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## CONTENT & TECHNOLOGY POLICY REPORT OCTOBER 27, 2017



### I. Congressional Updates:

- On Tuesday, the House Oversight and Government Reform Subcommittee on Information Technology held a hearing about online political advertising regulations. News Media Alliance CEO David Chavern [testified](#) that the Federal Election Commission (FEC) should “require disclosures within an internet advertisement to identify the sponsor of an ad,” arguing that “these rules apply to every other medium, and there is no longer a justification for exempting the internet here.” Chavern also argued that Facebook and Google have failed to assume “the responsibilities that publishers once upheld to ensure that the integrity of online advertising matches the integrity of our content.” Read more [here](#) and [here](#).
- Last week Senator Orrin Hatch (R-UT) gave a speech at the American Intellectual Property Law Association (AIPLA) 2017 Annual Meeting, where he received the organization’s Excellence Award for leadership on intellectual property issues. In his speech, which mostly focused on patent issues, Hatch said he has “worked hard to ensure we have an IP regime that protects innovators and rewards creativity.” Read more [here](#).
- Senator Rob Portman (R-OH), the author of the Stop Enabling Sex Traffickers Act (SESTA), has written an op-ed in *Wired* arguing that “because of broad legal interpretations,” the Communications Decency Act is being “used as a shield by websites that facilitate the sale of women and children for sex.” Portman writes, “I do not believe those in Congress who supported this bill in 1996 ever thought that 21 years later, their vote would allow websites to knowingly traffic women and children over the internet with immunity.” Portman also asserts that the

### Headlines and Highlights:

- Content Creators Coalition launch series of ads criticizing YouTube for exploiting artists.
- Leaders of International Chamber of Commerce pen op-ed expressing concern about NAFTA renegotiations.
- House Judiciary to hold hearing on “Net Neutrality and the Role of Antitrust.”
- Unwillingness to give up any privileges in NAFTA renegotiations puts U.S. in tough spot, Sec. of Commerce Wilbur Ross says.

### In the Blogs:

[Is a Tech Company Really Claiming Ownership of Marvel Characters?](#)

The Illusion of More  
October 23 by David Newhoff

[Netflix in Canada: Let No Good Deed Go Unpunished](#)

Hugh Stephens Blog  
October 25 by Hugh Stephens

[Sucking Faster: Is the Tech Backlash Happening or Not?](#)

The Illusion of More  
October 27 by David Newhoff

bill will not “expose innocent websites to frivolous lawsuits,” because it “remove[s] immunity only for websites that can be proven to have intentionally facilitated online sex trafficking.” Read more [here](#).

- On Wednesday, November 1<sup>st</sup> at 10:00 a.m. the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law will hold a hearing on “Net Neutrality and the Role of Antitrust.”
- On Wednesday, all five Federal Communications Commissioner (FCC) commissioners testified at an oversight hearing before the House Energy & Commerce Committee’s Subcommittee on Communications and Technology. The commissioners discussed topics such as the broadcaster repacking process, media ownership rules, net neutrality, and process reform. At the hearing, FCC Chairman Ajit Pai announced proposals to relax the agency’s media ownership rules. The list of proposals includes the elimination of the rule prohibiting ownership of a newspaper and a radio TV station in the same market. Pai argued that “the marketplace today is nothing like it was in 1975,” due to competition from internet companies such as Google and Facebook. The FCC will vote on the proposals on November 16. Read more [here](#) and [here](#).

## II. Judicial Updates:

- On Thursday, the Florida Supreme Court ruled against Flo & Eddie of The Turtles in their pre-1972 copyright lawsuit against SiriusXM. *The Hollywood Reporter* reports that the court came “to the conclusion that Florida simply never recognized a common law right of performance in sound recordings.” Read more [here](#).

## III. Administration Updates:

- During an interview with CNBC this week, Commerce Secretary Wilbur Ross admitted that the U.S. is in a tough spot in the North American Free Trade Agreement (NAFTA) renegotiations because “we’re asking two countries to give up some privileges they have enjoyed for 22 years and we’re not in a position to offer anything in return...” Ross went on to say that he is unsure if the U.S. will get “every single thing that we want,” but “the question is will we get enough to make it worthwhile.” Watch the entire interview [here](#).

## IV. International Updates:

- Perrin Beatty, Maria Fernanda Garza, and Peter Robinson, who respectively lead the International Chamber of Commerce’s arms in Canada, Mexico, and the United States, have written an op-ed in *The Hill* expressing concern that in the latest round of North American Free Trade Agreement (NAFTA) renegotiations, the United States “has introduced a number of proposals...that are inconsistent with the principles of free trade and free enterprise.” The authors further write they are concerned the U.S. might withdraw from NAFTA. However, they note that “the United States...has put forward solid proposals on digital trade.” Read more [here](#).

## V. Industry Updates:

- Facebook has [released](#) new guidelines aimed at helping publishers use the platform’s News Feed feature. The guidelines cover topics such as how News Feed works, “the values it

operates by, the policies Facebook enforces, the signals [Facebook] look[s] for when ranking stories, and the storytelling tools Facebook offers to help [publishers] reach the right audience.” Read more [here](#). Earlier this week, *Recode* [reported](#) that Facebook has been experimenting with removing publishers’ content from the main News Feed, instead putting it in a “separate, hard-to-find” ‘Explore Feed’ intended to show users content from entities they do not follow on the platform.

- This week, the Content Creators Coalition (c3), an advocacy group for musicians, launched an ad campaign against YouTube and its parent company Google, accusing them of exploiting artists. The videos, released on YouTube competitor Vimeo’s website, accuse the streaming giant of shortchanging artists “while earning billions of dollars off our music.” “Artists know YouTube can do better,” the video continues. “So, rather than hiding behind outdated laws, YouTube and Google should work to give artists more control over our music and pay creators fairly when our songs are played on their platform.” Read more [here](#).
- The Regulatory Transparency Project’s Intellectual Property Working Group has released a new paper about problems with the Digital Millennium Copyright Act’s notice-and-takedown system, and with cable and satellite compulsory licenses. Among the paper’s recommendations is that Congress should “consider legislative reform to update” the DMCA to ensure “that the law does not protect those that knowingly profit from infringement and that take down means stay down.” The paper also urges Congress to “transition to a market-based licensing system for the retransmission of broadcast programming by cable and satellite providers.” Read the paper [here](#).
- The Copyright Office has issued a notice of proposed rulemaking in the seventh triennial rulemaking proceeding under Section 1201 of the Digital Millennium Copyright Act (DMCA). The Office states, “with this notice of proposed rulemaking, the Office concludes that it has received a sufficient petition to renew each existing exemption, and it does not find any meaningful opposition to renewal. Accordingly, the Office intends to recommend readoption of all existing exemptions.” The notice also “outlines proposed classes for exemptions for which the Office now initiates three rounds of public comment.” Read more [here](#).
- Facebook is reportedly negotiating with record labels and music publishers, with hopes of striking a deal that would allow Facebook users to include music in the videos they upload on the platform. *Bloomberg* reports that “Facebook is eager to made a deal now so that it no longer frustrates users, by taking down their videos; partners, by hosting infringing material; or advertisers, with the prospect of legal headaches.” Facebook recently rolled out a new section of its platform devoted to videos called ‘Watch.’ Read more [here](#).