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

In re Request for Public Comments and Notice of a Public Hearing Regarding the 2026 Special 301 Review	Docket No. USTR-2025-0243

COMMENTS OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

Pursuant to the request for comments published by the Office of the United States Trade Representative (USTR) in the Federal Register at 90 Fed. Reg. 57,519 (Dec. 11, 2025),[1] the Computer & Communications Industry Association (CCIA) submits the following comments for the 2026 Special 301 Review. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms. For over 50 years, CCIA has promoted open markets, open systems, and open networks.[2]

I. INTRODUCTION

Digital services exports, highly dependent on both intellectual property (IP) protections and related exceptions and limitations, represent a historic area of strength for the U.S. economy, generating $729.7 billion in 2024 and delivering a trade surplus of $282 billion.[3] As both rights holders and rights users, CCIA members value IP protection and have devoted significant resources to developing tools to combat online infringement, while at the same time, these strong U.S. exporters may be discouraged from entering new markets that lack adequate and

[1] Office of the United States Trade Representative, *Request for Comments and Notice of a Public Hearing Regarding the 2026 Special 301 Review*, 90 Fed. Reg. 57519 (Dec. 11, 2025), https://www.federalregister.gov/documents/2024/12/06/2024-28559/request-for-comments-and-notice-of-a-public-hearing-regarding-the-2025-special-301-review.

[2] For more, visit www.ccianet.org.

[3] Bureau of Economic Analysis (BEA), *International Data- International Transactions, International Services, and International Investment Position Tables* (2024), https://apps.bea.gov/iTable/?reqid=62&step=6&isuri=1&tablelist=359&product=4.

technologically necessary limitations and exceptions to copyright.[4] These exceptions and limitations are vital safeguards that ensure the U.S. IP system fulfills its constitutional mandate: promoting innovation and free expression.[5] This is especially true given the rise of artificial intelligence (AI), which is rapidly becoming a core driver of digital trade, productivity, and U.S. economic competitiveness. Trade policies and domestic regimes that restrict lawful access to data risk chilling AI investment, slowing technological advancement, and weakening the global competitiveness of U.S. digital services exporters, as well as the benefits they offer to foreign consumers and businesses. In fact, a recent CCIA study has shown that workers using generative AI report a 15% productivity improvement on average—a strong incentive for foreign trade partners to embrace the exports U.S. firms are pioneering.[6]

Given that barriers to digital services increased by 25% globally between 2014 and 2023,[7] addressing IP-related constraints affecting those digital services should be central to the Special 301 review. For example, a robust trade-enhancing framework must include protections for online intermediaries and flexible limitations and exceptions to copyright that are necessary for the development and training[8] of next-generation technologies such as AI and machine learning.[9] With private AI investment in the U.S. increasing 62% between 2023 and 2024 to

[4] *See* CCIA, *Fair Use in the U.S. Economy – 2025 Edition* (2025), https://ccianet.org/research/reports/fair-use-in-the-u-s-economy-2025-edition/.

[5] U.S. Const. art. 1, § 8, cl. 8.

[6] CCIA, *2025 Survey of Product Impact in the Connected Economy: Artificial Intelligence* (Nov. 18, 2025), https://ccianet.org/research/reports/2025-survey-of-product-impact-in-the-connected-economy-artificial-intelligence/ .

[7] Global Data Alliance, *Global Data Alliance Welcomes Comprehensive OECD Analysis of Services Trade Barriers* (June 24, 2024), https://globaldataalliance.org/news/gda-welcomes-comprehensive-oecd-analysis-of-services-trade-barriers/.

[8] CCIA, *CCIA Comments on Korea Copyright Commission Surveys on Copyright and AI* (Dec. 6, 2024), https://ccianet.org/library/ccia-comments-on-korea-copyright-commission-surveys-on-copyright-and-ai/.

[9] CCIA, *Fair Use in the U.S. Economy*, *supra* note 4, at 8 ("New machine learning technologies depend on flexible copyright law. Machine learning by artificial intelligence requires programs ingesting and analyzing data and information, which may include material protected by copyright. Courts have found this type of intermediate copying to be a non-infringing, transformative use. Machine learning helps power innovation in a variety of areas, including autonomous vehicles, medical diagnostics, image recognition, augmented and virtual reality, and drones."); Jonathan Band, *Fair Use, Artificial Intelligence, and Creativity*, Disruptive Competition Project (Jan. 20, 2020), http://www.project-disco.org/intellectual-property/012019-fair-use-artificial-intelligence-and-creativity/

reach over $100 billion, access to global datasets is critical to recouping these substantial investments.[10]

The 2026 Special 301 Review coincides with a critical inflection point in the global digital economy. Since late 2025, the digital trade landscape has deteriorated precipitously as theoretical policy debates have crystallized into enacted statutes, with key foreign jurisdictions increasingly imposing onerous IP-related regulations aimed at U.S. digital service providers. These measures range from mandatory revenue-sharing codes in Australia to discriminatory computational thresholds in South Korea and 'hybrid' copyright levies in India, and target U.S. digital service providers specifically. USTR must view these measures not as isolated domestic regulations, but as a systemic effort to target U.S. technology leadership through non-tariff barriers that distort global markets, undermine reciprocal trade obligations owed to the United States, and threaten the economic viability of U.S. AI exports.

CCIA supports USTR engagement on these issues through multiple venues, including the Special 301 Report, National Trade Estimate (NTE) Report, pursuit of trade agreements, and discussions with key trading partners. CCIA reiterates that a strong IP system reflects the needs of all participants in the copyright ecosystem. Any discriminatory practices under the guise of IP that target U.S. exports should be identified and discouraged by USTR in the 2026 Special 301 Report.[11]

II. ADDRESSING CONCERNS IN THE SPECIAL 301 REPORT

("Many AI processes rely on the ingestion of large amounts of copyrighted material for the purpose of 'training' an AI algorithm. Fair use is the legal theory in the United States that allows the copying of these works. Numerous appellate courts have found the mass copying of raw material to build databases for uses by AI processes to be fair use under 17 U.S.C. § 107.").

[10] Stanford University, *The 2025 AI Index Report* (2025), https://hai.stanford.edu/ai-index/2025-ai-index-report.

[11] CCIA does not make any specific recommendations on countries to place on the Priority Watch List or Watch List, but identifies regions of concern.

As CCIA has argued for many years and in previous submissions, the Special 301 process should not only account for gaps in enforcement but also identify areas where countries have failed to implement substantive IP-related commitments to the U.S. or have used IP regulation in an inappropriate manner to target leading U.S. firms, thereby impeding legitimate market access.

This is well within USTR's statutory mandate governing the Special 301 process, 19 U.S.C. § 2242. The phrase "adequate and effective protection of intellectual property rights" in section 2242(a)(1)(A) refers to protection of IP rights; it is not limited to infringement, and it should not be so interpreted.[12] Moreover, section 2242(a)(1)(B) empowers USTR to address barriers to "fair and equitable market access," which confront "United States persons that rely upon intellectual property protection."[13] The latter include CCIA members and other U.S. industry stakeholders confronted with regulations such as audiovisual local content quotas and investment requirements, snippet taxes, and intermediary liability regimes that fail to lead to effective enforcement. The market access barriers contemplated by the statute include regulations that violate provisions of international law or constitute discriminatory non-tariff trade barriers.[14] These include unbalanced ancillary rights and bargaining regimes, failure to

[12] *Cf.* 17 U.S.C. § 108(f)(4) (referring to "the right of fair use as provided by section 107"); § 107 ("the fair use of a copyrighted work . . . is not an infringement of copyright").

[13] The market access provision was added to the final text of the Omnibus Trade and Competitiveness Act of 1988 during conference. The Conference Report notes that "[t]he purpose of the provisions dealing with market access is to assist in achieving fair and equitable market opportunities for U.S. persons that rely on intellectual property protection. As a complement to U.S. objectives on intellectual property rights protection in the Uruguay Round of trade negotiations, the conferees intend that the President should ensure, where possible, that U.S. intellectual property rights are respected and market access provided in international trade with all our trading partners. . . . Examples of foreign barriers to market access for products protected by intellectual property rights which this provision is intended to cover include, but are not limited to—laws, acts, or regulations which require approval of, and/or private sector actions taken with the approval of, a government for the distribution of such products; the establishment of licensing procedures which restrict the free movement of such products; or the denial of an opportunity to open a business office in a foreign country to engage in activities related to the distribution, licensing, or movement of such products" (emphasis added). Bernard D. Reams Jr. & Mary Ann Nelson, *Trade Reform Legislation 1988: A Legislative History of the Omnibus Trade and Competitiveness Act of 1988*, Pub. L. No. 100-418 (1988).

[14] 19 U.S.C. § 2242(d)(3).

adopt adequate intermediary liability protections, and discriminatory treatment of foreign services to advantage domestic competitors, often in the name of cultural preservation policies.

Ancillary protection conflicts with international copyright obligations.[15] The imposition of ancillary rights through link taxes, or through mandatory bargaining codes and forced arbitration, conflicts with long-standing international law that prohibits nations from restricting quotation of published works. These regulations compel one group of businesses to subsidize another and undermine market access for U.S. services and depart from established copyright law. These regulations also contravene World Trade Organization (WTO) commitments: by imposing a levy on quotations, these entitlements violate Berne Convention Article 10(1)'s mandate that "quotations from a work . . . lawfully made available to the public" shall be permissible. As TRIPS incorporates this Berne mandate, compliance with Article 10(1) is not optional for WTO Members. While Article 1 of TRIPS permits Members to implement their law with more extensive protection, they can only do so "provided that such protection does not contravene the provisions of the Agreement." Non-compliance is a TRIPS violation and should be addressed by USTR in its 2026 Special 301 Report.

CCIA notes that in the 2018 Special 301 Report, USTR referred to the 2018 National Trade Estimate Report regarding "laws and legislative proposals in the EU that may hinder the provision of some online services, such as laws that would require certain online service providers—platforms providing short excerpts ("snippets") of text and images from other

[15] A full analysis of how ancillary rights conflict with international law and copyright norms is available in the following CCIA publication: *Understanding "Ancillary Copyright" in the Global Intellectual Property Environment* (2015), http://www.ccianet.org/wp-content/uploads/2015/02/CCIA-Understanding-Ancillary-Copyright.pdf.

sources—to remunerate or obtain authorization from the original sources."[16] CCIA supports highlighting these trade concerns in *both* the NTE Report and the Special 301 Report.[17] Consistent with prior reports, the Special 301 Report should also consider measures that introduce content quotas, a market intervention that most obviously constitutes a "discriminatory non-tariff barrier."[18] This includes any investment obligations to acquire or produce local content that affects U.S. IP-intensive industries (including online streaming services) that are engaged in the global distribution of content. Given that these proposals have proliferated in recent years to be adopted or considered in countries such as Canada, Australia, France, Brazil, and Colombia, urgent attention to this issue from USTR is warranted.

The nexus between Special 301 and content restrictions is further supported by the special obligations Canada has under the U.S.-Mexico-Canada Agreement (USMCA). 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. 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

[16] Office of the U.S. Trade Rep., *2018 National Trade Estimate Report on Foreign Trade Barriers* 27–28 (2018), https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf.

[17] USTR has highlighted IP-related trade concerns in both the Special 301 and NTE reports. *Compare 2018 Special 301 Report* at 76 ("The United States strongly encourages Costa Rica to build upon initial positive momentum to strengthen IP protection and enforcement, and to continue to draw on bilateral discussions to develop clear plans to demonstrate progress to tackle longstanding problems.") *with 2018 NTE Report* at 123 ("The United States strongly encourages Costa Rica to build on these initial positive steps it has taken to protect and enforce IPR, and to continue with bilateral discussions of these issues and the development of a clear plan that will demonstrate additional progress to tackle longstanding problems."); *compare 2018 Special 301 Report* at 69 ("The United States urges Egypt to provide deterrent-level penalties for IP violations, ex officio authority for customs officials to seize counterfeit and pirated goods at the border, and necessary additional training for enforcement officials.") *with 2018 NTE Report* at 140 ("The United States continues to recommend that Egypt provide deterrent-level penalties for IPR violations, provide customs officials with ex officio authority to seize counterfeit and pirated goods at the border, and provide necessary additional training for enforcement officials.").

[18] The 2023 *Special 301 Report* called attention to legislation in Thailand that allows for content quota restrictions for films and regulation in Indonesia that includes screen quotas and dubbing bans for foreign films. *2023 Special 301 Report* at 84, 60.

and Article 32.6 of USMCA. The U.S. Trade Representative is directed to identify as part of the Special 301 process any "act, policy, or practice of Canada" affecting a cultural industry.[19] As noted below, recent measures now being implemented in Canada are so extensive and distortive that USTR can no longer ignore their impact on U.S. firms and must address them in this proceeding, while remediating the lack of a meaningful focus on these restrictive measures in prior reports.

III. ANCILLARY COPYRIGHT AND MANDATORY NEWS BARGAINING CODES

CCIA reiterates longstanding concerns regarding the spread of unbalanced ancillary copyright regimes in foreign markets in the form of link and snippet taxes, as well as other frameworks that utilize similar objectives through mandated collective bargaining or other collective payment mechanisms.[20]

Studies based on the experience of countries that have implemented such laws, including studies commissioned by the European Parliament and European Commission, have demonstrated that they fail to meet stated objectives. The European Parliament JURI Committee report observed that it was "doubtful that the proposed right will do much to secure a sustainable press" and that the "effect of the snippet tax was to add additional entry costs for new entrants into those markets. . . . In turn, it cements the position of incumbents and reduces incentives to innovate."[21]

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[19] "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. 19 U.S.C. § 182(f)(3)(B).

[20] *See* CCIA, *The Harms of Forced Online News Payments* (2023), https://ccianet.org/library/the-harms-of-forced-online-news-payments/. CCIA also filed comments with the U.S. Copyright Office regarding its Publishers' Protections Study that speak further to the concerns with the creation of an ancillary press publishers' right in the United States. Comments of CCIA, *In re Publishers' Protections Study: Request for Additional Comments*, Docket No. 2021-5, filed Jan. 5, 2022, https://www.ccianet.org/wp-content/uploads/2022/01/2022-01-05-CCIA-Additional-Comments-on-Copyright-Office-Publishers-Protections-Study.pdf.

[21] Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive, Legal and Parliamentary Affairs, European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for Internal Policies of the Union, PE 596.810, at 18–19, 21 (Sept. 2017), http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf.

International research has also highlighted the detrimental impacts on local publishers. A European Commission document made available online stated that the "available empirical evidence shows that news aggregators have a positive impact on news publishers' advertising revenue" and that a press publishers' right would do little to address perceived risks created by news aggregation platforms.[22] The Spanish Association of Publishers likewise observed that "[t]here is no justification - neither theoretical nor empirical - for the existence of the fee since aggregators bring to online publishers a benefit rather than harm" and that "[t]he fee also has a negative impact for consumers, due to the reduction in the consumption of news and the increase in search time."[23]

An academic article also looked at the failure of Spain's and Germany's ancillary rights legislation, observing that the snippet taxes led to a decrease in visits to online news publications. The analysis noted that the shutdown of Google News in Spain "decreased the number of daily visits to Spanish news outlets by 14%" and that "effect of the opt-in policy adopted by the German edition of Google News in October of 2014 . . . reduced by 8% the number of visits of the outlets controlled by the publisher Axel Springer."[24]

CCIA first raised concerns about ancillary copyright in 2013.[25] There is now an EU-wide obligation for Member States to implement ancillary measures in the form of the press

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[22] The draft paper was made available through a public records request and is available at https://www.asktheeu.org/en/request/4776/response/15356/attach/6/Doc1.pdf. *See also* Tom Hirche, *EU Commission Tried to Hide a Study that Debunks the Publisher's Right as Ineffective*, IGEL (Mar. 1, 2018), https://ancillarycopyright.eu/news/2018-01-03/eu-commission-tried-hide-study-debunks-publishers-right-ineffective .

[23] NERA Economic Consulting, *Impact on Competition and on Free Market of the Google Tax*, Report for the Spanish Association of Publishers of Periodical Publications (AEEPP) (2017), https://clabe.org/pdf/Informe_NERA_para_AEEPP_(INGLES).pdf.

[24] Joan Calzada & Ricard Gil, *What Do News Aggregators Do? Evidence from Google News in Spain and Germany* (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2837553.

[25] Comments of CCIA, In re 2013 Special 301 Review, Dkt. No. USTR-2012-0022, filed Feb. 8, 2013, http://www.ccianet.org/wp-content/uploads/library/CCIA%20Comments%20on%20Special%20301%20[2013].pdf.

publishers' right under Article 15 of the Directive on Copyright in the Digital Single Market.[26] As explained below, frameworks with more discriminatory elements targeting U.S. service suppliers — including designation-based bargaining obligations, compulsory arbitration, and the threat of digital service-specific conduct remedies — have been adopted in Australia, Canada, Indonesia, and South Africa, and are being considered in New Zealand.

a. Australia

In February 2021, the Australian Government passed the News Media and Digital Platforms Mandatory Bargaining Code.[27] Under the Code, designated platform services companies are required to engage in negotiations with Australian news publishers for online content. The rules dictated that online services negotiate and pay Australian news publishers for online content, and disclose proprietary information related to private user data and algorithms.[28]

If forced negotiations break down, or an agreement is not reached within three months between a news business and designated platform, the bargaining parties would be subject to compulsory mediation. If mediation is unsuccessful, the bargaining parties would proceed with arbitration, with arbitrators seeking to determine a fair exchange of value between the platforms and the news businesses. In addition to the negotiation and arbitration requirements, the Bargaining Code imposes information sharing requirements, including a requirement that platforms provide advance notice of forthcoming changes to algorithms if the change is likely to have a significant effect on the referral traffic for covered news content. But given the

[26] *What they are saying: EU Copyright Directive (Article 15)*, Computer & Commc'ns Indus. Ass'n (May 9, 2024) https://ccianet.org/library/wtas-resource-on-eu-copyright-directive-article-15/.

[27] Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021 (Austl.), https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6652.

[28] *The Dangers of Australia's Discriminatory Media Code*, Disruptive Competition Project (Feb. 19, 2021), https://www.project-disco.org/21st-century-trade/021921-the-dangers-of-australias-discriminatory-media-code/.

government's acknowledgement of the recent "limitations" as noted in a 2024 Parliamentary report, it is unclear what could change about the Code in 2026.[29]

Under the Code, the Australian Treasury has the utmost discretion to determine which companies these mandates are applied to by determining whether the platform holds significant bargaining power imbalance with Australia news media businesses. The Treasurer must also consider if the platform has made a significant contribution to the sustainability of the Australian news industry through agreements relating to news content of Australian news businesses. Only two companies (both American) have been identified throughout deliberations. There are significant concerns from procedural,[30] competition,[31] trade,[32] and intellectual property[33] perspectives that USTR should pay close attention to.

At time of filing, no platform has been officially designated, but it is clear from the Treasury's consultation paper reviewing the code, published in April 2022, that the main targets of the law remain Google and Meta.[34] In January 2021, USTR strongly objected to the first

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[29] *Second interim report – Digital platforms and the traditional news media*, Parliament of Australia (May 15, 2024), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Social_Media_and_Australian_Society/SocialMedia/Final_report/.

[30] *Australian Regulations Detrimental to the Digital Economy: Process (Part 1)*, Disruptive Competition Project (Aug. 6, 2020), https://www.project-disco.org/competition/080620-australian-regulations-detrimental-to-the-digital-economy-process/.

[31] *Australian Regulations Detrimental to the Digital Economy: Competition (Part 2)*, Disruptive Competition Project (Aug. 13, 2020), https://www.project-disco.org/competition/081320-australian-regulations-detrimental-to-the-digital-economy-competition/.

[32] *Australian Regulations Detrimental to the Digital Economy: Trade (Part 3)*, Disruptive Competition Project (Sept. 4, 2020), https://www.project-disco.org/21st-century-trade/090420-australian-regulations-detrimental-to-the-digital-economy-trade-part-3/.

[33] *Australian Regulations Detrimental to the Digital Economy: Intellectual Property (Part 4)*, Disruptive Competition Project (Oct. 9, 2020), https://www.project-disco.org/intellectual-property/100920-australian-regulations-detrimental-to-the-digital-economy-intellectual-property-part-4/.

[34] Review of the News Media and Digital Platforms Mandatory Bargaining Code Consultation Paper, at 10 (Apr. 2022), https://treasury.gov.au/sites/default/files/2022-04/c2022-264356_0.pdf (showing only deals struck by Google and Meta).

version of Australia's news media code and called it "fundamentally unbalanced" and "clearly detrimental" to U.S. companies.[35]

It will be important to closely monitor the political pressure domestic news businesses exert on the Treasury to extract more revenue from U.S. firms as a condition of market access, further distorting Australia's internet services market. This is particularly true given the decision in 2024 of one of the U.S. companies targeted by the law to discontinue carrying domestic news on digital services.[36]

Further, in December 2024, Australia's government doubled down on this flawed policy through the announcement of a discriminatory digital services tax (DST) to force companies to comply with the News Media Bargaining Code, in the form of a "news bargaining incentive."[37] In November 2025, the country opened a consultation on the "incentive," which operates as a *de facto* retroactive DST on a handful of U.S. companies applied as a percentage of those firms' attributable revenue from Australia. Covered entities can only avoid this tax by entering into commercial funding agreements with news publishers that meet arbitrary government valuation targets (suggested at 1.5% of revenue). This "news bargaining" DST violates the Australia-U.S. Free Trade Agreement (AUSFTA), specifically Article 10.2 (National Treatment), by *de facto* targeting U.S. firms for taxation while exempting Australian digital services with similar business models. Rather than seeking other means of funding within its own government or treasury, the Australian government is looking to compel U.S. firms to subsidize Australian media competitors through a state-directed transfer of wealth.

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[35] Australian House of Representatives, Explanatory Memorandum, Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021, https://www.aph.gov.au/DocumentStore.ashx?id=cb2c2ac0-ad05-43ae-bddb-afaa018124aa&subId=699981.

[36] *Update on Facebook News in the US and Australia*, Meta Newsroom (Feb. 2024), https://about.fb.com/news/2024/02/update-on-facebook-news-us-australia/.

[37] Australian Treasury, News Bargaining Incentive Fact Sheet (Dec. 2024), https://ministers.treasury.gov.au/sites/ministers.treasury.gov.au/files/2024-12/news-bargaining-incentive-fact-sheet.docx.

In December 2025, CCIA filed comments with the Australian Treasury, which discussed how the framework is fundamentally misdirected and harmful and how no set of definitions, thresholds, data sources, or other mechanisms can cure its core defect of being a discriminatory tax.[38] Australia's proposed retroactive news tax will fall on select foreign companies and exempt numerous competing local services, including the ones that many Australians use to consume their news most, while failing to implement a genuine solution to Australia's news industry needs.[39] As such, the ongoing process as well as Australia's efforts to mandate revenue transfers from U.S. online service providers to news publishers should be investigated and addressed by USTR to ensure this harmful policy does not spread.

a. Canada

The Online News Act entered into law in June 2023,[40] and implementing regulations were published in December 2023.[41] Digital platforms must self-designate if they have a "strategic advantage" in the online news market under specific thresholds. Under the law, these designated platforms have an obligation to negotiate payment agreements with news businesses, or will be subject to final offer arbitration. The law also prohibits these firms from giving "undue preference" to news content, which could restrict the ability of covered services to moderate content and prevent misinformation online.

One of the U.S. companies subject to the law has secured an exemption from the law under criteria that would require it to pay C$100 million annually to Canadian news

[38] CCIA Comments to Australia's Consultation on the News Bargaining Incentive, Computer & Commc'ns Indus. Ass'n (Dec. 18, 2025) https://ccianet.org/library/ccia-comments-to-australias-consultation-on-the-news-bargaining-incentive/.

[39] CCIA, *News Media Bargaining Incentive: A Coercive and Discriminatory Digital Tax* (2024), https://ccianet.org/library/news-media-bargaining-incentive-a-coercive-and-discriminatory-digital-tax/.

[40] Bill C-18, Online News Act, 44th Parl., 1st Sess., Royal Assent (Can.), https://www.parl.ca/DocumentViewer/en/44-1/bill/C-18/royal-assent.

[41] Regulations Amending the Copyright Regulations, SOR/2024-276, *Canada Gazette*, Part II, Vol. 158, No. 1 (Jan. 3, 2024), https://www.gazette.gc.ca/rp-pr/p2/2024/2024-01-03/html/sor-dors276-eng.html.

organizations and the second U.S. company has ceased to host links to news content in Canada. Even if not fully tested, the law remains an incipient threat to U.S. companies and is the government's leverage to extract fees. The law has already resulted in harm to the internet landscape, consumers, and small publishers in Canada given a continued decrease in traffic and the overall chilling of innovation within the news sphere.[42]

Last month, the U.S. government noted that the Online News Act and other Canadian cultural laws "discriminate against U.S. tech and media firms."[43] Absent repeal, this law still conflicts with several of Canada's international trade obligations, so USTR should remain vigilant of any action against these two U.S. companies and any others the government may seek to scope into the law.[44] Other U.S. companies that link to news articles could still come under consideration by the Canadian Radio-television and Telecommunications Commission (CRTC) or Canadian Heritage. Also, the fact that the popular Chinese social media service TikTok is not subject to this law, despite hosting news content on its service, raises Most-Favored-Nation (MFN) issues under both USMCA and the General Agreement on Trade in Services (GATS).

b. European Union

CCIA continues to monitor implementation of Article 15 of the EU's Directive on Copyright in the Digital Single Market (hereinafter "the CDSM Directive"), which created a

[42] CCIA, *Panel Urges Policymakers to Consider Past Lessons on Link Tax Policies* (2024), https://ccianet.org/articles/panel-urges-policymakers-consider-past-lessons-link-tax-policies/.

[43] Davis Legree, *Trump's trade rep targets Online Streaming Act, Online News Act, raising questions about future of Canada's cultural exemption*, The Hill Times (Dec. 18, 2025), https://www.hilltimes.com/story/2025/12/18/trumps-trade-rep-targets-online-streaming-act-online-news-act-raising-questions-about-future-of-canadas-cultural-exemption/486370/.

[44] CCIA, Comments for the 2025 USTR National Trade Estimate Report, at 78 (Oct. 2024), https://ccianet.org/wp-content/uploads/2024/10/CCIA_Comments-for-the-2025-USTR-National-Trade-Estimate-Report.pdf ("These obligations include the U.S.-Mexico-Canada Free Trade Agreement Articles 14.4 (Investment) and 15.3 (Cross-border Services) regarding National Treatment; USMCA Articles 14.5 (Investment) and 15.4 (Cross-border Services) regarding Most-Favored Nation Treatment; USMCA Article 14.10 regarding Performance Requirements; USMCA Article 19.4 regarding Non-Discriminatory Treatment of Digital Products; and intellectual property obligations through the WTO's absorption of the Berne Convention and the right to quotation in the Agreement on Trade-Related Aspects of Intellectual Property Rights.").

press publishers' right. In the future, it is essential to ensure national legislation follows the terms of the CDSM Directive in order to achieve maximum harmonization in the EU in order to maintain a fair balance between the various fundamental rights. Moreover, it is imperative that national implementation does not impact on the freedom of contract and thereby diverge from the terms of the CDSM Directive by imposing mandatory licensing obligations.

CCIA notes concerns with implementation of the CDSM Directive in France,[45] Croatia,[46] the Czech Republic, as well as the CDSM directive and implementation of Article 18 regarding remuneration in Belgium. The European Commission is carrying out a full review of the CDSM Directive, with a final review report with potential recommendations of legislative changes expected as soon as June 2026.

Rather than transposing Article 15 of the CDSM Directive (and incorporating the Berne-derived exception for quotation), Czech legislators created an expansive obligation on online services to negotiate payments to news publishers. The 2022 Czech law departs from other Member States' implementation of Article 15, particularly with respect to the creation of special rights and arbitrarily-categorized "dominant" platforms and the targeted obligations on these select few companies. Specifically, the law introduces a prohibition on "dominant" platforms from "arbitrarily restrict[ing] or adjust[ing] the service in a discriminatory manner"; new arbitration procedures where either party can request the Ministry of Culture to determine

[45] France created a new right for press publishers which entered into force in October 2019. The authorization of press publishers is required when platforms display their content online. Future licensing agreements should take into account criteria such as the publisher's audience, nondiscrimination and the publisher's contribution to political and general information.

[46] Croatia completed implementation in October 2021. The Croatian text implementing Article 15 includes a provision which makes it mandatory for all publishers to license these rights collectively. Not only does this go against the spirit of the EU rules, but such a move would weaken the nature of publishers' rights, forcing publishers to act collectively via a Collective Management Organisation (CMO) and creating unnecessary barriers to the functioning of the EU internal market. Austria follows the same path. It would make it impossible for publishers and platforms to conclude pan-European licenses. Croatian Official Gazette 111/2021, Art. 15; Victoria de Posson, *Croatia's Diverging Implementation of EU Copyright Rules*, Disruptive Competition Project (Sept. 15, 2021), https://www.project-disco.org/european-union/091521-croatias-diverging-implementation-of-eu-copyright-rules/.

remuneration, after 60 days of negotiation; and an obligation to share "all data necessary" with the Ministry of Culture to determine remuneration, without safeguards for the protection of intellectual property like trade secrets. The Ministry can impose fines of up to CZK 500,000 or 1% of the total global turnover for the previous financial year (whichever is highest) for non-compliance. While wrapped in the guise of copyright, this approach cannot meet the standard of fair and non-discriminatory application of copyright protection. U.S. services operating in the Czech Republic have changed service offerings due to this implementation of the CDSM Directive, with functionality and consumer benefits in some cases sacrificed as the price of avoiding uncapped financial liability.

Belgium implemented the CDSM Directive in August 2022. The law implementing Article 15 goes further than the Directive to introduce an obligation for press publishers and information society providers to negotiate in good faith on "the exploitation of the remuneration due in that respect." If parties do not reach an agreement within four months, parties can launch proceedings before the Belgian Institute for Telecommunications and Postal Services. The Belgian Constitutional Court recently directed several questions on the legality of these new copyright rules to the EU Court of Justice (Case C-663/24).

c. Indonesia

In February 2024, the Indonesian government signed a Presidential Regulation directing specific digital platforms to pay news organizations for news content that appears on those platforms.[47] Digital platforms that would qualify are those that host content from Indonesian news outlets and make up at least 1% of all internet traffic within Indonesia, and/or platforms with over 1 million daily active users in Indonesia in a 3-month period. Although these

[47] *Gov't Issues Regulation on Publisher Rights*, Cabinet Secretary of the Republic of Indonesia (Feb. 21, 2024), https://setkab.go.id/en/govt-issues-regulation-on-publisher-rights/.

thresholds, albeit arbitrary, are facially neutral, the effects and intent of this measure make clear that U.S. companies are primary targets of this regulation. The revenue-extraction and subsidy objective is evident from the regulation itself, which states that digital services have a "responsibility" to support news organizations.

The Regulation requires digital services to support media companies, which entails paid licenses, profit sharing, data sharing, or other forms of cooperation. It further empowers the Press Council, a third party made up of members of the domestic press and media companies, to implement the regulations, prescribe further regulations, and oversee arbitration between digital platforms—a conflict of interest that greatly compromises any presumption of neutrality and objectivity between disputing parties. Under this regulation, Indonesia's Press Council can establish the rules of engagement and simultaneously oversee mediation or arbitration if any disputes materialize. The Regulation could also direct digital platforms to share and disclose algorithm changes to news publishers and disclose commercially sensitive user activity to news publishers.

d. New Zealand

In August 2023, New Zealand introduced the "Fair Digital News Bargaining Bill," which would require designated digital platforms to pay news businesses for the ability to host news content, explicitly including news hyperlinks.[48] An impact assessment conducted by the New Zealand government reflected a clear targeting of two U.S. companies through this effort, and divulged that the government believes $40-$60 million per year could be extracted from registered digital platforms subjected to the law for the benefit of domestic news businesses.[49]

[48] *Digital Platforms (Transparency and Fairness) Bill 2023*, https://www.legislation.govt.nz/bill/government/2023/0278/latest/LMS814468.html (N.Z.).

[49] *Proactive Release of Cabinet Material: Supporting Commercial Bargaining for Online News*, Minister for Broadcasting and Media, 11 (2022), https://mch.govt.nz/sites/default/files/projects/cab-rel-online-news-151222.pdf ("Should the Government introduce a news media and digital platforms bargaining framework, the expected scale of

Under the proposal, digital platforms would be designated as subject to the law if "there is likely to be a bargaining power imbalance" with news companies, along with a host of other considerations. News businesses are defined as those that produce news or "observations on news" and that satisfy a "professional standards condition."[50] New Zealand's bill tracks closely with Canada and Australia's versions, with a few notable changes. Although New Zealand's version includes more specific parameters for designating digital platforms, news businesses can themselves apply to have a digital platform registered to be subjected to the mandatory bargaining code. This power undermines any incentive of platforms to negotiate deals to obtain exemptions, as any disgruntled news business could seek designation regardless of whether they have bargained in good faith with the digital services providers. The legislation also contains provisions regarding mandatory sharing of information and acting on requests for information or investigation from foreign regulators.

Many have expressed significant concerns about the bill's emphasis on forced revenue transfers between sectors and its implications for news industry innovation.[51] Furthermore, this proposal has far-reaching implications for the principles of the open web, community-based news, and overall investment in the country's news sector.[52] The legislation remains pending in the New Zealand Parliament, with the government noting public concerns about how the U.S. government might respond.[53]

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the revenue that could flow from digital platforms to New Zealand news media organisations could be between $40 and $60 million per annum (about one-fifth of what is estimated to have been agreed in Australia)").

[50] Fair Digital News Bargaining Bill, Government Bill 278—1 (2023), https://www.legislation.govt.nz/bill/government/2023/0278/latest/whole.html.

[51] Dr. Eric Crampton, *The Fair Digital News Bargaining Bill*, The N.Z. Initiative (July 10, 2024), https://www.nzinitiative.org.nz/reports-and-media/reports/the-fair-digital-news-bargaining-bill.

[52] Tricia McCleary, *The Harmful Consequences of New Zealand's Link Tax Proposal*, Disruptive Competition Project (Oct. 11, 2024), https://project-disco.org/competition/the-harmful-consequences-of-new-zealands-link-tax-proposal/.

[53] Tom Pullar-Strecker, *Goldsmith admits Fair Digital Media Bargaining Bill shelved because of Trump*, The Post (Dec. 9, 2025), https://www.thepost.co.nz/business/360912473/goldsmith-admits-fair-digital-media-bargaining-bill-shelved-because-trump.

IV. POTENTIAL CHALLENGES TO THE DEVELOPMENT OF ARTIFICIAL INTELLIGENCE

Artificial intelligence is now a core component of U.S. digital services exports, and depends on copyright frameworks that preserve longstanding limitations and exceptions essential to innovation. As global demand grows for AI products, U.S. companies increasingly face foreign regimes that condition market access on compulsory licensing, revenue-sharing, or other measures that undermine balanced and flexible copyright systems. Such approaches threaten these exports and the future of innovation, especially when faced with concerning intellectual property commitments, such as the ones detailed below.

An emerging trend that warrants close attention is the potential proliferation of AI laws and regulations that would adversely affect investment in or the cross-border supply of AI-enabled services and technologies. Access to vast and diverse datasets, including publicly available information from the open web, is fundamental to developing accurate, secure, and effective AI systems. This access underpins AI innovation by allowing models to learn from billions of data points, identify relationships and patterns, incorporate diverse perspectives, and guard against bias. Although robust training inevitably requires access to copyright-protected material, models and applications do not, as a general matter, reproduce and distribute such content and thus do not impair its economic value. Rather, AI models and applications transform data-derived insights into powerful complementary economic value. However, this essential ecosystem is increasingly at risk from restrictive international measures that could severely limit the ability of U.S. companies to train AI models.

Additionally, a growing number of foreign jurisdictions are imposing or proposing transparency obligations related to artificial intelligence training data.[54] While often framed as

[54] *See, e.g.*, Interim Measures for the Management of Generative AI Services (promulgated by the Cyberspace Administration of China, Aug. 15, 2023); European Union Artificial Intelligence Act, 2024 O.J. 1689; South Korea

consumer protection or copyright compliance measures, these requirements risk functioning as compelled disclosure of proprietary business information and trade secrets. Leading AI firms are already engaging in meaningful transparency practices on a voluntary basis, and in many instances, individual companies have proactively shared information with policymakers and the public about training practices and data governance.[55] These voluntary disclosures give regulators insight into industry practices without requiring one-size-fits-all exposure of proprietary systems.

However, one company choosing to disclose certain information does not justify mandating that all firms disclose the same details. Such regulations exceed what is necessary to protect legitimate public interests. They instead are likely to advantage foreign competitors by giving access and insights into U.S. companies' strategies and innovation processes, potentially undermining the value of American intellectual property. American companies invest heavily with the expectation that their ingenuity will be rewarded. Mandates that compel disclosures of sensitive information and know-how risk deterring future investment in AI development and require close USTR monitoring.

Countries such as Brazil are already pursuing proposals that would impose impractical licensing requirements on the use of copyrighted works for AI training, while policy debates in Australia, Canada, the European Union, India, Korea, and the UK are also raising fundamental questions about access to online content. Such measures, if enacted, could create significant trade barriers, stifle innovation, and disadvantage U.S. developers who operate in line with international norms. Consistent with longstanding U.S. copyright law, U.S. courts correctly

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Artificial Intelligence Basic Act; 2338, de 2023, Brazilian AI Bill de 17.03.2025, https://www25.senado.leg.br/web/atividade/materias/-/materia/157233.

[55] *Transparency in AI Model Training Data*, CCIA (Jan. 1, 2024), https://ccianet.org/wp-content/uploads/2025/01/Principles-and-Template-Transparency-in-AI-Model-Training-Data.pdf.

continue to find the copying necessary for AI training to be protected by the fair use doctrine. As most other countries do not have this innovation-friendly doctrine, if the U.S. is to succeed in its ambition of promoting the export of AI-enabled products and services, championing fair use or analogous exceptions and limitations should be a priority.

As governments seek to advance regulations with the legitimate aim of promoting safety, they may be tempted to regulate poorly understood functions or features, slow competitive threats, and protect local businesses, either incumbents or new entrants. For U.S. firms, representing leading capabilities in foundational models, basic research, advanced computing, and end-use tools, the risk of discriminatory treatment is significant. More specific threats to the cross-border supply of AI services include poorly distinguishing obligations between AI developers and deployers; forced disclosure of source code, algorithms, model weights and training data; imbalanced applications of copyright law; identification of risk and imposition of special obligations based on inaccurate risk proxies such as compute thresholds or business scale; and onerous transparency and labeling requirements that conflict with best practices.[56] The U.S. government should bolster its current efforts to build consensus on best practices for governing AI by ensuring that foreign governments do not impose measures that restrict U.S. firms' AI offerings and market access.

a. Australia

Australia continues to reject broad TDM exemptions that would let AI developers train models on copyrighted works. The government recently confirmed it won't weaken copyright protections for AI training, consulting instead on a proposal that AI developers must pay a mandatory license under the country's existing Copyright Act in order to train their GenAI tools

[56] Jonathan McHale, *Rules of the Road: Trade Principles for a Competitive Global AI Market*, CCIA (Nov. 2023), https://ccianet.org/wp-content/uploads/2023/11/CCIA_Trade-Principles-Competitive-Global-AI-Market.pdf.

on Australian content, at odds with the fair use principle and TDMs, and therefore limiting domestic and U.S. AI innovation.[57]

b. Brazil

Brazil continues to actively debate its comprehensive AI legal framework (Bill 2338/23) that would regulate AI development and its intersection with copyright law.[58] The bill, which has been approved by the Senate and is under review in the Chamber of Deputies, would require AI developers to obtain lawful access and compensate rightsholders for the use of copyrighted works in training. Creators also can prohibit use and insist on remuneration. Many argue these licensing requirements are impractical, and would hinder AI innovation. Brazil currently has no clear text-and-data mining (TDM) exemption, which continues to leave AI training in a legal gray area and prompts litigation over alleged unauthorized use.

c. Canada

Canada's government continues to conduct consultations on copyright law modernization in the context of generative AI.[59] These discussions are considering whether the existing Copyright Act should clarify how AI training and TDM interact with existing rights, with many creators pushing for compensation. While consultations are ongoing, the U.S. government must monitor for any developments or barriers to innovation.

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[57] Patrick Commins, *Proposal to allow use of Australian copyrighted material to train AI abandoned after backlash*, The Guardian (Dec. 15, 2025), https://www.theguardian.com/australia-news/2025/dec/19/proposal-australian-copyrighted-material-train-ai-abandoned-after-backlash.

[58] 2338, de 2023, Brazilian AI Bill de 17.03.2025, https://www25.senado.leg.br/web/atividade/materias/-/materia/157233.

[59] Consultation on Copyright in the Age of Generative Artificial Intelligence: What we heard report, Government of Canada (Jan. 24, 2024), https://ised-isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/consultation-copyright-age-generative-artificial-intelligence-what-we-heard-report.

d. India

In December 2025, India's Department for Promotion of Industry and Internal Trade's published a working paper on generative artificial intelligence (AI) and copyright (Working Paper).[60] The Working Paper recommends a mandatory blanket licensing framework where AI developers must pay royalties for the use of copyrighted works in training datasets, does not allow rightsholders to withhold their works from AI training, and mandates a centralized non-profit entity designated by the government to collect and distribute royalties. The proposed centralized licensing model raises significant legal, economic, and practical concerns that outweigh any speculative benefits for creators. Critically, the Working Paper proposes calculating the royalties payable by AI developers as a percentage of the developer's global revenue, rather than based on actual usage of Indian works. This structure effectively functions as a discriminatory digital services tax (DST) on U.S. technology companies. Furthermore, the proposal implies retroactive application, creating the risk of infeasible, exorbitant liability for models already trained and deployed.

The retroactive, compulsory, and centralized licensing approach proposed by the Working Paper reflects a fundamental mischaracterization of how generative AI systems are trained and the importance of a copyright approach that balances access to information and innovation. As seen in mandatory bargaining or link tax regimes, such approaches often rely on centralized intervention to correct a perceived market failure that has not been demonstrated or proven and lacks evidence of publisher or creator benefit.[61]

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[60] Government of India, Department for Promotion of Industry and Internal Trade Ministry of Commerce & Industry, *Working Paper on Generative AI and Copyright Part 1: One Nation One License One Payment, Balancing AI Innovation and Copyright* (Dec. 2025), https://www.dpiit.gov.in/static/uploads/2025/12/ff266bbeed10c48e3479c941484f3525.pdf.

[61] *What They Are Saying: Link Taxes*, Computer & Commc'ns Indus. Ass'n (May 9, 2024), https://ccianet.org/library/wtas-resource-on-link-taxes/.

CCIA plans to submit comments in response to the Working Paper, which detail how the proposal would create artificial boundaries around information that is lawfully accessible and how it would fragment and deter globally integrated AI systems.

It is important to closely monitor developments in India, especially given the current direction misunderstands both how generative AI systems are trained and how copyright law already operates, and suggests overly prescriptive licensing mandates for AI training.

e. European Union

The European Union presents a significant and evolving case study in how copyright policy impacts the development of AI. While the law initially sought to strike a balance between rights holders and innovation, recent legislative and regulatory developments risk undermining said balance, risking uncertainty for AI developers and companies, including U.S. firms.

Article 4 of the EU CDSM Directive introduced a TDM exemption for commercial purposes, which allows the use of lawfully accessible works for TDM unless rightsholders expressly reserve their rights.[62] This framework was widely understood as a compromise that preserved access to necessary data while enabling rights holders to opt out in a technologically neutral way. This is consistent with international copyright norms.

However, that balance has been altered by the EU Artificial Intelligence (AI) Act.[63] First, Article 53 (1) (d) of the AI Act requires providers of general-purpose AI models (GPAI) to publish a "sufficiently detailed summary" of training data, introducing new transparency obligations that raise serious concerns about trade secrets and legal exposure. Second, the AI Act

[62] *Directive (EU) 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 and 2001/29/EC, European Union (EU)*, World Intellectual Property Organization (Apr. 17, 2019) https://www.wipo.int/wipolex/en/legislation/details/18927

[63] *EU AI Act: first regulation on artificial intelligence*, European Commission (June 8, 2023), https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence.

requires GPAI model providers to implement policies to comply with Article 4 of the CDSM Directive, including opt-out entitlements. This embeds copyright compliance into AI regulation in a way that goes beyond the original scope of the Directive. Third, Recital (106) of the AI Act introduces harmful language suggesting the extraterritorial application of EU copyright rules, as it states that any provider placing a GPAI model on the EU market must comply with these obligations "regardless of the jurisdiction in which the copyright-relevant acts" occur. This approach risks subjecting non-EU training activities to EU copyright law, creating conflicts with other jurisdictions' legal frameworks and raising serious concerns for U.S. companies operating globally.

Overall, these concerns are compounded by a July 2025 voluntary Code of Practice for providers of GPAI models.[64] This code further elaborates on AI Act obligations and introduces measures that go beyond the text of the legislation itself. The Code outlines new complaint-handling mechanisms, imposes expectations on search engines, and outlines vague processes for the development of additional opt-out mechanisms. Although voluntary, such codes risk becoming de facto regulatory standards, which could increase compliance costs and uncertainty.

The European Commission has launched a consultation to explore new mechanisms beyond internationally recognized robots.txt standard.[65] This raises significant concerns, as no alternative protocols are currently mature, interoperable, or widely adopted by the global technology community. Fragmentation of such mechanisms would significantly increase compliance burdens and disadvantage smaller developers who lack the resources to implement

[64] *The General-Purpose AI Code of Practice*, European Commission (July 10, 2025), https://digital-strategy.ec.europa.eu/en/policies/contents-code-gpai.

[65] *Commission launches consultation on protocols for reserving rights from text and data mining under the AI Act and the GPAI Code of Practice*, European Commission (Dec. 1, 2025), https://digital-strategy.ec.europa.eu/en/consultations/commission-launches-consultation-protocols-reserving-rights-text-and-data-mining-under-ai-act-and,

evolving technical standards. The CDSM Directive is scheduled for review in June 2026. Recent activity from the European Parliament suggests a growing interest in revisiting the Article 4 TDM exemption.[66] Further changes to this framework would increase existing uncertainty and risk, deterring investment within the EU.

Taken together, these developments illustrate how unclear and unstable copyright rules can create significant barriers to AI development. The EU's evolving approach warrants close monitoring in the Special 301 process, particularly its implications for U.S. AI companies and cross-border innovation.

f. South Korea

Concerning the training of AI models, Korea adopted fair use in 2011, mirroring language from the U.S. doctrine. However, its use in training models continues to be debated. Additionally, the country has not yet adopted an explicit TDM exemption for AI training but rather, courts appear to be taking a cautious approach to generative AI.[67] Guidance so far appears to emphasize infringement risks where AI outputs are similar to copyrighted works, and policymakers continue to scrutinize the legality of training under existing law. As Korea develops further guidance, the U.S. government should continue to monitor as some interpretations of copyright and AI training could risk creating compliance burdens that affect both international and American firms.

g. United Kingdom

The United Kingdom is considering what generative AI means for copyright, including during a consultation that examined options from strengthening copyright protections or creating

[66] *Generative AI and Copyright: Training, Creation, Regulation*, European Parliament (July 2025), https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU(2025)774095_EN.pdf.

[67] *South Korea Artificial Intelligence (AI) Basic Act*, International Trade Administration (Apr. 14, 2025), https://www.trade.gov/market-intelligence/south-korea-artificial-intelligence-ai-basic-act.

new exemptions that could allow commercial AI training on copyrighted works with or without a rights-reservation or opt-out mechanism.[68] Subsequently, there are official working groups considering next steps and rights holder organisations proposing collective licensing frameworks. These conversations are underway, and CCIA continues to monitor the latest developments.

V. LOCAL CONTENT QUOTAS

Although issues cited below are analyzed in terms of compliance with specific FTA provisions, where applicable, these listed measures would also fall under the Special 301 mandate to address measures that implicate "fair and equitable market access for United States persons that rely on protection of intellectual property rights."

a. Australia

On November 27, 2025, both houses of the Australian Parliament passed the Communications Legislation Amendment (Australian Content Requirement for Subscription Video On Demand Services) Bill 2025, or the "ACO Law."[69] This legislation requires major streaming platforms to allocate a fixed percentage of their Australian revenue or expenditure toward local content production. Unlike previous iterations, the law targets Subscription Video on Demand (SVOD) services with more than 1 million Australian subscribers, capturing the largest U.S. platforms while exempting smaller competitors, undermining fair and equitable market access for IP-reliant firms.

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[68] *Copyright and Artificial Intelligence*, UK Intellectual Property Office (Dec. 2024), https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence.

[69] Parliament of Australia, Communications Legislation Amendment (Australian Content Requirement for Subscription Video on Demand (Streaming) Services) Bill 2025 (Nov. 27, 2025), https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7404.

Under this framework, streaming services are obligated to commit either a portion of their content acquisition expenditures, or commit a percentage of their Australian revenue to Australian content at the expense of U.S. content or international programs. Specifically, qualifying services must spend either 10% of their total Australian program expenditure or 7.5% of their gross Australian revenue on new local commissions.

The ACO law appears inconsistent with multiple AUSFTA obligations, including National Treatment, MFN, digital product non-discrimination, and the prohibition on domestic content requirements (Articles 10.2, 10.3, 11.3, 11.4, 11.9(c), and 16.4). By conditioning market access on mandatory investment in domestically defined content, the measure functions as a discriminatory non-tariff barrier against U.S. digital service suppliers reliant on IP-intensive content.

This law effectively forces global platforms to act as local production studios, a burden CCIA research estimates would cost U.S. platforms $1 billion over the next five years.[70] Australia has justified the measure on the grounds that local content is "not readily available." However, available data contradicts this claim: Australian drama production has reached record levels, driven largely by voluntary investment from international streaming services,[71] which now account for the majority of TV and VOD drama financing, undermining any asserted justification for imposing mandatory expenditure requirements on U.S. platforms.

[70] CCIA, *Australia's VOD Law Undermines U.S. Streaming Services and the US-Australia FTA* (Dec. 9, 2025), https://ccianet.org/wp-content/uploads/2025/12/Australias-VOD-Law-Poses-Key-Trade-Barriers-for-U.S.-Streaming-Services.pdf ("This figure assumes a cumulative assessable revenue base of $23.56 billion AUD between 2026 and 2031 for eligible U.S. firms (Netflix, Amazon Prime Video, Disney+, Paramount+, Apple TV, and YouTube Premium, which is expected to be scoped in soon), based on current estimated revenues growing at an 8.06% CAGR, which, when subjected to the proposed 7.5% contribution requirement, yields an estimated total funding liability of $1.77 billion AUD, which translates to $1.16 billion USD.").

[71] Screen Producers Australia, *Spend Masks Risks for Australian Stories, Says Screen Producers Australia* (Dec. 4, 2025), https://www.screenproducers.org.au/media/release/?id=SPA-01870.

The ACO Law undermines fair and equitable market access for U.S. companies reliant on copyrighted works and audiovisual content by imposing nationality-based domestic content investment requirements. This expansion of Australia's protectionist industrial policy disadvantages U.S. IP-intensive firms in contravention of AUSFTA. USTR should engage with Australia to seek repeal of the measure to avoid long-term economic distortion and preserve the bilateral digital trade relationship.

b. Canada

Canada's Online Streaming Act received Royal Assent and entered into law on April 27, 2023. The law requires qualifying online content providers to fund and promote arbitrarily defined "Canadian content" (CanCon). Following the law's passage, Canadian Heritage published its policy direction to the Canadian Radio-Television and Telecommunications Commission (CRTC) for implementation of the Act on November 14, 2023.[72] CCIA filed in this proceeding requesting that Canadian Heritage instruct the CRTC to revisit the definition of what constitutes CanCon and introduce flexibility with respect to IP ownership.[73] While the final 2023 Policy Directions bypassed these suggestions, the CRTC moved forward with a framework that empowers it to apply "discoverability" obligations to any service hosting audio-visual content. On November 18, 2025, the CRTC issued Broadcasting Regulatory Policy CRTC 2025-299,[74] which finalized the updated CanCon definitions. While the modernized definition expands recognized creative roles, it does not fix the discriminatory nature of the framework. Specifically, for content to be deemed Canadian, the new policy introduces a mandatory minimum copyright

[72] Government of Canada, *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework): SOR/2023-239* (Nov. 9, 2023), https://canadagazette.gc.ca/rp-pr/p2/2023/2023-11-22/html/sor-dors239-eng.html.

[73] CCIA, *CCIA Comments to Canadian Heritage in the Canada Gazette Part I, Volume 157, Number 23* (June 6, 2023), https://ccianet.org/wp-content/uploads/2023/11/CCIA-Comments-to-Canadian-Heritage-on-the-Online-Streaming-Act-Regulations.pdf.

[74] CRTC, *CRTC 2025-299* (November 18, 2025), https://crtc.gc.ca/eng/archive/2025/2025-299.htm.

threshold of 20% that must be held by Canadian entities. Furthermore, if Canadians own less than 50% of the copyright, the production must meet a significantly higher points threshold (80% of possible points) to qualify, effectively penalizing U.S.-led partnerships and compounding the harm from the overall mandates on U.S. suppliers and content providers.

Beyond these definitional barriers, the CRTC has moved to impose direct and discriminatory financial burdens on U.S. platforms. In its implementing regulations, the CRTC issued Broadcasting Regulatory Policy CRTC 2024-121, which mandated that streaming providers with at least C$25 million in annual revenue to contribute 5% of their revenue to funds supporting the production of Canadian content (2% to the Canada Media Fund (CMF) and 1.5% to the Independent Local News Fund (ILNF)), as part of an effort to generate C$200 million annually in new funding.[75] The 1.5% mandate for the ILNF is particularly egregious, as it forces U.S. entertainment platforms to subsidize a domestic news sector in which they do not compete. Critically, the CRTC explicitly exempts online services affiliated with traditional Canadian broadcasters from these base contributors, ensuring the financial burden falls almost exclusively on U.S. suppliers.

The cumulative scale of these levies far exceeds initial government estimates and ignores the significant existing contributions of U.S. firms. While the CRTC initially projected these measures would generate C$200 million annually, a December 18, 2025 bipartisan letter to USTR from Representatives Smucker and Sanchez[76] warned that the cumulative cost of these discriminatory levies could reach $7 billion for U.S. firms by 2030. Despite the fact that U.S. streaming services have been recently investing billions of dollars every year into Canada's

[75] CRTC, *CRTC 2024-121* (June 4, 2024), https://crtc.gc.ca/eng/archive/2024/2024-121.htm.

[76] Press Release, Congressman Lloyd Smucker, *Smucker, Sanchez Lead Bipartisan Letter Expressing Concern with Canada's Digital Trade Barriers* (Dec. 18, 2025), https://smucker.house.gov/media/press-releases/smucker-sanchez-lead-bipartisan-letter-expressing-concern-canadas-digital.

creative sector, neither the law nor the regulations require the CRTC to account for these investments when establishing mandatory minimum contribution requirements. Instead, the regulations restrict those flows by disincentivizing such investments, while simultaneously harming customer choice, affordability, and companies' room to innovate in the Canadian sector.

This discriminatory structure is inconsistent with several core USMCA provisions. Specifically, the mandate violates Article 19.4 on the Non-Discriminatory Treatment of Digital Products by providing preferential treatment to Canadian digital products, such as news and local productions, through forced subsidies from foreign competitors. It further contravenes Article 15.3.1 on Cross-Border Trade in Services by failing to provide National Treatment to U.S. service suppliers while exempting their Canadian-affiliated counterparts. Furthermore, the requirement constitutes a prohibited performance requirement under Article 14.10.1 (b) by compelling U.S. investors to achieve specific domestic content spending levels.[77]

Adding to this restrictive environment, Québec's National Assembly passed Bill 109, the Cultural Sovereignty Streaming Act, on December 12, 2025.[78] This legislation establishes a provincial layer of oversight, empowering the Québec government to impose discoverability requirements and French-language quotas on digital platforms and device manufacturers. By enshrining a "right to discoverability" in Québec's Charter of Human Rights and Freedoms, the Act interferes with the operation of these digital services. This provincial duplication creates a fragmented and unworkable regulatory landscape that conflicts with Canada's USMCA commitments to provide equal treatment for digital products.

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[77] CCIA, *CCIA Comments on Canada's Obligatory Base Contribution for Streaming Suppliers* (June 14, 2024), https://ccianet.org/library/ccia-comments-on-canadas-obligatory-base-contribution-for-streaming-suppliers/.

[78] Assemblée Nationale Du Québec, Bill 109, *An Act to affirm the cultural Sovereignty of Québec and to enact the Act respecting the discoverability of French-language cultural content in the digital environment* (Dec. 12, 2025), https://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-109-43-1.html

As noted above, USMCA's implementing legislation directs USTR to evaluate, as part of its Special 301 review, any discriminatory measures pursued pursuant to the Cultural Industries exception, and consider appropriate actions to compensate for any adverse effects. USTR has used Special 301 in tandem with its other tools to tackle issues central to U.S. intellectual property in the past, as it did when it included Canada on its Watch List in the 1995[79] and 1996[80] Special 301 reports, partially as part of its ongoing Section 301 investigation[81] and World Trade Organization challenge[82] over Canada's discriminatory 80% tax on American periodicals. This is emblematic of how USTR can leverage Special 301 to tackle barriers to U.S. exports that implicate U.S. intellectual property. Since this measure would violate several USMCA provisions but for Canada invoking the cultural industries exception, it thus implicates 19 U.S.C. § 2242(f)(A). CCIA urges USTR not to repeat this oversight in its forthcoming report to Congress. In fact, the Special 301 report is a perfect vehicle to begin detailing whether, and to what extent, Canada's Bill C-11 and Québec's Bill 109 adversely affect the United States' economic interests, as a patently "discriminatory non-tariff barrier."

c. Brazil

In early November 2025, Brazil's Chamber of Deputies passed a significant amendment to Bill 8.889/2017,[83] an audiovisual law proposing a combination of taxes and regulatory

[79] United States Trade Representative, *USTR Announces Two Decisions: Title VII and Special 301* (Apr. 29, 1995), https://ustr.gov/sites/default/files/1995%20Special%20301%20Report.pdf.

[80] United States Trade Representative, *USTR Announces Two Decisions: Title VII and Special 301* (Apr. 30, 1996), https://ustr.gov/sites/default/files/1996%20Special%20301%20Report.pdf.

[81] United States Trade Representative*, 1996 National Trade Estimate Canada* (last accessed Jan. 22, 2025), https://ustr.gov/archive/Document_Library/Reports_Publications/1996/1996_National_Trade_Estimate/1996_National_Trade_Estimate-Canada.html ("On March 11, USTR officially opened a section 301 investigation and requested WTO consultations with the Government of Canada regarding certain measures concerning periodicals, including: measures prohibiting or restricting the importation into Canada of certain periodicals; tax treatment of so-called 'split-run' periodicals; and the application of favorable postage rates to certain Canadian periodicals.").

[82] Reporters Committee for the Freedom of the Press, *U.S Takes Canada to WTO over 80 Percent Magazine Tax* (Mar. 25, 1996), https://www.rcfp.org/us-takes-canada-wto-over-80-percent-magazine-tax/.

[83] Portal da Câmara dos Deputados, *PROJETO DE LEI Nº 8.889, DE 2017* (last accessed Jan. 5, 2026), https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=3036147&filename=Tramitacao-PL%208889/2017.

mandates to support local content. The bill, which now awaits Senate approval, establishes the Condecine Tax, a new annual tax levied on the gross revenue of impacted companies, including advertising revenue. Under this framework, Video-on-Demand (VOD) services face a progressive tax rate of up to 4.0%, while content-sharing services face a fixed rate of 0.8%. The highest brackets are explicitly designed to target large-scale global platforms, which are predominantly U.S.-based, while exempting domestic competitors with fewer than 200,000 registered users.

The legislation further imposes a mandatory 10% quota for Brazilian content in VOD catalogs, with a requirement that half of this content be "independent." This is accompanied by a "prominence" mandate, requiring platforms to give "direct and highlighted access" to Brazilian content, which interferes with catalog curation and user-interface design. Additionally, the bill introduces a nine-week theatrical window, prohibiting the streaming of a film until nine weeks after its Brazilian theatrical release, a measure that directly targets the global "day-and-date" release strategies of U.S. studios and platforms.

These measures represent significant and discriminatory non-tariff barriers that directly interfere with the ability of U.S. firms to operate in the Brazilian market.[84] The CONDECINE tax is punitive, as it is levied on gross revenue regardless of profitability and ignores the high costs of licensing, production, and infrastructure. Based on current projections, these new measures could extract nearly $500 million annually from U.S. streaming services alone by 2029.[85]

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[84] CCIA, *Brazil's VOD Bill Poses Key Trade Barriers for U.S. Streaming Services* (Dec. 3, 2025), https://ccianet.org/wp-content/uploads/2025/12/Brazils-VOD-Bill-Poses-Key-Trade-Barriers-for-U.S.-Streaming-Services.pdf.

[85] This figure assumes a total Brazilian online video market size of $14.4 billion by 2029 and that U.S. firms will maintain their current estimated market share of 83%, resulting in a projected $11.95 billion in revenue for U.S. firms, which, when subjected to the bill's maximum 4% CONDECINE tax rate, yields an estimated annual tax liability of $478 million. *See* Meio&Mensagem, *Prime Video lidera streaming no Brasil, diz JustWatch* (July 23, 2025), https://www.meioemensagem.com.br/midia/prime-video-lidera-mercado-de-streaming-no-brasil. *See also* Advanced Television, *Report: Brazil emerges as streaming powerhouse* (May 28, 2025), https://www.advanced-television.com/2025/05/28/263928/.

Furthermore, the bill's deduction scheme effectively commandeers private U.S. capital to subsidize local productions chosen by the government. As this legislation proceeds to the Senate, it warrants careful review and strong pushback by U.S. policymakers to prevent long-term economic distortion for U.S. digital exports.

VI. COPYRIGHT INTERMEDIARY LIABILITY PROTECTIONS DEPARTING FROM GLOBAL NORMS

U.S. firms operating as online intermediaries face an increasingly hostile environment in a variety of international markets. This impedes U.S. internet companies from expanding services abroad. These adverse conditions manifest through court decisions and copyright frameworks that depart from global norms. The Special 301 process serves as a valuable tool to identify areas where these liability rules fall short. USTR has placed countries on the Watch List in part for failing to implement a clear and predictable intermediary liability regime that provides rightsholders an adequate process for protecting content without overburdening internet services.[86]

a. European Union

On May 17, 2019, the Directive on Copyright in the Digital Single Market was published in the Official Journal of the European Union.[87] EU Member States had until June 7, 2021 to transpose the Directive into their national law or domestic framework. Article 17 of the Directive

[86] Office of the U.S. Trade Rep., 2013 Special 301 Report at 7 (2013), https://ustr.gov/sites/default/files/05012013%202013%20Special%20301%20Report.pdf (observing that the failure to implement an effective means to combat the widespread online infringement of copyright and related rights in Ukraine, including the lack of transparent and predictable provisions on intermediary liability and liability for third parties that facilitate piracy, limitations on such liability for ISPs, and enforcement of takedown notices for infringing online content."); *2018 Special 301 Report* at 56 ("The creation of a limitation on liability in this law is another important step forward. Notwithstanding these improvements, some aspects of the new law have engendered concerns by different stakeholder groups, who report that certain obligations and responsibilities that the law imposes are too ambiguous or too onerous to facilitate an efficient and effective response to online piracy.").

[87] Directive (EU) 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 and 2001/29/EC, 2019 O.J. (L 130) 92, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:130:FULL&from=EN.

represents a departure from global IP norms and international commitments, and poses significant consequences for online services and users. These rules diverge sharply from U.S. law, and place unreasonable and technically impractical obligations on a wide range of service providers, resulting in a loss of market access by U.S. firms.

Article 17(8) expressly provides that the CDSM Directive does not imply any general monitoring obligation for service providers. It is materially impossible for any service to license all the works in the world and rightsholders are entitled to refuse to grant a license or to license only certain uses. Accordingly, CCIA believes that measures taken by a service provider pursuant to Article 17 should be evaluated in light of technical realities and be based on the notification of specific allegedly infringing uses of works, not just notification of works. A functional copyright system requires cooperation between information society service providers and rightsholders. Rightsholders should provide digital services with the necessary and detailed rights information (using standard formats and technology where applicable) to facilitate efforts to limit the availability of potentially infringing content.

USTR should work with its EU counterparts to ensure the remainder of the CDSM Directive is implemented in a manner which gives service providers the flexibility to develop and maintain effective content recognition systems that also protect user freedoms. EU countries should not mandate either the use of a technological solution nor impose any specific technological solutions on service providers in order to demonstrate best efforts. Any requirement to render content unavailable must be proportionate and allow online services the latitude needed to manage their systems without negatively impacting lawful user expression and legitimate uses of creative content. Finally, it is imperative that national implementations endorse modern authorization mechanisms which include alternatives to traditional licensing approaches,

based on the core principle of contractual freedom. To remain consistent with the CDSM Directive, national implementations should not diverge from its terms by imposing mandatory licensing.

VII. FORCED TECHNOLOGY TRANSFER, PROTECTION OF TRADE SECRETS, AND LACKING ENFORCEMENT OF IP PROTECTION

Forced technology transfer as a condition to operate in a region remains a key concern for U.S. services. Broad interoperability requirements should be avoided to lessen threats posed to privacy and security. Broad mandates on data disclosure, portability, and interoperability may have the unintended consequence of requiring U.S. online platforms to share sensitive or protected user data and IP with unverified third parties, and could lead to forced IP transfers to foreign competitors and entities controlled by authoritarian adversaries and non-market economies. It is vital to ensure that any new regulatory framework secures clear benefits while avoiding the harms to security, privacy, online safety, innovation, and IP protection.

A new development in this area is the potential mandatory disclosure of technological know-how and trade secret data involved in artificial intelligence, particularly with respect to mandatory disclosure of training datasets.

a. China

CCIA reiterates concerns with certain Chinese regulations that discriminate against U.S. cloud service providers through forced technology transfer.[88] U.S. cloud service providers (CSPs) are strong American exporters and have been at the forefront of the movement to the cloud worldwide. China has sought to block these U.S. cloud service exporters through discriminatory practices that force the transfer of intellectual property and critical know-how, reputable brand

[88] *CCIA Comments on 301 Investigation into China's Targeting of the Semiconductor Industry*, Computer & Commc'ns Indus. Ass'n (Feb. 5, 2025) https://ccianet.org/library/ccia-comments-on-301-investigation-into-chinas-targeting-of-the-semiconductor-industry/

names, and operation over to Chinese authorities and companies in order to operate in the market.[89] Chinese cloud service suppliers face no constraints in the U.S. market, where many are active, underscoring the lack of reciprocal treatment. USTR should once again highlight China and its policies pursuant to the Cybersecurity Law in its next Report.

Although China now rivals the United States in the breadth, innovation and global reach of its e-commerce marketplace, it remains far behind the United States with respect to effective protection against counterfeit and pirated products, a deficiency that can put Chinese firms at a competitive advantage in foreign markets. While U.S. companies operate in a good faith nature to address the sale of counterfeit and pirated goods online,[90] U.S. companies are competing against rapidly-expanding rivals, such as China's Temu and Shein, that, in their home market, face notably weaker standards of transparency, accountability, and verification of sellers.[91] USTR has highlighted these concerns in the most recent Notorious Markets report.[92] As USTR considers measures to protect IP abroad, it should include the way that inconsistent protectionist enforcement abroad serves as a trade distortive measure that undermines U.S. companies' position globally in its analysis and remediation.

b. European Union

[89] These regulations and other discriminatory regulations toward U.S. firms were outlined in USTR's 2018 Report to Congress on China's WTO Compliance. *Report for Congress on WTO's Compliance* (2019) at 43-44, https://ustr.gov/sites/default/files/2018-USTR-Report-to-Congress-on-China%27s-WTO-Compliance.pdf.

[90] *CCIA 2025 Notorious Markets Reply Comments*, Computer & Commc'ns Indus. Ass'n (Oct. 15, 2025). https://ccianet.org/wp-content/uploads/2024/10/CCIA-Reply-Comments-to-USTR-in-the-2024-Review-of-Notorious-Markets.pdf.

[91] Press Release, *Chairs Rodgers and Bilirakis Press China-Based Online Marketplaces on Potential Data Privacy and Human Rights Violations, House Committee on Energy and Commerce* (Dec. 20, 2023), https://energycommerce.house.gov/posts/chairs-rodgers-and-bilirakis-press-china-based-online-marketplaces-on-potential-data-privacy-and-human-rights-violations; Jessice Napoli et al, *Shein, Temu Branch Further into Toy Market Amid Worry over Fake Products*, Reuters (Nov. 29, 2024), https://www.reuters.com/business/retail-consumer/hot-wheels-gi-joes-aplenty-shein-temu-amid-worry-over-fake-products-2024-11-29/.

[92] *2024 Review of Notorious Markets for Counterfeiting and Piracy*, Office of the United States Trade Representative, at 41 (2024) ("Sellers of counterfeit merchandise continue to use their brick-and-mortar storefronts as points of contact for customers, sites for "sample/product testing," and centers for fulfillment of online sales."), https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20(final).pdf.

The Digital Markets Act (DMA) was adopted by the European Parliament and the Council of the EU on September 14, 2022, entered into force on November 1, 2022, and became applicable on May 2, 2023.

Under these rules, companies that operate a "core platform service" must notify the European Commission upon meeting pre-defined thresholds for European turnover, market capitalization, and number of European end and business users. These thresholds have been set at levels where primarily U.S. technology companies fall under scope, reflecting some policymakers' intent to ensure this outcome.[93] The list of "core platform services" furthermore carves out non-platform-based business models of large European rivals in media, communications, and advertising.

The European Commission has designated seven companies as the so-called "gatekeepers" under the DMA, and in total 23 of their services will be subject to this regulation.[94] Six out of those seven companies (the seventh is Chinese) and 22 of the 23 services are American. Although ByteDance is in scope of the law for some of the DMA's requirements, there are no indications that other major technology competitors in China or Russia—such as Alibaba, Tencent, Huawei, Baidu, and Yandex—will be subject to oversight or obstacles under the DMA. None of these Chinese and Russian firms will need to comply with the DMA's strict rules, but they are all possible beneficiaries of the DMA in terms of their ability to gain preferential regulatory treatments (e.g., an unconstrained ability to engage in self-preferencing) and access to data and IP from U.S. firms.

[93] *EU Should Focus on Top 5 Tech Companies, Says Leading MEP*, Financial Times (May 13, 2021), https://www.ft.com/content/49f3d7f2-30d5-4336-87ad-eea0ee0ecc7b.

[94] European Comm'n, *Gatekeepers* (last updated Oct. 14, 2024), https://digital-markets-actcases.ec.europa.eu/gatekeepers.

Designated companies are prohibited from engaging in a range of common business practices that are either procompetitive or competitively neutral (e.g., benefiting from integrative efficiencies). Furthermore, the Commission is vested with gatekeeping authority over approval for future digital innovations, product integrations, and engineering designs of U.S. companies. The DMA will also, in some cases, compel the forced sharing of intellectual property, including firm-specific data and technical designs, with EU competitors, effectively requiring U.S. firms to subsidize rivals. An example of such compelled sharing is found in Article 6(11) of the DMA, which requires gatekeepers that operate online search engines with access to ranking, query, click, and view data on fair, responsible, and non-discriminatory (FRAND) terms.[95] Developing a high-quality search index requires billions of dollars in infrastructure investment. By mandating the sharing of digital service-specific data, the DMA allows competitors to leverage a "gatekeeper's" training inputs to improve their own services without having to independently attract comparable scale or investment. This obligation effectively compels the transfer of valuable intellectual property, raising serious concerns about the forced subsidization of rivals. The DMA could result in the forced transfer and disclosure of intellectual property, trade secrets, and sensitive business and user data to state-sponsored Chinese and Russian companies, through obligations to disclose data under DMA Art. 6.(9), (10), (11), and (12). These requirements could result in the sharing of sensitive European data from both users and businesses—as well as trade secrets—to foreign rivals and bad actors that could potentially misuse that data to further their own interests. Art. 6 (9) and (10) opens the door for malicious actors to incentivize customers into authorizing access to their data via real-time data flows from a designated platform, increasing the risks to their privacy and data security. And as the European Data Protection

[95] *The final text of the Digital Markets Act (DMA)*, European Union Digital Markets Act, https://www.eu-digital-markets-act.com/Digital_Markets_Act_Article_6.html.

Board recognized in November 2021,[96] such transfers would take place without any consultation with Data Protection Authorities or other competent authorities to assess the potential harms related to security and privacy.

In this sense, the DMA represents a dramatic shift in competition enforcement, resulting in greater potential infringement on fundamental intellectual property rights and limiting the freedom to contract to only exceptional circumstances. Unlike traditional competition enforcement, the Commission will be able to impose these interventions without an assessment of evidence, without taking into consideration any effects-based defenses, and without considering procompetitive efficiencies put forth by the companies targeted.

As such, through the Special 301 process, USTR should investigate the applicability of TRIPS Article 39 in Section 7 on the "protection of undisclosed information," to the data-sharing obligations described above. This TRIPS article provides:

> 2. **Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices (10) so long as such information:**
>
> > (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
> >
> > **(b) has commercial value because it is secret**; and
> >
> > (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.[97]

[96] European Data Protection Board, *Statement on the Digital Services Package and Data Strategy* (Nov. 18, 2021), https://www.edpb.europa.eu/our-work-tools/our-documents/statements/statement-digital-services-package-and-data-strategy_en.

[97] Agreement on Trade-Related Aspects of Intellectual Property Rights, Part II (Jan. 23, 2017), https://www.wto.org/english/docs_e/legal_e/31bis_trips_04d_e.htm#7 (emphasis added).

Against this framework for protecting trade secrets, recent regulations raise new and unresolved questions about how those protections apply in practice internationally. For example, the European Union's AI Act requires a "comprehensive" summary of the content used for training the general-purpose model. While the act recognizes "the need to protect trade secrets and confidential business information," the comprehensive disclosure requirement may be incompatible with maintenance of trade secrecy.

Similarly, while the Data Act purports to protect proprietary information, it significantly undermines trade secret protection by forcing companies to disclose sensitive data generated by connected products and related services to third parties, including potential competitors. The Data Act requires data holders to port "raw" and "pre-processed" product and related service data, including accompanying metadata and digital assets, to third parties upon users' request. And although the 2016 Trade Secrets Directive remains technically applicable, the Data Act prevents data holders from unilaterally refusing a request based solely on a trade secret claim, effectively shifting the burden of protection onto the manufacturer. This mandatory sharing mandate creates a forced disclosure environment where even the so-called "trade secrets handbrake" requires objective evidence of "serious and irreparable economic loss", an exceptionally high legal threshold that leaves many proprietary datasets vulnerable to exploitation.[98] Furthermore, because data holders must share data of the "same quality" they use themselves, the Act risks the transfer of highly valuable, granular insights to rivals who can use them to undercut the original innovator's market position. The European Commission has recently suggested introducing a "substantial risk" of third-country leakage as a distinct ground

[98] The relative inapplicability of the "trade secret handbrake" in practice is described in Section 23 of the European Commission FAQ on the Data Act, dated from 12 September 2025, available at https://digital-strategy.ec.europa.eu/en/library/commission-publishes-frequently-asked-questions-about-data-act

for refusal to share trade secrets.[99] The obligation for data holders to "duly substantiate" their refusal to share data in writing places an unworkable burden on IoT manufacturers and service providers. In practice, effectively refusing to share trade secrets would require these companies to possess a detailed understanding[100] of any number of potential third parties to whom customers might choose to migrate their personal, technical, and commercial data. This is not merely impractical; it is wholly unrealistic. Consequently, any available grounds for refusal are practically ineffectual.

a. Türkiye

Türkiye amended its Law of the Protection of Competition, No. 4054, in 2020, and has again proposed new amendments in 2024-25 to impose a new regulatory framework for online platforms, targeted at U.S. firms. Borrowing concepts from the EU Digital Markets Act, Türkiye's regulation requires designated companies to enable the interoperability of core platforms services and/or ancillary services in a manner that goes beyond what is required even under the EU's DMA.

Specifically, the proposed rules require unbounded and "free of charge" interoperability for all digital services (Art. 6/A (j)) and "free access" to operating system, hardware, and software features (Art. 6/A (k)). The law requires platforms to "enable the operability of core platform services or ancillary services with other related products or services effectively and free

[99] See Recitals 10-13, Articles 1(3) and (4) of Digital Omnibus Proposal, 19.11.2025, COM(2025) 837 final, available at https://digital-strategy.ec.europa.eu/en/library/digital-omnibus-regulation-proposal.

[100] Detailed understanding includes (1) identity, EU status and global ties of the third party, (2) sufficiently detailed understanding of relevant third country laws and practices, including insufficient or inadequate legal standards, poor or arbitrary enforcement, historical infringements, foreign disclosure obligations conflicting with Union law, limited legal recourse or remedies for Union entities, the strategic misuse of procedural tactics to undermine competitors, or undue political influence, (3) the third party purposes to use data agreed upon with the user, (4) whether the third party already is, or may be developing a competing product.

of charge." This rule could impose an unbounded and gratuitous[101] interoperability rule on any type of core platform service, even for services that are not designed to be interoperable and that require charging a fee to businesses to be viable.[102]

VIII. ABUSIVE THIRD-PARTY LITIGATION FUNDING

CCIA members are concerned with a growing trend in the increasing abuse of third-party litigation funding (TPLF) to weaponize patents against U.S. operating companies, at home and abroad. These funders increasingly target leading U.S. industries and critical technologies such as 5G, advanced manufacturing, and semiconductors. The investors of the TPLF funders remain anonymous, leaving to speculation who the real parties in interest actually are and what motivates them.

Given the increasingly clear economic and national security implications of TPLF, as well as the impact on individual U.S. operating companies and their workers, we must address these abuses of the U.S. and our trading partners' IP systems. Transparency, including meaningful disclosure of funding sources, is key to curbing abusive TPLF. Transparency will discourage the worst actors, allowing efficient management and defense of legitimate claims against operating companies. Through Special 301, as well as its review of U.S. International Trade Commission exclusion orders, USTR can help protect U.S. IP-intensive industries from predatory TPLF practices supported by foreign governments. USTR is encouraged to lead a whole-of-government approach to assess the extent of involvement in TPLF by strategic competitor economies and drive adoption of rigorous transparency requirements in all U.S. fora

[101] *See also* Joint Industry Letter on DMA Gratuitous Access Provisions (Mar. 2022), https://www.ccianet.org/wp-content/uploads/2022/03/Joint-Industry-Letter-on-DMA-Gratuitous-Access-Provisions.pdf.

[102] *See* CCIA Comments on Draft Amendment to Law No. 4054 of the Protection of Competition in Turkey (Nov. 17, 2022), https://ccianet.org/wp-content/uploads/2022/11/CCIA-Comments-on-the-Draft-Amendment-to-Law-No.-4054-of-the-Protection-of-Competition-in-Turkey..pdf.

(i.e., USITC, USPTO, and federal courts) and relevant foreign jurisdictions to ensure the identification of funders and real parties in interest in IP litigation.

In 2022, the European Parliament issued a recommendation that the Union introduce transparency measures for litigation funding. In January 2023, the European Commission began studying the topic, including ways to ensure that such funding is not used to the detriment of consumers and technological progress. This represents a positive step forward and should be commended as an example to all nations.

IX. CONCLUSION

In the 2026 Special 301 Report, USTR should recognize concerns of U.S. services that rely on innovation-enabling provisions that reflect the needs of the digital age.

Respectfully submitted,

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