



**WRITERS
GUILD OF
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Mr. Douglas Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508
Submitted via: www.regulations.gov

Re: Docket No. USTR-2013-0019; Request for Comments Concerning the Proposed Transatlantic Trade and Investment Partnership

Dear Mr. Bell:

Writers Guild of America, West, Inc. (WGAW) appreciates the opportunity to submit comments as the Office of the United States Trade Representative prepares for negotiations on the proposed Transatlantic Trade and Investment Agreement (TITP).

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, “WGA”). The content our members create is a major U.S. export and is enjoyed by consumers around the world. U.S. film and television services exports totaled \$13.5 billion in 2010.¹ International ticket sales for U.S. feature films were \$23.9 billion in 2012.² Access to consumers in foreign markets fuels continued investment in domestic film and television production and provides significant compensation to writers in the form of residual payments for international use of such works. For example, 20 percent of television residual payments to writers in 2012 were derived from international licensing of television programs.

¹ American Motion Picture and Television Industry, “The Economic Contribution of the Motion Picture & Television Industry to the United States,” 2012, <http://www.mpaa.org/Resources/6f8617ae-bdc7-4ff2-882e-746b1b23aba9.pdf>.

² Richard Verrier, “International box office revenues soared in 2012, MPAA reports,” LA Times, 3/21/2013, <http://articles.latimes.com/2013/mar/21/entertainment/la-et-ct-mpaa-report-20130321>.

As the bargaining representative of audiovisual content creators, the WGAW has a significant interest in the legal distribution of creative content across borders. The growth of the Internet as a video platform provides new opportunities for content distribution. The ease with which video and other forms of content can now cross borders because of the Internet makes it possible for content creators to widen their audience. The Internet also represents an independent distribution platform that can enhance competition. While television and film distribution is controlled by a handful of powerful media companies, the low entry barriers of the Internet make it possible for anyone to distribute content to consumers. This is only possible if the Internet is kept open.

At the same time, the Internet has also made it easier to illegally distribute copyrighted works . The WGAW has a substantial interest in the protection of copyrighted works. Guild members rely on residuals – deferred compensation based on the continuing use of creative works – as a vital form of compensation. Residual compensation represents one-quarter of total writer compensation each year. Residual payments derived from the reuse of content are essential to sustain careers and support industry health and pension plans. These payments serve as research and development funding for the entertainment industry, allowing writers to develop new material while waiting for their next employment opportunity. Any devaluation of copyrighted content could significantly diminish the ability of writers to spend time developing new content. Strong enforcement of copyright law benefits society as well. The ability to generate revenue through the exploitation of intellectual property provides funds that can be reinvested and fuel further innovation in many industries, including entertainment. Piracy threatens the ability to sustain and develop content. As such, the WGAW supports efforts to reduce copyright infringement.

We are encouraged that the final report of the US-EU High Level Working Group on Jobs and Growth (HLWG) includes a commitment to protecting intellectual property rights through enforcement and mutual cooperation.³ We urge the USTR to use these negotiations to further expand market access with an important trade partner

Policies Should Diminish Copyright Infringement while Protecting the Open Internet

In 2012, widespread political opposition led to the failure of the Stop Online Piracy Act (SOPA) in the U.S. House of Representatives and the Anti-Counterfeiting Trade Agreement (ACTA) in the European Parliament. Consumers and open Internet advocates rallied against SOPA and ACTA because of concerns that the proposed anti-piracy measures--including secondary liabilities for Internet service providers and affirmative policing requirements--would stifle free expression online and limit competition. SOPA included broad and vague definitions of what constituted an infringing site, such that video aggregation sites that allow content creators and users to distribute their works without gatekeeper approval could have been subject to liability even where they made efforts to remove infringing content when notified. SOPA's imprecise and overbroad language raised significant concerns about its impact on free speech, due process and a competitive market.

³ Office of the United States Trade Representative, "Final Report of the U.S.-EU High Level Working Group on Jobs and Growth," 2/11/2013, available at <http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg>.

Piracy is a crime and should be treated as such. The financial well-being of WGAW members and the creative community largely depends on the protection of copyrighted works. But to use the threat of piracy to require widespread content filtering or blocking would fundamentally alter the open nature of the Internet, and would limit competition and reduce opportunities for independent distribution. Protection of intellectual property rights in the TITP should respect open Internet principles.

Legal Access to Content through Legitimate Distributors Can Diminish Piracy

Promoting legal access to content through online video services such as Amazon Prime, Hulu and Netflix is perhaps the most effective method of curbing piracy. Netflix's low-cost subscription streaming service has attracted 32 million subscribers and is expanding to foreign markets. Netflix Chief Content Officer Ted Sarandos recently noted a correlation between launching Netflix in new territories and reduced BitTorrent traffic in those same regions.⁴ This effect has already been seen in the United States, where Internet traffic from Netflix exceeded traffic from BitTorrent sites in 2011. Sandvine, a research company that analyzes Internet traffic, found that Netflix was responsible for 33 percent of Internet traffic in 2012 while BitTorrent's share was 12 percent.⁵

Other online video distribution services are growing as well. Amazon has doubled its video library over the last year through licensing deals with content owners, such as Epix (co-owned by Lionsgate, Paramount and MGM), which will make popular content like *The Avengers* and *The Hunger Games* available on Amazon Prime Instant Video.⁶ Amazon offers low cost rentals and downloads, providing an accessible and legal service for consumers to stream content. Hulu reports that its paid subscribers doubled over the last year to 4 million and that revenue grew to \$695 million in 2012.⁷ Hulu's affordable \$7.99 monthly subscription fee gives access to a library of 70,000 full length television episodes, including original content and programs currently in release on broadcast and cable networks. Subscriber growth, legal traffic growth and investment in content for online distribution confirm the potential of the Internet to become another successful platform for content. Even the Recording Industry Association says, "The single most effective anti-piracy strategy is to help build a thriving legal marketplace."⁸ A goal of the TITP should be to help expand these types of services in Europe.

While combating piracy is an important objective, anti-piracy efforts must be balanced with the equally important objectives of free speech, due process, the protection of privacy and an open Internet. Any trade partnership initiatives that target copyright infringement must be carefully

⁴ Craig Lloyd, "Netflix: piracy rate goes down when we arrive," Slash Gear, 5/3/2013, <http://www.slashgear.com/netflix-piracy-rate-goes-down-when-we-arrive-03280546/>.

⁵ Ryan Singel, "Netflix Beats BitTorrent's Bandwidth," 5/17/2011, Wired, <http://www.wired.com/business/2011/05/netflix-traffic/>.

⁶ Ian Sherr and Ben Fox Rubin, "Amazon Adds Epix Content in Blow to Netflix," Wall Street Journal, 9/5/2012, <http://online.wsj.com/article/SB10000872396390444301704577631342458272750.html>.

⁷ Brian Stelter, "Hulu Says Number of Paid Subscribers Has Doubled," New York Times, 4/30/2013, <http://www.nytimes.com/2013/05/01/business/media/hulu-says-it-has-4-million-paid-subscribers-double-last-years-total.html>.

⁸ "Why We Do What We Do," RIAA Website, http://www.riaa.com/physicalpiracy.php?content_selector=piracy-online-why-we-do-what-we-do.

developed to ensure that the Internet is not constrained as a competitive platform for free expression.

Respectfully submitted,

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