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CONTENT & TECHNOLOGY POLICY REPORT OCTOBER 11, 2019



I. Congressional Updates:

- As reported by *Broadcasting and Cable*, the Senate Commerce Committee is planning to convene a hearing on the STELAR compulsory license on October 23rd. Senators will consider whether Congress should reauthorize the compulsory license for secondary transmissions of distant broadcast programming by satellite under 17 U.S.C. § 119. The provision, which was most recently extended by the Satellite Television Extension and Localism Act Reauthorization Act (STELAR) in 2014, is slated to expire on December 31st. The House Energy & Commerce Subcommittee on Communications and Technology held a [hearing](#) to consider STELAR reauthorization on June 4th, and the Senate Commerce Committee discussed the broader issues surrounding the TV and video marketplace at a June 5th [hearing](#) titled “The State of the Television and Video Marketplace.” Register of Copyrights Karyn Temple also weighed in on this issue in June, sending a [letter](#) to the House Judiciary Committee leaders recommending that Congress should not reauthorize the section 119 compulsory license because it has been “made unnecessary by the substantial growth the of the satellite industry” and the “changed realities of the programming delivery market.” More info. [here](#).
- House Ways & Means Committee Chairman Richard Neal (D-MA) led a delegation of five Democrats to Mexico this week to meet with Andrés Manuel López Obrador (AMLO) and his finance and labor ministers. According to Rep. Jimmy Panetta (D-CA), AMLO agreed to provide funding to bolster inspections and the courts that settle labor disputes, and lawmakers left the 90-minute meeting “on the same page.” Democrats working with United

Headlines and Highlights:

- USTR Lighthizer declines invitation to testify at House hearing on Section 230 next week.
- According to *Broadcasting and Cable*, the Senate Commerce Committee will consider STELAR reauthorization at a hearing on October 23rd.
- Supreme Court denies petition to review a Section 230 case.
- American Conservative Union pens letter in support of the CASE Act.

In the Blogs:

[Can Copyright Law Protect Indigenous Culture? If Not, What is the Answer?](#)

Hugh Stephens Blog
October 8 by Hugh Stephens

[MPA’s Logo Goes Global— Reflecting the Association’s Global Reach](#)

Hugh Stephens Blog
October 3 by Hugh Stephens

[Google-Funded Groups Determined to Sink the CASE Act](#)

Illusion of More
October 9 by David Newhoff

States Trade Representative (USTR) Lighthizer to iron out their concerns with the United States–Mexico–Canada Agreement (USMCA), led by Chairman Neal, were disappointed when an initial budget released by Mexico last month did not appear to provide adequate funds to execute its aggressive labor reform implementation timeline. Top Mexican officials, such as Undersecretary for North America Jesús Seade, have attempted to dispel these budgetary concerns. The following Democrats joined Neal and Panetta on the trip: Reps. Jimmy Gomez (D-CA), Dan Kildee (D-MI) and Bill Pascrell (D-NJ). Read more [here](#).

- On Monday, *POLITICO* published a story naming Rep. Henry Cuellar (D-TX) the “USMCA whisperer.” The story profiles his efforts to rally Democrats and others to support USMCA ratification. The article explains that Rep. Cuellar “courts skeptical Democrats and keeps track of who can be persuaded” to support the deal. According to *POLITICO*, the Congressman also works with big business groups, such as the U.S. Chamber of Commerce, as well as high-level Mexican officials, to mitigate concerns on the American side. Read more [here](#).
- Rep. Nita Lowey (D-CA), Chair of the House Appropriations Committee, will retire from Congress in 2020 after more than three decades of service. More info. [here](#).

II. Judicial Updates:

- On Monday, the Supreme Court denied a petition to review in the *Herrick v. Grindr LLC* case, which involved a Section 230 defense. The plaintiff, Matthew Herrick, attempted to hold the online dating site Grindr responsible for alleged harassment by one of its users, Herrick’s ex-boyfriend. Herrick alleged that his ex-boyfriend impersonated Herrick on the dating site, which led to unwarranted visits and other harassment. Last year, a federal district court judge in New York dismissed Herrick’s lawsuit on the grounds that Grindr is protected by Section 230 of the Communications Decency Act (CDA). Herrick then appealed to the 2nd circuit, which rejected his argument and similarly held that Grindr was immune from liability for failing to police users’ content. More info. [here](#).

III. Administration Updates:

- According to *POLITICO*, USTR Lighthizer declined a request to testify at a House hearing on Section 230 next Wednesday, October 16th. The House Energy & Commerce Subcommittees on Communications and Tech and Consumer Protection will hold a joint hearing to explore “online content moderation practices and whether consumers are adequately protected under current law.” According to a statement from Full Committee Chairman Frank Pallone (D-NJ) and Subcommittee Chairs Mike Doyle (D-PA) and Jan Schakowsky (D-IL), members will examine whether companies appropriately use the tools they have, including Section 230 of the CDA, to foster a healthier internet. *POLITICO* reported this week that lawmakers asked USTR Lighthizer to testify at the hearing, but he declined. “As we explore whether consumers are adequately protected by platforms’ content moderation practices and Section 230 of the Communications Decency Act, it’s extremely disappointing that Ambassador Lighthizer would refuse to testify before our Committee on the inclusion of similar language in trade agreements,” Chairman Pallone stated. More info. [here](#).
- Next Tuesday, October 15th, the U.S. is slated to increase the Section 301 tariffs on the list covering approximately \$250 billion worth of Chinese goods from 25% to 30%. This tariff

hike was originally scheduled to go into effect on October 1st, but President Trump announced plans to delay the increase as “a gesture of good will” via [tweet](#) on September 11th. High-level trade talks convened in Washington on Thursday, and President Trump was scheduled to meet Chinese Vice Premier Liu He on Friday.

IV. International Updates:

- Formalizing the partial trade agreements reached by President Donald Trump and Japan Prime Minister Shinzō Abe last month on the sidelines of the United Nations General Assembly gathering in New York, USTR Lighthizer and Japanese Ambassador to the U.S. Shinsuke J. Sugiyama signed the deals at the White House on Monday. President Trump, who presided over the signing ceremony, called the two deals “a significant victory” for both countries. Under the first mini-deal, Japan agreed to cut tariffs and provide more market access for a wide array of U.S. agricultural goods, providing the U.S. nearly the same level of access it had granted under the Trans-Pacific Partnership (TPP) before President Trump withdrew from the accord in his early days in office. Second, the two nations reached an agreement on a “high-standard” and “comprehensive” set of provisions addressing areas in digital trade. This includes prohibitions on imposing customs duties on digital products transmitted electronically such as videos, music, e-books, software, and games. There is no mention of these Section 232 tariffs in the accord, but Prime Minister Abe has said that Trump has “firmly confirmed” that Japan will no longer face the threat of auto tariffs moving forward. More info. [here](#) and [here](#).

V. Industry Updates:

- On Wednesday, the American Conservative Union (ACU) penned a letter of support for the CASE Act. The ACU wrote that the founding fathers recognized the important role of intellectual property rights, but that this right has been rendered “virtually meaningless” for individual creators and small businesses as digital piracy soars and the cost of litigation makes it “practically impossible” for these creators to enforce their rights. The ACU stated that the CASE Act seeks to address the injustice in a sensible way by creating a voluntary Copyright Claims Board within the U.S. Copyright Office. In the letter, the ACU highlighted the important role copyright plays in the economy, noting that copyright “supports 5.7 million jobs and contributes \$1.3 trillion to U.S. GDP.” More info. [here](#).
- On Thursday, a coalition of nonprofits led by the American Family Voices sent a letter to the Hill in support of the [PLAN Act \(H.R.4232\)](#), which would modify Section 230 in an attempt to crack down on unlawful short-term vacation rental postings on websites like Airbnb. These groups alleged in the letter that short term rental sites like Airbnb are “exploiting” Section 230 to skirt regulation. According to the letter, Airbnb and HomeAway are “knowingly facilitating and profiting from illegal listings” all while driving up cost and access to housing. The nonprofits wrote that the PLAN Act, as introduced by Rep. Ed Case (D-HI), would clarify that the CDA 230 does not shield short-term rental platforms from accountability when they facilitate illegal rental bookings. More info. [here](#).
- Last week, Amazon announced via a blog post the launch of its ‘IP Accelerator’ program, which is designed to help businesses quickly obtain IP rights and brand protection on its platform. Amazon claims that the new IP Accelerator service will help connect small businesses with a vetted network of IP law firms that provide trademark registration services to help brands secure trademarks at competitive rates. Amazon will not charge businesses to

use this service; rather, the businesses only pay the law firms for the work performed at the pre-negotiated rates. Amazon states that selected firms can also help businesses with additional IP needs such as copyright registrations, design patents, and broader IP protection strategies. More info [here](#) and [here](#).

- Apple's ambition to bundle Apple Music and Apple's upcoming television service for one flat monthly fee has reportedly faced early opposition from some music labels that are nervous that such a change would hurt their profit margins. While some labels are open to the idea, one big record company expressed concerns to the *Financial Times*, explaining that it is still wary after being strong-armed into selling individual songs for \$0.99 on iTunes a decade ago. These executives fear that their margins may be hurt if Apple undercuts the \$10 monthly subscription price that Apple Music and most major streaming services charge. The new video streaming service, Apple TV+, launches on November 1st and will cost \$5 a month. Read more [here](#).
- In an interview with *The Washington Post* this week, AFL-CIO President Richard Trumka told reporters that if there was a vote in Congress on the USMCA before Thanksgiving, "the agreement would be defeated." This statement from the leader of the 12.5 million-strong labor organization stands in contrast to the U.S. Chamber of Commerce's calls for implementation legislation to be put to a vote by Thanksgiving. Trumka underscored that Mexico faces enormous challenges to implement the necessary changes to its labor laws, including the need for a large budgetary commitment for enforcement. Read more [here](#).