



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 22, 2019



I. Congressional Updates:

- On Thursday, the Satellite Television Community Protection and Promotion Act of 2019 ([H.R. 5140](#)) was reported favorably out of the House Judiciary Committee. The bill, introduced by Chairman Jerry Nadler (D-NY), would reauthorize the expiring STELAR and narrow the category of households that are eligible to receive programming under a license that lets them import broadcast signals from other markets. The bill also includes an amendment from Rep. Zoe Lofgren (D-CA) which gives satellite tv companies 6 months to comply instead of 120 days, and enables satellite tv companies to seek extensions of 90 days, as long as they file a notice with the Copyright Office and make a good faith effort to deliver those signals. Lofgren's amendment also gives broadcasters a private right of action in court if they believe there was no good faith effort made. Ranking Member Doug Collins (R-GA) begrudgingly voted for the bill but did not support the amendment. Collins expressed dismay that the Committee was voting on an important issue at the last minute, and without a hearing. During the markup, Rep. Ted Deutch (D-FL) offered and withdrew a performance right bill, which would require broadcasters to obtain permission before transmitting performers' work over terrestrial radio. Rep. Deutch stated that every country besides the U.S. has a performance right, and music creators deserve retransmission consent. More info. [here](#).
- Despite signs of progress in negotiations between the Trump Administration and House Democrats last week, freshman Democrats emerged from a meeting with AFLIO president Richard Trumka on Tuesday with little confidence that the two sides will reach a deal this year. Rep. Jimmy Gomez (D-CA), who serves on Speaker

Headlines and Highlights:

- House Judiciary Committee reports out favorably the Satellite Television Community Protection and Promotion Act of 2019 (H.R. 5140).
- House Ways & Means trade subcommittee holds hearing on U.S.-Japan trade agreements.
- Supreme Court to hear *Google v. Oracle* copyright case.
- AAG Delrahim announces that DOJ is moving to terminate the Paramount Consent Decrees, "expect for a two-year sunset period on the bans on block booking and circuit dealing."
- Amazon releases free, ad-supported music streaming service.

In the Blogs:

[YouTube Adpocalypse is No Surprise](#)

Illusion of More

November 19 by David Newhoff

[When Copyright Meets Patriotism: Who Owns the Copyright to National Anthems?](#)

Hugh Stephens Blog

November 18 by Hugh Stephens

Pelosi's (D-CA) nine-member trade working group, noted that although Trumka claims that negotiators are at the five yard line, "it feels like we've been at the five yard line for a while." Rep. Anthony Brindisi (D-NY) told reporters that several lawmakers joined him in calling on their colleagues to put the implementation legislation to a vote soon. Meanwhile, Rep. Donna Shalala contended that her freshman colleagues "don't understand football," adding that "He just said we're on the seventh yard line, we just don't know which down it is. It's the red zone – and you know how difficult that is." The meeting comes after a group of battleground House Democrats reportedly staged a dramatic show of support for the renegotiated pact during a special caucus meeting on the issue last Thursday. Read more [here](#).

- On Wednesday, the House Ways & Means Trade Subcommittee held a hearing titled "U.S.-Japan Trade Agreements." The following witnesses provided testimony: [Darci Vetter](#) (Global Lead, Public Affairs; Vice Chair, Agriculture & Food, Edelman U.S. Public Affairs); [Matthew Goodman](#) (Senior Vice President; Simon Chair in Political Economy; Senior Adviser for Asian Economics, Center for Strategic & International Studies); [Josh Nassar](#) (Legislative Director, United Automobile Workers, UAW); and [Russell Boening](#) (Owner, Loma Vista Farms and Boening Bros. Dairy Inc.; President, Texas Farm Bureau). All the witnesses except Josh Nassar with the UAW supported the partial trade agreements, while acknowledging that the Administration needs to make progress on important issues in the second phase of negotiations. For instance, Vetter urged the Trump Administration to conclude a second phase agreement that augments the existing tariff provisions with robust provisions on other critical issues, including IP. Democrats expressed their disappointment that the United States Trade Representative (USTR) declined the Subcommittee's request for an official to testify at the hearing. The caucus was also united in their concerns that the USTR sidelined the consultation process required by the Trade Promotion Authority (TPA) to broker the partial trade deal. On the other hand, Republicans touted that the agreement would deliver a much-needed win for farmers, while acknowledging that a second phase of negotiations will be critical. More info. [here](#).

II. Judicial Updates:

- Late last week, the Supreme Court announced that it will hear Google's appeal of a U.S. Court of Appeals for the Federal Circuit decision that Google's use of Java shortcuts to develop Android violated Oracle's copyright. In its decision last year, the appeals court also sent the case back for a trial to determine how much Google should pay in damages for the infringement—Oracle had previously sought as much as \$9 billion. Earlier this fall, U.S. Solicitor General Noel Francisco's office recommended that the Supreme Court deny certiorari in this case and rejected Google's fair-use argument entirely in his [brief](#). Read more [here](#).
- On Tuesday, the Music Artists Coalition (MAC) and the Songwriters of North America (SONA) announced that they have filed a joint amicus brief urging the D.C. Circuit Court of Appeals to uphold the Copyright Royalty Board's (CRB) 2018 decision to award publishers and songwriters a 44% rate increase by 2022. The brief explains that songwriters have been subject to a compulsory license, now embodied in section 115 of the Copyright Act, that determines the price paid for reproduction and distribution of the music works they create for over a century. The brief claims that this compulsory license has a "depressive effect" on songwriter income and has not kept pace with the value of musical works. As such, for some songwriters, the added income provided by the rate increase "will be a critical factor in their ability to continue in their careers as professional songwriters." Read more [here](#).

III. Administration Updates:

- During a speech on Monday at the American Bar Association (ABA), Assistant Attorney General (AAG) for the Antitrust Division Makan Delrahim said that the Department of Justice (DOJ) is moving to terminate the Paramount Consent Decrees, “expect for a two-year sunset period on the bans on block booking and circuit dealing.” The decrees, which were created after the 1948 Supreme Court ruling in *United States v. Paramount Pictures*, bar a group of movie companies, including Paramount, Universal, Warner Bros., Twentieth Century Fox, Sony, and United Artists from owning major theater circuits. The DOJ announced in August 2018 that it would be reviewing the decrees. “We have determined that the decrees, as they are, no longer serve the public interest, because the horizontal conspiracy—the original violation animating the decrees—has been stopped,” Delrahim said on Monday. The DOJ will require court approval to terminate the decrees as well. Read more [here](#).
- On Thursday, Speaker Nancy Pelosi and House Ways & Means Committee Chairman Richard Neal met with USTR Robert Lighthizer in an attempt to work through Democrats’ outstanding concerns with the USMCA. After the ninety-minute meeting, both Neal and Pelosi said that the two sides had made progress, and Neal added that there were about “two and a half issues” outstanding. A spokesperson for Speaker Pelosi later told reporters “We can reach an agreement on USMCA when the Trade Representative makes the agreement enforceable for American workers.” Stakeholders hoped that the two sides would broker a deal before House lawmakers left town for Thanksgiving break.

IV. International Updates:

- On Wednesday, EU competition commissioner Margrethe Vestage told reporters that the bloc might look into Google’s compliance with the EU Directive on Copyright in the Digital Single Market after France raised concerns about the tech giant. Last month, Emmanuel Macron called on Europe’s competition authorities to “engage in any possible action as soon as possible” to ensure that Google does not evade the spirit or the letter of the Directive after news surfaced that Google would stop showing in search results a snippet and thumbnail photo for articles by European publishers seen in France. The provision in the Directive that aims to require Google to pay for snippets that appear in searches on the platform, Article 11, renamed Article 17 in the final text, was controversial when lawmakers were drafting the new rules. 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. “We’re in contact with the French competition authorities, in order to see what would they do, to see if they would want to handle the question or if we should have a look,” Vestage said this week. Read more [here](#).

V. Industry Updates:

- On Monday, Amazon announced that it has introduced an ad-supported, free music streaming service. The service follows the Pandora model, in which users can access top playlists and thousands of stations for free. However, users can’t play back specific songs, nor can users download songs for offline listening. Amazon offers playback ability and offline listening via its subscription-based service Amazon Music Unlimited, which rivals competitors such as Spotify and Apple Music. More info. [here](#).

- On Tuesday, the House Judiciary Committee released the responses submitted by Google, Facebook, Amazon, and Apple to lawmakers' questions in their antitrust probe. Of note, Google defended against allegations that it favors its own services over that of its competitors in search, video, and internet browsers. For instance, Google cited that the "vast majority" of clicks following a Google search go to non-Google websites. However, despite its huge collection of data search queries and clicks, Google said that it could not provide much of the data sought by the committee, including information about how many searches display location information about a business. Facebook acknowledged blocking certain third-party apps from its developer platform for replicating core functionalities, but provided limited answers to other questions about its handling of prospective competitors. Amazon asserted that it uses aggregated data from merchants on its third-party marketplace for "business purposes," but denied leveraging this data to inform launching, sourcing, or pricing private-label products. The ecommerce platform also acknowledged that it has asked third-party merchants to lower their price on Amazon when it discovers that a merchant is selling an item for less on a competing website. Read more [here](#).