

Australia backs copyright crackdown in TPP -- Murdoch is overjoyed

by Rohan Pearce via jess - ComputerWorld Friday, Oct 24 2014, 9:40am

international / prose / post

A document published by Wikileaks reveals a battle over the 'heart and soul of intellectual property law in the Pacific Rim,' says IP expert. Australia's consent at the behest of media magnates such as Rupert Murdoch is yet another blow to Australian sovereignty, as the Corporate created TPP has the power by consent to overrule the once supreme authority of local governments -- may democracy never rest in peace!



Leaked details of Trans-Pacific Partnership Agreement (TPP) negotiations reveal that Australia is pushing an approach to copyright enforcement in the region that appears to ignore broader public interest concerns in favour of the supporting rights owners.

Wikileaks overnight [published](#) a working document for the intellectual property chapter of the TPP, which is a transnational treaty being negotiated between 12 nations, including Australia.

The leaked document, dated 16 May, reveals details of the IP-related text nations are pushing to have incorporated in the final TPP agreement.

"There's a real synergy between the copyright crackdown being proposed by [Attorney-General George] Brandis at a domestic level and the copyright maximalist measures in the Trans-Pacific Partnership," IP expert Dr Matthew Rimmer said.

"I definitely think it's the case that the Coalition government is trying to use trade agreements to buttress their domestic initiatives," said Rimmer, an associate professor at the Australian National University College of Law and an Australian Research Council Future Fellow.

Brandis and the government earlier this year proposed a range of domestic changes to copyright enforcement. A discussion paper circulated by the government canvases changes including potentially [forcing Internet service providers to block access to piracy-related sites](#) and extending the circumstances in which ISPs can be held accountable for copyright violations.

The government has previously claimed that international agreements obliged it to tighten domestic copyright enforcement.

In the objectives section for the TPP IP chapter, Australia's negotiators have pushed for the inclusion in the TPP of text that states: "Each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilization, protection and enforcement of intellectual property rights,] and through greater quality,

efficiency and transparency in its intellectual property administration and registration systems."

Rimmer contrasted this to text proposed by a group of countries, including Canada and New Zealand but excluding Australia, that sets out broader goals for IP rules, including maintaining a balance between the rights of content creators and consumers, ensuring preservation of the public domain, broader economic and social development goals, and making sure that IP enforcement measures do not introduce new trade barriers.

"Australia has not been taking a position in terms of the Canadian/New Zealand text about the need to promote access to and preserve the public domain," Rimmer said.

"It seems to me that Australia's vision of copyright law is very much one that protects the investments of large multinational companies, particularly from Hollywood and the music industry."

Australia's position in the negotiations seems at odds with the position the High Court of Australia took in the case over legislation enforcing plain packaging for tobacco products, Rimmer said. In that case the court said that the broader public policy objectives of intellectual property should be considered.

"There's a real battle going on for the heart and soul of intellectual property law in the Pacific Rim," the academic added.

The TPP text resurrects many of the elements of the controversial Anti-Counterfeiting Trade Agreement, Rimmer said.

"It's a bit like Halloween has come early — all the measures that were in the dead and buried in the Anti-Counterfeiting Trade Agreement have come back to life with a vengeance. It's a bit of a zombie agreement in that you have all those sorts of measures for copyright piracy and trademark counterfeiting included within this agreement."

The leaked document also reveals differences over the length of copyright terms.

"Previously there had been some countries like Canada and New Zealand that were arguing that each country should be able to set their own copyright term, but now there's a real push to have a unified approach," Rimmer said.

The US has been pushing for copyright to last for the life of the author and 70 years; other countries have argued for the Berne Convention length of life plus 50 years, or in the case of Mexico arguing for life plus 100 years.

The agreement also includes measures for fixing the life of works with corporate authorship (those created in the course of employment) at between 50 and 95 years from the time of creation.

In the US in 1998 copyright was extended from the Berne Convention length of life plus 50 years to life plus 70 years (copyright protection for works made in the course of employment was extended even further). The legislation was dubbed the 'Mickey Mouse Protection Act' after extensive lobbying by Disney for the copyright extension.

These Mickey Mouse Act-style extensions of copyright are an important issue that has implications for cultural heritage, innovation and competition, and freedom of speech, Rimmer said.

"Economically, there's been a lot of debate about what is an appropriate length of protection. There's been a great deal of criticism by economists, policy-makers and lawyers that the term of copyright is term too long," the IP expert said.

Online copyright crackdown

Addendum III to the TPP IP chapter is a 'non-paper' (text yet not incorporated directly in the TPP IP chapter working document) that covers potential measures to crack down on online copyright infringement and safe harbour provisions for Internet service providers.

Text supported by Australia states that in "order to facilitate the continued development of entities engaged in providing online services, while also providing enforcement procedures that permit effective action against copyright infringement including remedies for right holders to address copyright infringement in the online environment, each Party shall establish or maintain a framework that provides safe harbors with respect to copyright infringement"; those safe harbour measures would limit the liability of ISPs for copyright violations by their customers.

However, the text also directs parties to the TPP to provide legal incentives for online service providers to co-operate with copyright owners to deter the "unauthorised storage and transmission of copyright materials".

ISPs would only qualify for safe harbour provisions under certain circumstances, including participating in measures to stop copyright infringement that takes place through "systems or networks controlled or operated by them or on their behalf".

Parties to the agreement would need to develop procedures that enable copyright owners to obtain information from an ISP identifying people engaged in copyright infringement.

Rimmer said that TPP measures to prevent the disclosure of trade secrets were also concerning and have implications for journalists and whistleblowers.

The US has been pushing hard to make trade secret disclosures not just a matter of civil law, and the TPP text on trade secrets has "developed significantly" since the last leak, Rimmer said.

The text supported by the majority of the TPP parties makes provisions for "criminal procedures and penalties" for the "the unauthorized, willful access to a trade secret held in a computer system," "the unauthorized, willful misappropriation of a trade secret, including by means of a computer system" or "the fraudulent {or unauthorized} disclosure of a trade secret, including by means of a computer system".

The provisions could affect organisations such as Wikileaks or whistleblowers such as Chelsea Manning or Edward Snowden, Rimmer said.

© 2014 IDG Communications



Abbott sucking up to Murdoch

<http://www.computerworld.com.au/article/557634/australia-backs-copyright-crackdown-tpp/>

Jungle Drum Prose/Poetry. <http://jungledrum.lingama.net/news/story-1322.html>