



Computer & Communications Industry Association
1972-2012: 40 YEARS OF TECH ADVOCACY

February 27, 2013

Via Courier

Lisa R. Barton
Acting Secretary to the Commission
U.S. International Trade Commission
Room 112-A
500 E Street SW
Washington, DC 20436

Re: *Digital Trade in the U.S. and Global Economics, Part I: Investigation No. 332-531*
(FILING COPIES ENCLOSED)

Ms. Barton:

Enclosed for filing in the above-captioned investigation, are eight (8) copies of the Pre-Hearing Brief of Edward J. Black on behalf of the Computer & Communications Industry Association (CCIA). This document was filed yesterday, Feb. 26, via the Commission's electronic system.

Do not hesitate to contact my staff if we may be of any further assistance.

Respectfully submitted,

A handwritten signature in black ink that reads "Ed Black". The signature is written in a cursive, slightly slanted style.

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Before the
International Trade Commission
Washington, DC

In re

Digital Trade in the U.S. and
Global Economics, Part I

Investigation No. 332-531

**PRE-HEARING BRIEF OF EDWARD J. BLACK ON BEHALF OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION**

In advance of the March 7 hearing announced by the International Trade Commission (ITC) and published in the Federal Register at 78 Fed. Reg. 2,690 (Jan. 14, 2013), the Computer & Communications Industry Association (CCIA)¹ submits the following pre-hearing brief regarding digital trade in the broader U.S. and global economies.

I. Introduction

The significance of the Internet to global trade cannot be overstated. The Internet accounted for 21% of the GDP growth in mature economies over the past 5 years, with 75% of the benefits captured by companies in more traditional industries.² In a survey of 30 countries with a collective 2010 GDP of \$19 trillion, Internet penetration was found to be growing at 25% per year over the past five years, and contributing an average of 1.9% to GDP— a \$366 billion impact.³ If information flows are viewed as trade in knowledge services, then the volume of

¹ CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA's members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries. A list of CCIA members is available at <http://www.cciagnet.org/members>.

² McKinsey Global Institute, *Internet Matters: The Net's sweeping impact on growth, jobs and prosperity*, May 2011; see also McKinsey Global Institute, *The great transformer: The impact of the Internet on economic growth and prosperity*, Oct. 2011.

³ Olivia Nottebohm *et al.*, McKinsey & Co., "Online and upcoming: The Internet's impact on Aspiring Countries," Jan. 2012.

information relayed by online platforms such as Google, Yahoo, Facebook, Tuenti, Baidu, Yandex and Microsoft Bing places those services among the largest traders in the global economy.

Within the United States, Internet services represent an extraordinary portion of the U.S. economy and provide substantial economic benefits to multiple sectors. As early as 2009, the Internet was adding an estimated \$2 trillion to annual GDP, over \$6,500 per person, according to the National Economic Council.⁴ Total combined business-to-business and business-to-consumer e-commerce shipments, sales, and revenues, as measured by the Commerce Department for 2008, were \$3.8 trillion.⁵ In light of this data, “information discrimination” against U.S. digital goods and services represents a fundamental strategic threat to U.S. economic interests.

The costs of discrimination against these services are not felt merely by the high-tech sector, given the opportunities that Internet services create for more traditional businesses. Online marketplaces such as eBay and Etsy provide crucial platforms for international SME trade every year, and that trade is growing. The reason that three-quarters of the positive impact of the Internet accrues to traditional industries is because the Internet produces efficiency gains and expands markets. SMEs who heavily utilized the Internet exported twice as much as those that did not, and further, that Internet usage increased SME productivity by 10%.⁶ In addition to these platforms, the Internet enables numerous knowledge-enhancing services that we now largely take for granted, such as email, whose consumer application largely post-dates the Uruguay Round.

Today the Internet functions as a commerce-facilitating platform, and is thus ever more critical to the entire economy. Services across all sectors rely upon the Internet for mission-critical business operations across the board, and that reliance and ‘value add’ impact is growing. To craft appropriate trade policy for the Internet, it is essential to understand its nature: the

⁴ Exec. Ofc. of the President, Nat’l Econ. Council/OSTP, *A Strategy for American Innovation: Driving Towards Sustainable Growth and Quality Jobs*, Sept. 2009, at 5, available at <<http://www.whitehouse.gov/administration/eop/nec/StrategyforAmericanInnovation>>.

⁵ See U.S. Census Bureau, *2008 E-Stats*, at 2 (May 2010). Industries whose product demand is driven by Internet content and services, such as consumer electronics, also make a significant economic contribution. For the same year, 2008, CE industries were responsible for \$1.3 trillion in annual value-added to the U.S. economy. See PriceWaterhouseCoopers, *Innovation: U.S. Economic Contribution of Consumer Electronics*, at 2 (2008).

⁶ *Internet Matters*, *supra* note 2.

Internet is not merely an invention – it is, as the printing press and the steam engine were, a *general purpose technology* (GPT)⁷ which transforms everything about our societies and economies. One of the best examples of the Internet’s special nature is the impact it has on the global supply chain across all industries.

II. The Importance of Internet Services to the U.S. Economy

U.S. trade policy constructed an enduring legacy of free trade beginning with the General Agreement on Tariffs and Trade (GATT) more than 60 years ago. Yet despite having dramatically reduced barriers to trade in goods, the United States is now quite far advanced in its transformation from a products economy into a services economy. “Services industries employ 95 million of America’s 110 million private-sector workers,” and “in the United States exporting services industries employ more people than work in factories, farms, and mines combined.”⁸ This is increasingly true of all economies, however, as U.S. trading partners are also selling fewer products and goods, and providing more value-add further down the product chain. Nevertheless, international trade law has failed to keep pace with this economic transition.⁹

Due to these changes, the U.S. economy has migrated out from underneath the robust umbrella of liberalization that our trade policy constructed over the last 60 years, into a world in which, functionally, we are prohibited from discriminating against goods – the primary export of many U.S. trading partners – but these same trading partners face a less comprehensive set of prohibitions to abide by when it comes to discriminating against the services that they import from us. To protect U.S. economic interests, remedying the relatively disadvantaged posture of services in the global trade regime must take precedence among trade policy priorities.

⁷ Additional discussion of the impact of GPTs and how they differ from less transformative inventions is available in Nathan Rosenberg & Manuel Trajtenberg, “A General-Purpose Technology at Work: The Corliss Steam Engine in the Late-Nineteenth-Century United States,” 64 J. OF ECON. HISTORY 61-99 (2004) available at http://journals.cambridge.org/abstract_S0022050704002608. See also Susanto Basu & John Fernald, “Information and Communications Technology as a General-Purpose Technology: Evidence from US Industry Data,” 8 GERMAN ECON. REV. 146-173 (2007) at <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0475.2007.00402.x/abstract>.

⁸ Edward Gresser, *Services Trade Liberalization as a Foundation of Global Recovery*, February 2012 at <http://uscsi.org/images/files/press-releases/Gresser%20White%20Paper%20FINAL.pdf>.

⁹ While e-commerce and Internet services fall within the remit of WTO’s liberalizing mandate, insufficient attention has been given to this crucial area. The WTO’s Work Programme on Ecommerce began in 1998 but has been eclipsed by the focus on Doha and development-related issues. It should be noted that renewed interest in e-commerce as part of a GATS+ initiative may provide an opportunity to remedy this neglect, as most WTO members appear to agree that the majority of electronically-delivered services are services governed by GATS.

III. 21st Century Trade Barriers

A. Filtering and Blocking of Internet Content, Platforms and Services

Evidence indicates that at least 40 governments now engage in broad-scale online censorship.¹⁰ At times the motivation for censorship is self-evident, or is disclosed, but generally the processes and reasons for censoring Internet services and content are opaque. With few exceptions, states do not attempt to justify blocking or unblocking Internet content or services, and restrictions are not developed in a transparent manner. As discussed below, the motivation for these practices may be political, or it may be economic, but regardless, censorship constitutes a substantial barrier to digital trade in the global economy. Known offenders include Afghanistan, Burma, China, Cuba, Egypt, Guatemala, Indonesia, Iran, Kazakhstan, North Korea, Pakistan, Saudi Arabia, Syria, Tunisia, Turkey, Turkmenistan, Uzbekistan, and Vietnam.

Censorship methods vary, but generally consist of (a) legal or regulatory obligations imposed upon intermediary services, (b) blocking and/or filtering executed at the network level through state control or influence over the communications infrastructure, or (c) technology mandates that either hobble user privacy and security, or that force product manufacturers to include intrusive monitoring technology or back-doors. Examples of legal and regulatory requirements imposed upon Internet services include blocking access to an entire Internet service or specific keywords, web pages, and domains; requiring Internet search engines to disappear search results; and demanding service providers take down certain web sites. Additionally, firms are forbidden in some countries from revealing requests made by censorship authorities.

Perhaps the most apparent barriers to digital trade are the outright filtering and blocking of U.S. Internet platforms and online content. The trade costs of filtering are both direct and indirect. When a website or platform, such as YouTube or Wordpress, is directly blocked, the trade distorting effects are obvious. However, filtering also impedes digital exports indirectly. When countries operate firewalls, all foreign websites and services must pass through “gateways.” Domestic Internet content, however, does not pass through the gateways to reach its

¹⁰ See generally Open Net Initiative, ACCESS DENIED, ch. 3 (2008), available at: <http://access.opennet.net/wp-content/uploads/2011/12/accessdenied-chapter-3.pdf>

own domestic market. This has the effect of systemically affecting the speed and quality of service (QoS) of foreign websites and services vis-à-vis domestic Internet content.¹¹

High-profile examples of targeted blocking of whole services include China's blocking of major US websites including Facebook, Twitter, Google Docs, Blogger, Wordpress and YouTube. Other visible examples include Vietnam's Facebook ban and Turkey's prior court-ordered shutdown of YouTube.¹² Russia's new Internet blacklist, depending how expansively it is used, has the potential to block numerous American owned websites and services.¹³

Although websites and Internet services are often blocked for ostensibly "national security" reasons, protectionist motivations are readily apparent. In the case of China, many of the blocked U.S. sites have domestic clones that contain the very same "offensive" content on them that seemly justify outright blocking of websites operated by U.S. companies. For example, China blocked Facebook, Twitter and other U.S. websites in response to the Uighur riots in July 2009. According to *Foreign Policy*, several Chinese clone websites continued to operate:

Meanwhile, direct Chinese copies of Facebook, Ren Ren Wang and Kai Xin Wang, have been enjoying enormous success. Now, Ren Ren Wang has 22 million active users and Kai Xin Wang is the 56th-most visited site globally.

Also in the aftermath of the Xinjiang riots, microblogging site Twitter was cut off by the Chinese firewall for similarly dubious reasons. Less than two months later, Chinese Internet giant Sina launched a near identical microblogging service. To further the business-over-politics angle of China's foreign Internet purge, China's wildly popular instant-messaging service QQ removed a censorship filter after users' complaints. Dissidents and riot organizers can now use Chinese versions of Twitter to organize.

Even a seemingly harmless site, like photo-sharing website Flickr, has been blocked in China, while its identical clone Bababian has grown steadily with foreign technology and no foreign competition. Likewise, blog-hosting sites Blogger and WordPress have long been blocked in China. Instead, Chinese netizens use Tianya, the 13th-most popular site in China. Far from being a sanitized land of boring blogs about daily activities, Tianya also hosts China's

¹¹ See Paul Mozur & Carolos Tejada, *China's 'Wall' Hits Business*, WALL ST. J., Feb. 13, 2013.

¹² In 2007, the Turkish government passed Law No. 5651, allowing courts to block websites where there is "sufficient suspicion" that a crime has occurred. Applicable crimes include child pornography, gambling, prostitution, and crimes against Ataturk. Crimes against Ataturk include online content deemed to be insulting to Kemal Ataturk, modern Turkey's founder and first president. The law resulted in Turkey blocking access to YouTube from May 2008 through October 2010, temporarily lifting the ban, and then recommencing blocking YouTube in November 2010. Additionally, Turkish courts have allowed the government to monitor and block sites such as Amazon, Bing, Google, Hotmail, MSN, and Yahoo for content considered to be blasphemous or anti-Islamic.

¹³ Miriam Elder, *Censorship row over Russian internet blacklist*, THE GUARDIAN, Nov. 12, 2012. Available at: <http://www.guardian.co.uk/world/2012/nov/12/censorship-row-russian-internet-blacklist>

largest Internet forum, a vitriolic, sensationalized, and hate-filled arena that makes Western gossip sites seem like the Economist.¹⁴

Although it is not feasible to prohibit all instances of Internet filtering and blocking, such instances should be kept to an absolute minimum and should conform to traditional principles of national treatment. Websites and services should not be blocked unless a high-bar test of necessity is met. If it is met, that bar should apply equally to both domestic and foreign websites. Furthermore, such restrictions should be required to comply with WTO principles of transparency, necessity, being as minimally restrictive as possible, and the provision of due process to affected parties.

B. Local data hosting requirements

The Internet's rapid growth depends upon its end-to-end design, allowing compatible hardware to be attached to the edges of the network and immediately send and receive data to and from any other 'node' of the network. At the same time, the network is also designed to ensure that packets of data take the most efficient route between two points. These features undergird the resilience, reliability and flexibility of the Internet, but run contrary to the desires of governments seeking jurisdictional control, political leverage, and/or local investment from online services. As a result, policies mandating local infrastructure in order to operate locally have become attractive to certain jurisdictions.

Generally, these measures compel financial services providers to process data onshore or require online service providers or other companies to locate data within their borders. Such local hosting requirements can potentially harm a vibrant and growing sector of the U.S. economy: cloud computing, which includes the outsourced provision of both infrastructure and software as services. U.S. companies pioneered cloud computing, and the U.S. is currently the unquestioned world leader in the field.¹⁵ These companies allow their clients, large and small companies alike, to outsource their in-house information technology needs. Instead of needing to invest in local software and expensive servers, companies can outsource their whole IT stack to third-party specialists. As hosting and services can easily be provided regardless of location, local data hosting requirements can disproportionately affect U.S. companies and serve as thinly

¹⁴ Jordan Calinoff, *Beijing's Foreign Internet Purge*, FOREIGN POLICY, Jan. 15, 2010.

¹⁵ U.S. companies such as Amazon, Savvis, Salesforce.com and Rackspace comprise the majority of revenue in the "public cloud" market.

veiled protectionism for foreign competitors of U.S. cloud companies. Given that the greatest growth for cloud demand is predicted to come from outside the United States in the near future,¹⁶ the placement of barriers to market access before U.S. cloud providers will substantially impair cross-border digital trade.

C. Proposed “Sending Party Pays” Regimes in IP Networks

The free flow of information also relies on the efficient interconnection of the networks that make up the Internet. Historically, telephone networks have relied upon a system in which the network that originates a call paid the terminating network to have the call completed. IP networks, on the other hand, have traditionally interconnected under a free contract system in which the parties involved decide between themselves how to allocate costs. In many cases these deals are done “on a handshake” and an agreement is reached to exchange data with neither party paying the other. This reflects the fact that, for network operators, having many robust routes to the Internet is more important than trying to make money from peering arrangements.

Some constituencies, however, view interconnection as a potential source of revenue for themselves. These companies have proposed that governments mandate (at fora such as the International Telecommunications Union) a “sending party network pays” model of interconnection. This model would lead to a world in which U.S. businesses must pay the telecommunications carriers in other countries, some of whom are still state-owned and – operated, for the privilege of reaching users accessing their services. Furthermore, these charges would violate the 1998 WTO e-commerce moratorium which explicitly forbids access fees on data transmissions.¹⁷ As calls for a worldwide Internet “access charge” regime have echoed through international fora, the ITC should explore the significant distorting effects tariffs on electronic transmissions could have on digital trade.

¹⁶ “But the fastest growth in public IT services spending will be in the emerging markets, which will see its collective share nearly double by 2016 when it will account for almost 30% of net-new public IT cloud services spending growth.” See IDC Press Release, “IDC Forecasts Public IT Cloud Services Spending Will Approach \$100 Billion in 2016, Generating 41% of Growth in Five Key IT Categories,” Sept. 11, 2012, *available at*: <http://www.idc.com/getdoc.jsp?containerId=prUS23684912#.USzjZ-s5x8M>.

¹⁷ Hosuk Lee-Makiyama, *Whither Global Rules for the Internet?* EURO. CTR. FOR INT’L POL. ECONOMY, Policy Brief No.12/2012, *available at*: <http://www.ecipe.org/publications/wcit/>.

C. Third-party Liability for Online Intermediaries

Unbounded liability rules constitute a major barrier to international Internet commerce, and the lack of protection for Internet services from liability for third party content represents a significant barrier to cross-border digital trade.

Within the United States, Congress recognized early on that holding Internet and e-commerce businesses liable for the wrongful conduct of their users would jeopardize the growth of this vital industry and place unreasonable burdens on these service providers. Due to the extraordinary quantity of data transiting communications networks, these businesses are unusually vulnerable to strict liability for the misdeeds of any users. Unlike many of our international trading partners, Congress responded to this problem with two statutes designed to limit Internet businesses' liability for the wrongdoing of others. First, Section 230 of the Communications Decency Act provided categorical immunity from liability for user misconduct, thus allowing Internet companies to combat undesirable or potentially illegal activity without fear of additional liability.¹⁸ Section 230 has provided a foundation for today's highly successful Internet services and applications by establishing a robust limitation on potential liability. Second, Section 512 of the U.S. Digital Millennium Copyright Act (DMCA)¹⁹ provided limitations on remedies available against online intermediaries whose users are implicated in copyright infringement, provided that the service provider complies with a notice and takedown regime specified by statute. The success of Internet and e-commerce businesses in the U.S. must be at least partially attributed to the fact that the U.S. Congress carefully crafted laws that encourage rapid innovation and entrepreneurialism online by establishing certainty and predictability with respect to liability matters. It is no accident that innovation in Internet-connected products and services is concentrated in free societies, and particularly the United States.

Among developed countries, it is widely recognized that “[i]ntermediaries are increasingly important and empower end-users” and that “[l]imitations on their liability for the actions of users of their platforms have encouraged the growth of the Internet,”²⁰ Neither law

¹⁸ 47 U.S.C. § 230.

¹⁹ 17 U.S.C. § 512.

²⁰ OECD, *The Role of Internet Intermediaries in Advancing Public Policy Objectives*, at 15 (2011) at <http://dx.doi.org/10.1787/9789264115644-en>.

nor practice have caught up with this understanding, however. Even in Member States of the European Union, whose E-Commerce Directive contains a nominally strong safe harbor for Internet service providers, U.S. companies and their executives have been subjected to civil and criminal liability based entirely on misconduct by third parties on the Internet.

In Italy in 2010, U.S. executives were criminally convicted when an Italian Internet user posted to the Italian YouTube site a video of students mistreating a disabled classmate, notwithstanding the fact that the video was removed within hours of authorities reporting it to YouTube.²¹ Although the conviction was ultimately overturned, nearly three years had passed during which U.S. executives faced the prospect of criminal prosecution for third-party content.²²

Outside of Europe, examples abound of litigants attempting to penalize intermediaries for third party content, even where the connection may be tenuous at best.²³ In India, notwithstanding 2008 legislation refining Indian law to “correspond more closely to the DMCA/ECD model”,²⁴ in 2012 Facebook, Google, among other prominent Internet services were criminally prosecuted for hosting material that “seeks to create enmity, hatred and communal violence” and “will corrupt minds,”²⁵ and executives faced possible prison terms, in addition to financial penalties.²⁶ Such liability risks, according to the OECD, “weaken private sector confidence.”²⁷

Punitive rules are not exclusively directed at foreign services, of course.²⁸ A widely covered case in Thailand involved a criminal conviction under Thailand’s Computer Crimes Act

²¹ See Rachel Donadio, *Larger Threat Is Seen In Google Case*, N.Y. TIMES, Feb. 24, 2010.

²² See Eric Pfanner, *Italian Appeals Court Acquits 3 Google Executives in Privacy Case*, N.Y. TIMES, Dec. 21, 2012, at <http://mobile.nytimes.com/2012/12/22/business/global/italian-appeals-court-acquits-3-google-executives-in-privacy-case.xml>.

²³ See, e.g., Michelle Griffin, *Man Sues Twitter over Hate Blog*, SYDNEY MORNING HERALD, Feb. 17, 2012, at <http://www.smh.com.au/technology/technology-news/man-sues-twitter-over-hate-blog-20120216-1tbwg.html> (libel claim against Twitter based upon a tweet of a hyperlink to allegedly defamatory post).

²⁴ OECD, *The Role of Internet Intermediaries in Advancing Public Policy Objectives*, *supra* note 20, at 79-80.

²⁵ Amol Sharma, *Facebook, Google to Stand Trial in India*, WALL ST. J., Mar. 13, 2012, at <http://online.wsj.com/article/SB10001424052702304537904577277263704300998.html>.

²⁶ Rebecca Mackinnon, *The War for India’s Internet*, FOREIGN POLICY, June 6, 2012, at http://www.foreignpolicy.com/articles/2012/06/06/the_war_for_india_s_internet?page=0,0.

²⁷ OECD, *supra* note 20, at 15.

²⁸ Although oppressive liability rules may impede trade, they may not necessarily violate existing international norms. Countries are undoubtedly ill-advised to adopt ‘blame the messenger’ rules, but so long as both domestic and international messengers are mistreated alike, rules of national treatment are not necessarily breached. However,

of a webmaster whose only crime was “failing to quickly delete posts considered insulting to Thailand’s royal family.”²⁹

Intellectual property liability for third party misconduct merits specific attention as a potential impediment to trade. While protecting IP rights has long been considered a component of international trade, these rules date from the TRIPS era, when international trade did not envision the expansive and growing importance that digital services would have in the international economy. As a result, intellectual property liability is all too often assigned to intermediaries instead of end users.

In France, for example, a court imposed liability on eBay for sales of authentic (non-counterfeited) Louis Vuitton goods by various small businesses and individuals through eBay’s site.³⁰ While the sales at issue were legal under U.S. law and were marketed on eBay’s U.S.-facing site, the court imposed a \$60 million judgment in a decision that press commentary argued “reeks of protectionism.”³¹ In another particularly extreme case, an Italian copyright licensee of a film brought suit against multiple search engines and in fact prevailed against Yahoo on the mere grounds that the search engine contained links that pointed to sites that enabled users to stream or download the work to which the licensee had rights.³² Similarly, a Russian court recently penalized vKontakte, a Facebook-style social network, for end-user infringement despite the fact that the site had mitigation measures in place,³³ and Indian courts have been similarly aggressive in penalizing international intermediaries on copyright grounds.³⁴

this masks the fact that – particularly in many emerging markets – U.S. services dominate domestic markets. Thus, liability rules that appear facially equal can still disproportionately affect U.S. commerce.

²⁹ James Hookway, *Conviction in Thailand Worries Web Users*, WALL ST. J., May 30, 2012, at <http://online.wsj.com/article/SB10001424052702303674004577435373324265632.html>.

³⁰ Tribunal De Commerce De Paris, June 30, 2008, Geronimi.

³¹ See, e.g., Therese Poletti, *EBay Ruling in France Reeks of Protectionism*, MARKET WATCH, July 1, 2008, at http://articles.marketwatch.com/2008-07-01/news/30697184_1_nichola-sharpe-ebay-perfume.

³² Giulio Coraggio, *Yahoo Liable for Searchable Contents*, IPT ITALY BLOG, Apr. 3, 2011, at http://blog.dlapiper.com/IPTItaly/entry/yahoo_liable_for_searchable_contents.

³³ Daria Kim, *Russia’s Largest Social Network vKontakte Held Liable For Copyright Infringement*, INTELLECTUAL PROPERTY WATCH, May 30, 2012, at <http://www.ip-watch.org/2012/05/30/russias-largest-social-network-vkontakte-held-liable-for-copyright-infringement/>.

³⁴ See, e.g., Amlan Mohanty, *The Death of Safe Harbour for Intermediaries in India for Copyright Infringement? (Parts I & II)*, SPICY IP, Apr. 6, 2011, at <http://spicyipindia.blogspot.com/2011/08/death-of-safe-harbour-for.html> (discussing *Super Cassettes India Ltd. (SCIL) v. MySpace*).

IV. Statistical Considerations

Given that three quarters of the value-add of the Internet accrues in other industries, the benefits of the Internet are frequently undercounted.³⁵ Furthermore, as Internet “markets” rapidly evolve, new products and services often do not fall neatly into legacy classification systems. Revenue from advertising-supported services like Facebook and Google is often counted in different categories, for example, than the sale of cloud computing services. As the ITC conducts this comprehensive analysis of digital trade, it should explore modernizing data collection and methodologies so as to fully account for the full benefits of digital trade. In discussing methodologies, the ITC’s work product may also provide guidance to other organizations – such as the World Bank and the WTO – on how to properly measure the value of the Internet in the global trading system.

V. Conclusion

The development of the Internet has led to a revolution in the way we conduct international commerce and trade. Yet concerns over impediments to the free flow of information continue to grow as communications and commerce over the Internet increase. Numerous restrictions on this flow harm U.S. trade and commerce, as well as innovation in Internet communications and services. In the new world of electronic commerce and digital trade, removing obstacles and helping trade flow as freely as possible means safeguarding the free flow of information. Sen. Ron Wyden has characterized the Internet as “the shipping lane of the 21st century,” and we need to better assess how free that shipping lane is, and what barriers U.S. Internet companies face in seeking to access overseas markets. We look forward to the results of the Commission’s study playing an important role in the crafting of new rules of the road to adapt the timeless goals of the rules-based trading system to the new online reality.

³⁵ See *supra* note 2.

Respectfully submitted,

A handwritten signature in black ink that reads "E J Black". The signature is written in a cursive style with a large "E" and "B".

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February 26, 2013