



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 MARCH 3, 2017



I. Congressional Updates:

- On Wednesday, March 8th at 10 a.m. the Senate Committee on Commerce, Science, and Transportation will hold an [oversight hearing](#) on the Federal Communications Commission (FCC). The hearing will feature FCC Chairman Ajit Pai and Commissioners Clyburn and O’Rielly. The Chairman and Commissioners were also slated to participate in a second hearing on Wednesday—before the House Energy and Commerce Subcommittee on Communications and Technology. That hearing, however, has been postponed.
- The Senate [confirmed](#) Wilbur Ross as Commerce Secretary on Monday by a vote of 72 to 27. In an [address](#) to Commerce Department employees on Wednesday, Ross mentioned that “protecting intellectual property rights” will be one of the Department’s priorities under his leadership.
- On Tuesday, March 7th at 10:00 a.m. the Senate Judiciary Committee will hold a nomination hearing for Rod J. Rosenstein to serve as the next U.S. Deputy Attorney General and Rachel L. Brand to serve as the next U.S. Associate Attorney General.

II. Judicial Updates:

- Last Friday, a federal judge in the Eastern District of New York dismissed a copyright lawsuit that some experts argued could have upended the Creative Commons licensing system. In the suit, filed last year, D.C. educational nonprofit Great Minds (GM) sued FedEx, alleging that the company profited—and

Headlines and Highlights:

- Senate confirms Wilbur Ross as next Secretary of Commerce.
- President Trump identifies strong IP protections as “key objective” in trade policy agenda.
- Sixty-four academics issue statement criticizing RCEP’s copyright provisions as potentially “stifling creativity.”
- YouTube announces paid TV streaming service.
- White House announces senior staff appointments to the National Economic Council.

In the Blogs:

[“Minding the Gap” in Canada: But Which Gap?](#)

Hugh Stephens Blog
February 27 by Hugh Stephens

[What Would Judge Gorsuch Mean for Fair Use?](#)

Mister Copyright
February 27 by Kevin Madigan

[Fair Use Isn’t “Dare Use”](#)

The Illusion of More
February 25 by David Newhoff

infringed their copyright—when school representatives duplicated GM’s educational materials. District Judge Denis Hurley dismissed the case, writing that there is “no claim that the undisclosed school districts are using the Materials for other than a ‘non-Commercial purpose’...” However, the judge did not grant FedEx attorneys fees, claiming that the “plaintiffs claim was not frivolous.” Read more [here](#).

III. Administration Updates:

- The Office of the United States Trade Representative (USTR) submitted a statutorily required [document](#) outlining the President’s trade policy agenda to Congress on Wednesday. The agenda states that one “key objective” is “ensuring that U.S. owners of intellectual property (IP) have a full and fair opportunity to use and profit from their IP.” The agenda also states that one of four “major priorities” is the “use of all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services, and provide adequate protection and enforcement of U.S. intellectual property rights.” Finally, IP theft is identified as a factor that distorts “significant markets around the world.” Also submitted to Congress was a 2016 annual trade report, which includes discussion of the WTO TRIPS Council. Read more [here](#).
- The White House announced senior staff appointments to the National Economic Council (NEC) on Monday. The appointments include Kenneth Juster and Jeremy Katz, who will serve as Deputy Directors, and Grace Koh, who will serve as Special Assistant to the President for Technology, Telecom, and Cyber-Security Policy. Koh previously served as Deputy Chief Counsel on the House Energy & Commerce Subcommittee on Communications and Technology. Read more [here](#).

IV. International Updates:

- The United Kingdom’s Intellectual Property Office (IPO) has launched a “consultation” process to seek input from outside groups on combatting the illicit use of streaming set-top devices such as Kodi Boxes. The IPO is also investigating whether the current legal framework is adequate for addressing these devices, in particular the 1988 Copyright, Designs and Patent Act and the 2006 Fraud Act. Read more [here](#).
- The Court of Justice of the European Union (CJEU) has [ruled](#) that national legislation cannot hold that the immediate retransmission of television broadcasts by cable, including via the internet, in the area of initial broadcast does not constitute copyright infringement. The ruling comes in a case between UK television channels ITV, Channel 4, and Channel 5 and a streaming service called TVCatchup. In a joint statement, the television channels said they are “delighted that the European court has ruled that our channels should not be retransmitted online or on cable without our authorization.” Read more [here](#).
- Haochen Sun, the director of the University of Hong Kong’s Law and Technology Centre, has circulated a [statement](#) criticizing the Regional Comprehensive Economic Partnership (RCEP) trade deal’s copyright provisions as likely to “cause unintended effects of stifling creativity, free speech, and economic growth.” Sixty-four academics have signed on to the statement. The document calls for the integration of “public interest” as a core value for copyright negotiations - including the

identification of “myriad public interests in using copyrighted works in RCEP” countries; increased transparency of the negotiating process; and changes to the deal’s copyright provisions such as the inclusion of a safe harbor for internet service providers alongside a notice and takedown system. Read more [here](#).

V. Industry Updates:

- *POLITICO* is reporting this week that Google has hired an aide to Senator Ted Cruz (R-TX) in an effort to increase their conservative outreach in Washington. Max Pappas, formerly the chief economist and director of outreach for Cruz, will serve as Google’s liaison to conservative groups. Meanwhile, Lee Carosi Dunn, who previously served as Google’s Senate Republican lobbyist and later as head of election sales for the company, has been tapped to lead Google’s White House outreach.
- YouTube has announced that it will offer a streaming television service that will provide cable television programming. Subscribers will pay \$35 per month and receive the ABC, CBS, FOX, and NBC networks alongside forty other channels, including ESPN and FX. Read more [here](#).
- *Intellectual Property Watch* reports that law professor Annemarie Bridy has written a [draft article](#) which argues that the Internet Corporation for Assigned Names and Numbers (ICANN) has undergone an “ambivalent drift into online content regulation through its contractual facilitation of a ‘trusted notifier’ copyright enforcement program between the Motion Picture Association of America (MPAA) and two registry operators for new gTLDs,” Donuts and Radix. Bridy also alleges that ICANN “did nothing to secure any procedural protections or uniform substantive standards for domain name registrants who find themselves subject to this new form of DNS regulation.” Read more [here](#).
- The Copyright Office has updated its website, www.copyright.gov. In addition to design and organizational changes, the website now features a new header with global navigation and search, and pages on the history of copyright law, past reports, and past announcements.
- The Copyright Office has issued a notice of proposed rulemaking detailing amendments to its regulations governing delays in the receipt of material caused by the disruption of postal or other transportation or communication services. The amended rule would, for the first time, specifically address the effect of a disruption or suspension of any Copyright Office electronic system on the Office’s receipt of applications, fees, deposits, or other materials, and the assignment of a constructive date of receipt to such materials. The proposed rule would also make various revisions to the existing portions of the rule for usability and readability. Written comments are due on April 3, 2017. Read the Federal Register notice [here](#).
- The Copyright Office has extended the deadlines for public comment in connection with the Office’s study on the moral rights of attribution and integrity. Public comments are now due on March 30, 2017, and reply comments are now due on May 15, 2017. Read the Federal Register notice [here](#).

