

## IGF 2016 Workshop Report Template

Session Title	WS 60: Trans-Pacific Partnership: Good or Bad for the Internet?
Date	8 December 2016 (Thursday)
Time	9:00 – 10:30 am
Session Organizer	Milton Mueller & Farzaneh Badiei, Internet Governance Project (IGP), Georgia Tech
Chair/Moderator	Chinmayi Arun, Nat'l Law Univ Delhi
Rapporteur/Notetaker	
List of Speakers and their institutional affiliations	<p>Barayre-El Shami, Cecile, UNCTAD</p> <p>Bramble, Nicholas, Google</p> <p>Dorantes, Juan Antonio, Former Mexican IP Negotiator / Currently Aguilar &amp; Loera, S. C.</p> <p>Kilic, Burcu, Public Citizen</p> <p>Malcolm, Jeremy, Electronic Frontier Foundation</p> <p>Mueller, Milton, IGP, Georgia Tech</p>
Key Issues raised (1 sentence per issue):	<ol style="list-style-type: none"> <li>1. Are the copyright and trademark aspects of the TPP threats to Internet freedom?</li> <li>2. Are the liberal e-commerce aspects of TPP worthy of support and if so, do they offset the intellectual property issues?</li> <li>3. Should IPR be included in trade agreements or not?</li> </ol>
If there were presentations during the session, please provide a 1-paragraph summary for each Presentation	<p>Jeremy Malcolm, Senior Global Policy Analyst for EFF, criticized the intellectual property rights (IPR) aspects of the TPP, which require copyright terms to be extended from life+50 years to life+70 years in 6 of 12 countries. He further criticized the creation of much harsher punishments to access trade secrets, putting journalists, civil society, and whistle-blowers under serious risks. He added that although the TPP is now dead in the United States, other countries are considering putting it into effect.</p> <p>Milton Mueller, Professor at Georgia Tech and Director of the IGP, criticized the opponents of TPP for failing to differentiate themselves from protectionist opponents of free trade. He agreed with most of EFF's criticisms of the IPR provisions of TPP, but thought that they merely ratified what was already the IPR status quo in most of the world, and that a critique focused entirely on IPR overlooked the important benefits of liberalizing e-commerce and trade in information services, including an end to data localization requirements.</p> <p>Mr Juan Antonio Dorantes, an IPR lawyer in Mexico, presented the</p>

	<p>Mexican government's perspective on trade deals. He added that since the creation of the WTO, IP was considered one of the pillars of WTO law and trade law. He further added that the WTO and WIPO are trade-related organizations and are not devoted in principle for discussion on the Internet or human rights protection. Dorantes noted that trade agreements will remain a vehicle to propose and negotiate better and stronger protection for IPR. This, he said, will happen irrespective of what happens with the TPP in the USA or with President-Elect Donald Trump.</p> <p>Ms Burcu Kilic, Legal Counsel at Public Citizen, stated that she believes in trade but a fair one, adding that the TPP is not a fair trade. She criticized the closed nature of trade negotiations and said that civil society was excluded. She opposed all aspects of the TPP, including the E-commerce part which she claimed undermined privacy rights. She noted that trade agreements are becoming increasingly effective tools for Internet governance and stressed the need to come up with better standards.</p> <p>Ms Cécile Barayrer-El Shami, Program Manager at UNCTAD, commented that the e-commerce chapter in any regional trade agreement has never been controversial compared to IP and employment rights. She further added that only half of the developing countries have data protection laws in place which leads to unequal grounds for negotiations. She agreed that the TPP text is a good base for future Internet-related trade agreements. However, in future agreements there is a need for closer dialogue between Internet and trade policy representatives, as well as civil society stakeholders. Beyond trade agreements, there are other initiatives driven at fostering the participation of developing countries in e-commerce such as the eTrade For All initiative.</p> <p>Mr Nicholas Bramble, Public Policy Manager at Google Inc., highlighted the importance of cross-border connectivity and keeping the Internet open. He identified filtering, blocking, disclosure of encryption keys, and unbalanced copyright laws as issues that erode the baseline functions of the Internet. He stressed the need to better engage and try to shape the conversations on trade deals.</p>
<p>Please describe the Discussions that took place during the workshop session: (3 paragraphs)</p>	<p>The panel generated intense discussions about two topics: 1) the role of copyright and trademark in trade deals, and 2) the closed nature of trade negotiations.</p> <p>Malcolm and Mueller viewed the length and scope of IPR protection as a legal policy issue not a trade issue, and saw the attempt by IPR interests to leverage trade agreements to strengthen their protection as illegitimate and harmful. Dorantes believed that "IPR is trade-related" and equated stronger protection for IPR as an improvement in trade. Kilic seemed to support including rights in trade</p>

	<p>agreements, e.g. privacy and other human rights, but disagreed with IPR rights being included.</p> <p>A variety of civil society participants from both the developed and developing worlds expressed major frustration with the way trade negotiations are closed and input into them is dominated by major multinational business interests, especially IPR interests. Defenders of current negotiations said that it was difficult if not impossible for governments to make offers and bargains in a fully public context.</p>
<p>Please describe any Participant suggestions regarding the way forward/potential next steps /key takeaways: (3 paragraphs)</p>	<p>The role of IPR in trade agreements will continue to generate controversy.</p> <p>Trade agreements should not be used to address policy issues that already have well-established, expert agencies to handle them. An example used was domain name trademark conflicts. Aspects of several trade agreements, including TPP, address this problem but ICANN already has a stakeholder-balanced, globally applicable, expert process to resolve them, so they do not need to be included in trade agreements.</p> <p>Consultation arrangements at the national level that feed into trade negotiators need to be broadened to include a wider range of interests – not just business multinationals. Also, a window of opportunity was identified for civil society organizations to engage in a more effective and constructive way with trade Ministries during trade negotiations.</p>