

CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 30, 2016



I. Congressional Updates:

- On Tuesday members of the House Ways and Means Committee met with U.S. Trade Representative (USTR) Michael Froman about the future of the TPP. Following the meeting, Ways and Means Chairman Kevin Brady (R-TX) and Trade Subcommittee Chairman Dave Reichert (R-WA) released a statement saying that although they “want to find a path forward” on TPP, the White House “must quickly address existing concerns of Members who serve both on and off our Committee.” They further state that “without these substantive changes, the House will not have the votes to approve TPP”. Read more [here](#).
- At a Peterson Institute for International Economics event on Tuesday, House Ways and Means Committee Chairman Kevin Brady (R-TX) said, “I think we’re going to max out on the Republican votes if these remaining issues are resolved on TPP.” He also said “we’ve got 28 courageous Democrats in the House and we hope more will step forward and support the president’s trade agreement.” As for specific remaining issues, he mentioned that there has been “very strong progress” on a data fix for the financial services sector, though he said there is more work to be done on enforcement issues, biologics, and the carve out of tobacco products from dispute settlement. Also on Tuesday, Representative Ron Kind (D-WI), a member of the House Ways & Means Committee, said a classified national security briefing for members made a “powerful argument” that trade is “an important tool in our diplomatic and national security arsenal.” He also urged a vote on TPP, saying that if Republican leadership were to schedule a vote “you will then start seeing decisions being made.” Read more [here](#)

Headlines and Highlights:

- FCC delays its vote on controversial set-top box proposal.
- Sen. Cruz sends letter to Defense Secretary and Joint Chiefs of Staff Chairman, signed by military and cybersecurity experts, asking to stop ICANN transition.
- Bipartisan Members of Congress send letter to Attorney General Lynch asking DOJ to reverse its music composition full-works licensing decision.

In the Blogs:

[Are Candidates Even Talking About the 21st Century Economy?](#)

Illusion of More

September 27 by David Newhoff

[5 Important Copyright Questions Before U.S. Courts](#)

Plagiarism Today

September 28 by Jonathan Bailey

[Signs Of Changing Trends in FTAs’ IP Chapters, Speakers Say At WTO](#)

Intellectual Property Watch

September 29 by Catherine Saez

and [here](#).

- On Tuesday, Senator Ted Cruz (R-TX) provided reporters with a letter from 77 individuals, predominantly with military and cybersecurity backgrounds, asking Defense Secretary Ashton Carter and Joint Chiefs of Staff Chairman Joseph Dunford to intervene to prevent the ICANN transition. The letter states that the “United States might be transferring to future adversaries a capability that could facilitate, particularly in time of conflict, cyberwarfare against us.” Read more [here](#).
- On Tuesday, the House Ways & Means Subcommittee on Trade held a hearing on U.S. Customs and Border Protection’s (CBP) enforcement of U.S. trade laws and agreements. CBP Commissioner Gil Kerlikowske was repeatedly questioned on whether entering into trade agreements helps the U.S. to enforce its trade laws. He said, “when it comes to that area for me that is more of the political decision, I’m kind of out of the politics and in the enforcement position.” Read more [here](#).
- On Wednesday, a bipartisan group of 18 members of the House of Representatives sent a letter to Attorney General Loretta Lynch urging the Department of Justice to reverse its decision on music composition ‘full-works’ licensing. The Department of Justice has previously ruled that the consent decrees governing BMI and ASCAP require full-works licensing. The letter was spearheaded by House Judiciary Committee members Doug Collins (R-GA) and Hakeem Jeffries (D-NY). Read more [here](#).
- On Thursday the Federal Communications Commission announced it was delaying the vote on its controversial set-top box proposal, originally scheduled to take place Thursday morning. In a [joint statement](#), Chairman Wheeler and Commissioners Rosenworcel and Clyburn said that although “it’s time for consumers to say goodbye to costly set-top boxes” they “are still working to resolve the remaining technical and legal issues.” Following the news, House Energy & Commerce Committee Chairman Fred Upton (R-MI) and Communications and Technology Subcommittee Chairman Greg Walden (R-OR) released a statement saying that “this process has been clouded with uncertainty and indecision around both what the commission is proposing and whether the proposal is supported by legal authority.” The statement also calls on Chairman Wheeler to release the text of the proposal and seek public comment. Read more [here](#) and [here](#).

II. Judicial Updates:

- A group of large record labels, including Universal, Sony, and Warner Bros, has filed a lawsuit against YouTube-mp3.org, a site which allows users to rip audio files off of YouTube videos and permanently store them on their computers. The lawsuit alleges that YouTube-mp3, with over 60 million users per month, is the “chief offender” amongst stream-ripping services. The lawsuit seeks damages alongside a court order that bans web hosts and other entities from facilitating access to the site. Read more [here](#).
- On Tuesday, District Judge William Alsup of the U.S. District Court for the Northern District of California denied Oracle a new trial in its longstanding copyright infringement dispute with Google over the use of Java code in the Android operating system. Read more [here](#).

III. Administration Updates:

- On Wednesday, during a speech at the Woodrow Wilson Center for International Scholars, Secretary of State John Kerry highlighted the national security implications of a U.S. rejection of the TPP. “If we reject TPP, we take a giant step backwards,” Kerry said. “It will be a unilateral ceding of American political influence and power with grave consequences for the long term.” Read more [here](#).

IV. International Updates:

- A UK man has appeared in court for selling “fully-loaded Kodi boxes.” Kodi is a free, open-source software designed to bring a variety of content, such as videos and music, together in a single application. Kodi’s developers argue that the software does not actually contain any content itself and is only intended for use with legal content that is freely available on the internet. However, some merchants are selling set-top boxes that have Kodi “fully-loaded” with third-party add-ons which allow access to illegal content such as pirated TV series. Read more [here](#).

V. Industry Updates:

- Earlier this week *The New York Times* profiled Democratic FCC commissioner Jessica Rosenworcel. The piece calls her “the crucial swing vote” on the commission’s set-top box proposal and notes that she “has not fully embraced the cable box proposal like her two Democratic colleagues and instead has indicated her unease with the plan.” In particular, she has said that the proposal should be revised to comply with copyright and licensing laws. Read more [here](#).
- A company called Subsentio is offering a new service which allows Internet Service Providers (ISPs) to outsource the process of sending copyright infringement notices. The company, which currently works with small and mid-sized regional ISPs, argues that the service is necessary because ISPs are receiving “thousands of notices every month from owners of copyrighted content” and thus risk “falling behind on DMCA procedural obligations”. Read more [here](#).
- Reports this week indicate that Swedish music streaming service Spotify is in early talks to acquire German rival SoundCloud. Citing people familiar with the matter, *Bloomberg* estimated the sale could value SoundCloud at \$1 billion. Read more [here](#).
- The U.S. Copyright Office is conducting a study to evaluate the operation of section 1201 of title 17 and has reviewed public input from the first round of written comments and from roundtable participation. To further aid the analysis, the Copyright Office is now soliciting additional written comments on a subset of issues. These include proposals that would update the statute’s permanent exemption framework and amend the anti-trafficking provisions to better enable intended beneficiaries of exemptions to engage in lawful circumvention activities, as identified further in the September 27, 2016, Federal Register notice. You may access the Federal Register notice [here](#). Written comments are to be submitted electronically using the regulations.gov system. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/policy/1201/commentsubmission/>. Comments are due on or before October 27, 2016. Reply comments are due on or before November 16, 2016.

