

## CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 10, 2022



### I. Congressional Updates:

- While the election results are still coming in, it is clear that there will not be a so-called “red wave” of Republican victories in the 2022 midterm elections. Republicans are likely to take the majority in the House of Representatives, and at this point it is still unclear whether Democrats will be able to hold onto their razor-thin majority in the Senate. In Pennsylvania, Democrat John Fetterman defeated Republican Mehmet Oz, flipping the seat held by retiring GOP Senator Pat Toomey. However, the other competitive seats that will decide the fate of the majority in the upper chamber – Arizona, Georgia, and Nevada – remain too close to call. As Members of the 117<sup>th</sup> Congress will return for a lame duck session on November 14<sup>th</sup>. Without an incoming large Republican majority in the 118<sup>th</sup> Congress, there should be more political oxygen for members to strike deals this fall on outstanding items and send them to President Biden’s desk for final signature in the coming weeks. The biggest outstanding item is *funding the federal government when the current continuing resolution (CR) expires on December 16<sup>th</sup>*. To avert a government shutdown (or partial shutdown), Congress will either need to broker a deal on the twelve annual appropriations bills or pass another CR to fund all (or some) of the twelve titles at current levels. At this point, it seems most likely that there will be an end-of-the-year omnibus appropriations package to fund the government through Fiscal Year (FY) 2023, as we have seen in recent years. There is also additional political pressure for members to broker a deal on FY2023 appropriations before the end of the year since the leaders of the Senate Appropriations Committee – Leahy (D-VT) and Shelby (R-AL) – are both retiring. As a reminder on [where FY2023 appropriations currently stand](#), in July the

### Headlines and Highlights:

- ACG Elections and Lame Duck Update
- GitHub Programmers File Lawsuit Alleging IP Violations Arising from AI Systems.
- European Songwriter Organizations Call for EU Lawmakers to End ‘The Coercive Buy-Out Practices of US-Based VOD Platforms’
- Pressure mounts on TikTok Over its Music Royalties Payments
- YouTube Music and Premium Top 80 Million Paid Subscribers

### In the Blogs:

- Hugh Stephens Blog: [In Praise of the Extraordinary Power of the Internet—and In Memory of Geoffrey Boisselier Davies \(A Personal Remembrance Day Story\)](#)

House [passed the following appropriations bills](#) by a 220-207 vote as part of a six-bill package: Transportation-HUD, Agriculture, Energy & Water, FSGG, Interior, and Military Construction-VA. The other six appropriations bills have advanced out of the House Appropriations Committee and are awaiting floor action. Meanwhile, in the Senate, Democratic appropriators [released twelve draft FY2023 bills](#) at the end of July. Another so-called “must pass” legislative item on the agenda for the lame duck session is the *annual defense authorization bill, the National Defense Authorization Act (NDAA)*, which has been passed and enacted for 61 years. The House [passed the NDAA for FY2023](#) by a 329-101 vote on July 14<sup>th</sup>. Meanwhile, the Senate released its [proposed NDAA for FY2023](#) on July 18<sup>th</sup>, although it never received floor consideration. SASC Chairman Reed (D-RI) and Ranking Member Inhofe (R-OK) unveiled a “Managers Amendment” on the Senate floor in October – which included the SASC-passed NDAA as well as a series of bipartisan amendments agreed to by both sides. HASC and SASC staff are currently in conference discussions, using the Managers Amendment as the Senate version. It is unlikely that Leader Schumer (D-NY) will bring the NDAA to the Senate floor for a vote after the election – so it appears that these conference negotiations will continue until agreement on a final FY2023 NDAA Conference Report is reached, likely sometime in December.

### III. Judicial Updates

- Last Friday, *Vice* reported that GitHub programmers filed a lawsuit against GitHub, owned by Microsoft, and Open AI for allegedly violating their open-source licenses and using their code to train Microsoft’s latest AI tool, called Copilot. "I am grateful to the programmers and users who came forward to bring this case to fruition and ensure that corporations like Microsoft, GitHub, and OpenAI cannot unfairly profit from the work of open-source creators," said Joseph Saveri, the lawyer whose firm is filing the class-action lawsuit. "This case represents the first major step in the battle against intellectual-property violations in the tech industry arising from artificial-intelligence systems. In this case, the work of open-source programmers is being exploited. But this will not be the last community of creators who are affected by AI systems. Our firm is committed to standing up for these creators and ensuring that companies developing AI products are held accountable under the law." Read more [here](#).

### V. International Updates:

- On Monday, *Digital Music News* reported that Brussels-headquartered ECSA and GESAC have far-reaching “concerns about the growing phenomenon of buy-out and work-made-for-hire contracts imposed on them by the major non-EU based VOD platforms.” These buy-out contracts “deprive audiovisual (or screen) composers from an appropriate and proportionate remuneration, as well as the exercise of their moral rights,” besides “severely” undermining “creators’ ability to earn a living through their artistic work.” ECSA president Helienne Lindvall said, “The options are either accepting the terms of a contract, however damaging... and thereby giving away the royalties they should be entitled to receive or losing the opportunity to work in a project handled by a very popular and dominant VOD platform and

taking the risk of never working again for them. We need EU-wide rules to ensure fairness and create real choices for creators.” Read more [here](#).

## VI. Industry Updates:

- On Tuesday, *Music Ally* reported that there has been increased criticism over TikTok’s seemingly disproportionate royalty payments. Citing a recent Billboard [article](#), a music track that was used in ~500k TikTok videos and generated billions of views “took home less than \$5,000 from the platform.” Another independent label shared figures with Billboard showing royalties of \$8 from 1million views on TikTok. With the recent news that TikTok’s parent company ByteDance is looking to expand into the music streaming business, future talks over music licensing in the wake of the lack of fair royalty payments will be something to watch in the coming months. Read more [here](#).
- On Wednesday, *TechCrunch* reported that YouTube announced it had surpassed 80 million paid subscribers for YouTube Music and Premium. The article states that the company netted a 30-million year-over-year increase of subscribers having reported only 50 million in September of 2021. Lyor Cohen, global head of Music at YouTube and Google, said, “Alongside our music industry partners, we’ve been working hard to make YouTube the best place for every fan and every artist, and today’s news marks a significant milestone in that journey. We’re not stopping here. We’ve got lots to do and look forward to driving more growth and contributions back to the music industry.” YouTube’s official blog post announcement [here](#) and the *TechCrunch* article [here](#). Although there is significant growth for YouTube, they are still far behind Apple, Spotify, and Tencenet in terms of subscriber numbers. Spotify reported a total of 195 million premium subscribers and 456 million monthly active users as part of its third-quarter earnings last month. In July, Apple reported that it had 860 million paid subscriptions across the App Store, Apple TV+, Apple Music, cloud services and its other businesses. While Tencent Music Entertainment Group has about 82.7 million subscribers across its three music streaming apps.