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## CONTENT & TECHNOLOGY POLICY REPORT OCTOBER 18, 2019



### I. Congressional Updates:

- On Wednesday, the House Committee on Energy and Commerce Subcommittees on Communications & Technology and Consumer Protection & Digital Commerce held a joint hearing on content moderation on internet platforms and Section 230 of the Communications Decency Act (CDA 230). Witnesses from [Google](#), [Reddit](#), the [Electronic Frontier Foundation](#), [Boston University School of Law](#), the [Alliance to Counter Crime Online](#), and the [University of California, Berkeley](#), provided testimony. Notably, several lawmakers raised concern over language mirroring Section 230 being included in trade agreements, and expressed disappointment that United States Trade Representative (USTR) Robert Lighthizer declined their invitation to testify at the hearing. For instance, Subcommittee on Communication Protection and Commerce Chairwoman Jan Schakowsky (D-IL) criticized the Trump Administration for inserting language mirroring CDA 230 in the United States-Mexico-Canada Agreement (USMCA) and in the trade pact with Japan signed earlier this month. Chairwoman Schakowsky elaborated that "it is just inappropriate right now to insert this liability protection into trade agreements, and as a member of the working group that is helping to negotiate that agreement, I am pushing hard to make sure that it just isn't there." Full Committee Chair Frank Pallone (D-NJ) echoed his disappointment that USTR Lighthizer refused to participate in the hearing or explain why CDA 230 language appeared in such trade deals. Full Committee Ranking Member Greg Walden (R-OR) criticized USTR Lighthizer for not consulting the committee in advance of negotiating the policy in trade discussions. In August, the committee sent a [letter](#) to USTR Lighthizer, but has yet to receive a response. More

### Headlines and Highlights:

- U.S. Copyright Office submits a proposed fee schedule to Congress.
- Copyright Office announces planned changes to eCO, effective November 30<sup>th</sup>.
- In hearing to examine Section 230 of the Communications Decency Act, House Energy & Commerce lawmakers raise concerns about similar language being included in U.S. trade agreements, such as the USMCA.
- Senator Bernie Sanders unveils antitrust agenda.
- NMPA urges federal government to investigate copyright infringement on TikTok.

### In the Blogs:

[Carrie Goldberg's "Nobody's Victim": Cyber-Policy is Not an Abstraction](#)

Illusion of More  
October 17 by David Newhoff

[Monarch of All I Survey...Copyright Excepted \(What are the Purposes and Limits of Government Copyright?\)](#)

Hugh Stephens Blog  
October 17 by Hugh Stevens

info. [here](#).

- On Monday, Senator Bernie Sanders (I-VT) unveiled his new antitrust agenda, called the Corporate Accountability and Democracy Plan. This plan combines several key aspects of Senator Sanders' campaign platform—such as combatting income inequality, bolstering workers' rights, ensuring corporate accountability, and mitigating the dangers of corporate consolidation—into one. Senator Sanders wrote on his website that this plan “will give workers an ownership stake in the companies they work for, break up corrupt corporate mergers and monopolies, and finally make corporations pay their fair share.” As part of the antitrust arm of this plan, Senator Sanders pledges to review all mergers that took place during the Trump Administration; expand the authority of the Federal Trade Commission (FTC); institute new merger guidelines; and ensure fair contracts between corporations and employers by banning non-compete clauses and other anticompetitive exclusivity agreements. Read more [here](#).
- On Tuesday, House Judiciary Committee (HJC) leaders spearheading the investigation of big tech companies announced that they received initial documents from Apple, Facebook, Amazon, and Google, answering a slew of questions the lawmakers sent the companies last month. A joint statement issued by HJC Chairman Jerry Nadler (D-NY) and Ranking Member Doug Collins (R-GA), as well as Antitrust Subcommittee Chairman David Cicilline (D-RI) and Ranking Member Jim Sensenbrenner (R-WI), explained that “the committee will review all of the information received from the companies in order to help inform next steps.” These next steps will likely include additional hearings, discussions, and roundtables, according to the statement. Read more [here](#).
- On Thursday, House Small Business Committee Chair Nydia Velázquez (D-NY) formally invited representatives from Facebook, Google, Amazon, and Apple to testify at a hearing in November about whether their practices harm small businesses. In a statement, Chairwoman Velázquez explained that given how the growth in platforms has shifted many traditional business models, it is appropriate and necessary to bring big tech and small businesses to the table “to discuss how the rise in online retail and digital platforms is shaping the playing field for America's small firms.” Velázquez has asked the big tech companies to respond to her invitation by October 31<sup>st</sup>. Read more [here](#).
- Speaking at a press conference on Monday, Speaker of the House Nancy Pelosi (D-CA) stated that the House was working on USMCA throughout the two-week October recess, and she “hopes to be on a path to yes.” However, Speaker Pelosi stated that she is still waiting for assurances on enforceability. During a Fox Business interview on Tuesday, Rep. Debbie Dingell (D-MI) confidently stated that “We will end up with a trade deal, somehow some way... by next year's election.” Watch Speaker Pelosi's press conference [here](#) and Rep. Dingell's interview [here](#).

## **II. Judicial Updates:**

- This week, YouTube announced that the platform has settled its Digital Millennium Copyright Act (DMCA) abuse dispute with YouTuber Christopher Brady. According to the lawsuit, Christopher Brady frivolously reported other YouTube users for copyright violations in order to extort them. Following the terms of the settlement, Brady agreed to pay \$25,000 and offered a public apology to those who were impacted by his actions. Furthermore, under the proposed injunction, Brady is prevented from filing any fraudulent copyright claims

moving forward. A spokesperson for YouTube stated “This settlement highlights the very real consequences for those that misuse our copyright system. We’ll continue our work to prevent abuse of our systems.” Read more [here](#).

### III. Administration Updates:

- On Thursday, the U.S. Copyright Office announced that it will be making several changes to the electronic registration system (eCO), effective November 30<sup>th</sup>. First, to conserve system resources, any draft application created on or before October 31<sup>st</sup>, 2018, will be permanently discarded. Second, the office will remove from the system “obsolete templates,” which are templates for registration options that are no longer available. This includes any template created before March 15<sup>th</sup>, 2019 for an unpublished work, or before February 20<sup>th</sup>, 2018 for a “photograph.” More info. [here](#).
- On Thursday, the Copyright Office submitted to Congress a proposal for a new fee schedule for certain services. The proposed fee schedule, which the Office seeks to implement in spring 2020, recommends new fees for certain services, including applications to register copyrights, record documents, and issue certifications. Copyright law authorizes the Register of Copyrights to institute new fees 120 days after the proposed schedule is submitted to Congress, unless Congress enacts a law within the 120-day period stating that it does not approve the schedule. More info. [here](#).

### IV. International Updates:

- French President Emmanuel Macron told reporters on Wednesday that he is asking Europe’s competition authorities to “engage in any possible action as soon as possible” to ensure that Google does not evade the spirit or the letter of the EU Directive on Copyright in the Digital Single Market. News surfaced last month that Google will stop showing in search results a snippet and thumbnail photo for articles by European publishers seen in France when the Directive takes force in the country at the end of October. The provision in the Directive that aims to require Google to pay for snippets that appear in searches on the platform, Article 11, which was renamed Article 17 in the final text, was controversial when lawmakers were finalizing the Directive in April. Critics said it would amount to a “link tax,” while news organizations applauded that it would require platforms to finally pay licensing fees to display their content in search results. The French competition authority announced last month that it would be looking into Google’s actions, but said it was only in an “exploratory” inquiry at this stage. Read more [here](#).
- Late last week after an Oval Office meeting with Chinese Vice Premier Liu He, President Trump announced that the two leaders had brokered a “Phase One” trade deal that includes a reduction in Chinese agriculture tariffs; Chinese agriculture purchases between 40 and 50 billion dollars, unspecified IP provisions, a halt on U.S. tariff increases, and a currency manipulation agreement. The negotiating teams will now be tasked to work out the details and finalize text before the Asia-Pacific Economic Cooperation (APEC) Summit in Chile on November 16<sup>th</sup>-17<sup>th</sup>. At the moment, the deal means that the current tariff status quo will hold, namely 25% tariffs on Lists 1-3, 15% on List 4A, and zero on List 4B. As a technical matter, List 4B—with consumer electronics and big ticket consumer items—is still slated to go into effect at 15% on December 15<sup>th</sup>, per the active [Federal Register Notice](#). Negotiations continue over whether it will be included in the Phase One deal. More info. [here](#).

## V. Industry Updates:

- The New York Times reported on Tuesday that for months, there has been a dispute over the songwriting credits for popstar Lizzo's hit song "Truth Hurts." While the song credits four writers for its lyrics, a pair of songwriters, Justin and Jeremiah Raisen, say they were involved and denied credit. According to the article, the Raisen brothers were involved in an early writing session with Lizzo that adapted a tweet into the song's signature lyric- "I just took a DNA test, turns out I'm 100 percent that bitch." Not only is this widely considered the signature lyric of the song, Lizzo has applied for a trademark of this phrase and has sold merchandise on her website using this slogan. While the brothers praised Lizzo for her impact on pop culture, they told the New York Times that it was not fair for them to be excluded. Cynthia S. Arato, a lawyer representing Lizzo, denied the Raisens' claim and stated that they are not the writers of "Truth Hurts" nor did they collaborate with Lizzo to create the song. Further complicating the case is the fact that the Raisens rescinded an earlier claim over the song through their publisher Kobalt. According to the Times, Lizzo's representatives believe that this should bar them from pursuing the matter further. Read more [here](#).
- On Wednesday, the National Music Publishers' Association (NMPA) sent a letter to Senator Marco Rubio (R-FL) urging federal policymakers to investigate the popular video-sharing app TikTok for potential copyright theft. In the letter, NMPA CEO David Israelite insists that "The scale of TikTok's copyright infringement in the U.S. is likely considerable and deserves scrutiny." Senator Rubio sent a letter to U.S. Treasury Secretary Steven Mnuchin last week asking that the Committee on Foreign Investment in the United States (CFIUS) investigate TikTok, which is owned by the Chinese company ByteDance, for allegedly censoring videos that are critical of the Chinese government. The NMPA letter claims that in addition to censorship concerns, "it appears that TikTok has consistently violated U.S. copyright law and the rights of songwriters and music publishers." NMPA therefore urges the federal government to include potential copyright theft in the scope of its investigation. Read more [here](#).