

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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

**Re: Mexico's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations,
76 Fed. Reg. 76479 (December 7, 2011), Docket No. USTR-2011-0020**

Dear Mr. Bell:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to submit the views of the U.S. copyright industries on Mexico's expression of interest in the proposed Trans-Pacific Partnership Trade Agreement (TPP).

IIPA welcomes this expression of interest from the Government of Mexico, and endorses Mexico's participation. Mexico has demonstrated leadership at the international level in promoting modern and effective protection of intellectual property, and we look forward to its continued leadership in the TPP and other fora. At the same time, we note that Mexico's legal and enforcement structures are in need of urgent improvement, and would not, at present, afford the kind of protection for copyrighted works that we would expect from a TPP partner. Thus, to enhance the commercial benefits of Mexico's TPP participation, it is important that the U.S. Government work with the Government of Mexico to significantly improve Mexico's copyright legal and enforcement regime to meet the higher standards of intellectual property rights (IPR) protections that we expect to be embodied in the TPP. Recognizing these deficiencies, however, it is imperative that Mexico's participation does not impede progress in the TPP IP negotiations or weaken the Agreement's IP disciplines. An improved Mexican IPR regime, along with its participation in a TPP with strong IPR provisions, would greatly benefit the U.S. and Mexican economies as a whole, and, in particular, the critical sectors of our economies that depend on copyright protections.

About IIPA

The IIPA is a private sector coalition of seven trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts working to improve international protection and enforcement of copyrighted materials and open up foreign markets closed by

piracy and other market access barriers. IIPA's seven member associations (listed below) represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world – 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 in all formats. The members of the IIPA are: 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 enhance international disciplines in the IPR arena. They also contain important market access provisions that 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. In addition to addressing inadequate legal protections and insufficient enforcement policies against widespread copyright infringement that are significant 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.¹

Mexico's Participation in the TPP

Mexico is a very important export and foreign sales market for all the U.S. copyright industries. Unfortunately, this market is severely hampered due to high levels of piracy of copyrighted works, including: various forms of Internet piracy; CD-R and DVD-R burning of music, audiovisual and videogame discs; unauthorized camcording in theaters; unlicensed use of software in corporate and government settings; unauthorized photocopying at universities; and widespread sale of all hard copy material in street markets. The Mexican authorities, notably the

¹ 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>

Attorney General's Office (the PGR – responsible for federal criminal enforcement), the Mexican Institute of Industrial Property (IMPI – responsible for administrative actions under the Copyright Law) and INDAUTOR (the author's rights institute with enforcement responsibilities as well), have worked well with rights holders, including IIPA members, but these authorities need increased resources and training, and are hampered by a number of statutory deficiencies in dealing with the size and scope of the problem.

As a result of these problems, the copyright industries recommend several legal reform and enforcement steps the Government of Mexico needs to take in order to improve its IPR regime. Taking these steps would significantly improve market conditions for U.S. and Mexican rightsholders. These legal reforms include:

- Fully implementing the WIPO digital treaties – in the Copyright, Industrial Property, Criminal and Criminal Procedural Codes.
- Developing legislation calling for ISPs' cooperation to address online piracy following the direction of the CALC initiative, and including notice and takedown procedures.
- Ensuring that all relevant right holders are entitled in law and practice to operate effectively through the collecting bodies of their choice in the licensing of broadcasting, public performance and other communications to the public.
- Passing legislation to impose criminal penalties for the unauthorized camcording of films in theaters.
- Amending the Criminal Code and the Copyright Law to facilitate the imposition of criminal sanctions for the distribution and importation of devices used for the unauthorized circumvention of technological protection measures (TPMs).
- Enacting and enforcing decrees to ensure the procurement and use of legal computer software in governmental agencies, especially at the state and municipal levels.
- Strengthening administrative enforcement by: (1) providing tax crime prosecution authority; (2) increasing administrative sanctions; (3) allowing electronic (photo and video) evidence taken during inspections.

In addition to these key legal reforms, Mexico needs to undertake significant improvements in its criminal enforcement activities, including raids and prosecutions, as well as in its administrative enforcement mechanisms, and in its prosecutions by the courts where adjudication of copyright infringement faces significant delays. IIPA and its members have set out numerous enforcement recommendations in the past; these recommendations should be implemented to meet the high standards of the TPP. For a discussion of these enforcement recommendations, see the IIPA's 2011 Special 301 filing:

<http://www.iipa.com/rbc/2011/2011SPEC301MEXICO.pdf>

In sum, an improved IPR legal and enforcement regime in Mexico would improve Mexico's market for the copyright industries of TPP parties.

For the reasons stated above, IIPA supports Mexico's participation in the TPP and looks forward to using this as an opportunity to work with the Mexican government to make urgently needed improvements to its IPR legal and enforcement regime.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric J. Schwartz". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Eric J. Schwartz
On behalf of
International Intellectual Property Alliance