



AMERICAN CONTINENTAL GROUP

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## CONTENT & TECHNOLOGY POLICY REPORT APRIL 13, 2018



### I. Congressional Updates:

- On Friday, Sens. Hatch (R-UT) and Nelson (D-FL) sent a letter to United States Trade Representative (USTR) Lighthizer asking him to limit the number of exceptions to copyright protections in NAFTA or any future U.S. trade deal. "In the context of both existing and future trade agreements, the administration must ensure that copyright laws abroad strengthen, rather than create exceptions to, protections for America's creators and innovators," the lawmakers write. "We therefore urge you to make strong and enforceable protections for creative works a priority in any negotiation with our trading partners."
- On Wednesday, Speaker of the House Paul Ryan (R-WI) announced he would not seek reelection at the end of his current term. "The job provides incredible opportunities, but the truth is it's easy for it to take over everything in your life. And you can't just let that happen," Ryan said in a press release. "That's why today I'm announcing that this year will be my last one as a member of the House. To be clear, I am not resigning. I intend to serve my full term as I was elected to do. But I will be retiring in January, leaving this majority in good hands with what I believe is a very bright future." Read more [here](#).
- On Tuesday, the Senate Commerce and Judiciary Committees held a joint hearing titled "Facebook, Social Media Privacy, and the Use and Abuse of Data." Facebook CEO Mark Zuckerberg was the sole witness at the hearing. Commerce Chairman John Thune (R-SD) began the hearing by questioning whether Facebook users truly had the ability to consent to how their data is being used, and he specifically mentioned that Congress'

### Headlines and Highlights:

- House and Senate Committees hold hearings on Facebook featuring Mark Zuckerberg.
- House Judiciary approves Music Modernization Act by 32-0 vote.
- USTR Lighthizer tells Admin and Hill officials he wants NAFTA vote by December.
- Coalition of academic publishers warn ResearchGate is still hosting copyright-infringing papers.

### In the Blogs:

#### [Cruz Asks Zuckerberg the Section 230 Question](#)

Illusion of More

April 13 by David Newhoff

#### [Blocking Offshore Content-Theft Sites in Canada: It's now up to the CRTC](#)

Hugh Stephens Blog

April 8 by Hugh Stephens

#### [Wrangling With the Facebook Problem](#)

Illusion of More

April 10 by David Newhoff

passage of FOSTA (Allow States and Victims to Fight Online Sex Trafficking Act of 2017) last month should be a “wake up call” for the tech industry. He also stated that he’s not sure if the industry has the ability to regulate itself.

- Last week, Rep. Blake Farenthold (R-TX), a member of the House Judiciary IP Subcommittee, announced he would resign effective immediately. "While I planned on serving out the remainder of my term in Congress, I know in my heart it's time for me to move along and look for new ways to serve," he said in his statement. "Leaving my service in the House, I'm able to look back at the entirety of my career in public office and say that it was well worthwhile." Read more [here](#).
- On Tuesday, April 17<sup>th</sup> at 2 p.m. the House Judiciary IP Subcommittee will hold a hearing titled “Safeguarding Trade Secrets in the United States.”
- On Tuesday, Sen. Shelby (R-AL) was selected to serve as the next Senate Appropriations Committee Chairman following the resignation of former Sen. Thad Cochran (R-MS) on April 1<sup>st</sup>. In the press release announcing his selection, Shelby also announced the rosters for the various subcommittees. The Commerce, Justice, Science and Related Agencies Subcommittee—which oversees funding for the Patent and Trademark Office—will be chaired by Sen. Moran (R-KS) while Sen. Shaheen (D-NH) will be the Ranking Member. Sen. Daines (R-MT) and Sen. Murphy (D-CT) will be the Chairman and Ranking Member, respectively, of the Legislative Branch Subcommittee, which oversees and allocates funds for the Library of Congress and Copyright Office. Read more [here](#).
- On Wednesday, the House Judiciary Committee approved by a 32-0 vote the Music Modernization Act (H.R. 5447), legislation that updates several copyright provisions regarding music licensing, including compensating pre-1972 artists when their work is played on digital platforms. “This legislation, which is the first major update to our music licensing laws in decades, brings early 20th century music laws for the analog era into the 21st Century digital era,” House Judiciary Chairman Goodlatte said following the vote. Read more [here](#).
- On Thursday, House Judiciary Committee Chairman Bob Goodlatte (R-VA) announced that Rep. Keith Rothfus (R-PA) would be rejoining the committee, replacing Rep. Farenthold (R-TX). Read more [here](#).

## **II. Judicial Updates:**

- On Monday, April 9, a federal judge released his opinion in the long-awaited Wolfgang’s Vault case initiated by the National Music Publishers Association in 2015. Judge Ramos of the US District Court for the Southern District of New York found that the concert streaming service did not have appropriate licenses for its concert recordings, handing a major victory to the music publishers. The judge dismissed the defendant’s argument that the service held valid mechanical licenses. The court also found that the service could not prove that it had acquired required permissions from the performers. Read more [here](#).

## **III. Administration Updates:**

- On Thursday, President Trump told lawmakers he is considering rejoining the Trans-Pacific Partnership (TPP)—a trade pact he withdrew from shortly after taking office.

Trump reportedly said he had deputized economic advisor Larry Kudlow and U.S. Trade Representative (USTR) Robert Lighthizer to explore re-entering the TPP. Sen. Sasse (R-NE) said that Trump “multiple times reaffirmed the point that TPP might be easier to join now.” Read more [here](#).

- According to reports by POLITICO, USTR Lighthizer has told Hill and Administration officials in recent weeks that he will be able to reach a preliminary NAFTA deal by May and wants to have Congress vote on it by December. Lighthizer has also indicated that he wants the agreement to pass Congress with 65 percent support, including supportive votes from 20 to 25 Senate Democrats and half the House Democratic Caucus. Read more [here](#).

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

- On Monday, European Commission Vice-President Andrus Ansip gave a speech on copyright at the London Book Fair. In his speech, Ansip says that copyright rules have not kept pace with the advances of the digital age and this has contributed to a value gap. Ansip places blame for the value gap on digital platforms, saying they should “be more active in fighting piracy and illegal material posted online.” Read more [here](#).
- Bloomberg Law reported this week that the tech industry is warning that a provision of a new European Union copyright proposal—called Article 13—which would force tech companies to either heavily filter user-uploaded content or shutter their websites could potentially harm small websites. The provision would essentially “create this new requirement to license or filter everything online,” Matthew Schruers, vice president for law and policy at the Computer & Communications Industry Association in Washington, said. “It’s a rule that only the largest companies can comply with.” Representatives from the creative industries have pushed back against this notion by arguing Article 13 would help fix safe harbor abuses and ensure creators are paid fairly for their music and other content. Read more [here](#).

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

- Prior to Tuesday’s Senate hearing on “Facebook, Social Media Privacy, and the Use and Abuse of Data” the Motion Picture Association of America (MPAA) sent a letter to Senate Commerce Chairman John Thune (R-SD) urging greater accountability for internet platforms. “There was a vision for the internet, and this is not it,” MPAA Chairman Charles Rivkin wrote in his letter, referring to the scandals that have plagued Facebook and other sites. “The moment has come for a national dialogue about restoring accountability on the internet,” he added. “Whether through regulation, recalibration of safe harbors, or the exercise of greater responsibility by online platforms, something must change.” Read more [here](#).
- This week, the Coalition for Responsible Sharing—a group of 12 academic publishers including Elsevier, Wiley the BMJ—issued an [updated report](#) on ResearchGate claiming that the site is still hosting millions of copyright-infringing papers. Despite taking down 1.4 million papers from the public domain last October, “around 4 million copyright infringing articles remain publicly available on the site and continue to grow by the day”, the publishers say. Last October’s take-down of papers was a “one-off action that will not be repeated”. Read more [here](#).

- On Thursday, music streaming service Spotify announced the acquisition of Loudr.fm, a San Francisco-based provider of licensing technology. The acquisition helps address a major weakness that Spotify has said exists in its business model, specifically locating and ensuring the right artists get paid for their copyrighted work. Read more [here](#).