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Hearing on Expanding U.S. Digital Trade and Eliminating Barriers to

U.S. Digital Exports

Testimony

by

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Chairman Reichert, Ranking Member Rangel, and Members of the Subcommittee on Trade, thank you for the opportunity to testify today on “Expanding U.S. Digital Trade and Eliminating Barriers to U.S. Digital Exports.” My name is Michael Beckerman and I am the President and CEO of the Internet Association.

The Internet Association represents nearly 40 of the world’s leading internet companies.¹ Our mission is to foster innovation, promote economic growth, and empower people through the free and open internet. As the voice of the world’s leading internet companies, our job is to ensure that all stakeholders understand the benefits the internet brings to our economy.

Today, I will address the following points in my testimony:

1. The internet is revolutionizing our economy, with the internet sector contributing to economic growth and opportunity by facilitating exports for Small and Medium-sized Enterprises and traditional businesses.
2. The growth of the internet is underpinned by strong laws and policies in the United States that enable the free flow of information, create a balanced copyright framework that unleashes opportunities for creators and innovators, and include clear intermediary liability protections that enable internet services to provide frictionless access to global marketplaces for businesses of all sizes.

¹ Members of the Internet Association include Airbnb, Amazon, Coinbase, DoorDash, Dropbox, eBay, Etsy, Expedia, Facebook, FanDuel, Google, Groupon, Handy, IAC, Intuit, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, PayPal, Pinterest, Practice Fusion, Rackspace, reddit, Salesforce.com, Snapchat, Spotify, SurveyMonkey, Ten-X, TransferWise, TripAdvisor, Turo, Twitter, Uber Technologies, Inc., Yahoo!, Yelp, Zenefits, and Zynga.

3. While the United States leads the world in its digital policy framework, U.S. companies face significant market access barriers in other countries that lack similar frameworks. We have seen a rising tide of digital protectionism and bad policy frameworks abroad that threaten to undermine the internet's growth.

4. To combat this trend, the United States needs a trade policy that is better oriented to the digital economy – both in future trade agreements and in the implementation of the Trans-Pacific Partnership (TPP). In particular, the U.S. must ensure that balanced intellectual property laws, limitations on liability for online intermediaries, streamlined trade facilitation and customs procedures, and rules on the free flow of information and data across borders are applied and vigorously enforced in current and future trade agreements.

I. Introduction to the Internet Industry

Internet platforms are the global engine of the innovation economy, with the internet sector representing an estimated 6 percent of U.S. GDP in 2014, totaling nearly \$967 billion, and accounting for nearly 3 million American jobs. Internet Association's member companies are transforming the way we export and do business at home and abroad by lowering barriers to entry and providing unprecedented growth opportunities for American businesses and entrepreneurs. The internet sector itself is a major U.S. export industry – the majority of many of our companies' users and revenues come from outside the U.S. – while also transforming trade for small, medium, and large businesses.

Cross-border trade is no longer defined by shipping containers and freight lines – but is now just as likely to be data flowing freely across borders. Buyers and sellers from around the globe are now connected instantaneously through the internet. Small businesses and entrepreneurs are harnessing the power of the internet to reach new markets and connect with new customers. Businesses of all sizes are taking advantage of the benefits the digital economy provides by embracing internet-enabled technology. In addition to ‘born-internet’ industries, the internet is yielding dramatic benefits for traditional industries. A recent study found that more than 75 percent of the economic value created by the internet is captured by companies in traditional industries, many of them small businesses.² It is safe to say that nearly every country, sector, and all types of businesses are using the internet in some form to increase efficiency, growth, and competitiveness.

Our members are introducing international audiences to American musicians, writers, and directors through services like Spotify, Pandora, and Netflix, promoting small hospitality providers through TripAdvisor and Yelp, and are revolutionizing how entrepreneurs source materials and supply their customers through Amazon. Frictions in international marketing are also alleviated by platforms like eBay and Etsy that make sellers' products fully searchable. Cloud services from Amazon, Dropbox, Google, Rackspace, Intuit and others enable entrepreneurs and small businesses to instantly build a global network footprint, running

² McKinsey Global Institute, “Internet matters: The Net’s sweeping impact on growth, jobs, and prosperity,” May 2011 (<http://www.mckinsey.com/industries/high-tech/our-insights/internet-matters>)

anything from an e-commerce site to a bank to a genomics company without building their own IT infrastructure. And platforms like Facebook Live and YouTube are giving entrepreneurs the ability to showcase their products to a global audience, all in real time.

In the United States, the open, technology neutral, innovation without permission ecosystem of the internet has grown exponentially since it was first used commercially in the early 1990s. Between 2004 and 2009, the digital economy was the fastest growing sector of the U.S. economy, representing 15 percent of U.S. GDP.³ Today, 73 percent of Americans are using the internet on a daily basis,⁴ while over \$8 trillion is exchanged through global e-commerce each year. The United States is a net exporter of internet related products and services and according to the United States International Trade Commission, U.S. exports of digitally enabled services (one measure of international digital trade) grew from \$282.1 billion in 2007 to \$356.1 billion in 2011, with exports exceeding imports every year.⁵ In its short history, the internet as a universal driver of trade and global growth has proven to be highly beneficial to the United States economy, empowering and democratizing consumers and users worldwide.

³ McKinsey Global Institute, “Internet matters: The Net’s sweeping impact on growth, jobs, and prosperity,” May 2011 (<http://www.mckinsey.com/industries/high-tech/our-insights/internet-matters>)

⁴ Pew Research Center, “One-fifth of Americans report going online ‘almost constantly’” by Andrew Perrin, <http://www.pewresearch.org/fact-tank/2015/12/08/one-fifth-of-americans-report-going-online-almost-constantly/>

⁵ United States International Trade Commission Investigation No. 332-531 USITC Publication 4415 July 2013 Digital Trade in the U.S. and Global Economies, Part , July 2013, (<https://www.usitc.gov/publications/332/pub4415.pdf>)

To put the power of the internet as an export platform in perspective, over 67 percent of eBay-enabled SMEs in Washington State are selling to 4 or more continents and are selling, on average, in eighteen foreign market destinations.⁶ In New York City, StereoBuyers, known to its eBay customers as High End Audio Auctions, is a locally owned, family-run business focused on buying and selling high-end, pre-owned HiFi audio equipment. The seed of StereoBuyers was planted in the mid 1990s. As a college student, Adam Wexler wanted a high end stereo, but could not afford one. That's when he got the idea to buy and sell stereo equipment that had been traded into a local HiFi shop. After graduation, Adam continued to run StereoBuyers part time until 2009, when he left his full-time job as one of Manhattan's top high-end AV salesmen and designers to pursue the business full-time. StereoBuyers exports about 30 percent of its products.

Another example of how platforms are helping SMEs ease marketing frictions is Phil Ford's "Bone Suckin' Sauce" from Raleigh, North Carolina. Phil initially stumbled upon his sauce in 1987 when he attempted to reproduce his mother's recipe. After some encouragement, he brought the sauce to market in 1992, which has since won numerous awards including receiving an A+ rating by Health Magazine – the only barbecue sauce to receive this rating. Today, the company exports its products to over 50 countries with 15 to 20 percent of its business coming from these exports. Both domestic and export sales are steadily growing. The company attributes an increase in sales of its product to its Facebook engagement. To attract new

⁶ The State of Small Online Businesses in America: Results from eBay's 5-Year Study (http://www.ebaymainstreet.com/sites/default/files/vf_lowres/eBay_washington_Small-Online-Business-Factsheet_lores.pdf)

customers, the company promoted its Facebook post – “Which is better on the grill? Fish, chicken, vegetables, or steaks?” – to encourage conversation among fans. As a result of the Facebook ads, online store sales jumped 83 percent, online store visitors increased by 28 percent, and the company saw a nine-fold increase in engagement with the promoted posts versus the non-promoted posts. Patrick Ford, the International Marketing Director of Ford’s Gourmet Foods, acknowledged the importance of the company’s Facebook page in helping drive sales when he said, “there’s no other place where we can reach so many of our customers and place our product right in front of them.”

II. The Free and Open Internet – Why Does Trade Policy Matter?

Internet platforms have transformed trade – but for the internet to continue to provide frictionless access to global marketplaces for businesses of all sizes, and for the U.S. internet sector itself to continue to grow, trade policy must keep up with this fundamental transformation. In particular, we need trade policy that recognizes and advances the open architecture of the internet, which has created new opportunities for cross-border trade and investment, enabling small businesses around the world to connect with customers and suppliers in the global market without building their own multinational supply chains. An internet-connected entrepreneur can now sell products and services across borders at the click of a button or the tap of a screen. With the help of internet platforms, small businesses grow up to four times faster than businesses that do not embrace the web, 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.⁷ Additionally, 97 percent of U.S.-technology-enabled commercial sellers engage in exporting; reaching nearly 30 markets whereas traditional U.S. businesses that export reach on average two to three different markets per year.⁸

The rise of this new generation of exporting platforms has, perhaps unsurprisingly, been accompanied by the rise of new forms of digital protectionism – which harms both internet services and the small businesses that rely on these services to reach a global customer base. We have seen a significant increase in the number of countries that are imposing data and infrastructure localization requirements. We have seen European countries enact so-called “ancillary copyright laws” that forbid activities clearly allowed under U.S. law and deny U.S. stakeholders effective access to those markets. Countries like China, India, Russia, and Ukraine have sought to hold intermediaries liable for content posted by users, or have required intermediaries to block, censor, monitor, and filter communications and content that travels over their services. And many countries lack flexible copyright rules such as fair use – which creates significant barriers to entry for U.S. companies that are hoping to do business in those markets.

This matters for trade, because 95 percent of consumers are now outside of the United States. In order to ensure the continued growth of the internet, and to ensure that U.S. exporters are able to

⁷ Enabling Traders to Enter and Grow on the Global Stage, 2012
(https://www.ebaymainstreet.com/sites/default/files/EBAY_US-Marketplace_FINAL.pdf)

⁸ *Ibid.*

reach over 3 billion internet connected consumers worldwide, the U.S. must push back against these market access barriers abroad.

III. Supporting Policies that Encourage the Growth of the Internet Worldwide

This is where trade policy comes into play. The sustained growth of the internet as a global vector for innovation, trade, and commerce is made possible by laws and policies that preserve the vitality of an open and consumer-oriented internet environment – and trade agreements can help protect this environment by promoting a U.S.-style open innovation framework in other countries.

It is no accident that many of the world’s leading internet platforms have been born, scaled, and continually reimagined in the United States. Without adequate protection of foundational policies that have grown the innovation economy, internet industries and the businesses they support face barriers to market entry in foreign countries. These foundational policies should be fully reflected in our trade policy.

For instance, the Internet Association strongly believes copyright policy in trade agreements must reflect the balanced framework in U.S. law, which provides not only strong protections and enforcement, but also robust and flexible limitations and exceptions, including fair use and copyright safe harbors. Without these flexibilities, a website could not provide snippets and links to other websites; an internet service could not “cache” copies of files, which allows an internet browser to respond to inputs in a matter of milliseconds; and artists could not produce

mash-ups of existing content to create new works. These policies are crucial to continued economic growth: industries relying on fair use generate total annual revenue of \$4.7 trillion,⁹ and contribute about \$2.2 trillion in added value—just over 16 percent of total U.S. GDP.¹⁰

In addition, outside of the area of intellectual property, the intermediary liability protections reflected in Section 230 of the Communications Decency Act (CDA) enable U.S. companies to host user-generated content without being held liable for such third party content – which fuels content creation at home and is crucial to the free flow of information abroad. The internet ecosystem flourishes when users and content creators are empowered through an open architecture that promotes free expression and unrestricted exchange of ideas and information. Online intermediaries – big and small – connect users to goods and services, facilitate social interactions, and drive economic activity across borders.

The Internet Association supports including Section 230 of the CDA in trade agreements to promote e-commerce and democratic discourse. Reliable intermediary liability protections have a significant impact on platforms like eBay, Etsy, Google Search, Yelp, YouTube, and TripAdvisor that are helping U.S. small and medium-sized businesses reach global customers. Inadequate intermediary liability laws make it impossible for e-commerce platforms to operate and serve as trade-enabling marketplaces. For instance, without proper intermediary liability

⁹ Thomas Rogers & Andrew Szamoszegi, Comp. & Commc'ns Indus. Ass'n, Fair Use in The U.S. Economy: Economic Contributions of Industries Relying on Fair Use 20 ch.1 (2011), <http://bit.ly/1MloZnp>.

¹⁰ Ibid.

rules, an internet service would be unable to maintain open user review and customer feedback mechanisms that businesses need in order to gain support for their products in new markets.

For example, in Turkey, internet services face liability if users post blasphemous, discriminatory, or insulting content, making it very difficult to run an e-commerce or other internet platform.

Content-filtering requirements and other liability risks in China “pose a significant burden to foreign suppliers, hurting both internet sites themselves, and users who often depend on them for their businesses.”¹¹ Russia has ordered all of Wikipedia to be blocked due to problematic content on a single page. Under India's intermediary liability rules, “foreign companies providing internet services are forced to choose between needlessly censoring their customers and subjecting themselves to the possibility of legal action.”¹²

Internet-enabled small businesses also rely on simplified customs procedures that help facilitate the movement of goods and services across borders. The Internet Association supports policies that encourage trading partners to increase arbitrarily low de minimis thresholds to decrease trade barriers experienced by internet-enabled businesses. Additionally, provisions ensuring duty free treatment for all technology goods and services and the limitation of non-tariff barriers that can be imposed on technology and other goods would help internet-enabled small businesses engage in global trade and commerce.

¹¹ 2016 National Trade Estimate Report on Foreign Trade Barriers (NTE), (<https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf>)

¹² *Ibid.*

The internet is a borderless medium. Movement of electronic information across borders is critical to global businesses, but the rules governing flows of digital goods, services, and data are uncertain. Consistent with these goals, the Internet Association supports the inclusion of provisions in trade agreements and implementing legislation that protect legitimate, cross-border information flows, including language that promotes compatible privacy regimes and measures that link market access or other commercial benefits to local infrastructure and investment.

IV. Building and Implementing a Trade Framework that Advances the Digital Economy

As the Committee considers policies that will help encourage digital trade, the Internet Association supports efforts that promote strong international rules and balanced intellectual property laws, limit liability for online intermediaries, streamline trade facilitation and customs procedures, and encourage the free flow of information and data across borders – including for cross-border financial services platforms. We believe the United States should continue to negotiate, implement, and vigorously enforce trade agreements that promote the free and open internet.

Historically, pro-internet policies have been absent from trade agreements. While we recognize there is a diversity of views on the TPP, the agreement acknowledges the benefits of the full balance of copyright law – requiring countries to adopt innovation-critical limitations and exceptions, as well as safe harbors that protect the basic functionality of the internet, social

media, and online platforms. For too long, U.S. trade agreements have failed to reflect the balance of U.S. copyright law, under which individual creators, rights holders, internet platforms and users have all benefitted. The TPP also promotes a more inclusive trade economy by supporting the ability of small businesses to use the internet to serve customers and users in key markets, while also allowing for the transfer of information across borders, prohibiting the use of inefficient localized computing facilities. Although we believe the true test of any trade agreement should be judged on its implementation, the Internet Association believes the TPP is a step in the right direction. We look forward to working with the Committee and the Administration to ensure the digital trade provisions in the TPP are thoughtfully implemented.

The Committee and the Administration should also ensure that all TPP parties:

- Adopt or maintain comprehensive ISP safe harbor provisions that cover the full range of service providers and functions, with prohibitions on monitoring duties and strong due process protections.
- Adopt a comprehensive framework of copyright exceptions and limitations for the digital economy, modeled on the multi-factor balancing test in 17 USC § 107, or other flexible rules that allow for ongoing digital innovation, including in commercial contexts.

The Internet Association is also closely monitoring the Trade in Services Agreement (TISA) negotiations. TISA represents one of the best opportunities to liberalize international rules to expand trade in services between 23 members of the World Trade Organization, representing 70 percent of world trade in services. Specifically, the internet industry supports efforts to include

an intermediary liability provision in TISA that reflects Section 230 of the CDA. This provision would help unleash growth and investment in internet services by providing a safe harbor from liability rules that would otherwise hold intermediaries liable for content posted by their users. The intermediary liability protections found in Section 230 of the CDA are a perfect example of future proofed legislation that allowed internet platforms to scale and spurred unprecedented economic growth and innovation. Section 230 of the CDA excludes intellectual property and criminal issues, which are more appropriately addressed in other models. We look forward to working with U.S. trade negotiators and the Committee as TISA negotiations come into focus.

The Internet Association also welcomes the recent breakthrough on the U.S.-EU Privacy Shield. The Privacy Shield represents a positive outcome and a win for innovation and growth both here and in the EU. We commend Congress, the Administration, and the European Commission for taking the necessary steps to ensure information and data will continue to flow across the Atlantic. Absent an agreement, many U.S. small businesses and consumers could have experienced significant challenges in the EU market. Additionally, as Congress and U.S. trade negotiators review policies the EU is considering to unify their digital market, we caution against policies that may turn into disguised protectionism against innovative U.S. internet platforms. We believe the best path forward for digital growth and jobs is a positive reform agenda that promotes the free and open internet on both sides of the Atlantic. There is no reason why digital trade and a digital market within the EU cannot be a win-win for both the U.S. and the EU.

Finally, we hope the Committee will continue to work closely with the internet community to find ways to create a more inclusive system for negotiating trade agreements. Our industry supports increased transparency and will continue to seek reforms that give all stakeholders a meaningful voice in the process.

V. Conclusion

The internet industry is committed to working with Congress and U.S. trade officials to ensure the internet remains the greatest American export of the 21st century. Future trade agreements should continue to take into account the economic benefits the internet industry brings to every sector of the economy. As I highlighted in my testimony, internet platforms are intrinsically trading platforms that give U.S. small businesses, entrepreneurs, developers, and startups the tools they need to compete and win in the fastest growing markets in the world. Breaking down barriers to digital trade and supporting pro-internet policies that promote the free and open internet are critical to the long-term growth of our sector. As the Committee continues to analyze policies that support the growth of internet-enabled trade, I look forward to working with Members of this Committee to address our shared goals and priorities.

With that, let me thank you again for inviting me here today to testify on behalf of the internet industry. I am happy to answer any questions you may have.