

Submission template

Implementation of the Trans-Pacific Partnership Intellectual Property Chapter

Instructions

This is the submission template for the consultation document, *Implementation of the Trans-Pacific Partnership Intellectual Property Chapter*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the consultation document by 5pm on **Wednesday 30 March 2016**. Please make your submission as follows:

1. Fill out your name and organisation in the table, “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to consultation document questions”. Your submission may respond to any or all of the questions in the consultation document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the “Other comments” section below the table.
4. When sending your submission:
 - a. Delete these first two pages of instructions.
 - b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
 - c. If your submission contains any confidential information:
 - i. Please state this in the cover letter or e-mail accompanying your submission, and set out clearly which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
 - iii. Please provide a separate version of your submission excluding the relevant information for publication on our website (unless you wish your submission to remain unpublished). If you do not wish your submission to be published, please clearly indicate this in the cover letter or e-mail accompanying your submission.

Note that submissions are subject to the Official Information Act 1982.

5. Send your submission:

- as a Microsoft Word document to tpp.ip.policy@mbie.govt.nz (preferred), or
- by mailing your submission to:

Business Law
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to tpp.ip.policy@mbie.govt.nz.

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

Your name and organisation

Name	Brett Mason
Organisation	Museums Wellington

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> <ul style="list-style-type: none"> • 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. • 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. •
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> <ul style="list-style-type: none"> • 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.
3	<p>Do you agree that the exceptions proposed for TPMs should apply to both prohibitions (i.e.</p>

	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 <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?
	<ul style="list-style-type: none"> 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.
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?
	<ul style="list-style-type: none"> The proposed exceptions to performers property rights with respect to acts

permitted by librarians and archivists need to be extended to museums and galleries.

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 you agree that Article 4 of European Union Council Regulation (EC) No 3295/94 is an appropriate model for implementing *ex officio* 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.

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