

## **SUBMISSION NO. 8**

### **TT 21 November 2011**

Main points regarding my opposition to ACTA include:

- It is undemocratic, the implications too large to not be subject to public scrutiny.
- Freedom, creativity and innovation are stifled under this treaty, and punishments are exported from the US who has a different definition of what constitutes infringement
- The entertainment industry is using the government to take care of civil matters by adjusting their status to criminal
- National border security could be threatened as those who protect them will have extensive duties to cover the obligations of this treaty
- Despite repeated statements that this will not affect laws, it is evident laws will have to be made to uphold the obligations of this treaty
- Internet Service Providers should not be responsible for the actions of their customers, they should also not be forced to log the online actions of users as this shows a complete disregard for privacy and treats everyone like a criminal
- This treaty could cost lives by making it harder to break patents when a pharmaceutical company is being unreasonable in a time of emergency
- The parties who have signed this treaty do not agree on its nature, purpose or whether it is even a binding treaty
- It could be used in conjunction with other treaties to even further restrict freedom, innovation and progress, halting technological and economic growth

In the concept of a real and honest democracy, no government should allow the signing of any treaty which has been developed in secrecy and without transparency and without a way for citizens to express their support or concerns for such a treaty long before the signing process. Despite global criticism from concerned citizens, elected officials and public interest groups, many Australians still are unaware of this treaty. Because of this, it has received a disproportionate and unfair amount of public scrutiny despite the highly significant extent that the consequences of this treaty will have.

Ratifying the Anti-Counterfeiting Trade Agreement (ACTA) treaty is the first step to subjecting Australians to US-style draconian Intellectual Property enforcement laws which hurt innocent, innovative and creative individuals on a colossal scale, whilst those who it intends to protect are merely exploited in alternative new ways that are even harder to detect. ACTA does not take into account the damaging effects the treaty will have or how it will impact copyright law, only discussing the enforcement perspective. The punishment for violations have largely been taken from United States law, however Australia does not have the robust and well established 'Fair Use' laws which the US does. Like many other countries it has a weaker 'Fair Dealing' system, meaning a larger body of people who

'infringe' are within the boundary for punishment. This highlights a fundamental problem with ACTA, it applies US punishment to countries that define infringement more loosely and in doing so unreasonably restrict creativity, speech and freedom.

This treaty does not help anyone except the entertainment industry who are using it as a means to profit further with the change in status of non-commercial file sharing (which in many cases is perfectly legitimate as it is used as a means to backup data and share personal files) to commercial scale criminal infringement, as well as secondary liability - which has always been a civil matter, into a criminal one (aiding and abetting). The transformation of civil infringements to criminal ones allows the entertainment industry to pass on the policing and enforcement to government bodies, where all related costs are on the tax payer, and there is a higher chance of those who infringe ending up in prison. ACTA alters the provisions we have created to promote a free and open internet, prevents technological and economic innovation and produces barriers for small and new businesses.

US Homeland Security itself has expressed concerns about ACTA on the grounds that the implications of this treaty will make it more complicated to successfully protect intellectual property, and increase the time they spend examining evidence and identifying potential infringers than protecting the actual security of the nation. There is no reason this would not also pose a problem for Australian national security.

Supporters for this treaty have insisted that it will not change any laws, however in order to oblige the treaty, modifications will have to be made. Most notably the changes affecting domestic law are in the areas of disclosing customer information, surveillance, protection of customer information and due process. These laws treat every citizen as a potential criminal and lay waste to the very notion of privacy and freedom.

The laws made to comply with ACTA will entirely destroy online privacy by forcing Internet Service Providers (ISPs) to monitor, record and document every action users make online and report anything they even suspect goes against government policy. This is no different to government endorsed and regulated wiretapping, without any prior indication or suspicion of intentions required. Furthermore ISP's should be no more accountable for what a user does online than a carrier service is of a terrorist who organises a plot via their phone, or the bank who stores the money which is used to buy the materials.

This treaty could potentially cost thousands or even millions of lives as pharmaceutical patents in large scale health emergencies will be much harder to break than under existing treaties, effectively putting a price on human life if pharmaceutical companies are unwilling to supply treatment at a fair price. Even worse, countries that are more likely to require these medications are being left out of the negotiations in spite of evidence of the profound effect it may have should an infectious outbreak strike.

Not only is ACTA a threat to every individuals freedom of expression and privacy, in combination with the Trans-Pacific Partnership Agreement (currently under negotiation in secrecy), it could pave the way for laws that suffocate new talented individuals and stifle innovation and new businesses by catering to the interests of those currently established. Even the parties that have signed this treaty

disagree on the nature and purpose of it. President Obama insists that ACTA is not a binding treaty and the US has said it can ignore parts of ACTA that it has issues with. However Europe see it as binding, this lack of clarity is all that is required to spark an international conflict, all because this treaty has not been discussed and made clear enough for all parties to honestly commit to it wholeheartedly and with complete conviction.

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