

EU-Japan trade agreement's intellectual property chapter limits options for reform

Vrijschrift

The [EU-Japan trade agreement](#)'s intellectual property (IP) chapter limits possibilities for copyright and patent reform. With the agreement, the EU exports part of its IP system. Local rules become binding international rules.

Societies need policy space for reform. ¹ The exclusive nature of copyrights, patents and other so called intellectual property rights impedes access to medicine and cultural goods, and harms independent and follow up innovation; copyright isn't fit for the digital age.

IP rules in trade agreements do not make trade more free, but rather strengthen inequality through upward redistribution. Note that the agreement also has [insufficient data protection safeguards](#). Corporate concentration, upward redistribution and insufficient data protection, on their own and together, may have a negative effect on the sustainability of democracy. ²

The trade agreement is the first EU only one – no ratification by EU national parliaments is needed. The [IP chapter](#) has 32 pages; I will highlight just a few issues.

Importation of rules from other agreements

The agreement does not contain very wild things like criminalisation of everyday computer use or retail price damages (both [ACTA](#)). However,

¹See also [IP out of TAFTA](#)

²See, for existential security and populist authoritarian parties [Ronald Inglehart and Pippa Norris](#); for corporate concentration [Dan Ciuriak](#) (page 15); for Facebook / Cambridge Analytica, for instance [NPR](#); see also [FFII](#).

the IP chapter includes a most favoured nation treatment clause ([article 14.5](#)), which imports commitments from other – earlier and future – agreements.³ For the EU this covers the [EU-Ukraine Association Agreement](#), which includes injunctions without the defendant having been heard (article 236 (4)) and [controversial database rights](#) (article 185 and further). The clause would also cover, after ratification, the EU-Singapore agreement, which arguably has [damages even higher than those included in the rejected ACTA treaty](#).⁴

Minimal copyright limitations and exceptions

Despite the fact that the public domain and limitations and exceptions are important, the trade agreement only allows minimal limitations and exceptions to copyright (article 14.14). And while the text of the conditions is based on the Berne Convention and the TRIPS agreement, the trade agreement creates an additional forum for interpretation (by IP maximalist parties) and the text has a broader scope than the Berne Convention.⁵

Mandatory propaganda

Article 14.7 contains an obligation to side with rights holders:

“Each Party shall take necessary measures to continue promoting public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.”

³Article 14.5: “Each Party shall immediately and unconditionally accord to nationals of the other Party treatment no less favourable than the treatment it accords to the nationals of a third country with regard to the protection of intellectual property, subject to the exceptions provided for in Articles 4 and 5 of the TRIPS Agreement.”

⁴This [agreement](#) has injunctions without the defendant having been heard as well, article 10.39.2

⁵See, in general, James Love, [Copyright Limitations and Exceptions: What does the secret TPPA text say?](#) and Timothy Vollmer, [Copyright in Mercosur-EU trade agreement: a little better, but mostly worse](#)