

CONTENT & TECHNOLOGY POLICY REPORT SEPTEMBER 8, 2023



I. Congressional Updates:

- On July 27, 2023, Senator Brian Schatz (D-HI) introduced the “AI Labeling Act of 2023” (S. 2691). The bill would require that every generative AI system that produces images, videos, audio, or multimedia content should include a clear and conspicuous disclosure that it was created with AI. The resulting output would then have to include information in its metadata that identifies it as AI-generated content, what AI tool was used, and the date and time the output was created. Sen. John Kennedy (R-LA) is the only cosponsor of the legislation.
- Just before leaving for the August recess, Reps. Anna G. Eshoo (CA-16), Rep. Michael McCaul (TX-10), Rep. Don Beyer (VA-08), and Rep. Jay Obernolte (CA-23), Co-Chairs and Vice-Chairs of the Congressional Artificial Intelligence Caucus, introduced the Creating Resources for Every American To Experiment with Artificial Intelligence Act of 2023 (CREATE AI Act). According to the press release, the CREATE AI Act establishes the National Artificial Intelligence Research Resource (NAIRR) as a shared national research infrastructure that provides AI researchers and students from diverse backgrounds with greater access to the complex resources, data, and tools needed to develop safe and trustworthy artificial intelligence. A Senate companion bill was introduced at the same time by Sens. Martin Heinrich (D-NM), Sen. Todd Young (R-IN), Sen. Cory Booker (D-NJ), and Sen. Mike Rounds (R-SD). The legislation has four primary goals. (1) Spur innovation and advance the development of safe, reliable, and trustworthy AI research and development. (2) Improve access to AI resources for researchers and students, including groups typically underrepresented in

Headlines and Highlights:

- CREATE AI Act Introduced
- Tech Chiefs to Gather in Washington re: AI Regulation
- Copyright Office Issues Notice of Inquiry on Copyright and Artificial Intelligence
- Google and Universal Music Working on Licensing Voices for AI-generated Songs
- Meta to End News Access in Canada Over Publisher Payment Law
- China Expected at UK AI Summit Despite Pushback from Allies

In the Blogs:

- The Hollywood Reporter: [Scraping or Stealing? A Legal Reckoning Over AI Looms](#)
- The Washington Post: [From China to Brazil, here's how AI is regulated around the world](#)
- [Majority Leader Schumer AI Insight Forum To Take Place Next Week](#)

STEM. (3) Improve capacity for AI research in the United States. (4) Support the testing, benchmarking, and evaluation of AI systems developed and deployed in the United States. Read the full bill text [HERE](#). Read a fact sheet on the CREATE AI Act [HERE](#). Read the press release from Rep. Eshoo's office [here](#).

- On August 15, the New Democrat Coalition announced the first ever AI working group, which will aim to develop and advance forward-thinking policies that both encourage innovation and guard against potential risks. Led by Chair Derek Kilmer (D-WA-06) and Vice Chairs Don Beyer (D-VA-08), Jeff Jackson (D-NC-14), Sara Jacobs (D-CA-51), Susie Lee (D-NV-02), and Haley Stevens (D-MI-11), the working group will engage with the Biden administration, key stakeholders and lawmakers on both sides of the aisle and Capitol to develop and advance sensible, bipartisan policies to address the emerging technology. Rep. Derek Kilmer released the following statement. “As AI’s applications expand and change, it is incumbent on lawmakers to address its unique opportunities and challenges by creating a regulatory framework that both encourages growth while guarding against potential risks. This AI Working Group will focus on understanding AI’s many applications, assessing their benefits and drawbacks, and proposing policies that position the U.S. as a world leader in AI innovation and safety.” Read more [here](#).
- On August 28, *The New York Times* reported that Sen. Chuck Schumer will begin the first of nine AI listening sessions next month with a group of tech leaders, including Elon Musk of Tesla, Sundar Pichai of Google, Sam Altman of OpenAI, Satya Nadella of Microsoft, Mark Zuckerberg of Meta, Jensen Huang of Nvidia, and Eric Schmidt, the former CEO of Google. The first session is a closed-door listening session for lawmakers and will be held in Washington on September 13. According to the article, “Mr. Schumer, the majority leader, said the sessions were intended to educate members of Congress on the risks posed by A.I. on jobs, the spread of disinformation and intellectual property theft. Lawmakers will also learn about opportunities created by the technology in the field of research on diseases, his office said.” Read more [here](#).
- On Wednesday, the Senate Judiciary Committee held a nomination hearing for Deborah Robinson’s appointment as the Intellectual Property Enforcement Coordinator (IPEC) at the Executive Office of the President. The hearing included questions from Senators Durbin, Padilla, Hirono, Welch, and Coons. Of note, Senator Coons announced plans to reintroduce the SHOP SAFE Act and announced he is about to release a proposal to protect individuals against unauthorized reproductions of their voice, name, image, and likeness. Further, Senator Coons suggested no-fault injunctions as a remedy in the US. He also submitted a letter of endorsement for Ms. Robinson that included organizations such as the Copyright Alliance, and several other creator groups. A full memo from ACG can be provided upon request.
- On Friday, the *New York Times* reported that Senators Richard Blumenthal (D-CT) and Josh Hawley (R-MO) plan to announce a sweeping framework to regulate artificial intelligence. According to the article, the Senators said that their framework will include requirements for the licensing and auditing of AI, the creation of an independent federal office to oversee the technology, liability for companies for privacy and civil rights violations and requirements for data transparency and safety standards. They plan to announce their proposals in an AI hearing on Tuesday, where Brad Smith from Microsoft and William Dally from Nvidia will

be witnesses. “We are really moving very forcefully and promptly toward legislation,” said Mr. Blumenthal, chair of the subcommittee. “Our goal is not only to educate and inform the public but to reach very specific and definite results.” Read more from the *New York Times* [here](#) and find the hearing notice [here](#).

- Next Tuesday, the Senate Judiciary Committee is expected to hold a hearing at 10:00 a.m. ET on "Book Bans: Examining How Censorship Limits Liberty and Literature." SJC Chair Durbin's office said the witnesses are confirmed, but they have not announced them publicly yet. The link to the hearing can be found [here](#).
- Next Tuesday, the Senate Judiciary Committee Subcommittee on Privacy, Technology, and the Law will hold a hearing titled “Oversight of AI: Legislating on Artificial Intelligence.” Witnesses have not been announced at the time of this writing. The hearing is expected to take place at 2:30 p.m. ET. A link to the livestream can be found [here](#).

II. Administration Updates

- On August 9, *Reuters* reported that the White House has launched a multimillion-dollar cyber contest to spur the use of AI to find and fix security flaws in U.S. government infrastructure in the face of growing use of the technology by hackers for malicious purposes. "Cybersecurity is a race between offense and defense," said Anne Neuberger, the U.S. government's deputy national security advisor for cyber and emerging technology. According to the article, the two-year contest includes around \$20 million in rewards and will be led by the Defense Advanced Research Projects Agency (DARPA). Alphabet, Google, Anthropic, Microsoft, and OpenAI have all agreed to make their systems available for the challenge. "Our goal with the DARPA AI challenge is to catalyze a larger community of cyber defenders who use the participating AI models to race faster – using generative AI to bolster our cyber defenses," Neuberger said. Read more [here](#).

III. USCO Updates:

- On July 31, the US Copyright Office (USCO) announced that they have issued a [final rule](#) regarding Copyright Claims Board (CCB) procedures governing district court referrals, proof of service forms, default proceedings, and the appearance of law student representatives before the CCB. The final rule is available [here](#).
- On August 1, the USCO marked the one-year anniversary of the public launch of the online recordation system. Since opening to the public, 75 percent of all recorded documents have been submitted through the online system. This represents over 8,000 documents containing over 350,000 works pertaining to copyrights. “The Office is gratified to see the positive reception and increasing use of the online Recordation System since it opened to the public a year ago,” said Shira Perlmutter, Register of Copyrights and Director of the U.S. Copyright Office. “From faster processing times to consolidated tracking and messaging, this system is a success story as the first major product release of our Enterprise Copyright System (ECS),

which will integrate and improve all of our services.” For more information about copyright recordation and the online Recordation System, visit copyright.gov/recordation

- On August 11, the USCO issued a final rule regarding the use of *ex parte* communications in informal rulemakings. The proposed rule defines *ex parte* communications, instructs the public on how to request an *ex parte* meeting with the Office, sets forth the responsibilities of parties after an *ex parte* meeting, and addresses impermissible *ex parte* communications. Additional information on this rule is available [here](#).
- On August 29, *Complete Music Update* reported that the USCO declined to review the compulsory license (also known as the Section 115 license) that covers the mechanical copying of songs within the United States. The consideration was in response to a request made by songwriter George Johnson in a letter sent to the USCO back in June in which he asked the office for a new study. In reply, the USCO stated, “As you know, the section 115 license was previously explored by the Office, and it was recently amended by Congress as part of the Music Modernization Act. As the changes made to the license through the MMA have been effective only for the past two and a half years, the Office believes that it would be premature at this time to engage in a new study of the section 115 license”. Read more [here](#).
- On August 30, the USCO issued a [notice of inquiry \(NOI\)](#) in the *Federal Register* on copyright and artificial intelligence (AI). The Office is undertaking a study of the copyright law and policy issues raised by generative AI and is assessing whether legislative or regulatory steps are warranted. According to the USCO’s press release, the NOI seeks factual information and views on a number of copyright issues raised by recent advances in generative AI. These issues include the use of copyrighted works to train AI models, the appropriate levels of transparency and disclosure with respect to the use of copyrighted works, the legal status of AI-generated outputs, and the appropriate treatment of AI-generated outputs that mimic the personal attributes of human artists. “We launched this initiative at the beginning of the year to focus on the increasingly complex issues raised by generative AI. This NOI and the public comments we will receive represent a critical next step,” said Shira Perlmutter, Register of Copyrights and Director of the U.S. Copyright Office. Initial written comments are due on Wednesday, October 18, 2023. Reply comments are due on Wednesday, November 15, 2023. Instructions for submitting comments are available on the Office’s [website](#).
- On September 1, the USCO issued a notice of proposed rulemaking to update its regulations regarding electronic deposits of published works submitted to the Office eligible for selection by the Library of Congress for addition to its collections. The notice of proposed rulemaking and instructions on how to submit comments are available [here](#). Comments must be received no later than October 2, 2023. Reply comments are due by October 16, 2023.
- On Tuesday, the USCO issued an interpretive rule regarding the Music Modernization Act’s due date for royalty payments as it relates to late fees under the blanket statutory mechanical license. They concluded that the statute’s due date provisions are unambiguous (no later than forty-five days after the end of the monthly reporting period) and, therefore, are not issuing regulations on this topic and will be terminating the related notification of inquiry. More information can be found [here](#).

- On Wednesday, *Reuters* reported that the USCO has again rejected copyright protection for an AI-created image. Artist Jason Allen submitted a request for copyright covering an image he created with Midjourney. The USCO said that Allen’s science-fiction-themed image “Theatre D’opera Spatial” was not entitled to copyright protection because it was not the product of human authorship. According to the article, Allen said on Wednesday that the office’s decision on his work was expected, but he was “certain we will win in the end. If this stands, it is going to create more problems than it solves,” Allen said. “This is going to create new and creative problems for the copyright office in ways we can’t even speculate yet.” Read more [here](#).

IV. Industry Updates:

- On August 8, *The Guardian* reported that Google believes in an opt-out system for publishers if they do not want their works to be mined by generative AI systems. According to the article, Google submitted comments to the Australian government’s review of the regulatory framework around AI. In their comments, Google stated that copyright law should be altered to allow for generative AI systems to scrape the internet. The company has called for Australian policymakers to promote “copyright systems that enable appropriate and fair use of copyrighted content to enable the training of AI models in Australia on a broad and diverse range of data while supporting workable opt-outs for entities that prefer their data not to be trained in using AI systems.” Read more [here](#).
- On August 9, *The Guardian* reported that Google and Universal Music are negotiating a deal on licensing the voices and melodies of artists for AI-generated songs. Robert Kyncl, the CEO of Warner Music Group, said on Tuesday that artists should have a choice when it came to AI music. “There’s nothing more precious to an artist than their voice, and protecting their voice is protecting their livelihood and protecting their persona.” According to the article, the final product would be a tool for individuals to use that could make AI-generated songs while having the relevant copyright owners get paid. Read more [here](#).
- On August 12, *Rolling Stone* reported that record labels, including Universal Music Group (UMG), Sony Music Entertainment, Capitol Records, and others, filed a lawsuit against the Internet Archive over their “Great 78 Project,” accusing them of behaving as an “illegal record store.” The suit claims that the Internet Archive has violated copyright laws by “transferring copies of those files to members of the public, Internet Archive has reproduced and distributed without authorization Plaintiffs’ protected sound recordings.” According to the complaint, the record companies argue that “Defendants attempt to defend their wholesale theft of generations of music under the guise of ‘preservation and research,’ but this is a smokescreen: their activities far exceed those limited purposes. Internet Archive unabashedly seeks to provide free and unlimited access to music for everyone, regardless of copyright.” Read more [here](#).
- On August 14, *Digital Music News* reported that the Copyright Royalty Board (CRB) officially issued its final determination for the Phonorecords III ruling. The decision

encompasses a 43.8 percent rate boost for on-demand streaming across 2018 and 2022. Read more [here](#).

- On August 14, *Reuters* reported that Sony Music dropped a lawsuit against Triller over allegations that the platform used the label’s music without permission. According to the article, the parties told the court that they would end the copyright case with prejudice, meaning it cannot be refiled. Part of the original lawsuit was settled in April when Triller agreed to pay over \$4.5 million for breach of contract. Read more [here](#).
- On August 16, *Music Business Worldwide* reported that SoundExchange has launched a lawsuit against Sirius XM alleging that they have withheld substantial unpaid royalties and late fees owed under the Copyright Act. SoundExchange says that it estimates that SiriusXM has “wrongfully withheld more than \$150 million in unpaid royalties over the past several years”. SoundExchange CEO Mike Huppe released a statement saying, “It is extremely unfortunate that we must bring this action on behalf of creators against SiriusXM. In recent years we have viewed SiriusXM as a willingly lawful and compliant company that shares our desire for a robust streaming marketplace. But SiriusXM has and continues to wrongfully exploit the rules to significantly underpay the satellite royalties that it owes.” Read more [here](#).
- On August 16, *NPR* reported that the New York Times and OpenAI may end up in court after weeks of tense negotiations over a potential licensing deal. According to the article, the New York Times and OpenAI have been discussing a potential licensing deal that would have OpenAI pay the New York Times for incorporating its stories into AI tools. However, after weeks of negotiations, lawyers for the New York Times are considering legal action to protect the intellectual property rights associated with its reporting. The potential case could have massive ramifications. “If OpenAI is found to have violated any copyrights in this process, federal law allows for the infringing articles to be destroyed at the end of the case. In other words, if a federal judge finds that OpenAI illegally copied the *Times*’ articles to train its AI model, the court could order the company to destroy ChatGPT’s dataset, forcing the company to recreate it using only work that it is authorized to use.” Read more [here](#).
- On August 16, The New York Post reported that US booksellers such as the American Booksellers Association, the Open Markets Institute, and the Authors Guild have urged the Federal Trade Commission (FTC) to investigate Amazon’s alleged monopolistic grip over the industry. The groups sent a letter to FTC Chair Lina Khan and the DOJ’s Jonathan Kanter which stated, “Amazon has an oversized power to control what readers see when browsing for books [and that Amazon incorporates] strong-arm tactics to force traditional publishers to agree to onerous contract terms and conditions” and self-preferential treatment for book listings and pricing. Read more [here](#).
- On August 16, *The Verge* reported that the *Associated Press (AP)* released guidelines around generative AI to its journalists. According to the article, journalists for *AP* can experiment with ChatGPT but are asked not to use the tool when creating publishable content. *The Verge* also noted that *AP* signed an agreement with OpenAI, allowing the AI company to use its news stories to train its models. Read more [here](#).

- On August 18, the *Hollywood Reporter* reported that a federal judge upheld a finding from the US Copyright Office that a piece of art created by AI is not open to copyright protection. The ruling turned down Stephen Thaler’s bid, challenging the USCO’s refusal to register works made by his AI model. Copyright law has “never stretched so far” to “protect works generated by new forms of technology operating absent any guiding human hand,” U.S. District Judge Beryl Howell found. The opinion stressed, “Human authorship is a bedrock requirement.” Read more [here](#).
- On August 29, the Association of American Publishers (AAP) reported that the United States Court of Appeals for the District of Columbia ruled in favor of Valancourt Books, rejecting the Government’s argument that depositing books with the Library of Congress without compensation and under threat of substantial penalties is a condition of copyright protection. According to AAP’s press release, the opinion found “mandatory deposit” (section 407 of the Copyright Act) unconstitutional as applied to physical books. AAP CEO Maria Pallante commented saying, “We are pleased with the Court’s clear and concise decision, which unpacks a troubling legacy practice in the Library of Congress that has been unconstitutional since Congress enacted the 1976 Copyright Act, which, among other things, provides that copyright protection must be automatic, free of burdensome formalities, and in step with global standards.” Read AAP’s press release [here](#), the Court of Appeals decision [here](#), and AAP’s amicus brief [here](#).
- On August 29, *Reuters* reported that OpenAI has asked a San Francisco federal court to dismiss parts of two lawsuits from authors, including comedian Sarah Silverman, who accused the company of infringing their copyrights. According to the article, Open AI recently responded to allegations that text generated by ChatGPT constitutes “derivative works” of books by saying the authors failed to demonstrate that ChatGPT’s output is similar enough to their work to prove copyright infringement. Read more [here](#).
- On September 7, the Authors Guild reported that after months of discussions with Amazon, the tech giant has announced a new policy that requires users who post content to its Kindle Direct Publishing (KDP) platform to disclose if the content contains AI-generated material. In a statement the Authors Guild said, “We are grateful to the Amazon team for taking our concerns into account and enacting this important step toward ensuring transparency and accountability for AI-generated content.” Read more [here](#).

V. International Updates:

- At the beginning of August, *The Guardian* reported that Meta has begun the process to end access to news on Facebook and Instagram in Canada over the recent passage of the Online News Act that requires internet giants to negotiate commercial deals with news publishers for their content. Canada’s heritage minister, Pascale St-Onge, who is in charge of the government’s dealings with Meta, called the move irresponsible. “[Meta] would rather block their users from accessing good quality and local news instead of paying their fair share to news organizations,” St-Onge said in a statement. Read more [here](#).

- On August 25, *POLITICO* reported that China is expected to attend the UK AI summit later this fall. According to three people familiar with the U.K.’s plans for the AI summit, the Rishi Sunak administration is determined to involve the Chinese government in some form — despite resistance from Japan, the United States, and the European Union. The UK’s top diplomat, James Cleverly is expected to visit Beijing at the end of August to discuss China’s involvement. In a speech this April related to working with China, Cleverly stated, “We have an obligation to future generations to engage because otherwise we would be failing in our duty to sustain – and shape – the international order. Shirking that challenge would be a sign not of strength but of weakness.” Cleverly also told the United Nations Security Council in July that no country will be untouched by AI, so “we must involve and engage the widest coalition of international actors from all sectors,” while AI Minister Jonathan Berry told *POLITICO* last month that China will have to be involved “one way or the other” in global conversations on addressing the risks of AI. Read more [here](#).