



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036  
Tel: (202) 327-8100 | Fax: (202) 327-8101

## CONTENT & TECHNOLOGY POLICY REPORT JULY 21, 2017



### I. Congressional Updates:

- On Monday, Senators Hatch (R-UT) and Wyden (D-OR) and Reps. Brady (R-TX) and Neal (D-MA) sent a letter to United States Trade Representative (USTR) Lighthizer urging him to “consult closely” with Congress in any potential upcoming talks surrounding the Korean-U.S. free-trade agreement (KORUS). “There are a host of areas in which our trade relationship with Korea can be enhanced,” the letter reads. “However...the Administration must consult closely with the Chairs and Ranking Members of the committees of jurisdiction, and Congress more broadly, throughout the process.” Read the letter [here](#).
- Last Friday, Reps. Delbene (D-WA) and Paulsen (R-MN), co-chairs of the Digital Trade Caucus, sent a letter to USTR Lighthizer providing recommendations for a digital trade framework the Administration could implement in a renegotiated North American Free Trade Agreement (NAFTA). The letter states, “NAFTA should address non-IP intermediary liability/safe harbors relating to third-party content. We need a clear legal framework – consistent with U.S. law – that provides appropriate limitations on liability for internet service suppliers for third-party content, while encouraging actions taken in good faith by suppliers to restrict access to or availability of harmful or objectionable material.” It also adds, “NAFTA should foster intellectual property frameworks to facilitate legitimate digital trade. Intellectual property is critical to the U.S. economy and companies excelling in innovation, research, development, and content creation. NAFTA was negotiated before the commercial Internet existed, and its intellectual property chapter should be modernized consistent with the Congressional directive

### Headlines and Highlights:

- Reps. Issa and Nadler introduce CLASSICS Act.
- Rep. Cicilline and Sen. Booker call for scrutiny of Amazon-Whole Foods merger.
- USTR releases “Summary of Objectives for NAFTA Renegotiation.”
- D. Bruce Hoffman selected as Acting Director of FTC Bureau of Competition.

### In the Blogs:

[The Access Copyright v York University Decision: Restoring Some Balance to Copyright in Canada](#)  
Hugh Stephens Blog  
July 18 by Hugh Stephens

[“Monkey selfie” photographer reportedly broke. And for what?](#)  
The Illusion of More  
July 15 by David Newhoff

[Brief: USTR Puts IP Focus In Digital Trade In NAFTA Renegotiation Objectives](#)  
IP Watch  
July 18

articulated through the Trade Promotion Authority legislation.”

- Rep. Jim Sensenbrenner (R-WI) [introduced](#) on Thursday the *Transparency in Music Licensing Ownership Act*, which would establish within the Copyright Office a publicly-accessible database of musical works and sound recordings. The bill also places limits on “remedies available to a copyright owner or authorized party to bring an infringement action for violation of the exclusive right to perform publicly, reproduce or distribute a musical work or sound recording if that owner/authorized part has failed to provide or maintain the minimum information required in the database.”
- Late last week, Rep. David Cicilline (D-RI), the top Democrat on the House Judiciary Antitrust Subcommittee, sent a letter to House Judiciary Chairman Bob Goodlatte (R-VA) and House Judiciary Antitrust Subcommittee Chairman Tom Marino (R-PA) calling for a hearing on Amazon’s proposed \$13.7 billion acquisition of Whole Foods. “Competition is essential for a healthy economy,” Cicilline writes. “Amazon’s proposed purchase of Whole Foods could impact neighborhood grocery stores and hardworking consumers across America.” In the letter Cicilline also underlines the dangers of Amazon’s online dominance, which he said enabled “it to prioritize its products and services over competitors.” Citing a September 2016 [report](#) by *ProPublica*, Cicilline writes that “Amazon’s pricing algorithm favors Amazon and its sellers by favoring ‘its own products ahead of better deals offered by others it charges for services.’” Read the entire letter [here](#). In related news, Senator Cory Booker told *Recode* this week that “consolidation that’s happening all over the country is not a positive trend,” and mentioned that Amazon, Facebook, and Google deserve regulatory attention in this regard. Booker said that the Congressional Black Caucus plans to send a letter to the Department of Justice raising concerns about the proposed Amazon-Whole Foods merger, citing fears that the merger could be harmful to majority-black areas lacking access to grocery stores. Booker also said that the “U.S. government absolutely should take a look at Google.” Read more [here](#).
- On Wednesday at 11 a.m. the House Administration Committee will hold a [hearing](#) on “Oversight of the Library of Congress’ Strategic Plan.” Librarian of Congress Dr. Carla Hayden will be the sole witness.
- House Judiciary Intellectual Property Subcommittee Chairman Darrell Issa (R-CA) and Ranking Member Jerrold Nadler (D-NY) introduced on Wednesday the *Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society (CLASSICS) Act*, which “establishes a federal intellectual property interest, granting the owners of pre-1972 sound recordings the exclusive right to digitally broadcast them.” The bill’s official [press release](#) characterizes the [legislation](#) as an “update” to the pre-1972 provisions of the broader *Fair Play Fair Pay Act*, and notes that the legislation is supported by organizations such as Pandora, the Internet Association, musicFIRST, SoundExchange, and the Recording Industry Association of America. Reps. Marsha Blackburn (R-TN), Tom Rooney (R-FL), Ted Deutch (D-FL), and House Judiciary Ranking Member John Conyers (D-MI) signed on to the bill as original cosponsors. In a *Billboard* [op-ed](#), SoundExchange President and CEO Michael Huppe praised the bill for requiring “digital radio services to compensate legacy (pre-1972) artists who gave the world jazz, Motown, and rock ‘n roll.” A one-pager detailing the bill’s provisions is available [here](#).

## II. Judicial Updates:

- Spotify was hit with two copyright lawsuits on Tuesday. Rights administrator Bluewater Music Services alleges that Spotify has infringed over 2000 copyrighted works, and Bob Gaudio, a member of the group Frankie Valli and The Four Seasons, alleges that Spotify has infringed over 100 of the group's works. The plaintiffs are both represented by King & Ballow attorney Richard Busch. Both lawsuits assert that Spotify built its business "by willfully infringing on the copyrights of creators of music worldwide without building the infrastructure needed to ensure that songs appearing on the Spotify service were properly licensed." The lawsuits also state that "prior lawsuits and settlements are woefully inadequate...and do not nearly compensate publishers for the value of Spotify built on unlawful exploitation, or punish Spotify sufficiently for its willful infringement." Read more [here](#).

## III. Administration Updates:

- D. Bruce Hoffman has been [selected](#) to serve as Acting Director of the Federal Trade Commission (FTC) Bureau of Competition. Hoffman is currently the head of law firm Shearman & Sterling's Antitrust Group. Current Acting Bureau of Competition Director Markus Meier will return to leading the Bureau's Health Care Division.
- Neil Alan Chilson has been appointed Chief Technologist at the Federal Trade Commission (FTC). Chilson was previously an Attorney Advisor in the Acting FTC Chairman's office, where he was responsible for technology, privacy, and data security issues. He previously worked at the law firm Wilkinson Barker Knauer, where he handled telecommunications and privacy issues. Read more [here](#).
- On Monday, the Office of the United States Trade Representative released its "[Summary of Objectives for the NAFTA Renegotiation](#)." On intellectual property, USTR writes that it wants to "ensure provisions governing intellectual property reflect a standard of protection similar to that found in U.S. law" and also "ensure standards of protection and enforcement that keep pace with technological developments, and in particular ensure that rightsholders have the legal and technological means to control the use of their works..." Senate Finance Chairman Orrin Hatch (R-UT) released a [statement](#) on the summary, writing that the "objectives—which will be further developed as the negotiations proceed—are an important part of the public discussion about the launch of the upcoming talks among our three nations." "However...future negotiating objectives must include stronger protections for intellectual property rights, upgraded rules and enforcement procedures for American exporters and investors, and improved regulatory practices that treat American goods and services fairly."

## IV. International Updates:

- Qualcomm lost an appeal before a European Union court against a \$665,000 daily fine for failing to submit certain requested information to the European Commission. The European Commission had previously charged Qualcomm with using anti-competitive tactics to the detriment of Icera, a British phone software company. Qualcomm has argued that the request for information is financially burdensome and time consuming. A judge ruled that Qualcomm "does not claim that its financial viability would be at risk or that its market share could be affected substantially," and further "does not give any explanation as to why

it would be impossible to seek compensation for the alleged financial costs it would suffer by answering the questions.” Read more [here](#).

## V. Industry Updates:

- On Monday, Robert Epstein—a senior research psychologist at the American Institute for Behavioral Research and Technology, and the former editor-in-chief of *Psychology Today* magazine—penned an op-ed in the *Huffington Post* on the European Union’s recent \$2.7 billion fine of Google for anticompetitive practices. In the piece, Epstein argues that the decision shows “authorities are...beginning to figure out how extensively Google is using its platforms to suppress competition and manipulate user behavior.” One such manipulation Epstein highlights is the “featured snippet.” “Google officials have long known that people don’t really want to see a list of 10,000 search results when they ask a question; they just want the answer,” Epstein writes. However, as Epstein explains, the answer is “often wrong” and when you give an undecided user what they believe to be “*the answer*” you have an “even larger impact on their opinions, purchases, and voting preferences.” Read more [here](#).
- Facebook is reportedly planning to offer a subscription service within the Facebook platform that will allow news outlets to put their articles behind a paywall. The paywall would activate after a viewer accesses 10 free articles in a month. *Business Insider* reports that Facebook has been talking to publishers about the subscription service, and plans to begin testing it in October. Read more [here](#).
- The D.C. Bar Intellectual Property Law Community has awarded former Register of Copyrights Maria Pallante the 2017 Champion of Intellectual Property Award. Pallante is currently the president and CEO of the Association of American Publishers. Read more [here](#).