



Written by [Joe Wolverton, II, J.D.](#) on October 28, 2013

Trans-Pacific Partnership Takes Legal Authority Away from Domestic Courts

New reports on leaked draft versions of the Trans-Pacific Partnership (TPP) agreement indicate threats to the rights of news organizations to publish information critical of large corporations. The multinational trade pact will require member states to surrender sovereign control over domestic copyright laws, as well.



In [a story published by the Electronic Frontier Foundation](#) (EFF), the agreement being hammered out by the 12 Pacific rim countries will:

give private corporations new tools to undermine national sovereignty and democratic processes. Specifically, TPP would give multinational companies the power to sue countries over laws that might diminish the value of their company or cut into their expected future profits.

EFF reports that a seemingly benign provision of the TPP agreement called the “investor-state dispute settlement” (ISDS) will revoke the right of domestic courts to settle legal disputes between participating countries and corporations with investments in that country.

In a nutshell, if a corporation feels that its ability to turn a profit on an investment made in a member country is being stymied by the country’s regulatory scheme, then that corporation may bring the dispute to the TPP bureaucracy, completely bypassing the nation’s domestic judicial system.

The EFF story summed up this TPP provision’s assault on national sovereignty:

Apparently a country’s own courts can’t be trusted to administer this kind of lawsuit, so investor-state also requires the creation of a new court. It would be comprised of three private-sector attorneys who take turns being judge and/or corporate advocate.

Even if this kangaroo court ruled in favor of the defendant nation, court costs alone would scare countries from adopting (or enforcing) pro-user policies where they might potentially inhibit investor profits. The investor-state tribunal bills its time by the day and decides for itself how many days to work, so it can rack up as many days of work they want. Given this system, it’s then no surprise that current investor-state court costs average about 8 million dollars per case. So even if it wins, the country has to pay those court fees, the lawyer fees, plus compound interest. That’s money that would doubtless be better spent elsewhere.

The process is absurd as well. Once a decision has been issued, there is no way to appeal it. That’s right, if this court rules that the nation is at fault and has to pay huge fees that could even bankrupt a government, there’s no other way for the country to overturn that decision.

The ISDS section of the chapter on intellectual property in the leaked TPP draft agreement is nearly as “absurd,” however, as the agreement’s mandate forces member nations to enact regulations that require Internet Service Providers (ISPs) to privately enforce copyright protection laws.



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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 its subscribers.

Current U.S. law, specifically the Digital Millennium Copyright Act (DMCA), would be supplanted by TPP Article 16.3. This provision in the TPP draft document paves the way for a new copyright enforcement scheme that extends far beyond the limits currently imposed by DMCA. In fact, it contains mandates more expansive than even those proposed in the Anti-Counterfeiting Trade Agreement (ACTA).

ACTA is widely regarded as a threat to Internet freedom, as well as to the legislative power of the Congress. If ACTA is a threat than TPP is an all-out frontal assault.

Regardless of any flaws of the DMCA, it is U.S. law and should not be subject to de facto appeal by the work of a body of internationalists who are not accountable to citizens of the United States.

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 the risks of providing Internet access as outweighing the benefits.

An [earlier story published by EFF](#) 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



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deliberating and drafting the TPP is an attack on our laws, our courts, our freedom of expression, our Constitution, and our sovereignty.

As EFF warns:

What is worse, even in the U.S. legislators are considering abdicating their authority to debate and modify the TPP once it is finally revealed to the public. The Obama administration is pushing hard for “Fast Track Authority” (aka Trade Promotion Authority) which effectively gives the U.S. Trade Representative the power to bind the United States to the TPP without the usual opportunity for congressional review and debate.

To put a finer point on it, the purpose of the TPP isn’t, as the U.S. trade representative claims, “enhance trade and investment among the TPP partner countries, promote innovation, economic growth and development, and support the creation and retention of jobs.” The true purpose behind the creation of this and all other extra-constitutional, international trade blocs is to facilitate the eventual economic and political consolidation of sovereign nations under regional governments, with the ultimate aim of consolidating all power under one world government.

After 16 rounds, President Obama’s goal of reaching an “agreement in the 2013 time frame” is on track. The next round of negotiations will take place in Lima, Peru, from May 15-24, 2014.

Americans aware of this plan’s substantial threat to the Constitution and the economic well-being of the United States should contact their senators and encourage them to block any effort to ratify the TPP or any other so-called regional trade pact.

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