



## Facts on ACTA

The following points address arguments that have been made by the European Commission about ACTA's supposed harmlessness. They are available online at:

[https://lqdn.fr/counter\\_acta](https://lqdn.fr/counter_acta)

### “ACTA is not the EU's SOPA or PIPA”

In some important ways, ACTA is worse than SOPA. ACTA is the global blueprint for repressive laws such as SOPA.

- **ACTA is the blueprint for laws such as SOPA/PIPA**

While SOPA/PIPA may have been put aside for a moment, ACTA is a global agreement negotiated outside of democratic arenas, pursuing a similar enforcement strategy, and meant to be imposed globally.

[La Quadrature article on the strategy behind ACTA](#)

- **EU elected representatives won't be able to modify ACTA**

If SOPA were to be adopted, the US Congress could amend or abrogate it. ACTA will prevent the EU and its Member States as well as other signatories to change their copyright and patent laws, and to fix their broken and brutal enforcement policies to adapt to the new economy of sharing.

- **ACTA will lead to extra-judicial censorship measures**

If ACTA is adopted, it will be possible for the entertainment industry to exert pressure on every Internet actor under the threat of criminal sanctions for “aiding and abetting” infringements (art.23.4) and under the guise of “cooperation” between both parties (art.27.3). ACTA also mentions “expeditious measures to deter further infringements” (art.27.1).

Under this legal framework, Internet actors will be compelled to deploy automated blocking, filtering of communications and deletion of content online. Such measures will inevitably restrict users' freedoms online.

[Detailed analysis of ACTA's digital chapter](#)

- **Mexican lawmakers stress the dangers of ACTA for freedom of expression and culture**

The Mexican Senate approved a resolution calling on the government not to sign the anti-counterfeiting agreement ACTA. In its conclusions, it argues that the digital chapter could lead to privatized online censorship, with harmful effects on Net

neutrality (and therefore freedom of expression), access to communications or access to culture.

[Resolution of the Senate of Mexico on ACTA](#)

- **ACTA is part of the Commission's dangerous copyright agenda**

By defending this SOPA-style policy in ACTA, the Commission is paving the way for the copyright industries' enforcement agenda, preventing any true debate on alternative to repression. This fits with the announced revision of the IPRED and eCommerce directives.

[La Quadrature's view on the EU Commission's repressive agenda](#)

## **“ACTA is about large-scale and organised infringements of intellectual property”**

This is simply false, as the sanctions provided in ACTA relate even to not-for-profit infringements.

- **ACTA covers for-profit and not-for-profit infringements**

ACTA modifies the scope of criminal sanctions in EU Member States, ensuring they will be applied for cases of infringement on a “commercial scale”, defined as inducing “direct or indirect economic or commercial advantage” (art. 23.1). This term is vague, open to interpretation, and just plainly wrong when it comes to determining the scope of proportionate enforcement, as it does not make any distinction between commercial and non-profit infringement.

[Article 23.10 of ACTA](#)

- **Criminalization of sharing was part of the EU Commission ACTA mandate**

The Commission claims that ACTA does not target non-commercial users infringing on copyright. Why then does the 18 July 2007 discussion paper submitted in interservice consultation in the EU Commission for the negotiating mandate of ACTA include the criminalisation of not-for-profit sharing by individuals? The latter explicitly refers to the need of criminal sanctions for: “*significant willful infringements without motivation for financial gain to such an extent as to prejudicially affect the copyright owner (e.g., internet piracy)*”. This is a fundamentally flawed policy, and ACTA will make it impossible to reform in the EU while exporting it worldwide.

[EC discussion paper on ACTA negotiating mandate](#)

- **ACTA disrespects the position of the EU Parliament on criminal sanctions**

ACTA's overbroad definition of commercial scale runs counter to the EU Parliament

position on the IPRED 2 proposal in 2007. According to the EU Parliament, acts “carried out by private users for personal and not-for-profit purposes” should be excluded from criminal sanctions. ACTA contradicts this by expanding the commercial scale definition to acts providing “indirect economic advantage”.

[EDRi's analysis of ACTA's “criminal sanctions” chapter](#)

- **ACTA will impact small and innovative market entrants**

ACTA will also chill innovation in. By extending the scope of criminal sanctions for “aiding and abetting” to such “infringement on a commercial scale”, ACTA will create legal tools threatening any actor of the Internet. Widespread social practices, like not-for-profit file-sharing between individuals, as well as editing a successful information website or distributing innovative technological tools, could be interpreted as “commercial scale”. Access, service or hosting providers, website editors will therefore suffer from massive legal uncertainty, making them vulnerable to litigation by the entertainment industries. They will then be forced to implement censorship measures harming the free Internet.

[EDRi's analysis of ACTA's “criminal sanctions” chapter](#)

## **“ACTA does not even change EU law” and “provides adequate protections for fundamental rights”**

Again, the Commission keeps arguing that ACTA does not go further than EU law, but it's simply not true.

- **On damages and border measures in particular, ACTA goes beyond EU law**

In an opinion released last year, leading European academics shows how ACTA clashes both with EU law and with the enforcement provisions of the TRIPS Agreement - which is binding for the EU - particularly on border measures, damages, commercial scale definition and lack of safeguards.

[Opinion of EU legal scholars on ACTA](#)

- **A study requested by the European Parliament underlines the lack of safeguards and calls on the EU Parliament to reject ACTA**

An independent study commissioned by the Directorate-General for External Policies of the European Parliament recognizes ACTA's lack of safeguards for fundamental rights, while underlining that it is “difficult to point to any significant advantages that ACTA provides for EU citizens beyond the existing international framework. According to the study, “unconditional consent would be an inappropriate response from the European Parliament given the issues that have been identified with ACTA as it stands”.

[Study commissioned by EU Parliament on ACTA \(pdf\)](#)

- **European Economic & Social Committee stresses that fundamental rights are not taken into consideration in ACTA**

In an opinion criticizing the EU Commission's IPR Strategy, the [European Economic and Social Committee](#) stress that “*fundamental human rights, such as the right to information, health, sufficient food, the right of farmers to select seeds and the right to culture, are not taken sufficiently into consideration*” in ACTA, and that “*this will impact on future European legislation geared towards the harmonisation of Member States' legislation.*” According to the EESC, “*ACTA's approach is aimed at further strengthening the position of rights holders vis-à-vis the ‘public’, certain of whose fundamental rights (privacy, freedom of information, secrecy of correspondence, presumption of innocence) are becoming increasingly undermined by laws that are heavily biased in favour of content distributors.*”

[Opinion of the EESC](#)

- **ACTA will prevent needed reform of EU copyright law**

Even if ACTA respected EU law, it would still not be acceptable, as it would bind the whole Union to a plurilateral agreement that would prevent us from reforming our copyright and patent law. This is especially shocking at a time when many citizens and advocacy groups are calling for a reform of these laws.

[La Quadrature's proposals for the future of copyright](#)

## **“ACTA is needed because protecting intellectual property is protecting EU jobs”**

- **ACTA won't protect European SMEs**

Geographical indications – a key point for Europe's small businesses and cultural heritage – are mostly excluded from ACTA. The few references to geographical indications in ACTA will have no or very little effect on third countries' national law.

- **Numbers regarding job losses due to counterfeiting are bogus**

The copyright lobbies have issued dozens of studies alleging that file-sharing and counterfeiting had disastrous economic consequences. In March 2010, during the debate at the EU Parliament on the so-called Gallo report, a “study” by TERA consultants was sent to MEPs in order to “demonstrate” that file-sharing would result in impressive job losses in the European Union. As usual, their methodology was bogus, and their findings based on no empirical data. The Social Science Research Council – which carried out a major study on piracy - was quick to publish a document debunking the study's findings. According to the SSRC, even if one admits that some sectors in the industry suffer losses directly because of file-sharing, the TERA study overlooks the fact that the money not spent on, say, CDs and DVDs is simply transferred to other activities and sectors, which potentially better contribute to EU economic and social wealth.

- **ACTA will favor big businesses over innovators and creators**

ACTA will actually hamper innovation and creativity in the EU and worldwide. By broadening the scope of civil and criminal sanctions and establishes new procedural rules favouring the entertainment industries, ACTA will chill EU innovators, start ups and venture capitals. This is especially clear when one considers ACTA's insane damage provisions (during a trial, right holders will be able to submit their preferred form of damage computation)

[Article 9.1 on damages in ACTA \(PDF\)](#)

- **Copyright repression is costly and ineffective**

The Commission keeps stepping up repression, when in many instances counterfeiting is at its core a market failure due to the inadequacy of IPR holders' business models and contracts. At the same time, no EU Commission initiative exists to take a positive approach on discussing new financing models for the culture economy fit for the digital environment.

## **“ACTA is also needed to protect our safety and health”**

- **ACTA will do little against truly harmful counterfeiting**

China, Russia, India and Brazil, countries where most of counterfeiting is produced, are not part of ACTA, and have stated publicly that they will never be. Considering the widespread opposition to ACTA, the agreement has lost all legitimacy on the international stage. It hampers the advent of a consensus worldwide to fight “real” counterfeiting.

[Statements by China, India and Brazil in TRIPS Council against ACTA](#)

- **ACTA is a badly drafted text which takes the wrong approach to tackling counterfeits**

If protecting health and safety was really the priority, then ACTA is just a bad and overbroad text. It mixes many types of infringement and enforcement measures, in which life-endangering fake products and organized crime activities are considered together with not-for-profit activities that play a role in access to knowledge, innovation, culture and freedom of expression.

[Study on how ACTA would hamper the right to health](#)

## “The negotiations of ACTA have been transparent”

- **Transparency was only made possible under the pressure of civil society**

Contrary to the Commission's claims, transparency on ACTA was only made possible after negotiation documents were leaked by insiders worried of ACTA's consequences. These leaks forced the negotiators to release negotiation texts in the Spring of 2010, more than 3 years after the beginning of the negotiations. Preparatory documents, which are key to interpret ACTA's vague provisions, remain confidential, as most of content of the EU Parliament's legal opinions on ACTA.

- **ACTA is part of the international agenda of copyright, patent and trademarks lobbies**

ACTA is a direct by-product of the lobbying offensive launched in 2004 by the International Chamber of Commerce, presided by the then CEO of Vivendi-Universal Jean-René Fourtou, who started the business initiative against counterfeiting (BASCAP). Fourtou's wife acted as EU Parliament rapporteur for the IPR Enforcement Directive (IPRED) adopted the same year. It is one of the worst examples of private interests taking over policy-making.

[Wikipedia article on BASCAP](#)

- **ACTA both bypasses and undermines traditional international fora**

The negotiation and implementation of ACTA bypasses legitimate international organizations (WTO, WIPO) where copyright, patent and trademarks policy are discussed. This is all the more unacceptable considering that a growing number of countries understand the importance of reforming these policies by breaking away from blind repression.

[La Quadrature article on how ACTA bypasses democracy](#)

- **ACTA will continue to circumvent democracy**

In the future, ACTA's scope could also be easily expanded through the “ACTA committee”. The latter will have authority to interpret and modify the agreement after it has been ratified, and propose amendments. Such a parallel legislative process, which amounts to signing a blank check to the ACTA negotiators, would create a precedent to durably bypassing parliaments in crucial policy-making, and is unacceptable in a democracy. This alone should justify that ACTA be rejected.

[Article 36.2 of ACTA](#)

*These points are regularly updated as a collaborative document on La Quadrature's wiki:*

[https://lqdn.fr/counter\\_acta](https://lqdn.fr/counter_acta)

**For more information, visit [www.lqdn.fr/acta](http://www.lqdn.fr/acta)**