

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 6 January 2006

[Date]

The Honorable Alfredo Ferrero Diez Canseco
Minister of Foreign Trade and Tourism

Dear Minister Ferrero:

In connection with the signing on this date of the United States – Peru Trade Promotion Agreement (the “Agreement”), I have the honor to confirm the following understandings reached by the Governments of the United States of America and the Republic of Peru during the course of the negotiation of Chapter Sixteen (Intellectual Property Rights) of the Agreement:

In meeting the obligations of Article 16.11.29(ix), the United States shall apply the pertinent provisions of its law¹ and the Andean Parties agree to adopt requirements for: (a) effective written notice to service providers with respect to materials that are claimed to be infringing and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was disabled through mistake or misidentification, as set forth below. Substantial compliance with the elements listed below shall be deemed to be effective written notice or counter-notification.

(a) *Model of an effective notice, by a copyright² owner or person authorized to act on behalf of an owner of an exclusive right, to a service provider’s publicly designated representative³*

In order for a notice to a service provider to be compliant with Article 16.11.29 (ix), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number and electronic mail address of the complaining party (or its authorized agent).
2. Information that is reasonably sufficient to enable the service provider to identify the copyrighted work(s)⁴ claimed to have been infringed.
3. Information that is reasonably sufficient to permit the service provider to identify and locate the material that is residing on a system or network

¹ 17 U.S.C. Sections 512(c)(3)(A) and 512(g)(3).

² All references to copyright in this letter are understood to include related rights, and all references to works are understood to include the subject matter of related rights.

³ It is understood that a representative is publicly designated to receive notification on behalf of a service provider if the representative’s name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider’s website, and also in a public register publicly accessible through the Internet or such other form or manner appropriate for the Andean Parties.

⁴ If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

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controlled or operated by it or for it, that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled.⁵

4. Statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by copyright owner, its agent or the law.
5. Statement that the information in the notice is accurate.
6. Statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the owner of an exclusive right that is allegedly infringed or is authorized to act on the owner's behalf.
7. The signature of the person giving notice.⁶

(b) Model of an Effective Counter-Notification by a Subscriber⁷ Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material

In order for a counter-notification to a service provider to be compliant with Article 16.11.29 (ix), it must be written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number and electronic mail address of the subscriber.
2. Identification of the material that has been removed or to which access has been disabled.
3. Location at which the material appeared before it was removed or access to it was disabled.
4. Statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber is the supplier of the material and has a good faith belief that the material was

⁵ In the case of notices regarding an information location tool pursuant to subparagraph (b) (i) (D) of Article 16.11.29 information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notice regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

⁶ A signature transmitted as part of an electronic communication satisfies this requirement.

⁷ All references to "subscriber" in this letter refer to the person whose material has been removed or disabled by a service provider as a result of an effective notice described in paragraph (a) of this letter.

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removed or disabled as a result of mistake or misidentification of the material.

5. Statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber's address is located, or if that address is located outside of the Party's territory, any other court with jurisdiction over any place in the Party's territory in which the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement.
6. Statement that the subscriber will accept service of process in any such suit.
7. The signature of the subscriber.⁸

I have the honor to propose that this letter and your reply confirming that you share this understanding shall constitute an integral part of the Agreement.

Sincerely,

Robert Portman
United States Trade Representative

⁸ A signature transmitted as part of an electronic communication satisfies this requirement.