

CONTENT & TECHNOLOGY POLICY REPORT JANUARY 7, 2022



I. Congressional Updates:

- With Sen. Manchin’s (D-WV) stance on the Build Back Better Act, Democrats are scrambling to put together a “passable” bill early in the new year. If they are able to broker a deal, it would be on a much smaller package. However, certain provisions of interest could still be included in a smaller package, including the creation of an Federal Trade Commission (FTC) data privacy bureau, increased funding for antitrust enforcement at DOJ and FTC, investments in broadband infrastructure and affordability, and upgrading 911 call centers, to name a few.
- Shortly before the holiday break, Revolving Door Project sent a letter to Democratic leadership requesting that Rep. Zoe Lofgren recuse (D-CA) herself from oversight of the Justice Department and FTC because of her financial investments in tech companies and her daughter’s employment at Google. The full letter can be found [here](#). Rep. Lofgren defended herself in a statement saying, “It is sad, yet telling, when outside groups and/or colleagues turn to personal attacks and fear-based tactics when they cannot advance a policy matter.” She continued, “When it comes to tech policy, I share the same desire as many of my colleagues to reform digital markets and increase competition, however, most of the bills that passed the House Judiciary Committee back in June are poorly-drafted, extreme and go beyond legitimate, real-world concerns with big tech companies.”
- On December 22, GOP lawmakers in the House wrote letters asking five federal agencies how they are spending broadband funding that Congress has provided over the last year. In one letter, they [urged the FCC](#) to work quickly to

Headlines and Highlights:

- Democrats Scramble to Salvage BBB
- Biden’s Nominations Get a Second Chance
- USCO Ends CARES Act Timing Adjustments
- India Files Antitrust Probe Against Apple
- ACG’s Marla Grossman Advocates for the Passage of AMFA
- Apple’s \$3 Trillion Market Valuation Raises Alarm Bells for Some

In the Blogs:

- Hugh Stephens Blog: [Some Copyright Highlights in 2021- Around the World and in Canada](#)
- Hugh Stephens Blog: [What Lies Ahead for Canada in 2022 from a Copyright and Content Perspective?](#)

update its [outdated broadband data maps](#), while in another they [asked the NTIA](#) what action the agency is taking to ensure money goes to unserved areas before those that already have broadband, and how will it avoid subsidizing and overbuilding over privately owned networks. The lawmakers requested responses from the agencies by January 14.

- Congress will look to confirm Gigi Sohn at FCC, Alvaro Bedoya at FTC, and Alan Davidson at NTIA after GOP objections stalled them in December. The White House renewed their nominations this week after they technically expired at the end of the December session. Three former FCC public safety chiefs endorsed Gigi Sohn in a pair of letters to the Senate Commerce Committee on Monday, and Obama administration alums Jamie Barnett, David Simpson, and David S. Turetsky signaled their support for Sohn’s nomination. As for Alan Davidson, after Majority Leader Schumer (D-NY) filed for cloture late Wednesday, he could get a vote as soon as next week.

II. USCO Updates:

- On December 22, 2021 the US Copyright Office published a [Federal Register notice](#) announcing a series of consultations on technical measures that identify or protect copyrighted works. In a letter dated June 24, 2021, Senate Judiciary IP Subcommittee Chairman Patrick Leahy (D-VT) and Ranking Member Thom Tillis (R-NC) requested that the Copyright Office “convene a representative working group of relevant stakeholders to achieve the identification and implementation of technical measures.” The consultations will address current and forthcoming technologies for identifying or protecting works, including the technologies’ availability, their use-cases, and their limitations. The Office plans to hold a plenary session to launch these consultations on February 22, 2022, to be followed by smaller industry-sector specific consultations in 2022. Both the plenary and industry-sector based sessions will be held virtually over Zoom. For additional information, including instructions for participating in the consultations or submitting comments for the record, please visit the Office [website](#). A statement of interest to participate must be received no later than 11:59 p.m. eastern time on February 8, 2022.
- The USCO is conducting a [study](#) to evaluate the merits of providing an option to defer its examination of copyright registration application materials until examination is later requested by the applicant. Comments are due January 24.
- The USCO is requesting comments on its 105-page [Notice of Proposed Rulemaking \(NPRM\)](#) to establish procedures governing active proceedings before the Copyright Claims Board (CCB) and post-determination procedures. Initial comments are due by February 7, and reply comments are due by February 22.
- The USCO [announced](#) a series of consultations on standard technical measures (STMs) to identify or protect copyrighted works online and is seeking input on a number of questions. The Office plans to hold a plenary session to launch consultations on February 22, to be followed by smaller sectoral consultations thereafter. The deadline to submit written statements of interest to participate in the consultations is February 8.

- On December 29, the Register of Copyrights issued a [declaration](#) that, as there is no evidence of a need for continued adjustments as a result of disruptions to the copyright system, the remaining CARES Act timing adjustments would be allowed to expire at the end of the day on December 31, 2021.
- On December 30, the USCO proposed procedures governing representation of parties by law students and representation of business entities by authorized individuals in proceedings before the Copyright Claims Board (CCB), established by the [Copyright Alternative in Small-Claims Enforcement \(CASE\) Act of 2020](#). The proposed rule sets forth the threshold eligibility requirements for law students to appear before the CCB, expectations for practice by law students and their supervising attorneys while participating in CCB proceedings, and the creation of a public directory of clinics that are available to accept clients appearing before the CCB. The proposed rule also sets forth the requirements that must be followed by individuals who will be authorized to represent business entities, which include corporations, limited liability companies, partnerships, and sole proprietorships. Initial comments on the proposed rule are due by February 3, 2022; reply comments are due by February 18, 2022. Additional information is available [here](#).
- On Wednesday, January 5, Register of Copyrights Shira Perlmutter has announced the appointment of Suzanne “Suzy” Wilson as General Counsel and Associate Register of Copyrights of the United States Copyright Office, effective January 31, 2022. Wilson will have responsibility for an extensive portfolio of regulatory, litigation, and policy matters for the Office.
- The Copyright Royalty Judges announced commencement of a proceeding to determine reasonable royalty rates and terms for the recording of ephemeral copies of sound recordings to facilitate digital audio transmissions of those sound recordings to business establishments pursuant to the limitation on exclusive rights specified by the Copyright Act. The royalty rates and terms the Judges determine in the proceeding will apply during the period beginning January 1, 2024 and ending December 31, 2028. Parties wishing to participate in the rate determination proceeding must file their Petition to Participate and pay the accompanying \$150 filing fee no later than February 4, 2022. For more information, click [here](#). Digital Downloads and music revenues hit an all-time high last year of \$15.2 billion, and music publishers have proposed an increased rate of 20% of streaming service revenue. We will be tracking these developments and expect to have a proposed rate from the board by the end of this year.

III. Judicial Updates

- Over the weekend, the Wall Street Journal reported that India launched an antitrust probe into Apple over its control of the App Store. “The order from the Competition Commission of India said Friday that its initial view is that the Cupertino, Calif., company has violated some of the country’s antitrust laws. The order said the body is prima facie convinced that a case is made out for directing an investigation into Apple.” India becomes the latest country to file antitrust concerns over Apple, following Europe, Australia, the UK, and South Korea. Read more [here](#).

IV. Administration Updates:

- Advocacy groups Demand Progress and Public Citizen sent a letter to the White House shortly before Christmas asking President Biden to clarify his Administration's stance on the European Union's antitrust rules such as the Digital Markets and Digital Services Act. The confusion comes after Commerce Secretary Gina Raimondo criticized the proposed regulations and the US warned they could threaten companies' intellectual property and trade secrets. Read more [here](#). The business community also shared their concerns with companies such as Yelp, Genius, Felt, Patreon, Beeper, and REX, writing that they support the Digital Markets Act and the Digital Services Act.
- On Tuesday December 22, FTC Chair Lina Khan commented on the Consumer Financial Protection Bureau's probe into the role of tech giants in online payments. She highlighted three areas, "First, Big Tech companies' participation in payments and financial services could enable them to entrench and extend their market positions and privileged access to data and AI techniques in potentially anticompetitive and exploitative ways. Second, Big Tech companies' use of algorithmic decision-making in financial services amplifies concerns of discrimination, bias, and opacity. And third, Big Tech companies' increasingly commingled roles as payment and authentication providers could concentrate risk and create single points of failure." Read her full comments [here](#).
- The National Institute of Standards and Technology (NIST) is doing a [study](#) on emerging technology and is seeking input about the public and private sector marketplace trends, supply chain risks, and legislative, policy and future investment needs of eight emerging technology areas, including artificial intelligence. The deadline to submit comments is January 31.
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- In a New Year's Eve letter, Transportation Secretary Pete Buttigieg, along with the FAA, asked AT&T and Verizon CEOs to delay the planned launch of 5G spectrum. The two executives rejected the request, instead offered to take more extensive mitigation measures for the first 6 months of the roll out to "avoid potential interference with aviation instruments." FCC Chair Jessica Rosenworcel commented on the situation saying, "I am optimistic that by working together we can both advance the wireless economy and ensure aviation safety." On Tuesday, the New York Times reported that Federal aviation officials have agreed not to ask for further delays to Verizon and AT&T's new 5G cellular service, clearing the way for the companies to start their service while avoiding a major clash with

regulators who said it could endanger flights. “In addition to delaying the start of their service by two weeks, the carriers will temporarily put in place measures designed to address the government’s safety concerns about the technology, particularly around certain airports.” Read more [here](#).

- The FCC [announced members](#) who will serve on the six working groups of the rechartered Communications Security, Reliability, and Interoperability Council and also [launched the Affordable Connectivity Program](#), the new \$14 billion version of its Emergency Broadband Benefit subsidy for low-income households.
- FCC Chair Jessica Rosenworcel has scheduled a vote for January 27 to consider “A proposal to establish simple-to-understand broadband labels, whereby internet providers would disclose accurate information about prices, introductory rates, data allowances, and broadband speeds.” Read her full statement [here](#).
- The FTC raised its maximum civil penalty to \$46,517 per day, which is a 6% bump due to inflation. Read more [here](#).

V. International Updates:

- According to TorrentFreak, a new anti-piracy group is expected to launch in April called the International Anti-Piracy Organization (IAPO). The group was created by the Japan-based Content Overseas Distribution Association (CODA). Director Masaharu Ina informs TorrentFreak that CODA planned the foundation of the IAPO coalition last year and talks have been held with the Motion Picture Association (MPA), the Copyright Society of China, plus other organizations around the world. “Our plan is to start the new organization in or around April this year and share the information on piracy sites compiled in each country and provide same to the police of the country where the servers are located for example,” he explains. Read more [here](#).
- A recently published European Parliament think tank study aimed to provide both an overview of the current state-of-play as well as a set of policy recommendations with respect to cross-border enforcement of intellectual property rights (IPRs) in the European Union (EU), with a particular emphasis on the enforcement of copyright and related rights in the online environment. The study provides a detailed analysis of the current situation of cross-border IPR enforcement and formulates various policy recommendations to improve current IPR enforcement options. Overall, the study concluded that cross-border enforcement in the EU is a rare phenomenon. “Despite the cross-border nature of most infringements occurring online, stakeholders in some sectors reported no instances of/no experience with cross-border enforcement.” Read the full report [here](#).

VI. Industry Updates:

- On December 30, New York Governor Kathy Hochul vetoed New York Assembly Bill 5837. CEO of the Copyright Alliance, Keith Kupferschmid expressed his support for the veto saying, “I thank New York Governor Hochul for vetoing Assembly Bill 5837-B on December 29, legislation that would have forced authors, publishers, and other copyright owners to involuntarily grant licenses to New York libraries for their digital works on terms decided by the state of New York. The bill was clearly unconstitutional, based on a campaign of misinformation, and in violation of federal copyright law. We are incredibly grateful to Governor Hochul for recognizing this and for taking appropriate action to veto the bill, and for helping to protect the rights of creators across the state and across the country.”
- On January 20, the ALI Council will meet to discuss Council Draft #6 of the Copyright Restatement.
- On December 6, YouTube published a new copyright transparency report that reveals the company receives 4.4 million “incorrect” claims a year. However, those incorrect claims represent less than 1% of more than 729 million total copyright claims issued in the same 6-month period. YouTube’s full report can be found [here](#).
- On January 1, IP Watchdog published an article titled, “Only in Your Dreams: Patent Stakeholders Share Their IP Wishes for the New Year.” ACG’s Marla Grossman was featured saying, “My IP wish for 2022 is that Congress finally ends the decades-long loophole that has enabled AM/FM radio broadcasters to use the music of hard-working performers without compensating them for their work. The failure of terrestrial radio to compensate the performing artists, whose sound recordings drive the success of broadcast radio, remains one of the few remaining injustices in music law. Hopefully this will be the year that Congress recognizes the value of the creators of the music that provides the soundtrack of our lives.” Read the full article [here](#).
- As Apple’s valuation briefly passed \$3 trillion this week, many Big Tech critics are sounding the alarm. “Apple’s historic market cap is just another indicator of the firm’s overwhelming market dominance. With 11 reported acquisitions in the past two years and a long track record of abusive and illegal conduct, Apple’s market power is continuing to grow,” Krista Brown of the anti-monopoly group American Economic Liberties Project said. She urged Congress to pass legislation to fix antitrust laws and “stop pro-monopoly judges from sheltering Apple from accountability.” According to Politico, Apple’s \$3 trillion valuation is equal to those of Walmart, Disney, Netflix, Nike, Exxon Mobil, Coca-Cola, Comcast, Morgan Stanley, McDonald’s, AT&T, Goldman Sachs, Boeing, IBM, and Ford — combined.