



October 18, 2018

The Honorable Michael R. Pompeo
Secretary of State
United States Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Wilbur L. Ross Jr.
Secretary of Commerce
United States Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

The Honorable Robert E. Lighthizer
United States Trade Representative
600 17th Street NW
Washington, D.C. 20006

The Honorable Larry Kudlow
Director, United States National Economic Council
The White House
1600 Pennsylvania Avenue
Washington, DC 205

Dear Secretary Pompeo, Secretary Ross, Ambassador Lighthizer, and Mr. Kudlow:

The European Union is readying changes to its copyright framework which will make it harder for U.S. businesses to effectively compete in Europe and will burden U.S. companies with compliance obligations if they decline to pay European companies or organizations for activities that are entirely lawful and legal under the U.S. copyright framework. We urge the Trump Administration to raise concerns with the EU and begin a dialogue with them regarding the proposed changes, including during the recently announced bilateral U.S./EU negotiations.

Internet Association (IA) represents over 40 of the world's leading internet companies. IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA's mission is to foster innovation, promote economic growth, and empower people through the free and open internet. IA's members include copyright owners and distributors, and we are proud of the award-winning original content produced and made legally accessible through the products and services we represent.

The balanced copyright regime in U.S. law supports a flourishing system of innovation, creativity, and investment. The strong protections afforded to copyrighted works are carefully balanced with safeguards to foster further creativity and provide significant benefit to the public. The protections afforded to responsible services by the Digital Millennium Copyright Act are a crucial driver of innovation, allowing internet-enabled products and services to thrive under clear, workable rules while responding to copyright infringement.



By sharp contrast, the EU is now finalizing a copyright proposal that diminishes needed checks and balances, tilting rights in favor of just rights holders, in an approach that will significantly harm American exporters and innovators. As the Trump Administration continues to engage with the EU on copyright reform, we respectfully request that the administration advocate for the full scope of the U.S. copyright framework and provide feedback on proposals that will inhibit U.S. innovation and economic growth. Below, we highlight pressing concerns with the current European proposal.

Specifically, we have three concerns.

First, The U.S. copyright framework is a model for balancing the rights of content owners while also guarding the rights of users to engage in legitimate speech and activity. The framework achieves this balance by providing online platforms with limited protection and clarity for their obligations to address complaints of copyright infringement by users of their platforms. Proposed Article 13 in Europe upsets that balance – it effectively mandates content filtering systems for internet services without regard to whether the content filtering would adequately address unlawful conduct without also removing protected speech, ignoring fair use, and misidentifying legally distributed works. The intended purpose of Article 13 is to target U.S. tech platforms and mandate the installation of filtering technologies if license negotiations do not produce suitable “value” to European copyright owners. It raises insurmountable hurdles for startups and new businesses who will not be able to afford the necessary technologies, and whose existing notice and takedown tools and practices may actually be more effective at combating copyright infringement concerns. Article 13 of the European proposal would also hold user-upload services directly liable for copyright infringement committed by others.

Second, Article 11 was also drafted to compel U.S. companies to pay for activities that are entirely lawful under U.S. copyright law. Copyright has always allowed for using brief snippets of copyrighted material for legitimate, referential purposes, and Article 10(1) of the Berne Convention further protects the right to provide “quotations from a work lawfully made available to the public.” Online platforms consistently exercise this right when they provide services that index websites, aggregate news headlines, and refer online users to third-party articles. Yet Article 11 of the European proposal includes vague measures that would create a “quasi-copyright” publisher right whose primary goal is to require U.S. services to remunerate or obtain authorization for the use of such content for uses otherwise permitted by copyright law. The U.S. government has repeatedly recognized that these measures are “key barriers to digital trade [that] impose financial and operational burdens on U.S. firms that help drive traffic to publishing sites.”

Finally, a responsible copyright regime also must enable continued innovation in the field of artificial intelligence to benefit customers worldwide. The ability to engage in informational analysis of lawfully acquired works, using technologies such as machine learning, provides the foundation for artificial intelligence and is used by all manner of researchers, businesses, and startups for data analytics. Copyright law has never been used to stop people from understanding and analyzing copyrighted works that they have lawfully accessed, nor has it prevented the use of unprotected facts and ideas contained in any copyrighted work. However, Article 3 of the European proposal attempts to prevent U.S. companies from engaging in informational analysis or using text and data mining in Europe.



We encourage the Trump Administration to reiterate the U.S. government's opposition to these and other measures as currently drafted and to seek obligations through the upcoming U.S./EU bilateral trade negotiations to prohibit such measures. Departures by the EU from the proven, successful policies that we have followed to date on both sides of the Atlantic risk thwarting the continued growth of innovative and creative industries alike.

Internet Association respectfully requests that the U.S. government advocate for the full scope of the U.S. balanced copyright framework and the protections afforded to responsible services enshrined in U.S. law, as the administration continues to engage with the EU on their copyright reforms.

Thank you for your attention to these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Beckerman', with a long horizontal flourish extending to the right.

Michael Beckerman
President & CEO
Internet Association