

CONTENT & TECHNOLOGY POLICY REPORT JULY 26, 2024



I. Congressional Updates:

- On July 22, the *Protecting and Enhancing Public Access to Codes Act (Pro Codes Act)*, H.R. 1631 was taken up on the House suspension calendar. The Motion to Suspend the Rules and Pass, as amended HR 1631, the *Pro Codes Act*, FAILED by a vote of 248 to 127. (It needed a 2/3 yes to pass the motion.) The *Pro Codes Act* is bi-partisan legislation that ensures that codes and standards continue to be protected by copyright and do not lose copyright protection when they are incorporated into law as long as they are accessible without charge on a publicly available website. The bill was originally introduced in March of 2023 by IP Subcommittee Chairman Darrell Issa (R-CA). As introduced, the bill: Amends title 17 of the United States Code to ensure works incorporated by reference into law are publicly accessible. It is aimed at balancing the creation of standards with public access. It acknowledges the essential role of private standards development organizations in creating technical and voluntary consensus standards, which benefit various sectors, such as innovation, commerce, and public safety, without government cost. It recognizes the need for governments to rely on these standards and protect copyrights while providing public access. Federal and state governments extensively use standards incorporated by reference into their regulations. A markup was held in April in the House Judiciary Committee. Chairman Issa presented an amendment in the nature of a substitution to address two concerns articulated by committee members: Section 3a, ensuring that no personally identifiable information is collected without the consent of the user and Section 3b, requiring that information be made available in a format that includes a searchable table of content. His amendment passed. Two of Rep. Lofgren's (D-CA) amendments were

Headlines and Highlights:

- PRO CODES Act Fails on the House Floor
- Senate Democrats Propose \$55 Million Boost for DOJ Antitrust
- U.S. Copyright Office Issues Final Rule to Create New Group Registration Option for Updates to News Websites
- Altman urges U.S. action to beat China in AI race
- Nike Using AI to Make Dream Shoes

In the Blogs:

- **Hugh Stephens Blog:** [Introducing "Funopoly": \(But What About Copyright?\)](#)
- **Tech Crunch:** [What Kamala Harris has said about AI, tech regulation and more](#)
- **IPWatchdog: AI:** [The Voices Behind the Music](#)

also passed. The first would require the Copyright Office to produce a report on the Pro Codes Act, and the second would direct the US Government Accountability Office (GAO) to conduct a study.

- On July 23, the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet held a hearing entitled, “IP Litigation and the U.S. International Trade Commission.” The hearing featured testimony from Sam Korte (Senior Principal Counsel, IP, Garmin Ltd), Jorge L. Contreras (James T. Jensen Endowed Professor for Transactional Law, University of Utah), Tara Hairston (Senior Director, Technology Policy, Alliance for Automotive Innovation), and Michael Doane (Visiting Assistant Professor of Law, University of Akron School of Law). Chairman Darrell Issa (R-CA) outlined that the purpose of the hearing was to focus on how intellectual property (IP) litigation at the International Trade Commission (ITC) fits into the overall IP system, and to evaluate the ITC’s role and effectiveness in the overall IP landscape. He highlighted concerns over the misuse of the ITC for purposes beyond its original intent, citing the Qualcomm vs. Broadcom case as an example. Ranking Member Hank Johnson (D-GA) defended the ITC’s role in protecting American IP rights, emphasizing its importance for small businesses facing high costs and long wait times in district courts. The discussion included potential reforms to Section 337, balancing public interest considerations, and the ITC’s role in handling standard essential patents (SEPs) and enforcing IP rights against foreign infringers. A full memo from ACG can be provided upon request.
- On July 23, the House Financial Services Committee held a hearing titled “AI Innovation Explored: Insights into AI Applications in Financial Services and Housing.” The hearing examined the impacts of rapidly evolving AI on the financial services and housing industries to balance the benefits of the technology while safeguarding against associated risks. Of note Representative Scott Fitzgerald (R-WI-05) asked the panel of witnesses what safeguards are in place to avoid copyrighted material, and any instances in which the panelists would want a patent on their AI uses. Vijay Karunamurthy emphasized the importance of understanding IP rights when developing and training AI and said testing and evaluating models is the only way to be sure they do not contain problematic material or violate IP laws. Representative Andy Ogles (R-TN-05) asked the panel about the implications of AI on the music industry, saying that there needed to be a balance between AI upholding creators’ rights without stifling innovation. The response was a general discussion among panelists, who found common ground by drawing parallels between the music industry and financial services sector. With the benefits that AI can bring to an industry, comes the same need for robust regulation that protects IP rights for creators, without being overly regulating. A full summary from ACG can be provided upon request.
- On July 25, *Bloomberg Law* reported that Senate Democrats have introduced a FY25 appropriations bill proposing a nearly 25% funding increase for the Department of Justice’s (DOJ) antitrust division, totaling \$288 million—\$55 million more than in FY24. This proposal, announced by Senate Appropriations Committee Chair Patty Murray (D-Wash.), aims to strengthen the DOJ’s capacity to pursue competition cases against major corporations like Apple and Alphabet. Jonathan Kanter, assistant attorney general for the DOJ’s antitrust division, praised the effort, stating, “This historic investment in antitrust enforcement will help improve the lives of hardworking Americans across the country. Competition is the backbone of economic resilience, opportunity, and liberty in every community.” The bill eliminates restrictions on merger notification fees collected by the DOJ. Both President Biden’s budget and House Republicans’ appropriations plan previously included caps on the division’s access

to these fees. Under current regulations, mergers valued at or above \$119.5 million must notify the DOJ and the Federal Trade Commission (FTC), with fees dependent on deal size. In contrast, a bill introduced by House Republicans in June would cap the division's spending at \$192.8 million for FY25, irrespective of fee collections. This bill passed through committee but has not yet received a floor vote, with the House adjourning early for the August recess, canceling scheduled votes on spending bills, the earliest this could see floor time would be mid-September. Read more [here](#).

- On July 25 the Senate Appropriations Committee held a markup of the *Commerce-Justice-Science-and Related Agencies Appropriations Act for FY2025*. Overall, the bill was passed out of committee as amended by a vote of 26-3. The no votes included Senators Hagerty (R-TN), Rubio (R-FL), and Manchin (D-WV). Of note, the USPTO receives \$4,554,940,000 which is \$359,141,000 above the fiscal year 2024 enacted level and equal to the budget request. ITC receives \$126,100,000 which is \$4,100,000 above the fiscal year 2024 enacted level and equal to the administration's budget request. Sen. Shaheen's Managers Amendment Package that was adopted by Unanimous Consent. One adopted amendment was the *Protection of U.S. Innovation in the Global Marketplace* proposed by Senators Chris Coons (D-DE) and Bill Hagerty (R-TN) which states, "The Committee directs USTR to advance the protection and enforcement of intellectual property rights with trading partners around the world in order to protect U.S. innovation. Strengthening protections for intellectual property rights reinforced America's global competitiveness and incentivizes the American businesses and workers who bring these technologies to market." A summary of the Senate CJS bill can be found [here](#) and the markup can be found [here](#).
- On July 25, *The Hill* reported that the Senate voted 86-1 to invoke cloture, or limit debate, on the *Kids Online Safety Act (KOSA)* and the *Children's Online Privacy Protection Act (COPPA) 2.0*. The vote tees up a final passage for the bipartisan bills likely to take place next week prior to the August recess. Sen. Rand Paul (R-KY) voted against invoking cloture. In a floor speech Thursday, the senator called *KOSA* "Pandora's box for censorship" and argued it "opens the door to nearly limitless content moderation as people can and will argue any piece of content could contribute to some sort of mental health disorder." Read more [here](#).
- Next week, the Senate Appropriations Committee is planning to markup the remaining 5 appropriations bills – *Energy and Water Development, Department of Defense, Departments of Labor, HHS and Education, Department of Homeland Security, and the Financial Services and General Government*. The markup is scheduled for Thursday, August 1 at 9:30am. More information is available [here](#).

II. Administration Updates

- On July 25, *FedScoop* published an article outlining what a potential Harris Administration would mean for AI regulation. Vice President Kamala Harris has been instrumental in shaping the Biden administration's AI initiatives, and she is expected to continue that approach if she becomes the Democratic presidential nominee. Harris has led efforts to engage AI companies, secure safety commitments, and introduce federal guidelines, prioritizing a sophisticated approach to AI that places human interests at the center. Dr. Alondra Nelson, former acting

director of the White House Office of Science and Technology Policy (OSTP), noted that voters can "anticipate continuity" in Harris's AI policies, emphasizing her Silicon Valley experience as California's attorney general. Harris's work in obtaining safety commitments from tech giants like Amazon and Microsoft reflects her pragmatic approach, although she acknowledges these voluntary agreements as just the beginning of a broader regulatory strategy. Harris's public remarks have consistently emphasized AI's potential to advance the public interest, working with civil society to ensure protections for Americans. Her past initiatives, such as California's OpenJustice data project, hint at how she might approach federal data transparency in AI. Read more [here](#).

- The White House's Office of Digital Strategy [announced](#) that it will hold a first-ever White House Creator Economy Conference (WHCEC) on August 14, 2024. According to the press release, the conference will "convene a group of digital creators and industry professionals to discuss the most pressing issues within the creator economy today — including privacy, fair pay, AI, mental health, and more." The conference will also allow members of the Administration to learn from creators and industry professionals and gain insight on how various issues are impacting their lives to inform policy decisions. The event is by invitation only, and those interested in attending and/or submitting questions for the conference can do so [here](#).
- A [Notice of Public Roundtable](#) was posted in the Federal Register announcing that the United States Patent and Trademark Office (USPTO) will hold a roundtable on August 5, titled *Protecting NIL, Persona, and Reputation in the Age of Artificial Intelligence*. The roundtable will seek public input on whether existing laws protecting an individual's reputation and existing laws prohibiting unauthorized use of an individual's name, image, voice, likeness, or other indicia of identity are sufficient given the development and proliferation of AI technology. According to the notice, the roundtable will consist of an in-person session and a separate virtual session. Individuals who wish to participate as a speaker at either session must submit a request to NILroundtable@uspto.gov by July 31, 2024. Supplementary information and a link to register to watch the livestream can be found [here](#).

III. USCO Updates:

- On July 22, the U.S. Copyright Office created a new group registration option, known as [Group Registration for Updates to a News Website or GRNW](#), to allow news publishers to register frequently updated news websites as collective works with a deposit composed of identifying material representing sufficient portions of the works included, rather than the complete contents of the website. The Office establishes this rule with the anticipation that it will lead to broader participation in the registration system. The application for the GRNW registration option is available now. For more information, visit the USCO [website](#).
- The U.S. Copyright Office sent a press release inviting the public to [register](#) to attend the upcoming webinar: Level Up Your Copyright Public Records Search on August 1, 2024, at 2:00 p.m. eastern time. In this sixty-minute webinar, the USCO will share ways to search copyright public records using the pilot of the new Copyright Public Records System (CPRS), an easy-to-navigate, highly searchable database. CPRS is the second component to be made

publicly available as part of the Office's new Enterprise Copyright System (ECS). The webinar will include a live demonstration of the CPRS pilot's powerful search capabilities. Learn how to leverage its many features to conduct simple and advanced searches successfully and receive information on supplemental research and support services the Office provides to the public. There will be an opportunity for questions and answers. The webinar will take place August 1, 2024, 2:00 p.m. eastern time. Speakers include Denise Wofford, Assistant Register and Director, Office of Copyright Records, U.S. Copyright Office; George Thuronyi, Deputy Director, Office of Public Information and Education, U.S. Copyright Office; Michael Goldfine, Copyright Specialist, Records Research and Certification Division, U.S. Copyright Office. Read more [here](#).

- In January, the U.S. Copyright Office (USCO) published a [notification of inquiry](#) required by the Music Modernization Act regarding whether the existing designations of the Mechanical Licensing Collective (MLC) and Digital Licensee Coordinator (DLC) should be continued. This is the first of the review processes that the Copyright Office is statutorily required to conduct every five years. Reply comments by the currently designated MLC and DLC must be submitted by July 29. Additional information is available [here](#).

IV. Industry Updates:

- On July 18, *POLITICO* reported that the 8th Circuit Court of Appeals temporarily blocked the Biden administration's new student loan repayment plan. The Education Department said in a statement that it is assessing the impact of the ruling and will be in touch directly with borrowers with any impacts that affect them. "Our Administration will continue to aggressively defend the SAVE Plan — which has been helping over 8 million borrowers access lower monthly payments, including 4.5 million borrowers who have had a zero-dollar payment each month," an Education Department spokesperson said. Read more [here](#).
- On July 22, *Billboard* reported that SoundExchange has sued the free streaming service AccuRadio over allegations that the company failed to pay royalties for music. In the lawsuit filed in Washington D.C. federal court SoundExchange says AccuRadio paid its full bill until 206, paid portions of their bill in 2017 and then stopped paying anything in 2018. "AccuRadio has directly harmed creators over the years by refusing to pay royalties for the use of protected recordings," said Michael Huppe, SoundExchange's president and CEO said in a statement. "Today, SoundExchange is standing up for creators through this lawsuit to protect the value of music and ensure creators are compensated fairly for their work. We hope AccuRadio will immediately reverse course and pay what they owe for the use of the music that sits at the foundation of its service." Read more [here](#).
- On July 25, *Axios* reported that OpenAI CEO Sam Altman has called for a "U.S.-led global coalition" to ensure democracies maintain dominance in the AI field, urging both federal and state governments to act with greater urgency. "The future continues to come at us fast," Altman stated in a phone interview with *Axios*. "I'm grateful that some stuff is happening [at the White House and on Capitol Hill]. But I don't think we're seeing the level of seriousness that this warrants." Altman outlined four key priorities for the U.S. to shape AI with a democratic vision: (1) basic security, (2) infrastructure development, (3) commercial diplomacy, and (4) global governance. He stressed the importance of innovations in

cyberdefense to protect intellectual property, building robust physical infrastructure, and establishing clear rules for AI-related export controls. Read more [here](#).

- On July 25, *Axios* reported that Nike showcased a future where generative AI assists in crafting the perfect shoes for athletes during the Olympics. Highlighting how technology can enhance creative possibilities, Nike launched the "Art of Victory" exhibition at the Centre Pompidou in Paris, featuring shoe prototypes designed with and for star athletes, with AI playing a crucial supporting role. The exhibition included custom designs for basketball stars A'ja Wilson and Victor Wembanyama, sprinter Sha'Carri Richardson, and soccer legends Sam Kerr and Kylian Mbappé. Nike collaborated with 13 athletes across four sports—track, soccer, basketball, and tennis—to create these prototypes, displaying both the final designs and smaller exploratory versions as part of its A.I.R. (Athlete Imagined Revolution) initiative. Nike utilized generative AI to inspire new ideas, employing various prompts to generate images with diverse textures, materials, and colors to initiate the design process. While the company used 3D printing for prototyping, it did not disclose the specific generative AI tools involved. Nike's lead footwear designer, Juliana Sagat, noted the shift from traditional hand sketching, saying, "It's a new way for us to work." Despite AI's initial tendency to produce similar fluid designs, Nike pushed the technology to explore distinct concepts. Vice President Roger Chen explained that many AI-generated images initially resembled each other, but they focused on inspiration points to differentiate each concept. However, Sagat emphasized that designing custom shoes for star athletes remained a fundamentally human effort, stating, "It's still a collaboration between athletes and the designer." Read more [here](#).