

Joint Statement on U.S. Trans-Pacific Partnership (TPP) Proposal on Exceptions and Limitations - Leesburg Round - August 2012

Why would anyone trade away our freedoms?



International



International



USA



USA



Canada

We, the undersigned public interest organizations, oppose the current framework for exceptions and limitations proposed by the Office of the US Trade Representative (USTR) as the language stands in the August 3rd leaked text<sup>1</sup> of the Trans-Pacific Partnership agreement (TPP). It uses the most restrictive three-step test language, extends the test to exceptions and limitations not currently under the test and jeopardizes countries' ability to set what best fit their needs. The US proposal misses opportunities to use the TPP to strengthen limitations and exceptions further.

The language in Paragraph 1 of the US proposal, specifically the excerpt “shall confine”, limits nations’ ability to seek a flexible exceptions and limitations system. This language would cause numerous potential problems for the kind of balance in copyright systems that the new USTR proposal claims to advance<sup>2</sup>. Additionally, while the language in Paragraph 2, focused on copyright exceptions and limitations for the digital environment, may appear to reflect progress, the unintended consequences of the proposed three-step test language are many and will create chilling effects in the ability of users and entrepreneurs to innovate. This is a worse problem for those nations that do not adopt fair-use-like systems.

We firmly believe that countries should be able to tailor copyright exceptions and limitations to their domestic needs, and extend such limitations into the digital environment to create new exceptions as they find appropriate. We consider that the proposal pushed forward by New Zealand, Chile, Malaysia, Vietnam and Brunei—which also leaves to each country to decide what is appropriate for their digital environment—is a better solution.

The USTR announced a copyright proposal during the San Diego Round for the TPP negotiations in July 2012 that would “obligate Parties to seek to achieve an appropriate balance” in their copyright systems<sup>3</sup>.

Two weeks ago, the USTR’s proposal leaked on the Internet. The leak revealed that the proposed text would do little to incorporate public interest concerns in the TPP’s copyright chapter. The text revealed that the US would follow the controversial three-step test as the cornerstone of its approach. That test has been subject to varying interpretations and is not sufficient to

<sup>1</sup> <http://keionline.org/node/1516>

<sup>2</sup> Public Statement on the U.S. Proposal for a Limitations and Exceptions Clause in the Trans-Pacific Partnership <http://infojustice.org/archives/26799>

<sup>3</sup> <http://www.ustr.gov/about-us/press-office/blog/2012/july/ustr-introduces-new-copyright-exceptions-limitations-provision>

**TAKE ACTION**

<https://eff.org/r.2ajj>



provide countries with the certainty they need to craft limitations and exceptions suitable to their domestic needs.

Furthermore, the leak revealed that the US and Australia introduced a restrictive text, confining each and any limitations and exceptions to compliance with the controversial three-step test framework. This would potentially extend the test to exceptions and limitations that are not subject to the three-step test under current international standards reflected in the Agreement on Trade Related Aspects of IP Rights.



Chile

In particular, we note that the Berne Convention, Rome Convention, and Agreement on Trade Related Aspects of Intellectual Property (TRIPS) have several articles that explicitly permits specific limitations and exceptions without having to comply with the three-step test.



Chile

For instance, Article 10 of the Berne Convention grants rights to make quotations and also allows routine uses of literary or artistic works by way of illustration in publications, broadcasts, or sound or visual recordings for teaching purposes. Articles 7 and 8 of the TRIPS agreement envision limits to intellectual property rights in order to promote innovation and prevent abuse of intellectual property rights. Neither Berne Article 10 nor TRIPS Articles 7 and 8 are subject to the three-step test.



Australia

The US approach of seeking higher levels of copyright protection combined with a minimally effective provision on limitations and exceptions may end up generating greater risks of liability for ISPs. The proposed US text for the TPP (also available through a leak in February 2011) indicates that ISPs would be required to take measures to prevent infringement.



Mexico

With its TPP proposals, the USTR is putting peoples' freedoms and ability to innovate at risk, while imposing greater barriers to development and human rights particularly for those from developing countries. The scope of the text proposed by the US and Australia will restrict rights that are essential to access to information, culture, science, education, and innovation.



USA

We cannot accept these limitations on fundamental human rights. We urge negotiating countries to oppose the USTR's maximalist approach to intellectual property. We urge the negotiating Parties to uphold international standards, including the numerous flexibilities that exist in agreements set at the more transparent multilateral fora that are more appropriate to the public interest of their citizens. And we urge country members to release the official proposals, making the text fully transparent and capable of scrutiny by the public, civil society, and by the legislative bodies of the countries involved—not just by corporate conglomerates who wish to protect their business models and profits.



Join the over 100.000 people from around the world who have signed the petition at: [www.stophetrap.net](http://www.stophetrap.net)

**TAKE ACTION**

<https://eff.org/r.2ajj>