

ACTA THREATENS RIGHTS, INNOVATION AND SHARING OF KNOWLEDGE



PRIVATIZED SANCTIONS VIOLATING DUE PROCESS AND FUNDAMENTAL RIGHTS

ACTA agreement pushes for "cooperation" between rights-holders and Internet service providers (article 27.3) by threatening them with civil (art. 8) and criminal sanctions (art. 23). The very same mechanisms are being considered by the European Commission as "extra-judicial measures" providing "alternative to courts". It would amount to the privatization of policing and judicial investigations undermining the rule of law. Internet technical intermediaries will be forced to take measures such as filtering or limitation of access in order to "prevent" alleged infringements. Such a mode of enforcement would inevitably violate freedom of expression and communication as well as privacy.

VIOLATION OF PRIVACY

ACTA could be used to encourage rights-holders to obtain private data regarding the users of Internet service providers, without a court order (art. 27.4). This would be a dangerous breach of privacy, as the debates surrounding IPRED demonstrates (for instance, the EUCJ's Promusicae ruling).

DISPROPORTIONATE AND ILLEGITIMATE DAMAGES

ACTA promotes the "lost-sale myth" put forth by industry that claims enormous retail profit losses due to "piracy" by using flawed and biased methodologies (when many independent and scientific studies show today that the biggest file sharers are the biggest spenders for culture - see lqdn.fr/p2pstudies). The ACTA text requires "pre-established" damages, as well as "additional damages" (art. 9), which means penalties are not based on any proof of economic harm. These measures can chill innovation by inhibiting investment. They are not part of the *acquis*.

NO IMPACT ASSESSMENT ON FUNDAMENTAL RIGHTS

The Commission has refused to draft a meaningful impact assessment of ACTA on fundamental rights and innovation. Yet, such an assessment is urgently needed. Public-interest groups keep on denouncing the disastrous consequences of the agreement on freedom of communication, privacy, access to medicines and access to culture.

AN OUTDATED AGREEMENT BYPASSING INTERNATIONAL BODIES

At a time when we should be adapting international IPR law to accommodate the emerging and innovative modes of management of knowledge-based goods based on sharing, ACTA reinforces proprietary and closed strategies that have created a strong antagonism between the producers and the users of such goods, hampering access to knowledge and culture. This is all the more unacceptable considering ACTA is designed to circumvent international organizations traditionally in charge of "intellectual property", such as WIPO or WTO, were we are beginning to see a change of paradigm.

BINDING ON EU LAW, VOLUNTARY FOR UNITED STATES

While for the EU, ACTA is binding on the Union and national law, the US considers it only a voluntary benchmark agreement. While the European Parliament will have to give "assent" to ACTA, the US Senate will not consider this agreement that will only be an "executive agreement". The U.S are refusing to adapt their legislation to ACTA standards despite of the numerous contradictions between ACTA and US law as proven by the Congressional Research Report on ACTA and US law. This means that the EU will hinder the circulation of knowledge and innovation by enforcing tough enforcement measures when the US will do nothing and adopt a free-rider strategy.

La Quadrature's detailed analysis: www.lqdn.fr/actaanalysis