



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT

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I. Congressional Updates:

- On September 15th, at 2:00 p.m. ET, the Senate Judiciary Antitrust Subcommittee will hold a hearing titled “Stacking the Tech: Has Google Harmed Competition in Online Advertising?” Subcommittee Chairman Mike Lee (R-UT) hopes that the hearing will “reaffirm the wisdom of focusing on better enforcement rather than the radical transformation of the antitrust laws demanded by the extreme left.” A notice announcing the hearing asserts that “recent consumer complaints and investigations by law enforcement have raised questions about whether Google has acquired or maintained its market power in online advertising in violation of antitrust laws.” More info. [here](#) and [here](#).
- On Wednesday, September 16th, at 2:30 p.m. ET, the Senate Judiciary IP Subcommittee is scheduled to hold a hearing titled “Are Reforms to Section 1201 Needed and Warranted?” Regan A. Smith, the General Counsel and Associate Register of Copyrights at the U.S. Copyright Office, is slated to testify before the subpanel. Lawmakers will also hear from the following witnesses on a second panel: Ms. Vanessa P. Bailey (Global Director, Intellectual Property Policy, Intel Corporation); Professor Blake E. Reid (Director, Samuelson-Glushko Technology Law & Policy Clinic, University of Colorado Law School); Mr. J. Matthew Williams (Partner, Mitchell Silberberg & Knupp LLP); Mr. Seth D. Greenstein (Partner, Constantine Cannon LLP); Mr. Morgan Reed (President, ACT | The App Association); and Mr. Aaron Lowe (Senior Vice President, Regulatory and Government Affairs, Auto Care Association). More info. [here](#).

Headlines and Highlights:

- Senate Judiciary IP Subcommittee to consider whether reforms to Section 1201 are “needed and warranted” at upcoming hearing.
- Senators Wicker, Graham, and Blackburn introduce bill to modify Section 230 CDA.
- Creative industry raises concern that the European Commission’s proposed Article 17 guidance is inconsistent with the copyright directive’s original objective.
- President Trump reportedly considering nominating Nathan Simington, senior NTIA advisor who helped draft social media EO, to replace O’Rielly on FCC.

In the Blogs:

[Undoing the Damage of the Federal Court of Appeal’s Decision on “Mandatory” Tariffs](#)

Hugh Stephens Blog
September 8 by Hugh Stephens

[Schrödinger’s Reality](#)

Illusion of More
September 4 by David Newhoff

- On Wednesday, September 23rd, at 2:30 p.m. ET, the Senate Judiciary IP Subcommittee will hold a hearing titled, “Examining Threats to American Intellectual Property: Cyber-attacks and Counterfeits During the COVID-19 Pandemic.” The following witnesses are slated to testify before the Subcommittee: Mr. Adam Hickey (Deputy Assistant Attorney General National Security Division, Department of Justice); Mr. Clyde Wallace (Deputy Assistant Director, Cyber Operation Branch, Federal Bureau of Investigation); Mr. Steve Francis (Assistant Director, HSI Global Trade Investigations, Division Director, National Intellectual Property Rights Center, U.S. Immigration and Customs Enforcement, Department of Homeland Security); and Mr. Bryan S. Ware (Assistant Director For Cybersecurity Cyber Security And Infrastructure Security Agency, Department of Homeland Security). Read more [here](#).
- On Tuesday, Senate Commerce Committee Chairman Roger Wicker (R-MS), Senate Judiciary Committee Chairman Lindsey Graham (R-SC), and Senator Marsha Blackburn (R-TN) introduced the *Online Freedom and Viewpoint Diversity Act*. The bill would strip liability protections provided by Section 230 of the Communications Decency Act (CDA) if a platform restricts access to content without providing specific rules that it violated. In a press release, Senator Wicker explained that the bill seeks to address the perceived problem of platforms censoring viewpoints that deviate from their beliefs. “These practices should not receive special protections in our society where freedom of speech is at the core of our nation’s values,” Wicker said. Read more [here](#).

II. Judicial Updates:

- *POLITICO* reported late last week that the nearing election has heightened partisan dimensions of disputes on whether and when to bring an antitrust case against Google. The Department of Justice (DOJ) announced in July 2019 that it was investigating whether and how market-leading online platforms “have achieved market power and are engaging in practices that have reduced competition, stifled innovation, or otherwise harmed consumers.” The DOJ reportedly [began collaborating](#) with state attorneys general who have also opened an inquiry into Google earlier this year. According to the *Wall Street Journal*, Attorney General William Barr is [preparing](#) to bring a case against Google as soon as this summer, although some DOJ staffers have [expressed internally](#) that they need more time to develop a camera-ready case. Sources told *POLITICO* that some Democratic AGs are also holding up the case’s launch as well, and the DOJ will hold meetings in the coming weeks in an attempt to smooth over these disagreements. Read more [here](#).

III. Administration Updates:

- *The Verge* reports that President Trump is considering Nathan Simington, a senior adviser at the National Telecommunications and Information Administration (NTIA), as its pick to replace Mike O’Rielly on the Federal Communications Commission (FCC). Simington apparently helped draft President Trump’s social media executive order (EO) targeting platforms’ legal protections under Section 230 CDA. Trump withdrew O’Rielly’s re-nomination last month after the commissioner gave a speech opposing revising Section 230 CDA. It is unclear whether a nomination will be submitted before the November election. Read more [here](#).

- This week, the Cybersecurity and Infrastructure Security Agency (CISA) responded to Senators Tillis (R-NC) and Cornyn's (R-TX) [letter](#) inquiring about recent NetWalker attacks on education systems, medical facilities, businesses, and government agencies. Senators wrote the agency on July 30th raising concern that NetWalker threatens users with the publication of their data and adds an encryption that makes it impossible for users to cover their data without paying the ransom. Tillis and Cornyn also noted that according to public reports, NetWalker has been traced back to Russian government-affiliated hackers. In its response, CISA confirmed that it is tracking actors who are utilizing the NetWalker ransomware specifically to capitalize on COVID-19. In response to the question about which other foreign actors, besides Russia, are conducting attacks using RaaS similar to the NetWalker attacks, CISA stated "Criminal actors that are not necessarily tied to traditional APT Groups/Nation-States have been conducting RaaS attacks." Finally, on the question of how Congress can bolster CISA's ability to effectively combat sophisticated actors such as NetWalker, CISA pointed to the Cybersecurity Vulnerability Identification and Notification Act (CVINA), which was included in both the House and Senate versions of the National Defense Authorization Act (NDAA).
- The eCO Registration System will be offline for system maintenance from 5:00 p.m. ET Saturday, September 12th until 4:00 p.m. ET on Sunday, September 13th.

IV. International Updates:

- On Tuesday, the European Court of Justice published its decision in the Irish performer collective case. The decision recognizes the national treatment for American performers and record companies in Europe. The decision applies across all EU Member States. SoundExchange President and CEO Michael Huppe applauded the decision, saying it "reflects a growing global recognition that countries should treat all music creators the same, regardless of their nationality." Read more [here](#).
- This week top Democrats warned that they would not support a U.K.-U.S. trade agreement if UK Prime Minister Boris Johnson moves forward with an EU exit plan that would imperil the Good Friday Accord. As part of its initial withdrawal plan with the EU, Britain agreed to give Northern Ireland the same rules as the EU to avoid customs checks at the land border between Northern Ireland, upholding the agreement that ended years of bloodshed. Speaker of the House Nancy Pelosi (D-CA), House Ways & Means Committee Chairman [Richard Neal](#) (D-MA), and Biden campaign advisor [Antony Blinken](#) all implored the UK to prevent the return of a hard border in statements on Wednesday. "If the UK violates that international treaty and Brexit undermines the Good Friday accord, there will be absolutely no chance of a U.S.-UK trade agreement passing the Congress," Speaker Pelosi declared. This controversy comes as the two nations [kicked off](#) their fourth round of negotiations in pursuit of a Free Trade Agreement (FTA) this week. Read more [here](#).
- Former Latvia Prime Minister Valdis Dombrovskis was named the European Commission's new trade commissioner on Tuesday. Dombrovskis outlined his goals for an investment deal with China in his first appearance in the top trade role. "It needs to be an ambitious agreement and address challenges and imbalances we're facing in our investment relations with China," Dombrovskis said. The EU's new trade lead has extensive economic and crisis management experience, *POLITICO Europe* [reports](#), but is a relative newcomer to the world of trade. However, he has been a [proponent](#) of establishing an EU digital services tax, which

angered Silicon Valley and Trump Administration trade officials. Read more [here](#).

- The European Commission’s consultation period for how to apply Article 17 of the copyright directive closed on Thursday. In a letter obtained by *Reuters*, 23 bodies representing publishers, music industries, and film and TV producers raised concern that in its consultation paper, the Commission went “against its original objective of providing a high level of protection of rightsholders and creators and to create a level playing field in the online Digital Single Market.” Furthermore, the letter claims that the proposed guidance “amounts to an attempt to rewrite the Directive and amend EU copyright law without due legislative process.” The European Commission said it “was mindful of the letter, context and purpose of Article 17.” Read more [here](#).
- On Tuesday, the European Commission published a Staff Working Document evaluating its Vertical Guidelines and the vertical block exemption regulations (VBER). Regulators found that while both are still relevant, updates are needed to address changes to the market, including growing sales and the entrance of new players such as online platforms. The evaluation notes that changes to the market have been accompanied by changes to distribution models, including increased direct sales by suppliers and a greater use of selective distribution systems. “New types of vertical restrictions, such as restrictions regarding sales through online marketplaces and restrictions on online advertising, as well as retail parity clauses, have become more widespread,” regulators found. The Commission will launch an impact assessment in the coming weeks to investigate the issues identified during the evaluation and revise the rules before they expire in May 2022. Read more [here](#).

V. Industry Updates:

- On September 21st, 24th, and 29th, the Innovation Alliance is hosting a webinar with the world’s leading experts in licensing “to discuss the methodology used for collecting economic data on licensing and whether it sufficiently highlights its growing contribution to the U.S. economy.” The webinar will kick off on Monday, September 21st, with a fireside chat between USPTO Director Andrei Iancu and Don Rosenberg, General Counsel, Qualcomm Incorporated. Find more info. and register [here](#).
- On Thursday, Public Citizen released a report claiming that Amazon raised prices on essential products months after the start of the COVID-19 pandemic by as much as 1,000% compared with pre-pandemic levels or prices at other large retailers. The consumer watchdog accused Amazon of inflating prices for hand sanitizer and disposable gloves, among other essential goods. The report also challenges Amazon’s claim that the price gouging on the e-commerce platform was perpetuated by a few “bad actors” on the site. The report asks Amazon to publish list prices and a pricing history for specific items, and recommends a national prohibition on price gouging. Amazon declined claims that it inflated the prices of essential products in a statement obtained by *Bloomberg*, maintaining its public position that “There is no place for price gouging on Amazon and that includes products offered directly by Amazon.” Read more [here](#).
- *The Hill* reports that TechNet, a trade group with members such as Google, Apple, eBay, DoorDash, and Nasdaq hosted a three-day virtual fly-in this week to connect tech executives with powerful members of Congress. The fly-in agenda reportedly includes meetings with Speaker Pelosi, Senate Minority Leader Charles Schumer (D-NY), House Minority Leader Kevin McCarthy (R-CA), and House Majority Leader Steny Hoyer (D-MD). Members were

also slated to meet with Sens. Amy Klobuchar (D-MN), Jacky Rosen (D-NV) Deb Fischer (R-NE), and Steve Daines (R-MT). Read more [here](#).