

6 June 2012

Committee Secretariat
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

By email: jsct@aph.gov.au

Supplementary submission to the Joint Standing Committee on Treaties Inquiry into the Anti-Counterfeiting Trade Agreement

Dear Sir/Madam,

I would like to thank the Committee for allowing us the opportunity to make such a late supplementary submission regarding the Anti-Counterfeiting Trade Agreement (ACTA). There have been very significant developments regarding the passage of ACTA through various committee and oversight processes in the European Parliament and we would like to ensure the Committee has such information for consideration in its final report, which we understand is expected to be complete by late June or possibly early July.

In recent decisions undertaken by various advisory committees reporting to the Committee on International Trade (INTA), all four committees have voted to recommend that the European Parliament reject ACTA.

Committee on Industry, Research and Energy

In its recommendation to INTA, the Committee on Industry, Research and Energy (ITRE)¹ states that whilst admirable that parties to the agreement are seeking to tackle the trade in counterfeited goods, the agreement is much wider than the name purports and thus creates by its nature a "one-size-fits-all instrument of enforcement which doesn't meet the unique needs of each sector."

This strongly suggests that any enforcement agreement should be sector specific and be tailored specifically to the peculiar needs of each economic sector taking into account different aspects of intellectual property. Sweeping enforcement approaches are not productive.

ITRE rapporteur Amelia Anderstotter also states that the agreement runs contrary to the desire and agenda hoping to make Europe the scene for cutting edge Internet innovation and its promotion of net neutrality and access to online digital markets for SMEs.

According to the Committee the ACTA text "does not ensure a fair balance between the right to intellectual property and the freedom to conduct business, the right to protection of personal data and the freedom to receive or impart information," and accordingly recommended that INTA withhold its consent.

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-483.518+01+DOC+PDF+V0//EN&language=EN>



Committee on Civil Liberties, Justice and Home Affairs

The Committee on Civil Liberties, Justice and Home Affairs (LIBE) in its recommendation to INTA² outlines that there is no balance in the ACTA text in regards to intellectual property rights (IPRs) and fundamental freedoms, particularly those of privacy and the protection of personal data, the freedom to receive and impart information or the freedom to conduct a business. There is distinct ambiguity in what safeguards are included in the agreement.

In particular, rapporteur Dimitrios Droutsas observes:

“The culture of file-sharing, enabled by the remarkable technological advance of the last decades, certainly poses direct challenges to the way we have dealt with compensation of artists and proper enforcement of intellectual rights for the past decades. Our task, as policymakers, is to overcome this challenge by striking an acceptable balance between the possibilities that technology unravels and the continuation of artistic creation, which is an emblematic token of Europe’s place in the world.

We are therefore, at a defining moment of this debate, an exciting juncture of change. In this sense, your Rapporteur believes that ACTA comes at a very premature stage and a possible adoption of the Treaty would essentially freeze the possibility of having a public deliberation that is worthy of our democratic heritage.”

He concludes:

“In light of all of the above and without prejudice to CJEU’s assessment on the matter, but taking into consideration EP’s role in the protection and promotion of fundamental rights, concludes that the proposed ACTA to which we have been asked to give consent is incompatible with the rights enshrined in the Charter [of Fundamental Rights] and calls on the Committee on International Trade, as the committee responsible, to recommend that Parliament declines to consent to the conclusion of ACTA.”

Committee on Legal Affairs

It is important to note that the Committee on Legal Affairs (JURI) has voted against the so called ‘Gallo Report’.³ The Secretariat will amend the draft opinion of the Committee to reflect that JURI recommends that INTA withhold consent to ACTA.

Committee on Development

Given worries surrounding the potential ACTA could have on access to medicines in developing countries, it is important to note that the Committee on Development (DEVE) has voted to amend the report of Jan Zahradil⁴ with a recommendation that INTA withhold consent to ACTA.

² http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/pa/889/889383/889383en.pdf

³ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/pa/898/898420/898420en.pdf (Please note that this draft is to be amended by the Committee Secretariat with a recommendation that INTA withhold consent to ACTA.)

⁴ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/deve/pa/900/900232/900232en.pdf (Please note that this draft is to be amended by the Committee Secretariat with a recommendation that INTA withhold consent to ACTA.)



Rejection of ACTA by the Netherlands

The Dutch Parliament has rejected ACTA because it "interferes with the liberties of the individual internet users and that it leaves too much room for 'extensive interpretation with negative consequences for the privacy and internet freedom of citizens and innovation for enterprises.'"⁵

It is extremely important to note the recognition by the Dutch government at the difficulty for any meaningful reform where rigid or recklessly adopted international instruments like ACTA are adopted.

Conclusion

We hope this information is useful to the Committee in its consideration of the ACTA text. We would hope given the raft of problems and issues in our previous submission the Committee will give the strongest possible recommendation that the Australian Government and Parliament reject ACTA.

Kind Regards,

Rodney Serkowski
Treasurer
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⁵ <http://www.wired.co.uk/news/archive/2012-05/30/dutch-acta-rejection>

