

CONTENT & TECHNOLOGY POLICY REPORT MAY 7, 2021



I. Congressional Updates:

- After the Biden Administration announced its intention to support the WTO IP waiver, congressional republicans quickly criticized the decision. Senators Tillis (R-NC) and Cotton (R-AR), members of the Senate Judiciary Committee, issued a joint [press release](#) calling the decision “disastrous” and that it will “do little to end the COVID-19 pandemic and help developing nations.” Rep. Kevin Brady (R-TX), Ranking Member of the House Ways and Means Committee, [said](#) “it is dangerous for America to “consent to strip away patents on lifesaving COVID vaccines now that cost businesses billions of dollars to develop at a historic pace.” “The better solution to help our global neighbors is to solve the very real logistical hurdles slowing access to these vaccines, not undermine the incentives to develop them.”
- On Wednesday, the House Judiciary Committee held an oversight hearing for the U.S. Copyright Office, featuring newly appointed Register of Copyrights Shira Perlmutter. This hearing was the first time Perlmutter appeared before Congress since being appointed six months ago. The hearing touched on several important copyright topics, including the implementation of the CASE Act and Music Modernization Act, the USCO report on Section 512 released last year, the creation of a performance right for terrestrial radio, and ways to combat piracy and infringement online. Watch the hearing [here](#).
- USTR Katherine Tai will testify before the Senate Finance Committee [next week](#) to outline President Biden’s 2021 trade policy agenda. The hearing will take place on Wednesday at 9:30 a.m. She will also [appear](#) before House

Headlines and Highlights:

- USTR Tai announces U.S. will support WTO TRIPS IP waiver.
- House Judiciary Committee holds Copyright Office oversight hearing featuring Register Perlmutter.
- Energy and Commerce leaders urge USTR Tai not include Section 230 in future trade agreements while Congress considers changes to it.
- EUIPO releases study on role of social media in online piracy.
- Ninth Circuit rules Snapchat can not use Section 230 as defense in reckless driving lawsuit.
- Twitter announces acquisition of Scroll, an ad-free news app supported by publishers.

In the Blogs:

[Site-blocking for “Online Harms” is Coming to Canada: Similar Measures to fight Copyright infringement Should Follow](#)

Hugh Stephens Blog

May 3 by Hugh Stephens

Ways and Means on Thursday at 10 a.m. to discuss the same topic.

- On Monday, Reps. Pallone (D-NJ) and McMorris Rodgers (R-WA), chair and ranking member of the House Energy and Commerce Committee, sent a letter to USTR Tai expressing concern regarding the inclusion of Section 230 language in any trade agreements while the Congress is considering modifications to the statute. “As you may know, the effects of Section 230 and the appropriate role of such a liability shield have become the subject of much debate in recent years,” the lawmakers wrote. “While we take no view on that debate in this letter, we find it inappropriate for the United States to export language mirroring Section 230 while such serious policy discussions are ongoing.” Read more [here](#).

II. Judicial Updates:

- On Tuesday, the U.S. Court of Appeals for the Ninth Circuit reversed a lower court ruling in *Lemmon v. Snap* that said Snapchat can not be sued over a Snapchat speed filter that allegedly encouraged reckless driving due to Section 230 protections. The court concluded that Snapchat “indisputably designed” a reward system for the filter and created a defective product. As such, the court found that Snapchat could be sued and could not use Section 230 as a defense. Read more [here](#).

III. Administration Updates:

- On Wednesday, United States Trade Representative (USTR) Katherine Tai [announced](#) that the Biden Administration will support a World Trade Organization proposal to waive IP protections for COVID-19 vaccines. “The Administration believes strongly in intellectual property protections, but in service of ending this pandemic, supports the waiver of those protections for COVID-19 vaccines,” the statement from Tai reads. “We will actively participate in text-based negotiations at the World Trade Organization needed to make that happen.” It remains unclear how broad the scope of the final waiver will be, but the current iteration includes patents, copyrights, and trade secrets. India and South Africa, the countries leading the waiver, agreed on Wednesday to revise their proposal and will present it to members for a meeting tentatively scheduled for the second half of May. Read more [here](#).

IV. International Updates:

- Late last week, Margrethe Vestager, the European Commission’s top antitrust official, said Apple is in breach of competition law because it charges app developers high commission fees and forbids them from advertising cheaper alternatives. “Our preliminary conclusion is that Apple abused its dominant position for the distribution of music streaming apps through its app store, and distorted competition in the music streaming markets,” she told reporters during a press conference. Apple will now be offered the opportunity to reply to the Commission in writing and request a hearing. More info [here](#).
- This week, the European Union Intellectual Property Office (EUIPO) released a study titled “Monitoring and analyzing social media in relation to IP infringement.” The researchers looked at the role of social media in relation to counterfeiting and piracy. They found that 35% of all conversations on digital content could “possibly” be related to piracy and observed that Reddit was the most used site for piracy-related conversations. Read the report [here](#).

V. Industry Updates:

- Twitter announced this week that it is acquiring Scroll, a startup that offers ad-free viewing of news sites for a monthly fee. Scroll launched last January and offers readers an ad blocker that publishers agree to and benefit from financially. Participating publishers include The Atlantic, The Daily Beast and BuzzFeed. In a blog post announcing the acquisition Twitter said they are exploring was to include Scroll as part of an upcoming subscription offering for the site which also may include the ability to tip Twitter users. Read more [here](#).
- Last Friday, Senator Thom Tillis (R-NC), Ranking Member of the Senate Judiciary IP Subcommittee, penned an op-ed in *The Hill* in which he urged the Biden Administration to not support the TRIPS IP waiver being considered at the WTO. Tillis criticized the “mistaken belief” that the waiver will promote broader access to vaccines, writing “The waiver will not spontaneously transfer the complex technical and logistical know-how to develop vaccines, nor would it generate the necessary infrastructure to distribute the shots safely and quickly.” “Poor quality vaccines being produced by underqualified manufacturers could have extremely negative consequences and potentially prolong the pandemic.” Read more [here](#).