

TTIP and software freedom

John Rooke



Introduction

- Secret negotiations
- Most of the resistance is centred around public health, public ownership and environmental concerns
- Part of a comprehensive upgrading of the global trade regime
 - a set of treaties with similar provisions
 - increasing emphasis on intellectual property
 - increasing importance of international corporate courts
- CETA and DRM
- Four issues highlighted by the FSF
 - software patents
 - trade secrets
 - availability of source code
 - international corporate courts
- Opposing the treaties

International Trade Regimes

- GATT: General Agreement on Tariffs and Trade (historic).
- WTO: World Trade Organisation (current).
- The new regime:
 - CETA (Comprehensive Economic and Trade Agreement);
 - TPP (Trans-Pacific Partnership);
 - TISA (Trade in Services Agreement);
 - TTIP (Transatlantic Trade and Investment Partnership).

"This is a partnership of corporations to attack democracy, with some secondary and unimportant effects on trade."

Richard Stallman, 10th November 2015



CETA *Article 20.9*

3. In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 2, each Party shall provide protection against at least:

(a) **to the extent provided by its law:**

(i) the unauthorised circumvention of an effective technological measure carried out **knowingly or with reasonable grounds to know**; and

(ii) the **offering to the public by marketing** of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and the manufacture,

(b) **importation, or distribution** of a device or product, including computer programs, or provision of a service that:

(i) is **primarily designed** or produced for the purpose of circumventing an effective technological measure; or

(ii) **has only a limited commercially significant purpose** other than circumventing an effective technological measure.

http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf

TTIP could:

- Lock the US and EU into the current terrible situation regarding software patents
- Contain a possible expansion of penalties relating to trade secrets
- "No Party may require the transfer of, or access to, source code of software owned by a person of another Party, as a condition of providing services related to such software in its territory." (TISA Article 6)
- Grant proprietary developers supra-national power to interfere with local laws and policies in the form of investor-state dispute settlement (ISDS)



Problems with software patents

- Patent thickets
- Trivial Patents
- Difficulty of patent searches
- Legal costs
- Patent examination is too slow
- Software is maths, not technology
- Copyright is the appropriate law to cover patents

[Wikipedia](#) accessed 14.06.2015

Software patents, current situation

- Currently governed by TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) [Wikipedia](#)
- While US law treats software as patentable, this is not currently the case in Europe [Wikipedia](#)
- Though some software patents are granted in Europe [Wikipedia](#)
- Will TTIP push Europe further towards software patents?



Trade Secrets

- The opposite of patent and copyright (no quid pro quo) [Breznitz 2015](#)
- A common way to prevent public and even regulatory access to important information [EFF 2014](#)
- A new offence of unauthorized, wilful access to a trade secret held in a computer system [TSW 2015](#)
- Industrial espionage becomes a criminal offence [TSW 2015](#)
- May be no safeguards to protect investigative journalists, security researchers or whistleblowers [EFF 2014](#)
- “The potential risk for would-be entrepreneurs to start a business in anything that even remotely relates to their past job are now enormous.” [Breznitz 2015](#)

TISA Article 6 – source code

- "No Party may require the transfer of, or access to, source code of software owned by a person of another Party, as a condition of providing services related to such software in its territory."
- Status: currently stalled, but could it be included in TTIP?
- Public sector FOSS users could be under threat



Investor State Dispute Settlement (ISDS)

- International courts run by corporate lawyers
- Corporations can sue national governments
- Already in existence, but powers will be extended
- List of disputes under NAFTA
<https://www.citizen.org/documents/investor-state-chart.pdf>
- 1997 Ethyl v. Canadian Government. Canada settled out of court, accepting the use of a known human neurotoxin, despite it being banned in Ethyl's home country, the USA.

Big Tobacco

- Australia

- The cost to the Australian taxpayer of defending the case was Aus\$50 million.
- The premise of plain packaging was not tested in this case, the case was lost on a technicality relating to which country PMI was registered in at the time that the relevant trade deal was agreed on.
- The 'new' investment court system (ICS) that the EU has proposed being a real alternative to ISDS would make no discernible difference in outcome.
- The threat of such court cases, even if they are not successful, inhibit government action. The New Zealand government have been the introduction of plain packaging, while they see what happens to Australia.

<http://www.globaljustice.org.uk/blog/2016/may/20/big-tobacco-lost-australia-over-plain-packaging-doesnt-mean-corporate-courts-work>

- Togo

<https://www.youtube.com/watch?v=6UsHHOCH4q8&feature>

The anti-TTIP movement

- British organisations actively campaigning include: **Friends of the Earth; Global Justice Now; War on Want; 38 Degrees**
- **Stop TTIP**: an alliance of over 500 European organisations <https://stop-ttip.org/about-stop-ttip/>
- May 2016:
 - Substantial leaks of the TTIP protocol
 - Françoise Hollande attacked “the undermining of the essential principles of our agriculture, our culture, of mutual access to public markets.”
 - The treaty may be doomed

Now for the bad news...

- June 2016: EU Council due to ratify CETA – last chance for national governments to object
- September 2016: Final approval of CETA due
- Spring 2017: Provisional implementation could mean that parts of the treaty are legally binding before national parliaments have had a chance to review it

Actions

- Petition to the [European Union](#)
- Write to [David Cameron](#)
- Petition to the [British Parliament](#)
- Petition to [Manchester City Council](#)
- The CETA Check (Euro MPs) <https://stop-ttip.org/>
- Members of Parliament
<https://www.writetothem.com/>
- Should Manchester Free Software be doing something as a group?