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**Oral Testimony of Daniel O'Connor, Vice President of Public Policy,
Computer & Communications Industry Association re: ITC Report:
*Global Digital Trade I: Market Opportunities and Key Foreign Trade
Restrictions***

Introduction

Commissioners, thank you for the opportunity to testify before you today. My name is Daniel O'Connor, Vice President of Public Policy at the Computer & Communications Industry Association. CCIA represents large, medium and small companies in the high technology products and services sectors. CCIA members are either directly engaged in trade in digital goods and services, or facilitate it, and we appreciate the Commission's attention to the opportunities and challenges facing this increasingly critical component of the economy.

As the Internet continues to grow into a key driver of cross-border trade in both goods and services, Internet-enabled commerce becomes more and more vital to U.S. economic interests. Cross-border e-commerce accounted for 10 to 15 percent of total global e-commerce in 2014, and could grow to as much as \$350 billion in revenue in 2025. Given U.S. leadership in innovation and high-technology industries, facilitating the export of Internet-enabled products and services promises substantial gains across the wider economy.

Benefits of Digital Trade

Today, digital trade encompasses more than just accessing media or content through online platforms. Businesses small and large, in both developed and developing countries, rely on the services and software of digital platforms to access new markets, reach underserved communities, and realize efficiencies at a global scale.

Internet platforms do more than export services to users abroad. They now also enable small and medium-sized U.S. business to participate in the global marketplace. Small businesses and craftspeople located across the U.S. can use platforms like eBay and Amazon to sell their goods worldwide without the need for brick-and-mortar presences abroad. An array of online payment processors and emerging digital currencies allow the same small firms to handle transactions globally, and global Internet advertising networks enable them to target potential customers in markets they would not be able to otherwise access. Building online presence, payment processing,

cloud computing, communications, funding—all have been made simpler by the likes of Slack, Kickstarter, Squarespace, Dropbox, Microsoft, AWS, Rackspace and PayPal. Over the last decade, these building blocks have greatly reduced the time— and cost—involved to start and run a business, making companies that heavily rely on digital technology more competitive. Some experts estimate tech-reliant ideas that would have cost \$5 million to set up a decade ago can be done for under \$50,000 today. This is a boon to small business, as Internet-enabled tools have allowed them to scale faster and sell more than they could have imagined just 10 years ago.

Companies across different industries and sectors can similarly take advantage of cloud platforms to analyze vast quantities of data and improve services to customers worldwide, with benefits visible across industries, from manufacturing and retail to finance and health care.

Revenue growth for music labels is one recent example of a traditional industry benefiting from internet-enabled commerce. Recent RIAA data shows that the cost savings of digital distribution are passed on to consumers and labels alike, and labels are seeing increasing growth as a result. Last year, the RIAA's wholesale revenues grew a staggering 9.3%. Looking at past data published by the RIAA, this is at least the fourth year of consistent revenue growth for the music industry.

Barriers to Digital Trade

As robust cross-border data flows and trade in digital goods and services increasingly contribute to the overall growth of the broader economy, barriers to digital trade are harmful to more than just Internet-enabled commercial activity. Restricted data flows, forced technology standards and localization requirements, and unbalanced intermediary liability regimes also impose substantial costs and barriers to entry on economic sectors that may not traditionally be considered part of the technology industry, but which now rely on cloud services and Internet platforms to reach new customers, promote efficiency, and reduce overhead.

Restricted Data Flows

Cross-border data flows are the lifeblood of global digital trade. Policies that restrict data flows negate the productivity gains and efficiencies enabled by Internet platforms and cloud computing.

Explicit data localization rules have been proposed or implemented in countries including Russia, China, India, and Indonesia, among others. Russia's 2014 law is fairly demonstrative—it requires all operators that process the personal data of Russian citizens to use databases located exclusively in Russia, and to disclose the address of these data centers to Russian authorities. The European Center for International

Political Economy predicts that due to productivity losses associated with these policies, the Russian economy will shrink significantly.

Less explicit restrictions on cross-border data transfers also have significant consequences for Internet-enabled businesses. However well-intentioned, data security and protection regimes without the clarity, certainty, and flexibility necessary for responsible and reliable cross-border data transfers effectively serve as indirect localization requirements and barriers to digital trade.

For example, the EU's current Data Protection Directive and its successor, the General Data Protection Regulation, generally bar transfers of Europeans' personal data to countries that do not have "adequate" data protection regimes. Bilateral agreements and other complex mechanisms to facilitate data transfers have historically been struck but these have been challenged in recent years, most notably in the Court of Justice of the European Union's 2015 decision invalidating the EU-U.S. Safe Harbor framework.

A successor framework for transatlantic data transfers, the EU-U.S. Privacy Shield, was negotiated and implemented last year. But the Privacy Shield is already the subject of legal challenges in the EU, meaning companies that rely on transatlantic data flows continue to operate under a cloud of legal and economic uncertainty.

Technology Requirements

Digital trade and innovation are also threatened by onerous technology requirements specific to particular countries. Such measures restrict trade in services for ostensibly legitimate national security or public policy objectives, but often amount to protectionist measures that are vaguely construed, inadequately articulated, and thus nearly impossible to satisfy. For example, China's recent counter-terrorism and cybersecurity laws require that certain network technology products and services be "secure and controllable" and subject to security examination. Not only are these requirements unclear, but they differentiate China's market for digital goods and services to make entry unappealing for foreign enterprises unwilling or unable to bear the costs of compliance.

Vague Regulatory Imperatives and Inconsistent Liability Rules

Regulation, however well-meaning, can function as a barrier to digital trade when the imperatives of the regulation are vague or open-ended, and penalties are assessed on Internet platforms for non-compliance. This type of regulation or judicial outcome chills innovation and investment in innovative Internet platforms, which ultimately harms businesses and end-users who benefit from digital platforms. This includes making Internet platforms or hosting companies liable for third-party content beyond their

control, which is nearly impossible to effectively police and imposes huge compliance costs on platform companies.

Europe's ill-conceived "right to be forgotten" is just one example of a difficult to implement regulation that has imposed huge costs on incumbent search engines, and if such regulation was applied to other information intermediaries, it would limit innovation in the marketplace to those companies who could afford the massive compliance costs. The current discussion of a heightened "duty of care" as part of the European Commission's Digital Single Market initiative is similarly troubling. Requiring online intermediaries to monitor, filter, and screen potentially billions of posts, tweets, comments or files on their systems—if implemented—would have similar negative effects across a broad swath of digital companies and their users. .

Digital trade policy should also promote liability rules that encourage the export of Internet services. Clear, unambiguous regulations encourage investment and innovation on the Internet by venture capitalists. Laws that limit the liability of online intermediaries for content posted by their users like Section 512 of the Digital Millennium Copyright Act and Section 230 of the Communications Decency Act have led to a thriving Internet industry in the United States, as such balanced regimes encourage cooperation between rightsholders and Internet platforms.

In contrast, U.S. companies have faced some challenges abroad when attempting to enter new markets due to legal uncertainty and inconsistent liability rules, several of which were appropriately identified by USTR in its recently released 2017 National Trade Estimate Report. Of particular concern are European proposals aimed at addressing a so-called 'value gap' for copyrighted works. Such policies, which would require digital service providers to preemptively detect and filter for content identified by rightsholders as infringing, are based on scant evidence and would chill expression and innovation online.

Conclusion

Given the importance of digital platforms and online services to all cross-border trade in the 21st century, CCI encourages the ITC to take a holistic view of digital trade barriers and their effect across the entire economy. Thank you.