



INTERNET ASSOCIATION NAFTA MODERNIZATION HEARING STATEMENT

Good evening, my name is Ari Giovenco and I am the Director of Trade and International Policy at Internet Association. Thank you for holding today's public hearing. IA represents the world's leading internet companies and supports policies that promote and enable internet innovation.

The internet sector makes up 6 percent of U.S. GDP – nearly \$1 trillion in economic activity – and employs nearly 3 million Americans. Globally, the internet has helped the U.S. unlock a massive \$159 billion digital trade surplus. And each year, U.S. manufacturers leverage the internet to export \$86.5 billion of products and services through online sales, adding to a positive balance of trade.

When NAFTA entered into force in the 1990s, the commercial internet, as we know it today, didn't exist. The internet is now at the center of U.S. competitiveness and a key enabler of current and future trade growth. The U.S. is a global leader in digital trade, and American exporters are leveraging internet-enabled tools to connect with customers in nearly every country in the world. A modernized NAFTA is an opportunity to help the U.S. maintain and build on this leadership.

NAFTA's text says little on information flows. On intellectual property, NAFTA includes detailed rules in some areas, but lacks provisions that are critical to the U.S. digital economy. On customs, NAFTA does not facilitate e-commerce trade. Overall, the parts of U.S. law that have enabled America's internet strength are absent from NAFTA.

Modernizing NAFTA offers both a chance to address specific market access issues for American's internet-enabled goods and services exporters and also provides an important opening to address issues of global significance. While Canada and Mexico follow some practices we advocate, codifying provisions would strengthen the North American market and set important precedents worldwide. As the U.S. formalizes negotiating objectives for modernizing NAFTA, we encourage USTR to focus on updating NAFTA in three key areas: data flows and digital services, intellectual property, and customs and trade facilitation.

NAFTA should protect the free flow of information and prohibit data and facilities localization requirements. In addition, consistent with U.S. law, NAFTA should empower internet services that are critical for U.S. exporters by prohibiting governments from making online services liable for third party content.

As all U.S. industries increasingly use the internet to trade, it is more crucial than ever to promote intellectual property frameworks in Mexico and Canada that are tailored for the digital environment. For too long, U.S. trade policy has been focused only on promoting strong copyright protection and enforcement, while ignoring the other parts of U.S. copyright law that U.S. tech success depends on.

U.S. internet services rely on critical copyright limitations and exceptions to enable digital trade worldwide. The balance at the heart of U.S. copyright law provides exclusive rights to authors to



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incentivize the creation of new works, and it grants critical limitations and exceptions in laws that promote the public good through legal access to works. Fair use allows content to be reproduced and used in ways that do not unreasonably harm the interests of the work's author and enables U.S. internet services to provide snippets of news articles, show thumbnails of photos, index copies of webpages for search purposes, store and transfer information via cloud services, analyze large data samples to build machine learning tools, and launch countless other innovations. Globally, more than 40 nations now have some form of statutory fair use or fair dealing provision in their domestic copyright law. A successful update to NAFTA must require parties to adopt a strong set of copyright limitations and exceptions, such as fair use, tailored for the digital environment. Such rules are currently missing in Mexico and would set a gold standard for other countries that threaten to discriminate against U.S. exporters.

NAFTA also lacks copyright safe harbors for liability for online infringement. The U.S. has promoted copyright safe harbors in trade agreements for the last fifteen years. Safe harbors are critical to the functioning of cloud services, social media platforms, online marketplaces, search engines, internet access providers, and many other businesses. Mexico does not have a copyright safe harbor regime, which means U.S. service providers can be held liable under Mexican law even if they have a system in place to remove content. NAFTA must be updated to require governments to adopt strong copyright safe harbors from liability for online service providers.

At a time of increased digital trade restrictions around the globe, the U.S. cannot continue to export a one-sided, enforcement only system of copyright favored by some stakeholders. Copyright provisions from past agreements – like KORUS – are woefully inadequate for today's economy and do not meet the Congressional directive articulated through Trade Promotion Authority. Without fully embracing balanced copyright, consistent with U.S. law, it will be very difficult for the internet industry to support a final agreement.

Finally, it is critical to the future economic integration in North America that e-commerce and online marketplaces can seamlessly connect buyers and sellers in the North American market. A significant aspect of this is ensuring that customs procedures are streamlined and that goods can move across borders expeditiously. Mexico and Canada maintain artificially low and commercially insignificant de minimis thresholds that disproportionately impact internet-enabled U.S. businesses. Commitments that harmonize de minimis levels with the current U.S. standard must be prioritized in NAFTA negotiations.

An updated NAFTA should also ensure low value non-commercial shipments are eligible for simplified customs procedures. Mexico is currently considering changes to their customs procedures that would require low value shipments to go through a full formal customs clearance. This change would put a tremendous burden on both the small e-commerce businesses looking to trade in Mexico, as well as Mexican consumers who benefit from ability to access a wide range of products at competitive prices. Given that customs will be an important part of upcoming discussions in NAFTA, we urge USTR to work with Mexico to ensure e-commerce shipments are not unfairly targeted in advance of the start of negotiations.

Thank you again for holding today's public hearing. I'm happy to answer any questions.