



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT JANUARY 5, 2018



### I. Congressional Updates:

- The House was not in session this week. The Senate was in session, but opted not to hold any votes after Wednesday due to a winter storm.
- On Tuesday, Senator Orrin Hatch (R-UT), the longest-serving Senate Republican and the chairman of the Senate Finance Committee, announced he would retire at the end of the year. Read more [here](#).
- With Senator Hatch's retirement, current Judiciary Committee Chairman Chuck Grassley (R-IA) may have the option to become top Republican on the Senate Finance Committee in 2019, being the most senior Republican on the Finance Committee behind Hatch. If that were to happen, Senator Lindsey Graham (R-SC) is likely to become top Republican on the Judiciary Committee, being next in seniority in the Republican Judiciary Committee ranks. Read more [here](#).
- Judiciary Committee Chairman Bob Goodlatte (R-VA) told *Inside Radio* this week that he is planning to hold a field hearing in New York City "in the next few weeks to specifically look at the music industry." Read more [here](#).
- On December 21<sup>st</sup>, Reps. Doug Collins (R-GA) and Hakeem Jeffries (D-NY) introduced *H.R. 4706, the Music Modernization Act*, legislation that would reform Section 115 of the Copyright Act to create a single 'Mechanical Licensing Collective' to administer the mechanical licenses for interactive streaming or digital downloads of musical works. The bill also applies the 'willing buyer-willing seller' standard to Section 115 royalty rates. Read

### Headlines and Highlights:

- Senator Orrin Hatch announces retirement.
- House Judiciary Committee planning hearing on music industry.
- Section 115 reform legislation introduced.
- Spotify facing \$1.6 billion mechanical licensing suit.
- Commerce Dept. to hold public meeting on digital marketplace for copyrighted works.

### In the Blogs:

[2018 in Copyright Law and Policy Copyhype](#)  
January 3 by Terry Hart

[Disabling Access to Infringing Offshore Websites \(Site Blocking\) and Free Speech on the Internet: There is no Contradiction](#)  
Hugh Stephens Blog  
December 28 by Hugh Stephens

[Public Knowledge Responds to Infringement Claim in Ajit Pai Video](#)  
Illusion of More  
December 22 by David Newhoff

more [here](#).

- *Politico* reports that the Judiciary Committee seat of former Senator Al Franken (D-MN) will remain vacant until Majority Leader Mitch McConnell (R-KY) and Minority Leader Chuck Schumer (D-NY) finish “discussing whether the number of seats allotted to each party on committees will be adjusted to reflect the smaller GOP majority” resulting from the election of Senator Doug Jones (D-AL). Read more [here](#).
- The Stop Enabling Sex Traffickers Act (SESTA) has amassed 60 Senate cosponsors, removing any threat of a filibuster were the bill to come to the Senate floor for a vote. The Senate Commerce Committee approved the bill in November. Read more [here](#).
- *Axios* reports that Senator Mark Warner’s (D-VA) office organized a briefing for Democratic Hill staff in November “featuring Tristan Harris, the former Google Design Ethicist who argues that tech companies unethically manipulated their users, and academic Zeynep Tufekci, who is a prominent critic of Silicon Valley.” *Axios* obtained an invitation to the briefing, which reads, “Drawing on behavioral psychology research, many technology platforms actively condition user behavior, designing (and refining) products to be intentionally habit-forming. But these developments also raise important questions related to consumer protection, fake news/misinformation, antitrust/competition, and privacy.” Read more [here](#).

## II. Judicial Updates:

- Last Wednesday, Wixen Music Publishing sued Spotify for \$1.6 billion, claiming that the streaming company has been using songs Wixen administers without license or compensation. "Spotify brazenly disregards United States copyright law and has committed willful, ongoing copyright infringement," the publisher stated in its lawsuit. "Wixen notified Spotify that it had neither obtained a direct or compulsory mechanical license for the use of the works. For these reasons and the foregoing, Wixen is entitled to the maximum statutory relief." Read more [here](#).
- Sony Music has reached a settlement with stars of the television singing content *American Idol*, who sued Sony over the compensation arrangement for revenue from digital streams of their recordings. The terms of the settlement have not been made public, according to the *Hollywood Reporter*. Read more [here](#).

## III. Administration Updates:

- The Commerce Department’s Internet Policy Task Force will hold a public meeting titled ‘Developing the Digital Marketplace for Copyrighted Works’ on January 25 at the USPTO headquarters in Alexandria, Virginia. Read more [here](#).
- *CNBC reports* that a draft report on Chinese violations of U.S. intellectual property is “circulating among agencies.” The report’s allegedly “muscular” recommendations “are still being discussed, but could be made public this month,” according to an unnamed administration official. The *New York Times* [cites](#) “trade analysts” as suggesting that the administration “might consider restrictions on Chinese investment in the United States, as

well as tariffs on Chinese products.” *Axios* [reports](#) that it is “quite likely Trump will use 301 authority [in January] to put tariffs on Chinese consumer electronics as retaliation against” intellectual property theft. *Axios* further notes that although Gary Cohn and Steve Mnuchin “don’t like tariffs, they’re comparatively comfortable with targeted actions against truly bad actors, as in this case.”

#### IV. International Updates:

- *Reuters* [reports](#) that China’s state council announced on Wednesday that it will improve intellectual property protections in the country, but no further details were provided in the *Reuters* report.
- United Kingdom Minister of State for Security said in a recent interview that if internet platforms “continue to be less than co-operative” in combating terrorist activity online, “we should look at things like tax as a way of incentivizing them or compensating them for their inaction.” He further said, “we should stop pretending that because they sit on beanbags in T-shirts they are not ruthless profiteers.” Read more [here](#).

#### V. Industry Updates:

- Total music consumption in the United States rose 12.5 percent in 2017, with the R&B/hip-hop genre taking the highest share (24.5%) of music consumption, according to figures from *Nielsen*. Read more [here](#).
- British Phonographic Institute (BPI) figures show that in 2017 streaming accounted for the majority of UK music consumption, excluding radio. Separate figures from the Entertainment Retailers Association show that streaming revenues from subscription services like Spotify rose 41.9% in 2017. Read more [here](#) and [here](#).
- *Bloomberg* has published a profile of YouTube Global Head of Music Lyor Cohen’s efforts to improve YouTube’s relationship with the music industry, an effort which includes promises of “financial support for videos, promotion for new releases and a crackdown on free music.” Read more [here](#).
- News Corp CEO Robert Thomson said in a wide-ranging interview with *Digiday* that he hopes Google will provide publishers with “subscription mechanics and permissioned data about [their] users,” adding that Google’s discontinuation of the controversial ‘first click free’ policy is a “first step.” He also said that “in Washington, there is a time of reckoning” with respect to regulation of large technology platforms,” and “the digital world is dysfunctional from a content creative perspective.” Read more [here](#).
- In a *Salon* article, writer Rick Gell contends that the Digital Millennium Copyright Act (DMCA) and Communications Decency Act (CDA) have allowed internet platforms like Facebook and Google to “disregard long-standing laws and protocols governing intellectual property, media consumption and news, fueling growth at a scale only possible with such blanket immunity.” Gell further writes that these laws allowed “Silicon Valley giants to become sinfully rich, with a concentration of power not seen since the 1920s,” and argues that “the digital revolution could have succeeded without the ‘disruption’ and their disregard

for copyright and content creators.” Read more [here](#).

- In a New York Magazine piece, writer Brian Feldman predicts that 2018 “will be the year of the YouTube moral panic,” arguing that objectionable content on YouTube “is not an anomaly, but a rational response to the platform’s incentive scheme,” which is based on the generation of “high engagement numbers.” Read more [here](#).