

CONTENT & TECHNOLOGY POLICY REPORT MAY 19, 2023



I. Congressional Updates:

- On Tuesday, the Senate Judiciary Subcommittee on Privacy, Technology, and the Law held a hearing titled, “Oversight of A.I.: Rules for Artificial Intelligence.” The hearing encompassed a wide range of concerns related to AI, including privacy, job disruption, copyright, licensing, and the impact of Section 230. The focus was on identifying the regulatory measures needed to address these concerns and ensure the responsible development and deployment of AI technologies. There was bipartisan agreement among Senators and witnesses about the significant risks posed by AI and the need for government regulation. However, there were differing opinions on the specific form and nature of such regulation. Senator Coons (D-DE) confirmed there will be hearings in the Senate IP Subcommittee on AI and copyright this summer. Senators Blackburn (R-TN) and Klobuchar (D-MN) emphasized the importance of compensating creators and copyright owners for the use of their works to train AI. Blackburn specifically suggested SoundExchange’s model. Altman informed members that OpenAI is actively developing a copyright system designed to provide compensation to artists whose work has been utilized in the creation of new content. He also said that content creators should have a say in how their voices, likenesses, or copyrighted content are used to train AI models. Multiple Senators and Professor Marcus repeatedly emphasized that Congress had failed to tackle the risks associated with social media during its early stages and pledged to avoid repeating those errors with AI such as Section 230. A full summary memo from ACG can be provided upon request and you may watch the full hearing [here](#).

Headlines and Highlights:

- Senate and House Judiciary Committees Hold Hearings on AI
- USCO Holds Audiovisual AI Listening Session
- Supreme Court Rules Andy Warhol’s Image of Prince Breaches Copyright Laws
- SoundExchange Marks 20th Anniversary with \$10 Billion Distribution Milestone

In the Blogs:

- Hugh Stephens Blog: [Did US-style “Section 230” Internet Platform Immunities Sneak into Canada through CUSMA? No, They Did Not \(As Google Just Learned—the Hard Way\).](#)
- Hugh Stephens Blog: [Implementing Canada’s Online Streaming Act: The CRTC is Fast Out of the Gate](#)
- The New York Times: [Washington Confronts the Challenge of Policing A.I.](#)
- Complete Music Update: [US Congress puts spotlight on copyright questions posed by generative AI](#)

- On Wednesday, the House Judiciary IP Subcommittee held a hearing titled “Artificial Intelligence and Intellectual Property: Part I - Interoperability of AI and Copyright Law.” Lawmakers and witnesses discussed a myriad of pressing topics at the intersection of AI and copyright law, including the use of copyright-protected works in the training of generative AI models, copyright protection of works that were produced with the assistance of generative AI, and the economic impact of generative AI on creators and creative industries. Overall, Democrats and Republicans demonstrated a commitment to working in a bipartisan manner to ensure that AI is implemented in a responsible fashion, and the issues surrounding IP and creative industries are adequately addressed. On ingestion, [Sy Damle](#) with Latham & Watkins LLP and [Chris Callison-Burch](#) with the Allen Institute for Artificial Intelligence both insisted that training AI systems is covered by fair use. Meanwhile, the creatives and artists on the panel – including [Ashley Irwin](#), [Dan Navarro](#), and [Jeffrey Sedlik](#) – raised concern that generative AI systems are being trained using troves of rights holders’ works without their consent, credit, or compensation (the three Cs, as Ashley Irwin coined them). Another issue that witnesses and members grappled with was whether the output of AI systems could be eligible for copyright protection. During his opening statement, Ranking Member Hank Johnson (D-GA) noted that the Copyright Office has [issued guidance](#) on this matter, but he was interested to hear from witnesses on whether legislation is needed to provide clarity on the issue. During his opening statement, Chris Callison-Burch indicated that AI-generated works could be protected by copyright and seemed to think legislation might be needed to provide clarity on that issue. In contrast, witness Ashley Irwin raised concern that the market will be diluted by AI-generated works, and as such he reasoned that they should NOT be eligible for protection. Finally, there seemed to be a consensus among panelists and members on the Subcommittee that transparency will be a key component to the responsible implementation of AI into our society. Chairman Issa (R-CA) suggested that Congress could mandate AI developers to make their database of inputs searchable so rights holders could easily determine whether their works were used to train AI systems. You may watch the full hearing [here](#) and a summary by ACG can be provided upon request.

II. Administration Updates

- Last week, the Office of the U.S. Trade Representative (USTR) announced the extension of 77 of the 81 COVID-related exclusions in the China Section 301 Investigation. Although the exclusions were previously scheduled to expire on May 15, 2023, they have been extended through September 30, 2023. The COVID exclusions, which cover medical-care products, were initially granted in December 2020. Additional information is set out in the Federal Register notice, which can be viewed [here](#).
- From May 8th – 15th, the USTR and the Department of Commerce participated in the third negotiating round for the Indo-Pacific Economic Framework for Prosperity (IPEF) in Singapore. According to a readout of the negotiating round from USTR, building on the discussions that took place during the second negotiating round in Bali, Indonesia, in March, the U.S. delegation successfully led in-depth discussions with IPEF partners on Pillars I (Trade), II (Supply Chains), III (Clean Economy), and Pillar IV (Fair Economy). The IPEF negotiating round hosted by Singapore is the final round prior to the IPEF Ministerial in Detroit, Michigan, on May 27th. Find a full readout of the talks [here](#).

III. USCO Updates:

- 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 AI 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.' The answer will depend on the circumstances, particularly how the AI tool operates and how it was used to create the final work. 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:

- [Music and Sound Recordings](#) on Wednesday, May 31, from 1:00 p.m. to 4:00 p.m. eastern time
- The U.S. Copyright Office has been hosting listening sessions on the use of AI to generate works in creative fields. The third listening session took place on Wednesday and focused on audiovisual works. The session included remarks from the General Counsel and Associate Register of Copyrights Suzy Wilson and was comprised of two panels and an additional speaker section. The listening session brought together a diverse range of participants who shared valuable insights and recommendations regarding the intersection of AI and copyright. The session highlighted the immense potential of AI in the audiovisual industry, spanning presentations, filmmaking, game development, and music. However, participants expressed a collective need for clear guidelines, attribution standards, and the mitigation of biases in AI-generated content. Concerns about copyright infringement, loss of artistic control, and fair compensation resonated strongly among the speakers. The "three Cs" - Consent, Credit, and Compensation - were emphasized as fundamental principles that should underpin AI and copyright practices. The participants stressed the need for education, standardization, policy clarity, and a holistic approach that promotes innovation while respecting the interests of artists. Overall, the discussions underscored the significance of finding a harmonious middle ground that embraces the potential of AI, fosters creative expression, and ensures the protection of human creators' rights and interests. A full summary memo from ACG can be provided upon request.

IV. International Updates:

- On the heels of news that the UK’s Competition and Markets Authority (CMA) is blocking Microsoft’s proposed \$69 billion acquisition of Activision Blizzard, CMA Chief Executive Sarah Cardell told a panel of lawmakers on Tuesday that she is not seeking to create a “hostile environment” for tech companies. However, Cardell told the panel that she stood by the decision to block the deal, even after Brussels gave its approval on Monday. The U.S. Federal Trade Commission (FTC) has also filed a complaint to block the deal. Microsoft has indicated that it will fight both attempts to block the deal with Activision Blizzard. Read more [here](#).
- On Monday, European Union regulators announced that they had approved Microsoft’s \$69 billion acquisition of Activision Blizzard after Microsoft offered remedies “in the nascent area of cloud gaming that have staved off antitrust concerns. These remedies centered on allowing users to stream Activision games they purchase on any cloud streaming platform.” According to CNBC, the EU Commission found that the Activision takeover would not reduce competition in the console market given Sony’s dominance with the PlayStation, also stating that a large part of the EU’s investigation centered around cloud gaming. Read more from *CNBC* [here](#).

V. Judicial Updates:

- Andy Warhol’s portraits of Prince infringed the copyright of a photograph he used as a reference, a 7-2 Supreme Court said Thursday, narrowing the “fair use” right of artists and writers to build on existing works to create something new. Updates to follow as news develops. See more [here](#). The full SCOTUS opinion can be found [here](#).
- On Tuesday, Ed Sheeran defeated another copyright lawsuit over similarities between his song “Thinking Out Loud” and Marvin Gaye’s “Let’s Get It On.” U.S. District Judge Louis Stanton dismissed the case brought by Structured Asset Sales LLC, ruling that the parts of “Let’s Get It On” Sheeran was accused of infringing were too common for copyright protection. She stated that the combination of chord progression and harmonic rhythm was a “basic musical building block” that was too common to merit copyright protection. Read more from *NBC News* [here](#).

VI. Industry Updates:

- On Tuesday, SoundExchange announced they had surpassed the cumulative distribution of \$10 billion in digital streaming royalties in March during the celebration of its 20th anniversary. SoundExchange collects and distributes digital performance royalties on behalf of over 650,000 music creators. “Crossing the \$10 billion threshold and celebrating our 20th anniversary demonstrate our dedication to serving the entire music industry,” said Michael Huppe, President and CEO of SoundExchange. “Over the past 20 years, we have grown into a global music tech organization distributing around \$1 billion annually to a creator community of more than 650,000. I’m incredibly proud of our accomplishments and the team

we've built and look forward to continued innovation that will power the music industry for many years to come.” According to *PRNewswire*, SoundExchange is the only collective rights management organization in the world to make regular, monthly payments to artists – with 90% of royalties distributed within 45 days of receipt. They are also the largest global neighboring rights organization in the world, collecting royalties in more than 50 countries on behalf of more than 370,000 creators. Read more [here](#).