

An ICC initiative

BASCAP

Business Action to Stop
Counterfeiting and Piracy



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International
Trademark
Association

Re: Memorandum to ACTA Negotiators

Date: June 3, 2008

Given the difficult and complicated nature of negotiating the Anti-counterfeiting Trade Agreement (ACTA), ICC and INTA have undertaken to assemble recommendations from the business community, which we believe offer potential value to the process.

The attached paper, which we are also sending to your national capitals, is the outcome of a 16 May meeting (Berlin, Germany) of businesses and representative associations concerned about the damages and dangers of counterfeiting and piracy. The national affiliation of these groups generally correspond to nations involved in ACTA.

The recommendations contained in the document derive from the experienced views of businesses that have long-engaged in the fight against counterfeiting and piracy. For this reason, we hope that you will give them sufficient and genuine consideration.

Naturally, the limited information available on ACTA to date has limited our ability to provide detailed recommendations. Therefore, we urge you to provide opportunities for us to share additional, more detailed, expertise as you develop ACTA and its specific provisions. In this respect, we would welcome contact information for each of the negotiating parties.

Should you have any questions or further information requests, please feel free to contact us.

Sincerely,

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Memorandum to: ACTA Negotiators

Subject: Anti-counterfeiting Trade Agreement (ACTA)

From: Concerned business groups operating in ACTA nations

Date: 3 June 2008

As you initiate your negotiations and begin to frame the provisions of the Anti-Counterfeiting Trade Agreement (ACTA), the undersigned associations wish to provide our views on what we consider to be the essential elements upon which ACTA should be constructed. These are indispensable to your stated objective to significantly deter intellectual property (IP) theft and strengthen guidelines and standards for more effective national IP enforcement regimes.

Once the basic framework emerges and you begin to focus on specific aspects and details, we are prepared to provide additional recommendations drawn from the expertise of our member companies operating across sectors and across ACTA borders. Such engagement, which will generate broad business support for ACTA as negotiated, will only be possible if you provide details on the progress of the negotiations and create frequent opportunities for us to comment.

Finally, while we appreciate your aim to conclude the negotiations on an accelerated schedule, we urge you to maintain a comprehensive approach to creating ACTA, avoid compromises that will limit the scope and effectiveness of the final agreement, and devote whatever time is necessary to permit ACTA to become a truly higher standard for government performance.

Essential Elements of ACTA

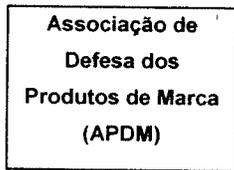
1. Intellectual property theft is no less a crime than physical property theft. An effective ACTA should therefore establish clear and transparent standards for the calculation and imposition of effective criminal penalties for IP theft that: reflect the magnitude of the crime; at a minimum match existing legal penalties for theft of physical merchandise; provide real deterrents to IP theft; remove incentives for infringement; escalate penalties for repeat infringers; and, apply to both online and off-line IP transactions.
2. Law enforcement and customs authorities must have expanded power to investigate criminal infringements of intellectual property rights and initiate criminal actions, both at the request of rights holders and on their own initiative. An effective ACTA must include provisions that train, resource and enable these authorities to: significantly increase inspections of exports/imports to find shipments of counterfeit or pirated goods; refer such findings to appropriate authorities for investigation and prosecution; seize clearly infringing copyright

and trademark materials and seize and/or place under seal equipment or materials suspected of being used to produce such infringing copies; and seize other physical and financial assets of violators.

3. In civil proceedings, an effective ACTA should establish minimum standards for prosecutors to bring charges and for judges to assess penalties in counterfeiting and piracy cases presented to authorities. Such civil sanctions should provide for: deterrent damages; destruction of infringing goods and machines used in their manufacture; closure of establishments used for production and sale; injunctive relief; compensation to rights holders for damages suffered; and, deprive infringers of any profits or other gain from the infringement.
4. While free trade zones are recognized as important and valuable for reducing barriers to global free trade, transshipment and transit of goods through these areas now contribute significantly to the trafficking of counterfeit goods around the world. An effective ACTA must disrupt the flow of counterfeit goods through Free Trade Zones and other transshipment sites by extending greater authority and effective powers to local customs and enforcement authorities to inspect all shipments, detain suspicious shipments, and seize and destroy all goods identified by rights holders as infringing.
5. Recognizing the real and growing link to organized crime and that organized criminals are behind commercial level counterfeiting trade, an effective ACTA must treat acts of counterfeiting and piracy crossing national borders as transnational crimes.
6. Counterfeiters and pirates are increasingly using the Internet to conduct illicit activity. An effective ACTA should address the growing problem of copyright infringements and the sale of counterfeit items on the Internet and encourage all relevant actors to play a responsible role and to cooperate in the fight against counterfeiting and piracy on the Internet.
7. Cooperation, both internationally and among national agencies, is imperative to curb the global nature of counterfeiting and piracy. International enforcement cooperation, especially in the areas of information exchange, capacity building and best practice exchange, is vital. An effective ACTA must create mechanisms for international cooperation, both among the ACTA parties and with countries who are not party to the agreement. It should also establish national coordination mechanisms, such as designating a chief intellectual property enforcement officer with high-level authority to raise the profile of the issue, oversee coordination of relevant government officials and agencies, and allocate necessary financial and personnel resources.

8. Educated consumers and constituencies that understand harms associated with purchasing and consuming counterfeit and pirate goods are better able to act against counterfeiting and piracy. An effective ACTA should include the establishment of public awareness campaigns to warn constituencies and consumers about the harms of counterfeit products and the immediate and extenuating dangers and risks of producing, distributing, marketing, purchasing and consuming counterfeit and pirate products.
9. The parties negotiating ACTA have an important opportunity to educate other countries on the harms associated with counterfeiting and piracy and the economic opportunities associated with creating a system that promotes and protects innovation and creativity. Parties should assist other countries with developing assessments of the economic and social benefits of participating in the ACTA process.

On behalf of:



Portugal



Spain



United Kingdom



Canadian IP Council,
Canada



European Union



Finland



Germany



USA



Mexico



Switzerland



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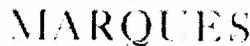


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The Institute of
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Attorneys

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European Union

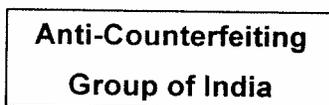


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Also supported by:



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