



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT MARCH 24, 2017



### I. Congressional Updates:

- On Thursday, House Judiciary Chairman Bob Goodlatte (R-VA) and Ranking Member John Conyers (D-MI) introduced a bill altering the selection process for the Register of Copyrights such that future Registers will be nominated by the President and confirmed by the Senate. The bill, titled the *Register of Copyrights Selection and Accountability Act*, would also limit the Register to a ten-year, renewable term. In a [statement](#), the House Judiciary committee noted that the bill “is the product of months of bicameral, bipartisan discussions” involving Senate Judiciary Chairman Chuck Grassley (R-IA) and Ranking Member Dianne Feinstein (D-CA). The legislation was introduced with twenty-nine [cosponsors](#), including House Judiciary Intellectual Property Subcommittee Vice-Chair Doug Collins (R-GA), who released a [statement](#) praising the bill. Read the bill text [here](#).
- On Monday, March 27<sup>th</sup> the Senate Judiciary Committee will hold a markup to vote on the nomination of Neil Gorsuch to be an Associate Justice of the Supreme Court; Rod Rosenstein to be U.S. Deputy Attorney General; and Rachel Brand to be U.S. Associate Attorney General.
- *Axios* reported this week that Google has taken its copyright court case against Oracle to Capitol Hill. Google has been providing Hill staff with a [presentation deck](#) titled ‘The Truth About Oracle’s Campaign Against Google.’ The deck accuses Oracle of launching a “vendetta campaign” against Google by “astroturfing,” making “false policy criticisms” of Google, and “spreading misinformation” about Google. Read more [here](#).

### Headlines and Highlights:

- U.S. Supreme Court rules in *Star Athletica, LLC v. Varsity Brands, Inc.* case.
- Dept. of Commerce’s Internet Policy Task Force will hold public meeting on April 18<sup>th</sup>.
- House Judiciary Chairman Goodlatte and Ranking Member Conyers introduce bill changing Register of Copyrights selection process.
- Australian Government drops proposal to extend copyright safe harbor to Google, Facebook.

### In the Blogs:

[Copyright in Canada: When Ten Percent is Too Much](#)

Hugh Stephens Blog

March 20 by Hugh Stephens

[UN Development Programme Calls For Reform Of IP And Investor Protection Regimes](#)

IP Watch

March 21 by Catherine Saez

[Kodi Software Enabling Widespread Copyright Infringement](#)

Mister Copyright

March 17 by Kevin Madigan

## II. Judicial Updates:

- On Monday, the Georgia Supreme Court ruled that music streaming service iHeart Radio may stream pre-1972 recordings without compensating the owners of the recordings. The original lawsuit was filed in September 2015 by Arthur and Barbara Sheridan in the U.S. District Court for the Middle District of Georgia and alleged that iHeart Radio’s lack of compensation violated the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act. iHeart responded by contending its state TV and radio exemption also applies to its internet streaming service. The Georgia Supreme Court justices agreed, saying the user’s “experience with iHeartRadio qualifies it as a ‘related use’ to a radio broadcast, noting that one of its services is a simulcast of programming offered on its regular broadcast stations.” “The only difference for the listener,” the Court wrote, “is that the music would be accessed through an internet-connected device such as a smartphone or computer, rather than a traditional radio receiver.” Read more [here](#).
- On March 22, 2017, the U.S. Supreme Court handed down its long-awaited decision in [Star Athletica, LLC v. Varsity Brands, Inc.](#), a case concerning the separability standard determining whether a useful article is eligible for copyright protection. Under section 101 of the Copyright Act, the “pictorial, graphic, or sculptural features” of the “design of a useful article” are eligible for copyright protection if those features “can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” The Court held that a feature incorporated into the design of a useful article is eligible for copyright protection only if the feature “(1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated.” Applying this holding, the Court found that the decorations on the cheerleading uniform at issue in the case were indeed separable.

## III. Administration Updates:

- *Recode* reported on Thursday that President Trump has hired Matt Lira, formerly a senior advisor to House Majority Leader Kevin McCarthy (R-CA), as a special assistant to the president for innovation policy and initiatives. Lira, *Recode* reports, was instrumental in advancing Rep. McCarthy’s “[Innovation Initiative](#)”—a program aimed at removing “government-made obstacles” to innovation and bring government into the 21<sup>st</sup> century. It was under this initiative that McCarthy introduced—and helped get signed into law—the [TALENT Act](#), legislation that codified the Presidential Innovations Fellows Program. Read more [here](#).
- On Tuesday, the White House released an Executive Order titled “Moratorium on New Multilateral Treaties,” which would prevent the making of any new treaties other than those implicating national security, extradition, and international trade, until a “high level executive branch committee has had an opportunity to review and assess the treaty.” The Committee, according to the order, would consist of the Secretary of State, Secretary of Defense, Attorney General, Director of the Office of Management and Budget, Director of National Intelligence, Assistant to the President for National Security Affairs, and the Counsel to the President...

## IV. International Updates:

- After an investigation from [The Times of London](#) found that ads for the UK government and some prominent companies were appearing alongside extremist YouTube videos, Google, the parent company of YouTube, announced sweeping changes to its policies on advertising and hate speech. On Monday, Philipp Schindler, Chief Business Officer for Google, penned a [blogpost](#) announcing Google is “taking a tougher stance on hateful, offensive and derogatory content.” Among the changes, YouTube will offer advertisers and agencies “more transparency and visibility on where their ads are running...”
- This week, the office of Australian Prime Minister Malcolm Turnbull dropped its proposal to extend the copyright safe harbor provision to “online intermediaries such as Google and Facebook, giving them immunity for infringing user-uploaded content on their platforms.” Other non-controversial aspects of the bill, known as the Copyright Amendment (Disability Access and Other Measures), were introduced and have received widespread support from creative industries. Read more [here](#).

## V. Industry Updates:

- The U.S. Department of Commerce’s Internet Policy Task Force will host a public meeting on “[Consumer Messaging in Connection with Online Transactions Involving Copyrighted Works](#)” from 1 p.m. – 5 p.m. ET on April 18<sup>th</sup> at the U.S. Patent and Trademark Office’s headquarters in Alexandria, VA. Register for the event [here](#).
- On Wednesday, Roy Kaufman, the managing director of new ventures for the Copyright Clearance Center, wrote an op-ed in *The Hill* titled “Is there a link between fake news and modernizing the Copyright Office?” Kaufman argues that, while the explosion of the internet has “resulted in many more people owning copyright rights,” the digital era has also “done more than any previous period to simultaneously erode these rights.” This gradual “weakening of copyright,” Kaufman writes, “has sucked the oxygen” out of reputable journalist sources and caused the rise of fake news. Read more [here](#).
- On Wednesday, *The Wall Street Journal* published a story about the “political tug of war” that is breaking out over who will appoint the next U.S. Register of Copyrights. According to the WSJ, top Republicans and Democrats are coming together to introduce legislation to change the Register position to a presidential nomination with Senate confirmation—a change that has so far been resisted by the Librarian of Congress who “is intent on moving forward with her own appointment,” the article states. Read more [here](#).
- On September 23, 2016, the Library of Congress awarded a contract for the design and implementation of an electronic filing and case management system for the Copyright Royalty Board. The Copyright Royalty Judges anticipate that the new system will be available for use by claims filers, participants in proceedings before the judges, and other members of the public having business with the board by summer 2017. The judges intend to make use of the system mandatory for attorneys representing participants in proceedings after a transition period. The judges propose to amend the claims filing regulations to accommodate electronic filing of claims. In addition, the judges propose to consolidate nearly identical regulations for cable and satellite claims and to make other amendments to the claims regulation to remove outdated references and enhance readability. Comments are due no later than April 17, 2017. For details, click [here](#).

