

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

In re Request for Public Comments and
Notice of a Public Hearing Reading the
2023 Special 301 Review

Docket No. USTR-2022-0016

**COMMENTS OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

Pursuant to the request for comments published by the Office of the United States Trade Representative in the Federal Register at 87 Fed. Reg. 76,660 (Dec. 15, 2022), the Computer & Communications Industry Association (CCIA) submits the following responses to questions posed by the Special 301 Interagency Committee. CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms.

I. Answers to Special 301 Interagency Committee

- 1. On China, your submission describes forced technology transfers, including with respect to the 2017 Cybersecurity Law. Are there any recent developments in implementation of the Cybersecurity Law that have raised concerns among your members?**

While CCIA is not aware of new concerns with respect to these developments, CCIA remains concerned with certain Chinese regulations that discriminate against U.S. cloud service providers through forced technology transfer, including the 2017 Cybersecurity Law.

- 2. Can you elaborate on “the threat posed to Internet services and its users” by the amendments to India’s Information Technology Act (IT Act) and separate new rules for publishers prescribing a code of ethics?**

Amendments to India’s Information Technology Act went into effect in 2022, imposing additional requirements under the Intermediary Rules and imposing new obligations on intermediaries. These new requirements include strict timelines for content takedown demands (72- and 24-hour timelines), new local presence requirements, and traceability mandates which pose significant security risks.

New rules were also announced simultaneously for “publishers of news and current affairs content” and “publishers of online curated content” to adhere to a prescribed Code of Ethics.¹ This includes incidental product changes to ensure rating and classification as per prescribed guidelines and implement access and parental control mechanisms and to implement a three-tiered grievance redressal mechanism.

¹ Available at:

<https://www.meity.gov.in/writereaddata/files/IT%20Rules%2C%202021%20with%20proposed%20amended%20text%20in%20colour.pdf>.

As recent investigations by the U.S. International Trade Commission on foreign censorship show these amendments led to an increase in content removal requests, and even included information critical of the Indian Government.² Overbroad content regulations that impose strict timeline removals subject to vague legal definitions of illegal or objectionable content can have a negative impact of free expression online, and incentivizes companies to over remove otherwise lawful content.

India is seeking to expand its already-intrusive powers to compel online platforms to take down information, as the Ministry of Electronics and Information Technology released another amendment for consultation on Jan. 17 that requires platforms to make reasonable efforts to prevent content fact-checked as fake or false by the government's Press Information Bureau from being posted.³

II. Additional Comments on Canada C-11

Canada is in the process of finalizing Bill C-11, "The Online Streaming Act". CCIA believes that this legislation should be reviewed in the context of the 2023 Special 301 review as it discriminates against online content provided by U.S. online services, imposing an obligation to promote Canadian content on their services. Given the concurrent effect this has of disadvantaging U.S. rights holders, the U.S. Trade Representative has special obligations to review Canadian measures that affect cultural industries under existing U.S. law.

C-11 would amend Canada's Broadcasting Act to direct the CRTC to regulate a newly defined group of online broadcasting undertakings to "clearly promote and recommend Canadian programming".⁴

Although USMCA recognizes Canada's right to adopt measures in support of Canadian content, the agreement also authorizes countermeasures (Article 32.6.4) in the event that such policies adversely affect the United States' economic interests. Given the ambitious goals of this bill with respect to the online distribution of content, directed specifically at U.S. suppliers, it is incumbent on the U.S. Trade Representative to evaluate the likely effect of this proposed legislation and consider an appropriate response.

Specifically, USMCA implementing legislation retains Section 182(f) of the Trade Act of 1974 (introduced in the implementing legislation of the North American Free Trade Agreement) detailing special rules for actions in Canada affecting U.S. cultural industries and Article 32.6 of USMCA. The Trade Representative is directed to identify as part of the Special 301 process to identify any "act, policy, or practice of Canada" affecting a cultural industry.⁵

² See <https://www.usitc.gov/publications/332/pub5244.pdf>. See also <https://www.thehindu.com/opinion/lead/indias-juggernaut-of-censorship/article66433103.ece>.

³ Available at: <https://www.meity.gov.in/writereaddata/files/Revised-IT-Rules-2021-proposed-amended.pdf>.

⁴ See <https://ccianet.org/library/ccia-white-paper-on-canadas-online-streaming-act-bill-c-11/>.

⁵ "Cultural industries" includes: (1) the production, distribution, sale, or exhibition of film or video recordings; and (2) the production, distribution, sale, or exhibition of audio or video music recordings. §182 (f)(3)(b). Both are

C-11 has yet to be adopted. However, it has passed both the House of Commons and the Senate, and only requires reconciliation of amendments passed in the Senate to be finalized, and may be adopted as early as this Spring. Accordingly, CCIA would like to ensure that C-11 is included in both the upcoming National Trade Estimates Report and the Special 301 Report.

implicated by C-11, which is expected to cover subscription video, music, news, and some user-generated content (deemed in scope by the CRTC).