



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 JULY 26, 2019



I. Congressional Updates:

- The Senate Judiciary IP Subcommittee is scheduled to hold an oversight of the U.S. Copyright Office hearing on Tuesday, July 30th at 2:30 p.m. ET. Register of Copyrights and Director of the U.S. Copyright Office Karyn Temple is the sole witness scheduled to testify before the subpanel. More info. [here](#).
- The Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights postponed an oversight hearing on the enforcement of U.S. antitrust laws that was originally scheduled for Tuesday. The hearing is now scheduled for 2:30 p.m. ET on Tuesday, September 17th, and the following witnesses will testify before the Committee: Federal Trade Commission (FTC) Chairman Joe Simons and Department of Justice (DOJ) Assistant Attorney General (AAG) for the Antitrust Division Makan Delrahim. More info. [here](#).
- On Tuesday, Senator Thom Tillis (R-NC), Chairman of the Senate Judiciary IP Subcommittee, called on Congress to modernize the U.S. Copyright Office in an *IP Watchdog* editorial. Chairman Tillis raises concern that the Copyright Office has been “hamstrung by outdated statutory authorities, the lack of adequate appropriated funds, antiquated legacy IT systems, and other structural issues.” As such, Chairman Tillis plans to announce a bipartisan, bicameral legislative effort to modernize the U.S. Copyright Office at the oversight hearing next Tuesday, July 30th. Chairman Tillis is “confident” that Register Temple “is the right person at the right time to finally launch the Office into the 21st Century.” Read more [here](#).

Headlines and Highlights:

- Senate Judiciary IP Subcommittee to hold U.S. Copyright Office oversight hearing next Tuesday, July 30th at 2:30 p.m. ET.
- Chairman Tillis to announce bipartisan, bicameral legislative effort to modernize Copyright Office at oversight hearing.
- Senate Judiciary Antitrust Subcommittee postpones oversight hearing on the enforcement of U.S. antitrust to September 17th.
- France became the first country to adopt the EU’s Copyright in the Digital Sale Market Directive.
- DOJ formally announces antitrust probe into market-leading online platforms.

In the Blogs:

[The Art in the Ravine—Can I Legally Post this Photo?](#)

Hugh Stephens Blog
July 24 by Hugh Stephens

[How to Avoid Copyright Infringement](#)

Illusion of More
July 21 by David Newhoff

- During the House Ways & Means Committee Member Day hearing on Thursday, Representative Ed Case (D-HI) urged the Committee to consider revising Section 230 of the Communications Decency Act (CDA). While suggesting that the statute played an important role in fostering the internet's growth, Rep. Case cautioned that today's massive internet platforms "cannot be allowed to knowingly facilitate lawbreaking in our states and localities by hiding behind CDA 230 immunity." He warned that this problem is "especially acute" for platforms that sell illegal short-term vacation rentals, such as Airbnb, TripAdvisor, Homeaway, VRBO, or Flipkey, because the statute that provides immunity from liability for providers and users of platforms serves as a roadblock for states and counties seeking to regulate such rentals and penalize the platforms that knowingly sell them. Chairman Frank Pallone (D-NJ) responded "We will certainly look into it." Read more [here](#).
- On Tuesday, Senator Rick Scott (R-FL) introduced a bill that seeks to help U.S. consumers make more informed choices when purchasing products from online retailers by increasing transparency about the country these products originate from. Specifically, the *Promoting Responsibility In Markets and E-Retailers (PRIME) Act of 2019* would require online retailers and sellers of internet applications to disclose the country of origin of their products and equip the FTC with the authority to enforce these rules. These new disclosure requirements would likely affect online retailers that have faced increased congressional scrutiny in recent months, such as Amazon and the Apple app store. "By buying products made by our adversaries," such as China, Senator Scott cautioned in a press release that U.S. consumers are "sending them money without a second thought and supporting their efforts on the global stage." Senator Scott hopes the *PRIME Act* would help U.S. consumers make more informed choices when purchasing online products and applications. Read more [here](#).

II. Judicial Updates:

- On Tuesday, Music Producer Dr. Luke testified in Katy Perry's copyright infringement case for her 2013 hit single "Dark Horse." The case first started in July 2014 when Christian rapper Marcus Gray (aka Flame) accused Perry and her team of knowingly infringing on his song, "Joyful Noise." Dr. Luke, who produced Dark Horse, testified that the bass notes were "too basic" to be protected by a copyright and told the jury that Perry and Dr. Luke's team never heard of Joyful Noise prior to writing and producing the song. Dr. Luke's testimony followed Katy Perry's testimony last week, in which she too testified that she was unfamiliar with Joyful Noise. More info. [here](#).

III. Administration Updates:

- During a Copyright Modernization Webinar on Thursday, representatives from the Copyright Office discussed its goals for the Office's modernization effort, which include (1) building a new enterprise copyright system featuring a user-centered and flexible design; (2) streamlining processes and policies; (3) improving access; and (4) reimagining the entire Office. During the webinar, representatives from the Copyright Office spoke about several ongoing modernization and digitization initiatives. One initiative is the upcoming pilot program, in which the Copyright Office will work alongside individuals and businesses to create an efficient online records system for copyright management and review. The Copyright Office anticipates that the dashboard will help users monitor the status of their application and act as a step towards enhanced transparency in the copyright process. However, the Copyright Office representatives stated that their reimagined process needs to meet the demands of both their staff and consumers. One representative stated that while the

Copyright Office wants to move their process online, the Office will work to ensure equal access to the copyright process by maintaining paper and other physical copyright application methods. Lastly, the Copyright Office representative answered several questions about the online copyright system and emphasized that the Office aims to make copyright certifications and older copyrights available online through the online records system.

- Last Friday, *The Washington Post* reported that the FTC allegedly finalized a settlement with Google in its investigation into YouTube for allegedly violating federal data privacy laws for children. The settlement, which was reportedly voted out of the Commission along party lines, finds that Google was in breach of the Children’s Online Privacy Protection Act (COPPA). Google is expected to pay a multimillion dollar fine, but the exact amount is unknown, as are the details of the settlement. More info. [here](#).
- On Wednesday, the FTC announced that Facebook will pay a \$5 billion penalty to settle FTC charges that the social media giant violated a 2012 privacy order. In addition to the monetary penalty, Facebook will also “submit to new restrictions and a modified corporate structure,” according to the FTC. Democrats have criticized the Commission since reports surfaced that commissioners had voted to approve a \$5 billion settlement, [claiming](#) that the monetary penalty is “woefully inadequate” and would not sufficiently alter the incentives of Facebook and its peers. Read more [here](#).
- On Tuesday, the DOJ announced a probe into whether and how market-leading online platforms “have achieved market power and are engaging in practices that have reduced competition, stifled innovation, or otherwise harmed consumers.” The DOJ’s statement announcing the review does not mention any companies by name, but [reports](#) in early June indicated that the DOJ was looking into the business practices of Apple and Google. “Without the discipline of meaningful market-based competition, digital platforms may act in ways that are not responsive to consumer demands,” AAG Makan Delrahim said in a statement. AAG Delrahim further explained that “The Department’s antitrust review will explore these important issues.” Read more [here](#).

IV. International Updates:

- On Tuesday, France became the first country to adopt the European Union’s (EU) [Copyright in the Digital Sale Market Directive](#) after a final reading of the directive in its lower legislative chamber. The directive seeks to modernize the EU’s copyright laws for the digital age through a myriad of reforms, including the provisions Article 13 and Article 11, renamed Article 17 and Article 15 in the final text, which faced criticism from opponents claiming that Article 13 would result in “upload filters” and that Article 11 would amount to a “link tax.” The directive was approved in April by the European Council and is due to be adopted by all member states by April next year. Read more [here](#).
- On Wednesday, the White House announced that USTR Robert Lighthizer and Treasury Secretary Steven Mnuchin will travel to Shanghai, China to begin trade talks with Vice Premier Liu He on July 30th. According to the press release announcing the trip, discussions will cover a broad range of issues, including “intellectual property, forced technology transfer, non-tariff barriers, agriculture, services, the trade deficit, and enforcement.” This is the first in-person trade meeting between the two countries since President Trump and President Xi met on the sidelines of the Group of 20 (G20) summit in Japan last month and agreed to a cease-fire in the trade dispute as talks resume. Read more [here](#).

V. Industry Updates:

- On Monday, July 29th, from 12:00 p.m. – 1:00 p.m. ET, the Congressional Internet Caucus Academy is holding an event titled, “In The Era Of Streaming, Who’s the Bigger Music Mogul, Jay-Z or Congress?” Event speakers will include 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). More info. [here](#).
- In an editorial published in *The Hill* on Saturday, Jennifer Huddleston and Brent Skorup, research fellows with the Mercatus Center at George Mason University, discuss a paper the pair is crafting that claims that Section 230 of the CDA accelerated “sound legal precedent and free speech protection, not special privilege.” Huddleston and Skorup assert that Section 230 codified the legal principle that “Media distributors should very rarely be liable for the content they transmit,” which had been developing since the 1930s. Furthermore, the pair attributes the statute penned by then-representatives Ron Wyden (D-OR) and Chris Cox (R-CA) as a key driver of the explosion of new and different uses for the internet because it provided certainty in an area where common law would have “eventually arrived at a similar conclusion.” Read more [here](#).