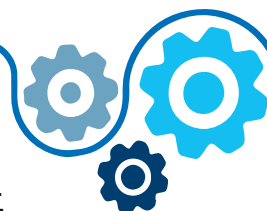


TRADE AGREEMENTS AND DIGITAL RIGHTS



Technology is part of our lives. Technology is part of our economy. Unsurprisingly, digital trade has become a hot topic in the European Union and around the world. The new generation of trade agreements includes provisions that have an impact on human rights in the online environment. Issues like privacy, trust, freedom of expression and information flows are part of the debate.

KEY ISSUES FOR PROTECTING CITIZENS' RIGHTS IN TRADE AGREEMENTS

1) Human rights clause

Trade agreements should contain a binding and enforceable human rights clause (read more: https://edri.org/files/TTIP_and_DigitalRights_booklet_WEB.pdf, p.14)

2) Data protection and data flows

Data flows and data localisation provisions should not be part of trade agreements. There are other legal fora (e.g. the GDPR, OECD, Council of Europe - Convention 108, etc) to address these issues. If the EU wants to go forward with including such provisions to trade agreements, the clauses proposed must:

- ensure that the Parties to the agreement can condition the transfer and processing of personal data on the protection of privacy and personal data;
- allow any Party to suspend the flow of personal data if other parties to the agreement do not respect human rights requirements;
- ensure that the existence, application, modification and enforcement of measures relating to the rights to privacy and data protection are not subject to challenge on the basis of any trade agreement; and
- guarantee that parties to the agreement must not be required to apply or adopt "least restrictive" privacy or data protection measures. Otherwise, the freedom to adopt measures aimed at protecting individuals' right to privacy and data protection will be limited by potential legal challenge.

3) Liability protections

The EU-Korea Trade Agreement contains provisions extracted directly from the E-Commerce Directive. There is more and more pressure being exerted towards companies to restrict content online without enough safeguards. Having provisions to ensure liability protections from the E-Commerce Directive would be a positive element. This can include a general prohibition against monitoring of content (like in Article 15 of the E-Commerce Directive).

What we need to be careful about is that trade agreements do not take a Good Samaritan short-cut. This type of provisions are designed to allow companies to restrict even more content, even more easily, and would further undermine citizens' rights. This would lead to public entities to exert more pressure on private companies to deal with content that they deem unwelcome for whatever reason. This approach was central in the failed SOPA (<https://edri.org/ttip-good-samaritan-meets-trojan-horse/>) proposal in the US. It was pushed by certain American internet industry actors, who bizarrely argue for new opportunities to be coerced by governments. The core aim of the Good Samaritan short-cut is to provide exception of liability when companies take voluntary, lawless, law-enforcement action against perfectly legal content.

4) Net Neutrality

Net neutrality is a principle that all the internet traffic has to be treated equally, without blocking or slowing down certain data. This is crucial for fair competition between online services, for innovation, and for freedom of expression online. If done correctly, the EU can lead in promoting net neutrality around the world. Trade agreements can be a good tool for achieving this. If the EU sees that the other partners cannot agree to having access to all the internet, by everybody and all the time, then it is better not to have provisions that could potentially undermine the good work of the EU in this regard.

READ MORE:

EDRi is part of the Transatlantic Consumer Dialogue (TACD). TACD has developed a broader alternative trade agenda, not only on digital trade, but also on other topics of importance for consumers. It's accessible online: <http://tacd.org/wp-content/uploads/2017/03/TACD-Vision-Paper-Pro-consumer-agenda-Final.pdf>

Study "Trade and privacy – Difficult bedfellows? How to achieve data protection-proof free trade agreements": https://edri.org/files/dp_and_trade_web.pdf and a factsheet detailing the study's main recommendations: http://edri.org/files/dp_and_trade_factsheet_web.pdf



#TradeLabEU



European Digital Rights (EDRi) defends fundamental rights and freedoms in the digital environment. We want to make sure that these rights are not undermined by EU trade agreements.

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