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CONTENT & TECHNOLOGY POLICY REPORT APRIL 26, 2019



I. Congressional Updates:

- Next Tuesday, April 30th, at 2:30PM ET, the Senate Judiciary Committee's Subcommittee on IP is scheduled to hold a hearing on "World Intellectual Property Day 2019: The Role of Intellectual Property in Sports and Public Safety." A panel of witnesses from industry are slated to testify before the subcommittee, including Matt Priest (President And CEO, Footwear Distributors and Retailers of America), Andrew Love (Brand Security / Investigations, Specialized Bicycles), Riché McKnight (Senior Vice President, Deputy General Counsel And Global Head of Litigation, Endeavor), Ronald S. Chillemi (Senior Vice President, Enforcement and Litigation, Fanatics, Inc.), and Michael Potenza (Vice President and Assistant General Counsel, Intellectual Property, NBA Properties, Inc.). More info. [here](#).
- On Thursday, House Ways & Means Committee Chairman Richard E. Neal (D-MA), Trade Subcommittee Chairman Earl Blumenauer (D-OR), and committee Democrats sent a letter to U.S. Trade Representative (USTR) Robert E. Lighthizer highlighting their concerns with the current enforcement provisions in the United States–Mexico–Canada Agreement (USMCA). The letter points out that since the North American Free Trade Agreement's (NAFTA) inception in 1993, no environmental disputes have ever been litigated and only one labor enforcement dispute has ever been pursued under a U.S. trade agreement. Furthermore, the letter explains that although the members' concerns are most pointed with respect to the enforceability of the USMCA's labor and environment commitments, they also apply more broadly to all commitments enshrined in the new proposal. Read more [here](#).

Headlines and Highlights:

- Senate Judiciary IP Subcommittee to hold hearing on the role of IP in sports and public safety next Tuesday at 2:30PM ET.
- USTR publishes its 2019 Special 301 report and 2018 Notorious Markets List.
- U.S. Copyright Office publishes a report titled "Authors, Attribution, and Integrity: Examining Moral Rights in the United States."
- ITC publishes economic analysis on USMCA.
- Google establishing "new-ish" government affairs and policy team to work on content issues.

In the Blogs:

[Why Sports Fans are Cheating Themselves When They Stream Pirated Content](#)

Hugh Stephens Blog
April 22 by Hugh Stephens

[Skin in the Game: World IP Day 2019](#)

Illusion of More
April 24 by David Newhoff

II. Judicial Updates:

- On Wednesday, The Hill published an Op Ed by Kent Walker, Senior Vice President for Global Affairs for Google, urging the Supreme Court to review a March 2018 decision from the U.S. Court of Appeals for the Federal Circuit. The appeals court found that Google's use of Java shortcuts to develop Android violated Oracle's copyright. Walker claims that if developers are not permitted to use standard ways of accessing common functions to create new applications, this will reduce competition and ultimately harm consumers. Read more [here](#).

III. Administration Updates:

- On Thursday, the Office of the USTR released its 2019 Special 301 report, which identifies trading partners that do not adequately or effectively protect and enforce IP rights or otherwise deny market access to U.S. innovators and creators that rely on protection of their IP rights. USTR's 2019 "Priority Watch List" includes the following countries: Algeria, Argentina, Chile, China, India, Indonesia, Kuwait, Russia, Saudi Arabia, Ukraine and Venezuela. According to the report, USTR will review the developments against the benchmarks established in the Section 301 action plans for these countries in the coming weeks and take action if countries fail to address U.S. concerns. Such measures could include enforcement actions under Section 301 of the Trade Act or pursuant to World Trade Organization or other trade agreement dispute settlement procedures. The report also finds that Brazil, India, the UAE, and Ukraine have not addressed the "continuing and emerging challenges of copyright policy." Finally, it asserts that online and broadcast piracy remain a challenging copyright enforcement issue in many countries, including Saudi Arabia, which was elevated to the Priority Watch List this year. Read more [here](#).
- On Thursday, the Office of the USTR also released its 2018 Notorious Markets List, which highlights 33 online markets and 25 physical markets that are reported to engage in and facilitate substantial copyright piracy and trademark counterfeiting. The list has a special focus on free trade zones (FTZs), which are designated economic areas that are not subject to customs duties, taxes, or normal customs procedures of their host countries. The list cautions that FTZs have become major facilitators of illicit trade in pirated and counterfeit goods. In its review of online markets, the USTR finds that pirate streaming sites continue to gain popularity, and identifies growing concern about the proliferation of counterfeits on e-commerce platforms. To address this latter problem, the USTR urges e-commerce platforms to take proactive steps to reduce counterfeiting, such as by establishing and adhering to strong quality control procedures, engaging with right holders to quickly address complaints, and working with law enforcement to identify IP violators. Finally, the list asserts that physical marketplaces continue to enable "substantial trade" in counterfeit and pirated goods, noting that "several commentators continue to identify China as the primary source of counterfeit goods." Read more [here](#).
- On Tuesday, the U.S. Copyright Office released a report titled, "Authors, Attribution, and Integrity: Examining Moral Rights in the United States." The report reviews the United States' moral rights regime, exploring the current state of attribution and integrity interests, and particularly with respect to the legal and technological changes since the U.S. joined the Berne Convention in 1989. The report identifies three important principles in the U.S. framework regarding moral rights protection: respecting foundational principles of U.S. law

(including the First Amendment, fair use, and limited terms), appreciating the importance creators place on their attribution and integrity interests, and recognizing and respecting the diversity among industry sectors and different types of work. Finally, the report outlines possible legislative changes for Congress to consider if members wish to strengthen this framework, including amendments to the Visual Rights Act (VARA) and the Lanham Act to better protect attribution and integrity interests, along with suggestions to expand authors' recourse for removal or alteration of copyright management information in section 1202 of Title 17. Read more [here](#).

- On Tuesday, the U.S. Copyright Office published a final rule to amend its regulations pertaining to the registration of architectural works. The new rule, effective May 23rd, will require applicants to submit their claims using an online application rather than a paper application. Applicants will also be required to provide a date of construction if the work was embodied in unpublished plans or drawings on or before December 1, 1990 and if the work was constructed before January 1, 2003. Finally, applicants will be encouraged to upload a digital copy of their architectural works through the electronic registration system. Read more [here](#).
- Late last week the International Trade Commission (ITC) released its report on the economic impact of the USMCA. The report finds that the elements of the new agreement that would have the most significant impact on the U.S. economy are the provisions that reduce uncertainty about digital trade and the certain new rules of origin applicable to the automotive sector. The ITC's model estimates that the USMCA would raise U.S. real Gross Domestic Product (GDP) by \$68.2 billion (.35 percent) and U.S. employment by 176,000 jobs (0.12 percent). Furthermore, the report concludes that the overall effect of the USMCA's provisions on U.S. cross-border exports of audiovisual services "is likely to be moderate in the short term due to the continuing presence of Canada's broad cultural industries exemptions." Read more [here](#).

IV. International Updates:

- In the wake of the terrorist attacks in the country on Sunday, government officials in Sri Lanka decided to block several social media networks, including Facebook. Sri Lanka presidential advisor Harindra Dassanayake justified this "unilateral decision" as an attempt to quell the possible unintended consequence of misinformation on platforms provoking further violence. This is not the first time the government in Sri Lanka has blocked social media networks—it temporarily blocked some platforms last year after rumors and calls to violence on social media appeared to provoke a wave of anti-Muslim riots and lynchings. However, as the New York Times points out, this appears to be the first time any government has taken such a pro-active measure to block social media networks before any known social-media-inspired violence has taken place. Read more [here](#).
- Reports surfaced this week that Spotify is being sued by Saregama, India's largest and oldest record label, and has been asked to remove Saregama's 120,000-song catalog from its streaming platform. Apparently, the record label had agreed to allow Spotify to post its music during initial negotiations, but the two parties were not able to finalize an agreement. Saregama has therefore directed Spotify to remove the record label's content from its streaming service within a ten-day timeline established at an April 23rd Delhi High Court hearing. Spotify's roll-out in India has not gone as smoothly as the music streaming service

had planned; it also failed to secure rights from Warner/Chappel Music Publishing. Read more [here](#).

V. Industry Updates:

- On Thursday, the U.S. Copyright Office hosted “Reach for Gold: Copyright & Sports” to explore the relationship between sports and copyright and to celebrate World Intellectual Property Day—which is April 26th. Speakers at the event represented a broad cross-section of copyright and sports business stakeholders, from major networks to competitive video gaming, or esports. Stakeholders discussed the success of sports media and predicted lucrative futures for the broadcasting of both traditional sports and esports. Derrick Heggans, founder and CEO of Global Sports and Entertainment Business Academy, provided a broad history of copyright and sports business. Delara Derakshani, tech policy counsel at Entertainment Software Association, said strong copyright and enforcement protections would ensure continued growth and innovation in esports. Robert Garrett, senior counsel at Arnold & Porter, showed that sports broadcasting is and will be the highest revenue source for teams and leagues as properties. All speakers showcased how copyright supports athletics and sports, and how IP directly supports the pursuit and enjoyment of them. More info [here](#).
- Derek Slater, Global Director of Information Policy, Government Affairs and Public Policy, at Google, announced on LinkedIn that he is leading a “new-ish” government affairs and public policy team that will focus on access to information issues, including “content regulation related to illegal and harmful content, disinformation, child safety, consumer protection, copyright, and more.” Google has posted two initial job openings—one in Mountain View, California and another in Singapore. In his post, Slater explains that he also plans to field new hires in London and Washington, DC. More info. [here](#).
- The Verge reports that users of Peloton, an exercise bike company that offers at-home virtual classes for users, have voiced their frustration over a recent downgrade in the company’s exercise playlists. Peloton deleted many songs from its repertoire after it was sued by members of the National Music Publishers Association (NMPA) last month for failing to obtain a sync license to use some labels’ musical work in their exercise videos. The article points out that “as fitness companies dabble in media creation, they’re also navigating into the pains of becoming an entertainment company.” Read more [here](#).
- On Wednesday, just two days before its U.S. premiere, reports surfaced that users in China had begun sharing Disney/Marvel’s “Avengers: Endgame” on peer-to-peer piracy networks. The copy apparently spread to English-based language torrent networks. Reports suggest that the copy was recorded in a movie theater in China, where the Disney/Marvel movie premiered on Wednesday. The movie is projected to earn between \$250 million and \$260 million in box office take in North America alone in the first three days of release. Read more [here](#).