

July 17, 2018

Ms. Fiona Alexander
Associate Administrator,
Office of International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, D.C. 20230

Re: Notice of Inquiry on International Internet Policy Priorities [Docket No. 180124068-8068-01]¹

Dear Administrator Alexander:

The Independent Film & Television Alliance® (IFTA®) respectfully submits these written comments in response to the Notice of Inquiry in the above-referenced matter.

We welcome this opportunity to provide input as the NTIA formulates its International Internet Policy Priorities and support the NTIA's focus to encourage growth and innovation for the internet and internet enabled economy. The NTIA must take an active leadership role within international organizations and ensure that the global dialogue goes beyond the technology of networks and connectivity and also embraces the critical need to build an environment which consumers, including businesses, can trust. The NTIA has filled this role effectively in the past, providing both thought leadership and governance support for internet growth, and it is well-placed to do so again.

As an organization that represents producers and investors in production, IFTA believes that any internet policy should promote and support strong copyright protections and enforcement as the foundation for innovation and expression under intellectual property law. Trade in intellectual property is dependent on a fair and transparent infrastructure, namely meaningful access to the internet for creators and their audience so that the creators and visionaries that we represent can reach their audiences worldwide. In that regard, the NTIA's International Internet Policy Priorities should also emphasize the responsibilities that online platforms must abide by as they gain more and more power over innovators and creators of the content that moves along the pipes and portals of the Internet that the gatekeepers control.

¹ See [83 Fed. Reg. 26036 \(June 5, 2018\)](#).

About IFTA and its Membership

Based in Los Angeles, IFTA is the trade association for the independent motion picture and television industry worldwide and is dedicated to protecting and strengthening its members' ability to finance, produce, market and distribute independent films and television programs in an ever-changing and challenging global marketplace. IFTA represents more than 130 companies in 19 countries, the majority of which are small to medium-sized U.S.-based businesses² which have financed, produced and distributed many of the world's most prominent films, including 80% of the Academy Award® winners for "Best Picture" since our association was formed back in 1980.

Independent films and television programs are made at every budget level and IFTA defines 'independents' as those companies (apart from the six major MPAA studios) that take on the majority of the financial risk for the production and control the licensing of its distribution to third parties around the world. While operating in a global arena, these independent companies rely heavily on the U.S. as a major marketplace to conduct business and engage in licensing of their copyrighted works.

The economic impact of the independent film and television industry is substantial. Our sector accounts for **over 70% of all films produced in the U.S.** and the jobs generated by that economic activity. For calendar year 2017, U.S. independent production companies shot 551 feature films. This resulted in over 36,363 full time jobs directly related to this production activity and another 109,611 full time jobs for the various vendors that service the film industry. Combined, both classes of employees earned over \$15.03 billion. Total business revenue that resulted from this production activity totaled over \$23.04 billion in economic output. Independent production generated over \$3.12 billion in income and sales tax for both the federal government and individual state governments. Federal government share of income tax received was over \$1.97 billion. A thriving foreign marketplace directly impacts the independent sector's revenue streams and thus its ability to sustain business operations and to employ American workers.

Collectively, IFTA members generated revenue over \$4.8 billion in 2017, of which approximately \$2 billion came from foreign (non-U.S.) markets and \$2.8 billion from domestic activity. With nearly half of IFTA member companies' revenue earned outside of the U.S. each year, IFTA has a strong interest in preserving the health and fostering growth of the international digital marketplace.

Copyright is the Foundation for Production and Innovation in the Motion Picture Industry

Copyright is our industry's backbone and lifeblood as it enables our industry to secure financing, distribution, and protect our films and television programs. The ability to grant meaningful territorial exclusivity to distributors across the entire audio-visual value chain and to protect those licensed rights is critically important to the financial health of the industry. Independent production companies invest in production and enter into license agreements

² A complete list of IFTA members is available online at: <http://www.ifta-online.org>.

with third party distributors. Independents in particular rely on a financing model that secures investment for production and distribution through commitments by third-party distributors in key geographic territories (often on a national and territorially exclusive basis) to exploit the finished film in the particular licensed territory, before any camera begins to roll. These local distributors accept significant economic risks – that the eventual film or program will generate revenues – because they can rely on copyright to protect their exclusivity by territory/language version and distribution channel, all of which enables these early investors to recoup their financial contribution.

The Four Areas of Internet Policy Priorities and the Motion Picture Industry

The Notice sets out four areas of inquiry: (1) the free flow of information and jurisdiction; (2) the multi-stakeholder approach to internet governance; (3) privacy and security; and (4) emerging technologies and trends. This inquiry of these topics is especially timely since these issues frame the challenges facing creators and the motion picture industry as they seek to meet the desires of its audience for more on-demand content in more convenient ways, including online streaming or downloading. Unfortunately, the growth of online platforms has been associated with traffic in illegally obtained content, which has generated profit for the platforms and networks at the expense of the legitimate rights holders. With this backdrop, there is a growing and serious concern in America and worldwide about the lack of responsibility and accountability exercised by major internet platforms toward harmful and illegal activities taking place on their services.

On a worldwide basis, our U.S. International Internet Policy Priorities must clearly define, promote, and prioritize the fundamental concept that a successful digital marketplace and infrastructure protects copyright owners; enables innovators to take risks, find funding for production and realize a return on that investment; provides tools for the enforcement of their rights and ensures them and their audience fair, secure access to the internet in the face of powerful gatekeepers; and hold platforms accountable for nefarious activities taking place on their sites. .

Emerging trends in the delivery of motion pictures

Digital rights that are commonly known as “On Demand” or “VOD” have matured, are monetized and an important part of the exclusive rights bundle of copyright. Distribution of films and programming via streaming or downloading is the desired delivery and viewing method of more and more consumers. The quality of their access and viewing experience relies solely on the infrastructure and gatekeepers to the Internet. We urge the NTIA to keep in mind that unless there is fair and transparent access to the internet as a distribution method, innovation in motion pictures and television production will certainly decrease and expression and innovation will be stifled.

Digital rights are also an increasingly important element of production financing as the online marketplace continues to develop and consumer demand evolves. For example, in the U.S., independent producers exclusively license certain digital distribution rights to various types of digital exploitation platforms, including satellite (DirecTV), cable (Comcast, Spectrum,

etc.), internet downloading and streaming services (iTunes, Netflix, Amazon, Hulu) and direct to broadband providers such as AT&T and Verizon. The revenues generated by these platforms are increasingly important as other forms of home entertainment (including free television and DVDs) decline and now are a significant element in securing third party production finance. Without confidence that independent programming can reach these platforms, and that revenues will not be undercut by competition from free (and illegal) copies, this important foundation for financing new content will not develop. The Internet must be governed in a fair and transparent manner worldwide so that we can continue to provide consumers alternative “on demand” ways to watch content.

Free Flow of Information

We agree that the free flow of information is critical not only to the protection of free speech online, but to the continued growth of the global economy. Creators and producers must have access to the Internet to reach their audiences. Censorship which stifles innovation and freedom of expression should be narrowly tailored to address only serious and legitimate concerns. However, the desire to establish Policies that promote the ‘free flow of information’ should never be used as justification to erode copyright protection or misinterpreted as permission for distribution of “free” content against the law.

As technology has advanced, the tools – digital fingerprinting and watermarking among them - are increasingly available to identify content that is subject to protection under copyright laws and to recognize online businesses that are built on illegal distribution of such content. It is reasonable to demand that online service providers deploy such tools at the copyright owners’ behest and that governments engage in careful inquiry about how to halt those that aggressively profit off the theft of content.

One trend copyright owners and creators find encouraging is the engagement of all stakeholders in establishing Codes of Conduct, including protocols by which search results for notorious distributors of illegal content are demoted or hidden and mechanisms to prevent the re-posting of content once taken down. The United Kingdom is a leader in this effort. There is also an emergence of a new norm for blocking websites that are large scale distributions of pirated content. Governments and Courts around the world are realizing the effective tool of website blocking that stops theft from creators and the compromise of security and privacy of those that use pirated sites. Whether it is the 2014 Copyright Law Amendments in Singapore, the 2015 website blocking law of Australia or the various court decisions on a national level in Ireland, Denmark or Germany, there are dozens of countries that legally ensure the blocking by ISPs access to stolen content of copyrighted works. In fact, the Motion Picture Association - Canada has identified at least 42 countries that have adopted or are legally required to adopt measures ensuring that ISPs take steps to disable access to copyright-infringing websites.³

³ <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=3095705>.

Multi-stakeholder Approach to Internet Governance

We encourage a multi-stakeholder approach to formulating policies for internet governance. However, the U.S. Government must ensure that creators and copyright owners are involved at every level of the various forums for internet governance discussions. In the case of the Internet Governance Forum (IGF) which discusses the internet's sustainability and development and in which the stakeholders themselves organize the programs and determine the participants, government should nevertheless facilitate and ensure meaningful participation and perspectives by creators and intellectual property owners.

Since the IGF is open only on a limited set of criteria and travel and participation are unfunded, it is unlikely that individual creators would be participants in these complex discussions. Participation and funding are dominated by governments and large corporations. For example, in the case of the IGF, only the Walt Disney Company provides funding for programming providing the perspective of a copyright owner and distributor, along with the creators and innovators who work with them to produce magic. However, massive funding by Google, Facebook and Amazon unfairly tips the scale in favor of the perspective of platforms and networks without reference to the concerns or rights of those who supply the content that has driven internet growth.

IFTA submits that it is incumbent on the U.S. Government to ensure that these dialogues also are informed by the concerns of creators and recognition of the role of copyright in supporting content production and the economic benefits that go with it. The appropriate policy balance can only be achieved if the key international organizations – the ITU, IGF, WSIS, and related organizations – provide a forum to confront and reach consensus on the appropriate “rules of the road,” recognizing the complimentary needs for legal responsibility, economic growth, and protection against abuse (including censorship).

Privacy and Security

Privacy and security on the internet is very important to our industry and our customers. We believe an environment which has strong copyright protections is also conducive to efforts to strengthen and secure consumer privacy and safety. We agree with NTIA's statement that cybersecurity risks should be viewed not exclusively as national security threats, but as a threat to economic growth and innovation.⁴ Privacy and security are of the utmost importance as they protect the freedom and wellbeing of our worldwide audience. Lack of security and accountability results in irreversible harm to independent producers and their distributors. Piracy – the theft and illegal distribution of content – is a specific example of a form of security breach which drains investment from legitimate industry, threatens jobs and stalls investment in production and distribution.

Piracy also is a clear example of the damage that is done by elevating network growth over economic and social responsibility. In Spain, the country's broadband network growth was fueled by government's failure to intervene as the growing network transported free but illegal

⁴ See [83 Fed. Reg. 26036 \(June 5, 2018\)](#) at page 26037.

entertainment content – thus building consumer demand for broadband while the foundation of the local film industry was destroyed. Invasions of consumer privacy, the spread of malware and spyware, and the threat of consumer identity theft are other examples of harm.

Lack of effective security in the online infrastructure puts individuals at risk and the U.S. Government should continue to press for accountability and responsibility in this area with all stakeholders and especially gatekeepers. For example, it was recently reported that the privacy controls on Facebook in which users block other users they don't want to contact them (many of whom use this tool to prevent abuse) or to see information about them failed miserably between May 29 and June 5 with 800,000 Facebook users exposed to those that they have blocked.⁵ Facebook's blog provided very basic information about the serious breach of almost 1 million accounts and did not identify which countries were impacted, leaving users in the dark as to whether corrective action by them was needed. This is just another example of the lack of transparency and accountability embedded in the harmful actions or inactions of entrenched gatekeepers.

Cybersecurity threats harm international commerce in the entertainment industry by devastating the recovery of investment in specific productions that are pirated and discouraging investment in future production and the legitimate distribution infrastructure. Whether it's stealing a motion picture's digital materials from a secured server prior to first public release or the mass dissemination of content in violation of the producers' exclusive rights, there must be policies and tools for rights holders to immediately prevent these threats, tools to address them if they occur, and serious penalties in place as deterrents. Ensuring that the internet offers suppliers and users the same protections that are available in the brick-and-mortar environment is critical to continue to build its power as an economic driver throughout the world.

IFTA appreciates this opportunity to provide the NTIA with the unique perspective of the independent motion picture and television industry on the important issues presented in this inquiry and hearings. We urge you and your colleagues at the NTIA to keep these pressing needs of our industry in mind as the process moves forward and maintain contact with IFTA to ensure that the resulting International Internet Policy Priorities support a flourishing global digital marketplace.

Best regards,



Jean M. Prewitt
President & CEO

cc: Susan Cleary, Vice President & General Counsel, IFTA
Eric Cady, Senior Counsel, IFTA

⁵ <https://newsroom.fb.com/news/2018/07/blocking-bug/>.