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AMERICAN CONTINENTAL GROUP

CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 17, 2021



I. Congressional Updates:

- The House Energy and Commerce Committee marked up its \$486.5 billion portion of the reconciliation bill on Monday, September 13. Some of the key provisions include \$1 billion increase of FTC funding for a “Privacy Bureau”, \$4 billion for the FCC’s Emergency Connectivity Fund, \$10 billion in grants to upgrade 911 emergency services, \$10 billion for the Commerce Department to bolster critical supply chains, and \$10 million to form a 6G council. Democrats defeated GOP amendments in party-line votes and advanced their plans unilaterally.
- On Tuesday, September 14, Rep. Donald McEachin (D-VA) and Sen. Raphael Warnock (D-GA) introduced a bill that would allocate \$2 billion for a proposed FCC voucher program for low-income Americans. *The Device Access for Every American Act* would authorize the FCC to distribute up to \$400 vouchers for the purchase of laptops, tablets, and desktop computers.
- Next Tuesday, September 21, at 2:30 p.m. ET, the Senate Judiciary Antitrust Subcommittee will hold a hearing titled “*Big Data, Big Questions: Implications for Competition and Consumers.*” No witnesses have been listed yet. More info [here](#).
- On Thursday at 10:00 a.m. ET, the House Judiciary Committee will hold a hearing entitled “*Reviving Competition, Part 4: 21st Century Antitrust Reforms and the American Worker.*” More info [here](#).
- On Friday, September 17th, the House Majority Leader Steny Hoyer sent an update on the September work period.

Headlines and Highlights:

- House Energy and Commerce Committee markup occurred this week.
- USCO and USPTO October 26 conference registration has opened.
- California Net Neutrality goes back to court.
- Alvaro Bedoya nominated for a seat on the Federal Trade Commission.
- POLITICO’s inaugural Tech Summit.

In the Blogs:

- Hugh Stephens Blog: [Some Reflections on What Can—and Cannot—Be Protected by Copyright](#)

“During the week of September 20, the House will take up a continuing resolution to ensure that our government can keep serving the American people without interruption. The House will also take action to suspend the debt limit to ensure that America pays its bills on time.”

II. USCO Updates:

- On Friday, September 17, the U.S. Copyright Office announced that registration for the USCO and the U.S. Patent and Trademark Office’s October 26, 2021, conference entitled "*Copyright Law and Machine Learning for AI: Where Are We and Where Are We Going?*" is now open. Panels will explore machine learning in practice, how existing copyright laws apply to the training of artificial intelligence, and what the future may hold in this fast-moving policy space. Click [here](#) to register and [here](#) to view the full agenda.

III. Judicial Updates

- On Tuesday, September 14, a federal appeals court in California heard oral arguments from the California DOJ and the telecom industry over the state’s 3-year-old net neutrality law. California enacted the law in 2018 in response to the Trump Administration’s decision to limit federal internet rules relating to internet speeds. The Trump DOJ and the telecom industry both sued California, but this February the DOJ dropped its suit, while a judge denied the industry’s request for an injunction and allowed California to begin enforcing the law. The industry groups appealed, saying “a patchwork approach of state net neutrality regulations would be untenable for their members” (POLITICO Morning Tech).
- On Friday, September 17, the D.C. Circuit Court of Appeals will hear an AT&T-led lawsuit over the Trump-era FCC’s decision to open the entire 6 GHz band of airwaves for unlicensed use. The Biden Administration and acting FCC Chair Jessica Rosenworcel have defended the FCC’s decision in a court filing earlier this year, while many companies warn that the increase of additional devices on that band of spectrum could disturb other important services that currently rely on it.

IV. Administration Updates

- According to POLITICO Morning Tech, two dozen civil society groups are urging the Senate to fast-track confirmation for Jonathan Kanter as the DOJ’s assistant attorney general for antitrust. The groups sent a [letter](#) to Senate Majority Leader Chuck Schumer and Senate Judiciary Chair Dick Durbin on Wednesday, September 15.
- The FCC [announced the members](#) of its Communications Security, Reliability and Interoperability Council, which will be co-chaired by Verizon SVP and CISO Nasrin Rezaei and Billy Bob Brown, Jr., executive assistant director for emergency communications at the Cybersecurity and Infrastructure Security Agency.

- On Monday, the White House announced that President Biden will nominate Alvaro Bedoya for a seat on the Federal Trade Commission (FTC). Bedoya is a Georgetown Law professor and the founding director of the school's Center on Privacy & Technology. He will fill Rohit Chopra's seat, who is leaving the Commission to lead the Consumer Financial Protection Bureau. Bedoya also previously served as the first chief counsel to the Senate Judiciary Privacy and Tech Subcommittee. According to the Washington Post, He has been praised on Capitol Hill for his bipartisan approach to privacy as a human right, and many say his nomination indicates a more aggressive approach to the private sector, particularly in issues of data protection. His confirmation hearings have yet to be scheduled and are expected to take months. Read more [here](#) and [here](#).
- On Wednesday, the FTC released its findings from its inquiry into past acquisitions by the largest tech platforms – including Alphabet, Amazon, Apple, Facebook, and Microsoft – that did not require reporting to antitrust authorities at the FTC and the Department of Justice (DOJ). The FTC's inquiry focused on 616 transactions (that exclude hiring events and patent acquisitions) valued at or above \$1 million. Out of the 616 transactions studied, the FTC found that 94 exceeded the Hart-Scott-Rodino (HSR) Act Size of Transaction threshold. Under the HSR Act, companies are only required to report transactions exceeding \$92 million in value. Although most transactions that exceed the size threshold must be reported, in some instances parties do not need to file if certain other criteria are met or statutory or regulatory exemptions apply. Pointing to the study results, FTC Chair Lina Khan said that the Commission should identify potential loopholes in HSR reporting requirements that allow some transactions to “fly under the radar.” Read more [here](#) and [here](#).
- On Wednesday, the FTC also voted to withdraw its approval of the Vertical Merger Guidelines that were issued jointly with the DOJ in 2020. According to a press release from the Commission, the guidance documents “include unsound economic theories that are unsupported by the law or market realities.” Specifically, the FTC majority claims that the 2020 Vertical Merger Guidelines improperly contravened the Clayton Act's language with its approach to efficiencies, which they assert are not recognized by the statute as a defense to an unlawful merger. Going forward, the Commission plans to work with the DOJ to update merger guidance to “better-reflect market realities.” Read more [here](#).
- On September 8, 2021, U.S. Secretary of Commerce Secretary Gina Raimondo announced the establishment of the National Artificial Intelligence Advisory Committee (NAIAC). The NAIAC will advise the President and the National AI Initiative Office (NAIIO) on various issues related to AI, including the National AI Initiative and recommendations related to, but not limited to: The current state of U.S. competitiveness and leadership in AI; A review of the progress made in implementing the Initiative, including the degree to which the Initiative is achieving its defined goals and metrics; and Issues related to AI and the U.S. workforce. Read more [here](#).

V. International Updates:

- France is pushing Europe to escalate its fight against U.S. law enforcement's ability to access secure data stored in Europe by American cloud companies via the CLOUD Act

which passed in 2018. Guillaume Poupard, director general of France’s cybersecurity agency stated that, “This is not about turning our backs on partners. But it’s about having the courage to say that we don’t want non-European law to apply to these services” (POLITICO Morning Tech).

- On Thursday, September 30, from 1:00 – 2:00 p.m. ET, USPTO is hosting a presentation on the latest developments in IP law over the past three months in the People’s Republic of China. Register to attend [here](#).
- On Wednesday, September 15, it was reported that Brazil’s Senate and Supreme Court nullified rules that President Jair Bolsonaro issued last week that banned social networks from removing content that violates their community guidelines regarding disinformation surrounding the upcoming presidential election. Read more [here](#).

VI. Industry Updates:

- Librarian of Congress Carla Hayden has appointed Judith Conklin as the chief information officer of the Library of Congress and John Rutledge the deputy chief information officer. Read more [here](#).
- On Monday, September 13, the New York University Stern Center for Business and Human Rights released a [report](#) that outlined 10 recommendations for the federal government and social media platforms to take to limit political polarization. The report’s authors found that Facebook, Twitter, and YouTube were “not the original or main cause” of the polarization, but the use of the platforms intensified divisiveness in the U.S. Limiting polarization should now be “an urgent priority,” they said.
- According to new polling from Data for Progress, 79% of American voters think the government should increase scrutiny on tech mergers. The results seem to be a positive sign for President Biden who has appointed tech critics and progressive antitrust leaders to his administration.
- The USPTO announced plans for the Patent Trial and Appeal Board (PTAB) to extend the Motion to Amend (MTA) pilot program on Wednesday, September 15. This program provides additional options for a patent owner who files an MTA in a trial proceeding under the America Invents Act (AIA). The MTA pilot program will run until September 16, 2022. The full text of the notice is available [here](#).
- Individuals and educational and cultural institutions who seek to amplify the stories of communities of color are invited to apply to new grant opportunities through the Of the People: Widening the Path Connecting Communities Digital Initiative at the Library of Congress. The funding opportunities announced on Wednesday, September 15, include a program for an artist or scholar in residence, a higher education grant and a library, archives, and museums grant. The award amounts range from \$50,000 to \$150,000. Read more [here](#).

- On Wednesday, September 15, Politico hosted an interview with Rep. Ken Buck (R-CO-4) and a separate panel thereafter with Dane Snowden (President & CEO, the Internet Association), Daphne Keller (Director, Program on Platform Regulation, Stanford Cyber Policy Center), and Adam Kovacevich (Founder & CEO, Chamber of Progress). The overall discussion evaluated the merits of Section 230 and the potential consequences of reform. Rep. Buck believes that repealing Section 230 would be a mistake but remains optimistic for potential reforms. He expressed interest in amending language in a way that would give smaller companies a chance against the industry giants.
- At a virtual conference hosted by POLITICO on Wednesday, September 15, Sen. Amy Klobuchar (D-MN) continued her calls to equip federal agencies with adequate resources to deal with privacy issues related to big tech. In May, Sen. Klobuchar, along with Sen. Chuck Grassley (R-IA), introduced legislation that would “ensure that antitrust authorities have the resources they need to protect consumers.” FTC funding was also included in the Democrats reconciliation bill. ““It is a major priority and has been of mine to get privacy money into the FTC,” Klobuchar said Wednesday.” Read more [here](#).