



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 30, 2017



I. Congressional Updates:

- On Tuesday, House Judiciary Chairman Goodlatte (R-VA) [announced](#) the addition of Rep. Karen Handel (R-GA) to the Committee. Rep. Handel is the second Republican addition to the Committee this month, with Rep. John Rutherford (R-FL) [joining](#) on June 13. However, Judiciary Republicans are losing Rep. Jason Chaffetz (R-UT), who is [leaving Congress](#) on June 30.
- On Thursday, the House Appropriations Committee passed the FY 2018 Legislative Branch Appropriations Bill by voice vote. The bill appropriates \$28.446 million for the Copyright Office for FY18, as opposed to the FY17 appropriation of \$23.098 million.
- On Thursday, the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law held a hearing titled 'Recent Trends in International Antitrust Enforcement.' The hearing focused on a recent [report](#) issued by the International Competition Policy Expert Group (ICPEG) and commissioned by the U.S. Chamber of Commerce, which found that certain of the United States' major trading partners appear to have used their competition laws to harm U.S. companies, protect their own markets from foreign competition, promote national champions, force technology transfers, and in some cases deny U.S. companies fundamental due process. Among the potential solutions proposed by ICPEG, witnesses discussed the establishment of a White House working group focused on the coordination of competition and international trade policy within the U.S. government, public exposure of foreign efforts to use competition laws to harm U.S. companies, dialog with trading partners, and

Headlines and Highlights:

- Rep. Karen Handel (R-GA) joins the House Judiciary Committee.
- USTR holds public hearings on NAFTA renegotiation, issues request for comment on performance of current trade deals.
- European Union fines Google \$2.7 billion.

In the Blogs:

[Packingham Ruling Likely Not Instructive to DMCA](#)

Illusion of More

June 23 by David Newhoff

[Copyright, Folklore and Traditional Native Culture](#)

Hugh Stephens Blog

June 25 by Hugh Stephens

[EPO Staff Calls General Strikes to Protest Presidential Reform Plans](#)

IP Watch

June 27 by Dugie Standeford

working within multilateral institutions in which the U.S. is already heavily involved. Intellectual property received some mention during the hearing, but little in-depth discussion. It was pointed out at several points that some countries use competition policy to force tech transfers and licensing of U.S. companies' intellectual property rights at lower rates. There was some limited discussion of American tech companies, especially investigations in China, Taiwan, the EU and the U.S. into alleged anticompetitive behavior by Qualcomm.

II. Judicial Updates:

- Magazine writer Kevin Powell has filed a copyright infringement lawsuit against a number of entities involved in the production of 'All Eyez On Me,' a film about rapper Tupac Shakur. Powell alleges that the film makes unauthorized use of content from his articles and interviews with the rapper. Read more [here](#).
- On Monday, U.S. District Judge Lucy Koh of the Northern District of California in San Jose denied Qualcomm's motion to dismiss the Federal Trade Commission's lawsuit against the company for allegedly engaging in anticompetitive tactics to maintain a monopoly on the cellphone chip market. Koh argued that the FTC had "adequately alleged" anticompetitive behavior. Read more [here](#).

III. Administration Updates:

- USTR held three days of hearings this week to obtain stakeholder input on the upcoming renegotiation of the North American Free Trade Agreement (NAFTA). In discussions on copyright issues, representatives from the International Intellectual Property Alliance and the Recording Industry Association of America (RIAA) argued that we should not export American copyright exceptions and limitations such as fair use through NAFTA, and that Canada has overly broad copyright exceptions and limitations. On the other hand, a speaker from the Internet Association lauded fair use policies as important for tech companies, and criticized Mexico for its lack of such policies. Participants also discussed safe harbors for internet services providers, with representatives from the Computer & Communications Industry Association (CCIA), the Library Copyright Alliance, the Internet Association, and the Consumer Technology Association advocating for the inclusion of safe harbor rules in NAFTA. A representative from the RIAA argued that safe harbors should apply only to passive networks, not to content distributors. Participants also discussed copyright enforcement and remedies, with representatives from the RIAA and Motion Picture Association of America (MPAA) advocating for improved remedies such as injunctive relief. Conversely, a participant from the Library Copyright Alliance opposed any increase of remedies, framing the matter as a "proportionality" issue, and a representative from the Organization for Transformative Works stated that NAFTA should not instate statutory damages for domestic copyright infringement in Mexico. Other topics covered include copyright term (some panelists argued that the term in the agreement should be limited to life + 50 to give the U.S. more flexibility to lower its term), technical protection measures, and international exhaustion.
- The Office of the United States Trade Representative (USTR) has issued a request for comments to be considered as part of its performance reviews of U.S. trade agreements and

other trade relationships. Those performance reviews are required by President Trump's April 29 Executive Order titled '[Addressing Trade Agreement Violations and Abuses.](#)' USTR is requesting comments on (a) the performance of individual free trade agreements (FTAs) and bilateral investment treaties (BITs); (b) the performance of WTO agreements with regard to trading partners with which the U.S. does not have an FTA, but with which the U.S. runs significant trade deficits; and (c) the performance of U.S. trade preference programs. The request for comments asks commenters to address a number of specific harms or benefits resulting from any trade agreement or treaty, including "violations or abuses" of an agreement that have, for example, "harmed intellectual property rights held by U.S. companies and U.S. persons; reduced the rate of innovation in the United States; or impaired research and development from occurring in the United States." Comments are due on July 31, 2017. Read the request for comments [here](#).

- Chris Campbell, Staff Director for the Senate Finance Committee, was [nominated](#) this week to serve as Assistant Secretary for Financial Institutions at the U.S. Treasury Department. Senate Finance Chairman Orrin Hatch (R-UT) announced that the Committee's Policy Director, Jay Khosla, will succeed Campbell as Majority Staff Director. Read more [here](#).
- President Trump has chosen to nominate Brendan Carr to serve as a Federal Communications Commission (FCC) commissioner. Carr, who currently serves as the FCC's general counsel and previously worked on the staff of FCC Chairman Ajit Pai, would fill a Republican vacancy on the commission. Read more [here](#).

IV. International Updates:

- On Tuesday, European Union antitrust regulators announced a fine of \$2.7 billion on Google for using its search engine to unfairly steer traffic to its shopping platform. "What Google has done is illegal under EU antitrust rules," Margrethe Vestager, European Commissioner for Competition, said. "It denied other companies the chance to compete on the merits and to innovate. And most importantly, it denied European consumers a genuine choice of services and the full benefits of innovation." Regulators also stipulated that Google has 90 days to alter its behavior or face additional fines and penalties. Following the ruling, a Google spokesperson said that the company "respectfully disagree[s] with the conclusion" reached by the EU. "We will review the Commission's decision in detail as we consider an appeal, and we look forward to continuing to make our case." Sen. Blumenthal (D-CT), a member of the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, said the fine could be used as an impetus for the Federal Trade Commission to reinvestigate Google. "Here in the United States, the FTC must confront the mounting evidence that Google is manipulating search results in anticompetitive ways and possibly running afoul of our antitrust laws." Rep. Lofgren (D-CA), who represents part of Silicon Valley, criticized the fine, calling it "unfair" and "overzealous." Read more [here](#) and [here](#).
- On Sunday, Indian Prime Minister Narendra Modi met with U.S. executives ahead of his state visit to the United States, according to the *Economic Times*. Corporations participating in the meeting with Modi included technology companies such as Amazon, Apple, Google, and Adobe, as well as companies from other sectors, such as Caterpillar, Walmart, and JP Morgan. The group reportedly discussed topics such as Indian tax policy, measures to entice

foreign companies to do business in India, and India's demonetization. Read more [here](#).

- The Supreme Court of Canada has ruled that Google must remove illegal websites from its search results. Notably, the Court specified that the ruling applies worldwide, not just in Canada, arguing that “the internet has no borders...the only way to ensure that the interlocutory injunction attained its objective was to have it apply where Google operates – globally.” The ruling came in a suit between Google and Canadian tech company Equustek Solutions, which has been fighting Google since 2011 over illegal websites in Google's search results. A number of music industry organizations praised the decision, with Music Canada CEO Graham Henderson saying in a statement that the decision “confirms that online service providers cannot turn a blind eye to illegal activity that they facilitate.” Read more [here](#).

V. Industry Updates:

- The Copyright Office has issued a notice of inquiry and request for petitions on exemptions to permit circumvention of access controls on copyrighted works. The Office states that it is “initiating the seventh triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”),” and that in this proceeding the Office is “establishing a new, streamlined procedure for the renewal of exemptions that were granted during the sixth triennial rulemaking.” Members of the public seeking the renewal of current exemptions can submit petitions by July 30, 2017, and parties opposing such renewal will then have the opportunity to file comments in response. The Office is also accepting petitions for new exemptions, which may include proposals that expand upon a current exemption. The Office states that “those petitions, and any renewal petitions that are meaningfully opposed, will be considered pursuant to a more comprehensive rulemaking process similar to that used for the sixth rulemaking (*i.e.*, three rounds of written comment, followed by public hearings). Read the Federal Register notice [here](#).
- The Copyright Office has adopted a final rule requiring that applicants seeking copyright registrations for groups of contributions to periodicals must submit applications through the Office's electronic registration systems, among other changes to its procedures for group registration of contributions to periodicals. Read the final rule [here](#).
- Tim Westergren has reportedly decided to step down from his position as CEO of Pandora. *Recode* reports that he is expected to continue as CEO until the company selects his replacement. Read more [here](#).
- The *Wall Street Journal* reported this week that Facebook is in talks with Hollywood studios to produce original programming such as television shows and short-form content. The *Journal* reports that “in meetings with major talent agencies...Facebook has indicated it is willing to commit to production budgets as high as \$3 million per episode,” and is also interested in shows with per-episode budgets “in the mid-to-high six figure-per-episode range.” Furthermore, Facebook will allegedly “be aggressive about trying to own as much of that content as possible.” Read more [here](#).
- The Trustworthy Accountability Group (TAG) has launched a new tool aimed at combatting mobile apps that distribute pirated content. The tool, called the TAG Pirate Mobile App Tool, will provide an up-to-date blacklist of apps that TAG members and other

organizations have identified as involved in the distribution of pirated content. Read more [here](#).

- This week, Twitter suspended the accounts of a number of music publications, such as The Fader and Hip Hop N More, for tweeting infringing content. The accounts allegedly posted content from the BET Awards and the NBA Awards, causing copyright violation notices to be filed against them. *Buzzfeed News* reports that “the publications are addressing the issues with legal teams and Twitter to reinstate their accounts,” but “still, the hard line from Twitter is a clear signal to publications and individuals that a copyright violation notice from a major media company is the most reliable way to lose access to one’s account.” Read more [here](#).
- *ProPublica* has published an exposé on Facebook’s policies for identifying and removing hate speech from its platform. The organization claims to have reviewed a “trove of internal documents” that “shed new light on the secret guidelines that Facebook’s censors use to distinguish between hate speech and legitimate political expression.” For example, *ProPublica* finds that Facebook deletes derogatory content when it is directed at certain “protected categories” based on, for example race or religious affiliation, but allows “broader latitude” when derogatory content is directed at certain “subsets” of those protected categories. Read more [here](#).