

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

September 14, 2017

Dear Ambassador Lighthizer,

Stakeholder Engagement in NAFTA

As an expert group of stakeholders representing Internet users, consumers, innovative businesses, cultural institutions, and scholars, we write to protest the lack of public engagement in the North American Free Trade Agreement (NAFTA) renegotiation process to date, and to ask that the process be changed to give the public a greater role in negotiations that have an impact on international law-making affecting the Internet.

As you know, the parties to NAFTA have been involved in several major negotiations affecting the regulation of the Internet. These include the Anti-Counterfeiting Trade Agreement (ACTA) and the Trans-Pacific Partnership Agreement (TPP).

ACTA was negotiated under intense secrecy and exclusion, which is very similar to how NAFTA is currently being renegotiated. The ACTA process included a lack of stakeholder meetings at its various rounds and a lack of public disclosure of the negotiating text, while select stakeholders were consulted through secretive processes. These processes contributed to massive public distrust of the agreement, leading to public protests and the eventual abandonment of the agreement.

During the TPP negotiations, although it was also ultimately abandoned, some lessons from the failure of ACTA were taken into account. Negotiation rounds included stakeholder

engagement events held alongside official meeting rounds. Although these varied from one round to another, in their most extensive form, these events comprised:

- Slide presentations from stakeholders, that took place at an officially scheduled event at the same venue as the negotiations.
- A tabling room where materials could be exchanged and negotiators could ask questions to stakeholder representatives individually.
- A public Q&A briefing session where stakeholders could ask questions of the chief negotiators from each country.
- A cocktail reception where negotiators and stakeholders could freely interact and exchange information in an informal setting.

While these stakeholder consultation events did not solve all problems of accountability in trade policymaking, there were a first step to engage with the public and increase the legitimacy of trade negotiations. Similar measures were extended to the TTIP negotiations with Europe.

At your confirmation hearing on 14 March 2017, you indicated that you supported and were receptive to extending such measures, stating:

“I will also look forward to discussing with you ways to ensure that the [United States Trade Representative (USTR)] fully understands and takes into account the views of a broad cross-section of stakeholders, including labor, environmental organizations, and public health groups, during the course of any trade negotiation. My view is that we can do more in this area to ensure that as we formulate and execute our trade policy, we receive fulsome input and have a broad and vigorous dialogue with the full range of stakeholders in our country.”

We were disappointed to discover that no such stakeholder engagement events were organized for the first or second rounds of negotiations over the modernization and renegotiation of the NAFTA agreement that took place in Washington, D.C., last month or the second round held in Mexico City in September. Nor were positions of the parties released to the public, as has become the norm in European Union negotiating processes,

which allow for regular stakeholder consultation both before and after negotiations through various forms of impact assessments.

Speaking as stakeholders from the Internet community who are not represented on any Trade Advisory Committees and have no other structured way to engage with the NAFTA negotiators, we would find value in being given the opportunity to participate in stakeholder engagement events during future rounds of the NAFTA negotiations.

We write to ask you about your plans for organizing such events for future NAFTA rounds that will take place in the United States.

Sincerely,

Electronic Frontier Foundation (United States)

Creative Commons (United States)

Access Now (United States)

Knowledge Ecology International (United States)

Progress Champions (Canada/United States)

Dr Susan Ariel Aaronson, Professor and Cross-Disciplinary Fellow, Elliot School of International Affairs (United States)

Sean Michael Fiil-Flynn, Associate Director, Program on Info Justice and IP, American University, Washington College of Law (United States)

Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) (Canada)

OpenMedia (Canada)

ARTICLE19 México & Central America Office (México)

Derechos Digitales (México)

Horizontal (México)

Project on Organizing, Development, Education and Research (PODER) (México)

R3D: Red en Defensa de los Derechos Digitales (México)

SonTusDatos (Artículo 12, A.C.) (México)