



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT

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I. Congressional Updates:

- On Tuesday evening, the House Judiciary Committee reported the [Manager's Amendment](#) to the Small-Claims Enforcement (CASE) Act ([H.R. 2426](#)) favorably out of the Committee by a voice vote. This bipartisan and bicameral legislation, which enjoys broad support across creative industries, would provide individual creators with an alternative to federal court to protect their work by creating a small claims tribunal under the U.S. Copyright Office. In a press release issued after the markup, Ranking Member Doug Collins (R-GA) stated that the CASE Act is “commonsense legislation” that would allow small creators the affordable legal resources to combat copyright theft. Rep. Collins lauded the leadership of Rep. Hakeem Jeffries (D-NY) in drafting this bill and accruing bipartisan support for it. Rep. Jeffries was also quoted in the press release, calling the establishment of a Copyright Claims Board “critical for the creative middle class.” He stated that the CASE Act “will enable creators to enforce copyright protected content in a fair, timely and affordable manner” and called the legislation a “strong step in the right direction.” The companion bill in the upper chamber—[S. 1273](#)—was reported favorably out of the Senate Judiciary Committee by a voice vote on July 18th. Read the press release [here](#).
- Next Tuesday, September 17th, at 2:30 p.m. ET, the Senate Judiciary Antitrust Subcommittee will hold an oversight hearing on the enforcement of antitrust laws in the U.S. Federal Trade Commission (FTC) Chairman Joseph Simons and Department of Justice (DOJ) Assistant Attorney General (AAG) for the Antitrust Division Makan Delrahim are slated to testify before the Subcommittee.

Headlines and Highlights:

- House Judiciary Committee reports the CASE Act favorably out of the Committee by a voice vote.
- Senate Judiciary Antitrust Subcommittee to hold oversight hearing on the enforcement of antitrust laws in the U.S. next Tuesday.
- Fulfilling the next step in negotiations, USTR Lighthizer sends proposals to House trade working group to assuage Democrats’ four primary concerns with the USMCA.
- Nintendo files suit against the alleged operator of the popular pirate site RomUniverse.

In the Blogs:

[Mural, Mural on the Wall: Were They Commissioned, One and All?](#)
Hugh Stephens Blog
September 9 by Hugh Stephens

[Does Graffiti Art Enjoy Equal Copyright Protection?](#)
Illusion of More
September 11 by David Newhoff

More info. [here](#).

- On Tuesday, September 23rd, at 2:30 p.m. ET, the Senate Judiciary Subcommittee on Antitrust will hold a hearing on "Competition in Digital Markets: Examining Acquisitions of Nascent or Potential Competitors by Digital Platforms." The following witnesses are slated to testify before the Subcommittee: Bruce Hoffman (Director Of The Bureau Of Competition, FTC); Dr. Diana Moss (President, American Antitrust Institute); Professor John Yun (Director, Economic Education At The Global Antitrust Institute, George Mason University); and Patricia Nakache (General Partner, Trinity Ventures). More info. [here](#).
- The scheduled hearing in the House Judiciary Committee this week to consider the competitive (or anti-competitive) effects of digital platforms controlling large amounts of consumer data was postponed. No new date has been listed yet. More info. [here](#).

II. Judicial Updates:

- Reports surfaced this week that Nintendo has filed suit in federal court against the alleged operator of RomUniverse, accusing the popular pirate site of mass-scale copyright infringement of its games. RomUniverse users can apparently download one file per week for free, or pay a \$30 membership fee to access unlimited downloads. In addition to games, RomUniverse also offers pirated eBooks and movies. Nintendo is seeking to shut down the site, and is requesting statutory damages of \$150,000 per infringing game and \$2,000,000 for each trademark infringement. Read more [here](#).
- Google and Facebook are both facing bipartisan scrutiny from two separate investigations led by coalitions of state attorneys general. Late last week, New York State Attorney General Letitia James announced a state-led antitrust investigation of Facebook. Additionally, on Monday, Texas Attorney General Ken Paxton formally announced an antitrust investigation into Google. During Monday's announcement, Paxton echoed concerns addressed by James. Paxton stated that Google's business practices may have "undermined consumer choice, stifled innovation, violated users' privacy and put Google in control of the flow and dissemination of online information." Both investigations are backed with substantial support. James leads a group of 8 attorneys general, while Paxton's group includes support from 48 states, excluding California and Alabama. Read more [here](#).

III. Administration Updates:

- The DOJ's Antitrust Division has posted all 877 submissions to its review of the consent decrees that regulate the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). Since their entry in 1941, the DOJ has periodically reviewed the operation and effectiveness of these consent decrees, most recently in 2014-2015. The ASCAP Consent Decree was last amended in 2001 and the BMI Consent Decree was last amended in 1994. More info. [here](#).
- United States Trade Representative (USTR) Robert Lighthizer sent House Democrats proposals to ease their four primary concerns with the United States-Mexico-Canada Agreement (USMCA) on Wednesday. Democrats have called on USTR to submit these proposals since returning from the summer recess, insisting that this step was necessary to move forward with the otherwise stalled negotiations between the House trade working group and USTR Lighthizer. House Agriculture Committee Collin Peterson (D-MN) has

said that when he spoke with House Ways & Means Committee Chairman Richard Neal (D-MA) this week, Neal told him he was “pretty confident we’re going to get a vote in the next month or two.” Lighthizer is expected to meet with the full trade working group next week. Read more [here](#).

- Bruce Hoffman, Director of the FTC’s Bureau of Competition, told reporters this week that the Commission’s tech task force has focused its antitrust investigation on specific types of business conduct and possible harms, moving past the lead generation phase. “The tech task force’s focus has turned primarily to actual investigations, rather than what you might think of as ‘lead generation,’” Hoffman stated, while clarifying that the FTC is “always looking for leads.” Additionally, Bilal Sayyed, Director of the FTC’s Office of Policy Planning, said at a conference in DC earlier this week that it is the “highest priority” to come up with new guidelines for how the U.S.’ antitrust laws apply to tech giants, indicating that the forthcoming guidance “is an enforcement document.” Reports surfaced this spring that the FTC is reviewing Amazon and Facebook, while the DOJ is looking into Apple and Google. Read more [here](#) and [here](#).

IV. International Updates:

- On Tuesday, incoming European Commission President Ursula von der Leyen unveiled her decision to name Margrethe Vestager as the executive VP overseeing a new portfolio called “Europe fit for the digital age.” Vestager will also retain her competition portfolio, which she has handled since 2014. Vestager has emerged as a fierce critique of big tech in this influential post, handing out more than 8 billion euros in fines to Google and spearheading a crackdown on tax avoidance by multinationals, targeting Apple, Starbucks, Amazon, McDonalds, and others. Vestager must secure the approval of the full European Parliament before beginning her five-year term on November 1st. Read more [here](#).
- On Wednesday, President Trump announced plans to delay the planned tariff hike from 25% to 30% on the imports of approximately \$250 billion worth of Chinese goods from October 1st to October 15th. President Trump called this a “gesture of good will” in a tweet announcing the delay. The U.S. and China are expected to resume trade talks in Washington, DC next month. Read more [here](#).

V. Industry Updates:

- In an editorial published in *The Register-Guard* on Tuesday, CALinnovates Executive Director Mike Montgomery calls on Senator Ron Wyden (D-OR) to support efforts to revise Section 230 of the Communications Decency Act (CDA), which Wyden authored while serving in the House. Montgomery observes that Wyden appears to be rethinking his “absolutist support” of the statute that provides immunity from liability for providers and users of platforms. For instance, Wyden has called on big tech companies to “get serious about cleaning up the slime that is still too common on their platforms” and has suggested that internet CEOs’ ineptitude “is threatening the very legal foundation of social media.” Nevertheless, Montgomery points out that the Senator has not supported efforts to revise the Section 230 thus far, pointing to his resistance to tweak the statute to combat sex trafficking on platforms. As the “dark side of the internet becomes clearer,” Montgomery asserts that “Wyden’s reticence to address the consequences of the law he authored is increasingly conspicuous.” Based in San-Francisco, CALinnovates is a coalition of tech companies, founders, funders, and nonprofits. Read more [here](#).

