

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

Your name and organisation

Name	James Christopher Cone
Organisation	individual

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?
	There could be one about enabling trends in the use of copyrighted material, which I see as being toward cheap and fast, such as the US compulsory license for commercial audio recordings broadcast on the internet. That would make it a much bigger consultation, and you may see it as being covered by (c).
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.
	I agree with the exemptions proposed.
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, because most people who would otherwise be entitled to benefit from one will not be well placed to create a circumvention method for themselves.
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?
	No. If it is removed, then some clever lawyer will define 'service' so that it does not include employment, and people who should not be penalised will be.
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.
	To enable circumvention of a TPM that to the extent that it controls geographic market segmentation by preventing the playback of legitimate copies of a film, sound recording, or computer game, transferred over a computer network into New Zealand.

	This is intended to allow parallel import of streaming media. If it is not done, then the value of exclusion deals will become ridiculous, and New Zealand video-on-demand services will continue to be so balkanised that they are not worth paying for.
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.
	The future would be prevented. It is hard to know what value uses would be prevented, that have not yet been invented.
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?
	Probably not, because it creates regulatory uncertainty, and there will be a lot of pressure from rights holders to increase the set of licensable acts.
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?
	No opinion (n/o).
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?
	n/o
10	Do you consider that third parties should be able to oppose decisions to extend patents on the ground of unreasonable delays in grant?
	n/o
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?
	I'm conflicted about this. They have a commercial incentive to file early, consistent with doing the trials that they need to do, so giving them no predictable period of sales seems a bit mean. If they were given only a predictable period of protection, starting from the date of marketing approval, then I presume that they'd balk at having less protection for quickly approved drugs.
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?
	n/o
13	Do you agree with the proposed method of calculating the length of extensions for

	pharmaceutical patents?
	n/o
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?
	n/o
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?
	Yes. In regimes where pharmaceutical products are patentable, substances are evergreened without limit.
16	Do you think the Australian definition of “pharmaceutical substance” should be adopted? Why / why not?
	Off topic: “ An application for marketing approval of the pharmaceutical substance had been made after both: – the date the provision came into effect; – marketing approval had been granted; and” This paragraph seems to be mangled and circular (see the words “marketing approval”) in a bad way.
17	Do you agree that patent rights during the extended term should be limited in the manner proposed?
	Yes. Otherwise it will interfere with applicaton of other people's research projects.
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?
	n/o
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 kind-of like yes, to try to break paparazzi journalism, but I could imagine arguing for minimal change, as you are doing.
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?
	See above.

21	Do you agree or disagree with any of the exceptions or limitations proposed for a performer's right to be identified? Why?
	It would be interesting to remove the exception for advertising, and see what that did to the advertising industry. That may not be your project at this time.
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.
	n/o
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?
	n/o
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.
	n/o
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.)
	n/o
26	Do you agree or disagree with any of the exceptions or limitations proposed above? Why?
	<p>"Radio New Zealand Ltd" is too specific. That organisation is in the process of being renamed. The exception might apply to either:</p> <ul style="list-style-type: none"> - "public non-commercial broadcasters" by analogy with your item 40 - individual non-commercial (no other stream of income; not dancing with the stars) broadcasts funded by NZ-on-Air - the current wording: an archive specified in the regulations
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 would like to include parallel importation of streaming media in this list. It would be hard to fit into the test in footnote 19.
28	Do you agree or disagree with any of the proposals above? Why?
	<p>They seem logical, but I haven't thought them through.</p> <p>I am unclear about whether you-all intend to remove the other exceptions in part 9, such as the folk songs.</p>

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.
	n/o
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 <i>ex officio</i> powers.
	n/o
31	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?
	I probably agree. I wonder what the time limit is, for Customs to send the notification to the rights holder. I wonder if that notification should go also to the importer, so that they can avoid providing probable causes in the future.

Other comments