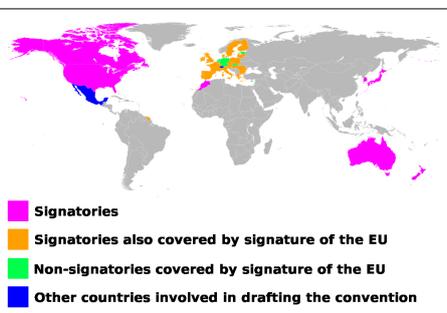


Anti-Counterfeiting Trade Agreement

ACTA

Anti-Counterfeiting Trade Agreement	
 <p> ■ Signatories ■ Signatories also covered by signature of the EU ■ Non-signatories covered by signature of the EU ■ Other countries involved in drafting the convention </p>	
Type	Plurilateral agreement
Drafted	<ul style="list-style-type: none"> 15 November 2010 (final revision) ^[1] 15 April 2011 (formal publication) ^[2]
Signed	1 October 2011
Location	Tokyo
Effective	not in force
Condition	ratification by six states
Negotiators	Australia, Canada, the European Union, Japan, Mexico, Morocco, New Zealand, Korea, Singapore, Switzerland and the United States
Signatories	United States, the European Union and 22 of its Member States, Australia, Canada, Japan, Morocco, New Zealand, Singapore, and South Korea
Ratifiers	None
Depositary	Government of Japan
Languages	English, French and Spanish
 Anti-Counterfeiting Trade Agreement at Wikisource	

The **Anti-Counterfeiting Trade Agreement (ACTA)** is a multi-national agreement for the purpose of establishing international standards for intellectual property rights enforcement. The agreement aims to establish an international legal framework for targeting counterfeit goods, generic medicines and copyright infringement on the Internet, and would create a new governing body outside existing forums, such as the World Trade Organization, the World Intellectual Property Organization, or the United Nations.

The agreement was signed on 1 October 2011 by Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea and the United States. In January 2012, the European Union and 22 of its member states signed as well, bringing the total number of signatories to 31. After ratification by 6 states, the convention will come into force.

Supporters have described the agreement as a response to "the increase in global trade of counterfeit goods and pirated copyright protected works". Large intellectual property-based organizations such as the MPAA and Pharmaceutical Research and Manufacturers of America were active in the treaty's development.

Opponents have criticized the act for its adverse effects on fundamental civil and digital rights, including freedom of expression and communication privacy.^{[3][4][5]} The Electronic Frontier Foundation among others, have derided the exclusion of civil society groups, developing countries and the general public from the agreement's negotiation process and have described it as policy laundering.^{[6][7]} The signature of the EU and many of its member states

resulted in the resignation in protest of the European Parliament's appointed rapporteur (Kader Arif), as well as widespread protests across Poland.^{[3][8][9][10]}

Negotiations

Negotiations for the ACTA treaty are not part of any international body.^[11] ACTA was first developed by Japan and the United States in 2006. Canada, the European Union (The represented in the negotiations by the European Commission, the EU Presidency and EU Member States.^[12]) and Switzerland joined the preliminary talks throughout 2006 and 2007. Official negotiations began in June 2008, with Australia, Mexico, Morocco, New Zealand, the Republic of Korea and Singapore joining the talks. The Senate of Mexico voted unanimously to withdraw Mexico from ACTA negotiations on 30 September 2010.^[13]

Round Number	Location	Date	Participants and discussion topics	References
1	 Geneva	3–4 June 2008	<i>Participants:</i> Australia, the European Union, Jordan, Mexico, Morocco, New Zealand, Republic of Korea, Singapore and United Arab Emirates	[14][15]
2	 Washington	29–31 July 2008		[16]
3	 Tokyo	8–9 October 2008		[17]
4	 Paris	15–18 December 2008		[18]
5	 Rabat	16–17 July 2009	<i>Participants:</i> Australia, Canada, the European Union (represented by the European Commission, the EU Presidency (Sweden) and EU Member States), Japan, the Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the USA. ^[19] <i>Topics:</i> international cooperation, enforcement practices and institutional issues.	[19]
6	 Seoul	4–6 November 2009	<i>Topics:</i> enforcement in the digital environment and criminal enforcement.	[20]
7	 Guadalajara	26–29 January 2010		[21]
8	 Wellington	12–16 April 2010	<i>Topics:</i> border measures, enforcement procedures in the digital environment, criminal enforcement, civil enforcement, and transparency.	[22][23]
9	 Lucerne	28 June–1 July 2010		[24]

Leaks, publications and consultations

ACTA first came to public attention in May 2008 after a discussion paper was uploaded to Wikileaks.^[25] According to a European Union commentary however there was at that stage no draft, but the document constituted initial views as they had been circulated by some of the negotiating parties.^[26] Leaked details published in February 2009 showed the 6 chapter-division also present in the final text. Most discussion was focused on the "Enforcement of Intellectual Property Rights" (IPR) chapter 2, which had the four



Stakeholders' consultation meeting on 21 April 2009 at the Charlemagne building in Brussels, Belgium

sections also present (but slightly differently named) in the final version: Civil Enforcement, Border Measures, Criminal Enforcement and Intellectual Property Rights Enforcement in the Digital Environment.^[26] Apart from the participating governments, an advisory committee of large US-based multinational corporations was consulted on the content of the draft treaty,^[27] including the Pharmaceutical Research and Manufacturers of America^[28] and the International Intellectual Property Alliance^[29] (which includes the Business Software Alliance, Motion Picture Association of America, and Recording Industry Association of America).^[30] A 2009 Freedom of Information request showed that the following companies also received copies of the draft under a nondisclosure agreement: Google, eBay, Intel, Dell, News Corporation, Sony Pictures, Time Warner, and Verizon.^[31]

On 23 March 2010, the entire "18 January 2010 consolidated text" of sections 2.1 and 2.4 (*Civil Enforcement, and Special Measures Related To Technological Enforcement Means And The Internet*) along with the demands of each negotiator was leaked to the public.^{[32][33]} This was immediately called the "biggest ever" ACTA leak.^[34]

The negotiating parties published the then current draft on 20 April 2010.^[35] In June 2010, a conference with "over 90 academics, practitioners and public interest organizations from six continents"^[36] concluded "that the terms of the publicly released draft of ACTA threaten numerous public interests, including every concern specifically disclaimed by negotiators." A group of 75+ law professors signed a letter to President Obama demanding that ACTA be halted and changed.^[37] A full consolidated text of the proposed ACTA, dated 1 July 2010,^{[38][39]} apparently coming from the civil liberties committee (LIBE) of the European Parliament was leaked providing the full text from the Luzern round of negotiations, including the name of the negotiating parties along with their positions.

The revised and final text, dated 15 November 2010, was leaked on 16 November 2010 by several websites.^{[40][41][42]}

On 16 April 2011, the negotiating countries issued a joint statement that they had reached unanimous agreement to make the consolidated text, as established at that round of negotiation, available to the public by 21 April. It was also decided to not release individual negotiating positions of countries.^[12] The final draft text was published on 20 April 2010.^[22] The final text was released on 15 November 2010,^[11] and published on 15 April 2011 in English, French and Spanish.^[2]

European Union

A draft Report from 26 August 2008 by the European Commission tried to establish a mandate from the European Parliament for the negotiation of ACTA.^[43] On 25 September 2008 the Council of the European Union adopted a resolution in support of ACTA.^[44] In November 2008 the European Commission describes ACTA as an attempt to enforce intellectual property rights and states that countries involved in the negotiations see intellectual property rights as "a key instrument for their development and innovation policies". It argues:

The proliferation of intellectual property rights (IPR) infringements poses an ever-increasing threat to the sustainable development of the world economy. It is a problem with serious economic and social consequences. Today, we face a number of new challenges: the increase of dangerous counterfeit goods (pharmaceuticals, food and drink, cosmetics or toys, car parts); the speed and ease of digital reproduction; the growing importance of the Internet as a means of distribution; and the sophistication and resources of international counterfeiters. All these factors have made the problem more pervasive and harder to tackle.^[26]

In March 2010, a leaked draft negotiation text showed that the European Commission has proposed language in ACTA to require criminal penalties for "inciting, aiding and abetting" certain offenses, including "at least in cases of wilful trademark counterfeiting and copyright or related rights piracy on a commercial scale."^[45] In a report published on 11 March 2009 the European Parliament called on the European Commission to "immediately make all documents related to the ongoing international negotiations on the Anti-Counterfeiting Trade Agreement (ACTA) publicly available".^[46]

The *European Parliament resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations* stated that "according to documents leaked, the ACTA negotiations touch on, among other things, pending EU legislation regarding the enforcement of IPRs (COD/2005/0127 – Criminal measures aimed at assuring the enforcement of intellectual property rights (IPRED-II)) and the so-called "Telecoms Package" and on existing EU legislation regarding e-commerce and data protection." The resolution furthermore states, "whereas the ongoing EU efforts to harmonise IPR enforcement measures should not be circumvented by trade negotiations which are outside the scope of normal EU decision-making processes." Also, that the enforcement of intellectual property rights (IPRs), including patent, trademark, and copyright law, must be "accomplished in a manner that does not impede innovation or competition, undermine IPR limitations and personal data protection, restrict the free flow of information or unduly burden legitimate trade."^[46]

The resolution called for the European Commission and the European Council to "grant public and parliamentary access to ACTA negotiation texts and summaries, in accordance with" the Lisbon Treaty and "Regulation 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents." In the resolution the European Parliament "deplores the calculated choice of the parties not to negotiate through well-established international bodies, such as WIPO and WTO, which have established frameworks for public information and consultation". The European Parliament asserts that under the Lisbon Treaty the European Commission needs to provide "immediate and full information" to the European Parliament on international treaties, such as ACTA. The resolution also "stresses that, unless Parliament is immediately and fully informed at all stages of the negotiations, it reserves its right to take suitable action, including bringing a case before the Court of Justice in order to safeguard its prerogatives".^[46]

Motion Picture Association of America

The Motion Picture Association of America (MPAA) has been one of the largest proponents of the treaty. An MPAA representative, in a 2010 private ACTA meeting in Mexico, told negotiators that "Bring in a censoring firewall to block piracy and you can use it to shut off sites that embarrass your government, like Wikileaks."^[47] WikiLeaks is the website that first leaked information about ACTA to the public in 2008.

Signatures and ratifications

The treaty is according to Article 39 open for signature until 31 March 2012 for the participants involved in the negotiations as well as all members of the World Trade Organization (WTO) of which the participants agree. It enters into force after subsequent ratification by six states (Article 40). After 31 March 2012, WTO members that did not sign, may accede to the convention after approval by the ACTA committee (Article 43).

A signing ceremony was held on 1 October 2011 in Tokyo, with the United States, Australia, Canada, Japan, Morocco, New Zealand, Singapore, and South Korea signing the treaty. The European Union, Mexico, and Switzerland attended but did not sign, professing support and saying they will do so in the future.^{[48][49]} On 26 January 2012, the European Union and 22 Member States signed the treaty in Tokyo. According to depositary Japan, the remaining members (Cyprus, Estonia, Germany, Netherlands and Slovakia) are expected to sign it on the completion of their respective domestic procedures.^[50] On 3 February 2012, Poland announced it halted the ratification process as it "had made insufficient consultations before signing the agreement in late January, and it was necessary to ensure it was entirely safe for Polish citizens."^[51] Also, the Czech Republic,^[52] Latvia^[53] and non signatories Germany^[54] and Slovakia^[55] have indicated to have stopped the process of ratification.

European Union

The European Union and its 27 Member States share competency on the subject of this convention. This means that entry into force on its territory requires ratification (or accession) by all states, as well as approval of the European Union.^[51] Approval of the European Union involves consent of the European Parliament as well as the Council.^[56] After the signing of 22 European Member States Kader Arif, European rapporteur for ACTA, resigned from his position on 26 January 2012 saying "I want to send a strong signal and alert the public opinion about this unacceptable situation. I will not take part in this masquerade."^{[8][9]}

The new rapporteur for ACTA in the European parliament is David Martin.

When Poland announced its intentions to sign the treaty on 18 January 2012,^[57] a number of Polish government websites, including those of the President and Polish Parliament, were shut down by denial of service attacks that started 21 January, akin to protests against SOPA and PIPA that had happened two days previously.^{[58][59]} Notwithstanding the ongoing protests, the Polish ambassador to Japan signed the treaty.^[60]

ACTA committee

ACTA establishes the *ACTA committee* in Article 36 as its own governing body outside existing international institutions such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) or the United Nations.^{[26][61]} With regards to the reason for not pursuing ACTA through the G8, WTO, WIPO or other formal existing structures the European Commission explains that a free-standing agreement provides the most flexibility "to pursue this project among interested countries", while stating that "the membership and priorities of those organizations (G8, WTO, and WIPO) simply are not the most conducive to this kind of path breaking project."^[26]

Treaty content

The finalized agreement text^[62] was published on 15 April 2011 and includes 6 chapters with 45 articles:

Chapter I: Initial Provisions and General Definitions

This Chapter describes the scope of the agreement as well as relations to other agreements. It asserts that obligations from other agreements still exist with entry into force of this agreement (Article 1) and that the agreement applies only those intellectual property rights existing in the country applying the treaty (Article 3). Countries may impose stricter measures than the treaty requires (Article 2) and should share (confidential) information for law enforcement purposes (Article 4). The treaty explicitly also applies to Free Zones (Article 5).

Chapter II: Legal Framework For Enforcement of Intellectual Property Rights

The legal framework set out in Chapter II is divided in five sections.

Section 1: General Obligations (Article 6: General Obligations with Respect to Enforcement)

General obligations are requirements to implement the provisions in law, to have fair procedure as well as "proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties" (Article 6).

Section 2: Civil Enforcement

The sections provides that rights holders have access to civil or (if they exist) administrative procedures (Article 7) and to have the possibility for judges "to issue an order against a party to desist from an infringement" (Article 8). They may also require in civil procedure pirated copyright goods and counterfeit trademark goods to be destroyed (Article 10). According to Article 11, they may ask (alleged) infringers to provide information on the goods it "controls". Article 9 states that a Party's judicial authorities *may* consider *inter alia* any legitimate measure of value submitted by a rights holder, including lost profits, the value of infringed property as per market price, or the suggested retail price. This clause has received considerable criticism for its validity, as well as its similarity to previously controversial attempts at establishing precedent to the same effect. According to the Foundation for a Free Information Infrastructure, the principle does not "reflect the economic loss suffered by the right holder".^{[63][4]} In a *Business Line* opinion piece, a professor from the Indian Institute of Foreign Trade's *Centre for WTO Studies* also explained that it would lead to "excess valuation" in infringement suits.^[64]

Section 3: Border Measures

At borders, officials may act on suspect goods on their own initiative or upon request of a "rights holder". For goods in transit, the requirements do not have to be enacted by a state (Article 16). "Small consignment" for commercial use are included in the border provisions, while "goods of a non-commercial nature contained in travellers' personal luggage" are excluded from the scope (Article 14).

Section 4: Criminal Enforcement

Article 23: Criminal Offenses

At least "wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale" should be punishable under criminal law.

According to European Digital Rights, the article "provides an extremely low threshold" when considering that the scope includes "acts" and because consequences for infringement can include criminal penalties.^[65] EDRi also outlines an absence of definitions for associated constructs, such as "aiding and abetting", "commercial scale", and "economic advantage", which it describes as "simply inappropriate in a key provision, on whose meaning the proportionality and the legality, of the Agreement rests".^[65]

Article 24: Penalties

Penalties that Parties should have in their criminal system should "include imprisonment as well as monetary fines", which are sufficiently high for discouragement of actions forbidden under the treaty.

Section 5: Enforcement of Intellectual Property Rights in the Digital Environment

Article 27: Enforcement in the Digital Environment

In the digital environment, also Civil and Criminal enforcement should be available "to permit effective action against an act of infringement of intellectual property rights which takes place in the digital environment"(Article 25, paragraph 1). Furthermore, infringement over digital networks (*possibly* including "the unlawful use of means of widespread distribution for infringing purposes") should be enforced in a manner, which "preserves fundamental principles such as freedom of expression, fair process, and privacy" (Paragraph 2). Against circumvention of systems to prevent copying measures should be implemented (Paragraph 6)

Critics of this article, such as the European Digital Rights, have raised concerns that its emphasis on the role of corporations in enforcement "promotes the policing and even punishment of alleged infringements outside normal judicial frameworks", while failing to "ensure effective remedies against such interferences with fundamental rights" despite "vague references to 'fair process' in the text [that] are not backed up by mandatory processes requiring respect for the Rule of Law" in Article 21 of the European Union's Maastricht Treaty.^{[5][66]}

Chapter III: Enforcement Practices

Article 28: Enforcement Expertise, Information, and Domestic Coordination

Parties are expected to cultivate expertise within agencies tasked with enforcing intellectual property rights, promote internal coordination, and facilitate joint actions. They are also compelled to collect and utilize statistical data, as well as "other relevant information concerning intellectual property rights infringements", to prevent and combat infringement as necessary. The article also indicates that parties shall "endeavour to promote, where appropriate, the establishment and maintenance of formal or informal mechanisms, such as advisory groups, whereby [their] competent authorities may receive the views of right holders and other relevant stakeholders."

Article 29: Management of Risk at Border

Parties may consult stakeholders or the intellectual property authorities of another party to identify and mitigate risks. Information, including but not limited to information that assists in identifying and targeting suspicious shipments, may be shared between parties for the purposes of border enforcement. Should an importing party seize infringing goods, it may supply such information to assist an exporting party in pursuing infringers.

Chapter IV: International Cooperation

Article 33: International Cooperation, Article 34: Information Sharing, Article 35: Capacity Building and Technical Assistance

Chapter V: Institutional Arrangements

In Article 36, the *ACTA committee* is established as governing body of the treaty in which all parties are represented. The body is not involved in individual cases, but monitors implementation, can formally propose changes to the convention (on the suggestion of a Party) and decides on the admittance of WTO-members which were not present at the negotiations. The committee decides by consensus. Parties establish a contact point (Article 37) which acts as a primary contact with regards to the execution of the treaty and are required to "shall accord sympathetic consideration" to requests for cooperation on matters regarding the convention (Article 38).

Chapter VI: Final Provisions

Chapter VI is the treaty's last chapter. It outlines principles and procedures regarding the treaty's status and execution.

Article 39: Signature

The article specifies that the agreement remains open for signature until 1 May 2013 by its negotiators, as well as any other World Trade Organization member that the negotiators support by consensus.

Article 40: Entry Into Force

Conditions necessary for the treaty to become effective are defined, which include six parties submitting instruments of ratification, acceptance, or approval to the depositary, as well as a thirty-day interim waiting period.

Article 41: Withdrawal

The process for withdrawal is outlined, which entails a party submitting written notification to the depositary and becomes effective 180 days after receipt.^{[67][68]} This process would also be subject to various national guidelines.^[68]

Article 42: Amendments

Parties may submit proposed amendments to the Committee for review, which would then determine whether or not the proposed amendment should be presented for potential ratification, acceptance, or approval. Successful amendments would become effective 90 days after all parties have provided their respective instruments of ratification, acceptance, or approval to the depositary.^{[69][68]}

In a report to the Australian Joint Standing Committee on Treaties, Kimberlee Weatherall, an associate professor at the University of Queensland, assessed the article in saying "it might be argued that the text of ACTA could be fleshed out through guidelines on an ongoing basis, with possible amendments in the longer term."^[70] Citing the relationship with Article 33, she added that "it might further be argued that the exhortations to 'promote cooperation, where appropriate, among [the Parties'] competent authorities', particularly in conjunction with the existence of regular meetings and exchange of information about enforcement practices, creates the basic framework within which more detailed mechanisms can be developed over time".^[70]

Article 43: Accession

After the date in Article 39 passes, any WTO member nation may seek to accede into the agreement. The terms of acceptance would be decided by the Committee on an individual, case-by-case basis. The treaty would enter into force for successful applicants thirty days after receipt of its instrument by the depositary.

Article 44: Texts of the Agreement

The treaty makes equally authoritative English, French and Spanish versions of the text, which for the purposes of signature are part of a single document.

Article 45: Depositary

Article 45 is the final text of the treaty. It elects the Government of Japan as depositary.

Provisions

Border searches

Potential border searches are covered by the "Border Measures" proposal of ACTA. As of February 2009, and according to University of Ottawa law professor Michael Geist, there is significant disagreement among countries on this topic: "Some countries are seeking the minimum rules, the removal of certain clauses, and a specific provision to put to rest fears of iPod searching customs officials by excluding personal baggage that contains goods of a non-commercial nature. The U.S. is pushing for broad provisions that cover import, export, and in-transit shipments."^[71] Newspapers reported that the draft agreement would empower security officials at airports and other international borders to conduct random *ex officio* searches of laptops, MP3 players, and cellular phones for illegally

downloaded or "ripped" music and movies. Travellers with infringing content would be subject to a fine and may have their devices confiscated or destroyed.^{[61][72]}

In July 2008, the United States Department of Homeland Security disclosed that its border search policies allow U.S. Customs and Border Protection agents to conduct random searches of electronic devices for "information concerning terrorism, narcotics smuggling, and other national security matters; alien admissibility; contraband including child pornography, monetary instruments, and information in violation of copyright or trademark laws; and evidence of embargo violations or other import or export control laws."^{[73][74]} US Senator Russell Feingold called the policies "truly alarming" and proposed to introduce legislation to require reasonable suspicion of illegality and to prohibit racial profiling.^[73] The Ninth Circuit Court of Appeals has previously upheld the constitutionality of laptop searches without reasonable suspicion at border crossings.^[73]

An ACTA fact sheet updated in November 2008, published by the European Commission, states:

ACTA is not designed to negatively affect consumers: the 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 neither have the time nor the legal basis to look for a couple of pirated songs on an iPod music player or laptop computer, and there is no intention to change this.^[26]

Criticism

Secrecy of negotiations

The Electronic Frontier Foundation (EFF) opposes ACTA, calling for more public spotlight on the proposed treaty.^[75] Since May 2008 discussion papers and other documents relating to the negotiation of ACTA have been uploaded to Wikileaks,^[25] and newspaper reports about the secret negotiations swiftly followed.^{[61][72][76]}

In June 2008, Canadian academic Michael Geist, writing for *Copyright News*, argued that "Government Should Lift Veil on ACTA Secrecy", noting that before documents leaked on the Internet, ACTA was shrouded in secrecy. Coverage of the documents by the Toronto Star "sparked widespread opposition as Canadians worry about the prospect of a trade deal that could lead to invasive searches of personal computers and increased surveillance of online activities." Geist argued that public disclosure of the draft ACTA treaty "might put an end to fears about iPod searching border guards" and that it "could focus attention on other key concerns including greater Internet service provider filtering of content, heightened liability for websites that link to allegedly infringing content, and diminished privacy for Internet users." Geist also argued that greater transparency would lead to a more inclusive process, highlighting that the ACTA negotiations have excluded both civil society groups as well as developing countries. Geist reported that "reports suggest that trade negotiators have been required to sign non-disclosure agreements for fear of word of the treaty's provisions leaking to the public." He argued that there is a need for "cooperation from all stakeholders to battle counterfeiting concerns" and that "an effective strategy requires broader participation and regular mechanisms for feedback".^[77]

In November 2008, the European Commission responded to these allegations as follows:

It is alleged that the negotiations are undertaken under a veil of secrecy. This is not correct. For reasons of efficiency, it is only natural that intergovernmental negotiations dealing with issues that have an economic impact, do not take place in public and that negotiators are bound by a certain level of discretion. However, there has never been any intention to hide the fact that negotiations took place, or to conceal the ultimate objectives of the negotiations, the positions taken in European Commission Trade 5/6 the negotiations or even details on when and where these negotiations are taking place. The EU and other partners (US, Japan, Canada, etc.) announced their intention to start negotiations of 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. Commission organised a stakeholders' consultation meeting on 23 June in Brussels, open to all – industry and citizens and attended by more than 100 participants. US, Australia, Canada, New Zealand and other ACTA partners did the same.^[26]

Another controversy is that EU Council has published official press release on ACTA in Agriculture And Fisheries Meeting report.^[78]

To coincide with the negotiation round InternetNZ, a non-profit organisation, held a *PublicACTA* event on 10 April 2010 to discuss the known and likely content of the ACTA draft agreement and to develop a statement on ACTA.^[79] At the event, the *Wellington Declaration* was developed by over 100 participants, and was published the following day along with a petition for its endorsement. By 13 April, it had received 6,645 signatures. The Wellington Declaration and the petition was given to the Government of New Zealand, which delivered the Declaration to the other negotiating countries.^[80]

Threats to freedom and fundamental human rights

An open letter signed by many organizations, including Consumers International, EDRI (27 European civil rights and privacy NGOs), the Free Software Foundation (FSF), the Electronic Frontier Foundation (EFF), ASIC (French trade association for web 2.0 companies), and the Free Knowledge Institute (FKI), states that "the current draft of ACTA would profoundly restrict the fundamental rights and freedoms of European citizens, most notably the freedom of expression and communication privacy."^[81] The Free Software Foundation argues that ACTA will create a culture of surveillance and suspicion.^[82] Aaron Shaw, Research Fellow at the Berkman Center for Internet & Society at Harvard University, argues that "ACTA would create unduly harsh legal standards that do not reflect contemporary principles of democratic government, free market exchange, or civil liberties. Even though the precise terms of ACTA remain undecided, the negotiants' preliminary documents reveal many troubling aspects of the proposed agreement" such as removing "legal safeguards that protect Internet Service Providers from liability for the actions of their subscribers" in effect giving ISPs no option but to comply with privacy invasions. Shaw further says that "[ACTA] would also facilitate privacy violations by trademark and copyright holders against private citizens suspected of infringement activities without any sort of legal due process".^[83]

The Free Software Foundation (FSF) has published "Speak out against ACTA", stating that the ACTA threatens free software by creating a culture "in which the freedom that is required to produce free software is seen as dangerous and threatening rather than creative, innovative, and exciting."^[82] ACTA would also require that existing ISPs no longer host free software that can access copyrighted media; this would substantially affect many sites that offer free software or host software projects such as SourceForge. Specifically, the FSF argues that ACTA will make it more difficult and expensive to distribute free software via file sharing and P2P technologies like BitTorrent, which are currently used to distribute large amounts of free software. The FSF also argues that ACTA will make it harder for users of free operating systems to play non-free media because DRM protected media would not be legally playable with free software.^[82]

On 10 March 2010, the European Parliament adopted a resolution^[84] criticizing the ACTA with 663 in favor of the resolution and 13 against, arguing that "in order to respect fundamental rights, such as the right to freedom of expression and the right to privacy" certain changes in the ACTA content and the process should be made.^[84]

Criminalizing generic medicine

According to French EP member Kader Arif, "The problem with ACTA is that, by focusing on the fight against violation of intellectual property rights in general, it treats a generic drug just as a counterfeited drug. This means the patent holder can stop the shipping of the drugs to a developing country, seize the cargo and even order the destruction of the drugs as a preventive measure." He continued, "Generic medicines are not counterfeited medicines; they are not the fake version of a drug; they are a generic version of a drug, produced either because the patent on the original drug has expired, or because a country has to put in place public health policies," he said.

A number of countries such as India and African nations have histories of seeking generic cheaper versions of expensive drugs for infections such as HIV, something that has often been historically resisted by pharmaceutical companies. "There are international agreements, such as the Trips Agreement, which foresees this last possibility," he said. "They're particularly important for developing countries which cannot afford to pay for patented HIV drugs, for example. Arif has stated ACTA would limit the freedom of countries such as India to determine their own medical choices."^[85]

Legal scope

Nate Anderson with Ars Technica pointed out that ACTA encourages service providers to collect and provide information about suspected infringers by giving them "safe harbor from certain legal threats". Similarly, it provides for criminalization of copyright infringement on a commercial scale,^[86] granting law enforcement the powers to perform criminal investigation, arrests and pursue criminal citations or prosecution of suspects who may have infringed on copyright on a commercial scale. It also allows criminal investigations and invasive searches to be performed against individuals for whom there is no probable cause, and in that regard weakens the presumption of innocence and allows what would in the past have been considered unlawful searches.

Since ACTA is an international treaty, it is an example of policy laundering used to establish and implement legal changes. Policy laundering allows legal provisions to be pushed through via closed negotiations among private members of the executive bodies of the signatories. This method avoids use of public legislation and its judiciary oversight. Once ratified, companies belonging to non-members may be forced to follow the ACTA requirements since they will otherwise fall out of the safe harbor protections. Also, the use of trade incentives and the like to persuade other nations to adopt treaties is a standard approach in international relationships. Additional signatories would have to accept ACTA's terms without much scope for negotiation.^[87]

From 16–18 June 2010, a conference was held at the Washington College of Law, attended by "over 90 academics, practitioners and public interest organizations from six continents".^[36] Their conclusions were published on 23 June 2010 on the American University Washington College of Law website. They found "that the terms of the publicly released draft of ACTA threaten numerous public interests, including every concern specifically disclaimed by negotiators." A group of 75+ law professors has signed a letter to President Obama demanding a host of changes to the agreement. The letter alleges that no meaningful transparency has been in evidence.^[37]

Parallels with SOPA and PIPA

Connor Adams Sheets of the *International Business Times* outlined five categories where digital rights advocates compared but expressed greater concern about ACTA than SOPA. Among these were the treaty's broader international nature, its fundamental lack of transparency, the relative ease of enactment, the degree of support by signatories, and a lack of visibility on the global political stage.^[88] *Forbes* writer E.D. Kain compared the characteristics of ACTA with that of SOPA and PIPA, noting that they were each "defined by [their] opacity: secret negotiations, closed door talks, no public discussion."^[89]

Requests for disclosure

In September 2008, a number of interest groups urged parties to the ACTA negotiations to disclose the language of the evolving agreement. In an open letter, the groups argued that: "Because the text of the treaty and relevant discussion documents remain secret, the public has no way of assessing whether and to what extent these and related concerns are merited." The interest groups included: the Consumers Union, the Electronic Frontier Foundation, Essential Action, IP Justice, Knowledge Ecology International, Public Knowledge, Global Trade Watch, the US Public Interest Research Group, IP Left (Korea), the Canadian Library Association, the Consumers Union of Japan, the National Consumer Council (UK) and the Doctors without Borders' Campaign for Essential Medicines.^[90] The Electronic Frontier Foundation (EFF) and Public Knowledge have filed a FOIA request which was denied.^{[11][91]}

Australia

A coalition of concerned organisations submitted to the responsible Australian Government department, the Department of Foreign Affairs and Trade.^[92]

The submission agreed that reducing counterfeiting is important where it endangers consumer health or safety, or constitutes commercial scale infringement. However, the coalition urged that pursuit of that goal should not threaten legitimate commercial, social, innovative and creative activities, the rights of consumers or the free flow of information. The coalition noted the current proposed treaty raised serious concerns with respect to transparency, increased customs search powers, increased penalties for IP infringement, and lack of due process.

The coalition consisted of:

- the Australian Digital Alliance – a public interest copyright organisation advocating for an appropriately balanced copyright regime;
- the Australian Library and Information Association – the peak professional organisation for the Australian library and information services sector;
- Choice – a not-for-profit consumer organisation that campaigns on behalf of Australian consumers; and
- the Internet Industry Association – Australia's national Internet industry organisation that provides policy input to government and advocacy on a range of issues.

Canada

The University of Ottawa's Canadian Internet Policy and Public Interest Clinic filed an access to information request but received only a document stating the title of the agreement, with everything else blacked out.^[61]

European Union

In November 2008, the Foundation for a Free Information Infrastructure (FFII) requested secret Anti-Counterfeiting Trade Agreement (ACTA) documents from the EU Council, specifically naming twelve documents to be published.^[93] The request was denied by the EU council, stating that "disclosure of this information could impede the proper conduct of the negotiations, would weaken the position of the European Union in these negotiations and might affect relations with the third parties concerned".^[94] In March 2009, the European Parliament passed a resolution demanding greater transparency in public affairs, which among other things called on the European Commission to make public all documents relating to the negotiations.^[95]

New Zealand

In August 2009, a coalition^[96] of NGOs and individuals formed to request more transparency in ACTA negotiations. At briefings held by the Ministry of Economic Development (MED) and the Ministry of Foreign Affairs and Trade (MFAT) on 16 December 2009, representatives from the coalition organisations supported the New Zealand negotiators stated desire to call for more transparency. In December 2009 two New Zealand members of Parliament, Clare Curran (Labour) and Peter Dunne (United Future) also publicly questioned the need for secrecy.^{[97][98]}

In March 2010, Tech Liberty^[99], a NZ digital civil rights organisation, received a response to its Official Information Act request on ACTA.^[100] It was given letters from MED and MFAT plus the May 2008 cabinet paper^[101] in which the NZ government agreed to participate in ACTA. Portions of the cabinet paper, and answers to questions posed by TechLiberty, were withheld including the venue for the April 2010 ACTA negotiations, the cabinet discussion paper on participation in ACTA, and all copies of draft negotiation texts, and all documents expressing NZ's negotiating position. This information was withheld under Official Information Act provisions allowing for withholding of information where it would prejudice the international relations of the Government of New Zealand, where it would affect the privacy of natural persons, where it was required to maintain the effective conduct of public affairs, and where withholding information was required to enable the government to carry on

negotiations (including commercial and industrial negotiations).

In the months before the 8th round of ACTA negotiations took place in April 2010, the Government of New Zealand briefed media that they are now championing greater transparency in the negotiation.^[23]

United States

Both the Bush administration and the Obama administration had rejected requests to make the text of ACTA public, with the White House saying that disclosure would cause "damage to the national security."^[102] In 2009, Knowledge Ecology International filed a FOIA (*Freedom of Information Act*) request in the United States, but their entire request was denied. The Office of the United States Trade Representative's Freedom of Information office stated the request was withheld for being material "properly classified in the interest of national security."^[103] US Senators Bernie Sanders (I-VT) and Sherrod Brown (D-OH) penned a letter on 23 November 2009, asking the United States Trade Representative to make the text of the ACTA public.^[104] According to Senator Ron Wyden (D-OR): "There are questions of constitutional authority surrounding whether the administration can enter into this agreement without Congress's approval ... Either way, when international accords, like ACTA, are conceived and constructed under a cloak of secrecy, it is hard to argue that they represent the broad interests of the general public. The controversy over ACTA should surprise no one."^[3]

Protests

EU Rapporteur's resignation

Kader Arif, European parliament's rapporteur for ACTA, resigned from his position on 26 January 2012 denouncing the treaty "in the strongest possible manner" for having "no inclusion of civil society organizations, a lack of transparency from the start of the negotiations, repeated postponing of the signature of the text without an explanation being ever given, [and] exclusion of the EU Parliament's demands that were expressed on several occasions in [the] assembly," concluding with his intent to "send a strong signal and alert the public opinion about this unacceptable situation" and refusal to "take part in this masquerade."^{[3][8][9]}



Kader Arif, the European parliament's rapporteur for ACTA, who resigned on 26 January 2012

Public demonstrations in Poland

Polish social sites Demotywatory.pl, JoeMonster.org, Kwejk.pl, AntyWeb.pl and Wykop.pl announced that they were considering a blackout similar to the SOPA-inspired 2012 Wikipedia blackout to protest Poland's plan to sign the Anti-Counterfeiting Trade Agreement.^[105] After Poland's announcement on 19 January 2012 that it would sign the treaty on 26 January, a number of Polish government websites were shut down by denial of service attacks that started on 21 January.^[58] Websites included those of the Chancellery of the Prime Minister, Ministry of Culture and National Heritage, the President, and the Sejm.^[59] Over a thousand people protested in front of the European Parliament office in Warsaw on 24 January.^[106] On 25 January, at least 15,000 demonstrated in Kraków, 5,000 in Wrocław, with considerable protests in cities across the country.^{[107][10]} A poll conducted on 27 January by Millward Brown SMG/KRC indicated that 64% of Poles opposed the agreement's signing, 60% believed the treaty would fail to achieve its primary objective, and 50% thought that it would curtail essential freedoms.^[108] On 27 January, protesters across the country numbered in the tens of thousands.^[109] An interactive map of protests was maintained on RMF 24 radio's website.^[110]

Following the demonstrations, Interia.pl and RMF FM facilitated 1.8 million emails to members of parliament related to ACTA, with 97% of those participating being opposed to the treaty.^[111]

Protests in Europe on 11 February 2012

On 11 February 2012 protest were held against ACTA in more than 200 European cities.^{[112][113]}

Polish parliament

On 26 January 2012 a group of Polish politicians expressed disapproval of the treaty by holding up Guy Fawkes masks during parliamentary proceedings.^[114] Images of this event quickly spread on the Internet.^[115] Mike Masnick of Techdirt resultantly noted that the handmade masks were themselves symbolically "counterfeit," as Time Warner owns intellectual property rights to the masks and typically expects royalties for their depiction.^{[116][117]}

Polish opposition right-wing party Law and Justice subsequently called for a referendum on ACTA.^[118] Later, the Polish Prime Minister Donald Tusk stated that ratification was "suspended."^[3]

Slovenia

Helena Drnovšek-Zorko, Slovenian ambassador to Japan, issued a statement on 31 January 2012 expressing deep remorse for having signed the agreement. "I signed ACTA out of civic carelessness, because I did not pay enough attention. Quite simply, I did not clearly connect the agreement I had been instructed to sign with the agreement that, according to my own civic conviction, limits and withholds the freedom of engagement on the largest and most significant network in human history, and thus limits particularly the future of our children," she said.^{[3][119]}

Slovenian members of hacktivist group Anonymous announced opposition against the treaty's signing and posted video threats on various websites against government officials and Nova Ljubljanska Banka, accusing the latter of corruption.^[120]

Some estimated 3000 Slovenians subsequently protested at Congress Square in Ljubljana and around 300 in Maribor on 4 February 2012.^{[121][122]} The Nova Ljubljanska Banka was also taken offline for about one hour by a cyber attack.



Petitions

On 8 February 2012, a petition at *jestemprzeciwacta.pl* seeking referendum in Poland had reached more than 392,600 signatures.^{[123][124]} A similar world-wide petition at Avaaz.org collected over 2.1 million signatures since 25 January.^{[125][126]} A petition directed at United Kingdom citizens, hosted by the UK Government's website, has reached over 14,000 signatures as of 11 February.^[127] A petition directed at Estonian citizens has reached over 7,000 signatures as of 13 February.^[128]

In the United States, several ACTA-related White House petitions have been created: "End ACTA and Protect our right to privacy on the Internet" (created 21 January 2012)^{[129][130]} and " Please Submit ACTA to the Senate for Ratification as Required by the Constitution for Trade Agreements" (created 22 January 2012)^{[131][132]}.

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External links

Official ACTA sites

- Australia: Department of Foreign Affairs and Trade (<http://www.dfat.gov.au/trade/acta/>) (DFAT)
- Canada: Foreign Affairs and International Trade Canada (http://www.international.gc.ca/trade-agreements-accords-commerciaux/fo/intellect_property.aspx)
- European Union: European Commission (<http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/>) (EC)
- Japan: Ministry of Economy, Trade and Industry (<http://www.meti.go.jp/english/policy/economy/chizai/acta.html>) (METI)
- New Zealand: Ministry of Economic Development (http://www.med.govt.nz/templates/ContentTopicSummary___34357.aspx) (MED) and Ministry of Foreign Affairs and Trade (<http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Anti-Counterfeiting/0-ACTA.php>) (MFAT)
- United States: United States Trade Representative (<http://www.ustr.gov/acta>) (USTR)

Authoritative treaty text

- English version, finalized (http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/acta-crc_apr15-2011_eng.pdf) - Released on 15 November 2010, published on 15 April 2011
- Treaty in EU Languages (http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&typ=Advanced&cmsid=639&ff_COTE_DOCUMENT=12196/11&ff_COTE_DOSSIER_INST=&ff_TITRE=&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_DOCUMENT=&document_date_single_comparator=&document_date_single_date=&document_date_from_date=&document_date_to_date=&dd_DATE_REUNION=&meeting_date_single_comparator=&meeting_date_single_date=&meeting_date_from_date=&meeting_date_to_date=&fc=ALLLANG&srm=25&md=100&ssf=DATE_DOCUMENT+DESC), Official languages English, Spanish and French, as well as translations into all languages of the European Union

Earlier drafts

- Draft of 18 January 2010 (<http://blog.die-linke.de/digitalelinke/wp-content/uploads/ACTA-6437-10.pdf>) - Leaked on 1 March 2010
- Draft of April 2010 (http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_146029.pdf) - Released on 21 April 2010
- Text of 25 August 2010 (http://keionline.org/sites/default/files/acta_aug25_dc.pdf) - Leaked on 5 September 2010
- Text of 1 July 2010 (http://www.laquadrature.net/files/ACTA_consolidatedtext_EUrestricted130710.pdf) - Leaked on 13 July 2010

Other sites

- ACTA tracking articles (<http://www.michaelgeist.ca/tags/anti-counterfeiting+trade+agreement>) by Michael Geist
- EFF's Anti-Counterfeiting Trade Agreement page (<http://www.eff.org/issues/acta>)
- KEI's Anti-Counterfeiting Trade Agreement page (<http://www.keionline.org/acta>)
- La Quadrature du Net's Anti-Counterfeiting Trade Agreement page (<http://www.laquadrature.net/en/ACTA>)
- Site for NZ coalition calling for transparency in ACTA (<http://www.acta.net.nz>)
- PublicACTA – the open consultation event in NZ on 10 April (<http://publicacta.org.nz>)
- Public Knowledge Anti-Counterfeiting Trade Agreement page (<http://www.publicknowledge.org/issues/acta>)
- Proposed ACTA Changes sent to the USTR. (http://slaconnections.typepad.com/public_policy_blog/2010/06/proposed-acta-changes-sent-to-the-ustr-.html) (Red Line Edit)
- What is ACTA? (<http://www.stopacta.info/>)

- White House Petition - To End ACTA And Protect Internet Privacy (Created 01/21/2012). (<https://www.whitehouse.gov/petitions#!/petition/end-acta-and-protect-our-right-privacy-internet/MwfSVNBK>)
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Protests

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