

Comments on the NTIA's International Internet Policy Priorities Notice of Inquiry
July 14, 2018

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Summary

We would like to thank you for the opportunity to comment on these important and timely issues. In the preamble to this Notice of Inquiry (“NOI”) the NTIA notes that is responsible for “protecting and promoting an open and interoperable internet, advocating for the free flow of information, and **strengthening the global marketplace for American digital products and services.**” We agree with the implicit assumption of this statement that it is possible to both promote an open Internet as well as protect the interests of American creators.

With this in mind, we would like to offer some comments on how best to assess the oft-asserted tension between policies that purport to maximize freedom online and those that seek to protect the interests of rightsholders.

It is undeniable that, in some cases, the unfettered flow of information can contribute to the infringement of the intellectual property rights of American citizens and companies, and that this is contrary to NTIA’s mission to promote the marketplace for American digital products and services. But it is also undeniable that the protection of intellectual property rights can promote both the creation of information and its dissemination. Our intellectual property laws reflect the congressional and judicial balancing of these dynamics: There is little reason to think that the legislative and legal principles that determine when content or its distribution is illegal offline apply any less when content is distributed online.

The flow of information is, in fact, never “unfettered.” When considering the free flow of information online, the goal should be the same as it is offline: to increase the flow of *legitimate* information and to decrease the flow of *illegitimate* information.

Properly considered, there is no novel conflict between promoting the flow of information and protecting intellectual property rights online. While the specific mechanisms employed to mediate between these two principles may differ — and, indeed, while technological change can alter the distribution of costs and benefits in ways that must be accounted for — the fundamental principles that determine the dividing line between “legal” and “illegal” content and its distribution offline can and should be respected online.

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