



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT

NOVEMBER 1, 2019



I. Congressional Updates:

- *POLITICO* reported this week that Senator Lindsey Graham (R-SC) plans to hand the Chairmanship of the Senate Judiciary Committee back to Senator Chuck Grassley (R-IA) next term. Senator Grassley gave up his powerful spot on the Judiciary Committee this year to Chair the Senate Finance Committee. However, Graham told reporters in an interview that Grassley asked to take back his post on the Judiciary Committee next term, and Graham responded “absolutely.” Of course, whether Grassley Chairs the Judiciary Committee hinges on Republicans holding their majority in the upper chamber in the 2020 elections. Read more [here](#).
- On Monday, Representative Greg Walden (R-OR) announced that he will retire and not run for another term in 2020. Rep. Walden was first elected to serve in Congress in 1998 and is the top Republican on the House Energy and Commerce Committee. In a statement to *POLITICO*, Rep. Walden explained that although he is confident that he could win in 2020—and optimistic that a path exists for Republicans to recapture a majority in the House—“I also know that for me, the time has come to pursue new challenges and opportunities.” Read more [here](#).
- On Tuesday, November 5th, at 2:30 p.m., the Senate Judiciary Subcommittee on Crime and Terrorism will hold a hearing on “How Corporations and Big Tech Leave Our Data Exposed to Criminals, China, and Other Bad Actors.” Outspoken big tech critic Senator Josh Hawley (R-MO) Chairs this subcommittee. No witnesses have been posted yet. More info. [here](#).

Headlines and Highlights:

- Senator Graham plans to hand the Chairmanship of the Senate Judiciary Committee back to Senator Grassley next term.
- Top E&C Republican Greg Walden announces retirement.
- House Ways & Means Committee Chairman Richard Neal calls for engagement between USTR, working group staff, and labor groups on USMCA.
- Ninth Circuit Court of Appeals revives copyright lawsuit alleging that Taylor Swift infringed lyrics in her hit single “Shake it Off.”

In the Blogs:

[Canada’s Election and the Election Copyright Controversies...Were There Any Actual “Winners”?](#)

Hugh Stephens Blog
October 29 by Hugh Stephens

[No, Mike, it’s that you’re just wrong about the CASE Act.](#)

Illusion of More
October 22 by David Newhoff

- On Tuesday, *Recode* published an article detailing Senator Josh Hawley’s scrutiny of big tech, including his efforts to reform Section 230 of the Communications Decency Act. Emily Stewart with *Recode* suggests that Hawley’s crusade against tech could offer a glimpse of the Republican Party’s future posture towards Silicon Valley. In contrast to some of his more senior colleagues who have blundered when questioning big tech executives, Stewart points out that Hawley “talks fast, tossing out data points off of the top of his head, and seems genuinely motivated to dive into the issues surrounding it.” Hawley was an early critic of big tech before the issue gained momentum on the federal stage, launching investigations into Google and Facebook to explore whether their business practices violated consumer protection or antitrust laws soon after he was elected attorney general of Missouri in 2016. Hawley has said that, for many Americans, tech is a “true kitchen-table issue, especially as it relates to their children.” On his bill to revise Section 230, the *Ending Support for Internet Censorship Act* ([S. 1914](#)), Stewart notes that Senator Hawley seems unbothered by the intense criticism from members and stakeholders across the political spectrum, telling *Recode* “I’m dead serious about it.” Read more [here](#).
- On Thursday, Sens. John Thune (R-SD), Richard Blumenthal (D-CT), Jerry Moran (R-KS), and Marsha Blackburn (R-TN) introduced legislation that would require online search engines and platforms to disclose when their services rely on algorithms and endow users with the choice to use an unfiltered version of the service that does not rely on user-specific data, such as geolocation or browsing history. The new rules enshrined in the bill, titled the *Filter Bubble Transparency Act*, would not apply to platforms with fewer than 500 employees or \$500 million in revenue, or those that collect or process the personal data of fewer than one million people. Additionally, the Federal Trade Commission (FTC) would enforce the rules. Read more [here](#).
- On Wednesday, House Ways & Means Committee Chairman Richard Neal (D-MA) called for United States Trade Representative (USTR) Robert Lighthizer and Democrat working group staff to engage directly with labor officials to hammer out an agreement over the labor and enforcement aspects of United States–Mexico–Canada Agreement (USMCA). Neal told reporters after a meeting that he thinks that it would be a “a good idea if labor and the AFL-CIO and trade staff here in the House and the USTR would get together during the next 10 or 12 days.” Neither the AFL-CIO nor the USTR immediately responded to Neal’s call for a meeting. AFL-CIO President Richard Trumka was on the Hill earlier this week for meetings with Neal, Speaker of the House Nancy Pelosi (D-CA), and the Congressional Progressive Caucus. Democrats remain concerned with ensuring that Mexico fully implements its promised labor reforms. *POLITICO* reports that given the upcoming week-long break and calls for more labor meetings, a deal between Lighthizer and House Democrats “is unlikely to happen until closer to mid-November” Read more [here](#).

II. Judicial Updates:

- On Monday, the Ninth Circuit Court of Appeals revived a 2017 copyright lawsuit brought by songwriters Sean Hall and Nathan Butler alleging that Taylor Swift infringed the lyrics to their 2001 song “Playas Gon’ Play” in her hit single “Shake it Off.” The plaintiffs’ song includes the lyrics “Playas, they gonna play/ And haters, they gonna hate,” compared to the chorus of “Shake It Off” where Swift sang, “Cause the players gonna play, play, play, play, play/ And the haters gonna hate, hate, hate, hate, hate.” U.S. District Court Judge Michael W Fitzgerald was not impressed with Hall and Butler’s complaint when he reviewed the case in February 2018, writing that the lyrics at issue “are too brief, unoriginal, and uncreative to

warrant protection under the Copyright Act.” However, on Monday a three-judge panel of Ninth Circuit judges said this decision was premature, raising concern that “the district constituted itself as the final judge on the worth of an expressive work.” The case is remanded back to a district court for further proceedings. Read more [here](#).

III. Administration Updates:

- On Tuesday, the Copyright Office announced that it is conducting a study to determine the best practices that the Mechanical Licensing Collective should implement in the following areas: (1) to identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective; (2) to encourage musical work copyright owners to claim the royalties of those owners; and (3) to reduce the incidence of unclaimed royalties. To kick off this effort, the Copyright Office announced that it will hold a one-day symposium on December 6th to educate the public about these relevant issues. Following this symposium, the Copyright Office stated that it will solicit public comments and announce roundtables to provide the public with opportunities to provide input on the Unclaimed Royalties Study. Read more [here](#).
- On Wednesday, the Copyright Royalty Judges published for comment proposed regulations governing the rates and terms for the digital performances of sound recordings by noncommercial educational webcasters and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1st, 2021 and ending on December 31st, 2025. Comments are due no later than November 20th. More info. [here](#).
- On Tuesday, the United States Patent and Trademark Office (USPTO) announced that it is gathering information about the impact of Artificial Intelligence (AI) technologies on intellectual property law and policy. Specifically, the USPTO stated that it is extending its inquiry to copyright, trademark, and other intellectual property rights impacted by AI. The USPTO set out thirteen questions on which it seeks input. Comments are due by December 16th and should be submitted by email to AIPartnership@uspto.gov. More info. [here](#).

IV. International Updates:

- As reported by the *Financial Times*, EU competition commissioner Margrethe Vestager is considering a proposal from independent experts that would require digital platforms suspected of anti-competitive behavior, in certain cases, to demonstrate clear gains for their users to avoid punitive measures—instead of Brussels having to show the damaging effects on consumers. The revised burden of proof would apparently only apply to companies preventing users from accessing multiple apps and companies blocking access to their data for third-party applications looking to offer supplementary services. Vestager, who has emerged as a fierce critic of big tech in her current post, is slated to add EU digital policy to her portfolio under incoming commission president Ursula von der Leyen. While underscoring that she has not yet reached a decision on whether to tighten the standard of proof, Vestager suggested that certain companies, such as Google, should bear extra responsibilities if their dominance has made them “de facto regulators.” Read more [here](#).

V. Industry Updates:

- On Wednesday, Digital Music News published an article expressing its shock over the size of the new MLC's budget. An unidentified executive at Digital Music news called the MLC's proposed budget "wildly expensive" and indicated that others in the industry feel the same way. The executive was quoted as stating that the \$66.25 million budget is "easily three times the cost of creating a comparable organization of this nature." While the source acknowledged that part of the budget is dedicated to education and outreach, the person expressed concern with the lack of information available about the costs of these efforts. Another source noted that the budget is likely to result in an impasse between major streaming providers and MLC-backing publishers. More info. [here](#).
- News surfaced this week that Barry McCarthy will retire as Spotify Technology SA's finance chief early next year. McCarthy has been the music streaming service's No. 2 since 2015 and plans to rejoin Spotify's board pending shareholder approval. From his current post, McCarthy oversaw Spotify's unusual direct stock listing and guided the company through its first year and a half on the public market. Paul Vogel, current head of investor relations, is expected to take over as chief financial officer in mid-January. Read more [here](#).