

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

Your name and organisation

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Organisation	International Association of Music Libraries (NZ)

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?

We believe that the objectives are appropriate, particularly the attempt to balance rights of rights holders and users.

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.

We are particularly interested in the proposed exception to allow playback of legally owned DVDs and CDs which are not region-coded for NZ. Not providing an exception to allow this activity would remove access for our users to a lot of important music materials from around the world. As an example one university music library estimates they would lose access to 3-400 music and dance DVDs in their collection - they have not been able to purchase these items in NZ or have them streamed online. These are mainly in specialist areas such as opera and modern dance (and this access is important - they are training world leading students in these areas, such as Sol3Mio and Black Grace).

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?

Libraries in NZ routinely provide DVD/cd players and computers which have been enabled to allow users to playback a library's legally owned discs with any region codes. It would be hard to provide teaching and study or just access to the music to enjoy without being able to provide the necessary playback equipment. There for we believe that the exceptions should apply to both prohibitions.

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?

We agree that the current exception is no longer needed (but would like to point out that

librarians have always found it useful to be able to point to the part 3 list to justify their activities – we are cautious people by nature)

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.

n/a

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.

n/a

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?

n/a

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?
	We do not have any particularly strong feeling about whether visual aspects should be included.
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?
	As above.
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 with the suggestion the right of a performer to be named doesn’t apply for private and personal copying. This is just sensible.
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.
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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.
	We would like an exception introduced, as exists in EU and UK law 'for the purposes of caricature, parody or pastiche', which is currently missing from NZ legislation. This would need to apply to composers'/producers' rights, as well as to performers' rights.
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?
	<p>We agree strongly with these exceptions below and for the following reasons</p> <ul style="list-style-type: none"> • parallel importation of sound recordings (Many recordings which libraries need for study, research or for the personal enjoyment of their users cannot be obtained in New Zealand. Libraries have been importing sound recordings for more than 20 years without any discernible effect on the market for sound recordings in NZ. Furthermore, for many libraries which now provide the majority of recordings through streaming services, the only sound recordings purchased are of a very limited interest and market such as the 153 disc Bach Complete edition from Teldec) • copying of sound recordings by librarians or archivists to replace copies of works (when one disc goes missing or is damaged from the 153 disc set, it seems reasonable that a library would be allowed to make a copy of the disc, rather than have to purchase a whole new set. Most libraries purchase commercial replacements rather than making copies, but would like to have that option). • libraries and archives communicating digital copies of sound recordings to authenticated users (This is already permissible for books and journal articles – it would be nice for music to be treated the same) • copying by librarians and archivists of a sound recording for supply to another library (again, this already applies to sections of books and to journal articles, and just brings sound recordings under the same regime for interloan purposes) • copying by librarians and archivists of unpublished recordings for research or private study (copying is often the only way that unpublished recordings can be made available at all – especially if they are on reel-to-reel tape or DAT or some other outmoded medium) • playing sound recordings by an archive maintained by Radio New Zealand Ltd (This is necessary for Radio NZ to undertake its work) • rental of sound recordings by libraries and educational establishments for non-commercial purposes (again, libraries in New Zealand have been lending sound recordings for more than 30 years – this has not brought about the demise of the recording industry or record shops in NZ. This activity should also be called 'lending' rather than 'rental' – most educational establishments

	<p>and some public libraries do not charge for the borrowing of sound recordings and none even break even on costs these days.)</p> <ul style="list-style-type: none"> • copying of sound recordings for personal use <p>(This right is long established in NZ, along with time shifting of TV programmes and does not need to be altered)</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>-</p>
28	<p>Do you agree or disagree with any of the proposals above? Why?</p> <p>We have some concerns about extending the copyright in sound recordings to performers. The definition of who constitutes a performer or composer is more and more blurred these days – for instance, the producer/engineer/mixing engineer Joel Little is also credited as a co-writer on many sound recordings by Lorde, Broods, Sam Smith and Ellie Goulding. The differentiation between engineer/producer and performer and composer/writer is becoming more and more difficult to maintain. We think this extension of rights to performers needs to be carefully considered, as it would also need to recognise the input of producers, engineers and backing musicians.</p>
29	<p>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.</p> <p>-</p>
<p>Border protection measures</p>	
30	<p>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.</p>
31	<p>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?</p>

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