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Submitted Electronically via EDIS to the Commission, Investigation No. TPA-105-001
Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: *Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors, Investigation No. TPA-105-001, 80 Fed. Reg. 72736, November 20, 2015*

Dear Madam Secretary:

The Motion Picture Association of America (MPAA) represents the six largest producers and distributers of filmed entertainment – motion pictures, home entertainment, and television -- in the world. MPAA's member companies are: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc. These companies employ hundreds of thousands of U.S. workers, entertain millions across the globe, and, unique among U.S. industries, generate a positive balance of trade in virtually every country in the world. MPAA appreciates the opportunity to offer comments in response to the International Trade Commission's notice on the likely impact of the Trans Pacific Partnership agreement.

A. Contribution of the U.S. film and television industry to the U.S. economy

The U.S. motion picture and television industry plays an important role in expanding the U.S. economy. It is one of the few industries that consistently generates a positive balance of trade with $16.3 billion in exports worldwide in 2014. The industry had a positive services trade surplus of $13.1 billion in 2014, or six percent of the total U.S. private-sector services trade surplus, exporting five times what it imported. The industry distributes its films to over 140 countries around the world with over half of MPAA members' revenue coming from overseas.

The American motion picture and television industry is a major U.S. employer that supported 1.9 million jobs and paid over $121 billion in total wages in 2014 in all 50 states. Direct industry jobs generated $50 billion in wages and an average salary 48 percent higher than the national average. Nearly 305,000 of these jobs were in the core business of producing, marketing, manufacturing, and distributing motion pictures and television shows with an average salary of $92,000, 79 percent higher than the average salary nationwide. An additional 348,000 jobs were in related businesses that distribute motion pictures and television shows to consumers.

The U.S. motion picture and television industry is a nationwide network of small businesses comprised of 89,000 small and medium sized enterprises; 84 percent of these businesses have fewer than 10 employees. Moreover, in 2014, the industry made $41 billion in payments to more than 354,000 local businesses around the country.

B. TPP Overview

With over half of MPAA members' revenue coming from overseas, the health and vitality of the international marketplace is of utmost importance to our members. While the U.S. has FTAs in place with six of the TPP parties, the TPP will nonetheless play a critical role in facilitating trade and commerce, fostering predictability, harmonizing rules, protecting intellectual property, and deepening economic integration. Importantly, trade agreements only create value to the extent that they are implemented and enforced.

The Asia Pacific region is a growth region for the U.S. motion picture and television industry. In 2014, the Region reached $12.4 billion in box office, up 12% over 2013. It remained the largest region in terms of international box office for the second year in a row. Even with this growth, many of these markets are under-screened and many will continue to build out their broadband. When coupled with the TPP's intellectual property rules, there is real growth opportunity for MPAA member companies.

While the TPP is currently comprised of 12 parties including the U.S., MPAA understands that other countries may join the agreement in the future. As a consequence, the TPP's potential benefit to the U.S. motion picture and television industry increases overtime as more countries agree to open their markets and abide by the same rules and standards.

C. Specific TPP Obligations

MPAA's interests in the TPP cut across the agreement. While the TPP does not achieve all of MPAA's objectives, it does raise intellectual property standards in the region and augment market access. Overall, it will contribute to the growth of the U.S. motion picture and television industry, thereby supporting U.S. jobs.

Market access for goods

MPAA member companies export films and television programs around the world for theatrical exhibition and home entertainment. For theatrical exhibition, the TPP eliminates tariffs on

Digital Cinema Packs (DCPs) and 35 mm film. For home entertainment, the TPP eliminates tariffs on DVDs and other film storage products. In addition, the chapter prohibits TPP parties from levying tariffs on these and other products on an *ad valorem* basis. This helpfully precludes parties from assessing *ad valorem* duties on the content rather than the underlying carrier medium, a practice that can cost MPAA members hundreds of thousands of dollars.

It is quite helpful that the market access chapter also precludes governments from banning the importation of commercial cryptographic goods, including DCPs. There is a break-through complimentary provision in the TBT chapter that precludes Parties from requiring companies to hand over DCP encryption keys. This is important to maintaining security and preventing copyright theft. Finally, TPP governments may not require a person, as a condition for importing a movie or television product, to establish or maintain a contractual relationship with a distributor in its territory, which will foster competition in the marketplace.

On the production side, the TPP parties must provide duty-free temporary admission of professional equipment including press, television, and cinematographic equipment.

Services and Investment

Overall, the TPP was successful in opening the theatrical market. For example, Vietnam locked in its 20% screen quota which will, in part, preclude Vietnam from increasing its quota per its Motion Picture Industry Vision Strategy. And, Mexico reduced its 30% screen quota from the NAFTA to 10%. Malaysia, New Zealand and Japan have very good obligations for theatrical distribution and exhibition. Conversely, Canada reserved the right to discriminate in these subsectors.

The U.S. was also quite successful in ensuring the continued openness of the online marketplace. Importantly, for the first time, Canada affirmed that it would not restrict access to on-line foreign audiovisual content. And, Japan helpfully clarified that its non-conforming measure to discriminate in the broadcast sector does not apply to on-demand online services. However, Japan did reserve the right to discriminate in new services not technically feasibly when TPP enters into force which would appear to undercut one of the fundamental benefits of the Agreement's negative list structure. Singapore, unlike Japan, did not offer this helpful clarification and its definition of broadcasting includes streaming and other online services. However, the U.S. successfully secured language ensuring that U.S. service suppliers and investors would not be implicated. The TPP did not narrow Australia's ability, secured in the U.S.-Australia FTA, to adopt measures to promote access to Australian content online.

Unfortunately, parties invoked cultural promotion to justify discriminating against foreign content though perhaps this is most pronounced in the television market. Unlike the theatrical and online markets, the TPP did very little to open up the television market. In 2016 when consumers could possibly have access to hundreds of pay television channels, as well as access to channels and content via the online market, it is difficult to be sympathetic to such outdated policy assertions. Such policies not only prejudice the interests of our industry but also limit consumers' choice and legitimate access to content, exacerbating intellectual property theft. Canada took a sweeping reservation allowing it to adopt or maintain any measure affecting the television market. Japan and Vietnam reserved the right to discriminate in the broadcasting sector. Malaysia will continue to bar foreigners from receiving a broadcast license, though importantly, foreigners can license their content to Malaysian providers. And, Malaysia does appear to have eliminated its broadcast quota and its ban on foreign programming during prime time though it retained the right to censor foreign works. Brunei is broadly allowed to discriminate in any licensable free-to-air or subscription broadcasting services. New Zealand's television market, by contrast, is open, which will benefit New Zealand consumers, as well as U.S. investors.

Australia and Singapore did not make any improvements in the television market beyond their bilateral agreements. Chile made some minor liberalization in the terrestrial broadcasting sector. The TPP did improve some aspects of Mexico's television market over NAFTA. For example, the TPP does not include the 49% equity cap for cable and satellite. Further, the TPP does not have any restrictions on the cross-border supply of broadcasting however IFETEL will not allow a supplier to have more than 50% of the total broadcast channels. Also, some outdated NAFTA measures that applied to both cable and broadcasting, such as use of Spanish language and Mexican nationals, have been relaxed and, under the TPP, only apply to the broadcasting sector. MPAA is disappointed that the TPP was not able to address Mexico's limitations on broadcast and cable advertising.

Intellectual Property

The Intellectual Property chapter makes important gains in raising the level of copyright protection and enforcement in the region. These protections will benefit both U.S. and foreign rightsholders and facilitate consumers' access to diverse content, particularly in the digital marketplace. One important gain achieved by the TPP for the U.S. motion picture industry is extending the term of protection to the global minimum standard of life plus 70. This has a direct benefit to creators and is also important to facilitating global trade in creative works. TPP Parties must also implement the WIPO Internet Treaties and criminalize the circumvention of technological protection measures (TPMs) and trafficking in circumvention devices. Copyright owners apply TPMs to works to authorize the distribution and making available of their works and to prevent the unauthorized use of their works, enabling the functionality of most online business models and contributing to the diversity of offerings and price points consumers demand. In addition, the TPP requires criminal liability when there is no proof of financial gain, which is imperative when addressing P2P piracy.

On the enforcement side, there is a useful provision to criminalize camcording, which, while not as clear and specific as the U.S.-Korea FTA anti-camcording provision, should nonetheless assist enforcement against this source piracy. The TPP also obligates parties to provide criminal penalties and civil remedies for manufacturing or distributing devices for decrypting encrypted satellite signals and/or willfully receiving or further distributing such a signal and to provide civil or criminal penalties for similar cable signal theft. MPAA would have preferred the U.S.-Korea FTA formulation which provides the same treatment for satellite signal and cable signal theft. Nonetheless, this is a step is the right direction. The TPP also provides for statutory or additional damages which compensate copyright holders for infringement when actual damages are difficult to calculate. This is particularly useful in the digital market when harm is certain but the number of times a copyright is infringed and the amount of harm caused by that infringement is unknowable. At the border, the TPP parties agreed to several TRIPs-plus disciplines, including, *ex-officio* authority for customs officials.

Importantly, the TPP includes two novel and beneficial provisions: one is aiding and abetting for all criminal copyright offenses and the other is an explicit obligation to apply enforcement procedures (other than border measures) to the digital environment. These provisions recognize the importance of fostering a healthy online marketplace, will assist rightsholders in enforcing their rights overseas, and establish an important precedent for other trade agreements.

In the civil and criminal remedies section, many obligations reiterate or clarify the TRIPS. The TPP provides the full set of presumptions of authorship, ownership and subsistence of copyright. When determining damages, judges have authority to consider any legitimate measure of value the right holder submits. Preliminary injunctions must be available expeditiously through *ex parte* proceedings, and judicial authorities have the authority to order the seizure of suspected infringing goods, materials, and implements. The TPP also incorporates contractual rights which safeguards the freedom of contract and ensures that a country may not pass laws that undermine the intent of the parties to such contracts.

While MPAA commends the Administration on achieving a solid IP chapter that will foster legitimate trade and benefit both creators and consumers, MPAA is disappointed with several elements in the text, notably the ISP liability provision. MPAA also notes that the TPP takes a different drafting approach to exceptions though this should not implicate the actual effect of the provision.

Electronic Commerce

MPAA member companies continue to seek new opportunities to license their content to online platforms around the world. Some governments have expressed interest in discriminating against foreign content online under the pretext of fostering cultural diversity. In that regard, it is quite helpful that the TPP e-commerce chapter includes a provision that precludes such discrimination against intangible digital products and, in so doing, fosters consumers' access to diverse content. In addition, the e-commerce chapter provides that electronic transmissions between TPP parties are duty-free.

D. Closing

The six major studios of the MPAA generate billions of dollars annually from filmed entertainment distributed around the globe. Notwithstanding this singular achievement, the U.S. film and television industry faces daunting barriers in many markets as well as relentless challenges to the integrity of its product. The TPP has the potential to open foreign markets and to foster copyright protection and enforcement, which will strengthen U.S. competitiveness and support U.S. jobs.

MPAA strongly supports the TPP but cautions that U.S. creators, and the U.S. economy broadly, will only reap the benefits achieved by this Agreement if it is accurately and effectively implemented and enforced by the U.S. and its trading partners. MPAA appreciates the opportunity to comment on the TPP's likely impact on our sector and is ready to provide further information or answer questions as required.

Sincerely,

Anissa Brennan
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International Affairs and Trade Policy