

15 July 2011



Prime Minister John Key
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Dear Prime Minister,

Trans Pacific Partnership Agreement – Intellectual Property

During your forthcoming visit to the United States, it is likely you will be involved in discussions regarding the Trans Pacific Partnership Agreement.

This letter is to draw your attention to debates regarding intellectual property law reform that are part of the negotiations and to offer InternetNZ's strong support for New Zealand's current position.

New Zealand negotiators have been arguing that the international framework for intellectual property set out in the WTO's TRIPs Agreement forms an adequate norm that does not need to be expanded. That judgement explains why New Zealand has not signed up to other international agreements on IP law, such as the WIPO Internet Treaties.

A range of concerns would arise with any tightening of IP law as is being sought by the United States in the negotiations.

A key concern which may emerge during your visit is an increasing drive to change the status of Internet Service Providers from mere conduits of data to and from the Internet, into enforcers of intellectual property law.

This is primarily driven by the lobbying efforts of movie and music interests in the United States, and has been a long-standing pressure applied by the United States in its international trade policy.

The Australian Government agreed to a tightening of IP law in their Free Trade Agreement with the U.S. in 2004, which has since been criticised by an Australian Productivity Commission study¹ looking at the costs and benefits of bilateral trade agreements. The Productivity Commission concluded that the agreement's IP provisions are incurring tens of millions of dollars a year in increased costs for Australian businesses and consumers.

This is not a situation which New Zealand should seek to emulate.

¹ Available on the Productivity Commission's website at <http://www.pc.gov.au/projects/study/trade-agreements> (as accessed on 15 July 2011).

We note too that Parliament has recently passed amendments to the Copyright Act after three years of debate and discussion which appears to have secured a workable compromise among all the stakeholders involved. It would be regrettable to have a TPPA which forced the Government to abandon this settlement and embark on a further difficult round of legislative change.

Our contact with New Zealand officials indicates that the Government's position today is that the TPPA should not require any changes to domestic law, beyond the recent changes to the Copyright Act which have already been enacted.

We strongly support this approach: no further tightening of New Zealand IP law should be mandated by the TPPA. Doing so would not be in the national interest. We urge you and your Government to maintain this position.

On a related note, and as part of these discussions, you may be briefed by the Americans on the recent agreement by key U.S. ISPs to commence a graduated response scheme to deal with online copyright infringement.

This is a voluntary scheme focused on education of ISP subscribers – it does not go as far as the new regime that takes effect in New Zealand on 1 September, as there is no end point where judicial authorities can impose financial penalties of up to \$15,000.

This is an illustration that New Zealand already has in place reasonable approaches to deal with intellectual property infringing on the Internet, and that any request for further measures is out of place and inconsistent with U.S. practice.

I hope this is of assistance to you, and I wish you well for your trip.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Vikram Kumar", with a horizontal line underneath it.

Vikram Kumar
Chief Executive