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SUBMISSION TO FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE

The NZSA represents the Motion Picture Association (MPA) in New Zealand as well as the NZ arms of the six major Hollywood studios: 20th Century Fox, Paramount Pictures, Sony Pictures, Universal Pictures, Warner Bros., and Walt Disney Pictures. We also represent Roadshow Entertainment.

NZSA's members produce and distribute film and television content, both in NZ and overseas. These companies are some of the most dynamic and innovative in NZ, constantly innovating to meet the demands of their customers and the market.

NZSA provides comments below on the international treaty examination of the Trans Pacific Partnership Agreement (TPPA). We appreciate that ratifying the TPPA will allow NZ to join the latest iteration of the Berne Convention, as well as the WIPO Copyright Treaty and WIPO Performances & Phonograms Treaty (the WIPO Internet Treaties).

The film and TV industries are major contributors to NZ's economy. PwC found the NZ film and TV industries directly employed more than 14,000 people in 2013, with a total employment impact of over 31,000 employees. New Zealand's film and television industries also directly contributed \$1.3 billion to NZ's GDP with a total impact of \$2.8 billion. Additionally, the film and television industries have assisted in promoting tourism in New Zealand.

NZSA believes that the TPPA can play a critical role in facilitating trade and commerce, fostering predictability, harmonizing rules, protecting intellectual property and deepening economic integration throughout the region. For example, the TPPA e-commerce chapter includes a provision that precludes discrimination against intangible digital products and, in so doing, fosters consumers' access to diverse content. Importantly, this does not create a new obligation for NZ since NZ's market is already quite open per its WTO obligations, but rather, levels the playing field in overseas markets for NZ producers and distributors. It is therefore of concern that the film and TV sector, and the wider creative industries, appear to be seen by many in the Government as barriers to growth and to the move to a digital age. We are concerned at the way both the creative industries, and the Copyright Act (CA) that protects and promotes them, are portrayed in the National Interest Analysis (NIA) and various Government communications on the TPPA. This was highlighted as recently as the first "TPPA Roadshow" in Auckland, when the Government repeated the oft-quoted 'downside' of the TPPA of a \$55 million cost to the country as a result of copyright term extension.

We understand that this \$55 million cost comes from an economic analysis from some years ago. It would seem the analysis and the cost it arrives at are, at the least, contentious. Given the regular referral to this cost as a downside of the TPPA, NZSA requests that the Government reviews the analysis upon which the figure is derived. This is particularly relevant now with the CA scheduled for a review in the near future.

Similarly, the TPPA makes important gains in raising the level of copyright protection and enforcement in the region. For example, the TPPA extends the term of protection to the global minimum standard of life plus 70/70 years from publication. This will ensure that NZ's creators are not second class citizens globally, particularly given the rule of the shorter term.

In addition to the above, given the reluctance of the Government to introduce legislation similar to s97A of the UK Copyright Act, NZSA note we are pleased that the wording of the TPPA clarifies that IPR enforcement should be available to the same extent against infringement in a digital environment, which could allow for effective judicial relief against infringing websites based on s92B. We are also pleased that the TPPA weighs against a roving fair use defence, as the language in Arts. 18.65 and 18.66 is consistent with the long-standing NZ position that exceptions and limitations to copyright should be rooted in and framed by the global international standard on exceptions and limitations, the Three-Step Test.

TPPA Parties must also implement the WIPO Internet Treaties and criminalize the circumvention of technological protection measures (TPMs) and trafficking in circumvention devices. TPMs are critical to the creation of new and innovative distribution models that have allowed consumers to enjoy their content when and where they want, on the devices they want, and at a variety of price options. Strong protections for TPMs are more important now than ever before as the industry continues its move to digital distribution. In addition, the TPPA requires criminal liability for all acts of commercial scale infringement, regardless of proof of financial gain. This is critical in the age of the Internet, where a single infringing copy can lead to literally millions of acts of infringement. These provisions do not place any new burden on the NZ Government, but will help the NZ industry better protect its creative investments throughout TPPA countries.

On the enforcement side, the TPPA includes a useful provision to criminalize unauthorized recording in movie theatres ("camcording"). Illegal camcords account for over 90% of piracy while movies are in the theaters, seriously impacting theatrical revenues. The TPPA provides for statutory or additional damages which compensate copyright holders for infringement when actual damages are difficult to calculate. These protections, coupled with the TPPA's market access provisions, will benefit both NZ and foreign creators and facilitate consumers' access to diverse content, particularly in the digital marketplace.

The economic and cultural vitality of the creative industries is one of New Zealand's greatest assets. The TPPA has the potential to open foreign markets to NZ content and foster copyright protection and enforcement which will, in turn, foster legitimate trade in film and television content, benefiting New Zealand and international producers and distributors. NZSA are now working to ensure that the Government has the necessary research to appreciate the contribution the film and TV industries make to NZ's economy. We ask the Government to fully review all available material as it proceeds to examine the treaties noted above, and as it moves into a review in time of the CA.

NZSA and its members look forward to working with the Government on these issues.

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