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CONTENT & TECHNOLOGY POLICY REPORT JULY 24, 2015



I. Congressional Updates:

- On Wednesday, Senator Al Franken (D-MN) sent a [letter](#) to the Department of Justice (DOJ) and Federal Trade Commission (FTC) encouraging the entities to “examine Apple’s current dealings with app developers to determine whether the company is engaging in anticompetitive behavior in the music streaming market.” The issue of concern relates to a non-negotiable 30% cut Apple takes on all in-app purchases; as a result, companies, such as Spotify, who offer music streaming service subscriptions through their App Store apps, lose a share of their revenue to Apple. Senator Franken writes “I am concerned... that Apple’s position as a dominant platform operator may actually undermine many of the potential consumer benefits of its entry into the market.” The FTC has reportedly launched an investigation into Apple’s practices related to the issue.
- On Thursday, Judiciary Committee Chairman Bob Goodlatte (R-VA) and Ranking Member John Conyers (D-MI) [announced](#) the next step in the Committee’s ongoing review of U.S. copyright law. The Committee has issued joint invitations to all prior witnesses of the Committee’s copyright review hearings to meet with Committee staff and provide additional input on copyright policy issues. Over the prior two years, the Committee has held 20 hearings with 100 witnesses to review U.S. copyright law. The Committee is also openly inviting any interested party to come and discuss their interests in copyright law during this process.
- Also on Thursday, during a nomination hearing for Marisa Lago to serve as Deputy U.S. Trade Representative, Senate Finance Committee Chairman Orrin Hatch (R-UT) outlined five key components he believes is necessary for the Trans-Pacific Partnership (TPP) to gain sufficient support in the

Headlines and Highlights:

- Senator Franken calls for a DOJ and FTC investigation into Apple’s music dealings
- House Judiciary Chairman Goodlatte announces next step in copyright law review
- TPP ministers kick off meetings in Hawaii

In the Blogs:

[Visual Artists: Recent Orphan Works Rumors Are Not True](#)
Copyright Alliance
July 23 by Sofia Castillo & Leo Lichtman

[In a World of Streaming Music Criticism, YouTube Always Gets a Pass](#)
Creativity Tech
July 23 by Gordon Platt

[Using DMCA to fight Ashley Madison hackers is poor use of copyright law](#)
Vox Indie
July 21 by Ellen Seidler

Senate. His first component was that TPP include strong IP rights protections. “In my home state of Utah, for example, half a million jobs and 67 percent of our exports are directly connected to intellectual property. That is why the Trade Promotion Authority (TPA) law recently passed by Congress and signed by President Obama requires that trade agreements meet the high standards for IP protections found in U.S. law. I fully expect the TPP to reflect these standards, including twelve years of regulatory data protection for biologics, strong copyright and trademark protections, prevention of trade secrets theft, and transparency and procedural fairness for reimbursement decisions relating to medical devices and pharmaceuticals.” Another one of his pillars included the requirement that TPP reflect digital trade priorities set forth in Trade Promotion Authority: “This includes ensuring foreign governments do not impede cross-border data flows and eliminating forced localization requirements.” Read Senator Hatch’s full statement [here](#).

- During a mark-up this week of a tax-extender package, Senator Mark Warner (D-VA) remarked on how the U.S. is falling behind in corporate competitiveness with the advent of patent boxes and innovation boxes amongst our trading partners. The Senator’s remarks came in the wake of the Senate Finance Committee’s recently released international tax reform recommendations, which included a proposal to create a U.S. “innovation box” tax regime; under the regime, revenue derived from qualified IP would be taxed at a lower rate.
- The House Judiciary Subcommittee on IP has scheduled a hearing on the “Internet of Things” for July 29 at 10:00AM.

II. Judicial Updates:

- The music licensing group SESAC settled an antitrust lawsuit with the Radio Music Licensing Committee (RMLC) this week. RMLC sued SESAC in 2012 over purported anticompetitive licensing practices. Under the settlement, a third party will decide the rates if SESAC cannot reach an agreement on royalties with RMLC. Furthermore, SESAC must pay the radio group \$3.6 million to cover legal fees.

III. Administration Updates:

- The U.S. will host a meeting of TPP Trade Ministers in Maui, Hawaii from July 28-31, preceded by a meeting of TPP Chief Negotiators from July 24-27. Since they last met in May, Trade Ministers from the twelve TPP countries have been working continuously, making progress in closing gaps on remaining issues.

IV. International Updates:

- On Monday, a group of 85 organizations representing 51 countries sent an [open letter](#) to WIPO Director Dr. Francis Gurry in support of strong protections for all forms of IP. The group’s letter comes amidst the negotiations of several international trade agreements, including TPP and Transatlantic Trade and Investment Partnership (TTIP). The letter concludes by stating: “Advanced societies have long understood that by protecting the proprietary rights of artists, authors, entrepreneurs, innovators, and inventors, they were promoting the greater public welfare. The continued protection of these fundamental rights is essential to global innovation, creativity and competitiveness.”

- On Thursday, the European Commission charged several U.S. studios and a UK broadcaster with antitrust violations. The studios indicated in the suit include Disney, NBC Universal, Paramount Pictures, Sony, Twentieth Century Fox, Warner Bros, and Sky UK. The Commission claims the U.S. companies' contracts with Sky UK could be in violation of EU competition rules, as they include country specific licensing. EU regulators argue the common and long-held practice is in violation of EU single-market rules. A Commission spokesperson said "European consumers want to watch the pay-TV channels of their choice regardless of where they live or travel in the EU." In a statement, Disney said "The impact of the Commission's analysis is destructive of consumer value and we will oppose the proposed action vigorously."
- The UK's IP Minister Baroness Neville-Rolfe has proposed a new maximum copyright infringement term that would raise the country's current two year limit for violators to ten years. Rolfe said the new maximum sentence would only apply to "commercial scale" infringement. She said in a statement: "Our creative industries are worth more than £7 billion to the UK economy and it's important to protect them from online criminal enterprises."
- The French's Hadopi anti-piracy agency revealed it has now sent more than five million warnings to alleged infringers of copyright since it began sending notices in September 2010. Recent data also revealed that 169 people have been referred to a public prosecutor so far in 2015.

V. Industry Updates:

- Last Friday, the Advisory Committee to the Congressional Internet Caucus hosted an event on Capitol Hill titled "Taylor Swift or Congress? Who has more power in the digital music streaming marketplace?" Panelists at the event provided background on the laws that shape the digital music streaming marketplace, detailing the policies that facilitate a market of growing importance in the industry. Speakers included: Kevin Erickson, Communications and Outreach Manager, Future of Music Coalition; Alec French, Founder and Principal, Thorsen French Advocacy LLC; Tim Lordan, Executive Director, Congressional Internet Caucus Advisory Committee (moderator); Julia Massimino, Vice President, Global Public Policy, SoundExchange; and Jon Potter, President and Co-Founder, Application Developers Alliance.

Opposition News

- On Thursday, the Electronic Frontier Foundation (EFF) published a [piece](#) titled "The Copyright Office Belongs in a Library." The group argues "any hasty moves to yank the Copyright Office out of the Library should be non-starters." In the piece, they emphasized the need for "more thoughtful leadership" at the Library of Congress. Also on Thursday, EFF published a [piece](#) titled "What Do We Want From the Next Librarian of Congress?" The group calls for a librarian that would focus on collection digitization and accessibility, improved oversight and support of the Copyright Office, and improved access to the Congressional Research Service.