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CONTENT & TECHNOLOGY POLICY REPORT MARCH 20, 2020



I. Congressional Updates:

- This week, several artists, music coalitions, and record labels called on Congress to support musicians, songwriters, and other entertainers struggling from the loss of work due to the novel coronavirus. Lawmakers have enacted two packages in what is expected to be a series of emergency funding bills to combat the spread of COVID-19 and support the economy. Songwriter groups, including the Songwriters Guild of America, BMI, ASCAP, NMPA, NSAI, SESAC and SONA urged Congress to consider music gig workers in relief plans. In the [letter](#), the songwriter representatives urged Congress "...to not forget our nation's songwriters and composer and include assistance for them in any pandemic assistance legislation forthcoming." Similarly, the Music Artist Coalition sent a [letter](#) to Congress emphasizing the impact of the coronavirus on workers in live-entertainment. The letter was signed by dozens of artists and executives, including Don Henley, Lizzo, Maren Morris, John Mayer, Stevie Nicks, Gwen Stefani, Def Leppard and many others. American Federation of Musicians of the United States and Canada (AFM) President Ray Hair issued a [statement](#) calling on Congress to provide relief funds to gig-economy artists. In his statement, Hair acknowledged that the emergency declarations across the two countries have dramatically hindered the earning potential of artists and other entertainment-industry professionals. He urged Congress to coordinate with state and local governments to consider the economic distress of gig workers during the aid distribution process. Lastly, *Billboard* posted a [state-by-state resource guide](#) for music professionals who may need assistance during this crisis.

Headlines and Highlights:

- As Congress works on series of economic stimulus packages, artists and music coalitions call on members to support musicians, songwriters, and other entertainers struggling from the loss of work due to the coronavirus outbreak.
- Copyright Office holds webinar on new fee schedule.
- Notorious piracy app Popcorn Time comes back online after a years-long hiatus.
- USTR requests applications for USMCA state-to-state dispute settlement panelists.
- USTR notifies congress of intent to negotiate a free trade agreement with Kenya.

In the Blogs:

[AI, Ethics and Copyright](#)

Hugh Stephens Blog

March 16 by David Newhoff

[DMCA Review II – Looking to foreign jurisdictions, when some answers are already here.](#)

The Illusion of More

March 17 by David Newhoff

II. Judicial Updates:

- On Tuesday, a federal judge overturned a copyright infringement verdict in the “Dark Horse” case. A jury found last July that Katy Perry’s hit song included an eight-note ostinato stolen from “Joyful Noise” by Christian rapper Flame and awarded \$2.8 million in damages. In her ruling on Tuesday, Judge Christina A. Snyder found that the short musical phrase in question is not enough to warrant copyright protection. She asserts that it is “undisputed in this case” that “the signature elements of the 8-note ostinato in ‘Joyful Noise’... is not a particularly unique or rare combination.” Flame can still appeal Snyder’s ruling to the 9th circuit. Read more [here](#).

III. Administration Updates:

- USCO published several notices this week changing services and deadlines in light of the coronavirus outbreak. On Monday, USCO extended the comment period for [Registration Modernization Notice of Inquiry](#) to June 1st. Next, on Tuesday, USCO issued a notice regarding the continuation of online services amid office closure. According to the notice, the USCO is open through its website for online registration, searching copyright-related records, and learning about copyright topics. Furthermore, USCO will continue to receive registration applications and recorded documents sent by mail. The Office has also established a [webpage](#) to answer specific about special handling and will soon include information about effective date of registration, search and certification services, and other matters. To minimize the effects of temporary measures on the initiation of copyright infringement actions, the Office is adopting an interim policy for the “special handling” of applications for registration on an expedited basis.
- On Wednesday, the Copyright Office held a webinar to discuss the [new fee schedule](#), effective March 20th. Jalyce Magnum, Attorney Advisor for the Office of the General Counsel at USCO, delivered the presentation. USCO commenced its cost study in June 2017 and presented a final proposed schedule and analysis of fees for Copyright Office services to Congress last October. The new fee schedule is a product of this cost study and consideration of well over 100 comments. Magnum stated that while a number of fees, including the fee for standard registrations, have increased to permit the Office to more fully recoup its expenses, some fees have decreased, and others, such as the group application for photographs, remain the same. Magnum highlighted the fact that the significant increase for paper applications is because of higher costs to paper applications. Continuing, she stated that by raising the fees for paper applications, USCO is attempting to incentivize electronic filings. Magnum also explained that USCO acknowledged the concerns voiced by some in public comments. Specifically, it heard that the proposed fees: (1) reduce registration filings and overburden individual creators and small entities; (2) disproportionately burden small photographers; (3) disadvantage special handling filers in cases of imminent litigation; (4) modernization costs should not be passed on to applicants; (5) more appropriated dollars are in order to fund the Copyright Office’s IT modernization; and (6) fee increase should account for improved efficiencies and cost savings expected with modernization. Magnum stated that the USCO understands these concerns and the need for affordable fees so that individual creators can take advantage of our services.

- On Thursday, the Copyright Royalty Judges announced their final determination of the distribution of the digital audio recording (DART) royalty fees in the 2007, 2008, 2009, 2010, and 2011 Sound Recording Funds. More info. [here](#).
- The Office of the United States Trade Representative (USTR) published a notice requesting applications to serve as panelists for the general state-to-state dispute settlement panels and for specialized labor panels that were established under the United States-Mexico-Canada Agreement (USMCA). Applications are due on April 20th. More info. [here](#).
- Following the congressional consultation framework under the Trade Promotion Authority (TPA), USTR notified Congress on Tuesday that the Trump Administration intends to negotiate a free trade agreement with Kenya. The notice cites that two-way goods trade between U.S. and Kenya totaled \$1.1 billion in 2019, up 4.9% from 2018. In accordance with TPA, USTR will publish objectives of the negotiations with Kenya at least 30 days before formal trade negotiations begin. More info. [here](#).

IV. International Updates:

- *TorrentFreak* reports that internet piracy appears to be increasing in Italy after the government ordered a country-wide lockdown in an effort to contain the spread of the coronavirus. The article points out that Google searches for popular local piracy sites such as Guardaserie, Filmpertutti, Altadefinizione, CB01, and Eurostreaming, all skyrocketed over the past few days. Furthermore, the coronavirus outbreak appears to also have an effect on the nature of the content consumers are seeking to pirate. For instance, the movie “Contagion” earned a spot in *TorrentFreak*’s weekly top 10 most pirated films, which is rare for films that are almost a decade old. Read more [here](#).

V. Industry Updates:

- *Motherboard* reports that Popcorn Time, a notorious app for illegally streaming the latest movies and TV shows, came back online on Tuesday after a years-long hiatus. The app allows users to stream movies using BitTorrent without downloading the content or worrying about finding a tracker to use. According to *Motherboard*, the new version of the app works just as easily as earlier versions, is free, and implores people to sue virtual private networks to avoid having their use of the app detected by internet service providers. Read more [here](#).
- As requested by the White House Office of Science and Technology Policy, on Monday researchers and leaders from the Allen Institute for AI, Chan Zuckerberg Initiative (CZI), Georgetown University’s Center for Security and Emerging Technology (CSET), Microsoft, and the National Library of Medicine (NLM) at the National Institutes of Health released the [COVID-19 Open Research Dataset](#) (CORD-19). This data represents the most extensive machine-readable coronavirus literature collection available for data and text mining to date. The White House joined these institutions in calling U.S artificial intelligence experts to develop new text and data mining techniques that can help the science community answer high-priority scientific questions related to COVID-19. According to a White House [press release](#) announcing this call to action, researchers should submit the text and data mining tools and insights they develop via the [Kaggle platform](#). Kaggle is sponsoring a \$1,000 per task award to the winner whose submission is identified as best meeting the evaluation criteria. There will be two rounds of submissions – due April 16th and June 16th. Read more [here](#).