

August 24, 2017

Chrystia Freeland, Minister of Foreign Affairs  
Global Affairs Canada  
125 Sussex Drive  
Ottawa, Ontario, Canada  
K1A 0G2

cc: Steve Verheul, Chief Negotiator for NAFTA

### **Transparency, Digital Rights, and NAFTA**

We, the undersigned, are Internet freedom and public interest advocates drawn from all three nations party to this agreement, who are dedicated to the rights of all peoples to access cultural and educational resources, to enjoy a free and open Internet, and to benefit from open and needs-driven innovation.

As the United States, Mexico and Canada begin talks on the renegotiation of the North American Free Trade Agreement (NAFTA) this week, we write to share our concerns about NAFTA's potential impact on the critical functions of the Internet and its potential to threaten access to information, the dissemination of news, cultural exchange and democratic organizing.

First and foremost, we call upon the United States, Mexico and Canada to meaningfully reform trade negotiation processes to make them more transparent, inclusive and accountable. It is unacceptable that binding rules are created in a forum that is inaccessible and often hostile to input from members of the public. Specifically, we would like to see: public release of text proposals by governments before negotiations, with clear processes established for members of the public to comment on them; consolidated versions of negotiating texts published between negotiating rounds; locations and times of key meetings announced well ahead of time; and the establishment of consultative trade groups that are broadly representative of both business and public interest stakeholders with a commitment to conducting deliberations openly.

Without these reforms, public trust in trade processes will continue to wane, and governments will face significant popular resistance to agreements based on process alone.

We also share concerns about the suitability of trade mechanisms to create prescriptive policies that govern Internet use, cultural sharing and innovation. In general, developments in technology happen quickly, and trade processes that do not keep pace with technological and social advancement may inhibit each of our respective governments from making necessary

and appropriate changes to related rules, especially with regard to intellectual property regulations that impact our rights to culture and free expression.

With specific regard to including intellectual property rules in trade agreements, when these policies have been included in past agreements, we have seen that there is a significant push to drastically increase enforcement measures for rightsholders, lengthen copyright terms, and demand harsh infringement penalties, without corresponding provisions to protect the interests of users of copyright works.

We do not believe these types of rules belong in trade agreements, and given the ambitious timeline for a completed NAFTA renegotiation, the inclusion of prescriptive IP provisions will prove to be a stumbling block for governments seeking to create public consensus around a mutually beneficial agreement.

However, if intellectual property is addressed within NAFTA, it is critical that user rights are balanced alongside the demands of rightsholders: there must be active and enforceable mechanisms to protect exceptions and limitations regimes, fair use/fair dealing and the public domain. Parties should resist extensions in copyright terms that punish new artists and creators, and there should be no increased criminalization for digital rights management circumvention.

Further, any rules aimed at promoting the free flow of data across the Internet and reducing barriers to trade in digital products and services must preserve countries' flexibility to robustly protect individual privacy and security, including the ability to place limits on cross-border data transfers or on the protection of trade secrets.

A renegotiated NAFTA should not be developed in secret, and must not lead to a rewriting of intellectual property rules that further tilts the balance away from the public interest or undermines the free, open and interoperable Internet.

## **Signatories**

Electronic Frontier Foundation

Creative Commons

OpenMedia

R3D: Red en Defensa de los Derechos Digitales

Public Interest Advocacy Centre

Derechos Digitales

Just Foreign Policy

Public Knowledge

Media Alliance

Engine  
Data Roads Foundation  
Public Citizen (Access to Medicines, Innovation and Information)  
Red Mexicana de acción frente al Libre Comercio (RMALC)  
Common Frontiers  
SPARC  
Voices-Voix  
May First/People Link  
Internet Archive  
SonTusDatos (Artículo 12)  
STRM  
Horizontal  
Authors Alliance  
Sierra Club Canada Foundation  
Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC)  
National Family Farm Coalition  
Wikimedia Foundation  
Wikimedia Mexico  
Access Now (International)  
Rabble.ca  
Rocky Mountain Civil Liberties Association  
Privacy and Access Council of Canada - Conseil du Canada de l'accès et la vie privée  
(PACC-CCAP)  
Canadian Journalists for Free Expression