



April 15, 2019

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, DC 20006

The Honorable Larry Kudlow  
Director, United States National Economic  
Council  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

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

I am writing to you to express the internet industry's concern with the European Union's (EU) recent passage of the Copyright Directive. We are deeply concerned that it will serve as a market access barrier for U.S. technology companies doing business in Europe, and underscore our position that the strong and balanced U.S. copyright system has continued vitality in promoting the strongest content and technology sectors in the world. The principles behind the newly labeled Articles 15 and 17<sup>1</sup> are at odds with fundamental principles of U.S. law and longstanding U.S. intellectual property policy and practice – including the recently negotiated U.S.-Mexico-Canada Agreement (USMCA) – and should be resisted both domestically and through U.S. foreign and trade policy. Regrettably, these aspects of the Directive appear to be part of a larger pattern of unfair actions by the EU against the innovative U.S. internet technology sector.

Internet Association represents over 40 of the world's leading internet companies. IA's mission is to foster innovation, promote economic growth, and empower people through the free and open internet.

The U.S. copyright system has a strong and innovation-oriented copyright framework that protects creators' legitimate rights, benefits consumers, and enables innovation – including through the safe harbors and limitations and exceptions in the Digital Millennium Copyright Act (DMCA). The changes to copyright made by the Copyright Directive, specifically those requiring proactive filtering and licensing for snippets, impose significant unwarranted liability on internet companies, and will have a disproportionately large impact on the ability of small companies to compete. The directive also risks limiting access to European content for American consumers, as platforms unable to negotiate licenses may be forced to block European-based publisher content from their sites.

The EU Directive effectively requires internet services of all sizes to implement comprehensive content filtering systems, without regard for the inevitable consequences of such filtering, including the removal of protected speech; content protected by the "fair use" doctrine; and misidentified, legally distributed works from all types of online platforms. This is completely at odds with the provisions of the

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<sup>1</sup> Article 15 was previously known as Article 11 and Article 17 was previously known as Article 13.



recently-negotiated USMCA, which help protect these core goals. The USMCA maintains the U.S. law-endorsed balance among stakeholders by allowing (1) the public to legally enjoy copyrighted content, (2) rights holders to identify allegedly infringing material online, and (3) internet platforms to expeditiously remove access to such material without incurring legal risk for the actions of third parties about which they have no knowledge. The new EU policy destroys that careful balance.

U.S. copyright law provides strong rights for publishers, but has always protected permitted 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 promote these goals when they provide services that index websites, aggregate news headlines, and refer online users to third-party articles. This benefits consumers by providing access to information, allows users to share and connect, and promotes the ability for publishers to reach new audiences. Yet the new EU policy includes vague measures that would create a “quasi-copyright” publisher right whose primary goal is to require U.S. services to remunerate European authors or obtain authorization for the use of such content otherwise permitted by copyright law.

The internet industry and the creative ecosystem both flourish under the balance of the U.S.’s innovation-oriented copyright regime.<sup>2</sup> The EU’s efforts to hamstring U.S. companies by abandoning that balance risks thwarting the continued growth of the commercial internet. We respectfully request that you remain steadfast in your efforts to include the elements of our balanced copyright system in trade agreement negotiations and find opportunities to highlight the problems with this directive when you engage with your EU counterparts.

Thank you for the opportunity to weigh in on these developments and for your diligent efforts to represent the interests of the U.S.

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

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<sup>2</sup><https://www.techdirt.com/skyisrising/>