I. Congressional Updates:

- Last Friday, the PEACE Through Music Diplomacy Act, as a part of the NDAA, passed the Senate and was sent to President Biden to sign into law. The bill “directs the Department of State (DOS) to leverage partnerships with the private sector when designing and implementing the music-related exchange programs run by the Bureau of Educational and Cultural Affairs (ECA). It also specifically authorizes music-related exchange programs that advance peace abroad, and it encourages the DOS to integrate a focus on conflict resolution into all relevant exchange programs for young musicians.” Senate Judiciary IP Subcommittee leaders Tillis (R-NC) and Leahy (D-VT) had introduced companion legislation in the Senate. Read the full press release from Rep. McCaul (R-TX), the House bill’s main sponsor, here.

- Early Tuesday morning, Congress unveiled the final text of the omnibus Fiscal Year (FY) 2023 appropriations package, which it is expected to send to President Biden’s desk before the current continuing resolution (CR) expires on December 23rd (this Friday). A couple of interesting things to note. (1) The bill allocates $100,674,000 for all necessary expenses of the Copyright Office. (2) The INFORM Consumers Act, a bill that seeks to crack down on the dissemination of counterfeits online by requiring ecommerce sites to take steps to verify the identity of high-volume sellers, is included. (3) The American Music Fairness Act, a bill that would require terrestrial radio to pay performing artists royalties, was NOT included. You may find the full text here.

Headlines and Highlights:

- Omnibus Text Released
- USTR Officially Asks ITC To Investigate TRIPS Waiver Extension
- Deadline Updated for Submitting Written Comments to USCO on NFT Study
- Copyright Office Concludes Voluntary Technical Measures and Standard Technical Measures Inquiries
- USTR Extends Exclusions From China Section 301 Tariffs
- Epic Games to pay $520 million in record-breaking FTC settlement

In the Blogs:

- Hugh Stephens Blog: Looking Back on 2022 and Forward to 2023: What was and will be important to Copyright, Creators and Content Industries?
- IPWatchdog: The IP News that Mattered Most in 2022, According to You
On Tuesday, there was language included in the omnibus package that would bar federal government employees from using the popular social media app TikTok on government-owned devices. Some federal agencies have already banned the use of TikTok on their devices, such as the White House, and 19 U.S. states have at least partially blocked access on government computers to TikTok within the last couple of weeks. Read more from Reuters here.

III. Judicial Updates

On Wednesday, the Copyright Office announced that they will be hosting a webinar titled “What You Need to Know about Small Claims and the Copyright Claims Board (CCB)”. The webinar is scheduled to cover topics such as What Is the CCB?, Who Can Use It?, What You Should Know Before Filing or Participating in a CCB Proceeding, and much more. The event speakers are Maya Burchette, Attorney-Advisor, Copyright Claims Board; and Dan Booth, Attorney-Advisor, Copyright Claims Board. The event is free, open to the public and is scheduled to take place on January 12 at 2pm ET. For more information and to register, please click here.

IV. Administration Updates

On Monday, Ambassador Tai asked the ITC to report back by Oct. 17, 2023, on supply-and-demand conditions for Covid-19 therapeutics and diagnostics, as well as pricing and trade flows after delaying the decision for a proposed waiver expansion to diagnostics and therapeutics. “I am not asking the Commission to draw any policy conclusions, but rather I am seeking a robust record with respect to these issues,” Tai said in her letter.

The Office of the United States Trade Representative (USTR) announced the addition of three new senior staff members on Tuesday. Roberto Soberanis joins as Assistant United States Trade Representative for Intergovernmental Affairs and Public Engagement, Angelica Annino joins as Director of Scheduling and Advance, and Victor Ban joins as Special Counsel. Read more here.

V. USCO Updates:

On November 22, the USCO and USPTO announced they will be publishing a Federal Register notice (FRN) announcing their joint study to examine various matter related to intellectual property that arise from the use of non-fungible tokens (NFTs). To assist in preparing a report for Congress, the notice seeks written responses from the public to several questions. It also announces that the Copyright Office and USPTO intend to hold virtual public roundtables in January 2023. For additional information, including instructions for submitting comments and asking to participate in the roundtables, please visit the Copyright Office website. Comments must be received no later than January 9, 2023.
• The U.S. Copyright Office is currently accepting applications for the Barbara A. Ringer Copyright Honors Program. Additional details about the program, including the application process, can be found on the Barbara A. Ringer Copyright Honors Program website. Applications will be accepted through December 31, 2022.

• On October 25, the U.S. Copyright Office published a notice of proposed rulemaking regarding the applicability of the derivative works exception to termination rights under the Copyright Act to the new statutory mechanical blanket license established by the Music Modernization Act (MMA). The Office’s proposed rule aims to clarify the appropriate payee under the blanket license to whom the MLC must distribute royalties in connection with a statutory termination. Written reply comments are due by January 5, 2023.

• On November 23, the U.S. Copyright Office published a Federal Register Notice announcing a joint study with the U.S. Patent and Trademark Office (USPTO) to examine various matters related to intellectual property that arise from the use of non-fungible tokens (NFTs). The dates for written comments and roundtables have been updated as of December 20. The updated dates and times are as follows. Written comments must be received by 11:59 p.m. Eastern Time on February 3, 2023. The roundtable on Trademarks and NFTs will now be held on Tuesday, January 24, 2023. The roundtable on Patents and NFTs will now be held on Thursday, January 26, 2023. The roundtable on Copyrights and NFTs will now be held on Tuesday, January 31, 2023. The deadline for requests to participate as a panelist in one or more of the roundtables is unchanged. Such requests must be received by 11:59 p.m. Eastern Time on December 21, 2022. Read more here.

• On Monday, the Copyright Office published an interim rule amending its regulations governing the appearance of law student representatives before the Copyright Claims Board (CCB). The interim rule will allow the CCB to modify or suspend certain rules when a claim is referred by a district court and, in cases that are first filed before the CCB, accept alternative proof of service forms. If you wish to submit comments, they are due by February 2. The interim rule and instructions for submitting comments are available here.

• On Tuesday, the US Copyright Office published two letters that outlined the results of its public consultations on voluntary technical measures and on standard technical measures (STMs) as defined in section 512 of Title 17. The letters were written in response to requests from Senators Leahy and Tillis. According to the press release, the Copyright Office has recommended a few changes to section 512(i) that could facilitate the adoption of STMs as Congress originally envisioned. “Specifically, the Office recommends that Congress amend section 512(i) to 1) clarify that the terms “broad consensus” and “multi-industry” require the support only of the industries directly affected by an STM; 2) state that technical measures qualify as STMs if they are recognized as such by a broad consensus of copyright owners and service providers, even if they were originally developed by a narrower subset of stakeholders or emerged from proprietary processes; and 3) set forth a list of factors use in weighing whether a particular measure imposes substantial costs and burdens.” The letter and the public comments are available on the Office’s website.
V. International Updates:

- Last Friday, the Office of the United States Trade Representative (USTR) announced a nine-month extension of 352 product exclusions in the China Section 301 Investigation. According to the USTR press release, the exclusions were initially reinstated on March 28, 2022, and the extension will help align further consideration of these exclusions with the ongoing comprehensive four-year review. Comments can be submitted through the USTR portal until January 17. Additional information is set out in the following Federal Register Notice.

VI. Industry Updates:

- On Monday, CNN published an article announcing that Epic Games, the maker of “Fortnite” agreed to pay a $520 million settlement after allegations that it misled millions of players, including children and teens, into making unintended purchases and violating a federal children’s privacy law. “Protecting the public, and especially children, from online privacy invasions and dark patterns is a top priority for the Commission, and these enforcement actions make clear to businesses that the FTC is cracking down on these unlawful practices,” FTC Chair Lina Khan said in a statement. Read more here.

- In an end-of-the-year summary published in IP Watchdog, ACG Partner Marla Grossman provided an overview of “The Good, the Bad, and the Ugly” of IP policy during the pandemic. On a positive note, Ms. Grossman underscored that the IP system worked as designed in the past few years as scientists and pharmaceutical companies, with remarkable speed, developed and brought to market vaccines that significantly reduced the harmful effects of the COVID epidemic and, in the process, saved hundreds of thousands, if not millions of lives. However, she also raised concern that the World Trade Organization (WTO) agreed to waive patent obligations for COVID vaccines for five years. She further cautioned against extending the waiver to COVID diagnostics and therapeutics. Read more here.