



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT MARCH 1, 2019



I. Congressional Updates:

- On Tuesday, the Senate Judiciary IP Subcommittee held a hearing to examine the 2019 [Annual Intellectual Property Report to Congress](#). The hearing featured only one witness: Intellectual Property Enforcement Coordinator (IPEC) Vishal Amin. Chairman Tillis (R-NC) used his opening statement to outline his vision for the subcommittee, which, he said, includes Copyright Office modernization. During the question and answer portion of the hearing, Sen. Blackburn (R-TN) asked what IPEC is doing to combat online piracy of content, and Amin assured Blackburn that the Administration talks about music streaming overseas. Shifting to domestic copyright policy, Sen. Blackburn asked about the terrestrial broadcast right for sound recordings that was not included in the Music Modernization Act (MMA), which was enacted last year. Amin responded that he is waiting to see how the Copyright Office implements the changes included in the MMA before proceeding in other areas. More info. [here](#).
- On Monday, the House of Representatives passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE) Act ([H.R. 583](#)) by a voice vote. This bipartisan legislation seeks to combat illegal broadcasting and interference and was introduced by Reps. Tonko (D-NY) and Bilirakis (R-FL). Specifically, it would increase the allowable fines for illegal broadcasts to \$100,000 per day, with a maximum fine of \$2,000,000. This legislation was sent to the Senate Committee on Commerce, Science and Transportation for review, where it stalled last term after passing the House.

Headlines and Highlights:

- IPEC Vishal Amin testifies before SJC IP Subcommittee.
- Senate Committee on Rules and Administration to hold oversight of the Library Congress hearing on March 6th.
- FTC announces the creation of a task force dedicated to monitoring competition in U.S. technology markets.
- USTR publishes U.S.-UK negotiating objectives.
- YouTube disables comments on videos featuring minors, with some exceptions.

In the Blogs:

[Copyright Review in Canada: Will Fair Dealing Be Widened Further, Tightened or Left As Is?](#)

Hugh Stephens Blog
February 25 by Hugh Stephens

[Rise Of The Machines: Experts Look At AI, Robotics And The Law](#)

IP Watch
February 27 by William New

[Fair Use Week Again. But Why?](#)

Illusion of More
February 27 by David Newhoff

- During an interview published by Bloomberg News late last week, reporter Malathi Nayak asked Rep. Hank Johnson (D-GA), who chairs the House Judiciary Committee’s Subcommittee on Courts, Intellectual Property and the Internet, to survey the copyright policy momentum after the passage of the MMA last year and whether there are gaps in the law where he believes legislation is needed. Chairman Johnson asserted that the MMA was “almost revolutionary,” and while the federal government is implementing the law Congress must “conduct oversight hearings on all phases of the copyright system to ensure that, from a musical perspective, that it is working as intended.” He also assured Nayak that Congress will pro-actively identify any modifications that are “necessary down the road.” Chairman Johnson did not shed any further insight into the IP Subcommittee’s copyright agenda. Watch the interview [here](#).
- Sen. Wyden (D-OR) told POLITICO this week that he met with Sen. Hawley (R-MO) to discuss Hawley’s recent criticism of Section 230 of the Communications Decency Act. The freshman senator from Missouri, who earned a spot on the Senate Judiciary Committee, has [called](#) the provision that gives immunity from liability to providers and users of online platforms a “sweetheart deal from the government” that allows social media platforms to “avoid the usual checks and balances of liability.” Sen. Wyden has defended the merits of Section 230, which he helped pen in the House of Representatives in 1996. Other members of the upper chamber have echoed Sen. Hawley’s interest in revising Section 230. For instance, Sen. Manchin (D-WV) vowed on Wednesday to continue efforts to modify this provision to ensure that platforms are liable for the sale of opioids online. Read more [here](#).
- This week, both the House Energy & Commerce Subcommittee on Consumer Protection and the Senate Commerce Committee heard from consumer advocacy organizations and industry groups in hearings to consider comprehensive federal privacy legislation. During the Senate hearing on Wednesday, there appeared to be a bipartisan consensus on some enforcement issues, including allowing state attorneys general the ability to enforce federal privacy law and granting the Federal Trade Commission (FTC) the authority to impose civil penalties on first-time offenders. [Chairman Roger Wicker](#) (R-MS) also reiterated his support for establishing a federal framework that pre-empts state laws, but there is still significant resistance, from many Democrats and members of the California delegation, to the idea of undermining California’s recently passed California Consumer Privacy Act (CCPA). Discussions during the House hearing on Tuesday were more high-level [and Subcommittee Chairwoman Schakowsky](#) (D-IL) noted that the hearing was the first in a series that will delve deeper into the issues of data privacy and protection that will be addressed in future legislation.
- Next Wednesday, March 6th at 10:30AM ET, the Senate Committee on Rules & Administration will convene a hearing titled, “Annual Oversight of the Library of Congress.” Librarian of Congress Dr. Carla Hayden is the only witness slated to testify before the Committee. More info. [here](#).
- On Tuesday, March 5th, the Senate Committee on the Judiciary’s Subcommittee on Antitrust, Competition Policy, and Consumer Rights will convene a hearing titled, “Does America Have a Monopoly Problem?: Examining Concentration and Competition in the U.S. Economy. Witnesses slated to testify before the Committee include: Robert B. Reich (Chancellor’s Professor of Public Policy, Goldman School of Public Policy); Joshua D. Wright (Professor of Law, Executive Director of the Global Antitrust, Antonin Scalia Law School at George Mason University); Professor John Kwoka (Neal F. Finnegan

Distinguished Professor of Economics, Northeastern University); and A. Douglas Melamed (Professor of the Practice of Law, Stanford Law School). More Info [here](#).

II. Judicial Updates:

- The Federal Supreme Court of Switzerland has rejected an application from Praesens-Film asking to have Swisscom, one of the country's largest internet service providers (ISPs), block pirate sites. "In order for Swisscom to be obliged to block the Internet sites in question, it would need to be a participant in a copyright infringement by third parties, by making a legally relevant contribution to it. That's not the case," the Court wrote this week. The Court decided that the fact that Swisscom provides technical infrastructure that enables customers to access the Internet is insufficient to directly link them to the infringement. Read more [here](#).

III. Administration Updates:

- On Thursday, the Office of the United States Trade Representative (USTR) published its objectives for the United Kingdom-United States trade negotiations currently underway. In the IP section, USTR commits to seeking provisions governing IP rights that "reflect a standard of protection similar to that found in U.S. law." This includes protections relating to trademarks, copyright and related rights (including, as appropriate, exceptions and limitations), undisclosed test of other data and trade secrets. Read more [here](#).
- On Tuesday, the FTC announced the creation of a task force dedicated to monitoring competition in U.S. technology markets, investigating any potential anticompetitive conduct in those markets, and taking enforcement actions where warranted. According to a press release announcing the creation of the task force, Patricia Galvan, Deputy Assistant Director of the Mergers III Division, will lead a team of approximately 17 staff attorneys from divisions within the Bureau. Read more [here](#).
- On March 28th from 9:00AM ET-5:00PM ET, the Department of Commerce's Internet Policy Task Force will host the Third Public Meeting on *Developing the Digital Marketplace for Copyrighted Works* at the United States Patent and Trademark Office's (USPTO) headquarters in Alexandria, Virginia. More info. [here](#).

IV. International Updates:

- On Tuesday, German Data Privacy Commissioner Ulrich Kelber expressed concerns that the European Copyright Directive could pose risks relating to data privacy rights. In a statement, published in German and translated by Florian Mueller of fosspatents.com and officially approved by the government agency, Kelber cautions that the legislation will result in an "oligopoly consisting of a few vendors of filtering technologies, which would then be instrumental to more or less the entire Internet data traffic of relevant platforms and services." Read more [here](#) and [here](#).
- House Ways & Means Committee Chairman Richard Neal indicated this week that he does not support calls from his Democratic colleagues to renegotiate the United States-Mexico-Canada Agreement (USMCA). "There's going to be ample opportunity here, once the

agreement is sent to us, for conversation and I think that's the better way to handle it," he said when asked whether reopening the text is an option. Read more [here](#).

V. Industry Updates:

- In a guest column in Billboard this week, Richard James Burgess, CEO of the American Association of Independent Music (A2IM), asserted that the Local Radio Freedom Act (LRFA) would harm artists by perpetuating an anomaly in U.S. copyright law that allows terrestrial broadcasters (AM/FM radio) to use creators' music with zero compensation for the artists who created the music. Burgess urges members of Congress to not be deceived by stakeholders characterizing LRFA as a non-controversial resolution aimed at protecting local radio stations. Read more [here](#).
- On Thursday, YouTube announced that it is disabling comments on videos with minors. Several companies including AT&T, Hasbro, Disney and Nestle pulled their ads from the video sharing platform last week following reports that there was a pedophile network in the comments of certain videos. According to a blog post announcing the decision, a "small number of creators" will still have comments enabled on this category of videos, but will be required to "actively moderate their comments, beyond just using our moderation tools, and demonstrate a low risk of predatory behavior." Read more [here](#) and [here](#).
- In a blog post published Tuesday, Amazon announced a new program called Project Zero that seeks to empower brands to "help drive counterfeits to zero." Amazon will attempt to achieve this ambitious goal by combining its advanced technology, machine learning, and innovation with brands' knowledge of their own IP and how to best detect counterfeits of their products. Read more [here](#).
- Late last week YouTube announced that it will prevent channels that promote anti-vaccination content from running advertisements on their videos. This decision comes shortly after BuzzFeed news reported that while the search results on the platform for queries such as "are vaccines safe" are normally from credible sources such as a children's hospitals, many times the next recommended videos caution against vaccinations. Seven different advertisers said they were not aware that their advertisements were playing on anti-vaccination videos. YouTube has explained that, "like many algorithmic changes," the alterations to its Up Next recommendation system "will be gradual and will get more and more accurate over time." Read more [here](#).