

CONTENT & TECHNOLOGY POLICY REPORT FEBRUARY 3, 2023



I. Congressional Updates:

- On Thursday, the Senate Judiciary Committee held its second Executive Session of the 118th Congress. The Committee had four bills on the agenda that seek to combat rising drug prices through addressing perceived anticompetitive practices in the drug patent space, but no bills on copyright or general technology issues. Watch the full markup [here](#).
- On Thursday, the bipartisan American Music Fairness Act (AMFA) was reintroduced in both the House and Senate. Congressman Darrell Issa (R-CA-48) and Jerry Nadler (D-NY-12) along with Tom McClintock (R-CA-4) and Ted Lieu (D-CA-36) introduced it in the House while Senators Alex Padilla (D-CA), Marsha Blackburn (R-TN), Dianne Feinstein (D-CA), and Thom Tillis (R-NC) introduced it in the Senate. The bill would ensure that artists and music creators are paid when their songs are played on FM/AM radio, bringing radio broadcasters in line with the standard of other platforms that compensate artists when their music is played. Read more [here](#) and [here](#).

II. Administration Updates

- On Tuesday, *Reuters* reported that the U.S. Chamber of Commerce sent a letter to the FTC that was signed by over 100 organizations, arguing that the proposed rule banning most noncompete agreements is broad enough to warrant an in-depth look. "The regulated community should be given sufficient time to assess the potential consequences of the rulemaking and develop insightful comments for the Commission to consider," they wrote. They asked for the

Headlines and Highlights:

- American Music Fairness Act Reintroduced in both the House and Senate
- USTR Announces New Assistant U.S. Trade Representative for Services & Investment
- USTR Releases 2022 Notorious Markets List
- UK Government Rethinks Plans for AI-Training Copyright Exception
- Piracy of Audiobook Summaries is Impacting Publishers and Authors
- ChatGPT Sets Record for Fastest-Growing User Base

In the Blogs:

- Hugh Stephens Blog: [Will the Year of the Rabbit be the Year of Contentious Copyright Litigation over AI-Generated Content?](#)

comment period to be extended by 60 days. The FTC declined to comment on the request. Read more [here](#). On Thursday, the FTC announced that they will host a public forum on Thursday, February 16, that will examine the proposed noncompete ban. The forum will be held virtually from 12 noon to 3 p.m. EDT. People can sign up to speak [through a webform](#) and will be heard on a first-come first-serve basis during the time available. Read more [here](#).

- On Thursday, the Office of the United States Trade Representative announced that Kenneth Schagrin has been promoted to the position of Assistant United States Trade Representative for the Office of Services & Investment. According to the press release, he is responsible for implementing innovative U.S. trade policy regarding services, digital trade, and investment initiatives. Ambassador Katherine Tai stated, “As we keep pace with the opportunities and challenges of a rapidly changing global economy and continue to strengthen our bilateral and multilateral economic relationships, Ken’s depth of experience will be essential to advancing an inclusive global trade agenda.” Read the full press release [here](#).
- On Thursday, President Biden confirmed that the Director of the National Economic Council, Brian Deese, will be leaving the White House. The move has been expected for some time now and a few names have already popped up as potential successors. Two names that have gotten a lot of attention are Federal Reserve Vice Chair Lael Brainard, and Deputy Treasury Secretary Wally Adeyemo. Read more [here](#).

III. Judicial Updates

- On Wednesday, *The Wall Street Journal* reported that a federal judge declined to halt Meta’s acquisition of the virtual-reality startup Within Unlimited. The decision setback antitrust enforcers at the FTC who were seeking to block the deal. Read more [here](#).

IV. International Updates

- On Tuesday the USTR released its Notorious Markets Report. The annual report “highlights prominent and illustrative examples of online and physical markets that reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial piracy or counterfeiting.” USTR selected the topic of *The Impact of Online Piracy on U.S. Workers* as this year’s Issue Focus. Significantly, this focus signals copyright protection and enforcement as a priority under the Administration’s worker-centric trade policy. Read the full report [here](#).
- On Thursday, *Music Ally* reported that the UK government is going to rethink their AI-related text and data mining proposal. Last year they proposed a copyright exception for text and data mining for AI technology training. In the UK’s parliament this week, minister for science, research and innovation George Freeman announced that the government is going back to the drawing board on its proposals. “We have written around to make it clear to other Ministers that the proposals were not correct, that we have met with a huge response, which should have been picked up in the pre-consultation before the proposals were announced, and

that we are looking to stop them.” He promised “a rather deeper conversation” in the coming months with politicians, creative industry bodies, creators and AI companies to “ensure that we do not rush precipitately into a knee-jerk move that is wrong”. Read more [here](#).

- On Thursday, USTR announced that they are seeking public comments on whether to further extend COVID related product exclusions in the Section 301 Investigation of China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation. The exclusions, which cover 81 medical-care products, were initially granted in December 2020, and were previously scheduled to expire on February 28, 2023. To allow for consideration of the public comments, USTR has extended the exclusions for an additional 75 days, through May 15, 2023. Read the formal notice [here](#) and the press release [here](#).

V. USCO Updates:

- On Wednesday, the U.S. Copyright Office issued a supplemental interim rule relating to certain reporting and payment requirements of digital music providers and related duties of the mechanical licensing collective (MLC). According to the press release, the amendment extends a previously adopted transition period provided to the MLC pending further rulemaking regarding reports of adjustment. Based on the imminent expiration of the transition period and recent public comments requesting further proceedings on the subject of adjustments, the Office has determined that there is a legitimate need to make this amendment effective immediately. Additional information is available [here](#).
- On Thursday, the Library of Congress announced that they will host a virtual meeting of the Copyright Public Modernization Committee on Thursday, March 2 at 1 p.m. ET. In addition to updates from Library and Copyright Office staff on the development of the Enterprise Copyright System, attendees will see a live demonstration of the registration application currently in development, followed by a discussion with committee members and a Q&A. To register to attend, click [here](#). To read more about the event, click [here](#).

VI. Industry Updates:

- On Tuesday, *Zee News* reported on an emerging piracy threat in the audiobook market. According to the article, unauthorized versions of audiobooks are being distributed online for free without permission from or compensation of the original publisher or creator. Moreover, many of the reported pirated summaries are also inaccurate. The article states that several major publishing companies have called for stricter regulations on audiobook summary services and for greater enforcement of copyright laws. Read more [here](#).
- Universal Music is reportedly in talks with streaming platforms such as Tidal to change the current streaming model in order to develop “a model that supports all artists.” One of the main focuses of the overhaul is to eliminate online bots and identify streaming fraud. A potential new strategy reported by the *Financial Times* is to create a bonus pool of money for

artists who are responsible for the most value in the form of a lot of streams from new users. Another potential new strategy would be to introduce a superfan subscription that would cost more but lead to extra perks or access to certain artists. “Everyone seems to agree that the current streaming model is not working,” said Tatiana Cirisano, an analyst at Midia Research, pointing to years of complaints from the independent music community. Read more [here](#).

- On Thursday, *Reuters* reported that ChatGPT is estimated to have reached 100 million monthly active users in January, an incredible feat making it the fastest-growing consumer application in history only two months after its initial public release last November. A UBS study said that an average of 13 million unique visitors visited/used ChatGPT per day in January, more than double the average from the month of December. "In 20 years following the internet space, we cannot recall a faster ramp in a consumer internet app," UBS analysts wrote in the note. Also on Thursday, the parent company of ChatGPT, OpenAI, announced a \$20 monthly subscription, initially for users in the United States only. Read more [here](#).