

CONTENT & TECHNOLOGY POLICY REPORT

NOVEMBER 15, 2019



I. Congressional Updates:

- The Senate Judiciary IP Subcommittee held its fourth roundtable on U.S. Copyright Office (USCO) modernization on Wednesday. One Library official and one Copyright Office official spoke to the stakeholders (names are purposely omitted to adhere to Chatham House rule). The following topics were discussed: (1) USCO's progression with its strategic plan, (2) IT modernization projects, (3) upcoming USCO pilots, (4) decision making surrounding procurement processes, and (5) security. The officials delivered an overview of the Copyright Office's modernization efforts and fielded questions from the stakeholders in the room. The officials' remarks echoed the testimony delivered by Dr. Hayden and Register Temple during last week's Senate Rules oversight hearing on Library of Congress modernization. The Copyright Office official noted that four of the six elements of the Copyright Office's strategic plan relate to modernization. The Copyright Office official stated that in FY2019, for the first time the USCO received dedicated funding for IT modernization efforts and noted its collaboration with the Office of Chief Information Officer (OCIO) to formulate the budget. The Copyright Office official also reiterated that USCO is set to release a pilot for its new digital recordation system in the Spring of 2020. The pilot will add more complex capabilities in phase two of its rollout. The official also noted that the Copyright Office is in the development stages for a new digital registration pilot. At the end of the discussion, Senate Judiciary IP Subcommittee Chairman Thom Tillis' (R-NC) staff indicated that the Chairman is looking to hold a Copyright Office modernization hearing sometime in the second week of December. The next roundtable will be on December 4th.

Headlines and Highlights:

- Senate Judiciary IP Subcommittee holds 4th Copyright Office Modernization Roundtable. SJC IP subcommittee hearing on USCO Modernization set for the second week of December.
- House Judiciary Holds fourth hearing on Online Platforms and Market Power
- MLC and DLC Reach Settlement on MLC Budget
- Speaker of the House Nancy Pelosi indicates that USMCA deal between House Democrats and the Trump Administration is "imminent."

In the Blogs:

[Congress Can Protect Creative Artists from Piracy. Why Won't The Senate Pass The Bill?](#)

Hartford Courant
November 10 by Douglas Preston

[The Mask of Zuckerberg's Zeal](#)
Illusion of More
November 12 by David Newhoff

- On Wednesday, the House Judiciary Antitrust Subcommittee held a hearing titled “Online Platforms and Market Power, Part 4: Perspectives of the Antitrust Agencies.” Witnesses included [Makan Delrahim](#) (Assistant Attorney General, Antitrust Division) and [Joseph Simons](#) (Chairman, Federal Trade Commission). During the Q&A portion of the hearing, Chairman Cicilline asked AAG Delrahim about the role that behavioral data collection plays in antitrust enforcement inquiries. Delrahim responded that behavioral data collection tends to fall outside antitrust inquiries. Chairman Cicilline argued, “Google’s proposed acquisition of Fitbit would threaten to give it yet another way to surveil users and entrench its monopoly power online.” In highlighting the prospective merger, Cicilline asked Delrahim whether he thinks the DOJ needs to consider a merger moratorium for large online platforms. Delrahim rejected the idea of such a moratorium, warning it could hurt consumers. However, Delrahim seemed to entertain the changing the burden of proof for large mergers when Cicilline suggested a “qualified moratorium — a moratorium unless it was demonstrated to be pro-competitive.” Delrahim responded “I don’t have a clear administration on that, but we’d be delighted to explore that with you.” More info. [Here](#).
- On Wednesday, the Senate Commerce Committee pulled the STAR Act (S. 2789) from its executive session at the last minute. S. 2789 would reauthorize the 2014 satellite TV law known as STELAR for five years. A Committee spokesperson told POLITICO that the bill was pulled from the agenda to allow the panel to more fully vet the reauthorization. Ranking Member Maria Cantwell (D-WA) pushed to make permanent language from STELAR mandating that broadcasters negotiate in good faith over what they charge TV companies to run their programming. On the other side of the aisle, Senator Mike Lee (R-UT) proposed reducing reauthorization to two years, and Senator Roy Blunt (R-MO) reportedly favored a permanent reauthorization. More info. [here](#).
- On Thursday, the House Committee on Small Business held a hearing titled “A Fair Playing Field? Investigating Big Tech’s Impact on Small Business.” Panel 1 featured testimony from the following witnesses: [Mr. Dharmesh M. Mehta](#) (Vice President, Customer Trust and Partner Support, Amazon), [Ms. Erica Swanson](#) (Head of Community Engagement, Grow with Google, Google), and [Dr. Joe Kennedy](#) (Senior Fellow, Information Technology & Innovation Foundation). Panel 2 featured Testimony from the following witnesses: [Ms. Allyson Cavaretta](#) (Principal and Owner, Meadowmere Resort), [Mr. Molson Hart](#) (CEO, Viahart Toy Co.), [Mr. Harold Feld](#) (Senior Vice President, Public Knowledge), [Ms. Theo Prodromitis](#) (Co-Founder and CEO, Spa Destinations), [Mr. Jake Ward](#) (President, Connected Commerce Council), and [Mr. Graham Dufault](#) (Senior Director for Public Policy, ACT | The App Association). Throughout the hearing, the platforms emphasized the market access and educational assistance that their services provide to small businesses. From Fulfillment by Amazon, to Google’s free Business Profiles, the platforms tried to illustrate the increase in business and growth potential that their services provide. Lastly, while intellectual property was not a large component of the hearing, both companies’ arguments that their platforms help protect customers and brands by validating the authenticity of products were supported by representatives and witnesses alike. More info. [Here](#).
- Next Wednesday, November 20th, at 10:00 a.m. ET, the House Ways & Means Trade Subcommittee will hold a hearing titled “U.S.-Japan Trade Agreements.” According to a press release, the hearing will focus on the two preliminary trade agreements signed by the U.S. and Japan last month and the “prospects for a second phase of negotiations for a bilateral agreement to cover trade in a comprehensive manner.” No witnesses have been

posted yet. More info. [here](#).

II. Judicial Updates:

- On Tuesday, U.S. District Court Judge Analisa Torres dismissed a complaint filed last October by rapper Leander Pickett (aka M.O.S.) claiming that Migos' 2018 single "Walk It Talk It" infringed the copyright of his 2008 song "Walk It Like I Talk It." Torres agreed with the hip hop group that the lyric "walk it like I talk it," which is the only similarity between the two songs, is a "short and commonplace phrase" that is not protected under copyright law. Torres also noted that several songs recorded before Pickett's 2008 track contain this phrase as well. Pickett's lawyer Dana Whitfield told *Billboard* that the rapper's legal team is "exploring options for an appeal" of the decision. Read more [here](#).

III. Administration Updates:

- On Tuesday, the U.S. Copyright Office published two final rules making technical amendments to its regulations for group registration options for serials and newspapers. The amendment to the group serial regulations ends the phase-out period for paper applications and acceptance of physical deposits. The amendment mandates that online applications and digital copies be used beginning December 31, 2019. The amendment to group registration for newspapers ends the phase-out period for accepting deposit copies on microfilm. Digital deposit copies must be submitted beginning January 1, 2020. More information on group registration for serials is available [here](#), and group registration of newspapers is available [here](#).
- During a speech at the Economic Club of New York on Tuesday, President Trump told the audience that a phase one trade deal with China "could happen soon," while clarifying that the U.S. "will only accept a deal if it's good for the United States and our workers and our great companies." Furthermore, President Trump threatened to "substantially raise" tariffs on Chinese goods if the two countries cannot finalize a deal to offer a much-needed thaw in the sprawling trade war. Read the President's full remarks [here](#)

IV. International Updates:

- On Thursday, Speaker of the House Nancy Pelosi (D-CA) indicated that House Democrats and the Trump Administration could soon announce a deal on United States–Mexico–Canada Agreement (USMCA) ratification. "I do believe that if we can get this to the place it needs to be — which is imminent — that this can be a template for future trade agreements," the Speaker told reporters during a weekly press conference. She also said that she would like to see the trade agreement pass the House this year, which matches the Trump Administration's goal for congressional ratification. Speaker Pelosi said that lawmakers will need to see a copy of the implementing legislation "as soon as we come to a conclusion" with United States Trade Representative (USTR) Robert Lighthizer, although Democrats "already have an idea" of what the implementing bill will look like. [According](#) to *POLITICO*, although not required by statute, the Senate Finance Committee and the House Ways and Means Committee plan to hold hearings and a mock conference on the draft implementation bill. The Trump Administration will also need to get any revisions to the pact approved by both Canada and Mexico. In what has also been considered a sign of progress, news surfaced that Democrats scheduled a full-caucus meeting Thursday

afternoon focused on economic issues and the USMCA. Read more [here](#).

V. Industry Updates:

- On Thursday, the Mechanical Licensing Collective (MLC) and the Digital Licensee Coordinator, Inc. (DLC) reached an agreement on MLC funding that will allow the MLC to implement its MMA mandates. The MLC was established by the Copyright Royalty Board earlier this year to build and operate a central database to allow for the matching of song recordings to rights holders so that songwriters and publishers can get paid for the use of their copyrighted works. The DLC represents the digital music services that the MMA mandates must fund the MLC. The agreement states that the MLC will receive \$33.5 million for startup costs and a first-year operating budget of \$28.5 million. Amazon, Apple, Google, Pandora, and Spotify will pay proportional amounts of the operating budget, with the largest digital service paying the larger portion of the payment. The terms of the agreement come close to the MLC's original request of \$37.25 million in startup funding and a first-year operating budget of \$29 million. In addition to the funding, the MLC and DLC announced the creation of a new budgeting committee, with equal representation from both sides, that will continuously evaluate the MLC's operating costs. MLC board chairman Alisa Coleman and DLC board chair James Duffett-Smith praised the agreement in a joint statement, calling it a "landmark achievement for every facet of the music industry." The agreement was similarly well received by those in the music industry, receiving accolades from NMPA President and CEO David Israelite and CEO of DiMA Garrett Levin. More info. [Here](#).
- On Friday, the Wall Street Journal published a report revealing that Google interferes with its search algorithms to change search results. The Journal conducted over 100 interviews and did its own testing of Google's search results. The report has several key findings. The report finds that Google made algorithmic changes to its search results that favor big businesses over smaller ones. Furthermore, Google engineers regularly made behind the scenes adjustments to other information the company is increasingly layering on top of its basic search. Despite publicly denying such behavior, the report finds that Google keeps blacklists to remove certain sites or prevent others from surfacing in certain types of results. Read the report [here](#).