1. *Given 21st century technology, should Congress consider updating the laws governing imports, such as section 337 of the Tariff Act, to include cross-border electronic transmission of IP-infringing content into the United States?*

Answer: SIIA takes no position on site-blocking legislation itself, and is regime-agnostic so long as the four guardrails mentioned in our testimony are met. Those guardrails are: (1) mandatory, robust judicial process before any order issues, with meaningful adversarial testing rather than rubber-stamped ex parte petitions; (2) narrow technical targeting that protects shared hosting, content delivery networks, and lawful content; (3) strict safe harbors for intermediaries that comply in good faith; and (4) no government-mandated technical architecture and no deep-packet-inspection or encryption-defeating mandates.[1] Additionally, meaningful penalties for bad-faith petitions and a workable way to challenge an erroneous order are important for practical workability. We appreciate the efforts both by the Chair and Representative Lofgren to advance legislation that meets these guardrails and protects speech at scale.

There are three main approaches that are already being considered — FADPA, the Block BEARD Act, and the Chairman's American Copyright Protection Act — and none has yet been reported out of committee.[2] A fourth track built on Section 337 risks dividing attention rather than producing a remedy. If the Subcommittee pursues an ITC-based approach, we respectfully urge that it be evaluated against those proposals rather than layered on top of them. Expanding the ITC's directive to cover digital flows would involve substantial changes to its existing function — the associated risks and potential unintended consequences should be approached with caution.

Regarding the ITC, as the Chairman noted, the *ClearCorrect* decision limited the definition of "articles" to material things and not electronic transmissions of digital data.[3] Were site-blocking orders to be adjudicated at the International Trade Commission, it would require legislative amendment. The International Trade Commission has some institutional advantages for these kinds of cases. Familiarity with copyright law and technology varies among the district courts, with much of it centered on the Second and Ninth Circuits. In contrast, the ITC has decades of IP adjudication experience (primarily involving patent disputes), administrative law judges accustomed to complex IP records, and a statutory culture of expedition, including the requirement that the Commission set a target date shortly after institution and conclude at the earliest practicable time.[4]

Section 337 could be amended in a way that narrowly maps onto data flows in one specific instance: where there's effectively no remedy available against a piratical foreign site and ordinary process has failed. If such a change were made, there are certain aspects of the ITC process that

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[1] Written Testimony of Christopher A. Mohr, President & CEO, Software & Information Industry Association, before the H. Comm. on the Judiciary, Subcomm. on Courts, Intellectual Property, Artificial Intelligence, and the Internet, at 16–17 (June 30, 2026) (SIIA takes no position on site-blocking legislation; setting out the four guardrails). judiciary.house.gov

[2] Foreign Anti-Digital Piracy Act, H.R. 791, 119th Cong. (2025), congress.gov/bill/119th-congress/house-bill/791; Block Bad Electronic Art and Recording Distributors Act of 2025 (Sens. Tillis, Coons, Blackburn & Schiff), tillis.senate.gov; American Copyright Protection Act (Rep. Issa) (discussion draft previously circulated).

[3] *ClearCorrect Operating, LLC v. International Trade Commission*, 810 F.3d 1283 (Fed. Cir. 2015) (holding that "articles" under 19 U.S.C. § 1337 means material things and does not include electronic transmissions of digital data). cafc.uscourts.gov

[4] 19 U.S.C. § 1337(b)(1) (requiring the Commission to conclude an investigation at the earliest practicable time and to establish a target date within 45 days after institution).

could help address certain concerns of a portion of our membership. As mentioned above, one of our guardrails involves robust judicial process. Section 337's existing public interest review, though tailored to physical goods, creates a more robust process than the existing site-blocking proposals contain.[5]

We note that this would require creation of a regime that (within section 337) is sui generis. None of its architecture was written with a transmission-based remedy in mind — the four factors track the effects of excluding physical articles from the U.S. market, not the effects of blocking access to a foreign website. Data has no port of entry. Any effective order would therefore have to run against domestic intermediaries: ISPs, DNS resolvers, content delivery networks, or payment providers. If Congress extends 337 to cross-border transmissions, it will need to decide whether the existing factors do useful work in that context or whether new public interest criteria should be drafted alongside the jurisdictional expansion. Section 337 raises the same technical, procedural, and First Amendment questions we identified in our testimony.

2. *For those who argue that the ingestion of materials protected by copyright to train generative AI models is infringement, what are they missing or what is commonly misunderstood?*

   Answer: SIIA has no position on whether training is fair use. And on each side, there are legitimate competing arguments. Which of those arguments prevail is, in turn, heavily fact-dependent and best resolved through the litigation process. For example, the court in *Bartz v. Anthropic* held that training was "exceedingly transformative" and fair, while holding that downloading and retaining pirated copies to build a permanent library was not.[6] The Copyright Office draws similar structural distinctions.[7]

   It is equally important to separate training from outputs. Whether and how a model may study protected works remains a contested question. Whether a model's *output* may reproduce protected expression is not: when a generative system outputs copyrighted expression, that is infringement, and existing law reaches it.

   a. _Follow on question_: *Do you think the courts have been striking the right balance?*

      Answer: Probably yes, with the caveat that the merits decisions to date are few, come from trial courts, and turn heavily on their particular records. Once those records crystallize and the courts of appeals (and most likely, the U.S. Supreme Court) have determined how fair use applies, Congress will be in a position to examine the systemic incentives that the decisions create, as well as any potential gaps. Put another way, the record Congress would need to legislate is still being made. We urge you to let the courts

[5] Before issuing an exclusion order or cease-and-desist order, the Commission must consider the order's effect on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. 19 U.S.C. § 1337(d)(1), (f)(1). Complainants must file a public interest statement at the time of filing, the Commission solicits public interest comments from the public and interested government agencies, and the Commission may direct the ALJ to take evidence on the issue before deciding on remedy. 19 C.F.R. §§ 210.8(b)-(c), 210.14(f), 210.50(a)(4), (b)(1). Independently, any exclusion order is subject to a 60-day policy review, delegated to USTR, that can disapprove the order for policy reasons unrelated to the merits. 19 U.S.C. § 1337(j)(1)–(2), (4).

[6] *Bartz v. Anthropic PBC*, No. 3:24-cv-05417 (N.D. Cal. June 23, 2025) (order on fair use). courtlistener.com

[7] U.S. Copyright Office, *Copyright and Artificial Intelligence, Part 3: Generative AI Training* (Pre-Publication Version, May 2025) (analyzing separately the stages at which copies are made in developing a generative AI model, including acquisition, dataset assembly, and training). copyright.gov

complete it.

b. *Follow on question: Has there been a breakdown in the free market that requires an immediate legislative fix?*

Answer: No. The licensing market for AI training and retrieval is developing, not failing. Agreements now span scholarly publishing, news, and specialized data; in one industry survey of 110 U.S. publishers, 51 percent reported signed AI licensing agreements and another 35 percent reported active negotiations.[8]

Real frictions exist — identifying rights, documenting provenance, and standardizing terms, particularly for smaller and independent creators. Those are transaction-cost problems, and they are being met with collective and templated licensing. A young market is not a broken one.

Legislating consent or pricing rules now would lock terms before the courts have defined the underlying entitlement and before the parties have found workable structures. And the development of a licensing market is preferable to legislation.

c. *Follow on question: What would the effect be if all ingestion were found to be an infringement of copyright?*

Answer: Market dynamics and technical responses are difficult to anticipate, which is among the reasons we favor allowing the courts and the licensing market to develop.

Congress would have to look at incentives created by that ruling, and the specific reasons that infringement liability was found.

If the liability turned on an especially undesirable course of conduct, the incentives created might not require legislative amendment. On the other hand, sweeping theories could call into question training not just at the frontier, but also at the enterprise level. The damages liability could be massive. Statutory damages assessed across large companies produce very large numbers: the Anthropic settlement resolved claims for $1.5 billion, roughly $3,000 per work across approximately 500,000 works, and that was a negotiated resolution rather than a judgment.[9] That cost could be passed along to consumers and enterprises, and could create a flurry of follow-on litigation. The resulting liabilities could undermine training efforts and model development throughout the AI industry. On the other hand, rights holders and authors would be assured that they would receive some level of compensation for the use of their works in ingestion, and a licensing market would likely expand further.

Ultimately, Congress will have to balance the externalities created by a liability finding. This is not a new legislative role, as the copyright law has been amended in response to technology since its creation. In this instance, however, the consideration of legislative amendment should be undertaken only when the judicial process has completed.

d. *Follow on question: As we look at the broader global AI competition, have other countries taken more permissive positions in an effort to out-innovate the United States*

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[8] Sara Guaglione, *Media Briefing: Brand authority and trust are becoming publishers' newest AI assets*, Digiday (July 23, 2026) (Interactive Advertising Bureau survey of 110 U.S. publishers). digiday.com

[9] *Bartz v. Anthropic PBC*, No. 4:24-cv-05417, Order Granting Final Approval of Class Action Settlement (N.D. Cal. July 20, 2026) ($1.5 billion, approximately $3,000 per work across an estimated 500,000 works). law.justia.com

or attract investment?

Answer: Some countries have adopted express statutory exceptions, but they are all qualified with conditions. For example, Japan's Copyright Act Article 30-4 permits exploitation of a work for "non-enjoyment" purposes, including data analysis, for both commercial and non-commercial use. But the Japan Copyright Office's General Understanding explains that the exception does not apply where a purpose of enjoying the expression coexists — fine-tuning intended to reproduce a particular creator's expression, for example — or where the use would unreasonably prejudice the rightsholder's interests, such as scraping a database offered for licensed data analysis while circumventing technical measures.[10] Singapore permits copying for "computational data analysis," including commercially, but only where the user had lawful access to the material.[11] The European Union's exception is subject to a machine-readable reservation of rights.[12] These are calibrated regimes, not open licenses.

It is also worth noting that the flexible, context-based analysis of fair use provides U.S. firms with a robust body of detailed cases that allows for a rapid adjustment to new technology. None of the approaches by other countries have meaningfully displaced or undermined America leadership in AI innovation: U.S. investment remains unmatched. Stanford's 2026 AI Index reports $285.9 billion in U.S. private AI investment in 2025 — more than twenty times China's $12.4 billion — and 1,953 newly funded U.S. AI companies, more than ten times the next closest country.[13] We are aware of no evidence that any country's IP exception has shifted investment at that scale. The U.S. advantages are its capital markets, talent, research universities, corporate and educational ecosystems, and compute.

[10] Copyright Act of Japan art. 30-4; Japan Copyright Office, Agency for Cultural Affairs, *General Understanding on AI and Copyright in Japan — Overview* (May 2024). bunka.go.jp

[11] Copyright Act 2021 (Sing.) § 244 (computational data analysis; lawful access required). sso.agc.gov.sg/Act/CA2021

[12] Directive (EU) 2019/790, art. 4 (general text and data mining exception, available only where the rightholder has not expressly reserved its rights; for content made publicly available online, reservation should be by machine-readable means, id. recital 18). eur-lex.europa.eu/eli/dir/2019/790/oj/eng

[13] Stanford Institute for Human-Centered Artificial Intelligence, *2026 AI Index Report*, ch. 4 (Economy). hai.stanford.edu