



April 27, 2018

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

Dear Ambassador Lighthizer:

When the North American Free Trade Agreement (NAFTA) was first negotiated the internet economy did not yet exist, and now it has grown to impact every sector of the economy, from manufacturing to agriculture to financial services. As you seek to complete negotiations, you have the potential to make NAFTA the model for future trade agreements for the digital economy and U.S. technology leadership.

I commend you on the progress that has been reported in the NAFTA negotiations to date, including in key areas related to data flows and data localization. We urge you to continue this work by securing outcomes that offer intermediary liability protections and streamline customs procedures for e-commerce shipments. We also urge you to conclude the agreement with copyright provisions that reflect the innovation-driving framework of U.S. law. A modernized NAFTA that includes the provisions outlined in this letter will ensure the U.S. maintains and builds on its place as the global leader in digital trade.

Intermediary Liability Protections That Reflect U.S. Law. Intermediary liability protections have enabled new business models to develop in the U.S. without getting sued out of existence. These protections have allowed online platforms to facilitate U.S. exports, especially by small- and medium-sized businesses and ensure a safe and trustworthy online environment. As our trading partners build out their regulation of the digital economy, we should be insisting upon the same protections abroad.

Section 230 of the Communications Decency Act is a core foundation of the U.S. internet economy. If online platforms or other services are considered to be the author of the content that is shared by others – including customer reviews and comments – they would not be able to operate as effectively, or even at all in some markets. Intermediary liability protections allow platforms to operate in an open manner and, more importantly, to innovate and grow.

Copyright Provisions That Reflect The Innovation Framework Of U.S. Law. To protect the U.S. digital economy globally, NAFTA must include an innovation-oriented copyright framework that reflects the full scope of U.S. law – including the copyright safe harbors of the Digital Millennium Copyright Act and the balanced limitations and exceptions of U.S. law. America has a strong and innovation-oriented copyright framework that protects creators' legitimate rights, enables new innovation, and allows consumers to benefit. NAFTA must reflect that.

U.S. online service providers at home depend upon a legal framework that protects against copyright claims over the massive volumes of content that they host but do not control, while also incentivizing action to deter infringement. The Digital Millennium Copyright Act is foundational to the U.S. internet economy, providing a 'safe harbor' system that protects the interests of copyright holders, online service providers, and users. Mexico has no copyright safe harbor regime, creating risks for U.S. service providers and content creators. The final NAFTA text should include strong copyright safe harbors, modeled on the U.S. system.



A strict regime of copyright protections and enforcement, without exceptions like the ‘fair use’ of copyrighted material, would also doom the digital economy and U.S. innovation leadership. Many of the core innovative activities undertaken by U.S. digital companies are only possible under copyright law because of limitations and exceptions. NAFTA should be updated to require the adoption of limitations and exceptions necessary for the digital economy, which enable innovative fair uses of copyrighted material. Such rules are missing in Mexico, and would set the standard for other countries that threaten to discriminate against American services through unbalanced copyright regimes.

Indeed, when Congress enacted Trade Promotion Authority (TPA) in 2015, it specifically addressed this issue, providing that U.S. trade agreements should foster an “appropriate balance” in copyright systems, including by means of limitations and exceptions.

Improved Customs And Trade Facilitation Procedures. Simplifying import requirements and expediting customs clearance for e-commerce and low-value manufactured goods is critical in order for the United States to fully benefit from what the digital economy has to offer. It is essential that NAFTA address red tape and cut transaction costs at the border by requiring that Mexico and Canada update and raise de minimis and informal clearance levels.

Thank you for your efforts to modernize NAFTA and ensure that the U.S. can continue to lead on digital trade.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Beckerman', with a long horizontal flourish extending to the right.

Michael Beckerman
President & CEO
Internet Association