



Written by [Joe Wolverton, II, J.D.](#) on August 10, 2012

TPP Secret Negotiations Threaten U.S. Copyright Laws

Despite assurances that he would not diminish the right of fair use in American copyright law, U.S. Trade Representative Ron Kirk (pictured) appears to be doing just that during secret negotiations being conducted on the [Trans-Pacific Strategic Economic Partnership](#) (also known as the Trans-Pacific Partnership, or TPP).



According to language leaked to the Internet late last week, the legal definition of “fair use” is now fair game for the international cabal of TPP negotiators hammering out that trade scheme in secret.

The TPP is an international trade treaty currently being negotiated behind closed doors by nine ([Mexico and Canada have been invited to join](#) and would bring the total number of participants to 11) nations located along the Pacific Rim. [The 14th round of talks is set for September 6-15 in Leesburg, Virginia.](#)

[As we have reported](#), among the many problems with shrouding the details of such a binding agreement behind a thick veil of secrecy is the fact that if the TPP is approved by the Senate it will become the law of the land and the laws of the United States will be subject to abrogation by an international body that is unelected and unanswerable to the people of the United States.

Furthermore, the text of the agreement reveals that USTR Kirk has agreed to place the approval of “domestic stakeholders” (read: large corporations) on a level with that of the Congress. It is precisely this exalting of big business that has troubled many of the people’s representatives in Congress.

For example, recently Zach Carter of the Huffington Post reported that Senator Ron Wyden (D-Ore.), the chairman of the Senate Finance Committee’s Subcommittee on International Trade, Customs and Global Competitiveness, was stonewalled by the Office of the U.S. Trade Representative (USTR) when he attempted to see any of the draft documents related to the governance of the TPP.

In response to this rebuff, Wyden proposed a measure in the Senate that would force transparency on the process and that was enough to convince the USTR to grant the Senator a peek at the documents, though his staff was not permitted to peruse them.

Wyden spokeswoman Jennifer Hoelzer told HuffPost that such accommodations were “better than nothing” but not ideal in light of the well-known fact that on Capitol Hill the real work of drafting and evaluating legislation is performed by the representatives’ staff members who are often experts in particular areas of domestic and foreign policy.

“I would point out how insulting it is for them to argue that members of Congress are to personally go over to USTR to view the trade documents,” Hoelzer said. “An advisor at Halliburton or the MPAA is given a password that allows him or her to go on the USTR website and view the TPP agreement anytime he or



she wants.”

That’s right. A duly elected senator of the United States has to beg and plead and threaten legislation in order to be able to gain access to the TPP trade agreement, but corporate interests are given a password by the USTR that grants them a priori access to those same documents.

Thankfully, there are constitutionally conscious Americans actively battling against the formation of the TPP and the “integration” sought by its proponents. These friends of liberty recognize the hand of large corporate interests at the helm of the ship that is sailing toward the eradication of American sovereignty.

[Americans for Limited Government](#) (ALG) is taking the lead in warning the people of the United States about the confluence of corporate and governmental interests and their goal of destroying the independence of our country.

ALG’s President Bill Wilson perceives real harm in the USTR’s grant of such a powerful corporate prerogative.

“We are elevating private businesses up to the level of sovereign governments,” Wilson told *The New American*. “Under NAFTA we gave companies the power to sue governments and the TPP does this as well. In this trade pact, we agree that our government can be sued by these foreign corporations who will be treated as sovereign nations. This is submerging the idea of sovereignty into a sea of regulatory bodies and international agencies and our freedom is drowning in it.”

“It is self-evident that the erosion of the right of citizens to control their own lives is progressing at a rate that we are little more than wage slaves to an oppressive government and its cadre of corporate backers that consider our lives and our liberties of little or no consequence,” Wilson warned.

Perhaps recognizing the growing opposition from civil libertarians to this otherwise secret pact, after the last round of negotiations concluded in July, USTR Kirk emailed a statement to the media declaring that he would propose language on fair use and limitations to copyright for inclusion in the final version of the treaty that will be presented to the Senate.

Such language was not found, however, in the text that was leaked and [made public by Knowledge Ecology International \(KEI\)](#). In the portion of the language posted by KEI, the exceptions to the laws protecting intellectual property seem to remain as stringent as ever, much to the chagrin of fair use advocates who had hoped for a reduction of the restrictions.

Before these revelations were made public by the KEI post, it was assumed that the USTR would stick to its commitment to work to include rules “that will obligate Parties to seek to achieve an appropriate balance in their copyright systems in providing copyright exceptions and limitations for purposes such as criticism, comment, news reporting, teaching, scholarship, and research.”

While there is indeed text purporting to accomplish that end, a closer reading reveals that there yet remain several loopholes through which significant restrictions (and punishments for violations of them) can pass through into American law.

For example, negotiators representing the United States and Australia have proposed a three-pronged



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test to determine whether an exception to copyright will be permitted under the terms of the TPP.

The three steps are (1) certain special cases which (2) do not conflict with a normal exploitation of the work, and (3) do not unreasonably prejudice the legitimate interests of the author.

Specifically, the leaked text mandates that TPP member nations should confine these limitations “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.”

Such language is not final, however, as other participating nations — New Zealand, Chile, Malaysia, Brunei, and Vietnam — are pushing for less restrictive language that would permit “a party to carry forward and appropriately extend into the digital environment limitations and exceptions in its domestic laws.”

As one would expect, negotiators for the United States and Australia prefer to reduce those fair use rights to the degree “that each party may, consistent with the foregoing, adopt or maintain ... exceptions and limitations for the digital environment.”

[As one writer observed](#), “In other words, the US and Australia are saying a country can’t just decide on ‘limitations and fair use’ based on existing domestic [intellectual property] laws, some of which may be quite broad. Instead, limitations must conform to international agreements, including the TPP, which can be more restrictive.”

As with all such attempts to integrate the economies of the United States and other “partners,” the right of settling disputes and defining the scope of intellectual property rights and restrictions will be granted to an extra-constitutional international tribunal with members being nominated by the United Nations Secretary General.

In fact, all “partners” to the pact including foreign corporations will be exempted from abiding by American copyright laws (those passed by Congress and designed to protect the public and the rights holder) and the sovereignty of the United States and the Constitution’s enumeration of powers will once again be placed on the altar of globalism.



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