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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

VIA ELECTRONIC TRANSMISSION

March 13, 2020

The Honorable Robert E. Lighthizer
Ambassador
Office of the United States Trade Representative
600 17th Street, Northwest
Washington, D.C. 20006

Dear Ambassador Lighthizer:

As the Chairman and Ranking Member of the Senate Judiciary Subcommittee on Intellectual Property, we urge you to prioritize strong intellectual property protections in free trade agreements, including an agreement between the United States and the United Kingdom.

We specifically encourage you to include a full national treatment provision, using the recently completed United States-Mexico-Canada Agreement as a model. Inclusion of this provision in this and other free trade agreements will help undo one form of discrimination and unfair treatment against American creators that costs them over \$330 million per year globally. It will ensure American artists are fairly compensated when their recordings are played in the United Kingdom to the same extent as their British counterparts.

However, we encourage you not to include language mirroring specific copyright safe harbor provisions in Section 512 of Title 17, originally enacted by the Digital Millennium Copyright Act of 1998 (DMCA), in future agreements. These copyright safe harbors have been the subject of much controversy, and many have called on Congress to revisit these provisions, enacted over 20 years ago when the internet was in its infancy.

In response to these calls, we have launched a series of hearings in the Senate Judiciary Subcommittee on Intellectual Property to explore ways we can promote the creative economy in the twenty-first century. This initiative began on February 11 with a hearing covering the background of the DMCA – the reasons for its enactment, the balance struck between internet platforms and copyright owners, and an assessment of whether this balance is currently working. We held a second hearing on March 10 to discuss copyright law in foreign jurisdictions. The Subcommittee intends to hold several additional hearings this year on the DMCA. In addition to our hearings, the United States Copyright Office is expected to produce a report on Section 512 at some point this year, concluding a multi-year process that started in 2015.

For these reasons, we are concerned that the United States continues exporting language mirroring the 22-year-old DMCA while these reviews are pending. We do not believe that a

provision requiring signatories to adopt Section 512-style safe harbors from 1998 should be included in future free trade agreements during this time. Given our Subcommittee's jurisdiction over intellectual property laws, we hope that your office will work closely with us in advance of negotiating future copyright provisions in free trade agreements.

Thank you for your attention to these important matters. If you have any questions, please do not hesitate to contact us. We are ready and willing to work with you.



Thom Tillis
United States Senator

Sincerely,



Christopher A. Coons
United States Senator