Copia Institute and author of the report, [Don't Shoot the Message Board](#)), Emma Llanso (Director of the Free Expression Project at the Center for Democracy and Technology), and Jesse Blumenthal (Vice President of Technology & Innovation at Stand Together). Masnick explained that his research suggests there is a positive correlation between the liability provided to tech platforms through laws such as Section 230 of the Communications Decency Act and economic prosperity. He explained that tech companies in America are five to ten times more likely to raise millions in venture capital compared to their European counterparts. Llanso echoed the previous speaker's sentiments about the perceived economic benefits of the statute that provides immunity from liability for providers and users of platforms, and claimed that the biggest beneficiaries from this statute are small tech companies and startups, who reap the rewards of increased investment.