



October 15, 2019

The Honorable Frank Pallone
Chairman
House Energy and Commerce Committee
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
House Energy and Commerce Committee
Washington, DC 20515

The Honorable Richard Neal
Chairman
House Ways and Means Committee
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
House Ways and Means Committee
Washington, DC 20515

The Honorable Chuck Grassley
Chairman
Senate Finance Committee
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Senate Finance Committee
Washington, DC 20510

Re: Importance of Intermediary Protections to U.S. Exports

Dear Chairman Pallone, Chairman Neal, Chairman Grassley, Ranking Member Walden, Ranking Member Brady, and Ranking Member Wyden:

Our organizations represent a wide range of companies and organizations that depend upon intermediary protections such as Section 230 of the Communications Decency Act to grow in the United States and export to markets around the world. Section 230 facilitates legal online commerce and communication, allowing millions of entrepreneurs, small businesses, and diverse voices to flourish.

The U.S. legal framework for online platforms is critical to American leadership in digital trade, including our \$172 billion digital trade surplus.¹ This framework enables growth and innovation across the creative and technology sectors, while enabling small U.S. businesses and startups to scale up quickly and become exporters. Undermining foundational intermediary liability protections would cost 4.25 million American jobs and \$400 billion over the next decade, according to recent research.²

Unfortunately, threats to this framework are mounting globally, and American leadership on this issue has become increasingly critical. Countries such as China, Russia, India, and parts of the European Union have pursued a very different approach through legal regimes that require state control of online speech, activity and commerce. These countries are actively pushing some of our key trading partners to adopt similar penalties and seek to apply their rules in an extraterritorial way that restricts market access for U.S. firms.

¹ Bureau of Econ. Affairs, U.S. Trade in ICT and Potentially ICT-Enabled Services (last updated Oct. 19, 2018).

² Christian Dippon, *Economic Value of Internet Intermediaries and the Role of Liability Protections* (NERA 2017), <http://internetassociation.org/wp-content/uploads/2017/06/Economic-Value-of-Internet-Intermediaries-the-Role-of-Liability-Protections.pdf>.

If the U.S. were to abandon its leadership position on this issue, it would send a clear signal to these and other countries that they are free to pursue further troubling restrictions on speech and innovation. Stakeholders broadly recognize the need for a robust system of intermediary liability protections, while still providing for healthy debate on the exact contours of Section 230.³

Promoting intermediary liability protections in a trade agreement serves several key functions. It stops foreign restrictions on free expression and innovation, and it gives companies the legal certainty they need to take “Good Samaritan” steps to proactively remove abusive and malicious content from their platforms. The Good Samaritan provisions in Section 230 are designed to enable website operators to fight misconduct and protect their users from online harms by removing disincentives to moderate abusive behavior. Narrowing this protection would have the perverse result of making it harder for website operators to police bad actors.

Intermediary liability protections also play a key role in enabling American small businesses to build trust and customer relationships in new markets. Today, millions of U.S. small businesses are taking advantage of online commerce to reach far beyond local markets, including through marketing tools and interactive customer services. However, for these trade-enabling tools to function, companies need legal certainty that they will not be held liable for all communications that arise between businesses and consumers using these tools. The inclusion of intermediary protections in trade agreements provides this assurance. As the U.S. International Trade Commission recently recognized, “provisions that reduce policy uncertainty about digital trade” are one of the most economically significant elements of the USMCA.

Finally, some have raised the concern that a trade agreement somehow ‘locks in’ domestic law. The protections in trade agreements, like U.S. law, provide clear flexibility for domestic changes to legal frameworks. In the U.S., criminal law is explicitly exempt from the law to ensure prosecution of bad actors. In the general exceptions to USMCA and other trade agreements, there is an exemption allowing for new laws to protect public morals and other interests. USMCA shows how trade measures can be sufficiently flexible to reflect new changes to a legal framework.

Thank you for your attention to this issue. We look forward to collaborating with you further to strengthen the American approach to digital trade on which so many of our nation’s creators, inventors, consumers, and businesses depend.

Sincerely,

Computer & Communications Industry Association
Consumer Technology Association
Engine
Internet Association
NetChoice

³ Chamber of Commerce *et al.*, 27-Association Global Industry Position Paper on WTO E-Commerce Initiative, Oct. 7, 2019, <https://www.itic.org/dotAsset/f2de6c22-e286-47d2-aca7-ba34830e462c.pdf>