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AMERICAN CONTINENTAL GROUP

## CONTENT & TECHNOLOGY POLICY REPORT OCTOBER 15, 2021



### I. Congressional Updates:

- The Senate Rules & Administration Committee is slated to hold an oversight hearing on the Library of Congress' modernization efforts next Wednesday, October 20<sup>th</sup>, at 3:00 p.m. The following witnesses are slated to testify before the Committee: Dr. Carla Hayden (Librarian of Congress, The Library of Congress); Ms. Shira Perlmutter (Register Of Copyrights And Director, U.S. Copyright Office); Dr. Mary Mazanec (Director, Congressional Research Service); and Mr. Jason Broughton (Director; National Library Service for the Blind and Print Disabled, Library of Congress). More info. [here](#).
- [In a letter on Friday](#), Democratic lawmakers urged Federal Trade Commission (FTC) Chair Lina Khan to keep tech companies accountable for recently announced policy changes aimed at protecting young people online. "These policy changes are no substitute for congressional action on children's privacy, but they are important steps towards making the internet safer for young users. ... We therefore encourage you to use every tool at your disposal to vigilantly scrutinize companies' data practices and ensure that they abide by their public commitments," Sen. Ed Markey (D-MA), Rep. Kathy Castor (D-FL) and Rep. Lori Trahan (D-MA) wrote.
- On Tuesday, Reps. David Cicilline (D-RI) and Ken Buck (R-CO), the chair and ranking member of the House Judiciary subcommittee on antitrust, published an op-ed through CNBC discussing the Facebook Whistleblower and antitrust concerns. "This latest evidence of Facebook's moral failures is credible and damning, but these concerns are not new. Instead, this evidence confirms what we have

### Headlines and Highlights:

- Library of Congress Modernization Hearing Scheduled
- Democratic Lawmakers Sent a Letter to Lina Kahn on Keeping Tech Companies Accountable
- Senators Klobuchar and Grassley Announce an Anti "Self-Preferencing" Bill
- USCO Released a FRN on Ancillary Copyright Protections
- FTC Sent Two "Warning" Letters This Week
- Amazon Accused of Promoting its Own Products

### In the Blogs:

- Hugh Stephens Blog: [Do News Publishers "Own" the News? \(And Should They be Compensated when Others use News Content they Publish?\)](#)

known about Facebook for years — that it will always prioritize growth and profit over everything else,” the op-ed cautions. It also mentions the package of bills the House Judiciary Committee passed on a bipartisan basis aimed at corralling Big Tech, calling for action to be taken both against Facebook as well as future anti-competitive corporations. Read the full op-ed [here](#).

- The House Financial Services Committee’s task force on artificial intelligence met on Wednesday to examine the “benefits, harms and ethical risks of AI technology.” The Office of Science and Technology Policy (OSTP) in the White House announced last Friday that it would develop a “bill of rights” to protect against harmful consequences of artificial intelligence, such as facial recognition tools that lead to disproportionately high arrests of minorities or hiring tools that disadvantage minority applicants. OSTP Director Eric Lander and Alondra Nelson, deputy director for science and society, [wrote in a Wired op-ed](#), “Americans have a right to expect better. Powerful technologies should be required to respect our democratic values and abide by the central tenet that everyone should be treated fairly. Codifying these ideas can help ensure that.” OSTP also stated that it was [putting out a public request for information](#) related to biometric technologies, such as facial recognition, voice analysis and heart rate tracking tools.
- On Thursday, the *Washington Post* reported that Senators Amy Klobuchar (D-MN) and Chuck Grassley (R-IA) will introduce a bill early next week that would make it “illegal for Amazon, Apple, Facebook, and Google to engage in ‘self-preferencing,’ the tech giants ‘practice of giving their own products and services a boost over those of rivals on their platforms.” The bill is an attempt to update the Sherman Act of 1890 to make it applicable in the digital era. Klobuchar reported that they already have secured six cosponsors, Senators Dick Durbin (D-IL), Lindsey Graham (R-SC), Richard Blumenthal (D-CT), John Kennedy (R-LA), Cory Booker (D-NJ), Josh Hawley (R-MO), Mazie Hirono (D-HI), Mark Warner (R-TN), and Cynthia Lummis (R-WY). A notable omission is Sen. Mike Lee (R-UT), the top Republican on the Senate Judiciary Antitrust panel who does not support the legislation as he views it as “government regulation dressed up as antitrust reform.” Read the full article [here](#).
- On Thursday, the House Energy & Commerce Committee announced new legislation to reform Section 230 of the Communications Decency Act. The legislation, titled the [Justice Against Malicious Algorithms Act](#), would “amend Section 230 to remove absolute immunity in certain instances. Specifically, the bill would lift the Section 230 liability shield when an online platform knowingly or recklessly uses an algorithm or other technology to recommend content that materially contributes to physical or severe emotional injury.” The bill is expected to be introduced soon by Representatives Frank Pallone (D-NJ), Mike Doyle (D-PA), Jan Schakowsky (D-IL), and Anna Eshoo (D-CA). Read the press release [here](#). Bill text can be found [here](#). Statements of support for the bill can be found [here](#).

## II. USCO Updates:

- On Friday, October 15, the U.S. Copyright Office announced that outdated applications will be removed from the Electronic Registration System. Any draft application created on or

before November 30, 2020, will be permanently deleted on November 30, 2021. Draft applications created and saved on or after December 1, 2020, will not be affected.

- The U.S. Copyright Office will host its next public modernization webinar on October 25, 2021, at 1:00 p.m. ET. The webinar will outline the reasons the Office is looking into modernizing its contact center and the potential benefits for the public. Participants must [register for this Copyright Office webinar](#).
- On October 26, 2021, from 10:00 a.m. to 2:30 p.m. ET, the Copyright Office and the U.S. Patent and Trademark Office will host their next AI-related event: Copyright Law and Machine Learning for AI: Where Are We and Where Are We Going? This event will explore machine learning in practice, how existing copyright laws apply to the training of artificial intelligence, and what the future may hold in this fast-moving policy space. You can register on the [event](#) website.
- The U.S. Copyright Office has published a [Federal Register notice](#) announcing a study on the matter of “ancillary copyright” protections for publishers, with a focus on press publishers. This study is in response to a May [letter](#) to USCO from Sens. Tillis, Leahy and others requesting that the Office “assess the viability of adding specific protections to U.S. copyright law similar to those now being implemented in Europe.” The leaders of the Senate Judiciary IP Subcommittee also asked that the report include a discussion of relevant exceptions such as “fair use” or “quotation” exceptions and examine any international treaty implications. The Federal Register notice also announces that the Copyright Office will hold a virtual public roundtable on the topic on December 9<sup>th</sup>. Comments are due by 11:59 p.m. ET on November 26<sup>th</sup>. For additional information, including instructions for submitting comments, please visit the Office [website](#). Comments must be received no later than 11:59 p.m. eastern time on November 26, 2021.

### III. Judicial Updates

- Apple filed a notice of appeal in the Epic antitrust suit last Friday and asked the court to stay an injunction that would allow third-party developers to include links to outside payment methods until the appeals process is completed. Read more [here](#).

### IV. Administration Updates

- The FTC sent out a letter on Wednesday, [warning more than 700 businesses](#) about practices the agency has determined to be unfair or deceptive surrounding fake online reviews. Recipients included Adobe, Airbnb, Alphabet, Amazon, Apple, AT&T, Charter Communications, Comcast, Cox, Dell, DirecTV, DISH, eBay, Facebook, Fitbit, Google, HP, Hulu, IBM, Lenovo, LG, LinkedIn, Lumen, Lyft, Match Group, Microsoft, Motorola, Netflix, PayPal, Postmates, Ring, Samsung, T-Mobile, Uber, Verizon, WhatsApp, Yelp, YouTube, and Zillow.

- The FCC is committing another \$1.1 billion as part of its \$7.17 billion Emergency Connectivity Fund program. A coalition of 57 education and library groups called on Congress last week to include at least \$4 billion in funding for the program in a [letter to top Democrats](#). Three Democrats, Senators Ed Markey (D-MA) and Chris Van Hollen (D-MD), and Rep. Grace Meng (D-NY), have introduced a bill, the SUCCESS Act, that would authorize \$40 billion over five years for the FCC program.
- On Thursday, October 14, CFPB Director Rohit Chopra and FTC Chair Lina Kahn sent a statement on the Amicus Brief filed in *Henderson v. The Source for Public Data, L.P.* “We are concerned that if tech companies circumvent consumer and banking laws, using Section 230 and other tactics, it will give a free pass to some, undermining fair competition.” The two agencies, they said, would “be closely scrutinizing tech companies’ efforts to use Section 230 to sidestep applicable laws and will seek to ensure that this legal shield is not being used or abused to gain an undue competitive advantage over law-abiding businesses.” Read the full statement [here](#).

## V. International Updates:

- On Monday, a second Facebook whistleblower is set to testify before the British Parliament. Sophie Zhang is a former Facebook data scientist who worked for the “Facebook Site Integrity fake engagement team, dealing with bot accounts, often operated by government backed agencies in countries such as Russia.” She claims to have documents that allege Facebook ignored her findings that the Honduran president ran a disinformation campaign for nearly a year before taking action, and that the company was slow to take action on a state-backed harassment campaign against journalists in Azerbaijan. Also, this week the first whistleblower, Frances Haugen, stated she will give evidence to the Parliament committee later this month on October 25. Read more [here](#).
- As many countries have been actively cracking down on big tech, South Africa has been oddly quiet, but is expected to increase its activity in the coming weeks. According to POLITICO, “South Africa has mainly been dominated by U.S. tech platforms, and stronger scrutiny against them could create opportunities for Chinese rivals to move in.” This will be an interesting development in the international antitrust enforcement arena to keep an eye on. Back in August, China’s ambassador to South Africa [wrote in an op-ed](#) for the newspaper BusinessDay saying, “Monopolistic actions in the platform economy ... [are] a matter of grave concern for South Africa’s Competition Commission. No country can turn a blind eye to the negative externality of the emerging digital economy.”

## VI. Industry Updates:

- In an article published by *Reuters*, Amazon is accused of knocking off products it sells on its website and of exploiting its vast trove of internal data to promote its own merchandise at the expense of other sellers. Thousands of pages of internal Amazon documents reportedly reveal that Amazon’s private-brand team in India exploited data from Amazon.in to copy

products sold by other companies. The employees also allegedly rigged Amazon search results to favor Amazon's products. Read the full story [here](#).