

Before the
Office of Management and Budget
Washington, D.C.

In re

Request of the U.S. Intellectual Property
Enforcement Coordinator for Public
Comments: Development of the Joint
Strategic Plan on Intellectual Property
Enforcement

**COMMENTS OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

Pursuant to the request for comments issued by the Office of Management and Budget and published in the Federal Register at 83 Fed. Reg. 46,522 (Sept. 13, 2018), the Computer & Communications Industry Association (CCIA)¹ submits the following information for consideration as the Office of the Intellectual Property Enforcement Coordinator (IPEC) composes its triennial Joint Strategic Plan (JSP).

I. Introduction

CCIA welcomes this opportunity to provide recommendations for the 2019 JSP on Intellectual Property Enforcement. CCIA urges the Office of the IPEC to prioritize engagement with trading partners to eliminate barriers to the expansion of digital trade created by intellectual property regulation ill-suited for the digital era, including the lack of technology-enabling limitations and exceptions. CCIA's comments also encourage the Office of the IPEC to take into account the extraordinary investments already being made by Internet and technology firms, including CCIA members, in protecting third-party intellectual property rights.

¹ CCIA represents technology products and services providers of all sizes, including computer hardware and software, electronic commerce, telecommunications and Internet products and services. CCIA members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. A list of CCIA members is available at <https://www.cciagnet.org/members>.

II. Promoting U.S. Intellectual Property Policy Abroad through Trade Agreements

One component of the Administration’s four-part strategic approach to promote and protect intellectual property discussed in the request for comments is “engagement with our trading partners.” Consistent with that goal, the 2019 JSP on Intellectual Property Enforcement should call for vigorous engagement with our trading partners to eliminate barriers to trade created by intellectual property regulation that lacks appropriate protections for providers and users of modern technology. The National Telecommunications and Information Administration recently recognized the importance of ensuring that measures intended to protect copyrights “aren’t misused to stifle innovation or the free flow of information.”² However, existing and proposed copyright provisions overseas, particularly in the European Union, are being misused in precisely this manner. Over the next three years, the U.S. Government should engage with our trading partners to stop this misuse.

In one prominent example of engaging with U.S. partners, the Administration has wisely pursued a modernized North American Free Trade Agreement (NAFTA), taking well-established U.S. policy and putting it in the United States-Mexico-Canada Agreement (USMCA). The Administration should continue to engage with our trading partners to promote well-established U.S. copyright policy, including intermediary protections that promote innovation, abroad.

The United States is a world leader in high-tech innovation and Internet technology — a central component of cross-border digital trade in both goods and services. The removal of foreign obstacles to Internet-enabled, international commerce and export of Internet-enabled products and services is thus increasingly critical to the American economy. Internet-enabled

² David Redl, National Telecommunications and Information Administration, *Recipe for Innovation: NTIA’s Role in Protecting Intellectual Property in the Digital Age* (Oct. 25, 2018), <https://www.ntia.doc.gov/blog/2018/recipe-innovation-ntia-s-role-protecting-intellectual-property-digital-age>.

commerce represents a significant, and still growing, sector of the global economy.³

International markets continue to present the most significant growth opportunities for major U.S. companies. Countries recognize the immense value that a strong digital industry contributes to the national economy, and with the predominance of U.S. companies in this sector, foreign governments are increasingly adopting policies designed to favor domestic innovation and specifically target American companies, ushering in a new form of discrimination.⁴

The United States is the largest global exporter of services, exporting \$761.7 billion in 2017.⁵ The Internet has been the single biggest component of the cross-border trade in services, with many of those services facilitating the international goods trade as well.⁶ The United States must retain its global leadership in technology products and services and continue to drive innovation at home and abroad. The Administration has committed itself to revitalizing American trade and prioritizing U.S. industries, the vast majority of which create, provide, or rely on Internet technologies. To fully realize this goal, the United States must develop a robust intellectual property and digital trade agenda and craft trade agreements that reflect copyright policies that promote our digital economy. Digital trade and trade liberalization generally is

³ From 2012 to 2016, global e-commerce grew 44 percent from \$19.3 trillion to \$27.7 trillion. U.S. INT'L TRADE COMM'N, *Global Digital Trade 1: Market Opportunities and Key Foreign Trade Restrictions* (Aug. 2017), available at https://www.usitc.gov/publications/332/pub4716_0.pdf.

⁴ WORLD ECONOMIC FORUM, *Internet Fragmentation: An Overview* at 35-36 (2016), http://www3.weforum.org/docs/WEF_FII_Internet_Fragmentation_An_Overview_2016.pdf (“[G]overnments are often tempted to play for time and pursue approaches that preference national/regional players and digital spaces, including by restraining first-moving companies from abroad. In this context, the predominance of US technology companies in key market segments has led some governments to consider or adopt laws and regulatory practices that hinder certain kinds of operations and transactions or block the use of particular tools, be it social networking platforms or cross-border delivery via 3D printing.”).

⁵ Value added by the U.S. electronic services sector was \$989.0 billion, and the sector accounted for 6.9 percent of U.S. private sector GDP in 2016. Further, the United States exported \$93.4 billion in cross-border electronic services and imported \$54.3 billion, resulting in a trade surplus of \$39.1 billion. U.S. INT'L TRADE COMM'N, *Recent Trends in U.S. Services Trade: 2018 Annual Report*, available at <https://www.usitc.gov/publications/332/pub4789.pdf> (2018).

⁶ When digitally deliverable services are factored in, the U.S. digital trade surplus balloons to \$172 billion. BUREAU OF ECONOMIC AFFAIRS, U.S. Trade in ICT and Potentially ICT-Enabled Services, available at <https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=6&isuri=1&tablelist=357&product=4> (last updated Oct. 19, 2018).

threatened when countries adopt protectionist policies, and utilize tools that undermine the benefits of free trade and impede global economic growth. Excessive intellectual property laws can have precisely this protectionist effect.

CCIA applauds the Administration's work to update existing trade agreements to better reflect the digital economy. The renegotiation of NAFTA — first negotiated in the infancy of the commercial Internet — has been a key opportunity to incorporate provisions focused on liberalizing digital trade and enabling innovation in the agreement. A modern overhaul of NAFTA was needed to factor in the growth of the digital economy and the strong digital trade relationship the U.S. enjoys with Mexico and Canada. USMCA represents significant progress in facilitating a more robust North American trading partnership.⁷ This is particularly true with respect to the IP sections critical to the digital economy, such as the intermediary liability framework for copyrighted content consistent with U.S. law.⁸ However, CCIA was disappointed that USMCA fails to include provisions that would uphold and promote U.S. rules on business-friendly copyright. Carefully crafted copyright law is essential to the continued growth of the digital economy, and is a critical aspect of U.S. law that should be incorporated into the Administration's digital trade policy, in addition to the Administration's international engagement on intellectual property policy.

Important copyright rules such as fair use and related limitations and exceptions have been critical to the growth of the U.S. technology and Internet economy. A 2017 study illustrated how U.S. firms operating abroad in regimes with user rights protections in their

⁷ OFFICE OF THE U.S. TRADE REPRESENTATIVE, U.S.-Mexico-Canada Agreement Text, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>.

⁸ Press Release, CCIA Welcomes Provisions in Canada, Mexico Trade Agreement to Reduce Digital Trade Barriers, Oct. 1, 2018, <http://www.cciagnet.org/2018/10/ccia-welcomes-provisions-in-canada-mexico-trade-agreement-to-reduce-digital-trade-barriers/>.

copyright law reported high incomes and increased total sales, encouraging foreign investment.⁹ A CCIA study showed that in 2014, fair use industries accounted for 16% of the U.S. economy, employed 1 in 8 workers, and contributed \$2.8 trillion to GDP.¹⁰ U.S. exports of goods and services related to fair use increased by 21% from \$304 billion in 2010 to \$368 billion in 2014 driven by increases in service-sector exports.¹¹ These economic benefits are lost when a country fails to uphold similar protections in their own copyright laws, impeding market access for U.S. companies looking to export, while also deterring local innovation.

They are also a defining aspect of U.S. trade policy. Beginning with free trade agreements with Chile and Singapore in 2003, every modern U.S. trade agreement has ensured some measure of limitations and exceptions that promote a working copyright system, at least through the inclusion of intermediary protections.¹² The Office of the U.S. Trade Representative (USTR) stated in 2017 its commitment to seek “the commitment of our free trade agreement partners to continuously seek to achieve an appropriate balance in their copyright systems, including through copyright exceptions and limitations.”¹³

Within the last thirty years, such rules have enabled the development of innovative new products and services such as the VCR, DVR, iPod, cloud computing, search engines, social media services, and 3D printing. Similarly, users of copyrighted works — including consumers,

⁹ Sean Flynn & Mike Palmedo, *The User Rights Database: Measuring the Impact of Copyright Balance*, Program on Information Justice and Intellectual Property (Oct. 30, 2017), <http://infojustice.org/archives/38981>.

¹⁰ CCIA, *Fair Use in the U.S. Economy: Economic Contribution of Industries Relying on Fair Use* (2017), <http://www.cciagnet.org/wp-content/uploads/2017/06/Fair-Use-in-the-U.S.-Economy-2017.pdf>, at 4.

¹¹ *Id.* at 6.

¹² See U.S.-Austl. Free Trade Agreement, May 18, 2004, 43 I.L.M. 1248, art. 17.11, para. 29; U.S.-Bahr. Free Trade Agreement, Dec. 7, 2005, 44 I.L.M. 544, art. 14.10, para. 29; U.S.-Chile Free Trade Agreement, June 6, 2003, 42 I.L.M. 1026, art. 17.11, para. 23; U.S.-Colom. Free Trade Agreement, Nov. 22, 2006, art. 16.11, para. 29; U.S.-S. Kor. Free Trade Agreement, June. 30, 2007, art. 18.10, para. 30; U.S.-Morocco Free Trade Agreement, June 15, 2004, art. 15.11, para. 28; U.S.-Oman Free Trade Agreement, Jan. 19, 2006, art. 15.10, para. 29; U.S.-Pan. Trade Promotion Agreement, June 28, 2007, art. 15.11, para. 27; U.S.-Sing. Free Trade Agreement, May 6, 2003, 42 I.L.M. 1026, art. 16.9, para. 22.

¹³ OFFICE OF U.S. TRADE REP., *The Digital 2 Dozen* (2017), available at <https://ustr.gov/sites/default/files/Digital-2-Dozen-Updated.pdf>.

libraries, museums, reporters, and creators — depend upon concepts like fair use and other limitations and exceptions to engage in research, reporting, parody, and political discourse. These innovations are jeopardized by weak or nonexistent limitations and exceptions in the copyright laws of other countries.¹⁴ While many of our trading partners either have adopted or proposed strong copyright enforcement rules, few of these countries have implemented U.S.-style fair use or other flexible copyright limitations and exceptions. Such exceptions are necessary to enable U.S. innovation abroad.

Some countries are going further and creating new rights. For example, as discussed below, legislatures in Europe and elsewhere have increasingly proposed or implemented new publisher subsidies styled as so-called “neighboring rights” that may be invoked against online news search and aggregation services and, as USTR noted earlier this year, raise concerns from a trade perspective.¹⁵ A recent USITC report observed that these laws tend to have “generated unintended consequences” to small online publishers.¹⁶ Service providers of online search, news aggregation, and social media platforms are compelled to pay for the “privilege” of quoting from news publications. This proposal is often referred to as a “snippet tax.” It is also at times described as “ancillary copyright”, yet it is in fact inconsistent with international IP law, violates

¹⁴ This is exacerbated when the U.S. trade agenda does not include commitments to upholding long-standing limitations and exceptions to copyright around the world. See Jonathan Band, *Keeping the DMCA’s Grand Bargain in NAFTA*, DISRUPTIVE COMPETITION PROJECT (Oct. 2, 2017), <http://www.project-disco.org/intellectual-property/100217-keeping-dmcas-grand-bargain-nafta/> (“The balanced structure of the DMCA has been reflected in our trade agreements for the purpose of benefitting the overseas operations of both the content industry and the service providers. Precisely because the free trade agreements embodied the DMCA’s evenhanded approach, USTR negotiated the copyright sections of these agreements with relatively little domestic controversy. Now, however, the content providers seek to depart from this framework in NAFTA; they hope to achieve the DMCA’s benefit—the TPM provisions—without the tradeoff they have agreed to repeatedly since 1998.”).

¹⁵ OFFICE OF THE U.S. TRADE REP., 2018 National Trade Estimate Report on Foreign Trade Barriers [hereinafter “2018 NTE”] at 199-200; OFFICE OF THE U.S. TRADE REP., *2018 Fact Sheet: Key Barriers to Digital Trade* (2018), <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/2018-fact-sheet-key-barriers-digital>.

¹⁶ *2017 Global Digital Trade 1*, *supra* note 3, at 291-92 (“Small online publishers have been reluctant to demand fees from online platforms because they rely on traffic from those search engines, and industry experts have stated that ancillary copyright laws have not generated increased fees to publishers; rather, they have acted as a barrier to entry for news aggregators.”).

international trade obligations, and constitutes a TRIPS-violating barrier to trade.¹⁷ While only the EU is seriously contemplating ancillary rights protection at the moment, other jurisdictions have at times considered such proposals.

Furthermore, countries frequently impose penalties on U.S. Internet companies for the conduct of third parties. This is especially true in the context of copyright enforcement. Countries are increasingly using outdated Internet service liability laws that impose substantial penalties. These practices deter investment and market entry, impeding legitimate online services. Countries that have imposed copyright liability on online intermediaries contrary to the laws of the United States include France, Germany, India, Italy, and Vietnam. Another concerning trend is the failure of current U.S. trading partners to fully implement carefully negotiated intermediary protections in free trade agreements, such as Australia and Colombia's ongoing lack of compliance. USTR has highlighted failures to comply with trading obligations and inadequate intermediary liability protections in past Special 301 Reports, indicating the importance of such protections to trade relations.¹⁸ The Administration should continue to note these deficiencies and encourage further engagement with trading partners in the 2019 JSP on Intellectual Property Enforcement.

¹⁷ By imposing a tax on quotations, these entitlements violate Berne Convention Article 10(1)'s mandate that "quotations from a work . . . lawfully made available to the public" shall be permissible. Berne Convention for the Protection of Literary and Artistic Works, Sept. 28, 1979, art. 10(1), amended Oct. 2, 1979. Moreover, if the function of quotations in this context – driving millions of ad-revenue generating Internet users to the websites of domestic news producers – cannot satisfy "fair practice", then the term "fair practice" has little meaning. Imposing a levy on quotation similarly renders meaningless the use of the word "free" in the title of Article 10(1). The impairment of the mandatory quotation right represents a TRIPS violation, because Berne Article 10 is incorporated into TRIPS Article 9. *See* TRIPS Agreement, art. 9 ("Members shall comply with Articles 1 through 21 of the Berne Convention (1971)."). TRIPS compliance, in turn, is a WTO obligation. As TRIPS incorporates this Berne mandate, compliance is not optional for WTO Members.

¹⁸ *See, eg.*, OFFICE OF THE U.S. TRADE REP., 2016 Special 301 Report, at 47 (2016) (watchlisting Ukraine, which has no specific intermediary liability FTA commitment, as being based in part upon the "lack of transparent and predictable provisions on intermediary liability"); OFFICE OF THE U.S. TRADE REP., 2009 Special 301 Report (2009) (watchlisting Chile for failing to implement provisions of the FTA regarding Internet service provider liability).

III. Engaging with the EU Regarding the Copyright Directive, which Threatens U.S. Industry

A. *Preserving the Innovation-Friendly Principle of Intermediary Liability*

Controversial updates to EU copyright law are expected to be politically agreed upon in the coming months, which will have a detrimental impact on Internet services exporting to the EU and to the EU's own startup community. EU officials have explicitly said that this proposal is targeted at U.S. tech companies.¹⁹ In September 2016, the European Commission submitted a copyright proposal to the European Parliament and European Council that would eliminate protections that limit online services' liability for misconduct by those services' users, require proactive screening by service providers, and create a "neighboring" pseudo-copyright restriction.²⁰ In September 2018, the European Parliament adopted its own position, creating a broad neighboring right for press publishers and undermining European safe harbors.²¹ Negotiations to reconcile the positions of the European Commission, European Council, and European Parliament have started and are expected to conclude by early 2019.²² These changes will upend nearly two decades of established law, threatening U.S. digital exports by eliminating long-standing legal protections for online services that are a cornerstone of Internet policy.

The proposed Copyright Directive disrupts settled law protecting intermediaries by weakening established protections from U.S. Internet services in the 2000 EU E-Commerce

¹⁹ Matt Schruers, *EU Copyright Changes Poised to Upset Critical Internet Policies*, DISRUPTIVE COMPETITION PROJECT (Oct. 18, 2018), <https://www.project-disco.org/intellectual-property/101818-eu-copyright-changes-could-upset-internet-policies/> (citing that in defending the bill after a preliminary procedural defeat, one parliamentary backer of the bill removed any doubt about this focus, claiming "the ones [firms] that are reacting are mostly the ones we are targeting, which are the GAFA," referring to prominent U.S. companies).

²⁰ Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market, COM (2016)593.

²¹ European Parliament, Parliament adopts its position on digital copyright rules, Press Release, Sept. 12, 2018, <http://www.europarl.europa.eu/news/en/press-room/20180906IPR12103/parliament-adopts-its-position-on-digital-copyright-rules>.

²² James Vincent, *EU Approves Controversial Copyright Directive, Including Internet 'Link Tax' And 'Upload Filter'*, THE VERGE (Sept. 12, 2018), <https://www.theverge.com/2018/9/12/17849868/eu-internet-copyright-reform-article-11-13-approved>.

Directive, and by imposing an unworkable filtering mandate on hosting providers that would require automated “notice-and-stay-down” for a wide variety of copyrighted works. If adopted, the proposal would dramatically weaken these long-standing liability protections, which suggests that most modern service providers may be ineligible for its protections.²³ These concerns remain with the amended text that the European Parliament voted on in September and with the position of the European Council adopted in May 2018.²⁴

Like U.S. law, EU law currently contains an explicit provision stating that online services have no obligation to surveil users, or monitor or filter online content.²⁵ Online services have invested heavily in developing international markets, including Europe, in reliance on these provisions. The proposal now implies that online services must procure or develop and implement content recognition technology. The decision to compel affirmative filtering of all Internet content, including audiovisual works, images, and text, based on that content’s copyright status, is alarming, and profoundly misguided.

Moreover, the proposal provides no specifics for what filtering mechanisms a hosting provider must implement, effectively empowering European rightsholders to dictate U.S. services’ technology in potentially inconsistent ways across Europe.²⁶ In short, a provider will never know when it has done enough, short of litigating in every EU Member State. Until the Court of Justice for the European Union eventually addresses the question, affected hosting

²³ *Copyright in the Digital Single Market, Amendments adopted by the European Parliament on 12 September 2018 on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market*, COM (2016) 0593 – C8-0383/2016 – 2016/0280(COD) (Sept. 12, 2018), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0337+0+DOC+PDF+V0//EN> [hereinafter “September 2018 Draft Copyright Directive”].

²⁴ *Id.*

²⁵ Compare 17 U.S.C. § 512(m)(1) (2012) with Directive 2000/31/EC art. 15(1).

²⁶ See *September 2018 Draft Copyright Directive*, *supra* note 23, at art. 13.

providers can expect inconsistent rulings and injunctions from lower courts in different countries.

As drafted, the Parliament text threatens significant damage to the U.S. economy. For example, surveys of venture capitalists show that 88% of investors are less likely to invest in user-generated content platforms in regions that have this kind of ambiguous legal framework for intermediaries.²⁷ If the final EU reform does include these provisions, there would likely be a corresponding increase in risk for U.S. platforms doing business in the EU, resulting in significant economic consequences for the U.S. digital economy that depends on the EU market. Furthermore, there is likely to be a ripple effect on the rest of the world, given the EU's international influence. By effectively revoking long-established protections upon which U.S. services relied when entering European markets, the new directive would limit U.S. companies' investments for the benefit of EU rightsholders, establishing a market access barrier for many U.S. services and startups. As the Office of the IPEC prepares the 2019 JSP on Intellectual Property Enforcement, U.S. Government engagement with European officials should be a top priority.

B. *Preventing the Anti-Innovation "Link Tax"*

In 2018, USTR identified the "link tax" as a key digital trade barrier in several EU Member States, accurately noting that these measures "impose financial and operational burdens on U.S. firms that help drive traffic to publishing sites."²⁸ Restrictions on the ability to quote news and other content violate Europe's international commitments, so the proposal would

²⁷ Matthew LeMerle, *The Impact of Internet Regulation on Early Stage Investment*, at 20 (Fifth Era 2014), <http://static1.squarespace.com/static/5481bc79e4b01c4bf3ceed80/t/55200d9be4b0661088148c53/1428163995696/Fifth+Era+report+lr.pdf>.

²⁸ 2018 NTE, *supra* note 15, at 199-200.

squarely violate international legal obligations.²⁹ Unfortunately, the proposal for a European Union-wide version of previous German and Spanish laws of this sort is progressing, and likely to become a reality as per the adopted positions of the European Council and the European Parliament, respectively in May and September 2018.³⁰

Of note, the European Parliament's amended text, as adopted in September, provides that publishers of press publications and news agencies become beneficiaries of the rights provided by Article 2 and 3(3) of the EU Infosoc Directive for the digital use of their press publications by "information society providers." The text also states that "the listing in a search engine should not be considered as fair and proportionate remuneration."³¹ CCIA urges the U.S. Government to engage directly with European officials to address concerns about this potential harm to U.S. industry and economic competitiveness as well.

IV. Recognizing Ongoing Private Sector Engagement to Protect Intellectual Property

As the Office of the IPEC prepares the 2019 JSP on Intellectual Property Enforcement, it should also take into account the extraordinary investments already being made by Internet and technology firms in protecting third-party intellectual property rights. An intellectual property enforcement strategy that does not account for these critical, existing voluntary contributions is unlikely to allocate resources efficiently.

²⁹ Article 10(1) of the Berne Convention provides: "It *shall be* permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries." As TRIPS incorporates this Berne mandate, compliance is not optional for WTO Members. A neighboring right is another form of snippet restriction and would violate this TRIPS commitment.

³⁰ EUROPEAN COMMISSION, Joint Statement by Vice-President Ansip and Commissioner Gabriel on the European Parliament's vote to start negotiations on modern copyright rules (Sept. 12, 2018), *available at* http://europa.eu/rapid/press-release_STATEMENT-18-5761_en.htm; *September 2018 Draft Copyright Directive*, *supra* note 23.

³¹ *September 2018 Draft Copyright Directive*, *supra* note 23, at recital 32.

This is especially relevant in the context of the Administration’s strategic focus on “engagement and partnership with the private sector and other stakeholders” to protect intellectual property. Internet companies, including CCIA members, engage in a variety of private sector partnerships to prevent and reduce copyright infringement in the technology and e-commerce space, going well above what is required under the law.

For example, in addition to standard DMCA compliance, many online services provide rightsholders with additional tools and services for content protection and monetization. Such initiatives are sometimes referred to as “DMCA Plus” because they exceed what businesses must do to qualify for statutory protections under Section 512 of the Digital Millennium Copyright Act (DMCA).³² These include YouTube’s Content ID,³³ Google Search’s Trusted Copyright Removal Program,³⁴ and Facebook’s Rights Manager.³⁵ Major e-commerce providers also voluntarily provide legal tools for brand owners for intellectual property protection. These initiatives include eBay’s Verified Rights Owner (VeRO) program,³⁶ which allows IP owners to report infringement of copyright, trademark, and other forms of unlawful uses; Amazon’s Brand Registry,³⁷ which enables rights owners to report trademark infringement, including automated proactive tools for brand protection; and Facebook’s Commerce & Ads IP Tool,³⁸ which allows rightsholders to review and report content on Instagram, Facebook, and Marketplace for

³² Jennifer Urban *et al.*, *Notice and Takedown in Everyday Practice*, UC Berkeley Public Law Research Paper No. 2755628, (posted: Mar. 30, 2016, last revised: Mar. 24, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2755628, at 29.

³³ *How Google Fights Piracy*, <https://drive.google.com/file/d/0BwxyRPFduTN2TmpGajJ6TnRLaDA/view>, at 27.

³⁴ *Id.* at 40. Additional industry partnerships, including working with the Office of the IPEC, are described *id.* at 57.

³⁵ Facebook, Rights Manager, <https://rightsmanager.fb.com/>.

³⁶ eBay, Verified Rights Owner Program, <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html>.

³⁷ Amazon Brand Registry, <https://brandservices.amazon.com/>.

³⁸ Facebook Transparency Report: Intellectual Property, FAQ: What other tools are available for rights holders to protect their IP?, <https://transparency.facebook.com/intellectual-property>.

counterfeit, trademark, and copyright reasons. These services are some examples of the many existing efforts that online services already make to protect third-party rights.

V. Conclusion

The 2019 JSP on Intellectual Property Enforcement should require vigorous engagement with our trading partners to eliminate barriers to trade created by excessive intellectual property protection. In particular, the U.S. Government should attempt to prevail upon the European Union to abandon or modify provisions in its proposed Copyright Directive concerning filtering and linking.

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