

THE ACTA AGREEMENT AND MACEDONIA¹

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Abstract

The ACTA agreement (anti-counterfeiting trade agreement) is a new international instrument in which there would be arranged for problems related to the enforcement of intellectual property, which would arrange the furniture and some issues that are not part of the TRIPS agreement.

Negotiations for ACTA were launched in October 2007, with the initiative by the United States, the European Community, Switzerland and Japan. The adoption of the agreement aims at establishing new international standards for enforcement of intellectual property rights through the improvement of international cooperation, introducing best practices for enforcement of intellectual property rights and providing more effective legal framework.

ACTA sparked protests in 2011 and 2012 in all European cities and many scientific and political debates. The discussions were held about the contract went to two extremes in which the first regarded the document as a document of great importance to the protection of intellectual property, while others regard it as an obstacle to the dissemination of the work and methods of implementation of censorship citizens, the document that will prevent the possibility of using the internet network and will allow control of the citizens.

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Counterfeiting and Piracy

Counterfeiting is unauthorized imitation of branded good. The official definition can be found in the TRIPS Agreement, reads: "Counterfeit goods protected by trademark may be every goods, including packaging, which itself have without authorization a trademark which is identical to the mark which is previously registered for such goods, or which cannot be distinguished in its essential elements of such a trade mark and therefore infringes the rights of the owner of the trademark in the country where it is registered."²

Piracy consists of making illicit full backup - not a simple imitation- the item which is protected by any of the intellectual property. Its official definition is also included in the TRIPS Agreement as follows: "Pirated goods can be all goods that are copies made without the consent of the holder or authorized by the right holder in the state production and which are made directly or indirectly in the form of an item where the creation of such a copy would mean violation of copyright or related rights according to law in the state are protected."³

Anti-Counterfeiting Trade Agreement (ACTA)

Anti-counterfeiting trade agreement (ACTA) is a multinational treaty aimed at establishing international standards on intellectual property. The agreement aims to establish an international legal framework targeting counterfeit goods, generic medicines and copyright infringement on the Internet, and create a new governing body away from existing, such as the World Trade Organization, the World Intellectual Property Organization and the United Nations.⁴

The agreement was signed in October 2011 by Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea and the United States. In 2012, Mexico and the European Union and 22 countries that are members of the European Union signed too. One of the signatories (Japan)

² Intellectual property rights - counterfeiting and piracy - Real FAKE competition - guide <http://www.eubusiness.com/topics/trade/real-fake-ipr>

³ Intellectual property rights - counterfeiting and piracy - Real FAKE competition - guide <http://www.eubusiness.com/topics/trade/real-fake-ipr>

⁴ Before ACTA there was SOPA) that shook the world talking about regulation of Internet piracy and the sale of counterfeit goods on the Internet.

have ratified the agreement, which will come into force after ratification by six signatory States.

Industrial groups with an interest in copyright, trademark and other intellectual property rights said that ACTA is the answer to "the growing global trade in counterfeit goods and pirated goods protected by copyright." Organizations such Motion Picture Association of America and the International Trademark Association is considered to have had a major contribution on the agenda of the contract.

Civil society organizations and NGOs objected that ACTA can represent a violation of fundamental rights including freedom of expression and privacy. ACTA also criticized by Doctors Without Borders because of jeopardizing access to medicines in developing countries. The secret nature of the negotiations excluded civil society groups in developing countries and the general public and was described as "laundering policies" by certain countries.

Signatures by the European Union and many member countries - resulted in protests throughout Europe. ⁵One of the informants in the European Parliament has recommended that Parliament should reject ACTA, saying: "Found benefits by the international agreement are overcome potential violations of civil liberties." On 4 July 2012, the European Parliament rejected the agreement by 478 votes to 39, with 165 abstentions.

Negotiations signing and ratification of ACTA

Negotiations on ACTA agreement were not part of any international organization. It was first created by the US and Japan in 2006. Canada, the European Union and Switzerland have joined the preliminary negotiations in 2006 and 2007. Official negotiations began in June 2008, where he joined Australia, Mexico, Morocco, New Zealand, Republic of Korea and Singapore. Senate of Mexico on September 30, 2010 voted unanimously in favor of withdrawing from negotiations Mexico. By 26 December 2014 the contract was signed, but not ratified by 31 countries and the European Union membership. Japan was the first country on October 4, 2012 to ratify the treaty.

⁵ These protests were organized by the group Anonymous (Anonymous) who at that time, the beginning of 2012 have become the first contemporary ones as fighters for human rights on the Internet. Although controversial group, as its sign backup took the character of Guy Fawkes, still managed to turn the world's attention to this problem and does it represent contracts ACTA and SOPA.

According to Article 39 of the agreement, the agreement is open for signature until May 1, 2013 for the countries that participated in the negotiations, including the countries that are members of the World Trade Organization. It comes into force after being ratified by 6 States Parties (Article 40). After May 1, 2013, the WTO member states that have not signed ACTA, may access the convention after approval by the committee of ACTA.

The signing ceremony was held on October 1, 2011 in Tokyo, the US, Australia, Canada, Japan, Morocco, New Zealand, Singapore and South Korea signed the agreement. EU, Mexico and Switzerland attended the celebration but did not sign the agreement, saying it would do in the future (EU with 22 member states do so in January 2012).

Contents of the agreement

ACTA established the Committee of ACTA in Article 36 as its governing body outside of international institutions such as the World Trade Organization (WTO), World Intellectual Property Organization (WIPO) and the United Nations.

The final text of the agreement was announced on April 15, 2011 and includes 6 Chapter 45 articles: The first chapter of the agreement explains the initial intentions of the creators of ACTA and gives general definitions of the terms contained therein. It describes the scope of the agreement and its relation to other contracts. Analyze obligations from other agreements that still exist at the time of entry into force of the agreement (Article 1) and that the discussion applies only to those intellectual property rights that exist in the state to implement the contract (Article 3). States can implement more stringent measures than those required by the contract (Article 2) and shares (confidential information in order to strengthen the law (Article 4). The agreement also applies to so-called free zones (Article 5).

Chapter two defines the enforcement of intellectual property rights. The legal framework is contained in Chapter II is divided into five parts. General obligations contained in the first part, the requirements to implement the provisions in the law to a fair procedure as 'proportionality between the seriousness of the infringement, the interests of third parties as well as measures that can be implemented, remedies and penalties "(Article 6).

The second part focuses on civil enforcement, and allows holders to have access to civil or administrative procedure (Article 7) and have the

opportunity for the judge to "issue an order against the party that performs the injury it to stop" (Article 8).

Also they can request in civil proceedings pirated goods and counterfeit trademarks to be destroyed (Article 10).

According to Article 11 may require the "alleged" violators provide information on the goods. Article 9 states that the judicial authority may require among other things (inter alia) any legitimate measure of value given by the right holder, including lost profits, the value of the damaged property valued at market price, or the suggested retail price.

The third part of the contract explains the powers which are border administration. Border, authorities can suspicious better to act on its own initiative or at the request of the "holder of the right." For goods that are in transit, these requirements do not have to be by the State (Article 16). Small parcels for commercial use are involved in border provisions, while goods which are for non-commercial use and are contained in the private luggage of travelers are excluded from the scope (Article 14).

Next, the fourth part of the agreement speaks of offenses covering the agreement, and the penalties for them, that provides guidelines for States Parties to implement them in its penal system. At least a "deliberate falsification of trademark or copyright infringement with piracy on a commercial scale" should be punished according to the provisions of criminal law.

The penalties that the parties should have in their criminal system includes imprisonment and fines, which will be high enough to discourage acts that prohibit the deal. The last section deals with the violation of intellectual property rights in the digital environment. In it, as well as civil and criminal enforcement should have permission to effective measures against the crime of infringement of intellectual property arising in the digital environment (Article 27, paragraph 1). Furthermore harmed digital networks (including "illegal distributions aimed violation of rights) will be implemented that way, that it will be preserved fundamental principles such as freedom of expression, fair trial and privacy (paragraph 2) .

Next, the third chapter is devoted to the practices of implementation of the legal framework of the agreement. Parties are expected to cultivate expertise within agencies whose task will be the implementation of intellectual property rights, to promote internal coordination and take common measures. They must also collect and analyze statistical data and other relevant information that is important for violations of intellectual property rights, in order to prevent and fight the violation of rights if necessary. The member also suggested that countries should promote when

necessary, the establishment and maintenance of formal or informal mechanisms, and advisory groups.

Parties can also consult the parties concerned or with the authorities of another country to identify and avoid certain risks. The fifth chapter of the agreement is committed to international cooperation between countries of the treaty and contains three members: International cooperation, information sharing, capacity building and technical assistance. In Article 36, which is part of the fifth chapter, the Committee of ACTA establishes as a governing body of the agreement in which all parties are represented. This body is not involved in individual cases, but only oversees the implementation can formally propose amendments to the Convention (the proposal of a party) and decide to accept any of the members of the WTO who were not present at the negotiations. The Committee shall decide by consensus.

Chapter VI contains final provisions of the agreement and the final chapter of the agreement. Defining the principles and procedures relating to the status of the agreement and its implementation.

Article specifies that the agreement will be open for signature until May 1, 2013 by the countries that participated in the negotiations and member states of the World Trade Organization, which are supported by consensus by States negotiators.

Terms of the agreement to become effective have been defined, and these include ratification of the agreement by the six signatory countries, acceptance or permission of the depositary, and 30 that the waiting period. Set the framework of the process of withdrawal, which the country is given the right to submit written notification to the depositary, which will perform in force after 180 days of receiving. This process must also be subject to multiple national guidelines.

Parties have the right to propose amendments to the contract, which shall submit to the Committee for consideration, which will then decide whether the proposed amendment can be proposed for potential ratification, acceptance or approval. Successful amendments will enter into force after the expiration of 90 days from when all parties will ratify it. After the expiry of the date specified in Article 39, any of the member states of the WTO may seek accession to the treaty. The conditions for admission will be decided by the Committee individually for each applicant country.

The agreement will enter into force for applicants received 30 days after the acceptance of its instruments depositary. The agreement makes the kit in English, French and Spanish versions of the text, which due to the signing of the contract are included in one document.

Article 45 is the latest member of the contract. He appoints the Government of Japan as depository.⁶

Conclusion

Chronologically SOPA appeared before ACTA. However, as SOPA and PIPA are acts adopted by the United States, the world looked upon them as violation of the freedom of the Internet. While ACTA is an agreement which enters in international waters, it talks about a new institutional control of intellectual property.

In early 2012 the world first felt the effects of global piracy. Piracy, most of which consists of placing a link for downloading specific content, most often a so-called torrents as PirateBay and Kickass, or putting copyrighted works on certain web sites freely accessing that content as a popular site Megashare.

The main question is whether this is justified or is a violation of some human rights and freedoms. In my opinion, access to information on the Internet should remain free. Although legally I accept the rationality of all this, especially having in mind the latest case linking the last film Tarantino, but as a consumer I can not accept it. Today we see the Internet as a major source of information, materials and entertainment. Is it because of easy access to what we need.

It requires control, primarily to protect the holders of rights, as well as consumers. One user to download a pirate movie will not hurt, but it is not the same with counterfeit goods. A trademark protects the good and the brand. The customer is given the guarantee of quality of the good he buys. Finally, if this control and protection should come from a new international organization. Whether, and this was always a major part of the debate, it is a US attempt to dominate the market. Some of the movie studios in the United States supported this in order to protect their works.

I believe that the country does not need accession to this agreement. Regardless of the opinion of the world, their (non) acceptance of the agreement, criticism and whatnot, so here you have no present injury. Maybe you have a counterfeit goods, but it is obvious that each of us consciously buys them. And also our market is not so large that it could endanger someone.

Back to back I think what was the reaction of the Macedonian public about these controversies. While in cities of Europe youth slept on the street,

⁶Anti-counterfeiting trade agreement ACTA
http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf

demanding freedom of information in our country there were just a few articles in several media and no one ever opened a deeper debate. Fortunately, the European Union rejected the agreement, and as we would have in our struggle for faster adoption and uncontrolled copying and "implementation" of EU directives will not only acceded to the agreement, but also ratified it.

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