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CONTENT & TECHNOLOGY POLICY REPORT NOVEMBER 12, 2021



I. Congressional Updates:

- Last weekend, Congress passed the \$1 trillion infrastructure bill. Many in the tech industry praised its passage. "By including investments that will pave the way for broadband to be more accessible and available, this measure will ensure that communities across the country are able to more equitably access the internet," Internet Association CEO K. Dane Snowden said in a statement. Overall, the bill allocates a total of \$65 billion for broadband which includes \$42.45 billion in grants to states, \$14.2 billion to build on the Emergency Broadband Benefit Program to provide discounts to low-income Americans, as well as an additional \$2 billion for rural broadband construction. The bill now goes to President Biden's desk to be signed. Read more [here](#).
- Last Friday, Senators Amy Klobuchar (D-MN) and Tom Cotton (R-AK) introduced the Platform Competition and Opportunity Act, a companion bill to a House bill of the same name, which passed out of the House Judiciary Committee in June. The bill would make it more difficult for Big Tech to acquire rival companies and would force them to prove proposed mergers are not anticompetitive. Read more [here](#).
- Last week, four additional Senators signed on as cosponsors of the [Open App Markets Act](#), a bill that would require alternative payment methods and app stores to be made available on smartphones. Senators Marco Rubio (R-FL), Cynthia Lummis (R-WY), Lindsey Graham (R-SC), and Cory Booker (D-NJ) joined Richard Blumenthal (D-CT), Amy Klobuchar (D-MN), and Marsha Blackburn (R-TN). "For too long, Apple and Google have created walled

Headlines and Highlights:

- Infrastructure Bill Passes with \$65 Billion for Broadband
- Lawmakers Receive Letter in Support of FTC Provision in Build Back Better Act
- The Senate Aims to Block Big Tech Mergers Through Legislation
- Librarian of Congress Names Judge Suzanne Barnett Interim Chief Copyright Royalty Judge
- Senate Announces First FCC Nomination Hearing
- The Secure Equipment Act was Signed into Law

In the Blogs:

- Hugh Stephens Blog: ["It's Not Really Our Fault: It's the Algorithm"](#)

gardens around their app stores,” Lummis said. “This legislation would introduce much-needed competition into these app store ecosystems.”

- On Friday, November 5, the Filter Bubble Transparency Act was introduced in the House by Reps. Ken Buck (R-CO), David Cicilline (D-RI), Lori Trahan (D-MA), and Burgess Owens (R-UT). The bill was reintroduced in the Senate back in June by Senators John Thune (R-SD), Richard Blumenthal (D-CT), Jerry Moran (R-KS), Marsha Blackburn (R-TN), and Brian Schatz (D-HI). The bill would require internet platforms to let people use a version of their services where content is not selected by "opaque algorithms" driven by personal data. "Consumers should have the option to engage with internet platforms without being manipulated by secret algorithms driven by user-specific data," said Buck. Read more [here](#).
- Chair Eddie Bernice Johnson (D-TX) and ranking member Frank Lucas (R-OK) wrote a letter asking Director of the U.S. Office of Science and Technology Policy and Science Advisor to the President, Eric Lander, to draft a report on ways to protect and boost spectrum access and quality for science and operational uses. “As demand for spectrum for mobile applications has increased drastically in recent years, spectrum-dependent scientific fields and operational functions such as weather forecasting are facing increasing threats.” Read the full letter [here](#).
- On Monday, Senate Commerce Consumer Protection Subcommittee Chair Richard Blumenthal (D-CT) sent letters requesting that Snapchat, TikTok, and YouTube publish their internal research, algorithms, and datasets on how their platforms impact children and teens by November 24. The letters follow up on a hearing the subcommittee held last month that featured testimony from the Big Tech companies. Read the letter to Snap [here](#) and more [here](#). Also, Rep. Raja Krishnamoorthi (D-IL), chair of the House Oversight panel on economic and consumer policy, wrote to TikTok CEO Shou Zi Chew on Wednesday demanding the company turn over “documents and information about TikTok’s troubling practice of showing dangerous content to minors, including sex- and drug-related videos and videos peddling Covid-19 misinformation.” Read the full letter [here](#).

II. USCO Updates:

- The Copyright Office is further extending temporary adjustments to certain timing provisions under the Copyright Act for persons affected by the COVID-19 national emergency. The Register is extending these modifications through December 31, 2021. The Register’s authority under the CARES Act expires after that date, and therefore these adjustments will not be extended further. For additional information, please visit the Office’s [Coronavirus page](#).
- The U.S. Copyright Office is seeking further comments on the effectiveness of copyright protections for publishers, with a focus on press publishers. Responses are due on or before November 26, 2021—or during the virtual public roundtable, which will be held on December 9, 2021. On November 29, 2021, the Office will post a link [here](#) through which parties can submit second round comments. Read more [here](#).

- Librarian of Congress Carla Hayden announced her selection of Judge Suzanne Barnett as interim Chief Copyright Royalty Judge and head of the Copyright Royalty Board, effective November 8. Barnett previously served as the Chief Copyright Royalty Judge from 2012 until her retirement in 2019. Barnett is replacing Chief Judge Jesse Feder, who is stepping down from the position, which he has held since 2019. More information about the appointment can be found [here](#).
- On September 29, the U.S. Copyright Office issued a notice of proposed rulemaking seeking public comment on a broad range of procedures governing the initial stages of proceedings before the Copyright Claims Board. The Office is now further extending the deadlines for submission of comments. Initial comments must be received no later than 11:59 p.m. eastern time on November 30 and reply comments must be received no later than 11:59 p.m. eastern time on December 15. A formal notice announcing the extensions will be published in the *Federal Register*. The Office does not intend to grant further extensions in this proceeding. Instructions on how to submit comments are available [here](#).

III. Judicial Updates

- Medical device company Arthrex has agreed to resolve allegations that it violated the False Claims Act by paying kickbacks that caused the submission of false claims to the Medicare program. In the Department of Justice press release, Acting U.S. Attorney Nathaniel R. Mendell for the District of Massachusetts stated, “Paying bribes to physicians to distort their medical decision-making corrupts the health care system. This settlement demonstrates our dedication to ensuring that taxpayers and patients get a health care system that is on the level. Kickbacks have no place anywhere in our health care system, and we will continue to identify and punish this illegal conduct.” The lawsuit was filed in the U.S. District Court for the District of Massachusetts and is captioned *United States ex rel. Shea v. Arthrex Inc. et al.*, No. 20-cv-10210-ADB (D. Mass.) Read more [here](#).
- Back in September, Apple was found to not violate antitrust law with its 30% commissions on App Store sales, but their practice of barring developers from informing customers of cheaper options was deemed illegal. Apple argues that they will be harmed if they let developers steer their customers to cheaper payment systems. In its [court filings](#), Apple highlighted [a recent class-action settlement under which it agreed to allow developers to email customers](#), as well as [a settlement with Japanese antitrust regulators](#) to let certain apps bypass its commissions. Apple said it was “working hard to address these difficult issues in a changing world, enhancing information flow without compromising the consumer experience” (Politico Morning Tech).

IV. Administration Updates

- Senate Commerce Committee Chair Maria Cantwell (D-WA) signaled earlier this month that she wanted a single hearing for both FCC Chair Jessica Rosenworcel and Gigi Sohn as well as possibly other nominees such as Alan Davidson for NTIA. Late Wednesday evening it

was reported that the Senate Committee on Commerce, Science, and Transportation, will convene an executive session at 10:00 a.m. on Wednesday, November 17, to consider the nominations of the Honorable Jessica Rosenworcel, to be a Commissioner of the Federal Communications Commission, and Mr. Alvaro M. Bedoya, to be a Commissioner of the Federal Trade Commission. Notably, Gigi Sohn will not appear. Link to the hearing can be found [here](#).

- Commerce Secretary Gina Raimondo is looking to increase broadband outreach and implementation as well as staffing up NTIA to help distribute more than \$42 billion in funding. “She emphasized a desire to avoid “overbuilding,” or spending government subsidies to build internet infrastructure in areas where private companies already have customers. And she said the Biden administration, despite its urgency to close the digital divide, will take its time and be precise about how it uses those funds” (Politico Morning Tech).
- The FTC and DOJ announced that they will hold a virtual public workshop to explore competition in labor markets on December 6 and 7. According to the announcement, the workshop will include, a series of panels, presentations, and remarks that will address competition issues affecting labor markets and the welfare of workers, including: labor monopsony; the increased use of restrictive contractual clauses in labor agreements, including non-competes and non-disclosure agreements; information sharing and benchmarking activity among competing employers; the role of other federal agencies in ensuring fair competition in labor markets; and the relationship between antitrust law and collective bargaining efforts in the gig economy.” Interested parties may submit public comments online now through Dec. 20, at [Regulations.gov](https://www.regulations.gov). The workshop will be held virtually and webcast on the FTC’s [website](#). Read the full announcement [here](#).
- President Biden officially signed the Secure Equipment Act into law on Thursday, November 11. The Senate passed the bill unanimously last week which requires the FCC to block Chinese companies that are designated as possible national security threats from gaining a foothold in the U.S. telecom networks. Huawei and ZTE are two of the primary examples of companies that will be impacted.

V. International Updates:

- The global tech alliance, an idea proposed by the U.S. that would promote internet freedom, is facing some pushback. EU leaders want to make sure that joining would not limit their ability to regulate tech platforms. “The overall success of the initiative would be facilitated by setting high-level principles that would allow to draw a line with respect to authoritarian regimes, but not commit to detailed actions, which could lead to controversies and risk lowering the EU ambitions. Such principles should respect the regulatory autonomy of participants.” Plans for this “Alliance for the Future of the Internet,” [first reported by POLITICO](#), are preliminary, although the EU document said the U.S. “appears realistic” about making an announcement timed with Biden’s much-anticipated virtual [Summit for Democracy](#), which will be held next month (Politico Morning Tech).

- On Wednesday, European antitrust enforces ruled against Google’s appeal of a 2017 decision that found they favored their own search services related to online shopping over rivals. The judges said Google had abused its dominant position in ways that harmed both consumer choice and smaller rivals, justifying the 2017 decision’s €2.4 billion fine. You can read the full ruling [here](#).
- On Thursday, the UK Intellectual Property Office (UKIPO) issued a second consultation on artificial intelligence and intellectual property aimed at “focusing on what changes are required for copyright and patents laws in order to facilitate the UK being a leader in AI research, development, and implementation.” Read more [here](#).

VI. Industry Updates:

- The retail-focused Buy Safe America Coalition and the PASS Coalition, which represents online marketplaces eBay, Etsy, Poshmark, Mercari and OfferUp, are urging lawmakers to pass the House version of the INFORM Consumers Act ([H.R. 5502](#) / [S. 936](#)) which has been filed as an amendment to the Senate’s annual defense bill. The two coalitions wrote a letter to the House bill’s lead sponsors Reps. Jan Schakowsky (D-IL) and Gus Bilirakis (R-FL) saying, “It is time to take action and stop counterfeiters and organized retail criminals from duping American consumers with their dangerous, harmful and stolen goods.” Read the full letter [here](#).
- On November 8, multiple civil rights, and consumer protection groups, including the Electronic Privacy Information Center, the Electronic Frontier Foundation, Common Sense, and the Center for Digital Democracy, sent a letter to Senate Majority Leader Chuck Schumer (D-NY) and Minority Leader Mitch McConnell (R-KY) as well as Speaker of the House Nancy Pelosi (D-CA) and Minority Leader Kevin McCarthy (R-CA) endorsing the FTC provisions in the reconciliation package. Specifically, the groups endorsed sections 31501 and 62002 of the Build Back Better Act, which would provide \$500 million each for the FTC’s data protection and antitrust activities, and section 31502, which would give the FTC authority to obtain first-time civil penalties against companies that engage in unfair or deceptive practices. Together, the letter asserts that the measures would “significantly strengthen the Commission’s hand against discriminatory and abusive data practices and the businesses that engage in them.” Read the letter [here](#).