

# Top 10 Reasons to Delete the IP Chapter of the Free Trade Area of the Americas (FTAA) Treaty

## **1. Threatens to Imprison Millions of People for P2P File -Sharing of Music**

One option proposed for Article 4.1 of the intellectual property rights chapter in the Free Trade Area of the Americas (FTAA) Treaty would mandate that countries must send noncommercial infringers such as Peer2-Peer (P2P) file-sharers to prison. By changing the standard that triggers criminal penalties from commercial infringements to “significant willful infringements,” people will be sent to prison for infringements that have no financial or commercial motivation or gain. An otherwise law-abiding person who swaps dozens or hundreds of songs over the Internet would be subject to imprisonment under this lower standard. An estimated 60 million Americans use P2P file-sharing software in the US alone.

## **2. Restrains Trade and Prevents Competition**

Mislabeled as a “free trade” agreement, the FTAA Treaty will actually harm free trade and restrict competition in the market. Anti-circumvention prohibitions, such as those contained in the FTAA Treaty, prevent people from bypassing trade barriers like DVD region code restrictions. They also create monopolies for entrenched corporations over the manufacture of compatible or interoperable devices. These provisions prevent consumers from purchasing after market replacement parts in industries completely unrelated to copyright. For example, Ford could embed a chip in a tire in order to require consumers to only purchase Ford tires. In the US where anti-circumvention laws are already in place, they have been used to sue a competing manufacturer of printer cartridges and a competing manufacturer of garage door openers for providing compatible parts.

## **3. Chills Freedom of Expression and Scientific Research**

Anti-circumvention laws outlaw tools including software and technical data that could help someone to bypass technological restrictions on digital media. Computer programs and research papers that assist in circumventing these restrictions are illegal under provisions against trafficking in circumvention technologies. The Digital Millennium Copyright Act (DMCA) outlawed circumvention in the US, creating a chilling effect for scientists and computer programmers who publish information about the vulnerabilities of media companies’ technologies. Many researchers have been threatened with prosecution for their research and one Russian PhD student spent 6 weeks in jail on charges of trafficking in circumvention devices for the legitimate software he had written. Prominent scientists have publicly stated that they will not travel to or publish their research in jurisdictions that have passed anti-circumvention laws out of fear of liability. Scientific conferences are relocating to countries outside the US, where the organizers and speakers will not be subject to imprisonment for disseminating technical papers that describe the weaknesses of certain technologies. The FTAA Treaty threatens to expand these anti-circumvention provisions and extend them to all signatory nations, in violation of both the US Constitution and the UN Universal Declaration of Human Rights, which guarantee of freedom of expression.

## **4. Stifles Innovation and Inhibits Free and Open Source Software Development**

Anti-circumvention provisions in the draft FTAA agreement limit the ability of innovators to develop media devices that are compatible with existing devices. Companies and individuals are prevented from building new and innovative technologies that would enable lawful uses of media, such as playing a DVD movie on nonproprietary software. Large multinational corporations can build on their monopolies and force small innovators out of the market. Open Source and Free Software developers, a major source of innovation in the software industry, are explicitly discriminated against in one proposed clause to Article 21.1, which provides less protection to software that is not being produced for commercial gain.

## **5. Undermines Democracy and National Sovereignty**

Countries who want to receive the benefits of membership in the FTAA regional trade pact must amend their nation’s domestic laws to meet with the obligations set forth in the treaty. The ability of individual countries to make their own decisions about fundamental public policy choices, such as which citizens to send to prison, or ought they ban consumer circumvention, or the appropriate scope and term for copyright protection, etc. should be determined by the people who will have to live under the laws. The FTAA Treaty undermines the democratic process and national sovereignty by permitting unelected foreign treaty negotiators to dictate fundamental domestic public policy choices to other countries.

## **6. Outlaws Bypassing Restrictions on One's Own Property**

The draft FTAA Agreement includes anti-circumvention provisions that prevent individuals from bypassing the technological restrictions on their own CDs, DVD, eBooks, and other personal property. Similarly to the US Digital Millennium Copyright Act (DMCA), consumers throughout the Western Hemisphere would be forbidden from bypassing the restrictions that prevent fast-forwarding of commercials or the misleading FBI warning at the beginning of a DVD movie under the FTAA Treaty. Media companies can dictate to consumers what devices they may use to play their movies and music and can control an individual's private use of their media. Anti-circumvention laws that prohibit people from using their own property in perfectly lawful ways completely ignore the consumer's property interest in her media collection and allow rights holders to control the private performance of a work, previously outside the scope of their rights.

## **7. Limits Consumers' Traditional Personal Use and Fair Use Rights**

The FTAA agreement significantly reduces the traditional fair use rights of consumers to enjoy their entertainment collections in perfectly lawful ways. The FTAA proposes new definitions for "fair use" and "personal use" that do not provide for a wide range of traditional fair use activities. Personal use of one's media would be limited to a single copy in limited circumstances. The new definitions would limit consumers' ability to back up media. It would also restrict consumers' fair use rights to "space-shift," or play media in another location, and "time-shift," to enjoy it at a more convenient time.

## **8. Permits Copyrighting of Facts and Scientific Data**

The draft FTAA agreement significantly lowers the standard for copyright protection by providing a narrow list of what types of material may *not* be copyrighted. Anything that is not listed may be subject to copyright protection under this broadened scope, including compilations of facts and protection for databases. Much scientific and technical data will be subject to copyright restrictions and removed from the public domain. Providing copyright protection for facts and data ignores the US Constitution's mandate that only original works of authorship may be subject to copyright protection.

## **9. Threatens Privacy and Due Process Rights**

If customs agents suspect a copyright violation, the proposed FTAA IP chapter would empower them to provide the rightsholder with the name of address of the suspected infringer. This violates the due process and privacy rights of suspected infringers by removing the discretion of a judge who has made a finding of infringement before a person's information is handed over to the entertainment industry for prosecution. Another proposed clause would send infringers to jail simply for refusing to turn over the identity of others involved in an infringement, no matter how small or insignificant of an infringement.

## **10. Threatens to Impose US Copyright Term of 70+ Years After Author's Death on Other Nations**

FTAA's IP chapter proposes two different clauses to increase the term for copyright across the Western Hemisphere. One proposal calls for a minimum copyright term of 50 years beyond the life of a creator. The other proposal requires all signatory nations to adopt at a minimum, the new US term of 70 years beyond the life of a creator. Extending the term of copyright reduces the public domain and is particularly burdensome for developing countries who are overwhelmingly importers of intellectual property and subject to restrictions for a much longer time.