



# The Internet Association

November 13, 2013

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

The Honorable Orrin G. Hatch  
Ranking Member  
Senate Finance Committee  
United States Senate  
219 Senate Dirksen Office Building  
Washington, DC 20510

The Honorable Dave Camp  
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 Baucus, Ranking Member Hatch, Chairman Camp, and Ranking Member Levin:

The Internet Association, a trade association representing leading Internet companies<sup>1</sup>, understands that you are in the process of drafting renewed Trade Promotion Authority ('TPA') legislation. We are writing to express our appreciation for your leadership on this important bill and support this effort to ensure that it addresses the key issues that drive the innovation economy.

Since the inception of the commercial Internet two decades ago, our industry has flourished as an incubator for new and innovative technologies, constantly altering the way in which individuals and entities communicate with others and engage in commerce and trade on a daily basis. For instance, in just six short years since the expiration of the 2002 TPA Act (which expired in 2007), most of our member companies have either just come into existence or did not exist at all. The Internet industry continues to grow as a strong economic driver both domestically and globally.

Over the past five years, the Internet has accounted for 21 percent of GDP growth in advanced economies. Generating \$8 trillion annually in global commerce, the Internet industry is particularly important to the United States ('U.S.'), which captures more than 30 percent of

---

<sup>1</sup> The Internet Association represents the world's leading Internet companies including: Airbnb, Amazon.com, AOL, eBay, Expedia, Facebook, Gilt, Google, IAC, LinkedIn, Monster Worldwide, Netflix, Path, Practice Fusion, Rackspace, reddit, Salesforce.com, SurveyMonkey, TripAdvisor, Uber Technologies, Inc., Yahoo!, and Zynga.



# The Internet Association

global Internet revenues and more than 40 percent of net income. What is most exciting is that small and large Internet-based businesses are contributing to this economic growth. In a recent study, The Internet Association found that part-time businesses enabled by the Internet alone contribute \$141 billion in annual revenue to the overall U.S. GDP, employ 6.6 million people, and facilitate digital trade by allowing sole part-time business owners to reach customers across the globe.

As a net exporter of Internet-related services and products, it is vital that U.S. trade policies support the continued growth and reach of the Internet. We were pleased to see the United States Trade Representative's ('USTR') offering of fair use type language as part of its Trans-Pacific Partnership ('TPP') negotiations. With other critically important trade agreements, such as Trans-Atlantic Trade and Investment Partnership ('TTIP'), and the Trade in Services Agreement ('TISA'), we encourage you to incorporate Internet-friendly policies into renewed TPA legislation.

Before delving into the details of these policies, it is important that we recognize the Internet's open platform and multistakeholder model, free of governmental control. Keeping this in mind is vital to ensuring that trade policies enacted do not disrupt this successful model.

To support e-commerce and digital trade, U.S. trade negotiating objectives should address the following:

**Cross Border Data.** The Internet is a borderless medium, and the ability to move data across borders is essential to global business across every sector of our economy. The current environment related to U.S. government surveillance has not only complicated discussions in current TTIP negotiations, but has also encouraged foreign markets to adopt policies requiring companies operating within their jurisdiction to store data or servers within its territories. For instance, Brazil is currently considering legislation to require Internet companies that have Brazilian users to mirror data pertaining to such users on servers within Brazil. We appreciate Ambassador Froman's recent comments defending the U.S.'s efforts to reduce barriers to the free flow of information across borders. Ambassador Froman made clear that USTR will continue to push for cross border data flows, and no forced localization in TPP and TTIP, but given the political climate in the rest of the world, it's essential that the US not allow any of its trading partners to thwart the architecture and efficiencies of the Internet. TPA negotiating objectives must eliminate all barriers to the movement of electronic information across borders and solidify the U.S.'s commitment to promoting a single, global digital information marketplace.

**Intermediary Liability.** By law, an Internet company in the U.S. is generally not liable for the conduct or content of third parties who use its platform. To promote e-commerce and innovate communications platforms, Section 230 of the Communications Decency Act has allowed



## The Internet Association

Internet companies to offer platforms for third party content without threat of being treated as a publisher or speaker of such content. Yet, this policy is either inconsistently applied by some of our trading partners or not recognized at all. For instance, despite the European Union's E-Commerce Directive, U.S. Internet companies and their executives are at times subject to civil claims and criminal prosecutions for third party speech. The threat of legal action across the globe serves as a significant trade barrier, preventing U.S. companies from optimally operating in global markets. Trading objectives should ensure that Internet intermediaries, including providers of online networks and platforms, are protected from the unlawful actions of third parties.

***Intellectual Property Limitations and Exceptions.*** As mentioned above, USTR has only recently begun to table fair use like language in a trade agreement, namely the current TPP negotiation. Without greater recognition of the innovation that stems from fair use and other important limitations and exceptions in US law, the current U.S. IP template is based inappropriately on the assumption that increased protection is inextricably correlated to increased revenue for U.S. companies and job creation for American workers. Under U.S. law, copyright and trademark protection is balanced with appropriate limitations and exceptions, such as fair use. This policy is imperative to the functioning and development of Internet technologies and services. Providing adequate and effective protection combined with mandatory flexible limitations with respect to copyright and trademark will not only promote growth of the \$4.2 trillion Internet economy but also the creation of new and emerging technologies. For the United States to negotiate the next generation of trade agreements, new TPA text needs 21st century negotiating objectives reflecting the entirety of the US intellectual property framework.

***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 and urging our trading partners to increase *de minimis* threshold 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.

***Promote Open Payment Systems:*** There are currently a variety of methods for payments service providers to utilize 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,



## The Internet Association

international policies impacting cross-border payments should be technology neutral and ensure that consumers across the globe have access to safe and secure payment methods.

As the Internet industry continues to flourish, new challenges and issues will arise in international trade. Incorporating 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. The Internet Association looks forward to our continued work with you and your staff to ensure that the Internet sector remains a vibrant and growing part of the U.S. and global economy.

Respectfully,

Michael Beckerman  
President & CEO  
The Internet Association