



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 JUNE 2, 2017



### I. Congressional Updates:

- A bipartisan group of approximately 60 House members sent a [letter](#) to U.S. Trade Representative (USTR) Robert Lighthizer this week, urging him to “recognize the importance of promoting North American energy independence” when renegotiating the North American Free Trade Agreement (NAFTA). While the letter largely focuses on energy policy, the group also asks Lighthizer to “consider the importance of maintaining, and where feasible upgrading, policies regarding...protections for U.S. intellectual property.” Read more [here](#).
- The Senate Judiciary Committee has [scheduled](#) a vote for Makan Delrahim, President Trump’s nominee for Department of Justice antitrust chief, on June 8<sup>th</sup>. The Committee will also vote on the nomination of Noel Francisco to serve as U.S. Solicitor General.
- *POLITICO* is reporting this week that Everett Eissenstat, the current chief Republican trade counsel for the Senate Finance Committee, has been selected as the next Deputy Director for the White House’s National Economic Council. The role, which also includes serving as the deputy assistant to the president for international economic affairs, would see Eissenstat act as a “sherpa,” negotiating U.S. interests at the annual G-7, G-20 and Asia-Pacific Economic Cooperation Summits.. Responding to the reports, Senate Finance Chairman Orrin Hatch said that if the Trump Administration is interested in Eissenstat, “they’re approaching things pretty intelligently, because he’s very, very good.” Eissenstat is expected to replace Kenneth Juster, who is in line to become U.S. Ambassador to India.

### Headlines and Highlights:

- EU antitrust regulators to hit Google with large fine for distorting internet search results, *Reuters* reports.
- Senate Finance Committee staffer to join National Economic Council, *POLITICO* reports.
- Senate Judiciary Committee to vote on DOJ Antitrust nominee on June 8<sup>th</sup>.
- Librarian of Congress and Secretary of Commerce to testify before Senate on FY18 budget requests.

### In the Blogs:

#### [Some Curiosities of the Copyright World](#)

Hugh Stephens Blog  
May 26 by Hugh Stephens

#### [ReDigi Is Not About Consumer Rights](#)

The Illusion of More  
May 30 by David Newhoff

#### [Increase in IP-based Extortion Reveals True Nature of Piracy](#)

Mister Copyright  
May 31 by Kevin Madigan

- On Wednesday, June 7<sup>th</sup> Librarian of Congress Dr. Carla Hayden and Architect of the Capitol Stephen Ayers will testify before the Senate Appropriations Legislative Branch Subcommittee on the “FY2018 budget for the Library of Congress and the Architect of the Capitol.” On Thursday, June 8<sup>th</sup> the Senate Appropriations Subcommittee on Commerce, Justice and Science, and Related Agencies will hold a hearing on the FY2018 budget request for the Commerce Department. Secretary of Commerce Ross will testify.
- The House and Senate were in recess this week.

## II. Judicial Updates:

- In a court filing, Spotify has proposed creating a \$43.4 million fund to settle copyright class action lawsuits filed by songwriters Melissa Ferrick and David Lowery. Ferrick and Lowery had alleged in separate suits that Spotify offered music on its platform without securing the relevant mechanical rights. The fund would compensate a large number of songwriters and publishers, although many are not eligible due to having already accepted a March 2016 settlement between Spotify and the National Music Publishers’ Association. Under the new proposed settlement, Spotify would also work “collaboratively to improve the gathering and collecting of information about composition owners to help ensure those owners are paid their royalties in the future.” Read more [here](#) and [here](#).

## III. Administration Updates:

- In written responses to questions submitted by members of the Senate Judiciary Committee, Makan Delrahim—the nominee to head the Justice Department’s Antitrust Division—said that he will “vigorously enforce antitrust laws with respect to online platforms.” In the responses, obtained by *Axios*, Delrahim writes that “[a]ntitrust has a vital role to play in the high-tech, e-commerce economy to protect consumers,” and adds that any action by firms that may threaten competition in this sector “should be investigated and pursued...” Read more [here](#).

## IV. International Updates:

- Last weekend, the chief executives of more than 30 European publishing companies, including the Daily Mail, the Financial Times, the Guardian, and Le Monde wrote the European Parliament and European Commission asking them to scrap their proposed online privacy rules. The changes would allow users to opt out of cookies—which track the sites people visit while surfing the internet—through their respective browsers such as Google Chrome, rather than on individual websites, which is currently the standard practice. Publishers argue that this change would severely impact their ability to sell “relevant advertising” to their readers and ultimately undermine their “ability to invest in high-quality journalism across Europe.” Read more [here](#).
- *Reuters* reported on Thursday that EU antitrust regulators aim to hit Alphabet, Google’s parent company, with a large fine after the EU competition authority accused the company in April 2015 of distorting internet search results to favor its shopping service. The fine is expected to be announced before August, the report says, and could be as high as 10 percent of Google’s global turnover, or \$9 billion of its 2016 turnover. Read more [here](#).

## V. Industry Updates:

- On Wednesday, *FedScoop* and *CyberScoop* published an article in which they gathered leading public and private CIOs, CISOs and IT officials to discuss federal cybersecurity shortcomings. The officials identified five issues plaguing federal cybersecurity: lack of talent, duplicative systems, agility in cybersecurity, IT modernization, and poor communication. The article points out that the group was in near unanimous agreement that Congress—and it’s lack of IT knowledge—is the “root” of the problem. “Senators don’t understand the problem at all,” an IT official said. “They don’t understand computers.” Officials also agreed that central to creating secure federal IT systems is modernizing “ancient legacy systems.” “It’s about IT and security. We keep separating those two worlds—we’ve created stovepipes,” a CIO said. Read more [here](#).
- *Morning Consult* has profiled the copyright and patent court case in which Oracle is seeking \$9 billion in damages from Google over alleged infringement of Java API code. The case is now in the U.S. Court of Appeals in Washington, after a San Francisco District Court previously ruled against Oracle. The article highlights a passage from the Copyright Alliance’s [amicus brief](#) filed in the case. In the passage, the Copyright Alliance argues that “if applied broadly, the district court’s analysis would have a negative impact on potential or emerging markets for copyrighted works more generally, and would unduly harm individual creators and small businesses that do not have the resources to enter all potential markets simultaneously.” Read more [here](#).
- YouTube has expanded its [guidelines](#) aimed at teaching creators on the platform how to ensure that their content is “advertiser-friendly.” The company has come under fire recently from advertisers upset that their ads were appearing next to unsavory content. YouTube added three new examples of content that is “not suitable” for advertising: hateful content, incendiary and demeaning content, and inappropriate use of family entertainment characters. Although that list is not exclusive and appears to be intended to be instructive rather than a statement of policy, it does not include copyright infringing content. Read more [here](#).
- The National Legal and Policy Center (NLPC) has [alleged](#) that over 100,000 pro-net neutrality comments, submitted to the Federal Communications Commission (FCC) in connection with the Electronic Frontier Foundation’s (EFF) comment campaign, “appear to have been generated using both fake email and fake physical addresses and perhaps even fake names.” The NLPC further alleges that many of the comments were submitted “using what appear to be other people’s private email addresses,” and may have been “culled from spam and hacker databases available on the open web, or from other publicly available files found on the open web.” In [response](#), the EFF said that the report is “false” because the data cited in the report does not match “to any of the comments that came through the EFF’s comment tool,” although the NLPC had not alleged that the potentially fake submissions were submitted directly through that tool. Overall, the NLPC found that “more than 465,322 pro-net neutrality comment submissions (close to 20% of all pro-net neutrality comments filed)” were potentially fake. That number includes the approximately 100,000 comments allegedly connected to the EFF.
- On Thursday, Acting Register of Copyrights Karyn Temple Claggett released a revised draft of the *Compendium of U.S. Copyright Office Practices, Third Edition*. This draft

includes the first proposed updates to the *Compendium* since its release in December 2014. The public draft is [available on the Office's website](#). It will go into effect on July 3, 2017.

- The Copyright Royalty Judges request comments on proposed regulations to require covered cable systems to pay a separate per-telecast royalty (a Sports Surcharge) in addition to the other royalties that the cable system must pay under Section 111 of the Copyright Act. All comments must be received by June 20, 2017. For details, click [here](#). For an accessible version, click [here](#).
- On June 14<sup>th</sup> from 8:00 a.m. - 9:30 a.m., *Bloomberg* will be hosting a breakfast with House Energy and Commerce Committee Chairman Greg Walden (R-OR) in which he will provide an overview of his legislative priorities for the 115<sup>th</sup> Congress. The event will be held at Bloomberg's DC office. Sign up for the event [here](#).