



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT MARCH 15, 2019



I. Congressional Updates:

- On Tuesday, Rep. Pocan (D-WI), co-chair of the Congressional Progressive Caucus, announced that his group of over ninety members is taking a position against the current United States–Mexico–Canada Agreement (USMCA). Pocan told POLITICO that both he and his co-chair Rep. Jayapal (D-WA) believe the deal “should be reopened, so that we can deliver a progressive trade deal in line with our principles.” Pocan referenced concerns about the environment and labor enforcement standards in the current proposal and called the provisions around pharmaceuticals “very egregious.” Furthermore, he insisted that the concern about pharmaceuticals goes beyond the Progressive Caucus and indicated that Democrats are going to take a “very strong lead on that.” Read more [here](#).
- On Thursday, the New Democrat Coalition Trade Task Force co-chairs Reps. Kind (D-WI), Larsen (D-WA), Meeks (D-NY), and Fletcher (D-TX) released their goals for the 116th Congress. In a press release on the matter, Rep. Kind asserted that in order to find a landing zone for the USMCA, the Administration will need to continue to work with the New Democrat Coalition and the larger caucus to “ensure all Members are heard and have outstanding concerns resolved.” Read more [here](#).
- On Wednesday, Sens. Portman (R-OH) and Heinrich (D-NM) launched the bipartisan Senate Artificial Intelligence (AI) Caucus. The AI caucus is intended to complement the *American AI Initiative* recently launched by the White House and will “advise the 15-member National Security Commission on Artificial Intelligence” as well as “host discussions with AI experts in private industry, academia

Headlines and Highlights:

- Congressional Progressive Caucus announces that it will not support the current USMCA proposal.
- New Democrat Coalition Trade Task Force releases its goals for the 116th Congress.
- Klobuchar suggests that members of Congress consider revising Section 230 to address platform accountability concerns.
- U.S. Copyright Office releases a draft update to its administrative manual—public comments due May 14th.
- Spotify responds to criticism for its decision to appeal the 2018 CRB decision to increase royalties for songwriters.

In the Blogs:

[Don't Blame Internet Culture on Copyright](#)

Illusion of More

March 13 by David Newhoff

[Feminism and Copyright Revisited](#)

Hugh Stephens Blog

March 10 by Hugh Stephens

and the executive branch.” Other members of the caucus include Sens. Schatz (D-HI), Gardner (R-CO), Peters (D-MI) and Ernst (R-IA). Read more [here](#) and [here](#).

- At the South by Southwest (SXSW) conference late last week, Sen. Klobuchar (D-MN) suggested that lawmakers should consider revising Section 230 of the Communications Decency Act, which gives immunity from liability to providers and users of online platforms, when drafting proposals to increase accountability for online platforms. In particular, Sen. Klobuchar, who serves as the Ranking Member of the Senate Judiciary Committee’s antitrust subcommittee, stated, “It is something else that we should definitely look at as we look at how we can create more accountability,” Read more [here](#).
- After Sen. Warren rolled out an ambitious policy plan to break up Facebook, Amazon, and Google, Rolling Stone published an article underscoring how antitrust concerns have emerged as a theme in the contest for the Democratic presidential nomination. For instance, Sen. Klobuchar has said that America has a “major monopoly problem,” and breaking up the nation’s largest banks tops Sen. Bernie Sanders’ (I-VT) campaign platform. The article also claims that Open Markets Institute founder Barry Lynn played a critical role in elevating antitrust concerns to the national arena. Rolling Stone reports that Warren, Klobuchar, former Security of Housing and Urban Development Julián Castro, Rep. Tim Ryan (D-OH) and ex-Congressman John Delaney are expected to speak about their antitrust concerns at the Heartland Forum in Storm Lake, Iowa on March 30th. The event is sponsored by Open Markets Institute Action, HuffPost, the Storm Lake Times and the Iowa Farmers Union. Read more [here](#).

II. Judicial Updates:

- On Tuesday, the Recording Industry Association of America (RIAA) appealed a federal judge’s decision that he lacked jurisdiction to take on the major label’s case against Tofiq Kurbanov, a Russian operator of two of the internet’s most popular stream-ripping websites. Judge Hilton of the Eastern District of Virginia ruled in January that he lacked jurisdiction because Kurbanov’s websites were “semi-interactive” with users and the defendant “did not purposefully avail himself” to any of the benefits or protections of doing business in Virginia or the U.S. as a whole. In its appeal, RIAA contends that Kurbanov “cannot seriously contend that he lacks ‘fair warning’ that he might be sued in U.S. courts” when he transmits hundreds of millions of infringing files to U.S. devices on U.S. soil. Read more [here](#)

III. Administration Updates:

- On Friday, the U.S. Copyright Office released a public draft update to its administrative manual, the *Compendium of U.S. Copyright Office Practices, Third Edition*. Comments must be made in writing and received no later than May 14th. Additionally, the Copyright Office will hold a webinar to review the proposed revisions on April 10th at 2:00PM EST. Read more [here](#) and [here](#).

IV. International Updates:

- On Wednesday, Japan’s government decided to shelve a proposal to amend Japan’s Copyright Act. The legislation would have expanded Japan’s anti-downloading laws to cover all copyrighted content and establish a penalty of up to two years in prison and fines of two million yen (\$18,052) for infringers, although this penalty would be

reserved for serious offenders. Japan's Copyright Act prohibits downloading copyrighted music and movies, but creators have complained that these protections do not extend to other creative works, such as still images (including manga publications), software, and games. Read more [here](#) and [here](#).

- This week the Higher Regional Court of Vienna, Austria, ruled that YouTube can't be held liable for infringing videos uploaded by users. This decision overturns a previous verdict which held that since YouTube takes an "active role" in organizing and optimizing how videos are displayed on the platform, it does not qualify for safe harbor protection. Read more [here](#).
- On Monday, Spotify filed a complaint to the EU's antitrust arm alleging that in recent years, Apple has abused its control over which apps appear in its App Store in an attempt to limit competition with its streaming service Apple Music. Spotify's general counsel Horacio Gutierrez asserted, "Once Apple became not only a platform provider, but also a direct competitor, their incentive to disadvantage rival services, like Spotify, became even greater and their restrictions started to become more frequent and extreme." Read more [here](#).

V. Industry Updates:

- On Tuesday, Information Technology Industry Council (ITI) released its "Policy Recommendations for a European Tech Agenda," which outlines steps the European Union (EU) can take to advance what the ITI believes is a "compelling European tech agenda for the 21st Century." Among other recommendations, the report urges EU regulators to promote interoperability between regional mechanisms for international data transfers; narrowly tailor proposals to regulate online platforms instead of taking a one-size-fits-all approach; uphold the EU E-Commerce Directive rules on the liability of an intermediary or platform; and ensure clear boundaries between privacy and competition enforcement. Read more [here](#).
- On Monday, Spotify published a blog post responding to the criticism surrounding its decision to appeal a 2018 ruling by the U.S. Copyright Royalty Board (CRB) to increase royalties for writers. The post clarifies that Spotify is not suing songwriters and asserts that the music streaming platform believes that songwriters deserve to be paid more. However, Spotify also contends that there are "significant flaws" in the CRB rate structure. According to the blog post, Spotify will highlight in its appeal how the CRB decision allegedly "makes it very difficult for music services to offer 'bundles' of music and non-music offerings." Read more [here](#).
- On Monday, David Kaye, who serves as the United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, urged the EU to revise certain provisions of its Directive on Copyright in the Digital Single Market so it is in line with international standards of freedom of expression. In particular, Kaye asserted that Article 13 of the proposal "appears destined to drive internet platforms toward monitoring and restriction of user-generated content even at the point of upload." Kaye claims that Article 13 would put legal pressure on platforms to install and maintain content filtering infrastructure. The European Parliament is expected to vote on the agreement in late March or early April. Read more [here](#).

- Late last week, over 200 organizations from across the cultural and creative sectors united to urge the European Parliament to adopt the Copyright Directive, insisting that it “has been long sought to create a much-needed level playing field” for actors in Europe’s digital market and claiming that the proposal would give citizens “better access to a wider array of content.” The coalition includes organizations that represent musicians, authors, composers, journalists, photographers, as well as music, book and other publishers. Read more [here](#).