



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT FEBRUARY 17, 2017



### I. Congressional Updates:

- On Thursday, Senate Judiciary Committee Chairman Chuck Grassley (R-IA) announced that confirmation hearings for Supreme Court nominee Neil Gorsuch will begin on March 20<sup>th</sup>. Sen. Grassley said he expects the hearings to last three to four days. Read more [here](#).
- On Thursday, Senator Orrin Hatch (R-UT), Chairman of the Senate Republican High-Tech Task Force, released his innovation agenda for the 115<sup>th</sup> Congress. During the unveiling, Hatch criticized the Library of Congress's decision to require Congress to weigh in on the selection of the next Register of Copyrights via SurveyMonkey, calling it "unacceptable." "I also think it would be a good idea to make the Register of Copyrights a presidentially appointed, Senate-confirmed position," Hatch added. "This would bring certainty to a position whose chain of authority is, at present, a bit unclear." Read more [here](#).
- Representative Brad Schneider (D-IL) will join the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet. He will replace Representative Judy Chu (D-CA), who is no longer on the Judiciary Committee. Chu has given up her Judiciary spot in order to serve on the Ways and Means Committee. In related news, Rep. Mike Bishop (R-MI) gave up his slot on the House Judiciary Committee to fill the Committee on Ways and Means slot recently vacated by new Health and Human Services Secretary Tom Price. No announcement has been made yet as to who will fill Rep. Bishop's vacated Judiciary seat.
- This week, the House Judiciary Committee released its "Authorization and Oversight Plan for the 115<sup>th</sup>

### Headlines and Highlights:

- Senate Judiciary Committee to hold confirmation hearings for Supreme Court nominee Neil Gorsuch starting March 20<sup>th</sup>.
- Executive Director for musicFIRST Coalition pens op-ed criticizing "decades-old subsidy" for AM/FM radio.
- Senator Hatch unveils innovation agenda, calls use of SurveyMonkey to solicit input on Register of Copyrights "unacceptable."
- MPAA Chairman gives speech at Berlin Film Festival, warns of 'new generation' piracy.

### In the Blogs:

[Here Come the Vikings: Piracy in the Nordic World](#)

February 13 by Hugh Stephens

[SONA and Songwriters Fight DOJ's Misguided 100% Licensing Rule](#)

Law Theories

February 9 by Devin Hartline

[5 Reasons People Plagiarize \(And How to Stop Them\)](#)

Plagiarism Today

February 15 by Jonathan Bailey

Congress.” The plan lists a host of agencies for which it plans to review their current authority and assess future needs, including U.S. Customs and Border Protection, U.S. Office of the Intellectual Property Enforcement Coordinator, U.S. Patent and Trademark Office’s fee setting authority, and the U.S. Copyright Office. Read the entire plan [here](#).

- *POLITICO* is reporting this week that, after the Affordable Care Act, Republicans next repeal-and-replace act will be to roll back the Federal Communications Commission’s net neutrality order. However, leading GOP lawmakers are concerned that an “outright repeal would provoke a massive backlash” and are hoping to convince Congressional Democrats to negotiate an acceptable replacement. For their part, Democratic lawmakers have so far balked at any attempt to negotiate. Sen. Ed Markey (D-MA) said repeal would bring a “political firestorm” upon Republicans. Senate Minority Leader Chuck Schumer said any effort to dismantle net neutrality rules would be “met with fierce resistance” from his Democratic colleagues.

## II. Judicial Updates:

- Late last week, Zillow was ordered to pay \$8.3 million by a Seattle federal jury after finding the company infringed the copyrights of VHT Inc. on its Zillow Digs website. Following the ruling, Zillow said they “will vigorously pursue all options to overturn their verdict,” adding that they “take copyright protection and enforcement seriously and will continue to respect copyright permissions across our platforms.” Read more [here](#).
- On Thursday, the 2<sup>nd</sup> U.S. Circuit Court of Appeals in New York dismissed a copyright lawsuit brought by the 1960s band The Turtles against SiriusXM, upholding a Dec. 20<sup>th</sup> ruling stating that New York common law does not protect the public performance of songs made before 1972. Read more [here](#).

## III. Administration Updates:

- On Tuesday, Senate Finance Committee Chairman Orrin Hatch (R-UT) said that Robert Lighthizer, President Trump’s nominee for United States Trade Representative, will need a special congressional waiver to take his post, citing his previous work representing a number of foreign governments, including Brazil and China. “We want to get him through,” Hatch said. “We’ve got to get a waiver first. But we want to get him through.” In 1991, Lighthizer represented the Chinese Chamber of Commerce for Manufacturers and Electronics (CCCME), a trade association that represents state-owned enterprises, in an anti-dumping action brought forth by U.S. ceiling and oscillating fan manufacturers. Read more [here](#).
- Michelle Lee’s status as Director of the USPTO remains unclear. *Politico* spoke with USPTO press secretary Paul Fucito, who “declined to clarify Lee’s status at the agency,” but said that she has been signing issued patents. *Politico* also spoke with Representative Darrell Issa (R-CA), Chairman of the House IP Subcommittee and a vocal supporter of Lee, who said he is “delighted that she’s been held over,” and added that he “would expect that her being held over allows for an orderly transition should they find another place for her in the administration.” Issa further suggested that Lee could move into an administration position in trade policy, or into a position at the White House Office of Science and Technology Policy (OSTP). Read more [here](#).

#### IV. International Updates:

- A large coalition is asking the Australian Communications Minister for new fair use legislation and other changes to copyright law. The coalition, which includes members such as Google and the Council of Australian University Librarians, is advocating for changes to Australian copyright law detailed in a Productivity Commission report in December 2016. That report argues that current Australian copyright protections are overly broad and “skewed too far in favour of copyright owners to the detriment of consumers and intermediate users.” Such changes are opposed by the Copyright Agency Limited and various groups representing the content industries. Read more [here](#) and [here](#).
- On Thursday, *POLITICO Europe* posted a “copyright power matrix” identifying which people and companies wield the most power when it comes to shaping EU copyright policy. Among the 31 important players identified, *POLITICO Europe* highlighted Germany as a “key influencer,” saying Commissioner Günther Oettinger “has for two years aggressively championed ‘neighboring rights,’ which would give press publishers the ammunition to negotiate with news aggregators like Google and Yahoo.” The article also claims that music-streaming service Spotify has overtaken Apple’s iTunes as a key influencer in the music space “because it has disrupted the old copyright business.” Read more [here](#).

#### V. Industry Updates:

- On Sunday, Chris Israel, Executive Director for the musicFIRST Coalition, published an op-ed on Quartz titled “In the age of Spotify, radio stations should no longer get away with playing music for free.” In the article, Israel criticizes big AM/FM radio stations for using their “powerful lobbying interests” to “reap billions in advertising revenue” while never paying a cent to musicians who perform the songs they use on the air. Israel goes on to highlight the efforts that radio station conglomerates are making to ensure their competitive advantage remains, namely through promoting the “Local Radio Freedom Act”—legislation that would preserve their “decades-old subsidy.” “To justify this massive subsidy, these powerful interests perpetuate the myth that Big Radio is where new artists and music are discovered,” Israel writes. “The truth is that today, musicians and their songs are discovered through social media, digital music services and a multitude of online entertainments and news platforms.” Read more [here](#).
- On Wednesday, Chris Dodd, Chairman of the Motion Picture Association of America (MPAA) gave a speech at the Berlin Film Festival where he raised concerns over “new generation” piracy in Europe—citing set top boxes using Kodi open-source media player apps on set-top boxes that facilitate access to illegal content—and pledged to stand “cheek by jowl” with European film and TV industries in their battle to preserve territorial licensing in Europe. Read more [here](#).