Submission to the Select Committee on the Trans-Pacific Partnership Agreement

This is a personal submission from

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I will not be attending the hearing in person.

Introduction

I call on Parliament not to ratify the Trans-Pacific Partnership Agreement.

I begin by listing four reasons I oppose the TPPA as a whole, and follow with a more detailed objection to the "Intellectual Property" chapter.

I oppose the TPPA as a whole because...

- The TPPA is a threat to our sovereignty, and incompatible with the Treaty of Waitangi. According to law professor Margaret Wilson[1], and many[2] other eminent New Zealand jurists, the TPPA is intentionally being "used to override the jurisdiction of domestic legal systems."

- The TPPA is the result of a multi-year process involving roughly 600 well-funded corporations. That process excluded the public of all twelve countries involved. Given the size and complexity of the text, the secrecy surrounding its development, and an inadequate submission period with no extension, the public has not been given a reasonable chance to respond.[3]

- The TPPA has been heavily criticised by the UN Human Rights Council:

  > "The disturbing experience of the last thirty years of ISDS [Investor-State Dispute Settlement] shows that there has been a serious asymmetry that must not be repeated in any future trade agreement. The options are not to sign the TPP as it stands, as civil society demands, or not to ratify it, which is the responsibility of democratically elected parliaments."[4] - *Alfred de Zayas, UN Human Rights Council*

- The TPPA is opposed by leading economists, including Nobel Prize winning economist Paul Krugman[5], and Nobel Laureate economist Joseph Stiglitz[6]. It is opposed by thousands[7] of organisations, including many well aligned with New Zealand's supposed values and international image. Just a sample: *Médecins Sans Frontières*[8], Amnesty International[9], the American Civil Liberties Union[10], the Electronic Frontier Foundation[11], and Greenpeace[12].

Objection to the “Intellectual Property” Chapter

In my 2007 submission to the Commerce Committee on the “Copyright (New Technologies and Performers' Rights) Amendment Bill” I noted that, according to the Bill's general policy statement, the “**key principle that guides copyright reform in New Zealand is the enhancement of the public interest**.” I opposed sections 226A through 226E of that Bill, as they contradicted this key principle.

The “Intellectual Property” chapter of the TPPA continues the trend away from the public interest, benefiting corporate rights-holders while discouraging creativity, competition, innovation, and progress.

New Zealand’s term of copyright is currently life plus 50 years. The TPPA extends it to life plus 70 years. According to the Electronic Frontier Foundation, “long copyright terms yield at best minimal increases in compensation for living authors and [...] there is little evidence to show that they significantly contribute to an author’s incentive to create. Creativity and innovation are only possible by building upon the prior work of others; excessive copyright terms prevent artists and creators from accessing, remixing, and re-creating new works out of existing ones.”[13]

I, for example, have written a free educational application for children. It depends on stories and illustrations that recently entered the Public Domain, to encourage reading and ideas about grammar. If New Zealand’s term of copyright is extended to life plus 70 years, my application is unlikely to survive - despite being a public good that hurts nobody.

If the term of copyright is to be increased, there needs to be unbiased research - not a secretive corporate-driven process - showing that it is in the public interest. Where is the research?

The TPPA increases penalties for copyright infringement. Under the TPPA, even non-commercial copyright infringement is a criminal offense. People can be jailed, heavily fined, and have property seized - even without a complaint from the copyright holder.[14] [15]

TPPA provisions relating to Technical Protection Measures (TPMs) “make it a crime to tinker with, hack, re-sell, preserve, and otherwise control any number of digital files and devices that you own. The TPP will encourage ISPs to monitor and police their users, likely leading to more censorship measures such as the blockage and filtering of content online in the name of copyright enforcement.”[14]

By increasing protection for Technological Protection Measures, the TPPA harms competition, innovation, and user-choice. TPMs allow issuers to invent arbitrary restrictions that override “fair use”, control customer behaviour, and limit competition. For example, music or movies bought from one company's music store will play on that company's players, but “technological protection measures” mean those files won’t work with the competition’s products. By legally protecting TPMs, customer lock-in is enforced, and innovation based on “protected” technologies is limited.

TPMs are an artificially imposed barrier to interoperability. Laws protecting TPMs encourage intentionally incompatible file formats, software, and devices. There are already enough of those.

To top it off, under the TPPA, companies with more user- or consumer-friendly approaches could risk lawsuits from other companies claiming loss of profit![16]

Finally, the TPPA prohibits Open Source mandates. According to the Electronic Frontier Foundation, “the agreement would outlaw a country from adopting rules for the sale of software that include mandatory code review or the release of source code.” So how is this not a clear danger to New Zealand’s national security?[16]

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