

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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Written Comments of the International Intellectual Property Alliance (IIPA)

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**Re: Participation of Japan in the Trans-Pacific Partnership Trade Negotiations
Request for Comments, 78 Fed. Reg. 26,682 (May 7, 2013)**

June 9, 2013

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to submit the views of the U.S. copyright industries on negotiating objectives with respect to Japan's participation in the proposed Trans-Pacific Partnership Trade Agreement (TPP). Japan is an extremely important export and foreign sales market for all the U.S. copyright industries. 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 are listed and briefly discussed in this statement.

About IIPA

The 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 open foreign markets closed by piracy and other market access barriers. IIPA's seven member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world—all types of computer software, including operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software, free software, open source software, and software as a service, entertainment software including interactive games for videogame 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 nonfiction books, education instructional and assessment materials, and professional and scholarly journals, databases and software in all formats. Members of the IIPA include Association of American Publishers, BSA | The Software Alliance, Entertainment Software Association, Independent Film & Television Alliance, Motion Picture Association of America, National Music Publishers' Association, and Recording Industry Association of America.

Copyright Negotiating Objectives with Japan

These comments focus solely on relevant trade-related intellectual property rights issues that should be addressed in the TPP negotiations (item (m) in the Federal Register Notice). [IIPA has been a strong supporter of the concept of a TPP Free Trade Agreement (FTA) since its inception. In general, we believe that the high-standard TPP agreement that the United States should be seeking must feature a level of protection for copyright that is consistent and co-extensive with the current FTAs between the U.S. and its current FTA partners (most recently the KORUS FTA Agreement). A successful TPP requires high standards of protection that take into account technological changes and that reflect the global consensus on minimum standards already embodied in international copyright treaty instruments, such as the WIPO Internet treaties; comprehensive obligations regarding copyright enforcement and the scope of criminal penalties and civil remedies; obligations to implement laws, regulations or executive decrees to prevent the unauthorized use of computer software or other protected materials within government agencies; and enforcement measures addressing online infringement, that mandate deterrent civil and criminal remedies and provide incentives for online service providers to cooperate with right holders.

Japan already has a relatively strong and modern copyright law and responsive copyright enforcement agencies. It has made recent improvements to its copyright statute and to other laws that are used in enforcing the standards that should be incorporated into the TPP. However, some significant gaps still remain, and Japan needs 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. The following is a non-exhaustive list of some of the needed changes:

- Extension of terms of copyright protection for all works, including sound recordings, to comply with evolving global norms. Although 80 countries around the world, including a majority of TPP partners, have extended terms beyond the minimum levels set by the Berne Convention and the TRIPS Agreement, Japan has done so only for one category of work – films.
- More effective, predictable and deterrent remedies for infringement, including pre-set statutory damages. Damage awards for copyright infringement in Japan often fall well short of deterrent or even fully compensatory levels. Making statutory damages available could help address this problem, and also facilitate settlements by making defendants' financial exposure more certain.
- Further strengthening of legal protections for the use of technological protection measures. Although Japan provides some protection against circumvention of technological measures copyright owners use to manage access to or copying of their works, gaps remain to be filled. These include: providing civil remedies under the Copyright Act for trafficking in technologies to circumvent copy controls (currently the law provides only a criminal offense under Art. 120bis); outlawing the act of circumvention of access controls (covered primarily by the Unfair Competition

Prevention Act); providing criminal remedies that meet global standards (for example, Art. 120bis improperly requires proof that a trafficker in circumvention devices intended to infringe copyright); and ensuring coverage of unauthorized distribution of product keys.

- 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 so downloaded are excluded from the exception (Art. 30(1)(iii)), implying that other works such as software can be downloaded from such sources with impunity.
- Elimination of costly and burdensome requirements for formal legal complaints from right holders before criminal copyright cases can be prosecuted.
- Bringing enforcement procedures and remedies up to global minimum standards. Needed changes include: authorizing the seizure and destruction of all equipment and instrumentalities used to commit infringements; explicitly outlawing the creation of or trafficking in counterfeit labels, certificate of authenticity, or software documentation; and clarifying judicial powers to enforce orders and punish violators.
- More effective enforcement tools against online copyright infringements, including improvements to the notice-and-takedown process.

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. IIPA looks forward to the conclusion of such an agreement, and stands ready to provide any further information or analysis that would be helpful to USG in advancing this goal.

Respectfully submitted,



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On behalf of
International Intellectual Property Alliance