I. Congressional Updates:

- On Tuesday, the Senate Judiciary IP Subcommittee held the first of its Digital Millennium Copyright Act (DMCA) reform hearings, this one titled “The Digital Millennium Copyright Act at 22: What is it, why was it enacted, and where are we now.” Chairman Thom Tillis (R-NC) kicked off the hearing by raising concern that the DMCA has not kept pace with the speed of technological advancement and the law is not equipped for the modern internet. Ranking Member Chris Coons (D-DE) similarly remarked about the major technological developments since the DMCA’s enactment. The first panel provided the necessary background that led to the DMCA’s passage and the balance struck between copyright owners and internet service providers. Judge Edward Damich (Senior Judge, U.S. Court of Federal Claims), Jonathan Band (Owner, Jonathan Band PLLC), Robert S. Schwartz (Partner, Constantine Cannon), and Steve Metalitz (Partner, Mitchell, Silberberg & Knupp LLP) testified about their involvement in the bill’s passage and the different industries and stakeholders that participated in the negotiations surrounding the legislation. The witnesses on the second panel addressed the impact of the DMCA and the debate surrounding sections 512 and 1201. Professors Sandra Aistars and Mark Schultz (Partner, Constantine Cannon) and Steve Metalitz (Partner, Mitchell, Silberberg & Knupp LLP) testified about their involvement in the bill’s passage and the different industries and stakeholders that participated in the negotiations surrounding the legislation. The witnesses on the second panel addressed the impact of the DMCA and the debate surrounding sections 512 and 1201. Professors Sandra Aistars and Mark Schultz (Partner, Constantine Cannon) and Steve Metalitz (Partner, Mitchell, Silberberg & Knupp LLP) testified about their involvement in the bill’s passage and the different industries and stakeholders that participated in the negotiations surrounding the legislation. The witnesses on the second panel addressed the impact of the DMCA and the debate surrounding sections 512 and 1201. Professors Sandra Aistars and Mark Schultz (Partner, Constantine Cannon) and Steve Metalitz (Partner, Mitchell, Silberberg & Knupp LLP) testified about their involvement in the bill’s passage and the different industries and stakeholders that participated in the negotiations surrounding the legislation. The witnesses on the second panel addressed the impact of the DMCA and the debate surrounding sections 512 and 1201. Professors Sandra Aistars and Mark Schultz (Partner, Constantine Cannon) and Steve Metalitz (Partner, Mitchell, Silberberg & Knupp LLP) testified about their involvement in the bill’s passage and the different industries and stakeholders that participated in the negotiations surrounding the legislation. The witnesses on the second panel addressed the impact of the DMCA and the debate surrounding sections 512 and 1201. Professors Sandra Aistars and Mark Schultz (Partner, Constantine Cannon) and Steve Metalitz (Partner, Mitchell, Silberberg & Knupp LLP) testified about their involvement in the bill’s passage and the different industries and stakeholders that participated in the negotiations surrounding the legislation. The witnesses on the second panel addressed the impact of the DMCA and the debate surrounding sections 512 and 1201. Professors Sandra Aistars and Mark Schultz (Partner, Constantine Cannon) and Steve Metalitz (Partner, Mitchell, Silberberg & Knupp LLP) testified about their involvement in the bill’s passage and the different industries and stakeholders that participated in the negotiations surrounding the legislation.

II. Headlines and Highlights:

- Senate Judiciary IP Subcommittee holds first hearing in DMCA modernization series.
- SJC IP Subcommittee Chairman Tillis, Rep. Rouda, and HJC IP Subcommittee member Deutch raise concern about ALI’s copyright law restatement project.
- FTC orders big tech companies to provide information about prior acquisitions.
- LOC holds second listening session on appointing the next Register of Copyrights.

In the Blogs:

The Super Bowl, the CRTC and Promoting Canadian Content (They’re All Connected)
Hugh Stephens Blog
February 11 by Hugh Stephens

With Super Bowl Complaint, Graham Misunderstands Exploitation Illusion of More
February 9 by David Newhoff
allowed the internet to thrive. More info. here.

- On Tuesday, House Republicans on the Steering Committee unanimously approved Rep. Jim Jordan (R-OH) as the next top Republican on the Judiciary Committee. According to Roll Call, current Ranking Member Doug Collins (R-GA) will turn over the top post on the influential committee to Rep. Jordan on March 12th. Read more here.

- In an editorial published in The Hill on Tuesday, Chairman Tillis, Rep. Harley Rouda (D-CA), and House Judiciary IP Subcommittee member Ted Deutch (D-FL) raise concern about the American Law Institute’s (ALI) effort to “restate” copyright laws for the nation’s judicial system. “Last time we checked, Article I of the Constitution specifically grants Congress the authority to make laws to allow for individuals in the creative industries to be fairly compensated – not law professors,” the lawmakers write. The editorial reasons that copyright law does not need restating because it is primarily statutory law and not common law. Chairman Tillis and Reps. Rouda and Deutch are concerned that the project intends to move judicial interpretations of copyright law away from existing statutes and “toward interpretations that would weaken copyright protections for Americans.” Read more here.

- On Monday, Senator Josh Hawley (R-MO) released a proposal to absorb the Federal Trade Commission (FTC) into the U.S. Justice Department (DOJ) as a way to mitigate concerns about big tech companies, such as Alphabet Inc.’s Google and Facebook. The proposal would eliminate the five commissioners who run the FTC in favor of a Senate-confirmed director reporting to DOJ leadership. It also recommended giving the FTC new powers to enforce rules designed to keep tech markets from favoring big players, including limiting the data that firms can acquire or use, as well as increasing the agency’s fining authority and making ethics reforms. The freshman Senator from Missouri, who earned a spot on the Senate Judiciary Committee, has quickly emerged as a fervent critic of big tech, introducing a series of bills to address concerns surrounding tech moguls since assuming office. Read more here.

- On Monday, House Judiciary Committee Ranking Member Collins (R-GA) and Antitrust Subcommittee Ranking Member Sensenbrenner (R-WI) sent a letter to Full Committee Chairman Nadler (D-NY) raising concern about the New York Democrat’s recent public remarks regarding the subpanel’s bipartisan investigation into big tech companies. In the letter, Collins and Sensenbrenner assert that they “will not participate in an investigation with pre-conceived conclusions that America’s large tech companies are inherently bad, cannot be allowed to exist in society, and must be broken up.” The pair also reiterates their view that “big” doesn’t necessarily mean “bad,” reasoning that lawmakers shouldn’t punish tech companies simply because they have succeeded. Read more here.

- On Tuesday, the Senate Commerce Subcommittee on Manufacturing, Trade and Consumer Protection held a hearing on Tuesday titled “Name, Image, and Likeness: Intercollegiate Athlete Compensation.” The hearing presented the first opportunity for Congress to explore the landscape of collegiate sports following California’s passage of the Fair Pay to Play Act. While members tried to grasp the implications of state name, image, and likeness (NIL) legislation, much of the hearing reflected senators’ shared interest in working with the National Collegiate Athletic Association (NCAA) to find a solution. NCAA President Mark Emmert shared that the Association will have a NIL proposal finished by April and stated that the NCAA is willing to accept input from members to improve the proposed rule changes. The subcommittee also heard from Bob Bowlsby (Commissioner, Big 12
Conference), Douglas Girod (Chancellor, University of Kansas), Ramogi Huma (Executive Director, National College Players Association), and Kendall Spencer (Chair, Student-Athlete Advisory Committee, NCAA). Senators and witnesses also discussed the use of third-party agents, recruiting, and whether NIL compensation is the endgame for college athletes or whether it is merely the first step. More info. here.

II. Judicial Updates:

• On Wednesday, Oracle filed its opening brief in the Supreme Court copyright infringement case with Google. Google’s petition for a writ of certiorari was granted in November 2019 and asks the high court to consider “1. Whether copyright protection extends to a software interface” and “2. Whether, as the jury found, petitioner’s use of a software interface in the context of creating a new computer program constitutes fair use.” Oracle is suing Google for $8.8 in lost revenue. Justices are scheduled to hear oral arguments in the case on March 24th. Read more here and here.

• This week Lil Nas X issued his legal response to a copyright infringement lawsuit over his 2019 song “Rodeo.” The lawsuit, filed by producers Don Lee and Glen Keith, alleges that Rodeo shares similarities with their 2017 work, “gwenXdonlee4-14.” Lil Nas X claims that the song “was created independently from and without knowledge of the allegedly infringed work.” Read more here.

III. Administration Updates:

• On Thursday, at 2:00 p.m., the Library of Congress held its second “Listening Session” on the appointment of the next Register of Copyrights. The session lasted around one hour and again solely featured remarks from Library of Congress Chief of Staff Ryan Ramsey. Like the previous listening session, Ramsey outlined the hiring process the Library will undertake to find the next Register. He stated that the Library will hire an executive search firm to find high quality candidates but will also issue a federal register notice to solicit public applications. The pool of candidates will then be pared down by the Library’s “hiring panel” of three individuals—a senior executive from the Library, a service unit head within the Library that shares a similar level of statutory independence and authority with the Register, and a copyright expert outside the Library that is currently within the Federal Government. Ramsey stated that the members of the panel will not be publicly revealed so that they are not unduly influenced, and that the Library worked hard to balance the panel, so it just wasn’t “library people” picking the Register. Ramsey stated that the timeline for finding and hiring a Register candidate is variable. Typically, he said, search firms require a three-month period of work and beyond that there will be multiple weeks of onboarding. Ramsey confidently stated that he believes a new Register will be in place by the end of the year, going as far as to say he would be shocked if 2020 closes without a new Register. Ramsey indicated they expect to have this wrapped up by early Summer.

• On Tuesday, the FTC issued Special Orders to Alphabet, Amazon, Apple, Facebook, and Microsoft, seeking information about prior acquisitions not reported to the antitrust agencies under the Hart-Scott-Rodino (HSR) Act. In a press release, the FTC explained that it is seeking “information and documents on the terms, scope, structure, and purpose of” small and unreported transactions made between January 1st, 2010, and December 31st, 2019. The FTC will use the data and documents provided by the companies to “examine trends” in the tech industry’s merger strategies and structures and to analyze “how small firms perform
after they are acquired.” If the FTC were to discover anticompetitive merger activity in the past, it could prompt the agency to take enforcement action. Read more here and here.

• On Wednesday, the Hollywood Reporter published an article detailing how Makan Delrahim, Assistant Attorney General for the Antitrust Division of the U.S. Department of Justice (DOJ), “has become as potent a business gatekeeper in Washington as anyone not named Donald Trump.” The article points to Delrahim’s involvement in mammoth mergers, reevaluation of licensing rules that have governed the music businesses for nearly three-quarters of a century, and his interest in the Writer’s Guild’s dispute with talent agencies as proof that “his perspective about what's considered anticompetitive (or not) at a transformational moment will shape the future of the content industry.” Read more here.

IV. International Updates:

• This week, Google continued its efforts to overturn three antitrust rulings it lost against the European Union (EU), resulting in the tech mogul facing more than $9 billion in fines. Although a final verdict isn’t expected until early next year, stakeholders are following the litigation closely, as it is considered a test case for the new EU competition czar Margrethe Vestager, and the ongoing probes into Facebook, Apple, and Amazon. In 2017, Vestager found that Google abused its dominance over internet searches to favor Google’s comparison-shopping service to the detriment of competing services. Speaking to the General Court in Luxembourg on Wednesday, Google countered that rival comparison shopping services were demoted in the platform’s search rankings because they offered inferior services. “Competition law does not require Google to hold back innovation or compromise its quality to accommodate rivals,” Thomas Graf, a lawyer for Google, told the panel of five judges. Read more here.

V. Industry Updates:

• On Monday, Warner Music Group executive Jeff Bronikowski announced in a LinkedIn post that he is joining Apple as Global Head of Strategic Music Initiatives. According to his LinkedIn profile, Bronikowski served as Senior Vice President of Global Business Development and the Head of New technology & Innovation at Warner Music Group since May 2017. More info. here.