

9 July 2014

Dear ministers and lawmakers of TPP negotiating countries,

We write as a coalition of users of copyright materials, including libraries, public archives, authors, educators, students, digital rights advocacy groups and technological innovators, who will suffer from the further extension of the copyright term beyond the minimum period established by the TRIPS agreement, as proposed by certain parties under the Trans-Pacific Partnership agreement (TPP).

The public domain provides an immense social and economic benefit to all sectors of society. Through the public domain, in conjunction with today's affordable communications technologies and networks, access to knowledge is available to even the most impoverished members of the community. The public domain also spurs the creation of popular and valuable new derivative works, both commercial and non-commercial. For example, the spate of recent *Sherlock Holmes* spin-offs was made possible by the passage of that property into the public domain, as recently affirmed by a US court decision.¹

The most immediate threat to this invaluable resource would be the extension of copyright terms by another 20 years, adding to the TRIPS minimum term generally of life plus 50 years. Despite wide divergence on other issues, almost all contemporary economists are in agreement that copyright term extension makes no sense. The recent Hargreaves report in the United Kingdom summarizes the broad consensus on this question as follows:

Economic evidence is clear that the likely deadweight loss to the economy exceeds any additional incentivising effect which might result from the extension of copyright term beyond its present levels. This is doubly clear for retrospective extension to copyright term, given the impossibility of incentivising the creation of already existing works, or work from artists already dead.²

There cannot be any serious question about the fact that the extension of the copyright term results in a net welfare loss to society, and effectively amounts to a transfer of wealth to a small number of multinational copyright-holding companies. Other justifications are sometimes given for copyright term extension, but each of these can also be comprehensively debunked by evidence, as explained in the attached information sheet.

This transfer of welfare in favor of large corporate copyright owners will come at the cost of those who depend upon access to copyright works that would otherwise be in the public domain—libraries, students, artists, writers, and millions of other people.

We, the undersigned, urge you to reject any measure in the Trans-Pacific Partnership that would jeopardize the continued access to a growing public domain that we, and our colleagues in TPP-negotiating countries around the world, currently enjoy. The further extension of copyright term beyond TRIPS levels is costly, unnecessary, and could be very hard to reverse.

Sincerely,

¹ Jessica Glenza. *Sherlock lives in public domain, US court rules in the case of the heckled brand* (June 16, 2014), available at <http://www.theguardian.com/books/2014/jun/16/sherlock-public-domain-court-doyle-estate-copyright>.

² Ian Hargreaves. *Digital Opportunity: A Review of Intellectual Property and Growth* (May 2011), available at <https://ipo.gov.uk/ipreview-finalreport.pdf>.



Association for Progressive Communications



Authors Alliance



Association of Research Libraries



Bangladesh NGOs Network for Radio & Communication



Article 19



BC Freedom of Information and Privacy Association



Atlantic Provinces Library Association



Bytes for All, Pakistan



Australian Digital Alliance



Canadian Library Association



Australian Library and Information Association



Canadian Urban Libraries Council



Communia Association



Consumer NZ



Electronic Frontier Foundation



Consumers International



Electronic Frontiers Australia, Inc.



Council of Atlantic University Libraries



Fantsuam Foundation



Council of Australian University Librarians



Council of Canadians



Creative Commons



Internet Archive



IT for Change



OpenMedia.ca



Knowledge Ecology International



Public Citizen



Library Association of Alberta



Public Knowledge



Newfoundland and Labrador Library Association



Australian Fair Trade and Investment Network



ONG Derechos Digitales



WIKIMEDIA FOUNDATION
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Open Knowledge

Information Sheet on Copyright Term Extension

This information sheet debunks several common arguments in favour of copyright term extension.

- **Greater life expectancy of authors.** It is sometimes argued that copyright term extension is justified by the lengthening life expectancy of authors. We fully support artists receiving just rewards for their creative output. However because "life" is the starting point, copyright already extends beyond the lifetime of any author, and providing for his or her descendants is not a legitimate goal of copyright law. As noted above in the extract from the Hargreaves report, there is no additional incentivizing effect from copyright term extension on artists who are no longer living. Further, work by an eminent group of US economists, including Milton Friedman, on the US Copyright Term Extension Act of 1998 showed that the profit for the creator in the extended term was, at the most, a few cents and often a percentage of a cent.³ Conversely, it was calculated that 72% of the benefits of the most recent European term extension on sound recordings would accrue to record companies, not artists.⁴
- **Countries with longer copyright terms are a more attractive destination for cultural investment.** It is often supposed that by extending a country's copyright term, more direct foreign investment in that country's creative industries will be the inevitable result. Similarly, it is claimed that copyright protection is necessary to provide an incentive for industry to preserve works that would otherwise fall into the public domain. However, evidence does not bear this out. There is not a single published study that shows a significant positive relationship between copyright law and foreign direct investment, in any country. Indeed, an extended copyright term frequently results in the unavailability of copyright works altogether, either because the rightsholder is not interested in commercializing them, or—worse—because the works in question have become “orphaned” since the copyright owner cannot be contacted. Conversely, creative works are often only rescued from oblivion after entering the public domain.⁵
- **Harmonization.** The notion that a harmonized copyright term under the TPP will enable easier cross-border licensing of works is a sham. Amongst countries that share a copyright term of life plus 70 years, the rules that determine the actual copyright term for a particular work are complex. In fact they are complex even within the United States: the diagram below (although not reproduced at a legible size) shows just how complex it is to determine when copyright expires. The TPP does not seek to harmonize these divergent rules. Therefore, it will still be necessary, even under a uniform regime of life plus 70, for rightsholders to navigate a minefield of national legal systems in order to license their works.

³ George Akerlof, Kenneth Arrow, Timothy Bresnahan and others. *The Copyright Term Extension Act of 1998: An Economic Analysis* (May 2002), available at http://www.brookings.edu/~media/research/files/reports/2002/5/copyright%20litan/05_copyright_litan.pdf

⁴ Martin Kretschmer. *Comment on copyright term extension* (September 13, 2011), available at http://www.cippm.org.uk/copyright_term.html.

⁵ Paul Heald. *How Copyright Keeps Works Disappeared* (July 5, 2013). Illinois Program in Law, Behavior and Social Science Paper No. LBSS14-07; Illinois Public Law Research Paper No. 13-54. Available at SSRN: <http://ssrn.com/abstract=2290181> or <http://dx.doi.org/10.2139/ssrn.2290181>.

