



Principles for ACTA negotiations

A healthy digital economy is important to Australia's future. While reducing counterfeiting is important, particularly when it endangers consumer health or safety, or constitutes commercial scale infringement, pursuit of that goal should not threaten legitimate commercial, social, innovative and creative activities, the rights of consumers or the free flow of information. The organisations whose logos appear above are concerned that some provisions under consideration in the proposed ACTA could threaten these important values.

Accordingly, we propose the following six principles for the guidance of the Australian delegation in the forthcoming negotiations:

1. Transparency and accountability

(All stakeholders should see and comment on text before it is concluded)

Some measures reportedly being considered in the ACTA negotiations have the potential to prejudice Australian consumers and a range of legitimate Australian businesses in order to benefit certain industries, sometimes in ways unintended and unforeseen by negotiators. Few stakeholders have had any opportunity to analyse the proposals in a serious way. The Australian delegation should urge that ACTA negotiations be more transparent, and that the proposals be available for analysis and comment by all stakeholders potentially affected, prior to the final rounds which conclude the text.

2. Presumption of innocence

(No enforcement, civil or criminal, without independent findings of infringement)

The presumption of innocence should not be displaced by mere allegations of infringement. Infringement of an Intellectual Property (IP) right is only ascertainable by a properly convened court of competent jurisdiction. No property should be forfeited, no access to any service terminated, nor any personal information of consumers disclosed, without the fundamental protection of independent judicial oversight. Criminal liability should be reserved for the most serious cases, that is where there has been direct, intentional, commercial scale copyright piracy or trade mark infringement.

3. Proportionality

(All enforcement measures to be proportionate to the seriousness of any infringement)

The protections conferred by IP rights have always recognised that there is a balance to be struck between the interests of rights holders and the interests of users and others. This means that proposals to further extend IP protections need to be fair and equitable for

consumers and intermediaries as well. We therefore agree with the sentiment expressed by the EU Parliament on 11 April 2008, which called on its Member States, to "... avoid adopting measures conflicting with civil liberties and human rights and with the principles of proportionality, effectiveness and dissuasiveness, such as the interruption of Internet access."

4. Impact on other treaties and laws

(No doubling up or inconsistency with Australia's existing obligations)

We applaud any move to enhance international cooperation towards IP enforcement, but not at the expense undermining local laws and well-established principles of civil procedure. ACTA also needs to be consistent with existing treaties such as WIPO and the WTO Agreements. Australia must not agree to measures that duplicate or extend obligations in those treaties. Such duplication gives rise to the risk of uncertainty, forum-shopping and conflict, which can set back IP enforcement.

5. Mandatory filtering a flawed means of general IP enforcement

(Avoiding the prescription of surveillance technologies for IP enforcement)

Mandatory technical investigation and enforcement against alleged IP infringement – such as deep packet inspection - is technically immature and unproven. It may undermine the end users' rights to privacy, create significant costs (which will inevitably flow through to consumers) and have other adverse implications. Mandatory requirements to use particular technologies or types of technology for IP filtering have no place in a multilateral treaty. More generally, ACTA should avoid promoting a surveillance culture and discourage the imposition of mandatory IP filtering of Internet traffic, unwarranted checks of digital storage devices such as notebook PCs, iPods or iPhones, without due process.

6. Safeguards against liability for intermediaries

(Such as educational institutions, libraries and Internet Service Providers)

Australian and international law has long respected the important role of communications providers, search engines, online service providers and other intermediaries such as educational institutions, libraries which provide the facilities for private communication, commerce, and the free flow of information. Careful balances have been established over time in many laws: from defamation and the sale of goods rules, to copyright law and privacy. ACTA must not disturb these balances, or the flow of communications they enable. In particular:

- Primary responsibility for IP infringement should lie with the infringer;
- ACTA should not target innocent intermediaries or impose undue burdens on their commercial activities; and
- ACTA must not qualify or override the important safe harbour provisions under the Australia-US Free Trade Agreement.