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CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 18, 2016



I. Congressional Updates:

- Senate Commerce Committee Chairman John Thune (R-SD) sent a letter this week to Federal Communications Commission (FCC) Chairman Tom Wheeler urging him to avoid taking any “complex, partisan, or otherwise controversial” actions before the new Administration, Congress, and FCC leadership have been installed. The letter further asks Chairman Wheeler to focus on “consensus and administrative matters” in the interim period. Read the letter [here](#). House Energy & Commerce Committee Chairman Fred Upton (R-MI) and Communications and Technology Subcommittee Chairman Greg Walden (R-OR) sent Chairman Wheeler a similar letter urging him to avoid considering “complex and controversial items.” The letter suggests that the FCC should instead focus on ensuring a “successful broadcast incentive auction” which will “provide needed spectrum to meet Americans’ wireless broadband needs.” Read the letter [here](#).
- Senator Patrick Leahy (D-VT) has announced the he will give up his position as ranking member on the Senate Judiciary Committee in order to become ranking member on the Appropriations Committee. Senator Diane Feinstein (D-CA) will become Judiciary’s new ranking member, leaving her role as ranking member on the Intelligence Committee. The Intelligence Committee’s top Democratic spot will now be filled by Senator Mark Warner (D-VA). Read more [here](#), and find the full list of new Senate committee ranking members [here](#).
- On Wednesday, the U.S.-China Economic and Security Review Commission, created by Congress in 2000 to monitor the “security implications of the bilateral trade

Headlines and Highlights:

- Sen. Thune, Reps. Upton and Walden ask FCC Chairman Wheeler to table “controversial” actions until new Congress.
- Study finds “no basis” for law mandating free use of music by terrestrial broadcast radio industry.
- Google CEO meets with EU antitrust chief as search engine fights multiple antitrust cases.
- Sens. Markey and Wyden place hold on FCC Commissioner Rosenworcel’s confirmation.

In the Blogs:

[3 Questions About DMCA Safe Harbor](#)

Plagiarism Today
November 14 by Jonathan Bailey

[The EU Digital Single Market and Publisher’s Rights: Protecting the Public Interest](#)

Hugh Stephens Blog
November 14 by Hugh Stephens

[Democratization is Killing Democracy](#)

Illusion of More
November 11 by David Newhoff

and economic relationship between the United States and China,” released its 2016 report. The report states that China’s increased push for free trade agreements (FTA) in the Asia-Pacific can be seen as “a reaction to the Rebalance and a way for China to maintain favorable access to current and future TPP countries.” The report criticizes China’s FTA’s for having weaker standards than U.S. FTAs. “U.S. FTAs,” the report reads “typically require stronger intellectual property protection such as longer copyright periods and more binding requirements for intellectual property enforcement.” Conversely, the report says China does “not typically” include stronger intellectual property protections beyond the commitment it made to the World Trade Organization. Read the report [here](#).

- Senators Wyden (D-OR) and Markey (D-MA) have issued a hold on FCC Commissioner Jessica Rosenworcel’s confirmation for a second term. Senator Markey’s office says that the hold was placed because “recent actions from Commissioner Rosenworcel on the proposed set-top box rule and other items have called” her commitment to “pro-consumer, pro-competition policies” into question. Rosenworcel will have to leave the commission if she is not confirmed by the end of the year. Read more [here](#). Meanwhile, FCC Chairman Tom Wheeler has refused to confirm that he will step down as chairman. He told a press conference on Thursday that he serves “at the pleasure of the president as chairman” and has not “decided on a departure date.” The president has the authority to nominate a new chairman, but if he does Wheeler can remain on the Commission as a regular commissioner. Read more [here](#).

II. Judicial Updates:

- The United States Navy has denied accusations that it installed hundreds of thousands of copies of three-dimensional virtual reality software without a proper license. Bitmanagement, the German company which developed the software, called Contact Geo, has alleged that the software was improperly installed on over 500,000 Navy computers. The Navy maintains that the thirty-eight licenses it purchased were limited such that the software could only be installed on thirty-eight computers. Read more [here](#).

III. Administration Updates:

- The Department of Commerce’s Internet Policy Task Force will hold a public meeting at the U.S. Patent and Trademark Office (USPTO) on December 9, 2016 to “discuss current initiatives and technologies used to develop a more robust and collaborative digital marketplace for copyrighted works and to consider ways forward to help achieve that result.” In particular, the meeting will focus on “the potential for interoperability across digital registries and standards work...and consider the relevant emerging technologies” such as blockchain and open source technology. Read the Federal Register filing [here](#).

IV. International Updates:

- Google chief executive Sundar Pichai is scheduled to meet with European Union Competition Commissioner Margrethe Vestager and European Commissioner for Digital Economy and Society Guenther Oettinger on Friday. Google is currently under fire for allegations that it favors its own online shopping service and has hindered its competitors’ online advertising efforts. Additionally, Google’s Android platform has been criticized for allegedly stifling competition from the company’s rivals. European Union rulings on these issues are expected next year. Read more [here](#).

- Ukrainian file-hosting website EX.UA has announced that it will shut down following what it describes as “direct threats, blackmail (including at the international level), and DDOS attacks.” Additionally, Ukraine recently passed a law permitting rights holders to block infringing content. EX.UA has appeared on the United States Trade Representative’s list of notorious pirate markets. Read more [here](#).

V. Industry Updates:

- *Politico* is reporting that a top aide to FCC Chairman Tom Wheeler, Gigi Sohn, is leaving the agency to join the Open Society Foundations, where she will work on improving access to communications networks. Sohn was the president and CEO of Public Knowledge before she began working at the FCC in 2013.
- The Phoenix Center for Advanced Legal & Economic Policy Studies has released a study finding that “any alleged promotional effect [i.e. free advertising] provides no basis for federal law to mandate the free use of music by the terrestrial radio broadcast industry.” In particular, the study finds that “any promotional effect is fully internalized” when there is “a negotiation between the music and radio industries,” which “fully accounts for any promotional effect.” Read the study [here](#).
- On Monday, the Internet Association sent a letter to Donald Trump congratulating him on his victory and outlining in detail the trade association’s policy priorities. On copyright policy, the letter argues against any weakening of fair use exceptions and Digital Millennium Copyright Act (DMCA) safe harbors, and further calls for Copyright Office modernization. Other topics addressed in the letter include encryption, net neutrality, data security, and patent reform. The Internet Association’s members include Google, Amazon, Facebook, and Netflix. Read more [here](#) and read the full letter [here](#).
- Public Knowledge General Counsel Ryan Clough published a letter to the editor in the *Wall Street Journal* this week hitting back against the newspaper’s November 3rd article which called Maria Pallante’s dismissal as Register of Copyrights a “copyright coup.” Clough writes that the article “implicates our organization in a baseless conspiracy theory” and further contends that the Copyright Office “suffers from regulatory capture.” He also suggests that Pallante’s “campaign to free herself” from Library of Congress oversight makes it “not at all surprising that the new librarian would seek new leadership for the office.” Read the letter [here](#).