

All you want to know about the Anti-Counterfeiting Trade Agreement (ACTA)

On 2 October 2010, negotiators from the EU and 10 other countries¹ concluded the last round of negotiations of the Anti-Counterfeiting Trade Agreement (ACTA). The participants resolved nearly all outstanding issues and produced a consolidated and largely finalized text of the proposed agreement. This text is now being submitted ad referendum to the respective capitals. It has been made public on 6 October and is available on the Commission website: http://trade.ec.europa.eu/doclib/docs/2010/october/tradoc_146699.pdf.

Purpose and background of the agreement

The ACTA negotiations were launched in June 2008, based on a concept introduced by Japan in the preparation of the 2006 G8 Summit and later endorsed by the US. There were 11 rounds of negotiations.

Intellectual Property Rights (IPRs) are a key asset of the EU, ensuring its leading role in the "knowledge economy". The EU can only remain competitive, if it can rely on innovation, creativity, quality, and brand exclusivity. These are some of our main comparative advantages on the world market, and they are all protected by intellectual property rights. Only, the means of adequately **enforcing those rights in our main export markets** to date are limited.

This is where ACTA can help: The agreement aims to establish a comprehensive, first-time, international framework – a catalogue of "best practices" - that will assist its members to effectively combat the infringement of IPRs. IPR infringements undermine legitimate trade, the EU's **competitiveness** and jobs. ACTA will introduce a **new international standard**, building on the World Trade Organisation's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which was adopted in 1994.

It will include **state-of-the-art** provisions on the enforcement of intellectual property rights, including:

- civil measures
- criminal measures
- customs measures
- internet enforcement measures
- robust cooperation mechanisms among ACTA Parties to assist in their enforcement efforts, and
- establishment of best practices for effective IPR enforcement.

¹ Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States.

Impact on EU law

ACTA will not change the body of EU law as it is already considerably more advanced than the current international standards. European IPR enforcement legislation includes the:

- Enforcement of IPR Directive²;
- IPR Customs Regulation³
- Copyright in the Information Society Directive⁴
- E-commerce Directive⁵
- Data Protection Directives⁶
- Telecom Reform package of 2009, including the regulatory framework for electronic communications⁷.

ACTA will **only address the way** companies and individuals **can enforce their rights** in court, at the borders or via the internet. It will **not create new IP rights**, nor will it define their acquisition, duration, scope of protection, registration, etc. ACTA countries **will enforce the rights as they are defined domestically**.

Positive aspects of ACTA

ACTA is essential for **all those EU exporters who hold IP rights** and operate globally. Currently, many of them suffer systematic and widespread infringements of their copyrights, trademarks, patents, designs and geographical indications.

ACTA will improve the cooperation between authorities and thus the level and effectiveness in dealing with such infringements. Take for instance an author who is confronted with a pirated copy of his book outside the EU, or a fashion company that finds counterfeits of the clothes it sells: ACTA will harmonise the rules that lay out how they can react in such a case. Everybody who holds an IP right⁸, from the Chianti producer to the owner of entertainment software, will benefit from improved access to justice, customs, and police to enforce their rights versus counterfeiters or infringers. Right-holders will be able to count on efficient and broadly common rules regarding the way their complaint is dealt with. This does not only refer to the action they can expect from authorities but it also includes a series of practical questions: What urgent protection may a rights-holder obtain, what kind of evidence will be collected and preserved, what will happen to the fake goods once seized?

When it comes to the **internet**, ACTA even breaks new ground. The World Wide Web is the most global and open market for music, films, books and software, but also for millions of counterfeit goods. So far there is virtually **no international standard defined** to address the infringements for such goods, because the TRIPS agreement was concluded at a time (1994) when the internet was still in its infancy. ACTA, for the first time, creates a minimal level of **harmonisation** and transparency for the rules applicable to such infringements.

² Directive 2004/48 of 29 April 2004.

³ Regulation 1383/2003 of 22 July 2003.

⁴ Directive 2001/29 of 22 May 2001.

⁵ Directive 2000/31/EC of 8 June 2000.

⁶ Directive 95/46 and Directive 2002/58.

⁷ Regulation 1211/2009, Directive 2009/136/EC and Directive 2009/140/EC, all of 25 November 2009.

⁸ Most IPRs are territorial, meaning they need to be registered in countries to be applicable.

To sum up: ACTA provides a **balanced** Agreement, which replies to concerns expressed by **Members of the European Parliament, Non Governmental Organisations and other stake-holders** regarding issues such as:

- The **respect for fundamental rights, privacy** and data protection – e.g. article 1.4 on privacy and disclosure of information for instance states: *"Nothing in this Agreement shall require any Party to disclose: ... information the disclosure of which would be contrary to its law or its international agreements, including laws protecting right of privacy"*. Article 2.18 on enforcement in the digital environment equally stresses the importance of *"preserving fundamental principles such as freedom of expression, fair process, and privacy"*.
- The respect for the important role of **free internet** and the safeguard of the role of service providers as well as of the domestic systems of **copyright exceptions** – laid out for instance in the preamble: *"Desiring to address the problem of infringement of intellectual property rights [...] in a manner that balances the rights and interests of the relevant right holders, service providers and users."* With regard to copy rights article 2.18/8 states: *"The obligations in paragraphs 5, 6 and 7 are without prejudice to the rights, limitations, exceptions, or defenses to copyright or related rights infringement under a Party's law."*
- The safeguard of **access to medicines**, including a reference to the *Doha Declaration and to article 7 of TRIPS*, the explicit exclusion of patent infringements from the sections on border and penal enforcement (preamble and article 1.2/3)
- The safeguard of the *"need to contribute to technical innovation, transfer of technology, socio-economic welfare, the protection of health, development"*, (the pro-development clauses, highlighted in article 1.2.3).

Next steps

The European Commission is in close contacts with the ACTA Parties to clear the last reservations. It has presented the state-of-play to Member States (through the Trade Policy Committee) and to the European Parliament (INTA Committee), to answer their questions and collect initial reactions.

Remaining steps are: adoption by the Commission College, then approval and signature of ACTA by Council. Finally, the European Parliament will be asked to give its consent to the text.

For further information

Consolidated draft text of ACTA agreement:

http://trade.ec.europa.eu/doclib/docs/2010/october/tradoc_146699.pdf

More information and factsheets on ACTA:

<http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/>