

CONTENT & TECHNOLOGY POLICY REPORT APRIL 29, 2022



I. Congressional Updates:

- During Tuesday's Senate Democrat weekly lunch, Sen. Amy Klobuchar briefed Senate Democrats on her antitrust bill the American Innovation and Choice Online Act. The bill passed the Judiciary Committee with a bipartisan 16-6 vote back in January, but Big Tech companies have been lobbying to kill the legislation. Senate Majority Leader Chuck Schumer said he'll put antitrust bills on the floor if backers can round up 60 votes. According to Punchbowl News, House Democrats are split on the legislation as leadership has resisted a vote, saying it would divide the caucus.
- On Monday, Senators Leahy, Tillis, Coons, Cornyn, Hirono, and Padilla sent a letter to President Biden asking him to prioritize filling the position of Intellectual Property Enforcement Coordinator. "Without an IPEC to create and drive an overarching strategy, intellectual property protections are undermined. At a time when our economy is in need of recovery from the damage caused by the COVID-19 pandemic, intellectual-property-intensive industries are poised to continue to be an engine for growth. We must maintain our focus on promoting and protecting intellectual-property-related jobs and economic output. We look forward to working with you and the administration to swiftly confirm a qualified nominee for this critical position."
- Senate Majority Leader Chuck Schumer and Minority Leader Mitch McConnell have agreed on a path to begin an official House-Senate negotiation on the Bipartisan Innovation Act. Late Wednesday night, Schumer announced on the Senate floor that he and McConnell

Headlines and Highlights:

- Sen. Klobuchar Briefed Democrats on Big Tech Antitrust Bill
- Senators Asked Biden to Nominate an IPEC
- Schumer and McConnell agreed on a timeline for COMPETES Legislation
- USCO Published a Notice of Inquiry on STMs and Section 512
- White House Asked for TRIPS Text
- Commerce Department Supports Antitrust Bill
- EU Top Court Ruled Article 17 'Upload Filters' Don't Violate Freedom of Expression

In the Blogs:

- Hugh Stephens Blog: [World IP Day: IP and Youth-Innovating for a Better Future \(Kidovate as an Example\)](#)^[OBJ]

agreed on 28 “Motions to Instruct” which they will vote on next Tuesday and Wednesday. The Senate voted Thursday on cloture to enter into the conference negotiations and on making their conference negotiators official. According to Punchbowl News, Senators are saying that it could take until the end of summer to hammer out a final package.

II. USCO Updates:

- On Tuesday, the USCO published a notice of inquiry stating that they will be gathering information on the development and use of standard technical measures for the protection and identification of copyrighted works. Written comments must be received no later than 11:59 p.m. Eastern Time on May 27, 2022. Read more [here](#) and [here](#).

III. Judicial Updates

- In a lawsuit filed last year, the entertainer Cher stated that Bono's estate, administered by his widow, improperly tried to terminate her rights in Sonny & Cher royalties. According to the complaint, the Bono Collection Trust claimed that its 2016 notices of termination to several music publishers also applied to Cher's royalty rights. She asked the court to clarify that she still had a right to the royalties and requested at least \$1 million in damages. The case is *Cher v. Bono*, U.S. District Court for the Central District of California. Read more [here](#).

IV. Administration Updates:

- On Sunday, Senate Majority Leader Chuck Schumer stated that Alvaro Bedoya would be confirmed to the FTC this week. However, due to Vice President Harris contracting COVID and thus not being available for a tie-breaking vote, the cloture motion was withdrawn. It is expected that Bedoya will be confirmed at a later date. Read more [here](#).
- During a Senate Banking Committee hearing on Tuesday, Rohit Chopra, the director of the Consumer Financial Protection Bureau (CFPB) stated that they will promote competition and scrutinize the outsized influence Big Tech firms have in the marketplace. "We are especially interested in ways that small financial institutions can leverage technology and systems ... to capture market share while still preserving their relationship banking model," Chopra told lawmakers. Read more [here](#).
- On Thursday April 21, the Huffington Post published an article titled, [Biden Administration Urges Global Trade Chief To Release COVID-19 Patent Waiver Text](#). "While no agreement on text has been reached, the U.S. will continue to engage with WTO Members as part of the Biden-Harris Administration's comprehensive effort to get as many safe and effective vaccines to as many people as fast as possible," added Hodge, a spokesperson for U.S. Trade Representative [Katherine Tai](#). Hodge's statement is timed to precede the [next major WTO gathering](#), suggesting a potential deadline for an officially sanctioned text. Trade representatives of WTO member nations are due to convene in person in Geneva in mid-June.

- On Wednesday, the Office of the United States Trade Representative (USTR) released its 2022 Special 301 Report on the adequacy and effectiveness of U.S. trading partners' protection and enforcement of intellectual property (IP) rights. "Intellectual property-intensive industries support more than 60 million jobs – from the independent inventor just starting out to the documentary filmmaker studying critical social issues. We need robust protection and enforcement in foreign countries to protect these individuals, their livelihoods, and ensure they can fairly compete in the global marketplaces," Ambassador Katherine Tai said. The 2022 Special 301 Report can be viewed [here](#).
- Commerce Secretary Gina Raimondo said Wednesday the department supports the American Innovation and Choice Online Act. "[I] clearly agree that we need to improve competition, which increases innovation. Last month, the DOJ released a views letter on behalf of the administration in support of the American Innovation and Choice Online Act, and the department and I certainly support that and concur with the aim of the legislation and the views expressed in that views letter," she said. Read more [here](#).

V. International Updates:

- According to TorrentFreak, The Court of Justice of the European Union has dismissed Poland's request to annul Article 17 of the Copyright Directive, which requires online services to license content from copyright holders. The Court found that the legislation, which could boost the use of 'upload filters,' does not violate freedom of expression, as long as they can sufficiently distinguish between illegal and legal content. Read more [here](#).
- According to TorrentFreak, the EU reached an agreement on the final text of the Digital Services Act (DSA) over the weekend, although the final text is yet to be published. "The DSA will upgrade the ground-rules for all online services in the EU. It will ensure that the online environment remains a safe space, safeguarding freedom of expression and opportunities for digital businesses," European Commission President Ursula von der Leyen says. Some of the legislation will impact platforms as soon as this year, while others will take a few years before changes are implemented. Read more [here](#).
- On Monday and Tuesday, USTR Katherine Tai and United Kingdom Secretary of State for International Trade Anne-Marie Trevelyan hosted the second U.S. – UK Dialogue on the Future of Atlantic Trade in Aberdeen, Scotland. The two agreed to "collaborate further on: delivering practical support for SMEs, digitizing U.S.-UK trade in the modern economy, building resilience in critical supply chains, addressing the global trade impacts of Russia's invasion of Ukraine, promoting environmental protection and the transition to net zero, supporting high labor and environmental standards, and promoting innovation and inclusive economic growth for workers and businesses on both sides of the Atlantic." Read more [here](#).

VI. Industry Updates:

- On Monday, the Fraternal Order of Police (FOP) wrote to House leadership voicing their support for the INFORM Consumers Act (S. 936/H.R. 5502) and urging them to include it in

the COMPETES Act. The INFORM Consumers Act, introduced by Senators Durbin (D-IL) and Cassidy (R-LA) in March 2021, would require marketplaces to collect and publish identification and contact information from high-volume third-party sellers. On behalf of more than 364,000 members of the FOP, the letter insists that the bill includes “simple and common sense steps” to “help deter and curtail criminal third parties from abusing online marketplaces for illicit purposes.” Read the full letter [here](#).

- On Tuesday, The Information reported that Elon Musk’s initial 9% stake purchase in Twitter is being probed by the Federal Trade Commission (FTC). According to the article, the FTC is looking into whether Musk complied with an antitrust reporting requirement when he bought his stake in Twitter. The focus of the FTC inquiry is whether Musk bought the stake to influence Twitter's management or if he looked to be a passive shareholder, according to the report. In his April 4 filing with the U.S. Securities and Exchange Commission, Musk characterized his stake as passive. Read more [here](#).
- On Wednesday, the Consumer Brands Association, the National Confectioners Association, the American Bakers Association, General Mills, Kellogg Company, Post Consumer Brands, PepsiCo., and other stakeholders sent a letter to Congress urging members to support the SHOP SAFE Act with a certain amendment. They raise concern that THC-laced edible products use famous brand logos, characters, trademarks, and trade dress, posing a risk to children. The proposed fix would make an electronic commerce platform contributorily liable in a civil action by the registrant for the remedies for cases in which a third party seller uses in commerce a famous or counterfeit mark in connection with the sale without the consent of the registrant. The current version of the SHOP SAFE Act does not include the term “famous.” Read the full letter [here](#).