

# Legal Threats to Software Freedom from International Trade Treaties

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# International Trade Treaties

- An attempt to comprehensively upgrade the global trade regime
  - a set of treaties with similar provisions
  - increasing emphasis on intellectual property
  - increasing importance of international corporate courts
- An alphabet soup of treaties
  - CETA (Comprehensive Economic and Trade Agreement);
  - TPP (Trans-Pacific Partnership);
  - TISA (Trade in Services Agreement);
  - TTIP (Transatlantic Trade and Investment Partnership).

# 5 threats

- **Digital rights management**
- **Supra-national power to interfere with local laws and policies (ISDS/ICS)**
- Software patents
- Trade secrets
- Rights of public bodies to choose software freedom

# DRM in CETA *Article 20.9*

3. In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 2, each Party shall provide protection against at least:

(a) to the extent provided by its law:

(i) the unauthorised circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and

(ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and the manufacture,

**(b) importation, or distribution of a device or product, including computer programs, or provision of a service that:**

**(i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or**

**(ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.**

[http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc\\_154329.pdf](http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf)

# United States v. Elcom Ltd.

- Dmitry Sklyarov,  
Russian developer
- Arrested and jailed  
in 2001 in the USA
- Californian court  
found that Russia  
was outside its  
jurisdiction

Wikipedia, accessed  
16/09/16



Photo credit: Alexander Klink - Own  
work, CC BY 3.0,  
<https://commons.wikimedia.org/w/index.php?curid=11855006>

# ISDS/ICS

- International courts run by corporate lawyers
- Corporations can sue national governments
- Already in existence, but powers will be extended
- ISDS courts are held in secret
- List of disputes under NAFTA since 1994  
<https://www.citizen.org/documents/investor-state-chart.pdf>
- 1997 Ethyl v. Canadian Government, Canada accepted the use of a known human neurotoxin, despite it being banned in the USA
- ICS courts will be more open to public scrutiny

# Software patents

- [Patent Absurdity: how software patents broke the system](#)
- Patent thickets
- Trivial Patents
- Difficulty of patent searches
- Legal costs
- Patent examination is too slow
- Software is maths, not technology
- Copyright is more appropriate to software issues

[Wikipedia accessed 14.06.2015](#)

# Trade Secrets

- The opposite of patent and copyright (no quid pro quo)  
[Breznitz 2015](#)
- A common way to prevent public and even regulatory access to important information [EFF 2014](#)
- A new offence of unauthorized, wilful access to a trade secret held in a computer system [TSW 2015](#)
- Industrial espionage becomes a criminal offence [TSW 2015](#)
- May be no safeguards to protect investigative journalists, security researchers or whistleblowers [EFF 2014](#)
- “The potential risk for would-be entrepreneurs to start a business in anything that even remotely relates to their past job are now enormous.” [Breznitz 2015](#)



# Government access to source code (TISA Article 6)

- "No Party may require the transfer of, or access to, source code of software owned by a person of another Party, as a condition of providing services related to such software in its territory."
- Could prevent local governments and other public sector bodies from using FOSS

# CETA – progress and action

- Ratification by the European Parliament is due this month, **please write to your MEPs**

<http://www.globaljustice.org.uk/>

<https://stop-ttip.org/>

- Spring 2017 provisional implementation could mean that parts of the treaty will already be in force
- British government has announced intention of signing from outside EU
- Keep informed

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[European Initiative Against TTIP and CETA](#)