



November 1, 2017

The Honorable Robert Lighthizer  
United States Trade Representative  
600 17th St. NW  
Washington, DC 20508

Dear Ambassador Lighthizer,

As representatives of startups and small companies, we appreciate your strong leadership in negotiating the North American Free Trade Agreement (NAFTA). America's entrepreneurial spirit increases our ability to grow through trade, and startups have always been central to innovation and content creation in our country. We, the undersigned companies, know from first-hand experience that the success of America's smallest and youngest entrepreneurs depends on the clear and balanced copyright and intermediary liability laws currently found in our legal system. Additionally, startups drive the technology that allows creators to connect with fans, discover new ideas, and enable more creation. Any renegotiation of NAFTA must preserve and promote this U.S. framework for creation and innovation.

Startups and small businesses develop breakthrough technologies that fuel innovation and drive economic growth and job creation. In fact, research shows that new firms are responsible for all net new job growth in the United States.<sup>1</sup> To catalyze this growth, entrepreneurs depend on two core ingredients: access to foreign markets and users, and a balanced legal framework in those markets that enables us to pursue the same business models that we do at home. Investors are far less likely to fund the expansion of small companies seeking access to foreign markets that lack innovation-oriented balanced copyright and intermediary liability laws.<sup>2</sup>

First, NAFTA must reflect the full spectrum of U.S. copyright law that is essential to our existence and growth, including the innovation-oriented fair use doctrine, the Digital Millennium Copyright Act (DMCA) safe harbors, and other copyright limitations and exceptions that protect startups, consumers, and creators. The startup community depends fundamentally on these principles, and if other countries fail to reflect these same principles in their laws, we are at great risk. For instance, if through NAFTA USTR requires Mexico to adopt a more stringent set of litigation tools and enforcement measures that can be used against startups, then we will get sued out of the market if we lack the same protections that we have in the United States.

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<sup>1</sup> Hathaway, Ian, "Tech Starts: High-Technology Business Formation and Job Creation in the United States," Kauffman Foundation Research Series: Firm Formation and Economic Growth, August 2013.

[http://www.kauffman.org/~media/kauffman\\_org/research\\_reports\\_and\\_covers/2013/08/bdstechstartsreport.pdf](http://www.kauffman.org/~media/kauffman_org/research_reports_and_covers/2013/08/bdstechstartsreport.pdf).

<sup>2</sup> Fifth Era, "The Impact of Internet Regulations on Investment," 2016.

<http://www.fifthera.com/s/201603-Fifth-Er-Report-The-Impact-of-Internet-Regulation-on-Investment.pdf>

Moreover, pursuing an enforcement-only agenda on copyright will make it more difficult for us to challenge larger companies that are better able to defend themselves in litigation. A small business cannot compete in a marketplace where every piece of user generated content could be litigated on copyright claims. Changes to NAFTA that disrupt the balanced laws American companies depend on will disproportionately harm startups, and, in turn, the content creators who rely on those startups.

The internet allows startups to easily and cheaply expand their customer base worldwide, and that is only possible through the right legal frameworks. Startups have long supported the DMCA for creating predictable limitations on liability while empowering rightsholders to expeditiously remove infringing content. Additionally, copyright principles like fair use are critical for startups and content creators to leverage and build off existing works. NAFTA should be updated to promote the U.S. system of copyright limitations and exceptions, to ensure that startups can export to foreign markets.

Second, any changes to NAFTA must include intermediary liability protections that have led to the creation of pioneering platforms for collaboration, communication, creation, distribution, promotion, and mobilization that are used by billions of people. Modern technology allows millions of people worldwide to reach even the smallest of online platforms. This model only works because U.S. law enables companies to host or serve as a platform for huge volumes of transactions, communications and other activity by third parties. NAFTA modernization should include provisions to prohibit governments from forcing online services to be gatekeepers for content on the internet -- consistent with legitimate law enforcement requirements.

NAFTA is essential for startups as our top two export destinations are Canada and Mexico.<sup>3</sup> Additionally, every sector of the innovation economy depends on these principles including, but certainly not limited to: cloud services, fintech, artificial intelligence, social media platforms, web hosting providers, podcasts, software developers, translation services, 3D printing and mapping services. As negotiations continue, we urge you to pursue a strategy that protects and promotes the intermediary liability and copyright laws that startups depend upon to succeed.

Thank you for your careful consideration of these issues. We are happy to meet with you to discuss the importance of startups to U.S. trade.

Sincerely,

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<sup>3</sup> U.S. Chamber of Commerce. "The Facts on NAFTA."  
[https://www.uschamber.com/sites/default/files/the\\_facts\\_on\\_nafta\\_-\\_2017.pdf](https://www.uschamber.com/sites/default/files/the_facts_on_nafta_-_2017.pdf)

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