



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT MAY 24, 2019



I. Congressional Updates:

- Senator Ron Wyden (D-OR), who helped pen Section 230 of the Communications Decency Act while serving in the House of Representatives in 1996, defended the merits of the statute that provides immunity from liability to providers and users of online platforms in a recent interview with *Recode*. Notably, Sen. Wyden addressed criticism from several of his conservative colleagues, spearheaded by Sens. Ted Cruz (R-TX) and Josh Hawley (R-MO), claiming that Congress granted social media platforms this special immunity from liability under the condition that they would serve as neutral public fora for users. Sen. Wyden contended that the law does not necessitate private companies to take a neutral stance about what content is and is not allowed on their platform. “Section 230 is not about neutrality. Period. Full stop. 230 is all about letting private companies make their own decisions to leave up some content and take down other content,” Sen. Wyden told *Recode*’s Emily Steward. Read more [here](#).
- On Wednesday, the House Ways & Means Trade Subcommittee held a hearing titled “Enforcement in the new NAFTA.” As expected, Democrats used the hearing to drill down on their concerns regarding the lack of enforcement mechanisms in the United States–Mexico–Canada Agreement (USMCA), and particularly with respect to the labor and environment standards included in the new pact. Democrats, whose support in the House will be essential to sending legislation to President Trump’s desk to implement the new trade agreement this year, seemed to agree that policymakers must iron out these enforcement concerns before many members of the caucus will consider endorsing the proposal. To mitigate their

Headlines and Highlights:

- Sen. Wyden responds to conservative criticism of Section 230 in interview, insisting that the statute is “not about neutrality. Period.”
- House Democrats drill down on enforcement concerns in USMCA hearing.
- U.S. Copyright Office issues a NPRM to create a new group registration option for musical works, sound recordings, and certain works contained on an album.
- Trump Administration lifts steel and aluminum tariffs from Mexico and Canada.

In the Blogs:

[Did the Internet Get Worse, or Were You Not Paying Attention?](#)

Illusion of More

May 21 by David Newhoff

[Canadian Copyright Reform: “Shifting Paradigms” Report Released—An Important Milestone, But Not Yet the Final Destination](#)

Hugh Stephens Blog

May 21 by Hugh Stephens

concerns, witnesses cited frameworks from previous trade agreements, such as the forestry annex added to the United States' free trade agreement with Peru, in addition to Sens. Ron Wyden (D-OR) and Sherrod Brown's (D-OH) proposal to equip countries with tools to address labor violation concerns. Democrats were also highly critical of the Trump Administration's suggestion that Section 301 investigations and tariffs could be used to hold countries accountable to the USMCA's standards. Republicans, on the other hand, appeared united in their sentiment that all provisions in the USMCA must be enforceable, including the labor and environment standards. Overall, there was little discussion about the IP standards in the new pact, although several members, including Ranking Member Vern Buchanan (R-FL) and Rep. George Holding (R-NC), touted the USMCA's elevated IP standards while listing the agreement's many perceived benefits. Watch online [here](#).

- On Tuesday, the Senate Judiciary Committee held a hearing titled “Understanding the Digital Advertising Ecosystem and the Impact of Data Privacy and Competition Policy.” Most of the hearing was high-level discussion about the importance of consumer privacy, and how a lack of competition between digital platforms may contribute to poor privacy practices. Similar to previous congressional hearings on this topic, witnesses agreed that a federal preemption would be ideal, although some witnesses pointed out that the federal standards must be strong enough to justify the preemption. There was very little discussion about the advertising business specifically, as much of the hearing was focused on these platforms in a broader sense. However, at the conclusion of the hearing, Sen. Cruz raised concern that a platform like Facebook or Google could charge different prices for campaign ads depending on political preference and Chairman Lindsey Graham (R-SC) expressed an interest in learning more about this potential problem. Of note, Chairman Graham also identified content moderation and preventing foreign interference as important topics for the Committee to consider during his opening remarks. More info. [here](#).
- On Wednesday, the House Oversight Committee held a hearing titled “Facial Recognition Technology (Part 1): Its Impact on our Civil Rights and Liberties.” Members heard from witnesses about the potential impact of facial recognition technology used by both government and commercial entities, featuring testimony from [Dr. Cedric Alexander](#) (Former President of the National Organization of Black Law Enforcement Executives), [Ms. Joy Buolamwini](#) (Founder of the Algorithmic Justice League), [Mr. Andrew G. Ferguson](#) (Professor of Law, University of the District of Columbia, David A. Clarke School of Law), [Ms. Clare Garvie](#) (Senior Associate, Georgetown University Law Center, Center on Privacy & Technology), and Ms. Neema Singh Guliani (Senior Legislative Counsel, American Civil Liberties Union). Members and witnesses seemed to agree that regulation is needed to prevent the abuse of this technology. One theme of concern raised by Chairman Elijah Cummings (D-MD) and others is the disparate impact this technology has on vulnerable communities. In particular, several members and witnesses took umbrage with the alarming rate at which facial recognition technology misidentifies women and people of color. Chairman Cummings told reporters after the hearing that he plans to hold a second hearing in June on this topic and he hopes to draft legislation to “put a halt on facial recognition” until some of the problems discussed at the hearing are resolved. More info. [here](#).
- On Wednesday, Sen. Wyden (D-OR), Ranking Member of the Senate Finance Committee, said in a letter to United States Trade Representative (USTR) Robert Lighthizer that he still has concerns about USMCA's mechanisms for resolving investor state disputes. Sen. Wyden wrote that the renegotiated trade agreement with Canada and Mexico had “some improvements” for resolving disputes but “essentially replicates” the failings of the original

North American Free Trade Agreement (NAFTA). Sen. Wyden also reiterated concerns expressed by some Democrats regarding skepticism of Mexico's ability and willingness to enforce the new labor commitments in the deal. He concluded his letter by stating that "the Administration's justification for this mechanism has only increased my worry that the new Agreement will not be enforced." Read more [here](#).

II. Judicial Updates:

- U.S. District Judge Lucy H. Koh ruled in favor of the Federal Trade Commission (FTC) in its suit against Qualcomm this week. The FTC had filed a complaint in federal district court charging the chipmaker's alleged "no license, no chip" practice of pegging patent royalties to the price of a device is anti-competitive. Read more [here](#) and read the *WSJ* Editorial [here](#).
- Reports surfaced this week that the estate of Harold Arlen, who composed American classics such as *Over the Rainbow* and *Get Happy*, has sued Apple, Google, Amazon and Microsoft, alleging the firms engaged in "massive piracy operations." Specifically, the late music composer's son Sam Arlen claims that he has found more than 6,000 unauthorized copies of Arlen's works on the tech firms' music services, often offered at a lower price than the originals. Harold Arlen's estate is seeking damages in the region of 4.5 million dollars. Read more [here](#).

III. Administration Updates:

- Late last week, the U.S. Copyright Office issued a Notice of Proposed Rulemaking (NPRM) to create a new group registration option for musical works, sound recordings, and certain other works contained on an album. According to the NPRM, the proposed rule would expand the registration options currently available to register multiple musical works or sound recordings under one application. Comments are due to the Copyright Office no later than 11:59 p.m. ET on July 19th. Read more [here](#).
- Last Friday, President Trump announced plans to lift steel and aluminum tariffs imposed on imports from Canada and Mexico, easing the passage to approval of the new North American trade pact. In addition to lifting the tariffs, the U.S. is expected to not impose quotas in their place. As outlined by the USTR's joint statements with Canada and Mexico, the tariffs of 25 percent on steel and 10 percent on aluminum were eliminated within two days of the announcement. In exchange, Canada and Mexico lifted retaliatory tariffs they had imposed a slew of U.S. goods, including agricultural products. The deal came together quickly after months of deadlock between the U.S. and its two trading partners. Canadian Foreign Affairs Minister Chrystia Freeland met with USTR Robert Lighthizer last Wednesday, and was presented with an amenable deal- no tariffs, no quotas, and a promise to create a mechanism to limit Chinese steel imports. The USTR called the details of the deal "great news" for American farmers and industries, and Canada and Mexico were similarly upbeat about the agreement. Read more [here](#).

IV. International Updates:

- In a clear translation blunder, the official Italian translation of the EU Directive on Copyright in the Digital Single Market posted late last week mistakenly claimed that Article 17 of the Directive requires platforms such as YouTube to ensure that *non-infringing* works are never made available on their sites. In actuality, Article 17, which was formerly Article 13 in draft

proposals, requires platforms to take measures to ensure that *infringing* works are unavailable on their sites. Specifically, the provision, which some critics have claimed will necessitate so-called “upload filters,” requires platforms to sign licensing agreements with creators or, if that is impossible, ensure that infringing content uploaded by users is taken down and not re-uploaded to the site. Read more [here](#).

- According to a document obtained by *The Wall Street Journal*, the Competition Commission of India is assessing the domestic e-commerce sector. The document indicates that Ernst & Young is conducting the study to understand the evolution of the industry, firms’ methods and strategies, business practices, and “implications for competition.” An official from India’s Ministry of Corporate Affairs, which oversees the Competition Commission, told *The Wall Street Journal*, “What if tomorrow Amazon takes over Walmart-controlled Flipkart or vice versa? Wouldn’t there be a complete monopoly? This needs to be checked.” However, it should be noted that a disclaimer in the document explains that the study is “purely a fact-finding exercise.” Read more [here](#).

V. Industry Updates:

- Amazon shareholders rejected two proposals regarding the tech giant’s facial recognition surveillance technology Rekognition, despite the American Civil Liberties Union’s (ACLU) endorsement of the measures. The ACLU had published an open letter earlier this week urging Amazon shareholders to vote “yes” on the two proposals; the first would ask the Board of Directors to stop selling this technology to the U.S. government, and the second would require an independent review of the technology’s human and civil rights impacts. The open letter cautions that multiple studies and experiences of impacted communities have found that face surveillance “will amplify biased police practices and increase dangerous encounters between law enforcement and communities of color.” For instance, when the ACLU scanned the faces of Congress people against a mugshot database using Rekognition, the system produced 28 false matches that were disproportionately people of color. Read more [here](#) and [here](#).
- A recently published UK Cinema Association 2018 Annual Report saw a record number-140- of “film theft” related incidents. While a setback, the Cinema Association notes that the UK Film Content Protection Agency (FCPA) is investigating the cases with authorities hoping to bring perpetrators to justice. The increase in reported incidents could also be related to elevated awareness. Last year, around two thousand cinema staff from 68 UK cinemas attended the FCPA’s anti-piracy briefings. In addition to education, the FCPA has put in place a bounty system, awarding up to £1,000 to employees for spotting pirates. Read more [here](#).
- The Houston Rockets’ Twitter account was suspended on Monday due to several prior social media posts with copyrighted music, according to a statement from the basketball team. As reported by *The Hill*, several sports teams recently had their accounts temporarily suspended due to alleged copyright infringement, including the accounts of college football programs at Iowa State, Iowa, Auburn, and Rutgers. Read more [here](#).