

# House of Representatives

# Supplementary Order Paper

**Tuesday, 8 November 2016**

## **Trans-Pacific Partnership Agreement Amendment Bill**

### *Proposed amendment*

Gareth Hughes, in Committee, to move the following amendment:

*New clause 11A*

After *clause 11* (page 13, after line 5), insert:

#### **11A New section 40A inserted (Fair use)**

After section 40, insert:

#### **40A Fair use**

- (1) Despite any other provision in this Part, the fair use of a copyrighted work, including use by reproduction in copies or phonorecords or by any other means, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.
- (2) In determining whether the use made of a work in any particular case is a fair use the factors to be considered include—
  - (a) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes:
  - (b) the nature of the copyrighted work:
  - (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole:
  - (d) the effect of the use upon the potential market for or value of the copyrighted work.

- (3) The fact that a work is unpublished does not bar a finding of fair use if that finding is made upon consideration of all the above factors.

### **Explanatory note**

The Trans-Pacific Partnership Agreement Amendment Bill extends and introduces United States-styled copyright terms without the corresponding United States-styled fair use copyright protections. This amendment copies the United States 4 factor fair use provisions to allow creative and publicly-important works that are not covered by existing fair dealing provisions to be allowed under our current copyright regime. Fair use alongside existing fair dealing exemptions balances the interests of copyright holders with the public interest allowing the wider distribution and use of creative works that might otherwise be considered infringement.