



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 4, 2020



I. Congressional Updates:

- On Wednesday, September 23rd at 2:30 p.m. ET, the Senate Judiciary IP Subcommittee will hold a hearing on “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). More info. [here](#).
- 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](#).

Headlines and Highlights:

- Senate Judiciary IP Subcommittee to examine cyber-attacks and counterfeits during the pandemic at hearing.
- FCC Section 230 comment period closes.
- Singer Eddy Grant files copyright infringement lawsuit against Trump Campaign.
- Federal judge in Washington issues sweeping order against e-book piracy operation.
- Copyright Alliance CEO Keith Kupferschmid urges Congress to advance a consensus proposal to close the streaming loophole.
- Facebook to prohibit new political advertisements a week prior to the U.S. election.

In the Blogs:

[Copyright on the Rocks](#)

Hugh Stephens Blog

August 24 by Hugh Stephens

[Google v. Oracle VIII: On Juries Deciding Fair Use](#)

Illusion of More

August 31 by David Newhoff

II. Judicial Updates:

- As reported by *Billboard*, Eddy Grant filed a copyright lawsuit against President Trump’s reelection campaign this week for allegedly infringing his iconic song “Electric Avenue” in a campaign video. The lawsuit, filed in the U.S. District Court in the Southern District of New York on Tuesday, claims that the defendants “have infringed and continue to infringe Plaintiffs’ copyrights in the Composition and the Recording by creating, producing, distribution, promoting, advertising, performing by means of digital audiovisual transmission, and otherwise commercially exploiting the Infringing Video, and/or authorizing others to do the same, without Plaintiffs’ authority or consent.” The suit requests a jury trial and seeks the disgorgement of profits, the payment of reasonable licensing fees and statutory damages, as well as a takedown of the video, and injunctive relief. The clip in question – depicting a cartoon version of former Vice President Joe Biden driving an old fashioned train car – racked up more than 352,000 likes and 95,000 retweets on the President’s Twitter account. Twitter removed the campaign video shortly after the lawsuit was filed. Read more [here](#) and [here](#).
- News surfaced this week that Judge Marsha J. Pechman in Washington State has issued a preliminary injunction against the major e-book piracy operation KISS Library after its operators failed to answer a lawsuit filed by the Authors Guild, Amazon Publishing, Penguin Random House, and a number of bestselling authors in July. Beyond shutting down the affiliated sites, Judge Pechman also ordered expedited discovery in the case and a temporary freeze on all assets and accounts connected to the operation. Read more [here](#).

III. Administration Updates:

- On Wednesday, the Federal Communications Commission’s (FCC) comment period to provide input on the Petition for Rulemaking filed by the Commerce Department regarding Section 230 of the Communications Decency Act (CDA) closed. As directed to under President Trump’s May 28th [Executive Order](#) (EO), the National Telecommunications and Information Administration (NTIA) [petitioned](#) the FCC to “[m]andate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.” Among other things, the petition asks the FCC to clarify that Section 230 CDA does not apply to internet companies’ “decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.” The FCC received more than 1,000 public comments on the petition. Organizations representing the tech industry including the [Internet Association](#), [Consumer Technology Association](#), [Incompas](#), and [NetChoice](#) argued that Congress never intended to give the FCC the power to regulate internet companies. Of note, AT&T [voiced its support](#) for modifying Section 230 immunity “to reduce the gross disparities in legal treatment that have emerged between the dominant online platforms and the traditional purveyors of third-party content, such as book publishers, newspapers, or radio and television businesses.” Interested parties now have 15 days to respond to public comments, which are compiled [here](#).
- According to [data released](#) by the Department of Commerce on Thursday, the U.S. trade deficit in July swelled to \$63.56 billion, the largest monthly trade deficit since July 2008. The foreign-trade gap in goods and services expanded 19% from the prior month. Joshua Shapiro, chief U.S. economist at MFR Inc., explained to the *Wall Street Journal* that while the import side has “pretty much” bounced back as states eased restrictions on business activities across

the country, U.S. exports have not kept pace. One key contributor to the widening deficit is the lag in U.S. services such as tourism, medical care, and higher education. In July, the U.S. services surplus shrank to its lowest level since August 2012. Read more [here](#).

IV. International Updates:

- Japan's Prime Minister Shinzo Abe announced late last week that he is resigning, citing health reasons. During his tenure, Abe cultivated a personal relationship with President Trump, which some stakeholders believed helped Japan avoid a trade war with the United States. In fact, the two countries brokered two partial trade agreements on market access and digital trade during the fall of 2019. The process to pick the next prime minister, who will also be a member of Abe's Liberal Democratic Party, is expected to happen behind closed doors. Read more [here](#).
- *POLITICO Pro* reports that Google and French publishers failed to reach an agreement on how the search giant should pay to display news content by the competition authority's end-of-August deadline. Marc Feuillée, director general of the Figaro Group, expressed frustration in a [statement](#) that the two sides have been at a "dead end" for a decade now. "A law was voted in France a year ago and it is not applied," Feuillée asserted. France was the first country to implement the EU's Directive on Copyright and Related Rights in the Digital Single Market, which was adopted in April 2019. Read more [here](#).
- On Monday, Facebook threatened to block users in Australia from sharing news on Facebook and Instagram if a controversial proposal to force tech giants to pay publishers to distribute portions of their content becomes law. In a blog post, Facebook's managing director for Australia & New Zealand Will Eason claimed that the proposal "misunderstands the dynamics of the internet and will do damage to the very news organizations the government is trying to protect." Eason argues that the current arrangement is beneficial for publishers because it helps them expand their ad reach and sell more subscriptions. Meanwhile, Eason claims that news "is not a significant source of revenue" for Facebook. A source also told *Axios* that the company likely will not launch its Facebook News Tab in Australia due to the ongoing battle with Australian regulators. The Australian Competition & Consumer Commission released a draft code of conduct earlier this summer for a consultation period that ended last Friday. The final legislation is expected to be introduced in Parliament soon. Read more [here](#).

V. Industry Updates:

- In a *Hill* editorial published on Thursday, Keith Kupferschmid, Chief Executive Officer of the Copyright Alliance, urges Congress to advance legislation this term to close the "streaming loophole." He explains that such action would help modernize U.S. law in pace with technology by ensuring that felony penalties are available to federal prosecutors in large-scale commercial cases of streaming piracy. Kupferschmid highlights the potential dangers of using pirate sites – which can serve as gateways for viruses, malwares, and fraud. Fortunately, Congress convened negotiations this term with a broad array of stakeholders and developed a two-page legislative proposal to close the streaming loophole. Kupferschmid asserts that the biggest challenge to advancing the consensus proposal this term is the calendar. He urges Congress to advance this non-controversial and bipartisan measure after dealing with COVID-19 relief. Read more [here](#).

- Facebook CEO Mark Zuckerberg announced this week that the social media site will prohibit new political advertisements a week prior to the U.S. election in November and attach an informational label to any content that seeks to delegitimize the outcome of the election or discuss the legitimacy of voting methods. Furthermore, Facebook will seek to identify any posts from a campaign or candidate prematurely declaring victory and direct users to the official results from Reuters and the National Election Pool. In a blog post, Zuckerberg explained that these policy changes seek to “help secure the integrity of US elections by encouraging voting, connecting people to authoritative information, and reducing the risks of post-election confusion.” Read more [here](#).