



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT MAY 5, 2017



### I. Congressional Updates:

- Representative Tom Marino (R-PA), a member of the House Judiciary Committee’s Intellectual Property Subcommittee and a strong proponent for Copyright Office modernization, has announced that he will withdraw from consideration for Director of the White House Office of National Drug Control Policy, opting instead to remain in Congress. In a [statement](#), Rep. Marino said that his withdrawal is due to a “critical illness” in his family. Read more [here](#).
- On Tuesday, the Senate Foreign Relations Committee held hearing to consider the nomination of Iowa Governor Terry Branstad to serve as U.S. Ambassador to China. In his [opening statement](#), Branstad said that the “protection of intellectual property and technology security is of the utmost importance to our country” and pledged to make that “clear” to the Chinese government. Branstad also said that he wanted to convince the Chinese government that protecting IP is not only in the best interest of the U.S. but for China, as well. “As the Chinese have advanced, hopefully they are going to see that there is a danger to them as well, in having their intellectual property stolen by other countries,” Branstad said. Watch the video [here](#).
- A group of House members has formed a new caucus focused on virtual reality technology. The caucus, called the ‘Congressional Caucus on Virtual, Augmented and Mixed Reality Technologies,’ will be co-chaired by Representatives Suzan DelBene (D-WA), Yvette Clarke (D-NY), Bill Flores (R-TX), Darrell Issa (R-CA), and Ted Lieu (D-CA). In a [joint statement](#), the co-chairs said that virtual and augmented reality technologies “have shown tremendous potential for innovation,” and noted that as

### Headlines and Highlights:

- Senate introduces companion bill to H.R. 1695.
- MPAA CEO Chris Dodd announces he will step down. Charles Rivkin named as successor.
- European internet companies, including Spotify, send letter to European Commission accusing Google and Apple of “abusing their privileged position” to stifle competition.
- Trump signs executive order establishing “American Technology Council.”

### In the Blogs:

[To Celebrate World IP Day—An Interesting Copyright Conversation](#)

Hugh Stephens Blog  
May 1 by Hugh Stephens

[Reality Check – H.R. 1695](#)

The Illusion of More  
May 1 by David Newhoff

[E-Commerce Offers Opportunities, But Many Challenges to SMEs](#)

IP Watch  
May 2 by Peter Kenny

they develop “questions will inevitably rise in privacy, intellectual property, and other areas.” Read more [here](#).

- On Tuesday, Senate Judiciary Committee Chairman Chuck Grassley (R-IA), Ranking Member Dianne Feinstein (D-CA), and Senators Patrick Leahy (D-VT) and Orrin Hatch (R-UT) introduced a Senate companion to *HR 1695, The Register of Copyrights Selection and Accountability Act*, which recently passed the House of Representatives. In a [press release](#), the senators said that they “look forward to working with the Senate Rules Committee on legislation to improve the selection process for the position of Register.” The bill was referred to the Senate Rules Committee.
- The Senate Judiciary Committee will hold its rescheduled confirmation hearing for Makan Delrahim to serve as Assistant Attorney General of the Department of Justice’s Antitrust Division on Wednesday, May 10<sup>th</sup> at 10:00 am. The Committee will also consider the nominations of Steven A. Engel as Assistant Attorney General, Office of Legal Counsel; and Noel J. Francisco to serve as Solicitor General of the U.S. More info [here](#).

## II. Judicial Updates:

- On Wednesday, Jayme Gordon was sentenced to two years in prison after being convicted of filing a bogus copyright lawsuit against DreamWorks Animation. In 2011, Gordon claimed that DreamWorks stole the characters and story from him for its film “Kung Fu Panda.” DreamWorks later discovered that some of Gordon’s drawings had been traced from a coloring book featuring Walt Disney characters from the 1994 film “The Lion King.” U.S. District Court Chief Judge Patti Saris in Boston ordered Gordon to pay more than \$3 million in restitution in addition to his two year prison sentence. Read more [here](#).

## III. Administration Updates:

- On Monday, President Trump signed an Executive Order establishing the “American Technology Council.” The Council will be tasked with promoting “the secure, efficient, and economical use of information technology” to achieve the missions of the U.S. government and its membership will consist of the U.S. Chief Technology Officer, the Director of OMB, the Secretary of Commerce, amongst others. Read more [here](#).

## IV. International Updates:

- The Society of Authors, a United Kingdom trade union for “writers, illustrators and literary translators,” has published a [manifesto](#) ahead of the upcoming general election. The group calls on the next Government to address “unfair contract terms” in creators’ contracts; “continue to follow future EU copyright law and the EU’s Digital Single Market Strategy;” review tax, benefits, and other laws to ensure that self-employed authors are not penalized; sustain funding for the arts – including replacing any European Union funding lost due to Brexit; and ensure “all creators are fairly remunerated for library ebook loans,” among other requests.
- *Intellectual Property Watch’s* Catherine Saez reports that two side events at this week’s session of the World Intellectual Property Organization (WIPO) Standing Committee on Copyright and Related Rights (SCCR) focused on the interests of music performers. At one side event hosted by the International Federation of Musicians (FIM), multiple speakers

expressed concern that performers are not benefiting enough from the growth in digital music, and Association of European Performers' Organisations (AEPO-ARTIS) General Secretary Xavier Blanc said that performers are increasingly worried about compensation from the use of their works in audiovisual formats. At a separate side event hosted by the International Federation of the Phonographic Industry (IFPI), FIM Secretary General Benoit Machuel argued that streaming services should pay performers' royalties directly to collective societies in order to ensure that performers collect more than just a one-time fee for their recordings. Read more [here](#).

- The European Commission will close an investigation into Amazon's ebook licensing deals with publishers, having reached an [agreement](#) with the company. Amazon has agreed not to enforce contract clauses requiring publishers to offer Amazon similar terms to those they offer to Amazon's competitors, as well as clauses requiring publishers to reveal details of their contracts with other distributors. Publishers will also be allowed to terminate ebook contracts containing provisions "linking discount possibilities for e-books to the retail price of a given e-book on a competing platform." In the future, Amazon will refrain from including any of the aforementioned types of provisions in contracts with publishers. Read more [here](#).
- This week, a group of European internet businesses, including streaming service Spotify, sent a letter to the European Commission accusing big internet platforms of abusing their "privileged position" to hinder competition. Although the letter does not cite Internet giants Google and Apple by name, it argues that some app stores, search engines, and mobile operating systems "have evolved from gateways into gatekeepers—effectively hindering rivals from competing with their own service." The chief executives who signed the letter argue that this problem requires "specific rules guiding the interactions between platforms and their business users." Read more [here](#).
- Over 400 organizations from Europe and around the world have signed a letter in opposition to the European Commission's proposed copyright reform which would allow broadcasters to offer certain online content throughout the EU so long as they have cleared the rights in their home country. The letter's signatories - which include the MPAA, BFI, the Premier League, and Sky - argue that such "country-of-origin" licensing "undermines the entire audiovisual eco-system in Europe." The European Parliament's Committee on Legal Affairs is scheduled to vote on the proposal in September, with other parliamentary committees scheduled to issue opinions on the matter in the next few months. Read more [here](#) and [here](#).

## V. Industry Updates:

- The Center for the Protection of Intellectual Property (CPIP) at the George Mason University School of Law has published a policy brief titled 'Open-Access Mandates and the Seductively False Promise of "Free"'. The brief advances four arguments against open-access mandates requiring academic research to be made freely available. Such mandates, the paper argues, harm publishers' ability to invest in the production and distribution of works; "contradict basic principles of copyright law" such as the principle that "copyright owners retain authority in and control over their works;"; constitute "a solution in search of a problem" given that "there is no evidence of a systemic market failure in scholarly publishing;" and are "based on untenable economic models" which hold that publishers

will be able to make returns on their investments when competing against “repositories that free-ride” on those investments. Read the brief [here](#).

- *The Economist* is running a cover story titled ‘Regulating the internet giants: The data economy demands a new approach to antitrust rules.’ The story argues that although large internet companies such as Google and Facebook do not “raise the alarm when standard antitrust tests are applied,” their “control of data gives them enormous power.” Control of data, the piece argues, “can stifle competition” by “providing barriers to entry and early-warning systems [against competitors].” The article suggests that antitrust authorities should take into account firms’ data assets when considering potential mergers, and become “more-data savvy in their analysis of market dynamics, for example by using simulations to hunt for algorithms colluding over prices or to determine how best to promote competition.” Second, the article suggests that the government should “loosen the grip” that these companies have over data. Such a strategy would include providing users with more control over and transparency about the use of their data; opening government “data vaults;” mandating that companies share certain data with third parties; and “managing crucial parts of the data economy as public infrastructure.” Read more [here](#).
- The fifth season of the popular Netflix series ‘Orange Is the New Black’ has been pirated and released on the Pirate Bay by an anonymous hacker, over a month before the season’s scheduled June 9 release. The hacker had allegedly tried to use the pirated files to extort Netflix for money, releasing the files to the public when Netflix refused to comply with the hacker’s demands. The hacker also illegally obtained unreleased series from ABC, Fox, IFC, and National Geographic. Read more [here](#).
- The Motion Picture Association of America (MPAA) has announced that its chairman and chief executive Chris Dodd will step down at the end of this year. He will be succeeded by Charles Rivkin, who formerly served as U.S. Ambassador to France and as Assistant Secretary of State for Economic and Business Affairs. Rivkin has a background in the entertainment industry, having worked at the Jim Henson Company and WildBrain Entertainment. Read more [here](#).
- The musicFIRST coalition has sent a [letter](#) to the chairmen and ranking members of the House and Senate Judiciary Committees urging them to support the Fair Play Fair Pay Act, which establishes a performance right for terrestrial radio, ends satellite radio’s “below-market royalty standard,” and requires royalty payments for pre-1972 recordings. The letter asserts that “there is clear momentum for reaching a solution to the inequities that exist today by establishing a right to compensation for all music creators and technology-neutral rules for music services.” More broadly, the group asks the Judiciary Committee leaders to “take into account” such inequities as they “seize the historic moment and prepare to address copyright reform.”