



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT MARCH 8, 2019



### I. Congressional Updates:

- On Wednesday, the Senate Committee on Rules and Administration held a hearing on the “Annual Oversight of the Library of Congress” featuring Librarian of Congress Carla Hayden. Chairman Blunt (R-MO) and Ranking Member Klobuchar (D-MN) raised the importance of information technology (IT) modernization within the Library, particularly within the U.S. Copyright Office. Dr. Hayden discussed the strategic plan the Library introduced last October, which she said revolves around being more user-centered and digitally enabled through four basic goals: expand access, enhance services, optimize resources and measure impact. During the question and answer portion of the hearing, some members asked about IT systems, whether it be their security or development more generally, as well as the progress the Copyright Office has made in implementing the Music Modernization Act, particularly regarding the Music Licensing Collective (MLC). Watch more [here](#).
- On Thursday, the House Appropriations Subcommittee on the Legislative Branch held a hearing to consider the Fiscal Year (FY) 2020 Library of Congress budget. A panel of witnesses testified before the Committee including Dr. Carla Hayden (Librarian of Congress), Dr. Mary Mazanec (Director, Congressional Research Service), and Karyn Temple (Acting U.S. Register of Copyrights, U.S. Copyright Office). During her opening statement, Dr. Hayden announced that the Library of Congress’ fiscal 2020 budget request represents a 6.8 percent increase over the Library’s 2019 enacted appropriations. The discussion between panelists and members on the Committee focused on improvement to the visitor experience at the Library

### Headlines and Highlights:

- Dr. Hayden testifies at Senate oversight hearing.
- Library of Congress FY20 budget request 6.8 percent higher than FY19 enacted appropriations.
- Kevin R. Amer to serve as deputy general counsel of the Copyright Office.
- Copyright Alliance sends letter urging elected officials to support the creative community.
- Spotify, Google, Pandora and Amazon to appeal 2018 CRB decision that increased royalties for writers.

### In the Blogs:

[Taiwan: A Centre of Reading, Publishing...and Democracy](#)  
Hugh Stephens Blog  
March 4 by Hugh Stephens

[The Internet is Not \(and never was\) Paradise](#)  
Illusion of More  
March 4 by David Newhoff

[Brief: Chinese IP Officials Complete Study Of UK, European IP Law](#)  
IP Watch  
March 3 by IP Watch

and services the Library offers for the visually disabled, etc. More info. [here](#).

- In an interview with POLITICO, House Ways & Means Committee Chairman Richard Neal (D-MA) declined to say whether he will support calls from Democrats for the Trump Administration to re-negotiate the United States–Mexico–Canada Agreement (USMCA). Neal asserted that he is keeping all options on the table since lawmakers "haven't had anything yet to wrap our arms around." The Administration submitted to Congress a list of statutory changes needed to implement the agreement late last month, but legislative text has yet to materialize. Lawmakers are also waiting for an International Trade Commission report analyzing the economic impact of the deal, which was delayed due to the partial government shutdown and probably will not be published until April. Neal told POLITICO that the key issue he is looking at is “enforcement, enforcement, enforcement.” Read more [here](#).
- On Wednesday, March 13th, at 2:30PM EST, the Senate Judiciary Committee's Subcommittee on Intellectual Property will hold a hearing titled, “Oversight of the United States Patent and Trademark Office.” Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO) Andrei Iancu is the sole witness scheduled to testify. More info. [here](#).

## II. Judicial Updates:

- On Monday, in a unanimous opinion delivered by Justice Kavanaugh, the Supreme Court held in *Rimini Street Inc. v. Oracle USA Inc* that a federal district court’s discretion to award “full costs” to a party in copyright litigation pursuant to 17 U. S. C. §505 is limited to the six categories specified in the general costs statute codified at 28 U. S. C. §§1821 and 1920. Kavanaugh asserts that the term “full” in the statute refers to a quantity or amount and “does not expand the categories or kinds of expenses” that can may be awarded as “costs” under the general costs statute. Read more [here](#).
- On Monday, the Supreme Court held in *Fourth Estate Public Benefit Corp. v. Wall-Street.com* that registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright. In other words, a copyright owner can’t properly sue for infringement before the Register has processed its copyright registration application. Justice Ginsburg delivered a unanimous opinion for the court. Read more [here](#).
- A California judge ruled this week that VidAngel, a video streaming service that filters profanity, sex, violence and more from movies, is liable for copyright infringement. Disney, Warner Bros. and Fox filed a suit in 2016 against the company alleging that it was running an “unlicensed” video on demand streaming service, circumventing the encryption on DVD and Blu-rays that is intended to protect against unauthorized access. On Wednesday, U.S. District Court Judge Andre Birotte Jr. delivered a series of orders representing bad news for VidAngel, including one that grants summary judgement to the studios on the issue of liability. Read more [here](#).

## III. Administration Updates:

- On Tuesday, the U.S. Copyright Office announced that Acting Register of Copyrights Karyn A. Temple has appointed Kevin R. Amer to serve as deputy general counsel of the Copyright Office, effective March 3rd. In this position, Amer assists the General Counsel and Associate Register of Copyrights in providing legal guidance to the Office’s divisions, promulgating

regulations governing the administration of the copyright system, advising congressional offices and other federal agencies, and developing legal positions in copyright litigation and other matters. Read more [here](#).

- On Tuesday, the Copyright Office updated the Virtual Card Catalog (VCC) proof of concept with more than 24 million card images from 1970 through 1954. These images contain Copyright Registrations, Assignments, Notices of Use, Commercial Prints and Labels, Title Indexes, and Pseudonym Files. The office welcomes the public to browse the newly added indexes and provide feedback online [here](#).

#### **IV. International Updates:**

- In a blog post published Sunday, Google's senior vice president for global affairs Kent Walker makes one final plea to Members of the European Parliament to reconsider the European Union Copyright Directive, which members are expected to vote on this month. He cautioned that the pact would "hold back" Europe's creative and digital economy by creating "vague, untested requirements, which are likely to result in online services over-blocking content to limit legal risk." Read more [here](#).
- Late last week the Office of the United States Trade Representative (USTR) published its "2019 Trade Policy Agenda and 2018 Annual Report of the President of the United States on the Trade Agreements Program." The report confirms that passing legislation to implement the USMCA and ending the U.S.-China trade dispute are priorities in President Trump's trade agenda this year. Read more [here](#).
- On Thursday, the Federal Trade Commission (FTC) announced its agenda for the 11<sup>th</sup> Session of Its Hearings on Competition and Consumer protection in the 21<sup>st</sup> Century. The hearing, which is co-sponsored with the George Washington University Competition Law Center, will take place in Washington DC on March 25-26 and will focus on the agency's international work. FTC Chairman Joe Simons will deliver opening remarks on the first day and a series of presentations and panels will highlight international developments in competition, consumer protection, and privacy laws, enforcement, and policies. FTC Commissioner Noah Phillips is slated to provide opening remarks on the second day. Read more [here](#).

#### **V. Industry Updates:**

- On Tuesday, the Copyright Alliance sent an Open Letter to elected officials stressing the importance of copyright and urging them to support the creative community. The letter is signed by more than 100K creators, audience members, fans, and consumers, and makes the following assertions: we embrace the internet as a powerful democratizing force for creative industries and the world at large; we embrace a strong copyright system that rewards creativity and promotes a healthy creative economy; we proudly assert that copyright promotes and protects free speech; copyright should allow creative communities to safeguard their rights against those who would use the internet to undermine creativity; and creative communities must be part of the conversation and stand up for creativity. Read more [here](#).
- On Wednesday, WIRED published an article highlighting the prevalence of anti-vaccine books on Amazon and urging the company to take further action to curb the spread of misinformation on its platform. The article reveals that many anti-vaccination books are

marked as #1 Best Sellers in book categories ranging from Emergency Pediatrics to History of Medicine to Chemistry. It further cautions that health misinformation and conspiracies have found a “new megaphone in the curation engines that power massive platforms like Amazon, Facebook, and Google.” Read more [here](#).

- On Monday, writer and comedian Miel Bredouw shared an anecdote on Twitter exposing what she has called a “glaring loophole” in Twitter’s copyright policy. After Bredouw filed a Digital Millennium Copyright Act (DMCA) claim on an infringing video posted to Barstool Sports’ account, she claims that representatives from the Barstool Sports tried to persuade her to retract her claim with increasingly lucrative offers. When she declined to respond to these offers, Barstool Sports eventually filed a counter-notice. Twitter’s policy states that once the platform receives a counter-notice to a DMCA claim, the case is no longer in Twitter’s hands because it has been elevated to legal matter only courts are equipped to handle. Even though Twitter immediately took down the infringing clip when she filed her DMCA claim, Bredouw claims that large accounts successfully weaponize the counter-notice policy. Read more [here](#) and [here](#).
- Reports surfaced this week that Spotify, Google, Pandora and Amazon are appealing a controversial 2018 ruling by the U.S. Copyright Royalty Board (CRB) that drastically increased royalties for writers. According to Billboard, the companies contend that there was never a chance for third parties to discuss the rates before the decision was made. Apple Music is notably absent from the list of major music streaming services appealing the CRB decision. Read more [here](#).