

## CONTENT & TECHNOLOGY POLICY REPORT APRIL 26, 2024



### I. Congressional Updates:

- On Wednesday April 24, President Joe Biden signed a \$95 billion package into law that will provide aid to Ukraine and included a measure that aims to force a sale of TikTok. The bill passed the House on Saturday in a 360-58 vote and passed the Senate on Tuesday in a 79-18 vote. The Senate previously sat on the earlier, House-passed TikTok bill in mid-March, letting it stall in the Senate Commerce Committee. This new version was updated based on negotiations with key senators, including Senate Commerce Chair Maria Cantwell (D-WA). According to *POLITICO*, one edit was to extend the amount of time TikTok's parent company, ByteDance, has to find a buyer to one year instead of six months, which appeased some constitutional concerns in the Senate. Read more from *POLITICO* [here](#) and NBC News [here](#).
- With only eight months remaining in the 118<sup>th</sup> Congress, *SEMAFOR* reported what is still on the to-do list for Capitol Hill. (1) FY25 Budget and Appropriations, (2) The Farm Bill, (3) Federal Aviation Administration's (FAA) Reauthorization, (4) National Defense Authorization Act (NDAA), and (5) Baltimore Bridge Funding. These don't include other priorities such as AI legislation or a bipartisan tax bill. With a lot to do, and not a lot of time, an already chaotic Congress will have a sprint to the finish line. Read more [here](#).
- Next Tuesday, April 30, the Senate Judiciary Committee Subcommittee on Intellectual Property, will hold a hearing titled *The NO FAKES Act: Protecting Americans from Unauthorized Digital Replicas*. Witnesses listed are (1) Lisa P. Ramsey - Professor of Law

### Headlines and Highlights:

- House Approves Bill to Divest TikTok
- What's Left for Congress?
- FTC Votes to Ban Noncompete Agreements
- USTR Releases 2024 Special 301 Report on Intellectual Property Protection and Enforcement
- FCC Votes to Restore Net Neutrality Rules
- U.S., China to Hold First AI Talks Within 'Weeks'

### In the Blogs:

- **Hugh Stephens Blog:** [Public Lending Right \(PLR\) Registration in Canada is Still Open: Enrol If You Are Eligible](#)
- **IPWatchdog:** [Tennessee's ELVIS Act – Is This Attempt to Protect Musicians \(and Record Labels\) in the AI Era Enforceable?](#)
- **Apple Insider:** [Apple's generative AI may be the only one that was trained legally & ethically](#)
- **POLITICO:** [Inside Dems' thinking on saving Mike Johnson](#)

University of San Diego School of Law, (2) Graham Davies - President and Chief Executive Officer Digital Media Association (DiMA), (3) Ben Sheffner - Senior Vice President and Associate General Counsel Motion Picture Association, Inc., (4) Duncan Crabtree-Ireland - National Executive Director and Chief Negotiator Screen Actors Guild-American Federal of Television and Radio Arts (SAG-AFTRA), (5) Robert Kyncl - Chief Executive Officer Warner Music Group, and (6) Tahliah Debrett Barnett (“FKA twigs”) - Singer, Songwriter, Producer, Dancer, and Actor. The hearing page can be found [here](#).

- Next Tuesday, April 30, the Senate Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee will hold a hearing titled, *A Review of the President’s Fiscal Year 2025 Budget Request for the Department of Education*. The sole witness will be The Honorable Miguel Cardona – Secretary of the Department of Education. The hearing page can be found [here](#).
- Next Tuesday, April 30, the House Energy and Commerce Committee Subcommittee on Innovation, Data, and Commerce will hold a legislative hearing titled, *Draft Legislation to Preserve Americans’ Access to AM Radio*. They will be considering the *AM Radio for Every Vehicle Act of 2024*. The hearing page can be found [here](#), and the official announcement can be found [here](#).
- Next Wednesday, May 1, the Senate Committee on Commerce, Science and Transportation, will convene a full committee Executive Session to consider multiple bills and nominations. Some highlights include (1) *S. 1291 - Protecting Kids on Social Media Act*, (2) *S. 2714 - CREATE AI Act of 2023*, and (3) *S. 4178 - Future of AI Innovation Act*. The hearing page can be found [here](#) and will stream live on the Committee website [here](#).

## II. Administration Updates

- On Monday, April 22, the Office of the United States Trade Representative (USTR) announced that Katherine White will serve as USTR’s Chief Textiles and Apparel Negotiator. Ms. White previously served as International Trade Policy Advisor on the House Committee on Ways and Means. “Strengthening America’s textile industry is a key priority for USTR,” said United States Trade Representative Katherine Tai. “The Biden-Harris Administration is committed to crafting trade policy that supports industry revitalization and resilience. Ms. White is a skilled and strategic trade negotiator, and I look forward to continuing this work with her as we fight for a better deal for America’s textile manufacturers.” Read more [here](#).
- On Tuesday April 23, *The Hill* reported that the Federal Trade Commission (FTC) voted to ban noncompete agreements 3-2. The dissenting commissioners said they did not support noncompete agreements carte blanche, but that they did not believe the agency had the authority to issue the rule without an express directive from Congress. According to the article, the final rule would ban new noncompete agreements for all workers and require companies to let current and past employees know they won’t enforce them. Companies will also have to throw out existing noncompete agreements for most employees, although in a change from the original proposal, the agreements may remain in effect for senior executives. “It is so profoundly unfree and unfair for people to be stuck in jobs they want to leave, not

because they lacked better alternatives, but because noncompetes preclude another firm from fairly competing for their labor, requiring workers instead to leave their industries or their homes to make ends,” said FTC Commissioner Rebecca Slaughter in prepared remarks. The new rule is slated to go into effect in 120 days after it’s published in the Federal Register. But its future is uncertain, as pro-business groups opposing the rule are expected to take legal action to block its implementation. Read more [here](#).

- On Thursday, April 25, USTR released its 2024 Special 301 Report on the adequacy and effectiveness of U.S. trading partners’ protection and enforcement of intellectual property (IP) rights. “Many of the issues highlighted in the Special 301 Report demand collaborative efforts from our allies and partners,” said Ambassador Katherine Tai. “Many of my counterparts share the goal of making sure that trade supports the interests of our people, and one of the most dangerous types of IP violations involves counterfeit goods that pose health and safety risks. In addition, the Biden-Harris Administration has continued its policy of declining to call out countries for exercising TRIPS flexibilities, including with respect to compulsory licenses, in a manner consistent with TRIPS obligations.” Read the full report [here](#).
- On Thursday, April 25, *The Hill* reported that the Federal Communications Commission (FCC) voted to restore net neutrality rules that were repealed in 2017. The 3-2 party-line vote will reinstate rules that bar broadband providers from blocking or throttling internet traffic to some websites and speeding up access to others that pay extra fees. “Broadband access to the Internet is a critical conduit that is essential for modern life,” said Commissioner Gomez. “Protecting this critical infrastructure that is essential to the safety, economy, health, education, and well-being of this country is good public policy. The value is so great that we cannot wait for the flood to arrive before we start to build the levee.” Read more from *The Hill* [here](#) and the official FCC press release [here](#).

### III. USCO Updates:

- On Tuesday, April 23, the U.S. Copyright Office’s Chief Economist, Dr. Brent Lutes, authored a blog post on the work and activities of the Office of the Chief Economist (OCE). Lutes wrote that the Office, in conjunction with a group of ten economists, has been discussing empirical and theoretical evidence of the economic issues posed by AI technologies on creators and the creative industries, and that a report on these issues would be issued later in 2024. Lutes also wrote that the OCE is also studying “name, image, likeness” and style issues, but noted that there is little empirical evidence of the effects of right of publicity issues on creative output. Lutes noted that OCE is collaborating with colleagues at the World Intellectual Property Organization (WIPO) in examining how right of publicity issues might affect the creative ecosystem and the commercial implications of such issues. Read more [here](#).
- In January, the US Copyright Office issued a notification of inquiry seeking public comments regarding its periodic review of the designations of the mechanical licensing collective and digital licensee coordinator. Initial submissions from the existing designees must be received on April 1, 2024. Initial public comments must be received on May 29, 2024. Reply public comments must be received on June 28, 2024. Reply submissions from the existing designees

must be received on July 29, 2024. More details are available on the rulemaking's webpage [here](#).

#### IV. Industry Updates:

- Next Wednesday, May 1, celebrate World IP Day with Intellectual Property Owners Association (IPO) and their partner organizations. This year's theme is focused on "Sustainable Development Goals: IP as a Solution." The annual international event is an opportunity to learn about the role that intellectual property (IP) rights play in encouraging innovation and creativity. This year's congressional event sponsor is Representative Darrell Issa (R-CA), Chair of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet. The event is free and meets the requirements of a widely attended event under Congressional Ethics Rules. This event is open to members of the press. There is no fee to attend, but please register at the link below. Live Streaming is also available. Please add a live-stream ticket if you plan to attend remotely. The link will be provided in your registration confirmation. [Click here to register](#).
- On Wednesday, April 24, *Bloomberg Government* reported that the US Justice Department is weighing the possibility of terminating its deferred-prosecution agreement (DPA) with Boeing, prompted by recent incidents and pressure from families of crash victims. The agreement, which was established in 2021, allowed Boeing to evade criminal charges relating to the crashes of 737 Max jets in 2018 and 2019, provided certain conditions were met, including changes to disclosure practices and a hefty fine. However, a recent midair incident involving an Alaska Airlines plane losing its door, has reignited scrutiny over Boeing's practices and the terms of the DPA. According to the article, prosecutors aim to decide by early June to give families and Boeing enough notice of what they're planning. If the Justice Department decides to withdraw from the DPA, it would have to file a motion in the Texas federal court where the deal was originally made. The judge overseeing the case would then have to decide if ditching the agreement was in the public interest. Read more [here](#).
- On Wednesday, April 24, *Variety* published an article about how current antitrust policy in Washington DC is having an impact on Hollywood. Currently, federal regulators are moving to overhaul how antitrust laws are enforced which is causing issues for mergers and acquisitions (M&A), especially in Hollywood. Many have questioned the ability of US regulatory agencies to effectively police an increasingly digital economy. According to the article, "The Biden administration sent its signal loud and clear in November 2021 when it blocked Paramount Global's planned sale of its Simon & Schuster publishing division to Penguin Random House. Last year, the Justice Department went so far as to increase the merger-review filing fee by 704% (to \$2.25 million) for a deal valued at \$5 billion or more." In a speech at Fordham University last September, FTC Chair Lina Khan said, "Over the last decade, we've heard mounting concerns about inadequate competition across key markets in the U.S. economy. Evidence suggests that decades of mergers have been a key driver of weakened competition. Evidence suggests that many Americans historically have lost out, with diminished opportunity, higher prices, lower wages and lagging innovation," she continued. "A lack of competition also appears to have left segments of our economy more brittle, as consolidated supply and reduced investment in capacity can render us less resilient in the face of shocks. These facts have prompted us to assess how our merger policy tools

can better equip us to discharge our statutory obligations and halt this trend.” Read more from *Variety* [here](#).

- For World IP Day, ACG Advocacy Partner Marla Grossman weighs in on the day's theme of Sustainable Development Goals (SDGs) and how aligning innovations with SDGs through patent mapping can be a powerful strategy for driving sustainable technological development. Her statement is copied below, while the full article can be found [here](#). ACG also reposted the article on their website [here](#).
  - “Given this year’s World IP Day’s theme of Sustainable Development Goals (SDGs), it behooves us to consider the many ways in which aligning innovations with SDGs through patent mapping can be a powerful strategy for driving sustainable technological development: Informed Decision Making: Patent analytics provide valuable insights into the technological landscape related to sustainability. By mapping patents to specific SDGs, decision-makers can identify gaps, trends, and opportunities for innovation in areas crucial for sustainable development. Strategic Resource Allocation: With data-driven insights from patent mapping, policymakers and businesses can allocate resources more effectively. This ensures that investment and effort are directed towards areas where they can have the most significant impact on achieving sustainability goals. Facilitating Collaboration: Patent mapping fosters collaboration among stakeholders by highlighting areas where inventive contributions are most needed. It enables partnerships between businesses, research institutions, and governments to develop sustainable solutions collaboratively. IP Department Benefits: IP departments can leverage patent mapping to gain a comprehensive understanding of sustainable technology developments. This knowledge allows them to advise businesses strategically on sustainability matters, enhancing the company’s overall sustainability strategy. Business Advantages: Aligning innovations with SDGs can enhance a company’s financial profile by appealing to socially conscious consumers, purchasers, and licensees. It positions the business as a leader in sustainability, which can contribute to brand loyalty and competitiveness in the market. By actively linking innovations to SDGs through patent analytics, organizations can play a pivotal role in advancing sustainable development and contributing to a better world for future generations.”
- On Friday, April 26, *CNBC* reported that the U.S. and China will hold their first high-level talks on artificial intelligence within the coming weeks according to statements made by Secretary of State Antony Blinken. During wide-ranging talks with Chinese officials in Beijing, Blinken said the two sides had agreed to the first U.S.-China intergovernmental dialogue on AI to discuss the risks and safety concerns surrounding the emerging technology. “Earlier today we agreed to hold the first US PRC talks on artificial intelligence to be held in the coming weeks, to share our respective views on risks and safety concerns around advanced AI and how best to manage them,” Blinken said during a press conference. Read more from *CNBC* [here](#).