



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036  
Tel: (202) 327-8100 | Fax: (202) 327-8101

## CONTENT & TECHNOLOGY POLICY REPORT APRIL 18, 2019



### I. Congressional Updates:

- Late last week, Reps. Bill Pascrell (D-NJ), Rosa DeLauro (D-CT) and over 80 of their colleagues sent a letter to U.S. Trade Representative (USTR) Robert Lighthizer stating that Mexico must pass meaningful labor reforms that fully meet the obligations outlined in Article 3 of Annex 23-A of the United States-Mexico-Canada Agreement (USMCA) before the lawmakers will consider advancing legislation to implement the pact. While noting that current draft legislation in the Mexican legislature “meets and exceeds” some of the obligations in the Annex, the lawmakers caution that the Annex “must not be allowed to become a game of multiple choice, in which the Parties can pick and choose which obligations they want to enforce.” Read more [here](#).
- Late last week, House Ways & Means Chairman Richard Neal (D-MA) and Trade Subcommittee Chairman Earl Blumenauer (D-OR) led a letter from committee Democrats to USTR Lighthizer insisting that “successful passage of domestic labor law reform in Mexico is a necessary first step” to securing their support for the USMCA. According to the letter, the members are particularly concerned about the enforceability of the violence and intimidation provision in the new agreement. Members are also concerned that the dispute settlement mechanism application to USMCA’s labor obligations is “designed to be easily frustrated and will be ineffective.” Read more [here](#).
- On Wednesday, the House Ways & Means Committee Democrats followed up with a letter to the USTR raising concerns about the potential environmental impact of the USMCA. According to the letter, the proposal’s

### Headlines and Highlights:

- EU Council approves Copyright in the Digital Sale Market Directive.
- Over 80 Democrats send letter to USTR raising concerns about Mexico’s labor laws.
- House Ways & Means Democrats send letters to USTR raising concerns about the USMCA’s potential impact on labor and environmental impact.
- Sen. Hawley explains his Section 230 criticism to POLITICO, notes that he is still collecting information on the problem before crafting legislation.

### In the Blogs:

[Infringing Website Lists: Another Valuable Tool in the Anti-Piracy Toolbox](#)

Hugh Stephens Blog

April 15 by Hugh Stephens

[When Fair Use Threatens the Derivative Works Right](#)

Illusion of More

April 15 by David Newhoff

environment chapter “fails to incorporate the May 10 framework requiring parties to adopt, maintain, and implement all seven of the relevant multilateral environmental agreements.” The lawmakers also express disappointment that the USMCA does not include provisions to mitigate the effects of climate change and the rules governing trade of illegally taken animals, animal products, plant, and plant products in the final proposal “appear to be nowhere near equivalent to U.S. law.” Read more [here](#).

- In a recent interview with POLITICO, Senator Josh Hawley (R-MO) spoke about his criticism of Section 230 of the Communications Decency Act, which provides immunity from liability for providers and users of platforms. He suggested that lawmakers need to think about how dominant platforms are using Section 230 “to advance their own agendas but not necessarily to promote free and open dialogue,” which he explains is their mandate to enjoy the immunity from liability provided by the statute. When asked whether he is crafting legislation to mitigate these concerns, Sen. Hawley said he is still simply gathering information on the problem with his colleagues, including Sen. Ted Cruz (R-TX). However, the freshman lawmaker promised to ensure that any forthcoming legislation avoids the potential unintended consequence of entrenching incumbents in the digital marketplace. When pressed on whether he has spoken about his concerns with President Trump, Sen. Hawley declined to characterize his conversations with the President, while pointing out that Trump has “talked a lot about viewpoint bias by these platforms.” Read more [here](#).

## II. Judicial Updates:

- As reported by Billboard, “Lady Marmalade” songwriter Kenny Nolan has filed a \$20 million lawsuit in U.S. District Court in California against Sony/ATV Music Publishing alleging breach of a contract and copyright infringement. Nolan claims that after licensing his 50 percent share of the publishing rights to 77 compositions, including “Lady Marmalade,” to his former co-writer Bob Crewe, Crewe licensed those compositions to music publisher Stone Diamond. He further alleges that Stone Diamond sold these rights to Sony/ATV without Nolan’s knowledge or consent. Read more [here](#).

## III. Administration Updates:

- The U.S. Copyright Office announced this week that users of its Electronic Copyright Office (eCO) system will need to reset their passwords every sixty days, beginning April 14<sup>th</sup>. More info. [here](#).
- The Department of Justice announced last week that it will hold a public workshop on May 2<sup>nd</sup> and 3<sup>rd</sup> to explore industry dynamics in media advertising and the implications for antitrust enforcement and policy, including merger enforcement. According to the press release announcing the workshop, panelists will discuss a range of topics, including how each type of advertising may fit into an advertising campaign, how inventory is priced, the economics of advertising, developments in advertising technologies, the effects from changes in consumer behavior, and the competitive dynamics of media advertising in general. Interested parties may submit public comments on these topics by June 15<sup>th</sup>. More info. [here](#).
- At an event in Minnesota on Monday, President Trump reiterated his threat to impose tariffs on European car markets if the EU does not open up its markets to U.S. farmers. Senate Finance Committee Chair Chuck Grassley (R-IA) [suggested](#) that any deal that omits agriculture is “unlikely” to earn Congressional approval. On the other hand, the EU’s

negotiating objectives for a potential new trade deal with the U.S. focuses exclusively on eliminating tariffs on industrial goods—noticeably excluding agricultural products from the target list. Ironing out the two countries’ differences on agriculture will be essential if EU Trade Commissioner Cecilia Malmström is to realize her goal of wrapping up negotiations before the European Commission’s term ends in October. Read more [here](#) and [here](#).

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

- On Monday, the European Council voted to approve the [Copyright in the Digital Sale Market Directive](#), with 19 countries backing the proposal, six members voting against it, and three abstaining. The Directive, which cleared the EU Parliament last month, seeks to update the EU’s copyright laws for the digital age and includes Article 13 and Article 11, now renamed Article 17 and Article 15 in the final text, which have faced criticism from opponents claiming that Article 13 would result in “upload filters” and that Article 11 would amount to a “link tax.” “Europe will now have clear rules that guarantee fair remuneration for creators, strong rights for users and responsibility for platforms,” European Commission President Jean-Claude Juncker said in a [statement](#) following the vote. EU member states have been tasked with implementing the Directive within two years. Read more [here](#).
- As reported by Reuters, the European Parliament voted on Wednesday to fine online platforms up to four percent of their turnover if they persistently fail to remove extremist content within one hour of being asked to do so by authorities. A new European Parliament, which will be elected on May 23<sup>rd</sup>-26<sup>th</sup>, will finalize the new law in negotiations with the European Commission and representatives of EU governments. Reuters estimates that this process will likely take many months. Read more [here](#).
- After Mexico’s lower house of Congress approved a labor law reform aimed at ensuring workers can freely vote for their union representation and contracts late last week, Mexico’s Senate majority leader Ricardo Monreal announced on Monday that the upper chamber will begin debating the proposal next week, with the goal of passing these reforms by the end of April. Some Democrats in the U.S. House of Representatives have said they are waiting for Mexico to pass labor reforms before they will consider advancing legislation to implement the USMCA. After the Mexican house approved the labor proposal, Ivanka Trump tweeted “Mexican lawmakers passed a landmark labor reform bill clearing the way for the new US-Mexico-Canada Agreement (USMCA) to replace the job killing NAFTA.” Read more [here](#) and [here](#).

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

- Indie distributor and music publisher CD Baby announced that it is enlisting Audible Magic’s help to identify potential rights infringement claims before servicing tracks to digital service providers such as Spotify, Apple Music or Tidal. After users upload files to CD Baby, Audible Magic’s RightsRx™ program will scan the audio to check if it matches another track in its library of 30 million, or if it contains potentially copyright-infringing content. Read more [here](#).
- On Tuesday, YouTube’s content moderation software mistakenly flagged several live stream videos of the Notre Dame Cathedral fire as footage of the September 11<sup>th</sup> terrorist attacks and posted snippets from Encyclopedia Britannica about the terrorist attacks below these videos. YouTube Chief Executive Officer Susan Wojcicki rolled out the information boxes last year

in an attempt to heed the criticism about the spread of disinformation through conspiracy theory videos on the platform. The text panels appear below “tens of millions” of videos each week. Read more [here](#).

- On Tuesday, a U.K. consumer advocacy group published a report claiming that Amazon is flooded with thousands of fake five-star reviews. The group analyzed hundreds of tech products on the platform and found that potentially false reviews were helping push less prominent brands to the top of search results for popular products, such as headphones, smartwatches, and wearable devices. In a statement, an Amazon spokesperson maintained that “Even one inauthentic review is too many.” The spokesperson also defended the platform’s policies to combat fake reviews, explaining that Amazon suspends, bans, and takes legal action on both reviewers and selling partners who violate its participation guidelines. Read more [here](#).
- As reported by the Verge, an Electronic Frontier Foundation (EFF) tweet linking to a TorrentFreak article about several leaked TV shows was recently hit with what some are calling an unjustified Digital Millennium Copyright Act (DMCA) takedown request. The EFF tweet subject to the takedown request linked to a TorrentFreak article reporting that several shows had leaked online prior to their broadcast, including the Starz releases *American Gods* and *The Spanish Princess*. Despite the fact that the aforementioned article did not link to sites where these pirated copies were available and did not mention the names of these pirate sites, Starz filed a DMCA takedown notice claiming that the linked article used “images of the unreleased episodes” and “information about their illegal availability.” EFF has filed a counterclaim in response to the takedown notice and has asserted that “Reporting about copyright infringement is not infringement.” Read more [here](#).