

10 MYTHS ABOUT ACTA

1. ACTA is a secret agreement. Negotiations were not transparent and conducted "behind closed doors". The European Parliament was not fully informed.

The text of the Anti-Counterfeiting Trade Agreement (ACTA) is publicly available to all. The negotiations for ACTA were not different from negotiations on any other international agreement. It is a fact that such agreements are not negotiated in public, but with the Lisbon Agreement and the revised Framework Agreement there are clear rules on how the European Parliament (EP) should be informed of such trade negotiations. And these have been scrupulously followed. Trade Commissioner De Gucht has participated in three plenary debates, replied to several dozens of written and oral questions, as well as two Resolutions and one Declaration of the EP, whilst Commission services have provided several dedicated briefings to Members of the European Parliament (MEPs) during the negotiations.

Likewise, the public was informed, since the launch of the negotiations about the objectives and general thrust of the negotiations. The Commission also released summary reports after every negotiation round and the negotiating text since April 2010.

2. ACTA leads to "harmonisation through the backdoor". A study ordered by INTA to academics says that ACTA will require changes to EU enforcement legislation and/or to national laws.

ACTA provisions are compatible with existing EU law. ACTA will not require any revision or adaptation of EU law and will not require any Member States to review the measures or instruments by which they implement relevant EU law. ACTA is also in line with relevant international law, in particular with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

This has been confirmed in very clear terms by an Opinion of the Legal Service of the European Parliament of 5 October 2011, which was requested by the International Trade Committee (INTA).

The INTA study does not show evidence of any concrete situation where ACTA would contradict, repeal or require the modification of a single provision existing in EU legislation. Instead, it gives two examples (regarding the coverage of all trademark infringements by customs controls and regarding the calculation of damages based on the value of the real goods) where it cautions against the possibility that the EU be found in breach of ACTA due to the interpretation that some of its members may have of the implementation of ACTA's rules.

3. ACTA moves the balance of rights towards IP right-holders. ACTA eliminates safeguards and exceptions existing under international law.

Quite to the contrary, ACTA is drafted in very flexible terms and contains the necessary safeguards to allow its Parties to strike an appropriate balance between all rights and interests involved, in line with their economic, political and social objectives, as well as with their legal traditions. All safeguards and exceptions under EU law or under the TRIPs Agreement remain fully preserved.

4. ACTA will lead to limitations on fundamental rights or civil liberties (e.g. controls of laptops of air passengers at borders, monitoring of internet traffic, etc.).

There is no provision in ACTA that substantiates this claim. ACTA is about tackling large scale illegal activity, often pursued by criminal organisations. It is not about limiting civil liberties or harassing consumers. The respect for fundamental rights such as, privacy, freedom of expression and data protection is expressly mentioned as a basic principle of the agreement. There is a provision in ACTA specifically exempting travellers from checks if the infringing goods are of a non-commercial nature and not part of large scale trafficking

5. ACTA threatens the legitimate trade in generic medicines and global public health.

There are no provisions in ACTA that could directly or indirectly affect the legitimate trade in generic medicines or, more broadly, global public health. On the contrary, ACTA contains unequivocal language safeguarding access to health and expressly refers to the Doha Declaration on intellectual property and public health. ACTA also excludes patents from criminal and border measures.

6. ACTA will lead to the introduction of a '3 strikes' system for internet infringements, or to demands for internet service providers (ISPs, to monitor or filter the data they transmit.

ACTA does not provide for a "3 strikes" or a "graduated response" system to infringements over the internet. Neither does it oblige Internet service providers (ISPs) to monitor or filter content of their users. ACTA is fully in line with the relevant EU legislation, in force since 2000 (E-commerce Directive).

7. ACTA's provisions on criminal enforcement of intellectual property rights require additional legislation at EU level.

There is no EU legislation on criminal measures. The criminal enforcement provisions of ACTA do not require additional legislation at *EU level*. A very limited number of Member States may need to adapt their own legislation related to criminal enforcement to comply with the commitments they undertook (ACTA is a mixed EU/Member States' competence Agreement).

This has been confirmed in very clear terms by the Opinion of the Legal Service of the European Parliament of 5 October 2011.

8. The EU will impose the provisions of ACTA to third countries through incorporation of its provisions in free trade agreements.

There is no intention to do so, and this has not been proposed in bilateral trade negotiations conducted by the EU

9. ACTA should only cover counterfeiting (trademark infringements) of goods. It should not cover copyright infringements, particularly on internet.

Providing for enforcement of a broad range of intellectual property rights (IPR) infringements is necessary, since a large spectrum of EU economic operators rely on economic activities that need intellectual property protection (e.g. geographical indications





for high quality agricultural products, designs for fashion and design, copyright for the entertainment and culture sectors or patents for innovative industries).

This being said, ACTA steered away from a one-size-fits all approach and contains several exceptions to avoid that legitimate goals such as access to medicines are incidentally affected by provisions destined to prevent illegal traffics.

10. ACTA was negotiated as a self-standing agreement to avoid being negotiated at a inclusive multilateral forum, such as the World Trade Organisation (WTO) or the World Intellectual Property Organisation (WIPO).

The Commission would have preferred to address IPR enforcement problems in the WTO or in WIPO, and made many proposals to that effect. The point is that certain other Members of these organisations opposed any enforcement debate there.

