



CÁMARA NACIONAL DE LA INDUSTRIA
EDITORIAL MEXICANA



CANADIAN
PUBLISHERS'
ASSOCIATION

ASSOCIATION
NATIONALE
DES ÉDITEURS
DE LIVRES

Via electronic mail.

October 10, 2017

The Honorable Chrystia Freeland
Minister of Foreign Affairs, Global Affairs Canada

The Honorable Idefonso Guajardo Villareal
Secretary, Ministry of Economy Mexico

The Honorable Wilbur Ross
Secretary, U.S. Department of Commerce

The Honorable Robert E. Lighthizer
Ambassador, Office of the U.S. Trade Representative

Dear Minister Freeland, Minister Guajardo, Secretary Ross, and Ambassador Lighthizer:

We write as representatives of the leading publishers throughout the Americas – from Mexico to the United States to Canada. Collectively, we urge you to continue to support strong protections for intellectual property, and copyright in particular, in the ongoing negotiations to modernize the North American Free Trade Agreement (NAFTA).

We represent over 3,000 publishers in our three countries. Our members invest in and license important and valuable publications that are critical to modern life, including innovative educational materials, prized fiction, and scientific, medical and technical journals. Our member companies are essential partners to nurses, doctors, engineers, educators and scientists, and inspire and inform people throughout the world on virtually every subject of the twenty-first century. Publishers are transformative participants in both local and global markets, but our businesses depend upon strong intellectual property protections and fair trade agreements.

We are pleased to be a part of a growing and vibrant sector of the economies of the three NAFTA partners. In the U.S. alone, “core” copyright industries, including the publishing sector, generate over \$1.2 trillion in economic output per year.¹ The U.S. Department of Commerce has similarly reported that copyright-intensive industries directly employ over 5.5 million jobs in the United States, with an additional 2.8 million indirectly supported throughout

¹ See, e.g., [Copyright Industries in the U.S. Economy: the 2016 Report](http://www.iipawebsite.com/pdf/2016CpyrtRptFull.PDF), see <http://www.iipawebsite.com/pdf/2016CpyrtRptFull.PDF> (accessed October 3, 2017).

the supply chain, for a total of over 8 million jobs dependant on the health of the copyright industry.² In 2016, the U.S. book and journal publishing industry generated \$26.24 billion in net revenue.³ According to the Bureau of Labor statistics, in 2016, the U.S. publishing industry⁴ generated 155,821 jobs.⁵

The copyright sector is also vibrant in Canada and Mexico. A September 2017 Creative Canada Policy Framework document valued Canada's book publishing industry at \$1.15 billion, generating 13,845 jobs.⁶ In Mexico, the publishing industry generates \$515 million per year, supporting more than 11,000 jobs in the publishing and related industries.⁷ Downstream partners, such as bookstores, employed 15,000 and generated \$448 million last year⁸.

As these trade negotiations continue, we urge you to keep our industry's priorities and concerns in mind. Foremost, we believe a modernized NAFTA must maintain strong protections for intellectual property. In our view, agreements such as NAFTA should be norm setting, laying the parameters for strong copyright protection, and not work to advance ambiguous or ill-defined exceptions to those protections. Where the agreement includes language regarding exceptions and limitations to copyright protection, such provision should conform to the well-established norm of the "three step test" — that has been part of international law for decades, including in the Berne Convention, the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), and the World Intellectual Property Organization's (WIPO) Internet treaties. Those who argue against the well-established three step test, and advocate for ambiguous "balance" language (as was previously proposed in the Trans Pacific Partnership Agreement) are often the same entities that are ideologically opposed to strong intellectual property protection in the first instance.

In the course of these negotiations, some parties may seek to inject new language regarding an exception to copyright protection for so-called text and data mining (TDM). This concept has not been the subject of substantial discussion, and is as yet undefined in any specific laws in our respective countries. Thus, it would be ill advised to bring into an already complex negotiation a proposed exception that has not been appropriately vetted with the public. What may not have been adequately communicated is the fact that the subject of the proposed exception (i.e., text and data mining) is already being conducted pursuant to license. For these and other reasons, we urge you to reject efforts to insert such a proposed exception at this time.

Publishers also believe that the final NAFTA text must include an improved enforcement framework for addressing online piracy. As digital trade in copyrighted content grows, a framework that provides rights holders with effective tools necessary to protect and enforce their

² U.S. Department of Commerce, "Intellectual Property and the U.S. Economy: 2016 Update" (Sept. 2016), see <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf> (accessed October 3, 2017).

³ <http://newsroom.publishers.org/book-publishing-annual-statshot-survey-reveals-religious-crossover-and-inspirational-books-supported-trade-book-growth-in-2016/> (accessed October 3, 2017).

⁴ The NAICS index defines the "Publishing Industries (except Internet) subsector" as including "establishments engaged in the publishing of newspapers, magazines, other periodicals, and books, as well as directory and mailing list and software publishing." See <https://www.bls.gov/iag/tgs/iag511.htm> (accessed October 4, 2017)

⁵ Bureau of Labor Statistics, <https://sicode.com/en/naicscodes/511130/book-publishers> (accessed October 4, 2017).

⁶ <https://www.canada.ca/en/canadian-heritage/campaigns/creative-canada/framework.html> (accessed October 4, 2017).

⁷ <http://caniem.org/es/content/actividad-editorial> (accessed October 4, 2017).

⁸ <http://www.beta.inegi.org.mx/app/saic/default.aspx> (accessed October 4, 2017).

rights online, and compels cooperation with the range of intermediaries that facilitate e-commerce, is essential to ensuring a robust online marketplace. As such, we support flexible, high-level language that provides for both intermediary liability and appropriate limitations on liability in a modernized NAFTA text.

Finally, we urge inclusion of strong protections for the technological protection measures (TPMs) rights holders employ in protecting their works. TPMs are essential to the variety of online distribution models through which rights holders make their content available to consumers, on the platform and at a time of their choosing. Because of TPMs, consumers can enjoy their books, and other educational and entertaining content, in almost any setting – at home, at the university library, and even in transit.

Thank you for your attention to these issues of critical importance to the publishing sector in the Americas.

Sincerely,



Maria Pallante
President & CEO
Association of American Publishers




David Swail
Executive Director
Canadian Publishers' Council



Kate Edwards
Executive Director
Association of Canadian Publishers



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