CONTENT & TECHNOLOGY POLICY REPORT
JUNE 7, 2024

I. Congressional Updates:

- The FY25 Appropriations markup schedule and FY25 subcommittee allocations have been released. Non-defense programs will be cut effectively by 6%, and those cuts are not evenly distributed. Some subcommittees, such as Labor-Health and Human Services-Education, Financial Services-General Government, and State-Foreign Operations, will receive significant cuts of 10-11%. Other subcommittees will have smaller non-defense cuts, reflecting Republican priorities across the bills. Important dates to watch: (1) Wednesday June 12: CJS Subcommittee Markup, (2) Thursday June 13: Full Committee Markup Legislative Branch, and (3) Tuesday July 9: Full Committee Markup CJS.

- On Monday, June 3, Sen. Mark Warner (D-VA) introduced S.4443, a bill to authorize appropriations for fiscal year 2025 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes. It has been placed on the Senate Legislative Calendar under General Orders. The bill includes a technical amendment to Section 105 of title 17, United States Code. [*(b) Copyright Protection For Civilian Faculty Of Certain Accredited Institutions.—Section 105 of title 17, United States Code, is amended to read as follows: "§ 105. Subject matter of copyright: United States Government works "(a) In General.—Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise."(b) Copyright*

Headlines and Highlights:

- DOJ Hosts AI Workshop at Stanford

- USTR Concludes Public Engagement to Advance Supply Chain Resilience in Trade Policy Initiatives

- US Treasury Seeks Comments on AI Use in Financial Services Sector

- US Regulators to Open Antitrust Inquiries of Microsoft, OpenAI and Nvidia

- Big Tech Launches Campaign to Defend AI Use

- Publishing Companies Say Google is Liable for Promoting Pirated Textbooks

In the Blogs:
- **Hugh Stephens Blog:** The USTR "Watch List" Designation You Will Never See
- **Complete Music Update:** The MLC's billion dollar black box in the spotlight in US Copyright Office review

Protection Of Certain Works.—Subject to subsection (c), the covered author of a covered work owns the copyright to that covered work.] The full text of the bill can be found [here](#).

- On Tuesday, the Joint Economic Committee held a hearing entitled, "[Artificial Intelligence and Its Potential to Fuel Economic Growth and Improve Governance](#)." Overall, the hearing focused on the transformative potential of artificial intelligence (AI) across various sectors, emphasizing the importance of bipartisan efforts in shaping AI policy. Senator Martin Heinrich (D-NM) led the discussion, highlighting AI's capabilities to drive economic growth, improve healthcare efficiency, and enhance national security, while also stressing the need to carefully manage the associated risks. The hearing featured testimony from Dr. Ayanna Howard, Dr. Jennifer Gaudioso, Dr. Robert Miller, and Mr. Adam Thierer. Throughout the hearing, discussions touched on the need for careful regulation to encourage innovation without stifling it, the importance of AI literacy for the broader workforce, and the unique contributions of national labs to AI development. The potential of AI to revolutionize healthcare, both in terms of patient care and administrative efficiency, was a recurring theme, with specific emphasis on the use of AI to manage chronic conditions and automate preventive services. Senators and representatives raised concerns about over-regulation, the impact of AI on the workforce, and the importance of transparency and trust in AI applications. A full summary from ACG can be provided upon request.

- As of Tuesday, June 4, another House Republican has announced plans not to run for reelection, bringing the number of Members of the 118th Congress not planning to return to their same seat in the next Congress to 60 (13%) of those who started. However, two new Representatives have been sworn in to fill vacancies, which have been reduced to 4. As of Monday, House Republicans increased their vote margin to 2.

- On Tuesday, June 4, the House Judiciary Committee held a hearing titled "Oversight of the U.S. Department of Justice." Overall, Republicans raised concerns about Attorney General Garland's handling of the Trump trials, the Hunter Biden investigation, the Department of Justice's (DOJ) decision to not release the President Biden-Hur audio tapes, and more. Meanwhile, Democrats applauded AG Garland for his public service, and criticized their Republican colleagues for losing focus on the intended purpose of an oversight hearing. Democrats also voiced concerns about gun violence and the rise of hate speech. Rep. Pramila Jayapal (D-WA) praised the DOJ for their antitrust efforts, highlighting key cases in the food, airline, video game, and live music industries. A full summary from ACG can be provided upon request.

- On Wednesday, June 5, the Senate Committee on the Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights held a hearing titled "[Strengthening U.S. Economic Leadership: The Role of Competition in Enhancing Economic Resiliency](#)." The hearing covered topics such as the impact of consolidation on new markets and smaller companies, the importance of funding for antitrust enforcers, the effects of healthcare consolidation, and the role of regulatory barriers in stifling competition. Discussions also touched on the impact of vertical integration in the healthcare sector, the consolidation among ocean carriers, and the effects of tech monopolies on local journalism. Key discussions included supply chain disruptions, the concentration of industrial computing capacity, and the negative impact of tech monopolies on local journalism and democracy. Healthcare was a major focus, with concerns about rising costs and compromised care quality

due to consolidation, especially in rural communities where the loss of independent pharmacies hinders access to services. Members and witnesses highlighted the necessity of diverse supply chains for national security and the importance of antitrust enforcement, advocating for the *Competition and Antitrust Law Enforcement Reform Act.* Overall, the hearing underscored the critical need for maintaining competition to ensure economic resiliency, with a focus on addressing the challenges posed by industry consolidation through legislative and regulatory measures. A full summary from ACG can be provided upon request.

II. Administration Updates

- On Thursday, May 30, the Department of Justice (DOJ) hosted an AI workshop at Stanford University on Promoting Competition in AI. The goal of the event was to discuss competition and AI industry structure, including competition in AI models, semiconductors, the cloud, and AI applications. In a series of panels, presentations and remarks, government and industry representatives, academics from both law and business, content creators, inventors, and other tech industry stakeholders explored how competition at one level of the AI stack affects other AI technologies, how standards and accountability systems can be designed to promote competition, and the challenges AI poses to content creators. Assistant Attorney General for Antitrust, Jonathan Kanter, specifically mentioned that compensation to creators is an area of concern for the department stating, "What incentive will tomorrow's writers, creators, journalists, thinkers and artists have if AI has the ability to extract their ingenuity without appropriate compensation?" Kanter said. "The people who create and produce these inputs must be properly compensated… Absent competition to adequately compensate creators for their works, AI companies could exploit monopsony power on levels that we have never seen before, with devastating consequences," Kanter said. The DOJ is also asking for comments from the public on the topics covered by this workshop. Interested parties may submit public comments online now through July 15, 2024, at ATR.2024AIworkshop@usdoj.gov. A full summary of the speakers and the livestream link is available here. A full summary of the event from ACG can be provided upon request.

- On Wednesday, June 5, the Office of the United States Trade Representative (USTR) announced that Laurie-Ann Agama will serve as the Assistant United States Trade Representative for Economic Affairs. Dr. Agama most recently served as Acting Assistant U.S. Trade Representative for Textiles. The Office of Economic Affairs conducts statistical and economic analytical research and critical reviews of outside materials to inform the U.S. Trade Representative and agency leadership in developing and implementing U.S. trade and investment policy. In her previous roles at USTR, Dr. Agama provided leadership for USTR's strategic planning processes. She also provided advice on textile and apparel trade policy matters, led U.S. trade negotiations on Inclusivity with Kenya and IPEF trading partners, and provided statistical and economic analysis and advice to support U.S. trade policy development and its implementation, dispute settlement cases and enforcement, and to resolve various trade policy and investment-related issues. Read more here.

- On Thursday, June 6, the Office of the United States Trade Representative (USTR) announced they had convened four public hearings and received written comments to inform the development of trade and investment policy initiatives that promote supply chain resilience. Over the course of May, USTR received testimony from 84 witnesses in Washington, D.C.;

St. Paul, Minnesota; and New York, New York, as well as virtually. The comment docket, which closed June 4, is public and contains nearly 300 submissions from a wide range of stakeholders, including labor unions and labor rights non-governmental organizations (NGOs), think tanks, environmental NGOs, and companies and trade associations, as well as foreign governments. "We are grateful to all stakeholders who participated in this public comment process at this inflection point in the development of U.S. trade policy," said Ambassador Katherine Tai. "To drive supply chain resilience, we must reevaluate earlier policy approaches and think creatively and strategically." USTR expects to synthesize the public comments over the coming months and release additional information to the public here.

- On Thursday, June 6, *Reuters* reported that the US Treasury Department is seeking public comments on the use of AI in the financial services sector. According to the article the agency is looking to improve its understanding of the opportunities and risks presented by the development and application of AI within the sector as regulators have cautioned the rapid adoption of AI could create new risks for the financial system. During a speech to a Financial Stability Oversight Council and Brookings Institution AI conference on Thursday, Treasury Secretary Janet Yellen warned that that the use of AI in finance could lower transaction costs but comes with "significant risks." The agency has encouraged members of the public to submit their comments within 60 days. The full request for information can be found here. The official press release from the Department of the Treasury can be found here. Comments will be made public on www.regulations.gov.

III. USCO Updates:

- 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. Written initial public comments were due by May 29. If you wish to submit reply comments they must be submitted by June 28. Reply comments by the currently designated MLC and DLC must be submitted by July 29. Additional information is available here.

- On July 25, the U.S. Copyright Office will hold a webinar to keep the public updated on the Office's optimized Recordation System. Separate from the Office's registration application, the new recordation module allows users to electronically transfer their copyrights to someone else. The webinars will "cover announcements about the module, important reminders, frequently asked questions, and a live Q&A session." Anyone interested in attending may join the session. For additional information and to register, please click here.

IV. Industry Updates:

- On Tuesday, June 4, *Roll Call* reported that the Tech Oversight Project, American Economic Liberties Project, Demand Progress, Institute for Local Self-Reliance, NextGen Competition and the Revolving Door Project sent a letter to the House and Senate Judiciary Committees seeking a congressional investigation into tech company employees encrypting or deleting internal messages to destroy evidence in antitrust cases. "We are disturbed by recent reports

that the tech giants have yet again been caught systematically deleting internal messages and chats tied to active federal investigations, thus concealing them from regulators and the courts," the groups wrote in their letter. They cite findings from a judge and accusations by the Federal Trade Commission that these practices are taking place. "This behavior is not new, but it has grown steeply in recent years," the groups wrote, calling on lawmakers to investigate the alleged practice "to safeguard the power of the federal government to enforce antitrust laws and regulations in good faith." Read more here.

- On Thursday, *Reuters* reported that the US Justice Department (DOJ) and the Federal Trade Commission (FTC) have reached a deal that will allow them to proceed with antitrust investigations into Microsoft, OpenAI, and Nvidia, and their roles specifically in the AI industry. According to the article, the deal stipulates that the DOJ will take the lead in investigating whether Nvidia violated antitrust laws, while the FTC will examine the conduct of OpenAI and Microsoft. A formal announcement from DOJ and FTC is expected to be released soon. Read more here.

- On Thursday, June 6, *The Hollywood Reporter,* published an article announcing that the Chamber of Progress has launched a campaign to defend the legality of using copyrighted works to train AI systems called the "Generate and Create" campaign. The group aims to highlight "how artists use generative AI to enhance their creative output" and "showcase how AI lowers barriers for producing art" as part of an initiative to "defend the longstanding legal principle of fair use under copyright law." In comments submitted to the Copyright Office Chamber of Progress argued that Section 230 should be expanded to immunize AI companies from some infringement claims. "One criterion for determining safe harbor eligibility could involve an evaluation of the size and diversity of the training dataset used for the model," it stated in its submission. "Further, given the inherently opaque nature of Generative AI models and the unpredictable behavior of human users, Congress may consider legislation that establishes a liability framework that shields Generative AI services from liability when users intentionally submit infringement-driven queries." Read their full comments to the Copyright Office here, and more from *The Hollywood Reporter* here.

- On Friday, June 7, *IPWatchdog* reported that several major educational publishing companies, including Macmillan, Elsevier and McGraw Hill, have sued Google in a New York district court "alleging contributory and vicarious copyright infringement, trademark infringement and violations of New York's General Business Law." The companies claim that Google's search engine is facilitating infringement by promoting pirate sites that sell heavily discounted versions of educational textbooks. According to the complaint, rather than removing the ads for the infringing works, Google "has continued to do business with known pirates," and "even threatened to stop reviewing all of the Publishers' notices for up to six months simply because the Publishers appropriately re-submitted notices for infringing works that Google previously failed to act upon." According to *IPWatchdog,* the complaint is seeking claims for relief on four counts: contributory and vicarious copyright infringement and violations of New York's General Business Law, all asserted by the Publishers (Cengage, Macmillan Learning, Elsevier, and McGraw Hill); and trademark infringement, asserted by the Trademark Plaintiffs (Cengage, Macmillan Holdings, Elsevier, Elsevier B.V., and McGraw Hill). The complaint is also asking the court to find that google willfully infringed and is seeking damages and attorneys' fees and costs. Read more here.