



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 MAY 11, 2018



### I. Congressional Updates:

- POLITICO Morning Tech reported on Tuesday that Chris Randle, formerly Rep. Hakeem Jeffries' (D-NY) legislative director and counsel, has joined Facebook's government affairs team. Randle will reportedly work with the Congressional Black Caucus and on judiciary issues.
- POLITICO reported this week that members of the New Democrat Coalition, a group of pro-trade lawmakers that provided most of the 28 Democratic votes in the House for Trade Promotion Authority in 2015, are increasingly upset by the lack of engagement by USTR Lighthizer on NAFTA. "The lack of engagement from USTR is troubling, but not surprising," said an aide to a senior New Democrat member. "We have made it clear for months our willingness to engage in these discussions and USTR has not followed through. As our members' said at the recent press conference, it is important that we are involved in the takeoff not just the landing. We are past takeoff, but perhaps Captain Lighthizer could check in with the control tower before he starts his descent." Read more [here](#).
- On Wednesday, May 16<sup>th</sup> at 11:00 a.m. the House Small Business Committee will hold a hearing titled "Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protection in Their Businesses." The hearing will feature witnesses including Rick Carnes, President of the Songwriters Guild of America (SGA); David Graham, CEO of Code Ninjas LLC; and Michael Rosenn, General Counsel for Expa. Read more [here](#).

### Headlines and Highlights:

- Bipartisan group of Senators introduce Music Modernization Act.
- Sen. Toomey pens op-ed warning Administration not to "blackball" Congress into voting for "diminished NAFTA" deal.
- Anti-sex trafficking groups urge USTR Lighthizer to not include Section 230 liability protections in new NAFTA.
- Content Creators Coalition asks Congress to question Google execs on platform dominance.

### In the Blogs:

[Fool me once, shame on Facebook...](#)

Illusion of More

May 10 by David Newhoff

[Is the Era of "Permissionless Innovation" and Avoidance of Regulation on the Internet Finally Over? It's High Time.](#)

Hugh Stephens Blog

May 7 by Hugh Stephens

[Public Knowledge Attack on CLASSICS Act Typically Unsound](#)

Illusion of More

May 8 by David Newhoff

- On Tuesday, May 15<sup>th</sup> at 10:00 a.m. the Senate Judiciary Committee will hold a hearing titled “Protecting and Promoting Music Creation for the 21<sup>st</sup> Century.” Read more [here](#).
- On Thursday, Reps. Ro Khanna (D-CA) and John Ratcliffe (R-TX) introduced the 21<sup>st</sup> Century Integrated Digital Experience Act, legislation that would give agencies a two-year window to develop a comparable digital offering for any in-person service they provide. Read a summary of the bill [here](#).
- On Thursday, a bipartisan group of Senators, including Sens. Hatch (R-UT), Grassley (R-IA), Whitehouse (D-RI), Leahy (D-VT), Alexander (R-TN), Coons (D-DE), Kennedy (R-LA), Harris (D-CA), Corker (R-TN), Durbin (D-IL), Isakson (R-GA), Crapo (R-ID), Jones (D-AL), Tillis (R-NC), Nelson (D-FL), Perdue (R-GA), Capito (R-WV), and Blunt (R-MO) introduced the Music Modernization Act, legislation that will reform music licensing laws to bring them “into the 21<sup>st</sup> century and create a fairer marketplace for songwriters and other content creators.” A similar package recently passed the U.S. House of Representatives by a 415-0 vote. Read more [here](#).
- On Friday, Sen. Toomey (R-PA), a member of the Senate Finance Committee, wrote an op-ed in *The Wall Street Journal* in which he warned the Trump Administration not to try and “blackball” Congress into voting for a “diminished NAFTA.” “If presented with this ultimatum, I will vote ‘no,’ urge my colleagues to do likewise, and oppose any effort by the administration to withdraw unilaterally,” Toomey writes, adding that “pulling out of Nafta by executive fiat would be economically harmful and unconstitutional.” Toomey went on to point out a number of ways the Administration could improve NAFTA, including strengthening “pre-internet intellectual property rules.” Read more [here](#).

## II. Judicial Updates:

- Attorneys for Fox Searchlight and director Guillermo del Toro filed a motion on Monday asserting that Oscar-winning film *The Shape of Water* is not substantially similar to the 1969 play *Let Me Hear You Whisper* and thus is not infringing its copyright. The family of the late author Paul Zindel sued in February alleging the movie copied significant aspects of his play. Fox and del Toro’s attorneys have disputed the claim, saying the Zindel’s case is “embarrassingly inaccurate.” Read more [here](#).

## III. Administration Updates:

- On Wednesday, a group of anti-sex trafficking groups, led by End Child Prostitution and Trafficking (ECPAT), sent a letter to USTR Lighthizer urging him to not include Section 230 liability protections in the new NAFTA agreement, something the tech industry has pushed hard to include. “It is ironic for the tech industry to foist this failed domestic policy into a trade agreement, while the United States Congress is acting aggressively to curb the abuses that Section 230 promoted in the first place,” the group writes. “We believe it would be a grave mistake to entertain any attempt by the tech industry to undermine the Congress’ will with an end-run through trade negotiations.”

## IV. International Updates:

- On Wednesday, Canadian Foreign Minister Chrystia Freeland said that NAFTA negotiators have not yet had time to discuss intellectual property issues such as the 12 years of biologics protection and stronger copyright laws that the U.S. wants included. Read more [here](#).
- Mexican Trade Undersecretary Juan Carlos Baker [told reporters](#) on Thursday that Mexico would not rush a NAFTA renegotiation agreement to meet the U.S.' May 17 deadline. "For Mexico, what's important is to have a good agreement, and it'll take the time that it has to take to arrive at that good agreement," Baker said.

## V. Industry Updates:

- On Sunday, David Leonhardt, opinion columnist for *The New York Times*, penned an op-ed titled "Save Barnes and Noble!" in which he disputes the notion that bookstores such as Barnes and Noble and Borders have failed—and subsequently been overtaken by behemoths like Amazon—due to poor leadership. In reality, Leonhardt argues, "Washington's leniency, under both parties, toward technology giants" has allowed them to "vanquish their competitors and create problems for society." Amazon is happy to artificially lower prices on books and lose money to build a loyal customer base, to which it can sell everything else, Leonhardt writes. While this may work for Amazon, it poses a host of issues for others, such as fewer commercially viable books and publishers focusing on big-name writers, Leonhardt writes. Read more [here](#).
- On Monday, Terry Hart, Director of Legal Policy at the Copyright Alliance, published a post on his blog disputing the oft-repeated claim that the CLASSICS Act would extend the copyright term for sound recordings, something Hart says is "strikingly incorrect." Read more [here](#).
- On Monday, the Content Creators Coalition (C3), which fights for compensating musical artists for their digital play, launched a video campaign calling on Congress to question high-ranking Google officials on how its "platform dominance has decimated the creative economy." Read more [here](#).