



Written by [Joe Wolverton, II, J.D.](#) on September 1, 2012

TPP Copyright Provisions Threaten Internet Freedom, U.S. Sovereignty

The secretive conferences where delegates are hammering out the details of the Trans-Pacific Partnership (TPP) are effectively rewriting the law for the United States, particularly in the area of intellectual property.

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



As *The New American* [has 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 would become the law of the land, and the laws of the United States would be subject to abrogation by an international body that is unelected and unanswerable to the people of the United States.

According to a proposed draft version of the treaty leaked to the public, the United States, as part of its membership in the TPP, would agree to exempt foreign corporations from our laws and regulations, placing the resolution of any disputes as to the applicability of those matters to foreign business in the hands of an international arbitration tribunal overseen by the Secretary General of the United Nations.

Furthermore, the text of the agreement reveals that U.S. Trade Representative (USTR) Ron 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.

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 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. 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 fact that the real work of drafting and evaluating legislation on Capitol Hill is performed by staffers who often possess expertise 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



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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.”

A 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.

Now it is discovered that the chapter on intellectual property in the leaked TPP draft agreement launches another attack on U.S. sovereignty through the mandate that member nations enact regulations that 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 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 the merits 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.

[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



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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 also 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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