



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT

### APRIL 5, 2019



#### I. Congressional Updates:

- POLITICO reports that Reps. Bill Pascrell (D-NJ) and Rosa DeLauro (D-CT) are collecting signatures on a letter to the United States Trade Representative (USTR) Robert Lighthizer expressing concerns about Mexico's labor practices. The letter, which is endorsed by the AFL-CIO, raises concerns that the legislation the Mexican Congress is preparing "does not meet the requirements of Annex 23-A" of the United States–Mexico–Canada Agreement (USMCA). Specifically, the document claims that the draft legislation "fails to ensure that workers will be able to exercise a free, secret, and personal vote on the collective bargaining agreement that will cover their terms and conditions of work." Read more [here](#).
- Speaker of the House Nancy Pelosi (D-CA) told POLITICO this week that she does not plan to advance legislation to implement the USMCA until Mexico's Mexican policymakers pass and implement legislation to improve the country's labor laws. Speaker Pelosi asserted, "Unless you do this, we can't even consider it. ... We have to see that [Mexico passes] the legislation, that they have the factors in place that will make sure it's implemented and they demonstrate some commitments in sincerity, because it's a big issue how workers are treated in Mexico." Read more [here](#).
- After Facebook CEO Mark Zuckerberg outlined his proposal for U.S. policymakers to regulate big tech in a Washington Post editorial last weekend, some members of Congress expressed disdain for Zuckerberg's eagerness to have a seat at the drafting table. For instance, Rep. David Cicilline (D-RI), who Chairs the House Judiciary Committee's antitrust subpanel, mused on Twitter that the

#### Headlines and Highlights:

- White House issues a memorandum on "Combating Trafficking in Pirated and Counterfeit goods."
- Zuckerberg outlines proposal for government to regulate big tech in Washington Post editorial.
- Reps. Collins and Cicilline introduce legislation to establish a 48-month safe harbor for small publishers to band together to negotiate with dominant online platforms.
- Australian parliament passes the Sharing of Abhorrent Material bill.

#### In the Blogs:

##### [Copyright and Your Carbon Footprint](#)

Hugh Stephens Blog  
April 1 by Hugh Stephens

##### [Milton Never Said a Damn Thing About the Internet](#)

Illusion of More  
March 31 by David Newhoff

fifth rule of the Facebook CEO's proposal "should be that Mark Zuckerberg doesn't get to make the rules anymore," explaining that "Facebook is under criminal and civil investigation. It has shown it cannot regulate itself. Does anyone even want his advice?" Read more [here](#).

- On Wednesday, Rep. Doug Collins (R-GA), Ranking Member of the House Judiciary Committee, and Rep. David Cicilline (D-RI), Chairman of the House Judiciary Committee's Subcommittee on Antitrust, Competition Policy and Consumer Rights, introduced a bill that seeks to improve the access to and the quality of news online by establishing a 48-month safe harbor for small publishers to band together to negotiate with dominant online platforms. This bipartisan legislation, titled The Journalism Competition and Preservation Act, would allow coordination by news publishers if it "(1) directly relates to the quality, accuracy, attribution or branding, or interoperability of news; (2) benefits the entire industry, rather than just a few publishers, and is non-discriminatory to other news publishers; and (3) is directly related to and reasonably necessary for these negotiations, instead of being used for other purposes." Rep. Cicilline had introduced this legislation [last Congress](#), and Rep. DeSaulnier (D-CA) was the only member to sign on as a cosponsor. Read more [here](#).
- Next Wednesday, April 10th, at 2:30PM ET, the Senate Judiciary Committee's Subcommittee on the Constitution will hold a hearing on "Stifling Free Speech: Technological Censorship and the Public Discourse." Subcommittee Chairman Ted Cruz (R-TX) will preside over the hearing. More info. [here](#).
- Next Tuesday, April 9<sup>th</sup>, at 10:00AM ET, the House Judiciary Committee will hold a hearing on hate crimes and the rise of white nationalism. According to a [press release](#) announcing the hearing, it is intended to "foster ideas about what social media companies can do to stem white nationalist propaganda and hate speech online." Reports indicate that representatives from both Facebook and Google will testify before the Committee. This comes after Facebook announced last week that it will now take down posts supporting white nationalism and white separatism from the social media platform. More info. [here](#).
- As reported by The Hill, the House Intelligence Committee is planning to host a hearing in the coming months to examine a series of national security matters, including the potential negative impact of so-called "deepfakes" on the 2020 Presidential election. House Intelligence Committee Chairman Adam Schiff (D-CA) has warned that foreign and domestic actors could "wreak havoc" during the U.S. elections in 2020 by deploying this technology, which creates videos using artificial intelligence that look strikingly real. Read more [here](#).
- Following reports that a Twitter account affiliated with the pro-life film Unplanned was suspended on its opening weekend, Sen. Hawley (R-MO) sent a letter to Twitter CEO Jack Dorsey calling for a third-party audit of the platform's suspension policies. "I am rapidly losing confidence that Twitter is committed to the free speech principles that justify immunity under section 230," Sen. Hawley writes. The freshman senator, who earned a spot on the Senate Judiciary Committee, has emerged as a fierce critic of big tech and Section 230 of the Communications Decency Act, which gives immunity from liability to providers and users of online platforms, since assuming office in January. Read more [here](#).

## II. Judicial Updates:

- A Florida district court this week issued a default judgement against 27 defendants who operate websites that host links to copyright-infringing streams of ABS-CBN content. U.S. District Judge William Dimitrouleas granted a default judgement and ordered the 27 defendants to each pay \$1 million in damages for willfully violating ABS-CBN's trademark after none of the defendants showed up in court. Four defendants received an additional \$30,000 in copyright infringement damages. Read more [here](#).
- Reports surfaced this week that two U.S. street artists filed suit against NYCeWheels and 10 unnamed U.S. Brompton retailers for allegedly using their copyrighted art in social media campaigns without their permission or compensating the artists. Artists David Momyer and Justin Davis claim that the brand took pictures of their products in front of murals painted by the artists in a social media campaign to promote Brompton demo tour events held at retailers around the country. Read more [here](#).

### III. Administration Updates:

- On Wednesday, the White House issued a memorandum on "Combating Trafficking in Pirated and Counterfeit goods." The memorandum directs the Secretary of Homeland Security, in coordination with the Secretary of Commerce, and in consultation with the Attorney General, the Director of the Office of Management and Budget, the USTR, the Assistant to the President for Economic Policy, and the Assistant to the President for Trade and Manufacturing Policy, to prepare and submit a report to the President within 210 days on the extent to which online third-party marketplaces and other third party intermediaries are used to facilitate the importation and sale of counterfeit and pirated goods. The report will also identify appropriate administrative, statutory, regulatory, or other changes, including enhanced enforcement actions, that could substantially reduce trafficking in counterfeit and pirated goods or promote more effective law enforcement regarding trafficking in such goods. Read more [here](#).
- On Tuesday, USTR Lighthizer met with freshmen Democrats to discuss the USMCA. POLITICO reports that the discussion focused on how the proposal might affect the cost of pharmaceuticals in the U.S. Democrats have raised concerns about the provision in the USMCA that requires Mexico and Canada to provide ten years of protection for test data used to develop biologic medicines. According to Rep. Susan Wild (D-PA), USTR Lighthizer told lawmakers that these provisions are "non-negotiable." Read more [here](#).
- Rep. Matt Gaetz (R-FL) told POLITICO on Monday that he has discussed his concerns about the tech industry's immunity under Section 230 of the Communications Decency Act with "senior White House officials." Rep. Gaetz asserted that, in his view, there is a "pretty keen understanding of the stake if there is not a level playing field for people to be able to make their arguments." Read more [here](#).

### IV. International Updates:

- Poland's ruling party leader Jaroslaw Kaczynski raised concerns about the [Copyright in the Digital Sale Market Directive](#) that was approved by the European Parliament last week, cautioning that he believes the rules will stifle creativity and the spread of information. Kaczynski asserted that the Law and Justice party will implement the Directive in Poland "in a way that will preserve freedom." The Directive will face a vote by the European Council, which is likely to take place on April 9<sup>th</sup>. If the Council

adopts the proposal, EU member states will have to implement the Copyright Directive in local legislation. Read more [here](#).

- On Thursday, the Australian parliament passed the [Sharing of Abhorrent Material](#) bill, which amends Australia’s criminal code to ensure that persons who are internet service providers, or who provide content or hosting services, are proactively referring abhorrent violent material to law enforcement, as well as expeditiously removing violent material that is capable of being accessed within Australia. The bill also provides a new power to the eSafety Commissioner to issue written notice to a provider of a content service or hosting service notifying them that abhorrent material can be accessed by or is hosted on their service. This notice intends to create a presumption for the purpose of any future prosecution that the provider was reckless as to whether the material could be accessed from their service. Read more [here](#).

## V. Industry Updates:

- The Washington Post published an editorial by Facebook CEO Mark Zuckerberg making the case for why the government should play a “more active role” in regulating the internet in four key areas: harmful content, election integrity, privacy, and data portability. To mitigate concerns about harmful content moderation, Zuckerberg suggests that technology platforms must take a “more standardized approach” to moderating harmful content. Specifically, he believes third-party bodies should set the standards governing the distribution of harmful content and measure companies against those standards. “Regulation could set baselines for what’s prohibited and require companies to build systems for keeping harmful content to a bare minimum,” Zuckerberg writes. Overall, Zuckerberg asserts that he agrees with lawmakers’ assessment that Facebook has “too much power over speech” and reaffirms the notion that his social media platform should not “make so many important decisions about speech on our own.” Read more [here](#).
- On Tuesday, The Atlantic held a briefing titled, “The New Rulebook: The Future of Tech Regulation.” Government officials and industry representatives considered whether the federal government should seek to regulate big tech. Much of the discussion focused on the four key areas of concern identified in Zuckerberg’s op ed, with a particular focus on the need for a federal privacy standard. There seemed to be a consensus among panelists that the federal government should play a role in mitigating some of the concerns surrounding big tech. Panelists disagreed over what this role should look like, however. Rep. DelBene (D-WA) suggested that the federal government should take an active approach in addressing privacy concerns and establish an opt-in framework that provides more rulemaking authority to the Federal Trade Commission (FTC), pointing to a bill she has introduced, called the [Information Transparency and Personal Data Control Act](#), as a potential legislative solution. On the contrary, FTC Commissioner Noah Phillips indicated that federal policymakers have a lot of details to iron out before advancing any federal privacy bill. Commissioner Phillips urged his colleagues on Capitol Hill to drill down and identify a specific issue they are trying to solve to avoid passing legislation that might unintentionally harm consumers, such as by stifling innovation. More info. [here](#).