MOTION PICTURE ASSOCIATION

July 16, 2021

Submitted Electronically via EDIS and in Copies to the Commission, Investigation No. 332–585.

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

Re: MPA written submission related to: *Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses* (no. 332-585).

Dear Ms. Barton:

The Motion Picture Association (MPA) hereby submits its written submission related to *Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses* (no. 332-585).

Respectfully submitted,

/s/Anissa Brennan

Anissa Brennan
Senior Vice President
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MPA appreciates the opportunity to provide comments on *Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses* (no. 332-585).

MPA proudly represents one our nation's most vibrant industries – the American motion picture, television and steaming sector. MPA's member companies are: Netflix Studios,.LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. Here at home and around the world, our industry delivers enormous economic value, drives innovation, promotes free expression, and serves as a global ambassador for the nation's creativity and dynamism.

Since its founding in 1922, the MPA has fought for the freedom of filmmakers to tell stories free from the oppressive hand of government interference and has opposed efforts by governments to suppress content they find objectionable. Here in the United States, our efforts to end government censorship of movies have been almost entirely successful. Our anti-censorship battles in the courts led to the U.S. Supreme Court's landmark 1952 decision in *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952), in which the Court held that "motion pictures are a significant medium for the communication of ideas," fully deserving of the First Amendment's protections. And the MPA's ratings system—which provides information to parents about movies' content rather than suppressing it—hastened the demise of state and local movie censorship boards, the last of which survived until 1981.[1]

But the United States' commitment to filmmakers' freedom of expression is not universally shared; to the contrary, it makes us an outlier among nations. Indeed the MPA's Classification and Ratings Administration ("CARA") is *one of the few such systems in the world* run by a private entity; nearly all others, in countries ranging from liberal democracies to authoritarian dictatorships, grant to the government the power to determine what movies may be shown, and to whom. These censorship regimes—none of which could exist in the U.S. due to the First Amendment—reflect the differing values that predominate in particular countries, including the protection of children; social and political cohesion; religious sensitivities; cultural sensitivities (that vary by country) to issues such as violence, sex, nudity and even displays of affection; drugs, alcohol, and firearms; and the like. The justifications for censorship run the gamut from the relatively benign (e.g., the desire to shield children from displays of explicit sex or violence) to the offensive (e.g., efforts to silence the viewpoints of a government's political opponents or disfavored social groups). MPA and its members frequently disagree with the particular decisions of foreign censorship boards and similar institutions. These government entities often diverge from MPA's preference for content review and standards that are clear, transparent, expeditious, consistent and non-discriminatory. But when we do disagree, we do so with appropriate humility, acknowledging that other countries may legitimately weigh individual freedom against community values differently than we do, and recognizing that, as a practical matter, our ability to influence foreign governments is often quite limited.

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[1] *See "G" is for Golden: The MPAA Film Ratings at 50* (Nov. 2018), available at https://www.motionpictures.org/wp-content/uploads/2018/11/G-is-for-Golden.pdf; *see also* Ben A. Franklin, Last State Board Of Censors Fades Away After 65 Years, *New York Times* (June 29, 1981), available at https://www.nytimes.com/1981/06/29/us/last-state-board-of-censors-fades-away-after-65-years-state-board-of-censors.html.

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This filing is divided into four sections. The first section provides an overview of the U.S. motion picture and television industry. The second section provides an overview of the broader global policy landscape including site blocking as a legitimate enforcement tool against online piracy and shares MPA's policy recommendations to foreign governments on content-review and censorship schemes. The third section speaks to barriers, including censorship, in three of the markets identified by the ITC: China, Indonesia and Vietnam. The final section offers concluding observations on censorship as a barrier to trade.

I. Industry Overview

The American motion picture and television industry is a major U.S. employer that supported 2.5 million jobs and $181 billion in total wages in 2018. Nearly 319,000 jobs were in the core business of producing, marketing, and manufacturing of motion pictures and television shows.

Another nearly 573,000 jobs were engaged in the distribution of motion pictures and television shows to consumers, including people employed at movie theaters, video retail and rental operations, television broadcasters, cable companies, and online video services. The industry also supports indirect jobs in the thousands of companies that do business with the industry, such as caterers, dry cleaners, florists, hardware and lumber suppliers, and retailers.

The American motion picture and television production industry remains one of the most highly competitive in the world. In 2018, the enduring value and global appeal of U.S. entertainment earned $16.3 billion in audiovisual exports. Moreover, this industry is one of the few that consistently generates a positive balance of trade. In 2018, that services trade surplus was $9.4 billion, or four percent of the total U.S. private-sector trade surplus in services.

Today there are over 480 legitimate streaming services providing online audiovisual content to consumers all around the world, accommodating all manner of consumer viewing preference. In addition to licensing content for theatrical release, television broadcasting and online services, MPA members are launching their own diverse online streaming services in markets globally. Today the industry distributes its films and TV shows to over 130 countries. With well over half of MPA member companies' distribution revenue annually earned from overseas, MPA has a strong interest in the health and sustainability of these international markets.

II. Global Policy Overview

a. Market access and censorship

Audiovisual services is one of the least subscribed sectors in the WTO and is often excluded from full market access commitments in free trade agreements. Governments around the world, both developed and developing, impose a range of market access barriers to promote their domestic industry and to shelter it from competition. These market access barriers impact all segments of the U.S. film and television industry and, more recently, the streaming industry. As consumers' viewing preferences have evolved (there were more than 1.1 billion online video subscriptions globally in 2020)[2], governments are now considering how to replicate barriers that constrain the theatrical and pay-TV markets within the online video market. These market access barriers, such as licensing and local presence requirements, curb the ability of our industry to compete fairly, and limit consumers' access to legitimate content.

Many countries couple market access barriers with censorship and/or content review regimes. Indeed, to export film and television content to global audiences, the U.S. film and television industry must navigate more than 100 censorship, ratings and review regimes operating around the world run by government or quasi-governmental entities. Censorship and review processes have become a routine predicate to global distribution of film and television content. Censorship requirements and procedures are set at the sole discretion of each sovereign country and can vary, often widely, based on a variety of issues from cultural norms and sensitivities to societal attitudes toward violence, alcohol and drugs and sexuality to name a few. MPA members are of course aware of the censorship regimes in countries where they intend to distribute their content and sometimes avoid or edit certain content to facilitate access to a market and proactively comply with local laws, regulations, and review processes. For example, Kuwait prohibits "strong violence, sex, kissing, drugs, [or] black magic,"[3] so producers know it would be futile to submit content containing those elements for exhibition in that country. It is routine to have a film censored based on a country's independent norms and requirements. What is not common is to have censorship used as a trade barrier and a mechanism to block equal and fair access to a market. With regard to this proceeding and censorship practices that impede trade and investment, MPA's comments focus on three markets: China, Indonesia and Vietnam.

To meaningfully address censorship as a barrier to trade in these three markets, U.S. policy makers must also confront the web of market access barriers that these three nations utilize in combination with censorship to limit U.S. companies' ability to access their markets, legitimately distribute film and television programming, and launch new online digital video services. These nations to do not necessarily separate censorship from the complex array of access limitations they impose. China, Indonesia and Vietnam each inhibit the full potential of U.S. audiovisual exports by interweaving and layering market access barriers with unfair and at times egregious censorship practices. Together, these barriers can limit access and as such "limit speech by controlling the flow of information and services."[4]

While this investigation is focused on the past five years, the U.S. film and television industry

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[2] Motion Picture Association, *Theme Report* (2020), 5, https://www.motionpictures.org/wp-content/uploads/2021/03/MPA-2020-THEME-Report.pdf

[3] Even within the U.S. theatrical market, for example, commercially released films overwhelmingly undergo voluntary rating by the MPA's Classification and Rating Administration. After a film receives an initial rating from CARA, the producer may edit the film (e.g. by removing certain vulgar language or explicit depictions of sex) to receive a different rating. Regarding Kuwait, ***see*** https://www.pri.org/stories/2010-06-13/kuwaiti-censors-say-hold-sex.

[4] Letter from Sen. Chuck Grassley to ITC Chairman Jason Kearns, January 4, 2021, https://www.finance.senate.gov/download/2021-01-04-ceg-to-us-international-trade-commission-sec-332-investigation-request_-censorship.

has been navigating censorship regimes around the world for over 80 years. The notable development of the past five years for our sector, as noted above, is the rapid rise of online video services as a preferred viewing option for many consumers, and the attendant response by some governments to attempt to regulate this market like a more established media market, extending censorship regimes to, and imposing market access barriers on, the online marketplace.

For our entire history, MPA has defended the rights of our member studios to free expression. In the U.S. and around the world, we actively work to protect the ability of our studios to tell stories as they decide to tell them. When provided the opportunity, MPA engages in public consultations on content-review schemes and encourages foreign governments utilizing censorship regimes to shift to industry self-regulation and classification. This is consistent with U.S. practice and provides parents and consumers with robust information to make informed viewing choices. It is also highly adaptable to local market conditions. Industry self-regulation is consistent with norms for free expression and the concept of editorial responsibility. Film and television creators can additionally factor these transparent and predictable classification processes into production and distribution timelines. This is especially relevant given the vast amount of content being made available through online services.

MPA encourages foreign governments to adopt industry-led ratings and classification systems akin to those that are so successful here in the United States.[5] Content review regimes should provide clear, transparent, consistent, and expeditious guidelines and these guidelines should ensure equal treatment of all content regardless of origin. MPA also recommends that all content should only need to be classified once, regardless of platform. Both domestic and foreign producers must be able to ascertain the feasibility of securing a product’s distribution predictably and reliably. With regard to the online market, MPA urges foreign governments to eschew laws and regulations that would require preapproval for streaming services’ vast libraries of content and instead create processes based on transparent, non-discriminatory, objective criteria applied consistently and predictably.

b. Piracy and Content Protection

While censorship regimes and market access barriers curb legitimate distribution of film and television programming, they have no impact on infringing services. Online content theft impedes MPA member companies’ ability to compete fairly in many important overseas markets. Besides skirting censorship and access limits that legitimate distributors face, piracy services steal and disseminate content that deprives creators of millions of dollars in fair remuneration that they would otherwise use to fund U.S. production and puts thousands of American jobs at risk.[6]

Some of the practices above, such as pre-approval requirements, also have piracy implications. By delaying in-country content availability these requirements provide opportunity for illicit

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[5] In addition to the MPA’s movie-rating system, similar self-regulatory processes exist for television content and videogames. See http://www.tvguidelines.org/aboutUs.html; https://www.esrb.org/about/.

[6] Global Intellectual Property Center, *Impact of Digital Piracy on the U.S. Economy* (June 2019), https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf

operators to disseminate the same content to the disadvantage of actual legitimate content owners.

In tackling content theft, MPA continues to forge partnerships with key stakeholders in the online ecosystem, pursuing voluntary agreements and public policies that make it easier for legitimate content and lawful digital services to flourish on the internet. Meanwhile, we have in recent years seen emerging best practices, particularly in the Asia-Pacific and European markets, as governments respond to online piracy with targeted site blocking and notice-and-stay-down remedies.

Moreover, there is now global recognition that no-fault injunctive relief effectively reduces online copyright infringement. No-fault means that these remedies target only the infringing conduct of the piracy service at issue; they do not entail any finding of fault on the part of the intermediaries. Site blocking is one form of no-fault injunctive relief, in which an ISP receives an order to disable access to a given dedicated pirate site. The U.S. Copyright Office wrote in May 2020:

> Recent studies have shown that website blocking has operated as an effective tool in addressing digital piracy, despite the familiar misperceptions about its efficacy and alleged potential for abuse. Currently, more than 40 countries have either enacted or are under an obligation to enact some form of no-fault injunctive relief to block access to piracy sites.[7]

With close to a decade of implementation, studies overwhelmingly demonstrate that in those countries where no-fault injunctive relief is employed, it greatly contributes to (1) reduced usage of infringing websites to which access has been blocked[8]; (2) reduced overall usage of infringing websites[9]; and (3) increased traffic to legitimate offerings for copyrighted content.[10] And, it has

[7] U.S. Copyright Office, Section 512 of Title 17 (2020), at 58-59, https://www.copyright.gov/policy/section512/section-512-full-report.pdf

[8] Joost Poort, Jorna Leenheer, Jeroen Ham, and Cosmin Dumitru, "Baywatch: Two Approaches to Measure the Effects of Blocking Access to the Pirate Bay," (August 22, 2013), https://ssrn.com/abstract=2314297.
Luis Aguiar, Jorg Claussen, and Christian Peukert, "Online Copyright Enforcement, Consumer Behavior, and Market Structure," *European Commission Joint Research Centre* (2015), https://ec.europa.eu/jrc/sites/jrcsh/files/JRC93492_Online_Copyright.pdf

[9] Brett Danaher, Michael D. Smith, and Rahul Telang, "The Effect of Piracy Website Blocking on Consumer Behavior," (November 2015), https://ssrn.com/abstract=2612063.
Brett Danaher, Michael D. Smith and Rahul Telang, "Website Blocking Revisited: The Effect of the UK November 2014 Blocks on Consumer Behavior," (April 18, 2016), https://ssrn.com/abstract=2766795
Incopro, *Site Blocking Efficacy in Portugal September 2015 to February 2016* (May 2016), (http://www.incoproip.com/wp-content/uploads/2017/07/Site-Blocking-and-Piracy-Landscape-in-Portugal-FINAL.pdf
Motion Picture Association, *MPA Study on Site Blocking Impact in South Korea* (2016), (http://www.mpa-i.org/wp-content/uploads/2018/01/MPAA_Impact_of_Site_Blocking_in_South_Korea_2016.pdf).
Incopro, *Site Blocking Efficacy – Key Findings – Australia (February 2018),* (https://www.creativecontentaustralia.org.au/_literature_210629/2018_Research_-_Incopro_Study).

[10] Brett Danaher, Michael D. Smith and Rahul Telang, "The Effect of Piracy Website Blocking on Consumer Behavior," (November 2015), https://ssrn.com/abstract=2612063.
Brett Danaher, Michael D. Smith and Rahul Telang, "Website Blocking Revisited: The Effect of the UK November 2014 Blocks on Consumer Behavior," (April 18, 2016), https://ssrn.com/abstract=2766795.

proven to work safely and effectively in a narrow targeted way without any harm to the operation or security of the internet or access to lawful websites. Global site blocking tools operate with extensive safeguards and due process and are consistent with free expression and the rule of law. MPA encourages the ITC to emphatically reject reductionist assertions that blocking of websites/services engaged in copyright infringement constitutes censorship.

III. Discussion of Foreign Censorship Practices

a. China

China is a large, growing and important media market for MPA members. In 2019, China's theatrical box office was US$9.3 billion.[11] China continues to rapidly expand its number of theatrical screens, growing 13 percent in 2020 to reach over 75,000 nationwide.[12] The online marketplace, already the largest in Asia Pacific with over 927 million active online video users at the end of 2020, is expected to continue to grow. Unique subscription video on demand subscribers are projected to grow from 298 million in 2020 to 375 million in 2025.[13] Chinese investment in local over the top (OTT) video content also continued to grow reaching approximately US$12.1 billion in 2020 while investment in foreign content has declined.[14] Unfortunately, onerous market access barriers across all methods of distribution coupled with an opaque censorship regime severely limit the ability of U.S. companies to compete fairly.

Theatrical market

In 2009, the U.S. won a WTO case against many of China's market access barriers to audiovisual products.[15] In 2012, the U.S. and China signed a Film MOU to resolve outstanding issues from the U.S. victory. To date, China maintains a quota for imported revenue-share movies of 34 per year that is too low to meet normal market demand.[16] Furthermore, China committed that in 2017 it would make a meaningful increase to compensation, as the current 25 percent U.S. share of box office revenue is far below the global average.[17] To date, a new MOU has yet to be concluded. Consequently, China has not increased its annual foreign film quota of 34 revenue share films and severely restricts the amount of revenue U.S. producers receive from the Chinese box office.

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[11] Motion Picture Association, *Theme Report* (2019), https://www.motionpictures.org/wp-content/uploads/2020/03/MPA-THEME-2019.pdf

[12] Rebecca David, "China's Cinema Screen Count Leaps Despite COVID Closures," *Variety*, February 16, 2021, https://variety.com/2021/film/news/china-cinema-screen-count-increased-2020-1234909164/ .

[13] Media Partners Asia, *Asia Pacific Online Video and Broadband Distribution,* (2021), page 46.

[14] Ibid.

[15] China–Measures Affecting Trading Rights and Distribution Services For Certain Publications And Audiovisual Entertainment Products, WT/DS363/AB/R, (December 21, 2009).

[16] Under the MOU, China agreed to allow an additional 14 enhanced format films to its annual revenue share film quota of 20.

[17] 40-50 percent of box office is the global average revenue share.

The China Film Administration (CFA) forces foreign distributors to use only one film importer and two domestic distributors, both of which are state owned companies: China Film Group and HuaXia Film Distribution Company Ltd. While China affirmed in the Film MOU that any properly licensed Chinese enterprise may distribute imported films, CFA has yet to approve any new private distributor. China Film Group also dictates when films can be released in China and how long foreign films can be shown in theaters, which often restricts the U.S. producer's ability to obtain the full commercial value of the film. For example, by requiring two similar-genre blockbuster U.S. movies to open against each other on the same weekend, with limited opportunity for marketing and limited theatrical runes, total revenue is artificially constrained.

Moreover, to limit competition against domestic films released during peak movie-going periods, the Chinese Government implements "blackout periods" during which no new foreign films may be released. Blackouts typically occur during key theater going times, such as Lunar New Year or school and summer holidays. Blackouts also often coincide with political events. Restricting the release of new foreign imported titles during peak season depresses theatrical revenues and induces consumers to seek alternative, unauthorized sources such as piracy websites and services.

China also imposes a screen quota, restricting the public screening of foreign films to no more than one-third of the total annual screen time. And China prohibits foreign investment in Chinese film production, distribution and cinema chain companies.

China further disadvantages foreign films' ability to compete in the Chinese market by incentivizing cinemas to screen more Chinese domestic films. China allows the refund of a certain percentage from the Film Development Fund collection to cinemas that report favorable annual box office receipts from the screening of Chinese films.

While CFA has responsibility for the censorship of films for theatrical release, other ministries, including the Propaganda Department, often play a role in the review of films. The censorship guidelines are vague.[18] The censorship review process is opaque, burdensome, and lengthy, with no prescribed timelines. Moreover, it is not iterative and it is not divorced from the general terms of the release; filmmakers submit their work to the government, which generally either rejects the title or sets non-negotiable terms for its distribution – from marketing to release date. In China, the content-review process functions as a market access barrier. It is generally understood that China blocks or limits the distribution of films that it believes may somehow threaten national security, harm national interest or undermine social stability. However, what may be deemed unsuitable is sometimes arbitrary and broadly interpreted. While the Film Industry Promotion Law includes an extensive list of content that China prohibits in films for theatrical release, there remains a profound lack of clarity about what films will be allowed into the Chinese market. Moreover, because China lacks a formal rating system, films that touch particular sensitivities cannot be restricted to a more mature audience.

Since the 2018 government reorganization, the censorship review process has become more protracted and strict. A process that took one month prior to 2018 now routinely takes two or three. Films are often held up in the censorship review process for extensive periods of time

[18] Film Industry Promotion Law of the People's Republic of China (2017).

during which the producer does not know if the film will be permitted for release. Once a film is approved for release, it will often not be given a release date until a few weeks or even days prior to release. This lack of transparency and certainty restricts and complicates marketing and promotional activity for a film.

Television market

China has one of the most restrictive television markets in the world. Foreign content cannot exceed 30 percent of daily programming on a domestic pay-TV channel.[19] China further prohibits the retransmission of the entirety of a foreign channel on pay-TV other than in hotels with a three-star or higher rating. China prohibits foreign investment in pay-TV/VOD services and television production companies.

China bans foreign movies and TV programming during prime time (between 7:00 pm and 10:00 pm) for broadcast television. Foreign TV series are limited to 50 episodes. In February 2020, the National Radio and Television Association (NRTA) further limited each drama title to 40 episodes and proposed limiting each mini-series to 30 episodes.[20] China restricts foreign animation to no more than 40 percent of total airtime and importers of foreign animation must produce a like amount of domestic animation.

Local cable networks are prohibited from carrying foreign satellite channels without government approval or landing permits, which are limited to Guangdong province and a handful of foreign channels. Furthermore, foreign satellite channels beaming into China are required to downlink from a government-owned encrypted satellite platform, and these channels, as noted above, may only be shown in three-star hotels and above and in foreign expatriate compounds. The annual fee for each channel remains excessively high at $100,000.

The China Film Administration (CFA) and the National Radio and Television Administration (NRTA), and Chinese Central Television perform various censorship functions related to television programming.

Online market

In recent years, the Chinese Government has issued a number of regulations that further restrict the online media space.

In 2014, China began requiring online video services to obtain advance approval for all their content. The content review process allows only two windows each year for online distributors to submit content for registration and censorship review. Provincial authorities are prohibited

[19] Administrative Provisions on the Importation and Broadcasting of Overseas Audiovisual Programs, Notice of Further Implementation of Provisions Concerning the Administration of Online Foreign Films and TV Dramas (September 2014).
[20] Media Partners Asia, *Asia Pacific Online Video*, 59.

from performing content review, slowing the review process.[21] Further, foreign TV series must be submitted as complete seasons, rather than the previous practice of per-episode submission, which was consistent with international practice. When coupled with the two-window advance content-approval regime, these rules severely limit the licensing of current TV content, which is typically when it is most valuable, and provide opportunity for illicit providers to monetize the content when it is in highest demand. These rules have substantially suppressed the number of U.S. TV programs licensed in China and have resulted in delays in the availability of TV series, effectively curtailing day-and-date releases and encouraging consumers to turn to infringing websites.

Moreover, in 2019, Chinese government agencies and distribution platforms significantly slowed the processing and licensing of new U.S. content intended for Chinese online streaming platforms. This so-called "soft ban" dramatically decreases available U.S. content online in China.

For films to reach a streaming platform in China, they must have a censorship certificate from theatrical release. In other words, China's theatrical quota extends to full-length movies for the Chinese online market.

The China Netcasting Services Association's (CNSA) "Internet Audiovisual Program Content Audit General Rules" specify that all original audiovisual content—including movies, dramas, documentaries, and animations—require content review by at least three auditors before transmission. Audit requirements include close scrutiny of the political, social and aesthetic orientation of content. Programs that undermine China's national image, ridicule its leaders, promote negative or decadent views of life, or show the "dark side" of society, are subject to editing or outright bans.

Online video services are required to limit their catalogue's share of foreign content to 30 percent. However, the market is not allowed to operate freely to meet market demand even within the quota and U.S. content is restricted to 15 percent in real market terms. There is also a pending rule that stipulates that the quota will be further applied on a category-by-category basis to genres of film, TV, animation, documentaries, and "other" programs, such as education, science and technology, culture, variety, and sports. Media Partners Asia reports:

> Tightening restrictions on foreign content acquisitions has depressed investment in imported content. The ban on Korean content, along with greater censorship of Western content, has led to a significant drop in foreign content releases, especially dramas. With an implicit mandate to promote Chinese language and culture, platforms are shifting focus to develop homegrown content.[22]

Foreign investment in online video platforms is prohibited. Furthermore, video websites must allow state-owned media enterprises to own "Special Management Stakes," including voting powers in decision making. If enforced, this means that SOEs would have a say in how a

[21] The review process is centralized under NRTA. Prior to the government reorganization, there was an effort to utilize provincial authorities for content review.
[22] Media Partners Asia, *Asia Pacific Online Video*, 56.

platform complies with government censorship rules.

b. Indonesia

Indonesia is an important and growing market for MPA member companies. In 2019, it had the 16th largest theatrical box office in the world.[23] Artisan Gateway reported the 2019 theatrical box office at US$474.8 million. Artisan Gateway's Rance Pow expects significant growth in the number of movie screens in Indonesia as the market remains severely under-screened.[24] This lack of theatrical screens, however, has created commercial opportunity for the online video market. Indonesia's online video industry continues to expand, generating US$366 million in revenue in 2020, up 26 percent over 2019.[25] Media Partners Asia estimates that Indonesia's online video market will reach US$1 billion by 2025. Indonesia's subscription video on demand sector currently represents 40 percent of Indonesia's online video market but is still nascent and will likely continue to experience robust growth. Investment in local content is also growing, up 87 percent over 2019.[26] Indonesia's pay-TV industry continues to expand at a healthy clip with a projected 4 percent annual growth in subscribers and total revenue through 2025.[27]

Theatrical

While the government in 2016 took the very positive step of removing film distribution and exhibition from its negative investment list, the government more recently has advanced regulations that would undermine this progress. In 2019, the government issued implementing regulations for a 60 percent theatrical screen quota for Indonesian films. Fortunately, this quota is not being enforced because it is practically impossible to fill. Indonesia also continues to prohibit the dubbing of imported films with some limited exceptions at the insistence of the film industry. Films intended for theatrical release in Indonesia must be reviewed by the censorship committee which is under the auspices of the Film Censorship Institute in the Ministry of Education and Culture.[28] The censorship committee is comprised of 17 members, from both the private sector and government, who determine the guidelines and the appropriateness of a film. Censorship in Indonesia remains strict by international standards.[29]

Television

Indonesia limits foreign ownership in pay-TV to 20 percent, and pay-TV providers must be licensed by the government. Indonesia's Broadcasting Commission (KPI) requires pre-

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[23] Motion Picture Association, *Theme Report* (2019), https://www.motionpictures.org/wp-content/uploads/2020/03/MPA-THEME-2019.pdf .
[24] Matt Scott, "From Singapore to Malaysia: Markets Leading the Expansion of Southeast Asian Cinema," *Hollywood Reporter*, May 16, 2019, https://www.hollywoodreporter.com/lists/markets-leading-expansion-southeast-asian-cinema-1211133/.
[25] Media Partners Asia, *Asia Pacific Online Video*, 87.
[26] Ibid.
[27] Media Partners Asia, *Asia Pacific Online Video*, 106.
[28] Law No. 33/2009 and Law No. 18/2014.
[29] Guidelines and Criteria for Censorship, Grouping of Watching Ages, and Withdrawal of Film and Film Advertising from the Circulation, Regulation of the Minister of Education and Culture, Number 14 of 2019 (2019).

censorship and classification for programs on all TV channels. KPI actively monitors TV content (heavily weighted towards free-to-air) and takes firm action against broadcasters that violate the Broadcasting Ethics and Broadcast Program Standard including written warnings, temporary suspension of problematic programming through to temporary suspension of broadcaster's license and, in extreme cases, revoking a broadcasting license. To date, KPI has not issued administrative fines but has announced that going forward, it will issue fines up to IDR100bn (US$7m) for TV broadcasters as a deterrent. Further, the LSF has partnered with some regional broadcasting entities to cooperate on monitoring broadcast content.[30]

Streaming/OTT

The Ministry of Communication and Informatics has drafted onerous OTT regulations that require foreign OTT service providers to obtain certification, set up local permanent establishments, localize data, and use local national payment gateways, in addition to providing content-filtering and censorship mechanisms. In addition, these regulations contain significant penalties for non-compliance including license revocation and access blocking. Such requirements, if implemented, would stifle business development and add a burdensome barrier to market entry.

Online video platforms are subject to the Law on Electronic Information and Transaction and the Private Scope Digital Service Provider (PSE) regulation (November 2020). These rules require all PSEs to register with the Ministry of Communications and Informatics by January 2022 and to take down prohibited content within 24 hours of request. It also grants authorities access to electronic systems and provides for criminal enforcement.

In January 2021, Indonesia's Constitutional Court ruled that OTT services were outside the legal definition of broadcasting set out in the Broadcasting Law. Indonesia's Parliament now intends to revise the Broadcasting Law in 2021 and may look to extend the definition of broadcasting to capture OTT services, subjecting OTT content to KPI's strict censorship and classification requirements. Such a change in the legal regime would be very disruptive to services currently operating in Indonesia.

c. Vietnam

Vietnam is an important emerging market for the U.S. film and television industry. Media Partners Asia estimates that online video generated US$222 million in 2020.[31] There is ample growth potential for Vietnam's subscription video on demand market which remains underdeveloped. Unfortunately, the full potential of the market has been constrained by rampant online piracy and onerous market access barriers on the pay-television and online markets. Vietnam's theatrical market was US$178.5 million in 2019, representing a 36.7 percent increase

[30] LSF-DKI Jakarta Regional Indonesian Broadcasting Commission MOU, May 2021, and LSF-Central Indonesia Broadcasting Commission MOU 2020.
[31] Media Partners Asia, *Asia Pacific Online Video*, 200.

over 2018.[32]

Theatrical

Vietnam currently requires films slated for theatrical distribution to be submitted to the Censor Board within the Cinema Department. Vietnam introduced a film rating system in 2016 and maintains strict content guidelines for classification. Helpfully, recent draft amendments to Vietnam's Cinema Law remove the 20 percent screen quota, reflecting the reality that Vietnamese films are securing a greater share of the theatrical market. Unfortunately, the draft provides space for the government to revisit a quota in the future. Vietnam also limits foreign investment in film production and distribution to 51 percent.

Television

Vietnam caps the number of foreign channels a pay-TV service carries to 30 percent. Operators must also appoint and work through a locally registered landing agent. In addition, foreign content is limited to 50 percent of broadcast time and foreign programming on broadcast television is not allowed during prime time. Broadcast stations must also allocate 30 percent of airtime to Vietnamese feature films. Further, most foreign programming is required to be edited and translated by an approved licensed press agency. The regulations also provide that all commercial advertisements airing on such channels in Vietnam must be inserted in Vietnam. All channels must also undergo a censorship review by an approved press agency.[33] This mandate imposes new "editing fees" and unreasonable burdens on international channels. These measures are unduly restrictive and severely impede the growth and development of Vietnam's pay-TV industry.

Streaming/OTT

For several years, Vietnam's Ministry of Information and Communications (MIC) has considered regulating the OTT market like the pay-television market. Draft amendments to Decree 06, which currently regulates the pay-TV industry, would expand the decree's scope to include OTT services. Several provisions of the draft Decree would impose significant barriers to foreign investment and potentially force existing services out of the market stunting the growth of Vietnam's e-commerce market and limiting consumer choice and access to entertainment options. Fortunately, MIC signaled in June 2021 that it would remove the requirements for pre-censorship and content editing for OTT platforms for certain classes of content, including entertainment. MIC has also removed the local content quotas. Unfortunately, it appears that the licensing requirement, which would require a local presence, possibly through forced joint venture, remains under consideration.

Classification for the online distribution of entertainment is also being concurrently considered in the Draft Cinema Law and it appears that the government is leaning towards self-classification. The most recent version of this draft law allows for self-classification of films

[32] Artisan Gateway data. (NB: Used 2019 data as 2020 is anomalous because of the pandemic.)

[33] A licensed press agency is a non-governmental entity that is licensed by the Government to review content for compliance with censorship rules.

that do not already have film permits for theatrical release. This is a welcome development.

These market access barriers conflict with the Government of Vietnam's public statements that suggest it prioritizes preserving cultural diversity and strengthening Vietnam as a producer and provider, not just as a consumer, of creative products.

IV. Conclusion

The United States leads the world in film, television, and streaming content. U.S. studios have long recognized that they serve global audiences and have designed their content to appeal to the broadest possible range of international moviegoers and TV-watchers, reflecting not just American stories but universal stories and values. Open, free, and fair trade is key to our industry's ability to compete globally and to continue offering billions of consumers access to content of their choice. It also fosters an exchange of information and ideas and brings outside ideas to local communities—critical to long-term change and progress in closed societies.

Our industry relies on the global marketplace to support the creation, production and distribution of movies, television programming and streaming content here in the United States. The industry delivers enormous economic value, drives innovation, promotes free expression and serves as a global ambassador for the nation's creativity and dynamism. In 2019, the enduring value and global appeal of U.S. entertainment earned $16.3 billion in audiovisual exports. Despite this success, the full potential of U.S. audiovisual exports is inhibited by a range of market access barriers.

Censorship stifles creativity and economic activity and can also function as a barrier to trade. Some countries interweave their censorship requirements and controls among a myriad of market access barriers. To meaningfully address censorship as a barrier to trade, U.S. policy makers must also address the market access barriers that limit the ability of the U.S. film, television and streaming industry to fully participate in a market and compete freely. Addressing censorship without also addressing barriers to entry and participation, inures to the benefit of the domestic (non-U.S.) industry.

When engaging with foreign governments about their content-review schemes, U.S. policy makers should wherever possible encourage countries to empower creative industries to create transparent industry-based, self-regulatory ratings and classification systems akin to those that are so successful here in the U.S. Content review and standards should be clear, transparent, expeditious, consistent, and non-discriminatory.

Here in the U.S., the political debate around foreign censorship of films has focused heavily on a handful of anecdotes, often wrenched from the broader context of overall market access limits and the efforts by governments to subsidize their own domestic film produces and challenge U.S. market leadership. The question is often framed as whether individual film producers "resist" or "give in" to isolated foreign censorship demands. But as this proceeding shows, that narrow focus misses the point.

Addressing foreign censorship regimes to open up audiovisual services markets around the world and prevent flawed and unfair regulations and requirements from expanding to nascent streaming services, cannot be done by individual companies or industries. This can only be achieved on a government-to-government basis. We urge U.S. officials to focus on steps U.S. policymakers and trade officials can take to promote open markets and fair and equitable access and competition – and to avoid solutions and recommendations that only add new burdens to U.S. companies and industries trying to compete around the world, as some in Congress have proposed.

MPA appreciates the opportunity to share its perspectives on the issues presented in the ITC's notice on Foreign Censorship, Part One. We stand ready to address any questions you might have or provide additional information.