

Rue Joseph II, 9-13
B-1000 Brussels
Belgium

PRESIDENT
Magdalena VINENT

CHIEF EXECUTIVE & SECRETARY GENERAL
Olav STOKKMO

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IFRRO Open Letter

on the Anti-Counterfeiting Trade Agreement (ACTA)

IFRRO, with its 136 member organisations in 75 countries, links the collective management organisations in the text- and image-based sector – the Reproduction Rights Organisations (RROs) – and international and national associations of authors and publishers. One of IFRRO's core functions is to assist rightholders in maintaining viable local cultural industries in the pursuit of cultural diversity, *inter alia* by supporting adequate copyright laws, protecting copyright, and by facilitating access to copyright works through well-functioning RROs.

In this open letter, we aim at bringing clarity to some of the important questions and concerns raised in the recent debate on the Anti-Counterfeiting Trade Agreement (ACTA) by referring to specifically expressed objectives and expected results of ACTA.

Objectives and expected results of ACTA

The intention of the ACTA initiative, as stated by the governments involved, is to establish a comprehensive international framework that will assist parties to the Agreement in their efforts to effectively combat the infringement of Intellectual Property Rights (IPR), in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.¹ We do not believe that support for piracy and copyright infringement is common. Rather, the need to build and strengthen the knowledge-based economy, i.e. activities based on Intellectual Property (IP), seems to be generally recognised. The objectives of ACTA to sustain that intent are also, to our knowledge, broadly shared, in particular among those who are concerned with building a sustainable economy for the future.

¹ In a Commission Q&A document it is stated that the EU fully supports the important work of G8, WTO and WIPO, but that the "membership and priorities simply are not the most conducive to this kind of path breaking project" (http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142040.pdf, page 3).

Activities based on IP are among the most important contributors to the economy and employment². Several governments, as well as the European Commission, in the document ‘Consultation on the future “EU 2020” Strategy’³, identify these activities as cornerstones to uphold the economy, nationally, regionally and globally, and to move out of the current economic situation. This requires investment in knowledge-based activities, combined with a regulatory framework which allows related sectors to become viable, and a solid basis for combating piracy, counterfeiting and infringement of IP. ACTA’s declared intention is to provide just that.

The said purpose of ACTA is to help countries to work together to tackle more effectively IPR infringements. It is also considered as an achievement that the parties to the Agreement will be able to count on common rules regarding the way complaints are dealt with. The ACTA criteria and measures generally confirm, on an international level, what is already included in the legislation of and/or common practice among countries involved. For the EU Member States, for instance, the Agreement aims at ensuring that the EU’s already established standards of protection for IP apply internationally. On the other hand, the mere compliance with the ACTA criteria and measures cannot be considered sufficient in order to develop the knowledge-based economy. It must be supplemented by other strategic initiatives intended to boost the innovative capacity.

It is also appropriate to recall that ACTA is intended and expected to have a positive impact on developing countries, which aim to change their own domestic IP regimes to develop a knowledge-based economy. IP-based activities need to be built where they are scarce or inexistent, and reinforced where they already exist. This also meets the goal of nourishing national cultural independence. IFRRO and its members contribute to facilitating access to IP, *inter alia* by supporting and helping to build infrastructures in developing countries, including arrangements for the collective management of rights. This plays an important part in providing legitimate legal access to works of local authors and publishers, as well as to those of foreign rightholders, via the efficient network between RROs worldwide. The effectiveness of those efforts depends also on the regulatory environment.

Putting ACTA’s provisions into context

We note the concerns expressed on issues, including: the potential negative effect of ACTA on fundamental human freedoms and privacy; the possibility of requiring cut-off of internet access to consumers that infringe the Agreement; and imposing liability on internet service providers that carry content that infringes the Agreement.

ACTA measures and criteria do not appear to go beyond what already exists or is common practice in countries involved. EU Member States, for example, will not have to make any modifications to their legislation to comply with ACTA, and no new EU legislation is required. This seems to be corroborated by the content of related EU

² Cf. http://www.wipo.int/export/sites/www/ip-development/en/creative_industry/pdf/economic_contribution_analysis_2012.pdf

³ See: <http://ec.europa.eu/eu2020/pdf/eu2020.pdf> (pages 4 *et seq.*)

documents. In the Q&A document prepared by the European Commission⁴, it is stressed that ACTA will not go further than the current EU *Acquis* on IPR enforcement, which does not limit fundamental rights and freedoms or civil liberties, such as the protection of personal data. This is confirmed by the study published in July 2011, conveying an assessment of ACTA which had been requested by the European Parliament's Committee on International Trade⁵, which finds that, in the case of the EU, ACTA does not entail a significant shift in the EU *Acquis*. The study also highlights that ACTA does not appear, on its own, to have a significant impact on the EU's innovative capacity or its global competitiveness, partly due to the relatively modest scale of the outcome, as well as the fact that ACTA will not require any change in the laws or regulations of significant competitor countries such as Brazil, India and China.

The respect of fundamental rights such as privacy, freedom of expression and data protection is specifically mentioned as a basic principle of the Agreement. The respect for the important role of a free internet and the safeguarding of the role of service providers is laid out, for instance, in the Preamble of ACTA⁶:

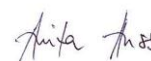
"Desiring to address the problem of infringement of intellectual property rights [...] in a manner that balances the rights and interests of the relevant right holders, service providers and users."

Against this background, the criticism of ACTA appears to be disproportionate to its stated objectives and specific provisions. We appeal to governments to assess the question of ratification based on the specific provisions of the Agreement itself, and how they might impact the building of knowledge-based activities, without being overly affected by comment, which seems – to some extent – to be based on a lack of knowledge of the provisions, misunderstanding of the objectives and context or more generalised concerns about privacy, access and enforcement beyond the provisions of Agreement.

Yours sincerely,



Olav Stokkmo
Chief Executive



Anita Huss
General Counsel

⁴ See: http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142040.pdf

⁵ See:

http://www.erikjosefsson.eu/sites/default/files/DG_EXPO_Policy_Department_Study_ACTA_assessment.pdf

⁶ Available at: <http://register.consilium.europa.eu/pdf/en/11/st12/st12196.en11.pdf>