



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036
Tel: (202) 327-8100 | Fax: (202) 327-8101

CONTENT & TECHNOLOGY POLICY REPORT

APRIL 9, 2021



I. Congressional Updates:

- This week, the Department of Justice (DOJ) answered Senate Judiciary IP Subcommittee Chairman Patrick Leahy (D-VT) and Ranking Member Thom Tillis' (R-NC) letter regarding the recently-enacted *Protecting Lawful Streaming Act (PLSA)*. The IP Subcommittee leaders [wrote](#) the DOJ last month urging U.S. Attorney General Merrick Garland to use the authority granted under PLSA to combat internet piracy. In the response letter, Acting Assistant Attorney General Helaine Greenfeld explains that in January, the DOJ circulated guidance to each of the United States Attorneys' Offices making them aware of the new legislation, highlighting its potential application in criminal piracy cases, and offering technical assistance to those Assistant United States Attorneys who may be working on cases in which it may be appropriate to bring criminal charges under the new statute. DOJ attorneys have also met with the investigative partner agencies at the National Intellectual Property Rights Coordination Center to discuss the scope of the PLSA and investigative strategies to pursue under the new statute. Finally, Acting Assistant Attorney General Greenfeld assured the senators that the DOJ "continues to place a high priority on intellectual property crimes, and in particular, on intellectual property crimes that pose a significant threat to public health and safety, national security, the integrity of the marketplace, and those that involve substantial economic harm and illicit profits."

II. Judicial Updates:

- On Monday, in a 6-2 majority opinion delivered by Justice Stephen Breyer, the U.S. Supreme Court sided with Google in the copyright infringement dispute with Oracle over elements of Google's Android smartphone-operating

Headlines and Highlights:

- DOJ responds to Tillis and Leahy inquiry on PLSA implementation.
- DOJ reportedly struggling to fill DOJ AAG for Antitrust role due to ethics concerns raised about past anti-Big Tech representation.
- UK launches Digital Markets Unit.
- YouTube discloses Violative Rule Rate.
- Supreme Court sides with Google in copyright dispute with Oracle.
- New report confirms Amazon's growing presence in U.S. digital advertising market.
- Merchant groups form coalition to target Amazon over perceived anticompetitive behavior.

In the Blogs:

[NFTs and Copyright](#)

Hugh Stephens Blog

April 5 by Hugh Stephens

system. Throwing out a lower court ruling that found that Google had infringed Oracle's copyrights on its Java software platform, the Supreme Court said that Google's copying of some Java API code was "fair use." "Google reimplemented a user interface, taking only what was needed to allow users to put their accrued talents to work in a new and transformative program," Breyer wrote. Justice Thomas filed a dissenting opinion, in which Justice Alito joined. Justice Barrett took no part in the consideration or decision of this case. Read more [here](#) and [here](#).

III. Administration Updates:

- *POLITICO* reports that the Biden Administration is struggling to fill the Assistant Attorney General for Antitrust at the DOJ due to White House ethics officials objecting to candidates who have represented critics of Big Tech companies. Those concerns have reportedly prompted one prime candidate, Terrell McSweeney, to pull herself out of the running, and would pose a major obstacle to hiring another contender, Jonathan Kanter, since he has represented many clients with complaints about Google. The White House is in a bind as President Biden simultaneously faces immense pressure from the left to not hire lawyers who have worked for major Silicon Valley companies. *POLITICO* reports that the other major candidate for the top antitrust post, former Obama administration lawyer Jonathan Sallet, would face fewer ethics obstacles, although he worked for the state of Colorado and a multistate coalition of attorneys general on a parallel antitrust case filed against Google late last year. Read more [here](#).
- In recognition of World IP Day, on April 26th at 12:00 p.m. ET, the U.S. Copyright Office is hosting a briefing titled "The Creative Business: Celebrating World IP Day and Taking Your Ideas to Market." Panelists will discuss the importance of small and medium businesses in copyright, the economy, and our culture. Featured panelists include Hakim Draper, Executive, Founder, Manager, Author, Speaker Strategist, and Consultant, The Boogie Shack, Sunil Iyengar, Research & Analysis Director, National Endowment for the Arts, and Laura Zabel, Executive Director, Springboard for the Arts. Register online [here](#).
- The Copyright Office will host its twelfth public modernization webinar on April 28th from 1:00 to 2:00 p.m. ET. The webinar will focus on the Scaled Agile Framework and the Enterprise Copyright System (ECS) development. More info. [here](#).

IV. International Updates:

- On Wednesday, the United Kingdom [launched](#) the Digital Markets Unit (DMU), a regulatory body aimed at policing allegations of anticompetitive behavior among the world's largest tech companies. The creation of the DMU was announced in November 2020, but the new regulatory body will not have the power to levy fines on tech companies or reverse corporate mergers until Parliament approves legislation governing its oversight power. In the meantime, the agency will focus on staffing up and drafting what will become a legally binding code of conduct for companies. The DMU will be housed inside Britain's main antitrust regulator, the Competition and Markets Authority (CMA). "Today is a major milestone in the path to creating the world's most competitive online markets, with consumers, entrepreneurs and content publishers at their heart," U.K. Digital Secretary Oliver Dowden said in a statement. Read more [here](#).

V. Industry Updates:

- In a blog post published Tuesday, YouTube disclosed a new metric to measure the platform's effectiveness in finding and removing rule-breaking videos. The Violative View Rate (VVR) is the percentage of total views on YouTube that come from videos that do not meet its guidelines before the videos are removed. The video-sharing company claims that violative videos accounted for between .16 and .18 percent of all views on the platform in the fourth quarter of 2020. YouTube cites that the VVR rate in Q4 2017 was between .63 and .72 percent to demonstrate its progress in identifying and taking down banned content over the years. "We've made a ton of progress, and it's a very, very low number, but of course we want it to be lower," said Jennifer O'Connor, a director at YouTube's trust and safety team. Read more [here](#) and the blog post [here](#).
- According to a new report from the research firm eMarketer, Amazon's share of the digital ad market was 10.3 percent in 2020, up from 7.8 percent in 2019. Even though the uptick in Amazon's digital ad share can likely be attributed to the pandemic-induced increase in online shopping, Nicole Perrin, a principal analyst at eMarketer, told the *Wall Street Journal* that she thinks the trend will continue. "This is one of these situations where the pandemic accelerated something that was happening anyway," she said. "We are expecting pretty notable continued gains in share through at least 2023, specifically looking at the search side." The research firm predicted that Amazon will make up 10.7 percent of the U.S. digital ad market this year, 11.9 percent in 2022, and 12.8 percent in 2023. Meanwhile, the two largest players in the industry, Google and Facebook, made up 28.9 percent and 25.2 percent of the market respectively in 2020. eMarketer expects Google's market share to decrease to 26.2 percent in 2023. Read more [here](#).
- On Tuesday, the National Grocers Association, the American Booksellers Association, and the Alliance for Pharmacy Compounding joined a number of merchant groups to launch Small Business Rising, a new coalition that will campaign for stricter antitrust laws aimed at reigning in Amazon. In particular, they are pushing for tougher enforcement of competition laws, as well as federal legislation to prevent the owner of a dominant online marketplace from selling its own products in competition with other sellers. Read more [here](#).