



Office of the Vice President
Government and Regulatory Affairs

600 14th Street, N.W., Suite 300
Washington D.C., 20005

February 28, 2018

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

Dear Ambassador Lighthizer:

IBM is grateful for your commitment to digital trade as the United States continues negotiations to modernize the North American Free Trade Agreement (NAFTA). We believe that the discussions on the digital chapter are proceeding well and would establish new, world-class standards for the treatment of digital commerce and data flows in North America. We understand, however, that an unresolved issue in these negotiations has been the issue of intermediary liability for users' content – the ability of internet media companies to enjoy blanket legal immunity for what is shared on their platforms.

This matter is the subject of an ongoing and evolving debate in the United States. Indeed, on February 27, 2018, the U.S. House of Representatives voted overwhelmingly to limit elements of legal immunity that internet media companies enjoy. The Fight Online Sex Trafficking Act (FOSTA) addresses several aspects of the immunity provision of the Communications Decency Act (CDA), and provides law enforcement authorities and victims with legal recourse that was previously closed off to them. This is an important step forward that demonstrates our nation's commitment to the responsible use of technology. IBM and other responsible U.S. technology companies were strong advocates of this legislation.

It seems clear that given the public's increasing concerns about online responsibility and accountability, there is no longer a consensus in the United States that internet media companies should enjoy blanket immunity from legal liability. We do not believe it would be appropriate to incorporate into NAFTA provisions on intermediary liability that are evolving even in U.S. domestic law. IBM therefore recommends that the digital chapter of NAFTA be closed without including language on this issue.

Thank you for considering our views, and for your leadership on digital trade as part of a new, modernized NAFTA.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Padilla".

Christopher A. Padilla
Vice President
Government and Regulatory Affairs