



**MOTION PICTURE ASSOCIATION ASIA  
PACIFIC**

Hon. Don Farrell MP  
Minister for Trade and Tourism  
Via email

October 28, 2022

Dear Minister,

The Motion Picture Association (MPA) offers the following comments in response to the Department of Foreign Affairs and Trade (DFAT) notice inviting submissions from the public on the Indo-Pacific Economic Framework (IPEF).

The MPA is a trade association representing six international producers and distributors of film and television entertainment. The MPA-represented companies are:

*Walt Disney Studios Motion Pictures*  
*Netflix Studios, LLC.*  
*Paramount Pictures Corporation*  
*Sony Pictures Entertainment Inc.*  
*Universal City Studios, LLC.*  
*Warner Bros. Entertainment Inc.*

Our member companies produce and distribute a wide range of film and television content in Australia and around the world, and are committed to the growth and success of the Australian screen industry. We seek to protect and promote the safe and legal consumption of movie and TV content across all platforms.

We thank the DFAT for the opportunity to provide comments on the IPEF. MPA strongly supports efforts to expand global trade, which will enhance the screen sector's opportunities for growth and support the many Australians who rely on the industry to support themselves and their families. Below are MPA's specific comments on several of the IPEF's proposed trade elements.

General Negotiating Objectives

MPA recommends that the negotiating objectives for IPEF translate the shared values of IPEF countries into meaningful commitments. MPA agrees with the commitments made by IPEF countries to "seek to build high-standard, inclusive, free, and fair trade commitments and

develop new and creative approaches in trade and technology policy”.<sup>1</sup> MPA’s detailed comments below examine how the IPEF trade pillar can advance these general objectives.

## Digital Economy

MPA members are launching their own online streaming services and licensing content to other streaming services in markets around the globe. In 2021, the home/mobile entertainment<sup>2</sup> market, not including pay television, was worth \$71.9 billion. The overseas digital market<sup>3</sup> grew 24 percent in 2021. The Asia Pacific home/mobile entertainment market reached \$18 billion in 2021, a 17 percent increase over 2020 and a 101 percent increase over 2017.

Notwithstanding this success, MPA members confront the rampant theft of their content and a range of discriminatory practices that curb their ability to license their content and compete fairly overseas. The IPEF is an opportunity to craft a forward-looking agreement that effectively responds to these challenges and, in so doing, supports Australian workers, protects consumers, and defends against non-market economy practices. Specifically, MPA recommends:

- **Incorporate an obligation to join and implement the WIPO Internet Treaties.** The WIPO Internet Treaties are fundamental to the legal infrastructure of digital trade. To date, over 100 countries are parties to these foundational internet treaties.<sup>4</sup> These decades-old treaties require signatories to provide copyright holders with the full panoply of exclusive rights for the digital marketplace as well as protections for technological protection measures (TPMs). TPMs are the creative industry’s encryption technologies that enable a range of online digital services, including streaming and subscription services, which deliver content to consumers in a time and place convenient to them and in a manner that protects the rights of and payments to creators and producers.
- **Include an explicit obligation that enforcement procedures are equally applicable to the digital market.** Piracy services steal and disseminate content, depriving creators of millions of dollars in fair remuneration that they would otherwise use to fund Australian production and employ thousands of Australians. Piracy also has negative consequences for Australians in terms of cyber safety – among other impacts, almost 50% of teens have been exposed to age-inappropriate content according to a 2021 report by Creative Content Australia.<sup>5</sup>
- **Ensure protections for contractual freedom.** Such a provision ensures that a country may not pass laws that undermine the ability of private parties to enter into mutually

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<sup>1</sup> DFAT, *Launch of the IPEF – Joint Statement*, May 23, 2022. <<https://www.dfat.gov.au/news/media-release/launch-indo-pacific-economic-framework-prosperity-ipef-joint-statement>>

<sup>2</sup> *Home/mobile entertainment* refers to entertainment content viewed on all devices, whether home-based (e.g., TVs) or mobile-based (e.g. smart phones). This includes both digital methods (electronic sell-through (“EST”), video-on-demand (“VOD”), and paid subscription streaming (subscription video-on-demand (“SVOD”) – excluding virtual pay TV – and physical methods (Blu-ray and DVD sales and rentals). *Digital* includes movies and TV, and excludes sports. Previous years’ estimates may be updated based on changes made by sources.

<sup>3</sup> Overseas digital is sourced from Omdia and includes all countries except the United States. These figures include online video (EST, internet video-on-demand (“iVOD”), Pay TV EST/SVOD/VOD for TV and Movie genre consumer spending. Also includes Online Subscription Revenue (Multiscreen, N/A (Others) and Online Channel) for movie and TV genre, excluding Virtual Pay TV. Previous years’ estimates may be updated based on changes made by source.

<sup>4</sup> Of the IPEF countries, Fiji is not a signatory of the WIPO Copyright Treaty. Fiji and Thailand are not signatories of the WIPO Performances and Phonograms Treaty.

<sup>5</sup> Creative Content Australia, *2021 Australian Piracy Behaviours and Attitudes*, April 2022.

<<https://creativecontentaustralia.org.au/wp-content/uploads/2022/04/2021-Australian-Piracy-Behaviours-and-Attitudes.pdf>>

beneficial contracts. In certain countries, the integrity of contracts is often disregarded, chilling both foreign and domestic investment in the creative sector.

- **Include a commitment to non-discrimination.** The imposition of policies that discriminate against foreign creators, including policies like local content obligations on video-on-demand (VOD) services, is harmful to Australian producers and creators who wish to license their content overseas, as it could lead to retaliatory discriminatory policies from other countries / trading partners. Many Australian creators rely on deferred compensation from the licensing of content to support themselves and their families between projects and through retirement. A commitment to non-discrimination would protect the income and jobs of such creators.
- In addition to this commitment to non-discrimination, any digital trade agreement should **include key commitments to promote an integrated digital services market** among IPEF members, including a commitment to ensure a right to provide digital services on either a cross-border basis or via local presence; no limits on foreign ownership of digital services; and other traditional services and investment obligations to ensure non-discrimination and commercial decision-making in supply and operations of digital services.
- **Commit not to charge duties on e-commerce / digital products and services.** The cross-border exchange of knowledge, technical know-how, and scientific and commercial information across transnational IT networks have helped sustain economies, expand education, raise global living standards, and improve supply chain resilience for manufacturing and services industries. Imposing duties on e-commerce will jeopardize these benefits, reduce opportunities for digital innovation, and potentially invite retaliatory duties.
- **Incorporate an obligation to join the Budapest Cybercrime Convention.** Cybercrime is a significant threat to the rule of law and human rights, and carries both economic and social consequences. The Budapest Cybercrime Convention responds to this challenge, facilitating law-enforcement cooperation in combatting crimes committed online including computer-related fraud, child safety issues, violations of network security and copyright theft. There are currently 67 parties to the Budapest Cybercrime Convention, including Australia.<sup>6</sup>
- **Provide an obligation to require Infrastructure-as-a-Service (“IaaS”) providers to verify and retain the identity of their business customers.** Commercial entities that intentionally distribute illegal and harmful services or content online tend to hide their true identity when they sign up for online services, such as web hosting. This anonymity complicates law enforcement efforts to the detriment of consumers, including by exposing them to malware, data theft and unsafe products and services. By verifying and retaining the identity of business customers, IaaS providers can help deepen consumer trust in the safety and security of the online marketplace. These principles are deeply ingrained in a long list of international instruments, including the aforementioned Council of Europe Convention on Cybercrime.

### Transparency and Good Regulatory Practices

The Australian film, television, and streaming industry must navigate more than 100 censorship, ratings and review regimes around the world operated by government or quasi-

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<sup>6</sup> <https://www.coe.int/en/web/cybercrime/the-budapest-convention>

governmental entities. In Australia, the industry is largely self-regulated, and this system has proven itself to be fair and resilient. Industry self-regulation is consistent with norms for free expression and the concept of editorial responsibility.

While many countries do impose censorship or content review regimes on theatrical movies and TV content, these regimes would be affirmatively harmful to the competition, market growth, and consumer choice if extended to online video streaming. Moreover, censorship regimes may be used as a trade barrier and a mechanism to block equal and fair access to a market. MPA offers the below recommendation:

- **Include safeguards for content review and censorship regimes.** IPEF members should agree to allow industry self-regulation for streaming services and in particular should not require pre-approval for content on streaming services, which is impractical given the vast libraries involved. Governments would retain the right to request removal of specific content in appropriate circumstances via a transparent and predictable system. For censorship regimes that do apply (e.g. for theatrical movies and, when applicable, TV content), governments should commit to develop content review and standards that 1) do not constitute unnecessary barriers to trade and 2) are clear, transparent, expeditious, consistent and non-discriminatory. All content should only need to be reviewed once, regardless of platform.

#### Closing

MPA's studios generate billions of dollars annually from filmed entertainment distributed around the globe. Notwithstanding this singular achievement, the motion picture, television and streaming industry faces daunting barriers in many markets as well as relentless challenges to the integrity of its product, challenges extracting an increasingly unbearable cost. The economic and cultural vitality of the creative industries is one of Australia's most valuable assets, and we urge the DFAT to take available measures to help maintain and enhance the competitiveness of the Australian creative industries globally.

MPA appreciates the opportunity to comment on the IPEF and is ready to provide further information or answer questions if we can be of assistance.

Yours sincerely,



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