



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT OCTOBER 8, 2021



### I. Congressional Updates:

- Following the debut of the 60-Minutes episode featuring the “Facebook Files” whistleblower on Sunday, on Monday, Facebook, Instagram, and multiple other apps associated with the company were down for much of the day. On Tuesday, the whistleblower testified in front of the Senate Commerce Committee, and Senators expressed their disdain for the Big Tech giant. “Big tech companies have gotten away with abusing consumers for far too long,” Sen. Marsha Blackburn (R--TN), the panel’s Ranking Member, told *Morning Tech* in a statement. “It is clear that Facebook prioritizes profit over the well-being of our children.” The hearing emphasized bipartisan support for regulation on Facebook, with many senators expressing their concern over the online recruitment of teenagers and creating an Instagram targeted at 8-12-year old’s. Senators utilized Ms. Haugen's testimony and disclosure to exhibit the mental health detriments Facebook's products engender within pre-adults. Meanwhile, Zuckerberg published a 1,300-word [memo](#) in response to Haugen’s testimony on his Facebook page. Zuckerberg didn’t address calls for him to testify, instead reiterating that the work the platform is doing on itself has been misrepresented. Watch the full hearing [here](#).
- In an editorial published in *Roll Call* on Tuesday, Senators Dick Durbin (D-IL) and Bill Cassidy (R-LA) called on their colleagues to pass the INFORM Act ([S. 936](#)) to help combat the trafficking of counterfeit and pirated goods through e-commerce platforms, which the senators warn can threaten public health and safety, as well as national security. Reps. Jan Schakowsky (D-IL) and Gus Bilirakis (R-FL) introduced a House version of that bill Tuesday. Read the full op-ed [here](#) and more [here](#).

### Headlines and Highlights:

- Senate Holds Kanter Nomination Hearing for Antitrust Division
- Facebook’s Bad Week Gets Worse
- Whitney Levandusky selected as the Supervisory Copyright Claims Attorney
- DOJ Announces they will sue companies who fail to report cybersecurity breaches
- Sarah Bianchi Sworn In
- FTC Expands Enforcement Options
- Facebook Whistleblower to Speak with the EU

### In the Blogs:

- Hugh Stephens Blog: [Thank You Professor! “Explaining” Section 230 to Canadians](#)

- The top Republicans of the Senate and House Judiciary committees, as well as their respective antitrust panels, [wrote to the leaders](#) of the FTC and DOJ antitrust division on Tuesday saying, “We are worried that your agencies appear to be applying the law unequally to similarly situated respondents, raising serious concerns about the fairness of America’s antitrust enforcement regime.” The signees include Sen. Mike Lee (R-UT), Rep. Ken Buck (R-CO), Sen. Chuck Grassley (R-IA), Rep. Jim Jordan (R-OH).
- On Wednesday, the Senate Judiciary Committee considered multiple nominations including Jonathan Kanter to serve as Assistant Attorney, Antitrust Division, at the Department of Justice (DOJ). Kanter’s confirmation would complete what some view as the aggressive positioning of the Biden Administration against Big Tech. EU competition chief Margrethe Vestager expressed her support for Kanter and the Biden Administration’s positioning saying, “It’s really, really interesting what is happening in the U.S. right now, both on competition, law enforcement — and the signals sent there with Lina’s appointment, with Kanter, with the executive order [which Wu helped put together]. That is like a dream come true to see a president take that kind of interest in so many different areas” ([Morning Tech](#)). Read Kanter’s opening statement [here](#). During the hearing, Ranking Member Grassley (R-IA) asked questions focused on concentration and consolidation in the agriculture and livestock industry. He also noted that it was encouraging to him that Kanter is “a forceful critic of big tech.” Antitrust Subcommittee Chairwoman Klobuchar (D-MN) praised Kanter for his “strong advocacy for vigorous antitrust enforcement.” She also asked how Kanter would ensure that companies comply with settlement consent decrees following merger approval. Ranking Member Lee (R-UT) of the Antitrust Subcommittee raised concern with the divergence between the DOJ and Federal Trade Commission’s (FTC) standards of review to mergers and acquisitions under their shared jurisdiction (See his [letter on this topic](#)). He also asked Kanter whether the DOJ will ask merging companies about their ESG policies. Kanter said he was unable to answer that question in his current role. Sen. Blumenthal (D-CT) asked about interoperability and portability while promoting the [Access Act](#). Senator Tillis (R-NC) asked whether Kanter supports patent rights and if his views are consistent with antitrust law. Senator Tillis also asked whether Kanter would withdraw the [DOJ Policy Statement](#) on remedies for Standard Essential Patents subject to voluntary F/RAND Commitments. Finally, Tillis asked whether Kanter would withdraw [the ASCAP and BMI consent Decrees](#). In response to both questions, Kanter said he couldn’t prejudge the outcomes. Senator Padilla’s (D-CA) questions focused on gig workers’ employment status as independent contractors rather than employees. Watch the full hearing [here](#).
- On Wednesday, the Senate Commerce Committee convened the second hearing on consumer privacy and data breaches. The hearing focused on the Democrats’ proposal to launch a \$1 billion privacy and data security bureau within the FTC. The hearing featured testimonies from the following witnesses: [James E. Lee](#) (Chief Operating Officer, Identity Theft Resource Center); [Jessica Rich](#) (Of Counsel (Kelley Drye; Former Director, Bureau of Consumer Protection, Federal Trade Commission); [Edward W. Felten](#), (Robert E. Kahn Professor of Computer Science and Public Affairs, Princeton University; Former Chief Technologist, FTC); and [Kate Tummarello](#) (Executive Director, Engine). The hearing was the second in a series examining the growing urgency to protect consumer privacy and safeguard their data, as well as the need to ensure the FTC is equipped with the authorities and resources needed to fight digital harms and hold bad actors accountable for increasing

privacy violations, data breaches, internet scams, ransomware assaults and other harmful data abuses. Watch the full hearing [here](#).

- On Wednesday, the House Energy and Commerce Committee held a hearing on strengthening communications networks, touching on issues from broadband service, spectrum coordination, the state of telehealth amid the pandemic, and how to remove barriers to accessing it. Lawmakers will also discuss the importance of broadband during a public health crisis. Republican Federal Communications Commission (FCC) Commissioner Brendan Carr is one of the witnesses slated to testify before the Senate Commerce communications panel on Thursday regarding the state of telehealth. Carr will be the first sitting FCC commissioner to testify on the Hill in more than a year, according to Morning Tech.
- The Senate Rules & Administration Committee has postponed its oversight hearing of the Library of Congress' modernization efforts. The hearing, which was originally scheduled for Wednesday, is now scheduled for October 20<sup>th</sup>. 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](#).

## **II. USCO Updates:**

- On Wednesday, [Whitney Levandusky](#) announced that she has been selected as the Supervisory Copyright Claims Attorney to support the operations of the Copyright Claims Board. In this role, Levandusky will report to a Copyright Claims Officer in the Copyright Claims Board and supervise the support staff for the Copyright Claims Board, including the Attorney-Advisor (General), Paralegal and Program Specialist. Levandusky has been with the Copyright Office since 2015, serving as Attorney-Advisor for the Office of Public Information and Education.
- On Friday, October 8, the United States Copyright Office is undertaking a public study at the request of Congress to evaluate current copyright protections for publishers. Among other issues, the Office will consider the effectiveness of publishers' existing rights in news content, including under the provisions of title 17 of the U.S. Code, as well as other federal and state laws; whether additional protections are desirable or appropriate; the possible scope of any such new protections, including how their beneficiaries could be defined; and how any such protections would interact with existing rights, exceptions and limitations, and international treaty obligations. To aid in this effort, the Office is seeking public input on a number of questions. The Office also plans to hold a virtual public roundtable to discuss these and related topics on December 9, 2021. Read more [here](#).

### III. Judicial Updates

- On Wednesday, October 6, Deputy Attorney General Lisa Monaco said the Justice Department is prepared to take action under the False Claims Act, which permits the government to file lawsuits over misused federal funds, against government contractors and other companies who receive U.S. government grants if they fail to report breaches of their computer systems or misrepresent their cybersecurity practices. “For too long, companies have chosen silence under the mistaken belief that it’s less risky to hide a breach than to bring it forward and to report it. Well, that changes today... Where those who are entrusted with government dollars, who are entrusted to work on sensitive government systems, fail to follow required cybersecurity standards, we’re going to go after that behavior and extract very hefty fines,” Monaco said. Read more [here](#).

### IV. Administration Updates

- On Monday, Ambassador Tai officially swore Sarah Bianchi in as Deputy United States Trade Representative (DUSTR). Her portfolio will include Asia, Africa, Investment, Services, Textiles, and Industrial Competitiveness. She was confirmed by the United States Senate on September 23, 2021. Also on Monday, USTR Katherine Tai voiced her opposition to China’s unfair trade practices and stated her intent on protecting the US economy from them. “Our objective is not to inflame trade tensions with China, but above all else, we must defend to the hilt our economic interests and that means taking all steps necessary to protect ourselves against the waves of damage inflicted over the years through unfair competition,” she asserted. Read more [here](#).
- Following Ambassador Katherine Tai’s announcement on October 4<sup>th</sup>, that USTR will start a targeted tariff exclusion process, USTR posted a Federal Register notice inviting public comments on whether to reinstate previously extended exclusions. The public comment period will last for 50 days, from October 12 through December 1. The text of the Federal Register notice inviting public comment can be viewed [here](#).
- Senate Intelligence Committee Chair Mark Warner (D-VA) urged Secretary of State Antony Blinken to increase international collaboration on emerging tech issues at this week’s ministerial meeting hosted by the Organization for Economic Cooperation and Development. In a letter to Blinken on Monday, Chairman Warner urged the Secretary of State “to use the OECD’s upcoming ministerial meeting on October 5-6, 2021, to work to establish rules and norms around strategic technology issues, including development and governance strategies and best practices for communications applications, AI-enabled products and services, next-generation networks, Internet of Things devices, blockchain and fintech products, and renewable energies.” Read the letter [here](#).
- The U.S. Department of Commerce recently published a [Federal Register Notice](#) (FRN) requesting nominations to serve on the [National Artificial Intelligence Advisory Committee](#) (NAIAC). The call for nominations seeks expert leaders from a broad range of AI-relevant disciplines from across academia, industry, non-profits and civil society, and federal laboratories, including those from underrepresented communities. “As intellectual property is

a bedrock of innovation, our stakeholders in the intellectual property community are uniquely positioned to offer valuable perspectives on areas such as science and technology research and development, technology transfer, commercial application, and economic competitiveness, related to artificial intelligence,” said Drew Hirshfeld. Nominations will be accepted until October 25 at 5 p.m. ET.

- The FTC decided to revive its rarely used “penalty offense authority” against for profit colleges that make misleading or deceptive claims. This is an interesting move, coming on the heels of the Supreme Court decision earlier this year that gutted its Section 13(b) authority to seek monetary damages from companies that engage in illegal conduct. Read more [here](#) and [here](#)
- FCC Commissioner Nathan Simington [announced changes to his staff](#): Marco Peraza is joining his office as wireline adviser, replacing Carolyn Roddy, who will join the International Bureau. Erin Boone will become his chief of staff, while continuing in her position as his wireless adviser. ... Rosenworcel [announced the agenda](#) for the FCC’s October open meeting. President Biden has also lagged on naming a permanent chair for the agency, taking longer than any other president. According to Morning Tech, the closest parallels are Jimmy Carter and Richard Nixon, who made their decisions in mid-September.
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- Friday October 8, marks FTC Commissioner Rohit Chopra’s last day at the agency. He’ll be sworn in as director of the Consumer Financial Protection Bureau on Tuesday. His departure creates a 2-2 partisan deadlock at the FTC which will make Chair Lina Khan’s job that much harder until the Senate confirms Alvaro Bedoya.

## **V. International Updates:**

- European Union Lawmakers are working on an invitation for the Facebook Files whistleblower, Frances Haugen, to present her findings to the European Parliament. They are currently working on a flagship content moderation bill, the Digital Services Act, and believe that her insights into the toxic practices of the platform can help them finalize the legislative language to regulate online content. “We must demand transparency from the tech companies and we must allow civil society, lawmakers and scholarly experts to have insight into the building blocks of the algorithms. This is the only way that we can have a public debate about the effects of these algorithms,” said Christel Schaldemose. While Parliament is aiming to vote on its revision of the text by the end of the year, EU institutions aim to finalize the Digital Services Act by mid-2022. Read more [here](#).

## **VI. Industry Updates:**

- The Advocacy group Consumer Reports delivered a [petition](#) to the FCC on Monday, calling on the agency to deny [a request from the Perdue for Senate campaign](#) that would allow “ringless voicemail,” or direct-to-voicemail calls, which would “throw open the door” to similar tactics by telemarketers. The petition has received more than 88,000 digital signatures.
- On Tuesday, October 5, wireless carriers will be able to bid on licenses for portions of 5G airwaves which are currently used by the Pentagon and known as “mid-band”. AT&T, Verizon and T-Mobile are among the 33 bidders who qualified to participate, per an FCC tally. Read more [here](#). New Street Research [predicts](#) the auction launching today will raise about \$25 billion and that AT&T, T-Mobile and Dish Network will emerge the big winners. LightShed Partners [estimates a total](#) of more than \$30 billion. Absent congressional direction, this money will go to the U.S. Treasury to pay down debt (Morning Tech).