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William Schpiece
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, NW
Washington, DC 20508

RE: IIPA’s Comments Regarding Fair and Resilient Trade Pillar Related to the Development of an Indo-Pacific Economic Framework (IPEF) (87 FR 13789)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to comment on the negotiating objectives and positions for an Indo-Pacific Economic Framework (IPEF). IIPA’s comments primarily focus on the following issues identified in the above-referenced Request for Comments: digital economy-related matters, transparency and good regulatory practices, and customs and trade facilitation.

IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other barriers. Members of IIPA include: Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com).

Collectively, IIPA’s five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and distributed by IIPA-member companies 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 recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional, and assessment materials, and professional and scholarly journals, databases, and software in all formats.

In December 2020, IIPA released the latest update of its comprehensive economic report, *Copyright Industries in the U.S. Economy: The 2020 Report*, prepared by Economists Inc. (2020 Report). Based on 2019 data, the report generally does not reflect the impact of the COVID-19 pandemic on the creative industries, but it shows that the copyright industries continued to be a significant contributor to the United States economy and will likely remain so when the impact of the virus has been mitigated. According to the 2020 Report, in 2019, the “core” copyright industries in the United States: (i) generated over \$1.5 trillion of economic output; (ii) accounted for 7.41% of the entire economy; and (iii) employed approximately 5.7 million workers, which is 3.79% of the entire U.S. workforce and 4.46% of total private employment in the United States.¹

The jobs created by these industries are well-paying jobs; for example, copyright industry workers earn on average 43% higher wages than other U.S. workers. Further, according to the 2020 Report, the core copyright industries outpaced the U.S. economy, growing at an aggregate annual rate of 5.87% between 2016 and 2019, while the U.S. economy grew by 2.48%. When factoring in other industries that contribute to the copyright economy (which together comprise what the 2020 Report calls the “total” copyright industries), the numbers are even more compelling. The 2020 Report and statistics amply demonstrate the economic importance of the copyright industries to the U.S. economy and to the livelihoods of millions of American workers, as well as the value of improving protection, enforcement, and market access abroad.

Additionally, the 2020 Report highlights the positive contribution of selected copyright sectors to the U.S. overall trade balance. In 2020, these sectors contributed \$218.8 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.

Studies such as the 2020 Report amply demonstrate the contribution of creators, producers, workers, and the creative industries that support them, to the American economy. They also highlight what is at stake if those creators, producers, workers, and industries have to face the additional hurdles and costs associated with obstacles such as copyright piracy and other barriers,

¹ See Economists Incorporated, *Copyright Industries in the U.S. Economy: The 2020 Report* (December 7, 2020) available at <https://iipa.org/reports/copyright-industries-useconomy/>. 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 has been well documented by the World Intellectual Property Organization (WIPO). See, e.g., WIPO Studies on the Economic Contribution of the Copyright Industries: Overview (2014), available at http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/economic_contribution_analysis_2014.pdf. The WIPO website provides links to 51 country studies employing virtually the same agreed-upon methodology as the Economists Inc. methodology. See <http://www.wipo.int/copyright/en/performance/>. For the video game industry, see a December 2020 report by ESA Video Games in the 21st Century: The 2020 Economic Impact Report, available at <https://www.theesa.com/wp-content/uploads/2019/02/Video-Games-in-the-21st-Century-2020-Economic-Impact-Report-Final.pdf>. This report highlights how video games provide not only rich interactive entertainment experiences, but also power an innovative industry that has a significant impact on U.S. economic growth and jobs. For the music industry (RIAA), see the 2018 Jobs & Benefits Report (currently being updated): <http://www.riaa.com/wp-content/uploads/2018/04/US-Music-Industries-Jobs-Benefits-SiwiekEconomists-Inc-April-2018-1-2.pdf> and, the 50 States of Music website – <https://50statesofmusic.com/> – that provides (qualitative and quantitative) state-by-state contributions. There are also music industry reports on employment and economic contributions in specific regions, e.g., Europe, available at https://www.ifpi.org/wpcontent/uploads/2020/11/IFPI_music_in_Europe_WEB_spreads.pdf, as well as in specific countries, e.g., India, available at https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/IMI%20report_singlePage.pdf. For the motion picture industry (MPA), see the 2019 U.S. economic contribution infographic, available at https://www.motionpictures.org/wpcontent/uploads/2020/02/MPA_Economic_contribution_US_infographic_2019_Final.pdf.

particularly in the digital environment. That is why any IPEF agreement should address issues that ensure a level playing field for the creative industries in the region, as discussed below.

Digital Economy-Related Matters

As Ambassador Katherine Tai noted in her recent remarks on digital trade, “it is important to recognize that there is no bright line separating digital trade from the digital economy – or the “traditional” economy for that matter. Nearly every aspect of our economy has been digitized to some degree.”² Ambassador Tai continued that “[o]ur efforts to formulate and pursue digital trade policies should, therefore, begin with a high level of ambition to be holistic and inclusive.”³

For two decades, the copyright industries have been at the forefront of digital technological advances, creating and disseminating copyrighted materials using a wide variety of media and ever-more sophisticated systems (including new services and applications) and new digital business models. The end-result of these digital technological advances is that more copyrighted material is now legally available, in more diversified ways and with more varied pricing options, than at any other time in history, for the enrichment and enjoyment of consumers.⁴

To meet worldwide demand, the copyright sector, more than any other in the U.S. economy, has moved aggressively to digitally deliver its products and services across borders, inextricably linking “digital trade” with trade in copyright-protected material. As a result, the U.S. copyright industries, as much as any industry, depend on strong rules and practices for digital trade. Consistent with Ambassador Tai’s call for digital trade policies to have a “high level of ambition” and be “holistic and inclusive,” any IPEF agreement should therefore ensure a level playing field for American creative industries to compete in the digital marketplace.

The U.S. creative industries seek to license and distribute their content to both large and niche online platforms around the world in addition to launching their own streaming platforms to reach global audiences. The International Trade Commission (ITC) found that the global digital content market reached \$89.5 billion in total revenue in 2016.⁵ Moreover, the U.S. Department of

² Remarks of Ambassador Katherine Tai on Digital Trade at the Georgetown University Law Center Virtual Conference, November 2021, available at <https://ustr.gov/index.php/about-us/policy-offices/press-office/speeches-and-remarks/2021/november/remarks-ambassador-katherine-tai-digital-trade-georgetown-university-law-center-virtual-conference>.

³ *Id.*

⁴ For example, there are now over 90 million licensed tracks on some of the major music streaming services. *See e.g.*, <https://www.apple.com/au/apple-music/> and <https://www.amazon.com/music/unlimited> and hundreds of digital music services. The number of subscriptions to online video services around the world increased to 1.3 billion in 2021, a 14% increase compared to 2020. <https://www.motionpictures.org/wp-content/uploads/2022/03/MPA-2021-THEME-Report-FINAL.pdf>. For more information generally on the proliferation of services, see, <https://www.motionpictures.org/watch-it-legally/> (movies and television content); and <http://www.whymusicmatters.com>, <http://www.pro-music.org/>, and the IFPI Global Music Report 2021 at <https://gmr2021.ifpi.org> (music). For entertainment software, the number of active gamers worldwide reached 3 billion in 2021, an increase from 2.3 billion gamers in 2018. Newzoo, *The Games Market and Beyond in 2021: The Year in Numbers* at <https://newzoo.com/insights/articles/the-games-market-in-2021-the-year-in-numbers-esports-cloud-gaming/?msclkid=253ca1dfb0f611ec8b7a27790b7520d8>.

⁵ United States International Trade Commission, *Global Digital Trade 1: Market Opportunities and Key Foreign Trade Restrictions*, p. 21, 87, available at https://www.usitc.gov/publications/332/pub4716_0.pdf.

Commerce noted that charges for the use of intellectual property, which includes copyrighted content, accounted for \$124.5 billion of a total of \$403.5 billion of potentially ICT (information and communications technology)-enabled services exports, or 31%.⁶ It also found that charges for the use of intellectual property accounted for \$80 billion out of a total trade surplus of \$159.5 billion of potentially ICT-enabled services, or over 50%.⁷ It has only grown since 2016. The vast majority of this content is produced in the United States. According to the Department of Commerce's Bureau of Economic Analysis (BEA), in 2020 intellectual property (IP) licensing amounted to over \$34 billion in information and communications technology (ICT)-enabled services exports and \$113.8 billion in potentially ICT-enabled services exports.⁸ Digital trade is critical to the American creative industries, which in turn play a leading role in ensuring that the U.S. digital economy thrives.

The film and television industry reports that in 2020, streaming subscriptions surpassed the one billion mark and grew 14 percent in 2021 to reach 1.3 billion.⁹ Online video subscriptions became the second largest subscription revenue market in the world in 2021, surpassing satellite TV, as a result of a \$17.9 billion, or 26%, increase.¹⁰ Global digital home and mobile entertainment reached US\$ 71.9 billion.¹¹ In the United States alone in 2021, scripted original series released on online services reached nearly 700 series¹² and nearly 180 original films exclusive to online services were released.¹³

The music industry reports that 2020 saw growth in eight of the top 10 markets globally, largely driven by streaming.¹⁴ Streaming revenues grew by 19.9% in 2020 to US\$13.4 billion. Paid subscription streaming was the key driver of this, growing 18.5%.¹⁵ Streaming had a 62.1% share of global revenue in 2020, up from 55.7% in 2019, 28.3% growth in users of subscription streaming services, and an increase of 80 million subscription streaming accounts globally in 2020.¹⁶ Shridhar Subramaniam, President, Strategy and Market Development, Asia and Middle East, Sony Music, explained how digital is changing the music market, noting that:

The relationship between an artist and a fan is actually no longer artist: fan—it's creator: co-creator. There are similar things happening in games, whether it's the Travis Scott or Lil Nas X concerts (in Fortnite and Roblox respectively), these are

⁶ U.S. Department of Commerce, *Digital Trade in North America*, p 4, available at <https://www.commerce.gov/sites/default/files/media/files/2018/digital-trade-in-north-america.pdf>.

⁷ *Id.*

⁸ See Bureau of Economic Analysis (BEA), International Data, Table 3.1. U.S. Trade in ICT and Potentially ICT-Enabled Services, by Type of Service, available at <https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=9&isuri=1&6210=4#reqid=62&step=9&isuri=1&6210=4>.

⁹ MPA, 2021 Theatrical and Home Entertainment Market Environment (THEME) Report, p. 5 and 15, available at <https://www.motionpictures.org/wp-content/uploads/2022/03/MPA-2021-THEME-Report-FINAL.pdf>.

¹⁰ *Id.*

¹¹ *Id.* at 8.

¹² *Id.* at 5 and 23.

¹³ *Id.* at 5 and 24.

¹⁴ International Federation of the Phonographic Industry's (IFPI's) 2021 Global Music Report, p. 10.

¹⁵ *Id.* at 13.

¹⁶ *Id.* at 57.

immersive experiences, where I can get a specific avatar and I can participate in many different ways. Nobody is a passive fan anymore; you're engaged—through live streaming, through video games, or short-form video.¹⁷

Moreover, the International Federation of the Phonographic Industry's (IFPI's) 2021 Global Music Report provided an example of the unique ways the music industry is using digital means to share music with fans. During the pandemic when live concerts were not possible, artist Travis Scott held an immersive concert experience in the game *Fortnight*.¹⁸ At one point the concert had 12.3 million concurrent players and a total 28 million unique players from around the globe who joined across five airings of the concert titled *Astronomical*.¹⁹ Including repeat viewers, fans showed up for the event a total of 46 million times and of the five tracks performed within the concert game only one was new, and overall streams after the game were 372 million globally.²⁰

The video game industry is also a leader in driving the adoption of new technologies such as, for example, pioneering the digital distribution of interactive entertainment through various platforms such as PCs or smartphones, and also harnessing virtual, augmented, and mixed reality software, hardware, and accessories to create interactive experiences that push the envelope in innovation. Citing an article by Jacob Sobolev, the video game industry reports that a rough estimate of the number of digitally released video games is 1,181,019 games, which includes 33,554 games on Steam, 199 games on Uplay, 3,125 games on GoG, 327,491 games on Google Play, 811,911 games on the App Store, 1,893 games for the PS4, 1,760 games for the Xbox One, and 2,330 games for the Nintendo Switch.²¹

The publishing industry reports that e-book sales made up 11.3 % of total book sales and digital audio books made up 8.6% of total book sales in 2021 of publishers who reported.²² E-book revenues were down 4.7 percent as compared to calendar year 2020, but still totaled US\$1.1 billion.²³ Downloaded audio format was up 13.4%, at US\$766.2 million in revenue.²⁴

Policies should uphold high standards of copyright protection and enforcement

Because the single-most damaging barrier to digital trade faced by the creative industries is digital piracy, it is extremely important that any outcome on digital economy issues does not in

¹⁷ *Id.* at 26.

¹⁸ *Id.* at 31.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Simon Tripp, Martin Grueber, Joseph Simkins, and Dylan Yetter of TEconomy Partners, LLC, *Video Games in the 21st Century: The 2020 Economic Impact Report*, prepared for the Entertainment Software Association (ESA), p. 23, available at <https://www.theesa.com/video-game-impact-map/wp-content/uploads/sites/2/2020/12/Video-Games-in-the-21st-Century-2020-Economic-Impact-Report-Final.pdf>.

²² Association of American Publishers (AAP), *December 2021 StatShot Report: Publishing Report up 2.8% for month, and 12.2% Calendar 2021*, reporting revenue data from approximately 1,360 publishers, although participation may fluctuate slightly from report to report, available at <https://publishers.org/news/%e9%bf%bcaap-december-2021-statshot-report-publishing-industry-up-2-8-for-month-and-12-2-calendar-2021/>.

²³ *Id.*

²⁴ *Id.*

any way reduce or undermine high standards of copyright protection, including obligations in the WIPO Internet Treaties and the WTO TRIPS Agreement. It is critical that as the U.S. negotiates the IPEF digital trade provisions, that it ensures that those provisions do not undermine high standards of copyright protection and enforcement. IPEF should promote the creative industries as discussed below, including by doing no harm to the copyright protections on which our industries rely.

In addition, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (collectively the WIPO Internet Treaties), which set the global minimum standards for providing copyright holders with the full panoply of exclusive rights in the digital networked environment, are fundamental to digital trade of copyrighted works and sound recording. In particular the WIPO Internet Treaties require trading partners to “provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures.”²⁵ Technological protection measures (TPMs) are a cybersecurity tool used by the creative industries. TPMs include “access controls” that prevent unauthorized access to copyrighted works and “copy controls” that protect the exclusive rights granted to copyright owners, such as measures preventing unauthorized reproduction. To circumvent a TPM means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a TPM, without the authority of the copyright owner. Protecting against circumvention and trafficking of circumvention devices is therefore essential to the digital trade of copyrighted works. TPMs allow the creative industries to license and distribute content around the world. As such, IPEF partners should accede to and implement these foundational treaties.

Cross-border data flows and data localization

IIPA members rely on digital infrastructure to deliver content around the world in a variety of methods, offering copyright works as digital goods and through copyright-driven online services. The cross-border transfer of digital works also permits creators across the globe to collaborate, sometimes in real-time, in the production of creative works. For example, many motion pictures are filmed, at least in part, overseas and therefore, the production process requires the cross-border transfer of digital works. Moreover, the development and maintenance of state-of-the-art video games often depend on the cross-border transfer of digital works. Copyright laws protect the exclusive rights of copyright owners to determine whether, to what territories, and the manner in which, their digital goods and services are produced, reproduced, and delivered. Any negotiations regarding digital trade must ensure that these exclusive rights are not undermined by regulation of cross-border data flows and data localization.

Other constraints and restrictions on over-the-top services

Many governments around the world are considering or have imposed other constraints and restrictions on digital “over the top” (OTT) services that in many instances discriminate against the U.S. motion picture and television industry. Such restrictions include local content

²⁵ WIPO Copyright Treaty, Article 11 and WIPO Performances and Phonograms Treaty, Article 18.

quotas and prominence requirements; dubbing requirements; and foreign investment restrictions. Any framework on the digital economy should prioritize non-discrimination of digital products and services and promote light touch regulation to avoid stifling innovation and to encourage further development of this sector.

Transparency and good regulatory practice issues

In any form of trade, digital or otherwise, transparency and good regulatory practice are essential. That includes at a minimum, notice of laws or regulations a government is considering and a meaningful opportunity for stakeholder input. Notice should be in a manner that all interested stakeholders would see, not only in local or regional publications. Also, a “meaningful opportunity” means that stakeholders have sufficient time to review the proposal and comment on it. It also includes a detailed review of those comments by the government, and engagement with stakeholders to discuss further. Transparency requires that all stakeholder comments are public.

Customs and trade facilitation issues

The World Trade Organization (WTO) established a moratorium prohibiting customs duties on electronic transmissions in a 1998 Declaration on Global Electronic Commerce, which has been periodically renewed ever since. Similarly, U.S. trade agreements since the 2001 U.S.-Jordan Free Trade Agreement through the U.S.-Mexico-Canada Agreement include a prohibition against such duties. Prohibiting duties on electronic transmissions has been critical to fostering digital trade, including by ensuring that cumbersome customs procedures do not hamper the dynamic online marketplace that is central to the U.S. creative industries’ global competitiveness. IIPA urges the U.S. government to continue to ensure trading partners refrain from imposing duties on electronic transmissions, which would significantly harm the creative industries and threaten U.S. jobs.

Periodically, countries have adopted or considered customs valuation practices for entertainment products that would be out of line with international best practices, for example, policies to assess duties on the value of the content rather than the underlying carrier media. This revenue-generating measure is highly unpredictable and, in some cases, cost prohibitive. Additionally, product taxes, often on the federal, state, and municipal levels, is sometimes significant.

Other measures or practices, including those of third-country entities, which undermine fair market opportunities for U.S. workers, farmers, ranchers, and businesses

IIPA’s 2022 Special 301 submission includes detailed discussions on other measures or practices that undermine fair market opportunities for the copyright industries in many Indo-Pacific markets, including India, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam.²⁶

²⁶ IIPA’s 2022 Special 301 Submission, February 2022, available at <https://www.iipa.org/files/uploads/2022/01/2022-SPEC301-3.pdf>.