



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT JANUARY 27, 2017



### I. Congressional Updates:

- Last Wednesday, the Senate Commerce Committee held a hearing on the nomination of Wilbur Ross to be the next Secretary of Commerce. During the hearing Ross defended his position on trade, saying “I am not anti-trade. I am pro-trade, but I am pro sensible trade, not pro trade that leads to the disadvantage of the American worker and the American manufacturing community.” Ross went on to add that countries that don’t play by the rules in international trade should be “punished and severely.”
- The musicFirst coalition sent members of Congress a letter last week laying out the coalition’s priorities and urging them not to cosponsor the Local Radio Freedom Act. The letter asserts that “terrestrial radio must join EVERY other platform that builds a business delivering copyrighted content and compensates artists for their music.” It also calls for legislation to address pre-1972 music copyrights, and for satellite services like SiriusXM to pay “a market-based rate to the artists and creators that they depend upon.” Read the letter [here](#).
- The House Judiciary Committee’s Subcommittee on Intellectual Property has added California Democrats Ted Lieu and Eric Swalwell to its ranks for the 115<sup>th</sup> Congress. The two Congressmen are also new additions to the full Judiciary Committee.
- This week, the House Energy and Commerce Subcommittee on Communications and Technology announced a hearing for Thursday, February 2<sup>nd</sup> on “Reauthorization of National Telecommunications and Information Administration.” In the hearing

### Headlines and Highlights:

- The Copyright Alliance sends letter to President Trump urging him to support “strong and vibrant” copyright system.
- President Trump taps Ajit Pai as next Chairman of Federal Communications Commission.
- Pearson, McGraw Hill, and Cengage subpoena Amazon to reveal names of counterfeit sellers.
- Trump directs USTR to withdraw from TPP, renegotiate NAFTA.

### In the Blogs:

#### [The Artist as Underdog](#)

Hugh Stephens Blog

January 23 by Hugh Stephens

#### [Intellectual Property Backgrounds of President Trump’s Potential Supreme Court Nominees](#)

Law Theories

January 23 by Devlin Hartline

#### [Guest Post: Trump’s Copycake Plagiarism Today](#)

January 26 by Diane Klein

announcement, Chairman Marsha Blackburn said “I’m looking forward to discussing NTIA’s work on spectrum allocation, ICANN activities, and what steps we can take to ensure America remains competitive in today’s digital environment.” Read more [here](#).

## II. Judicial Updates:

- Pearson Education, Cengage Learning and McGraw Hill Education—three of the largest textbook publishers in the world—have subpoenaed Amazon to reveal the names and financial accounts of online vendors who they allege are selling counterfeit books at “too good to be true” prices, and “hiding behind the anonymity of internet pseudonyms to profit from unauthorized copies of their books.” Amazon has said that it will work with the publishers to identify the offending parties and remove fraudulent items. “Amazon has zero tolerance for the sale of counterfeit items on our site,” said spokesman Erik Farleigh. Read more [here](#).

## III. Administration Updates:

- *Politico* is reporting that Google executive Eric Schmidt had lunch with Jared Kushner, Donald Trump’s son-in-law and top adviser, at Trump Tower last week. *Politico* also reports that Schmidt met recently with Treasury Secretary nominee Steve Mnuchin, Trump economic adviser Gary Cohn, and a number of members of GOP congressional leadership. Additionally, Schmidt attended Donald Trump’s high-profile December meeting with technology company executives. Read more [here](#).
- Donald Trump has selected Republican FCC Commissioner Ajit Pai to chair the Commission, replacing Democrat Tom Wheeler, who resigned from the Commission on the day of Donald Trump’s inauguration. For the time being, Pai will serve as Acting Chairman, and he will need Senate confirmation to serve as full Chairman. Pai voted against the Commission’s net neutrality proposal, and was opposed to its proposed set-top box rules. On Wednesday, Energy and Commerce Committee Chairman Greg Walden (R-OR), Communications and Technology Subcommittee Chairwoman Marsha Blackburn (R-TN), and Energy and Commerce Committee Vice Chairman Joe Barton (R-TX) sent Pai a [letter](#) urging him to remove the set-top box proposal from the FCC’s agenda. Likewise, Walden and Blackburn released a [statement](#) heralding Pai’s appointment as Chairman, predicting a “new era of leadership and decision making at the FCC.” On the other side of the aisle, Energy and Commerce Committee Ranking Member Frank Pallone (D-NJ) and Communications and Technology Subcommittee Ranking Member Mike Doyle (D-PA) sent Pai a [letter](#) asking him to commit to brief Committee leadership “on all major decisions before the Commission acts;” work in a “bipartisan fashion;” and refrain from taking any actions to “retaliate against, undermine, demote, or marginalize civil servants on the basis of their analysis or their work under previous Commission leadership.” Read more [here](#).
- Although no official confirmation has been given, [widespread rumors](#) are indicating that Michelle Lee may remain—at least temporarily—as USPTO Director under the Trump Administration. Those rumors are primarily attributed to Representative Darrell Issa (R-CA), an outspoken advocate for Lee’s candidacy. It is unclear at this point whether the appointment – if true – will be only temporary until the new Administration chooses its own candidate. On the other hand, *IP Watchdog*’s Gene Guinn [reports](#) that his sources tell

him “Michelle Lee is no longer at the USPTO” and that Commissioner for Patents Drew Hirshfeld is currently serving as Acting Director.

- On Monday, President Trump signed an executive order directing the U.S. Trade Representative to withdraw the United States from the Trans-Pacific Partnership (TPP). On the same day, Trump signed another executive order stating the Administration’s intention to renegotiate the North American Free Trade Agreement (NAFTA). “Great thing for the American worker, what we just did,” Trump said after signing the memorandum. Sen. McCain (R-AZ), Chairman of the Senate Armed Services Committee, [criticized](#) President Trump’s decision, calling it “a serious mistake that will have lasting consequences for America’s economy and our strategic position in the Asia-Pacific region.” Read more [here](#).
- Speculation is growing about who President Trump will select to lead the White House Office of Science and Technology Policy (OSTP), the executive branch body that provides the President and his senior staff with advice on science and technology and the major government policies and programs in those areas. In mid-January Donald Trump met with Yale computer scientist David Gelernter and Princeton physicist William Happer. Gelernter and Happer have both criticized the science community’s mainstream views on climate change. Read more [here](#).

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

- The United Kingdom has launched an anti-piracy campaign called ‘Get it Right’ whereby leading internet service providers (ISPs) send warning letters to internet users suspected of engaging in copyright infringement online. The warning letters provide details of the allegedly infringed copyrighted works in addition to information about how to avoid engaging in infringing behavior in the future. The program only focuses on peer-to-peer file sharing, and detection of alleged infringement will be the responsibility of the anti-piracy company MarkMonitor. Read more [here](#).
- On Tuesday, the European Commission asked for public comment on a series of proposed changes to Amazon’s e-book contracts, which the company hopes will stave off accusations of antitrust violations. The European Commission began investigating Amazon in 2015 for its contracts’ parity clauses, which potentially impede competition by requiring publishers to give Amazon terms as favorable as those it gives to Amazon’s competitors. In particular, Amazon has proposed “not to enforce (i) any clause requiring publishers to offer Amazon similar terms and conditions as those offered to Amazon’s competitors or (ii) any clause requiring publishers to inform Amazon about such terms and conditions.” Read more [here](#).

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

- In an op-ed in *The Hill* last week, senior policy counsel for Intellectual Policy and the Digital Economy at the International Center for Law and Economics Neil Turkewitz countered arguments advanced by Charles Duan (Public Knowledge) and Sasha Moss (R Street) in a separate *The Hill* [op-ed](#). The Duan and Moss piece argues that the Supreme Court should address the “dancing baby” case, in which Universal sent a takedown notice to the uploader of a video of a baby dancing to Prince’s ‘Let’s Go Crazy.’ In particular, Duan and Moss assert that the case “is pretty clearly in line with what courts have determined to be fair use,” and also urge the Court to address “whether Universal should

have been allowed to send that takedown notice in the first place.” In his rebuttal piece, Turkewitz argues that Duan and Moss employ a problematic conception of fair use, and notes that “the overwhelming number of uncontested notices of clear infringement (more than 20 million each day) illustrate that we have not found an effective solution.” Read more [here](#).

- The Copyright Office announced on Thursday that it will carry out a public study “to assess the current state of U.S. law recognizing and protecting moral rights for authors, specifically the rights of attribution and integrity.” The Office is seeking public comments as part of the study. Read the Federal Register public inspection document.
- The Copyright Alliance sent a letter on Monday to President Trump urging him “to support a strong and vibrant copyright system in the United States.” The letter highlights that Donald Trump is “an author and holder of numerous copyrighted works,” and cites statistics demonstrating the value of the copyright industries to the U.S. economy. The letter also calls attention to “the prevalence of piracy in the internet age” and calls for enhanced protections for creators. The Alliance stresses that “in limited cases where regulation is deemed necessary and royalties are set by the government rather than the marketplace, the law must ensure copyright owners receive the fair market value for their work.” Read the letter [here](#).