

Copyright Licensing NZ
Submission re Trans-Pacific Partnership Agreement Amendment Bill
22 July 2016

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The recognised RRO (Reproduction Rights Organisation) in New Zealand and a member of IFRRO (International Federation of Reproduction Rights Organisations), CLNZ has non-exclusive mandates to represent authors and publishers from throughout the world in offering licensing services in New Zealand. CLNZ has copyright licenses with all of the universities and polytechnic institutions and wananga in New Zealand as well as schools, businesses and government agencies.

We wish to speak to this submission.

Background

1. The value of a strong local publishing industry is not purely economic. It is difficult to imagine how New Zealand schools could effectively teach our children about their own country and culture without access to content that is written and published here.
2. Earlier this year CLNZ conducted a survey of New Zealand teachers part of which focused on access to New Zealand resources. 72% of teachers expressed a preference for New Zealand resources to use in their classrooms.
3. Some New Zealand resources may be provided by government, but increasingly the development of these resources will need to be invested in by businesses. For investment to take place, certainty of the legal environment for a creative business is needed.
4. Certainty and stability in relation to copyright are almost totally absent from the draft legislation that this submission provides comment on.
5. The National Interest Analysis negatively portrays both content owners and copyright which is totally at odds with the potential of the creative sector as outlined in the Business Growth Agenda and with the time and investment the Government is making in the Creative Sector Study.

Phase-in of the Term Extension

6. This negative portrayal is clearly demonstrated in the continuation – even after extensive and exhaustive submissions from the publishing and music industries – of the phase-in of the copyright term extension.
7. The phase-in creates administrative burden for authors and publishers and consumers of published materials. It delays the opportunity for authors to derive benefit from the implementation of the TPP. We are not aware of any other territory where a term extension has been implemented using a phase-in.
8. Copyright costs to the consumer were considered during the negotiation of the TPP, but costs to industry from implementing the agreed provisions have not been. Direct and indirect costs, at a yet to be determined level, will be incurred by New Zealand licensing organisations due to the phase-in. This directly impacts content owners' revenue from the licensing of their work.
9. CLNZ distributes 100% of its net revenue from licensing to authors and publishers. Net revenue is arrived at by deducting the cost of operations from licensing revenue earned. Any increase in operational costs results in a direct reduction of revenue to authors and publishers.
10. We cannot understand the need to transition the term extension into New Zealand law. This creates administrative burden for both content owners and the Government, for no economic gain.
11. Confusion for content consumers will also be an issue given that there will not be a single date from which to calculate whether a work is in or out of copyright. We refer you to the example provided in Recorded Music NZ's submission which demonstrates how the proposed 2-tier phase-in will work in practice. It is an unnecessarily complex system.
12. The phase-in also has implications in terms of the royalty revenue received from overseas. Most countries apply a comparison of term based on the Berne Convention, so while the copyright term in NZ remains at Life plus 50 or 60 years, NZ copyright owners will not receive royalties from countries that have a longer term – eg. The 27 EU countries that already have Life +70
13. A do-it-once and get-on-with-it approach to term extension is what is required. This is especially relevant given that the cost-estimates that the phase-in was premised on have been demonstrated to be significantly over-inflated and that they completely ignore the economic benefit to authors and publishers that will be derived from the term extension.

TPM's

14. The many new and amended provisions on TPM's fail to deliver any certainty for either content creators or content users.
15. Worse, there is provision to enable future regulations to be made in relation to TPM's that leave the draft legislation open to even more confusion and misinterpretation.
16. TPM's are used by publishers to deliver digital content to consumers. They are integral to how a distribution service, such as Amazon, provides an author's work to a reader.
17. The exceptions provided almost exclusively take a user-view to accessing a work. Consumer's / customer's needs are the primary concern of providers of digital content. If the digital service does not work properly, the provider will lose customers.
18. The digital service that is created using TPM's is designed to deliver the content to the consumer. Any exception that enables the security of the TPM to be affected could also impact the correct delivery of the content to the consumers.
19. We believe that the "knowledge" requirement in Sec 226AB contravenes Article 18.68.1(b)
20. Sec 226D amalgamates two matters, contrary to Article 18.68.3 of the Agreement. TPM circumvention and copyright infringement are separate issues.
21. We submit that the new Sec 226M provides an unwarranted level of protection to certain not-for-profit entities. While there may be an argument for limiting criminal liability, limiting civil liability denies copyright owners any remedies for breaches of their rights, even in circumstances where significant financial loss may result. In addition we submit that the provision of Sec 226M negates the likelihood that not-for-profit entities will instigate policies and procedures within their organisations that implement effective practice in regard to the matters covered in Sec 226C. The inclusion of Sec226M is a disincentive to positive action on compliance.

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