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Subject: **Trans-Pacific Partnership Agreement: Limitations and Exceptions Leaked Text**

Date/Version: 6 August 2012, version 1

Talking Points

- . We are aware of allegedly leaked text on copyright limitations and exceptions from the Trans-Pacific Partnership Agreement (TPP).
- . Due to our confidentiality obligations, we cannot comment on text, however Australia supports a high-quality, balanced intellectual property chapter in the TPP
 - Australia’s position in the intellectual property chapter has been, and continues to be, informed by a wide range of stakeholder views and perspectives.
- . Copyright limitations and exceptions are still very much under negotiation
 - revised text on copyright limitations and exceptions has been tabled as recently as the last round, in July
 - Australia is giving careful consideration to all proposals
 - : and there is still a way to go.
- . It is important to remember that the chapter has not been agreed
 - all parties are engaging in a negotiation process
 - : it is not a given that any particular piece of text currently on the table will be included in the final agreement.

If asked: Why is Australia presenting ‘very restrictive text’ in the TPP?

- . Australia is not presenting ‘very restrictive text’ in the TPP, as claimed by Knowledge Ecology International
 - Australia supports copyright limitations and exceptions in the TPP that are consistent with our **existing** international obligations
 - : and we would not accept an outcome in the TPP that reduces the scope of copyright limitations and exceptions provided under international agreements to which Australia is a party.

If asked: Is Australia’s position in the TPP seeking to prejudge the outcome of the ALRC’s Inquiry into Copyright and the Digital Economy?

- . No. Australia would not accept an outcome in the TPP that **reduces our present flexibility to enact** copyright limitations and exceptions **in Australian domestic law** as provided under international agreements to which Australia is a party
 - including in relation to the digital environment
 - : these limitations and exceptions are essential for maintaining a balanced intellectual property system in the 21st century.

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Background (not for public use)

On 3 August 2012, James Love of US-based NGO Knowledge Ecology International published S33(a)(iii), S33(b) on copyright limitations and exceptions from the intellectual property chapter of the Trans-Pacific Partnership (TPP) Agreement. S33(a)(iii), S33(b)

In his blog on the S33(a)(iii), S33(b), James Love criticises the United States and Australia for 'presenting very restrictive text' and notes that Australia is not shown as asking for a provision that is in AUSFTA which preserves the scope of limitations and exceptions permitted under international agreements to which Australia is a party. He further states that '[t]he US/AU proposal is also narrowing the flexibilities for related rights...' and describes Australia's position on copyright limitations and exceptions as being 'captured by publishers'.

S33(a)(iii), S33(b)

Negotiations on the copyright limitations and exceptions are still in their early stages. S33(a)(iii), S33(b)

Australia is still developing its final position on copyright limitations and exceptions, taking into account our existing international obligations, stakeholder views and perspectives, and domestic developments. Relevantly, on 29 June 2012 the Attorney-General provided the Australian Law Reform Commission with Terms of Reference for its inquiry into Copyright and the Digital Economy.

Media Interest

S33(a)(iii), S33(b) has been reported in one Australian media outlet, ITnews, which stated:

New text leaked from the secretive Trans-Pacific Partnership (TPP) treaty negotiations has revealed Australia's support for new rules that could severely restrict copyright limitations and exceptions. Social justice not-for-profit Knowledge Ecology International (KEI), which leaked the texts, said contingents representing the US and Australia were both presenting "very restrictive text" that goes beyond earlier trade and intellectual property treaties such as the Berne Convention and TRIPS.

There has also been commentary on local Twitter feeds criticising Australia's position in the S33(a)(iii), S33(b), including by Dr Matthew Rimmer (ANU College of Law) and the Pirate Party.

Approval

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