

CONTENT & TECHNOLOGY POLICY REPORT JANUARY 14, 2022



I. Congressional Updates:

- On Thursday, the Senate Judiciary Committee [reported](#) Kathi Vidal's nomination to be Under Secretary of Commerce for Intellectual Property and USPTO Director favorably out by a 17-5 vote, sending her nomination to the full Senate for consideration. The following senators voted no on her nomination: Kennedy (R-LA), Lee (R-UT), Cruz (R-TX), Hawley (R-MO), and Ossoff (D-GA).
- This week, House Democrats wrote to six privacy compliance organizations asking how they follow self-regulation guidelines related to a 1998 children's online privacy law. In [their letter](#), the lawmakers asked the organizations how their safe harbor programs require "substantially the same or greater protections" as those in COPPA, and what disciplinary actions the organizations impose when the operators they work with don't comply with safe harbor guidelines. They also asked what Congress can do to improve the safe harbor program and how the Federal Trade Commission (FTC) can amend the COPPA rule to better protect children's privacy. The lawmakers requested a response by January 28.
- The Senate Judiciary Committee announced the markup of the American Innovation and Choice Online Act, which would prohibit big tech platforms from unfairly using their own online marketplaces to restrict the business of their rivals on Tuesday. It was held over by the committee on Thursday, so markup is now scheduled to take place January 27, with some insiders expecting the legislation to move quickly. The Senate bill was introduced by Antitrust Subcommittee Chair Klobuchar (D-MN), and full Committee Ranking Member Grassley (R-IA). The bill has support from Senate Judiciary Committee Chairman Durbin

Headlines and Highlights:

- Kathi Vidal Reported Favorably
- Antitrust Interest Renewed in Senate
- Congress Asked to Exercise Caution in Regulating the Tech Industry
- Tech Companies Advocate for Passage of USICA
- Music Rights, Radio Station Groups Settle Licensing Fee Row
- Lawsuit Alleges Google Misled Publishers and Advertisers
- Senate Confirms New NTIA Chief
- Meta Platforms Facing Potential \$3.2 billion Fine in Britain

In the Blogs:

- Hugh Stephens Blog: [Will the Content Tail Wag the Wireless Dog? The Rogers/Shaw Merger in Canada](#)

(D-IL) and Senator Graham (R-SC). The House companion bill (H.R. 3816) was introduced by House Judiciary Antitrust Subcommittee Chairman Cicilline (D-RI) and Ranking Member Buck (R-CO). The House was marked up and advanced out of the House Judiciary Committee last June.

- House Judiciary Antitrust Subcommittee Ranking Member Ken Buck (R-CO) filed a discharge petition to force a vote on his bill the State Antitrust Enforcement Venue Act this week. His [press release](#) states, “It has passed the Judiciary Committee in the House by a vote of 34-7, and the Senate Judiciary Committee unanimously. It is a bipartisan conservative solution to a significant problem and has an excellent chance to see floor action and be signed into law by the Biden administration.”
- On Tuesday, over 25 civil rights and privacy groups sent a letter to Congress calling on them to exercise caution in regulating the tech industry. “We call on Congressional lawmakers to approach legislation related to Web 3 technologies carefully and consider the impact that any potential regulation might have on communities of color, low-income people, and other who have faced discrimination from traditional, and often predatory, Big Tech companies, banks, and financial services.” Read the full letter [here](#).
- The House Energy and Commerce Committee Republicans wrote a letter to House E&C Chair Frank Pallone (D-NJ) and Telecom Subcommittee Chair Mike Doyle (D-PA) on Wednesday, asking for oversight and review of the appropriations submitted to NTIA for broadband deployment. Read the full letter [here](#).
- Over 40 tech companies, universities, and nonprofits wrote to members of the New York congressional delegation today to advocate for passage of the U.S. Innovation and Competition Act ([S. 1260](#)), which the Senate passed last summer but has since stalled in the House. According to Politico, the organizations want funding for one bill folded into USICA, the CHIPS Act, which would establish a resource center for semiconductor chip innovation and production. Furthermore, the organizations want that center to be built in New York. Read the full letter [here](#).
- Tech trade groups and 81 members of the U.S. Chamber of Commerce [sent a letter](#) on Thursday calling for Congress to pass a comprehensive federal privacy bill (via Politico).
- On Thursday, Rep. Lori Trahan introduced the Terms-of-Service Labeling, Design and Readability Act (TLDR). The bill would direct the FTC to issue requirements for tech companies to inform consumers how their data is collected and used by helping consumers compare simple and standardized terms-of-service summary statements across different websites and apps. A one-pager of the bill can be found [here](#). A Senate companion bill was introduced by Senators Cassidy and Luján.
- Sen. Roger Wicker (R-MS), ranking member of the Senate Commerce Committee, wrote to FCC Chair Jessica Rosenworcel and NTIA Chief Alan Davidson on Thursday, urging them to collaborate on spectrum policy issues. “With your recent confirmations by the Senate, it is now time to take steps toward improving the cooperation and collaborating between your agencies that is essential to spectrum management and the future of U.S. spectrum policy.” He also advocated for the passage of the Improving Spectrum Coordination Act of 2021. Read the letter [here](#).

- Next Wednesday, the House Committee on Small Business will hold a remote hearing titled: “The Power, Peril, and Promise of the Creative Economy.” The hearing is scheduled to begin at 10:00 A.M. The hearing will provide recommendations for investments in key infrastructure and provide a roadmap for bringing arts, culture, and creativity into the center of long-term recovery. The Hearing Notice can be found [here](#), and the witness list can be found [here](#).

II. USCO Updates:

- On January 1, 2022, a new class of creative works entered the public domain in the United States, with works published or registered in 1926 joining pre-1925 works already in the public domain. Some prominent examples include *Winnie-the-Pooh* by A.A. Milne, *My Mortal Enemy* by Willa Cather, *The Weary Blues* by Langston Hughes, “Someone to Watch Over Me” by George and Ira Gershwin, and *Oh, Kay!* by P. G. Wodehouse and Guy Bolton. Read more [here](#).

III. Judicial Updates

- Global Music Rights LLC (GMR) and Radio Music License Committee Inc. (RMLC) say they've settled the more than five-year-old rival antitrust suits over the music licensing fees that RMLC's 10,000 radio station members pay GMR musicians. “RMLC, which negotiates with performance rights organizations to use licenses on behalf of its member radio stations, is pursuing monopolization claims based on GMR's demands for higher musical work licensing fees, while GMR contends the committee is rallying its 10,000 radio station members and their 3,000 radio group owners to boycott the music organization to cut rates.” Read more [here](#).
- On Tuesday, January 11, the United States District Court for the District of Columbia denied Facebook’s motion to dismiss a complaint brought against it by the U.S. Federal Trade Commission (FTC), holding that the FTC had stated a plausible claim for relief under Section 2 of the Sherman Act. Read a more detailed summary of the decision [here](#) from IPWatchdog.
- The Wall Street Journal reported on Friday, that in a newly unsealed lawsuit from state attorneys general, Google misled publishers and advertisers for years about the pricing and processes of its ad auctions, creating secret programs that deflated sales for some companies while increasing prices for buyers. Originally filed in 2020, this is the first time that the complete unredacted version has been available to the public. “Led by Texas Attorney General Ken Paxton and joined by more than a dozen states, the suit alleges that Google’s business practices inflate advertising costs, which brands pass on to consumers in higher-priced products. It also alleges that Google suppresses competition from rival exchanges and limits websites’ options for ad delivery, drawing on the company’s internal comparison of itself to a bank that also owns the New York Stock Exchange.” The suit is complemented by a separate antitrust case by the U.S. Justice Department which is set for trial in 2023 at the earliest. Read more [here](#).

IV. Administration Updates:

- Privacy advocacy groups Free Press Action, and Fight for the Future, are urging Senate Democrats to quickly confirm Gigi Sohn as an FCC commissioner and Alvaro Bedoya as an FTC commissioner. According to Politico, the Senate Commerce Committee expects to hold a markup to vote on nominees, which may include Sohn and Bedoya, the week of January 24.
- Alan Davidson was confirmed as administrator of the National Telecommunications and Information Administration (NTIA) by a vote of 60-31 on Tuesday. Separately, the NTIA is [seeking public comment](#) on the \$48.2 billion allocated in the infrastructure bill to deploy broadband to unserved and underserved populations.
- The Federal Communications Commission has released its draft rulemaking spelling out how to implement its Affordable Connectivity Program, which received \$14.2 billion in the infrastructure bill. Last Friday, FCC Chair Jessica Rosenworcel issued the draft [rulemaking](#), which is based on directives in the infrastructure bill that was signed into law in mid-November. According to Politico, the rule would establish household eligibility requirements, adopt consumer protection rules, and establish consent requirements to help households already enrolled in broadband subsidies transition to the new program, among other provisions. Friday marks the 60-day deadline that Congress gave the FCC for setting up rules for the program, so we expect a vote on this soon.
- The FTC and DOJ have been stretched to the limit reviewing mergers. In 2021, 4,130 mergers were reported to the FTC and DOJ which is more than double the number from 2020. The last time the number of reported mergers eclipsed 2,000 was in 2018. Due to the increased demand, there have been renewed calls for increased funding. According to Politico, the text of a bill by Sens. [Amy Klobuchar](#) (D-MN) and [Chuck Grassley](#) (R-IA) to increase the money the agencies receive from merger filings was tucked into the Senate-passed [U.S. Innovation and Competition Act](#), but the House has yet to act on it. On Thursday, Bloomberg reported that the House is preparing to move forward on the U.S. Innovation and Competition Act (USICA). “Pelosi has told the chairs of several committees—including Science, Foreign Affairs and Energy and Commerce—to draft proposals for a piece of legislation the House can take to conference with the Senate, with the aim of getting a bill both chambers agree on.”
- On Wednesday, FCC Chair Jessica Rosenworcel shared a [draft rulemaking](#) which would strengthen requirements for telecommunication companies to notify customers of data breaches. She calls for the updating of existing rules to “fully reflect the evolving nature of data breaches and the real-time threat they pose to affected consumers.”
- On Thursday, the White House held a meeting with tech companies and software nonprofits on how to better secure open-source code. It was called in response to the Log4j breach. One of the main takeaways was that there have not been enough resources to securing collaboratively written, freely distributed code found throughout the online world. The White House is expected to release its proposal next week. Read more [here](#).

- On Thursday, the FCC [announced members](#) of its communications equity and diversity council. “The Council will provide the Commission with recommendations on advancing equity in the provision of and access to digital communication services and products for all people of the United States. The Innovation and Access Working Group will recommend solutions to reduce entry barriers and encourage ownership and management of media, digital, communications services and next-generation technology properties and start-ups to encourage viewpoint diversity by a broad range of voices.”

V. International Updates:

- On Friday, Reuters reported that Meta Platforms (formerly Facebook), is facing a \$3.2 billion class action suit in Britain over allegations that it exploited the personal data of over 44 million users. “The lawsuit, which will be heard by London's Competition Appeal Tribunal, alleges Facebook made billions of pounds by imposing unfair terms and conditions that demanded consumers surrender valuable personal data to access the network.” Read more [here](#).

VI. Industry Updates:

- Last Friday, Ruth Vitale published an Op-Ed in The Hill titled, “President Biden, Creatives need copyright champions in the federal government.” In it she expressed the need for President Biden to appoint a champion of copyright for the Intellectual Property Enforcement Coordinator (IPEC) and called on his administration to increase their support for the copyright and creative industry. “I remain hopeful that President Biden’s future appointments will better reflect his lengthy and strong record in support of respect for copyright. Specifically, the position of U.S. Intellectual Property Enforcement Coordinator (IPEC) is open once again.” Read the full op-ed [here](#).