



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 8, 2019



I. Congressional Updates:

- On Thursday, the Senate Rules and Administration Committee held a hearing on the Library of Congress modernization oversight. Ms. Karyn A. Temple (Register of Copyrights and Director of the U.S. Copyright Office), Mr. Bernard A. Barton, Jr. (Chief Information Officer, Library of Congress), and [Dr. Carla Hayden](#) (Librarian of Congress, Library of Congress) testified at the hearing. Dr. Carla Hayden was the only witness to deliver opening remarks. Chairman Roy Blunt (R-MO) and Senator Tom Udall (D-NM) delivered opening remarks, and were joined in the Q&A portion by Senators Capito (R-WV), Cortez Masto (D-NV), and Hyde Smith (R-MS). IT modernization was the central theme throughout the hearing, with the Senators and Dr. Hayden commending the Library's efforts to implement nearly all of the recommendations set forth in the GAO audit. Dr. Hayden noted that the Library is one year into its five-year effort to design and implement a new Enterprise Copyright System. Dr. Hayden also highlighted the collaboration between the Copyright Office and the OCIO on IT modernization. She also testified about the Library's upcoming pilot of the first fully digital copyright recordation system, the upcoming release of a prototype searchable record management system, and the beginning of the development of a next generation online registration system. Chairman Blunt also asked several questions on the CASE Act (H.R.2426/ S.1273), specifically on whether the Copyright Office has the resources and capabilities to implement the legislation, if passed. Register Temple confidently stated that the Copyright Office can readily implement it. She did not anticipate requiring additional staff for its implementation, while noting that provisions in the bill allow for the hiring of two additional attorneys in

Headlines and Highlights:

- Senate Rules Committee holds Library of Congress modernization oversight hearing.
- Bipartisan and bicameral group of members introduce legislation directing the Register of Copyrights to waive the copyright registration fee for winners of the Congressional Art Competition and the Congressional App Competition.
- House Judiciary antitrust subpanel to hold fourth hearing to inform its antitrust probe into possible anticompetitive conduct in the digital marketplace next week.
- Supreme Court hears oral arguments in *Allen v. Cooper*.
- Chair Cicilline travels to Dublin for disinformation summit.

In the Blogs:

[Content Piracy as Hybrid Warfare](#)
Hugh Stephens Blog
November 4 by Hugh Stephens

[CASE Act noise gets louder. And sillier.](#)
Illusion of More
November 5 by David Newhoff

addition to three new judges. More info. [here](#).

- On Thursday, Senators Thom Tillis (R-NC) and Patrick J. Leahy (D-VT) joined their colleagues Representatives Martha Roby (R-AL) and Hakeem Jeffries (D-NY) to introduce the Artistic Recognition for Talented Students (ARTS) Act. This bipartisan and bicameral legislation directs the Register of Copyrights to waive the copyright registration fee for winners of the Congressional Art Competition and the Congressional App Competition. Under current law, the Register of Copyrights does not have the authority to waive the registration fee. Tillis Chairs the Senate Judiciary IP Subcommittee, on which Leahy also serves. In addition, Roby and Jeffries both serve on the House Judiciary IP Subcommittee, and Roby is the Ranking Member on the subpanel. Chairman Tillis said, “Over the last few months I have had ongoing conversations with today’s leaders in the copyright industry about what Congress needs to do to incentive copyright registration. Introducing these talented students to the benefits of copyright protection is an excellent place to start, and I look forward to seeing what these talented students come up with next.” Read more [here](#).
- Last Friday, Senator Cruz sent a [letter](#) to United States Trade Representative (USTR) Robert Lighthizer requesting that he remove the language in the United States–Mexico–Canada Agreement (USMCA) and other pending trade deals that provides technology companies with immunity for third party content. Senator Cruz wrote, “With members of both the Senate and House of Representatives seriously considering whether to amend or eliminate Section 230’s grant of immunity because big tech is not living up to its end of the legislative bargain, I believe that enshrining it in our trade agreements would be a mistake.” Senator Cruz has previously accused social media platforms of censoring conservative posts and has suggested amending or revoking Section 230 protections if platforms cannot prove they are neutral moderators of content. Read more [here](#).
- Last Friday, Senate Judiciary Chairman Lindsey Graham (R-SC) indicated that he is against reauthorizing STELAR, which expires at the end of this year. Chairman Graham wrote letters to [ABC](#), [CBS](#), [FOX](#), and [NBC](#) advocating for a stopgap solution that would let rural households keep receiving programming “during this transition to a free market” after STELAR expires. Furthermore, Senator Graham wrote that he hopes these corporations’ responses will provide clarity and “ensure that Congress does not need to extend the Section 119 compulsory license beyond the end of this calendar year.” Senator Graham set a deadline for November 12th for responses to his letter. Read more [here](#).
- At its fourth hearing in the House Judiciary Committee’s antitrust probe into possible anticompetitive conduct in the digital marketplace, Federal Trade Commission (FTC) Chairman Joe Simons and Assistant Attorney General for the Antitrust Division Makan Delrahim are slated to testify before the Antitrust Subcommittee at a hearing next week. The hearing, which has been scheduled for next Wednesday, is titled “Perspectives of the Antitrust Agencies.” More info. [here](#).

II. Judicial Updates:

- On Tuesday, the Supreme Court heard oral arguments in *Allen v. Cooper*, with the Justices making remarks seemingly siding with the petitioner, Frederick Allen. Derek Shafer, representing Allen, argued that “when states infringe the exclusive rights that Congress is charged with securing, Congress can make states pay for doing so.” Shaffer stated that the intellectual property clause of Article I Section 8 of the Constitution provides “express

constitutional mandate for Congress to protect specified private property rights against any and all intrusion,” therefore “securing” exclusive rights against “all comers, exclusive against the world, including the government and including states.” North Carolina Deputy Solicitor General Ryan Park argued on behalf of the state, and Park maintained that the Constitution preserves state sovereignty unless there is “compelling evidence that the states surrendered it when they ratified a particular constitutional provision.” Park argued that state sovereignty immunity limits congressional authority to expose states both to expansive liability that go beyond the due process clause and to the Copyright Remedy Clarification Act’s financial remedies of up to \$150,000 per infringement. Justices Kavanaugh and Breyer questioned Park about the possibility of multiple, rampant state uses of copyright for which the copyright owners receive nothing. Justice Ginsburg suggested that this case “sounds pretty intentional to me.” Furthermore, Justice Ginsburg stated that there is “something unseemly” about a state’s being able to hold copyright and sue for infringement of their copyrights but also say “we can infringe to our heart’s content and be immune from any compensatory damages.” Read more [here](#).

III. Administration Updates:

- On Friday, the U.S. Copyright Office published its final rule to amend the regulation governing the group registration option for newspapers. Under the status quo, applicants are required to upload a complete copy of each newspaper issues through the Office’s electronic regulation system. Applicants may also submit their newspaper issues on microfilm on a voluntary basis in addition to their digital submission. However, that microfilm option expires at the end of the year, as the new rule will take effect on January 1st, 2020. More info. [here](#).

IV. International Updates:

- House Judiciary Antitrust Subcommittee Chairman David Cicilline (D-RI) traveled to Dublin this week to participate in a summit on the threat of disinformation online with legislators from around the world. The disinformation summit was hosted by the International Grand Committee, which was formed in 2017 by lawmakers in Europe as a response to Russia’s alleged efforts to weaken Western democracies through aggressive disinformation campaigns that manipulate Facebook, Twitter, Instagram, and other social media platforms. Read more [here](#).

V. Industry Updates:

- On Friday, IPWatchdog published an editorial written by Terrica Carrington, Copyright Counsel with the Copyright Alliance, refuting an article published earlier in the week by Mitchell Stein insinuating that there are “three gaping holes” in the CASE Act that make for bad policy, despite the bill’s noble goals. Carrington claims that Stein’s critique was grounded in simple misunderstandings about the bill. Overall, Carrington underscores that the CASE Act will not bring an end to copyright infringement entirely, but it will improve the current system by providing an alternative to federal court where consenting parties who presently cannot afford to, might finally get their day in court. Read more [here](#).
- Digital Music News and Torrentfreak report that the Recording Industry Association of America (RIAA) recently issued a Digital Millennium Copyright Act (DMCA) subpoena to CloudFlare, ordering the customers content delivery network (CDN) provider to hand over

the personal details of Wi.to, a file-hosting site that specializes in music. RIAA has accused Wi.to. of allowing copyright infringement on its site, listing several infractions it found on the platform. RIAA has sought the physical address, IP address, e-mail address, payment information, account updates, and other information about the customer connected to Wi.to. After becoming aware of the subpoena, Torrentfreak reached out to the operator of Wi.to, Sergey, who resides in Estonia. Sergey told Torrentfreak that the DMCA doesn't apply to him, but claimed that the site regularly removes infringing content in response to these notices. Read more [here](#) and [here](#).