



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT AUGUST 7, 2020



### I. Congressional Updates:

- The staff of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet began hosting informal stakeholder roundtables to discuss the Library of Congress [report on Section 512 of the DMCA](#). The roundtables will hear from various industries and organizations with an interest in the workings of Section 512 and any potential reforms thereto. For example, the staff convened a meeting of representatives of the sports and live entertainment industries earlier this week. No formal legislative action with respect to Section 512 is expected this year.
- Late last week, Reps. Linda Sánchez (D-CA) and Ron Estes (R-KS) introduced a bill intended to encourage independent artists to create new music during the pandemic by revising the tax code. The *Help Independent Tracks Succeed (HITS) Act* would allow individuals to expense up to \$150,000 of the cost of new studio recordings on their taxes within the same year of production. The current tax code requires artists and producers to amortize production expenses for tax purposes over the economic life of a sound recording, normally between three and four years. In contrast, TV and film producers enjoy a 100% first-year deduction under the current regime. Rep. Sánchez told *Billboard* that the idea for the legislation came about from discussions she had with music creators during a GRAMMYS on the Hill webinar in the early days of the pandemic. “We can all agree that our world needs music now more than ever as we navigate this new unknown,” she said. Read more [here](#).
- On Tuesday, House Energy & Commerce Committee Ranking Member Greg Walden (R-OR), Consumer Protection Subcommittee Ranking Member Cathy

### Headlines and Highlights:

- House Judiciary IP Subcommittee begins Section 512 roundtables.
- Reps. Sánchez and Estes introduce bipartisan *HIT Act*.
- FCC seeks public input on Commerce’s Section 230 petition for rulemaking.
- President Trump withdraws re-confirmation of FCC Commissioner Michael O’Rielly.
- Neil Young files copyright infringement lawsuit against Trump campaign.
- DNC finalizes 2020 platform.

### In the Blogs:

[USCO’s Study Offers Hope for Reform of the “Notice and Takedown” Law, But Ducks the Issue on Site Blocking](#)  
Hugh Stephens Blog  
August 4 by Hugh Stephens

[DMCA HEARING IV – Contemplating Fair Use Illusion of More](#)  
August 4 by David Newhoff

McMorris Rodgers (R-WA), and Rep. Richard Hudson (R-NC) wrote to Amazon CEO Jeff Bezos, eBay CEO Jamie Iannone, and Facebook CEO Mark Zuckerberg asking about each companies' policies to address the sale of counterfeit products and stolen goods. The letter highlights that the Government and Accountability Office (GAO) found that e-commerce has “contributed to a shift in the sale of counterfeit goods with...counterfeiters producing a wider variety of goods that may be sold on websites alongside authentic products.” Read the full letter to Amazon [here](#), eBay [here](#), and Facebook [here](#).

- On September 15<sup>th</sup>, at 2:00 p.m. ET, the Senate Judiciary Antitrust Subcommittee will hold a hearing titled “Stacking the Tech: Has Google Harmed Competition in Online Advertising?” Subcommittee Chairman Mike Lee (R-UT) hopes that the hearing will “reaffirm the wisdom of focusing on better enforcement rather than the radical transformation of the antitrust laws demanded by the extreme left.” A notice announcing the hearing asserts that “recent consumer complaints and investigations by law enforcement have raised questions about whether Google has acquired or maintained its market power in online advertising in violation of antitrust laws.” No witnesses have been announced yet. Read more [here](#).
- On Wednesday, Senate Judiciary IP Subcommittee Chairman Thom Tillis (R-NC), Antitrust Subcommittee Chairman Mike Lee (R-UT) and Ranking Member Amy Klobuchar (D-MN), joined Sens. Richard Blumenthal (D-CT), Marsha Blackburn (R-TN), Josh Hawley (R-MO), Elizabeth Warren (D-MA), Mazie Hirono (D-HI), Cory Booker (D-NJ) and Ted Cruz (R-TX) in a letter to Assistant Attorney General for the Antitrust Division Makan Delrahim and Federal Trade Commission Chairman Joseph Simons regarding allegations of potentially anticompetitive practices and conduct by online platforms toward content creators and emerging competitors. The letter cites a *Wall Street Journal* report that Alphabet Inc. has designed Google Search to give preference to YouTube and other Google-owned video service providers. The lawmakers ask that the enforcers “thoroughly review this situation to determine whether Google’s algorithm is giving preference to YouTube and/or other Google owned video service providers, and whether such conduct violates the antitrust laws.” Read the full letter [here](#).

## II. Judicial Updates:

- On Tuesday, musician Neil Young filed a copyright infringement lawsuit against President Trump’s campaign for playing his songs at campaign rallies. The suit alleges that Trump’s campaign used the songs “Rockin’ in the Free World” and “Devil’s Sidewalk” without a license to publicly perform the compositions at the rally in Tulsa, Oklahoma on June 20<sup>th</sup>. Young is demanding statutory damages and that Trump be enjoined from further playing his songs. Read more [here](#).

## III. Administration Updates:

- On Monday, Federal Communications Commission (FCC) Chairman Ajit Pai announced that the FCC is seeking public input on the Petition for Rulemaking recently filed by the Commerce Department regarding Section 230 of the Communications Decency Act (CDA). Stakeholders will have 45 days to provide their input. In a statement announcing the decision, Chairman Pai said “We should welcome vigorous debate—not foreclose it.” As directed to under President Trump’s May 28<sup>th</sup> [Executive Order](#) (EO), the National Telecommunications and Information Administration (NTIA) last week petitioned the FCC to “[m]andate disclosure for internet transparency similar to that required of other internet companies, such

as broadband service providers.” Among other things, the petition asks the FCC to clarify that Section 230 CDA does not apply to internet companies’ “decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.” *POLITICO* [reports](#) that some thorny legal questions surround the commission’s ability to take action on this matter, given its lack of authority over social media companies and historical questions surrounding any speech-related regulation. Read the FCC announcement [here](#).

- Meanwhile, on Monday the White House withdrew its re-nomination of FCC Commissioner Michael O’Rielly for another five-year term. Although O’Rielly’s term expired in June 2019, FCC rules allow him to stay through the end of the year. The decision comes after the Republican Commissioner said in June that he has “deep reservations” that the FCC can limit Section 230 legal protections for social media companies the way President Trump demanded in the May EO. In a speech last week, Commissioner O’Rielly further explained that, in his view, “The First Amendment protects us from limits on speech imposed by the government—not private actors—and we should all reject demands, in the name of the First Amendment, for private actors to curate or publish speech in a certain way. Like it or not, the First Amendment’s protections apply to corporate entities, especially when they engage in editorial decision making.” The Senate Commerce Committee had approved O’Rielly’s re-nomination last month, but the full Senate vote was being held up by Sen. Jim Inhofe (R-OK), who demanded that the Commissioner vote to overturn the FCC’s unanimous approval of Ligado’s plan for a 5G cellular network. Read more [here](#).

#### **IV. International Updates:**

- At a ceremony last week, Japan’s Minister of Education, Culture, Sports, Science and Technology, Koichi Hagita, announced that Kitty White – better known as Hello Kitty – will raise awareness of recent changes to Japan’s copyright law. “I will do my best to make everyone aware of copyright”, the fictional character said in a statement following the announcement. The changes, which were enacted in June, include new penalties for sharing or downloading digital comic books, magazines, and academic texts without permission. Japan’s Content Overseas Distribution Association also announced that it plans to use Hello Kitty to “appeal widely” to audiences around the world about the importance of protecting copyright in Japan and beyond. Read more [here](#).
- U.S. Trade Representative (USTR) Robert Lighthizer and Chinese Vice Premier Liu He will reportedly meet on August 15<sup>th</sup> to survey the implementation of the “phase one” trade agreement that took effect on February 14<sup>th</sup>, 2020. Per the preliminary pact, leaders will meet every six months to “discuss (a) the overall situation regarding implementation of this Agreement, (b) major problems with respect to implementation, and (c) arrangements for future work between the Parties.” Sources told the *Wall Street Journal* that the meeting will most likely be held over videoconference. Read more [here](#).

#### **V. Industry Updates:**

- On Tuesday, the Democratic National Committee finalized its 2020 platform. Of note, Democrats pledge to “stand up to efforts from China and other state actors to steal America’s intellectual property.” On antitrust, the platform vows to vigorously use antitrust laws to fight against “mega-mergers in the hospital, insurance, and pharmaceutical industries” that would

raise prices for consumers, and direct federal antitrust agencies “to investigate the economic impacts of mergers in the media industry.” Read the full platform [here](#).

- On Thursday, the Digital Citizens Alliance hosted a discussion titled, “Briefing on the Billion-Dollar Streaming Piracy Industry.” Tom Galvin (Executive Director, Digital Citizens Alliance) moderated a conversation with Jan van Voorn (Executive Vice President and Chief of Global Content Protection, The Motion Picture Association) and Keith Kupferschmid (CEO, Copyright Alliance) about the rapid growth of the pirate subscription industry and ways to close the legal loopholes in which illegal streamers operate. Mr. Galvin began the briefing by giving an overview of a recent NAGRA [study](#) concerning the growth of pirate subscription Internet protocol television services (PS IPTVs). NAGRA concluded that there is a well-structured, well-organized criminal PS IPTV industry that earns about \$1 billion annually. Next, Mr. van Voorn explained that PS IPTV providers are centrally located in the United States and do not fear criminal prosecution. He detailed how the Alliance for Creativity and Entertainment (ACE) recently followed these prominent money trails and brought several successful civil suits against PS IPTV providers with the hope of deterring others from joining the illegal streaming landscape. Finally, Mr. Kupferschmid detailed a legislative proposal for “closing the streaming loophole.”