CONTENT & TECHNOLOGY POLICY REPORT
MAY 31, 2024

I. Congressional Updates:

- The FY25 Appropriations markup schedule and FY25 subcommittee allocations have been released. Non-defense programs will be cut effectively by 6%, and those cuts are not evenly distributed. Some subcommittees, such as Labor-Health and Human Services-Education, Financial Services-General Government, and State-Foreign Operations, will receive significant cuts of 10-11%. Other subcommittees will have smaller non-defense cuts, reflecting Republican priorities across the bills. Important dates to watch: (1) Wednesday June 12: CJS Subcommittee Markup, (2) Thursday June 13: Full Committee Markup Legislative Branch, and (3) Tuesday July 9: Full Committee Markup CJS.

- On Tuesday, May 28, *FedScoop* reported that Senator Mark Warner (D-VA) sent a letter to the Library of Congress (LOC) urging the copyright office to expand the existing 1201 good-faith security research exemption to cover research related to biases in generative AI. In the letter, Warner notes that as Co-Chair of the Senate Cybersecurity Caucus, he has an interest in permitting "'good-faith testing, investigation, and/or correction of a security flaw or vulnerability in computer programs," particularly, to address security, safety, and bias risks arising from use of generative AI models. The letter goes on to explain that an expansion of the exception should not be permitted for research which would undermine authenticity and provenance technological measures in an AI model and not otherwise facilitate copyright infringement. Read the full letter here and more from *FedScoop* here.

Headlines and Highlights:

- FY25 Appropriations Markup Schedule Released

- Sen. Warner Pushes for Expansion to Copyright Act to Include Generative AI Research

- USTR Requests Comments on Modification to Section 301 Investigation of China

- DOJ and Stanford Cohost Workshop to Promote Competition in AI

- DCC Sends Letter to Administration on International Copyright and AI

- Vox Media and The Atlantic sign content deals with OpenAI

In the Blogs:

- **Hugh Stephens Blog:** It's USTR "Watch List" Time Again
- **Mehlman Consulting:** Q2 2024 Slide Deck
- **Variety:** Artists Urge Action on AI, but Congress Is Slow to Respond
- **LA Times:** How Napster created a monster that became bigger than the music industry

II. Administration Updates

- On May 28, 2024, the Office of the U.S. Trade Representative (USTR) issued a request for comments in the Federal Register regarding proposed modifications to the 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation. This investigation, initiated in 2018, found that China's policies were "unreasonable or discriminatory and burdened or restricted U.S. commerce," leading to actions under section 307(c)(2) of the Trade Act. Directed by President Biden, the current proposal includes increasing or adding ad valorem rates of duty on various Chinese imports in strategic sectors, such as batteries, electric vehicles, medical supplies, critical minerals, semiconductors, cranes, solar cells, and steel and aluminum products, with changes taking effect in phases from August 1, 2024, to January 1, 2026. Additionally, the USTR proposes a temporary exclusion process for specific machinery used in domestic manufacturing and 19 temporary exclusions for solar manufacturing equipment, effective until May 31, 2025. The USTR is seeking public comments on the effectiveness, economic impact, and scope of these proposed modifications, with a comment period open from May 29, 2024, to June 28, 2024, via their online portal. Read more here.

- On Thursday, May 30, the Department of Justice (DOJ) hosted an AI workshop at Stanford University on Promoting Competition in AI. The goal of the event was to discuss competition and AI industry structure, including competition in AI models, semiconductors, the cloud, and AI applications. In a series of panels, presentations and remarks, government and industry representatives, academics from both law and business, content creators, inventors, and other tech industry stakeholders explored how competition at one level of the AI stack affects other AI technologies, how standards and accountability systems can be designed to promote competition, and the challenges AI poses to content creators. There were a number of speakers including Assistant Attorney General for Antitrust Jonathan Kanter, USPTO Director Vidal and a recorded message from Senator Klobuchar. The DOJ is also asking for comments from the public on the topics covered by this workshop. Interested parties may submit public comments online now through July 15, 2024, at ATR.2024AIworkshop@usdoj.gov. A full summary of the speakers and the livestream link is available here. In an article published on Friday, May 31, by *NBC News*, Assistant Attorney General for Antitrust, Jonathan Kanter, addressed the economic impact of generative AI systems and how antitrust laws may apply. He specifically mentioned that compensation to creators is an area of concern for the department stating, "What incentive will tomorrow's writers, creators, journalists, thinkers and artists have if AI has the ability to extract their ingenuity without appropriate compensation?" Kanter said. "The people who create and produce these inputs must be properly compensated… Absent competition to adequately compensate creators for their works, AI companies could exploit monopsony power on levels that we have never seen before, with devastating consequences," Kanter said. Read more here.

- On Friday, May 31, the Office of the Untied States Trade Representative (USTR) released summaries of texts proposed by the US under the US-Kenya Strategic Trade and Investment Partnership (STIP). The summaries detail the negotiating proposals from the United States for the customs, trade facilitation, and enforcement chapter and the environment chapter. USTR previously released public summaries of texts on agriculture; anticorruption; good regulatory practices; micro, small, and medium-sized enterprises; services domestic regulation; and workers' rights and protections. Click here for the full summaries.

III. USCO Updates:

- In January, the U.S. 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. 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:

- Last week, the Digital Creators Coalition (DCC) sent letters to Secretaries Blinken and Raimondo, USTR Ambassador Tai, and National Security Advisor Sullivan on international copyright and AI. The letters state the DCC's support for the US bilateral and multilateral engagement that advances human-centric and responsible AI, promotes creators, and protects copyright globally. The letters noted two specific issues, (1) Requests to advance adoption of the principles embraced by the U.S. in the G7 *Hiroshima AI Process* (especially as detailed in the May 2023 Leaders Communiqué); and (2) Requests to oppose broad copyright exceptions for AI, including with respect to text and data mining (TDM). A copy of these letters can be provided upon request.

- On Monday, May 27, the United Nations (UN) published the paper "Taxonomy of Human Rights Risks Connected to Generative AI," which aims to supplement the UN B-Tech Project's foundational paper on generative AI and examines how generative AI may negatively impact human rights. One of the rights addressed is the "Right to Own Property". The report states, "Generative AI models' ingestion of large quantities of data may entail adverse impacts to individuals' right to own moral and intellectual property. Training processes for some generative AI models may involve the unauthorised use of protected works, adversely impacting those works' original authors' right to own property. The capacity of generative AI systems to create content that mimics existing works by human creators also threatens original authors' property rights." Read the full report here.

- On Wednesday, May 29, *CNBC* reported that PwC signed an agreement with OpenAI to become the first resale partner and largest enterprise user. The agreement will "expand our technology ecosystem, bring GenAI deeper into our enterprise, and enable us to scale AI capabilities across businesses to help drive accelerated impact for clients," PwC said in a blog post Wednesday. PwC will hand ChatGPT Enterprise licenses to more than 100,000 employees — 75,000 in the U.S. and 26,000 in the U.K. — according to The Wall Street Journal, which earlier reported on the deal here. Read more from *CNBC* here.

- On Wednesday, May 29, *The Verge* reported that *The Atlantic* and *Vox Media* signed licensing agreements with OpenAI which will allow their content to be used to train their AI models. OpenAI has reached multiple partnerships with media companies recently signing deals with News Corp (*The Wall Street Journal,* the *New York Post,* and *The Daily Telegraph*), Axel Springer (*Business Insider* and *Politico),* DotDash Meredith (*People, Better Homes & Gardens, Investopedia, Food & Wine,* and *InStyle*), the *Financial Times, and The Associated Press*. While the intricacies of the deals are not known, the monetary values range from $5 million to upwards of $250 million. Read more here.