

CONTENT & TECHNOLOGY POLICY REPORT

MARCH 24, 2023



I. Congressional Updates:

- On Tuesday, Senator Michael Bennet (D-CO) wrote a letter to the CEOs of OpenAI, Microsoft, Snap, Google, and Meta to highlight the potential harm to younger users of rushing to integrate generative artificial intelligence (AI) in their products and services. “Few recent technologies have captured the public’s attention like generative AI. It is a testament to American innovation, and we should welcome its potential benefits to our economy and society. But the race to deploy generative AI cannot come at the expense of our children,” wrote Bennet. “Responsible deployment requires clear policies and frameworks to promote safety, anticipate risk, and mitigate harm.” The full text of the letter is available [here](#) and the press release [here](#).
- On Wednesday, the Senate Appropriations Legislative Branch Subcommittee held a hearing titled, [FY2024 Budget Requests for the Library of the Congress and the Architect of the Capitol](#). The hearing only lasted about 45 minutes with both the Librarian of Congress, Dr. Carla Hayden, and the Architect of the Capitol, Ms. Chere Rexroat, testifying. During the hearing, copyright only came up in two instances. The first was regarding the Enterprise Copyright System (ECS) and the US Copyright Office request for a permanent base for continuous innovations and updates to the system as technology advances. The ECS system is transforming the whole copyright process by integrating and improving all the Office’s technology modules, including the registration, recordation, public record, and licensing IT modules. Second, Dr. Hayden stated that the FY24 budget funding request would go towards ensuring the registration system stays functional while transferring from the once paper-

Headlines and Highlights:

- Sen. Bennet Urges Tech CEOs to Prioritize Young Americans’ Safety When Deploying AI
- U.S. Seeks to Prevent China from Benefiting from \$52 Billion Chips Funding
- Internet Archive’s Copyright Battle with Book Publishers Nears Climax
- Adobe, Nvidia AI Imagery Systems Aim to Resolve Copyright Questions
- Writers Guild Pushing to Prohibit AI-Generated Works Under Contract in Negotiations
- Utah Becomes First State to Sign Law Limiting Kids’ Social Media Use

In the Blogs:

- Hugh Stephens Blog: [Why Are Canadian Universities Vehemently Campaigning Against Any Clarification of Fair Dealing if They Are Already Licensing All the Content They Need for Teaching Students?](#)

based Copyright Recordation to online. This would be in addition to the active public advisory committee to continue development on this step. In her written testimony Dr. Hayden stated that the FY24 funding request “will bring in new staff and sustain a number of existing staff to implement a collaborative USCO/ Office of the Chief Information Officer (OCIO) continuous development program that will sustain and keep ECS and other systems up to date with new features, enhancements, and applications. It will also increase the functionality of ECS core services and add new services.”

- On Thursday, the Senate Finance Committee held a hearing titled, “[The President’s 2023 Trade Policy Agenda](#).” The Honorable Katherine Tai, United States Trade Representative, testified. Most questions revolved around the specifics of future trade negotiations and the enforcement of already existing rules that have not been fully met. Republicans were very skeptical of the IPEF and concerned about a lack of market access. Senators were also concerned about anti-competitive behavior (tariffs being too high), to the detriment of US companies, in Mexico, India and Japan. There was also interest in deepening ties with Ethiopia, Kenya, the UK, and the Western Hemisphere. Many also highlighted their concerns relating to China’s influence, their efforts to undermine US trade policy, and Chinese rule-breaking/cheating. Senators Tillis, Blackburn, Daines, and Wyden also made references to Intellectual Property. Senators Tillis and Blackburn spoke about the TRIPS waiver, Sen. Daines talked about Chinese abuse of IP, and Sen. Wyden mentioned Section 230 saying it was originally about democratizing the internet and protecting those without power.
- On Thursday, March 23rd, 2023, the House Energy and Commerce held [a 5-hour hearing](#) in which TikTok CEO Shou Chew was incessantly grilled on TikTok’s presence in the U.S. The hearing also represented strong bipartisan support as Rep. August Pfluger (R-TX) declared: “You have unified Republicans and Democrats, and if only for a day, we’re actually unified because we have serious concerns.” Legislators asked Chew on a slew of topics ranging from mental health, teen safety, illicit drug advertisements, data security issues, Chinese sabotage, and algorithmic transparency. Despite the length and breadth of the hearing, none of Chew’s comments on TikTok’s efforts to move data out of China and to Singapore and Virginia, alongside its efforts to address mental health concerns, assuaged the concerns of the Committee. Rather, the hearing augmented the push to ban or significantly limit the power of TikTok.
- On Thursday, the U.S. House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party held a hearing titled, “The Chinese Communist Party’s Ongoing Uyghur Genocide”. The hearing was a scathing account of the atrocities being placed upon the Uyghur people in the Xinjiang region. An Orwellian dystopia of surveillance and control was told by survivors of reeducation camps and echoed in the questions from Congressional members. Ranking Member Raja Krishnamoorthi (D-IL) praised the testimony from the survivors as heroic but noted the horrific atrocities being performed by the Chinese Communist Party. The Ranking Member admonished American companies who are a part of the genocide. Many members echoed his sentiment asking questions to the panel of solutions on how to stop the flow of products made in the region.

- Next Tuesday, March 28th, at 10:30am ET, the House Energy & Commerce Communications and Technology Subcommittee will hold a hearing titled “Preserving Free Speech and Reining in Big Tech Censorship.” No witnesses have been listed yet. More info [here](#).
- Next week, appropriators in both the House and the Senate are slated to hold budget hearings on the Department of Justice’s proposed Fiscal Year (FY) 2024 budget. Attorney General Merrick Garland will testify before the Senate Appropriations Commerce-Justice-Science (CJS) Subcommittee on Tuesday at 2:30pm ET and then Inspector General Michael E. Horowitz will first testify before the House Appropriations CJS Subcommittee at 9:30am ET on Thursday. The hearings will be live-streamed [here](#) and [here](#).

II. Administration Updates

- On Monday, *Politico* reported that the Biden Administration is planning to take action on at least three of its current investigations into Amazon. For instance, the FTC is considering challenging Amazon on its \$1.7 billion acquisition of robot vacuum maker iRobot with a potential case expected within the next few months. The FTC also has two privacy related investigations, one with Amazon’s Ring camera and another with the Amazon Alexa voice assistant. The article states that the result of at least one of those investigations could come in the next few months. Another potential case in the pipeline would be a wide-ranging antitrust case targeting Amazon’s retail operations. “Though the details of a complaint are not known, it could include the bundling of services through its Prime subscription business and its use of competitor data to out-muscle rival retailers on its platform.” Representatives for the FTC and Amazon both declined to comment on the investigations. Read more [here](#).
- On Tuesday, the Commerce Department released its proposed rules to prevent \$52 billion in semiconductor manufacturing and research funding from being used by China and other countries deemed of concern. According to *Reuters*, “The proposal limits recipients of U.S. funding from investing in the expansion of semiconductor manufacturing in foreign countries of concern such as China and Russia, and limits recipients of incentive funds from engaging in joint research or technology licensing efforts with a foreign entity of concern.” Commerce Secretary Gina Raimondo said, “these guardrails will help ensure we stay ahead of adversaries for decades to come.” The Commerce Department also announced that they plan to start accepting applications for the programs subsidies in late June. Read more [here](#).

III. USCO Updates:

- Last week, the U.S. Copyright Office published a statement of policy to clarify its practices for examining and registering works that contain material generated by the use of artificial intelligence technology. “In the case of works containing AI-generated material, the Office will consider whether the AI contributions are the result of “mechanical reproduction” or instead of an author’s “own original mental conception, to which [the author] gave visible form.”²⁴ The answer will depend on the circumstances, particularly how the AI tool operates and how it was used to create the final work.²⁵ This is necessarily a case-by-case inquiry.” The office did state however that this policy does not mean that technological tools cannot be

part of the creative process, rather what matters is the extent to which the human had creative control over the work's expression. The document also addressed certain questions such as, "How to submit applications for works containing AI-generated material." Read more [here](#). In a press release the Office stated that they will host public listening sessions this spring with artists, creative industries, AI developers and researchers, and lawyers working on these issues. "These roundtable-format listening sessions will provide an opportunity for participants to discuss their goals and concerns related to the use and impact of generative AI in creative fields." Also, later this year, the Office plans to publish a notice of inquiry soliciting public comments on a wide range of copyright issues arising from the use of AI. In support of this initiative, the Office has also launched a new [webpage](#) for announcements, events, and resources related to AI and copyright at copyright.gov/ai. Interested parties can register for the public listening sessions using the links below:

- [Literary Works](#) on Wednesday, April 19, from 1:00 p.m. to 4:00 p.m. eastern time
- [Visual Works](#) on Tuesday, May 2, from 1:00 p.m. to 4:00 p.m. eastern time
- [Audiovisual Works](#) on Wednesday, May 17, from 1:00 p.m. to 4:00 p.m. eastern time
- [Music and Sound Recordings](#) on Wednesday, May 31, from 1:00 p.m. to 4:00 p.m. eastern time

IV. Judiciary Updates:

- On Tuesday, *TorrentFreak* reported that the copyright lawsuit filed by major book publishers against the Internet Archive is nearing a climax. On Monday, both parties shared their positions at a New York Federal court with the Internet Archive claiming that its library is protected by fair use and does no harm to rights holders. Lawmakers have taken an interest in the dispute, with Senator Ron Wyden and Congresswoman Anna Eshoo [sending a letter](#) to the major publishers a few months ago asking them about their restrictive lease terms for e-books. "Many libraries face financial and practical challenges in making e-books available to their patrons, which jeopardizes their ability to fulfill their mission... It is our understanding that these difficulties arise because e-books are typically offered under more expensive and limited licensing agreements, unlike print books that libraries can typically purchase, own, and lend on their own terms." According to the article, many expect this case to go all the way to the Supreme Court. Read more from *TorrentFreak* [here](#). *Reuters* also published an article this week on the *Hachette Book Group Inc v. Internet Archive* case which can be found [here](#).

V. International Updates:

- On Wednesday, *Reuters* reported that recent developments in AI, such as ChatGPT, have complicated the efforts of European Union lawmakers who are trying to come to an agreement on AI laws. The European Commission proposed draft rules nearly two years ago, which have since been rendered nearly obsolete due to the recent advancements with the technology. Many still expect an agreement by the end of this year, while some foresee a delay into 2024. "The pace at which new systems are being released makes regulation a real challenge," said Daniel Leufer, a senior policy analyst at rights group Access Now. "It's a fast-moving target, but there are measures that remain relevant despite the speed of

development: transparency, quality control, and measures to assert their fundamental rights... Discussions must not be rushed, and compromises must not be made just so the file can be closed before the end of the year," said Leufer. "People's rights are at stake." Read more [here](#).

VI. Industry Updates:

- On Tuesday, *Reuters* reported that Adobe Inc. and Nvidia Corp both independently announced new tools that will generate images with artificial intelligence as well as help resolve some of the legal issues surrounding AI with copyrights and payments. According to *Reuters*, Adobe's new AI-enhanced feature, called "Firefly," has been trained on Adobe Stock images, openly licensed content, and older content where copyright has expired, meaning the resulting creations are safe for commercial use. The company also is advocating for a universal "do not train" tag that would allow photographers to request that their content not be used to train models. "We're very interested in making this creator friendly," Ely Greenfield, chief technology officer for digital media at Adobe, told *Reuters*. Nvidia's Picasso AI-image generator is part of a collection of AI-powered cloud products unveiled at its GTC Developer Conference. According to the article, the new service uses AI to generate images, videos and 3D applications from text descriptions and was trained on images licensed from Getty Images, Shutterstock, and Adobe, and plans to pay royalties. "This collaboration (with Nvidia) is testament to the feasibility of a path of responsible AI development and the unique nature of Getty Images content and data," Getty Images CEO Craig Peters told Reuters. "The livelihoods of content creators depend on respect for intellectual property rights and the value of their creative endeavors." Read more [here](#).
- On Wednesday, *The Wall Street Journal* reported that publishing executives have begun examining the extent to which their content has been used to train AI tool such as ChatGPT and how they should be compensated as many in the writing and publishing community see artificial intelligence and large language models (LLMs) are a threat to the industry. "We have valuable content that's being used constantly to generate revenue for others off the backs of investments that we make, that requires real human work, and that has to be compensated," said Danielle Coffey, executive vice president and general counsel of the News Media Alliance. While there are currently some licensing deals in place, many in the publishing community believe more needs to be done. Read more [here](#).
- On Wednesday, *The Hollywood Reporter* reported that the Writers Guild of America is negotiating with studios and streaming platforms to work out an approach to AI. According to the article, the Guild is looking to potentially ban AI from being used as source material and AI-written works and AI-rewritten works from being covered under its contract; the union also wants to preclude AI-created writing from being considered for credits. The guild additionally seeks to prohibit writers from being assigned "AI-generated material to adapt" and is also looking to prohibit "AI software generat[ing] covered literary material." The guild wrote in its statement, "The [WGA](#)'s proposal to regulate use of material produced using artificial intelligence or similar technologies ensures the Companies can't use AI to undermine writers' working standards including compensation, residuals, separated rights and credits." Both management and labor are expected to continue talks until April 1, when a brief break will occur, and then continue before the Writers Guild's current contract expires May 1. Read more [here](#).

- On Thursday, *Axios* reported that Utah became the first state to enact legislation that restricts children and teens from using social media without parental consent. The law, S.B. 152 Social Media Regulation Amendments, is expected to take effect on March 1, 2024, and will require social media companies to deploy curfews for minors that would barre them from using their accounts from the hours of 10:30pm to 6:30am each day. The legislation would also require companies to give a parent or guardian access to their child's account. Read more [here](#).