

**Before the Office of the United States Trade Representative  
Washington, D.C.**

Request for Comments Regarding the Administration's Reviews and Report to the President on  
Trade Agreement Violations and Abuses.

Docket: USTR-2017-0010

**Comments of the Internet Infrastructure Coalition - i2Coalition  
July 31, 2017**

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Pursuant to the request for comments issued by the U.S. Trade Representative (USTR) and published in the Federal Register at 82 Fed. Reg. 29622 (June 29th, 2017)(the “Request”), the Internet Infrastructure Coalition (i2Coalition)<sup>1</sup> respectfully submits the following comments for consideration by the USTR and Department Of Commerce.

## **I. Focus is the Critical Issue.**

The i2Coalition welcomes the opportunity to provide comments on the Request. An important aspect of USTR and the Department of Commerce’s review is a consideration of the harm caused to U.S. companies and individuals as a result of intellectual property infringement. The i2Coalition believes this consideration is appropriate. To accurately determine the impact of any infringement, it is important that the USTR and Department of Commerce study the root causes of any such infringement.

Key to such a study is an understanding of well understood roles related to intellectual property: the creation and consumption of intellectual property. Concentrating on these roles will likely lead to the greatest understanding of the interaction between trade agreements, intellectual property as a whole, intellectual property infringement in general, and trade deficits.

When conducting the performance reviews of current and future trade agreements, any review should focus on the infringement itself, and not on conduits. Past discussions about the roles of conduits in the context of trade agreements has been distracting at a minimum, and misleading in some cases.<sup>2</sup> The reason for this is relatively simple: in the context of trade agreements the boundaries of intellectual property laws related to the creation and consumption of content are well defined. However, the application of these rules to conduits and infrastructure providers are not as well defined. Focusing on rules that are well defined will help USTR and the Department of Commerce more clearly understand the interaction between the factors identified above and the creators and consumers of intellectual property.

The right of fair use should be considered by the USTR and Department of Commerce’s review. The review of infringement enforcement mechanisms must examine whether they are narrowly focused to avoid impacting fundamental rights like free speech. Free speech is a driving economic force for Internet infrastructure businesses, and our customer’s confidence that their fundamental rights will not be impacted is key to our businesses continued vitality.

It is appropriate for USTR and the Department of Commerce to consider the fragile nature of the Internet ecosystem in considering whether to include this aspect of the Internet in its review. The ecosystem that makes the Internet run relies on emerging technologies, some of which take years to find their ideal uses, implementation, and positions within the intellectual property enforcement structure.

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<sup>1</sup> Founded in 2012 by a diverse group of Internet infrastructure companies, the i2Coalition supports and represents the organizations that build and maintain the infrastructure of the global Internet. Today, the i2Coalition is the leading voice for hosting companies, data centers, registrars and registries, software services providers, and related technology firms.

<sup>2</sup> For example, statements about Domain Name Registrars in USTR’s 2014 Special 301 report did not include adequate context or understanding about the role of the contract between ICANN and Domain Name Registrars.

Blockchain is an example. Blockchain is not inherently good or bad. It simply facilitates transactions. Because its use and adoption is nascent at this time, including it in any review would likely lead to a premature determination of its position in any assertion of intellectual property infringement. Blockchain is only one example of how such an over early determination would impact the Internet's infrastructure.

Failing to allow the uses and impacts of new technology play out forecloses a deeper understanding of its impact, and also affects the ability of the U.S. economy to grow in new, unanticipated and likely more robust, directions. Focusing on technology, rather than the creation and consumption of intellectual property will not result in the reduction of intellectual property infringement. Rather, both technological innovation and economic growth, will be impacted.

A consideration of the economic impact of the study on the Internet infrastructure industry is also warranted. Our industry generates more than \$100 billion in annual revenue and is growing at a rate of nearly 20% per year.<sup>3</sup> Maintaining a strong and growing Internet infrastructure is vital to creating an environment of innovation, both globally and domestically. This environment also economically impacts a vast array of sectors, far extending beyond the Internet infrastructure itself.

## **Conclusion**

By focusing its review on well understood intellectual property concepts, and their application to the creation and consumption of intellectual property, USTR and the Department of Commerce will be better able to understand the impact of intellectual property infringement on the U.S. trade deficit. This understanding will help support traditional intellectual property interests without impacting the significant economic growth, and positive trade surplus, of the Internet's infrastructure providers.

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<sup>3</sup> See <http://www.gartner.com/newsroom/id/2352816>