



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 31, 2017



I. Congressional Updates:

- On Wednesday, the [House Judiciary Committee voted 27-1](#) to approve *H.R. 1695, the Register of Copyrights Selection and Accountability Act of 2017*. The legislation, if enacted, would create a selection panel—consisting of the Speaker of the House, House Majority Leader, House Minority Leader, President Pro Tempore of the Senate, Senate Majority Leader, Senate Minority Leader, and the Librarian of Congress—to submit a list of three qualified individuals to lead the Copyright Office to the President for his or her consideration. The nominee would also require Senate confirmation. Following the vote Copyright Alliance CEO Keith Kupferschmid [commended](#) Chairman Goodlatte (R-VA) and Ranking Member Conyers (D-MI), saying H.R. 1695 will “not only make the selection process more effective and transparent but its also critical to the continued modernization of the U.S. Copyright Office.”
- On Wednesday, Reps. Kilmer (D-WA) and Farenthold (R-TX) and Sens. Schatz (D-HI) and Sasse (R-NE) jointly reintroduced the [Open, Public, Electronic and Necessary \(OPEN\) Government Data Act](#), legislation requiring that public data be accessible at Data.gov so “individuals, organizations and other government offices can utilize it.” Read more [here](#).
- On Tuesday, Reps. Sensenbrenner (R-WI) and Johnson (D-TX) sent a [letter](#) to the Government Accountability Office (GAO) asking it to evaluate the “status, effectiveness and benefits of current federal public access policies.” Reps. Sensenbrenner and Johnson specifically asked the GAO to consider five questions, including to what “extent do the terms of use applicable to research

Headlines and Highlights:

- House Judiciary Committee approves bill making Register of Copyrights a presidential appointee.
- White House taps Makan Delrahim as nominee to lead Antitrust Division.
- YouTube’s use of DMCA safe harbor costs music industry over \$650 million a year, study finds.
- Lawmakers reintroduce Fair Play Fair Pay Act, legislation requiring AM/FM radio compensate record labels, artists.

In the Blogs:

[Canada, Special 301 and NAFTA](#)

Hugh Stephens Blog
March 27 by Hugh Stephens

[Supreme Court Will Not Hear Capitol v. Vimeo Case](#)

Illusion of More
March 28 by David Newhoff

[Register of Copyrights Selection and Accountability Act is First Step](#)

[Towards a Modern Copyright Office](#)
Mister Copyright
March 27 by Kevin Madigan

results made available through federal public access policies productive reuse of the research and computational analysis by state-of-the-art technologies?” Read more [here](#).

- On Thursday, Reps. Nadler, Blackburn, Conyers, Issa, Deutch and Rooney reintroduced the Fair Play Fair Pay Act, legislation that would require broadcasters to pay artists and record labels when their songs are played on terrestrial radio. In a [joint press release](#) announcing the legislation, Reps. Nadler, Blackburn, Conyers, Issa, Deutch and Rooney said the current U.S. music licensing laws “are antiquated and unfair, which is why we need a system that ensures all radio services play by the same rules and all artists are fairly compensated.”
- On Tuesday, April 4th at 2:00 pm the House Oversight and Government Reform Subcommittee on Information Technology will hold a [hearing](#) on “Reviewing Federal IT Workforce Challenges and Possible Solutions.”

II. Judicial Updates:

- On March 23, 2017, the U.S. District Court for the Northern District of Georgia issued a ruling in [Code Revision Commission v. Public.Resource.org](#). The case concerns the wholesale copying and online distribution of the Official Code of Georgia Annotated (O.C.G.A.). The Code Revision Commission is responsible for assisting the state legislature in publishing the laws it enacts in the O.C.G.A. The Commission signed a contract with Lexis/Nexis, under which Lexis/Nexis would provide annotations and other notes, and would have the exclusive right to publish and sell the O.C.G.A. Under the contract, Lexis/Nexis was required to provide an un-annotated version of the complete code on a free website. Public Resource purchased the entire O.C.G.A. and scanned and published it online. The Commission and the State of Georgia claimed copyright infringement. The court granted summary judgment, ruling that (1) the annotations to the code are copyrightable, because although government documents having the force of law are uncopyrightable, the Georgia state legislature does not enact the O.C.G.A. into law in its entirety; and (2) Public Resource’s reproduction and distribution of the code was not protected by fair use, as it was non-transformative, copied the work in its entirety, and would hinder the viability of creating the O.C.G.A.
- On March 27, 2017, the Supreme Court [denied certiorari](#) in *Capitol Records, LLC v. Vimeo, LLC*. The case [concerned](#) whether the DMCA safe harbor set forth in section 512(c) of the Copyright Act applies to pre-1972 sound recordings. Significantly, section 301(c) of the Act provides that with respect to pre-1972 sound recordings “any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, 2067.” Capitol Records asserted section 301(c) precluded application of the section 512(c) safe harbor to infringements of pre-1972 sound recordings on Vimeo’s website. The Southern District of New York [granted summary judgment](#) to Capitol Records on this point. The Second Circuit [vacated](#) the Southern District’s grant of summary judgment, finding that “[a] literal and natural reading of the text of § 512(c) leads to the conclusion that its use of the phrase ‘infringement of copyright’ does include infringement of state laws of copyright,” and that to read the statute otherwise would defeat the purpose behind the safe harbor. With the Supreme Court’s denial of certiorari, the Second Circuit’s reading of the statute prevails.

III. Administration Updates:

- On Monday, President Trump [announced](#) the creation of the White House Office of American Innovation (OAI). The OAI, which will be led by Senior Advisor Jared Kushner, will make recommendations to the President on “policies and plans that improve Government operations and services...and spur job creation.” According to the press release, the OAI will create task forces to focus on initiatives including modernizing Government services and information and implementing regulatory and process reforms, amongst other projects. Read more [here](#).
- On Monday, the White House [announced](#) that Makan Delrahim will be nominated to head the U.S. Justice Department’s Antitrust Division. Delrahim, who currently serves as Deputy Assistant and Deputy Counsel to the President, has previously served as Deputy Assistant Attorney General for the Antitrust Division at the Dept. of Justice. He was also a partner at a national law firm in Los Angeles practicing antitrust and intellectual property law. Read more [here](#).
- Officials from the Office of the United States Trade Representative were in Hanoi, Vietnam on Monday and Tuesday to discuss deepening U.S.-Vietnam trade ties under their Trade and Investment Framework Agreement (TIFA). According to the USTR press release, the U.S. reaffirmed the Trump Administration’s “commitment to expanding ties with the Asia-Pacific region, including with Vietnam.” The U.S. also urged Vietnam to address existing bilateral issues, including related to intellectual property, digital trade, financial services, transparency and good governance. Read more [here](#).

IV. International Updates:

- Last Friday, a group of campaigners, copyright academics, and lawyers [sent a letter](#) to UK lawmakers and the UK Intellectual Property Office expressing concern over proposals to revamp the copyright system. Specifically, the signers ask lawmakers to alter the current text from criminalizing “loss” or “risk of loss” to the owner of the copyright, with “commercial scale loss” and “serious risk of causing commercial scale loss,” respectively. “This change,” the letter states, “will ensure that individuals infringing copyright are normally dealt with through civil courts and civil copyright action.” Read more [here](#).
- Late last week, the European Union Intellectual Property Office (EUIPO) released the results of their EU-wide survey on perceptions of intellectual property. Seventy percent of those surveyed said that nothing can justify the purchase of counterfeit goods, yet the survey also found that there “appears to be more tolerance for buying counterfeits...among young people” with 15% of 15-24 year olds saying they intentionally purchased a counterfeit product in the past year. Read more [here](#).

V. Industry Updates:

- On Tuesday, Mark W. Lauroesch, Executive Director of the Intellectual Property Owners Association (IPO), penned an op-ed in *The Hill* titled “Register of copyrights should be presidential appointee.” In the article, Lauroesch applauds the Reps. Goodlatte and Conyers, Chairman and Ranking Member of the House Judiciary Committee, respectively, for introducing *H.R. 1695*, the *Register of Copyrights Selection and Accountability Act*. IPO, Lauroesch writes, “strongly supports the bill as an important first step toward

modernizing the Copyright Office and giving it the autonomy it requires to deliver high quality services to its stakeholders...” Lauroesch also urges Congress to continue its legislative efforts to create a more modern, autonomous Copyright Office that is “not intertwined with a larger agency that has a different mission.” Read more [here](#).

- The Phoenix Center for Advanced Legal & Economic Public Policy Studies has released a [study](#) finding that YouTube’s use of Digital Millennium Copyright Act (DMCA) safe harbor provisions costs the music industry in the United States \$650 million to over \$1 billion annually in lost revenue. Taking as a starting point the fact that YouTube pays significantly less in royalties than subscription-based services because it can “offer access to music without paying royalties and still claim safe harbor protection for infringement,” the study simulates the revenue effect from a plausible royalty rate change to YouTube’s service. Commenting on the study, Phoenix Center Chief Economist Dr. George Ford said that the lost revenue “lends credence to the recording industry’s complaints about YouTube’s use of the safe harbor.” Read more [here](#).
- The Recording Industry Association of America (RIAA) released a [study](#) this week finding that “in 2016, for the first time ever, streaming music platforms generated the majority of the U.S. music industry’s revenues.” Streaming revenues were \$3.9 billion in 2016, up 68% from the previous year. Commenting on the findings in a *Medium* [article](#), RIAA Chairman & CEO Cary Sherman stated, “the unfortunate reality is that we have achieved this modest success in *spite* of our current music licensing and copyright laws, not *because* of them.” Sherman targets YouTube in particular, arguing that the service “wrongly exploits legal loopholes to pay creators at rates well below the true value of music.” In conjunction with the report’s release, the RIAA and sixteen other music organizations launched www.ValueTheMusic.com, a website targeting the use of Digital Millennium Copyright Act (DMCA) safe harbor provisions by services such as YouTube.