



**Computer & Communications
Industry Association**
Tech Advocacy Since 1972

May 2, 2018

Via Overnight and Electronic Mail

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street NW
Washington, D.C. 20006

Dear Ambassador Lighthizer:

On behalf of U.S. Internet and technology firms, we write to express concerns that, as the United States looks to finalize discussions on a renegotiated North American Free Trade Agreement (NAFTA), the agreement may lack the critical protections necessary to further enable innovation. We urge the Administration to ensure that the renegotiated agreement includes an intellectual property chapter which affords U.S. exporters the same protections reflected under current U.S. copyright law, including in particular intermediary liability protections and relevant limitations and exceptions.

U.S. Internet service exports rely on consistency and regulatory certainty when looking to export to foreign markets. This includes protections from liability for online intermediaries, which have long been a crucial element of the U.S. trade agenda, dating back to the U.S.-Singapore Free Trade Agreement in 2003. The approach, which ensures U.S. services aren't penalized for misconduct by Internet users, is consistent with U.S. law. Of equal importance are the limitations and exceptions within U.S. copyright law that provide the adequate balance for Internet services and users in the digital age, such as fair use. These limitations and exceptions are not, as some have recently characterized, "weakening" of copyright protections. This characterization presents a false choice between protecting the interest of one industry over another. But policymakers need not choose between protecting content producers and technology developers. In reality, fair use and other exceptions work in tandem with strong copyright protection and enforcement measures to provide flexibility for online innovation and research while also incentivizing creation through copyright protection. Promoting international copyright norms that include both aspects of the U.S. copyright system ensures U.S. trade policy reflects the interests of all relevant exporters.

An intellectual property chapter that includes liability protections and relevant limitations and exceptions is also consistent with obligations under the Administration's current trade promotion authority (TPA). Section 102(b)(5)(A)(ii) of the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* sets out that, under TPA, the principal negotiating objectives of the U.S. should include promoting intellectual property in a manner that facilitates legitimate digital trade. The House Ways & Means Committee noted in its report that this language was included to recognize that trade agreements should "foster an appropriate balance in copyright systems,

inter alia by means of limitations and exceptions[.]”¹ The report also observed that the intellectual property commitments in TPA reflect the view of the Committee that “strong intellectual property rights protection should be accompanied by provisions on liability that are consistent with U.S. law, including the Digital Millennium Copyright Act[.]”²

In the digital age where Internet-connected trade is increasingly intertwined with cross-border delivery of all goods and services, trade must be approached in a holistic manner. A modern, 21st-century trade agreement equipped for the Internet economy must not only update its text to include new chapters such as digital trade, but also continue to uphold intermediary protections in the intellectual property chapter that allowed innovation at the infancy of the commercial Internet. Failure to include such protections would negate the progress made in other chapters, and fails to live up to the Administration’s promise of pro-growth economic policies.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Black". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ed Black
President and CEO
Computer & Communications Industry Association

¹ H.R. Rep. No. 114-100, pt. 1, at 45 (2015), *available at* <https://www.congress.gov/114/crpt/hrpt100/CRPT-114hrpt100-pt1.pdf>.

² *Id.* at 46.