



# MOTION PICTURE ASSOCIATION

MOTION PICTURE ASSOCIATION, INC.  
1600 I Street, NW  
Washington, DC 20006

## VIA ELECTRONIC SUBMISSION ONLY

The Honorable Katherine Tai  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

July 8, 2022

Re: Request for public comment on the U.S.-Taiwan Initiative on 21<sup>st</sup>-  
Century Trade, USTR-2022-0005

Dear Ambassador Tai:

The Motion Picture Association, Inc. (“MPA”) offers the following comments in response to the Office of the US Trade Representative (“USTR”) notice inviting submissions from the public on the proposed U.S.-Taiwan Initiative on 21<sup>st</sup>-Century Trade (“Initiative”).

The MPA proudly represents one of our nation’s most vibrant industries: the American motion pictures, television and streaming 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.

The American motion picture, television, and streaming industry is a major U.S. employer that supported 2.2 million jobs and \$192 billion in total wages in 2020. Nearly 273,000 jobs were in the core business of producing, marketing, and manufacturing of motion pictures, television shows, and video content. Another nearly 480,000 jobs were engaged in the distribution of motion pictures, television shows, and video content. Importantly, these are high quality jobs that pay 74 percent above the national average and offer a meaningful pathway to the middle class. The motion picture, television and streaming industry is one of the most heavily unionized private sector industries in the United States.

The motion picture, television, and streaming industry is a nationwide network of small businesses. As of 2020, the industry was comprised of more than 110,000 businesses across all

50 states. The vast majority of these businesses – 89 percent - employ fewer than 10 people. While many of these small businesses do not directly export their goods and services overseas, their products and services are inputs to the production and distribution of U.S. motion picture, television, and video content, which relies heavily on overseas markets for revenue and profitability.

The industry remains one of the most highly competitive in the world. In 2020, the enduring value and global appeal of U.S. entertainment resulted in \$17.3 billion in audiovisual exports. Moreover, this industry is one of the few that consistently generates, even in these difficult economic times, a positive balance of trade. In 2020, that surplus was \$9.6 billion, or three percent of the total U.S. private-sector trade surplus in services.

To enhance the industry’s opportunities for growth and support the 2.2 million Americans who rely on the industry to support themselves and their families, MPA strongly supports efforts to expand global trade. Below are MPA’s recommendations on several of the U.S.-Taiwan Initiative’s proposed elements.

### General Negotiating Objectives

MPA recommends that the U.S. negotiating objectives for the Initiative translate our shared values into meaningful commitments. MPA agrees with the administration’s decision to “develop concrete ways to deepen the economic and trade relationship, advance mutual trade priorities based on shared values, and promote innovation and inclusive economic growth.” MPA’s detailed comments below examine how this Initiative can advance these general objectives.

### Digital Economy

MPA members are launching their own online streaming services and licensing content to other streaming services in markets around the globe. In 2021, the home/mobile entertainment<sup>1</sup> market, not including pay television, was worth \$71.9 billion. The overseas digital market<sup>2</sup> grew 24 percent in 2021.

The film and television industry is a significant and growing contributor to Taiwan’s economy. A 2021 Frontier Economics study shows almost 9 million Taiwanese subscribed to VOD services providing film and entertainment content in 2020, which is forecast to grow to 14

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<sup>1</sup> Home/mobile entertainment refers to entertainment content viewed on all devices, whether home-based (e.g. TVs) or mobile-based (e.g. smart phones). This includes both digital methods (electronic sell-through (“EST”), video-on-demand (“VOD”), and paid subscription streaming (subscription video-on-demand (“SVOD”) – excluding virtual pay TV – and physical methods (Blu-ray and DVD sales and rentals). Digital includes movies and TV, and excludes sports. Previous years’ estimates may be updated based on changes made by sources.

<sup>2</sup> Overseas digital is sourced from Omdia and includes all countries except the United States. These figures include online video (EST, internet video-on-demand (“iVOD”), Pay TV EST/SVOD/VOD for TV and Movie genre consumer spending. Also includes Online Subscription Revenue (Multiscreen, N/A (Others) and Online Channel) for movie and TV genre, excluding Virtual Pay TV. Previous years’ estimates may be updated based on changes made by source.

million by 2025<sup>3</sup>. Similarly, Taiwan’s theatrical box office pre-pandemic was worth about \$338 million and, in 2022, ticket sales have shown signs of a steady rebound .

Notwithstanding this success, MPA members confront the rampant theft of their content and a range of discriminatory practices that curb their ability to license their content and compete fairly overseas, including in Taiwan. The U.S.-Taiwan Initiative on 21<sup>st</sup> Century Trade is an opportunity to craft a forward-looking agreement that effectively responds to today’s challenges in the digital economy and, in so doing, supports U.S. workers, protects consumers, and defends against non-market economy practices. Specifically, MPA recommends the following –

- **Include an explicit obligation that enforcement procedures are equally applicable to the digital market.** Piracy services steal and disseminate content, depriving creators of millions of dollars in fair remuneration that they would otherwise use to fund U.S. production and employ thousands of Americans. The U.S. Chamber of Commerce GIPC study on the Impact of Digital Piracy on the U.S. Economy found that global online piracy costs the U.S. economy at least \$29.2 billion in lost revenue each year. Including a provision to help ensure the full availability of online enforcement tools in this Initiative would respond to the harm of digital piracy on the U.S. economy and U.S. workers. (*See* USMCA article 20.78.2.)
- **Include a broad commitment to non-discrimination.** MPA lauds USTR for seeking to address “discriminatory and trade-distortive practices in the digital economy”<sup>4</sup> in the U.S.-Taiwan Initiative for 21<sup>st</sup>-Century Trade. The United States has a growing, diverse and highly competitive online video services sector that brings U.S. and foreign content to audiences in markets around the world. Discrimination against U.S. creators curbs the ability of U.S. creators and producers to license content overseas. U.S. creators rely on deferred compensation from the licensing of content to support themselves and their families between projects and through retirement. A broad commitment to non-discrimination would also augment revenue from licensing which helps to fund entertainment industry pension and health plans<sup>5</sup>. This provision could build on USMCA art.19.4, which helpfully guards against discrimination of digital products, to also include non-discrimination of services provided digitally via any mode of supply. Non-discrimination is a pillar of fair trade and should also apply to taxation.

Taiwan’s National Communications Commission (NCC) has proposed various OTT regulations that would discriminate against U.S. content and U.S. service providers. The proposed Internet Audiovisual Service Management Act that would oblige foreign OTT service providers to register with the NCC, appoint a local agent and comply with local content obligations. In addition, it is possible that the NCC will seek to require foreign OTT providers to disclose commercially-sensitive information. As of June 2022, draft

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<sup>3</sup> See Frontier Economics, The Economic Impact of Video On-Demand Services in Taiwan, <https://www.mpa-apac.org/wp-content/uploads/2021/11/TW-Frontier-The-Economic-Impact-of-VOD-in-Taiwan.pdf>

<sup>4</sup> USTR Federal Register Notice, 87 FR 34745, Docket Number USTR-2022-0005.

<sup>5</sup> Id.

OTT regulations are expected to also contain local content prominence obligations and significant penalties for non-compliance. Other regulation in the pipeline, such as the mooted Digital Services Act, may impose further onerous conditions on digital platforms (potentially including OTT providers) that *de jure* or *de facto* discriminate against U.S. content and service providers. Such requirements, if implemented, would stifle business development, chill investment in Taiwanese content and add a burdensome barrier to market entry; all of which would not be suffered by pirate services.

- **Include a commitment to permanently prohibit the imposition of customs duties on electronic transmissions.** MPA and its member companies are encouraged by the June 2022 decision by WTO Members to extend the Moratorium on Customs Duties on Electronic Transmissions. A similar provision has been included in U.S. trade agreements since 2001. Prohibiting the imposition of customs duties on electronic transmissions has been critical to fostering digital trade, including by ensuring that burdensome custom procedures do not hamper the dynamism or global competitiveness of the U.S. motion picture, television and streaming industry. MPA urges the U.S. government to incorporate this critical discipline into the U.S.-Taiwan Initiative.
- **Include an obligation to prohibit “performance requirements” in connection with an investment.** In many territories around the world, governments are seeking to impose legacy media regulations on commercial streaming services. Investment obligations and quotas that have historically plagued the theatrical and television market are migrating to the online space complicating the roll-out and in some cases threatening the viability of fast-growing business segments such as video on demand and other over-the-top services. These measures have the effect of stifling business development, add a burdensome barrier to market entry and exacerbate online piracy. Such policies ultimately curb the ability of the U.S. motion picture, television and streaming industry to compete fairly and limit consumers’ access to legitimate content. Obligations not to impose performance requirements on investments found in modern U.S. FTAs, most recently the USMCA, have been critical to responding to such threats. Including such a provision in the digital trade chapter of the U.S.-Taiwan Initiative would address “trade distortive practices in the digital economy.” (*See* USMCA article 14.10.)
- **Provide an obligation to require Infrastructure-as-a-Service (“IaaS”) providers to verify and retain the identity of their business customers.** Commercial entities that intentionally distribute illegal and harmful services or content online tend to hide their true identity when they sign up for online services, such as web hosting. This anonymity complicates law enforcement efforts to the detriment of consumers, including by exposing them to malware, data theft and unsafe products and services. By verifying and retaining the identity of business customers, IaaS providers can help deepen consumer trust in the safety and security of the online marketplace. These principles are required by E.O. 13984.
- **Eschew the inclusion of Section 230 of the CDA.** There is robust, bipartisan concern about the appropriateness of CDA Section 230’s unconditional immunity, as currently

drafted, for today's digital economy. Legislators have argued that more accountability is imperative for augmenting consumer safety and protection online. Legislators have expressed concern about the inclusion of language mirroring Section 230 in U.S. trade vehicles while these serious policy discussions are ongoing.

### Transparency and Good Regulatory Practices

The U.S. film, television, and streaming industry must navigate more than 100 censorship, ratings and review regimes around the world operated by government or quasi-governmental entities. In the United States, the industry is self-regulated, and this system has proven itself to be fair and resilient.<sup>6</sup> Industry self-regulation is consistent with norms for free expression and the concept of editorial responsibility.

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 factors from cultural norms and sensitivities to societal attitudes toward violence, alcohol and drugs and sexuality, to name just a few. Film censorship based on a country's norms and requirements is a routine aspect of global distribution. 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.

- **Include safeguards to ensure transparent, predictable and non-discriminatory content review and censorship regimes.** Taiwan should be encouraged to codify industry-led ratings and classification systems for content disseminated online. With the right to regulate for public morals in mind, Taiwan should be encouraged to develop content review and standards that 1) do not constitute unnecessary barriers to digital trade and 2) are clear, transparent, expeditious, consistent and non-discriminatory. If content must be reviewed, it should only need to be reviewed once, regardless of platform. Specific to the online market, Taiwan should be encouraged to eschew laws and regulations that would require preapproval for streaming services' vast libraries.

### Non-Market Policies and Practices

MPA lauds the U.S. and Taiwan's commitment to collaborate against non-market economy practices. The ability of private parties to contract without interference from government is a core market economy principle.

- **Ensure protections for contractual freedom.** Such a provision ensures that a government may not pass laws that undermine the ability of private parties to enter into mutually beneficial contracts. In some territories, the integrity of contracts is often disregarded, chilling investment in the creative sector. These protections are especially important in the digital environment where upstream contracts ensure certainty for the distribution ecosystem. (*See* USMCA article 20.65)

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<sup>6</sup> 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/>.

## Closing

The six major studios of the MPA generate billions of dollars annually from filmed entertainment distributed around the globe. Notwithstanding this singular achievement, the U.S. motion picture, television and streaming industry faces daunting barriers in many markets as well as relentless challenges to the integrity of its product, challenges extracting an increasingly unbearable cost. The economic and cultural vitality of the creative industries is one of our nation's most valuable assets and we urge USTR to take available measures to help maintain and enhance the competitiveness of the U.S. creative industries globally.

MPA appreciates the opportunity to comment on the proposed US-Taiwan Initiative for 21<sup>st</sup>-Century Trade and is ready to provide further information or answer questions if we can be of assistance.

Sincerely,



Anissa Brennan  
Senior Vice President  
Global Policy and Federal Affairs  
Phone: 202.293.1966  
Anissa\_brennan@motionpictures.org