



Written by [Joe Wolverton, II, J.D.](#) on March 17, 2014

## **SOPA: Dead in Congress, Alive in Trans-Pacific Partnership**

Lobbyists who once unsuccessfully pushed for federal control over the Internet are now finding new hope in the Trans-Pacific Partnership (TPP).

President Obama recently named Robert Holleyman deputy U.S. trade representative. Although he has worked until recently as a “chief executive of BSA/the Software Alliance, a trade organization for software companies that counts Apple, IBM, Microsoft and other top computer firms among its members,” a couple of years ago, Holleyman worked as a professional promoter of the Stop Online Piracy Act (SOPA), a bill introduced in 2011 by Representative Lamar Smith (R-Texas).



The official purpose of SOPA was to “expand the ability of U.S. law enforcement to combat online copyright infringement and online trafficking in counterfeit goods.” In reality, though, the measure would have surrendered control of the Internet to federal agencies.

Much to Holleyman’s chagrin, the reaction to SOPA was so widespread that it led to the “largest online protest in history.” The bill was practically stillborn in Congress, but the multinational industries promoting it were not to be denied.

The consortium turned to the TPP and rejoiced that their agenda could still be enforced on the Internet and could be worked out in secret, safe from the protests, the protesters, and the prying eyes of civil libertarians.

As the *Washington Post* noted, “The United States appears to be using the non-transparent Trans-Pacific Partnership negotiations as a deliberate end run around Congress on intellectual property, to achieve a presumably unpopular set of policy goals.”

When it comes to SOPA, the name of the bill, like so many other inappropriately named federal follies (Affordable Care Act?), has nothing to do with the real intent: granting government control over the content and traffic on the Internet.

If the agreement is being worked out in secret, how do we know such SOPA-like provisions are included? On November 13, 2013, WikiLeaks released to the Internet what appears to be a portion of the secretly negotiated draft version of the TPP.

Although the entire agreement reportedly runs over 1,000 pages and covers nearly every conceivable facet of commerce, the chapter leaked by the online whistleblower focuses on intellectual property rights (IPR).

In a press release announcing its publication of this key section of the TPP agreement, WikiLeaks



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described the Intellectual Property provisions as “the most controversial chapter of the TPP.” This chapter deserves that designation because of its substantial effect on so many aspects of American trade and industry, including, as WikiLeaks points out, what would be irreparable harm to “medicines, publishers, internet services, civil liberties and biological patents.”

In an article reporting on the leak of the IPR chapter, Internet freedom and fair copyright advocate TorrentFreak points out the SOPA similarities in the TPP intellectual property chapter:

Burcu Kilic, an intellectual property lawyer with Public Citizen, says that some of the proposals in the text evoke memories of the controversial SOPA legislation in the United States.

“The WikiLeaks text also features Hollywood and recording industry inspired proposals — think about the SOPA debacle — to limit Internet freedom and access to educational materials, to force Internet providers to act as copyright enforcers and to cut off people’s Internet access,” Kilic says.

Popular online tech magazine The Verge recognized the potential harm, as well:

Critics have wasted no time in attacking the treaty, with IP reform group Knowledge Ecology International calling it “bad for access to knowledge, bad for access to medicine, and profoundly bad for innovation.” Many of the criticisms focus on the treaty’s “enforcement” section, which includes language that critics say mirrors similar provisions from America’s controversial SOPA and ACTA bills. That includes provisions that would extend copyright to temporary copies of media, and others that place the burden of enforcement specifically on local ISPs, which critics say would further establish ISPs as a de facto copyright police. Other provisions would increase the software controls on consumer hardware. “The anti-circumvention provisions seem to cement the worst parts of the anti-phone-unlocking law that we saw this summer,” says Matt Wood, policy director at Free Press. “We can’t change the US law if we’re locked into these international agreements.”

The piece by The Verge references another failed legislative effort to seize control of the Internet, a bill that would abolish Internet freedom and intellectual property rights: the Anti-Counterfeiting Trade Agreement (ACTA). ACTA-like provisions appear in the leaked TPP chapter.

This section of the draft agreement launches another attack on U.S. sovereignty through the mandate that member nations enact regulations requiring Internet Service Providers (ISPs) to privately enforce copyright protection laws.

These private companies — many of which are very small — would be forced to take upon themselves the responsibility of patrolling for and punishing any violation of the copyright laws by their subscribers.

Apart from the issues of sovereignty, putting such pressure on service providers is a threat not only to the owners of these small business, but also to Internet freedom, as well.

It is the good work of these ISPs that has created the Internet we know today. Were it not for the typically low-cost access these companies provide, the pool of readily accessible viewpoints, opinions, and news resources would be significantly shallower.

In a post-TPP world, ISPs would be forced to raise prices dramatically in order to cover the increase in their own overhead brought on by the requirement that they monitor and manage the websites they host.

Alternatively, there would undoubtedly be a large number of ISPs who would not only want to avoid the administrative burden of being forced into the role of Internet cop, but who would also rightly regard



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the risks of providing Internet access as outweighing the benefits.

A story published by the Electronic Frontier Foundation accurately describes the potential problems and predicts the future of the Internet should the United States agree to enter the TPP:

Private ISP enforcement of copyright poses a serious threat to free speech on the Internet, because it makes offering open platforms for user-generated content economically untenable. For example, on an ad-supported site, the costs of reviewing each post will generally exceed the pennies of revenue one might get from ads. Even obvious fair uses could become too risky to host, leading to an Internet with only cautious and conservative content.

As any news organization that maintains a Web presence knows, in the posting of news items time is of the essence. If the regulations of the TPP become the law, then ISPs would be forced to remove immediately any subscriber content posted online that is challenged by someone claiming a copyright infringement. This broad expansion of copyright protection could be devastating to a news organization (or blogger, for that matter) depending for their economic survival on the timeliness of their online stories and on the availability of those stories to the millions of Internet users.

Such procedures bypass the U.S. court system and the Constitution by abolishing the due process owed to those accused of crimes. Rather than require a person to present evidence of an alleged violation of a copyright to an impartial judge, the TPP would allow someone to demand that the outlet's ISP immediately remove the content in question. Any legal proceedings on the merits of the charges would occur after the damage has been done.

Critics understand that this redrawing of the boundaries of copyright law by the globalists secretly deliberating and drafting the TPP is an attack on our laws, our courts, our freedom of expression, our Constitution, and our sovereignty.

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