



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT JUNE 7, 2019



I. Congressional Updates:

- On Monday, House Judiciary Committee lawmakers announced plans to conduct a bipartisan antitrust review of Facebook, Google, and other technology behemoths. Rep. David Cicilline (D-RI), who chairs the House Judiciary Antitrust Subcommittee, explained to reporters that his subpanel will lead a “broad investigation” of these platforms “with an eye toward developing kind of a deeper understanding of how the market is failing why the internet is broken and why it’s not functioning well.” Chairman Cicilline also noted that the group of lawmakers will then consider legislative actions to mitigate any concerns arising from the probe. Read more [here](#).
- On Monday evening, Speaker of the House Nancy Pelosi (D-CA) chimed into the conversation about increasing congressional scrutiny of Big Tech. “Today, everything is connected to the Internet; it is the foundation on which our economy, democracy & attention rest,” Pelosi tweeted. She further exclaimed that “Unwarranted, concentrated economic power in the hands of a few is dangerous to democracy – especially when digital platforms control content. The era of self-regulation is over.” Read more [here](#).
- On Monday, Sens. John Kennedy (R-LA) and Amy Klobuchar (D-MN) introduced legislation that seeks to improve the access to and the quality of news online by establishing a 48-month safe harbor for small publishers to band together to negotiate with dominant online platforms. This legislation, titled The Journalism Competition and Preservation Act, was introduced in the House earlier this Spring by Judiciary Committee Ranking Member Doug Collins (R-GA) and Rep. Cicilline. The proposal was

Headlines and Highlights:

- House Judiciary Committee lawmakers announce antitrust probe of tech behemoths.
- Sens. Kennedy and Klobuchar introduce the bipartisan and bicameral The Journalism Competition and Preservation Act.
- House E&C Committee and Senate Commerce Committee consider STELAR reauthorization in hearings.
- House Judiciary Committee to hold hearing on “Online Platforms and Market Power, Part 1: The Free and Diverse Press” next Tuesday, June 11th. |
- New Democrat Coalition outlines priorities for USMCA.

In the Blogs:

[Has the Server Rule Reached its End of Service Dated?](#)

Illusion of More

June 4 by David Newhoff

[Google in Australia: Sudden Conversion or Tactical Manoeuvre?](#)

Hugh Stephens Blog

June 3 by Hugh Stephens

introduced in the House last term but did not have a Senate counterpart. Notably, both original cosponsors in the upper chamber serve on the Senate Judiciary Committee, and Klobuchar is the Ranking Member of the committee's antitrust subcommittee. Read more [here](#).

- On Tuesday, the House Committee on Energy & Commerce Subcommittee on Communications and Technology held a hearing titled “STELAR Review: Protecting Consumers in an Evolving Media Marketplace.” The hearing featured a spirited discussion about whether Congress should reauthorize the Satellite Television Extension and Localism Act (STELA or STELAR). While all the witnesses expressed dissatisfaction with the STELA framework, three of them, Robert Thun (Senior VP of Content and Programming, AT&T Mobility and Entertainment), Patricia Jo Boyers (President and Vice Chairman of the Board, VOYCOM Vision), and John Bergmayer (Senior Counsel, Public Knowledge) agreed that—absent meaningful reform—STELAR should be reauthorized to ensure the marketplace remains competitive for rural TV customers. Watch online [here](#).
- On Wednesday, the Senate Commerce Committee convened a hearing titled “The State of the Television and Video Marketplace.” The Senate hearing touched on the broader issues surrounding the TV and video marketplace, whereas the prior House hearing nearly exclusively discussed STELAR reauthorization. The senators and witnesses all commented on the expansion and evolution of television programming and video content over the past decade, and particularly with respect to streaming services. While the witnesses agreed that there has been an unquestionable growth of content and improved access to entertainment, there was disagreement over who truly benefits from this growth. Michael Powell (President, NCTA-The Internet and Television Association) and Gordon Smith (President and Chief Executive Officer, National Association of Broadcasters, NAB) opined that the consumer has ultimately benefitted from these advancements, while Craig Aaron (President and CEO, Free Press) stated that consumers suffer from increasing prices charged by cable companies and subscription services. Smith was the lone panelist to support letting STELAR sunset. Of note, Senator Blackburn (R-TN) asked Smith a series of questions calling out the NAB for what she categorized as a double standard for requiring consent for retransmission of TV broadcast while not also for radio transmission of sound recordings where the copyright is owned by third parties. Watch online [here](#).
- On Monday evening, Chairman of the House Energy & Commerce Committee Frank Pallone (D-NJ) tweeted that Facebook's “failure to appropriately address intentional political disinformation harms its users, the public discourse, and our democracy.” He also asserted that Section 230 of the Communications Decency Act is “meant to enable platforms to take down harmful content,” adding that the statute, which provides immunity from liability for providers and users of platforms, “should not be a shield for inaction.” Read more [here](#).
- On Tuesday, June 11th at 2:00 p.m. ET the House Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law will hold a hearing titled “Online Platforms and Market Power: Part I: The Free and Diverse Press.” No witness list has yet been announced. More info. [here](#).
- On Wednesday, June 12th at 10:00 a.m. ET the Senate Commerce Committee will hold an oversight hearing of the Federal Communications Commission (FCC). The hearing will feature all five FCC Commissioners. More info [here](#).

- On Thursday, the New Democrat Coalition released its three priorities for the United States–Mexico–Canada Agreement (USMCA). First, the coalition wants to “restore confidence in the U.S.’ trade relationship with our North American allies.” This includes President Trump rescinding the unilateral tariffs on Mexico, maintaining the removal of Section 232 tariffs on steel and aluminum from Canada and Mexico, eliminating the U.S.’ threat to withdraw from the North American Free Trade Agreement (NAFTA), and reauthorizing the Export-Import Bank. Second, the coalition identifies strengthening enforcement, labor, and environmental commitments in the new agreement as a priority, and supports the establishment of working groups among House Democrats to iron out these potential concerns. Finally, the group wants to use the momentum behind updating NAFTA to advance a bipartisan domestic priority, such as an infrastructure package, a bill to close the workforce skills and opportunity gap, or increasing the federal minimum wage. Support from House Democrats for the USMCA will be critical to sending legislation to implement the new pact to the President’s desk. Read more [here](#).
- In her weekly press conference on Thursday, Speaker of the House Nancy Pelosi maintained her primary concern with the USMCA is whether the agreement is enforceable, and insisted that this issue must be addressed as part of the agreement and not “as part of a sidebar letter or bills that we might pass in each country.” Read a full transcript of Speaker Pelosi’s remarks online [here](#).

II. Judicial Updates:

- Reports surfaced this week that on Monday, Toronto Raptors player Kawhi Leonard filed a suit in the U.S. District Court for the Southern District of California, alleging that Nike effectively stole a logo the basketball player created in college. According to the suit, Leonard allowed Nike to use the “unique logo” as part of an endorsement deal with the sports apparel company while he continued to use the logo on non-Nike goods. However, the document claims that Nike “filed an application for copyright registration of his logo and falsely represented in the application that Nike had authored the logo.” Read more [here](#).
- Last Friday, Register of Copyrights Karyn Temple responded via letter to leaders of the Senate Judiciary IP Subcommittee Thom Tillis (R-NC) and Chris Coons’ (D-DE) concerns regarding the potential harmful implications of the Fourth Estate case on the enforcement of IP rights. In the letter, Temple supports the Supreme Court’s decision, writing that it accurately describes the requirements for copyright registration. Temple acknowledges the importance of efficiency and responsiveness on behalf of the Copyright Office, and described the initiatives the Office has taken to reduce pendency times. Temple highlights the Copyright Office’s modernization efforts and other multifaceted efforts to reduce processing times, such as: (1) increasing staffing, (2) streamlining and improving training processes, and (3) using internal working groups to develop and implement recommendations for reducing processing times. Please find an identical letter she sent to House Judiciary Chairman Jerrold Nadler (D-NY) and Ranking Member Collins [here](#).

III. Administration Updates:

- On Monday, Register of Copyrights Karyn Temple sent a letter to Chairman Nadler and Ranking Member Collins recommending that Congress should not reauthorize the compulsory license for secondary transmissions of distant broadcast programming by satellite under 17 U.S.C. § 119. The provision, which was most recently extended by the

Satellite Television Extension and Localism Act Reauthorization Act (STELAR) in 2014, is slated to expire on December 31st, 2019. Temple notes that this recommendation is consistent with the Office's long-standing position on the section 119 compulsory license, reflected in previous reports sent to Congress in 2008 and 2011. Temple claims that the section 119 compulsory license has been "made unnecessary by the substantial growth of the satellite industry" and the "changed realities of the programming delivery market." Read more [here](#).

- Reports surfaced this week that the Federal Trade Commission (FTC) and the Department of Justice (DOJ) are reviewing potential antitrust concerns surrounding technology behemoths. Sources told *Reuters* that the FTC is reviewing Amazon and Facebook, while the DOJ is looking into Apple and Google. Read more [here](#).
- After President Trump threatened to impose tariffs on all Mexican goods last Thursday, representatives from Mexico visited Washington this week to meet with the administration. President Trump has linked the 5% tariff to his immigration agenda, calling on Mexico to stem the flow of migrants at the U.S.-Mexico Border. Mexican Foreign Secretary Marcel Ebrard met with senior White House officials on Wednesday to discuss what Mexico was doing to address the issue and to come up with a joint strategy. Those close to meeting reported that the White House focused on what Mexico needed to handle the situation. So far, the administration has called on Mexico to secure its own southern border with Guatemala, but has offered no metric to determine if Mexico was doing enough. After the meeting, Foreign Minister Ebrard said that he was "optimistic" that the U.S. and Mexico could reach an agreement. President Trump took to [Twitter](#) on Wednesday to show his displeasure with current Mexican efforts stating, "Progress is being made, but nearly enough!" Absent a deal, the tariffs are slated to take effect on Monday, June 10th. Read more [here](#).

IV. International Updates:

- This week, the Canadian Parliament's "Standing Committee on Industry, Science, and Technology" published its review of Canada's Copyright Act. The review, which serves as guidance for the government, rejected non-judicial site-blocking and recommends that the current safe harbors remain intact. Read the entire report [here](#).
- Earlier this month, Village Roadshow and a group of prominent movie companies filed a complaint in Australia's Federal Court requesting local Internet providers to block dozens of websites that allegedly host pirated content. For the first time, Netflix Studios joined Disney, Universal, and other leading movie companies in this filing. Netflix's participation in the complaint follows a trend in the company's recent gradual expansion of its anti-piracy efforts. The company joined the Alliance for Creativity and the Motion Picture Association of America (MPAA) earlier this year. The injunction lists 86 sites in total, targeting torrent sites, streaming portals, and several release blogs. Read more [here](#).

V. Industry Updates:

- On Tuesday Evening, The News Alliance hosted a congressional briefing to discuss the challenges faced by news publishers and legislative efforts to address these challenges. House Judiciary Antitrust Subcommittee Chairman Cicilline and full Committee Ranking Member Collins delivered opening remarks in which they stressed the importance of their newly introduced legislation, The Journalism Competition and Preservation Act. Antoinette

(Toni) Bush, Global Head of Government Affairs, News Corp, Nicole Carroll, Editor in Chief, USA Today, Jonathan Kanter, Partner, Paul Weiss, Neil Patel, Co-Founder of The Daily Caller subsequently participated in a panel discussion. The panel discussed what some viewed as failures of antitrust laws, the importance of local news, and the growing dominance of technology platforms.

- On Wednesday, New America held a panel on “[Speech Police: The Global Struggle to Govern the Internet](#).” New America CEO Ann-Marie Slaughter moderated the briefing, and panelists including David Kaye, UN Special Rapporteur on freedom of opinion & expression and author of *Speech Police: The Global Struggle to Govern the Internet*, and Rebecca MacKinnon, Director, Ranking Digital Rights. David Kaye underscored that the debate over regulation is robust in Europe due to the belief that, because companies have a large impact on the public space, the companies have a responsibility to protect individuals and society. Additionally, he pointed out that even though the U.S. is largely excluded from this debate, its consumers will still be impacted by policy changes in the EU. Regarding misinformation and “fake news”, Ms. Slaughter asked how the panelists have experienced both this and the rush to counter misinformation, as well as the global implications of this trend. Mr. Kaye mentioned a [bill](#) that recently passed Singapore’s Parliament that criminalizes the dissemination of falsehoods and gives government ministers the authority to make demands of the companies to either label, correct, or take down information while the government disputes its credibility.