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AMERICAN CONTINENTAL GROUP

## CONTENT & TECHNOLOGY POLICY REPORT DECEMBER 17, 2021



### I. Congressional Updates:

- The Senate Commerce Committee considered the nomination of Alan Davidson to be the Commerce Department's Assistant Secretary of Commerce for Communications and Information on Wednesday, December 15. The committee approved his nomination, sending it to the full Senate for a vote, potentially allowing senators to confirm him before the end of the year, depending on when senators leave town. Read more [here](#).
- Congresswoman Judy Chu (D-CA) relaunched the Creative Rights Caucus (CRC) and announced her new co-chair Drew Ferguson (R-GA). "I am so proud to be partnering with Rep. Drew Ferguson to relaunch the Creative Rights Caucus," Chu said. "I helped found the CRC because I wanted more of my Congressional colleagues to understand that the creative industries aren't just movie stars and high-powered producers, but that these are a core part of our economy." Rep. Ferguson said, "By working together, we will take steps to improve copyright protections that allow the film and television industry to continue creating jobs in my home state of Georgia and across America. I'm confident that our collaboration will further the discussion and usher in a new era of the protection of creative rights that help bolster the 21st-century economy." Read more [here](#).
- On Thursday morning, the Senate Judiciary Committee held an executive session to consider multiple nominations. Chairman Durbin (D-IL) announced that Kathi Vidal's nomination would be held over at the request of the Minority. It is becoming seemingly more likely that her nomination will be voted on after the holidays.

### Headlines and Highlights:

- Rep. Judy Chu Announces Rep. Drew Ferguson as Co-Chair of CRC
- Kathi Vidal's Nomination to Serve as USPTO Director Held Over at Executive Session
- FTC to Punish Privacy Abuses
- Independent Book Publishers Association Joins the Copyright Alliance
- The Internet Association to Dissolve

### In the Blogs:

- Hugh Stephens Blog: [How Can News Publishers Best Protect Their Content? The US Copyright Office Explores Options](#)

## II. USCO Updates:

- Last Friday, the USCO published a [Federal Register notice](#) announcing a study to evaluate the merits of providing an option to defer its examination of copyright registration application materials until examination is later requested by the applicant. For additional information, including instructions for submitting comments, please visit the Office [website](#). Comments must be received no later than 11:59 p.m. eastern time on January 24, 2022.
- The USCO is proposing procedures governing active proceedings before the Copyright Claims Board (CCB) and post-determination procedures, as directed by the [Copyright Alternative in Small-Claims Enforcement \(CASE\) Act of 2020](#). Initial comments in response to the proposed rule are due no later than 11:59 p.m. eastern time on Monday, February 7, 2022; reply comments are due no later than 11:59 p.m. eastern time on Tuesday, February 22, 2022.

## III. Judicial Updates

- On Thursday, the Association of American Publishers (AAP) filed a subsequent motion for a preliminary injunction that seeks to block Maryland’s library e-book law from going into effect on January 1, 2022. The full filing from AAP can be found [here](#).
- On Thursday, it was reported that a federal judge refused to toss out a copyright infringement case against Taylor Swift due to the lyrical similarities in her song “Shake it Off” and the 2001 song “Playas Gon’ Play” by 3LW. District Judge Michael W. Fitzgerald said, “Even though there are some noticeable differences between the works, there are also significant similarities in word usage and sequence/structure,” adding that “the court cannot presently determine that no reasonable juror could find substantial similarity of lyrical phrasing, word arrangement, or poetic structure between the two works.” Read more [here](#).

## IV. Administration Updates:

- The Department of Justice and Federal Trade Commission invite comments from the public on the topics covered by its December 6-7, 2021, workshop on efforts to promote competitive labor markets and worker mobility. Interested parties may submit public comments online now through December 20, 2021, at [Regulations.gov](#).
- Last Friday, the FTC made an announcement that they may initiate a rulemaking that would allow them to take regulatory action against tech companies for abuses of customer’s privacy and civil rights. According to [this TechCrunch article](#), “it is currently only described in [this Office of Management and Budget summary](#), after the FTC submitted information to that agency on potential upcoming regulatory actions. According to the listing, the rule would

“curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination.” There is no public draft of the rule and no indication of whether the rule-making is more than notional at this point.” Although this development, if eventually successful, is a long way off. Read the full announcement [here](#).

- The National Telecommunications and Information Administration (NTIA) hosted three days of listening sessions covering privacy, equity, and civil rights this week. On Tuesday December 14, the first session explored the privacy and civil rights laws that apply to data practices and disproportionately harm marginalized groups. Day two dove deeper into how unfair or invasive data practices can harm marginalized groups, while day three discussed how to address the problems and what solutions may look like. A full breakdown of the schedule including speakers can be found [here](#). “We expect the sessions will be followed up by the administration’s first formal call for legislation and perhaps efforts to break the congressional logjam,” Jules Polonetsky, CEO of the Future of Privacy Forum, told Politico, adding that it’s imperative the NTIA sessions lay the groundwork for federal privacy legislation with strong civil rights and equity protections. The Commerce Department also released a memo in advance of the sessions this week which can be found [here](#). According to Politico, the main takeaway from the sessions was, “that there’s a role for the White House and federal agencies to play in consumer privacy in the U.S. — and they called on the Commerce Department agency to help focus the Biden administration’s efforts.”
- On Friday the FCC announced that it is ready to authorize over \$1 billion over 10 years and across 32 states as the 5<sup>th</sup> round of funding for the Rural Digital Opportunity Fund.

## **V. International Updates:**

- On Wednesday the European Union passed the Digital Markets Act (DMA). The final vote was 642 - 8. According to Politico, “In practice, the changes are set to limit so-called "killer acquisitions" — when Big Tech firms buy out smaller companies and kill off their innovations — by restricting acquisitions when companies are found to have systematically violated the DMA. They will also include a new obligation for Big Tech firms to allow users to both uninstall pre-installed apps and provide the option of switching to rival apps.” Read more [here](#).
- The EU Justice Chief, Didier Reynders, was in Washington on Friday meeting with top Biden Administration officials to discuss improving consumer protections online. He met with FTC Chair Lina Khan, CFPB director Rohit Chopra, CPSC Chair Alex Hoehn-Saric, and DHS Secretary Alejandro Mayorkas.

## **VI. Industry Updates:**

- The Government Accountability Office (GAO) released a report that found the Technology Modernization Fund (TMF) actually costs more than it collects in fees. The TMF awards federal agencies funds to replace aging IT systems. Congress provided an initial \$175 million in funding, from which 11 projects received \$89 million, and the American Rescue Plan Act

added \$1 billion to the fund. Read more [here](#). This is the second report from the GAO on the TMF.

- On Tuesday, the Copyright Alliance, which represents the copyright interests of over 1.8 million individual creators and over 13,000 organizations across the spectrum of copyright disciplines, announced the addition of the Independent Book Publishers Association as its newest member. Copyright Alliance CEO Keith Kupferschmid said, “We are thrilled to have IBPA join as a member during a time that’s so critical for copyright and the creator landscape. Like our other members, IBPA and its members rely upon and understand the importance of strong copyright protections for publishers and creators. They bring a wealth of expertise and an important perspective that will benefit the Copyright Alliance. We look forward to working with them as we continue to fulfill our mission of educating people about the importance and value of copyright and protecting creator rights.” IBPA CEO Angela Bole stated, “Our membership in the Copyright Alliance represents our belief that the work it’s doing is vital to advancing initiatives that protect and expand copyright protections that independent book publishers find vital to their growth and success. With copyright being fundamental, we at IBPA are excited to join the Copyright Alliance at this crucial time and to partner with so many other like-minded organizations that are also members.”
- Once known as Silicon Valley’s most important trade group in Washington, the Internet Association, announced its dissolution this week according to Politico. The group has been struggling financially after Microsoft pulled its support earlier in the year. Read more [here](#).
- Earlier this month, the Intellectual Property Owners Association (IPO) Board of Directors elected Karen Cochran to serve as IPO President for a two-year term beginning on January 1<sup>st</sup>, 2022. Ms. Cochran is currently the General Counsel, Intellectual Property at Shell Oil Company and Vice President of the IPO Board.
- On Thursday, IPWatchdog released an article titled, “The Year in Copyright: From *Google v. Oracle* to the Takings Clause. It provides a recap of copyright developments over the last year. The full article can be found [here](#).