

The Trans-Pacific Partnership – a Librarian’s Perspective

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The Trans-Pacific Strategic Economic Partnership Agreement (TPP), previously known as P4, began in 2005 between Brunei, Chile, New Zealand and Singapore. Subsequently the United States applied to join, followed by Australia, Peru, Vietnam and Malaysia. Japan has also shown some interest in joining, and there are plans to extend the Agreement to other APEC countries. The TPP is intended to be a regional trade agreement dealing with the removal of trade barriers and reduction of compliance costs, but it also focuses on other issues such as regional integration and regulatory coherence and transparency. Intellectual property and copyright issues are included in the negotiations.

As by far the largest partner, the United States will play a major role in the development of the TPP. However, this role may be somewhat different from that of other free trade negotiations in which the United States has been involved. The United States has taken the initiative in applying to join the TPP, which is a multi-lateral, regional agreement, not a bilateral one, and the position of the United States is likely to be diluted somewhat by the views of the already-established partners. Nevertheless, it is clear that the United States will push for the TPP partners to bring their laws, regulations and systems into line with those of the United States, at least in some areas such as intellectual property and copyright. Less clear at present is to what extent the TPP partners will bend to the wishes of the United States, particularly if those demands are in conflict with international agreements such as the World Trade Organisation’s TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement and the WIPO Copyright Treaties. But as in all negotiations, there must be give-and-take, and inevitably there are likely to be some areas of negotiation (for example, regarding Pharmac, or access of dairy products to the United States market) that will be of more importance to the New Zealand Government than other areas (possibly, for example, copyright duration).

LIANZ’s Standing Committee on Copyright made a submission to MFAT (the Ministry of Foreign Affairs and Trade) in December 2008, following this up with a meeting with MFAT officials in May 2010, and correspondence in June and October 2010 and June 2011.

LIANZA’s chief concerns are as follows:

Duration of copyright

In most if not all free trade agreements (FTAs) negotiated with other countries, the United States has insisted that intellectual property law, and in particular copyright law, be strengthened in favour of copyright owners, to bring it more in line with United States law. One change forced by the United States on the countries with which it has negotiated is an extension of the duration of copyright – in Australia, for example, copyright duration has had to be extended from 50 years after the death of the author or the year of publication to 70 years. Since under American law the duration of copyright is 70 years after the death of the author, or for works of corporate authorship 95 years from date of publication, or for

unpublished works 120 years from date of creation, LIANZA is very concerned that New Zealand may be forced to extend the duration of copyright from the present 50 years, to 70 years after the death of the author or the year of publication, or perhaps even longer

It is of course the ambition of librarians, both here in New Zealand and overseas, to make out-of-copyright print resources available digitally to their users, and already a significant number of older-published New Zealand books and newspapers have been digitised by university and public libraries, by the National Library, and by organisations such as the New Zealand Electronic Text Centre. Digitisation allows out-of-copyright works to be accessed outside the holding libraries, such as from homes, schools or places of work, on a 24 / 7 basis; and provides keyword searching facilities not available in the print environment. Extension of copyright duration will hugely impede libraries' digitisation programmes, thereby seriously impinging on access to and re-use of recorded information and knowledge by New Zealanders. It may also require the removal from databases of works already lawfully digitised under current New Zealand law – the New Zealand Electronic Text Centre has estimated that an extension of copyright duration by 20 years, if applied retrospectively, would require the removal of nearly 20,000 pages of the works of some 50 authors. In addition to restricting access to information, this would also be to the detriment of educational programmes in universities and schools which are based on these digitised texts.

Extension of copyright duration will also have a serious adverse effect on the use of now out-of-copyright works such as photographs, illustrations or other images in new scholarly, educational and research publications. It is already extremely difficult under current copyright law to trace copyright owners in order to seek permission to make use of their work; extension of copyright duration beyond the present 50 years after the death of the author or year of publication will make this task even more difficult.

LIANZA is also extremely concerned that an extension of copyright duration will have a serious impact on research and scholarship in New Zealand. It is well proven that new scholarship builds on older scholarship. If New Zealand researchers and scholars are prohibited from making use of earlier works for an additional two decades or even longer, there will be a major impact on innovation, creativity and the production of new knowledge, which in turn will adversely impact on the drive to develop a knowledge economy in this country.

The extension of copyright duration will not benefit the creators of literary, dramatic, musical, artistic or scientific works. Rather, it will benefit only their heirs or corporate copyright successors – and to an extent that is well beyond what is reasonable. As major importers of in-copyright works, libraries will be seriously affected, and the result will be both very expensive for and highly disadvantageous to New Zealand users of works of intellectual creativity.

Balance in copyright law

Good copyright law seeks to achieve a balance – a balance between encouraging the creativity and protecting the rights of creators, authors and publishers, and providing for the needs of society to benefit from and make use of the ideas and knowledge incorporated within publications and other creative works. Causing a swing in this balance even more in favour of copyright owners than is the case at present must have a deleterious effect on users

of published information and on society as a whole. As stated in Appendix 3 of the March 2002 Report of the E-Learning Advisory Group, “A shift in balance towards owner rights is not in New Zealand’s interest, especially if it wishes to sustain a knowledge economy”.

New Zealand copyright law does not include all the rights and exceptions contained in United States copyright law, so a change in one element – for example, extension of copyright duration – may not be counterbalanced by another exception – for example, the fair use doctrine as applied by U.S. courts which is not included in New Zealand copyright law.

Parallel importing

LIANZA is also critically concerned that the United States may try to force the repeal of the provisions of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998. Apart from works published in New Zealand, libraries import almost all their holdings through specialist library supply companies based overseas. Such companies supply books and other library materials at prices which are much lower than could be achieved by agents based in New Zealand, thereby maximising the number of works able to be acquired by New Zealand libraries. In addition, overseas specialist library suppliers provide cataloguing, processing and other services which, because of economies of scale, could never be achieved by New Zealand agents. Repeal of the Amendment Act’s provisions would have an appalling effect on New Zealand libraries, severely limiting their ability to make as much recorded knowledge available as cheaply as possible and as quickly as possible to their users, thereby seriously impeding education, research and scholarly endeavours in New Zealand.

Technological protection measures (TPMs)

Any increase in the protection already given to TPMs is likely to further prevent the users of digital copyright works from exercising exceptions or undertaking acts permitted by current New Zealand copyright law.

Indigenous IP rights

Development of a New Zealand framework for indigenous intellectual and cultural property rights and to other taonga, for example as a result of the Wai262 claim, could be jeopardised if New Zealand is forced to fit into a United States model.

Changes to New Zealand copyright law

LIANZA has strongly argued to MFAT and MED that any changes in New Zealand copyright law must be in the best interests of copyright owners, users of copyright works, libraries and other institutions, and society as a whole. Requests for changes must be justified, and should be resisted unless the changes are of proven benefit to citizens and institutions in New Zealand.

LIANZA will continue to lobby the TPP negotiators, and to keep the library profession informed as the negotiations proceed.

June 2011