



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036  
Tel: (202) 327-8100 | Fax: (202) 327-8101

## CONTENT & TECHNOLOGY POLICY REPORT OCTOBER 21, 2016



### I. Congressional Updates:

- On Monday, House Energy & Commerce Committee chairman Fred Upton (R-MI) and Subcommittee on Communications and Technology chairman Greg Walden (R-OR) sent a letter to the Inspector General of the Federal Communications Commission (FCC) raising concerns about the “growing interdependence” between the Inspector General and the Office of the FCC Chairman. Upton and Walden cite a number examples of an “apparent erosion of the Inspector General’s independence by FCC action,” such as the sharing of drafts of audits and the FCC’s Office of Human Resources allegedly having “inserted itself into hiring decisions of the Inspector General’s Office.” The letter asks the FCC to respond to a set of written questions by October 31, 2016. Read the letter [here](#).
- This week, Nashville newspaper *The Tennessean* interviewed members of Congress and music industry executives about the prospects for copyright reform. Participants were asked about the recent Department of Justice ‘100 percent licensing’ ruling, areas where music copyright reform is needed, and whether reform is politically feasible. *The Tennessean’s* piece includes remarks from SoundExchange president and CEO Michael Huppe, Representatives Jim Cooper (D-TN) and Doug Collins (R-GA), as well as Senator Lamar Alexander (R-TN). Read more [here](#).

### II. Judicial Updates:

- British photographer David Kittos has sued Donald Trump Jr. and Mike Pence for copyright infringement of

### Headlines and Highlights:

- Reps. Upton and Walden send letter to FCC Inspector General raising concerns about “growing interdependence” with FCC Chairman.
- USTR Froman writes op-ed in *Savannah Morning News* urging support for TPP.
- *The Tennessean* conducts an interview with members of Congress, music industry executives about prospects for copyright reform.
- KickassTorrents’ legal team argues torrents are not copyrights and asks for case to be dismissed.

### In the Blogs:

[Content Thief Turned Content Creator Rails Against Piracy](#)  
Mister Copyright  
October 15 by Kevin Madigan

[The Nobel Prize for Bob Dylan: Songwriters Rejoice!](#)  
Hugh Stephens Blog  
October 19 by Hugh Stephens

[Second Circuit Brings Some Sanity Back to Transformative Fair Use](#)  
Law Theories  
October 13 by Devin Hartline

his photograph of a bowl of Skittles. The photograph was used in a controversial tweet from Donald Trump Jr., which said, “If I had a bowl of skittles and I told you just three would kill you. Would you take a handful? That’s our Syrian refugee problem.” The suit asks for an injunction to prevent the photo from being shared, as well as damages and profits. Read more [here](#).

- Illegal file-sharing website KickassTorrents (KAT) has argued that torrents are not copyrights, and thus the case against the site’s founder Artem Vaulin should be dismissed. The motion for dismissal states that “websites like KAT are devoid of content files,” being “nothing more than a search engine, no different in any material way from Google and other popular website search engines, except that KAT indexes BitTorrent files.” The defense further argues that any case which rests on the grounds of “secondary infringement” could only be made under civil law. Read more [here](#).

### **III. Administration Updates:**

- On Monday, U.S. Trade Representative (USTR) Froman wrote an op-ed in the *Savannah Morning News* urging Congress to pass the Trans-Pacific Partnership (TPP) and saying that failure to do so “would undermine U.S. leadership and cede the role of establishing the rules for global trade to China.” Froman went on to write that “Congress doesn’t get to vote to stop automation or globalization, so it is tempting to make trade agreements the scapegoat for all our economic ills.” “But the truth is—that done right—high standard trade agreements like TPP...actually levels the playing field.” Read more [here](#).

### **IV. International Updates:**

- On Monday, New Zealand Ambassador to the United States Tim Groser said that all Trans-Pacific Partnership (TPP) nations have “plan Bs” for a potential scenario in which the United States does not ratify the TPP. He noted that “the tragedy would be that the plan Bs that we have would not involve the United States.” He also said that in the meantime, he and his staff have been meeting with members of Congress to make the case for the TPP.

### **V. Industry Updates:**

- SoundExchange president and CEO Michael Huppe was interviewed in the music industry blog NEKST.biz this week. The interview covers a range of topics, including SoundExchange’s growth in recent years and changes in the streaming landscape. Huppe calls attention to “the AM/FM artist loophole”, arguing that the fact that radio promotes music does not entail that there is reason to “take someone else’s creative work for free, without their permission.” Read more [here](#).
- This week, the Copyright Royalty Board invited interviews regarding a new electronic filing system for all documents submitted to the Copyright Royalty Judges. Examples of documents that the system will accept are litigation documents, claims, audit notices, comments, and hearing exhibits. The Judges anticipate that the system will be completed by spring 2017 and go live later that year. They also anticipate making use of the electronic filing system mandatory for most filers. The contractor developing the system would like to interview prospective users about the best and the least valuable aspects of electronic filing systems with which they have experience. If you or your colleagues are willing to be

interviewed, please write to [crb@loc.gov](mailto:crb@loc.gov) as soon as possible, and type “User Interview” in the subject line. The contractor will independently select and contact respondents.

- Chinese billionaire Wang Jianlin has been expanding his push into the entertainment industry. Wang is chairman of the Dalian Wanda Group, which recently announced that it will offer a 40 percent production rebate for film and television projects shot at Wanda’s Qingdao Movie Metropolis in eastern China. Wanda is co-financing the rebate along with the Qingdao regional government. Wang also held a Hollywood-oriented gala at the Los Angeles County Museum of Art on Monday, his company’s first major event in the United States. In addition to acquiring entertainment companies such as AMC, he has repeatedly stated his desire to purchase a major Hollywood studio. Wang’s inroads into the U.S. entertainment industry have come under scrutiny, with 16 members of Congress recently asking the Government Accountability Office to study whether Chinese ownership of entertainment companies puts the U.S. at risk of foreign propaganda. Read more [here](#).
- *Music Week* conducted a survey this week, asking music industry executives about their copyright policy priorities for the next congress and administration - and the likelihood of those priorities being addressed. Participants include Copyright Alliance CEO Keith Kupferschmid, who makes the case for Copyright Office modernization and for a copyright small claims process, Sony/ATV CEO Martin Bandier, who discusses the Department of Justice’s ‘100 percent licensing’ ruling. Other executives interviewed include ASCAP CEO Elizabeth Matthews, The Recording Academy CEO Neil Portnow and Attorney Chris Castle, author of the blog Music Technology Policy. Read more [here](#).
- Federal Communications Commission (FCC) Chairman Tom Wheeler published a CNET op-ed on Wednesday touting the FCC’s role as a consumer protection agency. In addition to detailing the FCC’s recent settlements with T-Mobile and Comcast, he makes a case for the set-top box proposal, arguing that the proposal “would end the set-top box stranglehold.” He also presents a case for the broadband privacy proposal before the commission, telling consumers, “it’s your data – it’s about time you had a say over how it’s used.” Read the op-ed [here](#).
- During a Coalition of Service Industries Global Services Summit panel on Wednesday, former U.S. Trade Representative for China Charles Freeman III said that the Chinese no longer perceive the TPP as an “inherent threat,” and predicted that the TPP could spur the Chinese to “move the ball forward in an effort to catch up” on trade liberalization. He also predicted that failure to pass the TPP could damage the United States’ credibility with TPP nations, causing them to consider pursuing closer ties with China.