I. Congressional Updates:

- On Wednesday, the House Judiciary Committee held a markup on H.R. 4130, the American Music Fairness Act (AMFA). AMFA, as amended by the substitute amendment proposed by Chairman Jerry Nadler (D-NY-10), passed by a voice vote. The bipartisan bill, introduced by Reps. Ted Deutch (D-FL-22) and Darrell Issa (R-CA-50) on June 24, 2021, would require that performing artists are paid royalties for the use of their songs on FM/AM (i.e., terrestrial) radio. Under existing law, there is no terrestrial public performance right for sound recordings. AMFA would hold terrestrial radio to the same standards as streaming services and satellite radio operators and ensure that small, local broadcasters are protected by only being required to pay a de minimis amount for using the work of performing artists. Most members of the committee voiced their support for AMFA and the importance of bipartisan cooperation toward its passage. A few members emphasized the need to carefully balance the interests and concerns of both performers and local stations. Only Rep. Steve Chabot (R-OH-01) expressed outright opposition to the bill, arguing that passage of the bill would cause harm to local broadcasters.

- After much anticipation and speculation, the final text of the National Defense Authorization Act (NDAA) was released late Tuesday night, and the Journalism Competition and Preservation Act (JCPA) was not included. Despite assurances from bill sponsor Sen. Amy Klobuchar (D-MN) that the bill wouldn’t affect content moderation, some GOP lawmakers said they were concerned it would censor conservative viewpoints, while some Democrats have warned it could allow for

Headlines and Highlights:

- House Judiciary Committee Reports out the American Music Fairness Act
- JCPA Omitted From Defense Package
- U.S. to Spend $1.5 Billion to Jumpstart Alternatives to Huawei
- FTC Sues to Block Microsoft-Activision Blizzard $69B Merger
- Biden Administration Supports Delaying IP Waiver Extension
- Music Industry Competition Watchdog Finds Alarming Trends Across The Sector
- Carl Maxwell Named Vice President, Public Policy at the Association of American Publishers

In the Blogs:

- Hugh Stephens Blog: The “I Value Canadian Stories” Campaign: Time to Get Serious About Copyright Reform
disinformation and hate speech. The bill was approved by the Senate Judiciary Committee earlier this year and was expected to be addressed in the House Judiciary Committee this week before trying to get attached to the NDAA. It was one of several “non-defense” measures that were not in the final bill text. Another notable exclusion was the INFORM Consumers Act, which seeks to crack down on the sale of counterfeit and stolen goods online by requiring online marketplaces to take steps to verify the identity of high-volume sellers and provide some of that information to customers. Read more here.

II. Administration Updates:

- On Wednesday, Axios reported that the federal government plans to invest $1.5 billion to help spur a standards-based alternative for modern cellular network gear after banning Huawei’s products. “The highly consolidated global market for wireless equipment creates serious risks for both consumers and U.S. companies,” Alan Davidson, Assistant Secretary of Commerce for communications and information and NTIA administrator, said in a statement. The funds were made possible by the Chips and Science Act that passed earlier this year and is aimed at helping companies switch to Open Radio Access Network (ORAN), which uses standard computing gear to replace hardware from problematic companies such as Huawei. The agency plans to hold listening sessions in January and is required to start making the first grants by August 2023. Read more here.

III. Judicial Updates

- On Thursday, the Federal Trade Commission (FTC) sued to block Microsoft’s planned $69 billion takeover of Activision Blizzard. The commission voted 3-1 to issue the complaint with the sole Republican commissioner voting against. “Microsoft has already shown that it can and will withhold content from its gaming rivals,” said a prepared statement from Holly Vedova, director of the FTC’s Bureau of Competition. “Today we seek to stop Microsoft from gaining control over a leading independent game studio and using it to harm competition in multiple dynamic and fast-growing gaming markets.” According to the article, the FTC said it was filing the complaint through its administrative process rather than taking the case to a federal court. An administrative law judge is not expected to hear evidence until August 2023. Read more here.

IV. USCO Updates:

- On November 22, the USCO and USPTO announced they will be publishing a Federal Register notice (FRN) announcing their joint study to examine various matter related to intellectual property that arise from the use of non-fungible tokens (NFTs). To assist in preparing a report for Congress, the notice seeks written responses from the public to several questions. It also announces that the Copyright Office and USPTO intend to hold virtual public roundtables in January 2023. For additional information, including instructions for submitting comments and asking to participate in the roundtables, please visit the Copyright Office website. Comments must be received no later than January 9, 2023.
V. International Updates:

- On Tuesday, the Office of the United States Trade Representative (USTR) announced support for delaying the deadline to decide whether to extend a waiver of intellectual property rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to diagnostics and therapeutics. According to the United States Trade Representative (USTR) Ambassador Katherine Tai, her Office has actively engaged in discussions with World Trade Organization (WTO) members, U.S. stakeholders, Congress, and others on whether to extend the waiver and “[r]eal questions remain on a range of issues,” including the key question of whether an extension would actually result in increased access to COVID-19 treatments. USTR Tai said the additional time will help all members to “make an informed decision.” Read more from IPWatchdog here.

VI. Industry Updates:

- On Monday, Forbes reported that The Competition and Markets Authority (CMA), the UK competition watchdog, has spotted alarming trends in the music industry. In the CMA’s most recent report they state that more than 80% of recorded music is listened to via streaming and over 138 billion streams were played in the UK alone last year. The overall conclusion of the report is that a very small minority of artists made substantial returns while the vast majority made minimal revenue. Although ease of access to music has increased, many artists feel they are not getting a fair deal. According to the report, “A million streams per month would earn an artist only about £12,000 ($14,287) per year.” Interestingly, according to the UK Intellectual Property Office (UKIPO), only 1,700 artists managed to make 1 million streams per year in the UK. Catherine Willcox, of UK country-music duo Ward Thomas, told BBC News. “However, with the decline in album sales across the board and the rise in streaming, no-one is fully sure how they will sustain a creative career as the landscape of the industry changes so dramatically.” Read more here.

- On Monday, Axios reported that Adobe will open its stock images service to images made with the help of generative AI programs. According to the article, “Adobe says it is now accepting images submitted from artists who have made use of generative AI on the same terms as other works but requires that they be labeled as such.” This is the opposite approach to Getty Images, which announced that they would not accept contributions made with AI back in September. Read more here.

- On Monday, the Association of American Publishers (AAP) announced that J. Carl Maxwell has joined the organization as Vice President, Public Policy. In his new role, Carl will engage on a wide range of government and industry developments to advance a viable legal framework for houses of all sizes and specialties, both commercial and non-profit publishers. “AAP’s advocacy work is second to none,” commented Carl Maxwell. “I am eager to work with the talented membership and all parts of the publishing community to solve challenges and explore new possibilities.” Read more from the press release here.