



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT MAY 22, 2020



### I. Congressional Updates:

- As part of the Senate Judiciary IP Subcommittee’s review of the Digital Millennium Copyright Act (DMCA), Chairman Tillis (R-NC) will hold a briefing next week on the scope of music rights within the statute. As described by the Chairman’s office, participants will discuss the appropriate scope of exclusive rights in sound and ephemeral recordings. Similar to a hearing, the briefing will begin with opening remarks from Chairman Tillis and then proceed to five minute oral statements from the five witnesses. After the witnesses complete their opening remarks, subcommittee staff will be given the opportunity to ask questions. The following witnesses are slated to participate in the briefing: Colin Rushing (Chief Legal Officer, SoundExchange), Harvey Mason Jr. (Chair and CEO, The Recording Academy), Curtis LeGeyt (COO, National Association of Broadcasters), Richard Burgess (President and CEO, American Association of Independent Music), and Scott Hunter (Executive Director, National Religious Broadcasters Music License Committee).
- On Thursday, Sens. John Cornyn (R-TX) and Tom Carper (D-DE) led 40 of their Senate colleagues in a letter to Majority Leader Mitch McConnell (R-KY) and Minority Leader Charles Schumer (D-NY) asking them to include funding for independent live music venues in any upcoming coronavirus relief legislation. Specifically, the senators support “providing government funding, tax relief measures, and assistance to manage mortgage, rent and other debt burdens for mom and pop venues across the country.” The letter underscores that independent live music venues are central to the social, cultural, and economic fabric of many communities. Read the full letter

### Headlines and Highlights:

- Senate Judiciary IP Subcommittee Chairman Tillis to hold briefing on scope of music rights within DMCA next week.
- Copyright Office releases section 512 report.
- U.S.-UK wrap first round of virtual negotiations in pursuit of an FTA.
- Walt Disney Company’s top streaming executive, Kevin Mayer, to join TikTok as chief executive.
- EU regulators collect feedback to inform the drafting of the Digital Services Act.

### In the Blogs:

[The Ethics of Listening to Music—Especially Vinyl—in this Age of COVID-19](#)

Hugh Stephens Blog

May 18 by Hugh Stephens

[Copyright Office opines on National Emergency Library. Critics opine on Copyright Office.](#)

Illusion of More

May 20 by David Newhoff

[here](#).

- After reports surfaced that Uber is in discussions to acquire GrubHub, Senate Judiciary Antitrust Subcommittee Ranking Member Amy Klobuchar (D-MN) and Sens. Patrick Leahy (D-VT), Richard Blumenthal (D-CT), and Cory Booker (D-NJ) sent a letter on Wednesday urging regulators to investigate if a deal is met “to ensure that competition is preserved.” The letter cites research on the food delivery market finding that DoorDash earned 45% of meal delivery sales in April, with GrubHub earning 23%, and Uber Eats 22%. “The merger under negotiation would create a sector in which the top two players control 90 percent of sales,” the lawmakers cautioned. The letter claims that this market consolidation “could mean higher fees, reduced services quality, fewer choices, and less innovation for consumers and the restaurants that serve them.” Read more [here](#).

## II. Judicial Updates:

- Earlier this month, the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of a copyright infringement lawsuit filed against comedian Jerry Seinfeld over his hit show, *Comedians in Cars Getting Coffee*. The court found that the defendant’s claims, which accrued in 2012, were time-barred. In 2016, writer-director Christian Charles sued Seinfeld for copyright infringement in the SDNY, claiming authorship in the series. The district court granted Seinfeld’s motion to dismiss the case on the ground that Charles’s copyright infringement claims were time-barred. In upholding this decision, the Second Circuit agreed with the district court’s framing of the dispositive issue in the case being whether Charles’s alleged contributions to the series qualified him as an author and owner of copyrights to the show. The Second Circuit explained that a claim under the Copyright Act must be brought “within three years after the claim [has] accrued.” Read more [here](#).

## III. Administration Updates:

- On Thursday, the Copyright Office released the findings of its multi-year study of section 512 of the U.S. Copyright Act, which is part of the DMCA. The report concludes that the operation of the section 512 safe harbor system today is unbalanced and highlights areas where current implementation of section 512 is out of sync with Congress’ original intent, including: eligibility qualifications for the service provider safe harbors; repeat infringer policies; knowledge requirement standards; specificity within takedown notices; non-standard notice requirements; subpoenas; and injunctions. While the report does not recommend any wholesale changes to section 512, the Office points out these and other areas where Congress may wish to consider legislation to rebuild the original balance between rightsholders and online service providers. It also identifies several non-statutory areas of untapped potential to increase the efficacy of the statute and recommends additional and government and stakeholder focus in education, voluntary cooperation, and the use of standard technical measures. Read the full report [here](#).

## IV. International Updates:

- *Reuters* reports that EU regulators plan to send a 43-page questionnaire to members of the public, digital service providers, and EU governments in the coming weeks to collect feedback to inform the drafting of the Digital Services Act to replace the bloc’s decades-old e-commerce directive. The questionnaire reportedly covers topics such as the power of “gatekeepers,” online platforms’ liability for illegal or harmful content, gig economy

workers, and transparency around online advertising. According to *Reuters*, “The document shows EU regulators are considering whether all online platforms, or only larger ones or those at particular risk of exposure to illegal activities by their users, should be subjected to take-down notices, and how prescriptive these should be.” Read more [here](#).

- The first round of virtual negotiations in pursuit of a U.S.-UK Free Trade Agreement (FTA) concluded on May 15<sup>th</sup>. On Monday, UK Secretary of State for International Trade Liz Truss published an update on the status of the bilateral negotiations. She noted that both sides will quickly pursue a standalone Small and Medium Enterprises (SME) Chapter and will continue the UK-US SME Dialogue. According to her statement, the two sides also identified a mutually high ambition for services, investment, and digital trade, among other areas. The second two-week long negotiating round will start on June 15<sup>th</sup>. Read the full statement [here](#).
- The WTO announced this week that candidates seeking to succeed Roberto Azevêdo as Director-General must submit their nomination bid between June 8<sup>th</sup> and July 8<sup>th</sup>. As we previously noted, Roberto Azevêdo announced last week that he would step down on August 31<sup>st</sup>, a year before his term was slated to expire. Despite the Trump Administration’s actions to paralyze the trade court through blocking appointments, USTR Lighthizer [said last week](#) that the U.S. “looks forward to participating in the process of selecting a new director general.” Read the WTO’s announcement [here](#).

## V. Industry Updates:

- On Monday, Walt Disney Company’s top streaming executive, Kevin Mayer, resigned to become chief executive of TikTok and chief operating officer of ByteDance. Although he was “happy” with his job at Disney, Mayer told the *New York Times* that “The magnitude of this opportunity was just something I couldn’t pass up.” Read more [here](#).
- On Tuesday, Walmart announced that it is shutting down its e-commerce site Jet.com “due to continued strength of the Walmart.com brand.” In a quarterly earnings report released this week, Walmart said its online sales had surged 74% during the coronavirus pandemic. After launching in the summer of 2015, Jet quickly raised \$700 million, and offered creative new discounts to customers for bundling purchases or waiving returns. Walmart scooped up Jet in September 2016 for \$3.3 billion. Jet’s online traffic plummeted since the acquisition as Walmart focused on expanding Walmart.com, dropping from 33 million visits in December 2016 to 1.4 million visits in December 2019. Jet attempted to rebrand itself in 2018 with a refreshed site and improved grocery service but struggled to stand out against bigger rivals. Read more [here](#).
- California Governor Gavin Newsom (D) reportedly told entertainment industry leaders on Wednesday that the state plans to roll out guidelines for productions on film, television and commercials on May 25<sup>th</sup>. During the conversation, which was held as part of Governor Newsom’s Economic Recovery & Reinvention Listening Tour, production leaders discussed the ideas they are drafting for returning to work. Netflix chief content officer Ted Sarandos said that his company is implementing different safety protocols for production underway in South Korea, Iceland, and Sweden. Newsom also cautioned that Monday’s guidelines will not “mean the light goes on everywhere.” While 53 of California’s counties meet the state’s criteria for reopening, he clarified that Los Angeles County may “be a few weeks behind everyone else.” Read more [here](#).

