



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT OCTOBER 13, 2017



I. Congressional Updates:

- The House Energy & Commerce Subcommittee on Digital Commerce and Consumer Protection held a [hearing](#) on Thursday about the impact of “protectionist” cross border data flow policies on U.S. jobs. Members of the subcommittee, including Chairman Bob Latta (R-OH), stressed the importance of digital trade and cross-border data flows for U.S. businesses and economic growth. The hearing featured testimony from representatives of BSA – The Software Alliance, the Information Technology Industry Council, and ACT – The App Association, who spoke about the importance of free digital trade and pushed for policy goals such as provisions in a renegotiated North American Free Trade Agreement (NAFTA) prohibiting data localization requirements and restrictions on cross-border data flows.
- On Wednesday, the House Energy & Commerce Subcommittee on Communications & Technology [approved](#) by voice vote legislation to reauthorize and make reforms to the Federal Communications Commission (FCC). The bill includes provisions in the areas of FCC process reform, fee collection, public safety, and wireless coverage data collection. Full committee Chairman Greg Walden (R-OR) said that one issue which remains to be addressed is the challenge of completing the broadcaster repacking process “on time and on budget,” saying he hopes to “have further discussion...between now and the time” the draft comes before the full committee. Full committee Ranking Member Frank Pallone (D-NJ) also called for changes to the bill to address the repack process, suggesting that the committee include his [Viewer Protection Act](#) in the final version of the bill. Read more

Headlines and Highlights:

- USTR holds hearing on China Section 301 investigation.
- Stakeholders concerned that NAFTA renegotiations might break down.
- E&C subcommittee advances FCC reauthorization bill.
- Facebook COO meets with lawmakers amid rising controversy over election interference, fake news.

In the Blogs:

[The Forgotten Origins of Copyright for Photographs](#)

Mostly IP History
October 10 by Zvi S. Rosen

[Would Site Blocking Work in Canada? Quite Possibly - It Works Well in Australia and the UK](#)

Hugh Stephens Blog
October 7 by Hugh Stephens

[Speech Maximalism on SESTA is Madness](#)

Illusion of More
October 10 by David Newhoff

[here](#) and [here](#).

- Facebook Chief Operating Officer Sheryl Sandberg met with members of the House Intelligence Committee on Wednesday to discuss Russian ads on Facebook during the 2016 election. After the meeting, Rep. Mike Conaway (R-TX), who is leading the committee's investigation into Russian interference in the election, and Ranking Member Adam Schiff (D-CA) said that they plan to release 3,000 ads that are believed to have originated with Russian government-aligned entities. Sandberg also met with House Majority Leader Kevin McCarthy (R-CA) and Minority Leader Nancy Pelosi (D-CA) on Wednesday. On Thursday, Sandberg [met](#) with members of the Congressional Black Caucus and Congressional Hispanic Caucus to discuss concerns about issues such as Russian-linked content on Facebook aimed at increasing racial divisions in the United States, and a lack of diversity at Facebook. Read more [here](#). Sandberg also took part in an [interview](#) with *Axios* on Thursday in which she acknowledged that Facebook needs to address and accept responsibility for Russian election interference on its platform.
- Congressional Black Caucus (CBC) members Reps. Barbara Lee (D-CA) and G.K. Butterfield (D-NC) will travel to Silicon Valley next week to meet with technology industry leaders about increasing diversity in their companies. *Recode* [reports](#) that the lawmakers aim to put pressure on companies including Airbnb, Facebook, Twitter, Lyft, Uber, Intel, Salesforce, and TaskRabbit. Additionally, *The Hill* is [reporting](#) that an undisclosed subset of the CBC's membership has "formed a coalition dedicated to drawing the line on lack of racial inclusion at technology companies."
- *Bloomberg* reports that Google, Facebook, and Twitter are "scrambl[ing] to hold Washington at bay" in light of recent controversy over issues such as election interference, fake news, online sex trafficking, and potential antitrust violations. In September, Google "summoned about 200 staff from around the world for an annual policy meeting," where "one agenda item" was "how to deal with the sudden drumbeat of calls in the U.S. to regulate the company for being too big." Meanwhile, Facebook has hired two "crisis PR firms," and its "top executives, including Chief Executive Officer Mark Zuckerberg, are phoning members of Congress directly." Read more [here](#). In related news, the *Washington Post* [reported](#) this week that Google has discovered that Russian agents spent "tens of thousands of dollars" on ads on Google's platforms including YouTube, Google Search, and Gmail.
- Twitter has [reversed](#) its decision to prevent Rep. Marsha Blackburn's new Senate campaign from promoting a video Twitter deemed "inflammatory" because it contains a segment in which Blackburn uses the phrase "baby body parts" when speaking about her opposition to Planned Parenthood. Explaining the reversal, Twitter said, "after reconsidering the ad in the context of the entire message, we believe that there is room to refine our policies around these issues." Blackburn had protested Twitter's original decision, calling it an attempt by "Silicon Valley elites" to "impose their values." Read more [here](#).
- On Wednesday, Rep. Keith Ellison (D-MN) sent a letter to Acting Federal Trade Commission (FTC) Chair Maureen Ohlhausen requesting that the agency make public its reports "documenting the complete findings and analysis in the [FTC's] Google antitrust investigation that concluded in 2013." The letter argues that "given the impact Google has on small businesses, the flow of information, and that Google controls an outsize portion of the market for online search and online advertising, the public has a right to know what the

Federal Trade Commission found in its investigation into Google.” Read the letter [here](#).

- On Wednesday, the International Trademark Association (INTA), the U.S. Chamber of Commerce Global Intellectual Property Center (GIPC), and the Congressional Trademark Caucus held a briefing on Capitol Hill titled ‘The Intersection of Trademarks and Brands: A Dialogue with Famous Brands and Law Enforcement.’ The event featured remarks from Senator Chris Coons (D-DE), Senate Judiciary Committee Chairman Chuck Grassley (R-IA), Rep. John Ratcliffe (R-TX), and Rep. Ted Deutch (D-FL), the co-chairs of the Congressional Trademark Caucus. In addition to trademark issues, the event featured broader discussion about the importance of protecting intellectual property.
- On Wednesday, October 18, the Senate Foreign Relations Committee will hold a [hearing](#) on the nomination of Manisha Singh to be Assistant Secretary of State for Economic and Business Affairs. Singh was most recently Chief Counsel and Senior Policy Advisor to Senator Dan Sullivan (R-AK).

II. Judicial Updates:

- The U.S. government filed an amicus brief last Wednesday in the case *Spanski Enterprises, Inc. v. Telewizja Polska, S.A.*, currently before the U.S. Court of Appeals for the D.C. Circuit. Spanski Enterprises had been granted an exclusive license to distribute Telewizja Polska’s (TVP) content in North and South America, but filed a lawsuit after discovering that TVP had disabled its geo-blocking, allowing TVP to stream to the region. In its brief, the government argues that U.S. copyright law protects works overseas when those works are transmitted to the public in the United States. The government’s brief is supported by another amicus brief filed by Disney, Twentieth Century Fox, Warner Bros., the Recording Industry Association of America, the American Association of Independent Music, and the National Music Publishers’ Association. Also at issue in the case, and addressed in the two amicus briefs, is whether liability for copyright infringement requires proof of “volitional conduct.” Read more [here](#).
- Academic article sharing service ResearchGate has reportedly removed a number of copyrighted articles from its platform in response to action from the Coalition for Responsible Sharing. The coalition reportedly sent ResearchGate over 100,000 take-down notices, and coalition members have been “exploring their legal options” (Elsevier and the American Chemical Society (ACS) [filed](#) a lawsuit against the site in Germany last week). ResearchGate has not provided the coalition with information about how many copyrighted articles it has removed, but the coalition said in a statement that the number appears to be “significant.” Read more [here](#).

III. Administration Updates:

- On Tuesday, the Office of the United States Trade Representative (USTR) held a public hearing about its Section 301 [investigation](#) into Chinese government acts, policies, and practices related to technology transfer, intellectual property, and innovation. The hearing featured testimony from organizations such as the Commission on Theft of American Intellectual Property; the Information Technology and Innovation Foundation; the American Bar Association Intellectual Property Law Section; and the Center for Strategic &

International Studies. While organizations representing American companies described an array of challenges they face doing business in China, representatives from Chinese industry said they are “greatly concerned about the investigation,” and warned that any penalties the Trump administration might levy “may trigger a trade war.” Read more [here](#) and [here](#).

- *Axios* and other publications have reported this week that members of Congress and their staff are concerned that the Trump Administration’s proposals in NAFTA renegotiations are too extreme for Canada and Mexico to accept, and may even be designed to “give Trump the justification he’s been searching for to withdraw.” The potentially controversial proposals are about issues such as automobile rules of origin, Investor State Dispute Settlement, and a five-year sunset on the deal. Read more [here](#) and [here](#).
- On Wednesday, the leaders of the International AntiCounterfeiting Coalition (IACC), the Biotechnology Innovation Organization (BIO), the Motion Picture Association of America (MPAA), the Recording Industry Association of America (RIAA), and the Pharmaceutical Research and Manufacturers of America (PhRMA) wrote an op-ed in *The Hill* arguing that in NAFTA renegotiations, “U.S. negotiators ought to insist on trade policies that respect innovation and creativity, and ensure strong protections for IP and creative content.” In one passage, the authors state that “it is critical for the United States to assure that safe harbors can’t be used to deprive creators and innovators of the real value of their works.” Read more [here](#).
- CreativeFuture and the USAlliance For Music have [amassed](#) over 50,000 signatures on a petition demanding that “strong intellectual property protections...remain in any renegotiation of NAFTA.” The petition states that in the Trans Pacific Partnership (TPP), the U.S. “made many concessions to trade ‘partners’ where copyright laws are virtually non-existent.” The petition also argues that “limiting the property rights of U.S. creatives under the guise of ‘balance’ means foreign companies can use U.S. creative property without any payments to U.S. rights holders.” Read the petition [here](#).
- On Wednesday, October 18, the U.S. Patent & Trademark Office (USPTO) will host a day-long [roundtable](#) on intellectual property infringement at trade shows. Read the agenda [here](#).

IV. International Updates:

- A spokesman for United Kingdom Prime Minister Teresa May said this week that the cabinet is considering regulating Google and Facebook as news organizations. [According to Reuters](#), the spokesman said that the potential move would occur as part of the government’s “commitment to produce a digital charter setting out how firms and individuals should behave online.” The spokesman also said, “as part of that work we will look carefully at the roles, responsibility and legal status of the major internet platforms.” *Axios* [reports](#) that if Google and Facebook were regulated as news companies, “they would be responsible for the content that appears on their sites...if there is anything that the British government deems illegal,” they could be fined.
- Speaking before German Chancellor Angela Merkel and French President Emmanuel Macron at the opening ceremony of the Frankfurt Book Fair on Tuesday, German Publishers and Booksellers Association chairman Heinrich Riethmuller said that the recently passed Copyright Knowledge Society Act, which makes changes to German copyright law

governing scientific and educational works, “endangers the very existence of publishing houses and booksellers.” Riethmuller argued that the notion of ‘free access’ is being used as a “magic formula” to justify “increasingly drastic cuts to the rights of copyright holders.” In response, Merkel said she is “deeply convinced” that “those who create literature and culture have to receive an adequate price,” and said she will “try to find a European solution” to reconcile “digital access and respect for cultural value.” Read more [here](#) and [here](#).

- In a speech at the U.S. Chamber of Commerce this week, French Finance Minister Bruno Le Maire said that Europe should make “much faster progress” with regard to increasing taxes on American internet companies such as Google and Amazon. The *Wall Street Journal* reports that Le Maire suggested taxing those companies on their turnover instead of their profits. Read more [here](#).

V. Industry Updates:

- The Copyright Office has proposed a rule creating a new group registration option for up to five unpublished works. This new registration option will replace the current ‘unpublished collections’ option, which the Office “has determined is an ineffective mechanism for registration of multiple unpublished works.” The new registration option is intended to “improve the efficiency of the registration process.” Read the Federal Register notice [here](#).
- In a keynote speech at the 2017 Production Music Conference last week, National Music Publishers Association president and CEO David Israelite expounded on a number of music licensing issues, according to *Variety*. First, Israelite criticized major studios for demanding a percentage of the downstream public performance revenue from the music they want to use. Speaking about industry trends, Israelite highlighted growth in mechanical licensing revenues, which he attributed largely to the mechanical part of interactive streaming. He also said that “it’s practically impossible to license content properly,” calling for industry to create “a transparent database paid for 100% by the digital companies that use it, but managed by [the] creative community.” Notably, *Variety* reports that Israelite predicted “new legislation from Congress over the next few weeks to address critical inequities like the compulsory license...and the 1941 consent decrees.” Read more [here](#).
- Facebook’s subsidiary CrowdTangle has [launched](#) a new tool that allows local news outlets to track conversations in public Facebook groups and access an array of new local tracking lists, “including first responders and universities broken down by every state,” among other new features. *Axios*’s Sara Fischer writes that the launch of the tool is significant because “local media is still heavily reliant” on large technology companies “for their technology tools and resources,” which enable them to compete against national media. Read more [here](#).
- The Center for the Protection of Intellectual Property (CPIP) at the George Mason University Antonin Scalia Law School held its [2017 Fall Conference](#) on Thursday and Friday. The conference, which sought to “encourage and discuss proposals to make IP work more effectively,” featured panel discussions on topics such as the international IP system and IP in trade agreements, the concept of property in IP, and the relation between antitrust policy and IP.