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## CONTENT & TECHNOLOGY POLICY REPORT MAY 10, 2024



### I. Congressional Updates:

- On Wednesday May 1, Senators Chris Coons (D-DE), Thom Tillis (R-NC) along with Representatives Darrell Issa (R-CA) and Jake Auchincloss (D-MA) sent a letter to the Government Accountability Office (GAO) requesting a study on the potential impact of the National Institute of Standards and Technology's (NIST) proposed framework for exercising march-in rights under the Bayh-Dole Act. The proposed framework, which includes considering "reasonable pricing" as a factor for exercising march-in rights, has raised concerns about its potential impact on drug prices, U.S. innovation, and national interests. Various stakeholders, including trade associations, advocacy groups, universities, and businesses, have opposed the draft framework, expressing concerns about its potential negative consequences for innovation and the economy. The letter requests the study to assess the economic impact, potential effects, clarity for licensees and investors, and expectations of stakeholders regarding the draft framework saying, "We are concerned that implementing the draft framework is likely to have negative consequences for U.S. innovation and global competitiveness, the public-private partnerships that the Bayh-Dole Act created, and the U.S. economy."
- On Tuesday, May 7, 2024, the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet held a hearing titled "Intellectual Property: Enforcement Activities by the Executive Branch." The hearing examined enforcement of intellectual property (IP) in the U.S., with a focus on agencies and U.S. government entities charged with IP enforcement-related tasks. Overall, the hearing focused on the enforcement of intellectual property laws by the executive branch, with particular

### Headlines and Highlights:

- Congressional Members Send Letter to GAO on Bayh-Dole Enforcement
- HJC Holds IP Enforcement Hearing
- Library of Congress Re-Authorizes CPMC
- USCO Announces Next Monthly Recordation System Webinar
- Americans Favor AI Data Regulation
- SCL Songwriters Night in NYC
- Supreme Court Opens Doors to Massive Copyright Infringement Damages In Case Against Warner Music

### In the Blogs:

- **Hugh Stephens Blog:** [The Economics of Copyright: Incentives and Rewards \(It's Important to Get them Right\)](#)
- **The Hollywood Reporter:** [Universal Music Group CEO On New TikTok Deal: "Human Artistry Must Be Respected"](#)
- **RealClear Health:** [President Biden, Don't Undo Your Innovation Legacy](#)
- **Axios:** [Hollywood's AI disclosure dilemma](#)

concern over the Biden administration's approach and the significant economic losses attributed to inadequate enforcement, especially due to counterfeit goods predominantly originating from China. Witnesses from various agencies discussed their roles in IP enforcement, the challenges posed by e-commerce and small package shipments, and the importance of international cooperation and resource allocation to combat IP theft effectively. A full summary from ACG can be provided upon request.

- On Wednesday May 8, the House Committee on Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies held a budget hearing to discuss the Department of Commerce's proposed budget for FY25, totaling \$11.4 billion in discretionary funding and \$4 billion in mandatory funding. This request represents a 6% increase over the previous year. The budget allocates resources to various initiatives, including trade enforcement, manufacturing technology innovation, and economic development. Overall, the discussion covered a wide range of topics, including national security, workforce development, technology, trade, and infrastructure. Secretary Gina Raimondo and committee members engaged in detailed discussions on various aspects of the Department's budget proposal and its implications for American competitiveness and security. Of note, many Representatives raised concerns about AI-related issues, including content authenticity and watermarking, deepfakes, and the protection of intellectual property. A full summary from ACG can be provided upon request.

## **II. Administration Updates**

- On Tuesday, May 7, the Office of the United States Trade Representative (USTR) announced that Neil Beck will serve as Acting Assistant U.S. Trade Representative for World Trade Organization (WTO) and Multilateral Affairs. Mr. Beck previously served as Deputy Assistant U.S. Trade Representative in the same office. "Our multilateral work is as crucial as ever as we tackle the shared challenges of today's global economy and work to ensure our institutions adapt to them," said United States Trade Representative Katherine Tai. "The U.S. remains steadfast in our commitment to finding collaborative solutions that work for economies of all sizes through multilateral fora. Mr. Beck is an experienced trade professional who is well-equipped to serve the U.S. in this capacity, and I look forward to working with him to further this mission." According to the press release, the USTR's WTO & Multilateral Affairs (WAMA) office has overall responsibility for trade negotiations and policy coordination regarding matters before the WTO, the Group of Seven (G7), the Group of 20 (G20), and the Organization for Economic Co-operation and Development (OECD). Read more [here](#).

## **III. USCO Updates:**

- On April 30, all 13 members of the Copyright Public Modernization Committee (CPMC) sent a [letter](#) to Register Perlmuter of the U.S. Copyright Office (USCO) "to get an update on the status of the reauthorization of the CPMC and to request a meeting." The letter voiced concerns over the delay of the publication of the notice to reauthorize the CPMC and the Office's announcement that "there will not be a meeting for [at least] one whole year." The letter also stated that CPMC members think it would be best to "hold meetings...once each quarter." On

May 7, Register Perlmutter responded in a [letter](#), stating that the CPMC will be renewed after new members of the committee have been selected later this year; and the committee will then hold a meeting to discuss a “number of issues, including the coverage and frequency of CPMC meetings.” Three days later, the Library of Congress issued a [notice](#) reauthorizing the CPMC for an additional term. To apply to become a CPMC member, please email [cpmc@loc.gov](mailto:cpmc@loc.gov), and include a CV and statement of interest. Applications must be submitted by June 18.

- On Thursday May 30, the U.S. Copyright Office (USCO) will hold its next webinar to keep the public updated on the Office’s optimized Recordation System. Separate from the Office’s registration application, the new recordation module allows users to electronically transfer their copyrights to someone else. The webinars will “cover announcements about the module, important reminders, frequently asked questions, and a live Q&A session.” Anyone interested in attending may join the session. For additional information and to register, please click [here](#).
- 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. 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:**

- On May 1, Microsoft published its first *Responsible AI Transparency Report*. Among the report’s key takeaways, Microsoft says that the document is intended to “share how we build generative applications responsibly, how we make decisions about releasing our generative applications, how we support our customers as they build their own AI applications, and how we learn and evolve our responsible AI program.” It also states that Microsoft has “launched 30 responsible AI tools that include more than 100 features to support customers’ responsible AI development,” and that the company has “invested in mandatory training for all employees to increase the adoption of responsible AI practices.” Read the full report [here](#).
- On Monday, May 6, *POLITICO* reported that new polling shows Americans favor AI data regulation. A recent poll conducted by the Artificial Intelligence Policy Institute indicates a growing concern among Americans regarding the training practices of AI companies and their energy consumption. The majority of respondents expressed the view that AI firms should not have unrestricted access to public data and should compensate data creators. Additionally, a significant portion of respondents favored regulations on the use of public data for training AI models. There was also support for the idea of imposing a special tax on electricity for AI companies to support the upgrade of electrical grid infrastructure. Furthermore, opinions on the Biden administration's proposed funding for the AI Safety Institute showed a partisan divide, with Democrats more supportive than Republicans. The poll also revealed shifts in attitudes toward AI's impact on employment, particularly after exposure to generative AI music. College-educated respondents, in particular, showed an increase in concern about AI's potential to replace human jobs. Read more [here](#).

- On Monday, May 6, *Axios* reported that librarians are mounting a fierce state-by-state battle against the high prices they pay for e-book licensing. Publishers typically require libraries to renew the license to each e-book every two years, or after 26 loans — policies that libraries call prohibitively expensive. The Association of American Publishers (AAP) [argues](#) that it must protect the rights of copyright owners — authors and publishers—to be fairly compensated for their work. Read more [here](#).
- On Tuesday, May 7, the Special Competitive Studies Project (SCSP) and the Council for Innovation Promotion (C4IP) co-hosted a Fireside Chat titled *AI and IP: Can AI Generated Creations and Inventions be Protected?* Shira Perlmutter, Register of Copyrights and Director of the U.S. Copyright Office, alongside Andrei Iancu, Partner at Sullivan & Cromwell and former USPTO Director, spoke about the implications of AI on patents and copyrights and on U.S. innovation and competitiveness. The discussion was moderated by Rama Elluru, Senior Director for Society & Intellectual Property at SCSP. For additional information click [here](#).
- On Tuesday, May 7, *Reuters* reported that OpenAI is launching a tool to detect images created by its text-to-image generator DALL-E 3. The company said the tool correctly identified images created by DALL-E 3 about 98% of the time in internal testing and can handle common modifications such as compression, cropping and saturation changes with minimal impact. The ChatGPT creator also plans to add tamper-resistant watermarking to mark digital content such as photos or audio with a signal that should be hard to remove. Read more [here](#).
- On Tuesday May 7, *TechCrunch* reported that OpenAI is developing a tool to let creators better control how their content is issued in training generative AI. Called Media Manager, the new tool will allow creators and content owners to identify their works to OpenAI and specify how they want those works to be included or excluded from AI research and training. According to the article, Open AI’s goal is to have the tool in place by 2025, as the company works with “creators, content owners and regulators” toward a standard. Read more [here](#).
- On May 7, it was announced that veteran intellectual property (IP) protection and enforcement executives Steve Francis and Jan van Voorn have launched IP House, “a private sector company founded to support organizations in combating IP theft and defending their innovations from illicit trade.” Backed by a U.S.-based investment firm, IP House incorporates the best-in-class investigative teams and is supported by proprietary tech platforms, which enable it “to deliver proactive, end-to-end intellectual property protection at scale, addressing threats more completely than the industry’s patchwork of vendors can do.” Francis is serving as Executive Chairman of IP House following a 25-year career in federal law enforcement leadership positions; and van Voorn is the organization’s CEO following leading global content protection for the Motion Picture Association (MPA).
- On Thursday, May 9, *The Hollywood Reporter* published an article stating that the U.S. Supreme Court has endorsed open-ended recovery of damages for copyright infringement, ruling that music producer Sherman Nealy can pursue over a decade’s worth of damages for an unlicensed sample of his work by Flo Rida in his 2008 tune “In the Ayer.” The finding, in a 6-3 ruling, could expand the scope of damages in cases in which plaintiffs were previously barred from recovering money for infringement that occurred more than three years before the filing of a lawsuit. “There is no time limit on monetary recovery,” wrote justice Elena Kagan in the majority opinion. “So a copyright owner possessing a timely claim for infringement is

entitled to damages, no matter when the infringement occurred.” The ruling also reinforces the significance of securing licenses since the court clarified that there’s open-ended copyright infringement liability. Read more [here](#).

- On Tuesday May 21, the Society of Composers & Lyricists (SCL), in partnership with the Songwriters Guild of America (SGA), and the New York Songwriters Collective, will host Songwriters Night in NYC. Additional information is available [here](#).