



December 15, 2016

President-Elect Donald J. Trump
Trump-Pence Transition Team
1717 Pennsylvania Ave, NW
Washington, DC 20006

Dear Mr. President-Elect:

On behalf of the Association of American Publishers (AAP) and its members, congratulations on your election as the 45th President of the United States.

AAP is the national trade association of the U.S. book and journal publishing industry. AAP's nearly 400 members include most major commercial publishers in the U.S., as well as smaller and non-profit publishers, university presses, and scholarly societies, and they publish works in every field and format, including popular books, scholarly journals and monographs, software, websites, and a variety of other electronic publications. Among AAP's highest public policy priorities are the protection and enforcement of intellectual property rights, defense of the freedom to read and the freedom to publish, and promotion of research, education and literacy.

While the Internet and smartphones have added texting, tweeting, emailing, instant messaging, social networking, and blogging to the ways individuals communicate privately with a few or publicly with a crowd, publishing an original work remains a compelling way to tell a story, explain any subject, offer a viewpoint, or spread facts and ideas. Some authors choose to self-publish, but the more traditional approach of an author teaming up with an established publisher is still a tried and true means for people with something to say to reach those willing to heed them, even amidst the constant flow of so many digitally-enabled voices, texts and images competing for their attention at all times of every day wherever they may be.

This is not industry puffery, Mr. President-Elect. You and your daughter Ivanka are part of the proof, having authored some 18 popular books in the past thirty years, most of them published by imprints of AAP members such as Simon & Schuster, Penguin Random House, John Wiley & Sons, HarperCollins, Macmillan, and Hachette Book Group (Perseus Books), and all of them still available for purchase, whether in hardback, paperback, eBook or audio formats. Undoubtedly, your most recent books introduced readers to views and ideas that formed the core of your election campaign.

Effective Copyright Legal Protections Are Critical for Publishers

In the U.S., publishers continue investing in innovative technologies and business models to support the creation and dissemination of works of original expression, by novice as well as celebrated authors. Their ability to get those works into the marketplace, without interference from government and with the key assets of their exclusive rights in such works acknowledged as legally-safeguarded intellectual property, is protected by the First Amendment's guarantee of freedom of speech and the Constitution's

clear recognition that “securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” will “Promote the Progress of Science and useful Arts.” (*Article 1, Section 8, Clause 8*)

Surely you understand the role that meaningful intellectual property rights play in American entrepreneurial success, both at home and in global markets, as the ability to burnish the Trump brand through trademark registration and enforcement has helped your diverse enterprises to grow and thrive world-wide. Consistent with that understanding, your businesses have been active at the U.S. Trademark Office and in the courts when necessary to exercise your statutory rights to prevent infringement or dilution of your brand.

Whether operating on a commercial or non-profit basis, publishers’ reliance on their ability to secure adequate copyright protection and effective copyright enforcement, under both federal law and a variety of international agreements, is as critical to their success as the maintenance of trademark protection has been for your business endeavors. It is essential to their ability to publish in the U.S., where readers of all ages, origins and interests can relish discovering and digesting works that entertain or inform them while enriching the cultural, historical, political, and scientific record of American society.

Effective copyright protection and enforcement is equally critical for U.S. publishers’ ability to compete in global markets, where professional and scholarly works are much sought-after by academics and researchers; U.S. textbooks and other instructional materials are considered to be the top-of-the-line for educators and students in many countries; and, such exports, along with popular works of fiction and non-fiction, convey the diverse aspects, textures and colors of American life in ways that promote understanding and goodwill for American values, laws and institutions.

Publishers Make Significant Cultural, Economic, Educational, Scientific & Social Contributions Both in the United States and Overseas

Book and journal publishing, collectively with the other “core” U.S. copyright industries that create and distribute recorded music; motion pictures, television, and video; software; and, newspapers and periodicals, contribute some \$1.2 trillion in value to the U.S. GDP. This accounts for 6.88% of the U.S. economy, including \$177 billion in 2015 sales of major U.S. copyright products in overseas markets, which outpaces exports of the U.S. chemical, aerospace, agricultural, electrical, and pharmaceutical industries.¹

Among AAP’s membership, as further detailed at our website www.publishers.org, please note:

- **Trade publishers** play a critical role in securing a future for writers and books in all formats and attracting readers to ensure a healthy and vibrant marketplace for popular works of fiction and non-fiction. They create and support national efforts that advocate literacy; celebrate the freedom to read and publish; conduct outreach to independent and international publishers, libraries, and students seeking career opportunities; and, advance initiatives promoting industry diversity.

¹ See *Copyright Industries in the U.S. Economy - The 2016 Report* prepared by Stephen Siwek of Economists Incorporated for the International Intellectual Property Alliance (IIPA) based on data from the U.S. Bureau of Economic Analysis and other government agencies. To learn more, visit www.iipawebsite.com.

- **Higher education publishers and learning companies** are developing personalized learning technologies, expanding choices for online and other digitally-based learning solutions with affordable and pedagogically-advanced interactive multimedia content for customized use by students through digital learning platforms and materials. Such products and services support colleges and universities in meeting increasingly challenging tasks of helping students to stay in school, become more fully engaged in learning, and significantly improve performance and graduation rates. By partnering with educational institutions in “digital discount programs,” these AAP members are lowering the cost of instructional materials to help ensure inclusive access to higher education.
- **PreK-12 Learning Group members** support creation of innovative learning tools integral to educating our next generation of citizens, while promoting a fair, competitive, and thriving marketplace for PreK-12 publishing of all types on all platforms. These members include developers of print and digital instructional materials and learning tools, as well as manufacturers, suppliers, consultants, and other non-publishers directly involved in the industry. They will benefit from the Center for Innovation & Digital Learning, a new AAP initiative that aims to promote a steady influx of forward-thinking ideas into the learning resource market for the development of future-looking educational technology.
- **Professional & Scholarly Publishers** enable the communication and dissemination of new ideas and discoveries that drive innovation. They are fully committed to advancing quality scholarship that is validated through peer review, curated, and made available worldwide to inspire innovative ideas and cutting-edge research. They publish the vast majority of books, journals, software, databases, and other digital content that are used by scholars and professionals in science, medicine, technology, business, law, and the social sciences and humanities, and are leaders in promoting public access policies that benefit science and society.

Adequate copyright protection and effective copyright enforcement are critical to the business models of all AAP members, whose enterprises rely on flexible licensing options and diverse access and distribution possibilities to maximize customer choices in competitive markets online and offline. Publishers also need to be able to operate in an environment free of overreaching regulations and unfair government competition with the products and services they provide. AAP has worked to ensure that our members have fair opportunities at home and in global markets which publishers participate in both directly and through the Internet.

China Exemplifies Global Publishing Challenges of Market Entry and Rampant Infringement

For example, with respect to China, AAP has worked with U.S. Government officials in bringing a successful albeit not yet fully implemented market access action before the WTO to address China’s failure to live up to its commitments to lift restrictions on foreign investment in publications importation and distribution. In addition, for several years now, AAP has engaged on multiple fronts to stop the unauthorized dissemination of electronic copies of academic journal articles by Chinese commercial entities that, having sourced the articles from certain libraries with licensed journal subscriptions, set up their own “subscription services” in direct competition with American publishers. One such company, which electronically distributes illegally-obtained files of medical and scientific journal articles to “subscribers” in libraries and hospitals across China, appeared at one point to be supported in this activity by a well-known, powerful state-run medical library.

Although we understand that multilateral trade agreements are multi-faceted and often result in some stakeholders being unhappy with the ways in which certain aspects of their sectoral interests are addressed, we commend to you the accomplishments of U.S. trade negotiators in regard to the standards, practices and policies they have recently secured in connection with intellectual property rights and digital commerce. In general, these have been viewed within the U.S. creative and technology sectors as likely to be beneficial to U.S. economic interests.

Still, there are serious problems at home, where cultural values and business models that have evolved on the Internet with its growth as an adjunct and arena for commerce, entertainment and education pose serious practical and political problems for publishers in exercising their exclusive rights of copyright.

Congress Must Fix DMCA to Ensure Service Provider Cooperation to Protect Copyright Online

Innocently or not, the ease of discovery, access and distribution increasingly associated with the *unauthorized* presence of many copyrighted works on the Internet promotes conduct reflecting a mistaken view that their mere availability online justifies acquisition and use of such works without giving copyright owners the customary right to fair market value in exchange.

The problem is exacerbated by the conduct and rhetoric of some in the Internet-based services and consumer technology manufacturing communities, as well as in the library, education and archival communities, who share a common self-interest in continued advocacy to *minimize* the effectiveness of copyright protection and enforcement.

Businesses that market services and devices through which their customers may access, store and enjoy popular copyrighted works in digital formats benefit from weak or unenforceable copyright protection because their services and devices become more attractive to users as the ordinary market requirements to obtain books, watch movies or listen to music are reduced or eliminated online. Sadly, the same is true for some nonprofit cultural institutions that exist to provide free public access to diverse informational materials – including copyrighted works of original expression.

Provisions of the Digital Millennium Copyright Act (“DMCA”), which Congress enacted in 1998 to encourage online availability of popular copyrighted works while promoting a balance of interests and cooperation between copyright owners and Internet service providers in dealing with online infringement of such works, wildly succeeded in encouraging such availability. However, the relevant DMCA provisions do not achieve that intended balance and cooperation due to numerous instances of judicial misapplication and the unanticipated appearance of service provider business models that foster, exploit and profit from online infringement by their users while offering only token compliance with the law.

The current epidemic of online infringement harms public as well as private interests in the availability of such works, and the legal flaws that hamper the DMCA in its intended operation need to be fixed by our nation’s elected representatives.

Majority of U.S. Publishers are Small and Medium Enterprises Creating New Works and Jobs

While some of AAP's larger members may be familiar to American readers of best-seller fiction and non-fiction, as well as to those with sharp memories of the course materials they worked through while in elementary and secondary schools or college, the vast majority of AAP members – and of U.S. book and journal publishers in general – are small and medium businesses under the definitions and size standards of the U.S. Small Business Administration.

Like other small and medium entities that are responsible for meaningful job creation but often lack the resources needed to protect or pursue their rights through Congress and the federal courts, U.S. publishers need a common sense assurance that their ability to obtain a fair return on capital investments in competitive markets will not be thwarted by flawed federal laws and court decisions, especially since the exercise of their exclusive rights of copyright is an intended result of the Framers' grant of authority to Congress to advance the public dissemination of knowledge by rewarding the private creation of works of original expression.

We look forward to meeting and working with your people during the rest of the transition period to advance the health and productivity of one of our nation's premiere creative industries. We will follow up with specific recommendations for your consideration during your administration's first one hundred days in office.

Thank you, Mr. President-Elect, for your time and consideration.

Sincerely,



Allan Adler
General Counsel & Vice President, Government Affairs
Association of American Publishers