



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT JUNE 9, 2017



### I. Congressional Updates:

- On Tuesday at 10 am, the House Judiciary Subcommittee on Courts, Intellectual Property and The Internet will hold a hearing titled “[Examining the Supreme Court’s TC Heartland Decision](#)”. Witnesses will include Steven Anderson, Vice President & General Counsel of Culver Franchising System, Inc., Professor Colleen Chien of Santa Clara University School of Law, Professor Adam Mossoff of Antonin Scalia Law School at George Mason University, and John Thorne, Partner at Kellogg, Hansen, Todd, Figel & Frederick, PLLC. Also on Tuesday, at 10:30 am, the House Energy and Commerce Subcommittee on Digital Commerce and Consumer Protection will hold a hearing titled “[Disrupter Series: Update on Internet of Things Opportunities and Challenges](#).”
- On Thursday, Senate Finance Committee Chairman Orrin Hatch (R-UT) [announced](#) the appointment of Shane Warren to serve as the new Chief International Trade Counsel for the Committee. Warren joined the Senate Finance Committee in 2013, serving on the team that led legislative efforts to enact Trade Promotion Authority (TPA). Prior to joining the Committee, Warren served in the Office of the United States Trade Representative (USTR) as Assistant General Counsel. Everett Eissenstat, the former Chief International Trade Counsel, was recently appointed Deputy Assistant to the President for International Economic Affairs and Deputy Director of the National Economic Council (NEC).
- On Wednesday, Librarian of Congress Carla Hayden testified at a Senate Appropriations Legislative Branch Subcommittee hearing on the budget request for the

### Headlines and Highlights:

- House Administration holds oversight hearing on “Library of Congress IT Management.”
- Internet Association releases White Paper on NAFTA modernization priorities.
- USPTO Director Michelle K. Lee resigns.
- Senate Finance Committee Chairman Hatch announces appointment of Shane Warren as Chief International Trade Counsel.

### In the Blogs:

[WannaCry and China: Will This Finally Lead to Real Action against Software Piracy in China?](#)

Hugh Stephens Blog  
June 5 by Hugh Stephens

[Google Down-Ranks Real News](#)

The Illusion of More  
June 8 by David Newhoff

[DCA Report: Users Demand Some Accountability For Platforms](#)

The Illusion of More  
June 7 by David Newhoff

Library of Congress. Dr. Hayden stated that the Library’s Copyright IT modernization request “will focus on its mission systems and seeks support requirements analysis for the next generation registration system as well as resources for maintaining the stability of Copyrights legacy systems.” She also emphasized that the Library is “committed to a fully functional, well-staffed, and modern Copyright Office.” Read Dr. Hayden’s testimony [here](#).

- On Thursday, the Committee on House Administration held an oversight hearing on the “Library of Congress’ Information Technology Management” featuring Librarian of Congress Dr. Carla Hayden, Library of Congress Chief Information Officer Bud Barton, and Library Inspector General Kurt W. Hyde. Librarian of Congress Carla Hayden testified that she had addressed the need to “maximize value” from the Library’s technology investments by “directing that all technology activities be centrally coordinated through the Office of the Chief Information Officer and approved by [Chief Information Officer] Mr. Bud Barton, who now reports directly to me.” Library Inspector General Kurt W. Hyde stated, “The Library does not have a strong track record in implementing its enterprise-wide strategic plan,” and stated regarding the new plan that “[o]nce executed, it will require top-most executives to constantly monitor the various units’ implementation, and it will require changes in the Library’s governance and reporting.”
- The Copyright Office announced on Friday the launch of an online database of decisions from April 2016 to present by the U.S. Copyright Office Review Board, which hears final administrative appeals of refusals of copyright registration. The decisions are searchable and include an index; new decisions will be added as they are issued. The decisions will be a valuable resource to those seeking a better understanding of how the Copyright Office assesses whether works satisfy the legal and formal requirements for copyright registration. The index is available [here](#).

## **II. Judicial Updates:**

- This week, food blogger Elizabeth LaBau filed a copyright infringement lawsuit against the Food Network, alleging the company “willfully and intentionally sought to appropriate” her recipe for snow globe cupcakes. In 2014, LaBau posted the recipe to her website and “it went viral in the days that followed, garnering about 740,000 shares on Facebook.” About three weeks after posting a tutorial on how to make the cupcakes, LaBau alleges that the Food Network produced a how-to video “so similar that it constituted copyright infringement.” LaBau’s lawsuit seeks as much as \$150,000 in damages per copyright infringement. Read more [here](#).

## **III. Administration Updates:**

- On Tuesday, United States Patent and Trademark Office (USPTO) Director Michelle K. Lee resigned. While Lee did not provide a reason for her resignation, *POLITICO* [reports](#) that it was triggered by the Trump administration’s efforts to divert USPTO fees to pay for Department of Commerce services. The article goes on to state that Lee quit “after deciding that the so-called shared services initiative did not comport with laws governing the Patent Office, in particular the 2011 America Invents Act, which aimed to give the agency greater control over the fees it collects...” Secretary of Commerce Ross denied *POLITICO*’s report, calling it “completely untrue”. The Commerce Department [announced](#) late Wednesday that USPTO Associate Solicitor Joseph Matal will serve as Acting USPTO Director until a permanent replacement is named.

#### IV. International Updates:

- The *Hollywood Reporter* reports that plans for the European Union’s digital single market (DSM) are “quickly gaining momentum,” with the European Parliament’s Internal Market Committee voting on final amendments to DSM proposals this week, and additional committees expected to weigh in on the legislation this summer. If the proposals make it through the European Union’s Legal Affairs Committee in September, they could become law within the following six months. The film industry opposes the DSM proposals, in particular provisions that make it “harder to enforce local exclusive agreements” and that ban geo-blocking. Read more [here](#).

#### V. Industry Updates:

- The Internet Association has released a white paper outlining its priorities for renegotiation of the North American Free Trade Agreement (NAFTA). The paper notes that “when NAFTA entered into force in the 1990s,” tech-based elements of the economy such as online marketplaces, the sharing economy, and the Internet of Things “were all science fiction.” The Internet Association proposes provisions in the areas of intellectual property, digital flows and digital services, and customs and trade facilitation. The white paper argues that NAFTA should “require governments to adopt a strong set of copyright limitations and exceptions, such as the United States system of fair use,” and “require that governments adopt strong copyright safe harbors” for online service providers, “modeled on the United States system.” Additionally, the Internet Association suggests that an updated NAFTA “require proportionality and due process in copyright enforcement measures,” and “prohibit global injunctions against a foreign non-party that is not connected to the underlying dispute.” Read the white paper [here](#).
- A *New York Times Magazine* article titled ‘The Internet Is Where We Share – and Steal – the Best Ideas,’ profiles a “growing schism between those driving cultural conversations online and those profiting from them.” The article states that the “internet has become the go-to place to toss out ideas, in the hope that they could lead to a job, but it has also become the place where people go to find the best ideas, creating a lopsided dynamic that tends to benefit people in power.” For example, the piece details how the uploader of a viral photograph sued BuzzFeed for publishing it, and how a film concept discussed on Twitter was taken up by Netflix. The article quotes law professor Ann Bartow as saying, “we aren’t keeping pace with how to serve new types of creators who have never been valued by intellectual-property regimes.” Read more [here](#).
- Bloomberg reports that after the Wall Street Journal implemented a paywall preventing Google users from accessing its articles for free, the rate at which visitors to its website converted into paying customers quadrupled. However, the Wall Street Journal saw a decrease of 44%, in users accessing its site via Google. This decrease can be attributed to Google’s search algorithm, which demoted the Journal because it could only read the first paragraphs of articles behind the paywall. Suzi Watford, the Journal’s chief marketing officer, told Bloomberg that the Journal is “definitely being discriminated against as a paid news site.” Read more [here](#).
- PricewaterhouseCoopers (PwC) has released a report predicting that revenue from music streaming will become the largest source of music sales revenue worldwide, surpassing

physical sales of CDs and vinyl records for the first time. PwC predicts that streaming sales will reach \$9.1 billion 2017, as opposed to \$7.7 billion for physical sales. The study also finds that streaming's market share will reach 73%, as opposed to 23% for downloads of individual tracks and albums. Read more [here](#).

- In a *Music Business Worldwide* op-ed, independent record label founder Darius Van Arman argues for changes to safe harbor laws. Van Arman argues that “in a nutshell, the problem we have is labor-related. Laws which allow consumers or services to use intellectual property without permission or without paying an agreed price undermine the very marketplace that artists and music companies rely on to justify their labor and investment.” As a result, Van Arman writes, “the value of creative assets – the fruits of creative labor – are systematically being taken away from artists and music companies and transferred to internet services without fair compensation in return.” He proposes that safe harbor laws be changed to allow “all creators, regardless of size, a reasonably burden-free way of opting out their works from DMCA safe harbors.” Read more [here](#).