

CONTENT & TECHNOLOGY POLICY REPORT OCTOBER 7, 2016



I. Congressional Updates:

- This week, the Government Accountability Office (GAO) has agreed to conduct a study of the Committee on Foreign Investment in the United States (CFIUS) following a request, sent on September 16th by members of Congress, asking the agency to review whether CFIUS “is fully empowered to address” a “rapidly changing foreign investment climate, the rise of technology and information warfare, and new state-owned or -controlled companies that are structured as independent entities but are largely directed by foreign governments.” The letter specifically mentions Chinese conglomerate Dalian Wanda’s U.S. movie theater acquisitions as an impetus for the investigation, saying it presents “growing concerns” about potential Chinese censorship. Read more [here](#).
- On Monday, Senate Finance Chairman Orrin Hatch (R-UT) and House Ways & Means Committee Chairman Kevin Brady (R-TX) sent a letter to U.S. Trade Representative (USTR) Michael Froman stating that although they want USTR to “make as much progress as possible by then end of this year to create momentum for further action on a comprehensive TTIP next year”, they “remain concerned...by the unwillingness of the EU to negotiate on key issues of high priority for the United States.” In particular, they mention that “the EU has not appeared committed to our goal of full tariff elimination for all products, including in the agriculture sector”, and that the “EU continues to seek to exclude key [service] sectors.” They also say, “TTIP must include clear and enforceable commitments on digital trade, but the EU has not engaged meaningfully in this sector, particularly regarding cross border data flows and data server

Headlines and Highlights:

- Copyright Alliance and CreativeFuture send pro-creator letter to federal political candidates.
- GAO agrees to conduct study of Committee on Foreign Investment in the U.S. following reports of Chinese conglomerate purchasing major U.S. movie theater chains.
- Reports indicate that Amazon is in advanced talks with European Union antitrust regulators to settle a year-long investigation into its eBook deals with publishers.

In the Blogs:

[How the “Dancing Baby” Case Went Crazy](#)

Illusion of More

October 6 by David Newhoff

[Exploring the Gray Area of Plagiarism](#)

Plagiarism Today

October 5 by Jonathan Bailey

[WIPO Development Agenda Needs More Promotion, Country Involvement, Experts Say](#)

Intellectual Property Watch

October 5 by Catherine Saez

localization requirements.” The Chairmen also mention concerns about adequate intellectual property protections, sanitary and phytosanitary issues, the EU’s “attempts to include geographical indicators (GIs) in the agreement and to export its GI system to other countries”, and the “EU’s apparent unwillingness to include an adequate” investment dispute resolution mechanism. Read more [here](#).

- Late last week, Sens. Brown (D-OH), Casey (D-PA), Merkley (D-OR), Hirono (D-HI), and Markey (D-MA) sent a letter to President Obama saying that the Trans-Pacific Partnership (TPP) should not be signed until it is renegotiated, citing “fundamental flaws” such as a failure to address “currency manipulation,” amongst other things. Read more [here](#).

II. Judicial Updates:

- A federal judge in California has issued a ruling that makes it harder for rights holders to use geolocation data to go after copyright infringers. The judge ruled that since IP addresses assigned to residential users can change, geolocation that relies on IP addresses must be “performed in temporal proximity to the offending downloads” in order to be (potentially) “probative of the physical location of the subscriber.” *TorrentFreak* reports that this requirement may be difficult to satisfy: although ISPs “keep a log of...IP-address assignment changes” rights holders have to prove, using geolocation, that the case is being filed in the correct district, and a subpoena cannot be issued unless jurisdiction has been established. The article also points out that “geolocation databases are far from perfect and most are not updated instantly”, making it difficult for rights holders to obtain geolocation information at the time of infringement. Read more [here](#).

III. Administration Updates:

- On Thursday, Fred Hochberg, chairman of the Export-Import Bank of the U.S., told CNBC that China is ready to “pounce in” to engage with the other TPP-member countries should the trade pact fail. “We really can’t afford to sit on the sidelines and lose out,” Hochberg said, adding that “If we don’t do TPP, China is ready to engage with them.” Read more [here](#).
- Last Friday, President Obama’s top economic advisor Jason Furman told reporters of the White House’s latest pitch to lawmakers opposed to TPP: “What’s the alternative?” Furman also plans to continue underlining the significant cost associated with delaying a vote on TPP—\$94 billion each year, according to the White House. Read more [here](#).

IV. International Updates:

- On Wednesday, International Monetary Fund Managing Director Christine Lagarde, World Bank Group President Jim Yong Kim and World Trade Organization Director-General Roberto Azevado wrote an op-ed in *The Wall Street Journal* arguing that trade must be used as a tool to increase worldwide economic growth. “Let’s be clear about what’s at stake: Trade is not an end in itself, but a tool for better jobs, increased prosperity and reduced global poverty,” the leaders wrote. “By marrying greater economic openness with supportive domestic policies, trade can play its full role in driving increased and widely shared prosperity.” Read more [here](#).

- Reports this week indicate that Amazon is in advanced talks with European Union antitrust regulators to settle a year-long investigation into its eBook deals with publishers. The EU, which began its investigation last June, is accusing Amazon of abusing its market power to force illegal terms on publishers that harm eBook purchasers. Under EU settlement rules, the company would “not face any fine or finding of wrongdoing if it can offer concessions to allay regulatory concerns.” Read more [here](#).

V. Industry Updates:

- A *Politico* piece by Richard Berman, president of the public affairs firm Berman & Co., details how Chinese company Dalian Wanda is “building a real movie empire by consolidating U.S. film studios and movie theater chains under one parent company.” The company owns AMC Entertainment and Legendary Entertainment, and plans to buy Carmike Cinemas, forming “the country’s largest chain with 8,380 screens in more than 600 theaters by the end of the year.” Berman raises concerns that Dalian Wanda, which is “closely aligned to China’s Communist Party”, might engage in censorship or use film to “subtly influence public opinion.” The article suggests that Congress “broaden the scope of the Committee on Foreign Investment in the United States [CFIUS]...to include communications assets in the movie industry”, as well as “soft power assets inextricably linked to U.S. public opinion.” Berman also suggests that the Foreign Agents Registration Act’s disclosure process be expanded. Read more [here](#).
- On Thursday, the Copyright Alliance and CreativeFuture sent letters—signed by over 35,000 creatives, audience members, fans, and consumers—to federal political candidates, including Donald Trump and Hillary Clinton, arguing for a “strong copyright system that rewards creativity and promotes a healthy creative economy.” “Our copyright system is not perfect,” the letter states. “But, like democracy, it is better than the alternatives. It works. We urge our leaders to uphold America’s commitment to the rights of creatives to determine when and how their works are shared in the global marketplace.” Read more [here](#).
- The U.S. Copyright Office this week published a [Notice of Proposed Rulemaking](#), seeking public comments on proposed technical amendments to its regulations governing registration, recordation, licensing, and other services the Office provides. The amendments are designed to improve the quality of the Office’s regulations by updating cross-references, replacing outdated terminology, reflecting structural changes to the Office and its senior management, eliminating expired or obsolete provisions, and correcting nonsubstantive errors. While these amendments are intended to be technical in nature, out of an abundance of caution, the Office is publishing the proposed regulations for public comment.
- Microsoft’s Bing has released a new DMCA notice dashboard which allows rights holders to submit and monitor the DMCA complaints they have filed with Bing. The dashboard also provides users with their own submission statistics. The new tool is available to anyone with a basic Microsoft email account who has filed a complaint. Read more [here](#).
- The Center for the Protection of Intellectual Property at George Mason University’s Antonin Scalia Law School held its Fourth Annual Fall Conference on “Intellectual Property & Global Prosperity” this week. The two day conference featured a wide array of

speakers detailing the many benefits of IP rights both to their industry and personally. Read more [here](#).