



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 27, 2019



I. Congressional Updates:

- Rep. Mike Doyle (D-PA), who Chairs the House Energy & Commerce Committee's Communications & Technology Subcommittee, told *POLITICO* this week that his subpanel will meet in a joint session with the Consumer Protection Subcommittee, chaired by Rep. Jan Schakowsky (D-IL), to convene a hearing on Section 230 of the Communications Decency Act. Chairman Doyle explained that the purpose of the hearing is for lawmakers to explore reforming the statute that provides immunity from liability for providers and users of platforms. Although a date has not been set for the hearing, Doyle indicated it could take place sometime after Congress returns from its two-week recess in October or in November. Read more [here](#).
- Late last week Senate Judiciary Committee Ranking Member Dianne Feinstein (D-CA) announced the appointment of Heather Sawyer as Staff Director and Chief Counsel of the Committee. Sawyer most recently served as general counsel on the Judiciary Committee for Ranking Member Feinstein, where she assisted in the development and implementation of legislative and investigative plans. She also served as staff director and general counsel for Representative Jan Schakowsky (D-IL) when Schakowsky was the Ranking Member on the House Energy and Commerce Committee's Select Investigative Panel, and worked in the House for Reps. Elijah Cummings (D-MD), John Conyers (D-MI), and Jerrold Nadler (D-NY) as well. Sawyer is replacing Jennifer Duck, who has served as Feinstein's Chief Counsel, Chief of Staff, and Staff Director for over a decade. Read more [here](#).

Headlines and Highlights:

- House Energy & Commerce subpanels on communications and tech, and consumer protection, to announce Section 230 hearing soon.
- Senate Judiciary Committee Ranking Member Dianne Feinstein appoints Heather Sawyer as Staff Director and Chief Counsel of the Committee.
- U.S. Court of Appeals for the Ninth Circuit hears arguments for both sides of the *Michael Skidmore v. Led Zeppelin* 'Stairway to Heaven' case.
- Google announces that search results will no longer display snippets and pictures for articles from European publishers seen in France when Copyright Directive takes force next month.

In the Blogs:

[Copyright Governance Danish Style: Is This "Hygge" in Action?](#)

Hugh Stephens Blog

September 24 by Hugh Stephens

[The EFF Thinks People Are Too Stupid to Understand the CASE Act](#)
Illusion of More

September 25 by David Newhoff

- On Wednesday, the House Committee on Appropriations Subcommittee on Financial Services and General Government (FSGG) held a hearing titled “Federal Trade Commission: Protecting Consumers and Fostering Competition in the 21st Century.” The hearing featured testimony from Federal Trade Commission (FTC) Chairman [Joseph J. Simons](#) and Commissioner [Rohit Chopra](#). Members on the Subcommittee evaluated the FTC’s decision-making processes and enforcement capabilities. Representatives spent most of the hearing analyzing the recent FTC settlements with YouTube and Facebook. Chairman Simons and Commissioner Chopra both described the necessity of the additional \$40 million in FTC funding allocated in the House Fiscal Year (FY) 2020 FSGG appropriations bill. Earlier this year, House appropriators allotted \$349.7 million to the FTC in their FY2020 bill “to bolster antitrust and consumer protection.” However, their counterparts in the Senate have proposed flat funding for the Commission at \$312.3 million. More info. [here](#).
- On Wednesday, the House Science, Space and Technology Committee reported a bill favorably out of Committee that seeks to combat the increasing prevalence of “deepfakes” on the internet. Specifically, *The Identifying Outputs of Generative Adversarial Networks, or (IOGAN) Act (H.R. 4355)* seeks to mitigate the increasingly prevalent manipulated media by directing the National Science Foundation (NSF) and the National Institute of Standards and Technology (NIST) to study and accelerate the creation of technology that can detect the disruptive content. It was introduced last week by Reps. Anthony Gonzalez (R-OH), Jim Baird (R-IN), Haley Stevens (D-MI), and Katie Hill (D-CA). The version of the bill that advanced this week includes an amendment offered by Rep. Jennifer Wexton (D-VA) that directs the NSF to also study how to bolster the public’s ability to detect fake media. There is no companion bill in the Senate to date. Read more [here](#).

II. Judicial Updates:

- On Monday, an 11-judge panel for the U.S. Court of Appeals for the Ninth Circuit heard arguments for both sides of the *Michael Skidmore v. Led Zeppelin* ‘Stairway to Heaven’ copyright case. *Rolling Stone* reported that Francis Malofiy, the attorney representing the Wolfe estate (Skidmore), argued that the recorded versions of ‘Stairway to Heaven’ and ‘Taurus’ should be included as evidence and played at trial. During the initial trial, jurors had to base their decisions on the sheet music for both songs because both works were copyrighted under a 1909 law that only protects sheet music dropped off at the U.S. Copyright Office. Malofiy argued that the decision to exclude the actual recordings in favor of the sheet music was misleading, partly because Led Zeppelin’s Jimmy Page “doesn’t read music.” *Rolling Stone* reported that many judges were skeptical of Malofiy’s arguments. Peter Anderson, the attorney for Led Zeppelin, dismissed Malofiy’s argument about the recording as irrelevant. Anderson argued that there was no proof Led Zeppelin copied Spirit and that any common elements in “Taurus” that might have also appeared in “Stairway” were not afforded protection by copyright law. A ruling is expected to be announced in 2020 More info. [here](#).

III. Administration Updates:

- On Thursday, as part of its series on Copyright Modernization, the U.S. Copyright Office held a webinar on its Recordation Modernization Initiative. The presenter explained that the current system is antiquated for the following reasons: the Copyright Office has one of the few paper-only processes remaining, it manually processes receipt and payment, titles are manually ingested, there are long processing times, and the outdated IT systems are unable

to keep up with customer and Office needs. The presenter also highlighted eight primary keys to success, including (1) conduct outreach with real world users; (2) emphasize positive user experience; (3) establish regular communication channels; (4) build features that reflect user needs; (5) build a cohesive visual experience; (6) build incrementally with flexibility and scalability in mind; (7) modernize all aspects of recordation; (8) and align with long-term copyright modernization strategies. The webinar then delved into the goals for recordation and details about the pilot program, which the Office plans to release in early spring 2020. This program will be available only to a select number of users and it will have limited functionality (e.g. it will not have API functionality). According to the presenter, the Office is looking at the current pool of remitters to see who will be invited to test the pilot program and plans to invite participants from across several industries.

- Late last week, the Copyright Royalty Board announced the commencement of a proceeding to determine the final distribution of digital audio recording technology royalty fees in the 2014 Sound Recordings Fund. Interested parties must file a Petition to Participate and the accompanying filing fee, if applicable, by October 21st to participate. More info. [here](#).
- Pursuant to the Orrin G. Hatch—Bob Goodlatte Music Modernization Act (MMA), the Copyright Office on Tuesday issued a notice of inquiry seeking public comments regarding regulations to implement the new blanket section 115 “mechanical” license for making and distributing digital phonorecords of music works, which will become available on January 1st, 2021. Initial written comments are due to the Office by November 8th, and written reply comments must be received by December 9th. Read more [here](#).

IV. International Updates:

- On Wednesday, news surfaced that Google will stop showing in search results a snippet and a thumbnail photo for articles by European publishers seen in France when the Directive on Copyright in the Digital Single Market takes effect in late October. The provision in the Directive that aims to require Google to pay for snippets that appear in searches on the platform, Article 11, which was renamed Article 17 in the final text, was controversial when lawmakers were finalizing the Directive in April. Critics said it would amount to a “link tax,” while news organizations applauded that it would require platforms to finally pay licensing fees to display their content in search results. Google VP for news Richard Gingras nodded to this “link tax” critique in a call with reporters to discuss the change. “We don’t pay for links to be included in search results,” Gingras stated, adding, “Doing so would not only skew the options we might provide but it would ultimately undermine the trust users have in how search and news work on Google.” Read more [here](#).
- President Donald Trump and Japan Prime Minister Shinzō Abe signed a preliminary trade deal on the margins of the United Nations General Assembly gathering on Wednesday. First, Japan agreed to eliminate or lower tariffs for certain U.S. agricultural products and provide preferential U.S.-specific quotas on other agricultural products. Second, the two nations also reached an agreement on a “high-standard” and “comprehensive” set of provisions addressing areas in digital trade. This includes prohibitions on imposing customs duties on digital products transmitted electronically such as videos, music, e-books, software, and games. News broke earlier in the week that there was a snag in negotiations due to Japan’s request for a confirmed exemption from the potential U.S. tariffs on the imports of autos and auto parts in November. There is no mention of these Section 232

tariffs in the accord, but Abe has said that Trump has “firmly confirmed” that Japan will no longer face the threat of auto tariffs moving forward. Read more [here](#).

V. Industry Updates:

- On Tuesday, IFPI released its Music Listening 2019 report, which explores the way consumers engage with and access music across licensed and unlicensed services worldwide. Among other findings, the report highlights that copyright infringement remains a challenge for the music ecosystem. 27% of survey participants had used unlicensed methods to listen to or obtain music within the past month, while 23% of participants had used illegal stream ripping services. IFPI also observed a growing engagement with audio streaming globally, with the fastest growth for engagement in the 35-64-year-old age group. Read more [here](#).
- This week the Licensing Executives Society International (LESI) announced that Dana Robert Colarulli will serve as its new Executive Director. Colarulli most recently served for over a decade as the Director of the Office of Governmental Affairs at the U.S. Patent and Trademark Office (USPTO), as well as a member of the agency’s Executive Committee. In his new post, Colarulli will help LESI implement its strategy, build relationships with other relevant organizations, expand its membership base, develop its educational offerings, and support its National Presidents and Societies and the LESI committees. Read more [here](#).
- Facebook announced on Monday that it acquired CTRL-Labs, a New York-based tech start-up that specializes in allowing humans to control computers using their brains. CNBC reported that the size of the deal was between \$500 million and \$1 billion, with a Facebook spokesperson stating that it was lower than \$1 billion. The acquisition centers around CTRL-Lab’s work on creating a wristband that would allow people to control their devices. Earlier this year, CTRL-Labs purchased a series of patents around this armband. CNBC reported that this company will be assimilated with Facebook’s Reality Labs, a division of the company that is working to develop augmented-reality smart glasses. More info. [here](#).