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CONTENT & TECHNOLOGY POLICY REPORT JANUARY 10, 2020



I. Congressional Updates:

- On Monday, Senate Majority Leader Mitch McConnell (R-KY) signed onto the *Journalism Competition and Preservation Act of 2019* ([S.1700](#)), which was introduced by Senators John Kennedy (R-LA) and Amy Klobuchar (D-MN). The House companion bill ([H.R. 2054](#)) is sponsored by Judiciary Committee Ranking Member Collins (R-GA) and Antitrust Subcommittee Chairman Cicilline (D-RI). The Senate bill would grant publishers a four year antitrust exemption so they could negotiate financial terms with tech platforms. David Chavern, President of the News Media Alliance, called McConnell's cosponsorship a sign that the proposal is gaining momentum. Read more [here](#).
- On Tuesday, the Senate Finance Committee reported favorably out legislation to implement the USMCA ([H.R. 5430](#)) by a 25-3 vote. The three senators who voted against the re-negotiated pact include Pat Toomey (R-PA), who has been an outspoken critic of the deal, Bill Cassidy (R-LA), citing concerns that the agreement's altered investor protections for the energy sector would not extend to smaller suppliers and service companies, and Sheldon Whitehouse (D-RI), raising alarm that the bill "does not even mention climate change." Despite clearing the Senate Finance Committee, it is unclear when the bill will be put to a final vote, as it has become entangled in the impeachment timeline. Before the holiday recess, Majority Leader McConnell said he was planning to wait to put the implementing bill to a vote until after the impeachment trial concludes. However, on Thursday Grassley suggested that the Senate will not "dilly-dally" around a vote on USMCA as they wait for Speaker of the House Nancy Pelosi (D-CA) to send over the articles of impeachment. In addition to the Senate Finance Committee, the Senate parliamentarian

Headlines and Highlights:

- Senate Majority Leader McConnell signs onto the *Journalism Competition and Preservation Act of 2019*.
- Senate Finance Committee reports USMCA implementation bill favorably out, although the timeline for a floor vote remains uncertain.
- Miley Cyrus settles \$300 million copyright infringement lawsuit over her 2013 hit song "We Can't Stop."
- European Commission releases report on protection and enforcement of IPR in third countries.

In the Blogs:

[Internet Platform Immunity Language "Lite" Stays in new NAFTA Agreement, but It's Not "Baked In" to US or Canadian Law](#)
Hugh Stephens Blog
January 4 by Hugh Stephens

[The Cox \\$1 Billion Copyright Damage Award is Not as Big as You Think](#)
The Illusion of More
December 24 by David Newhoff

determined late last week that the USMCA implementation bill must earn the approval of six committees in the upper chamber. Five of these panels are scheduled to vote on the pact next week: the Budget Committee and the Environment and Public Works Committee are slated to consider the agreement on Tuesday; the Commerce Committee and the Health, Education, Labor and Pension (HELP) Committee are scheduled to take a vote on Wednesday; and the Foreign Relations Committee will consider the implementing bill on Thursday. The Appropriations Committee will also have to review the pact—but it has yet to announce a markup date.

- Last Friday, ALI Director Richard Revesz penned a letter to the members of Congress that inquired about the ALI’s Restatement of Copyright Law project. On December 3rd, Senate Judiciary IP Subcommittee Chair Tillis (R-NC) joined House Judiciary IP Subcommittee Ranking Member Roby (R-AL) and Reps. Cline (R-VA), Deutch (D-FL), and Rouda (D-CA) in a [letter](#) to Revesz raising concerns and asking a series of questions about the project. Revesz responded that ALI restatements are “designed to help courts make difficult judgements,” while clarifying that they “do not purport to be controlling law for courts.” Furthermore, Revesz claimed that this project is not an attempt to restate the entirety of U.S. copyright law. Revesz noted that restatements have increasingly covered areas of statutory law and that the ALI has “for decades” undertaken efforts in which there are important federal statutes. The letter indicated that the ALI has engaged in a collaborative effort with this process, specifically citing that it takes “seriously” the insights of the USCO, USPTO, the Copyright Alliance, IPO, and others in the copyright community. Director Revesz also provided answers to specific questions posed by the members. Regarding potential conflicts of interest in the ALI, Revesz pointed to the ALI’s policy statement on potential conflicts of interest, but did not answer the question directly.
- On Wednesday, the Senate passed by unanimous consent the *Preventing Illegal Radio Abuse Through Enforcement (PIRATE) Act* ([S.1228](#), [H.R. 583](#)), which seeks to help the Federal Communications Commission (FCC) combat illegal pirate radio operations. The bill increases fines for illegal pirate operations from \$10,000 per violation to \$100,000 per day per violation, up to a maximum of \$2,000,000, and streamlines the FCC’s enforcement. The lower chamber approved the bipartisan bill by a voice vote in February 2019. Read more [here](#).
- Next Friday, January 17th, the House Antitrust Subcommittee is holding a hearing on platforms and market power in Boulder, Colorado, according to the University of Colorado Law School, the event’s host. The school indicated that several “top executives” will testify before the subpanel, although the witnesses have yet to be announced. Antitrust Subcommittee Chairman David Cicilline (D-RI) said the purpose of the hearing is to provide members the opportunity to hear from “a diverse group of innovative companies” that are “forced” to rely on dominant online platforms “as gatekeepers to reach consumers and the online marketplace.” Read more [here](#).

II. Judicial Updates:

- News surfaced late last week that Miley Cyrus has settled the \$300 million copyright infringement lawsuit from Jamaican songwriter Michael May (Flourgon) over her 2013 hit “We Can’t Stop.” May claimed that Cyrus’ song infringed his 1988 song “We Run Things,” which reached No. 1 in his home country. For instance, May pointed out that his song included the phrase “We run things. Things no run we,” while Miley sang “We run things.

Things don't run we." Last Friday, May, Cyrus, Sony and the other defendants in the case filed a joint stipulation in Manhattan federal court ending the lawsuit with prejudice "pending payment of the settlement proceeds," which have not been specified. Read more [here](#).

III. Administration Updates:

- On Tuesday, the White House Office of Science and Technology Policy proposed a draft set of principles to guide federal agencies when drafting artificial intelligence (AI) regulations. These "first of its kind" principles are designed to hold agencies accountable in how they regulate the private sector's use of AI technology. The Trump Administration stated that the goal of these principles is to provide direction on the technical and ethical issues of AI, while making sure new rules don't impede innovation. In an [editorial](#) posted in *Bloomberg*, U.S. Chief Technology Officer Michael Kratsios outlined three goals these regulatory principles are designed to advance: "ensure public engagement, limit regulatory overreach and promote trustworthy technology." The principles are as followed: (1) public trust in AI; (2) public participation; (3) scientific integrity and information quality; (4) risk assessment and management; (5) benefits and costs; (6) flexibility; (7) fairness and non-discrimination; (8) disclosure and transparency; (9) safety and security; (10) interagency coordination. The White House is accepting public comments on the draft principles for 60 days. After this period, it will issue a final memo to federal agencies and instruct agencies to submit implementation plans. Read the draft memo [here](#) and read more [here](#).
- Chinese Vice Premier Liu He will lead a 10-member delegation to Washington early next week to sign the "Phase One" deal to ease tensions in the sprawling U.S.-China trade dispute. The signing ceremony is scheduled to take place at the White House next Wednesday at 11:30 a.m., at which about 200 people, including representatives from major American trade groups, will be in attendance. President Trump has said that he will travel to Beijing to commence "Phase 2" negotiations "at a later date," but China has yet to confirm such a plan, instead indicating that any future negotiations will depend on how the initial deal is implemented. Read more [here](#).

IV. International Updates:

- On December 23rd, the European Commission released its biennial report on the protection and enforcement of IP rights (IPR) in third countries. The report identifies a list of "priority countries" where the Commission finds the state of IPR protection and enforcement, both online and offline, raise the greatest level of concern. The list is bifurcated into three tiers, with China as the only "Priority 1" country identified. India, Indonesia, Russia, Turkey and Ukraine are listed in the second tier, and Argentina, Brazil, Ecuador, Malaysia, Nigeria, Saudi Arabia and Thailand are labeled as "Priority 3." Of note, the U.S. was removed from the priority list "in light of the good cooperation in international fora such as the TRIPS Council and the OECD as well as its engagement in bilateral discussions in the context of the Trans-Atlantic Working Group on IPR." Nevertheless, the report raises concern about the lack of progress in implementing the World Trade Organization panel decision on Irish Music. Finally, the report also includes a new annex dedicated to the protection and enforcement of plant variety right, because many EU plant varieties are reportedly suffering from weak protection and abuses in Argentina, China, Ecuador, and India. Read more [here](#).

V. Industry Updates:

- YouTube has rolled out changes to help creators navigate copyright infringement claims on their videos. According to a blogpost outlining the updates, the YouTube Studio Dashboard will now display more information about a channel's copyright strikes. Additionally, to increase transparency, the platform will surface the specific description of the copyrighted work provided by the claimant in the takedown notice, with certain exceptions. YouTube also unveiled a new tool on the Video Copyright details page to help creators trim out copyright content claimed by Content ID in their video, which will automatically release the claim. Read more [here](#).
- The Computer & Communications Industry Association (CCIA) announced that President & CEO Ed Black has retired, and COO Matt Schruers was voted by the Association's board of directors to fill his post. CCIA's press release indicated that Black will serve on CCIA's board as CEO Emeritus and will remain active as a "senior adviser." Schruers has been with CCIA since 2005, bringing his years of experience in private practice and work as an adjunct professor. Read more [here](#).