

December 18th, 2017

The Honorable Robert E. Lighthizer
Office of the U.S. Trade Representative
Executive Office of the President
600 17th Street, N.W.
Washington, D.C. 20006

Dear Ambassador Lighthizer,

“Intellectual property is a driving force in today’s global economy of constant innovation. It is the wellspring of American economic growth and job creation. With the rise of the digital economy, it has become even more critical that we protect intellectual property rights and preserve freedom of contract rather than create regulatory barriers to creativity, growth, and innovation. …We call for strong action by Congress and a new Republican president to enforce intellectual property laws against all infringers, whether foreign or domestic.”

On behalf of the undersigned organizations and the millions of Americans we represent, we agree with President Trump, who affirmed these words when he accepted his party’s nomination for the Presidency of the United States. Therefore, we urge you to strengthen intellectual property rights for the Digital Age in a renegotiated North American Free Trade Agreement (NAFTA)—because property rights, especially Intellectual Property (IP) rights, are the foundation of a strong digital economy.

Free trade is critical to economic growth and keeping the United States competitive around the world. America’s creative and innovative industries, which rely on strong IP rights, are essential to that growth. The U.S. Department of Commerce and the U.S. Patent & Trademark Office found that IP-intensive industries contributed \$6.6 trillion to the U.S. economy in 2014, comprising 38.2 percent of GDP. These industries support 45.5 million jobs, account for \$842 billion in merchandise exports, and generate \$81 billion in service exports.

NAFTA was adopted in 1998, when the commercial internet was in its infancy. Since that time, the world has changed dramatically. In 1998, only 1.2 percent of the Mexican population had access to the internet, compared to 36 percent today. Over the same period, Canada went from less than 40 percent to 88 percent of the population having internet access. But arm-in-arm with the legitimate internet’s growth, online theft of IP has also exploded. According to one estimate, IP theft could be costing the US economy as much as \$600 billion per year, in large part due to the rise of online theft.

One of the laws intended to protect IP online is the Digital Millennium Copyright Act of 1998 (DMCA). However, according to the Federalist Society Regulatory Transparency Project, “The law has failed to live up to its promise and objective, shifting the burden entirely to copyright owners while encouraging online intermediaries to do the bare minimum required to avoid liability, providing broad protection to bad actors for whom protection was never intended.”

The weak DMCA “notice and takedown” process chills creativity and innovation, a problem that will only grow as bad actors more completely exploit the holes in current system. Given

legitimate concerns about the law's efficacy here at home, we urge you to reject the suggestion that our trading partners adopt it under NAFTA.

We also urge you to reject calls for NAFTA to include "users' rights," which was manifested in the Obama-era concept of copyright "balance." In practice, promoting "balance" means encouraging our trading partners to adopt broad exceptions and limitations to copyright, such as fair use, which would allow foreign companies to profit by using U.S. copyrighted works without permission or compensation.

Credible legal and economic scholarship has demonstrated that exceptions and limitations to copyright should be contracting, not expanding, in the digital age. Moreover, the notion of copyright "balance" favored by dominant internet platforms does not translate to other countries. American fair use is bounded by nearly two centuries of jurisprudence and well-established legal norms. Without this rich history, simply exporting fair use or "balance" will give foreign companies a free ride on American creativity and innovation.

Alternatively, NAFTA should include high-level principles such as the globally-recognized Berne three-step-test, and notions of secondary liability that allow NAFTA signatories the flexibility to adopt effective online enforcement regimes that reflect the challenges of their respective markets.

As a diverse coalition of organizations, we strongly believe in free trade. But trade is not free when it is distorted by theft. We urge you to use these NAFTA renegotiations to better protect intellectual property and fight to make sure that America is on the winning side of trade.

America's creators and innovators deserve nothing less.

Sincerely,



THE
AMERICAN
CONSERVATIVE
UNION

Matt Schlapp, Chairman
American Conservative Union



THE
AMERICAN
CONSERVATIVE
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FOUNDATION

Daniel Schneider, Executive Director
American Conservative Union Foundation



AMERICANS
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CITIZENS
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AMERICAN COMMITMENT



The American Consumer Institute
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