



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT APRIL 7, 2017



### I. Congressional Updates:

- On Thursday, House Judiciary Ranking Member Conyers (D-MI) led—alongside seventeen other House Democrats—a “Dear Colleague” letter asking House Democrats to support H.R. 1695, the Register of Copyrights Selection and Accountability Act. The letter also seeks to allay concerns that opponents of the bill have brought up, including that it could potentially diminish the power of the Librarian of Congress. “H.R. 1695 does not undermine the Librarian of Congress, whom we all strongly support,” the letter reads. The decision to make the Register of Copyrights a presidential appointee confirmed by the Senate was the result of a “four year-long” review of the Copyright Act and Copyright Office by the House Judiciary Committee, the letter states. Since the bill was introduced on March 23<sup>rd</sup>, it has received three additional cosponsors, Reps. Crawford (R-AR), Schiff (D-CA), and Schneider (D-IL).
- In related news, on Friday, House Judiciary Chairman Bob Goodlatte (R-VA) and Ranking Member John Conyers (D-MI) sent a “Dear Colleague” letter to all House members asking them to support H.R. 1695. The legislation, the letter states, would ensure “that Members have a more formal process for input into who is chosen as Register...” It also notes that the legislation is supported by the AFL-CIO, U.S. Chamber of Commerce, and MPAA, amongst other organizations.
- On Tuesday, House Majority Leader Kevin McCarthy (R-CA) and Chris Lidell, Special Assistant to the President & Director of Strategic Initiatives, spoke at the White House’s CEO “Town Hall” on modernizing government IT. McCarthy, who has spearheaded a package of bills

### Headlines and Highlights:

- Senate confirms Neil M. Gorsuch to serve on Supreme Court.
- Rep. Conyers and 17 other Democrats circulate a Dear Colleague in support of H.R. 1695
- USTR submits foreign trade barriers report to Congress.
- Spotify signs new licensing agreement with UMG.
- Reps. Issa and Deutch introduce PROMOTE Act.

### In the Blogs:

[Canada and NAFTA: When a “Tweak” becomes a “Hard Squeeze” \(But Are There Upsides?\)](#)

Hugh Stephens Blog  
April 3 by Hugh Stephens

[On the SCOTUS Cheerleader Uniform Ruling](#)

Illusion of More  
March 31 by David Newhoff

[Critics Build House of Canards to Trash USCO Bill](#)

The Illusion of More  
April 5 by David Newhoff

known as the Innovation Initiative aimed at improving government services, said his vision is “to have government as innovative as Google, as customer-centric as Apple, and as quick as Amazon.” McCarthy lamented the fact that the U.S. government spends “\$80 billion on IT each year” while “80 percent of it goes towards legacy programs.” He also revealed that he has plans to reintroduce the [Modernizing Government Technology Act](#)—legislation that would establish, in each covered agency, an IT system modernization and working capital fund. Watch the entire event [here](#).

- On Friday, the Senate confirmed Neil M. Gorsuch to serve as an Associate Justice on the U.S. Supreme Court. The final vote occurred along party lines—52 to 48.
- House Judiciary Intellectual Property Subcommittee Chairman Darrell Issa (R-CA) has introduced legislation that would “allow performing artists to opt out of having their music played on the radio if the performing artist is not being paid an agreed-upon performance royalty.” Representative Ted Deutch (D-FL) is also an original cosponsor of the legislation, which is titled the Performance Royalty Owners of Music Opportunity To Earn (PROMOTE) Act of 2017. In a press release, Rep. Issa said that the bill “calls the bluff of both sides in the debate over performance rights.” Read more [here](#).

## II. Judicial Updates:

- On Tuesday, the Ninth Circuit Court of Appeals ordered Urban Outfitters Inc. to pay \$530,000 in damages for displaying “reckless disregard” in infringing the fabric design copyright of Los Angeles manufacturer Unicolors Inc. The fabric at issue in this case is “an abstracted purple palm front print on a black background” that Urban Outfitters used for a dress. The court rejected Urban’s claim that the district court should not have relied on a “subjective” analysis of the fabrics and their similarity to conclude the Unicolors’ design was copied before the trial began in 2015. “The works,” the opinion states, “are so overwhelmingly identical that the possibility of independent creation is precluded.” Perhaps of note, the opinion was published by the court, an indication that lower courts should reference the ruling in future copyright cases. Read more [here](#).

## III. Administration Updates:

- The Office of the U.S. Trade Representative has submitted to Congress a statutorily required [report](#) on significant foreign trade barriers “affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights.” The report, which covers 63 countries that represent the “largest export markets for the United States,” includes a “lack of intellectual property protection” as one of 10 categories of trade barriers it uses to evaluate U.S. trading partners. For example, the report severely criticizes Chinese government practices affecting American intellectual property, such as mandating “adverse licensing terms” and using “anti-monopoly laws to extract technology on unreasonable terms.” In a section on digital trade in China, the report calls China’s internet regulatory regime “restrictive and non-transparent.” Read more [here](#).
- The White House Office of Science & Technology Policy (OSTP) remains without a director and largely devoid of staff. However, in a [profile](#) of OSTP under the new Administration, the *New Republic* quotes OSTP Assistant Director for Biomedical and Forensic Sciences Eleanor Celeste as saying that the Administration “is working to recruit and confirm a director and has begun the process of recruiting new staff.” Additionally, in

an interview with *Politico* this week, Representative Darrell Issa (R-CA) again suggested that he would like to see current USPTO Director Michelle Lee working at OSTP.

#### IV. International Updates:

- Last weekend, data research company [MUSO](#) released an analysis of worldwide visits to torrent sites and established a “torrent piracy demand rank” for each country. The study revealed that, in absolute numbers, the U.S., Russia and India—with their large internet populations—led the globe with roughly three billion torrent site visits per year. When examining the average number of visits per Internet user in each country, the analysis found that much of Europe placed in the top ten, with Latvia, Bulgaria, and Estonia placing in the top three. Read more [here](#).
- On Monday, [Malaysian Prime Minister Najib Razak said](#) that the Regional Comprehensive Economic Partnership (RCEP)—a trade pact including Malaysia, China, India, Korea, Australia and eleven other Asia-Pacific nations—should be completed by the end of 2017 or “by early next year.” Razak, speaking at the India-Malaysia Business Forum in New Delhi, said that due to the “collapse” of the Trans-Pacific Partnership, “it is now more relevant than before that we conclude RCEP.” In related news, *Bloomberg* is [reporting this week](#) that India’s “foot-dragging” in RCEP negotiations has increased the risk that “the deal gets diluted or delayed.”

#### V. Industry Updates:

- *Tech Dirt* has [released](#) a leaked February 2017 Library of Congress Inspector General’s [report](#) about Library of Congress information technology systems. The report was referenced by Representative Zoe Lofgren (D-CA) in the markup for HR 1695, the Register of Copyrights Selection and Accountability Act.
- Former Rep. Howard Berman (D-CA) wrote an op-ed in *The Hill* late last Friday praising the House Judiciary Committee for voting to favorably report H.R. 1695, the *Register of Copyrights Selection and Accountability Act*. Berman writes that the legislation is a “critical step” towards a modernized Copyright Office that will be more accountable to Congress. Berman also pushes back against the idea that the legislation is “any sort of referendum” on Librarian of Congress Carla Hayden. “The reality,” Berman, who is a former Chairman of the House Judiciary Intellectual Property Subcommittee, writes, “is that the idea of making the Register a nominated and confirmed position dates back years.” “It is emphatically not about any individual Librarian of Congress, Register of Copyrights, member of Congress, or president.” Read more [here](#).
- Spotify has signed a new licensing agreement with Universal Music Group. The deal allows Universal to limit new releases to Spotify’s paid tier for two weeks, at which point they can be made available on the service’s free tier. In exchange for that provision in the deal, Universal will allegedly receive a reduction in royalties from 55 percent to 52 percent. Read more [here](#).
- The Re:Create Coalition has sent a [letter](#) outlining a “set of key values” on copyright policy to every member of Congress and to the Trump Administration. The document praises fair use protections and DMCA safe harbors, and asserts that “attempts to expand copyright law and increase regulatory control stifle the new creative revolution fueled by the internet and

constant advances in consumer electronics.” Re:Create’s membership includes large technology companies such as Google, Facebook, and Netflix, as well as groups such as the American Library Association and the Consumer Technology Association. Read more [here](#).

- The Recording Industry Association of America (RIAA) has announced that Mitch Glazier will succeed Cary Sherman as the organization’s CEO when Sherman retires at the end of 2018. In the meantime, Glazier, will serve as President. Read more [here](#).
- The Heritage Foundation’s Alden Abbott and Charles Melcombe have authored an op-ed in the *Daily Signal* in support of HR 1695, the Register of Copyrights Selection and Accountability Act. The piece argues that “allowing the Librarian of Congress to dictate the selection and retention of the Register of Copyrights interferes with the Copyright Office’s ability to operate independently and efficiently.” Abbott and Melcombe also call the bill a “first step,” and state that “the most necessary and important objective is making the Register and Copyright Office fully independent of the Librarian of Congress.” Read more [here](#).
- YouTube has announced that channels with under 10,000 lifetime views will no longer be eligible to earn advertising revenue. In a [blog post](#), YouTube stated that the new policy is necessary because “we’ve started seeing cases of abuse where great original content is re-uploaded by others who try to earn revenue from it.” The 10,000 view threshold is intended to give YouTube “enough information to determine the validity of a channel” and “confirm if a channel is following” YouTube guidelines. Additionally, all channels who apply to receive advertising revenue will have their activity reviewed once they hit the 10,000 view threshold. Read more [here](#).