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CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 19, 2021



I. Congressional Updates:

- On Monday, Senator Patrick Leahy (D-VT), Chairman of the Senate Judiciary IP Subcommittee, announced his decision to not run for reelection in 2022. A longtime champion of copyright and intellectual property rights, his announcement was bittersweet for many. As is custom for DC, there are already rumors on who will fill his vacancy in the Senate. Vermont's sole Congressman, Rep. Peter Welch, is the early favorite. Although he has not said anything on the matter, he has been a vocal advocate for reinstating net neutrality rules, rural broadband, consumer privacy, and regulating social media platforms.
- On Tuesday, the Senate voted 68-29 to confirm Jonathan Kanter to serve as the Assistant Attorney General (AAG) of the Department of Justice's (DOJ) Antitrust Division. Of note, Senate Judiciary Committee Ranking Member Chuck Grassley (R-IA) and Antitrust Subcommittee Ranking Member Mike Lee (R-UT) voted in favor of Kanter's confirmation. Kanter's confirmation completes what some stakeholders are calling the "trifecta" of progressive heads on government agencies (Lina Kahn at the FTC, Tim Wu in the White House, and now Jonathan Kanter at DOJ). Read more [here](#).
- On Wednesday, the Senate Commerce Committee held a nomination hearing for FCC Chair Jessica Rosenworcel and FTC nominee Alvaro Bedoya. Overall, the committee members seemed pleased with Ms. Rosenworcel and the job she has done and has pledged to do. The majority of the questions directed at her were very amicable and looking forward to working with her after her expected confirmation. Mr. Bedoya, on the other hand, had a more interesting experience. The Republican members of the

Headlines and Highlights:

- Senator Patrick Leahy Announces Retirement
- Senate Confirms Kanter as AAG of DOJ Antitrust Division
- INFORM Act filed as an Amendment to NDAA
- President Biden Signed the Bipartisan Infrastructure Bill and the House Passed the Reconciliation Package
- Apple to Launch Self-Repair Program for Devices
- Eshoo and Wyden Press for Answers on "Restrictive" E-Book Agreements That Limit Libraries' Digital Lending

In the Blogs:

- Hugh Stephens Blog: [Why is New Zealand's National Library Declaring War on Authors?](#)

committee pulled up his Twitter account and questioned him about his tweets and retweets, many of which were against the Trump Administration and Republican party as a whole. This dynamic was somewhat expected as Rosenworcel has showcased her bipartisan work at the FCC while Mr. Bedoya is widely considered to be a “progressive pick” by the Biden Administration. Senate Commerce Chair Maria Cantwell (D-WA) is eyeing the week after Thanksgiving to hold a hearing on President Joe Biden’s other telecom nominees Gigi Sohn and Alan Davidson. The committee will likely vote on Rosenworcel and Bedoya’s nominations during the same session.

- The House Energy and Commerce Committee marked up the INFORM Consumers Act on Wednesday. The text of the bill has also been filed as an amendment in the Senate to the annual NDAA by Senators Dick Durbin (D-IL) and Bill Cassidy (R-LA). Read more [here](#).
- The House Energy and Commerce Committee announced that they will hold hearings on Section 230 and online safety and accountability in early December. The committee did not say which specific bills would be discussed. The first hearing is scheduled for December 1, and the second hearing is scheduled for December 9.

II. USCO Updates:

- This week, the U.S. Copyright Office announced that it is further extending the deadline for the submission of comments in response to its proposed rulemaking regarding initiating proceedings before the Copyright Claims Board. The deadline for comments was pushed back from November 30th to December 15th. More info. [here](#).
- The U.S. Copyright Office has opened registration for interested parties to view a virtual public roundtable on copyright protections for publishers, with a focus on press publishers. The roundtable, which will be held on December 9, 2021, from 9:00 a.m. to 5:00 p.m. eastern time, will discuss the current copyright protections available to publishers, the desirability and scope of potential new protections, and the interaction between potential new protections and existing laws and international obligations. The roundtable will be held remotely using Zoom. To register, please use the form available [here](#). For those wishing to provide oral testimony in the Audience Participation portions of the event, a sign-up form for Audience Participation will be available on the Office’s [website](#) starting December 7, 2021.

III. Judicial Updates

- On Monday, Ohio Attorney General Dave Yost announced that he had [filed a lawsuit against Meta](#), saying the company misled the public on its harms to children in order to boost its stock and deceive its shareholders. “This suit is without merit, and we will defend ourselves vigorously,” Meta spokesperson Andy Stone said in a statement. The company has consistently denied allegations that it prized profits over users’ safety.

IV. Administration Updates

- President Joe Biden signed the bipartisan infrastructure bill on Monday. The bill provides a \$65 billion boost to expand broadband access.
- *The Wall Street Journal* published an article this week detailing discontent among career officials at FTC who “have felt like an afterthought” in commissioners’ agendas. Sources told the *WSJ* that some senior officials have felt excluded from deliberations and believe their views are not valued. During a speech last week, Republican FTC Commissioner hinted at the reported problem when she accused the commission’s current leadership of sidelining and disdaining their staff. After the speech, Chairwoman Lina Khan, who was sworn in to lead the Commission in June, sent a commission-wide internal memo to address “commentary about the environment at the agency,” and expressing her eagerness to build bridges among staff. Read more [here](#).

V. International Updates:

- Former USPTO Directors Andrei Iancu and David Kappos, along with former Secretary of Commerce Gary Locke, released a White Paper on Wednesday stating their opposition to the Biden Administration’s decision to support the international TRIPS waiver. “The real barriers to vaccinating the developing world are not IP protections. Forcing vaccine makers to give up intellectual property will not lower barriers; it will only create new ones, both for today’s global vaccination project and in future pandemics. Rather, a combination of logistical, regulatory, and infrastructure challenges is slowing global vaccination efforts. Fortunately, these are problems U.S. economic resources and technological innovation can readily solve.” Read the full paper [here](#) and an *IPWatchdog* article [here](#).
- On Thursday, Apple told the European Commission in a [filing](#) that it sees “negative consequences” if policymakers adopt a proposal for a common charging system on electronic devices sold in the EU. Apple said the charging requirement would stifle innovation and urged the EU to avoid such consequences “by reconsidering the proposal entirely or amending it.”

VI. Industry Updates:

- Last week, the American Economics Liberties Projects released a toolkit for state officials interested in challenging the dominance of Big Tech corporations such as Apple, Google, Amazon, and Facebook. Among the report’s suggestions are regulating app store dominance; adopting common carrier rules to stop Big Tech’s self-preferencing; halting subsidies for Big Tech’s expansion; adopting a digital ad revenue tax; and adopting a “right to repair” law for consumer electronics. Where applicable, the report provides model bills that have been introduced in states that other officials can emulate. Of note, while the report is targeted at state officials, its introduction also encourages the federal government to approve complementary measures through Congress and agencies such as the Federal Trade

Commission (FTC) to rein in Big Tech. The American Economic Liberties Project is a nonpartisan organization that advocates for new antitrust laws to take on powerful Big Tech companies. Read the full report [here](#).

- News surfaced this week that Snap has struck a licensing deal with Sony Music Entertainment, making the label group's artists available in the app's sound library. In addition to the latest deal, Snap has partnerships with Universal Music Group, Warner Music Group, Universal Music Publishing Group, Warner Chappell, Kobalt, BMG, and many others. The app also announced that in the coming weeks, it is adding its popular Sounds on Snap, which lets users add song clips to Snaps and Stories, into its AR Lenses. Read more from *Variety* [here](#).
- On Wednesday, Apple announced that it will launch a program early next year that will make it easier for customers to repair their own Apple devices. The initial phase of the program will focus on the most commonly serviced modules, such as the iPhone display, battery, and camera. Apple is a company that has long prided itself on its closed ecosystem of product repairs, so this concession is sure to turn heads. Read the announcement [here](#).
- Rep. Anna Eshoo (D-CA), and Sen. Ron Wyden (D-OR), published a press release announcing their expanded inquiry of "expensive, restrictive" (quotes added by ACG) lease terms for lending e-book contracts with libraries, in letters to nine e-book aggregators and platforms. They raised concerns that libraries are facing financial challenges lending e-books and are often unable to make books available to their patrons as a result. "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. These licensing agreements, with terms set by individual publishers and e-book aggregators, often include restrictions on lending, transfer, and reproduction, which may conflict with libraries' ability to loan books, as well as with copyright exceptions and limitations. Under these arrangements, libraries are forced to rent books through very restrictive agreements that look like leases." Wyden and Eshoo asked similar questions of the five major book publishers in [a September letter](#). The full letter can be found [here](#).
- On Thursday, November 18, 2021, the Patent Public Advisory Committee (PPAC) held its fourth and final meeting of 2021. The PPAC reviews the policies, goals, performance, budget, and user fees of patent operations and advises the director on these matters. The topics covered included: Innovation Expansion; Artificial Intelligence and Information Technology; Legislative Updates; Update on the USPTO Finances and Budget; International Outreach; the Patent Trial and Appeal Board (PTAB); and Patent Quality and Pendency. A recording of the meeting will be posted [here](#). A summary of the meeting can be found [here](#).