Anti-Counterfeiting Trade Agreement

New legislation for billions of people, made behind closed doors

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Anti-Counterfeiting Trade Agreement

• United States, European Union, Japan, Australia, Canada, Mexico, Morocco, New Zealand, Republic of Korea, Singapore, Switzerland

• ~ billion people
Anti-Counterfeiting Trade Agreement

- announced 23 October 2007
- behind closed doors
- after much pressure:
  - April 2010 text released
  - new round of negotiations: no text
  - compare WTO, WIPO
  - EU: Council will decide, European Parliament veto, member states veto on criminal measures

- US: ACTA is State secret
- Executive Agreement,
- Congress not involved
Anti-Counterfeiting Trade Agreement

not only trade mark counterfeiting

• new rules for the enforcement of
  • Copyright and Related Rights
  • Trademarks
  • Geographical Indications
  • Industrial Designs
  • Patents
  • Layout-Designs (Topographies) of Integrated Circuits
  • Protection of Undisclosed Information

not only fake Gucci handbags
Anti-Counterfeiting Trade Agreement

- threatens Internet freedom,
- access to medicine,
- fundamental rights and liberties,
- the right to a fair legal process
ACTA: new institution

- not transparent
- not accountable to non-Parties and public interest organizations
- may push for ever-higher levels of intellectual property protection and enforcement
- without adequate safeguards and evidence-based policy making
- undermines WTO, WIPO
Trade mark counterfeiting

Counterfeiting

- protected trademark on same type of goods
- Gucci label on handbags
- fake medicine
- criminal organization

may justify destruction of production facilities
ACTA: other trade mark infringements

- Apple records versus Apple Computer
- protected trademark not used
- no counterfeiting
- confusion?
- trade mark infringement

*destroy Apple Computer's production facilities?

basic pattern: extreme measures for normal infringements
- took millions of lives in Africa, 90ties
- medicine prices higher than in the US
- because of TRIPS, countries could not abolish patent system
- (NL abolished patents 1869 until 1912)
South Africa

- 1997, Mandela signs law to ensure affordable medicines
- U.S. prepares trade sanctions, 41 companies sue Mandela
- public outrage
- WTO Doha Declaration on TRIPS and Public Health, 2001
- pharma: minimize Doha, label generic medicine as counterfeit
Dutch seizures of essential medicine

- 2008, 2009, NL seized essential generic medicine (f.i. AIDS), in transit
- not patented in India, not patented in developing countries, not enter EU markets - violation Doha Declaration
- EU Customs regulation: *in transit* – WTO case
Software development

- full of ideas
- full of patents
- legal minefield
- infringement unavoidable
- ignore software patents to some extent
Patent trolls

- broad claims on trivial methods
- infringement is unavoidable
- extort entrepreneurs
- damages based on retail price
- injunctions without exception
- destruction of production facilities
Remove patents from ACTA

• access to medicine
• spread of green technology
• spread of food technology
• software development

remove patents
ACTA: Criminal Measures

- Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale.

- [EU: [J: For the purpose of this Agreement,] [US: Infringements] Acts [Can: of piracy] carried out on a commercial scale are [US/CH: include at least] those carried out in the context of commercial activity for direct or indirect economic or commercial advantage;

- [[US/J/CH: however a Party may exclude][EU: this excludes] such acts carried out by end consumers.] [US: Each Party may treat acts carried out by end consumers as outside the scope of this Section.]
ACTA: Criminal Measures

- **commercial advantage:** spending less money, downloading, advertisement on web page
- **end consumers:** not if you share a file
- newspaper, whistle blower, weblog author revealing a document
- office worker forwarding a document
- remixer, filesharer
ACTA: Internet

- Internet providers responsible for the actions of subscribers
- act expeditiously on alleged infringements
- not only upon notice
- aware of facts and circumstances from which infringing activity is apparent
ACTA: Internet

- ISP: police and judge
- no checks and balances, no procedural safeguards
- cost effective to give in to rights holders
- remove links to infringing material
ACTA: Internet

- ACTA encourages cooperation between service providers and rights holders
- deal effectively with infringement
- encourages establishing guidelines
- (three strikes?)
ACTA: Internet

- vertical integration content industry and Internet providers
- will Hollywood define our freedom on the Internet?
- freeze broken, old-school measures on new developments?
- protect the right of access to the Internet
- fundamental discussion of copyright in the digital era

Remove copyright
No evidence fighting counterfeiting is needed

- GAO study suggests claims are massively overstated
- Study: within two years, 46 percent of buyers of fake luxury apparel subsequently purchased the authentic version of the same product
“Lastly, some rather “incorrect” thoughts…

The modern plagues of counterfeiting and piracy did not come out of nowhere – to some extent, they are rooted in the development of IP protection itself.

The wider the gap becomes between production costs and the gains achieved by protected items, the more illegal copying it will attract…

If rightholders are compensated for their losses by granting ever stronger rights, also the attraction will increase, and so on.

It is doubtful whether imposing (ever more) drastic sanctions is able to break the vicious circle – experiences in other areas tell a different, sad story”
Fight dangerous products

- combat risks for public health is not primarily an IP issue
- resources are limited, especially in developing countries
- focus is needed
- fight dangerous products, whether IP rights are involved or not
Stop ACTA negotiations

- wrong focus
- flawed process
- if not stopped:
  - remove patents and copyright
  - limit to product counterfeiting
  - introduce TRIPS and WIPO safeguards in ACTA

Thank you!

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http://wiki.vrijschrift.org/acta