

# Implementation of the Trans-Pacific Partnership Intellectual Property Chapter

Submission to the Ministry of Business  
Innovation & Employment

30 March 2016



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## 1. Introduction

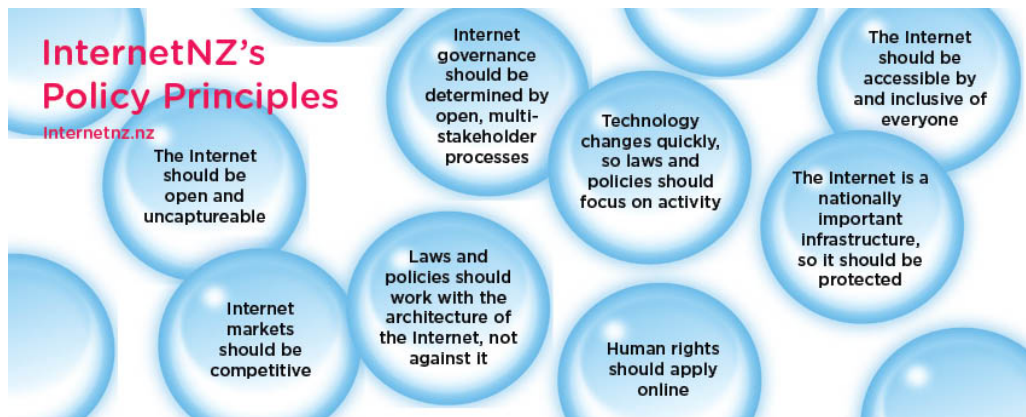
- 1.1 InternetNZ welcomes this opportunity to submit on implementation of the Trans-Pacific Partnership (TPP).
- 1.2 We would welcome any opportunity to clarify our position by corresponding further or appearing in person. Please contact James Ting-Edwards on [Redacted s.9\(2\)\(a\) OIA 1982](#)

### **InternetNZ's vision is "A better world through a better Internet"**

- 1.3 Our mission is to promote the Internet's benefits and uses and protect its potential. We do that with a cause in mind, that being the Open Internet. In doing this, we act as part of the New Zealand Internet community.
- 1.4 We support beneficial innovation, and broad access to the benefits of that innovation. To achieve those aims, we support competitive markets, open standards, and balanced intellectual property rights.

### **Our policy principles**

- 1.5 InternetNZ's policy work is guided by principles. Of particular relevance to this submission are the principles that:
  - a) Laws and policies should focus on activity rather than specific technologies
  - b) Laws and policies should work with the architecture of the Internet, not against it
  - c) Internet markets should be competitive.



## 2. Summary of InternetNZ Submission

### Intellectual property rights must achieve a FAIR balance

- 2.1 InternetNZ supports balanced intellectual property rights. A sensible balance will result in rights which are FAIR:
- Flexible:** Allowing for beneficial non-commercial activity
  - Adaptable:** Enabling innovation and use of new technologies
  - Incentives:** Encouraging creation of new works, innovation, and sharing
  - Realistic:** Pragmatic about concerns of creators, consumers, and business.
- 2.2 Changes under the TPP shift the balance New Zealand has set in its intellectual property law, particularly copyright. This move is a concession, made in exchange for gains in other areas.

### Objectives

- 2.3 InternetNZ supports the objectives of this process. TPP changes on intellectual property are concessions by New Zealand, and should be confined as far as possible.
- 2.4 Though TPP implementation impacts our broader balance of intellectual property rules, the present process is working to tight deadlines. The confined focus and short timeframe for this consultation make it difficult to consider these overall impacts.
- 2.5 Chapter 18 of the TPP endorses balance in intellectual property. Longer term, we support a substantive review of copyright, intended to realise this balance and enable the benefits of innovation.

### Submission Timeframes

- 2.6 This process has had extremely tight timeframes, making it difficult for those with expertise or a stake in outcomes to offer considered views.
- 2.7 Submissions closed March 30, following release of the consultation document on March 9. The 21 days for developing a response included the Easter break, and overlapped with the TPP Select Committee submission process.
- 2.8 The combined effect is that the people in the best position to inform this process are left with limited time to do so.

### **Technological Protection Measures (TPMs)**

- 2.9 TPM liability puts bars around content, and goes beyond orthodox principles of copyright protection. In particular:
- a) Access control TPMs violate user expectations, restricting the use of purchased content
  - b) Liability risks have a chilling effect on experimental uses and development of technology, meaning everyone misses out on beneficial innovation
  - c) TPMs can limit interoperability, resulting in missed opportunities for innovation, including innovation in accessing and distributing content
  - d) TPMs can favour “lock-in” to a particular platform, encouraging anticompetitive business practices.
- 2.10 We support measures to limit the scope and effects of TPM liability in New Zealand.

### **Proposed Exceptions to TPM liability**

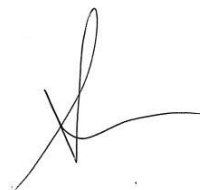
- 2.11 We support the exceptions proposed, particularly:
- a) The goal of framing broad exceptions, to minimise the impact of TPP changes and to create a relatively usable and clear regime of rules
  - b) The general exception to enable non-infringing uses of copyright content
  - c) The proposal for a regulatory power to clarify activities allowed under the general exception.
- 2.12 In our view, some of the proposed exceptions are too narrow or technology-specific to achieve the intended outcome. We address these in detail below.

### **Proposed new offences**

- 2.13 It is proposed to apply present criminal offences to wilful circumvention of “access controls”. Access controls restrict mere use of content, and have no relationship to infringement. Current offences involve a five year jail term and \$150,000 fine. Applied to access controls, this would be disproportionate and could chill legitimate uses of TPM-restricted content.

### **Further discussion**

- 2.14 We support this process and its intended outcomes. We would welcome the opportunity for further dialogue on how best to realise those outcomes.
- 2.15 Please contact our Issues Advisor, James Ting-Edwards via Redacted s.9(2)(a) OIA 1982



Andrew Cushen

**Work Programme Director**

### 3. Overarching objectives

#### InternetNZ supports the objective of minimising impacts

1

Have the overarching objectives been framed correctly for this policy process? If not, what would be more appropriate objectives?

- 3.1 InternetNZ supports the overarching objectives of this policy process to:
- Enable New Zealand to meet TPP obligations
  - Minimise the impact of changes to intellectual property settings to maintain an appropriate balance between rights holders and users
  - Provide certainty and minimise compliance costs
- 3.2 We see these objectives as preserving, to the extent allowed by TPP, New Zealand's ability to adjust our intellectual property rules to suit local priorities and adapt to technological change.
- 3.3 To minimise unnecessary impacts, we propose that adoption of changes be postponed until ratification of the TPP.

### 4. Technological Protection Measures

- 4.1 TPM rules are a concession under TPP, placing restrictions on users and limiting the potential upsides of technology.

#### Principles for TPM liability

- 4.2 To minimise change in this area, we propose the following principles:
- The only basis for TPM protection is to avoid prejudice to legitimate interests of the author, performer, or producer of a work which are protected by copyright
  - Legal protection of TPMs should be confined as far as possible
  - TPM protections should not restrain a use of a work which is:
    - Allowed by a statutory exception to exclusive rights in copyright; or
    - Allowed by an explicit or implicit grant of a licence by the owner; or
    - Otherwise non-infringing and has no significant impact on legitimate interests of the author, performer, or producer of a work.

Examples which should be excluded from TPM liability:

- Use of an out-of-copyright work however acquired
- Use of a copyright work which is allowed by a Creative Commons or other permissive licence under which the work has been acquired.

#### TPP Article 18.68

- 4.3 The rules proposed are intended to implement TPP Article 18.68. If brought into force, this would oblige New Zealand to:
- Extend TPM protection to cover "access control" TPMs; and
  - Extend legal liability to "knowing circumvention" of an access control TPM.

### **Definition of “Effective Technological Measures”**

- 4.4 Rules in Article 18.68 relate to an “**effective technological measure**” that “controls access to a protected work, performance, or phonogram” or “protects copyright or related rights related to a work, performance, or phonogram” (TPP 18.68.5).
- 4.5 This definition means that any limitation in copyright protection is a limitation on the scope of TPM liability. For example, expiry of copyright term should extinguish both copyright and TPM liability.
- 4.6 Footnote 95 clarifies that “effective” excludes from this protection measures which “can, in a usual case, be circumvented accidentally” (TPP at 18-39, Footnote 95).
- 4.7 As a result, where a technology has a failure rate in its ordinary mode of operation, it may not qualify as an “effective” measure. For example, geolocation over a network has an error rate when operating normally. This error rate may mean it is not an “effective measure” under TPP rules.

### **Exceptions allowed for TPM liability**

- 4.8 Article 18.68.4 allows “certain limitations and exceptions” to TPM liability in order to “enable non-infringing uses if there is an actual or likely adverse impact of those measures on non-infringing uses”.
- 4.9 These exceptions must not undermine the adequacy of legal protection for effective technological measures (18.68.4(c)). Exceptions applying to “copy control” TPMs must be available for use only by their intended beneficiaries (18.68.4(b)).

## 5. TPM Discussion Questions

5.1 We address the specific consultation questions below. We also provide detailed response to the proposed exceptions and examples in the following pages.

### 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.

Yes. TPMs restrict ordinary acts in relation to copyright content, and ordinary uses of technology. By restraining user behaviour and uses of technology, TPMs can provide legal backing to anti-competitive business practices.

For example:

- Software in VW cars fooled regulatory emissions testing. Circumventing a TPM can enable this software to be inspected.
- Barnes and Noble's Nook service is discontinuing its provision of copy-protected eBooks in the UK. Circumventing a TPM can allow users to retain access to their purchased eBooks.
- Distributors of games and video content use region-locking and systems which "phone home" to prevent legitimate user access. Using these products offline or after the life of the remote authentication service might require circumventing a TPM.
- Distributors of content may make it available only in specific formats, or on specific hardware. Circumventing a TPM can allow access to this content:
  - After an app or device becomes obsolete
  - With modifications to enable access such as additional subtitles, or formatting for screen readers and Braille.
- A phone or other device may be supplied on the basis that it is "locked-in" to a particular provider of network coverage, apps, or other services. Enabling competitive markets may require that users can circumvent a TPM.

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?

Yes. The balance of TPM rules should benefit all users, not just those who are technically able. Any person with the ability should be able to assist in allowed bypassing of a TPM where this would be allowed for the end user.



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?

Yes. Exceptions as proposed would simplify this area.

The current “qualified person” and “permitted act” regime is complicated and restrictive, undermining the intent that permitted acts should be enabled.

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.

We support the proposed exceptions, but consider that in some cases the wording and illustrative examples are too narrow, or not reflective of modern technology. We outline these concerns in the table below.

TPP Article 18.68.1 would impose liability for circumvention with “knowledge” or “reasonable grounds to know”. To improve avoid imposing liability where there is no genuine fault, we would suggest that any provision implementing this rule allow reference to:

- Circumstances in which circumvention occurs
- Standard practice in any relevant industry or community

Current criminal offences may be overly harsh in relation to some cases of “knowing circumvention” of an access control, even where this is wilful and done for commercial purposes.

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.

Yes. Technological change means that over time, the mode of distributing and accessing copyright material changes. It is not possible to anticipate the forms such change will take.

A broad exception allows for beneficial innovation, and achieves the goal of minimising impacts of TPP implementation in this area.



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?

Yes.

- We support a regulatory power to clarify this exception to TPM liability, by:
  - Identifying specific acts which come within the general exception
  - Identifying, in relation to substantive exceptions in copyright law, specific acts which are excluded from TPM liability.
- We propose a periodic review of regulations to identify acts falling within this exception, in light of:
  - New technologies
  - Exceptions identified overseas including by regulation or case law
  - Changes in how copyright content is accessed and distributed
  - The potential to enable emerging innovations, remove chilling effects, and encourage competitive markets.

## 6. Performers' Rights

### 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?

No. We consider that contractual arrangements can allow for a performer's interests. Additional moral rights for performers post-recording allow a performer to veto presentation and communication of works. This makes it harder to make and share new works.

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?

No. This would create administrative difficulties for using recordings in any medium.

21

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

We agree.

|    |  |
|----|--|
| 22 | <p>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.</p>  |
|    | <p>We consider that an obligation to identify performers would be onerous if applied to non-infringing, non-commercial recordings published via the Internet.</p>  |
| 23 | <p>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?</p>   |
|    | <p>We agree. The addition of performer veto rights over distribution of content introduces uncertainty, and risks making it harder to distribute and access recorded content.</p>  |
| 24 | <p>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.</p>   |
|    | <p>The right to object to derogatory treatment creates an unpredictable and subjective veto right over the distribution of and corresponding access to recorded performances. It creates uncertainty for producers, funders, and audiences.</p> <p>Where contractual rights are available, these provide a more efficient and more certain mode for addressing performer concerns.</p> |
| 25 | <p>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.)</p>  |
|    | <p>No. Creating another set of veto rights on access to visual recordings would make it harder to access and distribute visual recordings. This harms users and producers of content.</p>  |
| 26 | <p>Do you agree or disagree with any of the exceptions or limitations proposed above? Why?</p>   |
|    | <p>We agree</p>  |
| 27 | <p>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.</p>   |
|    | <p>We suggest that where contractual arrangements are a viable mode of allocating rights between performers and producers, that specific protections in copyright law be excluded.</p>   |
| 28 | <p>Do you agree or disagree with any of the proposals above? Why?</p>  |

|    |   |
|----|---|
|    | No  |
| 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. |
|    | No  |

## 7. Other Comments

### Access control rules require new criminal penalties

- 7.1 At page 14, paragraph 37, the consultation paper states that current TPM offences would apply to “knowing circumvention” of access controls.
- 7.2 TPP requirements uncouple TPM liability from infringement (TPP Article 18.68.3). Where circumvention is “wilful” and for financial gain or commercial purposes, criminal liability is required (TPP 18.68.1).
- 7.3 Current offences target the supply of tools for circumvention, with knowledge that infringement is likely to result. Penalties are severe, with a five year jail term and \$150,000 fine possible.
- 7.4 These penalties make sense for deterring the commercial supply of tools to enable infringement. However, liability for circumventing an access control has no relationship with infringement.
- 7.5 Current penalties may be too severe even for “wilful” circumvention of an access control for financial gain.
- 7.6 For example, a corporate IT person might circumvent an access control to enable use of an eBook or protected pdf document within their organisation. If done as part of their work duties, this would arguably be for “commercial purposes” or “financial gain”. Risking a jail term or a fine over a few thousand dollars would seem disproportionate to the harm done, including any consideration of deterrence.

## 8. Comments on Proposed Exceptions for TPM circumvention

|   | Proposed exceptions   | Examples   | InternetNZ Comments   |
|---|---|--|---|
| 1 | <p>To allow access to computer programmes that are embodied in a machine or device and restrict the use of goods (other than the work) or services in relation to the machine or device</p> | <ul style="list-style-type: none"> <li>• Enabling use of a generic (rather than manufacturer-approved) printer cartridge.</li> <li>• “Unlocking” a device to enable connection to an alternative wireless network (e.g. mobile or wifi) provided there is authorisation to do so.</li> <li>• “Jailbreaking” a legitimately purchased device to install legitimately purchased, non-infringing, apps or other software.</li> <li>• For the diagnosis, repair, or lawful modification of a vehicle.</li> </ul> | <ul style="list-style-type: none"> <li>• We welcome this proposed exception. The illustrative examples are clear cases of use which should be allowed by TPM rules. Allowing for devices such as drones, 3D printers, and network equipment supports innovation and the economic benefits of these technologies.</li> <li>• We suggest that the exception as proposed might not allow all the intended examples.</li> <li>• We agree with the inclusion of goods and services: <ul style="list-style-type: none"> <li>○ Wireless data connections, modern software, and car maintenance are often delivered as services rather than goods</li> <li>○ The computer programme itself might be delivered as a service.</li> </ul> </li> <li>• The term “embodied” may be too specific: <ul style="list-style-type: none"> <li>○ The exception should include computer programmes running remotely or accessed from the machine or device</li> <li>○ “Embodied in a machine or device” might suggest that the logical structure of the computer programme must correspond to the physical structure of the local machine or device, as in a physical circuit board. This is not true of modern computer programmes, which may be virtualised or run remotely. A TPM could be implemented as plugin software running remotely.</li> </ul> </li> <li>• We assume that “the work” refers to the restrictive computer programme. The exception as proposed is unclear on this.</li> <li>• We suggest: <ul style="list-style-type: none"> <li>○ “To allow access to a computer programme running on or accessed from a physical item that restricts the use of a good or service (other than the computer programme) in relation to the physical item.”</li> </ul> </li> </ul> |



|   | Proposed exceptions   | Examples   | InternetNZ Comments  |
|---|---|--|--|
| 2 | <p>To enable circumvention of a TPM that to the extent that it controls geographic market segmentation by preventing the playback of legitimate physical copies of a film, sound recording, or computer game in New Zealand</p> | <p>Viewing or using legitimate, non-infringing copies of physical works, such as DVDs for films or computer games, where regional zone protection is included.</p> | <ul style="list-style-type: none"> <li>• We welcome this proposed exception. We are glad to see that it extends to a range of media where legitimate physical copies are available. We welcome the inclusion of video games.</li> <li>• The principle here is not limited to physical media. We would welcome extending the market segmentation exception to non-physical modes of delivery. <ul style="list-style-type: none"> <li>○ Parallel importation is a fundamental plank of New Zealand’s trade policy.</li> <li>○ Content distributors practice price discrimination, increasing prices for consumers in New Zealand, despite near-zero marginal costs of distributing additional digital copies to any part of the world.</li> <li>○ As digital distribution becomes increasingly important, the limitation to physical copies might make this exception obsolete. Video games, for example, are now mostly bought and accessed online. The same is true for other computer programmes including mobile “apps”.</li> </ul> </li> <li>• It may be impractical to distinguish whether a work is accessed “in New Zealand”. People with authorised access to works will travel with their phones, tablets, laptops, and other devices. The exception should be read as allowing circumvention “to the extent” defined, enabling access whether or not the user is in New Zealand.</li> </ul> <p>We propose:</p> <ul style="list-style-type: none"> <li>• “To enable circumvention of a TPM to the extent that it controls geographic market segmentation by preventing playback of or access to legitimate copies of a film, sound recording, computer game, computer programme, website or other copyright work in New Zealand.”</li> </ul> |

|   | Proposed exceptions  | Examples  | InternetNZ Comments   |
|---|--|---|---|
| 3 | To enable interoperability of an independently created computer programme with the original programme or other programme | Allowing a third-party plug-in with another developer's software. | <ul style="list-style-type: none"> <li>• We welcome this proposed exception. Allowing for interoperability supports competitive markets and beneficial innovation.</li> <li>• We support the proposed scope of this exception in relation to computer programmes. This is the software equivalent of the first proposed exception for physical items.</li> <li>• We propose extending the exception to allow the use of a computer programme which interoperates with a legitimate, non-infringing copy of any work, performance, or phonogram by allowing access to that work. <ul style="list-style-type: none"> <li>○ This would allow for the playback of purchased movies or sound recordings on devices running software other than that supplied by the distributor of the movie or sound file.</li> <li>○ It would also allow for independent use of accessibility tools such as screen readers or added captions by users.</li> </ul> </li> <li>• We propose:</li> <li>• “To enable interoperability of a protected computer programme with a legitimate copy of a work, performance, or phonogram including another computer programme.”</li> </ul> |



|   | Proposed exceptions                    | Examples  | InternetNZ Comments   |
|---|--|---|---|
| 4 | To enable encryption research.         | Allowing study or employment in the field of encryption technology for the purpose of identifying and analysing flaws and vulnerabilities of encryption technology. | <ul style="list-style-type: none"> <li>• We welcome this proposed exception.</li> <li>• The security of users and businesses rests on good encryption research. Internet banking, online purchases, and other benefits of the Internet depend on strong, usable encryption.</li> <li>• The cited example addresses research into flaws and vulnerabilities of encryption only. It is equally important to improve and apply encryption.</li> <li>• Useful advances in understanding encryption are not confined to formal academic work. This exception must enable research in informal and business settings.</li> </ul> <p>We suggest:</p> <ul style="list-style-type: none"> <li>○ To enable encryption research and good faith application of encryption technologies</li> </ul> |
| 5 | To enable good-faith security research | Allowing for the good-faith testing, investigating, or correcting of the security of a computer, computer system, or computer network.                              | <ul style="list-style-type: none"> <li>• We welcome this proposed exception.</li> <li>• Good computer security depends on testing systems to understand their properties including strengths and weaknesses. Security testing may require circumvention of a TPM controlling access to a protected work, and may not always allow for explicit authorisation in advance.</li> <li>• We recognise concerns about unauthorised access to computer networks. These concerns are addressed by specific provisions in criminal law, and should not factor into TPM rules.</li> </ul> <p>We suggest:</p> <ul style="list-style-type: none"> <li>○ To enable good-faith security research and application of security technologies</li> </ul>  |

|   | Proposed exceptions       | Examples  | InternetNZ Comments  |
|---|---------------------------|---|--|
| 6 | To enable online privacy. | Allowing the circumvention of a TPM to remove unwanted programmes that are collecting personal information. | <ul style="list-style-type: none"> <li>• We welcome this proposed exception.</li> <li>• The exception as worded is appropriate in scope. However:               <ul style="list-style-type: none"> <li>○ The example given covers unwanted programmes which users can remove. By implication, these programs are on a user's local machine</li> <li>○ Remote data hosting and delivery of software is now common, and presents similar privacy concerns to unwanted programmes on a local machine</li> <li>○ Meaningful online privacy requires that users can control whether and how their personal information is presented to remote computers.</li> </ul> </li> <li>• TPM protections should not support any particular business model. Allowing users to protect their online privacy may affect businesses which depend on the collection and exploitation of user data. However:               <ul style="list-style-type: none"> <li>○ We do not support collection of user data without (an opportunity for) explicit and informed user consent</li> <li>○ Where money or other consideration is involved, the exploitation of user data may be less central to a particular transaction</li> <li>○ Where access to a user's data is offered as part of a market exchange, this should be a matter of contract law, not copyright.</li> </ul> </li> </ul> <p>We suggest that this exception should cover circumvention:</p> <ul style="list-style-type: none"> <li>• To enable online privacy, including               <ul style="list-style-type: none"> <li>○ Withholding information that identifies or is private to a user; and</li> <li>○ Restricting or removing unwanted devices or computer programmes, including items originally activated or acquired in connection with a product or service the user no longer uses</li> </ul> </li> </ul> |

|   | Proposed exceptions   | Examples   | InternetNZ Comments  |
|---|---|--|--|
| 7 | To enable law enforcement and national security.  | To allow anything lawfully done for the purposes of law enforcement, national security, or performing a statutory function, power or duty. | <ul style="list-style-type: none"> <li>We welcome this proposed exception. We suggest that the purpose would be better achieved with changes below.</li> <li><b>Broaden the relevant purposes:</b> The current wording captures only executive and statutory activities. We suggest a wording in terms of “public function, power, or duty” to include judicial and other public processes.</li> <li><b>Narrow the relevant authority:</b> The present wording may allow too broad a scope of action by enforcement and national security agencies.</li> </ul>   |
| 8 | To enable individual play by gamers of legitimate video games for which outside server support has been discontinued. | Where a developer decommissions support for a legitimately purchased game that is no longer popular, rendering it unplayable.              | <ul style="list-style-type: none"> <li>We welcome this proposed exception. The example is a useful illustration, but is only one of a number of possibilities.</li> <li>The principle behind this exception applies to a broader class of products and services than video games. Cheap connectivity, including cheap radio equipment, means that many types of work or device may “phone home” to authorise or restrict user actions.</li> <li>Failure of remote authorisation means users are deprived of access to content or functionality: <ul style="list-style-type: none"> <li>For example, the Barnes &amp; Noble Nook service provided reading devices and eBooks for download. It is closing its UK online store, removing access to some purchased content.</li> </ul> </li> </ul> <p>We suggest:</p> <ul style="list-style-type: none"> <li>To enable continued access to legitimate copies of a work to the extent that withdrawal of an external service, or inability to reliably access such a service, would prevent access to that work.</li> </ul> |

|   | Proposed exceptions  | Examples   | InternetNZ Comments  |
|---|--|--|--|
| 9 | <p>For any other purpose that does not infringe copyright.</p> | <p>Enabling any other use that does not infringe copyright where there is an actual or likely negative impact on that non-infringing use.</p> <p>It is proposed that a regulation-making power be included to enable this exception to be clarified from time to time – for example, by excluding specific activities.</p> | <ul style="list-style-type: none"> <li>• We welcome this proposed exception.</li> <li>• This is an area of continuing change and innovation, which is best addressed through a general exception to TPM liability.</li> <li>• We support a regulatory power to clarify this exception to TPM liability, by: <ul style="list-style-type: none"> <li>○ Identifying specific acts which come within the general exception</li> <li>○ Identifying, in relation to substantive exceptions in copyright law, specific acts which are excluded from TPM liability.</li> </ul> </li> <li>• We propose a periodic review of regulations to identify acts falling within this exception, in light of: <ul style="list-style-type: none"> <li>○ New technologies</li> <li>○ Exceptions identified overseas including by regulation or case law</li> <li>○ Exceptions in copyright law</li> <li>○ Changes in how copyright content is accessed and distributed</li> <li>○ The potential to enable emerging innovations, remove chilling effects, and encourage competitive markets.</li> </ul> </li> </ul> |

## About InternetNZ

### A better world through a better Internet

InternetNZ is a voice, a helping hand and a guide to the Internet for all New Zealanders. It provides a voice for the Internet, to the government and the public; it gives a helping hand to the Internet community; and it provides a guide to those who seek knowledge, support or any other method of benefiting the Internet and its users.

InternetNZ's vision is for a better world through a better Internet. To achieve that, we promote the Internet's benefits and uses and protect its potential. We are founded on the principle of advancing an open and uncapturable Internet.

The growing importance of the Internet in people's everyday lives means that over the last twelve months we have significantly reoriented our strategic direction. The Internet is everywhere. We are a voice for the Internet's users and its potential to make life better.

InternetNZ helps foster an Internet where New Zealanders can freely express themselves online – where they can feel secure in their use of the Internet. We foster an Internet where a start-up can use the web to develop a presence and customer base for a new product, and we foster an Internet where gamers can get online and battle it out.

We work to ensure this Internet is safe, accessible and open.

The work we do is as varied as what you can find on the Internet.

We enable partner organisations to work in line with our objects – for example, supporting Internet access for groups who may miss out. We provide community funding to promote research and the discovery of ways to improve the Internet. We inform people about the Internet and explain it, to ensure it is well understood by those making decisions that help shape it.

We provide technical knowledge that you may not find in many places, and every year we bring the Internet community together at NetHui to share wisdom, talk about ideas and have discussions on the state of the Internet.

InternetNZ is the designated manager for the .nz country code top-level domain and represents New Zealand at a global level through that role.

InternetNZ is a non-profit open membership incorporated society, overseen by a council elected by members. We have two wholly owned subsidiaries that ensure that .nz is run effectively and fairly – the Domain Name Commission (DNC) develops and enforces policies for the .nz domain name space, and .nz Registry Services (NZRS) maintains and publishes the register of .nz names and operates the Domain Name System for .nz