

Anti-Counterfeiting Trade Agreement (ACTA)

Why You Should Support It

Introduction

Effective intellectual property protection and enforcement are essential to fostering creativity and innovation, creating jobs and increasing cultural diversity. They are also vital to promoting technological advances, enhancing the rule of law, and boosting legal trade in products and services protected by intellectual property laws. ACTA will advance these vital goals by improving enforcement against counterfeiting and piracy, and by increasing cooperative efforts to tackle these global problems, which have significant negative impacts on the world and European economies, legitimate businesses and the public's health and safety. Recent studies suggest that millions of legitimate jobs are destroyed each year by

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counterfeiting and piracy across the globe, and that the value of counterfeit and pirated goods could grow to an estimated Euro 1.26 trillion by 2015. The pervasiveness of counterfeiting and piracy around the world requires a coordinated global approach by governments to address these illegal activities.

What ACTA is about

ACTA has been negotiated by 37 countries and the EU (together representing over 50% of world trade) to improve the international framework for fighting counterfeiting and piracy. Innovation, creativity, quality and brand exclusivity are some of the EU's main competitive advantages on the world market. Widespread infringements of intellectual property rights (IPRs) undermine legitimate trade, EU competitiveness and jobs. The EU

ACTA will help to:

- protect European creators and innovators
- create and preserve millions of European jobs
- spur European economic recovery, competitiveness and growth
- provide significant benefits for European citizens beyond the existing international framework
- foster international trade, development and the rule of law
- promote innovation, creativity, technological advancement and investment
- give European creators and export businesses of every size the confidence to promote their products without the fear of widespread counterfeiting and piracy
- encourage businesses to take risks and to attract investment for the development of new products and services
- protect the health and safety of European consumers

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and its businesses of every size, need the appropriate tools to ensure that European IPRs are effectively enforced in their main export markets and to maintain their competitiveness and jobs at this critical time.

More jobs and more exports are crucial for Europe.

This is why IPR enforcement should remain a key strategic priority for the EU's political and business leaders, and why the EU played such a leading role in the negotiation of ACTA.

IPR enforcement only

ACTA is **only about enforcement** of IPRs. It is not about raising substantive standards of IP protection or about how countries should define infringement. Rather, it sets out a harmonised framework through which rights holders will be able to rely upon clear and broadly common rules to enforce their rights in third countries. As EU law on IPR enforcement is already considerably more advanced than the current international standards, ACTA will not change the EU acquis in this area, as confirmed by the Opinion of the European Parliament's Legal Service in December 2011.

Commercial-scale infringements

ACTA's main objective is to address **commercial-scale infringements of IPRs**, which have a significant commercial impact and are mostly pursued by criminal

organisations. These infringements have a devastating impact upon growth and employment in Europe. ACTA does not

target private, non-commercial activities of individuals, nor is its purpose to institute the monitoring of individuals or to intrude into their private spheres. ACTA,

therefore, will not lead to limitations of civil liberties or to the harassment of consumers.

Reasonable and balanced

ACTA is **a reasonable and balanced agreement** because it respects the rights of citizens and responds to the concerns of important stakeholders such as consumers, internet providers and our partners in the developing world. Respect for all fundamental rights, including the right to

privacy, the right to freedom of expression and the right to due process is a basic principle of ACTA, and provisions to that

effect are clearly set out in both the preamble and the main body of the agreement.

By preserving and respecting essential safeguards

for privacy and civil liberties that exist under both international and European law, ACTA will allow its signatories to strike an appropriate balance between all of the rights and interests involved, both now and in the future. This (along with the presence in ACTA of express provisions requiring respect for fundamental rights) has also been confirmed by the Legal Service of the European Parliament in its Opinion of December 2011.

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Public health safeguards

ACTA also contains explicit public health safeguards, and contains nothing that could directly or indirectly affect the legitimate trade in generic medicines or, more broadly, global public health. The agreement contains an express reference to the Doha Declaration on TRIPS and Public Health, and incorporates the objectives and principles of Articles 7 and 8 of TRIPS, which also refer to the safeguarding of public health. In its Opinion of December 2011, the European Parliament's Legal Service has confirmed that there are no provisions in ACTA that are contradictory to those of TRIPS.

Conclusion

Some of the harshest criticisms of ACTA have been based upon distorted interpretations of the agreement's text. Like all international agreements, ACTA should

be interpreted according to the fundamental rule of treaty interpretation as set out in Article 31(1) of the Vienna Convention on the Law of Treaties, i.e., "in good faith in

"in good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose"

accordance with the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose". The potential for ACTA to provide the EU and participating governments with a framework to more effectively protect consumers and national economies from counterfeiting and piracy should be fully realised, and supported by all.

ACTA will not:

- require changes to the body of EU law
- limit, restrict or diminish fundamental rights, freedoms or civil liberties
- criminalise the non-commercial activities of individuals
- create barriers to legitimate trade or stifle innovation
- affect legitimate trade in generic medicines or access to medicines
- mandate governments to require ISPs to terminate users' Internet connections
- require border authorities to search travellers' baggage or their personal devices for infringing materials
- require the disclosure of information that would be contrary to a Party's law or its international agreements
- require the blocking of websites
- have any adverse impact on access to or use of the Internet
- limit access to culture or information

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ACTA

- is a reasonable and balanced agreement
- is about commercial-scale infringements
- is only about IPR enforcement
- preserves and respects essential safeguards for civil liberties
- contains explicit public health safeguards

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