



MOTION PICTURE ASSOCIATION

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

VIA ELECTRONIC SUBMISSION ONLY

Colette Morgan
Director
Southeast Asia and Pacific
Office of the US Trade Representative
600 17th Street, NW
Washington, DC 20508

April 6, 2022

Re: Request for public comment on the Fair and Resilient Trade Pillar of
the Indo-Pacific Economic Framework, USTR-2022-0002

Dear Ms. Morgan:

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 Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework (“IPEF”).

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 specific comments on several of the IPEF’s proposed trade elements.

General Negotiating Objectives

MPA recommends that the U.S. negotiating objectives for IPEF translate our shared values into meaningful commitments. MPA agrees with the administration’s decision to “build upon high-standard trade commitments and develop new approaches in trade policy.” Across the IPEF trade pillar, the United States should seek to support U.S. workers, defend against non-market economy practices, and protect consumers. MPA’s detailed comments below examine how the IPEF trade pillar 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 entertainment¹ market, not including pay television, was worth \$71.9 billion. The overseas digital market² grew 24 percent in 2021. The Asia Pacific home/mobile entertainment market reached \$18 billion in 2021, a 17 percent increase over 2020 and a 101 percent increase over 2017.

Notwithstanding this success, MPA members confront the rampant theft of their content and a

¹ 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.

² 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.

range of discriminatory practices that curb their ability to license their content and compete fairly overseas. The IPEF is an opportunity to craft a forward-looking agreement that effectively responds to these challenges and, in so doing, supports U.S. workers, protects consumers, and defends against non-market economy practices. Specifically, MPA recommends –

- **Incorporate an obligation to join and fully implement the WIPO Digital Treaties.** The WIPO Digital Treaties are fundamental to the legal infrastructure of digital trade. To date, over 100 countries are parties to these foundational internet treaties. These decades-old treaties require signatories to provide copyright holders with the full panoply of exclusive rights for the digital marketplace as well as protections for technological protection measures (TPMs). Simply stated, TPMs are the technologies that enable the creative industries to provide a range of online digital services to consumers and power the online content marketplace. These services, which include streaming and subscription services, deliver content to consumers in a time and place convenient to them and in a manner that protects the rights of and payments to creators and producers. Without protection for TPMs, it becomes much easier to pirate the content, which, among other ills, deprives our creative professionals of the resources to fund their union pension plans and health insurance contributions, as well as undermining their collectively bargained pay.³ (See USMCA article 20.7.1)
- **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 in IPEF to help ensure the full availability of online enforcement tools would respond to the harm of digital piracy on the U.S. economy and U.S. workers. (See USMCA article 20.78.2.)
- **Ensure protections for contractual freedom.** Such a provision ensures that a country may not pass laws that undermine the ability of private parties to enter into mutually beneficial contracts. In China and elsewhere, 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)
- **Include a commitment to non-discrimination.** Foreign governments' 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

³ “Through legitimate sales and streams of creative works, SAG-AFTRA members received more than \$1.01 billion (at an average amount of \$220 per residual check), IATSE members earned \$496 million for their pension and health plans, the DGA distributed over \$430 million in residuals to members, and writers, including members of the WGAE, earned \$529 million in 2020.” Department of Professional Employees, AFL-CIO. <https://www.dpeaflcio.org/other-publications/creative-professionals-depend-on-strong-copyright-protections>

commitment to non-discrimination would also augment revenue from licensing which helps to fund entertainment industry pension and health plans⁴. 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. Non-discrimination is a pillar of fair trade.

- **Incorporate an obligation to join the Budapest Cybercrime Convention.** Cybercrime is a significant threat to the rule of law and human rights, and carries both economic and social consequences. The Budapest Cybercrime Convention responds to this challenge, facilitating law-enforcement cooperation in combatting crimes committed online including computer-related fraud, child safety issues, violations of network security and copyright theft. There are currently 66 parties to the Budapest Cybercrime Convention, including the United States.⁵
- **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 deeply ingrained in a long list of international instruments, including the aforementioned Council of Europe Convention on Cybercrime and is 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.⁶ 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

⁴ Id.

⁵ <https://www.justice.gov/opa/pr/justice-department-announces-publication-white-paper-cloud-act>

⁶ 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/>.

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.** IPEF members should be encouraged to adopt industry-led ratings and classification systems. With the right to regulate for public morals in mind, governments should be encouraged to develop content review and standards that 1) do not constitute unnecessary barriers to trade and 2) are clear, transparent, expeditious, consistent and non-discriminatory. All content should only need to be reviewed once, regardless of platform. With regard to the online market, governments should be encouraged to eschew laws and regulations that would require preapproval for streaming services' vast libraries.

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 IPEF fair and resilient trade pillar and is ready to provide further information or answer questions if we can be of assistance.

Sincerely,



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