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## CONTENT & TECHNOLOGY POLICY REPORT DECEMBER 1, 2017



### I. Congressional Updates:

- The House Energy & Commerce Committee held a hearing on Wednesday about technology companies' use of algorithms. At the hearing, which featured testimony from six academics, lawmakers expressed concern about a lack of transparency with respect to how tech companies use consumer data and display content to users, among other practices. Additionally, Senate Commerce Committee Chairman John Thune (R-SD) told reporters on Tuesday, "We are interested in the subject [of tech companies' use of algorithms]. We don't have anything scheduled in terms of a hearing. But something will follow." Read more [here](#) and [here](#).
- This week, Rep. John Conyers (D-MI) [announced](#) he is stepping down from his position as Ranking Member of the House Judiciary Committee amid a congressional investigation into sexual harassment and workplace abuse allegations by his former staffers. Rep. Conyers denies the allegations. On Wednesday, it was [announced](#) that Rep. Jerry Nadler (D-NY) would replace Conyers as the top ranking Democrat on the committee.
- On Wednesday, the Senate Judiciary Committee held a hearing to consider various presidential nominations, including Andrei Iancu for Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. During the question and answer portion of the hearing, senators asked Mr. Iancu about numerous intellectual property concerns, including the recent Supreme Court case on eligible patent subject matter, the potential abusive litigation of "patent trolls," and the role of the USPTO Director on the Patent Trial

### Headlines and Highlights:

- ACTION for Trade sends letter to USTR Lighthizer urging him to include strong IP protections in renegotiated NAFTA.
- Rep. Conyers steps down as House Judiciary Ranking Member, Rep. Nadler assumes the vacant slot.
- Former judiciary counsel to Sen. Mike Lee joins Internet Association as director of government affairs.
- U.S. wants to "take, take, and take" in NAFTA renegotiations, Canadian Ambassador says.

### In the Blogs:

[The Suspension of IP Provisions in the TPP Negotiations and NAFTA: What's the Connection?](#)

Hugh Stephens Blog  
November 26 by Hugh Stephens

[A Quick Update on the Display Right](#)

The Illusion of More  
November 30 by David Newhoff

[Why I'm Neutral \(for now\) on Net Neutrality](#)

Illusion of More  
November 28 by David Newhoff

and Appeal Board (PTAB). Specific copyright issues were not raised, but Mr. Iancu spoke about his desire to evangelize the IP system generally.

- *The Intercept* has published a profile of Rep. Zoe Lofgren (D-CA) in light of her intention to succeed Rep. John Conyers' (D-MI) as Judiciary Committee ranking member. The article notes Lofgren's affinity with large technology companies like Google, and contends that "Lofgren's brand of Silicon Valley politics is now past its expiration date, her once virtuous alliance with the forces of progress and innovation curdling into a protection racket for increasingly unpopular monopolies." Read more [here](#).
- The House Energy & Commerce Subcommittee on Communications and Technology held a hearing Thursday on *HR 1865, the Allowing States and Victims to Fight Online Sex Trafficking Act*. Subcommittee Chairman Marsha Blackburn (R-TN) stated that trafficking "is on the rise in large part because the Internet, the technological masterpiece of our time, has made it much, much easier to do." She further noted that "law enforcement has consistently identified" section 230 of the Communications Decency Act "as a barrier preventing effective prosecution of online entities that facilitate trafficking, and adequate recourse for trafficking victims." Read more [here](#).
- On Wednesday, December 6<sup>th</sup> at 2 p.m. the House Foreign Affairs Subcommittee on Europe, Eurasia and Emerging Threats will hold a hearing titled "Brexit Negotiation Update."

## II. Judicial Updates:

- This week, Disney filed a lawsuit against DVD kiosk rental company Redbox for allegedly selling digital codes that allow consumers the ability to access digital copies of movies. At the heart of the dispute is Redbox's "combo packs," which include a Blu-ray disc, a DVD, and a code, which can be redeemed through authorized digital outlets. Though the codes are marked "not for sale or transfer," Disney is alleging that the "combo packs" are a breach of contract by Redbox as well as contributory copyright infringement. "Redbox is contributorily liable for copyright infringement because it (a) has knowledge that its customers will be reproducing the Copyrighted Works without authorization when they use the Codes to download copies of those works, and (b) induces, encourages, or materially contributes to the violation of Plaintiffs' rights through its unlawful resale of the Codes," states the complaint. Read more [here](#).

## III. Administration Updates:

- On Thursday, Canada's Ambassador to the U.S. David MacNaughton called the Trump Administration's approach to NAFTA negotiations—which the U.S. initially said would be a "win, win, win"—as more akin to a "take, take, take." "If what is happening here is the negotiation is all about how do we increase production in the United States—whether it be in autos or anywhere else—at the expense of Canada and Mexico, this is not going to end well," MacNaughton told *POLITICO*. U.S. Trade Representative Robert Lighthizer responded by calling MacNaughton's comments "so obviously to be inaccurate" and "counterproductive." Read more [here](#).

## IV. International Updates:

- European Commissioner for Competition Margrethe Vestager told *Recode* this week that “her commission will continue to focus on preventing large tech incumbents like Google from stifling competition from startups.” She also spoke about a need for accountability and transparency with respect to companies like Facebook and Snapchat, and expressed concern about tech companies’ use of algorithms, which might lead to anticompetitive conduct. Read more [here](#).
- The European Commission [announced](#) on Wednesday new initiatives to protect intellectual property from piracy and counterfeiting. New guidance clarifies the interpretation of a 2004 intellectual property enforcement directive, and the Commission is also “call[ing] upon Member States to step up their efforts by boosting judicial training, systematically publishing judgements on IP cases and encouraging alternative dispute resolution tools.” The Commission also intends to support industry-led initiatives to combat infringement.

## V. Industry Updates:

- *POLITICO Influence* reported on Monday that Mike Lemon—formerly senior counsel to Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights Chairman Mike Lee (R-UT)—has left the Hill to join the Internet Association as director of government affairs and counsel.
- This week, the Copyright Royalty Board (CRB) set the rates for master recording copyright holders and non-commercial webcasters. The rate for ad-supported, non-subscription music streaming services increased to \$0.0018 per play, and the paid subscription services rate increased to \$0.0023 per play. The CRB is expected to release a slate of rate determinations in the coming weeks. Read more [here](#).
- The Copyright Office has issued a notice of proposed rulemaking and request for comment regarding a proposed rule governing the royalty reporting practices of cable operators under section 111 of the Copyright Act, and proposed changes to Statement of Account forms and filing requirements. Read the Federal Register notice [here](#).
- The Copyright Office is extending the deadline for the submission of written comments in response to its interim rules regarding changes to the special procedure for examining secure tests, and the creation of a new group registration option for secure tests. Those comments are now due on January 31, 2018. Read the Federal Register notice [here](#).
- The Copyright Royalty Judges have published a regulatory interpretation regarding gross revenue exclusions that a satellite digital audio radio service may use when calculating royalty payments owed to SoundExchange for digital transmissions of sound recordings. Read the Federal Register notice [here](#).
- On Thursday, the ACTION for Trade coalition sent a letter to U.S. Trade Representative (USTR) Robert Lighthizer urging him to work to include strong intellectual property protections in a renegotiated North American Free Trade Agreement (NAFTA). The coalition is asking Lighthizer to avoid “overly broad” safe harbor provisions “that enable some Internet companies to profit from pirated content.” Read more [here](#).

