

CONTENT & TECHNOLOGY POLICY REPORT MAY 21, 2021



I. Congressional Updates:

- On Thursday, the Senate Commerce Committee approved the nomination of Dr. Eric Lander to serve as the Director of the White House Office of Science and Technology Policy (OSTP). Lander's responses to the committee's questions for the record were also released this week. In response to a question from Senator Warnock (D-GA) on how he would work with scientific societies and publishers to produce high-quality scientific analyses and articles while ensuring policymakers and the greater scientific community have access to potentially life-improving information, Lander said that he understood the importance of reliable and accurate scientific information. Lander committed to "exploring additional ways in cooperation with the scientific community to ensure scientific information is used in decision is of the highest quality and publicly available." Read more [here](#).
- Last Friday, Rep. Zoe Lofgren (D-CA), a senior member of the House Judiciary Committee, made public the areas where she disagrees with the House Judiciary antitrust report on competition in online markets. Lofgren stated that it will be difficult to regulate what the report calls "gatekeeper power" or who can use the platform and under what terms. On one hand, she writes, a platform uses this power to moderate hate speech and the advertisement of fraudulent products, but on the other hand a platform could abuse its power and promote its own products and services. "The challenge for Congress," she writes, "is to craft a legal framework to allow regulators to distinguish abusive gatekeeping from legitimate efforts to serve user interests and prevent ecosystems from breaking down." Read more [here](#).

Headlines and Highlights:

- Senate Commerce approves the nomination of Dr. Eric Lander to serve as OSTP Director.
- Apple CEO to appear before U.S. District Court in antitrust trial.
- Santa Clara Law professor Colleen Chien named senior counselor at Commerce Department.
- Rep. Lofgren raises concerns with aspects of House Judiciary antitrust report.
- Group of Republican Senators send letter to Tai, Raimondo criticizing TRIPS waiver decision.
- Spotify announces it will host virtual concerts for \$15 throughout May and June.

In the Blogs:

[Using Copyrighted Broadcast Content without Authorization to Produce Political Attack Ads: "All's Fair" Rules the Federal Court in Canada](#)

Hugh Stephens Blog
May 19 by Hugh Stephens

- On Wednesday, a group of Republican senators, led by Sens. Tillis (R-NC) and Cotton (R-AR), sent a letter to Secretary of Commerce Raimondo and U.S. Trade Representative (USTR) Tai expressing disappointment with President Biden’s decision to support the waiver of the Trade-Related Aspects of Intellectual Property Rights or TRIPS agreement in relation to the prevention, containment, or treatment of COVID-19. The letter calls the decision “disastrous” and posits that the reason why there are not enough vaccine doses currently is due to supply chain issues and technological capacity, and not IP rights. The senators also ask Raimondo and Tai to respond to a series of questions on the waiver by June 19th. Read the letter [here](#).
- On Wednesday, Senate Finance Committee Chairman Ron Wyden (D-OR) and Senate Majority Leader Chuck Schumer (D-NY) announced an amendment to the Endless Frontier Act aimed at combatting trade cheating by China and other rival nations. The Combating Oppressive and Manipulative Policies that Endanger Trade and Economic Security (COMPETES) Act of 2021 would, among other things, provide modernized trade enforcement tools to USTR to address anti-competitive digital trade and censorship practices like China’s Great Firewall. It would also require increased inspection by Customs and Border Protection of goods from countries identified to be significant sources of counterfeit goods. Read more [here](#).

II. Judicial Updates:

- This week, the Beijing Meishe Network Technology Company filed a copyright infringement lawsuit against TikTok, alleging the company “willfully” violated several of their software copyrights. Read more [here](#).
- Apple CEO Tim Cook will appear before the U.S. District Court in Oakland this morning to answer questions from Apple lawyers and from attorneys for Epic Games, Inc., the owners of popular video game franchise Fortnite. Epic Games is suing Apple, accusing them of being an illegal monopoly and criticizing their demand for 15% to 30% commission for in-app transactions. Apple has argued that the fee is the industry standard, and the money goes towards improving the security and privacy of apps. More info [here](#).

III. Administration Updates:

- Santa Clara University School of Law announced on Tuesday that Colleen Chien, a patent law expert and professor at the university, has been named senior counselor at the U.S. Department of Commerce. Reports indicate that Chien will serve in the general counsel’s office and oversee issues related to the U.S. Patent and Trademark Office (USPTO). The position is a part-time one, and Chien will retain her duties at Santa Clara law. Chien most recently served on the Biden-Harris Transition Commerce Department Agency Review team with primary responsibility for the Patent and Trademark Office. Read more [here](#).

IV. International Updates:

- On Wednesday, the European Parliament voted in favor of legislation to block illegal broadcasts within half an hour. The move largely targets the illegal streaming of live sporting events such as Premier League soccer matches. EU lawmaker Geoffroy Didier, a member of

the legal affairs committee, said online piracy of sports events also has severe consequences for amateur clubs and sports federations. “For the French football industry, for example, this means a loss of nearly 500 million euros (\$610 million) each year for our amateur clubs,” he said. “We must stop these illegal activities.” Read more [here](#).

V. Industry Updates:

- Late last week, the Regulatory Transparency Project of the Federalist Society released a white paper titled “Holding States Accountable for Copyright Piracy.” The paper—authored by Alden Abbott, Kevin Madigan, Adamo Mossoff, Kristen Ortega, and Zvi Rosen—claims that the recent Supreme Court decision in *Allen v. Cooper* has jeopardized the U.S. copyright system by “severely limiting” the ability of creators and copyright owners to hold states accountable for infringement by invoking sovereign immunity. The paper says a possible solution is for Congress to “amend Section 105 of the Copyright Act either to bar states from owning copyrights or to require that a state who wishes to take advantage of the benefits of copyright ownership, including availing itself of money damages, waive its sovereign immunity from lawsuit for its infringement of the copyrights of others.” Read the paper [here](#).
- Spotify announced this week that the company will start hosting virtual concerts throughout May and June. Initial artists include The Black Keys, Leon Bridges, and Jack Antonoff of Bleachers. Tickets will cost \$15, and the shows are all prerecorded and will not be available on demand. Read more [here](#).