

Q&As on the Anti-Counterfeiting Trade Agreement (ACTA)

What impact will ACTA have on individual citizens?

Does ACTA foresee controls of i-Pods or laptops at the borders?

ACTA is about tackling activities pursued by criminal organisations, which frequently pose a threat to public health and safety. It is not about limiting civil liberties or harassing consumers. The gangs behind this traffic are often the same that do drug trafficking or money laundering.

ACTA will not go further than the current Community *acquis* on IPR enforcement, which does not limit fundamental rights and freedoms or civil liberties, such as the protection of personal data. This *acquis* in terms of IPR enforcement is without prejudice to national or Community legal provisions in other areas, in particular in the area of personal data protection, as regulated by the Data Protection Directive¹ and the Directive on privacy and electronic communications².

ACTA is not designed to negatively affect consumers: EU legislation [2003 Customs Regulation] has a *de minimis* clause that exempts travellers from checks if the infringing goods are not part of large scale traffic. EU customs, frequently confronted with traffics of drugs, weapons or people, do not have the time or the legal basis to look for a couple of pirated songs on an i-Pod music player or laptop computer.

Will Internet controls be increased?

Intermediaries have a role to play in keeping trade channels free of counterfeits, including in the internet environment. The European Union is bound by its *acquis* (E-Commerce Directive of 2000 and Information Society Directive of 2001³). At the same time more can be done between service providers and right-holders to seek a balanced, non-disruptive way of conducting their business while avoiding being (ab)used by illegal networks to distribute infringing goods. In any event, it has to be kept in mind that ACTA is about large-scale infringement activities. The issue has not yet been addressed in the ACTA negotiations.

What is the role of other EU institutions like the European Parliament and the Council in the negotiation of ACTA?

The Council and Member States have been closely involved in the process due to the likely inclusion of matters of criminal policy, which are not yet harmonised at EU level. Consequently, the Presidency will be negotiating on this matter (and other non-harmonised issues which may arise, such judicial and police cooperation).

The European Parliament will continue to be consulted and informed. The Commission has repeatedly briefed the European Parliament on ACTA, and in particular the INTA Committee, since the launch of the process.

¹ [Directive 95/46/EC](#) of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31–50.

² [Directive 2002/58/EC](#) of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, OJ L 201, 31.7.2002, p. 37–47.

³ [Directive 2001/29/EC](#) of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001.

Which countries are involved?

A number of economies that consider IPR a key instrument for their development and innovation policies have agreed to be part of the negotiations: Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States.

What about the secretive nature of the negotiations?

The EU and other partners (US, Japan, Canada, etc.) announced their intention to start negotiations on ACTA on 23 October 2007, in well-publicised press releases. Since then we have talked about ACTA on dozens of occasions, including at the European Parliament (INTA committee meetings), and in numerous well-attended seminars. The Commission organised a stakeholders' consultation meeting in June 2008 in Brussels, open to all – industry and citizens – and attended by more than 100 participants. The USA, Australia, Canada, New Zealand and other ACTA partners did the same. Civil society input will continue to be taken into consideration during the negotiations. Press releases have also been issued after each of the negotiating rounds ([Round 1](#); [Round 2](#); [Round 3](#); [Round 4](#)).

What about the ACTA texts that circulate on the Internet?

There is no ACTA text, since negotiations are still ongoing. The process is at an early stage, and most alarmist ideas that circulate on the web or in the press are speculations which do not reflect the true nature of the ACTA negotiations.

Concept papers or draft proposals made by negotiating partners are just proposals, which are not necessarily accepted by the other parties. For instance, the 18 July 2007 concept paper, which was widely circulated, does not necessarily represent the views of all negotiating parties. This concept paper is a set of reflections made by the US and Japan and discussed with other partners to present the idea of a future anti-counterfeiting agreement to other countries that joined the process afterwards. It has no legal value.

What is the status of the negotiations?

What is the timetable and when will ACTA come into force?

So far, ACTA negotiating parties have discussed border enforcement and civil remedies for infringements of intellectual property rights, including the availability of preliminary measures, preservation of evidence, damages, and legal fees and costs. A timeframe for the conclusion of ACTA has not been determined. Timing will not take precedence over the quality and balance of the final agreement.

What will be the impact of ACTA on countries which are not part of the negotiations?

Countries which are not part of the negotiations and who will not sign the agreement will of course not be bound by the agreement. ACTA is not intended to isolate countries or point the finger at their enforcement efforts. The countries involved in this initiative share a particular vision of a path to stronger enforcement to deal with the challenges of piracy and counterfeiting today. This is an inclusive vision which we hope more countries will embrace when they feel the time is right.

Why are you not pursuing this agreement through the G8, WTO, WIPO or other formal structures?

The EU considers that the approach of a free-standing agreement gives us the most flexibility to pursue this project among interested countries. We fully support the important work of the G8, WTO, and WIPO, all of which touch on IPR enforcement. The membership and priorities of those organizations simply are not the most conducive to this kind of path breaking project.