

The Wellington Declaration

Arising from the PublicACTA Conference

10 April 2010

Preamble

The participants at the PublicACTA Conference of 10 April 2010 respectfully submit this, the **Wellington Declaration**, to the parties negotiating the Anti-Counterfeiting Trade Agreement (ACTA), for their consideration during the Wellington round of negotiations.

Consistent with the European Parliament's Resolution of 10 March 2010 on the Transparency and State of Play of the ACTA Negotiations (P7_TA(2010)0058), ACTA should be limited to an Agreement regarding enforcement against counterfeiting (the large scale commercial production of illicit physical goods).

The first part of the Declaration deals with general matters and principles.

The second part of the Declaration deals with some of the specific points under discussion in Wellington.

Part One: General Matters and Principles

Preserving the Internet

We recognise that the Internet has enabled creativity and innovation, the sharing of knowledge, citizen engagement and democracy, and is an engine of economic growth and opportunity. This is the result of certain attributes of the Internet: its open protocols and its generativity; the fact that anyone can connect and anyone can build new applications, and find new uses without discrimination. ACTA should preserve these attributes.

Forum for the Negotiations

We note that the World Intellectual Property Organisation has public, inclusive and transparent processes for negotiating multilateral agreements on (and a committee dedicated to the enforcement of) copyright, trademark and patent rights, and thus we affirm that WIPO is a preferable forum for the negotiation of substantive provisions affecting these matters.

Purpose of ACTA

We note that the purpose of copyright is to encourage creation & distribution of works for the public good, by allowing creators a limited opportunity to control their work. ACTA assumes that this is under threat, and further protection must be developed. We call for a clear statement of the problem that ACTA is designed to solve, with independent evidence to support it.

Process

ACTA's process must change:

Transparency

We declare public scrutiny and accountability to be important aspects of life in a free society. We call for full transparency and public scrutiny of the ACTA process including release of the text after each round of negotiations. Governments have been unwilling to respond to specific concerns raised by the public. Public scrutiny will help to ensure the Agreement has no unintended consequences and has maximum positive benefit.

Impact Analysis

We believe that Governments should not sign ACTA without an independent impact analysis covering economic, social, environmental and cultural impacts of the agreement on their respective countries. Such analysis should be published well in advance of any agreement being signed, so it is open to public scrutiny and consideration of its thoroughness.

Participation

We call for wider participation in setting the agenda and scope of ACTA. The negotiation and consultation process must enable full participation and informed input into reviewing and developing drafts. All governments must be invited to be part of the negotiating process. Input must be sought from affected sectors such as Education, Health Care, Arts & Culture and Information Technology, NGOs, and consumer rights groups.

Local Flexibility

We affirm the importance of local flexibility and the need to preserve a nation's tino rangatiratanga and sovereign rights to adjust copyright, trademark and patent law to reflect local culture, preferences and conceptions of the public good.

Part Two: Specific matters for the Wellington Round

Should the negotiations continue to deal with wider copyright, trademark and patent issues, we call on the parties to take account of the following matters:

Exceptions and limitations

We declare that ACTA must address exceptions and limitations, such as fair use and fair dealing, to maintain the balance that is fundamental to copyright.

Technological Protection Measures

We note that ACTA is an Agreement to, among other things, enforce copyright interests. TPMs concern access and control and so should be beyond the scope of the Agreement, because existing copyright law is sufficient to address infringement. TPMs should not be protected: copyright works should.

In the event that ACTA provides legal protection for TPMs, such protection shall go no further than Article 11 of the WIPO Internet Treaty. TPMs should not infringe on or limit the rights of users to use or access copyright material in a manner that would be permitted without the TPM.

Preserving civil procedures

We declare that ACTA must not override or supplant domestic civil procedure. Those accused of infringement must have the benefit of robust consumer protections and safeguards, and access to due process.

Privacy

We declare the importance of maintaining people's right to privacy including user details, personally identifiable information, IP addresses, and similar information. The Agreement should not require or permit such information to be disclosed to third parties without due process and judicial oversight, and nor should it limit or derogate from any existing data protection or privacy regimes, nor introduce surveillance.

Intermediaries

We declare that ACTA must recognise that intermediaries, such as ISPs, web site hosts, and search engines, are central to enabling people to derive the benefits of the Internet. Their role must be protected and encouraged.

Intermediaries who do not initiate or direct the content on their systems or networks must have the benefit of safe harbours that are not predicated on enforcement obligations designed to address third-party infringement.

ACTA must not mandate secondary liability standards.

Access to the Internet

We declare that access to the Internet is increasingly necessary for participation in society.

Disconnection, account suspension, or limitation of service, have disproportionately negative consequences for civil rights. ACTA cannot require or allow that it be an acceptable sanction for copyright or trademark infringement.

Damages

We declare that damages:

- must be determined only by competent legal authorities (such as courts) within each sovereign nation.
- must be proportionate to the intent, and to the real and actual harm.
- must not be implemented by means of a statutory damages regime.

Criminal liability

We declare that ACTA must provide a high bar for criminal liability. ACTA must not attempt to reframe personal use and private acts to fit a definition of “commercial” infringement.

ACTA must recognise the need for proportionate criminal provisions acknowledging the problem of large-scale commercial infringement, for profit, that is direct and intentional.

Done at Wellington, New Zealand on Saturday 10 April 2010.

Civic Suites, Wellington Town Hall.

Further information regarding this Declaration
is available from the PublicACTA website:

www.publicacta.org