

## CONTENT & TECHNOLOGY POLICY REPORT JANUARY 13, 2023



### I. Congressional Updates:

- On the 15<sup>th</sup> ballot, the House of Representative elected Representative Kevin McCarthy (R-CA) to serve as the Speaker of the House in the 118<sup>th</sup> Congress. In order to earn the support needed to take the gavel, McCarthy and his allies made a series of concessions to conservatives, including allowing any members to call for a motion to vacate the speaker's chair. He also agreed to allow the House to vote on key conservative bills, such as a balanced budget amendment, congressional term limits, and border security. Read more [here](#).
- On January 9, *Semafor* reported that Reps. Mike Gallagher (R-WI) and Raja Krishnamoorthi (D-IL) wrote a letter to ESPN requesting they end their relationship with TikTok. The lawmakers said that TikTok “poses a significant threat to U.S. national security,” and that the sponsorships raise “serious questions about ESPN corporate decision-making.” According to the article, the lawmakers are asking ESPN to respond to a series of questions by the end of January, including whether the network will “commit to ending its commercial relationship with TikTok, ByteDance, and other Chinese companies determined by the U.S. government to pose national security threats.” Read more [here](#).
- The *Wall Street Journal* reported this week that House Republicans plan to prob the Biden Administration's communications with Big Tech to see if social media companies censored legitimate viewpoints on issues such as COVID-19 that ran counter to White House policy. The House GOP is standing up a new Select Subcommittee on the Weaponization of the Federal Government, which will

### Headlines and Highlights:

- Dr. Dre, Marjorie Taylor Greene Feud over Music Copyright in Politics
- YouTube Wins Partial Summary Judgment in Maria Schneider Copyright Lawsuit
- Protecting American Intellectual Property Act Signed by President Biden
- Artists Are Selling AI-Generated Images of Mickey Mouse to Provoke a Test Case
- Computer Scientist Says AI 'Artist' Deserves its own Copyrights

### In the Blogs:

- Hugh Stephens Blog: [“Controlled Digital Lending”: Could Canadian Universities Find Themselves Out on a Limb?](#)
- Hugh Stephens Blog: [Why Can't Canada Produce Top Quality Localized TV Drama like the Aussies Do?](#)
- The Verge: [What a Speaker McCarthy means for Big Tech](#)

fall under the House Judiciary Committee. The White House has dismissed the effort, with spokesman Ian Sans calling it a partisan political stunt. He urged House Republicans to instead work with the president “to tackle the issues the American people care about the most like inflation.” Read more [here](#).

- On Tuesday, the House also agreed to create a select subcommittee focused on U.S. competition with China through a 365-65 vote, with 146 Democrats joining Republicans in support of the measure. The Select Committee will be chaired by Rep. Mike Gallagher (R-WI) and will investigate the Chinese Communist Party’s economic, technological, and security progress and the strategic competition between Beijing and Washington. The panel – which will be comprised of seven Republicans and five Democrats – will hold public hearings and is tasked with producing policy recommendations as a result of their investigations. Read more [here](#) and [here](#).
- Earlier this week, Rep. Marjorie Taylor Greene (R-GA) posted a political video on her social media that feature Dr. Dre’s hit song “Still D.R.E.” Dr. Dre sent Rep. Greene a letter through his attorney requesting that she stop using his music for campaign promotions. The video, posted to Twitter, has since been taken down. “I don’t license my music to politicians, especially someone as divisive and hateful as this one,” Dr. Dre said in a [statement](#). This is the most recent clash that has long plagued musicians and politicians. Read more on the copyright implications from *Bloomberg Law* [here](#).
- News surfaced this week about which House Republicans will Chair the Subcommittees of the Appropriations Committee, which will be led by Kay Granger (R-TX). Of note, Rep. Hal Rogers (R-KY) is slated to Chair the Commerce-Justice-Science subpanel, Steve Womack (R-AR) will lead the Financial Services and General Government (FSGG) subpanel, and Rep. Mark Amodei (R-NV) will lead the Legislative Branch subpanel. Read more [here](#).

### III. Judicial Updates

- On January 6, *TorrentFreak* reported that YouTube's motion for summary judgment in a lawsuit filed by Maria Schneider has been granted in part and denied in part. The article states that a California district court dismissed all claims related to 27 works, direct infringement claims against 15 works, and 121 other alleged infringements. However, other infringement claims stand, and the case will continue. Back in 2020, musician Maria Schneider filed a class action lawsuit accusing YouTube of mass copyright infringement. According to the article, YouTube’s main defense to Schneider’s copyright claims in other works is that it holds a “[blanket catalog license](#)” granted by Modern Works Music Publishing (MWP), which according to YouTube covers all of Schneider’s musical compositions. “Overall, due to the existence of numerous disputed facts, summary judgment for YouTube is denied on the issue of CMI. The parties are now required to file a numbered list of Schneider’s remaining works-in-suit and corresponding infringement claims by January 12.” Read more from *TorrentFreak* [here](#) and Judge Donato’s order [here](#).
- On Thursday, *PetaPixel* reported that photo agency Backgrid filed a \$228.9 million copyright infringement lawsuit against Twitter. The suit alleges that Twitter failed to take down more than 1,500 photographs of celebrities that were illegally posted to the platform by Twitter users. Backgrid filed the lawsuit on December 30, 2022 and claims they sent over 6,700

DMCA notices requesting removal of the copyrighted material to Twitter but did not receive a single response. Read more [here](#).

#### IV. Administration Updates

- On January 5, President Biden signed into law the Protecting American Intellectual Property Act, bipartisan legislation that mandates strong economic penalties on firms and individuals involved in stealing American IP. Introduced by Senators Chris Van Hollen (D-MD) and Ben Sasse (R-NE), the bill requires a report to Congress within six months, and annually thereafter, identifying (1) Any individual or firm that has engaged in, benefitted from, or provided support for the significant theft of U.S. trade secrets, if that theft constitutes a major threat to the national security, foreign policy, economic health, or financial stability of the United States; and, (2) The chief executive officers and board members of the reported firms and whether those individuals have benefitted from the significant theft of U.S. trade secrets. The bill passed both the Senate and House unanimously in December. Read the full press release from Senator Van Hollen's office [here](#).

#### V. USCO Updates:

- Since opening in June 2022, the Copyright Claims Board has received nearly 300 cases which has prompted increased optimism about its long-term success. Jacqueline Charlesworth, founder of Charlesworth Law and former general counsel for the US Copyright Office who oversaw the study that led to the creation of the board said, "It's a very inexpensive way to get a legal opinion on who's right and who's wrong, and I think there's a need for that. Especially in the copyright area, where there's a lot of confusion and people don't always understand what their rights are and aren't or what fair use is and isn't." In December, the Copyright Office [published](#) an interim rule to ensure that copyright disputes referred from a federal court to the board would have a more streamlined procedural process. According to *Bloomberg Law* the Copyright Office has also been informally consulting with other offices that are interested in introducing small claims tribunals of their own, including the Patent and Trademark Office, which is [considering](#) a small claims patent tribunal. Read more [here](#).
- On November 23, the U.S. Copyright Office published a [Federal Register Notice](#) announcing a joint study with the U.S. Patent and Trademark Office (USPTO) to examine various matters related to intellectual property that arise from the use of non-fungible tokens (NFTs). The dates for written comments and roundtables have been updated as of December 20. The updated dates and times are as follows. Written comments must be received by 11:59 p.m. Eastern Time on February 3, 2023. The roundtable on Trademarks and NFTs will now be held on Tuesday, January 24, 2023. The roundtable on Patents and NFTs will now be held on Thursday, January 26, 2023. The roundtable on Copyrights and NFTs will now be held on Tuesday, January 31, 2023. Read more [here](#).
- The Copyright Office published an interim rule amending its regulations governing the appearance of law student representatives before the Copyright Claims Board (CCB). The interim rule will allow the CCB to modify or suspend certain rules when a claim is referred by a district court and, in cases that are first filed before the CCB, accept alternative proof of

service forms. If you wish to submit comments, they are due by February 2. The interim rule and instructions for submitting comments are available [here](#).

## **V. International Updates:**

- On Wednesday, *Music Business Worldwide*, reported that TikTok has entered into a licensing agreement with Saudi Arabia's Rotana Music Group. Established in 1993, Rotana Music Group is claimed to be "the largest record label and music repertoire holder in the Arab world". TikTok reported that its platform is very popular across the Middle East and North Africa (MENA) as revenue grew by 35% in 2021 according to IFPI, making MENA the fastest-growing music region in the world. Read more [here](#).

## **VI. Industry Updates:**

- According to a *JDSupra* article published on January 6, several artists are using artificial intelligence (AI) image generators to produce images of Mickey Mouse and other copyrighted characters to challenge the current legal status of AI art. Currently, AI cannot hold copyright meaning that AI-generated art sits in the public domain. Many artists and creative professionals are frustrated as their art was used to train the AI system. The artists have chosen to use Mickey Mouse as a test case due to Disney's history of vigorously defending their intellectual property. Read more [here](#).
- On Tuesday, Stephen Thaler asked the U.S. District Court for the District of Columbia to overturn a U.S. Copyright Office decision that said creative works must be made by humans to receive copyright protection. "The fact that various courts have referred to creative activity in human-centric terms, based on the fact that creativity has traditionally been human-centric and romanticized, is very different than there being a legal requirement for human creativity," Thaler's filing said. Read more from *Reuters* [here](#).