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MISSION REPORT

following the visit of the Committee on Legal Affairs to Silicon Valley, USA,
from 30 October to 2 November 2017

Committee on Legal Affairs

Members of the mission:

Lidia GERINGER DE OEDENBERG (S&D) (Leader of the mission)

Axel VOSS (EPP)

Tadeusz ZWIEFKA (EPP)

Sylvia Yvonne KAUFMANN (S&D)

Sajjad KARIM (ECR)

Julia REDA (Greens/EFA)

Joëlle BERGERON (EFDD)

Christian EHLER (EPP) Chair of the Delegation for
relations with the United States of America

Introduction

The mission of the Committee on Legal Affairs to Silicon Valley took place from 30 October to 2 November 2017. It mainly related to the Committee's work in the fields of intellectual property rights, in particular on copyright, patent, trademarks and IPR enforcement.

The objective of the visit was to meet and engage in discussions with US stakeholders, with a focus on the cultural and creative industries, platforms and technology companies as well as academia and civil society actors. During the two days and a half visit, the delegation had thirteen meetings with a wide range of interlocutors representing different sectors, from movie studios to pharmaceutical company.

Members had the opportunity to discuss about content and technology strategies and the evolution towards media and technology convergence. They heard about the importance of IPR enforcement for preserving innovation. They discussed about patents as well as Standard Essential Patents with companies active in different sectors (pharmaceutical, technology, IT). They also extensively discussed about content protection and copyright enforcement, including the question of the liability of platforms for IPR infringement. Participants also had the opportunity to engage in discussions with non-profit organizations and representatives of start-ups, as well as with a young entrepreneur of the Silicon Valley. A meeting with academics at Stanford University School of Law was also organised, where participants learned about the US copyright law. Finally, the delegation met with the Chief Policy Officer and Director for International Affairs of the US Patent and Trademark Office.

Summary account of meetings

The visit started with a meeting on Monday 30 October with the representative of **Sky Ventures** based in San Francisco. Sky's strategy to invest in innovative technology and to engage with start-ups in the Silicon Valley was presented. The presentation mainly focussed on convergence between content and media and Sky's technology strategy, including disruptive OTT video, digital monetisation and artificial intelligence. During the discussion with Members, the territorial right clearance aspects as well as piracy and monitoring of content were topics raised by participants.

On Tuesday 31 October, the Parliament delegation met representatives of **Twenty-First Century Fox**. The discussion touched upon content protection enforcement and regulatory development in the EU with reference to the US regulatory framework. Members learned about US regimes applying to protection of content and copyright enforcement and discussed with their interlocutors about the liability of platforms and the measures to be taken by intermediaries for copyright enforcement, including the "notice and take down" approach and content recognition technologies.

The mission participants then met at **Dolby Laboratories with executives of Universal Music** dealing with legal affairs, digital strategy and market development. The presentations focused on the music's business model transformation and the convergence with technology. Members also learnt about the different aspects of the business, including the relationship with artists. Among the topics discussed, copyright in the music sector including licensing, artist remuneration and enforcement and liability of platform were touched upon. At the end of the meeting, the delegation had technology demonstrations of music-based entertainment technology, including virtual reality and mastering technology.

In the afternoon, the delegation was received at **Gilead Sciences** and heard a presentation of

the company's research and healthcare programmes and its approach for treatment expansion. The presentation touched upon intellectual property for pharmaceuticals and especially patent. During the discussion, Members were interested to learn about the impact of the unitary patent, pricing and funding as well as the fight against counterfeiting. Intellectual property aspects of TTIP and international trade agreements were also touched upon as well as technology transfer in the context of the negotiation on the European Research programme.

Later on, the delegation moved to the **Facebook Campus in Menlo Park**, where a meeting with Facebook representatives was organised. A short presentation of Oculus (virtual reality) and of devices of the next generation took place. Following that, speakers entered into the topic of IPR, with a focus on copyright. Facebook explained in detail their "notice and action" programme and the practical aspects of rights management, a tool available to content creators to block infringing content uploaded on the platform. Members also had a presentation of Facebook's terms of use and a detailed explanation of the process of right infringement reporting. Finally, a presentation of Facebook projects on journalism was made, e.g. development of local newsrooms. During the discussion, Members and their interlocutors exchanged views on specific provisions of the current proposal for a directive on copyright.

The last meeting on Tuesday took place at **Electronic Frontier Foundation (EFF)** where the delegation had a discussion on copyright in the digital environment. Speakers presented EFF's approach to copyright and related rights in relation to the current legislative debate taking place in the European Parliament. They notably focused on filtering measures. Members were interested to know about EFF's point of view on how to secure the rights of creators. During the discussion, questions about exceptions and limitations, news publishers' right, authors' remuneration and levies were asked.

On Wednesday 1 November, the delegation went to **Google Campus in Mountain View** and had a series of meetings at Google X, jointly with the TRAN Committee. The presentation included Google projects on robotics, artificial intelligence and drones. Questions about cyber security and sharing of data, and also about the company's strategy and the legal responsibility for self-driving cars were asked. The issue of finding the balance between new innovation and adaptation of the legal framework was also raised. A second part of the meeting was dedicated to IPR and more specifically to YouTube's activity. Members had a presentation on Google's product plans for 2018, including the launch of YouTube original content, YouTube TV, and the merge of YouTube Red and Google play music. The delegation was keen on exchanging with YouTube about the protection of copyright in relation to the current EU legislative proposal. YouTube made a focus on the Content ID dispute process. The "value gap" and the opposition between add supported user-generated content and subscription platforms was also discussed. Finally, a discussion about artists' remuneration and transparency took place. Following the meeting, both JURI and TRAN went to see Google X prototypes of self-driving cars.

In the afternoon Members had a very informative meeting with **Apple at Cupertino** on patent, copyright and counterfeiting. Apple's strategy for IP, with a focus on patents and standard essential patents, was presented. The talk also included a part about investment in innovation in order to protect and differentiate Apple's products. Apple's business model and the related intellectual property protection issues were explained. Regarding IPR enforcement, the presentation informed about the problems Apple faces and its strategy to fight against counterfeiting, differentiating between the production and distribution channels and online infringement. During the discussion, participants asked questions about IPR enforcement and content protection and copyright infringement.

The next meeting took place at **Stanford University School of Law**, where participants met two copyright experts, **Mr Paul Goldstein**, Professor of law at Stanford, and **Mr Tyler Ochoa**, Professor of law at Santa Clara University. The meeting started with a presentation by Professor Goldstein of the recent US legislation on copyright law focusing on the development of the notion of “fair use”. A discussion on recent case-law and how US judges are adapting copyright law to the new technology followed. Then, Professor Ochoa talked about Section 512 of the DMCA, the US piece of legislation dealing with the limitation of liability of intermediaries. During the discussion, Members exchanged views with the two experts on aspects of the proposal for a directive on copyright, particularly on exception for text and data mining, the “value gap” and the safe harbour provisions of the e-commerce directive.

At the last meeting, which took place at **Pixar’s headquarters**, the delegation was received by executives of the **Walt Disney Company and Pixar**. Members had a presentation about Pixar’s technology innovation and creative process, where they heard about investment in creation and technology. After the presentation, the delegation had a brief tour of the premises, followed by a discussion with the media company executives on the evolving business model, film funding and distribution, and copyright issues. Among the variety of topics discussed, participants talked about piracy, liability of platforms as well as territoriality and licensing.

On Thursday 2 November, Members spent the morning at the US Patent and Trademark Regional Office in San Jose where they had a series of meetings with different interlocutors. The first meeting with **CISCO Systems** was about standard essential patents and counterfeiting in the IT sector. The discussion focused on IPR policy and the value of patent, and the position of CISCO regarding licensing and standards. The question of the safe harbour and cloud storage was raised during the debate. CISCO’s experience with regard to counterfeiting was then shared with participants, including information on results of investigations and with a focus on the costs and risks and the importance of IPR enforcement in the EU.

Following that meeting, Members had a **discussion with Shira Perlmutter, the Chief Policy Officer and Director for International Affairs of the US Patent and Trademark Office**, on policies and legislative priorities on intellectual property rights. Questions about cooperation across the Atlantic were asked. Regarding copyright, Members were keen on discussing further on the principle of territoriality and fair use in the US. The situation in the EU was also discussed, particularly the notice and take down systems and the safe harbour provisions. Members focused on the role and responsibility of platforms and social media with regard to copyright infringement.

The mission ended with a **roundtable discussion with start-ups** representatives and with a young entrepreneur of the Silicon Valley. **Engine**, an organisation that works in the field of policy related to start-ups, and **ACT/The App Association**, an organisation representing small technology companies, presented their position on the current challenges for IPR in the digital and technological environment. They discussed about EU and US legislation and how it works for start-ups. The question of the exemption of liability of platforms was discussed extensively. Participants also exchanged about content recognition technology. Finally, the founder of **Spect**, gave his point of view as an ophtalmologist who recently turned tech entrepreneur on how start-ups perceive IPR at the early stage of starting-up.

Conclusions

The visit to the Silicon Valley and the discussions the delegation had with a wide range of interlocutors gave Members the opportunity to exchange views with US experts and stakeholders active in the fields of intellectual property rights.

The mission provided Members with new insights in relation to the current legislative debate taking place in Parliament, in particular on copyright, and information and new elements of reflection on policy strategies on other topics on which Parliament will be called to work in the near future, for example on standard essential patents or IPR enforcement.

The mission could lead to further exchanges with the interlocutors met by the delegation. This seems to be already the case for the academics who are now in contact with some of the Members of the delegation.

COMMITTEE ON LEGAL AFFAIRS
Mission to Silicon Valley
30 October - 2 November 2017

PROGRAMME

Monday, 30 October		
Afternoon	Individual transfers from the airport to Hotel Hilton Union Square	<u>Hotel Hilton Union Square</u> 333 O'Farrell St, San Francisco, CA 94102 Phone: +1 415-771-1400
18:25	<i>Meeting at the lobby of Hotel Hilton Union Square and transfer to Silicon Foundry</i>	
19.00-20:00	Meeting with SKY Venture Content and technology strategy and the IP environment <ul style="list-style-type: none"> • John Jelley, Vice President Business Development 	<u>Silicon Foundry</u> 505 Howard St Suite 201 San Francisco, CA 94105
20:00	<i>Transfer back to Hotel Hilton Union Square</i> <i>Dinner: free arrangements</i>	
Tuesday, 31 October		
09:00-09:45	Meeting with Twenty-First Century Fox, Inc. Content protection enforcement and regulatory development <ul style="list-style-type: none"> • Chris Reed, Vice President; Content Protection • David Fares, Senior Vice President, Government Affairs • Michael O'Leary, Senior Vice President, Global Public Affairs & Policy 	<u>Hotel Hilton Union Square</u> 333 O'Farrell St, San Francisco, CA 94102 Phone: +1 415-771-1400
09:45-10:15	<i>Transfer from Hotel Hilton Union Square to Dolby Laboratories</i>	
10:15-11:00	Meeting with Universal Music Music and copyright, building value in a digital world, partnering with artists <ul style="list-style-type: none"> • Eric Berman, Executive Vice President, Public Affairs • Jeff Harleston, Executive Vice President, Business & Legal Affairs • Michael Nash, Executive Vice President, Digital Strategy • Steve Berman, Vice Chairman, Interscope Geffen A&M • Adam Granite, Executive Vice President, Market 	<u>Dolby Laboratories, Inc.</u> 1275 Market Street San Francisco, CA 94103-1410

	Development <ul style="list-style-type: none"> Oana Ruxandra, Sr. Vice President, Digital Strategy & Partnerships 	
11:00-12:00	<i>Transfer from Dolby Laboratories to Gilead</i>	
12:00-13:00	Meeting at Gilead Sciences Patent in pharmaceutical sector and enforcement issues <ul style="list-style-type: none"> Gregg H. Alton, Executive Vice President, Corporate and Medical Affairs 	<u>Gilead Sciences</u> 309 Velocity Way Foster City, CA 94404
13:00-14:00	<i>Transfer to Gilead to Facebook</i>	
14:00-15:00	Meeting at Facebook Notice and action system, rights manager, partnership with publishers, policy discussion on copyright <ul style="list-style-type: none"> Richard Nessary, Deputy General Counsel for Facebook Mark Fiore, Director IP Legal Probir Mehta, Policy Manager, IP Thomas Sweeney, Media Operations and Partnerships Sarah Goll, Team Leader, IP Global Support Operations 	<u>FACEBOOK</u> BUILDING #15 1 HACKER WAY, MENLO PARK, CA
15:00-17:00	<i>Transfer from Facebook to EFF</i>	
17:00-18:00	Meeting at Electronic Frontier Foundation <ul style="list-style-type: none"> Mitch Stoltz, Senior Staff Attorney Danny O'Brien, International Director 	<u>ELECTRONIC FRONTIER FOUNDATION</u> 815 EDDY ST, SAN FRANCISCO
18:00	<i>Transfer from EFF to Hotel Hilton Union Square San Francisco Dinner: free arrangements</i>	
Wednesday, 1 November		
08:20	<i>Meeting at the lobby of Hotel Hilton Union Square and transfer to Google X</i>	
10:00-12:15	Meeting at Google (partly joint with TRAN Committee) 10:00- 10:15: Welcome and walkthrough of X museum 10:15- 11:15: Discussion on robotics, artificial intelligence and drones <ul style="list-style-type: none"> Alex Kozak, Public Policy Manager at X 11:15- 12:15: Discussion on IPR, including YouTube's activity, and partnering with publishers <ul style="list-style-type: none"> Erik Stallman, Public Policy Counsel at Google 12:15: Waymo presentation	<u>Google</u> 100 Mayfield Ave, Mountain View, CA 94043 Visitors' access: The Rails, Google Campus via Nita Avenue

	<ul style="list-style-type: none"> George Ivanov, Manager of Public Policy Development at Waymo 	
12:15- 12:30	<i>Transfer to Googleplex Main Campus</i>	
12:30-13:15	<i>Walk through Googleplex Main Campus followed by individual lunch at Charlie's Cafe</i>	1600 AMPHITHEATRE PKWY, MOUNTAIN VIEW, CA 94043
13:15-14:00	<i>Transfer from Google to Apple</i>	
14:00-15:00	Meeting at Apple Patent, copyright, counterfeiting/IP enforcement, Apple's content business <ul style="list-style-type: none"> BJ Watrous, Vice President & Chief IP Counsel Robert Windom, Senior Director, Chief Counsel - Content Jason Lundgaard, Senior Manager, Government Affairs 	Apple 4 Infinite Loop, Cupertino, CA 95014
15:00-15:30	<i>Transfer from Apple to Stanford University School of law</i>	
15:30-16:30	Meeting at Stanford University School of law Shared challenges in the digital environment <ul style="list-style-type: none"> Prof. Paul Goldstein, Stanford University Prof. Tyler Ochoa, Santa Clara University Also participating: Shira Perlmutter, USPTO	Stanford University School of Law Moot Courtroom, Room 80 559 Nathan Abbott Way, Stanford, CA 94305
16:30-18:30	<i>Transfer from Stanford University School of law to Pixar</i>	
18:30-20:00	Meeting at Pixar's headquarters 18:30 – 19:30: Overview of Pixar technology innovations and creative process, including collaboration with Disney and third party companies 19:30-20:00: Discussion focused on creativity/innovation, convergence of media and technology, film funding/distribution and copyright protection in evolving business models with media company executives <ul style="list-style-type: none"> Alan Braverman, Senior Executive Vice President and General Counsel, The Walt Disney Company Dorothy Attwood, Senior Vice President, Global 	Pixar's headquarters 1200 Park Ave, Emeryville, CA 94608, USA

	Public Policy, The Walt Disney Company <ul style="list-style-type: none"> • Thomas Spiller, Vice President, Global Public Policy – EMEA, The Walt Disney Company • Jim Kennedy, Senior Vice President, Business Strategy and Chief Legal Counsel, Pixar • Marc Greenberg, Vice President, Finance and Strategy, Pixar • John Halstead, Supervising Technical Director, COCO • David Ryu, Supervising Technical Director, COCO • James Filippatos, Vice President, Global Public Policy – EMEA, The Walt Disney Company 	
20:00	<i>Transfer back to Hotel Hilton Union Square San Francisco</i> <i>Dinner: free arrangements</i>	
Thursday, 2 November		
07:15-9:00	<i>Meeting at the lobby of Hotel Hilton Union Square and transfer to US Patent and Trademark Regional Office</i>	
9:00-10:00	Meeting with Cisco Systems, Inc. Counterfeiting in IT sector and Standard Essential Patents <ul style="list-style-type: none"> • Dan Lang, Vice President and Deputy General Counsel, Intellectual Property • Bill Friedman, Director for Worldwide Cisco Brand Protection 	US Patent and Trademark Regional Office 26 South Fourth Street, San Jose, CA 95113
10:00-11:00	Meeting with Shira Perlmutter, US Patent and Trademark Officer Exchanges on policy and legislative priorities	
11:00-12:00	Meeting with startups and start-ups representatives <ul style="list-style-type: none"> • Ankur Gupta, founder of Spect • Evan Engstrom, Executive Director, Engine • Kate Tummarello, Engine • Debbie Rose, Intellectual Property Fellow, ACT/The App Association 	
12:00	<i>End of mission - Transfer from San José to San Francisco city via San Francisco International Airport</i>	