



Computer & Communications Industry Association
1972-2012: 40 YEARS OF TECH ADVOCACY

Via Electronic Filing

Irving A. Williamson, Chairman
U.S. International Trade Commission
500 E Street SW
Washington, DC 20436

Re: March 7 Digital Trade Hearing (Investigation No. 332-531)

Dear Chairman Williamson:

I write to follow up on the Commission's March 7 hearing on digital trade. At the hearing, the issue of how precisely to define "digital trade" for purposes of the Commission's report received substantial attention. On this matter, I supplement my written testimony dated February 26 with the following.

Defining Digital Trade

The Commission has indicated that it presently proposes to define digital trade to encompass "commerce in products and services delivered over digital networks." This definition has merits; however, I note that an effective definition of digital trade should (1) construe "commerce" broadly; (2) construe "services" in a similarly broad fashion; and (3) maintain emphasis on "over digital networks," so that digital trade is not confused with trade in goods with digital elements.

1. Construing "commerce"

While the commercial aspect of digital trade is self-apparent, many Internet services today depend upon an advertising- or secondary-content supported business model. In this case, a user receives free access to a platform or service, and advertisers or content developers pay to either place advertisements on or make content available on the platform. While no money changes hands between the user and the platform, the provision of the service is governed by an agreement – possibly implied but often an explicit End-User Licensing Agreement (EULA) or Terms of Service (ToS). This interaction is commerce notwithstanding the absence of a financial transaction, and forms the basis for other economic transactions. A complete definition of commerce will encompass the exchange of value between both (a) the user and the platform, and (b) the platform and the advertisers or content developers.

2. Construing "services"

While some Internet services enable transactions in physical goods (*e.g.*, eBay), and others enable transactions in digital goods (*e.g.*, Google Play, Microsoft Windows Store); others are

entirely service-centric (e.g., Facebook, Pandora, Yahoo Screen). In fact, a substantial segment of Internet services have little or no connection to goods at all, although they frequently may function as inputs to goods.

The Commission should ensure that its definition captures the value created by Internet data exchange at all layers of the global value and supply chains. In particular, it should be recognized that one of the greatest benefits of the Internet to trade is that it eliminates or streamlines several intermediate steps that are often required to sell goods or services across borders. For example, a merchant may advertise with keywords, selling directly online; the merchant may acquire business intelligence using social media services to communicate with local specialists, or conduct video-conferences with foreign customers and counterparts, etc., and *yet little of this value would be captured if the only yardstick for measurement were the final sale of a good or service.*¹

A suitable definition of “digital trade” must encompass efficiency-enhancing functionality such as cloud computing, hosting, and caching, as well as user-oriented functionality such as social media, search, e-commerce platforms, media streaming, and secondary markets, regardless of the business model by which that service is provided.

3. *Emphasizing “over digital networks”*

The caveat of “over digital networks” is an essential component of the Commission’s definition. The digital network fundamentally changes the nature of the commercial activity.

The Commission’s definition of “digital trade” properly excludes digital goods traded conventionally, rather than over digital networks. These may be properly thought of as an independent category – trade in digital goods. This division has both a definitional rationale and a substantive rationale. From a definitional perspective, to include conventional trade in physical goods with digital contents would not effectively differentiate between conventional trade and digital trade. Many conventionally traded goods, including items as diverse as automobiles and home appliances, contain digital software. An automobile is not, however, a digital good. To include these items would result in significant double-counting, and over time, more conventional trade would be construed as digital trade simply because software is being designed into more physical goods.

¹ It bears noting that the volume of data transmitted is a particularly poor yardstick. Much of the concern about the percentage of global Internet traffic that allegedly constitutes copyright infringement is a function of the fact that there have been insufficient legal outlets for acquiring video content, and video is presently one of the most volume-intensive forms of data. To embrace a volume metric is to embrace unwarranted value judgments ill-suited for empirical analysis. It would imply, for example, that video-streaming on YouTube is more valuable than audio-streaming on Spotify, and that an iTunes *movie* download is more important than an iTunes *song* download of the same price. Moreover, it would mean that efficiency improvements in how data is transmitted might produce a decrease in observed digital trade. Because such assumptions have no basis, data volume is not a particularly effective metric.

Thus, the Commission wisely focuses not on the nature of the good but the mechanism of trade, *i.e.*, whether it occurs over a digital network or via conventional commerce. Naturally, this means that some digital goods will fall into “conventional trade” in some cases and “digital trade” in other cases, depending on how these goods are delivered. In many cases, however, digital trade may be the basis of inputs in purely conventional goods and services, and these inputs should not be excluded. As noted above, the enabling nature of the Internet largely accrues to the benefit of traditional industry, and such services should be included in the accounting insofar as they constitute value-add.

As both digital trade itself and our understanding of it evolve, CCIA looks forward to continuing to work with you on efforts to better describe and define it.

In conclusion, I thank the Commission for its attention to this important subject.

Sincerely,

A handwritten signature in black ink, appearing to read "E J Black". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Edward J. Black
President & CEO
Computer & Communications Industry Association

Cc: Commissioner Daniel R. Pearson
Commissioner Shara L. Aranoff
Commissioner Dean A. Pinkert
Commissioner David S. Johanson
Commissioner Meredith Broadbent