



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 6, 2019



I. Congressional Updates:

- Senate Judiciary Antitrust Subcommittee Chairman Mike Lee (R-UT) and Ranking Member Amy Klobuchar (D-MN) announced this week plans to convene a hearing on September 24th to examine “concerns relating to acquisitions of nascent or potential competitors by digital platforms.” In a statement, Chairman Lee explained that the subcommittee will field information from policy analysts, market participants, and other stakeholders on whether legislative action relating to such mergers is needed to ensure digital markets remain competitive. Ranking Member Klobuchar said she has observed a “record number of mergers that have raised serious competition issues” in recent years, and warned that “with virtually no meaningful pushback from our government, these companies have reshaped the meaning of American privacy, the purchasing of goods and services, and the workings of our elections and democracy.” The subpanel is also holding an oversight hearing on the enforcement of U.S. antitrust laws on September 17th featuring Federal Trade Commission (FTC) Chairman Joseph Simons and Department of Justice (DOJ) Assistant Attorney General (AAG) for the Antitrust Division Makan Delrahim. More info. [here](#) and [here](#).
- According to *Reuters*, the House Judiciary Antitrust Subcommittee will hold a hearing next Thursday, September 12th, to consider big technology companies’ potential impact on consumer data protection. The subpanel is expected to hear from FTC Commissioner Rohit Chopra, as well as experts from Harvard Kennedy School and the American Enterprise Institute. Read more [here](#).

Headlines and Highlights:

- Senate Judiciary IP Subcommittee Chairman Tillis urges the Copyright Office to speed up its modernization efforts in letter.
- Senate Judiciary Committee holds first roundtable in series on Copyright Office modernization.
- Bipartisan and bicameral group of members express concern that access to YouTube Content ID is effectively only granted to large companies and indicates plans to hold roundtable on this issue before the end of the calendar year.
- Register of Copyrights Karyn Temple appoints Kimberley A. Isbell to serve as the Office’s deputy director of policy and international affairs.

In the Blogs:

[The Jetflix indictment: talk about crime not paying.](#)

Illusion of More

September 4 by David Newhoff

[Section 230 is Dangerous—Keep it Out of Trade Negotiations](#)

Hugh Stephens Blog

September 2 by Hugh Stephens

- On Tuesday, Senate Judiciary IP Subcommittee leaders Tillis (R-NC) and Coons (D-DE) joined Sens. Feinstein (D-CA) and Blackburn (R-TN), as well as their colleagues in the House—Judiciary Committee Chairman Nadler (D-NY), Ranking Member Collins (R-GA), IP Subcommittee Ranking Member Roby (R-AL), and Rep. Schiff (D-CA) in a letter to Google CEO Sundar Pichai regarding YouTube Content ID. The letter raises concern that access to YouTube Content ID is effectively only granted to large companies, leaving smaller copyright holders unable to utilize Content ID. The members reason that these small players are at a “significant disadvantage” to prevent the repeated uploading of content that has been previously identified as infringing. Finally, the letter requests that Google participate in a roundtable with Congressional offices and members of the creative community to discuss a series of questions and issues no later than the end of the calendar year. Read more [here](#).
- On August 27th, Senate Judiciary IP Subcommittee Chairman Thom Tillis (R-NC) sent a letter to Dr. Carla Hayden, the Librarian of Congress, and Karyn Temple, Register of Copyrights and Director of the U.S. Copyright Office, urging the Office to speed up its modernization efforts. Chairman Tillis acknowledged that the Copyright Office has tried to adapt over time, but that it is limited by “outdated statutory authorities, lack of appropriated funds, antiquated legacy IT systems, and other structural issues.” The Chairman wrote that he intends to “move quickly to legislatively modernize the Copyright Office” but is dismayed at the pace of the implementation of some key aspects of the Copyright Office Strategic Plan. Chairman Tillis advised Dr. Hayden and Register Temple to “ensure a more competitive process” for the accelerated development of the new systems that are necessary to achieve modernization. More info. [here](#).
- On August 27th, the Senate Judiciary Committee held the first meeting of its roundtable series on Copyright Office modernization. At this roundtable, staff outlined the scope of this roundtable series, which is limited to: (1) the current structure of the Copyright Office, (2) what happens within this structure, (3) the necessary autonomy of the Register, (4) the appropriate relationship between the Library of Congress and the Copyright Office, (5) funding, (6) and digitization of recordation systems. There was also discussion surrounding the following questions: (a) What is slowing down the Copyright Office Modernization? (b) What are ways to improve modernization efforts? (c) Are there any comparable agencies that operate with comfortable levels of protection? (d) What level of control does the Register have over Copyright Office modernization? (e) How does engagement with the Library of Congress compare with engagement with the Copyright Office? (f) Does the Copyright Office and the CIO have the resources necessary to move forward? (g) Are there registration requirements that are overly burdensome or unnecessary? (h) What authority or autonomy does the Congressional Research Service have within the Library that the Copyright Office does not have?
- On August 14th, House Homeland Security Committee Chairman Bennie Thompson (D-MS) and Ranking Member Mike Rogers (R-AL) formally issued a subpoena to 8chan owner Jim Watkins to testify before the Committee. In his prepared remarks for a closed-door deposition on Thursday, Watkins claims that the racist speech on the platform originates from “a small minority of users,” and states that 8chan “has no intent of deleting constitutionally protected hate speech.” Watkins also asserts that his platform has taken steps to improve its ability to quickly identify illegal content and hopes to assist law enforcement officers “in times of need.” More info. [here](#) and [here](#).

- On August 6th, House Energy & Commerce Committee Chairman Frank Pallone (D-NJ) and Ranking Member Greg Walden (R-OR) wrote a letter to United States Trade Representative (USTR) Robert Lighthizer requesting that he remove Article 19.17 from the United States–Mexico–Canada Agreement (USMCA) because the language mirrors Section 230 of the Communications Decency Act (CDA). The letter states, “the effects of Section 230 and the appropriate role of such a liability shield have become the subject of much debate in recent years. While we take no view on that debate in this letter, we find it inappropriate for the United States to export language mirroring Section 230 while such serious policy discussions are ongoing.” Furthermore, given the Committee’s jurisdiction over this statute, Chairman Pallone and Ranking Member Walden request that USTR consult their Committee in advance of negotiating these issues in the future. More info. [here](#).
- Speaker of the House Nancy Pelosi (D-CA) and other top House Democrats hosted a caucus-wide call on Tuesday to discuss the status of USMCA negotiations, which continued at a staff-level during the Congressional recess. House Ways & Means Committee Chairman Richard Neal (D-MA) apparently informed members that the House trade working group has yet to receive concrete proposals from USTR on how the Administration plans to mitigate Democrats’ four focal concerns: labor standards, environmental standards, enforcement mechanisms, and the biologics exclusivity provision. That being said, the Chairman reportedly told Democrats that he expects the pace of negotiations to increase this month. Read more [here](#).

II. Judicial Updates:

- On August 27th, Universal Music Group, Sony Music Group, Warner Music Group, and other record labels filed a federal lawsuit against RCN, accusing it of enabling largescale copyright infringement of sound recordings and profiting from this infringement. According to the complaint, the record labels gathered this information regarding infringements from notices sent by Rightscorp Inc., which notified RCN of first time and repeat copyright infringement by RCN’s account holders. In a similar, but unrelated lawsuit, Rightscorp evidence was successfully used against another Internet service provider (ISP), Cox Communications. In the lawsuit against RCN, the labels claim that RCN could have easily stopped customers from illegal infringement by terminating their accounts, but instead took no action because the company earned a direct financial benefit. The plaintiffs allege that the infringement occurred through BitTorrent networks. More info [here](#).
- On August 19th, *The Verge* reported that YouTube is suing an alleged copyright troll using the Digital Millennium Copyright Act (DMCA) provisions against fraudulent takedown claims. YouTube claims that the alleged troll, Christopher Brady, sent multiple complaints stating that Minecraft gaming YouTubers infringed on his copyrights. The lawsuit claims that these notices are part of scheme to “harass and extort money from the users that he falsely accuses of infringement.” Julia Alexander of *The Verge* claims that this case is an example of the larger problem of “Copyright Striking” that occurs on YouTube. More info. [here](#).

III. Administration Updates:

- On Tuesday, the U.S. Copyright Office announced that Register of Copyrights Karyn A. Temple has appointed Kimberley A. Isbell to serve as the Office’s deputy director of policy and international affairs. In this position—effective September 1st—Isbell will assist with critical policy functions of the Office, including domestic international policy analyses, legislative support, and trade negotiations. Isbell has served as senior counsel for policy and

international affairs at the Copyright Office since 2015. Prior to joining the Office, Isbell was in-house counsel to a medical society and an associate in private practice focusing on trademark and copyright protection and enforcement at area law firms. Isbell is a Harvard Law School graduate and served as the editor-in-chief of the Harvard Law Record. Read more [here](#).

- On August 13th, FTC Chairman Joseph Simons indicated that, although messy, breaking up major technology platforms could be a remedy to rein in dominant companies and restore competition. “If you have to, you do it,” Chairman Simons said during an interview about breaking up tech companies. He added, “It’s not ideal because it’s very messy. But if you have to you have to.” Chairman Simons is overseeing a [task force](#) dedicated to monitoring competition in U.S. technology markets and investigating any potential anticompetitive conduct in those markets. Sources told *Bloomberg* that the Commission has opened a broad investigation into Facebook, “including whether the company acquired startups to thwart competition.” Some stakeholders have encouraged antitrust enforcers to unwind Facebook’s previously approved acquisitions of Instagram and WhatsApp. More info. [here](#).

IV. International Updates:

- The European Commission (EC) is slated to hold the first stakeholder meeting on the application of the copyright directive’s controversial Article 17 in mid-October. According to an EC statement, “The objective of the meeting is to gather and map existing practices for the use of copyright-protected content by online content-sharing service providers in cooperation with rights holders, as well as to gather user experiences.” More info. [here](#).
- Reports surfaced this week that France’s anti-piracy agency—the High Authority for the Distribution and Protection of Intellectual Property on the Internet (Hadopi)—will likely merge with the Higher Audiovisual Council, a powerful government agency tasked with regulating electronic media. Since its creation in 2010, Hadopi has been considered a pioneer of the “graduated-response” system, whereby persistent copyright infringers can eventually be disconnected from the internet. Reports suggest that the merger project will be presented to the Council of Minister in November and arrive at parliament early next year. Read more [here](#).
- On the margins of the G-7 Summit on August 25th, President Donald Trump and Japanese Prime Minister Shinzo Abe announced that the two nations have reached a trade deal “in principle,” and are planning to sign a formal deal on the sidelines of the September United Nations General Assembly meeting in New York. USTR Lighthizer has said that the deal addresses industrial tariffs, agriculture, and digital trade. The preliminary agreement does not eliminate the existing 2.5 percent tariffs on the importation of Japanese vehicles or major auto parts. However, Japan has maintained that it will not sign a deal unless it secures an exemption from the U.S’ potential Section 232 tariffs on autos and auto parts. Negotiators from both countries are now working to get documents drawn up for Trump and Abe to sign this month. Read more [here](#).
- Following a phone call on Thursday between China’s top trade negotiator Vice Premier Liu, U.S. Treasury Secretary Steven Mnuchin, and USTR Lighthizer, news broke that the U.S. and China have agreed to resume trade talks in Washington, DC next month. Deputy-level officials are expected to convene discussions this month to prepare for the October meeting. This was welcome news after weeks of rising tensions in the tit-for-tat trade dispute,

culminating in President Trump ordering domestic companies to “immediately start looking for an alternative to China” via [tweet](#) on August 23rd.

- Tensions rose quickly after USTR outlined the U.S.’ plan to impose 10% tariffs on approximately \$300 billion worth of Chinese goods through two tranches, with \$112 billion worth of Chinese goods being hit on September 1st, and the imposition of tariffs on another \$160 worth of Chinese goods being delayed to December 15th to offer some reprieve for certain products during the holiday season. China retaliated with tariffs of 5% or 10% on about \$75 billion worth of U.S. goods—effective September 1st. Shortly after China unveiled these retaliatory plans, President Trump ratcheted up his trade actions against China in a [series of tweets](#) on August 23rd. First, Trump announced plans to raise the existing tariffs on the imports of \$250 billion worth of Chinese goods from the existing 25% level to 30% on October 1st. Second, the President announced that the U.S. would increase the rate on the \$300 billion tariff bundle from 10% to 15%. Finally, the President [declared](#) that American companies are “hereby ordered to immediately start looking for an alternative to China,” suggesting that companies instead produce products in the USA. The Federal Register notices from the USTR executing these actions can be found [here](#) and [here](#).

V. Industry Updates:

- On August 13th, Michael Kozlowski of Goodereader.com posted an article detailing the rise of eBook piracy this year. Kozlowski highlighted a few statistics, most notably that \$300 million was lost in author income due to pirated book sales in the U.S. He noted that this is not strictly a problem in the U.S., for the UK’s Intellectual Property office found that 17 percent of all eBooks consumed in 2017 were pirated. Furthermore, the International Publishers Association claims that over one billion dollars is lost worldwide to eBook piracy. Kozlowski wrote about the complex legal and technical hurdles which make preventing eBook piracy the equivalent to a game of “whack-a-mole.” More info. [here](#).
- Reports surfaced in mid-August that Facebook has paid contractors to transcribe users’ audio chats, drawing consumer privacy concerns from members of Congress on both sides of the aisle. For instance, Senator Ron Wyden (D-OR) said in a statement that “Congress needs to pass tough rules that ensure that Americans don’t have our privacy repeatedly violated by accountable corporations.” Sen. Wyden circulated [draft legislation](#) last fall that would impose steep fines and even prison time for executives at corporations that fail to adequately safeguard Americans’ data. In a series of [tweets](#), Senator Josh Hawley (R-MO) asked whether Facebook’s audio transcripts violated the terms of its consent decree with the FTC and whether a crime was committed. More info. [here](#).