



The Internet Association

January 14, 2015

The Honorable Orrin Hatch
Chairman
Senate Finance Committee
United States Senate
219 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Senate Finance Committee
United States Senate
219 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Paul Ryan
Chairman
House Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Sandy Levin
Ranking Member
House Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Hatch, Ranking Member Wyden, Chairman Ryan, and Ranking Member Levin:

The Internet Association, a trade association representing leading Internet companies,¹ appreciates your leadership in continuing the important process of drafting renewed Trade Promotion Authority (TPA) legislation. Your committees already have recognized the importance of digital trade and the significant impact policies promoting cross border data flows have on international commerce. However, globally, our industry continues to face serious threats, and we believe U.S. trade policy must play a critical role and take a comprehensive approach in addressing them.

We are therefore concerned that the last version of TPA legislation includes imbalanced intellectual property language that does not reflect the challenges faced by the U.S. Internet sector globally, and urge that this gap be addressed as you work to update the legislation. As you consider TPA legislation, we urge you to include key principles that have made the Internet such an important communications platform and support digital trade and e-commerce.

¹ The Internet Association represents the world's leading Internet companies including: Airbnb, Amazon, AOL, Auction.com, eBay, Etsy, Expedia, Facebook, Gilt, Google, Groupon, IAC, LinkedIn, Lyft, Monster Worldwide, Netflix, Practice Fusion, Rackspace, reddit, Salesforce.com, Sidecar, SurveyMonkey, TripAdvisor, Twitter, Uber Technologies, Inc., Yelp, Yahoo, and Zynga.



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Internet companies today contribute \$141 billion in annual revenue to the overall U.S. GDP, employ 6.6 million people, and facilitate digital trade by enabling businesses large and small to reach customers across the globe.

With three billion Internet users worldwide, the Internet industry is a leading driver of commerce, innovation, free expression and economic growth, both at home and abroad. The U.S. is a net exporter of Internet-related services and products. According to the U.S. International Trade Commission, U.S. exports of digitally enabled services (one measure of international digital trade) grew from \$282.1 billion in 2007 to \$356.1 billion in 2011, with exports exceeding imports every year. Globally, in the past few years, the Internet has accounted for 21 percent of GDP growth in advanced economies and generates \$8 trillion annually in global commerce.

A critical factor in the Internet's success is the balance in U.S. copyright law. U.S. law provides not only strong protections and enforcement, but also robust and flexible limitations and exceptions. Without limitations and exceptions, a website could not provide snippets and links to other websites; an Internet service could not "cache" copies of files, which allows an Internet browser to respond to inputs in a matter of milliseconds; artists could not produce mash-ups of existing content to create new content; and researchers could not use others' digital databases to solve problems through data analytics.

Despite the critical role of copyright limitations and exceptions to the Internet's vibrancy, the legislation introduced in the last Congress — a proposed Bipartisan Congressional Trade Priorities Act of 2014 (S. 1900 and H.R. 3830) — reflected only the first part of this formula (protections and enforcement) and not the second (limitations and exceptions). We urge you to address this imbalance. We have attached suggested revisions to the bill. Already, the United States Trade Representative (USTR) has offered fair use-type language as part of the Trans-Pacific Partnership negotiations. The Internet Association views this as a strong first step as the U.S. seeks to adopt trade policies fit for the 21st century and innovative economies.

It is particularly important to fix this imbalance as policies are cropping up across some EU Member States that serve as new trade barriers to U.S. Internet companies. For instance, in Europe, Germany, Spain, France, and Austria have considered or adopted so-called ancillary copyright laws — laws that seek to restrict the ability of online platforms to show snippets and links to other websites. The Internet's seamless operation thrives on copyright policies that recognize equally exclusive rights for creators and flexible limitations and exceptions such as fair use and the first sale doctrine that encourage innovation. U.S. copyright law reflects this balance and contributes to the success of Internet companies



domestically. Ultimately, ancillary copyright laws compromise the Internet's future expansion and development.

A potential motivation for policies such as ancillary copyright is to protect incumbent European industries. While we understand the importance of efforts to protect homegrown industries, the beauty of the Internet is that it is not a 'zero-sum' game but rather offers equal opportunities for economic growth within global communities and cultures. Currently, the U.S. is engaged in negotiations with the European Union through the Transatlantic Trade and Investment Partnership (TTIP). This agreement presents a unique opportunity for two leading economies to promote Internet-friendly policies that benefit global communities and their citizens, encourage competition among existing market participants and new market entrants, and ensure the success of digital trade and ultimately the continued success of both economies.

In addition to the updating of the intellectual property language, key factors to update TPA for 21st century trade are detailed below. Upon request, we are happy to furnish language on these sections.

Intermediary Liability. An Internet company in the United States generally is not liable for the conduct or content of third parties who use its platform. To promote e-commerce and democratic discourse, Section 230 of the *Communications Decency Act* enables Internet platforms to host content without being considered the speaker of that content. This has been a critical element in the Internet's success in the U.S. Yet, most countries do not have the same legal framework. Consequently, the threat of legal action across the globe serves as a significant trade barrier, preventing U.S. companies from optimally operating in global markets.

Customs and Duties. While the Internet industry experiences unique, non-tariff barriers, our industry also faces considerable barriers that are found in the offline world such as customs and duties processes. Compliance with various countries' customs formalities, inspection requirements, and administrative procedures presents a significant barrier to market access for Internet-enabled businesses, especially small businesses. Improving customs and duties processes by harmonizing *de minimis* thresholds, as well as urging our trading partners to increase *de minimis* thresholds where they are artificially low, would decrease barriers faced by these businesses. Additionally, provisions ensuring duty free treatment for all technology goods and services and the limitation of non-tariff barriers that can be imposed on technology and other goods would allow Internet-enabled small businesses to engage in global trade and commerce.



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Promote Open Payment Systems: There are currently a variety of methods used by payments service providers to facilitate cross-border commerce in both goods and services. Trade policies should reflect the important role Internet-based payment methods play in facilitating cross-border commerce. To promote interoperability and a healthy, competitive market, international policies impacting cross-border payments should focus on open standards, be technology neutral, and ensure that consumers across the globe have access to safe and secure payment methods.

The Internet's growing role in international trade will bring about new challenges and issues such as ancillary copyright law and other policies that serve as trade barriers. Embedding technology-neutral policies such as those described above into modern TPA negotiating objectives will ensure that the Internet remains a global, revolutionary platform for trade, commerce, expression, and innovation.

We look forward to working with you to ensure that the Internet sector remains a vibrant and growing part of the U.S. and global economies.

Respectfully,

Michael Beckerman
President & CEO
Internet Association

**Possible Fixes to Intellectual Property Provisions of TPA
(Based on Bipartisan Congressional Trade Priorities Act of 2014)**

5) Intellectual property

The principal negotiating objectives of the United States regarding trade related intellectual property are—

(A) to further promote adequate and effective protection of intellectual property rights, including through—

(i)

(I) ensuring accelerated and full implementation of the Agreement on Trade Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)), particularly with respect to meeting enforcement obligations under that agreement; and

(II) ensuring that the provisions of any trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection **and appropriate and flexible copyright limitations and exceptions** similar to that found in United States law;

(ii) providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property with strong protections **and appropriate and flexible limitations and exceptions similar to those found in United States law**, including in a manner that facilitates legitimate digital trade;

(iii) preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights;

(iv) ensuring that standards of protection and enforcement keep pace with technological developments, **that appropriate and flexible limitations and exceptions similar to those found in United States law are available**, and ~~in particular ensuring that rightholders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works;~~

(v) providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms; and

(vi) preventing or eliminating government involvement in the violation of intellectual property rights, including cyber theft and piracy;

(B) to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection; and

(C) to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001, and to ensure that trade agreements foster innovation and promote access to medicines.