

Submission on consultation document: *Implementation of the Trans-Pacific Partnership Intellectual Property Chapter*

Your name and organisation

Name	Michael Frawley
Organisation	Museum Of Transport And Technology

Responses to consultation document questions

1	Have the overarching objectives been framed correctly for this policy process? If not, what would be more appropriate objectives?
Technological protection measures	
2	Do you agree with the exceptions or limitations proposed for TPMs? What would be the impacts of not providing these exceptions? Please be specific in your answers.
3	Do you agree that the exceptions proposed for TPMs should apply to both prohibitions (i.e. circumventing a TPM and the provision of devices or services that enable circumvention)? Why / why not?
4	Do you agree that, if our proposals are implemented, the current exception allowing a qualified person to circumvent a TPM that protects against copyright infringement to exercise a permitted act under Part 3 would no longer be required? Why / why not?
5	Are there any other exceptions or limitations to the TPM prohibitions that should be included in the Copyright Act? Please explain why any additional exceptions would be necessary.
6	Would there be a likely adverse impact on non-infringing uses in general if the exception for any other purpose that does not infringe copyright was not provided for? Please be specific in your answers.
7	Should there be a regulation-making power to enable the exception for any other purpose

that does not infringe copyright to be clarified, and if so, what criteria should be considered?

Patent term extension for delays in patent grant

8 Do you agree with the proposals for patent term extensions for unreasonable grant delays? Why / why not?

9 Do you think that there should be a limit on the maximum length of extension available for grant delays? If so, what should it be?

10 Do you consider that third parties should be able to oppose decisions to extend patents on the ground of unreasonable delays in grant?

Patent term extension for pharmaceuticals

11 Do you agree with the proposed definition of “unreasonable curtailment” for pharmaceutical patent term extensions? If not, what other definition should be used?

12 Do you agree that the definition of “unreasonable curtailment” should apply different time periods for small molecule pharmaceuticals and biologics? If so, what could these time periods be? If you consider that only one time period should apply to both, what should this be?

13 Do you agree with the proposed method of calculating the length of extensions for pharmaceutical patents?

14 The proposed method of calculating extensions for pharmaceutical patents includes a maximum extension of two years. Do you agree with this? If not, what do you think the maximum extension should be?

15 Do you agree or disagree that only patents for pharmaceutical substances *per se* and for biologics should be eligible for extension? Why?

16 Do you think the Australian definition of “pharmaceutical substance” should be adopted? Why / why not?

17

Do you agree that patent rights during the extended term should be limited in the manner proposed?

18

Do you agree that third parties should be able to oppose decisions to extend patents for pharmaceuticals through the Commissioner of Patents? Why / why not?

Performers' rights

19

Do you agree that a performer's moral rights should apply to both the aural and visual aspects of their live performance and of any communication of the live performance to the public? Why / why not?

20

Should performers' moral rights apply to the communication or distribution of any recording (i.e. both sound recordings and films) made from their performances, rather than just sound recordings as required by WPPT? Why / why not?

21

Do you agree or disagree with any of the exceptions or limitations proposed for a performer's right to be identified? Why?

22

Are there any other exceptions or limitations to a performer's right to be identified that should be included in the Copyright Act? If so, can you please explain why they would be necessary.

23

Do you agree or disagree with providing for any of the exceptions or limitations proposed for a performer's right to object to derogatory treatment? Why?

24

Are there any other exceptions or limitations to a performer's right to object to derogatory treatment that should be included in the Copyright Act? If so, please explain why they would be necessary.

25

Should the new property rights for performers be extended to apply to the recording of visual performances in films? Why / why not? (Please set out the likely impacts on performers and producers, and any others involved in the creation, use or consumption of films.)

26	Do you agree or disagree with any of the exceptions or limitations proposed above? Why?
27	Are there any other exceptions or limitations to the new performers' property rights that should be included in the Copyright Act? If so, can you please explain why they would be necessary.
28	Do you agree or disagree with any of the proposals above? Why?
29	Are there any other amendments that need to be made to the Copyright Act, and in particular to Part 9, to clarify the new performers' property rights? If so, can you please explain why they would be necessary.
Border protection measures	
30	Do agree that Article 4 of European Union Council Regulation (EC) No 3295/94 is an appropriate model for implementing <i>ex officio</i> powers into the border protection measures set out in the Copyright Act 1994 and Trade Marks Act 2001? If not, please explain why not and outline an alternative approach to implementing <i>ex officio</i> powers.
31	Do you agree that the detention period of three business days following notification to the rights holder is appropriate? Can you outline the impact on both the right holders and any importer/exporter where you consider the period should be shorter or longer than three business days?

Other comments

- The extension of copyright term to 70 years does not help with the work of museums, libraries, galleries and archives, but the need to align NZ legislation with international standards is recognised. The change will increase the likelihood of orphan works resting in museum collections and will increase the workload associated with the obtaining of permissions and clearances for a range of uses.
- The NZ Act requires amendment to specifically include museums and galleries in the current provisions (ss50-57) which allow libraries and archives certain exemptions to make copies of copyright protected works. With respect to preservation and communication of public collections, museums and galleries perform a very similar role to libraries and archives and it is an anomaly that they are not included in the current provisions.
- The list of acts permitted by libraries and archives (including museums and galleries) needs to be extended to include administrative purposes (for example documenting collection items, storing and communicating the collection catalogue, displaying copies onsite as part of exhibition support and interpretive material). An "administrative purposes" extension is

included in Australian copyright law with respect to museums. These uses seldom curtail the commercial exploitation of works by copyright holders, especially compared to the public benefit that museums perform in providing care and awareness of collections.

- To achieve better alignment with legislation internationally the NZ Act should be amended to introduce a "fair use" provision – this requires further consultation and consideration.
- With respect to Technological Protection Measures, the proposed exemptions for non-profit libraries, museums, archives, educational institutions, and public non-commercial broadcasters are strongly supported.
- With respect to Performers Rights, the assertion of the right to be identified is consistent with standard museum and research practice to attribute the source of a work, idea or performance so the Moral Rights proposals are supported.
- The proposed exceptions to performers' property rights with respect to acts permitted by librarians and archivists needs to be extended to museums and galleries.
- We have no particular view on the proposed measures with respect to patent grants, border protection or pharmaceuticals.
- Consideration of a copyright exception for the public good activities of Museums similar to that proposed to the World Intellectual Property office earlier this year i.e. for the purposes of display and non-commercial online use. This would reduce the burden of copyright in association with the public good activities and go some way to limiting the impact of the copyright duration extension on museums.
- NZ specific redrafting of the transitional arrangements associated with copyright and historic photographs to clarify the existing confusion.
- An exception or scheme to deal with the Orphan works issue particularly as the orphan works issue will impact the galleries, libraries, archives & museums sector negatively when the extension to copyright duration occurs.
- Adoption of a "fair use" provision