

CDT Offers Initial Views on Upcoming US-EU Trade Talks

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What will the upcoming free trade discussions between the US and EU mean for the Internet? It's too early to know, of course, but [CDT told USTR](#) [2] last week to include strong protections for the free cross-border flow of information on the Internet, while taking care not to get too entangled in substantive legal regimes for data protection and copyright.

At this point, the US-EU trade agreement is just an acronym - TTIP, the Transatlantic Trade and Investment Partnership. USTR sought public comments regarding possible negotiating objectives, and CDT and many others submitted comments last week. (The various filed comments are available [here](#) [3].)

CDT stressed that, as leading liberal democracies committed to human rights, the US and EU member states should set a positive model for the rest of the world by protecting the free flow of information online. TTIP should bar restrictions on online data flows, such as requirements to block non-local content or services or to store certain types of data locally. TTIP should also ensure strong protections for Internet intermediaries against liability for the expression and activities of users and prohibit governments from imposing "[sending party pays](#)" [4] fee regimes that discourage data flows between networks.

At the same time, CDT urged caution and restraint with respect to data protection and copyright. Both areas are the subject of active democratic [legislative](#) [5] [debate](#) [6], and both affect fundamental rights (privacy and free expression) of individual citizens. TTIP should avoid both the appearance and reality of trying to either (i) bypass or preempt the regular legislative process, or (ii) undermine or weaken individuals' rights. Instead, TTIP in these areas should limit itself to more procedural questions. With respect to data protection, for example, TTIP could feature a procedural commitment to develop an updated version of the existing US-EU Safe Harbor.

With respect to copyright in particular, CDT has [long been concerned](#) [7] that trade agreements may fail to strike an appropriate balance among legitimate interests of rights holders, the information- and technology-using public, and societal values such as free speech. There is also a real risk of exacerbating already-high levels of public disrespect for the law in this area. As CDT [has written before](#) [8], public disrespect for the law likely undermines efforts to improve compliance and enforcement of copyright. TTIP negotiators therefore should tread cautiously. If they nonetheless wade into substantive matters, they should seek balance by including strong provisions on things like limitations and exceptions (L&Es) and safe harbors for intermediaries.

Finally, CDT argued that anything TTIP does on data protection or copyright needs to be sufficiently transparent. Some issues are simply not well suited to resolution through deals cut behind closed doors. This is a point [we've made for years](#) [9] regarding trade talks on copyright, with limited success to date. But there is no reason why the US and EU could not jointly agree that data protection and copyright are suitable areas for the public release of actual draft text and an opportunity for public comment.

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[5] <http://arstechnica.com/tech-policy/2011/07/why-the-us-needs-a-data-privacy-law-and-why-it-might-actually-happen/>

[6] <https://www.cdt.org/blogs/david-sohn/2103copyright-office-calls-major-reforms-copyright-law>

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