



Electronic Frontiers
AUSTRALIA

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Trade Commitments Branch
Department of Foreign Affairs and Trade
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221

Via email to: tpp@dfat.gov.au

29th June 2012

Dear Sirs,

Re: Trans-Pacific Partnership Agreement negotiations – IP Chapter

Established in January 1994, Electronic Frontiers Australia (EFA) is a national, membership-based non-profit organisation representing Internet users concerned with on-line freedoms and rights.

EFA appreciates the opportunity to participate in recent stakeholder consultation sessions run by the Department in relation to the ongoing Trans-Pacific Partnership Agreement negotiations, and looks forward to the opportunity to continue to participate in these consultations.

At this time, EFA wishes to make this submission in relation to the negotiations relating to the IP Chapter within the Trans-Pacific Partnership agreement.

EFA understands that the Department's general negotiating position is that there is no intention to agree to anything in the IP Chapter that will require changes to existing Australian law. Given the imminent review of the Copyright Act, to be undertaken by the Australian Law Reform Commission, EFA is concerned that this negotiating position may lead to provisions being agreed with the TPP negotiations that while not requiring any changes to existing Australian law, may in fact impose constraints on the possible reforms to the Copyright Act that may result from the ALRC review.

EFA is specifically concerned about the experience from the AUSFTA negotiations, which resulted in the imposition of the requirements of the US Digital Millennium Copyright Act without the balancing fair use doctrine which also applies under US law. The technologically-specific provisions that were introduced into Australian copyright law in place of the fair use doctrine have been shown to be insufficient and already out-dated. EFA would like to see specific steps taken towards introducing a fair use doctrine into Australian copyright law and calls upon DFAT not to agree to any provisions within the TPP negotiations that would preclude this outcome.



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EFA therefore urges the Department to be cognisant of the Terms of Reference for the ALRC review of the Copyright Act while undertaking the TPP agreement negotiations, to ensure that no provisions are agreed to that may so constrain the evolution of the Copyright Act.

Yours sincerely,

David Cake
Chair, Electronic Frontiers Australia