

Anti-Counterfeiting Trade Agreement ACTA



Office of the
U.S. Trade Representative

Launching of Initiative

- On October 23, 2007, U.S. Trade Representative Susan C. Schwab announced that the U.S. Government was seeking to negotiate an Anti-Counterfeiting Trade Agreement (ACTA).



Objective

- To provide a framework for countries committed to strong IPR protection to more effectively combat the challenges of IPR infringement today, particularly in the context of piracy and counterfeiting.
- We envision that:
 - The ACTA will be a leadership agreement, setting a positive example for nations that aspire to strengthen IPR enforcement.
 - Participation will grow over time, reflecting the growing international consensus on the need for strong IPR enforcement.

Benefits of ACTA

- Enhancing international IPR enforcement by partnering with countries that recognize the critical importance of such enforcement.
- Strengthening the international fight against pirates and counterfeiters who steal from businesses and workers, discourage innovation and creativity, threaten health and safety, provide an easy source of revenue for organized crime, and cause loss of tax revenue.
- Building on the successes of the Strategy Targeting Organized Piracy (STOP) initiative, a government-wide effort started in October 2004 to confront piracy and counterfeiting.

Our Goal

- To achieve a new kind of agreement combining commitments to strong laws with a framework for ongoing cooperation and the promotion of effective enforcement practices.
- This approach aims to strengthen legal frameworks, bridge the gap between laws on the books and strong enforcement on the ground, and to foster ongoing cooperation and leadership.

Our Goal (continued)

- This combination builds on solid foundations:
 - Past agreements have addressed the legal framework for IPR enforcement.
 - WTO TRIPS Agreement defines international minimum standards for IPR enforcement – a base on which the ACTA will build.
 - U.S. free trade agreements (FTAs) also provide models for building on the enforcement standards contained in TRIPS.
 - International cooperation and enforcement practices have already been enhanced through growing efforts in international fora such as the G8 and APEC, and efforts with the EU and with Canada and Mexico starting with the US-EU and SPP summits in 2005.

Participants

- **A critical mass of key trading partners** is engaged in the ACTA effort. Participants include Australia, Canada, EU, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States.

Provisions of the Agreement

- **Provisions of the ACTA** are still under negotiation, but participants aim to reach agreement in three main areas:
 - *International Cooperation*: Potential provisions include capacity building and technical assistance in improving enforcement, and international cooperation among enforcement agencies.
 - *Enforcement Practices*: Potential provisions include formal or informal public/private advisory groups; fostering of specialized intellectual property expertise within law enforcement structures to ensure effective handling of IPR cases; and measures for raising consumer public awareness.
 - *Legal Framework*: Potential provisions include criminal enforcement, border measures, civil enforcement, optical disc piracy, and IPR enforcement issues relating to Internet distribution.

Progress of Negotiations

- June 2008, Geneva: Discussed border measures, particularly how to deal with large-scale intellectual property infringements, which can frequently involve criminal elements and pose a threat to public health and safety.
- July 2008, Washington, DC: Discussed civil remedies for infringements of intellectual property rights, including such issues as availability of preliminary measures, preservation of evidence, damages, and legal fees and costs.
- October 2008, Tokyo, Japan: Expect to discuss criminal enforcement.

Questions & Answers

Q: Where did the idea for ACTA come from?

A: ACTA represents the coming together of many related efforts by the United States and our trading partners. On the U.S. side, the STOP initiative announced in October of 2004 led to increased cooperative engagement with a wide range of trading partners to step up the fight against piracy and counterfeiting. That engagement gave impetus to the ACTA.

Questions & Answers

Q: Do you think other countries will join in the future?

A: We hope that other countries will join over time, reflecting the growing international consensus on the need for strong IPR enforcement.

Questions & Answers

Q: What is the value of this agreement if more countries are not initially a part of it?

A: The ACTA will provide leadership toward better protection and enforcement of IPRs, and enhance partnership with countries that share a similar level of ambition. Piracy and counterfeiting are growing global issues that have become a concern for all. They have adverse effects on a nation's economy, as well as on the public health and safety of its population. Through enhanced leadership and partnership, the ACTA can improve the international climate for IPR enforcement in ways that potentially benefit all countries.

Questions & Answers

Q: Why are you not pursuing this agreement through the G8, WTO, WIPO or other formal structure?

A: We feel that having an agreement independent of a particular organization is an appropriate way to pursue this project among interested countries. We fully support the important work of the G8, WTO, and WIPO, all of which touch on IPR enforcement.

Questions & Answers

Q: Do developing countries have any interest in the ACTA?

A: Yes. We look forward to partnering with developing countries through ACTA, and cooperating with ACTA partners to provide technical assistance to developing countries.

Questions & Answers

Q: Some of the countries involved are on USTR's Special 301 Watch List. Why are they part of this?

A: Some of the ACTA participants are still working toward important and necessary IPR reforms, which we hope to see completed as soon as possible. Participation in the ACTA may help these countries to carry out their goals of enhancing IPR enforcement.

Q: Why has the ACTA been kept from the public?

A: This process has not been kept from the public. On October 23, 2007, the partners involved in the proposed agreement at that time publicly announced that they had initiated preliminary discussions on the development of ACTA. The United States has invited and received public comments on the ACTA negotiations, as have several other participating governments. The following materials are available on the USTR website:

- [Fact sheet - August 2008](#)
- [USTR statement on second round of ACTA negotiations August 2008](#)
- [USTR statement on first round of ACTA negotiations June 2008](#)
- [Responses to ACTA Federal Register Notice](#)
- [ACTA Federal Register Notice February 2008](#)
- [ACTA Press Release October 2007](#)
- [Fact sheet from the October 2007 announcement](#)
- [Ambassador Schwab's remarks at the October 2007 announcement](#)

Questions & Answers

Q: Will the ACTA rewrite U.S. law?

A: No. Only the U.S. Congress can change U.S. law.

Questions & Answers

Q: Will the border enforcement provisions of the ACTA require searching travelers' music players or laptops for infringing content?

A: No. The focus of the discussion on border measures has been on how to deal with large-scale intellectual property infringements, which can frequently involve criminal elements and pose a threat to public health and safety. Past U.S. free trade agreements have called for *ex officio* authority for border enforcement, meaning that border officials are empowered to enforce the law on their own initiative, without waiting for a complaint from a right holder. But this in no way requires searches of travelers' music players or computers.

Questions & Answers

Q: How are counterfeit and pirated products dangerous to the public?

A: There is a definite threat to health and safety from a variety of counterfeit products such as medical supplies, batteries, brake pads, and electrical cords. Other counterfeit and pirated products may not cause such direct harm to health and safety, but they can still hurt businesses and workers, provide an easy source of funding for organized crime, and reduce incentives to innovate.

Thank you.

