



Before the
United States International Trade Commission
Washington, D.C.

In re:

United States-Mexico-Canada Agreement:
Likely Impact on the U.S. Economy and on
Specific Industry Sectors; Institution of
Investigation and Scheduling of Hearing

Investigation No. TPA-105-003

COMMENTS OF
INTERNET ASSOCIATION

Thank you for the opportunity to testify before you today on the impact of the U.S.-Mexico-Canada Agreement (USMCA) on the digital industry. The USMCA is a ground-breaking trilateral trade agreement for the American digital economy.

I am testifying today on behalf of Internet Association (IA) which represents the interests of leading internet companies.¹ IA's mission is to foster innovation, promote economic growth, and empower people through the free and open internet. The internet creates unprecedented benefits for society, and as the voice of the world's leading internet companies, we ensure stakeholders understand these benefits.

When NAFTA entered into force in the 1990s, online marketplaces, the cloud, the app economy, the sharing economy, smart manufacturing, Internet of Things, artificial intelligence, precision agriculture, and machine learning were all science fiction. Today, the internet is transforming trade in fundamentally positive ways. With the help of e-commerce and online marketplaces, U.S. small businesses grow up to four times faster than businesses that do not embrace the internet, create twice as many jobs, are 50 percent more likely to be exporters, and bring in twice as much revenue through exports as a percentage of sales.²

The digital economy has grown from nothing when NAFTA was first implemented to one of the largest and fastest growing sectors of the United States economy. Today, the United States runs a \$41.8 billion trade surplus in services with Canada and Mexico.

The United States is currently the global internet and digital content leader. The internet sector now makes up 6 percent of U.S. GDP and employs nearly 3 million Americans. And Americans are benefiting from the digital revolution that has led to amazing products, lower prices, and new jobs. We export all of this across the globe, with digital trade now accounting for 64 percent of all U.S. services exports. American exporters are leveraging internet-enabled tools, such as e-commerce, to connect with customers in nearly every foreign market in the world. Nearly \$8 trillion is exchanged through global e-commerce annually.³

¹ Internet Association membership includes: Airbnb, Amazon, Coinbase, DoorDash, Dropbox, eBay, Etsy, Eventbrite, Expedia, Facebook, Google, Groupon, Handy, HomeAway, IAC, Intuit, letgo, LinkedIn, Lyft, Match Group, Microsoft, Netflix, Pandora, PayPal, Pinterest, Postmates, Quicken Loans, Rackspace, Rakuten, reddit, Salesforce.com, Snap Inc., Spotify, Stripe, SurveyMonkey, Thumbtack, TransferWise, TripAdvisor, Turo, Twillio, Twitter, Uber Technologies, Inc., Upwork, Vivid Seats, Yelp, Zenefits, and Zillow Group

²<https://internetassociation.org/wp-content/uploads/2016/07/Internet-Association-TISA-Intermediary-Liability-2-Page-Handout.pdf>

³ <https://www.mckinsey.com/industries/high-tech/our-insights/internet-matters>



Our technology leadership is the envy of the world, but depends upon – and was built by – the U.S. digital policy framework. Internet companies benefit when the same digital trade laws here are replicated around the world, and this agreement reflects key parts of U.S. law that have created a \$196 billion American digital trade surplus.

In the hundreds of pages of the original NAFTA, the word “internet” does not appear once. The agreement says little on information flows. On intellectual property, the original NAFTA includes detailed rules in some areas, but lacks provisions that are critical to the United States digital economy. Overall, the parts of U.S. law that have enabled America’s internet strength are absent from NAFTA. While Canada and Mexico follow some practices we advocate for, codifying these provisions will strengthen the North American market overall and set important precedents for the digital economy worldwide.

Strong provisions in the USMCA allow for the free flow of information across borders, prohibit forced data localization, and establish robust intermediary liability protections that ensure internet services can both host and moderate content on their platforms. These provisions will promote and protect U.S. digital exports and support millions of American jobs.

I want to highlight a number of the provisions in the USMCA that will benefit the digital industry.

The free flow of information across borders is fundamental to how the internet functions. The USMCA prohibits restrictions on data flows⁴ – thus ensuring that digital flows of information, video, communication, transactions, and intracompany traffic will not be disrupted. Every sector of the economy relies on information flows from manufacturing to services, to agriculture. Requirements that force U.S. companies to store or process data locally hurt U.S. businesses and threaten the open nature of the internet. Cross-border data flows have grown 45-fold since 2005 and are a key medium for small and large businesses to reach new foreign customers.⁵

Additionally, provisions in the USMCA prohibit governments from requiring localization of computing infrastructure.⁶ Forced data localization requirements that compel companies to manage, store, or process data locally are harmful to the future growth and security of the internet. Such requirements significantly increase costs for businesses and consumers; decrease the security of user data; and threaten the open, transnational nature of the internet.

Intermediary liability protections allow online platforms to function and facilitate massive volumes of U.S. exports, especially by small- and medium-sized businesses. They support 425,000 U.S. jobs and \$44 billion in U.S. GDP annually.⁷ If online platforms or other services are held liable for other people’s materials, including customer reviews or other user-generated content, they would not be able to operate in such an open manner or, more importantly, innovate.

The intermediary liability protections⁸ in USMCA are consistent with U.S. law and ensure that internet services can host content and communications from their users without automatically becoming liable for that content. Such a framework enables features like customer reviews, which have been essential to building cross-border customer trust for e-commerce businesses.

⁴OFFICE OF THE U.S. TRADE REPRESENTATIVE, United States-Mexico-Canada Agreement Text (2018), <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-statesmexico> [hereinafter “USMCA”]. Article 19.11.1

⁵ <https://www.mckinsey.com/business-functions/digital-mckinsey/our-insights/digital-globalization-the-new-era-of-global-flows>

⁶ The United States-Mexico-Canada Agreement (USMCA). Article.19.12

⁷<https://internetassociation.org/wp-content/uploads/2017/06/Economic-Value-of-Internet-Intermediaries-the-Role-of-Liability-Protections.pdf>

⁸ USMCA. Article 19.17



The U.S. has a strong and innovation-oriented copyright framework that protects creators' legitimate rights, enables new innovation, and allows consumers to benefit – including through safe harbors like those in the Digital Millennium Copyright Act (DMCA) and limitations and exceptions like fair use. This framework has been critical to the U.S. digital economy domestically and needs to be projected globally. Fair use laws underpin one in eight U.S. jobs, they drive 16 percent of our economy, employ 18 million Americans, and generate \$368 billion in exports annually.⁹ And they hold the key to future U.S. innovation, including in areas like artificial intelligence. Additionally, when safe harbors are not in place, 78 percent of venture capital investors are less likely to invest in services such as cloud services, social media platforms, online marketplaces, search engines, internet access providers, and many other businesses.¹⁰

In the copyright area, however, the USMCA includes only a portion of the core U.S. legal framework. We hope USTR in the future also includes key provisions in U.S. law like fair use-style rights that U.S. innovators and creators depend upon.

The USMCA does include a notice-and-takedown system for copyright infringement¹¹ that provides protection for copyright holders and predictability for legitimate service providers that do not directly benefit from the infringement. By creating clear rules for the removal of infringing content (with roots in U.S. law), this part of the agreement balances strong IP protections with the right framework to allow for technological development and online innovation.

Protecting privacy¹² is a critical underpinning of digital trade and the USMCA includes language which ensures that enforceable privacy protections will apply to the digital marketplace. It also encourages mechanisms to promote compatibility between different privacy regimes, giving users and companies greater assurance that privacy will be protected on a cross-border basis.

The USMCA sets a next-generation template for digital trade and includes best practices for regulating online services.¹³ The USMCA ensures that regulatory, licensing, or operational requirements designed for public telecom utilities are not automatically applied to online services, particularly where the regulatory justification for the initial telecom requirement no longer applies to the market for new online services. Such a rule will avoid unnecessary regulations and help spur the cross-border growth of online apps and marketplaces.

Another area that USMCA is a forward-leaning agreement is how it deals with facilitating data used in algorithms. Algorithms are used virtually every day by every American with an internet connection or smartphone. Algorithms help make the internet work better for consumers. They allow internet companies to provide better, more useful, and personalized experiences online. The USMCA includes language that promotes open and machine-readable government data.¹⁴ The USMCA enables small and large companies to build innovative commercial applications and services based on public data, such as machine translation and image recognition systems that rely on access to text and images. By releasing trade statistics and other export data, governments can also assist local companies in navigating global markets.

⁹ <http://www.cciainet.org/wp-content/uploads/2017/06/Fair-Use-in-the-U.S.-Economy-2017.pdf>

¹⁰ <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/572a35e0b6aa60fe011dec28/1462384101881/EngineFifthEraCopyrightReport.pdf>

¹¹ USMCA. Article 20.J.11

¹² USMCA. Article 19.8

¹³ USMCA. Article 18.14

¹⁴ USMCA. Article 19.18



The inclusion of no duties on electronic transmissions¹⁵ is fundamental to ensuring the internet remains open. This provision prohibits customs duties and other discriminatory measures from being applied to digital products distributed electronically, such as e-books, videos, music, software, games, and apps.

Provisions in the Customs and Trade Facilitation Chapter are designed to streamline customs procedures and make it easier for small businesses to use the internet to export American products throughout North America. While IA welcomed the U.S. negotiating objective to streamline and simplify customs procedures between the U.S., Canada, and Mexico, we are deeply concerned by the U.S. threat to lower the U.S. de minimis level to a “reciprocal amount” by including footnote 3 to Article 7.8(1)(f) in the Customs and Trade Facilitation Chapter of the USMCA.

Reducing the U.S. de minimis threshold would harm American businesses, workers, and consumers while reducing investment in U.S. e-commerce infrastructure, and undermine U.S. global leadership in e-commerce policy. Intensive work will be necessary to ensure that Canada and Mexico implement USMCA in a way that facilitates cross-border trade. In particular, we are concerned that the outcomes related to tax and duty collection and procedures for low-value shipments have the potential to lead to additional obstacles for small businesses exporting to Canada and Mexico.

In conclusion, the USMCA is a ground-breaking trade agreement for the American digital economy that makes major strides towards spreading America’s digital framework across the world while at the same time defend against attacks on U.S. technology leadership. There’s a global race to set the rules for the digital economy. Other countries are actively pressuring their trading partners to adopt policies that will threaten the success of the U.S. digital economy both in the U.S. and abroad.

¹⁵ USMCA. Article 19.3