



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036
Tel: (202) 327-8100 | Fax: (202) 327-8101

CONTENT & TECHNOLOGY POLICY REPORT JULY 2, 2020



I. Congressional Updates:

- On Thursday, the Senate Judiciary Committee reported the *EARN IT Act*, as amended, favorably out by a 22-0 vote. Through a [manager's package](#) and an [amendment](#) offered by Senator Leahy (D-VT), the Committee revised the bill so the best practices Commission is advisory and the Section 230 section only removes immunity from Federal civil, State criminal, and State civil liability under child sexual abuse material (CSAM) laws based on existing Federal and State standards. Chairman Graham (R-SC) also made it clear that his intent is not to outlaw encryption, as the debate surrounding encryption is a separate issue the Committee should consider. Senators Lee (R-UT) and Coons (D-DE) both said that they considered offering amendments, but ultimately decided not to. Lee explained that while he voted in favor of the bill today, he plans to work with the bill's sponsors to address his concerns before it is put to a final vote on the floor. Lee said that it was "problematic" that the bill's broad language would allow each state to define the standards of liability. Finally, Coons said he was aware of the concerns about the bill raised by human rights and civil liberties groups and urged its sponsors to work with these stakeholder to address these issues. Watch the full markup [here](#).
- House Judiciary Antitrust Subcommittee Chairman David Cicilline (D-RI) told the *New York Times* that the CEOs of Amazon, Apple, Google, and Facebook have agreed to testify before the House Judiciary Committee as part of its big tech antitrust probe. The hearing reportedly will take place in late July, although the committee has yet to announce a set date and it is unclear whether the CEOs will testify in person or virtually. The House Judiciary Committee launched a bipartisan antitrust review of

Headlines and Highlights:

- Senate Judiciary Committee reports the *EARN IT Act*, as amended, favorably out by a 22-0 vote.
- CEOs of Amazon, Apple, Google, and Facebook to testify before House Judiciary Committee in late July.
- USMCA enters into force.
- EU trade chief Phil Hogan withdraws his bid to serve as next WTO Director-General.
- *New York Times* ends partnership with Apple News.
- *POLITICO* reports that EU and U.S. urged South Africa to delay copyright reform.

In the Blogs:

[International Book Piracy: How Canada Got Caught in the 19th Century British-US Copyright Wars](#)

Hugh Stephens Blog

July 1 by Hugh Stephens

[Allen v. Cooper Revisited Part I: State of Play](#)

Illusion of More

June 24 by David Newhoff

technology in June 2019 and have held a series of hearings covering topics such as the [press](#), [innovation and entrepreneurship](#), [privacy](#), [digital competition](#), and fielding information from [antitrust agencies](#). Chairman Cicilline hoped to wrap the investigation in June 2020 and introduce legislation this year based on the report's recommendations. However, this timeline appears to have slipped as lawmakers turned their attention to COVID-19 relief. More info. [here](#).

II. Judicial Updates:

- Late last week, Ralf Hartmann sued Amazon for allegedly distributing four films on its streaming service without authorization or licensure in violation of the Copyright Act. According to the lawsuit, Amazon made *Commander Hamilton* and *After the Rain* available for digital distribution in the U.S. and *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* available in other countries. Hartman has sought a declaratory judgement of infringement against Amazon; an award for damages and treble damages; an award for costs and fees; pre- and post-judgment interest; and other relief as determined by the court. Read more [here](#).

III. Administration Updates:

- On Tuesday, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) issued new Vertical Merger Guidelines, which dictate how the federal antitrust agencies evaluate the likely competitive impact of vertical mergers and whether those mergers comply with U.S. antitrust law. Tuesday's update is the first major revision to guidelines on vertical mergers since the 1984 Non-Horizontal Merger Guidelines, which were withdrawn earlier this year. They are also the first vertical merger guidelines issued jointly by the FTC and DOJ. More info. [here](#).

IV. International Updates:

- On Wednesday, the U.S.-Mexico-Canada Agreement (USMCA) took effect. Ratified by the three participating countries earlier this year, the modernized pact includes several provisions to strengthen the enforcement of IP rights. For instance, the USMCA establishes uniform rights for streaming music by requiring member states to provide creators of sound recordings the exclusive right to authorize reproduction of their works in any form. The pact also requires that authors and performers hold rights to license public distribution of performance of their works through interactive streaming services. "The USMCA contains significant improvements and modernized approaches that will deliver more jobs, stronger worker protections, expanded market access, and greater opportunities to trade for companies large and small," United States Trade Representative (USTR) touted in a statement celebrating USMCA's entry into force. Read more [here](#) and [here](#).
- South African President Cyril Ramaphosa sent a copyright reform bill back to parliament last week, [citing](#) concerns about the reform's "constitutionality" and that it would be in conflict with the World Intellectual Property Organization (WIPO) treaties. *POLITICO* reported this week that the United States and the European Union had pressured President Ramaphosa for months to postpone the legislation "with threats of tariffs and withdrawing investment." While the U.S. campaign was out in the open, *POLITICO* cites internal documents from the European Commission urging South Africa to delay the reform. Specifically, the Commission wrote to the government on multiple occasions dating back to 2015 to raise

concerns about the fair use provisions in the reform and its compliance with international treaties. Other disputed provisions include additional remuneration rights for authors and performers. A Commission official assured reporters that Brussels' contribution to the debate was made in the "spirit of collaboration and mutual respect." Read more [here](#).

- On Monday, EU trade chief Phil Hogan withdrew his bid to serve as the next Director-General at the World Trade Commission (WTO). Current Director General Roberto Azevêdo unexpectedly announced last month that he would step down on August 31st, a year before his term was slated to expire. In a [statement](#) announcing his decision, Hogan raises concern that the appointment timeline will be delayed past September, creating uncertainty "at this critical time." Hogan also suggests that the EU's busy trade agenda was a key factor in his decision to step out of the race. Candidates looking to fill the WTO vacancy [must submit their nomination](#) bid by July 8th. There are five candidates currently vying for the role: Jesús Seade of Mexico, Abdel-Hamid Mamdouh of Egypt, Tudor Ulianoschi of Moldova, Ngozi Okonjo-Iweala of Nigeria, and Yoo Myung-hee of South Korea.

V. Industry Updates:

- On Monday, the *New York Times* announced plans to end its partnership with Apple News, citing concerns that Apple had limited its direct relationships with readers and given it little control over the business. An Apple spokesperson underscored that *The Times* "only offered Apple News a few stories a day," and noted that the company would continue to offer customers trusted information from thousands of publishers. Although Apple News is one of the world's most widely read news sources with about 125 million monthly readers, *The Times* cites that the app has generated little revenue for news organizations since its creation in late 2015. Apple introduced Apple News Plus late last year in an attempt to increase publisher revenue, but the initiative would still require many publications to undercut their own prices and share revenues with dozens of other organizations. *New York Times* Executive Vice President and Chief Operating Officer Meredith Kopit Levien told employees that the exit was not expected to have a "material impact" on *The Times*' business and that it will work with Apple in other ways, including on apps, podcasts, and hardware. Read more [here](#).