



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 22, 2017



I. Congressional Updates:

- On September 18, 2017, the Center for Strategic & International Studies hosted United States Trade Representative Robert Lighthizer to discuss U.S. Trade Policy Priorities. Ambassador Lighthizer made four general points in his speech. First, contrasting his and the President's views with those whom he characterized as "sincerely believ[ing] that the prevailing world trade policy has been great for America," Lighthizer stated that "we must use all instruments we have to make it expensive to engage in non-economic behavior, and to convince our trading partners to treat our workers, farmers, and ranchers fairly." Second, Lighthizer said that he believes "that trade deficits matter," and that "faced with decades of large deficits globally and with most countries in the world," we must ask "whether the rules of trade are causing part of the problem." Third, Lighthizer argued that China is a challenge "that is substantially more difficult than those faced in the past," particularly with regard to China's subsidizing of Chinese enterprises and forced technology transfers from American businesses. Lighthizer believes that "the World Trade Organization is not equipped to deal with this problem," and that we "must find other ways to defend our companies, workers, farmers, and indeed our economic system." Watch the speech [here](#).
- On September 26th at 2:30 p.m. the Senate Commerce Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security will hold a hearing titled "FTC Stakeholder Perspectives: Reform Proposals to Improve Fairness, Innovation, and Consumer Welfare." Read more [here](#).

Headlines and Highlights:

- Group of trade association, tech companies, and creative organizations form pro-IP ACTION for Trade.
- Noel J. Francisco confirmed by Senate as next U.S. Solicitor General.
- Senate Commerce holds hearing on bill amending Section 230 of Communications Decency Act.
- 23 music organizations write USTR urging him to protect IP in renegotiated NAFTA.

In the Blogs:

[UNESCO's Guidelines on Contemporary Culture in the Digital Environment: Worth Thinking About](#)

Hugh Stephens Blog
September 18 by Hugh Stephens

[Internet Association Wants to Encode Safe Harbors in New NAFTA](#)

The Illusion of More
September 19 by David Newhoff

[USTR Launches Review Of IP In Thailand After Reported Improvements On Enforcement](#)

IP Watch
September 16 by William New

- On Tuesday, September 19th the Senate [confirmed](#)—by a vote of 50-47—Noel Francisco to serve as U.S. Solicitor General, the government’s top lawyer at the U.S. Supreme Court.
- On September 19, 2017 at 10:30am, the U.S. Senate Committee on Commerce, Science, & Transportation held a hearing on S.1693 the Stop Enabling Sex Traffickers Act of 2017 (SESTA). According to the hearing announcement, the bill would amend Section 230 of the Communications Decency Act to “create new legal liability for internet companies whose sites knowingly facilitate sex trafficking and other crimes through content hosted on their platform.” Addressing push-back from the tech community in his opening remarks, Chairman John Thune (R-SD) stated, “I believe the cooperation of the tech industry will be critical to any effective solution this Committee and our Senate colleagues might hope to forge.” However, he cautioned that “these companies . . . have an obligation to do more” to fight sex trafficking. Ranking Member Nelson was more direct in his criticism of S. 1693’s opponents, saying that the bill “would *not*, as some claim, take a sledgehammer to the Internet,” and characterizing the bill as a “responsible and targeted approach, one that the courts tell us we can take, to limit the scope of the current law and help end the scourge of child sex trafficking on the Internet.” Watch the archived hearing [here](#).
- The Library of Congress has launched a new online initiative called ‘labs.loc.gov’ that aims to facilitate and improve public engagement with the Library’s digitized collections. The initiative includes offerings such as crowdsourcing of the process of making photographs and cartoons in historic newspapers searchable, and the creation of application programming interfaces (APIs) for digital collections. Read more [here](#).

II. Judicial Updates:

- On Monday, songwriters Sean Hall and Nathan Butler filed a copyright lawsuit against Taylor Swift alleging that she stole their lyrics for her 2014 hit song “Shake It Off.” Swift’s representatives have rejected the songwriters’ claims as “ridiculous” and “nothing more than a money grab.” Read more [here](#).

III. Administration Updates:

- On Friday, the Department of Commerce released a report titled, “[U.S.-Produced Value in U.S. Imports from NAFTA](#)” which contains data showing the U.S.’ diminished role in manufacturing products that are bought and sold around the continent. The *New York Times* is reporting that the report is “expected to dominate NAFTA discussions over so-called ‘rules of origin.’” Read more [here](#).
- The Office of the U.S. Trade Representative (USTR) has issued requests for comments regarding its Special 301 Out-of-Cycle reviews of [Thailand](#) and [Colombia](#).

IV. International Updates:

- In the wake of the European Union’s \$2.89 billion fine of Google for inappropriately directing consumers to its own shopping platforms, the search engine giant announced this week plans to auction off shopping ad spaces to rivals. Under the proposal, Google would reportedly bid against rivals to display products for sale in the space above its general

search results. Although Google announced last week that it would appeal the EU's ruling, the company is required to comply while any legal action is ongoing. Read more [here](#).

- UK Music released its [2017 Measuring Music report this week](#), finding that the UK music industry contributed £4.4 billion to the UK economy in 2016, growing by 6% that year. The report contains a wide variety of statistics on the UK music industry, including findings on music consumption habits by age. For example, the report finds that “radio accounted for just a tenth of 16-19 year old listening time, while on-demand streaming accounted for 62%” of listening time in that age group.
- *Reuters* reported this week that China's commerce ministry will conduct a “four-month crackdown” on intellectual property theft, starting this month. China will reportedly “target theft of business secrets, knockoffs of well-known brands, the trade of goods in violation of intellectual property rights and take steps to protect copyrighted material.” Read more [here](#).
- The International Association of Scientific, Technical, and Medical Publishers (STM) sent a letter late last week to the Berlin-based academic networking website ResearchGate regarding the illegal sharing of articles on the platform. The letter proposes a “solution...that would enable ResearchGate to operate in a way that would be consistent” with STM's ‘Voluntary Principles on Article Sharing.’ STM's proposal includes the use of an automated system that would indicate the extent to which certain articles can be shared, and messages sent to authors showing them “how to obtain rights to post [a particular] article more widely.” Read more [here](#).

V. Industry Updates:

- On Tuesday, a group of trade associations, technology companies, and creative organizations announced the launch of “ACTION for Trade,” a coalition that aims to ensure U.S. trade policy and trade agreements advance “a pro-creativity and innovation agenda and prevent foreign countries from stealing intangible assets developed by U.S. creators and innovators.” Members include the Motion Picture Association of America (MPAA), Authors Guild, and RIAA, amongst others. Read more [here](#).
- A coalition of 23 music industry organizations, including SoundExchange, the Songwriters Guild of America, RIAA, SAG-AFTRA, the Recording Academy, ASCAP, and BMI, have written a letter to U.S. Trade Representative Robert Lighthizer urging him to, when renegotiation NAFTA, advance “an inclusive digital trade policy that capitalizes on the contributions of our creators to jobs, growth, and the U.S. competitive advantage in trade.” The letter is primarily a response to a recent letter that the Internet Association sent to Robert Lighthizer outlining its NAFTA priorities. The music industry groups claim that the Internet Association's letter would have Lighthizer “insert into NAFTA vast loopholes in the American copyright system,” which “would be an open invitation to America's trading partners to act as havens for piracy and refuges for those who illegally infringe American creative content.” In particular, the music industry letter addresses the issue of safe harbors, urging Lighthizer not to use the safe harbor provisions from TPP in NAFTA. Read the letter [here](#). Separately, Creative Future also sent Lighthizer a similar [letter](#) this week critical of the Internet Association's letter.
- *Politico* has profiled the ongoing dispute between New America and Open Markets that saw the lead researcher for the Open Markets team ousted from New America after

criticizing Google on antitrust grounds. The article argues that the controversy is part of a larger struggle over the goals of the Democratic Party, with Open Markets “trying to push [the Democratic Party] into a new fight against global corporate titans...and arguing that it’s time to use federal antitrust law to chip away at their influence.” While the Democratic Party has incorporated antitrust policy into its new ‘Better Deal’ platform, “it has still not adopted the more ambitious and controversial aspects of Open Markets’ broader political philosophy,” with “none of the new [Democratic Party] plans target[ing] Amazon, Google, Facebook or the other big tech firms.” Read more [here](#).

- The International Federation of the Phonographic Industry (IFPI) has released its [2017 Music Consumer Insight Report](#), which found that 40% of consumers access unlicensed music, including 35% who engage in stream ripping. The report also asserts that the ‘Value Gap,’ in which user upload video services such as YouTube “do not return fair value to the music community,” is the “single biggest threat facing the music world today,” given that video streaming accounts for 55% of on-demand music streaming time.
- In light of recent revelations that Russian entities used Facebook to interfere in the 2016 U.S. election, Facebook CEO Mark Zuckerberg gave a [speech](#) on Thursday outlining nine steps that Facebook will take to “protect election integrity and make sure that Facebook is a force for good in democracy.” Those steps include cooperating with U.S. government investigators and continuing the company’s internal investigation into election interference on Facebook. Facebook will also require political advertisers to “disclose which page paid for an ad,” and will “make it so that you can visit an advertiser’s page and see the ads they’re currently running to any audience on Facebook.” Additionally, Facebook will “strengthen” its ad review process for political ads. However, Zuckerberg added a caveat, saying, “Now, I’m not going to sit here and tell you we’re going to catch all bad content in our system. We don’t check what people say before they say it, and frankly, I don’t think our society shouldn’t want us to.” Read more [here](#). This week, Senate Intelligence Committee Ranking Member Mark Warner (D-VA) said that in addition to Facebook, sites like Twitter and Reddit were likely used by Russian entities to interfere with the election. Read more [here](#). In related news, Facebook CEO Sheryl Sandberg [responded](#) on Wednesday to a Pro Publica report finding that Facebook allowed advertisers to use offensive terms as ad targeting criteria. Sandberg outline steps the company will take to improve its ad targeting system.
- The Copyright Office has begun releasing updated circulars on a “wide range of topics including copyright fundamentals, core Office procedures, Licensing Division practices, and work-specific application tips.” The updated circulars are reformatted for online reading and revised to conform to the third edition of the Compendium of U.S. Copyright Office Practices. Thirty-one circulars were released this week, and more will be released on a rolling basis through the end of 2017. Read more [here](#).