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Consumer
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Association



Internet Association

August 31, 2017

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

Dear Ambassador Lighthizer:

We commend you on your strong commitment to digital trade. To truly modernize NAFTA for the digital age and ensure continued US technology leadership globally, we urge you to seek a strong and balanced copyright framework based on US law. The inclusion of the Digital Millennium Copyright Act (DMCA) safe harbors and clear language requiring copyright balance will advance US digital economy leadership and has the potential to spur untold future American innovation and economic growth.

The undersigned associations represent sectors responsible for 10.3 percent of US GDP and 15.3 million American jobs.¹ And digital trade now represents over half of all US services exports.² Our members – ranging from our largest manufacturers to our smallest mom-and-pop businesses – create jobs across the country by helping US companies leverage the internet to reach global markets. In addition, our industry is now producing and delivering original content, leading the world in creating innovative internet services and technology-enabled content that bring music, films, and other creative works to worldwide audiences. We are the new faces of the American content industry, winning Emmys and Oscars, providing digital distribution for streaming-only Grammy winners, while also creating services that address the challenge of piracy by allowing consumers to legally access content globally.

US technology-based innovation, and the jobs it has generated, depend upon the strong and balanced US copyright framework. As Congress has recognized,³ our trade agreements must reflect this to position the US for success globally. Indeed, the DMCA safe harbors (Section 512) and the Copyright Act exceptions (Section 107) are widely considered essential to the internet's commercial growth in the US. Cloud-based services, machine learning, text and data mining,

¹ <http://www.cta.tech/cta/media/ResearchImages/U-S-Economic-Contribution-of-the-Consumer-Technology-Sector-2016.pdf>

² <http://www.esa.doc.gov/economic-briefings/new-bea-estimates-international-trade-digitally-enabled-services>

³ <https://www.congress.gov/congressional-report/114th-congress/house-report/100/1>
<https://www.finance.senate.gov/imo/media/doc/TPA%20Report%20as%20filed.pdf>

web search, consumer electronic products, and many other innovations depend fundamentally on these provisions. US industries that benefit from fair use and other copyright limitations now generate \$4.5 trillion in annual revenue and employ 1 in 8 US workers.⁴ One recent study found that weakened safe harbors for online intermediaries would eliminate over 425,000 American jobs and lead to an annual loss of \$44 billion in US GDP.⁵

Some have urged USTR to disregard the needs of this critical export sector. If we seek to create an international obligation in a modernized NAFTA that embodies only one part of the US copyright framework, but leave out other portions that the US technology sector depends on, we will cause serious harm to the most innovative and fastest growing segments of our economy – and put at risk vital jobs. This is why it is essential to ensure the balance at the heart of the US copyright system, including DMCA safe harbors and other copyright limitations and exceptions, is embraced by our key trading partners in North America.

For over 20 years, safe harbors established by Section 512 of the DMCA have been and remain critical to internet-enabled trade, providing a framework that safeguards the interests of copyright holders, online service providers, and users, while imposing responsibilities and rights on each. Yet Mexico does not have a copyright safe harbor regime, which means US service providers are at risk of liability under Mexican law even if their actions fully comport with US law. This asymmetry puts US digital exporters, and the jobs they support, in jeopardy.

On behalf of our members, we thank you for your attention to this critical issue and look forward to engaging with you as NAFTA negotiations continue.

Sincerely,



Michael Beckerman
President & CEO
Internet Association



Ed Black
President & CEO
Computer and Communications
Industry Association



Evan Engstrom
Executive Director
Engine



Dean Garfield
President & CEO
Information Technology Industry Council

⁴ <http://www.cciainet.org/fairusestudy>

⁵ <http://internetassociation.org/wp-content/uploads/2017/06/NERA-Intermediary-Liability-Two-Pager.pdf>

A handwritten signature in black ink, appearing to read "Gary Shapiro". The signature is fluid and cursive, with the first name "Gary" written in a larger, more prominent script than the last name "Shapiro".

Gary Shapiro
President & CEO
Consumer Technology Association

Cc: The Honorable Wilbur Ross, Secretary of Commerce