



# copyright in the **TPPA**

# @ public interest

plan A:

**talk about**  
**specific issues**

provide useful  
information

to discuss and  
negotiate TPPA

is that  
possible?



**there's no**  
**public text**

**there's** no  
official agenda

**not even an  
official  
subject list**

**there's** (almost)  
no substantive  
statement  
from parties

**most** (yeah, most)  
**stakeholders**  
**are walking in the**  
**dark**

what is the **purpose**  
of being here  
speaking?

plan B:

we don't like  
TPPA



(what we know  
so far)

what an agreement  
like this **should**  
**look like**

to help pursuing  
public interest goals

**1st goal**  
give incentives for  
intellectual creation

# 2nd goal

# help parties

# development

**3rd goal**  
aligned with human  
rights

**the only useful**  
**“3 step test”**

**because the other**  
**“3 step test”**



# limits E&L

it's everywhere!

**Berne treaty** (reproduction E&L)

**TRIPS** (all E&L)

...all recent **US FTA's**

**do we need to repeat it?**  
**is it useful?**  
**serves public interest?**

not really

**interpretation** problems

collides w/other  
**permitted** exceptions

worrying trend

# us-cl 17.7 (3)



Each Party shall confine limitations or exceptions to rights to certain special cases which do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

(17)

# us-cl 17.7 (3) [17]



Article 17.7(3) permits a Party to carry forward and appropriately extend into the digital environment limitations and exceptions in its domestic laws which have been considered acceptable under the Berne Convention. Similarly, these provisions permit a Party to devise new exceptions and limitations that are appropriate in the digital network environment



# us-kor 18.4 (10)



With respect to this Article and Articles 18.5 and 18.6, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

where is the  
footnote?

# relying in this 3-step test

**to propose**  
an e&l rule

bad  
idea

good opportunity

# back to the question

discuss  
seriously



what an agreement  
like this **should**  
**look like**

to help pursuing  
public interest goals

copyright =  
unintended  
consequences

affects  
education

affects  
people w/disabilities

# poor a2k standards

affects  
freedom of expression

creation **does not**  
**occur** in a tabula rasa



**does not depend**  
**on copyright rules**

**beyond a**  
certain point

copyright affects  
**creation**  
negative way

copyright affects  
**innovation**  
negative way

leads to  
private **ensorship**

leads to  
gatekeepers  
control

**seriously** consider

# public interests



at stake

# real balanced copyright

# opportunity

# mandatory standard

# copyright

# exceptions & limitations

without  
**restraining**  
actual exceptions

**pursue**  
**balanced copyright**  
**system**

most  
in development  
countries



**lacks**  
**a balanced e&I**  
**system**

# obligations to achieve balance

matches **duties**

but...

starting from the  
**3-step-rule**  
to do this

in an **explicit** way

cripples  
public interests  
at stake

# thanks

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