



Oral Statement of
Ed Black, CEO, Computer & Communications Industry Association (CCIA)
Hearing on Transatlantic Trade and Investment Partnership (TTIP)
U.S. International Trade Commission, Washington, DC
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Good afternoon. My name is Ed Black. On behalf of the Computer & Communications Industry Association, thank you for the opportunity to address the impact of these important transatlantic negotiations on digital trade.

The significance of the Internet to global trade cannot be overstated. The extensive data in my written testimony demonstrates that the Internet's role as a commerce-facilitating platform matters to everyone.

CCIA has led on free trade issues for decades. Free trade agreements must promote openness and the free flow of commerce. FTAs should not carve out protectionist policies, nor lock in industrial policy for privileged sectors – that is contrary to free trade.

I will focus on six key issues:

First, the free flow of information: Today, businesses in our thriving Internet industry principally provide services. Yet trade law hasn't kept up with this transition; it is far easier for countries to block *bits* at the border than *Buicks*. As the U.S. economy produces more services, we the benefits of liberalized market access that we have achieved for goods.

Numerous governments now engage in broad-scale online censorship. Even if they nominally invoke legitimate WTO exceptions, these trade barriers rarely meet WTO principles of transparency, necessity, minimal restrictiveness, and due process. An accord between the world's most advanced and open economies should reaffirm the concept of the free flow of information, and thereby provide an important beacon for the rest of the international trade community. We are engaged in the Geneva TISA process, which is also seeking creative solutions in this area.

Second, forced localization: As a knee-jerk reaction to the growth of the Internet and cloud computing, governments are implementing "domestic data hosting" requirements. These "forced localization" mandates require companies to process and store data domestically, adding local infrastructure overhead. This locks out small business, and causes large enterprises to scatter IT infrastructure across the globe for non-business reasons, negating the savings and efficiency of cloud-based innovation.

Third, full market access for digital products: TTIP should include a strong e-commerce chapter that ensures that digital products, regardless of their classification, are not discriminated against merely because they are provided and consumed digitally. In this vein, the TTIP should mirror existing commitments already agreed to by the US and Australia in that FTA, which prevent discrimination against digital products regardless of their source country.

Fourth, intermediary liability protection: TTIP should establish minimum protections for online intermediaries. Intermediaries facilitate a mind-boggling quantity of transactions daily, and are essential to digital trade. Frequently, however, foreign nations seek to “blame the messenger” for undesirable communications and transactions. This is particularly tempting when the intermediary is a foreign company with deeper pockets than the domestic end-user whose conduct is at issue. Such liability poses a major barrier to Internet commerce.

Congress recognized how liability risks could jeopardize growth, and therefore created safe harbors, but we have seen unreasonable cases of intermediary liability proliferate abroad. Even though European law contains intermediary protections not unlike ours, EU protections are not adequately applied, often when US intermediaries are on trial against domestic interests. These liability risks weaken private sector confidence and impede market entry. TTIP should establish minimum levels of protection for intermediaries regarding third party behavior.

Safe harbors should also extend into copyright, *if* the TTIP should reach that contentious issue. The copyright safe harbors in the US Digital Millennium Copyright Act (DMCA) have been critical to the growth of the US Internet sector. Both the US and EU have recognized that holding Internet and e-commerce businesses liable for the wrongful conduct of their users would jeopardize the growth of this vital industry. Thus, if TTIP has an IP chapter, it should require minimum protections for intermediaries.

Fifth, intellectual property: I will not presume that TTIP will reach IP. It remains both contentious and divisive in transatlantic relations, and may not be appropriate in this agreement. To the extent that IP regulation is included in TTIP, however, we must reaffirm limitations and exceptions that US industry depends upon.

A year ago, USTR announced its intention to include language in TPP that will obligate parties to seek to “achieve an appropriate balance in their copyright systems.” Reaffirming established limitations, including issues such as first sale and the non-protection of facts, is as important in Trans-Atlantic trade as it is in Trans-Pacific trade.

Finally, customs harmonization: It is now common for individual entrepreneurs and small businesses to use Internet platforms like eBay and Etsy to reach customers around the world. Unfortunately for non-bulk shippers, customs inspections and duties are disproportionately expensive. By harmonizing the *de minimis* customs thresholds at \$800, the US and EU would provide leadership in updating global trade rules to better fit the realities of the 21st-century economy and help small businesses in the process.

I look forward to your questions.

Complete written testimony available online at:
<http://www.ccia.net/org/CCIA/files/ccLibraryFiles/File/00000000788/CCIA%20TTIP%20Comments%202013.pdf>