



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 10, 2017



### I. Congressional Updates:

- On Wednesday, November 8<sup>th</sup> from 12:30 p.m. to 3:00 p.m. the Open Markets Institute—now independent from New America—held an event titled “[Are Tech Giants Too Big for America’s Democracy?](#)” The event featured keynote remarks from Senator Al Franken (D-MN)—Ranking Member of the Senate Judiciary Privacy, Technology and the Law Subcommittee as well as a member of the Antitrust, Competition Policy, and Consumer Rights Subcommittee. In his wide-ranging speech, Franken was highly critical of U.S. tech giants, specifically Amazon, Google, and Facebook, saying that they are too powerful and have the ability to “decide for us what we should read, watch, buy or even how we should engage in civil society, and they’re doing it all under the shadow of complicated algorithms.”
- On Tuesday, November 14<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.” Read more [here](#).
- On Thursday, Senate Republicans released their tax reform bill, which includes a 12.5 percent tax on American companies’ overseas intellectual property earnings. The provision is intended to incentivize corporations to keep their intellectual property assets in the United States. Read more [here](#) and [here](#).
- The Senate Commerce Committee [approved](#) the *Stop Enabling Sex Traffickers Act* (S. 1693) Wednesday by a unanimous voice vote. The vote came after the Internet Association issued a [statement](#) in support of the bill last Friday, citing “important changes” that were made to the

### Headlines and Highlights:

- Rep. Goodlatte, Chairman of House Judiciary Committee, announces he will not seek reelection.
- Senate Antitrust Subcommittee to hold hearing on the consumer welfare standard in antitrust.
- EU Competition Chief criticizes Google and Apple for using their power to stifle competitors.
- U.S., Canadian and Mexican officials to begin next NAFTA round early, focus on IP, *Reuters* reports.

### In the Blogs:

[Internet Association Reverses on SESTA. EFF Cranky.](#)

The Illusion of More  
September 11 by David Newhoff

[Canadian Literature in Canadian Schools and the Duration of Copyright Protection \(Don’t Mix Apples and Oranges\)](#)

Hugh Stephens Blog  
November 6 by Hugh Stephens

[Inside Views: The User Rights Database: Measuring The Impact of Copyright Balance](#)  
IP Watch

bill. *Wired* [reports](#) that there were two such changes, one clarifying that “that the law only applies to companies that facilitate sex trafficking, not those trying to identify and stop the behavior,” and one “allowing state attorneys general to prosecute suspected traffickers under federal, rather than state, law.” However, after the vote Senator Ron Wyden (D-OR) [announced](#) that he has placed a hold on the bill, and a number of tech groups, such as the [Electronic Frontier Foundation \(EFF\)](#) and [Engine Advocacy and Tech Freedom](#), remain opposed to the bill. Read more [here](#) and [here](#).

- On Wednesday, November 15<sup>th</sup> at 2:30 p.m. the Senate Judiciary Subcommittee on Antitrust, Competition and Consumer Rights will hold a hearing titled “The Consumer Welfare Standard in Antitrust: Outdated or a Harbor in a Sea of Doubt?” Read more [here](#).
- On Thursday, Rep. Bob Goodlatte (R-VA), Chairman of the House Judiciary Committee, announced that he will not seek reelection in 2018. Rep. Goodlatte, who is term-limited as Judiciary chairman, said that he will use his final year to “bolster enforcement of our immigration laws” and simplify the tax code “in order to stimulate job growth,” among other initiatives. Read more [here](#).
- On Tuesday, the Senate confirmed David Redl to lead the National Telecommunications & Information Administration (NTIA) by voice vote. Redl’s confirmation had previously been delayed due to a hold Senator Ted Cruz (R-TX) put on his nomination, citing concerns about Redl’s position on the ICANN transition. Read more [here](#) and [here](#).

## II. Judicial Updates:

- Late last week, the American Chemical Society won its copyright lawsuit against SciHub, a pirate site for scientific papers. A judge in the US District Court for the Eastern District of Virginia issued a default judgment granting all of ACS’ requests, including monetary damages, an injunction requiring search engines to block SciHub, and a decree that SciHub can no longer sell or promote any ACS works. Despite the ruling, it remains unclear whether or not SciHub faces any real danger of shutting down. The site is currently hosted in Russia and registered to a domain in the Cocos Islands. Read more [here](#).

## III. Administration Updates:

This week, ResearchGate, a social networking site for scientists and researchers to share papers, announced they had removed at least 1.7 million articles following a wave of take-down notices by the Coalition for Responsible Sharing (CRS). A spokesperson for CRS, a group of five publishers including Elsevier and Wiley and Brill, said that the action was a “positive step” but added, “If they were really [serious about our demands] they would identify which papers are under copyright and make sure that those only stay in private sharing networks”. Read more [here](#).

- ABC News is reporting this week that the White House is expected to announce that Jim Carroll, who most recently served as counsel in the Office of Management and Budget, will be named the next Deputy Chief of Staff. He will succeed Kirstjen Nielson who President Trump selected as the nominee to lead the Department of Homeland Security. Read more [here](#).

#### IV. International Updates:

- On Monday, *Reuters* reported that U.S., Canadian and Mexican officials will begin the next round of North American Free Trade (NAFTA) renegotiation talks ahead of schedule on Nov. 15<sup>th</sup>, two days earlier than the official Nov. 17<sup>th</sup> start date. “Some topics that will likely be discussed during those days include textiles, services, labor, and intellectual property. It’s very possible other topics will be added,” one of the officials said. Read more [here](#).
- On Tuesday, EU Competition Chief Margrethe Vestager gave a speech in Lisbon, Portugal at the 2017 Web Summit, one of the biggest tech conferences in the world. In her speech Vestager criticized Apple, Google, and other large tech companies for creating an uneven playing field. “[I]t’s a problem when successful companies, which dominate the market, decide to use their power to shut down competition. Because that can end up closing the door to innovation,” Vestager said. “That’s why dominant companies like Google have a special responsibility not to undermine competition. And we had to fine Google because it didn’t live up to that responsibility.” Read the entire speech [here](#).
- A number of digital music companies have launched a new European coalition called Digital Music Europe. The coalition’s membership includes Spotify, Deezer, and SoundCloud. *Billboard* reports that the coalition’s launch “comes at a pivotal time for digital music companies in Europe, with the European Commission currently exploring a number of proposals relating to modernizing copyright legislation and cross border access as part of its plans to create a Digital Single Market (DSM).” Read more [here](#).

#### V. Industry Updates:

- Law professor Mark Schultz has written an op-ed in *The Hill* arguing that Congress “should amend the DMCA to ensure the application of the safe harbor only to truly good-faith intermediaries, denying protections to infringers and those who build businesses around infringement.” Schultz also states that the administration should prevent the inclusion of “DMCA-like safe harbor in NAFTA.” The piece further argues that the courts “should more faithfully enforce the statutory conditions that must be met to qualify for the DMCA safe harbor protection,” and “stop ignoring and give effect to the DMCA provision that requires service providers to act to block infringements.” Lastly, Schultz calls on service providers to “voluntarily implement systems ensuring that infringing materials are taken down and stay down.” Read more [here](#).
- This week, ResearchGate, a social networking site for scientists and researchers to share papers, announced they had moved at least 1.7 million articles to make them less easily available following a wave of take-down notices by the Coalition for Responsible Sharing (CRS). CRS, a group of five publishers including Elsevier and Wiley and Brill, said that the action was a “positive step” but added that the papers still breach copyright and that ResearchGate allowed them to be re-uploaded into the public domain. Read more [here](#).
- On October 25<sup>th</sup> the Motion Picture Association of America (MPAA) submitted its 2018 [comments](#) regarding the “2018 National Trade Estimate Report on Foreign Trade Barriers.”

- The Copyright Office extended the deadline for submitting comments on its proposed rule, which replaces the “unpublished collections” registration option with a new group registration option. The Office also clarified that this new registration option is not intended for the group registration of unpublished photographs. Written comments on the proposed rule are due to the Office by November 17, 2017. Read the full notice [here](#).
- The Copyright Office updated its interim rule governing registration of secure tests, as published on June 12, 2017. The Office established a new group registration option for secure test questions and answers that are stored in electronic databases, test banks, or other mediums of expression. The update includes additional procedures for group registration. The Office is currently accepting public comments on this interim rule. Read the full notice [here](#).
- The Copyright Office issued an interim rule amending its regulations governing recordation of transfers of copyright ownership, other documents pertaining to copyright, and notices of termination. Specifically, the interim rule updates several provisions in the notice of proposed rulemaking published on May 18, 2017. Through this interim rule, the Office seeks to streamline the recordation process prior to the completion of the new electronic recordation system. Read the full notice [here](#).
- The Copyright Office published a final rule lowering the filing fee for electronic title documents. This reduced fee ranges from \$60 to \$5,550, depending on the number of titles submitted to the Office. Separately, the Office noted a policy change regarding fees for notices of intention (NOI) to obtain a compulsory license to make and distribute phonorecords. Due to the increased volume of return-to-sender NOIs, the Office will only process NOIs that are accompanied by a filing fee after December 18, 2017. Read the full notice [here](#).