

Public Interest Coalition Letter: No Fast-Track Authority for the Trans-Pacific Partnership

EFF has joined a broad coalition of 14 public interest groups today in delivering a letter to members of Congress, urging U.S. lawmakers not to grant the Obama administration "fast-track" authority for trade agreements, including the Trans-Pacific Partnership (TPP). The TPP is a complex multi-national agreement that could extend restrictive laws around the world and rewrite international rules of copyright enforcement in ways that could further restrict online rights.

Fast-track authority, also known as "trade promotion authority," requires Congress to waive its Constitutional authority to review treaties, limiting its ability to seek fixes and amendments. In the case of agreements negotiated in near-total secrecy, like the TPP, granting fast-track authority would create a dangerous lack of accountability. From the letter:

The American public has a right to know the contents of the international agreements its government is crafting. Corporations cannot be the only interests represented in this agreement, since they do not advocate for policies that safeguard or even represent the interests of the public at large. Given the administration's complete lack of transparency in negotiating the TPP, it is vitally important that democratically elected representatives are at least given the opportunity to conduct a review and push for fixes.

As of now, the public cannot know exactly how the language in the TPP would affect its digital rights, because the only available information comes from intermittent leaks of the text. The most recent full leak of the "Intellectual Property" chapter came in February of 2011, and contained troubling provisions that would—among other things—formalize the U.S. ban on circumventing Digital Rights Management (DRM) software in more countries around the world, and extend copyright restrictions to so-called "temporary copies," interfering with basic functions of computers and the Internet.

Moreover, the letter explains that TPP as written could crystallize components of U.S. law that are far from fully settled domestically. Beyond the anti-circumvention provisions mentioned above, the leaked draft also contains restrictions on importation that were rejected by the Supreme Court this year in *Wiley v. Kirtsaeng*, which affirmed owners' first-sale rights to lend or resell products and works manufactured abroad.

It is possible these concerns have been addressed, but given the lack of transparency, the public cannot be sure. The public needs to play a role in the process, and one essential component of that is that Congress must be in the loop. Today's letter makes that point:

Agreements such as the TPP require transparency and input from all affected stakeholders, and a fast-track process would not permit Congress to provide that essential feedback. The stakes for user's rights are too high, and the process has been too secretive, to allow the administration to enact an agreement without meaningful Congressional oversight.

In pushing for fast-track authority, the Obama administration has sought to strip another layer of transparency and accountability out of the trade agreement process. Congress, as elected representatives of the public, must work to bring that transparency back.

October 23, 2013

Chairman Max Baucus,
Ranking Member Orrin Hatch
United States Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

Senator John Rockefeller,
Senator Ron Wyden, and
Senator Chuck Grassley
United States Senate
Dirksen Senate Office Building
Washington, D.C. 20510

Chairman Dave Camp,
Ranking Member Sander Levin
U.S. House of Representatives
Ways and Means Committee
1102 Longworth House Office Building
Washington, D.C. 20515

Representative Kevin Brady,
Representative Jim McDermott
United States House of Representatives
Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Baucus, Ranking Member Hatch, Chairman Camp, Ranking Member Levin, and Congressional Advisors on Trade Policy and Negotiations,

In a statement to his Export Council on September 19, President Obama reiterated a call for Congress to limit its own oversight ability on trade agreements by approving fast-track authority for the Trans-Pacific Partnership. We, the undersigned groups, urge you to reject that request and retain your Constitutional authority to seek fixes and amendments to this and other trade agreements.

The Trans-Pacific Partnership, commonly known as the TPP, has been negotiated in near-total secrecy between a still-growing list of countries around the Pacific region. Public interest groups have been routinely shut out of the negotiating venues, and our ability to present concerns to the negotiators have been largely symbolic, when permitted at all.

Since TPP trade delegates have kept all draft texts secret and have excluded public input from the process, our deep concerns about the agreement have been marginalized. In particular, the chapter titled "Intellectual Property"—a draft of which was leaked to the public in February 2011—appears to encourage the sort of speech-restricting provisions that the public protested loudly when they appeared in the Anti-Counterfeiting Trade Agreement (ACTA) and the Stop Online Piracy Act (SOPA).

Further, that chapter appears to include copyright enforcement rules that could prevent positive reforms to American law even as those laws remain far from fully settled. As just one example: its anti-circumvention rules echo section 1201 of the Digital Millennium Copyright Act (DMCA)—a section that has been the subject of vigorous debate, numerous legislative proposals, and White House criticism this

year because of its effect on phone-unlocking. With Congress currently considering how this law should work for Americans, crystallizing such language in another trade agreement without any opportunity for debate, will only create more problems down the road.

The American public has a right to know the contents of the international agreements its government is crafting. Corporations cannot be the only interests represented in this agreement, since they do not advocate for policies that safeguard or even represent the interests of the public at large. Given the administration's complete lack of transparency in negotiating the TPP, it is vitally important that democratically elected representatives are at least given the opportunity to conduct a review and push for fixes.

To that end, we request that you oppose any legislation that would renew fast-track or trade promotion authority. Agreements such as the TPP require transparency and input from all affected stakeholders, and a fast-track process would not permit Congress to provide that essential feedback. The stakes for user's rights are too high, and the process has been too secretive, to allow the administration to enact an agreement without meaningful Congressional oversight.

Sincerely,



Amnesty International



Demand Progress



Electronic Frontier Foundation



Free Press Action Fund



Free Software Foundation



Gene Ethics



Global Exchange



IOGT International



Knowledge Ecology International



New Media Rights



OpenMedia



Public Citizen



Public Knowledge



Red Peruana por una Globalización con Equidad