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# United States Senate

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## VIA ELECTRONIC TRANSMISSION

March 18, 2021

The Honorable Katherine Tai  
United States Trade Representative  
Executive Office of the President  
600 17th Street, NW  
Washington, DC 20006

Dear Ambassador Tai:

Congratulations on your confirmation as United States Trade Representative. I was proud to support your nomination and I look forward to working with you to promote strong bilateral and multilateral free trade agreements. I write you today in my capacity as Ranking Member of the Senate Committee on the Judiciary's Subcommittee on Intellectual Property to emphasize the need for you to use all the tools and authorities at your disposal to protect America's innovation economy.

As you well know, the United States has spent decades building and maintaining the world's strongest legal standards and policies to encourage innovation and protect intellectual property. America is the world's leading innovator, developing cutting edge technologies, therapeutics, and treatments that have literally changed the world for the better and saved countless millions of lives. Our nation has consistently led the world in biopharmaceutical innovation. For example, bioscience industries employed 1.74 million people in 85,000 U.S. business establishments in 2016 alone. The broader employment impact of bioscience jobs is an additional 8 million jobs throughout the rest of the economy. Taken together these direct, indirect, and induced bioscience jobs account for a total employment of 9.7 million jobs.

Our creative industries—books, music, film, and everything in between—dominate the world and set the table for global discourse. It can rightly be said that the growth of freedom and democracy worldwide can be attributed to the American ideals and values represented in American art and entertainment. These industries also contribute more than \$1.5 trillion dollars annually to our gross domestic product, accounting for 7.41% of the U.S. economy. More importantly, they employ 5.7 million workers with an average annual salary of \$107,805.

Simply put, on all fronts, our innovation economy represents the best of what is America and are a primary reason for us remaining the world's greatest economy. That is why, at this critical juncture in our nation's history, we cannot take our innovation and creative economy for granted. Our continued leadership in all of these areas depends on your work to secure strong intellectual property protections with our trading partners. With that in mind, I write today to urge you to take several actions to protect American intellectual property.

First, it is my sincere hope that you will vigorously use the Special 301 Review to highlight and penalize rampant intellectual property theft and infringement by our trading partners. You should use the review to include industry-specific fact sheets that outline foreign governments' acts, policies, and practices that violate American intellectual property. You should also specifically focus on

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nations that free-ride on American innovation, frustrate the ability of American companies to expand globally, and impose artificial price controls that limit U.S. companies' access to foreign markets. Furthermore, you should use the review—and all tools at USTR's disposal—to include engagement plans that outline intended actions to address identified concerns.

Second, I hope that you will use trade negotiations as an opportunity to support the inclusion of strong data exclusivity protections for biologics. As you know, regulatory data protection (RDP) complements patents on innovative medicines and agriculture products. RDP is particularly critical for biologic medicines, which may not be adequately protected by patents alone. Derived from living organisms, biologics are so complex that it is possible for others to produce a version – or “biosimilar” – of a medicine that may not be covered within the scope of the innovator's patent. It currently takes ten to fifteen years to develop a new medicine. Only a small percentage of these projects ever reach patients, but each project still represents huge investments for the companies that undertake the necessary research and development (R&D). These costs are not recouped without a significant data protection period. Simply put, if we are going to continue to be a leader in this innovative area of medicine, we must create strong protections for biologics in any free trade agreements.

Third, I encourage you to include full national treatment provisions in any future agreements. Inclusion of national treatment provisions in free trade agreements will help undo one particular instance of discrimination and unfair treatment against American creators that costs them over \$330 million per year globally. It will ensure American artists are fairly compensated when their recordings are played around the world.

Fourth, and finally, I urge you not to include language mirroring Section 512 of Title 17, originally enacted by the Digital Millennium Copyright Act of 1998 (DMCA). Section 512 and copyright safe harbors have been the subject of much controversy. Many have called on Congress to update these very provisions, enacted over 20 years ago when the internet was in its infancy. In response to these calls, I held a year-long series of hearings in the Senate Judiciary Subcommittee on Intellectual Property to explore ways we can better promote the creative economy in the 21st century. These hearings resulted in me releasing a reform discussion draft—the Digital Copyright Act of 2020—which I fully intend to introduce by May on a bipartisan, bicameral basis, and to work towards its enactment. For these reasons, I find it problematic that the United States continues exporting language mirroring the 22-year-old DMCA, and future free trade agreements should not include it.

Thank you for your attention to these matters. Please know that you have a ready and willing partner in me on any matter related to the protection of American intellectual property and our innovation and creative economy. I look forward to your reply and to working with you through the Biden Administration.

Sincerely,



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Thom Tillis  
Ranking Member  
Senate Judiciary Committee  
Subcommittee on Intellectual Property