



*Amplifying the voice of the Australian open source software industry*

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## FOR IMMEDIATE RELEASE

### CPTPP grants temporary stay of execution

*One third of the worst issues with TPP resolved for the short term*

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Open Source Industry Australia Ltd  
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Australian Free & Open Source Software (FOSS) companies have been handed a temporary reprieve by the “Comprehensive & Progressive Agreement for Trans Pacific Partnership” (CPTPP). The “suspension” by CPTPP of twenty-two TPP provisions addresses nine of the twenty-four grave concerns about TPP raised to JSCOT by OSIA in 2016<sup>1</sup>, albeit with no certainty about when the “suspended” provisions may resurface.

On patents, TPP was set to make old technology repatentable<sup>2</sup>. CPTPP avoids this ridiculous requirement temporarily by virtue of the “suspension” of TPP Art. 18.37(2).

On copyright term, TPP would have extended existing monopolies for no return, extended Crown copyright needlessly and locked Australia into its contemporary copyright terms forever<sup>3</sup>. The “suspension” by CPTPP of the provisions on copyright term in TPP Art. 18.63 removes those issues for the time being.

The particularly egregious “pointless prohibitions”<sup>4</sup> imposed by the TPM anti-circumvention provisions in TPP Art. 18.68 have also been “suspended” for now.

Finally, on ISP enforcement, TPP sought to discriminate against end users, to reverse the presumption of innocence, to legitimise automated fraud and to place impossible obligations on ISPs<sup>5</sup>. Those concerns have been addressed for the short term by CPTPP’s “suspension” of TPP Art. 18.82.

The CPTPP “suspensions” of those and other TPP provisions only apply “until the Parties agree to end suspension of one or more of these provisions”<sup>6</sup>.

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<sup>1</sup>Burton, J. & Foxworthy, P., *Submission to the Joint Standing Committee of Treaties regarding the Trans Pacific Partnership*, Open Source Industry Australia, 11 March 2016. Available at [http://osia.com.au/f/osia\\_sub\\_201603\\_jscot.pdf](http://osia.com.au/f/osia_sub_201603_jscot.pdf)

<sup>2</sup>*ibid.*, s. 6.7, p. 13.

<sup>3</sup>*ibid.*, ss. 6.3–6.5, pp. 10–12.

<sup>4</sup>*ibid.*, s. 6.8, pp. 13–14

<sup>5</sup>*ibid.*, ss. 6.12–6.15, pp. 16–17.

<sup>6</sup>Art. 2 of CPTPP, available at

<http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/tpp-11-treaty-text.pdf>

‘OSIA’s members take a little solace in the knowledge that those nine particular measures no longer pose an immediate threat to the Australian FOSS industry,’ said OSIA Company Secretary Jack Burton, ‘but to be frank the “suspensions” in CPTPP represent no more than a temporary stay of execution.’

‘Trade agreements are by their very nature specific agreements between countries,’ said OSIA Chairman Mark Phillips, ‘They should set out fully understood positions on how trade is and is not to be conducted. The known agreement into this conduct of trade is one of the fundamental aspects of law. Without a binding agreement that is fully known how can companies plan for the future? How can a series of “suspended” positions, which may or may not become enabled, provide certainty under this trade agreement?’.

‘If the suspended provisions are not important enough to be part of a binding agreement,’ continued Phillips, ‘then they should not be in the agreement at all!’.

These comments follow OSIA’s recent criticism of the “suspension” mechanism itself<sup>7</sup> and of the biased, misleading pro-CPTPP propaganda distributed recently by DFAT<sup>8</sup>.

## About Open Source Industry Australia Ltd

Open Source Industry Australia Ltd (OSIA) represents & promotes the Australian open source software industry by:

- Ensuring that the Australian business, government and education sectors derive sustainable financial and competitive advantage through the adoption of open source and open standards;
- Helping Australian Governments to achieve world leadership in providing a policy framework supportive of open standards and of the growth and success of the Australian open source industry; and
- Ensuring Australia’s global standing as the preferred location from which to procure open source services & products.

OSIA’s members are organisations in Australia who invest in or build their future on the unique advantages of open source software.

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<sup>7</sup>[http://osia.com.au/f/osia\\_cptpp\\_pr1.pdf](http://osia.com.au/f/osia_cptpp_pr1.pdf)

<sup>8</sup>[http://osia.com.au/f/osia\\_cptpp\\_pr2a.pdf](http://osia.com.au/f/osia_cptpp_pr2a.pdf), [http://osia.com.au/f/osia\\_cptpp\\_pr2b.pdf](http://osia.com.au/f/osia_cptpp_pr2b.pdf) & [http://osia.com.au/f/osia\\_cptpp\\_pr2c.pdf](http://osia.com.au/f/osia_cptpp_pr2c.pdf)