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Edward Gresser
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Written Comments of the International Intellectual Property Alliance (IIPA) in Response to Office of the United States Trade Representative’s Request for Comments on Negotiating Objectives for a U.S.-European Union Trade Agreement, 83 Fed. Reg. 57256 (November 15, 2018)

Dear Chairman Gresser:

The International Intellectual Property Alliance (IIPA) provides these comments in response to the above-captioned Federal Register Notice (FRN) requesting written submissions on negotiations with the European Union (EU) for a U.S.-EU Trade Agreement (Agreement). The FRN referenced the July 25, 2018 joint statement between President Trump and European Commission President Jean-Claude Juncker (Joint Statement), and requested comments on a limited set of issues that will inform negotiating objectives for the Agreement. Notably, the FRN does not explicitly reference a number of U.S. trade priorities, including intellectual property rights or digital trade. The Joint Statement similarly identified a discrete set of trade and investment issues on which the U.S. and EU will work together, with the only reference to intellectual property rights being a high-level commitment to “join forces to protect American and European companies better from unfair global trade practices,” including “intellectual property theft.”

IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve international protection and enforcement of copyrighted materials and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include [Association of American Publishers](http://www.publishers.org) (www.publishers.org), [Entertainment Software Association](http://www.theesa.com) (www.theesa.com), [Independent Film & Television Alliance](http://www.ifta-online.org) (www.ifta-online.org), [Motion Picture Association of America](http://www.mpa.org) (www.mpa.org), and [Recording Industry Association of America](http://www.riaa.com) (www.riaa.com). Collectively, IIPA’s five-member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world. These include entertainment software (including interactive video games for consoles, handheld devices,

personal computers and the Internet) and educational software; motion pictures, television programming, 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 in all formats.

In December 2018, IIPA released the latest update of its comprehensive economic report, *Copyright Industries in the U.S. Economy: The 2018 Report*, prepared by Stephen E. Siwek of Economists Inc. According to the report, the “core” copyright industries in the U.S. generated over \$1.3 trillion of economic output in 2017, accounting for 6.85% of the entire economy. The core copyright industries also employed approximately 5.7 million workers in 2017, accounting for 3.85% of the entire U.S. workforce, and 4.54% of total private employment in the U.S. These are good jobs: copyright industry workers earn on average 39% higher wages than other U.S. employees. The core copyright industries also outpaced the U.S. economy, growing at an aggregate annual rate of 5.23% between 2014 and 2017, while the U.S. economy as a whole grew by 2.21%. When factoring in other industries that contribute to the copyright economy (which together make up the “total” copyright industries), the numbers are even more compelling, as detailed in the report. Finally, the report highlights the positive contribution of selected copyright sectors to the U.S. overall trade balance. In 2017, these sectors contributed \$191.2 billion in foreign sales and exports, exceeding that of many other industry sectors, including chemicals, aerospace products and parts, agricultural products, and pharmaceuticals and medicines.¹ Studies such as this amply demonstrate the contribution of creators, and the copyright-based industries that support them, to the American economy. They also highlight what is at stake if those creators and industries have to face the additional hurdles and costs associated with obstacles such as copyright piracy and discriminatory market barriers.

The United States and the European Union are leaders in the innovative and creative industries. Their growth is at least in part fostered by common traditions of robust domestic

¹See Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2018 Report* (December 6, 2018) available at <https://iipa.org/reports/copyright-industries-us-economy/>. Core copyright industries are those whose primary purpose is to create, produce, distribute, or exhibit copyright materials. The link between copyright protection and economic growth is well documented by the World Intellectual Property Organization (WIPO) in its report, *2014 WIPO Studies on the Economic Contribution of the Copyright Industries: Overview*, available at http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/economic_contribution_analysis_2014.pdf, and the WIPO website now provides links to 49 country studies employing virtually the same agreed-upon methodology, see <http://www.wipo.int/copyright/en/performance/>. These national studies provide the economic underpinnings for efforts to reform copyright law, improve enforcement, and lower market access barriers. The Motion Picture Association Asia Pacific has issued a series of “Economic Contribution of the Film and Television Industry” studies. The most recent editions of these studies include: China (2015), Australia (2015), Hong Kong (2015), Japan (2015), Malaysia (2014), India (2013), Taiwan (2013), Shanghai (2012), New Zealand (2012), Indonesia (2012), Thailand (2012), and South Korea (2012). See Motion Picture Association Asia-Pacific, *Research and Statistics*, available at <http://mpa-i.org/research-and-statistics/>. See also UK Music’s *The Economic Contribution of the Core UK Music Industry (2013)* available at http://www.ukmusic.org/assets/general/The_Economic_Contribution_of_the_Core_UK_Music_Industry_WEB_Version.pdf, and PWC’s *Economic contribution of the New Zealand music industry, 2012 and 2013* (2014), available at <http://www.wecreate.org.nz/wp-content/uploads/2014/07/PWC-Music.pdf>. See also Economists Inc.’s *Video Games in the 21st Century: The 2014 Report* (2014), available at http://www.theesa.com/wp-content/uploads/2014/11/VideoGames21stCentury_2014.pdf.

copyright regimes and active roles on the forefront of the development of international norms in the area of copyright protection and enforcement. The unique trade relationship between our two economies in copyright matters is built upon decades of positive cooperation, in both bilateral and multilateral settings. Bilaterally, the Transatlantic Intellectual Property Rights (IPR) Working Group (TIPRWG) has been an important platform to affirm the importance of strong IPR protection and enforcement in the United States, in the European Union, and in third countries. Multilaterally, including before the World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) and alongside many other key trading partners, the United States Government and the European Commission have made important advances to establish international norms that provide the level of protection needed to promote the creative industries in the modern era.

It is therefore critical that, regardless of the limited scope, nothing in these negotiations, or in the US-EU bilateral engagement generally, diminish the high levels of copyright protection already achieved in the U.S. and EU markets. These high levels of protection are necessary for the creative and knowledge-based industries, and our economies as a whole to prosper. The current copyright framework already faces significant challenges from global copyright piracy, particularly in the digital marketplace. The current size and scope of digital piracy and its impact on the digital marketplace is substantial, although the full costs of copyright piracy are difficult to quantify. RIAA estimated that in 2016 there were over 137.3 billion visits globally to websites dedicated to copyright infringements. A 2013 NetNames study found that almost one quarter of the world's Internet bandwidth was dedicated to copyright infringement. A 2017 study "estimate[d] that the commercial value of digital piracy in film in 2015 was \$160 billion," while the corresponding estimate for the music industry was \$29 billion. The study also spells out methodological reasons why "it is most likely that the value of total digital piracy exceeds our estimates by a considerable amount."² This study does not include a comparable loss estimate for video games but discusses briefly how such an estimate might be prepared. The study also attempts to quantify the broader social and economic costs of piracy. A 2016 study by Carnegie Mellon, focused on movie piracy, determined that if piracy was eliminated in the theatrical window, then box-office revenues would increase by 15% or \$1.3 billion per year.³ This increase in revenues, largely, would be reinvested in U.S. and European films for distribution in the international marketplace.

Both the U.S. and the EU should set an example to all of our trading partners of the need to continually evolve the types of enforcement tools and levels of protection available, to ensure that these tools continue to work effectively against changing forms of illegal activities. Rampant worldwide piracy not only impedes the evolution of legitimate channels for distribution, but also threatens to permanently damage or displace existing and authorized distribution channels, which are unable to compete with infringing business models. Most damaging, piracy drains revenues from producers and their distribution partners that would

²Frontier Economics, *The Economic Impacts of Counterfeiting and Piracy* (February 2017), at pp. 23-39, available at <http://www.inta.org/Communications/Pages/Impact-Studies.aspx>.

³Ma, Liye and Montgomery, Aland and Smith, Michael D., *The Dual Impact of Movie Piracy on Box-Office Revenue: Cannibalization and Promotion*, Carnegie Mellon University (Feb 24, 2016) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2736946.

otherwise be reinvested into the financing and production of additional copyrighted works, thus stimulating more economic activity.

Moreover, by undermining the U.S. copyright industries, piracy significantly impairs one of the key drivers of U.S. trade surplus. This is also true of the other market distortions that prevent the commercial licensing of copyrighted materials. Cooperation between the U.S. and EU on third country concerns has been an important element of the Transatlantic IPR Working Group, permitting major piratical trade hubs to become the focus of shared transatlantic enforcement expertise and resources with important results. IIPA is hopeful that the commitment made in the Joint Statement for the U.S. and EU to work together on these issues will result in new mechanisms to ensure closer cooperation and collaboration between the United States and European Union to address these third market concerns.

The IIPA appreciates the opportunity to comment on the negotiating objectives for the proposed Agreement, and looks forward to further opportunities to contribute.

Respectfully submitted,



Kevin M. Rosenbaum, Counsel
International Intellectual Property Alliance