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AMERICAN CONTINENTAL GROUP

CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 10, 2021



I. Congressional Updates:

- Both sides of the aisle are pushing for changes to section 230 as more than 20 bills have been introduced this year. One of the bills is [H.R. 3184 \(117\)](#), led by Yvette Clarke (D-NY) which would hold platforms liable for civil rights violations in targeted advertising. One strategy for reforming Section 230 is tying Section 230 protections to platforms' conduct. This would require the platforms to take certain actions, such as publishing transparency reports or clearly defining content moderation policies for the public, in order to retain their legal protections. Section 230 reform will likely be an increasingly popular issue, especially as midterm elections approach.

II. USCO Updates:

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act authorizes the Register of Copyrights to temporarily adjust statutory deadlines for copyright owners and other affected parties if she determines that a national emergency declared by the President is generally disrupting the normal operation of the copyright system. These emergency modifications previously were set to continue through September 8, 2021. Due to the ongoing emergency of the COVID-19 Pandemic, the Register is extending these modifications through November 7, 2021. For additional information, please visit the Office's [Coronavirus page](#).
- Beginning August 12, 2021, and continuing until August 29, 2021, the USCO's Electronic Copyright Office (eCO) was unavailable to the public due to a technical upgrade.

Headlines and Highlights:

- Section 230 reform starts to take shape again.
- Supreme Court's patent judge ruling may cause issues with the Copyright Board
- First TTC Meeting Later this Month
- G-7 to Discuss Harmful and Illegal Online Content
- Proposed FCC Votes Later This Month
- Apple Trial Ends in Mixed Verdict

In the Blogs:

- Hugh Stephens Blog: [John Degen's Twitter Broadside on the Access Copyright v York University Copyright Case: Right Message; Wrong Target?](#)

Persons who emailed an examiner during this period may have received an error message indicating that their message could not be delivered. The Office is providing an accommodation for email responses that were due between August 10, 2021, and September 9, 2021. If you emailed an examiner during this thirty-day period and if your claim has been closed, you may [contact](#) the Public Information Office for special guidance on how to submit a request to reopen your claim. Note: This accommodation only applies to claims that were closed for failure to respond to Copyright Office correspondence between August 10, 2021, and September 9, 2021. It does not apply to situations where the Office has refused registration. For further information, please contact the USCO [online](#) or by calling (202) 707-3000.

III. Judicial Updates

- A Bloomberg Article published on Tuesday, September 7, stated that the *Arthrex* decision from the U.S. Supreme Court that administrative patent judges were unconstitutionally appointed is calling into question the constitutionality of the Copyright Claims Board (CCB). The Supreme Court mandated that Patent Trial and Appeal Board (PTAB) decisions be reviewable by the U.S. Patent and Trademark Office Director to overcome a constitutional hurdle. Unlike the PTAB, Copyright Claims Board decisions are currently subject to review by the Register of Copyrights, who is not a presidential appointee. Opinion is split, though, on whether *Arthrex* can be applied, said Meredith Rose, Public Knowledge senior policy counsel. Because the Copyright Office is housed in the legislative branch, rather than the executive branch like the patent office, and there are fundamental differences between the PTAB and the CCB, *Arthrex* might not be relevant. To read the full article click [here](#).
- Although there is not a current filing against Google, there is an expectation of a 5th major antitrust suit being submitted by the Department of Justice (DOJ), prior to the confirmation of Jonathan Kanter, who was recently nominated by President Biden to head the DOJ Antitrust Division. According to POLITICO's Morning Tech, prosecutors have spent months crafting a complaint focusing on Google's share of the \$70.2 billion spent on online display and video advertising last year. Read more [here](#).
- On Friday, September 10, a federal judge delivered a mixed verdict in the legal battle between Apple and Epic Games over app distribution on iPhones. U.S. District Judge Yvonne Gonzalez Rogers said, "The Court does not find that Apple is an antitrust monopolist in the submarket for mobile gaming transactions. However, it does find that Apple's conduct in enforcing anti-steering restrictions is anticompetitive." Read more [here](#).

IV. Administration Updates

- The FTC announced that its next open meeting will be scheduled for Wednesday, September 15. The agenda is still being finalized but one potential item mentioned in POLITICO is a policy statement on healthcare apps. Another big item mentioned is a vote on whether to

rescind Trump-era guidelines for vertical mergers. The agency's scrutiny of vertical mergers has increased under Kahn's leadership.

- Acting FCC Chair Jessica Rosenworcel laid out proposed votes for the agency's September 30 meeting, which will deal with the need for resilient communications networks and what to do when electrical power fails. The votes are resilient networks, repurposing airwaves for public safety and 5G, faster better wi-fi, cracking down on robocalls, connecting tribal libraries, and strengthening the security review of companies with foreign ownership. Read more [here](#).
- Today, Friday, September 10, marks the first meeting of the White House Competition Council. Attendees include Attorney General Merrick Garland, FTC Chair Lina Khan, acting FCC Chair Jessica Rosenworcel, and Commerce Secretary Gina Raimondo. The group was established as a part of Biden's executive order on competition issued in July. The commission was created to make sure Cabinet agencies and independent agencies "are all working as effectively as possible toward the goal" of Biden's order, as commission chair and National Economic Council Director Brian Deese said this week.

V. International Updates:

- The G-7 is in London this week discussing solutions to combat harmful and illegal content online, specifically the digital proliferation of child sexual abuse-related content and violent extremism online. U.K. Home Secretary Priti Patel is determined to put more pressure on online platforms by increasing scrutiny over their responsibility to protect users. The U.K. has also released an Age-Appropriate Design Code, a set of digital standards for protecting minors' digital privacy that fully went into effect in the U.K. last week — and is coveted by prominent lawmakers on the Hill. Read more [here](#) and [here](#).
- Brazil's President, Jair Bolsonaro, issued new social media rules this week which, according to the New York Times, appear to be the first time a national government has stopped internet companies from taking down content that violates their own company rules. "Under the new policy, tech companies can remove posts only if they involve certain topics outlined in the measure, such as nudity, drugs and violence, or if they encourage crime or violate copyrights; to take down others, they must get a court order. That suggests that, in Brazil, tech companies could easily remove a nude photo, but not lies about the coronavirus." As of now it is unclear how the rules will impact content outside of Brazil. Read more [here](#).

VI. Industry Updates:

- The first formal meeting of the U.S. – EU Trade and Technology Council (TTC) will be held in Pittsburgh on September 29 and 30. Commerce Secretary Gina Raimondo stated that the group, which was set up to coordinate digital and trade policies across the Atlantic, "will discuss semiconductors, the troubled EU – U.S. data transfer

agreement known as Privacy Shield, supply chain security and ‘the proper way to regulate platform companies’” (Politico’s Morning Tech).

- On September 15th POLITICO is hosting a virtual event, titled “At a Digital Crossroads — Washington and Silicon Valley,” where they will explore the evolving relationship between the power corridors of Washington and the tech sector. So far, Acting FCC Chair Jessica Rosenworcel, Rep. Yvette Clarke (D-NY), Pittsburgh Mayor William Peduto, the CEOs of tech trade groups NetChoice, Chamber of Progress and the Internet Association are slated to speak at the event. To register click [here](#).
- Data company LightBox released a nationwide broadband map (click [here](#)) that attempts to capture internet connectivity based on nearly 2 billion Wi-Fi access points such as routers. According to the map, nearly 60 million people in the U.S. lack broadband access which is a much higher number than has been previously estimated by the FCC. LightBox CEO Eric Frank said, “This is not the answer, this is not the broadband map” saying it is more of a jumping off point for analysis and data collection. LightBox was one of the companies this summer to bid on becoming the FCC vendor to supply the location fabric for the agency’s upcoming official broadband maps.
- The Library of Congress has created the Connecting Communities Digital Initiative which is designed to sponsor digital projects and partnerships aimed at amplifying the stories of Black, Indigenous, Hispanic, Asian American/Pacific Islander and other communities of color whose stories have too often been sidelined in our nation’s history and in the Library’s collections. The advisory board consists of Andre Brock, Brian Carpenter, Jennifer A. Ferretti, Gabrielle Foreman, Samip Mallick, Elizabeth Mendez Berry, Bari Talley, Janet Tom, and Jewon Woo. “The Connecting Communities Digital Initiative will offer grants to libraries, museums, educators, scholars, and artists working on projects that spotlight the perspectives of communities of color using Library of Congress digitized collection materials and will rely on the advisory board to expand on collaborative additions to the cultural record.” Read more [here](#).