



Implementation of the Trans-Pacific Partnership Intellectual Property Chapter

Submission | MBIE

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Public Version

INTRODUCTION

1. Spark welcomes the opportunity to respond to MBIE's consultation on the implementation of the Intellectual Property Chapter of the Trans-Pacific Partnership (TPP). Our comments only relate to the changes proposed for Technological Protection Measures (TPM).
2. As far as possible, the implementation of the intellectual property chapter of the TPP should maintain the status quo of existing legislation. We support the Ministry's overarching objectives in its approach to implementation of the chapter, in particular the aim to minimise the impact of changes to intellectual property settings to maintain an appropriate balance between rights holders and users.
3. Copyright issues are complex, requiring careful debate and consideration. We note that MBIE is confining the discussion paper to TPP implementation only and does not seek feedback on other Intellectual Property (IP) issues. This approach will make implementation of the TPP changes more straight forward. Stakeholders will have time to properly work through policy issues separately in other processes, such as the Creative Sector Study.
4. An example of a policy issue which requires further discussion in a policy context is that of access to online services which are subject to geographic blocking. Taking a position on this issue now risks shifting the balance between rights holders and users, and potentially drives considerable compliance costs (by undermining existing rights) on industry. The policy discussion should be had once the TPP changes are implemented and taking account of any exemptions put in place by other countries. Given the complexities of this debate we therefore support the status quo which is for the exemption around circumvention of a TPM to relate only to physical copies of a film, sound recording or computer game in New Zealand.

Exemptions by Regulation

5. MBIE proposes a catch all exemption 'for any other purpose that does not infringe copyright' with a regulation-making power to enable the exception to be clarified from time to time as technology changes. While we understand that technology changes faster than legislation we are concerned that this approach has the potential to allow new exemptions to be introduced without an appropriate level of scrutiny.
6. Any regulation creating power should be tightly constrained and a clear framework defined for the process for creating new regulations. The policy framework for how to evaluate and agree new exemptions should also be defined in legislation. Without this the legislative framework will not provide certainty to industry, which removes the incentive to invest.
7. Care also needs to be taken to ensure that new exemptions are clearly explained to the public, many of who may not understand the subtleties of their application. Without clear explanation, there is likely to be consumer confusion about what is or is not lawful.

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