



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 FEBRUARY 3, 2017



I. Congressional Updates:

- On Wednesday, the Senate Judiciary Committee voted to approve the nomination of Senator Jeff Sessions as attorney general. All nine Democrats on the committee voted against the nomination, and all eleven Republicans voted in favor of the nomination. The full Senate is expected to vote on the nomination next week. Read more [here](#).
- On Wednesday, Senate Finance Committee Chairman Orrin Hatch (R-UT) delivered remarks at the U.S. Chamber of Commerce outlining the Committee's priorities for the 115th Congress. In the speech, Hatch said he would not support any trade deal if it fell short of the standards Congress listed in the Trade Promotion Authority (TPA). Hatch went on to say that his "chief concern" was ensuring White House policies "promote economic growth, expand individual opportunity...and, of course, promote and protect intellectual property." Read his entire speech [here](#).
- On Thursday, the House Energy and Commerce Subcommittee on Communications and Technology held a hearing on reauthorization of the National Telecommunications and Information Administration (NTIA). During the hearing, Rep. Mike Doyle (D-PA), the top Democrat on the subcommittee, urged Congress to fully fund the NTIA, saying "Our lack of investment here could have serious implications for this agency's ability to accomplish its mission." Many of the subcommittee members also focused their questions on ways Congress and the NTIA could build out broadband infrastructure, particularly in rural communities.

Headlines and Highlights:

- Chairman Goodlatte lays out House Judiciary priorities for 115th Congress.
- Trump Administration is prioritizing a U.S.-Japan bilateral trade deal.
- U.S. business groups urge Congress, White House to strengthen U.S.-India economic cooperation.
- Senate Finance Chairman Hatch discusses Committee priorities for 115th Congress, pledges to promote and protect IP.

In the Blogs:

[The Super Bowl and the Future of Canadian Broadcasting](#)

Hugh Stephens Blog

January 30 by Hugh Stephens

[IP Scholars Explain Why We Shouldn't Use SurveyMonkey to Select Our Next Register of Copyrights](#)

Mister Copyright

January 31 by Kevin Madigan

[3 Count: Scrapped Plans](#)

Plagiarism Today

February 1 by Jonathan Bailey

- The House Judiciary Committee has posted all of the comments it has received on its proposal to reform the Copyright Office. The comments are available [here](#). The Internet Association’s comments argue that the Copyright Office “does not suffer from a lack of independence” and asserts that “reforming the position of the Register to a Senate-confirmed position and/or removing the Office from the Library are neither necessary nor helpful steps.” The comments urge the committee to instead focus on “areas most in need of modernization and reform” such as the Office’s IT infrastructure and accountability. The Association also recommends the creation of a public advisory committee and a “statutorily outlined ownership database,” among other suggestions. On the subject of a copyright small claims process, the comments argue that the matter is “best addressed in a separate legislative discussion.” Read their comments [here](#).
- In a speech to the Federalist Society on Wednesday, House Judiciary Committee Chairman Bob Goodlatte (R-VA) broadly described his agenda for the committee in the 115th Congress. He called the committee’s Copyright Office modernization proposal just the “first of what we intend to be numerous policy proposals to reform aspects of our copyright laws” and affirmed that his initial focus will be giving the Office more autonomy and the ability to modernize under the leadership of the new register. Goodlatte mentioned that there are many other areas of copyright policy ripe for reform, but expressed uncertainty that progress could be made in those areas because of the divergent interests of the stakeholders involved. He mentioned music licensing as an example, stating that there are “lots of concerns” that music licensing has become “exceedingly confusing” and ill-suited to consumers’ use of new technologies and platforms. Goodlatte also singled out the problem of orphan works as an issue he would like to address “soon,” starting with the Copyright Office modernization, given that the Office’s outdated systems make it especially difficult to track down the owners of those works. He highlighted that problems with orphan works create significant difficulties for photographers, who, he added, would also benefit from “some type of small claims process.” Read Goodlatte’s prepared remarks [here](#), and read more [here](#).
- In a House Foreign Affairs joint subcommittee hearing on the potential impacts of a U.S.-U.K. free trade agreement, Representative Darrell Issa (R-CA) pointed out that unlike in the United Kingdom—and much of the globe—the AM/FM radio industry in the United States is not required to compensate artists when it plays their music. He said, “Terrestrial radio play in the United Kingdom - the Beatles, or the Beach Boys, or anybody, gets a royalty. In the United States, they don’t. In a harmonized world, we’re trying to bring that together.” He suggested that remedying that state of affairs might be something that could be “on the table” if the U.S. and U.K. were to negotiate a trade agreement.

II. Judicial Updates:

- Oculus VR and its two founders, Palmer Luckey and Brendan Iribe, must pay \$500 million for infringing the copyrights of ZeniMax Media, according to a verdict delivered by a Dallas federal court jury on Wednesday. The jury also found that Luckey violated a non-disclosure agreement. ZeniMax alleges that Oculus infringed on its intellectual property rights in the creation of Oculus’s signature product, the Rift headset. Oculus is a subsidiary of Facebook, which has pledged to appeal the ruling. Read more [here](#).

III. Administration Updates:

- *Financial Times* is reporting that the Trump Administration is prioritizing a bilateral trade deal with Japan ahead of an official visit to the U.S. next week by Japanese Prime Minister Shinzo Abe. The *Financial Times* argues that any U.S.-Japan deal would “face significant hurdles.” Wendy Cutler, who oversaw the U.S. negotiations with Japan during the Trans-Pacific Partnership, said a bilateral deal “really puts Japan in a bind,” adding that “Abe spent a lot of political capital on TPP.” Read more [here](#).

IV. International Updates:

- On Wednesday, twenty business groups, including the U.S. Chamber of Commerce, National Association of Manufacturers, and the Motion Picture Association of America, sent a letter to Congressional leadership calling on them to improve the U.S.-India economic relationship. The letter acknowledges that while U.S.-India economic cooperation has improved over the years, “efforts to address infrastructure project permitting” and “bankruptcy and tax reforms...remain elusive.” Moreover, the businesses write, India still has “insufficient protection of intellectual property” as evidenced by the country being placed on the Office of the U.S. Trade Representative’s Special 301 “priority watch list.” “The U.S. government, including Congress, should use all available channels to ensure fair play for businesses, investors, and entrepreneurs across the United States, and to support Indian efforts that align with these goals,” the letter closes. Read more [here](#).

V. Industry Updates:

- In a *Forbes* op-ed, Gabriel Horwitz, Vice President for the Economic Program at the think tank Third Way, argues that Copyright Office modernization should be a priority for the new congress and administration. He praises Representative Marino (R-PA) and Chu’s (D-CA) Copyright Office for the Digital Economy (CODE) Act and points out the recent House Judiciary Committee Copyright Office reform proposal includes “many important aspects” of that legislation. Read more [here](#).
- The Copyright Office has issued a final rule to allow authors and claimants to replace or remove personally identifiable information (PII), such as home addresses or personal phone numbers, from the Office’s online registration catalog. That information will still be stored in the Office’s offline records as required by law. The rule also codifies an existing practice that removes extraneous PII, such as driver’s license and social security numbers. Read the rule [here](#).
- *IP Watchdog’s* Gene Quinn reports this week that the USPTO still has not confirmed, and refuses to comment on, whether Michelle K. Lee will continue as Director of the USPTO and whether a separate acting director is currently running the agency. Lee is scheduled to deliver remarks at a NASDAQ event in San Francisco on Thursday. Gene Quinn cites rumors that two competing camps within President Trump’s “inner circle” are battling over whether Lee should remain at the USPTO. Peter Thiel and Jared Kushner are rumored to be in favor of retaining Lee, while those rumored to be against Lee are “conservatives” who “want campaign promises to be delivered upon and are in favor draining the swamp...[which] starts with getting rid of all Obama appointees.” Read more [here](#).
- This week, Dean Baker, an economist and the co-director of the Center for Economic and policy Research, was featured as a debater on *The New York Times’* “Room for Debate” page. In answering what should and shouldn’t be on the table if President Trump does

indeed renegotiate the North American Free Trade Agreement (NAFTA), Baker argued for removing “strong patent and copyright protection.” “These are forms of protectionism—and the opposite of free trade,” Baker wrote, adding that it does not “make sense for a 21st century economy to be dependent on this relic of the feudal guild system for supporting innovation.” Read more [here](#).

- The Entertainment Software Association announced on Wednesday that the computer and video game industry generated \$30.4 billion in revenue in 2016, an increase from \$30.2 billion in 2015. In particular, video game software revenue grew from \$23.2 billion in 2015 to \$24.5 billion in 2016. Read more [here](#).