



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT JULY 14, 2017



### I. Congressional Updates:

- On Wednesday, July 19<sup>th</sup> at 10 a.m. the Senate Commerce, Science and Transportation Committee will hold a [hearing](#) to consider the nominations of Ajit Pai, Jessica Rosenworcel, and Brendan Carr to be members of the Federal Communications Commission (FCC).
- On Wednesday, the House Appropriations Subcommittee on the Interior, Environment, and Related Agencies approved the [FY2018 Interior Appropriations Bill](#). Notably, the bill provides for \$145 million in funding for both the National Endowment for the Humanities (NEH) and National Endowment for the Arts (NEA), a \$5 million decrease from the FY2017 level. More info [here](#).
- On Tuesday, July 18<sup>th</sup> at 10 a.m. the House Ways and Means Subcommittee on Tax Policy will hold a hearing on “NAFTA Modernization.”

### II. Judicial Updates:

- On Tuesday, U.S. District Court Judge Michael Fitzgerald rejected a copyright infringement complaint filed in March by Esplanade Productions against Disney and its Oscar-winning film *Zootopia*. Gary Goldman of Esplanade Productions alleged that Disney derived the concept for the movie after pitching his own project to the studio at least twice. Judge Fitzgerald granted Disney’s dismissal motion but with leave to amend due to Goldman failing to “attach the allegedly infringed materials to the Complaint” and not describing them “in sufficient detail to permit the requested analysis.” However, in the order to dismiss, Judge Fitzgerald stated

### Headlines and Highlights:

- *Wall Street Journal* reports on Google’s academic influence campaign.
- Spotify close to reaching licensing agreement with Sony Music Entertainment, *Billboard* reports.
- President Trump nominates Dennis Shea to serve as next Deputy USTR.
- House Ways and Means Subcommittee to hold “NAFTA Modernization” hearing.

### In the Blogs:

[Jonathan Taplin’s “Move Fast and Break Things”: A Sombre Warning—And a Call for Action](#)

Hugh Stephens Blog  
July 11 by Hugh Stephens

[A Lot of Noise on Spotify](#)  
The Illusion of More  
July 10 by David Newhoff

[EPO Begins Process For New President, Administrative Council Head](#)

IP Watch  
July 12 by Dugie Standeford

that the differences in character design and plot between the two movies “outnumber the similarities.” Read more [here](#).

- This week, the Federal Court of Canada ruled that Toronto’s York University will have to pay Access Copyright, a collective that provides institutions with copyrighted works while distributing the royalties to the owners they represent, after York created a program which permitted copying up to 10 percent of a protected work without paying the collective. York University severed their relationship with Access Copyright in 2011 citing rising tariffs, however, Access Copyright sued York after learning of their “fair dealing” program. In the decision, released Wednesday, Justice Michael L. Phelan wrote that “York has not satisfied the fairness aspect of the quantitative amount of the dealing. There is no explanation of why 10 per cent or a single article or any other limitation is fair.” Read more [here](#).

### III. Administration Updates:

- On Monday, the Senate voted 54-41 to confirm Neomi Rao to be administrator of the White House Office of Information and Regulatory Affairs (OIRA). In the position Rao will oversee the federal government’s entire regulatory process and all proposed and final rules, as well as government data collections, have to be approved by OIRA. Rao is the founder of the Center for the Study of the Administrative State at George Mason University which is [tasked](#) with examining “the administrative state as a whole, its constitutional foundations and its political and economic impacts.” Rao is also a former staffer of Sen. Orrin Hatch (R-UT). Following her confirmation, Hatch issued a [press release](#) praising Rao, calling her a “sharp and principled public servant.” Read more [here](#).
- *Science* magazine is reporting this week on that the White House Office of Science and Technology Policy (OSTP) is “still small and waiting for leadership.” In interviews with administration officials and past OSTP staffers, *Science* reported that the office now has 35 staffers and, while there has been no formal reorganization of OSTP, a “smaller, more collaborative staff” is now grouped around three areas—science, technology, and national security. Read more [here](#).
- On Tuesday, President Trump [announced](#) the nomination of Dennis Shea to serve as Deputy United States Trade Representative (Geneva Office). Shea previously served as the vice chairman of the U.S.-China Economic and Security Review Commission, which is charged with annually assessing the security, economic and trade relationship between the two nations. Read more [here](#).

### IV. International Updates:

- *Reuters* reports that Google has hired law firms Cleary Gottlieb, Allen & Overy, Slaughter and May, Garrigues, and White & Case to handle its antitrust battles with European Union regulators. Google was recently fined \$2.7 billion for practices related to its shopping service, and is reportedly facing further penalties for practices related to its Android operating system and its AdSense platform. Read more [here](#).

### V. Industry Updates:

- *Billboard* is reporting this week that Sony Music Entertainment has reached a licensing agreement with Spotify. The deal would make Sony the second major label to reach an

agreement with Spotify after Universal Music Group (UMG) and the streaming service announced a multi-year agreement in April. While the terms of the Sony deal have not been reported, the UMG agreement lowered Spotify's royalty percentage from 55 percent of revenue to 52 percent. Read more [here](#).

- On Thursday it was [announced](#) that Joanna McIntosh, executive VP for global policy and external affairs at the Motion Picture Association of America (MPAA), will be joining NCTA: The Internet & Television Association as senior VP of government affairs. McIntosh, slated to begin at NCTA in September, will report to NCTA president Michael Powell.
- *Music Business Worldwide* reports that Facebook is looking to hire a “Music Business Development Manager” to “lead Facebook’s strategy and negotiations with digital music services.” *Music Business Worldwide* speculates that this hiring effort could imply that Facebook intends to forge “some kind of revenue-share-esque deals with the likes of Spotify, Shazam, YouTube etc. so that they can be more integrated on the Facebook platform.” It could also indicate that Facebook has “settled on a music strategy weighing more on relationships with existing third-party services than the launch of a proprietary music platform.” Read more [here](#).
- *The Wall Street Journal* has published an exposé on Google’s funding of academic research favorable to its interests. The company allegedly has spent between \$5,000 to \$400,000 to fund favorable academic research, and has at times “compiled wish lists of academic papers that included working titles, abstracts and budgets for each proposed paper,” and then used those wish lists to search for authors. Overall, the article states that since 2009, Google funded around 100 academic papers on public policy matters, and “another 100 or so research papers were written by authors with financing by think tanks or university research centers funded by Google and other tech firms.” The *Journal* article also states that “several” Google-funded papers argued “that Google’s search engine should be allowed to link to books and other intellectual property that authors and publishers say should be paid for.” Google also funded research in areas such as antitrust policy, consumer data privacy, and patent law. Read more [here](#).
- News Media Alliance president and chief executive David Chavern published an op-ed in the *Wall Street Journal* this week stating that the Alliance is proposing “a new law granting a limited safe harbor under antitrust for publishers to negotiate collectively with dominant online platforms” such as Facebook and Google. Chavern argues that “Google and Facebook’s duopolistic dominance of online advertising” is a “threat to America’s news industry” that “could do far more damage to the free press than anything the president posts on Twitter.” He argues that this dominance is especially troubling given that the two companies do not themselves “dig through public records to uncover corruption, send correspondents into war zones, or attend last night’s game to get the highlights,” instead “expect[ing] an economically squeezed news industry to do that costly work for them.” Read more [here](#).