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# Our Worst Fears are Confirmed. The Trans-Pacific Partnership and Intellectual Property

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*This is about increasing the ability of global corporations to source wherever they can at the lowest cost. Michael Wessel, The Guardian, Oct 9, 2015*

Diplomats, trade officials and delegations of the twelve negotiating countries behind the Trans-Pacific Partnership Agreement were always doing one thing even as their respective masters were doing another. As the boardroom was carving out democracy and sovereignty, the executives were selling vassalage as well worth it. As President Barack Obama, mask off, was insisting on taking the globe, as far as it he could, further into an American trade orbit, free trade was being sold in all signatory countries as an automatic godsend.

Secret during the entire phase of negotiations, it has only been the workings of WikiLeaks that has enabled global citizens to get a glimpse about what exactly we are in for. The intellectual property chapter has now been released in three phases, the first in November 2013, and the final on October 9, 2015.[1]

The latter version, dated October 5, is the near, if not actual final product, one which will be sold to the twelve respective parliaments when respective ratification and domestic legislation will have to be enacted. In every sense of the term, it is a corporate seizure at the expense of a citizen's worth, because obviously, having extended copyright terms, paying more for pharmaceuticals, extending the length of patents, and attacking the generic drugs industry is exactly what the general public need.

As the Electronic Frontier Foundation noted, the IP chapter "confirms our worst fears about the agreement, and dashes few hopes we held out that its most onerous provisions wouldn't survive to the end of the negotiations."[2]

Coming to the chapter with fresh eyes allows for an initially easy deception. The language in parts is bland and general, taking cognisance of the IP rules for the "mutual advantage of producers and users" to "facilitate the diffusion of information". All this, it is suggested, is to aid access to the wonderful world of diversity that is the public domain.

The public domain, however, is evidently seen to be one heavily circumscribed by both the State and its corporate partners. The treaty entitles signatories to restrict information, for instance, through trial proceedings that would be "detrimental to a party's economic interests, international relations, or national defence or national security". Signatory states already have similar domestic restrictions designed to curb such information mechanisms as freedom of information.

Privacy is also shot through, be it in instances when authorities in signatory states can provide names and addresses of importers in violation to owners of that intellectual

property. The entire chain of production and use is targeted, with information including “any person involved in any aspects of the infringement or alleged infringement”. Third persons said to be “involved in the production and distribution of such goods or services and of their channels of distribution” are also netted.

As the text is chewed further, the restrictions, notably in terms of public use, start mounting. In fact, the public seem to be a defanged, inconsequential presence. Copyright, for instance, is said to be matter for the parties to balance within their domestic regulations, but the agreement does not bind parties to aim for that goal. There is no mandatory fair use model provision to speak of.

As for how long such copyright terms would run, a protection period of 70 years is offered after performance or publication, and if not published within 25 years after creation, for 70 years after that creation. Better, though not by much, than the absurdly lengthy 120 year period initially proposed by the US Trade Representative.

Reduced then, to its barest form, only a few provisions identified by the EFF can be deemed to be less inhibitive than what was found in initial drafts. Extending copyright protections to “buffer” copies in a computer system was eventually dropped by the USTR. The parallel importation of cheaper versions of copyright works will be permitted, complemented by an express authorisation of devices that bypass regions (EFF, Oct 9).

Leaving aside the evident influence of Hollywood in the entire affair, the heft of the pharmaceutical industries was also made apparent. Stifling innovation in its name, the chapter effectively entrenches the most anti-competitive practices of all by enforcing oligopolies with the grace, or gracelessness, of law. “The TPP,” argues Peter Maybarduk, Public Citizen’s Global Access to Medicines Program Director, “would cost lives.”

The implications are extensive, but a few points should be noted. Patent Term adjustments (Article QQ.E.14), extensions which delay the entry of generic medicines while also limiting access to cheaper medicines, looms large. Speed is of the essence, with parties undertaking to “make best efforts to process applications for market approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable and unnecessary delays.”

The state parties are given considerable leeway in terms of making “available a period of additional sui generis protection to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process.”

Stifling measures regarding the release of generic drugs into the market is provided by QQ.E.15, which enables parties to “adopt or maintain a regulatory review exception for pharmaceutical products”. In theory, this replicates provision in states where generic drugs are permitted as exceptions which enable them to be made in small quantities before the patent expires. Well and good, but for the fact that any such review must be mindful that the legitimate interests of the patent owner shall not be unreasonably prejudiced.

Furthermore, market exclusivity is granted for pharmaceutical products for “at least five years” – a means of ensuring that generic drug registration will be delayed for a designated period of time.[3] Third parties are not permitted to market the same or similar product using the same or other data regarding the safety and efficacy of that product. Even if the parties accept applications for generic medicines within those five years, marketing

approval can only take place after the five year period has expired.

The insidious linking between the market, marketing approval and the patent, gleams with nefarious consequence before the sickbed of humanity. It will also be distressing to some US Democrats who had hoped to build upon the May 10, 2007 deal made under the Bush administration. The “May 10 Agreement” had taken umbrage with patent term extensions and longer marketing exclusivities.[4]

At this point in time, as the clock ticks over respective domestic enactments by the 12 parliaments and congressional bodies, the political classes within the party states will have to consider whether a corporate dictated subservience, legally sanctioned, is better than such alternatives where the commonweal can prevail.

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Notes

[1] https://wikileaks.org/tpp-ip3/

[2] https://www.eff.org/deeplinks/2015/10/final-leaked-tpp-text-all-we-feared

[3] https://wikileaks.org/tpp-ip3/pharmaceutical/Pharmaceutical%20Provisions%20in%20the%20TPP.-pdf

[4] https://wikileaks.org/tpp-ip3/pcpressrelease/Public-Citizen-Statement-on-WikiLeaks-TPP--Publication.pdf



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