

## Responding to Leaked TPP IP Text

As you may have heard, Wikileaks released on Wednesday language that it purports to be the text for the intellectual property (IP) chapter of the Trans-Pacific Partnership (TPP) negotiations as of August 30, 2013. It is likely that the coming days will be full of hyperbolic misinformation about what is in that text. Indeed, it is likely that whoever leaked the text specifically *desired* this outcome as a way to set back the IP chapter and the TPP negotiations more generally.

It will take several days for any responsible commentator to go through the text in detail and compare it to previous FTAs. Experience has shown that many commentators will not be responsible, however. In the meantime, some points to keep in mind.

- The Draft Is Already Outdated. The draft is dated August 30, 2013. Since that date, there have been intensive TPP negotiations, including specifically about the IP chapter, as countries have redoubled efforts to conclude the negotiations by the end of the year. The only thing that can certainly be said about this draft is that it does not reflect the current state of the negotiations.
- Almost Everything Is in Brackets. No one can say what the TPP IP chapter would do because almost nothing in the draft text is agreed – it is almost all in brackets, meaning not agreed. Given how inter-related the chapter is (e.g., obligations can be limited by exceptions in a separate article; specific provisions in one article may be affected by general provisions in another), it is effectively *impossible* to make any accurate claims about what TPP would require. So, any source making a claim about what the TPP IP chapter would do is *making it up*. At best, these claims are hypotheses about which of various brackets would stay and which of various brackets would go. At worst, they are calculated misinformation.
- What It Would Not Require: Changes to U.S. IP Law. While it is impossible to say right now what a TPP IP chapter would do, experience provides an answer for what it would not do -- since the U.S. began negotiating FTAs again in 2000, no FTA has required a change to U.S. intellectual property law. Unlike the claims likely to be made by the anti-TPP voices, this one is objectively provable – please see the implementing legislation for all of the modern FTAs: P.L. Nos. 108-77, 108-78, 108-286, 108-302, 109-53, 109-283, 109-169, 110-138, 112-41, 112-42, 112-43. In recent years, it has been commonly known that USTR would not accept changes to U.S. IP law through an FTA.
- A Really Simple “BS Meter”: Does that Happen Under U.S. Law? Given that in FTAs this century, USTR has not signed off on an IP chapter that required changes to U.S. IP law, and those FTA IP chapters have in fact been consistent with existing U.S. IP law, there is a very simple “BS Meter” one can use to evaluate claims about TPP: “Does this happen under U.S. law now?” If the answer is “No,” then the claim is “BS.” If recent rhetoric is any indication of what is in store for TPP, get your shovels ready.
- The Only Real “News” – Many Bogus Claims Are Now Verifiably False. Despite the fear-mongering over “secret” TPP negotiations, the U.S. position on intellectual property in TPP has never really been a secret – the IP chapters of the previous FTAs this century have been remarkably similar. Now that a draft of the text has been released it confirms that the U.S. is seeking IP provisions remarkably similar to those in the KORUS FTA, which received widespread support

including from the tech community. The only real “news” in the leaked text is that various claims (e.g., TPP endangers Internet freedom, TPP is SOPA) are now provably false.