MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
(202) 293-1966

March 28, 2017

Submitted Electronically via EDIS and in Copies to the Commission, Investigation No. 332-561

Ms. Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: MPAA Pre-Hearing Statement Related to: *Global Digital Trade I: Market Opportunities and Key Foreign Trade Restrictions*; Investigation No. 332-561, 82 Fed. Reg. 10397, February 10, 2017.

Dear Ms. Barton:

The Motion Picture Association of America (MPAA) hereby submits its Pre-Hearing Statement Related to Global Digital Trade I: Market Opportunities and Key Foreign Trade Restrictions.

Respectfully submitted,

Anissa Brennan
Senior Vice President
International Affairs and Trade Policy

Prepared Statement of

Joanna McIntosh
Executive Vice President
Global Policy and External Affairs

Before the
United States International Trade Commission

Investigation No. 332-561
Global Digital Trade I:
Market Opportunities and Key Foreign Trade Restrictions

March 28, 2017

Mr. Chairman, Commissioners:

I would like to thank you for the opportunity to appear before you today to discuss global digital trade, an issue of critical importance to the U.S. motion picture and television industry.

My name is Joanna McIntosh and I am the Executive Vice President for Global Policy and External Affairs for the Motion Picture Association of America. The MPAA represents the six largest producers and distributors of filmed entertainment in the world.

Our industry is driving digital trade. Consider the following: Sandvine recently reported that in the U.S., "streaming audio and video now accounts for 71% of evening traffic in North American fixed access networks. Sandvine expects this figure will reach 80% by 2020." The explosion of online video consumption is happening the world over. The motion picture and television industry's vital role in driving digital commerce underscores the need to ensure that this industry remain paramount in your digital trade deliberations. I'll open by providing an overview of the U.S. motion picture and television industry and then introduce some of the impediments our industry confronts in the global digital marketplace.

I. Industry Overview

The U.S. motion picture and television industry is one of the most highly competitive in the world; one of the few industries that consistently generates a positive balance of trade in virtually every country in which it does business. In fact, our industry was responsible for $17.8 billion in exports worldwide in 2015 with a positive services trade surplus of $13.3 billion.

Supporting almost 2 million American jobs, the U.S. motion picture and television industry is a nationwide network of small businesses—88,000 across the U.S., with 85% employing fewer than 10 people. While some of these small businesses may not directly conduct business internationally, with 70% of global box office and a growing share of TV revenue coming from overseas markets, their success relies on a healthy and fair global digital marketplace.

The global digital marketplace has revolutionized the way consumers enjoy filmed entertainment. It has created important opportunities to reach new audiences and to respond to consumers' evolving viewing preferences. It has also, however, created challenges that inhibit our industry's ability to realize its potential.

MPAA last appeared before you to discuss digital trade in 2012. At that time, we noted that worldwide there were 360 legitimate services providing audiovisual content to consumers online. Today that number has grown to over 450. These sites provide high-quality content to consumers in a variety of ways, from ad-supported and rental to electronic sell-through and subscription.

Around the world, the demand for high-quality online content is driving the demand for increasingly sophisticated devices for viewing content and for increasingly faster broadband speeds. The U.S. Chamber of Commerce Global IP Center's (GIPC) 2017 IP Index found a high correlation between strong copyright protections and innovative technologies for enjoying content. The Index also found that countries with high levels of copyright protection had wider and more convenient access to video content – more than double the level of advanced and easy access home entertainment. And, there is no lack of high-quality content. A study released by SNL Kagan found in March 2016 that 98% of premium films and 94% of premium TV series were digitally available, the majority (95% and 84% respectively) of which were available through at least five online services.

This explosion of digital content and platforms through which to access it is predicated on contracts underpinned by copyright. Copyright incentivizes the creation of high-quality content by securing to creators the exclusive rights to control the dissemination of their creations; helping inspire that necessary leap of faith to invest in the high-risk proposition of producing and distributing commercial content. Copyright protections, including rules against the circumvention of technological protection measures, also incentivize creators and distributors to experiment with diverse, innovative new business models, resulting in the multitude of online platforms in the U.S. and globally.

For instance, MPAA members are entering into unique licensing deals with global platforms such as Amazon, Netflix, and iTunes as well as local platforms such as Maxdome in Germany and TF1 in France. They are also licensing to cable, satellite and telecommunications platforms such as Comcast and Dish here in the U.S., Sky and Virgin Media in Europe, and Foxtel in Australia.

MPAA members are actively supporting the adoption of digital technologies. Since 2012 the global penetration of digital cinema, which relies on encryption and compression technologies and high-speed data networking and storage, has almost doubled. In 2016, there were over 155,000 digital screens, or 95% of the world's cinema screens. MPAA members supply their content digitally to this predominantly digital infrastructure.

In addition to these B2B arrangements, MPAA members are also engaging consumers directly. MPAA members wholly or partially own sites and apps that distribute directly to consumers, such as Hulu and Crackle. Since the last time MPAA was before you, TV Everywhere has continued to expand. A December 2015 Gfk study found that 53% of U.S. pay television subscribers have used a TV Everywhere service. Each of the broadcast networks has embraced TV Everywhere to bring your favorite television programs to tablets, phones, gaming systems, and computers. And, of course, there is HBOGo and HBONow that ensure that fans of *Game of Thrones* can keep up with the life and death of Jon Snow on their commute into work or from their living rooms.

During 2012, when we were last here discussing digital trade, UltraViolet, a cloud based service, was really just taking off, with about 2 million users; as of January 2016, UltraViolet had more than 25 million accounts. Disney Movies Anywhere, another cloud service, launched in 2014.

In May 2016, the Bureau of Economic Analysis released a study on U.S. Information and Communications Technologies exports. BEA found that in 2014, the largest proportion of U.S. exports in digitally-enabled services, accounting for 33.9%, or $130 billion, was for the use of intellectual property, i.e. the licensing of creative content.

II. Content Theft: A Critical Impediment to Digital Trade

Despite the fact that our members and their business partners are working overtime to bring consumers high-quality content, piracy remains a persistent and growing threat to the motion picture and television industry. It is the most significant impediment to the ability of our companies to fully tap the potential of the U.S. and global digital marketplace. Let's go back to *Game of Thrones* and Jon Snow's passing. The Season 5 finale of *Game of Thrones* was illegally downloaded more than 1.5 million times in the first eight hours after its U.S. premiere. This was despite HBO making the show available online worldwide simultaneous with its U.S. premiere.

Looking at piracy as a whole, a 2013 NetNames study found that almost one quarter of the world's internet bandwidth was dedicated to copyright infringement. Furthermore, a 2017 Frontier Economics study estimated that the commercial value of digital piracy in film in 2015 amounted to a jaw-dropping $160 billion. Piracy isn't just a concern for creators—it's also a real concern for legitimate online services. For instance, Netflix wrote in its January 2015 shareholder earnings report, "Piracy continues to be one of our biggest competitors." In 2014, Spotify called piracy its biggest challenge in Asia in an article, "The Next Web."

Competition should be encouraged. But, let's make it a fair competition rooted in the rule of law. Online theft remains one of the most glaring obstacles to the legitimate digital marketplace.

Piracy also poses dangers for consumers and users. The online safety coalition Digital Citizens Alliance released a report finding that 1/3 of content theft sites distribute malware. What's more, this malware generates $70 million a year by luring unsuspecting consumers into infecting their own devices by promising them free access to movies and TV programs. Of course, the true damage is likely far higher as this figure does not include the revenue drawn from ransomware and identity theft schemes, nor from legitimate advertising.

We believe that all participants in the online ecosystem have a role to play. That's why here in the U.S. our industry has entered into myriad voluntary arrangements to address online theft including the Trustworthy Accountability Group with the advertising industry, the Trusted Notifier Program with participating domain name registries and registrars, among others.

Unfortunately, in some international markets such as Australia there is a push to weaken incentives for intermediaries to cooperate with rights holders to address online content theft. This is the opposite of where we should be going and why we were so troubled to find language in the ITC Federal Register Notice suggesting intermediary liability is a significant impediment to digital trade. It is a fundamental precept of the rule of law that accountability for one's actions leads to responsible actions. Immunity removes accountability, and thereby reduces or eliminates incentives to act cooperatively and responsibly. Limitations on liability should ensure that intermediaries are incentivized to address and deter illegal activity conducted over their networks and services and that intermediaries should not promote irresponsible behavior.

Policymakers and government institutions should be directing their attention towards ensuring strong copyright protections and diminishing online theft through the promotion and adoption of effective online enforcement tools. These should be core tenets of any effort to foster growth in the legitimate digital marketplace.

III. Other Impediments to Digital Trade

In addition to global content theft and the effort to weaken online copyright enforcement frameworks, our members confront an array of market access barriers in countries around the world. We will detail some of these challenges in our written submission, but I would like to offer a few examples here.

The Chinese marketplace features market access barriers that preclude the fair participation of U.S. companies. For example, the U.S. industry is almost totally excluded from China's pay-TV market. Local cable networks are prohibited from carrying foreign satellite channels without government approval or landing permits and foreign satellite channels beaming into China are required to downlink from a government-owned encrypted satellite platform and may only be shown in a very narrow part of the overall market. The Government is also constricting the online marketplace. In September 2014, the Government issued regulations requiring, among other things, that online websites submit content for an impractical censorship review and limit online distribution of foreign content to 30%.

The Malaysian government imposes FDI limitations in the pay television market whereas the Philippines prohibits FDI in this sector altogether. Brazil also imposes local content quotas for pay television and restricts advertising. Such restrictions limit the ability of U.S. companies to compete fairly and inhibit potential growth in the pay-TV market.

Digital motion picture technology and products, which utilize encryption and compression, enable creators to make content more secure and lower the costs of replication and distribution. In Brazil, the Government is trying to regulate the digital distribution of audiovisual works for theatrical exhibition. The regulator is compelling stakeholders to disclose proprietary information regarding their commercial contracts in an effort to restrict the delivery and encryption of content. Other governments, such as Vietnam, continue to impose duties on digital media. Eliminating tariffs on digital cinema packs and other storage devices would benefit the producers and distributors of filmed entertainment, the audiences that enjoy filmed entertainment, and the theaters that bring films to local screens.

In Switzerland, the Swiss Federal Arbitration Commission has imposed a levy on catch-up TV, placing these services within the scope of the private copy exception. This precludes direct licensing by right holders on a platform-by-platform basis. Subjecting these valuable new services to collective rights management creates a race to the bottom in terms of pricing and recoupment of value.

IV. Closing

Again, I would like to thank you for the opportunity to testify. As I noted in the beginning of my remarks, the U.S. motion picture and television industry is a major contributor to the growth of the legitimate digital marketplace and yet our contribution could be much greater if not for rampant online content theft and a thicket of market access barriers. As such, our industry has a huge stake in the policies you recommend. To assist you in your investigation, MPAA will also submit additional comments by the April 21 deadline.