



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT FEBRUARY 16, 2018



I. Congressional Updates:

- POLITICO reported this week that Sen. Bob Corker (R-TN), Chairman of the Senate Foreign Relations Committee, is reconsidering his retirement amid concerns that Rep. Marsha Blackburn (R-TN)—who is running to replace him—could lose in a general election to Democratic Gov. Phil Bredesen. A Corker spokeswoman responded to the rumors by saying “[P]eople across Tennessee have reached out to Senator Corker with concerns about the outcome of this election because they believe it could determine control of the Senate and the future of our agenda. The Senator has been encouraged to reconsider his decision and is listening closely.” Read more [here](#).
- On Monday, Sen. John Cornyn (R-TX), the Senate Majority Whip, gave a speech on the Senate floor on S. 2098, the Foreign Investment Risk Review Modernization Act. The legislation would reform the Committee on Foreign Investment in the U.S. (CFIUS), a committee tasked with scrutinizing business deals that could transfer valuable U.S. technology to China and other hostile powers. During his speech, Cornyn criticized “a very small group of...U.S. firms that are actively opposing CFIUS modernization, having decided that their bottom line is more important than our nation’s security.” POLITICO [reports](#) that Cornyn was likely making reference to Josh Kallmer, Senior Vice President at the Information Technology Industry Council (ITIF), which represents tech giants including Apple and Google, who last month said parts of the bill “would literally paralyze businesses.” Listen to the entire speech [here](#).

Headlines and Highlights:

- Reps. Brady and Neal send letter to Sens. McConnell and Schumer urging them to quickly confirm USTR leadership.
- Gail Slater, former General Counsel for the Internet Association, to join Trump Administration.
- Google and Getty Images announce multi-year licensing agreement.
- Mitt Romney says he will run for US Senate from Utah.

In the Blogs:

[The New Canadian Content Coalition: Hang Together or Hang Separately](#)

Hugh Stephens Blog
February 12 by Hugh Stephens

[Turns Out Money Talks in Silicon Valley](#)

Illusion of More
February 14 by David Newhoff

[Time to Stop Defending the Internet As-Is](#)

Illusion of More
February 12 by David Newhoff

- On Wednesday, February 14th, from 9:30 AM-12:00 PM ET, the Senate Commerce Committee held a [nomination hearing](#) on the president’s four nominees to serve as Federal Trade Commissioners. The nominees testifying at the hearing were as follows: [Joseph Simons](#) (to be FTC Chair Designate), [Rohit Chopra](#) (to be FTC Commissioner), [Noah Phillips](#) (to be FTC Commissioner), and [Christine Wilson](#) (to be FTC Commissioner). Issues involving recent data breaches, antitrust enforcement, and to a lesser extent, prescription drug costs were the primary topics of discussion among the nominees and members of the committee, and it appeared that there was a consensus among members of the committee and the nominees that all of these issues were crucial to the overall mission of the FTC. In the area of antitrust enforcement, there appeared to be a great deal of agreement among the nominees that although preventing anti-competitive consolidation was clearly a core function of the FTC, the simple fact a company was large did not by itself mean that the company was engaged in anticompetitive conduct.
- During Wednesday’s Senate Commerce hearing to consider the nominations of four Federal Trade Commissioner nominees, Sen. Blumenthal (D-CT) submitted a statement for the record on behalf of the Congressional Antitrust Caucus, comprised of Democratic Reps. Khanna, Pocan, Nolan, Cicilline, and Ellison. In the statement the Representatives write that “There is mounting economic evidence that an overall decline in antitrust enforcement over the past several decades, coupled with wave after wave of mergers, has resulted in high levels of concentration in numerous industries with clear indicators of monopoly profits in key markets.” The members go on to ask the nominees how the Commission could work to “reverse the decline in monopolization enforcement in recent decades?” Read more [here](#).
- On Wednesday, Reps. Brady (R-TX) and Neal (D-MA), Chairman and Ranking Member of the House Ways and Means Committee, sent a letter to Senate Majority Leader McConnell (R-KY) and Minority Leader Schumer (D-NY) asking them to quickly bring to the Senate floor nominations for senior positions at the Office of the United States Trade Representative (USTR). Read the letter [here](#).
- In a video announcement on Friday morning, former Massachusetts Governor Mitt Romney announced that he will be running to replace retiring Utah Senator Orrin Hatch. "I have decided to run for United States Senate because I believe I can help bring Utah's values and Utah's lessons to Washington," Romney said in his announcement. Read more [here](#).

II. Judicial Updates:

- On Tuesday, February 13th, Judge Michael Fitzgerald of the US District Court for the Central District of California dismissed a copyright infringement claim by songwriters Sean Hall and Nathan Butler against Taylor Swift. The songwriters argued that Swift’s 2014 hit song “Shake It Off” infringed their 2001 song “Playas Gon’ Play,” which included the line “Playas, they gonna play, and haters, they gonna hate.” Judge Fitzgerald found that this combination of phrases did not meet the Copyright Act’s originality requirement, and dismissed the suit with leave to amend. Swift’s “Shake It Off” includes the phrase “Players gonna play, play, play, play, play, play, and haters gonna hate, hate, hate, hate, hate.” Read more [here](#).
- On February 13, the US District Court for the Central District of California issued an injunction requiring Tickbox TV to remove copyright-infringing add-ons from its Kodi

boxes, including any links to infringing content on its homescreen. The suit against Tickbox TV was brought by Amazon, Netflix, and various movie studios. Read more [here](#).

III. Administration Updates:

- The *Financial Times* (FT) reported on Tuesday that the Trump Administration’s Section 301 investigation of China has become “bogged down” amid an “internal debate focused in large part on legal concerns.” The investigation, [announced](#) in August, saw the U.S. allege, among other charges, that China violated intellectual property rights which threatened U.S. companies’ ability to compete. FT reported that the White House is considering invoking the International Emergency Economic Powers Act, a move that would grant Trump “wide powers to respond without congressional approval.” The White House is reportedly concerned that such a move could face backlash from affected U.S. companies. Read more [here](#).
- On Thursday, POLITICO [reported](#) that Grace Koh, special assistant to the president for technology, telecommunications and cybersecurity policy at the National Economic Council, is leaving the White House. They also reported that Gail Slater, previously general counsel of the Internet Association, is joining the administration.

IV. International Updates:

- On Friday, February 9, Google and Getty Images announced an agreement to settle the complaint Getty had filed with the European Commission in 2016 regarding Google’s image search. According to their agreement, Getty grants Google a multi-year license to use Getty’s photos, while requiring Google to better highlight copyright attributions in its image search. In an effort to reduce the number of direct downloads, the agreement also requires Google to remove the “View image” option in its image search. Read more about the agreement [here](#) and [here](#).
- On January 16, fifty-four European organizations representing teachers, students, researchers, librarians, and other education professionals sent a letter to Members of the European Parliament, highlighting issues with the proposed Directive on Copyright in the Digital Single Market. The letter argues that licenses should not be allowed to overrule the education exemption, remuneration for copying should not be mandatory, the proposed exception should not be limited to formal educational establishments, and the use of cloud platforms should be allowed. Read the letter [here](#).

V. Industry Updates:

- Maria Pallante, former U.S. Register of Copyrights and current CEO of the Association of American Publishers, was a keynote speaker at the 32nd International Publishers Congress, taking place in New Delhi, India this week. In her remarks Pallante warned publishers of those who seek to weaken copyright law by citing the “public good”, saying “They frame the public interest as though it is separate from the rights of copyright owners or worse yet, that publishers and other copyright owners are an obstacle to progress.” “This is false.” Read more [here](#).