

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

Your name and organisation

Name	Michaela O’Donovan Head of Information, Library and Enquiry Services, on behalf of
Organisation	Auckland War Memorial Museum

Responses to consultation document questions

1	<p>Have the overarching objectives been framed correctly for this policy process? If not, what would be more appropriate objectives?</p>
Technological protection measures	
2	<p>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.</p> <p><i>Support in principle, with the following additions</i></p> <p><i>Section 42: Exceptions relating to libraries and other non-profit entities. This needs to be expanded to explicitly include museums, galleries and archives.</i></p> <p><i>Section 45: We support, however the concept of ‘fair dealing’ also needs to include the concept of 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.</i></p> <p><i>The impact of not providing these exceptions would be significant overhead of time and resource in getting clearances that are not required in comparable countries such as the UK, Singapore and Australia.</i></p>
3	<p>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?</p> <p><i>Yes, we support</i></p>
4	<p>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?</p>

	<i>We support</i>
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.
	<i>Section 45: We support, however the concept of 'fair dealing' also needs to include the concept of '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. .</i>
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 <i>per se</i> 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?
	<i>We agree</i>
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?
	<i>We agree</i>
21	Do you agree or disagree with any of the exceptions or limitations proposed for a performer’s right to be identified? Why?
	<i>Section 50: This provision needs to explicitly list galleries, in addition to libraries, museums, archives, educational institutions and public non-commercial broadcasters</i>
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?
	<i>We support these as proposed</i>
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.
	<i>Section 126. We support the proposal that the Copyright Act be amended to include the exceptions and limitations listed in this section. However this amendment also needs to include provision for the exception of '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.</i>
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 *ex officio* powers.

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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

In summary, Auckland Museum's key points are:

- Extension of copyright term to 70 years is not helpful to the work of museums, libraries, galleries or archives, but is accepted as an inevitable measure to align NZ legislation with international standards. It will increase the likelihood of orphan works resting in museum collections and will increase the workload seeking permissions and clearances for a range of uses.
- We submit that the NZ Act requires amendment to explicitly include public museums and galleries under 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 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.
- We submit that the NZ Act should include the option for owners of copyright to elect to transfer their copyright to the public domain earlier than the periods stipulated in the Act. By way of illustration, Auckland Museum has 2 major collections for which the copyright owners have determined that a period of 20 years for the works to enter the public domain would enable greatest public benefit from those works.
- 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 need 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.

Please feel free to contact me if I can be of further assistance.

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Auckland Museum

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