

ACTA Down?



Helen Charles, alum of the Department of Media and Communications (2010), argues that the new EC piracy treaty needs to be re-examined.

On Wednesday, the European Commission put its attempts to ratify the Anti-Counterfeiting Trade Agreement (ACTA) on hold, blaming “misinformation” about the agreement for the mounting opposition. While some of the more vocal critics may overstate their case, there are valid concerns about the agreement.

ACTA was ostensibly designed to establish common international standards for intellectual property (IP) rights enforcement. It covers digital copyright infringement as well as counterfeiting – running the gamut from creative works to knock-off designer handbags and generic medicines. ACTA will, supporters argue, extend high standards of protection for intellectual property around the globe and make it easier for rightsholders to enforce standards across borders.

But opponents to the agreement, who include the [Electronic Frontier Foundation](#) and the [Open Rights Group](#), maintain that the agreement threatens privacy, freedom of speech and will hinder innovation through harsh criminal measures. Others worry ACTA will allow border agents to check people’s laptops for copyrighted material and allow media companies to claim damages for lost sales for each illegal download.

While these scenarios would be concerning, it is hard to discern what the actual impact of ACTA will be. The agreement is, by necessity, or perhaps intention, vaguely worded. Supporters say it is mostly in line with existing EU and UK law and they are moving closer to their aims, despite yesterday’s decision. Part of the strength in the supporter’s position comes from ACTA being an international trade agreement signed by 31 nations including the U.S., Canada, and Japan as well as 22 EU member states. ACTA conveys legitimacy which increases with each signatory. This makes it easier for governments to agree with advocates of the agreement and dismiss opposition as alarmist.

The perceived legitimacy of ACTA as an international trade agreement also gives cover to those whose interests are represented in the agreement allowing these aims to be furthered with minimal scrutiny. Alexander Furnas [argues](#) ACTA is another tool for ratcheting up IP regulation to the ‘highest’ standard of protection. Indeed successive treaties set new minimums that were higher than what was previously thought “above-and-beyond” with the result being a move to greater IP protections – with the “new minimum” standards becoming the norm. These minimum standards become a weapon used by current rightsholders, often stifling creativity.

This slight of hand, however, isn’t the only misdirection taking place. ACTA implies counterfeiting and digital copyright infringement are the same. They are not. Fake branded electrical goods present a real risk to consumers who trust the product to be as safe and reliable as the real thing. In contrast, digital copyright infringement does not endanger people in the same way – if at all. So in addition to protecting rightsholders, there are further justifications for regulating counterfeit goods over and above the justifications for digital. IP law is about finding a balance between the competing interests of the rightsholder and the public. The danger of equating counterfeiting and digital copyright infringement is that the balance is tipped towards the rightsholder and away from the public. Unlike discussions about counterfeiting, the debate about digital copyright enforcement requires voices concerned with freedom of speech and privacy.

The opposition to ACTA in UK is a missed opportunity for consumer rights groups because finding a workable balance between the often competing interests of rightsholders and the public is an ongoing concern for legislators and regulators. Critics say ACTA was drafted without scrutiny from civil society groups who were excluded from closed-door negotiations between parties with vested interests in the outcome. It is indeed troubling that an agreement which enters this debate was reached with no democratic accountability. Decisions on matters of public concern, which are how some issues surrounding ACTA should be considered, are usually reached by a very different route than a trade agreement. The arguments against removed decision making in the UK are well-known on the right, with frequent calls-to-arms against bureaucrats in Brussels. Curiously, as far as ACTA is concerned, this line of argument has been noticeably quiet.

And in winning the trade agreement argument, the proponents of ACTA have successfully framed the thoughts regarding the policy. Critics need to find new ways to engage the public. The first step is explaining how and why catching people touting fake watches is different from catching someone illegally providing media content and how it will affect them. This will involve uniting disparate groups who have very different agendas including champions of digital rights, broader consumer groups, as well as those concerned with democratic accountability. Only by bringing in new voices will the debate between the competing interests of rightsholders and the public turn into a fair fight. Otherwise ACTA will finish the debate by tying the hands of governments.

February 24th, 2012 | [Copyright, Guest Blog](#) | [0 Comments](#)

☺