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CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 13, 2020



I. Congressional Updates:

- The CEOs of Facebook and Twitter are reportedly slated to appear before the Senate Judiciary Committee on November 17th. The Committee voted last month to authorize Chairman Lindsey Graham (R-SC) to subpoena Facebook CEO Mark Zuckerberg and Twitter CEO Jack Dorsey to testify about allegations of anti-conservative bias. In a [Tweet](#) after the vote, Senate Judiciary IP Subcommittee Chairman Thom Tillis (R-NC) declared that it is “past time” that the Big Tech CEOs “answer for not only their censorship of conservative voices but also their willingness to allow for rampant online piracy and copyright infringement.” Read more [here](#).
- On Wednesday, Senate Judiciary IP Subcommittee Chairman Thom Tillis (R-NC) sent stakeholders a questionnaire for input on his effort to reform the Digital Millennium Copyright Act (DMCA). In the letter requesting feedback, Chairman Tillis explains that, in his view, the following sections under title 17 of the DMCA are ripe for reform: 512, 1201, and 1202. The document poses seven questions to be answered by stakeholders by December 1st. After receiving the feedback, Chairman Tillis plans to release draft legislation on December 18th. The Chairman announced his plans to update the DMCA back in December 2019. He has led a series of hearings and briefings in the Senate Judiciary IP Subcommittee this year on a variety of topics including the history of the statute ([Feb. 11](#)), how other countries handle digital piracy ([March 10](#)), the scope of music rights within DMCA (May 27), notice-and-takedown ([June 2](#)), fair use ([July 28](#)), and Section 1201 ([Sept. 16](#)). Read more [here](#).

Headlines and Highlights:

- Senate Judiciary Committee to hear testimony from Big Tech CEOs on November 17th.
- Senate Judiciary IP Subcommittee Chairman Tillis sends DMCA reform questionnaire to stakeholders.
- USCO issues final rule regarding mandatory deposit of electronic-only books.
- USCO to hold webinar on electronic recordation system pilot program on December 1st.
- AAFA asks USTR to include Facebook, Instagram, and Amazon in Special 301 notorious markets report.

In the Blogs:

[The Biden Administration Should Avoid Past Mistakes on Cyber Policy](#)
Illusion of More
November 9 by David Newhoff

[COVID and Culture: What's Around the Corner?](#)

Hugh Stephens Blog
November 9 by Hugh Stephens

- On Tuesday, the Senate Appropriations Committee released twelve Fiscal Year (FY) 2021 appropriations bills. These bills are not expected to be marked up by the subcommittees in the upper chamber, but rather kickstart negotiations in pursuit of an omnibus to fund the government through FY2021 when the continuing resolution (CR) expires on December 11th. Senate Majority Leader Mitch McConnell (R-KY) said last week that he and Speaker of the House Nancy Pelosi (D-CA) “agree that we ought to do an omnibus appropriation bill and do it in December, no matter who wins the election.” As a reminder, the House passed two appropriations packages in July encompassing all but the Legislative Branch and Homeland Security bills. The Senate Financial Services and General Government (FSGG) [FY2021 bill](#) provides \$1.8 million for the Office of the Intellectual Property Enforcement Coordinator (IPEC), an increase from the \$1.3 million included in the [House-passed bill](#). The Senate Legislative Branch report [recommends](#) \$48.6 million in direct appropriations to the Copyright Office, compared to the \$46.6 million recommended in House appropriators’ [report](#).
- On Tuesday, the Senate Commerce Committee held a hearing on the nomination of Nathan Simington to be a member of the Federal Communications Commission (FCC). Simington’s views on Section 230 reform were the focus of the hearing. In an exchange with Senator Cruz (R-TX), Simington shared Cruz’s concern about censorship from Big Tech and supported the FCC’s decision to take up the National Telecommunications and Information Administration’s (NTIA) petition for rulemaking on Section 230. Simington argued that Section 230 reform is within the FCC’s jurisdiction and supported further debate between Congress and the FCC. Senator Blumenthal (D-CT) was deeply concerned with Simington’s work on the NTIA rulemaking petition and previous discussions with the White House about Section 230. When Blumenthal asked Simington directly if he would recuse himself from Section 230 matters because of his previous work with NTIA and discussions with the White House, Simington stated that he felt it was “premature to make that judgement.” Watch the full hearing [here](#).

II. Judicial Updates:

- On Wednesday, President Trump filed a motion in New York court to dismiss a copyright case Eddy Grant brought against Trump for using the 1983 hit “Electric Avenue” in a presidential campaign video. The motion argues that the lawsuit should be dismissed on fair use grounds, claiming that it was transformative to use the song over a cartoon version of his opponent driving an old-fashioned train car interspersed with Biden speeches. “The purpose of the Animation is not to disseminate the Song or to supplant sales of the original Song” the motion declares. Read more [here](#).

III. Administration Updates:

- The Biden-Harris transition team released its agency review teams on Tuesday afternoon. These teams are responsible for understanding the operations of each agency, ensuring a smooth transfer of power, and preparing for President-elect Biden and Vice President-elect Harris and their cabinet to hit the ground running on day one. Members include volunteers, full-time transition employees, and detailees. Find the full list of agency review team members [here](#).
- On Thursday, the U.S. Copyright Office published a final rule making electronic-only books published in the U.S. subject to the Copyright Act’s mandatory deposit provisions if they are

affirmatively demanded by the Office. The final rule, which will take effect on December 14th, largely adopts the language set forth in the Office’s June 2020 notice of proposed rulemaking, with one additional clarification regarding the rule’s applicability to print-on-demand books. Read more [here](#).

- On Monday, the U.S. Copyright Office announced that it is further extending the temporary adjustments to certain timing provisions under the Copyright Act for persons affected by the COVID-19 national emergency. The emergency modifications will be extended through January 8th, 2021. More info. [here](#).
- On December 1st, at 1:00 p.m. ET, the U.S. Copyright Office will host a webinar on the progress of the pilot program for the electronic recordation system, which is the first offering in the Office’s Enterprise Copyright System. Participants will have a chance to ask the panelists questions following their presentations. The webinar is part of the Copyright Office’s modernization series. More info. [here](#), and register online [here](#).

IV. International Updates:

- On Thursday, a group of 165 companies and industry bodies sent a letter urging EU antitrust chief Margrethe Vestager to take a tougher line against Google for allegedly favoring its own services on its web searches. The group includes companies from the U.S., UK, and 21 EU countries. “While we compete amongst ourselves for the best consumer experience, there is one common competitor that does not compete fairly - Google,” the letter asserts. *Reuters* reports that the letter was signed by Yelp, Expedia, Trivago, Kelkoo, Stepstone, and Foundem. Read more [here](#).
- Leaders from China, Japan, South Korea, Australia, New Zealand, and 10 members of the Association of Southeast Asian Nations (Asean) are expected to sign the Regional Comprehensive Economic Partnership (RCEP) this weekend. The deal will be the most ambitious trade agreement ever struck by population and GDP. RCEP will eliminate as much as 90% of the tariffs imposed on imports between its signatories within 20 years of the deal’s effective date. It will also establish common rules for e-commerce, trade, and IP. India pulled out of the trade negotiations last year due to concerns that the trade pact would devastate its local industries. *SCMP* reports that China has viewed the new FTA as an “opportunity to write regional trade rules and diversify its avenues of trade amid declining economic relations with the United States.” Read more [here](#) and [here](#).

V. Industry Updates:

- On Tuesday, Spotify announced plans to acquire the podcast ad platform Megaphone for \$235 million. More than 20,000 publishers and advertisers use the ad platform, which helps advertisers target 60,000 audience segments across various podcasts. “We are incredibly excited to join Spotify to help advance the podcast medium for publishers and advertisers alike,” Megaphone Chief Executive Brendan Monaghan said. The move is the latest in Spotify’s effort to grow its podcast presence, which will in turn help diversify its business beyond music streaming. PwC projects that the market for podcast advertising will grow by 14.7% to nearly \$1 billion this year. Read more [here](#).
- This week, the American Apparel & Footwear Association (AAFA) asked the Office of the U.S. Trade Representative (USTR) to include Facebook, Instagram, and Amazon in a special

report identifying sites of large-scale counterfeiting. Specifically, AAFA said the platforms should be listed in USTR's upcoming Special 301 Review of Notorious Markets, a list identifying physical and online markets where substantial counterfeiting is present. USTR listed Amazon's foreign domains in its [last report](#). Although Amazon has taken some action since AAFA urged USTR to include the e-commerce site in last year's report, the association claims that "the number of counterfeits on the platform and the systems developed to address them remain mismatched." Further, the group says that shopping options on Facebook and Instagram blur the line between e-commerce and social media. In Amazon's own set of [comments to USTR](#), the company says it "has never been and will never be a notorious market," outlining steps it has taken to combat counterfeit items on its website since its foreign domains were listed in last year's report. More info. [here](#).