June 6, 2023

Ambassador Katherine Tai
United States Trade Representative
600 17th Street NW
Washington, DC 20508
USA

Dear Amb. Tai:

We write today to express concerns with global attempts to circumvent key elements of copyright law, to grant an enforceable right in linking or snippeting content. Australia and the European Union have already taken action on this issue and Canada is moving forward with a similar plan. These efforts violate existing trade agreements, harm U.S. economic interests, and impede access to information for U.S. citizens.

The wide availability of news is central to a free and informed society. The news ecosystem depends on the ability to exchange and discover new knowledge, and on an open environment for media distribution. The rise of efforts in Canada, Brazil, and Indonesia to require payments for links and snippets of news information fundamentally damages these goals and would make it harder for Internet users to access and share news online in these countries.

Canada's Online News Act, Bill C-18, is the most extreme bill to date. It could pass as early as June 15 and would require carriage of content and payment for links from a far broader range of publishers than were covered under Australia's News Media Bargaining Code. As the Columbia Journalism Review and even Canada's own Parliamentary Budget Office have found, Bill C-18 would primarily benefit large Canadian broadcasters and hedge funds, not working journalists.

As was the case in Australia, where Rupert Murdoch's News Corp was a primary driver and beneficiary of legislation, these bills have been pushed by publisher conglomerates that are seeking to seize U.S. revenue and further consolidate the media sector. Additionally, they threaten the access of consumers to news sources, as U.S.-based internet companies may be compelled to shut down access to news given the lack of reasonable compliance paths and the requirement to pay for every act of linking. This type of unfair and discriminatory treatment, especially when it harms not just U.S. businesses, but U.S. consumers, is exactly the type of issue USTR should involve itself in.

By requiring news intermediaries to carry and pay for content from sources that do not meet basic journalistic standards, Bill C-18 would facilitate the funding and distribution of disinformation in Canada. The Internet Society has found that Bill C-18 would "stifl[e] freedom of expression" and "reinforc[e] the market power of big players by creating barriers to entry and growth for Canadian businesses."

Additionally, Bill C-18 expressly states that copyright exceptions and limitations do not apply, and would block platforms from exercising the right of quotation, which is required under Article 10 of the Berne Convention. Just last year, Re:Create joined a coalition of organizations expressing concerns with the Journalism Competition and Preservation Act (JCPA) in the United States. Similar to the Canadian proposal JCPA creates what amounts to ancillary copyright in links and snippets, an idea roundly rejected by the U.S. Copyright Office. When the U.S. Government Accountability Office studied the issue, it found that lobbyists for the news publishers were making claims not backed by facts and that third-party linking and snippeting were not playing a role in the economic challenges facing the news publishing industry.

Unfortunately, the Canadian government has rejected a number of constructive amendments that could have mitigated these risks, and now is seeking to move forward with a law that could make it infeasible for digital news providers to operate in Canada. Canada's approach is fundamentally different from Australia's which, for all its flaws, did include clear exemption milestones, was appropriately limited to a defined set of news entities that report on current events and follow journalistic standards, and did not override copyright exceptions and limitations.

Given the Canadian government's unwillingness to engage constructively on this issue to date, it is increasingly possible, if not likely, that affected U.S. suppliers will exit the Canadian market for news, given the uncapped liability for the compensation they would otherwise face. Such a step would help no one—not the news businesses, not consumers, and not the U.S. suppliers, who will lose an important market they have long contributed to. And beyond this, the effect could seriously harm the myriad of users—from researchers to tourists, to policymakers—who will be deprived of an invaluable tool for finding information.

It's urgent for the U.S. government to engage with Canada and push for a reasonable path forward on Bill C-18 that does not damage core open internet principles and ensures that U.S. and Canadian users and innovators can access and share high-quality information online.

Sincerely,

Joshua Lamel
Executive Director
Re:Create