



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT JUNE 21, 2019



### I. Congressional Updates:

- On Wednesday, June 26<sup>th</sup> at 10:00 a.m. ET, the House Judiciary IP Subcommittee will hold a hearing titled “Oversight of the U.S. Copyright Office.” More info. [here](#).
- On Wednesday, July 17<sup>th</sup> at 2:30 p.m. ET, the Senate Judiciary IP Subcommittee will hold a hearing titled “Oversight of the United States Copyright Office.” Register Of Copyrights Karyn Temple is slated to testify before the Committee. More info. [here](#).
- On Tuesday, July 23<sup>rd</sup> at 2:30 p.m. ET, the Senate Judiciary Antitrust, Competition Policy, and Consumer Rights Subcommittee will hold a hearing on “Oversight of the Enforcement of the Antitrust Laws.” Chairman Mike Lee (R-UT) said this week that he plans to bring in Makan Delrahim, the Department of Justice’s (DOJ) Assistant Attorney General for the Antitrust Division, and commissioners from the Federal Trade Commission (FTC) to testify. Lee did not specify whether he plans to bring in all five FTC commissioners or just Chairman Joe Simons, who testified at a hearing on a similar topic last October. More info. [here](#).
- On Wednesday, June 26<sup>th</sup> at 10:00 a.m., the House Committee on Homeland Security will hold a hearing on “Examining Social Media Companies’ Efforts to Counter Online Terror Content and Misinformation.” The following witnesses are slated to testify before the Committee: Ms. Monika Bickert (Head of Global Policy Management, Facebook), Mr. Nick Pickles (Global Senior Strategist for Public Policy, Twitter), and Mr. Derek Slater (Global Director of Information Policy, Google). More

### Headlines and Highlights:

- House Judiciary IP Subcommittee to hold oversight of U.S. Copyright Office hearing next Wednesday.
- Senator Hawley introduces legislation to revise Section 230 of the CDA.
- Mexico ratifies USMCA.
- Lighthizer touts IP provisions in USMCA while testifying before House Ways & Means Committee.
- U.S. Copyright Office proposes limited revisions to its previously proposed fee schedule relating to document recordation and new prospective group registration options.

### In the Blogs:

[Petitioner Asks SCOTUS to Hear ReDigi Case](#)

Illusion of More

June 20 by David Newhoff

[The USMCA/CUSMA and Intellectual Property: Canada Wins](#)

Hugh Stephens Blog

June 17 by Hugh Stephens

info. [here](#).

- On Tuesday, June 25<sup>th</sup> at 2:00 p.m. ET, the House Ways & Means Trade Subcommittee will hold a hearing on “Mexico’s Labor Reform: Opportunities and Challenges for an Improved NAFTA.” No witnesses are listed yet. More info. [here](#).
- United States Trade Representative (USTR) Robert Lighthizer testified in both chambers of Congress this week in hearings to review the Trump Administration’s 2019 trade agenda. Among other issues, Lighthizer spoke about the Administration’s efforts to iron out House Democrats’ concerns with the USMCA, telling the Senate Finance Committee on Tuesday that hopes to “make substantial progress” on this front “over the next couple of weeks.” Lighthizer also told Senators that he hopes to submit the implementation legislation, which will be put to a yes-or-no vote with no amendments under the trade promotion authority’s so-called “fast track” rules, to Congress for approval “very soon.” Lighthizer seemed particularly willing to resolve Democrats’ concerns about the lack of strong enforcement mechanisms in the final pact, telling senators that there is room to work with lawmakers on enforcement “to the extent they want to plus it up.” At the same time, however, Lighthizer defended the pact’s enforceability, claiming that provisions in NAFTA 2.0 have more teeth than past agreements because they are “far more specific.” More info. [here](#).
- Testifying before the House Ways & Means Committee on Wednesday, Lighthizer discussed the elevated IP protections enshrined in the USMCA. Lighthizer pointed out that although people tend to focus on the biologics provision in the agreement, there is a whole host of important IP standards strengthened in the final pact, including an extension of the copyright term, full national treatment for copyright, a fifteen year protection for industrial designs, criminal and civil penalties for illegal camcording of content, etc. Overall, Lighthizer remained optimistic that he would be able to work with the trade working groups recently established by Speaker Nancy Pelosi (D-CA) to resolve House Democrats’ concerns with the renegotiated deal. In fact, he said several times that he would be able reach a solution with Democrats after sitting down with the working groups “within half a day.” Democrats, including Chairman Richard Neal (D-MA), maintained their commitment to working with Lighthizer to get to a “yes,” but they urged the Trump Administration to not rush the Congressional review process. More info. [here](#).
- During the House Ways & Means trade hearing on Wednesday, Rep. Judy Chu (D-CA) raised concern that the most recent Section 301 tariff list from the USTR includes a twenty-five percent tariff on printed materials. This includes children’s books, textbooks, technical, scientific, and professional books, many of which are created in the U.S. by American authors and illustrators but are printed on unique paper exclusively made in China. Rep. Chu pointed out that under the International Emergency Powers Act (IEEPA), information and informational materials are exempt from these types of restrictions. She asked how the tariffs on these products are justified. Lighthizer did not address the general U.S. policy of excluding information and informational materials from tariffs; he instead answered that he is not using the authority granted in IEEPA for these tariffs.
- On Monday, Senator Mike Lee (R-UT), Chairman of the Senate Judiciary Antitrust Subcommittee, penned an editorial in the *Washington Examiner* calling for a reorganization of civil antitrust enforcement so that it is done under one roof. Senator Lee writes that the splitting of tech antitrust review across the FTC and the DOJ Antitrust Division illustrates the “absurdity” of having two federal agencies handling civil antitrust enforcement. Lee reasons

that this contributes to less effective and coherent investigations. Furthermore, Lee claims that dividing the review of the tech industry invites conflicts between how the agencies analyze competition issues. He asserts that this type of “dysfunction” is apparent in how the agencies handle matters relating to IP licensing. Finally, Lee cautions that having two agencies responsible for civil antitrust enforcement creates a duplication of resources that could be better used on “actual antitrust enforcement.” Read more [here](#).

- On Wednesday, Senator Josh Hawley (R-MO), a member of the Senate Judiciary Committee, introduced the *Ending Support for Internet Censorship Act*, which would revise Section 230 of the Communications Decency Act (CDA) to remove the immunity big tech companies receive under the statute unless they conduct an external audit and prove to the FTC with clear and convincing evidence that their algorithms and content-removal practices are politically neutral. The new rules enshrined in the bill would only apply to companies with more than 30 million active monthly users in the U.S., more than 300 million active monthly users worldwide, or to those who have more than \$500 million in global annual revenue. More info. [here](#).

## II. Judicial Updates:

- On Monday, a Federal jury in California ordered VidAngel, a video streaming service that filters profanity, sex, violence, and more from movies, to pay \$62.4 million collectively to Disney, Warner Bros, and 20<sup>th</sup> Century Fox, over copyright infringement. The U.S. District Court for the Central District of California declared the service to be illegal in December 2016 following a copyright infringement lawsuit from the film studios. In a statement, VidAngel CEO Neal Harmon asserted “VidAngel plans to appeal the District Court ruling, and explore options in the bankruptcy court.” Read more [here](#).

## III. Administration Updates:

- On Thursday, the U.S. Copyright Office released a supplemental notice of proposed rulemaking as part of its ongoing fee study. The Copyright Office is proposing limited revisions to its previously proposed fee schedule relating to document recordation and new prospective group registration options. Specifically, the proposed modifications would adjust the fee structure for document recordation to a formula based on the number of works and alternate titles and registration numbers to which a document pertains, and make certain other clarifications. The Copyright Office also announced its intention to issue fees for previously proposed group registration options for short online literary works and for works contained on albums. Public comments are due by 11:59 p.m. ET on July 22, 2019. More info. [here](#).
- Following up on concerns expressed by witnesses at a recent Senate Judiciary IP Subcommittee [hearing](#) on the role of IP in sports and public safety, Chairman Thom Tillis (R-NC) and Ranking Member Chris Coons (D-DE) sent letters this week to the [DOJ](#), [Customs and Border Protection](#) (CBP), and the [U.S. Copyright Office](#) seeking additional information on their ongoing efforts to combat IP infringement. The senators are particularly concerned about witness testimony suggesting that there are significant economic losses caused by rampant copyright infringement through illicit streaming and significant public safety risks posed by counterfeit goods flowing into the United States from China. The letters ask each executive office a series of questions due to the senators by July 18<sup>th</sup>, 2019. More info. [here](#).

#### IV. International Updates:

- On Wednesday, Mexico became the first country to ratify the USMCA. Its Senate backed the deal by a vote of 114 in favor to 4 against the renegotiated agreement. Read more [here](#).
- On Tuesday, President Trump announced firmed-up plans to meet with China's president Xi Jinping on the margins of the G-20 summit, and confirmed that negotiators from the two countries would "begin talks" prior to the president-level meeting in Japan. "Had a very good telephone conversation with President Xi of China," Trump tweeted, adding that the two leaders "will be having an extended meeting next week at the G-20 in Japan." Read more [here](#).

#### V. Industry Updates:

- In an editorial published in *Variety* on Wednesday, Jane Clark and Bob Tourtellotte, owners of FilmMcQueen Productions, spoke from their experience fighting rampant internet piracy to underscore how the *Copyright Alternative in Small-Claims Enforcement Act of 2019* (CASE Act, [H.R. 2426](#), [S.1273](#)) would give small creators, including indie filmmakers, a voice when their copyrights have been violated by establishing a small claims board within the U.S. Copyright Office to settle infringement cases. Clark and Tourtellotte explain how internet piracy devoured their earnings on their web series *Crazy Bitches*. "Horror comes from a terrifying feeling of helplessness and that's how we felt watching our passion project being stolen again and again," the pair asserts. Despite this disheartening experience, Clark and Tourtellotte are encouraged by the CASE Act, indicating that the tools provided by this legislation would have helped them recover some of their losses in 2015, and perhaps attract the necessary capital from investors to produce a sequel. Read more [here](#).
- On Tuesday, the U.S. Chamber of Commerce's Global Innovation Policy Center (GIPC) hosted an event to discuss the release of its study on illicit streaming, titled "Impacts of Digital Piracy on the U.S. Economy." House Judiciary Committee Ranking Member Doug Collins (R-GA) delivered opening remarks, noting that digital piracy doesn't just impact big movie companies, cable companies, and actors; rather, it also impacts songwriters, artists, and designers. Jeffrey A. Eisenach and David Blackburn, coauthors of the study, highlighted the methodology used in the study and its key findings. Notably, the study estimates that global online piracy costs the U.S. economy at least \$29.2 billion in lost revenue each year. Mark Olshanker, a *New York Times* bestselling author, also delivered remarks, stressing the importance of strong IP rights for creators. Read the study [here](#).
- On Tuesday, *Wired.com* posted an article detailing the origins of Backpage.com and the various legal battles the site's founders, James Larkin and Michael Lacey, faced over the years. Christine Biderman, the author of the piece, commented on how Section 230 initially immunized Backpage from any liability and allowed Lark and Lacey to continue to post criminal offerings on the site. Biderman also wrote about the various efforts, first by state AGs, and then by the Senate, to overhaul the law. The article highlights Senator Portman (R-OH) and the Senate Subcommittee on Investigation's 2017 report on Backpage. After this report was issued, numerous civil lawsuits were filed against Backpage, and the Section 230 defense worked only intermittently. Biderman also noted Senator Portman and Blumenthal (D-CT)'s *Stop Enabling Sex Traffickers Act* (Sesta), which faced initial opposition from the Internet Association (IA). After a sudden change of course from the IA, it supported a modified version of the bill, called the *Allow States and Victims to Fight Online Sex*

*Trafficking Act* (Fosta). Fosta-Sesta enabled the authorities to prosecute Lacy and Larkin. Read more [here](#).

- *The Wall Street Journal* published an article on Monday highlighting an ongoing dispute between lyrics site Genius and Google. Genius has accused the search platform of directly lifting lyrics from Genius and putting them on Google. Genius uses a watermarking system in its lyrics that embeds patterns in the formatting of apostrophes and said that it found more than 100 examples of songs on Google that came from its site. Starting in 2016, Genius claims that Google made subtle changes to the apostrophes in the lyrics, to which Google has denied any wrongdoing. In a statement issued after the article was published, Google claims it is investigating the issue raised by Genius and will terminate its agreements with partners who were “not upholding good practices.” Read more [here](#).