



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT AUGUST 4, 2017



I. Congressional Updates:

- Senator Rob Portman (R-OH) and nineteen other senators have [introduced](#) a bill, called the *Stop Enabling Sex Traffickers Act*, that would “eliminate federal liability protections for websites that assist, support, or facilitate a violation of federal sex trafficking laws.” *Recode* reports that “the likes of Amazon, Facebook, and Google are about to go to war with” Congress over the bill, with the Internet Association [claiming](#) that the legislation “jeopardizes bedrock principles of a free and open internet.” Read more [here](#).
- On Thursday, Vishal J. Amin was unanimously confirmed by the Senate to serve as the next Intellectual Property Enforcement Coordinator (IPEC). House Judiciary Chairman Goodlatte (R-VA) released a [statement](#) following the vote calling Amin—who formerly worked on the Committee—a “valued member” of the staff who will be “a tireless advocate on behalf of American innovators and creators...”
- The Senate Commerce Committee voted on Wednesday to approve the nominations of Jessica Rosenworcel and Brendan Carr to serve on the Federal Communications Commission (FCC). Democrats objected to Carr’s nomination including both a first and a second term, with Ranking Member Bill Nelson (D-FL) saying that Senate leadership only plans to allow a floor vote on Carr’s first term. However, in the end, Carr—who was nominated for a first and second term—was confirmed for only one term expiring in June 2018. The committee had also been scheduled to vote on the nomination of David Redl to lead the National Telecommunications and Information Administration (NTIA), but Chairman Thune said that he

Headlines and Highlights:

- Senator Hatch speaks on growing controversy over antitrust law in the tech sector.
- Senate confirms Vishal Amin as next IPEC.
- York University in Canada announces appeal of copyright “fair dealing” decision.
- Internet Association criticizes online sex trafficking bill, claims it “jeopardizes” free and open internet.

In the Blogs:

[Academics Propose Tweaks to CDA Section 230](#)

Illusion of More

July 31 by David Newhoff

[Richard Prince and the Increasingly Permissive Treatment of Infringement](#)

Mister Copyright

July 31 by Kevin Madigan

[Google Seeks to Invalidate Canadian Supreme Court Decision through US Courts: Could Google be Surprised?](#)

Hugh Stephens Blog

August 2 by Hugh Stephens

has accepted requests from other committee members to delay that vote to allow time to follow up on concerns raised during Redl's confirmation hearing. Read more [here](#) and [here](#).

- On Thursday, Senator Hatch (R-UT) spoke on the Senate floor about the growing controversies regarding the application of antitrust law in the technology sector, specifically referencing the Democrats' "[Better Deal](#)" platform which pledges to better police mergers. "Antitrust has been increasingly drawn into the broader public debate on economic policy, and not for the better," Hatch said. "With each passing day, it seems [free market economics] finds itself besieged from the left." Hatch went on to touch on a number of topics, including the European Union's recent \$2.7 billion fine of Google which he called unjustified. Read more [here](#).
- On Thursday, the Senate Finance Committee held a hearing on the nomination of Gilbert Kaplan to serve as Under Secretary of Commerce for International Trade. During the hearing, Kaplan said that among his areas of focus would be opening the world to U.S. digital trade and ensuring the protection of U.S. intellectual property abroad. Kaplan suggested multiple times that Section 301 of the Trade Act of 1974 could be used to take action on intellectual property violations. He also suggested that Section 301 could be used for China's restrictions on cloud computing.

II. Judicial Updates:

- On Thursday, Rolan Feld, son of Marc Bolan, the deceased lead singer of the band T. Rex, sued Sony Pictures and other producers of the movie *Baby Driver* for allegedly using the T. Rex song "Debra" without permission. "Inexplicably, Defendants failed to obtain — or even seek — the permission of the composition's U.S. copyright holder Rolan Feld," states the [complaint](#). In the six weeks since Feld brought this infringement to Defendant Sony's attention, Defendants have done little more than point fingers at one another — and they have neither apologized nor offered to pay Feld a reasonable license fee." Lawyers for Feld are seeking disgorgement of profits and punitive damages. Sony has yet to publically comment on the lawsuit. Read more [here](#).

III. Administration Updates:

- On Friday, President Trump was scheduled to give a speech and sign a memorandum targeting Chinese theft of American intellectual property and other unfair Chinese trade practices. However, CNBC [reported](#) on Thursday that the speech has been postponed indefinitely. The memorandum would reportedly direct U.S. Trade Representative Robert Lighthizer to conduct an investigation of China's trade practices under Section 301 of the Trade Act of 1974. Read more [here](#) and [here](#). Additionally, to assist with the preparation of its annual report on China's compliance with World Trade Organization (WTO) commitments, the Office of the U.S. Trade Representative (USTR) has requested public input through comment submissions and a public hearing. Read the Federal Register notice [here](#). USTR is also seeking comments on significant barriers to U.S. exports, to assist with the preparation of its annual National Trade Estimate Report on Foreign Trade Barriers (NTE). Read the Federal Register notice [here](#).
- On Thursday, White House Office of American Innovation (OAI) staff, including Jared Kushner and Reed Cordish, held a conference call with large technology companies, according to *Recode*. The call reportedly included representatives from Apple, Amazon,

Google, Oracle, Qualcomm, IBM, Intel, Mastercard, Microsoft, and SAP. OAI staff allegedly told the companies that the White House plans to create “centers of excellence,” which *Recode* describes as “teams focused on reducing regulation while trying to get federal agencies to embrace cloud computing and make more of their data available for private-sector use.” OAI staff are also said to have discussed a potential system that would have tech engineers do short “tours of duty” in the federal government. Read more [here](#).

IV. International Updates:

- York University in Canada announced this week that they will appeal a Federal Court ruling that found them guilty of copyright infringement after the institution distributed course packs to students while refusing to compensate the copyright owners. York argued that the materials given out were small enough to be considered “fair dealing” thus avoiding copyright fees. The trial judge, Judge Phelan, disagreed, calling York’s guidelines “not fair in either their terms or their application.” Read more [here](#).

V. Industry Updates:

- On October 17-19 at the Mandarin Oriental in Washington, D.C., ChIPs, an organization founded in 2005 to “support and promote the advancement, development, and retention of women where technology, law, and policy converge” will be hosting the 2017 ChIPs Women in Tech, Law, and Policy Global Summit. The event will feature remarks from a number of speakers, including former Director of the United States Patent and Trademark Office (USPTO) Michelle Lee, who will also be inducted into the ChIPs Hall of Fame. More information can be found [here](#).
- The *Wall Street Journal* reports that Makan Delrahim, the nominee to lead the Department of Justice’s Antitrust Division, has promised Senator Richard Blumenthal (D-CT) that he will inform him of any attempt by the White House to inappropriately influence his decision making on the proposed AT&T-Time Warner merger. The *Journal* reports that this commitment was made in a meeting that included Delrahim, Senator Blumenthal, and Senate and Justice Department staff. Senator Blumenthal subsequently “memorialized the discussion” in a letter to Delrahim. Read more [here](#).
- American songwriter Burt Bacharach told BBC News on Thursday that music experts should be used to decide music-related copyright lawsuits such as the Blurred Lines and Ed Sheeran’s Photograph cases. “It’s not a perfect science,” Bacharach said. “I think what needs to be done is there has to be maybe three, four outstanding experts, musicologists, who can be trusted, who can differentiate and say ‘that’s derivative, that’s not derivative.’” Read more [here](#).