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CONTENT & TECHNOLOGY POLICY REPORT FEBRUARY 10, 2017



I. Congressional Updates:

- On Monday, the House of Representatives voted to approve the *Email Privacy Act* by a vote of 419-0. In a [statement](#), House Judiciary Chairman Bob Goodlatte (R-VA) called on the Senate to take up the legislation, which he said “will better safeguard Americans’ constitutional rights while also protecting law enforcement’s ability to fight crime.” The bill, introduced by Representatives Yoder (R-KS) and Polis (D-CO), amends the *Electronic Communications Privacy Act of 1986 (ECPA)* to require law enforcement to obtain a warrant in order to access files that have been stored on third-party servers for more than 180 days. The bill passed the House in the previous Congress, but died in the Senate. Read more [here](#)
- Representatives Tom Rooney (R-FL) and Joe Crowley (D-NY) have reintroduced the *Allocation for Music Producers (AMP) Act* which aims to help music producers, mixers, and engineers access royalty payments. The bill provides these parties with a statutory right to receive royalties by way of the “letter of direction” contractual process. The bill also provides this statutory right to recordings produced before 1995, when the letter of direction process was established. Read more [here](#).
- In a *Politico Pro* interview this week, House Energy & Commerce Subcommittee on Communications and Technology Chairwoman Marsha Blackburn (R-TN) discussed net neutrality, broadband infrastructure expansion, the NTIA, broadband privacy, and technology companies’ reaction to President Trump’s executive order on immigration. Blackburn said that she would “like to see net neutrality become history” and get rid of the Title

Headlines and Highlights:

- Reps. Chu and Marino reintroduce the Copyright Office for the Digital Economy (CODE) Act.
- Sen. Hatch meets with tech representatives, will unveil innovation agenda next week.
- U.S. Chamber of Commerce releases *International IP Index*.
- Senator Jeff Sessions confirmed by 52-47 vote to be next U.S. Attorney General.
- Reps. Rooney and Crowley reintroduce Allocation for Music Producers (AMP) Act.

In the Blogs:

[Where does Copyright Governance fit within Government?](#)

Hugh Stephens Blog
February 5 by Hugh Stephens

[Academic Plagiarism, Real Courts](#)
Plagiarism Today

February 7 by Jonathan Bailey

[Disruption achieved. What now?](#)

The Illusion of More

February 8 by David Newhoff

II classicization. She said that legislation on the matter is possible and that she has “constituents that want to be able to use paid prioritization.” She also expressed a desire to modernize and re-organize the FCC. Addressing President Trump’s immigration order, Blackburn said that tech companies “probably don’t understand” the order, and encouraged the tech community “to continue to work with the administration.”

- Representatives Judy Chu (D-CA) and Tom Marino (R-PA) introduced the *Copyright Office for the Digital Economy (CODE) Act* on Monday. The bill aims to modernize the Copyright Office. It would also provide for the Copyright Office to be an independent entity within the Legislative Branch. In a [statement](#), Copyright Alliance CEO Keith Kupferschmid praised the bill, saying that it “addresses imperative modernization issues and, in conjunction with the proposal issued by Chairman Goodlatte and Ranking Member Conyers late last year, represents an important step toward modernizing the Office.” Read more [here](#).
- *Politico* is reporting this week that Sen. Orrin Hatch (R-UT), Chairman of the Senate Finance Committee, has been meeting with representatives from Amazon, Apple, Oracle, Cisco, and Qualcomm to discuss tech policy, and the Senator will “unveil an innovation agenda” at an event in the Capitol next week. The discussions have centered on topics like copyright reform, data privacy, and high-skilled immigration. In related news, Finance Chairman Hatch and Ranking Member Wyden (D-OR) announced the subcommittee assignments for the 115th Congress. On the Republican side, Sen. Dean Heller (R-NV) will join the trade subcommittee, replacing Sen. Rob Portman (R-OH). For the Democrats, Sen. Bob Casey (D-PA) will be the new trade subcommittee ranking member, while Sen. Claire McCaskill (D-MO) will take the place of Sen. Chuck Schumer (D-NY). Read more [here](#).
- It was announced this week that Rep. Judy Chu (D-CA) will be the newest member of the House Ways and Means Committee, taking the slot of former Rep. Xavier Becerra (D-CA), who left to become California’s attorney general. Rep. Richard Neal (D-MA), the Ways and Means Committee Ranking Member, released a [statement](#) applauding her addition to the panel, saying “Judy has gained invaluable experience in how to make the tax code work for local communities and small businesses—something she will bring with her as our committee looks to tackle tax reform.”
- Following the confirmation of Senator Jeff Sessions (R-AL) to be the next U.S. Attorney General, Alabama Governor Robert Bentley appointed Luther Strange to fill the state’s now-vacant Senate seat. Since 2011, Strange has served as the Alabama Attorney General, a position that saw him [successfully prosecute](#)—alongside 33 other states—Amazon, for its price-fixing of E-books. Read more [here](#).

II. Judicial Updates:

- On Monday, the estate of Messy Mya—a former rapper and YouTube star—filed a \$20 million copyright lawsuit against Beyoncé. The lawsuit, filed in the Eastern District of Louisiana, argues that Beyoncé’s song “Formation” features excerpts of Mya’s voice without her permission. Mya’s sampled words helped “create the tone, mood, setting and location of the New Orleans-themed ‘Formation’ video and audio recordings,” the lawsuit states. Aside from the \$20 million in back royalties, Mya’s estate is also seeking songwriting credit for the deceased singer, who was fatally shot in 2010 at age 22. Read more [here](#).

III. Administration Updates:

- On Wednesday, Sen. Jeff Sessions (R-AL) was confirmed as the next Attorney General of the United States in a near-party-line vote, 52 to 47. “I can’t express how appreciative I am for those of you who stood by me during this difficult time,” Sessions said following the vote. “By your vote tonight, I have been given a real challenge. I’ll do my best to be worthy of it.” Read more [here](#).
- President Trump signed an executive order on Thursday titled “Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking.” The order, which largely focuses on international criminal organizations such as drug cartels, briefly addresses intellectual property theft. The order states that it “shall be the policy of the executive branch to strengthen enforcement of Federal law in order to thwart transnational criminal organizations” and lists cybercrime and intellectual property theft as examples of the “illicit activities” that those criminal organizations undertake. The executive order also instructs the interagency Threat Mitigation Working Group (TMWG) to issue a report within 120 days on transnational criminal organizations and “recommended actions for dismantling them.” Read the order [here](#).
- On Thursday, the White House issued a [press release](#) formally announcing the 24 people who will be serving in President Trump’s Cabinet.

IV. International Updates:

- On Wednesday, the U.S. Chamber of Commerce released its *International IP Index*, which rates 45 world economies on the strength of their intellectual property protection regimes. In a statement, David Hirschmann, the President and CEO of the Chamber’s Global Intellectual Property Center, said that this year “a clear pack of leaders has emerged,” made up of the United States, the United Kingdom, Japan, and the European Union. On the other hand, the report criticizes countries such as Canada and Australia for implementing “policies that undermine their proud traditions of IP-led innovation.” Read more [here](#).
- European Union Advocate General Maciej Szpunar submitted an advisory opinion to the Court of Justice of the European Union on Wednesday arguing that courts may block access to the Pirate Bay, despite the fact that the site does not itself host infringing content. Szpunar argues that sites like the Pirate Bay can be found to engage in infringement because they play a role in the communication of infringing works to the public. Read more [here](#).
- Last Friday, in an interview with Ukrainian news outlet Unian, Nicholas Burge, the head of the trade section of the European Commission’s delegation to Ukraine, criticized the country’s lax approach to combatting online piracy within its borders. “There should be a law that would provide a major responsibility for the contents of pirate sites,” Burge said. “We will only believe in Ukraine’s serious intentions to fight pirate sites when there are penalties for those involved in supporting them.” Burge went on to say that ISP’s should bear some “legal responsibility” for what they do, otherwise it will be “impossible” to end online piracy. Read more [here](#).
- This week, the International Chamber of Commerce’s (ICC) Business Action to Stop Counterfeiting and Piracy (BASCAP) program and the International Trademark

Association (INTA) released a [report](#) finding that the worldwide value of trade in counterfeit and pirated goods was in the range of \$710 to \$917 billion in 2013, and that the worldwide value of digital piracy in movies, music, and software was \$213 billion in 2015. Read more [here](#) and [here](#).

V. Industry Updates:

- On Monday, the Copyright Office published a final rule that makes technical amendments to its regulations governing registration, recordation, licensing, and other services. The Office describes the rule as “designed to improve the quality of the Office’s regulations by updating cross-references, replacing outdated terminology, reflecting structural changes to the Office and its senior management, eliminating expired or obsolete provisions, and correcting nonsubstantive errors. Read the Federal Register notice [here](#).
- It is still unclear whether Michelle Lee will continue as Director of the United States Patent and Trademark Office (USPTO), and whether she is still serving in the position. *IP Watchdog’s* Gene Quinn reports that his sources say “Michelle Lee continues to be seen” at the agency and that patents continue to be issued with her signature. Meanwhile, Lee has been canceling previously scheduled speaking engagements, and many USPTO employees do not know who is currently leading the agency. Quinn’s sources also tell him that the USPTO “was prepared last week to issue patents with the signature of Drew Hirshfeld, who is the Commissioner of Patents and seems to be currently in the position of Acting Director,” but “at the last minute...a decision was made to revert back to Michelle Lee’s signature.” Quinn also points out that using Lee’s signature could put the agency in violation of 35 U.S.C. 153, which requires the Director to sign issued patents. Read more [here](#).
- On Thursday, Stevie Wonder penned an op-ed in *Billboard* discussing the threat that independent radio stations owners—such as himself—face from negotiating with U.S. performing rights organization like ASCAP, BMI, SESAC, and GMR. Wonder notes that “virtually every other country in the world” has one performing rights society, while the U.S. currently has four—a distinction that leaves independent radio station owners “facing higher costs to play the music our audience wants to hear, but with no decent explanation of the how and why these higher costs are justified.” Wonder goes on to note that he strongly believes artists should be “fairly and adequately” compensated for their work, but laments that the current system “isn’t fair, and it isn’t open.” Read more [here](#).