



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 6, 2020



### I. Congressional Updates:

- The CEOs of Facebook and Twitter are reportedly slated to appear before the Senate Judiciary Committee on November 17<sup>th</sup>. The Committee voted last week 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](#).

### II. Judicial Updates:

- At a status conference last Friday, Google lawyer John Schmiddlein agreed to tell the U.S. District Court for the District of Columbia by November 13<sup>th</sup> if the search and advertising giant planned to ask for the case to be thrown out on a summary judgment. Judge Amit Mehta also said that the two sides should make initial disclosures about potential witnesses and evidence that might be used at trial by November 20<sup>th</sup>. The next status conference is scheduled for November 18<sup>th</sup>. The Department of Justice filed its highly-anticipated antitrust lawsuit against Google last month, alleging that the tech giant uses anticompetitive tactics to preserve a monopoly for its flagship search engine and related advertising business. The suit accuses the search giant of using billions of dollars collected from advertisements on its platform to pay for mobile-phone manufacturers, carriers, and browsers, to maintain Google as their preset, default search engine. Read more [here](#).

### Headlines and Highlights:

- Senate Judiciary IP Subcommittee to hear testimony from Big Tech CEOs on November 17<sup>th</sup>.
- Google to tell district court how it will respond to DOJ antitrust lawsuit by mid-November.
- USCO to hold roundtables to inform sovereign immunity study on December 11<sup>th</sup>.
- EU antitrust chief suggests splitting up Big Tech will not be necessary in interview.
- *Hill* editorial calls on Congress to modernize copyright law to curb internet piracy.

### In the Blogs:

[Google v. Oracle XI: Going In Circles at Oral Arguments](#)  
Illusion of More  
November 1 by David Newhoff

[Remembrance Day, COVID—and Copyright](#)  
Hugh Stephens Blog  
November 2 by Hugh Stephens

### III. Administration Updates:

- On Thursday, the U.S. Copyright Office announced that it is holding public roundtables to inform its study on the degree to which copyright owners are experiencing infringement by state entities without adequate remedies, as well as the extent to which such infringement appears to be based on intentional reckless conduct. According to a Federal Register notice announcing the roundtables, they will cover the following topics: “evidence of actual or threatened copyright infringement by states; state policies and practices for minimizing copyright infringement and addressing infringement claims; and alternative remedies under state law for copyright infringement.” The roundtables will be held from 8:30 a.m. to 5:00 p.m. ET on Friday, December 11<sup>th</sup>. More info. [here](#).
- On Thursday, the U.S. Copyright Office released a supplemental notice of proposed rulemaking (SNPRM) on the proposed rule covering the Music Modernization Act (MMA) transition period transfer and reporting of royalties to the mechanical licensing collective (MLC). The SNPRM revises the requirements for the content of cumulative statements of account that digital music providers submit to the MLC at the end of the statutory transition period. It also proposes estimate and adjustment provisions with respect to payment of accrued royalties to the MLC in connection with that reporting. Comments on the updated rules are due to the Office by November 25<sup>th</sup>. More info. [here](#).

### IV. International Updates:

- European Competition Commissioner Margrethe Vestager made news on Sunday when she said that splitting up large tech companies such as Google and Facebook will not be necessary as part of the bloc’s digital regulation rewrite. She is poised to announce draft rules for the digital sector on December 2<sup>nd</sup>, at which point she will have to reconcile her proposal with those from member countries and the European Parliament. “It’ll never come to that,” Vestager told the *Frankfurter Allgemeine Sonntagzeitung* newspaper when discussing the possibility of breaking up tech companies. “Up until now we haven’t had any cases that could lead to such a move.” Vestager outlined some of the changes that might be included in the new regulation last month. “They’ll have to tell us how they decide what information and products to recommend to us, and which ones to hide, and give us the ability to influence those decisions, instead of simply having them made for us. And they’ll have to tell us who’s paying for the ads that we see, and why we’ve been targeted by a certain ad,” she said. Read more [here](#) and [here](#).
- In a written statement released Monday, UK Trade Secretary Liz Truss said that negotiations in pursuit of a U.S.-UK free trade agreement (FTA) are in “advanced stages,” and the two sides have agreed to continue talks in the weeks after the U.S. elections. “A significant proportion of legal text has been agreed across multiple chapters,” Truss explained, adding “We believe we are in a good position to move forward after the U.S. election.” The fifth round of negotiations – which concluded on October 30<sup>th</sup> – covered 38 sessions on 19 different chapter areas of the deal, including IP and digital issues. Read the full statement [here](#).

### V. Industry Updates:

- In an op-ed published in *The Hill* on Wednesday, Randolph May, President of the Free State Foundation, and Seth Cooper, a Senior Fellow at the think tank, called on Congress to

modernize copyright law to curb internet piracy. Specifically, the pair insist that the Senate Judiciary IP Subcommittee’s review of “notice-and-takedown” should be “part of a broader move by Congress to curb massive online infringement by updating the law to better protect copyright owners.” The op-ed cites a Sandvine study that found that subscriptions to illegal IPTV services increased to 6.9 percent of North American households by the end of 2019, compared to 5.5 percent two years earlier. It also points to an August 2020 report from the Digital Citizens Alliance that estimated that conservatively, these pirate subscription services generate revenues of \$1 billion annually in the U.S. The pair’s book, “Modernizing Copyright Law – Constitutional Foundations of Reform,” identifies avenues Congress can pursue to improve criminal and civil copyright enforcement. For instance, it urges legislators to increase criminal penalties for infringement involving Internet streaming, modernize the 22-year-old “notice and takedown” system for platforms, and enact the *CASE Act*. Read the full op-ed [here](#).