



August 15, 2012

Ambassador Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Re: U.S. Proposal for Copyright Exceptions and Limitations in TPP

Dear Ambassador Kirk:

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries—that collectively represent over 100,000 libraries in the United States employing over 350,000 librarians and other personnel.

LCA writes to express its appreciation for paragraph 2 of the U.S. proposal for copyright exceptions and limitations in the Trans-Pacific Partnership (TPP) Agreement. According to news reports, under paragraph 2, “each Party shall seek to achieve an appropriate balance in providing limitations of exceptions, including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to, criticism, comment, news reporting, teaching, scholarship, and research.”

The list of legitimate purposes contained in paragraph 2 derives from 17 U.S.C. § 107, which codifies the right of fair use. LCA welcomes inclusion of this language in paragraph 2 for three reasons. First, this language would insure that nothing in TPP would in any direct or indirect way undermine the fair use right. As Justice Ginsburg recently stated in *Golan v. Holder*, fair use is one of the “traditional contours of copyright protection” that acts as a “built-in First Amendment accommodation.” Fair use is critical to the operation of libraries and the activities of their users, and no international agreement should ever abridge it in any manner.

Second, this language would enhance the ability of libraries overseas to serve their users. The copyright laws of several of the other TPP countries do not contain the robust framework of exceptions for libraries and educational institutions found in the U.S. Copyright Act. Paragraph 2 obligates Parties to seek to achieve a balance in their copyright laws by adopting limitations and exceptions for legitimate purposes such as criticism, teaching, scholarship, and research—the very purposes for which libraries exist. Thus, paragraph 2 would lead to libraries throughout the TPP region benefiting from the same exceptions as U.S. libraries.

Third, this language demonstrates U.S. leadership in the promotion of exceptions and limitations in perhaps the most visible and forceful manner of any U.S. Administration. The July 3, 2012, statement announcing the introduction of paragraph 2 stated that “the balance sought by the U.S. TPP proposal recognizes and promotes respect for the

important interests of individuals, businesses, and institutions who rely on appropriate exceptions and limitations in the TPP region.” LCA appreciates this recognition of and respect for the interests of libraries.

While LCA generally supports paragraph 2, we believe that it should be amended to make unambiguous the obligation to achieve a balance of interests through the adoption of exceptions for legitimate purposes. Furthermore, language should be added to clarify that TPP does not reduce the scope of exceptions permitted under other agreements, nor does it prevent Parties from continuing existing exceptions and extending them to the digital environment.

Finally, LCA notes that it is in a position to comment positively on paragraph 2 only because its text was leaked. While the July 3 statement described the proposal, informed commentary is possible only with respect to actual text, not descriptions of text. USTR should encourage the other Parties to agree to make the entire draft IP chapter text publicly available for review and discussion.

We look forward to continuing to work with you and your staff on TPP as it progresses.

Sincerely,

A handwritten signature in cursive script that reads "Prudence S. Adler".

Prudence S. Adler
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On behalf of the Library Copyright Alliance