



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT JULY 16, 2021



I. Congressional Updates:

- House appropriators on Monday considered [an \\$81.3 billion spending bill](#) that would affect key tech and telecom agencies, such as the DOJ’s antitrust division, the White House Office of Science and Technology Policy, and the Commerce Department’s National Telecommunications and Information Administration, which is involved in 5G, spectrum and other telecom matters. Under the bill, the DOJ’s antitrust division is slated to get \$201.2 million, an increase of 9 percent from 2021 appropriations. The NTIA’s budget would nearly double to \$89.5 million, with \$26.7 million in one-time funding for 5G spectrum research as part of its Table Mountain field testing site. And OSTP would get \$7.15 million — an additional \$500,000 above the 20 percent bump that Biden had requested in May.
- On Tuesday, July 13th, 2021, from 10:00 AM –1:30PM, the House Judiciary Committee through the Crime, Terrorism, and Homeland Security Subcommittee held a hearing titled “[Facial Recognition Technology: Examining Its Use by Law Enforcement](#)”. Ultimately, the hearing sought to understand the benefits and shortcomings of Facial Recognition Technology (FRT) in both the private and public sectors of life, in investigative capacities, and as part of the larger rise and rapid growth of technology worldwide. There is no current regulation for FRT used in private, public, or investigative entities.

Headlines and Highlights:

- House Appropriators Consider \$81.3 billion spending bill
- The FTC announced their agenda for and open meeting on July 21st
- ARTS Act Passes Senate by Unanimous Consent
- Biden Executive Order on Promoting Competition
- Senate Judiciary Antitrust Subcommittee held a hearing titled, “*A Prescription for Change: Cracking Down on Anticompetitive Conduct in Prescription Drug Markets.*”
- Senate Finance Committee Subcommittee on Fiscal Responsibility and Economic Growth held a hearing titled, “*Defending and Investing in U.S. Competitiveness.*”

In the Blogs:

- Hugh Stephens Blog: [Negotiating Payment for Use of News Content on Dominant Internet Platforms: What’s Needed to Reach a Fair Deal?](#)

- On Tuesday, July 13th, [S.169](#) – the Artistic Recognition for Talented Students Act, sponsored by Sen. Tillis, passed the Senate without amendment by Unanimous Consent. The ARTS Act “directs the U.S. Copyright Office to waive various copyright registration-related fees for works that win certain competitions sponsored by the Congressional Institute or established by Congress.”
- On Tuesday, July 13th, from 2:45 – 5:00 p.m. ET, the Senate Judiciary Antitrust Subcommittee held a hearing titled “[A Prescription for Change: Cracking Down on Anticompetitive Conduct in Prescription Drug Markets](#).” Senators on both sides of the aisle inquired about how Congress can act to combat rising prescription drug prices through legislation to address perceived anticompetitive behavior in the industry. In particular, senators inquired about possible solutions to combat the perceived anticompetitive actions of product hopping, patent thickening, rebate traps, and sham petitions. Of note, during the Q&A portion of the hearing, Senator Cotton (R-AR) also raised concern for the Biden Administration’s support for the WTO IP waiver. At the end of the hearing, Chair Klobuchar (D-MN) said she was leaving the hearing more confident about the viability of legislative reform than she was entering. Among other areas, Chair Klobuchar identified high interest from members on both sides of the aisle for addressing patent thickening and ensuring that enforcement agencies are adequately funded. Watch the full hearing [here](#).
- Late on Tuesday, July 13th, Senate Majority Leader Chuck Schumer (D-NY) announced that Senate Budget Committee Democrats have reached an agreement to try and advance a \$3.5 trillion Reconciliation bill. The outlines of the package are expected as soon as this week, although the details will continue to evolve if Reconciliation is invoked, and as various committees of jurisdiction consider their own portions of the legislation.
- On Wednesday, July 14th, 2021 from 2:00pm to 4:30pm ET the Senate Finance Committee Subcommittee on Fiscal Responsibility and Economic Growth held a hearing titled, “[Defending and Investing in U.S. Competitiveness](#).” Chairwomen Elizabeth Warren (D-MA) and Ranking Member Bill Cassidy (R-LA) oversaw the hearing. Witnesses included the [Honorable William E. Spriggs, Ph.D.](#) (Professor of Economics, Chief Economist, Howard University), [Roy Houseman](#) (Legislative Director for the United Steelworkers), [Mary E. Gallagher, Ph.D.](#) (Amy and Alan Lowenstein Professor in Democracy, Democratization, and Human Rights at the University of Michigan), [Yaya J. Fanusie](#) (Adjunct Senior Fellow at the Center for a New American Society), [David M. Luna](#) (Executive Director at the International Coalition Against Illicit Economies (ICAIE)), and [Jane Nakano](#) (Senior Fellow, Energy Security and Climate Change Program and the Center for Strategic and International Studies). The hearing focused on bettering the U.S. workforce through investments in childcare and “human infrastructure.” To watch the full hearing, click [here](#).
- On Wednesday, July 14, 2021, the Joint Economic Committee held a hearing titled: “[A Second Gilded Age: How Concentrated Corporate Power Undermines Shared Prosperity](#)”.

The hearing today was focused on how policymakers can get more clarification and direction on dealing with monopolistic issues facing the U.S. economy. Policymakers directed the discussion on how they could help break up the monopsony going on in certain U.S. industries and the economy. The witnesses primarily focused their discussion on policy initiatives. Some of the main issues mentioned by witnesses were concentrated markets, antitrust law enforcement, worker's rights, and weakened investments. Witnesses discussed how concentrated industries are a leading factor in noncompetitive entry for small businesses to disrupt market share. To watch the full hearing click [here](#).

- Wednesday night (7/14) Sen. Bernie Sanders confirmed that the Senate Democrats' \$3.5 trillion reconciliation bill will include elements of the PRO Act, [S. 420 \(117\)](#). The details of the reconciliation bill are still emerging as no official text has been written. It is also unclear which provisions of the PRO Act are included. The Senate Parliamentarian still needs to review the bill so it is unclear which provisions will be allowed. However, the Communications Workers of America union [has said](#) in an analysis that proposals like creating civil penalties for union-busting practices and classifying gig workers as employees could be included in the reconciliation process. More information can be found [here](#). As of today, there is no comprehensive summary of what is in the bill but some clues into what is being considered can be found in [TPM Article](#) this [RollCall Article](#) this [POLITICO Article](#) and this [Axios Article](#).
- On Thursday, July 15, 2021, from 12:00 PM to 2:40 PM the House Homeland Security Committee, Transportation held a hearing titled "[Securing the Homeland: Reforming DHS to Meet Today's Threats](#)." In the hearing, the committee discussed the history of DHS and its urgent need to adapt and improve to a new era issue. The committee and the witnesses highlighted DHS's inadequate responses to problems like the COVID-19 pandemic. Many witnesses suggested diversifying the DHS and improving its staff's content to better tackle public safety issues. Among other growing issues, the committee emphasized the need to improve American cybersecurity. Mr. Cilluffo underscored the need to improve the DHS's CSISA following a surge of cybersecurity issues. The committee and the witnesses felt a unanimous urge to improve DHS in a world of new and ever-growing threats.

II. Judicial Updates:

- On Monday, news surfaced that Huawei Technologies has settled two U.S. patent infringement lawsuits brought against Verizon Communications Inc. Huawei had filed suit in two federal courts in 2020, demanding that Verizon pay it for fees for the use of dozens of patents. Although the terms of the settlement were not disclosed, Verizon said that it is "happy with the settlement" in a statement, praising its team for doing "an outstanding job bringing this protracted matter to a close." Read more [here](#).

III. Administration Updates:

- Late last week, President Biden signed a sweeping executive order (EO) on competition policy. The EO includes 72 initiatives by more than a dozen federal agencies to promptly tackle what the Biden Administration has identified as “the most pressing competition problems across our economy.” It establishes a White House Competition Council, which will be Chaired by the Assistant to the President for Economic Policy and Director of the National Economic Council, to oversee the order’s implementation. Among other issues, the EO includes directives related to drug pricing, standard-essential patents, right to repair, and competition in seed markets. On drug pricing, it directs the HHS Secretary to submit a report to the Council within 45 days detailing how the agency plans to combat “excessive pricing” of prescription drugs and enhance domestic pharmaceutical supply chains, reduce the prices paid by the Federal Government for such drugs, and address the “recurrent problem of price gouging.” It also directs the HHS Secretary, the Commissioner of Food and Drugs, will write a letter to the USPTO Director “enumerating and describing any relevant concerns of the FDA” regarding generic drug and biosimilar competition being unjustifiably delayed under the patent system. Find the full EO here, a fact sheet here, and a memo from ACG summarizing key elements [here](#).

IV. International Updates:

- The European Union said it will pause its push for a digital services tax and instead focus on negotiations for a global minimum corporate tax deal after the Group of 20 agreed to the principles of a deal over the weekend. Treasury Secretary Janet Yellen has fiercely opposed the E.U.'s digital levy, and part of the G-20 agreement would end digital services taxes on the revenues of top tech companies such as Facebook Inc. and Google that have been adopted in many European countries. Read more [here](#).
- ByteDance Ltd. indefinitely postponed its plans for an initial public offering in either the United States or Hong Kong after Chinese officials told the TikTok owner that it should first concentrate on addressing its data security risks, according to people familiar with the matter. Read more [here](#).
- The Biden administration is discussing plans for a digital trade pact centered on Indo-Pacific countries as a way to stem China's economic influence in the region, according to three people familiar with the discussions. The deal could standardize rules on data usage, trade facilitation and electronic customs arrangements, according to one of the sources, while another person said the agreement could involve Australia, Canada, Chile, Japan, Malaysia, New Zealand and Singapore. Read more [here](#).
- The French Competition Authority fined Alphabet Inc.'s Google 500 million euros (\$593 million) over compliance issues tied to paying news publishers in France. Google, which said it was disappointed with the ruling but would comply, faces additional fines of up to 900,000 euros (more than \$1 million) per day if it fails to

come up with compensation proposals to offer news outlets and publishers within the next two months. Read more [here](#).

- Rep. [David Cicilline](#) (D-R.I.), who chairs the House Judiciary antitrust panel and is leading the effort on the bipartisan antitrust package, met Tuesday, July 13th, with Andreas Schwab — the German member of the European Parliament who is handling the EU’s digital competition bill — as part of a joint parliamentary session hosted by the European Parliament’s Washington office.

V. Industry Updates:

- Register Perlmutter sent a letter to Senator Tillis confirming receipt of all requests received from Senator Tillis and the Senate Judiciary Committee for the Office to undertake various studies and other projects. Specifically mentioned were: A request that the Copyright Office study the extent to which copyright owners are experiencing infringement by state entities without adequate remedies under state law. A request to study potential protections for press publishers under copyright law. A request that the Copyright Office undertake studies on deferred examination as well as digital deposits and best edition, as well as provide a report on the results of our June 2020 NOI related to the definition of publication. A request to evaluate potential Copyright Act preemption of certain state legislation regarding the licensing terms for electronic literary products. A request that the Copyright Office undertake additional work related to the identification and adoption of standard technical measures under section 52 of the Copyright Act.
- The FTC announced their agenda for a July 21 open meeting. The agenda consists of the Care Labeling Rule, Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers, and Policy Statement on Prior Approval and Prior Notice Provisions in Merger Cases. Read more [here](#).
- On Tuesday, FCC commissioners [voted on the final measures](#) required to launch a \$1.9 billion program to subsidize the cost for small U.S. telecom companies to rip out and replace gear from Chinese telecom giants Huawei and ZTE, which U.S. officials believe is a security risk. Adopting the Order, among other changes, increases the eligibility cap for participation in the Reimbursement Program from providers serving two million or fewer customers to those with 10 million or fewer customers. Read more [here](#).
- FCC acting Chair Jessica Rosenworcel expressed general support Tuesday for the items in Biden’s competition executive order but declined to say when the agency might act on it. Biden’s requests for the FCC include reinstating net neutrality rules, helping ensure apartment dwellers have a choice of internet providers and imposing broadband pricing transparency — all ideas she endorsed during a press call after Tuesday’s meeting.