14 September 2017

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Ambassador Lighthizer:

Recently, a handful of tech trade associations claiming to be “the new faces of the American content industry” sent you a letter calling for the inclusion of “Digital Millennium Copyright Act (DMCA) safe harbors and clear language requiring copyright balance” in NAFTA. They claim these copyright carve-outs are “essential” to the growth of “cloud-based services, machine learning, text and data mining, web search, consumer electronic products, and many other innovations [that] depend fundamentally on these provisions.”

While I would take issue with anyone claiming to represent all the “new faces of the American content industry,” I can comfortably tell you that CreativeFuture represents many of the true faces. On behalf of our large community of creatives, we respectfully disagree with the views expressed by those tech trade associations.

CreativeFuture is a coalition of tens of thousands of people from the American content industry — over 500 organizations and companies and over 150,000 individuals — who make their living creating everyday. Our creative economy is under siege by digital piracy and a legal framework that allows these internet platforms to profit from our work to the tune of billions of dollars — the very same framework that these organizations are asking you to export overseas.

Copyright is the Foundation of a Strong Creative Economy
Strong copyright protections are what give creatives the freedom to pursue their art as a career, not just as a hobby. They ensure that the years of uncompensated work often required to create a song, craft a film, or code a program can be rewarded with a meaningful return.

The creative industries are a significant economic driver, contributing more than $1.2 trillion to GDP and employing 5.5 million Americans. U.S. core copyright industries are a leading export outselling other major U.S. industries — including aerospace, agriculture, and pharmaceuticals. When consumers in other countries enjoy American-made creative products, job creation and economic growth occur here.

But rampant online theft is diminishing the value of this creative economy.

The DMCA Safe Harbors and “Balance” Language Should Not Be Included in NAFTA
This digital global marketplace often leaves creatives without the necessary tools to protect their works, forcing them to play an endless game of “Whac-A-Mole” because of the DMCA’s flawed safe harbor provisions. These provisions pre-date the consumer internet and have been exploited by not
only large criminal piracy operations, but also legitimate American internet platforms that profit enormously from infringement.

It’s irrefutable that the outdated, overly-broad safe harbor proposals that currently exist in U.S. law and prevent effective enforcement of rights under copyright have had a negative impact on American creative works themselves – the movies, music, television shows, books, photographs, video games, and more that make our creative economy the envy of the world. Do an internet search for any of those creative works and you will find them for free within seconds.

Why should these provisions be in an updated NAFTA – undermining the protections for American creatives overseas? Our communities rely on strong intellectual property protections – protections that must be strengthened and improved, not undermined by these outdated “safe harbors.” Please don’t export a system that does nothing but shelter the most powerful internet companies, rather than the start-ups that these tech trade associations often claim are the beneficiaries of safe harbor. In short, we should not try to export laws that are the subject of serious dispute at home.

In 2014, Grammy Award®-winning composer Maria Schneider testified before Congress that she now spends much of her time “simply trying to protect my work online.” As a result, “only a small fraction of my time is now available for the creation of music.” Her experience is obvious in the data: Last year, copyright holders sent over 900 million takedown notices to Google and YouTube alone.

Creatives are not alone in their frustrations with the DMCA. In a recent Washington Times op-ed calling for strong IP protections in NAFTA, American Conservative Union Chairman Matt Schlapp described the DMCA as “a feeble tool for copyright holders that lacks the teeth required to effectively protect their works online.” And in March, a coalition of almost 70 think tanks, scholars, and advocacy groups sent a letter to the new Administration and Congress stating: “The lure of access to the U.S. market should be used as an incentive to convince trading partners that they should increase their protection of IP rights. Therefore, strong IP protections are integral to all trade agreement negotiations.”

It would be far wiser and more forward-looking to instead include high-level principles that reflect sound policy, while preserving the ability of the U.S. and our trading partners to try new ideas, informed by lessons learned about the internet’s problems, its evolving nature, and the DMCA’s demonstrable shortcomings since its adoption in 1998.

This latter approach answers the tech associations’ call for “balance” as well. While both U.S. law and international intellectual property treaties provide for limited and narrowly defined copyright exceptions, the term “balance” does not appear in either our law or such treaties. And, let’s be clear, the call for “balance” is really an effort to weaken copyright protections internationally to the benefit of big U.S. tech companies.

**Creatives Are the True Faces of Creativity**

Before taking the helm of CreativeFuture, I produced and distributed independent films for three decades, including movies as diverse as *Dirty Dancing*, *Mad Hot Ballroom*, *Hustle & Flow*, and *Bloody Sunday*. I have worked with our community and know their faces – from faces that everyone would recognize to the faces of tens of thousands of Americans who work behind the camera everyday. And that’s just one sliver of the vibrant American copyright industries.
So I hope you understand why it gave me pause when I read the letter from the tech trade associations claiming that they are the “new faces of the American content industry.” For them to entirely co-opt the mantle of our community while arguing against the very legal protections that allow creatives to make a living strikes me as dishonest.

It is in this spirit, Ambassador Lighthizer, that we respectfully urge heavy skepticism on your part towards anyone who claims to speak for creatives but who really speak for the most powerful and unregulated companies in the world.

Our creative communities span this country, and the world. We are artists, craftspeople, writers, producers, guilds and unions, agencies, studios, independents, music labels, and mostly small businesses. The creative process teaches us all to respect one another, especially when it comes to people’s right to be fairly compensated for their creative work.

Thank you for your consideration.

Sincerely,

Ruth Vitale
CEO, CreativeFuture