



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT MAY 19, 2017



I. Congressional Updates:

- On Wednesday, May 24th the Director of the Office of Management and Budget Mick Mulvaney will testify before the House Budget Committee on “The President’s FY2018 Budget.” On Thursday, May 25th at 10:30 a.m. Secretary of Commerce Wilbur Ross will testify before the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies on the “Department of Commerce Budget.”
- On Wednesday, May 24th at 10 a.m. the Senate Judiciary Committee will hold a hearing to consider the nomination of Vishal J. Amin to serve as the Intellectual Property Enforcement Coordinator (IPEC).
- On Tuesday, the Library of Congress announced that it will make 25 million records in its online catalog available for free bulk download on its website and at data.gov, the open government website hosted by the General Services Administration (GSA). The released records include books, music, manuscripts and maps, dating from 1968 to 2004. “The Library of Congress is our nation’s monument to knowledge and we need to make sure the doors are wide open for everyone, not physically but digitally too,” Librarian of Congress Dr. Carla Hayden said. “Unlocking the rich data in the Library’s online catalog is a great step forward. I’m excited to see how people will put this information to use.” Read more [here](#).
- On Thursday, Democrats on the House Science Committee, led by Rep. Don Beyer (D-VA), wrote a [letter](#) to President Trump urging him to appoint a Director of the Office of Science and Technology Policy (OSTP).

Headlines and Highlights:

- Vishal Amin, nominee for IPEC, to have confirmation hearing on May 24th
- Internet Association outlines digital trade priorities in letter to USTR.
- EU Parliament approves rules to allow online streaming without borders.
- USTR announces intent to renegotiate NAFTA.

In the Blogs:

[The Copyright Alliance Celebrates its 10th Anniversary: Rights Holders \(and Others\) World-Wide Should Rejoice](#)

Hugh Stephens Blog
May 15 by Hugh Stephens

[Virtual Insanity: Copyright and the Future of VR](#)

Plagiarism Today
May 18 by David Newhoff

[Brief: Investor-State Provisions Mean EU Cannot Conclude Singapore Trade Deal Alone, EU Court Says](#)

IP Watch
May 16

The Democrats argue that “until the OSTP is adequately staffed and the director position filled by a qualified, objective scientist who understands the difference between alternative news peddled on alt-right websites and legitimate well-vetted scientific facts, we fear that you will continue to be vulnerable to misinformation and fake news.” Read more [here](#).

- On Thursday, Librarian of Congress Dr. Carla Hayden testified before the House Committee on Appropriations Subcommittee on the Legislative Branch regarding the Library of Congress budget. In her prepared testimony, Dr. Hayden emphasized the Library’s IT modernization efforts, describing them as “the primary focus of my efforts and our [budget] request.” The Librarian stated that she was working “to make sure that we act on the GAO recommendations and that we are building an infrastructure that will support the Copyright Office, CRS, and our other specialized services,” and reported significant progress in responding to those recommendations.

II. Judicial Updates:

- On May 17, 2017, Qualcomm filed a [complaint](#) against Foxconn, Pegatron Corporation, Wistron Corporation, and Compal Electronics, Inc. in the U.S. District Court for the Southern District of California, alleging breach of intellectual property licensing agreements by withholding royalty payments that they owe Qualcomm. The four companies together manufacture all Apple iPhones and iPads sold worldwide. According to the complaint, the four companies consistently paid royalties to Qualcomm under their licensing agreements until the start of 2017, when Apple started withholding the payments from them that it owed to Qualcomm and directed the four companies “not to make corresponding royalty payments to Qualcomm.” Qualcomm asked the court to enjoin the four companies from violating the terms of the licensing agreements, to declare that the four companies breached their license agreements, and to award compensatory and consequential damages and attorney’s fees and costs. Read more [here](#).

III. Administration Updates:

- On Tuesday, President Trump announced the nomination of House Energy and Commerce Subcommittee on Communications and Technology Chief Counsel David Redl for the position of Administrator at the National Telecommunications and Information Administration (NTIA). House Energy and Commerce Chairman Greg Walden (R-OR), former Committee Chairman Fred Upton (R-MI), and Communications and Technology Subcommittee Chairman Marsha Blackburn (R-TN) issued a [statement](#) applauding the nomination, saying Redl’s experience with the Committee makes him “well suited to head the agency that will be at the forefront of promoting safe, secure communications networks...” Read more [here](#).
- On Thursday, United States Trade Representative (USTR) Robert Lighthizer notified Congress that President Trump intends to renegotiate the North American Free Trade Agreement (NAFTA). “The United States seeks to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities under NAFTA,” the [letter to Congress reads](#). “In particular, we note that NAFTA was negotiated 25 years ago, and while our economy and businesses have changed considerably over that period, NAFTA has not.” Read more [here](#).

IV. International Updates:

- On Thursday, the European Union Parliament approved new rules that would allow EU citizens with subscriptions to online content services such as Netflix, HBO Go, Spotify, and Amazon Prime to temporarily access that content while visiting another EU country. “European citizens have been waiting for these new rules, which represent a step towards a common digital market. The new rules increase mobility and successfully offer portability to users of European online content, without affecting copyright,” said Jean-Marie Cavada, a French member of Parliament who proposed the rules. Read more [here](#).
- France’s Commission Nationale de l’Informatique (CNIL) has fined Facebook €150,000 for six privacy and data protection violations. The regulatory body found that Facebook illegally collected user information for advertising purposes, and tracked users’ internet browsing activities without providing sufficient notice. Facebook’s privacy practices have also come under scrutiny from authorities in Belgium, the Netherlands, Spain, Germany, and Italy. Additionally, new European Union data protection laws will come into effect in 2018, which could levy high fines for privacy violations. Read more [here](#). Also this week, the European Commission [fined](#) Facebook €110 million for antitrust violations regarding the company’s provision of “incorrect or misleading information during the Commission’s 2014 investigation...of Facebook’s acquisition of WhatsApp.” Specifically, the Commission found that while Facebook claimed it “would be unable to establish reliable automated matching between Facebook users’ accounts and WhatsApp users’ accounts,” the “technical possibility” of doing so “already existed in 2014, and...Facebook staff were aware of such a possibility.” Read more [here](#).

V. Industry Updates:

- The Copyright Office has announced a proposed rule to amend its regulations governing recordation of transfers of copyright ownership, notices of termination, and other documents pertaining to a copyright. The Office states that these amendments are being proposed in conjunction with the anticipated commencement of development effort for a modernized electronic recordation system. The Office is inviting public comment on the proposed rule, and those comments are due on July 17, 2017. Read the proposed rule [here](#).
- The Copyright Office has adopted a final rule amending 37 CFR § 201.17, which prescribes requirements related to the submission of Statements of Account under the section 111 license for secondary transmissions of broadcast programming by cable systems. The amendments will allow cable systems operating under the statutory license to electronically sign Statements of Account, and to submit these documents to the Office electronically. Read more [here](#).
- The Professional Photographers of America (PPA) has issued a statement in support of *S. 1010, the Register of Copyrights Selection and Accountability Act*. The organization says that its backing of the bill is “an important step in the association’s ongoing call for lawmakers to modernize the U.S. copyright system,” and notes that it has been “activating its 30,000-member base” to reach out to congressional offices and urge passage of the bill. PPA’s statement argues that Copyright Office modernization is “particularly important for artists and small businesses,” given that the Copyright Office helps Congress to “hear the plight of creators, like photographers, on crucial issues such as” the need for a copyright small claims process. Read the statement [here](#).

- *Nature's* Quirin Schiermeier reports that some publishers are addressing the practice of unauthorized article sharing between academics by creating systems for legal “fair sharing” of articles, which will allow publishers to track and monitor the practice. Schiermeier quotes Cambridge University Press managing director Mandy Hill as saying that article sharing is inherent to the scientific process, and for that reason “it is important that, as publishers, we accept this and find ways to support fair sharing of content whilst ensuring the sustainability of the research publishing business.” Schiermeier writes that fair sharing programs generally involve “providing free links to the final versions of read-only, non-downloadable articles hosted on journal sites,” and notes that publishers Springer, Nature, and Wiley have implemented such programs. Read more [here](#).
- The Internet Association has sent a letter outlining its digital trade priorities to newly-confirmed United States Trade Representative (USTR) Robert Lighthizer. The letter calls fair use “critical” for a number of functions that internet companies perform, and stresses that internet companies “rely on safe harbors and limitations.” One passage calls for the “designation of a chief digital trade negotiator” at USTR, and for the “renewal of USTR’s Digital Trade Working Group.” Read the letter [here](#).
- Congratulations to Ryan Fox, Policy and Advocacy Director for the Authors Guild, who had his poem, “And Both Hands Wash The Face”, published in the May 8th issue of *The New Yorker*. Read the poem [here](#).
- *Axios* reports that music companies Pandora, Spotify, and iHeart Radio have all “declared major business changes” in the past month, arguing that these changes “point to a growing trend of competitiveness driving instability in the music streaming market.” Pandora is rumored to be considering buying SiriusXM, Spotify is reportedly planning a direct listing on the New York Stock Exchange (NYSE) rather than an initial public offering (IPO), and iHeart Radio has announced that it is likely to enter bankruptcy. Read more [here](#).
- The *New York Post* reports that record labels “are preparing to hit back” at YouTube’s recent self-funded study arguing that YouTube benefits, rather than harms, the music industry. The *Post* quotes a music industry source as calling the report “incredibly flawed” given that YouTube “destabilize[s] the marketplace” because it is a “free on-demand music service, and there is no ability to license it.” That music industry source also argues that although the report claims that 85 percent of YouTube listeners would use lower-paying services if YouTube did not exist, “it’s hard to even understand which services are even available that pay less than” YouTube, and if the other 15 percent of YouTube listeners used paid services, the music industry would benefit from significant increases in revenue. Read more [here](#).