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# Congress of the United States

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September 17, 2019

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

Dear Ambassador Lighthizer:

We write to express our concern regarding the inclusion of Article 20.89 in the United States-Mexico-Canada Agreement (USMCA). This provision, entitled "Legal Remedies and Safe Harbors," mirrors Section 512 of Title 17, originally enacted by the Digital Millennium Copyright Act of 1998 (DMCA).<sup>1</sup> In certain circumstances, Section 512 frees online platforms from liability for infringing content posted by third parties.<sup>2</sup>

The effects of Section 512 and the appropriate role of a copyright safe harbor have become the subject of much attention in recent years.<sup>3</sup> Some have called on Congress to update these very provisions, enacted in the days of a dial-up Internet.<sup>4</sup> The U.S. Copyright Office is expected to produce a report on Section 512 around the end of this year, the result of a multi-year process that started in 2015.<sup>5</sup> Moreover, the European Union has recently issued a copyright directive that includes reforms to its analogous safe harbor for online platforms, which may have an impact on the U.S. domestic policy debate.<sup>6</sup>

<sup>1</sup> Compare United States-Mexico-Canada Agreement, art. 20.89 (Nov. 30, 2018) with 17 U.S.C. § 512.

<sup>2</sup> 17 U.S.C. § 512(c).

<sup>3</sup> See, e.g., *Requests for Public Comments: Digital Millennium Copyright Act Safe Harbor Provisions*, U.S. Copyright Office, <https://www.regulations.gov/docket?D=COLC-2015-0013> (collecting over 90,000 public comments).

<sup>4</sup> See Dean Pinkert, *Take Down or Stay Down: Digital Piracy and Trade Negotiation*, Law360 (Oct. 17, 2017).

<sup>5</sup> See *Section 512 Study*, U.S. Copyright Office, <https://www.copyright.gov/policy/section512/>.

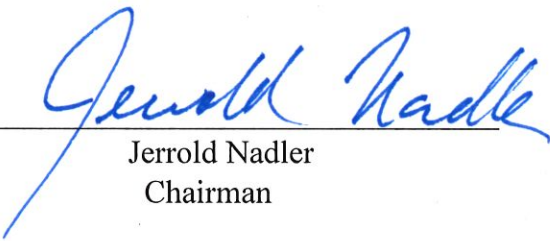
<sup>6</sup> Council Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC

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Without taking a position on that debate in this letter, we find it problematic for the United States to export language mirroring this provision while such serious policy discussions are ongoing. For that reason, we do not believe a provision requiring parties to adopt a Section 512-style safe harbor system of the type mandated by Article 20.89 should continue to be included in future trade agreements. Given that the Judiciary Committee closely oversees Section 512 through its jurisdiction over intellectual property laws, we also hope that the Office of the United States Trade Representative will work closely with our Committee in advance of negotiating copyright issues going forward.

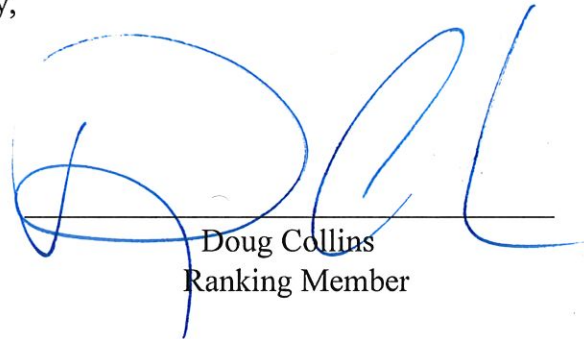
Thank you for your attention to this important matter. We would be pleased to discuss this issue with you at your convenience. Should you have any questions regarding this letter, please contact Jamie Simpson of the Majority Staff at (202) 225-5741 or Thomas Stoll of the Minority Staff at (202) 225-2320.

Sincerely,



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Jerrold Nadler  
Chairman



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Doug Collins  
Ranking Member