



AMERICAN CONTINENTAL GROUP

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CONTENT & TECHNOLOGY POLICY REPORT MARCH 29, 2019



I. Congressional Updates:

- On Wednesday, at 3:00PM ET, the Senate Appropriations Subcommittee on the Legislative Branch held a hearing to review the fiscal year 2020 budget request for the Library of Congress. During her opening testimony, [Librarian of Congress Dr. Carla D. Hayden](#) formally announced Karyn Temple as the 13th U.S. Register of Copyrights. Dr. Hayden commended her legal copyright and managerial skills as Acting Register for the previous two and a half years. During the question and answer portion of the hearing, Subcommittee Chair Hyde-Smith (R-MS) asked Dr. Hayden to justify the additional \$10 million requested for renovations. Dr. Hayden explained that the Library of Congress plans to use the \$8 million appropriated in 2019 in addition to new funds to continue design work. More info. [here](#).
- On Tuesday, at 10:00AM ET, the House Ways & Means Committee's Subcommittee on Trade held a hearing on "Trade and Labor: Creating and Enforcing Rules to Benefit American Workers." Witnesses raised concerns about the lack of mechanisms to enforce the labor standards in the United States–Mexico–Canada Agreement (USMCA). Several witnesses, including representatives from the AFL-CIO, the United Automobile Workers, the Communications Workers of America, and the Economic Policy Institute, encouraged members to leverage their role in implementing the USMCA to force the Trump Administration back to the negotiating table. Only one witness—Susan Monteverde from the American Association of Port Authorities—endorsed the current proposal as drafted. More info. [here](#).

Headlines and Highlights:

- Karyn Temple announced as the 13th U.S. Register of Copyrights.
- Labor groups express concerns about USMCA's labor enforcement mechanisms to House Ways & Means Trade Subcommittee members.
- Music publisher group sue Charter Communications, alleging the IPS did not kick off repeat piracy infringers from the site.
- European Parliament approves the Copyright in the Digital Market Directive.

In the Blogs:

[The Deadliest Aspects of Copyright](#)

Hugh Stephens Blog
March 25 by Hugh Stephens

[Update: Cy Pres & SCOTUS](#)

Illusion of More
March 25 by David Newhoff

[Courts Being Led Down Rabbit Hole in Photograph Copyright Case](#)

Illusion of More
March 21 by David Newhoff

- Reports surfaced this week that House Judiciary Chairman Jerrold Nadler (D-NY) and Ranking Member Doug Collins (R-GA) sent a letter to Dish and DirectTV seeking information from the companies to help them review whether the Copyright Act's section 119 compulsory license for satellite retransmission of broadcast distant signals should be reauthorized. According to Broadcasting & Cable, the letter asks the companies to answer questions, such as the number of subs that receive one or more distant signals and under what license subpart, by April 19th. Read more [here](#).
- On Monday, Senator Tom Udall (D-NM), who currently serves on the Senate Committee on Rules and Administration, announced that he will not seek re-election in 2020. "I'm confident that we could run a strong campaign next year to earn a third term, because of all the work you and I have done together, along with my wife, Jill, and my incredibly dedicated staff," Udall said in a statement, adding that "the worst thing anyone in public office can do is believe the office belongs to them, rather than to the people they represent." Read more [here](#).

II. Judicial Updates:

- On Monday, the U.S. Supreme Court announced that it will not hear the dispute between Nike and a photographer who alleges that the athletic apparel maker infringed on his copyright image of Michael Jordan in both a photograph Nike commissioned for advertisements and in their "Jumpman" logo, which is displayed on Nike Air Jordan shoes. Photographer Jacobus Rentmeester sued Nike in 2015 claiming that the company had infringed on a copyright image he took of Jordan in 1984 for Life magazine. The Ninth Circuit previously granted summary judgement for Nike, finding that the company's image and logo did not infringe upon Rentmeester's 1984 photograph. Read more [here](#).
- Late last week a group of music labels including Sony, Universal, and Warner collectively filed suit against Charter Communications in the U.S. District Court in Colorado. The labels claim that Charter is liable for piracy because it did not kick accused pirates offline, asserting that "Charter knowingly permitted specifically identified repeat infringers to continue to use its network to infringe." The Digital Millennium Copyright Act (DMCA) requires Internet Service Providers (ISPs) to forward copyright infringement warnings provided by the entertainment industry to users, and have policies in place for "repeat offenders." The lawsuit alleges that while the Charter has policies stating it will kick repeat copyright infringers off company's website, it refused to follow through on these threats. Read more [here](#).
- On Wednesday, Oracle filed an opposition brief asking the U.S. Supreme Court not to review a March 2018 decision from the U.S. Court of Appeals for the Federal Circuit that Google's use of Java shortcuts to develop Android violated Oracle's copyrights. Google filed a petition asking the Supreme Court to review the case earlier this year. Read more [here](#).

III. Administration Updates:

- On Thursday, the U.S. Department of Commerce's Internet Policy Task Force convened to discuss steps to optimize the digital marketplace for copyrighted works. As part of "Developing the Digital Marketplace for Copyrighted Works," industry stakeholders presented copyright digitization efforts in "Industry Perspectives," "Technology Initiatives," and "U.S. Copyright Office Modernization" events, among other events. "Industry Perspectives" traversed current industry perspectives on the digital marketplace for

copyrighted works. Vickie Neuman, the founder of CrossBorderWorks, spoke on the need for stakeholders to create music business licensing and payment norms. Ms. Neuman said that these norms would attract innovation and investment to copyrighted streaming models, boosting legal alternatives to piracy. The Associate Register of Copyrights and Director of Registration Policy and Practice at the U.S. Copyright Office Robert Kasunic presented on initial design concepts for a revised Enterprise Copyright System. Innovations to ease copyright application included prioritizing usability and stream-lining “less user-friendly” legal jargon. The Office is then transitioning from a text-heavy site to a virtual card catalog with design cues. The day proceeded to cover a slew of copyright digitization topics. More info. [here](#).

- Reports surfaced late last week that Clete Willems will soon depart from his current role of deputy director of the National Economic Council (NEC) at the White House. Kelly Ann Shaw, who joined the White House staff in November as an assistant to the president and senior director for international trade, investment and development is slated to over Willem’s role at the NEC. “It has been a great honor to serve the president in this White House for the last two years. President Trump’s leadership on trade has entirely changed the global conversation and will lead to an international system that is more free, fair, and reciprocal,” Willems said in a statement. Read more [here](#).

IV. International Updates:

- On Tuesday, The European Parliament voted to approve the [Copyright in the Digital Sale Market Directive](#) with 348 votes in favor and 274 against the proposal; 36 MEPs abstained from voting. The approved Copyright Directive includes Article 13 and Article 11, now renamed Article 17 and Article 15 in the final text, which have faced criticism from opponents claiming that Article 13 would result in “upload filters” and that Article 11 would amount to a “link tax.” A motion to vote on new amendments of the Directive individually failed by just five votes. The proposal will now face a vote by the European Council, which is likely to take place on April 9th. If the Council adopts the proposal, European Union members states will have to implement the Copyright Directive in local legislation. The pact has been embraced by many rightsholders groups, publishers, and other members of the creative industry. Read more [here](#).

V. Industry Updates:

- On Wednesday, Facebook announced a new policy regarding white nationalism and white separatism posts on the platform. The social media company will now take down posts supporting white nationalism and white separatism and direct users in the U.S. who attempt to post this type of content to the website for Life After Hate, a nonprofit that provides education and support to people looking to leave hate groups. Facebook faced an outpouring of criticism last May after Motherboard published excerpts of leaked internal training documents for Facebook content moderators revealing that the social media platform banned white supremacy content but permitted white separatist and white nationalist content because it “doesn’t seem to be always associated with racism (at least not explicitly).” Civil rights organizations, lawyers, and historians have challenged Facebook’s notion that there is a legitimate distinction between white nationalist and white supremacist ideologies. Read more [here](#).