



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 MARCH 27, 2020



### I. Congressional Updates:

- On Wednesday, the Senate approved a sweeping \$2 trillion COVID-19 response package, the *CARES Act*, by a 96-0 vote. The third package provides emergency supplemental funding to help federal agencies and states combat the spreading virus and provides economic relief through loans and loan guarantees for affected businesses and direct payments to taxpayers. The House of Representatives is expected to pass the legislation, which is the largest economic rescue package in U.S. history, soon. The bill includes several provisions to help artists and creative industries. For instance, self-employed individuals who make under \$100k annually are eligible to apply for relief grants and loans, such as emergency economic injury disaster loan (EIDL) grants. The package also provides an increase of up to \$600 per week for unemployment benefits. Finally, the *CARES Act* allocates an additional \$25 million in funding for the John. F. Kennedy Center for the Performing Arts in D.C., as well as \$75 million each for the National Endowment of the Arts and National Endowment of the Humanities. More info. [here](#).

### II. Judicial Updates:

- In a unanimous decision on Monday, the U.S. Supreme Court said that a videographer who spent decades documenting the salvaging of Blackbeard's ship cannot sue North Carolina in federal court for copyright infringement. After marine salvage company Intersal, Inc. discovered Blackbeard's ship in 1996, North Carolina commissioned Intersal to take charge of the operation. Intersal hired Federal Allen, a local videographer, to document the operation. As he documented the process for the next two decades, Allen copyrighted his work so it could not be used

### Headlines and Highlights:

- Senate approves sweeping \$2 trillion economic stimulus package, including several provisions to support artists and creative industries.
- In unanimous decision, Supreme Court rules that a videographer who documented Blackbeard's ship cannot sue the state of North Carolina in federal court for copyright infringement.
- Music streaming services donate to MusiCares' COVID-19 fund.
- EU and 15 other WTO Members announce Multiparty Interim Appeal Arbitration Arrangement.

### In the Blogs:

[Copyright Industries and Creators in the Age of COVID-19: The Impact and the Response](#)

Hugh Stephens Blog  
March 23 by Hugh Stephens

[Social \(Media\) Distancing](#)

David Newhoff  
March 22 by David Newhoff

without his permission. However, the state of North Carolina began posting some of his photographs online without permission or paying royalties. The state paid Allen \$15,000 for one such infringement in 2013, but he sued in federal court for copyright infringement after violations persisted. The state contended that it is immune to such suits because the Supreme Court has ruled that individuals cannot sue sovereign states without their permission in federal court over the last quarter century. Justice Elena Kagan delivered the opinion for the Court, pointing to several precedents over the past 26 years in which justices have barred such lawsuits. There were also two concurring opinions—one from Justice Clarence Thomas and another by Justice Stephen Breyer and Ruth Bader Ginsburg. Read more [here](#).

- On Thursday, U.S. District Court Judge Laura Taylor Swain ruled that Take-Two Interactive couldn't be sued for copyright infringement over tattoos of LeBron James and other NBA stars in the NBA 2K video games. Claiming to own copyrights to tattoo designs on LeBron James, Kenyon Martin, and Eric Bledsoe, Solid Oak Sketches filed suit against game publisher Take-Two Interactive in 2016 for alleged unauthorized reproductions of those tattoos in the *NBA 2K* franchise. In her [opinion](#), Swain claims that “The tattooists necessarily granted the players nonexclusive licenses to use the tattoos as part of their likenesses.” She also said that the tattoos were too insignificant to count as copyright infringement and that Take-Two was shielded by copyright's fair use doctrine because it had made a “transformative use” of the tattoos. Read more [here](#) and [here](#).

### III. Administration Updates:

- All Library of Congress buildings and facilities are closed to the public until further notice to reduce the risk of transmitting the COVID-19 coronavirus. Consequently, the Copyright Royalty Board (CRB) will not be reviewing courier deliveries during this period and members of the public are strongly encouraged to file all documents with the CRB electronically through eCRB. Although the CRB will continue to operate, all hearings scheduled to begin during this time will be postponed. More info. [here](#).
- In statements last week, the [Department of Justice \(DOJ\) Antitrust Division](#) and the [Federal Trade Commission \(FTC\)](#) said that while the agencies have implemented changes adjusting to COVID-19 circumstances, both enforcers will be carrying out their missions without interruption. However, in an article posted by *Protocol* on Wednesday, former FTC Chairman William Kovacic stated that he expected the workplace changes to result in long delays complicating any actions against large tech companies. Kovacic stated that “It's just impossible for FTC lawyers and economists to work at the same pace from home — and that's necessarily going to slow the progress of the inquiries down.” Furthermore, he added that he expected the timetables that the agencies developed to be “stretched out.” Tad Lipsky, former Director for the FTC's Bureau of Competition, stated that courts move to “virtual” proceedings could further limit civil procedures, citing the DOJ's move to postpone depositions as part of the impact of this move. Read more [here](#).

### IV. International Updates:

- On Friday morning, the EU and 15 other World Trade Organization (WTO) members announced that they have reached a deal that will allow participants to bring appeals and solve disputes despite the current paralysis of the WTO Appellate Body. According to a statement from the European Commission, the Multiparty Interim Appeal Arbitration Arrangement mirrors the usual WTO appeal rules and can be used between any members of

the Organization willing to join, as long as the WTO Appellate Body is not fully functional. The following countries signed onto the agreement: Australia; Brazil; Canada; China; Chile; Colombia; Costa Rica; the European Union; Guatemala; Hong Kong, China; Mexico; New Zealand; Norway; Singapore; Switzerland; and Uruguay. Washington froze the WTO's appellate body by blocking appointments for over two years. Read more [here](#).

- The *Financial Times* reported this week that the coronavirus crisis is forcing the EU to redraw its digital strategy and will likely delay legislation on the matter. Brussels set out its strategy for AI and data last month, calling for the EU to boost data sovereignty and even suggesting that EU AI algorithms should be trained on European data. The consultation of the AI white paper is due at the end of May, but will now likely be pushed back, depending how the situation develops. Beyond these process disruptions, some EU officials have indicated that the limitations of the policy are being exposed by the coronavirus pandemic as well. "The EU is not backtracking yet on its position but it is thinking more actively about the unintended consequences of what they have proposed in the white paper on AI," one person with direct knowledge of the European Commission's thinking told the *Financial Times*. Read more [here](#).

## **V. Industry Updates:**

- *Billboard* reports that Amazon Music, Facebook, SiriusXM and Pandora, Spotify, Tidal and YouTube Music have donated to a relief fund for music workers whose livelihoods have been impacted by the coronavirus crisis launched by MusiCares, the charitable arm of the Recording Academy, last week. The fund kicked off with an initial \$1 million donation from each MusiCares and the Recording Academy, and, according to a representative, that number has more than doubled thanks to donations from major streaming and tech companies and fundraising efforts from musicians like Alicia Keys and Better Than Ezra's Kevin Griffin. Read more [here](#).