

July 23, 2015

The Honorable Michael Froman  
United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20508

**RE: Trans Pacific Partnership Intellectual Property Concerns**

Dear Ambassador Froman:

All consumers are users of intellectual property. The average American interacts with hundreds, if not thousands, of IP-protected products and goods each day. The Trans-Pacific Partnership must not weaken or otherwise disrupt the protections afforded to American consumers.

The United States is a global leader in intellectual property, not only because of the rights enjoyed by creators of knowledge goods, but also because of those rights granted to consumers. Preserving these rights must be central to any trade negotiation.

Limitations and exceptions to intellectual property rights are absolutely critical to a functioning marketplace. The digital revolution has ushered in an era of ubiquitous content. Even without actively seeking out knowledge properties, the average American is constantly being exposed to—and interacting with—copyrighted and patented goods. Overbroad intellectual property protections create a minefield of liability through which no consumer, no matter how savvy, can reasonably be expected to navigate.<sup>1</sup>

In the interest of ensuring American consumers, and consumers around the world, can participate in and enjoy the freedoms of a global economy, we ask the following:

**The agreement must include reasonable proportionality limits on remedies.** In the United States, statutory damages, even when intended only to compensate for uncertain harms or deter infringement, can have dire and disproportionate consequences for consumers. Requirements or recommendations for deterrent damages in the TPP, absent limitations based upon principles of proportionality, could have profound consequences for users of IP products, and would chill even lawful use.

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<sup>1</sup> See, e.g., John Tehranian, *Infringement Nation: Copyright Reform and the Law/Norm Gap*, 2007 Utah L. Rev. 537 (illustrating how mundane activities can accrue massive copyright damages even in the absence of intentional piracy).

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**The agreement must encourage fair use and other key limitations and exceptions to exclusive rights.** Affirmative protections are also an integral part of the IP landscape. Fair use shields criticism, commentary, and creativity from being stifled by overzealous rights holders. It protects fundamental First Amendment rights. A system without fair use protections is a system that is designed for abuse. Over-enforcement is not just rent-seeking; it is active suppression of speech.

**The agreement must not reduce or otherwise diminish the public domain.** A robust and accessible public domain benefits society and the economy by enhancing education, research, and the arts. It fuels job creation and economic growth, and must be protected in our trade agreements abroad. The TPP must therefore not promote the lengthening of already-long copyright terms, or allow restrictions upon the sharing of scientific discoveries, products or principles, of nature, or abstract ideas.

These protections cannot be sacrificed on the altar of expedience. We urge you to take a firm stance on behalf of American consumers, and not undermine the protections they enjoy at home in the name of expedient negotiation.

Sincerely,



Gene Kimmelman  
President & CEO



Sherwin Siy  
Vice President, Legal Affairs



Carolina Rossini  
Vice President, International Policy



Meredith Rose  
Staff Attorney