

Impact of U.S.-Mexico-Canada Agreement on Technology and Media

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On September 30, the United States, Mexico and Canada reached agreement on the U.S.-Mexico-Canada Agreement (USMCA) to replace the North American Free Trade Agreement (NAFTA). While most attention on the USMCA has focused on issues like trade in automobiles and dairy, the agreement also significantly updates NAFTA with new rules affecting the technology and media sectors. The Administration also intends to use the USMCA as a template for future potential trade agreements with Japan, the United Kingdom, the EU and others. Therefore, the new rules in the USMCA potentially will not just impact doing business in Canada and Mexico, but also in other significant markets.

The greatest effect of the USMCA on technology and media companies will be in eliminating or lowering barriers for entering the Canadian and Mexican markets, strengthening rules to enforce intellectual property rights, and prohibiting cross-border data flow limitations and server localization requirements. The agreement also incorporates provisions of U.S. law limiting legal liability of Internet platforms for third-party content and creating the notice-and-takedown regime for Internet Service Providers regarding copyright protection. Many of these provisions build on what was negotiated in the Trans-Pacific Partnership Agreement (TPP), but there are also several significant differences and improvements on TPP.

Fully understanding the implications of a provision requires an analysis of the relevant text from past agreements and negotiations, other provisions of the USMCA and the exemptions taken by Canada and Mexico. While the text of the USMCA is essentially finalized, there will be opportunities to get clarification and explanation of the USMCA's rules when Congress considers the agreement. The USMCA

Authors

Amb. David A. Gross
Senior Counsel
202.719.7414
dgross@wiley.law

Practice Areas

Telecom, Media & Technology

is expected to be signed by the end of November and Congress may consider the agreement next year.

Wiley Rein LLP can assist companies with fully understanding the USMCA's rules and their potential impact. We can also create and execute effective legal and government affairs strategies to obtain beneficial clarification of the USMCA's rules.