



The Internet Association

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Michael Froman
Ambassador-Designate
United States Trade Representative
Executive Office of the President
600 17th Street, NW
Washington D.C. 20508

Ambassador-Designate Froman:

The Internet Association, a trade association representing leading Internet companies, congratulates you on your nomination to serve as United States Trade Representative. The role you will soon undertake is vital to America's Internet economy.

The Internet accounts for 21 percent of GDP growth in advanced economies over the past five years. The Internet industry is particularly important to the United States, which captures more than 30 percent of global Internet revenues and more than 40 percent of net income. If the Internet were a sector, it would have greater impact on U.S. GDP than agriculture or utilities.

The U.S. is a net exporter of Internet-related services and products in part because it has the most Internet-friendly legal system in the world. If the U.S. is going to remain the world's leader in this vibrant and growing sector, the U.S. government must lead the effort in promoting Internet-friendly laws through trade agreements and other vehicles.

We look forward to working with you on a range of trade matters that are critical to America's Internet economy, including the Trans-Atlantic Trade and Investment Partnership (TTIP), Trans-Pacific Partnership and renewal of Trade Promotion Authority and hope to meet with you on these matters soon after your confirmation. Trade issues for Internet companies today have evolved far beyond what was once a focus only on forced localization of servers and transfer of intellectual property. While those remain serious non-tariff barriers we seek to combat, we are also observing additional challenges in various countries such as Internet companies being subject to civil claims and criminal prosecutions for the actions of third parties on their websites, and U.S. companies facing discriminatory enforcement by foreign Governments on privacy matters.

Among the pending trade matters, there are two notable areas we wanted to raise in this letter: the IP template and TTIP.

One issue that consistently arises in the trade context is intellectual property protection. Upon your confirmation, we encourage you begin rethinking the U.S. "template" relating to intellectual



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property protection. While we recognize the importance of the provisions that track the Digital Millennium Copyright Act's safe harbors for Internet companies, the template overall lacks the nuanced balance of interests and flexibility present in U.S. law. Moreover, elements of this template, particularly those relating to copyright, reflect certain incorrect assumptions about what is in the economic best interest of the United States, including the notion that more protection invariably will lead to more revenue for U.S. companies and that U.S. companies will not have an incentive to innovate without strong protection. As the recent study released by the National Academies' National Research Council (NRC), *Copyright in the Digital Era: Building Evidence for Policy*, reveals, these assumptions are "poorly informed by objective data and independent empirical research."

Questioning some of the assumptions that underlie the IP template should not be misconstrued as a challenge to the basic premise that intellectual property protection provides important incentives to innovation. Internet companies rely heavily on copyright, as well as trademark, trade secret, and patents, to protect different aspects of their businesses. However, too much rigid IP protection prevents legitimate competition and frustrates the development of innovative products and services. In the international context, IP laws can be applied in a discriminatory manner and can be used to impede market penetration by U.S. companies.

We believe TTIP affords an opportunity to reduce barriers between the U.S. and E.U. economies, benefiting consumers and businesses on both sides of the Atlantic. In particular, the Internet industry supports the inclusion of policies that: (i) facilitate digital trade and economic growth through the promotion of a single global digital information marketplace, elimination of impediments to the development of cloud computing infrastructures, and harmonization of customs and duties processes between the U.S. and E.U.; (ii) ensure the free flow of information between the Continents by reinforcing the interoperability of existing privacy frameworks between the U.S. and E.U.; and (iii) ensure an IP chapter reflecting the full balance of U.S. IP law. You should consider whether the agreement in fact needs to include an IP chapter, particularly given the fact that the E.U. provides more protection for IP than the U.S.

While the free flow of data is of vital importance to Internet companies, it is critical to recognize that it will help companies in every sector and should therefore be a paramount goal in TTIP. Promoting Internet-friendly policies and the free flow of information in trade agreements offers significant trade-related growth opportunities to small businesses that are often active participants in the global economy due to the Internet. Internet-enabled small businesses offer tremendous trade-related growth opportunities if offline barriers, such as gaining access to various countries' custom forms, inspection requirements, and administrative procedures are addressed in a new trade agreement. Offline barriers hinder Internet-enabled small businesses from taking full advantage of global markets. Improving customs and duties processes between the U.S. and E.U. should be an important element of TTIP.

Similar to the commitments achieved in other Free Trade Agreements where trade partners committed to reform to achieve coherence in specific sectors, we believe TTIP can support the



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development of specific standards that promote simplified and interoperable requirements for data protection. Interoperability mechanisms like the U.S. Safe Harbor agreement, consistent with internationally accepted data protection principles, must remain available to Internet businesses in the future.

There is a need to reinforce the viability of interoperability as between the *existing* E.U. regime and the *existing* U.S. regime as they are. There must not be an assumption of any substantive changes in U.S. law, nor a presumption that the E.U. would by necessity remove any expectations for protection of cross-border flow of personal data. There is a strong need for the U.S. Government to educate E.U. negotiators on the robust U.S. approach to privacy: comprehensive consumer protection law (FTC Act) reinforced by sectoral statutes [(Health Insurance Portability and Accountability Act (HIPAA), Gramm-Leach-Bliley Act, Fair Credit Reporting Act, Children Online Privacy Protection Act, and CAN-SPAM)] and multi-stakeholder self-regulatory initiatives, all subject to enforcement.

One of the current regulatory challenges for digital commerce is the differing application of E.U. Data Protection regulations within different E.U. countries. This creates fragmentation and legal uncertainty, particularly for start-ups and other small, innovative businesses. The goal of negotiations in this area should be substantive and procedural commitments by both the E.U. and U.S. that are durable over time so as to increase regulatory predictability and business certainty. For example, one opportunity to lower regulatory barriers is for the U.S. to support the concept of a “lead” or “one stop shop” data protection regulator in Europe which would reduce inconsistent or overlapping requirements resulting from different Data Protection Authorities asserting jurisdiction and would reduce the exposure to discrimination against U.S. businesses and remove potential regulatory barriers to trade.

With the growth of the digital economy, new and challenging issues will continually emerge in international trade agreements. The Internet Association looks forward to working with you to ensure that the Internet sector remains a vibrant and growing part of the U.S. economy and one of our nation’s most transformative global exports.

Respectfully,

Michael Beckerman
President & CEO
The Internet Association

