

May 10, 2013

Douglas Bell  
Chair, Trade Policy Staff Committee Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

Re: Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement, 78 Fed. Reg. 19566 (Apr. 1, 2013), USTR-2013-0019-0001

[Comments submitted electronically through www.regulations.gov](http://www.regulations.gov)

Dear Mr. Bell:

The organizations listed below representing performers, musicians, and labels offer the following observations on the negotiation of a trade agreement between the US and EU.

We begin by noting the importance that we attach to modern and effective copyright protection—in law and practice. Copyright (which we use in the American sense to include protection for performers and labels that may be characterized as neighboring or related rights by many jurisdictions in the EU) is the mechanism that permits creators to earn a living through their craft, and which encourages investment in the creation of original cultural productions. Societies have a tremendous cultural, social and economic interest in sustaining and promoting creativity, and are the ultimate beneficiaries of this protection. As articulated by the US Supreme Court, copyright is an engine of free expression, and is a foundational principle for free and democratic societies in the 21st century. Copyright permits creators to pursue individual visions without regard to patronage, either from private or public sources. It is the ultimate tool for nourishing a thriving and diverse marketplace for the expression of ideas. The importance of effective copyright protection to societies generally, and to the US and EU in particular, should be a guiding principle for these negotiations.

## PART ONE

Unlike traditional free trade agreements in which we believe it is essential for normative IPR principles to be set out in detail, we do not believe that it is necessary or useful for the TTIP to serve as a mechanism for seeking higher levels of normative harmonization between the negotiating parties as a general matter. The US and EU legal systems already establish a high level of harmonization, and while neither the US nor the EU can be said to have developed ideal legal conditions to address online infringement, we believe that it would be premature to try to develop more detailed common standards while the Parties are examining how to best conform their legal, regulatory and enforcement regimes to enhance responsible online practices.

As noted by the High Level Working Group, the US and EU “are committed to maintaining and promoting a high level of intellectual property protection, including enforcement, and to cooperating extensively.” We believe that, aside from one substantive issue which we detail in Part Two below, the US and EU negotiators are best served by focusing on how they can cooperate in improving global protection of copyright, and in particular in markets in which large scale online infringement has essentially marginalized legitimate online commerce. We believe that TTIP should reflect the common interest of the US and EU in effective copyright protection, and that the parties should reaffirm their individual and joint commitment to the effective protection of intellectual property. The parties have recognized on various occasions, modern, effective and robust protection of intellectual property is a critical element for sustaining innovation and economic competitiveness in the 21st century, with particular importance for labor markets and small and medium sized enterprises. TTIP should express a renewed commitment to ensuring effective action against violations of intellectual property rights in the digital arena that undermine US and EU cultural communities, but without setting out the precise mechanism for doing so. Instead, TTIP should reflect an overall commitment to vigorously promote effective IPR protection in home markets and in third countries, and a recognition that such effective protection requires constant vigilance to ensure that today’s seemingly adequate standards are not tomorrow’s invitations to infringement.

In light of the importance of IPR protection to innovation, freedom of expression, economic development, employment, cultural enrichment and diversity, TTIP should contain an agreement to expand cooperation in multilateral, plurilateral and bilateral fora to promote effective IPR protection, in law and practice. The US and EU should pledge to work together to ensure that societies have a proper understanding of the role of effective IPR protection, and to guard against the adoption of policies that would undermine such protection. This common vision should reflect the importance of greater accountability at all levels of the distribution chain for goods and services protected by intellectual property, and the role of copyright protection in promoting innovation and the public welfare.

## PART TWO

There is one area of US copyright law that is out of step with international norms and which undermines US interests globally and in the EU in particular. We refer to the absence of a so-called “performance right” for performers and record companies under Title 17 other than as provided in the limited digital audio transmission right under sections 106 and 114. As a consequence of the failure of the United States to grant a general right of public performance/broadcasting, US performers and record companies lose an estimated 80 million euro a year in Europe alone. While we are firmly of the view that EU member states should not discriminate against US nationals, and should apply full national treatment as we do in the United States, the fact remains that many EU member states apply material reciprocity and deny protection to nationals of states that don’t afford reciprocal protection. This proposed agreement would be a perfect place to end this anomaly in US law, to finally join the rest of the industrialized world in granting performers and producers the right to be compensated for the commercial use of their recordings, and to simultaneously capture the benefits and secure entitlement to revenue pools throughout the EU. This is an unprecedented opportunity to effect a long overdue change to domestic law and to lock in the global benefits that will accrue.

We are of course mindful that this is not the prerogative of USTR, and that this is a matter to be taken up by Congress. This submission is intended to serve as a request for the Administration to consult with Congress about the possibility of Congressional action that would permit inclusion of provisions on this issue in the TTIP. The Register of Copyrights, Maria Pallante, recently noted that "The next great copyright act would not require Congress to start from scratch because, since 1998, it has put in motion a steady stream of preparatory work on core issues. For example, Congress has had more than a decade of debate on the public performance right for sound recordings, and given serious consideration to improving the way in which musical works are licensed in the marketplace. These issues are ripe for resolution."[http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file\\_id=612486](http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=612486).

And the Obama, Bush and Clinton Administrations have all expressed their support for amendment of US law to provide a performance right to performers and labels as well. We have hopefully arrived at a moment where action will be taken by Congress to cure a deficiency in US law and to capture the benefits in international markets.

Respectfully submitted by,

AFM-The American Federation of Musicians

The Recording Academy

RIAA-The Recording Industry Association of America

SAG-AFTRA-Screen Actors Guild & American Federation of Television and Radio Artists

SoundExchange

Descriptions below:

The American Federation of Musicians of the United States and Canada was founded in 1896. It is the largest organization in the world representing the interests of professional musicians. The union negotiates fair agreements for working artists, protects ownership of recorded music, and secures benefits such as health care and pension retirement plans for musicians and their families. For a century, the AFM has worked with federal, state legislators and regulators to affect meaningful legislation that helps improve the professional and personal lives of working musicians. Most importantly, the 90,000 members and leadership that comprise the Federation are committed to raising industry standards and placing the professional musician in the foreground of the cultural landscape.

Please visit us at [www.afm.org](http://www.afm.org)

Established in 1957, The Recording Academy® is an organization of musicians, songwriters, producers, engineers and recording professionals that is dedicated to improving the cultural condition and quality of life for music and its makers. Internationally known for the GRAMMY Awards — the preeminent peer-recognized award for musical excellence and the most credible brand in music — The Recording Academy is responsible for groundbreaking professional development, cultural enrichment, advocacy, education and human services programs. The Academy continues to focus on its mission of recognizing musical excellence, advocating for the well-being of music makers and ensuring music remains an indelible part of our culture.

SAG-AFTRA represents more than 165,000 actors, announcers, broadcast journalists, dancers, DJs, news writers, news editors, program hosts, puppeteers, recording artists, singers, stunt performers, voiceover artists and other entertainment and media professionals. SAG-AFTRA members are the faces and voices that entertain and inform America and the world. A proud affiliate of the AFL-CIO, SAG-AFTRA has national offices in Los Angeles and New York and local offices nationwide representing members working together to secure the strongest protections for entertainment and media artists into the 21st century and beyond. Visit SAG-AFTRA online at [SAGAFTRA.org](http://SAGAFTRA.org).

SoundExchange is a non-profit digital performance rights organization that represents the entire recorded music industry. Its mission is to support, protect and propel the music industry forward. The

organization collects statutory royalties from satellite radio, Internet radio, cable TV music channels and other services that stream sound recordings. Since inception, the organization has paid more than \$1.5 billion to the creators of music. The Copyright Royalty Board, created by Congress, has entrusted SoundExchange as the only entity in the United States to collect and distribute these digital performance royalties for featured recording artists and master rights owners. For more information, visit [www.SoundExchange.com](http://www.SoundExchange.com) or [www.facebook.com/soundexchange](http://www.facebook.com/soundexchange).

The Recording Industry Association of America (RIAA) is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members are the music labels that comprise the most vibrant record industry in the world. RIAA® members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States.

In support of this mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conduct consumer, industry and technical research; and monitor and review state and federal laws, regulations and policies. The RIAA® also certifies Gold®, Platinum®, Multi-Platinum™ and Diamond sales awards as well as Los Premios De Oro y Platino™, an award celebrating Latin music sales.