I. Congressional Updates:

- Next Tuesday, February 11th at 2:30 p.m. ET, the Senate Judiciary IP Subcommittee will hold a hearing 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) announced late last year his intention to explore ways the U.S. can better promote the creative economy in the 21st century through a series of hearings to evaluate both the policy baseline created by the Digital Millennium Copyright Act (DMCA) and the current practices and operations of platforms and creators in response. Next week, the IP Subcommittee will hear from two panels of witnesses. First, members will hear from Edward J. Damich (Senior Judge United States Court of Federal Claims); Jonathan Band (President, Jonathan Band PLLC); Robert S. Schwartz (Partner, Constantine Cannon), and Steve Metalitz (Partner, Mitchell, Silberberg &knupp LLP). Next, the following witnesses will offer their testimony: Sandra Aistars (Clinical Professor Senior Scholar and Director Copyright Research & Policy, Center for the Protection of IP, Antonin Scalia Law School, George Mason University); Rebecca Tushnet (Frank Stanton Professor of the First Amendment, Harvard Law School); Jessica Litman (John F. Nickoll Professor of Law, University of Michigan Law School); and Mark F. Schultz (Goodyear Tire & Rubber Company Chair in Intellectual Property Law Director, Intellectual Property and Technology Law Program, University of Akron School of Law). More info. [here](#).

- According to GOP sources, Rep. Jim Jordan (R-OH) has been selected as the next ranking Republican on the House Judiciary Committee. Rep. Jordan will replace Rep. Doug Collins (R-GA) as Ranking Member of the House Judiciary Committee. 

Headlines and Highlights:

- Senate Judiciary IP Subcommittee to hold first hearing in DMCA modernization series next Tuesday.
- GIPC releases 2020 International Intellectual Property Index.
- Google v. Oracle oral arguments before Supreme Court scheduled for next month.
- USCO and WIPO hold conference on Copyright and AI.
- President Trump touts trade achievements in third SOTU.
- President Trump signs EO to ensure sale & lawful e-commerce.

In the Blogs:

- [Copyright Term Extension in Canada and the Interesting Case of Broadview Press: Is it “Playing the Victim” or Just “Playing the Game”?](#)
  Hugh Stephens Blog
  February 3 by Hugh Stephens

- [The Precarious Politics of Reigning in Silicon Valley Illusion of More](#)
  February 5 by David Newhoff
Committee as Collins runs for the Senate in a primary against Sen. Kelly Loeffler, who was appointed to complete the term of former Georgia Senator Johnny Isakson. While the full Republican conference will need to approve Jordan for the position, the panel usually supports the steering committee’s recommendation. Read more [here](#).

- On Wednesday, at 10:00 a.m. ET, House Ways & Means Trade Subcommittee member Rep. Stephanie Murphy (D-FL) hosted a briefing on “The Role of Congress in Trade and Tariff Policy.” A panel with academic and industry representatives provided insight into ongoing efforts to reform the executive branch’s ability to impose tariffs without congressional consent. C. Fred Bergsten with the Peterson Institute for International Economics discussed the negative macro and microeconomic impacts of the trade war, advocated for the need to restore Congress’ statutory authority to levy tariffs, and criticized the Administration’s unilateral approach to negotiating trade agreements. Kathleen Claussen with the University of Miami School of Law voiced her support for Reps. Murphy, Cooper (D-TN), and Cunningham’s (D-SC) [Reclaiming Congressional Trade Authority Act of 2019 (H.R. 3477)](https://www.congress.gov/bill/116th-congress/house-bill/3477), and recommended several additional statutory revisions intended to restore Congress’ role in negotiating trade provisions. H.R. 3477, which was introduced in the upper chamber by Sens. Kaine (D-VA) and Carper (D-DE), would require congressional approval for national security tariffs within 120 days of the Administration initiating them. In addition to Murphy, Reps. Cooper (D-TN) and Costa (D-CA) were present and briefly asked questions. Watch the briefing online [here](#).

- Meetings between stakeholders and congressional staff on how to mitigate the “felony streaming loophole” continued this week. Last June, Senate Judiciary Chairman Tillis and Ranking Member Chris Coons (D-DE) wrote to the DOJ, Customs and Border Protection (CBP), Department of Justice (DOJ), and the Copyright Office stressing the harmful effects of illicit streaming on the creative community and the economy. The senators requested that the DOJ prioritize enforcement actions against entities that illegally stream copyrighted works. In a response letter issued in December, the DOJ noted that it is not always possible to charge the operators of illicit streaming sites with felony copyright infringement. Stakeholders have since been working with congressional staff on a potential legislative fix to close the so-called loophole.

II. Judicial Updates:

- Last Friday, the Supreme Court issued the calendar for its March argument sitting. The high court will hear oral arguments in [Google v. Oracle](https://www.supremecourt.gov/oral_arguments) on March 24th. Justices will review the U.S. Court of Appeals for the Federal Circuit decision that Google’s use of Java shortcuts to develop Android violated Oracle’s copyright. More info. [here](#).

III. Administration Updates:

- Last Friday, President Trump issued an executive order (EO) on “Ensuring Safe & Lawful E-Commerce for US Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights.” The EO appears to build on the [presidential memorandum](https://www.whitehouse.gov/) on counterfeit and pirated goods issued by President Trump last April. The EO directs the Secretary of the Department of Homeland Security (DHS) to establish criteria importers must meet in order to obtain an importer record number. This will include a provision providing that any person debarred or suspended by CBP for lack of present responsibility for reasons related to importation or trade shall be ineligible to obtain an importer record number for the duration
of their debarment. It also directs the DHS Secretary to consider appropriate measures to ensure that express consignment operators carriers, hub facilities, and licensed customs brokers cease to facilitate business activity that requires an importer of record number. Furthermore, the EO directs the DHS Secretary to work with the CBP Commissioner and the United States Trade Representative (USTR) to develop an “International Mail Non-Compliance metric” to formulate an overall compliance score for each international post, which will be updated on a quarterly basis. For any international post that is deemed as non-compliant for eight or more consecutive quarters, CBP, DHS, and USPS will take measures to protect the U.S. from shipments from these posts. Finally, DHS will publish information about seizures arising in the international mail “on a periodic basis.” Read the full EO here.

During his third State of the Union (SOTU) address on Tuesday, President Trump touted his victories on trade as some of the signature achievements of his tenure in office. For instance, the president was pleased to report that he had signed legislation to implement the U.S.-Mexico-Canada Agreement (USMCA) into law six days prior, claiming that the modernized pact will bring trade with Mexico and Canada “to a much higher level.” Turning to China, Trump underscored that he had just signed a “groundbreaking” agreement with Beijing that will “defend our workers, protect our intellectual property, bring billions and billions of dollars into our treasury, and open vast new markets for products made and grown right here in the USA.” Of note, Trump did not offer any details about a potential second-phase trade deal to address the issues left on the table after the preliminary agreement. Read Trump’s full remarks here.

On Wednesday, the Copyright Office hosted an event with the World Intellectual Property Organization (WIPO) titled “Copyright in the Age of Artificial Intelligence.” Francis Gurry, Director General of WIPO, Maria Strong, Acting Register of Copyrights, and Andrei Iancu, Director of the USPTO, delivered opening remarks. Gurry stated that there is a risk that questions surrounding copyright and AI will get “drowned out” by the urgency and importance of addressing AI issues in other areas such as privacy, security, and data integrity. Gurry noted that the speed at which AI technology is developing could lead to regulatory competition, and in such an environment, those with scale have an outsized advantage over smaller players. Gurry acknowledged general questions regarding the impact of AI on the copyright system, particularly the difficulty in determining authorship of machine created or assisted works. He also raised the possibility of creating two different copyright systems— one that rewards human creation and another that rewards and incentivizes machine creation. Maria Strong stated that the USCO has long understood the importance of keeping pace with technological advancements and is “keenly aware and interested” in the intersection of copyright and AI. Strong noted that while AI is a pressing issue, the questions surrounding this topic are not entirely novel, and the Copyright Office can use lessons learned from adapting to new technologies in the past when addressing AI questions. USPTO Director Andrei Iancu similarly remarked that AI is not a new issue, but it does present challenges for many forms of IP. Iancu acknowledged the complexities in answering questions on whether an AI algorithm can be an author or inventor, and determining the human involvement in a machine-created invention. Iancu stated that the Patent Office aims to issue a report in the next few months based on comments it received on the issue of AI and IP. Lastly, Iancu called for patience and the need to have a steady and deliberate hand when tackling issues surrounding AI.

On Monday, the New York Times reported that Makan Delrahim, Assistant Attorney General for the Antitrust Division of the DOJ, has recused himself from the investigation into
Google’s alleged anticompetitive practices. The *Times* reported that two individuals with knowledge of the decision cited a potential conflict of interest related to Delrahim’s past work for the platform. When Delrahim was in private practice in 2007, Delrahim lobbied on behalf of Google during its bid to acquire the ad-technology company DoubleClick. A DOJ spokesman told the *Times* that “He and the ethics office have decided that he should now recuse himself from a matter within the tech review in an abundance of caution.” The Agency spokesman stated that Associate Deputy Attorney General Ryan Shores will continue to oversee the tech review. Deputy Assistant Attorney General Alex Okuliar, who recently joined the Antitrust Division, will reportedly assist in the review. Read more here.

- The Copyright Office announced this week that the eCO Registration System will be offline for system maintenance from 10:00 p.m. ET Saturday, February 8th until 8:00 a.m. ET Sunday, February 9th.

IV. International Updates:

- On Thursday, the U.S. Chamber of Commerce’s Global Innovation Policy Center (GIPC) released its 2020 International Intellectual Property Index. In its eighth edition, the Index maps the IP ecosystem in 53 global economies, representing over 90% of global Gross Domestic Product. The Index evaluates the IP framework in each country across 50 indicators which industry believes represent economies with the most effective IP systems. For the “copyrights, related rights, and limitations” indicator, 33 of the economies benchmarked failed to achieve 50% of the available score. The U.S. tops the list with a score of 93.43%, followed by the UK with 94.71%, Singapore with 92.71%, and Germany with 91.14%. The countries with the lowest scores for the copyright indicator include Nigeria (21.29%), Egypt (19.71%), Pakistan (18.29%), and Vietnam (18.29%). The report also highlights that Ecuador, Greece, India, Israel, and Peru “utilized injunctive relief, anti-piracy legislation, or administrative orders to disable access to pirated content provided through copyright-infringing sites.” Read more here.

- On Monday, the *South China Morning Post* published an article detailing the escalating tension between the U.S. and China over the WIPO Director General position. While there are ten candidates vying for the position, Mark Magnier of the *South China Morning Post* claimed that there are only two viable candidates – China’s Wang Binying, WIPO’s current deputy director general, and Singaporean Daren Tang, who leads a WIPO office in Singapore. The U.S., Belgium, Japan, and Taiwan support Tang’s bid and, per the article, are attempting to drum up support for his candidacy to counter China’s vast resources and clout in the developing world where most votes reside. Sources quoted in the articles state that Jared Kushner have urged Brazil to support its own Jose Graca-Aranha as a potential compromise candidate. This petition has reportedly been rebuked from Brazil due to internal politics. A Wang victory would give China five spots at specialized UN agencies, compared to the U.S.’s four positions. IP Academics have voiced concerns about a potential China-led WIPO. Mark Cohen, Director of Law and Technology Center at UC Berkeley, stated, “If Wang steps into those shoes, 10 years from now we will no longer have an IP system based on markets.” Read more here.

- On Thursday, following a meeting with Kenyan President Uhuru Kenyatta, President Trump announced his intention to initiate trade agreement negotiations with the Republic of Kenya. USTR Lighthizer said in a statement that the U.S. looks forward to negotiating “a comprehensive, high-standard agreement with Kenya that can serve as a model for additional
agreements across Africa.” Following the congressional consultation framework in the Trade Promotion Authority (TPA), the Trump Administration plans to officially notify Congress of its intention to start negotiations, solicit public feedback on the effort, and publish objectives for negotiations at least 30 days before they begin. Read more [here](#).

V. **Industry Updates:**

- As reported by *The Washington Post*, White House adviser Peter Navarro has accused Amazon CEO Jeff Bezos of backing out of a meeting to discuss counterfeit products on the e-commerce platform. After months of unsuccessfully trying to secure a one-on-one meeting with Bezos to enlist Amazon’s help in the effort to crack down on counterfeiters, Navarro pulled Bezos aside at the annual Alfalfa Club dinner on January 25th, just one day after the Administration published its 54-page report on the perceived problem. According to Navarro, Bezos agreed to meet and instructed him to call Amazon’s senior vice president of global corporate affairs to “get it done.” Despite this personal assurance, Navarro claims that Amazon is offering him meetings with senior executives. Navarro told the *Post* that President Trump is also angry about counterfeit goods on the e-commerce platform and “thinks it’s outrageous what the e-commerce platforms are getting away with” at the expense of brick-and-mortar retail stores. Read more [here](#).