



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT AUGUST 2, 2019



### I. Congressional Updates:

- On Tuesday, the Senate Judiciary IP Subcommittee held a hearing titled “Oversight of the U.S. Copyright Office.” Register of Copyrights and Director of the U.S. Copyright Office [Karyn A. Temple](#) was the lone witness. Subcommittee Chairman Thom Tillis (R-NC), Ranking Member Chris Coons (D-DE), and Sens. Blumenthal (D-CT) and Hirono (D-HI) were present and participated in the Q&A session. Sen. Blackburn (R-TN) stayed for Register Temple’s statement but left before the questioning. The hearing addressed many of the same topics discussed in June’s House Judiciary Copyright Office oversight hearing, including (1) Copyright Office modernization efforts; (2) implementation of the MMA; (3) combating digital piracy; (4) letting STELAR sunset; (5) DOJ’s review of the ASCAP and BMI consent decrees; (6) reducing registration pendency times; (7) DMCA exemptions; and (8) Copyright Office resources and appropriations. In his opening remarks, Chairman Tillis expressed concern that the Copyright Office does not have enough autonomy and authority to complete its modernization efforts in a timely manner. Chairman Tillis also announced the formation of a bipartisan and bicameral working group to discuss Copyright Office modernization. Register Temple highlighted the Copyright Office’s modernization efforts, including reducing pendency times and eliminating the backlog of workable registration claims. Register Temple advised Congress to let STELAR sunset and called for statutory changes to address the rise of digital piracy. Register Temple also reiterated her support for a voluntary small claims tribunal. More info. [here](#).

### Headlines and Highlights:

- Register Temple testifies before Senate Judiciary IP Subcommittee at Copyright Office oversight hearing.
- House Judiciary IP Subcommittee Ranking Member Martha Roby announces her retirement.
- Trade working group working with USTR to iron out concerns about the USMCA tells Speaker Pelosi that it is time for Lighthizer to provide responses and counterproposals to the members “as soon as possible.”
- The Artists Rights Alliance urges federal policymakers to consider dominant tech platforms’ threat to creative communities in antitrust probes.
- President Trump announces plans to impose ten percent tariffs on \$300 billion worth of Chinese goods.

### In the Blogs:

[The People the CASE Act Critics Don’t Want to Mention](#)

Illusion of More

July 29 by David Newhoff

- Rep. Martha Roby (R-AL) announced late last week that she plans to retire at the end of this term. The Alabama Republican, who was first elected to serve in the House of Representatives in 2010, is the Ranking Member of the House Judiciary IP Subcommittee. “While my name will not be on the ballot in 2020, I remain committed to continuing the fight for Alabama and the people I represent until I cast my last vote on the floor of the United States House of Representatives,” Rep. Roby said in a statement. Read more [here](#).
- Rep. Paul Gosar (R-AZ) joined his colleagues Reps. Mark Meadows (R-NC), Steve King (R-IA), and Ralph Norman (R-SC) to introduce the *Stop Censorship Act* ([H.R. 4027](#)) late last week. This bill seeks to combat what some Republicans have claimed is the censorship of conservative viewpoints on social media platforms by deleting language in Section 230 of the Communications Decency Act (CDA) that allows platforms to moderate “objectionable” content. Furthermore, the bill replaces this deleted language with new language allowing users to choose between a “self-imposed safe space” or “unfettered free speech.” Read more [here](#).
- On Tuesday, Senator Josh Hawley (R-MO) introduced the [Social Media Addiction Reduction Technology \(SMART\) Act](#), which would ban social media companies from building “addictive” features into their products. Specifically, the bill would make it illegal for social media platforms to lure users by offering them more content than initially requested. For example, the bill would ban YouTube’s “autoplay” feature, Facebook and Twitter’s “infinite scroll,” and Snapchat’s “streaks.” To combat the perceived problem of companies manipulating users into consenting to features, the legislation would require companies to design “accept” and “decline” boxes using the same formats, fonts, and sizes. It would also give the Federal Trade Commission (FTC) and the Department of Health and Human Services (HHS) the authority to ban similar practices. Finally, the *SMART Act* would empower users with the choice to monitor and control their time on social media by requiring companies to provide an in-app tool that enables users to track the time they spend on social media across all devices and self-impose caps on the amount of time they can spend on the apps. The freshman senator from Missouri, who serves on the Senate Judiciary Committee, has quickly emerged as a fierce critic of big tech. More info. [here](#).
- On Tuesday, the Senate Finance Committee held a hearing to consider the United States-Mexico-Canada Agreement (USMCA). Members heard from a panel of witnesses representing industry and organized labor. During his opening statement, [Chairman Chuck Grassley \(R-IA\)](#) touted the USMCA’s projected benefits for domestic industries and offered his support for House Democrats’ efforts to work through outstanding concerns with USTR Lighthizer. Chairman Grassley said he has an “open mind to workable ideas” and stands “ready to consider possible improvements in the agreement,” including those to plus up its enforcement mechanisms, as long as proposed solutions do not require re-opening the entire deal. On prescription drugs, Chairman Grassley said he understands that the current text would not require any changes to U.S. law, but he would be open to a solution that confirms this point. [Ranking Member Ron Wyden \(D-OR\)](#) reiterated the importance of ensuring the deal is enforceable during his opening remarks. The Ranking Member seemed particularly concerned about labor standards in Mexico and noted that he has floated a proposal with Sen. Sherrod Brown (D-OH) to provide additional tools to address these concerns. Notably, Sen. Toomey (R-PA) was the only Republican to state that trade conditions for U.S. industries would be better under the status quo than the USMCA, displaying a sign reading “NAFTA>USMCA.” Sen. Toomey argued that the uncertainty surrounding several provisions in the USMCA, such as its sunset clause, coupled with the increased costs

American automakers would face under the new pact, outweigh the potential benefits stemming from its digital trade chapter and strengthened IP protections. More info. [here](#).

- Late last week the members of the House trade working group tasked with working with USTR Lighthizer to iron out the pending issues with the USMCA sent Speaker of the House Nancy Pelosi (D-CA) a status update on the group's progress to date. The document reiterates Democrats' outstanding concerns with the renegotiated pact, including access to affordable medicines, worker protections, environmental protections, and enforcement. On enforcement, which Speaker Pelosi has maintained is the overarching issue with the new agreement, the working group insists that the new pact must be fixed to close the so-called panel blocking loophole, which allows parties to block the formation of an arbitral panel in NAFTA's state-to-state dispute settlement mechanism. The document also asserts that enhanced enforcement mechanisms must be established to secure compliance with the labor and environmental rules that are enshrined in the new pact. Finally, the working group states that the next step in the process is for USTR to provide responses and counterproposals to members "as soon as possible." Read more [here](#).

## II. Judicial Updates:

- The verdict in the Katy Perry copyright infringement case was released on Monday. The nine-person jury unanimously found that Katy Perry's 2013 hit "Dark Horse" copied Christian rap song "Joyful Noise" by Flame. The verdict comes after a weeklong trial that included testimony by Katy Perry and producer Dr. Luke. More info. [here](#).
- Reports surfaced this week that CBS, Comcast, NBCUniversal, and Fox have filed suit in the U.S. District Court in the Southern District of New York in an attempt to shut down the nonprofit streaming service Locast. The broadcast networks claim that Locast infringes copyrights by retransmitting the signals of their local TV stations without permission. On the other hand, Locast contends that it complies with U.S. copyright law because the 1976 statute permits nonprofits to operate booster and translator stations that strengthen a TV station's signal to reach antennas that otherwise would not receive the channel. Locast is funded in part by AT&T and was founded by a Dish Network lobbyist. Since it was launched in early 2018, it has signed up more than 250,000 users. Read more [here](#).

## III. Administration Updates:

- Public comments about the current state of counterfeit and pirated goods through online third-party intermediaries were due to the Department of Commerce on Monday. Feedback from stakeholders, including recommendations for federal policy to curb the spread of pirated and counterfeit goods, will be shared with interagency teams to prepare a report to the President, as directed in the Presidential Memorandum on "Combatting Trafficking in Counterfeit and Pirated Goods." The Department of Commerce received 93 comments from stakeholders, although they have yet to be posted to the [docket](#). However, some organizations have posted their comments online, including the [American Intellectual Property Law Association \(AIPLA\)](#); [Authors Guild](#); [Copyright Alliance](#); [Computer & Communications Industry Association \(CCIA\)](#); [Intellectual Property Owners Association \(IPO\)](#); [Semiconductor Industry Association](#); and the [Motor & Equipment Manufacturers Association](#).

- On Thursday, President Trump announced plans to levy a ten percent tariff on \$300 billion worth of Chinese goods on Twitter, which would effectively cover the remainder of Chinese imports to the U.S. that have not yet been hit with a tariff in the year-long trade dispute. “Trade talks are continuing, and during the talks the U.S. will start, on September 1<sup>st</sup>, putting a small additional tariff on 10% on the remaining 300 billion dollars of products coming from China into our country,” President Trump tweeted. Reports suggest that the tweet came soon after the President held a mid-morning briefing in the Oval Office to get an update from USTR Lighthizer and Treasury Secretary Steven Mnuchin on the negotiations earlier this week in Shanghai. The President was apparently disappointed that China had not offered concrete promises to purchase U.S. agriculture products, even though President Trump has repeatedly claimed that Chinese President Xi Jinping committed to this action during the president-level meeting on the margins of the Group of 20 (G20) summit in Japan in June. Read more [here](#) and [here](#).
- The eCO Registration System will be offline for system maintenance from 8:00 p.m. ET Thursday, August 8<sup>th</sup> until 11:00 p.m. ET on August 11<sup>th</sup>. More info. [here](#).

#### **IV. International Updates:**

- On Monday, the European Court of Justice ruled that unauthorized sampling of even brief clips of music can infringe on a music producer’s copyrights if the clips are recognizable. The high court found that German rapper Moses Pelham had infringed Kraftwerk’s copyright by using a two-second rhythm sequence from the 1977 song “Metall auf Metall” in a song produced for another German rapper. The European Court of Justice’s ruling explained that “The phonogram producers’ exclusive right under [EU law] to reproduce and distribute his or her phonogram allows him to prevent another person from taking a sound sample, even if very short, of his or her phonogram for the purposes of including that sample in another phonogram.” This ruling comes seven months after an EU magistrate judge weighed in with a non-binding advisory opinion claiming that the sampling infringes the rights of the creator when it is taken without permission, even if it is brief. Notably, the Monday ruling clarifies that when a sound sample is unrecognizable to the ear in its modified form, this is not considered a “reproduction.” Read more [here](#).

#### **V. Industry Updates:**

- On Thursday, the Artists Rights Alliance, an artist-run non-profit organization made up of musicians, performers, and songwriters, wrote the leaders of the House Judiciary Subcommittee on Antitrust detailing the threat dominant tech platforms such as Google, Facebook, Twitter, and Amazon, pose to creative communities. The letter, which was also sent to the DOJ Antitrust Division and the FTC, claims that this “existential issue” affects working artists in a diverse array of fields, including music, video, photography, animation, and publishing. The Alliance cites a quote in a 2017 *New York Times* article from its then-President Melvin Gibbs describing how platforms, whose business model revolves around advertising revenues, are dispositioned to short-change artists. “None of these companies that are supposedly in the music business are actually in the music business,” Gibbs said. He further explained that “They are in the data-aggregation business. They’re in the add-selling business. The value of music means nothing to them.” To address its concerns, the Alliance urges policymakers to consider reining in tech abuses and modernizing and updating the law. Read more [here](#).

- On Monday, the Congressional Internet Caucus Academy hosted a briefing, “In The Era Of Streaming, Who's the Bigger Music Mogul, Jay-Z or Congress?” The briefing featured Danielle Aguirre (Executive Vice President & General Counsel, National Music Publishers Association), Kevin Erickson (Director, Future of Music Coalition), Curtis LeGeyt (Executive Vice President, Government Relations National Association of Broadcasters), Julia Massimino (Vice President of Global Public Policy, SoundExchange), and Ali Sternburg (Senior Policy Counsel, Computer & Communications Industry Association). The panel engaged in high-level discussion about how the many players in the music industry, specifically artists, songwriters, and record labels, receive payment for their work. The discussion focused on the critical role U.S. copyright law plays in ensuring creators can get paid when their songs are played across different mediums. House Judiciary Committee Ranking Member Doug Collins (R-GA) and Rep. Anna Eshoo (D-CA) are the Co-Chairs of the Congressional Internet Caucus. More info. [here](#).
- On Tuesday, musicians Dave Matthews., Anderson Paak, and Maren Morris announced a new lobbying group that will represent artists. The board of the group, the Music Artists Coalition, also includes managers Irving Azoff and Coran Capshaw, lawyer Jordan Bromley, and publicist Kristen Foster. More info. [here](#).