



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036
Tel: (202) 327-8100 | Fax: (202) 327-8101

CONTENT & TECHNOLOGY POLICY REPORT MARCH 23, 2018



I. Congressional Updates:

- This week, Mississippi Governor Phil Bryant officially selected Agriculture Commissioner Cindy Hyde-Smith to fulfill the remainder of Sen. Thad Cochran's term. Cochran announced earlier this month he would retire effective April 1st. Hyde-Smith served in the Mississippi Legislature from 2000 to 2012. She was first elected as a Democrat, but switched to the Republican Party in 2010. Hyde-Smith was elected agriculture commissioner in 2011, the first woman to hold that position, and was re-elected in 2015. Read more [here](#).
- On Wednesday, March 21st from 10:00 a.m. to 2:00 p.m., the United States House Committee on Ways and Means held a hearing on U.S. Trade Policy Agenda. The sole witness at the hearing was U.S. Trade Representative Robert E. Lighthizer. Chairman Brady in his opening remarks included the importance of robust IP protections in NAFTA. During the hearing, Rep. Chu (D-CA) noted that Canada and Mexico do not place the same value on copyright protection as the United States does, and asked what assurances the Ambassador could give with regards to IP and NAFTA renegotiations. While the Ambassador refused to give any assurances, he emphasized the need for strong IP protections, noted that these provisions are often the last ones to be negotiated, and that the speed of the closing of NAFTA renegotiations should not have any effect on the IP protections. He also noted that Canada and Mexico are takers of IP, not protectors, and that he is completely in the US IP community's camp on IP protections. Later, Rep. Reed (R-NY) observed the importance of IP to the US economy and US innovation. Lighthizer said that they are completely committed to IP in trade agreements, that the prior administration had

Headlines and Highlights:

- Senate Finance and House Ways and Means Committees hold hearings on "U.S. Trade Policy Agenda" featuring USTR Lighthizer.
- White House IPEC releases 2017 Annual Report to Congress.
- House Judiciary Chairman Goodlatte announces mark-up of Music Modernization Act on week of April 9th.
- Sens. Peters and Warner urge Trump to appoint OSTP Director.

In the Blogs:

[Facebook, Cambridge Analytica, & Our Digital Dysfunction](#)

Illusion of More

March 21 by David Newhoff

[The 2018 GIPC Index: Ranking 50 Countries by their IP \(and Copyright\) Standards](#)

Hugh Stephens Blog

March 19 by Hugh Stephens

[Brief: Did EU Council Conclusions On IP Enforcement Overlook Patent Trolls?](#)

IP Watch

March 16 by IP Watch

moved away from protecting IP in trade policy, and that he is working to recenter this element of trade policy.

- On Wednesday, the Senate passed the Fight Online Sex Trafficking Act of 2017 (FOSTA) by a vote of 97-2. FOSTA would amend Section 230 of the Communications Decency Act to hold websites liable for “knowingly” enabling sex trafficking. Sen. Portman (R-OH), one of the lead sponsors of the bill, [applauded](#) the bill’s passage, calling it a “victory for trafficking survivors and a victory for our efforts to help stop the selling of women and children online.” Read more [here](#).
- On Tuesday, House Judiciary Chairman Goodlatte (R-VA) announced via [tweet](#) that the committee intends to mark up the Music Modernization Act, legislation that reforms the music licensing system, the week of April 9th.
- On Thursday, March 22nd from 10:00 a.m. to 12:30 p.m., the United States Senate Committee on Finance held a hearing on the President’s 2018 Trade Policy Agenda. The sole witness at the hearing was U.S. Trade Representative Robert E. Lighthizer. Opening the hearing, Chairman Hatch (R-UT) noted that the trade agenda looks very different now than it did a year ago, and indicated that he was pleased with the NAFTA renegotiation progress, particularly with regards to SPS measures. He further noted that he believed the first priority should be strengthening IP protections and enforcement, with particular focus on copyright protection and enforcement and making sure that patent protections are not undermined. Senator Menedez (D-NY) asked for the Ambassador what his strategy was for closing out the IP chapter and delivering a strong IP chapter for US innovators. In response, Amb. Lighthizer noted, as he did yesterday, that IP is always the last thing to close because other countries are takers. He again was critical of Canada and said he believes he is mandated by the Committee to improve IP standards. Other Members, including Sens. Warner (D-VA) and Casey (D-PA), expressed concern about China’s theft of US IP, though Senator Warner called for a more organized approach to national security and IP theft. Watch the hearing [here](#).
- On Thursday, Sens. Peters (D-MI) and Warner (D-VA) sent a letter to President Trump urging him to appoint a Director of the Office of Science and Technology Policy (OSTP), a position that has been vacant for more than a year. “As co-chairs of the Senate Science Forum, we know legislators from both parties are eager to work with an OSTP Director who has the administrative and legal authority to lead broad-based federal science and technology efforts and the credibility and stature to bring partners in industry and academia to the table. We need such a partner to maintain America’s position at the forefront of science and technology innovation,” said the Senators. Read the letter [here](#).

II. Judicial Updates:

- On Wednesday, March 21, the US Court of Appeals for the Ninth Circuit upheld the lower court’s jury verdict in the Robin Thicke “Blurred Lines” case. While the appeal focused mainly on procedural issues and the court upheld most of the jury’s verdict, it reversed the lower court’s decision as it related to rapper T.I.’s liability. The court noted that the decision turned more on the skills of the lawyers involved rather than the merits of the case, while dissenting Judge Nguyen noted that the court effectively granted a copyright for a musical style. Read more [here](#).

- Earlier this month, the 1960s soul band The Diplomats filed a complaint against the hip-hop group Wu-Tang Clan for copyright infringement. The claim argues that the Wu-Tang Clan song “People Say” resembles “I’ve Got the Kind of Love” by the Diplomats. Read more [here](#).

III. Administration Updates:

- On Thursday, President Trump signed a presidential memorandum that could impose tariffs on up to \$60 billion of imports from China to “protect the intellectual property of Americans” and end “the illegal theft and transfer of IP to foreign nations.” The announcement follows a months-long Section 301 investigation into IP malpractice in China by USTR. House Ways and Means Chairman Kevin Brady (R-TX) [responded](#) to the announcement, saying the President “is right to go after China on intellectual property” as it costs “thousands of U.S. jobs.” However, Brady went on to implore the President to “narrow” the tariffs “to really hit the target and make sure there isn’t spillover that affects our workers, our families, our farmers.” Read more [here](#).
- This week, the White House Intellectual Property Enforcement Coordinator (IPEC) issued his Annual Report to Congress for 2017. The report highlighted copyright policy, cyber-theft, E-commerce, and ICANN as some policy areas that could be examined and discussed further. House Judiciary Chairman Bob Goodlatte (R-VA) issued a [press release](#) applauding the IPEC’s annual report, which he said “lays out a thorough strategy to continue economic growth by ensuring American innovation is protected and able to flourish.” Read the report [here](#).

IV. International Updates:

- On Tuesday, the Australian Senate Environment and Communications Legislation Committee recommended that the Copyright Amendment (Service Providers) Bill be passed, legislation that would expand safe harbors to educational institutions, libraries, archives, galleries, museums, key cultural institutions, and organizations assisting those with a disability. Read more [here](#).

V. Industry Updates:

- On Thursday, March 29th from 10:00-11:00 a.m. the Brookings Institution will hold an event titled “The future of EU data protection: A view from a leader in Parliament” featuring EU Member of Parliament Birgit Sippel to “discuss the prospects for the e-Privacy Regulation, privacy and data protection issues, and the transatlantic digital economy.” Read more [here](#).
- On Wednesday, March 28th from 9:30 am – 11:30 am the Center for Strategic and International Studies (CSIS) will host an event titled “Defending Intellectual Property: Is Section 237 the Right Answer?” The event will feature panelists including Katherine Tai, Chief Trade Counsel, House Ways and Means Committee; Deanna Tanner Okun, Former ITC Commissioner; and Ben Levi, Principal at Levi & Snotherly, PLLC. Read more [here](#).
- On Wednesday, the Internet Association—a trade association representing tech companies including Amazon, Facebook, and Google—hired Jordan Haas as Director of Trade and International Policy. Haas most recently served at the International Trade Administration

where “he provided strategic counsel to the Under Secretary for International Trade and the Office of the Secretary of Commerce on agency and department operations, including international trade policy initiatives.” Read more [here](#).

- According to data piracy insight tracker MUSO’s 2017 Global Piracy Report, music piracy grew 14.7 percent over the prior year. The study, which takes into account piracy across, music, TV, film, publishing and software sites, found that overall there were 300.2 billion visits to piracy sites last year, up 1.6 percent. “There is a belief that the rise in popularity of on-demand services such as Netflix and Spotify have solved piracy, but that theory simply doesn’t stack up,” MUSO co-founder/CEO Andy Chatterly said in a statement accompanying the report. “Our data suggests that piracy is more popular than ever.” Read more [here](#).