

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



1818 N STREET, NW, 8<sup>TH</sup> FLOOR · WASHINGTON, DC 20036 · TEL (202) 355-7924 · FAX (202) 355-7899 · WWW.IIPA.COM · EMAIL: INFO@IIPA.COM

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Mr. Douglas Bell  
Chair, Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17th Street, NW  
Washington, DC 20508

**Re: Japan's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations, 76 Fed. Reg. 76478 (December 7, 2011), Docket No. USTR-2011-0018**

Dear Mr. Bell:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to submit the views of the U.S. copyright industries on Japan's expression of interest in the proposed Trans-Pacific Partnership Trade Agreement (TPP). IIPA believes the U.S. government should warmly welcome this expression of interest. In our view, Japanese participation in a TPP agreement with strong copyright law and enforcement standards would greatly benefit the U.S. economy as a whole, and, in particular, the critical sectors of our economy that depend on copyright protections.

## About IIPA

The IIPA is a private sector coalition of seven trade associations representing U.S. copyright-based industries. IIPA works to improve international protection and enforcement of copyrighted materials, and to open up foreign markets closed by piracy and other market access barriers. IIPA's seven member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world. These materials include all types of computer software, including business applications software and entertainment software (such as videogame discs and cartridges, personal computer CD-ROMs, and multimedia products); theatrical films, television programs, DVDs and home video, and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and fiction and non-fiction books, education instructional and assessment materials, and professional and scholarly journals, databases and software. Members of the IIPA include the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Entertainment Software Association (ESA), the Independent Film & Television Alliance (IFTA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA), and the Recording Industry Association of America (RIAA).

## Benefits of the TPP

IIPA has been a strong supporter of the concept of a TPP Free Trade Agreement (FTA) since its inception. The FTAs currently in force contain strengthened copyright protection and enforcement standards that go beyond the globally required minima. They also contain other important market access provisions to enable increased exports and foreign sales of products and services protected by copyright. The U.S. economy has already reaped significant benefits in key export markets from implementation of these strengthened standards and market access commitments. Those benefits will be further enhanced by the coming into force of the recently ratified Colombia, Panama and Korea FTAs. Further benefits can be expected from the adoption and implementation of state-of-the-art copyright standards, consistent and coextensive with those already featured in existing FTAs, in markets of our current TPP negotiating partners, such as Vietnam, New Zealand, Malaysia, and Brunei Darussalem. While inadequate legal protections and insufficient enforcement policies against widespread copyright infringement remain the leading barriers to full access by the U.S. copyright industries to these markets, the TPP negotiating process also offers the prospect for lowering other onerous market access barriers in some of these markets.<sup>1</sup>

## Japanese Participation in TPP

Japan is an extremely important export and foreign sales market for all the U.S. copyright industries.<sup>2</sup> It already has a relatively strong and modern copyright law, responsive copyright enforcement agencies, and few significant market access barriers for products and services protected by copyright. It would, however, need to make some important changes to its laws and enforcement practices in order to meet the higher standards that should be embodied in the TPP agreement. Some of these changes include:

- More effective enforcement tools against online copyright infringements, including improvements to the notice-and-takedown process, and the removal of impediments to voluntary cooperation among rights holders and providers of Internet-related services to combat online theft;
- Reform of Japan's private copying exception, to exclude from the exception the downloading of all types of copyright works from known infringing sources (currently only audio and video recordings are so excluded), and to provide criminal penalties for such downloading in appropriate circumstances;

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<sup>1</sup> For a further summary of IIPA's views on the TPP process in general, see the comments filed in January 2010 in response to a Federal Register notice on the TPP, at <http://www.iipa.com/pdf/IIPAWrittenStatementonProposedTransPacFTA012510.pdf>

<sup>2</sup> For instance, Japan's home entertainment market is the second largest in the world, and it has a robust level of broadband penetration, with 36 million broadband homes. It is thus a very important consumer market for a wide range of copyrighted materials, delivered both in optical disc formats and online.

- Extension of terms of copyright protection for all works, including sound recordings, to comply with evolving global norms;
- More effective, predictable and deterrent remedies for infringement, including pre-set statutory damages;
- Seamless legal protections for the use of technological protection measures, including clearer definitions and more comprehensive civil and criminal remedies;
- Elimination of costly and burdensome requirements for formal legal complaints from right holders before criminal copyright cases can be prosecuted.

Japan's participation in a strong TPP agreement, under which it would address these and other shortfalls in its current copyright law and enforcement regime, would be highly beneficial to the creative and innovative sectors of the economy in both countries. Inclusion of Japan within such a TPP agreement would also provide a useful mechanism for our two countries, along with other TPP partners, to settle trade-related intellectual property disputes that may arise, and would provide a strong framework to serve as a basis for updating copyright law and enforcement standards in response to future changes in technology, markets, or patterns of copyright piracy.

A comprehensive TPP agreement that includes Japan would set a much more significant precedent for other Asia-Pacific markets than a similar TPP agreement without Japan. It would also have a much greater positive impact on U.S. jobs, exports, and competitiveness. As USTR noted at the time it formally launched the TPP negotiations, "expanding U.S. exports to the Asia-Pacific region can contribute significantly to further job growth and economic recovery for America's working families."<sup>3</sup> This potential would be greatly enhanced were the TPP agreement to embrace one of our largest export markets – Japan – in addition to those countries now participating in the negotiations.

For these reasons, IIPA applauds Japan's expression of interest in TPP participation, and urges the US government to pursue the goal of such participation as a high priority.

Respectfully submitted,



Steven J. Metalitz  
On behalf of  
International Intellectual Property Alliance

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<sup>3</sup> See <http://www.ustr.gov/about-us/press-office/fact-sheets/2009/december/economic-opportunities-and-tpa>.