

**Eric Hafner – PO Box 8 – Red Bank, NJ 07701**

December 11, 2010

Jacqui Caldwell  
FOIA Officer  
Second Floor  
1724 F Street, N.W.  
Washington, D.C. 20508

**FOIA REQUEST**

**Fee waiver requested**

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of all correspondence relating to the proposed, "Anti-Counterfeiting Trade Agreement" also known by the acronym "ACTA" to and or from the Office of the United States Trade Representative between the period of 2005 and 2010.

I would like to receive the information in electronic format.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within 20 business days, as the statute requires

Thank you for your assistance.

Sincerely,



Eric Hafner

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

January 11, 2010

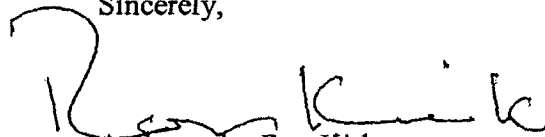
Mr. Dan Glickman  
Chairman and CEO  
Motion Picture Association of America, Inc.  
1600 Eye Street, NW  
Washington, DC 20006

Dear Secretary Glickman:

I appreciated the recent opportunity to meet with you and your members as well as unions representing workers in the motion picture industry during my trip to Los Angeles. The companies and workers in your industry clearly have a keen appreciation of how trade works for America.

I want to reiterate my thanks for your strong support for the President's trade agenda, including the Trans Pacific Partnership (TPP) negotiations and the Anti-Counterfeiting Trade Agreement (ACTA) negotiations. I look forward to continuing to work with you to ensure, through these negotiations and the broader U.S. trade agenda, that this Administration delivers the benefits of trade -- better jobs, higher wages, and more affordable goods -- to American families and communities.

Sincerely,



Ambassador Ron Kirk

# United States Senate

WASHINGTON, DC 20510

January 6, 2010

The Honorable Ron Kirk  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Kirk,

I write today to learn more about the Anti-Counterfeiting Trade Agreement (ACTA), on which your office is leading the negotiations on behalf of the U.S. As the world's largest market, the U.S. has disproportionate ability to shape international economic accords so, from my perspective, American policy makers must be very thoughtful about how any international agreement will impact American and overseas producers and consumers.

Members of civil society have approached me with concerns about the potential outcomes of ACTA and the process by which it is being negotiated. I feel strongly that in order for our nation to effectively tackle foreign barriers to goods designed or produced in America, we must employ a trade policy that is clear and broadly compelling. I commend you and your office for taking bold, unprecedented steps to promote transparency around the nation's international trade agenda. Regarding the discussions on the ACTA, I respectfully suggest that the objectives behind the negotiations still remain inadequately clear to the American public. I believe that the specific objectives that are held by the office of the United States Trade Representative (USTR) for the purposes of negotiating ACTA should be clearer in order to help build broad public support for an agreement that appropriately seeks to strengthen enforcement of Intellectual Property Rights (IPR). I have taken the time to propose several questions that, once answered, I believe will go a long way to providing the clarity that the American public needs and deserves in order to more fully support the ongoing negotiations.

1. I understand that the office of the USTR has indicated that no agreement would be made that would require a statutory change to U.S. law. However, are you also reviewing negotiating proposals to ensure that no agreement would constrain the ability of the Congress to reform our domestic IPR laws?
2. In what ways are you taking steps to ensure the ACTA will not interfere with public health flexibilities included under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the Doha Declaration on TRIPS and Public Health?
3. What types of IPR do you seek the ACTA to cover and how do you define "counterfeit"?

4. If you are negotiating provisions in the ACTA that address the enforcement of patents please help me understand your positions related to:
  - a. The current U.S. practice of considering the possibility of imposing royalty payments in lieu of an injunction to those found infringing upon a patent;
  - b. Enabling the unfettered movement of non-counterfeit pharmaceutical products and active pharmaceutical ingredients that may move through national markets with very different patent landscapes, including for example, to national developing country markets where the U.S. supports treatment programs for HIV/AIDS and other diseases;
  - c. Commitments, if any, you are seeking related to parallel trade;
  - d. The willful movement of patent infringing goods as unlawful activities that could be subject to criminal penalties; and
  - e. Measures to ensure that foreign entities cannot block access to U.S. goods by using dubious foreign patents?
5. For the purpose of providing enforcement procedures against acts of copyright infringement under Article 41 of the TRIPS agreement, what legal incentives are you seeking to encourage Online Service Providers (OSPs) to cooperate with copyright owners to deter the unauthorized storage or transmission of copyrighted materials?
6. With respect to limitations in U.S. law regarding the scope of remedies available against OSPs for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, are you seeking obligations on OSPs as a condition of qualifying for such limitations:
  - a. Which are more specific than the obligations under U.S. law to, in appropriate circumstances, terminate services of repeat infringers of copyrighted work?
  - b. To monitor consumers' online behavior to identify activities related to copyright infringement?
  - c. To provide copyright owners the ability to expeditiously receive information identifying the person allegedly infringing upon a copyright?
7. Do you intend to resist efforts to expand the circumstances in which a rights-holder may, for the purpose of collecting evidence to support the enforcement of IPR, obtain any information that the infringer or the alleged infringer possesses or controls regarding any aspect of the infringement or the alleged infringement? What tools are available to assist rights-holders in obtaining information pertaining to infringement of their property online?

8. To what extent are you advocating that border measures be applied to goods-in-transit, and are you willing to seek removal of any provision in the agreement that applies border measures to goods-in-transit?
9. Are you seeking any commitments related to third-party liability for IPR infringements and, if so, what is the outcome that you seek?
10. Are you taking any positions in the ACTA negotiations that, if successful, would commit the U.S. or any ACTA parties to obligations currently found under the Digital Millennium Copyrights Act?
11. Are you proposing any means to remove impediments to, or encourage, inter-industry arrangements to reduce the risk of piracy and facilitate its detection and elimination, and if so, how?

I thank you in advance for a prompt response to these questions and look forward to working with you on these and other important matters.

Sincerely,

A handwritten signature in cursive script that reads "Ron Wyden".

Ron Wyden  
United States Senator

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

January 28, 2010

The Honorable Ron Wyden  
United States Senate  
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your recent letter concerning the Anti-Counterfeiting Trade Agreement (ACTA). I am pleased by your interest in this important agreement.

The objective of the ACTA negotiations, which began in June 2008, is to create a new, state-of-the-art agreement to combat counterfeiting and piracy. The United States has been working with several trading partners, including Australia, Canada, the European Union and its 27 member states, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, and Switzerland, in order to negotiate the agreement. When it is finalized, we intend ACTA to assist in the efforts of governments around the world to combat more effectively the proliferation of counterfeit and pirated goods. Trade in these illegitimate goods undermines legitimate trade and the growth of the world economy, and in some cases may contribute to funding organized crime and exposing American consumers to dangerous fake products.

As to your specific questions:

1. *I understand that the office of the USTR has indicated that no agreement would be made that would require a statutory change to U.S. law. However, are you also reviewing negotiating proposals to ensure that no agreement would constrain the ability of the Congress to reform our domestic IPR laws?*

We do not view the ACTA as a vehicle for changing U.S. law. We are also cognizant of the desire in Congress for flexibility in certain areas, and have worked to shape relevant U.S. proposals to provide appropriate flexibility.

2. *In what ways are you taking steps to ensure the ACTA will not interfere with public health flexibilities included under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the Doha Declaration on TRIPS and Public Health?*

One of the Administration's first steps on ACTA was to work with our trading partners to prepare a summary of the issues under discussion in the negotiations. That consensus document, supported by the United States, provides that among other things, "ACTA is not intended to interfere with a signatory's ability to respect its citizens' fundamental rights and civil liberties, and will be consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and will respect the Declaration on TRIPS and Public Health" (emphasis added). USTR is working to ensure that the agreement that results from the ongoing negotiations lives up to this commitment.

3. *What types of IPR do you seek the ACTA to cover and how do you define "counterfeit"?*

We seek coverage that is similar to the enforcement provisions of intellectual property chapters of U.S. free trade agreements (FTAs) previously negotiated with ACTA partners Australia, Korea, Morocco, and Singapore. Those agreements provide for, among other things, criminal penalties and procedures in cases of willful trademark counterfeiting or copyright piracy on a commercial scale; border measures in cases involving trademarks and copyrights; and civil remedies for all intellectual property rights (*e.g.*, patent, trademark, copyright), with appropriate limitations that ensure consistency with U.S. law.

While those agreements do not specifically define "counterfeit," we note that, in the context of border enforcement measures, our previously negotiated FTAs provide a definition for "counterfeit trademark goods" and "pirated copyright goods." (*See, e.g.*, U.S.-Australia FTA, Art. 17.11.19, fn.17-26; KORUS FTA, Art. 18.10.19, fn. 30; U.S.-Morocco FTA, Art. 15.11.20, fn. 19; U.S.-Singapore FTA, Art. 16.9.16, fn.16.)

Links to the relevant provisions of our prior agreements with ACTA negotiating partners can be found on the main ACTA web page at: <http://www.ustr.gov/trade-topics/intellectual-property/anti-counterfeiting-trade-agreement-acta>

4. *If you are negotiating provisions in the ACTA that address the enforcement of patents please help me understand your positions related to:*

- a. *The current U.S. practice of considering the possibility of imposing royalty payments in lieu of an injunction to those found infringing upon a patent;*

We seek coverage of civil injunctive relief that is similar to the enforcement provisions of the intellectual property chapters of U.S. FTAs previously negotiated with ACTA partners Australia, Korea, Morocco, and Singapore. Those agreements require that judges have the *authority* to award civil injunctive in connection with specified infringements, but they do not prevent judges from determining, in line with the relevant legal standards, that injunctive relief is inappropriate in a particular case.

- b. *Enabling the unfettered movement of non-counterfeiting pharmaceutical products and active pharmaceutical ingredients that may move through national markets with very different patent landscapes, including for example, to national developing country markets where the U.S. supports treatment programs for HIV/AIDS and other diseases;*

The United States would like to see ACTA reflect an approach to border enforcement that follows that of recent U.S. trade agreements. For example, those agreements call for customs officials to have *ex officio* authority to seize imported, exported, or in-transit merchandise suspected of being counterfeit or confusingly similar trademark goods, or pirated copyright goods. We do not support extending that provision to include suspected patent infringement.

- c. *Commitments, if any, you are seeking related to parallel trade;*

ACTA is envisioned as an intellectual property enforcement agreement; as such we are neither seeking nor expecting to address the question of whether a party's laws confer substantive rights that could be used to prevent parallel imports.

- d. *The willful movement of patent infringing goods as unlawful activities that could be subject to criminal penalties; and*

As noted above, we seek coverage that is similar to the enforcement sections of the intellectual property chapters of U.S. free trade agreements (FTAs) previously negotiated with ACTA partners Australia, Korea, Morocco, and Singapore. None of those agreements provide for criminal penalties and procedures in cases of patent infringement, nor does U.S. law.

- e. *Measures to ensure that foreign entities cannot block access to U.S. goods by using dubious foreign patents?*

Patent rights are, by definition, territorial in nature. The existence of a foreign patent, dubious or otherwise, would have no bearing on allegedly infringing activity in the United States.

5. *For the purpose of providing enforcement procedures against acts of copyright infringement under Article 41 of the TRIPS agreement, what legal incentives are you seeking to encourage Online Services Providers (OSPs) to cooperate with copyright owners to deter the unauthorized storage or transmission of copyrighted materials?*

We are seeking legal incentives similar to, and consistent with, those found in relevant U.S. law (See 17 USC § 512).

6. *With respect to limitations in U.S. law regarding the scope of remedies available against OSPs for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, are you seeking obligations on OSPs as a condition of qualifying for such limitations:*

- a. *Which are more specific than the obligations under U.S. law to, in appropriate circumstances, terminate services of repeat infringers of copyrighted work?*
- b. *To monitor consumers' online behavior to indentify activities related to copyright infringement?*
- c. *To provide copyright owners the ability to expeditiously receive information identifying the person allegedly infringing upon a copyright?*

We are not seeking any obligations that go beyond U.S. law concerning termination of repeat infringers, monitoring of online behavior, or expeditious receipt by copyright holders of information concerning alleged infringers.



7. *Do you intend to resist efforts to expand the circumstances in which a rights-holder may, for the purpose of collecting evidence to support the enforcement of IPR, obtain any information that the infringer or the alleged infringer possesses or controls regarding any aspect of the infringement or the alleged infringement? What tools are available to assist rights-holders in obtaining information pertaining to infringement of their property online?*

We look forward to discussing the specific efforts or tools that may be of concern to you. Existing U.S. FTAs with ACTA participants include provisions calling for judges to have the authority to order infringers to provide certain information. (See, e.g., U.S.-Australia FTA, Art. 17.11.11, KORUS FTA, Art. 18.10.10, U.S.-Morocco FTA Art. 15.11.11, and U.S.-Singapore FTA, Art. 16.9.13.).

8. *To what extent are you advocating that border measures be applied to goods-in-transit, and are you willing to seek removal of any provision in the agreement that applies border measures to goods-in-transit?*

Please see the response to question 4(b) above.

USTR does not support the suggestion to seek removal of provisions concerning application of border measures to goods in transit. The risk to American consumers from potentially life-threatening products (such as adulterated food, medicine, agricultural chemicals, personal care products, electrical products, car and airplane parts, etc.) is increased when customs authorities in transit ports turn a blind eye to, or are legally incapable of acting to stop, goods suspected of bearing counterfeit trademarks. However, as noted in the response to question 4(b), we do not support extending the relevant provisions to include suspected patent infringement.

9. *Are you seeking any commitments related to third-party liability for IPR infringements and, if so, what is the outcome that you seek?*

In order for a "safe-harbor" approach to ISP liability (such as that provided in relevant U.S. law) to be meaningful, there must necessarily be some form of potential secondary liability against which the "safe harbor" provides shelter. Thus, in connection with consideration of limitations on ISP liability in the ACTA, we find it helpful for our trading partners to confirm the existence in their respective legal systems of some relevant form of secondary liability.

10. *Are you taking any positions in the ACTA negotiations that, if successful, would commit the U.S. or any ACTA parties to obligations currently found under the Digital Millennium Copyrights Act?*

We envision that the provisions of the DMCA would be relevant to U.S. compliance with future ACTA obligations. However, we are aware of concerns about retaining flexibility to legislate in the future in this field, and have written our proposals with those concerns in mind.

11. *Are you proposing any means to remove impediments to, or encourage, inter-industry arrangements to reduce the risk of piracy and facilitate its detection and elimination, and if so, how?*

We are not currently proposing any provisions specifically relating to private, inter-industry arrangements. We would welcome any suggestions that you or other members of Congress might have in this regard.

\* \* \*

Finally, concerning the transparency of ACTA in general, I am grateful for your recognition of the unprecedented steps taken by the Obama Administration to promote transparency around the nation's international trade agenda. We have taken specific steps to improve transparency and stakeholder outreach in connection with the ACTA negotiations. For example in 2009, USTR:

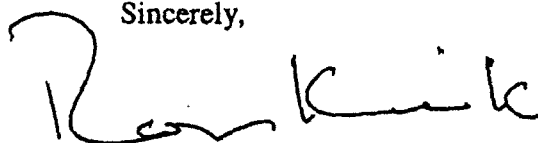
- established a dedicated ACTA web page on new USTR website;
- issued and updated the first public summary of issues under negotiation, which is also available on the ACTA web page;
- started releasing public agendas on the ACTA web page before each meeting;
- sought advice from a broad group of experts, including representatives of IP right holders, Internet intermediaries, NGOs, and others, about prospective U.S. positions on IPR enforcement in the digital environment; and
- provided links on the ACTA web page to relevant portions of past agreements, for review by members of the public who are interested in understanding the U.S. approach to possible legal framework provisions of the ACTA.

The Administration is committed to continuing to provide opportunities for the public to provide meaningful input into the ACTA negotiating process. We won endorsement of the importance of meaningful public input from all of the participating governments at the Seoul Round in of the ACTA negotiations in November. The Administration also recognizes that confidentiality in international negotiations is sometimes necessary to enable officials of participating governments to engage in frank exchanges of views, positions, and specific negotiating proposals, and thereby facilitate agreement on complex issues.

We continue to work with our trading partners to consider the best way to facilitate additional public input to the ACTA negotiations. The views expressed in your letter will be helpful as we work with our trading partners to further improve the ACTA process.

I thank you for taking the time to write and look forward to staying in touch. Please do not hesitate to contact me if you have any further questions.

Sincerely,



Ambassador Ron Kirk

March 22, 2010

The Honorable Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President:

It was with great interest and appreciation that we read your recent remarks concerning the importance of intellectual property. You said "Our single greatest asset is the innovation, ingenuity, and creativity of the American people. It's essential to our prosperity. But it's only a competitive advantage if our companies know that someone else can't just steal that idea and duplicate it with cheaper inputs and labor." We wholeheartedly concur; indeed, we could not have stated this essential point any more clearly or succinctly.

One way the US can promote effective global intellectual property protection in the digital environment is through the negotiation of a strong and modern intellectual property enforcement agreement, the ACTA (Anti-Counterfeiting Trade Agreement). We were very glad to hear you refer to this Agreement in your remarks, and support the Administration's attempt to ensure that discussions advance strong standards and enforcement mechanisms to address the theft of US creativity and ingenuity in this forum as well as the just beginning negotiations on the Trans-Pacific Partnership.

The organizations listed below, representing actors, musicians, performers, composers, songwriters, music publishers, technicians and craftspeople, directors and their teams, and record and film companies (both large and small), can only underscore, as you indicated, the economic and cultural importance of succeeding in promoting more effective global protection of copyright. America's music and movies are not only central to our Nation's economic competitiveness, but they define and reflect our ever-changing cultural landscape, and drive technological innovation in the delivery of content.

It is essential that US policies ensure that present and future generations of Americans can continue to earn a living through artistic and cultural pursuits that reflect and advance the interests of our diverse Nation. Success in enhancing the global protection of

March 22, 2010  
President Barack Obama  
The President of the United States

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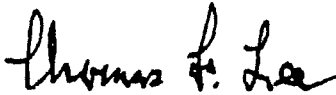
intellectual property will directly and significantly expand US exports and create new jobs in an arena where the US enjoys a competitive advantage--an advantage that is now undermined by global theft of intellectual property. We are grateful for your engagement, the support of your Administration, and your personal leadership on this critical issue.

With best personal regards, we are

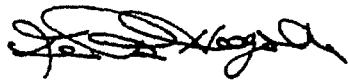
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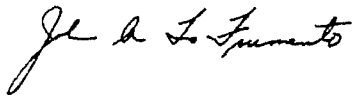
Richard Bengloff, President  
American Association of Independent Music (A2IM)



Tom Lee, President  
American Federation of Musicians (AFM)



Kim Roberts Hedgpeth, National Executive Director  
American Federation of Television and Radio Artists, AFL-CIO (AFTRA)



John A. LoFrumento, CEO  
The American Society of Composers, Authors and Publishers (ASCAP)

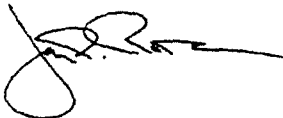
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March 22, 2010  
President Barack Obama  
The President of the United States

3



Del Bryant, President & CEO  
Broadcast Music Inc., BMI



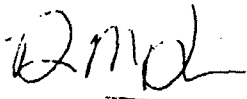
Jay D. Roth, National Executive Director  
Directors Guild of America (DGA)



Matthew D. Loeb, International President  
International Alliance of Theatrical Stage Employees (I.A.T.S.E.)



Dan Glickman, President & CEO  
Motion Picture Association of America (MPAA)



David Israelite, President & CEO  
National Music Publishers' Association (NMPA)

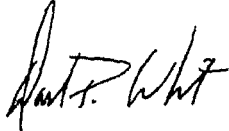


Neil Portnow, President  
The Recording Academy (NARAS)

3

March 22, 2010  
President Barack Obama  
The President of the United States

4



David White, National Executive Director.  
Screen Actors Guild (SAG)



John L. Simson, Executive Director  
SoundExchange



Mitch Bainwol, Chairman & CEO  
Recording Industry Association of America (RIAA)

Cc:

Ambassador Ron Kirk, United States Trade Representative  
Secretary Hilary Clinton, US Secretary of State  
Secretary Gary Locke, US Secretary of Commerce  
The Honorable Eric Holder, United States Attorney General  
David J. Kappos, Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office (USPTO)  
Victoria A. Espinel, U.S. Intellectual Property Enforcement Coordinator,  
Office of Management and Budget  
Marybeth Peters, Register of Copyrights, US Copyright Office

4

March 18, 2010

The Honorable Ron Kirk  
U.S. Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Kirk:

The undersigned businesses applaud your efforts to negotiate the Anti-Counterfeiting Trade Agreement (ACTA) and urge you to continue to work diligently toward concluding a robust agreement by the close of 2010.

Intellectual property (IP) rights have helped the United States become the world leader in innovation by encouraging businesses of all sizes to take risks and enabling them to attract investment to develop exciting new products and services. Not only has this innovation improved citizens' lives, but the IP-intensive industries have become the backbone of the 21st century American economy, employing nearly 18 million workers, accounting for more than \$5 trillion of the gross domestic product, and comprising more than 40 percent of all exports.

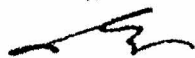
However, these innovative and creative sectors are under attack by sophisticated criminal networks around the world that profit from counterfeiting and piracy, at the expense of the American economy. This illicit activity threatens the sustainability of businesses of all sizes, but particularly small and medium sized businesses, which often operate on tight margins and lack the resources to effectively defend their IP rights on their own.

If the administration is to achieve its goal of spurring economic recovery through doubling exports over the next five years it is imperative to more effectively combat counterfeiting and piracy. We believe that successfully concluding ambitious and comprehensive ACTA would be a significant step in the right direction. Specifically, we believe the agreement should:

- Recognize the contributions of small businesses to the global economy and the importance of IP rights to businesses of all sizes.
- Build upon existing international rules to produce measurable improvements in the prevailing legal and enforcement frameworks for the protection of IP rights;
- Complement IP provisions of recent free trade agreements, especially those with Korea and Oman;
- Include robust provisions to confront IP theft in both physical and online environments; and
- Include an effective and credible mechanism to monitor and provide incentives to encourage parties' compliance with the agreement.

We thank you for your efforts on this important endeavor and firmly believe that concluding the ACTA will protect U.S. jobs, American consumers, and will stimulate the U.S. economy.

Sincerely,



Christopher A Burger



**Chris Burger**  
*Minister of International  
Business Development*

706 East River Drive

Davenport, Iowa 52803

phone 1.800.357.6272 x106

fax 563.884.8181

email [cburger@gemvision.com](mailto:cburger@gemvision.com)

web [www.gemvision.com](http://www.gemvision.com)

- The export of secondary liability principles to ACTA countries without simultaneously including the limitations and exceptions contained both in U.S. statutory law (e.g., fair use) and in the significant court decisions limiting secondary liability (e.g., *Sony*).
- How *technological measure* anti-circumvention provisions are to be interpreted and applied, whether they will apply to access to works, whether they are to be limited to circumventions for infringing purposes, and whether account will be taken of the variations in national law, practice, and context, such as U.S. adherence to fair use and the imposition of levies under other national law.
- The extent to which a "three strikes" approach and express or implied "filtering" mandates are to be imposed on ISPs.

U.S. negotiators have assured the Congress and the public that they cannot and will not agree to any provision that is contrary to domestic law. Other national negotiators have likely given similar assurances at home, publicly or privately. Hence the annotated documents appear rife with linguistic tugs and footnotes. To the extent compromise is achieved through ambiguity, no national of *any* participant nation will have assurance that domestic law will not be affected.

The time for public discussion as to exactly what this document will and won't do is now.

Thank you for your consideration,

American Association of Law Libraries

Consumer Electronics Association

American Library Association

Electronic Frontier Foundation

Association of College And  
Research Libraries

Home Recording Rights Coalition

Association of Research Libraries

Public Knowledge

Center for Democracy & Technology

Special Libraries Association



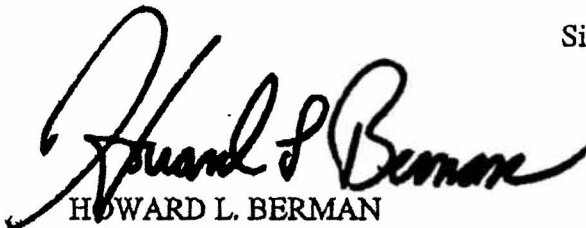
The Honorable Ronald Kirk  
April 15, 2010  
Page Two

Our understanding is that much of the concern expressed about ACTA pertains to the internet provisions. While issues such as increased responsibility for intermediaries are being discussed domestically in terms of possible changes to U.S. law, we understand that ACTA will be limited to the bounds of existing law.

To enable us to provide greater support to your efforts, we would like to request that USTR staff conduct an ACTA briefing for Members and staff of the House Committee on Foreign Affairs during the month of April. Please contact Shanna Winters, General Counsel, at 202-225-5021 and Doug Seay on the Minority staff at 202-225-5043 to schedule a convenient time for a briefing.

The cooperation among the countries participating in the ACTA negotiations represents a welcome interest in protecting intellectual property rights, and we thank you for ensuring that the United States remains a leader in that process.

Sincerely,

  
HOWARD L. BERMAN  
Chairman

  
ILEANA ROS-LEHTINEN  
Ranking Republican Member



### E-Mail Viewer

Message	Details	Attachments	Headers	Source
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HTML

From: "Write your representative" <writerep@heoc-t2kwww1.house.gov>  
Date: 3/28/2010 7:31:04 PM  
To: "IN01IMA@mail.house.gov" <IN01IMA@mail.house.gov>  
Cc:  
Subject: WriteRep Responses

DATE: March 28, 2010 8:25 PM  
NAME: Jeffrey Sandefur  
ADDR1: 2772 Jasper st  
ADDR2:  
ADDR3:  
CITY: Lake Station  
STATE: Indiana  
ZIP: 46405  
PHONE:  
EMAIL: randysandefur@yahoo.com

msg:  
Topicline: Open Up the Anti-Counterfeiting Trade Agreement to Oversight

As a consumer and a technology user, I am concerned about recent revelations regarding the Anti-Counterfeiting Trade Agreement (ACTA) being negotiated by the Office of the United States Trade Representative. Please open up this agreement to the congressional and public oversight it needs.

Instead of targeting counterfeit products and coordinating the practices of national customs agencies as originally announced, leaked documents indicate that ACTA includes provisions that increase Internet intermediary liability, regulate access to the Internet and significantly affect the rights of all American citizens. Because ACTA is being negotiated as an Executive Agreement, there is no Congressional oversight. I am worried that ACTA will threaten the carefully crafted balance of US copyright law that protects citizens' freedom of expression and has been key to the success of the US technology industry.

Please contact your Senate colleagues on the Finance, Foreign Relations, and Judiciary committees and ask that they tell the USTR to make the ACTA negotiation text public in the interests of balanced policymaking, to ensure that US negotiators take account of the interests of the Internet users, technology companies and innovators that are so vital to this country's future.

Thank you for your consideration.

[Close](#)

April 6, 2010

The Honorable Ron Kirk  
U.S. Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Kirk:

The undersigned businesses and associations applaud your efforts to negotiate the Anti-Counterfeiting Trade Agreement (ACTA) and urge you to continue to work diligently toward concluding a robust agreement by the close of 2010.

Intellectual property (IP) rights have helped the United States become the world leader in innovation by encouraging businesses of all sizes to take risks and enabling them to attract investment to develop exciting new products and services. Not only has this innovation improved citizens' lives, but the IP-intensive industries have become the backbone of the 21<sup>st</sup> century American economy, employing nearly 18 million workers, accounting for more than \$5 trillion of the gross domestic product, and comprising more than 40 percent of all exports.

However, these innovative and creative sectors are under attack by sophisticated criminal networks around the world that profit from counterfeiting and piracy, at the expense of the American economy. This illicit activity threatens the sustainability of businesses of all sizes, but particularly small and medium sized businesses, which often operate on tight margins and lack the resources to effectively defend their IP rights on their own.

If the administration is to achieve its goal of spurring economic recovery through doubling exports over the next five years it is imperative to more effectively combat counterfeiting and piracy. We believe that successfully concluding an ambitious and comprehensive ACTA would be a significant step in the right direction. Specifically, we believe the agreement should:

- Recognize the contributions of small businesses to the global economy and the importance of IP rights to businesses of all sizes.
- Build upon existing international rules to produce measurable improvements in the prevailing legal and enforcement frameworks for the protection of IP rights;

- Complement IP provisions of recent free trade agreements, especially those with Korea and Oman;
- Include robust provisions to confront IP theft in both physical and online environments; and
- Include an effective and credible mechanism to monitor and provide incentives to encourage parties' compliance with the agreement.

We thank you for your efforts on this important endeavor and firmly believe that concluding the ACTA will protect U.S. jobs, American consumers, and will stimulate the U.S. economy.

Sincerely,

1-800-PetMeds  
48HourPrint.com  
ABRO Industries, Inc.  
Activision Blizzard  
Acushnet Company  
Affliction Holdings, LLC  
Ag-Defense Systems  
Allegro Productions, Inc.  
American Leather  
American Science and Engineering, Inc.  
American Society of Inventors  
ASCAP  
Authenticate, Inc.  
Axcelis Technologies, Inc.  
Ballard Fish & Oyster Co.  
Baser  
BioBrite, Inc.  
Brewer Science  
Brigid Collins Family Support Center  
Burton Snowboards  
Capital Area Manufacturing Council  
Coffee Buddy, LLC  
Collection 2000 Cosmetics, Inc.  
Connecticut Electric, Inc.  
Declarative Engineering, LLC  
Dust Off Your Dreams, LLC  
DYMAX Corporation  
Earthlinked Technologies

Eastman Machine Company  
Eldridge Plays & Musicals  
ET Squared  
Fashion Business Incorporated  
FrogPad, Inc.  
Gallup, Inc.  
Gary Lee Price Studios  
Gemvision Corporation  
Global IC Trading Group  
Global Intellectual Property Center  
GT Solar Incorporated  
GTC Technology U.S., LLC  
GYRO, LLC  
Healing Music  
Hubbardton Forge  
IEC Electronics  
Innovative Environmental Technologies, Inc.  
Inventors and Entrepreneurs Club (Juneau County)  
Inventors Association of Middle Tennessee  
Inventors' Association of South-Central Kansas  
Inventors Network of the Capital Area  
Isagenix  
ITWorx USA, Inc.  
J.B. Madison Furniture Co.  
Jermanco  
Kekepana International Services  
LA Fashion District BID  
Laguna Components Inc.  
Leatherman Tools  
Liquid Productions LLC  
MAGIC International  
Messy Face  
Michael Stars, Inc.  
Military Personnel Services Corporation  
Mixel  
Modern Technology Solutions, Inc.  
Modumetal  
Montana Chamber of Commerce  
Music In Motion  
Muskegon Inventors Network  
Nanofilm

Nanticoke Maritime LLC  
Neogen Corporation  
Nervous Tattoo Inc., dba Ed Hardy  
NewCenturyMusic  
O.F. Mossberg & Sons, Inc.  
Oxygen Plus, Inc.  
Pacific Component Xchange, Inc.  
Plitt Crane & Rigging, Inc.  
Purple Wave, Inc.  
Quality Float Works, Inc.  
Reid Plumbing Products, LLC  
Revision Eyewear Ltd.  
Reyes Aviation, Inc  
Sensible Vision  
Smart Lid, LLC  
SMT Corporation  
SolarRoofs.com  
Sologear, LLC  
SportCount  
Sportniks  
SquareOne Systems Design  
Stemco LLC  
StrawJet  
Stuart Weitzman, LLC  
SunRise Solar  
Tahitian Noni International  
Tampa Bay Inventors Council  
TEDSBOX  
The Piano Education Page  
Tickle Bellies  
Traffax Inc.  
TrakLok Corporation  
Treasure Chest Pets  
True Religion Brand Jeans  
Underwriters Laboratories Inc.  
Uniweld Products Inc.  
Velocity Electronics  
Wedding Vow Rings  
Zippo Manufacturing Company



March 31, 2010

The Honorable Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear President Obama:

On behalf of the 300,000 members of our Guild and unions that work in the film, television and music industries, we thank you for your remarks on the importance of protecting intellectual property made before the Export-Import Bank Annual Conference.

We wholeheartedly embrace your view that, "our single greatest asset is the innovation, ingenuity, and creativity of the American people. It's essential to our prosperity. But it's only a competitive advantage if our companies know that someone else can't just steal that idea and duplicate it with cheaper inputs and labor."

No group of people have a greater stake in this debate than our members. Highly skilled, our members embody the innovation, ingenuity and creativity that today makes the American film, television and music industries a global economic and cultural powerhouse. Without their talent and craftsmanship, quite simply, these works would not exist. Our members are also the American workers who are the first and most immediate "victims" of rampant copyright theft over the Internet—a threat which erodes their ability to earn a living, feed their families and the vitality of their pension and health plans.

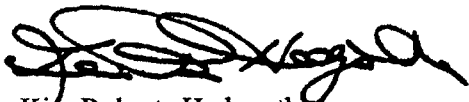
We are concerned that this problem is worsening. Increased broadband speeds and penetration make it easier to steal creative works through illegal revenue-generating sites around the world.

Online copyright theft is our number one federal policy priority. Our concerns are shared by other U.S workers. Earlier this month, the Executive Council of the AFL-CIO issued a statement identifying Internet piracy as a threat to the jobs and incomes of working people that federal policy makers should address.

We applaud the Administration's steadfast efforts to ensure that effective global intellectual property protection in the digital environment is contained in the Anti-Counterfeiting Trade Agreement (ACTA). We urge you to ensure that your entire Administration supports your remarks with aggressive policies to battle intellectual property theft and protect the quality jobs in our industry through international trade negotiations, aggressive law enforcement, and sensible broadband regulatory policies.

Thank you for your consideration and we look forward to working together to protect this valuable American industry.

Sincerely,



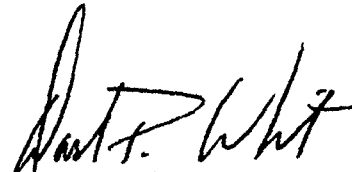
Kim Roberts Hedgpeth  
National Executive Director  
American Federation of Television and  
Radio Artists



Jay D. Roth  
National Executive Director  
Directors Guild of America



Matthew D. Loeb  
International President  
The International Alliance of  
Theatrical Stage Employees



David P. White  
National Executive Director  
Screen Actors Guild

Cc:

Ambassador Ron Kirk, United States Trade Representative  
Secretary Hilary Clinton, US Secretary of State  
Secretary Gary Locke, US Secretary of Commerce  
The Honorable Eric Holder, United States Attorney General  
David J. Kappos, Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office (USPTO)  
Victoria A. Espinel, U.S. Intellectual Property Enforcement Coordinator,  
Office of Management and Budget  
Marybeth Peters, Register of Copyrights, US Copyright Office



RICHARD G. LUGAR  
(INDIAN#)

306 HARI SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
202-224-4814  
<http://lugar.senate.gov>

COMMITTEES:  
FOREIGN RELATIONS, RANKING MEMBER  
AGRICULTURE, NUTRITION, AND FORESTRY

# United States Senate

WASHINGTON, DC 20510-1401

April 5, 2010

Mr. David Sepulveda  
Office of the U.S. Trade Representative  
Office of Congressional Affairs  
600 Seventeenth Street, N.W., Room 215  
Washington, D.C. 20508

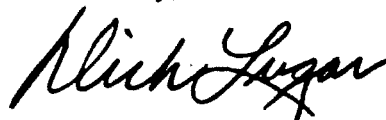
Dear Mr. Sepulveda:

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested.

Your findings and views, in duplicate form, along with the return of the enclosure, will be greatly appreciated. Please direct your reply to the attention of Darlee McCollum of my Washington office.

Thank you for your thoughtful attention.

Sincerely,



Richard G. Lugar  
United States Senator

RGL/cgd  
Enclosure

&lt;IP>149.166.168.63</IP>  
&lt;APP>SCCMAIL  
&lt;PREFIX>Reverend</PREFIX>  
&lt;FIRST>Steve</FIRST>  
&lt;LAST>Corbin</LAST>  
&lt;ADDR1>81 North Dr.</ADDR1>  
&lt;ADDR2></ADDR2>  
&lt;CITY> Mooresville</CITY>  
&lt;STATE>IN</STATE>  
&lt;ZIP>46158</ZIP>  
&lt;PHONE>317-432-0515</PHONE>  
&lt;EMAIL>belarm@gmail.com</EMAIL>  
&lt;ISSUE>Trade</ISSUE>  
&lt;MSG>Senator Lugar,

I am gravely concerned to hear that President Obama is planning to not only continue to hold the contents of the ACTA as state secrets, but to push this agreement through as an executive order. There has been no public oversight of this act, and what information has been leaked about it is terrifying in its draconian measures to 'protect intellectual property.' Not only does this agreement unfairly favor copyright holders (allowing them to cause a citizen's Internet access to be terminated permanently after three unsubstantiated claims of copyright infringement), but the idea of a law being created without the involvement of either house of Congress, or any opportunity for public discourse (all parties who have seen the text of the agreement are bound by NDAs) is, frankly, sickening. I beg of you, Sir, to do whatever is in your power to bring this agreement to light and allow public discourse of it!</MSG>  
</APP>

**Congress of the United States**  
Washington, DC 20510

March 30, 2010

Ambassador Ron Kirk  
U.S. Trade Representative  
600 17th Street, NW  
Washington, D.C. 20508

Dear Ambassador Kirk:

As co-chairs of the Congressional International Anti-Piracy Caucus, a bipartisan and bicameral group committed to protecting American intellectual property and reducing the scourge of piracy abroad, we commend the Office of the United States Trade Representative (USTR) for its continued commitment in negotiating an Anti-Counterfeiting Trade Agreement (ACTA) with our trading partners

Protecting intellectual property (IP) rights is vital to our country's continued success as a world leader in innovation. IP rights provide the necessary incentives for artists, creators, and entrepreneurs to invest both the time and financial resources toward the development of new and innovative products and services.

U.S. IP-based businesses employ nearly 18 million workers, account for more than \$5 trillion of the gross domestic product, and comprise more than 40 percent of all U.S. exports. In contrast, theft of IP – counterfeiting and piracy in both physical and online markets – is a growing problem that harms a broad range of industries and costs the U.S. economy hundreds of billions of dollars annually. In order to ensure that the knowledge-based, cultural, and entertainment sectors of our economy can thrive, we believe that a more robust framework is needed to thwart the criminal enterprises engaged in IP theft.

We look forward to receiving an update from you on this issue

Sincerely,



Adam B. Schiff  
Member of Congress



Orrin G. Hatch  
United States Senator

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN  
DIANNE FEINSTEIN, CALIFORNIA  
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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
BRIAN A. BENCKOWSKI, *Republican Staff Director*

June 16, 2010

The Honorable Ron Kirk  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Kirk:

I am pleased that you continue to make progress negotiating an Anti-Counterfeiting Trade Agreement (ACTA) with the goal of strengthening intellectual property protections and enforcement coordination around the world. Promoting strong but balanced intellectual property protections and enforcement is among my top priorities. I strongly support the objective of ACTA, and I applaud your work on it. I continue to be concerned, however, about several aspects of the proposed text.

In 2008, I wrote to Ambassador Schwab expressing initial concerns about the specificity with which certain provisions of the agreement were written and about the breadth of the proposal. If ACTA is drafted without sufficient flexibility, it may create too narrow a framework and impede Congress's flexibility to make appropriate changes to U.S. intellectual property laws in the future. This would be particularly troublesome in those areas of the law, such as online theft, where the United States is still working to develop our own standards both in Congress and in the courts. Technology is ever-changing, and Congress must retain the flexibility to adapt its laws to changes in business and the world.

I am disappointed that these problems remain in the latest version of the ACTA text under consideration. I am particularly concerned about those portions of the agreement that address secondary liability for online service providers. Our legal standards in this area are still developing, and this agreement risks boxing Congress into a legal framework.

I understand that many of the provisions used in the ACTA text are similar to provisions in the previous Administration's Free Trade Agreements, some of which were even ratified by Congress. I actually raised these same concerns when the Senate considered the Peru Free Trade Agreement. I strongly urge you to consult with the leadership of the Senate and House Judiciary Committees, which have jurisdiction over our Nation's intellectual property laws, before negotiating the intellectual property chapters of future Free Trade Agreements.

The Honorable Ron Kirk  
June 16, 2010  
Page 2 of 2

The chapters in the draft ACTA text that address international cooperation and enforcement practices represent significant accomplishments. I urge you, however, not to enter into an Agreement that creates inflexible standards for civil, criminal, and border enforcement. Further, any language in the text that addresses secondary liability for online service providers should be very general in nature to provide flexibility for Congress. This is one of the most hotly debated topics in intellectual property law, and an international executive agreement is not the proper place to resolve it – or to lock into place current standards or safe harbors.

I appreciate your commitment to protecting intellectual property, and look forward to continuing to work with you towards this important goal.

Sincerely,

  
PATRICK LEAHY  
Chairman

A<sup>2</sup>IM

American Association  
of Independent Music



ASCAP

AFM  
AMERICAN  
FEDERATION  
OF MUSICIANS



BMI

CMPA  
FOUNDED 1926

NMPA  
National  
Music Publishers'  
Association

NSAI  
"IT ALL BEGINS WITH A SONG"



Songwriters  
Guild of  
America



soundexchange



GRAMMY FOUNDATION

June 28, 2010

The Honorable Gary Locke  
Secretary of Commerce  
Washington D.C.

The Honorable Ron Kirk  
United States Trade Representative  
Washington D.C.

Dear Mr. Secretary and Mr. Ambassador:

We write you regarding the June 2<sup>nd</sup> letter Ambassador Kirk received from CEA, CCIA and Tech America outlining their concerns about certain aspects of the ACTA agreement currently under negotiation, particularly how ACTA would apply to online infringing activity.

CEA/CCIA/Tech America's letter advocates an agreement which would address traditional 20<sup>th</sup> century intellectual property problems (physical piracy and counterfeiting) while ignoring the critical intellectual property issues of the 21<sup>st</sup> century confronting our sector and many others. This proposal is particularly ironic in light of criticisms from these same groups that the music industry wishes to preserve outdated business models. It is abundantly clear that negotiating an agreement that addresses only yesterday's problems makes no sense from a US economic perspective.

The CEA/CCIA/Tech America letter refers to a particular enforcement issue -- "secondary liability"-- as "highly contentious" and "unresolved," and thus not worthy of inclusion in the ACTA. However, secondary liability has been a feature of our laws for nearly 100 years. And the 9-0 Supreme Court decision in Grokster preventing the deliberate inducement of infringement is hardly the hallmark of an "unresolved" issue. While the outer parameters of secondary liability may not be "ripe for international agreement," there is no doubt that certain key features of secondary liability can—and must—be harvested in a 21<sup>st</sup> century state-of-the-art enforcement agreement. Your ACTA negotiators will obviously need to be careful in how they handle these issues, but to fail to address them, as proposed by CEA/CCIA/TechAmerica, would ignore one of the principal enforcement issues of the online world and would greatly undermine the impact and effectiveness of this Agreement.

In addition, CEA/CCIA/Tech America press for the inclusion of exceptions from liability for copyright infringement. Their letter acknowledges that ACTA's focus is on strengthening penalties against copyright infringement. However, their letter then incorrectly implies that an agreement that addresses stronger penalties against infringement is somehow the same thing as an agreement that negotiates new provisions on the definition of copyright infringement itself. The letter then extends this illogic by suggesting that since ACTA addresses how one defines copyright infringement, ACTA should also provide corresponding provisions for exceptions and limitations—so-called fair use provisions. But the predicate for this argument—that ACTA expands copyright and may confine the ability to maintain or create exceptions and limitations, including through fair use, is simply not borne out by the facts. ACTA effects no modifications to the underlying copyright law, and affects neither rights nor limitations thereon.

If you find it necessary to address exceptions and limitations in the agreement, then the text should state, in clear declarative terms, that nothing in the Agreement either expands or limits the discretion of ACTA parties to maintain or create limitations or exceptions to rights that are consistent with that Party's obligations under relevant IP conventions. That should give comfort to CEA/CCI/Tech America that "fair use" and other such limitations on rights are outside the scope of ACTA obligations. It would be a mistake to go further than this by introducing specific obligations with respect to "fair use" or other limitations and exceptions into the agreement to "balance" enforcement. Fair use is not to be balanced against enforcement—it is to be considered within the relevant framework of rights and limitations thereon.

We greatly appreciate the opportunity to work with you and the officials in your agencies on this negotiation and on other matters affecting the protection and enforcement of the intellectual property rights in our nation's creations and innovations which drive our economy now and will continue to do so in the future. We look forward to the conclusion of an ACTA that indeed does address the critical copyright enforcement issues confronting our sector in the 21<sup>st</sup> century. At present, most observers estimate that 95% of global online transmissions of music are infringing. To our minds, effecting a change to this intolerable situation is the single most important thing that ACTA could achieve, and expanding the application of laws that promote reasonable online practices is the centerpiece of this goal.

On behalf of the undersigned organizations, we wish you luck and fortitude in reaching an agreement that advances key US goals in expanding the effective protection of US intellectual property in global markets. An ACTA that introduces much needed discipline in the online environment would be an exceptionally important first step in realizing the vision articulated in the strategic plan just released by the White House for the enforcement of intellectual property rights.

Respectfully submitted,

American Association of Independent Music (A2IM)  
American Society of Composers, Authors and Publishers (ASCAP)  
American Federation of Musicians (AFM)  
American Federation of Television and Radio Artists (AFTRA)  
Broadcast Music, Inc (BMI)  
Church Music Publishers Association (CMPA)  
National Music Publishers' Association (NMPA)  
National Songwriters Association International (NSAI)  
Recording Industry Association of America (RIAA)  
Songwriters' Guild of America (SGA)  
SoundExchange  
The Grammy Organization

Cc: Senator Max Baucus  
Senator Charles Grassley  
Senator Patrick Leahy  
Senator Orrin Hatch

Congressman Charlie Rangel  
Congressman Dave Kamp  
Congressman John Conyers  
Congressman Lamar Smith  
Congressman Howard Berman  
Congressman Ileana Ros-Lehtinen





**Intellectual  
Property  
Owners  
Association**

June 25, 2010

The Honorable Ron Kirk  
Ambassador  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

**RE: Anti-Counterfeiting Trade Agreement  
Public Pre-decisional/Deliberative Draft April 2010**

Dear Ambassador Kirk:

Intellectual Property Owners Association (IPO) appreciates the circulation of the Consolidated Text of the Anti-Counterfeiting Trade Agreement (ACTA), and respectfully offers its comments for your consideration.

IPO, established in 1972, is a trade association for companies, inventors, law firms and others who own or are interested in patents, trademarks, copyrights and trade secrets, and other forms of intellectual property. IPO is the only association in the United States that serves all intellectual property owners in all industries and all fields of technology. Governed by a 50-member corporate board of directors, IPO advocates effective and affordable intellectual property ownership rights in the United States and abroad on behalf of its more than 200 corporate members and more than 11,000 individuals involved in the association.

IPO recognizes the importance of addressing trademark counterfeiting. Not all trademark infringements constitute counterfeiting<sup>1</sup>. Infringement, which is by far a more common occurrence, occurs when a party adopts a trademark that, for the relevant consumer, is likely to cause confusion as to the source of the goods with that of another trademark owner. The party is not necessarily trying to pass off its product as exactly being that of the rights holder, i.e., a fake, – but is benefitting from the adoption of a confusingly similar trademark nonetheless.

Counterfeiting is making a copy that is a fake – it is forged to look real and intended to be passed-off to the public for what is in fact real. Consumers may even know that what they are purchasing is a counterfeit, (i.e., a “knock-off” DVD sold rather

<sup>1</sup> A counterfeit, a subset of trademark infringement, is defined as “a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.” 15 U.S.C. §1127, *see also* 15 U.S.C. §1116 d(1)(B).

President  
Douglas K. Horvath  
BI Lilly and Co.

Vice President  
Richard K. Phillips  
Eaton Mobil Corp.

Treasurer  
Angelo Charles  
Piracy Review Inc.

Directors  
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Oracle USA, Inc.  
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Timothy Cross  
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Santitas-Avanti  
Jennett D. Deid  
Dow Corning Corp.  
Best Electronics  
Microsoft Corp.  
Scott M. Frank  
AT&T

Michael L. Giesse  
Dow Chemical Co.  
Raymond J. Graves, Jr.  
Eastman Chemical Co.  
Krisla Guyse  
DAC Corporation

John R. Heinen  
Donald R. Horvath, Jr.  
Hammam Co.  
Carl B. Horton  
General Electric Co.  
Samsong Long  
Danisco U.S., Inc.  
Michael Juro

Michiel Juro  
Jonathan R. Johnson  
Lynalab, Inc.  
Philip E. Johnson  
Johnsen & Johnson

George William Johnston  
Hoffmann-La Roche Inc.  
Lisa Jorgensen

ETMicroelectronics, Inc.  
Dean Kemmer  
DEKA Research & Development  
Corporation

Charles M. Kinzig  
Gloria Mitchell  
David J. Korts  
Shell International B.V.  
Michelle Lee

Google Inc.  
Kevin Light  
Hewlett-Packard Co.  
Richard J. Linton, Jr.  
Aparit Inc.

Jonathan P. Meyer  
Anarolis, Inc.  
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Jeffrey L. Myers  
Adam Symons Inc.  
Eaton O'Brien

United Technologies Corp.  
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3M Innovative Properties Co.  
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Daniel A. Siskoff  
Siemens Corp.  
Brian K. Skarvick

ConocoPhillips  
Thierry Sauer  
Air Liquide  
James J. Trussell  
EP America, Inc.

Danese von Vermo-Wald  
Coax-Lite Co.  
Ray Wadson  
Pinner, Inc.  
Michael Walker  
LithoPro

Suavi Wall  
Ampco, Inc.  
Don Webber  
Cordien  
Paul D. Yeager  
Abbott Laboratories

Executive Director  
Herbert C. Wansley

## INTELLECTUAL PROPERTY OWNERS ASSOCIATION

inexpensively at a street corner stand). Furthermore, the counterfeit may also pose significant health and safety risks to our citizens.

IPO's concern with the present draft version of ACTA is that, despite the fact that an infringement is not necessarily a counterfeit, Section B General Definitions of the published ACTA text defines "intellectual property" broadly.<sup>2</sup> ACTA does not refer to spurious marks in its definition of counterfeit trademark goods.<sup>3</sup>

As currently drafted, given the expansive use of the broadly-defined term "intellectual property," ACTA goes far beyond addressing the subject matter of counterfeiting. This broad definition encompasses issues that are most appropriately handled as civil infringement causes of action in most jurisdictions around the world, and especially so in the case of the United States.

We believe ACTA potentially changes United States law by transforming what are the commonly occurring non-counterfeit-types of civil action infringements into activity that is to be punished under federal criminal law. By way of examples, IPO notes the following discrepancies and overbreadth in the Consolidated Text of ACTA:

- Section 2 – Border Measures: Section 2 specifically notes that the Scope of Border Measures includes: "goods infringing an intellectual property right". Footnote 22 further states that the provisions also apply to a trademark "that is similar to the trademark validly registered in respect of such or similar goods where there exists a likelihood of confusion." ACTA is unwittingly broadening the scope of the seizure power of Customs and Border Patrol forces to encompass civil action trademark infringement and raising the specter of potential abuse in many countries around the globe. The determination of whether marks are similar and whether there is a likelihood of confusion should not be conducted hastily and in an *ex parte* manner by a border official, but should instead be based upon the appropriate legal analysis (possibly resulting from extensive pre-trial preparation and discovery where allowed).
- Section 3 – Criminal Enforcement: Section 1 notes that criminal penalties and procedures shall apply "at least" in cases of willful trademark counterfeiting or copyright or related rights piracy." By referring to "at least in cases," the scope of criminal enforcement could be expanded by signatories to include what is typically a civil infringement, even as to trademarks that are not identical, i.e., not just a

<sup>2</sup> ACTA currently defines Intellectual Property as the term is used in Section 1-7 of Section 2 of TRIPs, which includes copyrights, trademarks, patents, design rights, geographical indications, and trade secrets.

<sup>3</sup> The 25<sup>th</sup> footnote of the Anti-Counterfeiting Trade Agreement, PUBLIC Predecisional/Deliberative Draft of April 2010 states, "For purposes of this Section, counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set out in this Section are invoked."

## INTELLECTUAL PROPERTY OWNERS ASSOCIATION

counterfeit, but possibly also similar marks and related goods. As a result, cases involving a good faith adoption of a mark, which are typically non-counterfeit infringements, could become subject to criminal prosecution.

- Section 4 – Enforcement of Intellectual Property in the Digital Environment: Paragraph 1 specifically refers to making criminal and civil enforcement options available in instances of *intellectual property rights infringement* on the internet or digital environment. This section could encompass the purchase of keywords for use in web site metadata – an unsettled area of law around the globe. The United States has tended to find that the purchase of keywords on the internet, via search engines such as Google, does not constitute “use” and is therefore not an infringement. The language proposed would also encompass the good faith adoption as noted above if the mark in question is used on a webpage. While IPO certainly supports the provisions of criminal penalties and civil processes for addressing counterfeiting activities on the internet, and while it is appropriate for ACTA to do so, as presently written the scope is broader than the stated intended purpose of the Act.
- Chapter Three, Article 3.1 Paragraph 2 and Article 3.3: Both would encompass measures to combat general trademark infringement, and assistance in capacity building, and technical assistance for improving enforcement of intellectual property. It demonstrates the over-breadth of ACTA in its current embodiment. While IPO supports the concept of governments working together to try to address the pervasive and potentially dangerous results of counterfeiting, the question remains as to whether ACTA is the appropriate vehicle for developing capacity and assistance for improving the overall enforcement environment for all intellectual property rights. Chapter Four, Enforcement Practices, Article 4.1, poses the same concerns.

We appreciate that the definition of a counterfeit trademark good as “at least” willful counterfeiting may reflect the language of Free Trade Agreements. However, though the FTA’s provide a general foundation, the language of ACTA should be tailored to reflect the narrower stated purpose of an anti-counterfeiting agreement.

Thus, IPO urges USTR to review ACTA to ensure that the scope of the Act is appropriately limited to its stated purpose of addressing the limited, though important, subset of infringement known as “counterfeiting.” ACTA should appropriately define “counterfeiting” in Section B, and use that term consistently throughout the Act.

INTELLECTUAL PROPERTY OWNERS ASSOCIATION

Should you have questions or wish to follow up on any of the points noted above, IPO would be pleased to provide further comments.

Sincerely,

*Douglas K. Norman*

Douglas K. Norman  
President



June 2, 2010

Ambassador Ron Kirk  
U.S. Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington DC. 20508

Dear Ambassador Kirk:

We write to you regarding the Anti-Counterfeiting Trade Agreement (ACTA), a proposed draft of which your office made public last month. We commend your hard work, and look forward to continuing to work with you to promote free trade.

As you may know, the technology industry has long supported free trade. We are united in our belief that opening up new markets will create new economic opportunities for the businesses we represent and the millions that they employ.

Additionally, we represent industries that are harmed by counterfeit goods. We support multilateral efforts to combat counterfeiting. There are important parts of this trade agreement we want to support. It is thus with considerable regret that we find ourselves expressing concerns about significant aspects of ACTA. Unfortunately, at this moment we are unable to support ACTA.

The fundamental flaw in the approach taken by ACTA – to export and expand the strong penalties found in our copyright law without symmetrically exporting the exceptions that many technology companies rely upon – will exacerbate the trend of foreign states imposing significant civil and potentially even criminal liability on U.S. companies for user activities, or activities permitted under U.S. law.

We would expect the Administration to be as concerned as we are about the existing trend of foreign countries imposing unjustified civil and criminal liability on U.S. technology companies and their executives. Should ACTA aggravate this problem, as now appears likely, it would do a great disservice to our international competitiveness.

We believe many of our members would support an international anti-counterfeiting instrument that focused on trademark counterfeiting without becoming enmeshed in secondary liability and other highly contentious issues surrounding digital copyright enforcement. Many of these unresolved issues involve numerous legitimate domestic interests, and are simply not ripe for international agreement. We urge you to pursue a narrower ACTA, one focused on preventing the proliferation of counterfeited trademarked goods – in particular those that endanger public health or safety. We believe such an agreement would receive far broader support than ACTA currently does now.

At your earliest convenience, we would like to meet with you to discuss the ACTA proposal further.

Sincerely,

Ed Black, President & CEO  
Computer & Communications  
Industry Association (CCIA)

Gary Shapiro, President & CEO  
Consumer Electronics  
Association (CEA)

Phillip Bond, President & CEO  
TechAmerica

July 28, 2010

Ambassador Ronald Kirk  
U.S. Trade Representative  
600 17<sup>th</sup> Street, NW.  
Washington, DC 20508.

**Re: Additional measures needed to ensure that ACTA does not jeopardize Public Health and access to affordable medicines.**

Dear Ambassador Kirk:

I am writing in advance of the intercessional meeting between the United States and European Union concerning the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which I understand shall be held on August 16<sup>th</sup>. In recent months, there have been some efforts to address the concerns of non-governmental organizations, including release of the negotiating text in April 2010 and an emerging consensus to remove patents from the border measures chapter.

Yet Oxfam is concerned that the negotiating parties have demonstrated little ambition to truly ensure that ACTA will not jeopardize public health and access to affordable medicines. I would like to offer some suggestions to ensure the protection of public health.

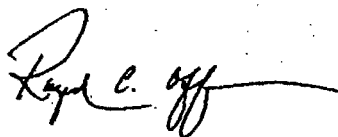
1. **Promote full transparency and consultation.** Oxfam was dissatisfied that the negotiating text was not released following the Lucerne round due to a decision of the US negotiators to reject basic transparency principles. We believe that the negotiating parties have benefited from external review and input by public interest organizations, academics and various industries that are affected by the Agreement. We hope that, as part of the intercessional meeting, the United States and European Union agree to promptly release all negotiating texts before and after each subsequent round of negotiations. Furthermore, we hope that the US Government will demonstrate real leadership, and alongside the European Union, will establish robust consultation between negotiators and interested stakeholders, including opportunities to review the text before, during and after each negotiating round.
2. **On-going concerns with new rules included under ACTA.** While we agree that removing patents from the border measures chapter will eliminate some concerns that ACTA shall limit access to medicines, there are still numerous flaws in ACTA.
  - Patents have not been fully removed from the Agreement. Patent infringement bears no relationship to counterfeiting, and any inclusion of

patents in ACTA creates new restrictions on importing, producing and using generic medicines.

- The Agreement fails to differentiate between trademark infringement and trademark counterfeiting. ACTA should only be concerned with enforcement rules that reduce or eliminate trademark counterfeiting.
- ACTA, under Article 2.6, still could allow for in-transit seizure of goods that infringe intellectual property rules in a transit country, even when a product does not infringe intellectual property rules in either an exporting or importing country.
- ACTA, under Article 2.X.2, will extend intermediary liability to innocent active pharmaceutical ingredient (API) suppliers whose materials are used in mislabeled products without their knowledge. This could discourage the provision of APIs to generic producers who are under the risk of liability.
- ACTA will create a new institution which will lack transparency and accountability to non-Parties and public interest organizations. It may also push for higher worldwide levels of intellectual property protection and enforcement without the benefit of safeguards and evidence-based policy making.
- ACTA will limit key flexibilities necessary to promote the public interest, including flexibilities included in the TRIPS agreement on the award of injunctions as remedies. The US should support the proposal offered by Canada and Australia that would allow each Party to preserve or introduce statutory exceptions to injunctive relief in their national laws.
- ACTA will lack safeguards already included under the TRIPS Agreement that ensure a proper balance in the enforcement of intellectual property rules. A lack of safeguards will delay generic competition. Our expectation is that basic TRIPS safeguards will be introduced into the final Agreement.

Oxfam urges you to address these serious concerns. We would be happy to further discuss these issues.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Raymond C. Offenheiser". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Raymond C. Offenheiser  
President  
Oxfam America



**Oxfam**  
America

March 23, 2010

Ambassador Ronald Kirk  
U.S. Trade Representative  
600 17th. Street, NW.  
Washington, DC 20508

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[www.oxfamamerica.org](http://www.oxfamamerica.org)

Raymond C. Offenheiser  
President

Re: Serious concerns for upcoming ACTA negotiations

Dear Ambassador Kirk:

I am writing in advance of the next negotiating round of the Anti-Counterfeiting Trade Agreement (ACTA). Oxfam America is concerned that ACTA could adversely affect access to medicines of poor people in developing countries. We hope the United States Trade Representative will seek three concrete outcomes during this negotiating round:

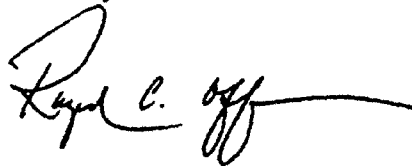
1. **A full commitment to transparency, with a concrete timetable to release the negotiating text for broader public scrutiny.** Oxfam America is disappointed that the U.S. remains opposed to any clear commitment, sought increasingly by most other negotiating parties, to release the negotiating text for broader discussion. We think it is no longer possible for the United States to claim that other parties are blocking progress on this critical issue. It is our understanding that every other negotiating party – with the exception of South Korea and Singapore – prefers some form of transparency and public consultation. We believe the United States must change course and fulfill broader promises, offered by President Obama both before and after his election, to improve transparency and consultation in all matters involving the public interest. As such, we hope the upcoming negotiating round, with full support of the United States, will establish a framework and process to encourage open and constructive consultation.
2. **A commitment to exclude patents from ACTA.** Patents have no bearing upon whether a product is counterfeit. Including patents in ACTA will do nothing to arrest the proliferation of counterfeit products, including counterfeit medicines. Instead, it will discourage legitimate challenges to frivolous patenting practices by multinational pharmaceutical companies. Combined with border measures, enhanced measures to enforce patents under ACTA will result in delays or barriers to exporting medicines to developing countries, and will catalyze an upward harmonization of patentability standards worldwide. This will increase medicine prices in developing countries and, as a result, could ultimately lead more poor people to purchase counterfeit and fake products due to unaffordable prices of legitimate products.



**3. Actions to limit possible consequences for access to medicines.** If patents are not excluded from ACTA, it is critical that the U.S. and other parties to the negotiation eliminate border measures of goods-in-transit involving patent or civil trademark determinations of infringement, including both ex officio measures by border officials and seizures based upon requests by patent holders. Such border measures have resulted in the seizure within the European Union of at least twenty shipments of legitimate and safe generic medicines, including anti-retroviral medicines, en route from either India or China to developing countries. Furthermore, ACTA should not create new intellectual property rules that would impose onerous criminal or civil damages for patent infringement, or impose restrictions on judges who prefer resolving patent disputes through royalty payments instead of injunctive relief.

Oxfam requests that you work with other negotiators to address these issues urgently. We believe the negotiations should be abandoned if these concerns are not addressed. We are available to discuss these issues, and any related matters, at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond C. Offenheiser". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Raymond C. Offenheiser  
President

RICHARD G. LUGAR  
INDIANA

308 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
202-224-4814  
<http://lugar.senate.gov>

COMMITTEES:  
FOREIGN RELATIONS, RANKING MEMBER  
AGRICULTURE, NUTRITION, AND FORESTRY

# United States Senate

WASHINGTON, DC 20510-1401

June 18, 2010

Mr. David Sepulveda  
Office of the U.S. Trade Representative  
Office of Congressional Affairs  
600 Seventeenth Street, N.W., Room 215  
Washington, D.C. 20508

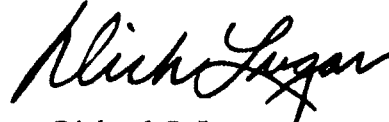
Dear Mr. Sepulveda:

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested.

Your findings and views, in duplicate form, along with the return of the enclosure, will be greatly appreciated. Please direct your reply to the attention of Darlee McCollum of my Washington office.

Thank you for your thoughtful attention.

Sincerely,



Richard G. Lugar  
United States Senator

RGL/cgd  
Enclosure

2	Mr. Terry Ross 705 East Washington Street Veedersburg, IN 47987-8208 ryu-knt@sbcglobal.net	Mr. Terry Ross 705 East Washington Street Veedersburg, IN 47987-8208 ryu-knt@sbcglobal.net	6/2/2010	ACTA
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From: "ryu-knt@sbcglobal.net" <ryu-knt@sbcglobal.net> [mailto:ryu-knt@sbcglobal.net] 6/2/2010 2:34:52 PM  
 Date: 6/2/2010 2:34:52 PM  
 To: "webmail@lugar-iq.senate.gov" <webmail@lugar-iq.senate.gov>  
 Cc:  
 Subject: ACTA

<IP>99.130.186.56</IP>  
 <APP>SCCMAIL  
 <PREFIX>Mr.</PREFIX>  
 <FIRST>Terry</FIRST>  
 <LAST>Ross</LAST>  
 <ADDR1>705 E Washington St</ADDR1>  
 <ADDR2></ADDR2>  
 <CITY>Veedersburg</CITY>  
 <STATE>IN</STATE>  
 <ZIP>47987</ZIP>  
 <PHONE>765-294-0198</PHONE>  
 <EMAIL>ryu-knt@sbcglobal.net</EMAIL>  
 <ISSUE>Trade</ISSUE>  
 <MSG>Honorable Senator Lugar,

From what I read, by passing ACTA, you (the government) have essentially given governmental powers to non-government private, for-profit organizations, such as RIAA and the MPAA, IFPI, etc. I have a few problems with this. First off, their claim as to the amount of online piracy is debatable, even the sights and oversights committee stated that the numbers were ... not accurate. Secondly is the way that our "Free market" is working, ie. it works until it fails and we bail them out, instead of letting them fail for not changing with the market environment. I am speaking of Fanny Mae/Freddi mac/big bank bailouts, GM/Ford/Chrysler (note that Toyota, Mitsubishi, Honda, BMW, Mercedes, Lamborghini/Ferrari didn't ask/get a bailout) and now RIAA/MPAA (through legislation) instead of changing with the market. Remember what RIAA said about Cassette Tapes and MPAA about VCR's in the 80's? sound familiar? What I ultimately want to know is WHY is ACTA passed? For what purpose is it for? War against Piracy? is that gonna be as effective as the War on Drugs or the War on Terrorism?

Another part of ACTA (though the anti-piracy stuff) is INTENTIONALLY limiting or blocking nationwide broadband progress. It's getting strained as it is, what with mobile phones AND high speed Internet taking up the same infrastructure, now instead of promoting innovation of ISP/Phone/Cable companies, they are wanting to restrict bandwidth and increase monitoring for EVERYONE (as ludicrous as that sounds), thus limiting innovation potential.

again, giving such governmental powers to a few individuals, and having them dictate what we can or cannot do, is hypocritical of a democracy.</MSG>  
 </APP>

RON WYDEN  
OREGON

223 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-5244  
(202) 224-1280 (TDD)

United States Senate  
WASHINGTON, DC 20510-3703

COMMITTEES:

COMMITTEE ON THE BUDGET  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
SPECIAL COMMITTEE ON AGING  
SELECT COMMITTEE ON INTELLIGENCE  
COMMITTEE ON FINANCE

August 13, 2010

The Honorable Ron Kirk  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

U.S. TRADE  
REPRESENTATIVE

10 SEP -7 PM 2:47

RECEIVED  
OFFICE OF  
GENERAL COUNSEL

Dear Ambassador Kirk:

I write to follow up on our discussions about the Anti Counterfeit Trade Agreement (ACTA). I believe that the ACTA negotiations that are to occur in Washington, DC next week presents the Obama Administration with a unique opportunity to demonstrate how it will establish transparency as a central pillar of the administration's approach to international trade.

As you know, I have long held concerns about the process used to negotiate ACTA, and the substance of the talks. An international norm-setting effort on intellectual property protection in the digital environment should not be taken lightly, nor is it an exercise that should allow the narrow interests of the well-connected outweigh the broad interests of the American public. I thank you for the meaningful steps that you and your staff have taken to improve transparency and encourage you to take even more. Your decision to allow the ACTA negotiating text to be made public earlier this year was a meaningful step forward, demonstrating the need to trust and empower the American public to understand and shape the U.S. position on international trade. I am disappointed that the U.S. objected to making public the ACTA negotiating text that followed the discussions in Lucerne, Switzerland because there were positive developments that resulted from the round and because difficult and controversial decisions remain. The fact that this draft text is available on the Internet because it was leaked by your European counterparts speaks volumes about how important the medium is to democratizing valuable information, and how the attempt to keep it secret was short-sighted.

Although I am pleased that the current ACTA text takes steps toward making clear that poor countries will retain their appropriate ability to obtain generic pharmaceutical drugs, I and others still have serious concerns about the current text with respect to patents and copyrights: Unless these concerns are resolved, there will be significant opposition from America's technology industry and from many of us in the Congress. The office of the U.S. Trade Representative must work to ensure that the ACTA does not export the strong penalties found in U.S. copyright law that discourage infringement without exporting the protection and limitations that accompany them, like "fair use" and section 230 of the Communications Decency Act for instance. At a time when opening foreign markets is vital to economic growth, ACTA would be unacceptable if it helps make foreign markets more legally hazardous for U.S. technology and Internet firms.

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105 FIR ST  
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310 WEST 6TH ST  
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SUITE 107  
BEND, OR 97701  
(541) 330-9142

707 13TH ST, SE  
SUITE 285  
SALEM, OR 97301  
(503) 589-4555

[HTTP://WYDEN.SENATE.GOV](http://wyden.senate.gov)

PRINTED ON RECYCLED PAPER

In terms of the next round of ACTA negotiations, I request that you:

- Establish a means by which interested stakeholders can obtain an understanding about rationale of the U.S. positions that are evident in the leaked copy of the ACTA
- Establish a process by which interested stakeholders can be consulted during the next and all subsequent rounds of ACTA negotiations
- Establish a process by which the draft ACTA negotiating texts are made public once they are distributed to the countries participating in the negotiations
- Seek to address the substantial concerns that the technology sector and public interest representatives have with ACTA
- Not sign any final agreement until the text of it has been made public and the Congress has sufficient opportunity to review the agreement and learn the public's views on it

The lessons we can learn from the ACTA negotiations can guide our approach to trade negotiations more broadly. As a U.S. Senator, I may obtain the negotiating text of a potential trade agreement, but I am prohibited from consulting with stakeholders that are not pre-cleared by the administration to have knowledge of the agreement. The public ACTA text and the leaked copies on the Internet improved my ability to obtain feedback from a wider group of stakeholders than I would otherwise have access to and, as a result, my own views about ACTA are better informed. I would like to work with you to think through the way that bilateral and regional trade agreements are negotiated to determine whether there are ways to bring more transparency to the discussions in order to achieve agreements that are as well constructed as possible.

As always, I appreciate your consideration of my views and suggestions and look forward to our continued work together.

Sincerely,



Ron Wyden  
United States Senator

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

March 28, 2011

Mr. Eric Hafner  
P.O. Box 8  
Red Neck, NJ 07701

Dear Mr. Hafner:

This letter is USTR's response to your Freedom of Information Act request for **copies of all correspondence relating to the proposed. "Anti-Counterfeiting Trade Agreement" also known by the acronym "ACTA" to and or from the Office of the United States Trade Representative between the period of 2005 and 2010, under the Freedom of Information**

Please be advised that we are releasing seventy-one (71) documents within the scope of your request.

Inasmuch as this constitutes a complete response to your request, I am closing your file in this office. In the event that you are dissatisfied with USTR's determination, you may appeal such a denial, within thirty (30) days, in writing to:

FOIA Appeals Committee  
Office of the United States Trade Representative  
1724 F Street, N.W.  
Washington, DC 20508

Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal". In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you seek.

Sincerely,

  
Jonathan R. Weinberger  
Associate General Counsel

Case File #11032408



**Oxfam**  
America

U.S. TRADE  
REPRESENTATIVE

JUL 20 11:00

RECEIVED  
OFFICE OF  
GENERAL COUNSEL

July 13, 2009

Ambassador Ronald Kirk  
U.S. Trade Representative  
600 17th. Street, NW.  
Washington, DC 20508.

228 Causeway Street, 5<sup>th</sup> Floor  
Boston, MA 02114-2206  
Tel: (800) 77-OXFAM  
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E-mail: [info@oxfamamerica.org](mailto:info@oxfamamerica.org)  
[www.oxfamamerica.org](http://www.oxfamamerica.org)

Raymond C. Offenheiser  
President

Re: Serious concerns about impact of ACTA negotiations on access to medicines.

Dear Ambassador Kirk:

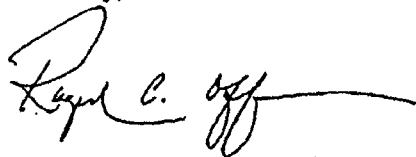
I am writing to express Oxfam America's concerns about the on-going negotiations of the Anti-Counterfeiting Trade Agreement (ACTA). We have serious concerns with respect to the process and substance of the negotiations and believe the Parties should address three critical issues: failure to include developing country interests, lack of transparency in the negotiations and the inclusion of new enforcement rules for Intellectual property (IP) that would jeopardize access to affordable medicines.

1. Since the inception of ACTA discussions, negotiating parties have refused, despite repeated requests by public interest groups around the world, to make the text available for public scrutiny and review. We believe this secrecy is unacceptable. IP rules remain an area of great controversy as strict levels of IP protection can harm development and increase poverty in poor countries. Any discussions of IP should be available to public scrutiny.
2. ACTA negotiations are plurilateral discussions held outside the World Trade Organization's multilateral framework; they exclude developing country interests and will exceed well-settled principles on IP enforcement established under the WTO TRIPS Agreement. Parties to the negotiations have assembled a 'coalition of the willing' with the intent of setting higher standards among those who can most easily agree on them and subsequently pushing others, including poorer countries where adverse effects would be most serious, to accept those standards. Recently, Oxfam has learned that Brazil was refused permission to enter negotiations due to its anticipated stance on IP rules. A small and unrepresentative group of countries must not be able to set new global IP standards that would have significant adverse effects on other countries, particularly those with high poverty levels. If negotiations do proceed among existing Parties, at a minimum they should consider measures such as the following: independent, publicly-available analyses of how the agreement's provisions would adversely affect developing countries; opportunities for developing countries to review and offer comments on the text; and a willingness for the negotiating Parties to allow developing countries to join negotiations without precondition.

3. Finally, all Parties must ensure the negotiating text does not include any new IP rules that would endanger access to affordable medicines. Recent discussions with negotiating Parties indicate there is serious consideration of introducing multilateral enforcement rules with criminal penalties, as well as border measures to enforce IP rules, as measures necessary to curb trade in counterfeit medicines. Oxfam strongly disagrees with the establishment of multilateral enforcement rules for IP, both because this would do little to reduce trade in counterfeit medicines and because it would simultaneously reduce access to affordable medicines in developing countries (see annex 1).

Oxfam requests that you work with other negotiators in Morocco this week to address these issues. If these concerns are not adequately addressed, we believe the negotiations should be abandoned, as they will do more harm than good with regard to promoting access to affordable medicines. We are available to discuss our concerns, and any related matters, at your convenience.

Sincerely,



Raymond C. Offenheiser  
President

**Annex 1: Additional information on why Oxfam disagrees with the inclusion of multilateral enforcement rules for IP**

WHO defines counterfeit medicines as fake medicines that willfully infringe a trademark and target both generic and branded pharmaceuticals. Products not covered by a patent or under patent dispute in a particular country are not counterfeit – they are produced by legitimate companies, are deemed safe and effective and are sold in highly regulated markets. On the other hand, intentional trademark infringement is committed through criminal networks.

Including patents and trademarks (or IP in general) under ACTA does not curb counterfeit medicines. In fact, it could undermine efforts to stop the marketing of substandard, unsafe or fake medicines. Enforcing patents through border measures and criminal penalties as a means to combat counterfeit medicines would divert scarce public resources towards the protection of commercial interests of multinational companies while curtailing generic competition. These measures, imposed worldwide,



would empower branded companies to seek additional monopoly protection with impunity, discourage challenges to frivolous patents, slow or arrest parallel importation and result in customs officials incorrectly ordering seizures of generic medicines that do not infringe patents.

Multilateral enforcement rules for IP would only provide benefits to multinational pharmaceutical companies that must normally enforce their patent rights through their own commercial efforts. Instead, these companies would be able to rely upon public authorities to enforce private IP rights. This would shift a private burden to governments, which would be forced to commit public resources - financial and administrative - for private profit. Yet such resources would be better used targeting criminal networks that produce counterfeit medicines and strengthening drug regulatory authorities around the world to eliminate substandard medicines.

Patent enforcement through border measures and criminal penalties will harm legitimate generic competition and access to affordable and safe medicines. Border measures for IP, which must be enforced by customs officials, are rife with poor implementation due to the inability of border officials to make complex patent and trademark determinations. In recent months, EU customs officials, especially the Netherlands and Germany, have incorrectly seized generic medicines in-transit at least eighteen times due to overzealous enforcement of patents at the behest of multinational pharmaceutical companies. This has included medicines for HIV and AIDS and heart disease produced legally and intended for poor countries, including Nigeria and Peru. These seizures could violate WTO rules, and clearly contravene the spirit and intent of the Doha Declaration on TRIPS and Public Health. These measures could eventually stop legitimate parallel importation, a key measure used by many countries to control the cost of pharmaceuticals.

Criminal penalties for IP including patent infringement will have similar implications for access to medicines. Patent disputes are civil matters between two private parties. Criminal penalties with respect to pharmaceuticals would chill generic competition until all patents (even frivolous ones) on a medicine expire, as the risk for generic companies to legitimately challenge patents would be too great. Generic companies would delay product development and generic competition, delaying lower prices by many years. The costs to public health budgets and to the health of poor people would be ethically and economically unacceptable.

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

SEP 24 2009

Mr. Raymond C. Offenheiser  
President  
OXFAM America  
226 Causeway Street, 5<sup>th</sup> Floor  
Boston, MA 02114-2206

Dear Mr. Offenheiser:

Thank you for your letter regarding the Anti-Counterfeiting Trade Agreement (ACTA). I always appreciate input from the public on the work of my office.

The ACTA was initiated due to a growing concern that the proliferation of counterfeit and pirated goods in international trade poses a threat to the sustainable development of the world economy. This problem not only hinders sustainable economic development in both developed and developing countries, but in some cases, represents a risk to consumers. The initiative has brought together both developed and developing countries interested in fighting counterfeiting and piracy.

The participants in the ACTA negotiations include Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States. This group of countries reflects over 50 percent of global trade flows, and they are on the front lines of the fight against counterfeiting and piracy.

Recently there have been reports of other countries that wish to join the negotiations. The ACTA initiative has progressed significantly and a number of negotiating rounds have already been held. We anticipate that the ACTA will include provisions for accession to the Agreement, and we are recommending that the best approach for countries interested in furthering the goals of the ACTA would be to seek accession to the Agreement upon the conclusion of the negotiations. As to your statements regarding Brazil, I understand that the Brazilian Government has confirmed publicly that it is not interested in joining the ACTA negotiations.

In keeping with President Obama's transparency goals, USTR is continuing its efforts to ensure that the public is well-informed about the negotiations. For instance, on April 6, 2009, we released a detailed summary of issues under negotiation, and we have established a dedicated ACTA page on the USTR website. In addition, we continue to maintain our "open-door" policy toward all stakeholders, and are planning to hold additional public meetings to engage with

Mr. Raymond C. Offenheiser

Page Two

members of the public. Regarding your interest in seeing the negotiating text, it is accepted practice during trade negotiations among sovereign states to not share negotiating texts with the public at large, particularly at early stages of the negotiation. This enables officials of participating governments to engage in frank exchanges of views, positions, and specific negotiating proposals, and thereby facilitate the negotiation and compromise that are necessary in order to reach agreement on complex issues. Moreover, at this point in time, ACTA delegations are still discussing various proposals for the different elements that may ultimately be included in the agreement. A comprehensive set of proposals for the text of the agreement does not yet exist. However, as we noted in the April 6, 2009 release I mentioned above, we will continue to work with our negotiating partners to release as much information as we can without impeding the negotiations.

With respect to the substance of the negotiations, the U.S. approach to the legal framework provisions of ACTA has been to view the intellectual property rights (IPR) enforcement provisions of recent U.S. free trade agreements as a model. I would like to reiterate that we are focusing our efforts in ACTA on combating trademark counterfeiting and copyright piracy, which are the main challenges USTR set out to address when the negotiations were launched; this is particularly true with respect to the criminal and border enforcement provisions.

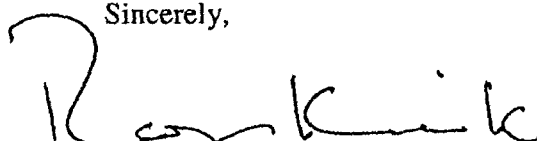
In response to your concern that IP protection can harm development and increase poverty in poor countries, let me clarify that ACTA is an enforcement agreement focused on the criminal, civil and administrative enforcement against trademark counterfeiting and copyright piracy. That said, I appreciate your concern that you do not want ACTA to have any unintended consequences, such as harming development or increasing poverty in poor countries. In fact, ACTA is intended to stamp out the problems of counterfeiting and piracy that not only harm economic development but also can pose a threat to the health and safety of consumers particularly in developing and least developing countries.

As I noted earlier, we have created a webpage dedicated to the ACTA initiative:

<http://www.ustr.gov/trade-topics/intellectual-property/anti-counterfeiting-trade-agreement-acta>.

We have a great deal of information available on the website, which was created in an effort to try to keep the public as well informed as possible about the negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Kirk". The signature is written in a cursive, flowing style.

Ronald Kirk

# TACD

TRANS ATLANTIC  
CONSUMER DIALOGUE

DIALOGUE TRANSATLANTIQUE  
DES CONSOMMATEURS

1 July, 2009

Ambassador Ron Kirk  
United States Trade Representative  
600 17<sup>th</sup> St NW  
Washington, DC 20508-0002

U.S. TRADE  
REPRESENTATIVE

9 JUL 21 P1 57

RECEIVED  
OFFICE OF  
GENERAL COUNSEL

**Subject: Trans-Atlantic Consumer Dialogue resolution on terms of protection and measures to expand access**

Dear Ambassador Kirk:

On behalf of the Trans-Atlantic Consumer Dialogue, I would like to bring your attention to our recent resolution on terms of protection for copyright and related rights, and measures to expand access to unexploited works.

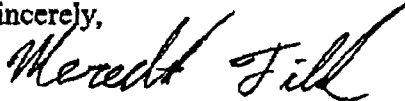
A copy of this resolution and the related press release is attached. Additionally, you may find the resolution on-line at [www.tacd.org](http://www.tacd.org).

The TACD resolution on the terms of protection represents the consensus views of 30 U.S. and 50 European consumer groups (list of U.S. groups attached). We request the opportunity to discuss the content of the resolution with you or your staff.

While the resolution covers many different access and protection topics of interest and relevance to USTR, we would like to call special attention to the recommendations on **injunctions and damages** (section 6), titled "The EU and the US should not adopt provisions in ACTA or other trade agreements that reduce the flexibility of governments to permit uses of works without authorization from right owners."

TACD would very much appreciate a response to each of these points.

Sincerely,



Meredith Filak  
Trans-Atlantic Consumer Dialogue  
mailto: [meredith.filak@gmail.com](mailto:meredith.filak@gmail.com)  
+1.908.601.3189

cc: Committee on Ways & Means Majority Staff (attn: Aruna Kalyanam)  
Committee on Ways & Means Minority Staff (attn: Andrew Garber)  
House Judiciary Committee Majority Staff (attn: Christal Acquanetta Sheppard)  
House Judiciary Committee Minority Staff (attn: David Whitney)  
Senate Finance Committee Majority Staff (attn: Amber Cottle)  
Senate Finance Committee Minority Staff (attn: Claudia Bridgeford Poteet)  
Senate Judiciary Committee Majority Staff (attn: Aaron Cooper)  
Senate Judiciary Committee Minority Staff (attn: Joseph Matal)  
Senate Judiciary Committee, Subcommittee on Antitrust, Competition Policy and  
Consumer Rights Majority Staff (attn: Caroline Holland)  
Senate Judiciary Committee, Subcommittee on Antitrust, Competition Policy and  
Consumer Rights Minority Staff (attn: Matthew Sandgren)

## U.S. Members of the Trans Atlantic Consumer Dialogue (TACD)

American Association of Retired Persons (AARP)  
American Civil Liberties Union (ACLU)  
American Council on Consumer Interests (ACCI)  
Center for Auto Safety (CAS)  
Center for Digital Democracy (CDD)  
Center for Food Safety (CFS)  
Center for Science in the Public Interest (CSPI)  
Community Nutrition Institute  
Consumer Action  
Consumer's Choice Council (CCC)  
Consumer Federation of America (CFA)  
Consumers Union (CU)  
Economic Justice Institute  
Electronic Frontier Foundation (EFF)  
Electronic Privacy Information Center (EPIC)  
Health Action International  
Institute for Agriculture and Trade Policy (IATP)  
International Centre for Technology Assessment (ICTA)  
Knowledge Ecology International (KEI)  
National Association of Consumer Advocates (NACA)  
National Association of Consumer Agency Administrators (NACAA)  
National Consumers League  
Prevention Institute  
Privacy International  
Privacy Rights Clearinghouse  
Public Citizen  
Public Interest Advocacy Centre  
Public Interest Research Group (PIRG)  
Public Knowledge  
World Privacy Forum

# TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE  
CONSUMER DIALOGUE DES CONSOMMATEURS

Press Release

DATE ISSUED: 1<sup>st</sup> July 2009

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**New TransAtlantic Consumer Dialogue (TACD) resolution calls on policy makers to consider measures to moderate the harm caused by long terms of copyright and related rights**

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The TransAtlantic Consumer Dialogue (TACD) today issued a Resolution on the Terms of Protection for Copyright and Related Rights, and Measures to Expand Access to Works not Exploited by Copyright Owners (the Resolution is accessible on <http://www.tacd.org>).

The TACD is a trade advisory body to the European Union and the U.S. Government, with 80 member organizations in Europe and the United States.

The regimes for copyright and related rights, including the terms of protection, vary by country and by types of work, and are regulated by a complicated web of global trade rules. The TACD resolution expresses opposition to copyright and related that exceed the period required by the WTO TRIPS agreement. In cases where this recommendation is not followed, TACD asks governments to introduce measures, such as limitations and exceptions to rights, or registration requirements, to mitigate the harm from long terms of protection.

TACD first discussed the Resolution with representatives from the European Union and the U.S. Government on June 9th, 2009, during the TACD 10th Annual Meeting in Brussels.

The following are comments about the Resolution from members of the TACD (Quotes are arranged in alphabetical order):

**Edouard Barreiro, UFC-Que Choisir (Paris, France), +33 (0)1 44 93 19 67**  
"Each time the duration of copyright protection is extended, it creates significant harmful effects, increasing the private income of some, which does not foster investment or research, and hinders innovation and creation."

**Jill Johnstone, Consumer Focus (London, UK) +44 207 799 7900**

"Excessive terms of protection for copyright and related rights shrink the public domain, threaten consumers' access to knowledge and hinder innovation by creative communities. Terms of protection in the EU and US should not exceed those required by the WTO TRIPS Agreement. The "arms race" approach to copyright term extension must stop."

**Eddan Katz, Electronic Frontier Foundation (EFF), San Francisco, CA (USA) +1 415 436 9333 ext. 133**

"The perpetual extension of copyright protection does not incentivize creativity and innovation, nor does it facilitate the dissemination of culture to the public. Term extension has served only to extend a windfall to the few and powerful incumbent copyright holders. This proposal and resolution brings back evidence-based decision-making for advancing the balance of interests among society's stakeholders in copyright legislation."

**Anne-Catherine Lorrain, TACD (Brussels, Belgium), +32 (0)2 740 28 17**

"Policy-makers should ground policy decisions on objective evidence and analysis. In the event that longer terms of copyright protection are adopted, they still have the option to counter-balance the harmful effects of such policies, by adopting several measures to improve public access to knowledge goods. This resolution provides both a framework for making policy, and suggestions for lessening harmful impacts of bad policies."

**James Love, Knowledge Ecology International (KEI), Washington, DC (US), +1 202 332 2670:**

"Extended terms of copyright have decimated the public domain at a time when there is a growing awareness of the value of re-using and re-purposing works in digital formats. The TACD resolution provides a framework for policy analysis, and also identifies several ways to mitigating the harm of term extensions, within the constraints of the WTO TRIPS Agreement. Among the strategies proposed are requirements for registration of works in the extended term of protection, and more liberal exceptions or compulsory licensing of works in the extended terms."

**Thomas Nortvedt, the Consumer Council of Norway, +47 23 400 522**

"Copyright law is under pressure from both consumers and rights holders. To uphold and increase the respect for copyright, it is paramount that legislation is reasonable, understandable and justifiable for all parties involved. This resolution underlines important aspects to be taken into account for legislators on both sides of the Atlantic, such as thorough peer reviewed assessments before increasing protection beyond what is required under international agreements, and making demands when rights holders do not exploit works the public should have access to."

**Kostas Rossoglou, European Consumers' Organisation (BEUC), Brussels (Belgium), +32 (0)2 790 24 04:**

"BEUC fully supports the right for artists to fair remuneration; however, extended copyright terms are not the right instrument to achieve this aim. Extending a temporary monopoly without sound economic justification, does not facilitate the search for new business models, nor address the need for the increased provision of legal content. Copyright should aim to keep a balance between rights holders and society as a whole. This balance risks to be seriously altered by recent proposals to extend the terms of copyright protection, notably in the EU. BEUC calls on EU Member States and the new European Parliament to duly consider the recommendations included in the TACD Resolution."



**Sherwin Sly, Public Knowledge, Washington, DC (US), +1 202 518 00 20**

**“For too long, legislatures have accepted uncritically the assertions of industry that longer copyright terms necessarily lead to more creation. However, as terms reach multigenerational lengths, mounting evidence has shown that long terms can chill discussion, debate, analysis and revisiting of existing works, to the detriment of our society at large. Because of this, any proposed extension of terms must be rigorously shown to actually benefit all of society, and not just specific segments of industry.”**

**Contact :**

**James Love, KEI, Washington, DC, US co-Chair of TACD Policy Committee on Intellectual Property, +1 202 332 26 70**

**Jill Johnstone, Consumer Focus, London, EU co-Chair of TACD Policy Committee on Intellectual Property, +44 207 799 79 00**

**Anne-Catherine Lorrain, TACD IP Project, Brussels, +32 473 99 97 92**

**Julian Knott, TACD Coordinator, London, +44 207 226 66 63 ext. 218**

# TACD

TRANS ATLANTIC      DIALOGUE TRANSATLANTIQUE  
CONSUMER DIALOGUE      DES CONSOMMATEURS

DOC No. IP 10-09

DATE ISSUED: 1<sup>st</sup> July 2009

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## **Resolution on the Terms of Protection for Copyright and Related Rights, and Measures to Expand Access to Works not Exploited by Copyright Owners**

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### **Introduction**

The members of the *Trans Atlantic Consumer Dialogue* (TACD) agree that policy makers should reject excessive terms of protection for copyright and related rights, and consider measures to mitigate or overcome harm from long terms of protection. The recommendations below concern the term of protection, as well as the use of systems of registration to limit the works subject to protection, and the role of exceptions to copyright and related rights to expand access to works that are not being actively exploited by copyright owners. A series of recommendations are presented, followed by an elaboration of the context and rationale for the recommendations:

### **RECOMMENDATIONS**

1. The EU and the US should implement copyright and related rights with terms for protection that do not exceed that required by the WTO TRIPS Agreement.

2. In cases where the EU and the US consider terms of protection that exceed WTO TRIPS requirements, the evaluation must start with a thorough, objective, and peer reviewed assessment of the costs and benefits to society as a whole.

3. For countries that have previously extended terms of protection for works protected by Article 9-13 of the TRIPS agreement beyond the terms required by the TRIPS agreement, such protection should be converted to a supplementary system of protection. As a supplementary regime the extended term would not be constrained by the Berne or Rome Convention requirements concerning registration obligations or Berne, Rome or TRIPS three step tests. The features of the extended term will of course be constrained by domestic law, and possibly other obligations. In implementing extended terms as a supplementary protection regime, TACD recommends the following features be incorporated, to the extent that such features are consistent with domestic legal traditions and can be resolved through negotiations regarding non-TRIPS trade agreements, including but not limited to Europe Union Directives or bilateral or regional Free Trade Agreements.

### **Mandatory Features of the Supplementary Regime**

(a) The regime for the extended term shall include limitations and exceptions to rights that are at least as supportive of access to knowledge as exist for copyrighted and related rights works;

(b) The regime for the extended term shall require that protection is based upon the registration of the work and the inclusion of a notice of an extended term of

protection, identifying the right owner and the date the work will enter the public domain.

(c) Works must be subject to an obligation for deposit in an archive in a format that will ensure public access after the expiration of the extended term of protection.

(d) The extended term of protection should have provisions allowing states to introduce appropriate non-voluntary remuneration schemes that advance innovative uses of knowledge goods in other areas.

(e) The regime for the extended term shall be subject to additional public interest measures that promote access to knowledge, including additional limitations and exceptions to rights, obligations to support public knowledge goods, or include special provisions to protect the rights of authors or performers.

#### **Optional Features of a Supplementary Regime**

(f) Among the specific measures for obligations, limitations or exceptions for protection of works in the extended term, or changes in modalities, taking into account also domestic legal constraints, TACD recommends consideration be given to the following optional features for the supplementary regime:

(i) Owners must actively exploit works.

(ii) Where works were created by individuals, the right to use the extended protection should revert back to the creative persons who authored or performed the work, or their heirs.

(iii) The extended term of protection would not apply to use in documentaries, education, non-profit archives, or scholarly use.

(iv) The extended term of protection should not apply retroactively, but only progressively for works whose term of protection has not expired.

(v) The extended term of protection should not be granted when the creator of a work is dead.

(vi) The extended term of protection would not apply for any work for which the individual authors have alienated all economic rights, such as works created as a work-for hire or as a corporate authorship, in countries where such systems exist.

(vii) The works subject to the extended term of protection that are commercially exploited shall be subject to requirements that rights holders contribute money to funds created to benefit authors or performers, support live performances of works, to acquire works or licenses to use works that can be dedicated to the public domain, or for other public interest purposes.

4. The EU and the US should undertake a study to examine the extent and ways that systems of copyright and related rights registration can be implemented within the current framework of WTO TRIPS obligations, and the benefits of doing so, in terms of expanding access to works not exploited by copyright owners.

5. For protected works that are not commercially exploited, the EU and the US should evaluate mechanisms to allow use without the permission of the right owners,

### **Works Not Exploited by Copyright Owners**

6. The vast majority of protected works are either not exploited by the owner, or are classified as orphaned works, where it is impossible to even locate the owner. Consumers and creative communities are both harmed by the lack of access to such works.

### **Registration of Works**

7. Prior to the United States joining the Berne Convention, copyrighted works that were not registered with the U.S. Library of Congress entered the public domain. Many experts believe that it is a mistake to extend protection to all works, regardless of copyright registration, and that this practice has dramatically expanded the number of protected works to include countless works that are not actively exploited by copyright owners, including those for which it is difficult to establish ownership, or where it is difficult to know when terms of protection have expired.
8. Article 5 of the Berne Convention for the Protection of Literary and Artistic Works places certain restrictions on government obligations to comply with formalities. The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, which has been adopted by the members of the EU, has no such restrictions.
9. The Berne restrictions on formalities do not rule out systems of registration for copyrighted works, as evidenced by the existence of a copyright registration system in the United States. The Berne restrictions do not apply to the term that exceeds that required in the Berne Convention for copyrighted works, if the extended period of protection is fashioned as a right that is separate from the rights created by the Berne Convention.<sup>1</sup>

### **Remedies for Uses without Authorizations from Right Owners**

10. TACD notes a US Library of Congress Copyright Office report recommended a system of access to orphan works that was based in part upon limits to right owner remedies for unauthorized uses, including in particular limitations on the use of injunctions and compensation for unauthorized use.
11. TACD notes that neither the Berne Convention nor the Rome Convention provide specific obligations regarding the enforcement of rights.
12. TACD notes that the WTO TRIPS Agreement sets standards for enforcement of copyright and related rights.
13. TACD notes that the EU and the US are engaged in several non-transparent negotiations on intellectual property enforcement, including a proposed Anti-Counterfeiting Trade Agreement (ACTA), which deal extensively with the enforcement of copyright and related rights, including the specific areas that have been considered as part of a system for access to orphaned works.

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<sup>1</sup> A useful analogy is the case in some countries for the period of extended protection that is given the pharmaceutical drugs that experience long delays in regulatory approval, or which benefit from *sui generis* forms of protection, such as the exclusive rights to rely upon drug registration data, or market exclusivity under the US or EU orphan drug legislation.

# TACD

TRANS ATLANTIC      DIALOGUE TRANSATLANTIQUE  
CONSUMER DIALOGUE      DES CONSOMMATEURS

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TO: Ambassador Ron Kirk      FROM: Meredith Filak  
FAX #: 202-395-4549      FAX #: 202-332-2673  
DATE: 1 July, 2009

# OF PAGES: 11 (including cover sheet)

MESSAGE: TACD resolution for Ambassador Kirk



159224  
A: McCoy  
C: Garcia  
Reif

September 22, 2009

Ambassador Ron Kirk  
Office of the US Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

RECEIVED  
OFFICE OF  
GENERAL COUNSEL  
9 SEP 23 AM 1:36

Dear Ambassador Kirk:

As representatives of the US motion picture and television industry and the labor organizations that are integral to the success of the industry, we write to you today in regard to the ongoing Anti-Counterfeiting Trade Agreement (ACTA) negotiations, specifically the online provisions which we understand will be the focus of the next round of negotiations.

The US motion picture and television production industry continues to be a cornerstone of America's creative economy and a major US employer supplying millions of Americans either directly or indirectly with skilled and high value jobs. Over 180,000 people are directly employed in studios, independent production and distribution companies, and in core industry suppliers, such as film labs, special effects and digital studios, and prop and wardrobe houses. The industry employs another 231,000 workers, including actors, directors, writers, musicians, and technical or craft specialists. Our industry also generates nearly 1 million indirect jobs.

The US motion picture and television industry is one of the few U.S. industries that consistently generates, even in these difficult economic times, a positive balance of trade, distributing films to over 150 countries around the world. In 2007, that surplus was \$13.6 billion.

The ability to finance, create and distribute entertainment, the overall health and success of our industry and the livelihood of the talented and dedicated men and women who work in our industry are dependent upon our ability to protect the intellectual property that is the lifeblood of our industry. Internet piracy has emerged as the fastest growing threat to the filmed entertainment industry. We place the highest priority on securing both the legal and practical tools necessary to protect intellectual property rights in the digital age.

We recognize that the inclusion of disciplines in the ACTA to address Internet piracy may continue to be a sensitive issue. However, we firmly believe that for the ACTA to meet its potential as a state-of-the art agreement to combat counterfeiting and piracy, it must include robust protections for intellectual property online, building on established international norms. We offer the following specific recommendations for your consideration in advance of the next round --

- The full and effective implementation of the global legal minimum standards embodied in the WCT and WPPT, including those measures to prevent the trafficking in anti-circumvention devices, should be the baseline for the Anti-Counterfeiting Trade Agreement.

- Practical secondary liability regimes for online infringement are essential to motivate participants to cooperate in implementing the reasonable practices that will make the online marketplace less hospitable for infringers. ACTA parties should refine their secondary liability regimes to reflect current realities and adopt modern, flexible systems where they do not exist. The goal must be to educate and encourage responsible conduct on the part of all parties involved in the transmission of copyright materials.
- Overly strict interpretations of national data privacy rules increasingly impede enforcement against an array of wrongs that occur on the Internet, including copyright theft – often leaving victims without any means of redress. ACTA partners should ensure that the interpretation of data privacy rules appropriately balances the fundamental rights of privacy and property, including intellectual property, in such a way as to encourage meaningful cooperation by telcos/ISPs, in particular the implementation of a legally acceptable “graduated response” mechanism.
- ACTA partners should develop effective measures to address illegal P2P streaming, downloading or sharing of pirated content.
- The commercial scale test for damages should clearly acknowledge the harm to the infringed party rather than profit-motive or commercial purpose of the infringer. The reality is that right holders are harmed when illegal content is posted to the Internet *with or without charge* to the downloader.

We view these negotiations as a unique opportunity. We believe that the US government must strive for an ambitious agreement that addresses today’s challenges in the digital environment; fosters the new and innovative business models of US creative industries, many of which are online; and, protects the valuable and much needed jobs and benefits of the millions of Americans who work in the creative industries.

We appreciate the US government’s continued openness and receptivity to comments. We stand ready to provide any additional information to support your efforts.

Respectfully submitted by the following:

American Federation of Musicians

American Federation of Television and Radio Artists

Directors Guild of America

The International Alliance of Theatrical Stage Employees, Moving Picture Technicians,

Artists and Allied Crafts of the United States, Its Territories and Canada

Independent Film & Television Alliance

Motion Picture Association of America

Producers Guild of America

Screen Actors Guild

## ASSOCIATION DESCRIPTIONS

### AFM

Founded in 1896, the American Federation of Musicians of the United States and Canada, AFL-CIO, is the largest organization in the world dedicated to representing the interests of professional musicians. With more than 90,000 members, AFM represents all types of professional musicians, including those who record music for sound recordings, film scores, videogames, radio, television and commercial announcements, as well as perform music of every genre in every sort of venue from small jazz clubs to symphony orchestra halls to major stadiums. Whether negotiating fair agreements, protecting ownership of recorded music, securing benefits such as health care and pension, or lobbying legislators, the AFM is committed raising industry standards and placing the professional musician in the foreground of the cultural landscape.

### AFTRA

The American Federation of Television and Radio Artists, AFL-CIO, are the people who entertain and inform America. In 32 Locals across the country, AFTRA members work as actors, journalists, singers, dancers, announcers, hosts, comedians, disc jockeys, and other performers across the media industries. The 70,000 professional performers, broadcasters, and recording artists of AFTRA are working together to protect and improve their jobs, lives, and communities in the 21st century. From new art forms to new technology, AFTRA members embrace change in their work and craft to enhance American culture and society.

### DGA

The Directors Guild of America (DGA) represents 14,000 directors and members of the directorial team who work in feature film, filmed/taped/and live television, commercials, documentaries, and news. DGA members include Film and Television Directors, Unit Production Managers, Assistant Directors, Associate Directors, Technical Coordinators, Stage Managers and Production Associates. DGA seeks to both protect and advance directors' economic and artistic rights and preserve their creative freedom.

### IATSE

The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC (IATSE) is an International Union that represents over 110,000 members employed in the stage craft, motion picture and television production, and trade show industries throughout the United States, its Territories and Canada.

### IFTA

The Independent Film & Television Alliance is the worldwide trade association of the independent film and television industry. Our Members represent all facets of the independent film and television industry including sales, production, distribution and financing. IFTA also hosts the American Film Market, the world's largest film market, where more than \$500 million dollars in film license transactions are concluded annually. International exports of film, television and video/DVD rights are a major aspect of the business of IFTA Members and constitute about \$2.6 billion dollars in annual sales.



### MPAA

The Motion Picture Association of America (MPAA) is a trade association that serves as the voice and advocate of the American motion picture, home video and television industries. MPAA member companies are: Paramount Pictures, Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLP; Walt Disney Pictures and Warner Bros. Entertainment Inc.

### PGA

The Producers Guild of America is the non-profit trade organization that represents, protects and promotes the interests of all members of the producing team in film, television and new media. The PGA has approximately 4,100 members who work together to protect and improve their careers, the industry and community by providing members with health benefits, enforcing workplace labor laws, the creation of fair and impartial standards for the awarding of producing credits, as well as through other education and advocacy efforts. The PGA hosts important industry events including the annual Producers Guild Awards and the Produced By Conference.

### SAG

The Screen Actors Guild is the nation's largest labor union representing working actors. Established in 1933, SAG has a rich history in the American labor movement, from standing up to studios to break long-term engagement contracts in the 1940s to fighting for artists' rights amid the digital revolution sweeping the entertainment industry in the 21st century. With 20 branches nationwide, SAG represents nearly 120,000 actors who work in film and digital television programs, motion pictures, commercials, video games, music videos, industrials and all new media formats. The Guild exists to enhance actors' working conditions, compensation and benefits and to be a powerful, unified voice on behalf of artists' rights.



September 22, 2009

Secretary Gary F. Locke  
US Secretary of Commerce  
Herbert Clark Hoover Building  
1401 Constitution Avenue, NW  
Washington, D.C. 20230

U.S. Trade Representative Ronald Kirk  
Office of the United States Trade Representative  
600 - 17<sup>th</sup> Street, NW  
Washington, D.C. 20508

RECEIVED  
OFFICE OF  
GENERAL COUNSEL  
9 SEP 23 11:11

Dear Secretary Locke and Ambassador Kirk:

The organizations listed below, representing musicians, performers, composers, songwriters, music publishers and record companies offer the following thoughts as you prepare for your next important ACTA negotiating session in November. Our ability to continue to create and offer music is today under threat like never before. The collective output of songwriters, performers, musicians, technicians and producers is being pirated on a massive scale, particularly on the internet. Unless adequately addressed, this will fundamentally undermine American economic competitiveness and a unique cultural and treasure.

We call upon you to ensure that ACTA discussions advance the consideration by all parties of strong substantive standards and enforcement mechanisms so that we can collectively turn the tide on the destructive forces of music piracy. These discussions offer an unparalleled opportunity to address common problems affecting cultural output and diversity through the articulation of a strong and unambiguous commitment to fighting piracy, and to pave the way for e-commerce in cultural materials to prosper by helping to create standards that will ensure the protection of cultural materials in the on-line environment.

At present, most internet "commerce" in copyrighted materials is infringing. It has become manifestly clear that an adequate and effective response to online piracy can not be achieved based solely on litigation against individual infringers. Governments can effectively promote innovation and competitiveness in both the communications and IP sectors by enhancing responsibility and accountability in the online

space. Internet service providers must play a reasonable role in cooperating with right holders to address the use of their proprietary networks in the transmission of infringing materials, and governments should focus on finding ways to best encourage that cooperation.

We must find a global solution that discourages unauthorized peer-to-peer file sharing, through aggressive enforcement against unauthorized uploaders of infringing product, as well as against services that encourage and profit from copyright infringement. For new legal online services to succeed, we must ensure that such services do not face unfair competition from unauthorized sources. And in particular we need to ensure that all parties involved in the transmission of infringing content are encouraged to cooperate in the fight against piracy, so that we can build a legal and technological architecture that promotes greater accountability on the Net. This is not a zero sum game that pits technological developments in the communications sector against intellectual property protection. Technological advances in communications technologies have the potential for greatly enhancing new cultural production. Unfortunately, the potential for growth is instead being undermined by massive infringement on the internet.

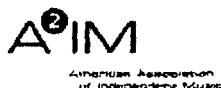
In conclusion, we look to the United States and other ACTA parties to demonstrate leadership in promoting modern and effective protection of intellectual property--both domestically and abroad-- that will sustain some of the world's most competitive and vibrant sectors. ACTA parties owe it to themselves, to each other, and to the world's creative community and broader society, to provide an environment that expands cultural and economic output. We are confident that an agreement that promotes greater accountability on the part of network service providers can be achieved in a fair, reasonable and flexible manner.

Respectfully submitted by:

- A2IM
- AFM
- AFTRA
- NMPA
- The Recording Academy
- RIAA



## COMPANY DESCRIPTIONS



### About A2IM:

Launched on July 4th, 2005 to represent the needs of the independent music label community, this year A2IM celebrated its fourth anniversary as the sector's pre-eminent advocacy group and trade organization. Currently, the organization counts over 225 music label members and 100 associate members (companies who don't own masters but rely upon, provide services for, or otherwise support independent music labels).

A2IM is a not-for-profit trade organization serving the independent music community as a unified voice representing a sector that comprises over 30% of the music industry's market share in the United States (and 38% of SoundScan digital sales). The organization represents the Independents' interests in the marketplace, in the media, on Capitol Hill, and as part of the global music community. A2IM is headquartered in New York City.



### About the AFM:

Founded in 1896, the American Federation of Musicians of the United States and Canada (AFM), AFL-CIO, is the largest organization in the world dedicated to representing the interests of professional musicians.

With more than 90,000 members, the AFM represents all types of professional musicians, including those who record music for sound recordings, film scores, videogames, radio, television and commercial announcements, as well as perform music of every genre in every sort of venue from small jazz clubs to symphony orchestra halls to major stadiums. Whether negotiating fair agreements, protecting ownership of recorded music, securing benefits such as health care and pension, or lobbying legislators, the AFM is committed to raising industry standards and placing the professional musician in the foreground of the cultural landscape.



### About AFTRA:

The American Federation of Television and Radio Artists, AFL-CIO, are the people who entertain and inform America. In 32 Locals across the country, AFTRA members work as actors, journalists, dancers, singers, announcers, hosts, comedians, disc jockeys, and other performers across the media industries including television, radio, cable, sound recordings, music videos, commercials, audio books, non-broadcast industrials, interactive games, the Internet, and other digital media. The 70,000 professional performers, broadcasters, and recording artists of AFTRA are working together to protect and improve their jobs, lives, and communities in the 21st century. From new art forms to new technology, AFTRA members embrace change in their work and craft to enhance American culture and society. Visit AFTRA online at [www.aftra.com](http://www.aftra.com).

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### About the NMPA:

Founded in 1917, the National Music Publishers' Association (NMPA) is a trade association representing American music publishers. The NMPA's mandate is to protect and advance the interests of music publishers and their songwriter partners in matters relating to the domestic and global protection of music copyrights.

## COMPANY DESCRIPTIONS

3



THE RECORDING ACADEMY  
GRAMMYS ON THE HILL  
ADVOCACY & GOVERNMENT RELATIONS

### About The Recording Academy:

Established in 1957, The Recording Academy is an organization of musicians, producers, engineers and recording professionals that is dedicated to improving the cultural condition and quality of life for music and its makers. Internationally known for the GRAMMY Awards — the preeminent peer-recognized award for musical excellence and the most credible brand in music — The Recording Academy is responsible for groundbreaking professional development, cultural enrichment, advocacy, education and human services programs. The Academy continues to focus on its mission of recognizing musical excellence, advocating for the well-being of music makers and ensuring music remains an indelible part of our culture. For more information about The Academy, please visit [www.grammy.com](http://www.grammy.com).



### About The RIAA:

The Recording Industry Association of America is the trade group that represents the U.S. recording industry. Its mission is to foster a business and legal climate that supports and promotes our members' creative and financial vitality. Its members are the record companies that comprise the most vibrant national music industry in the world. RIAA® members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States. In support of this mission, the RIAA works to protect intellectual property rights worldwide and the First Amendment rights of artists; conducts consumer, industry and technical research; and monitors and reviews state and federal laws, regulations and policies. The RIAA® also certifies Gold®, Platinum®, Multi-Platinum™, and Diamond sales awards, as well as Los Premios De Oro y Platino™, an award celebrating Latin music sales.

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EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 07 2009

Mr. Rich Bengloff  
President  
American Association of Independent Music  
853 Broadway, Suite 1406  
New York, NY 10003

Dear Mr. Bengloff:

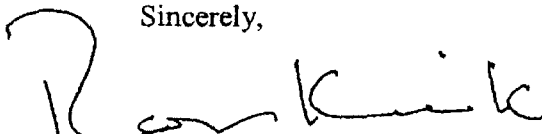
I am writing in response to your recent letter on the Anti-Counterfeiting Trade Agreement (ACTA). I wish to reassure the members of the American Association of Independent Music and all of the other organizations that joined in the September 22<sup>nd</sup> letter that the U.S. Trade Representative fully supports the ongoing ACTA negotiations.

The U.S. Government is fully committed to concluding a strong ACTA agreement that will build on existing international standards for enforcing intellectual property rights. We believe that such an agreement will help to address the growing problem of online piracy. The U.S. negotiation team is currently preparing to participate in the next round of negotiations, which will take place in Seoul, Korea in early November. We expect many of the issues mentioned in your letter to be discussed in Seoul.

We pledge to fairly represent the interests of all U.S. constituencies, including those interests represented in your letter, during those talks. You may be assured that my team will keep you fully apprised of the negotiations as they progress.

If you have any further questions or concerns, you may contact the Deputy Assistant U.S. Trade Representative and Chief Negotiator for Intellectual Property Enforcement, Ms. Kira Alvarez at (202) 395-4510 or by e-mail at [Kira\\_Alvarez@ustr.eop.gov](mailto:Kira_Alvarez@ustr.eop.gov).

Sincerely,



Ronald Kirk

cc: Secretary Gary Locke

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 07 2009

Mr. Mitch Bainwol  
Chairman and CEO  
Recording Industry Association of America  
1025 F Street, NW, 10th Floor  
Washington, D.C. 20004

Dear Mr. Bainwol:

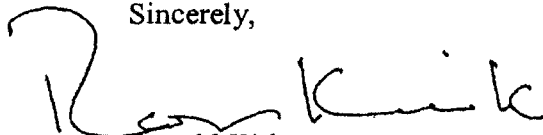
I am writing in response to your recent letter on the Anti-Counterfeiting Trade Agreement (ACTA). I wish to reassure the members of the Recording Industry Association of America and all of the other organizations that joined in the September 22<sup>nd</sup> letter that the U.S. Trade Representative fully supports the ongoing ACTA negotiations.

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Sincerely,



Ronald Kirk

cc: Secretary Gary Locke



EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 07 2009

Mr. David Israelite  
President & CEO  
National Music Publishers' Association  
101 Constitution Avenue, NW, Suite 705 East  
Washington, D.C. 20001

Dear Mr. Israelite:

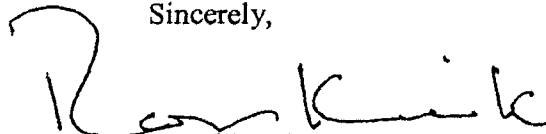
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Sincerely,



Ronald Kirk

cc: Secretary Gary Locke

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 07 2009

Jimmy Jam  
Chairman of the Board  
The Recording Academy  
3030 Olympic Boulevard  
Santa Monica, CA 90404

Dear Mr. Jam:

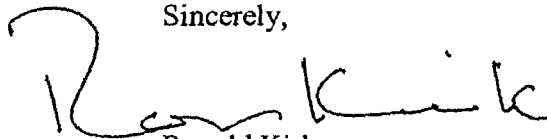
I am writing in response to your recent letter on the Anti-Counterfeiting Trade Agreement (ACTA). I wish to reassure the members of The Recording Academy and all of the other organizations that joined in the September 22<sup>nd</sup> letter that the U.S. Trade Representative fully supports the ongoing ACTA negotiations.

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Sincerely,



Ronald Kirk

cc: Secretary Gary Locke

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 07 2009

Mr. Thomas F. Lee  
President  
American Federation of Musicians of the United States and Canada  
1501 Broadway, Suite 600  
New York, NY 10036

Dear Mr. Lee:

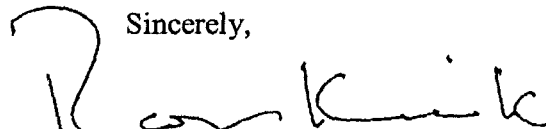
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Sincerely,



Ronald Kirk

cc: Secretary Gary Locke

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 07 2009

Ms. Roberta Reardon  
President  
American Federation of Television and Radio Artists  
260 Madison Avenue, 7th Floor  
New York, NY 10016-2401

Dear Ms. Reardon:

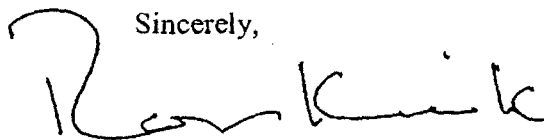
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Sincerely,



Ronald Kirk

cc: Secretary Gary Locke

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20

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



2101 L STREET NW, SUITE 1000 • WASHINGTON, DC 20037 • TEL (202) 833-4198 • FAX (202) 331-3101 • WWW.IIPA.COM • EMAIL: INFO@IIPA.COM

September 22, 2009

The Honorable Barack H. Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

RECEIVED  
SEP 25 2009  
U.S. DEPT. OF STATE

Re: Anti-Counterfeiting Trade Agreement (ACTA)

Dear Mr. President:

As the U.S. and its ACTA counterparts approach the next negotiating session in which internet piracy will be discussed substantively for the first time, we urge you to ensure that the U.S. continues to advocate for a robust agreement that establishes high standards for the enforcement of intellectual property rights in both physical and online environments, so essential to the U.S. copyright-based industries and the U.S. economy.

The U.S. copyright industries represent over 6% of U.S. GDP, over 4% of U.S. employment and, in 2007, contributed over 22% of the total economic growth in the U.S. economy. While our sector of the economy is one of the most productive and fastest growing of all sectors, that growth is wholly dependent upon the capacity and willingness of countries to establish effective standards of protection and enforcement for the intellectual property that is at the core of our creative businesses.

The ACTA has great potential to promote healthy e-commerce globally and to contribute significantly to economic growth in the United States. Ambassador Kirk and his able staff at USTR have done an excellent job to date in negotiating this agreement. With your support, we believe that ACTA can contribute to a rules-based international framework that will be of major benefit to the American people. But ACTA would be meaningless, and would fail to achieve its core mission, if it failed to address the issue of online piracy. It is essential that ACTA standards be robust, obligate countries to take effective action against infringing conduct, including online infringements, encourage intermediaries that transmit our content to cooperate with content owners globally in the fight against internet piracy, and meet international obligations by prohibiting the circumvention of technological protection measures used to prevent unauthorized use of, or access to, copyrighted materials. An ACTA designed to be a "state of the art agreement" for the 21<sup>st</sup> century that dealt only with the problems of the last century is hopefully as unthinkable to you as it is to us.

We also would like to take this opportunity to urge you to nominate as soon as possible a person to serve as the Intellectual Property Enforcement Coordinator (IPEC), a position created by Congress in its last session. The ACTA will have provisions that promote global coordination of training and capacity-building to boost enforcement efforts by our trading partners. The U.S. is uniquely positioned to contribute to this coordination process and the IPEC is an essential component of it.



Your Administration has taken a strong and principled position on the importance of intellectual property rights to U.S. trade and to our overall economy. We appreciate your attention to these issues and look forward to working with you and your Cabinet to rebuild the U.S. economy for the benefit of the American people.

Sincerely,

Tom Allen  
President and CEO  
Association of American Publishers

Dan Glickman  
Chairman and CEO  
Motion Picture Association of America

Robert W. Holleyman, II  
President and CEO  
Business Software Alliance

David Israelite  
President and CEO  
National Music Publishers' Association

Michael Gallagher  
President and CEO  
Entertainment Software Association

Mitch Bainwol  
Chairman and CEO  
Recording Industry Association of America

Jean Prewitt  
President and CEO  
Independent Film & Television Alliance

Eric H. Smith  
International Intellectual Property Alliance

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 15, 2009

The Honorable Thomas Allen  
President and CEO  
Association of American Publishers  
50 F Street, NW  
4th Floor  
Washington, D.C. 20001

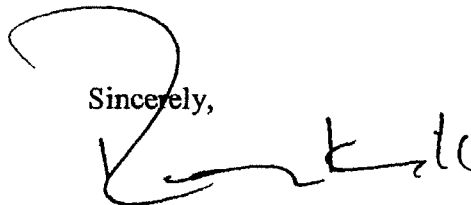
Dear Congressman Allen:

Thank you for your letter to President Obama in support of the ongoing negotiations of the Anti-counterfeiting Trade Agreement (ACTA). Let me assure you that achieving a strong ACTA remains a priority for this Administration.

This Administration recognizes the importance of the U.S. copyright industries to the U.S. economy and the harmful effects of piracy on your industries. This Administration has taken a strong stance on intellectual property rights protection and enforcement and intends to negotiate a high standard ACTA. The goal of the United States is to achieve a state-of-the-art agreement that will provide the tools needed to the participating countries to effectively address today's challenges of counterfeiting and piracy. Piracy in the digital environment is among those important challenges, which is why it is and will remain part of the discussion in ACTA.

Regarding the Intellectual Property Enforcement Coordinator position, as you know, Victoria Espinel has been confirmed in that position. My office looks forward to working with Ms. Espinel.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kirk", written over the word "Sincerely,".

Ambassador Ronald Kirk

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 15, 2009

Mitch Bainwol  
Chairman and CEO  
Recording Industry Association of America  
1025 F Street, NW  
10th Floor  
Washington, D.C. 20004

Dear Mr. Bainwol:

Thank you for your letter to President Obama in support of the ongoing negotiations of the Anti-counterfeiting Trade Agreement (ACTA). Let me assure you that achieving a strong ACTA remains a priority for this Administration.

This Administration recognizes the importance of the U.S. copyright industries to the U.S. economy and the harmful effects of piracy on your industries. This Administration has taken a strong stance on intellectual property rights protection and enforcement and intends to negotiate a high standard ACTA. The goal of the United States is to achieve a state-of-the-art agreement that will provide the tools needed to the participating countries to effectively address today's challenges of counterfeiting and piracy. Piracy in the digital environment is among those important challenges, which is why it is and will remain part of the discussion in ACTA.

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Sincerely,

  
Ambassador Ronald Kirk



EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 15, 2009

Mr. Michael Gallagher  
President  
Entertainment Software Association  
575 7th Street, NW  
Suite 300  
Washington, D.C. 20004

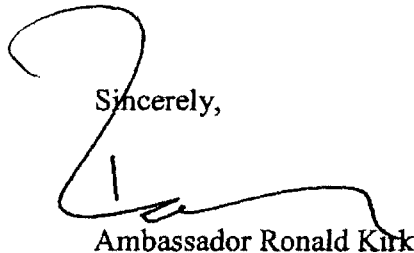
Dear Mr. Gallagher:

Thank you for your letter to President Obama in support of the ongoing negotiations of the Anti-counterfeiting Trade Agreement (ACTA). Let me assure you that achieving a strong ACTA remains a priority for this Administration.

This Administration recognizes the importance of the U.S. copyright industries to the U.S. economy and the harmful effects of piracy on your industries. This Administration has taken a strong stance on intellectual property rights protection and enforcement and intends to negotiate a high standard ACTA. The goal of the United States is to achieve a state-of-the-art agreement that will provide the tools needed to the participating countries to effectively address today's challenges of counterfeiting and piracy. Piracy in the digital environment is among those important challenges, which is why it is and will remain part of the discussion in ACTA.

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Sincerely,



Ambassador Ronald Kirk

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 15, 2009

Mr. Dan Glickman  
Chairman and CEO  
Motion Picture Association of America  
1600 Eye Street, NW  
Washington, D.C. 20006

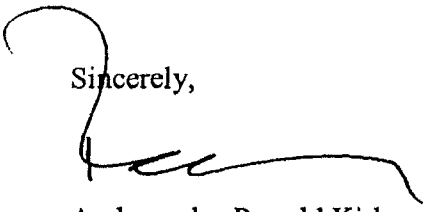
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Regarding the Intellectual Property Enforcement Coordinator position, as you know, Victoria Espinel has been confirmed in that position. My office looks forward to working with Ms. Espinel.

Sincerely,



Ambassador Ronald Kirk

*I thank you  
again for  
working the  
M. Bush -  
RK*

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 15, 2009

Mr. Robert W. Holleyman, II  
President and CEO  
Business Software Alliance  
1150 18th Street, NW  
Suite 700  
Washington, D.C. 20036

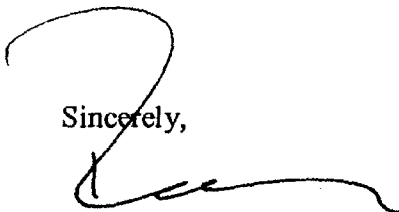
Dear Mr. Holleyman:

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This Administration recognizes the importance of the U.S. copyright industries to the U.S. economy and the harmful effects of piracy on your industries. This Administration has taken a strong stance on intellectual property rights protection and enforcement and intends to negotiate a high standard ACTA. The goal of the United States is to achieve a state-of-the-art agreement that will provide the tools needed to the participating countries to effectively address today's challenges of counterfeiting and piracy. Piracy in the digital environment is among those important challenges, which is why it is and will remain part of the discussion in ACTA.

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Sincerely,



Ambassador Ronald Kirk

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 15, 2009

Mr. David Israelite  
President and CEO  
National Music Publishers' Association  
101 Constitution Avenue, NW  
Suite 705 East  
Washington, D.C. 20001

Dear Mr. Israelite 

Thank you for your letter to President Obama in support of the ongoing negotiations of the Anti-counterfeiting Trade Agreement (ACTA). Let me assure you that achieving a strong ACTA remains a priority for this Administration.

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Sincerely,

  
Ambassador Ronald Kirk

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 15, 2009

Jean Prewitt  
President and CEO  
Independent Film & Television Alliance  
10850 Wilshire Boulevard  
9th Floor  
Los Angeles, CA 90024-4321

Dear Ms. Prewitt,

Thank you for your letter to President Obama in support of the ongoing negotiations of the Anti-counterfeiting Trade Agreement (ACTA). Let me assure you that achieving a strong ACTA remains a priority for this Administration.

This Administration recognizes the importance of the U.S. copyright industries to the U.S. economy and the harmful effects of piracy on your industries. This Administration has taken a strong stance on intellectual property rights protection and enforcement and intends to negotiate a high standard ACTA. The goal of the United States is to achieve a state-of-the-art agreement that will provide the tools needed to the participating countries to effectively address today's challenges of counterfeiting and piracy. Piracy in the digital environment is among those important challenges, which is why it is and will remain part of the discussion in ACTA.

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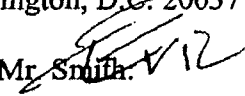


Ambassador Ronald Kirk

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

December 15, 2009

Eric H. Smith  
President  
International Intellectual Property Alliance  
2101 L Street, NW  
Suite 1000  
Washington, D.C. 20037

Dear Mr. Smith. 

Thank you for your letter to President Obama in support of the ongoing negotiations of the Anti-counterfeiting Trade Agreement (ACTA). Let me assure you that achieving a strong ACTA remains a priority for this Administration.

This Administration recognizes the importance of the U.S. copyright industries to the U.S. economy and the harmful effects of piracy on your industries. This Administration has taken a strong stance on intellectual property rights protection and enforcement and intends to negotiate a high standard ACTA. The goal of the United States is to achieve a state-of-the-art agreement that will provide the tools needed to the participating countries to effectively address today's challenges of counterfeiting and piracy. Piracy in the digital environment is among those important challenges, which is why it is and will remain part of the discussion in ACTA.

Regarding the Intellectual Property Enforcement Coordinator position, as you know, Victoria Espinel has been confirmed in that position. My office looks forward to working with Ms. Espinel.

Sincerely,

  
Ambassador Ronald Kirk

# United States Senate

WASHINGTON, DC 20510

November 23, 2009

The Honorable Ron Kirk  
United States Trade Representative  
600 17th Street NW  
Washington, D.C. 20508

Dear Ambassador Kirk:

We write to request that the public be allowed to review and comment on substantive proposals for a new Anti-Counterfeiting Trade Agreement (ACTA).

For nearly two years the United States and 37 other countries have been engaged in negotiating this agreement, which deals exclusively with the enforcement of intellectual property rights.

The ACTA involves dozens if not hundreds of substantive aspects of intellectual property law and its enforcement, including those that have nothing to do with counterfeiting. ACTA will impact businesses and the public in a wide range of areas, including those relating to access to information, and products such as pharmaceutical drugs. There are concerns about the impact of ACTA on the privacy and civil rights of individuals, on the supply of products under the first sale doctrine, on the markets for legitimate generic medicines, and on consumers and innovation in general.

The ACTA is being negotiated as an executive agreement that will not be subject to approval by Congress, yet its contents will have a large and likely durable impact. The negotiating countries have a population of 1.2 billion persons and a combined annual GDP of more than \$40 trillion.

The public has a right to monitor and express informed views on proposals of such magnitude. For that to happen, they need to have access to information, including relevant meeting details such as time, place, agenda and participants, reports or minutes of meetings, and key documents and negotiating texts distributed to all members of the negotiation.

We were encouraged by the President's January 21, 2009, Memorandum on Transparency and Open Government, in which he made clear to all members of his Administration the importance of transparency, public participation, and collaboration in government. We are concerned that the ACTA negotiations have not been conducted in a manner consistent with these principles.

We are surprised and unpersuaded by assertions that disclosures of basic information about the negotiation would present a risk to the national security of the United States, particularly as regards documents that are shared with all countries in the negotiations, and with dozens of

November 23, 2009  
The Honorable Ron Kirk  
United States Trade Representative  
Page 2

representatives of large corporations. We are concerned that the secrecy of such information reflects a desire to avoid potential criticism of substantive provisions in the ACTA by the public, the group who will be most affected by the agreement. Such secrecy has already undermined public confidence in the ACTA process, a point made recently by Dan Glickman, the CEO of the Motion Picture Association of America – a group highly supportive of the ACTA negotiation, as well as by the members of the TransAtlantic Consumer Dialogue - a group more critical of the negotiations.

We firmly believe that the public has a right to know the contents of the proposals being considered under ACTA, just as they have a right to read the text of bills pending before Congress.

Thank you for your consideration.

Sincerely,



BERNARD SANDERS  
United States Senator



SHERROD BROWN  
United States Senator

cc: The Honorable Joseph Biden, Vice President





MOTION PICTURE ASSOCIATION  
OF AMERICA, INC.  
1600 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006  
(202) 293-1966  
FAX: (202) 452-9823

DAN GLICKMAN  
CHAIRMAN  
AND  
CHIEF EXECUTIVE OFFICER

December 16, 2009

The Honorable Ron Kirk  
United States Trade Representative  
600 Seventeenth Street, NW  
Washington, D.C. 20508

Dear Ambassador Kirk:

*Ron*

I want to thank you for taking the time to meet with MPAA, its member company executives, and the leadership of our industry's unions to discuss the US motion picture and television industry's priority issues and how we can cooperate with USTR to advance the US trade agenda.

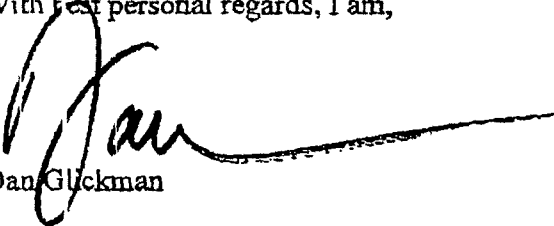
International markets account for over half of our members' revenue. To enhance opportunities for growth and provide consumers with more choices, overseas markets must be open, non-discriminatory, and secure. We remain strong supporters of the US trade agenda and we heartily support swift passage of the three pending free trade agreements and laud the launch of the Trans Pacific Partnership (TPP) negotiations. We look to the TPP to build on the existing US free trade agreements that form the backbone of the TPP, enhancing protections for intellectual property, lowering market access barriers to US audiovisual products and services, and promoting legitimate electronic commerce.

Our industry places the highest priority on securing both the legal and practical tools necessary to protect intellectual property rights in the digital age. Internet piracy has emerged as the fastest growing threat to the filmed entertainment industry depriving creators and copyright owners of the return they deserve on their massive investments of creativity, expertise, hard work, and other resources.

We appreciate that there is no one silver bullet to eradicate the online theft of creative content. There is, however, a range of technological tools and policy approaches that can and should be used to address online infringement. These efforts, which include graduated response policies as well as technologies such as watermarking and filtering, require the cooperation of Internet Service Providers and have proven to be successful in various contexts around the world. The ACTA must not preclude any solution to this challenge but, rather, encourage countries to develop policies that effectively combat online infringement. The U.S. should not waiver in advocating for robust protection and enforcement of intellectual property online.

MPAA works diligently around the world to promote the interests of our members. We are cognizant, however, that there are limitations to what we, as an industry, can achieve and I want to assure you that our industry fully appreciates the challenging and important work of USTR. The economic and cultural vitality of the US creative industries is, I believe, one of our nation's most valuable assets and we look forward to working with you and your staff to open foreign markets and to protect and enforce US intellectual property rights.

With best personal regards, I am,

A handwritten signature in black ink, appearing to read "Dan", with a long horizontal flourish extending to the right.

Dan Glickman



EUROPEAN UNION  
DELEGATION OF THE EUROPEAN COMMISSION

Head of Delegation

April 17, 2008  
D/432

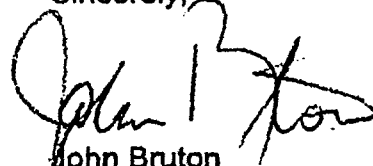
The Honorable Susan C. Schwab  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20505

Dear Ambassador Schwab,

Please find attached a copy of a letter dated April 16, 2008, from Commissioner Peter Mandelson.

With the assurance of our highest consideration.

Sincerely,



John Bruton  
Ambassador

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 17 2007

His Excellency Ryozo Kato  
Ambassador Extraordinary and Plenipotentiary  
Embassy of Japan to the United States  
2520 Massachusetts Avenue, N.W.  
Washington, D.C. 20008

Dear Ambassador Kato:

I am pleased to invite you to join me and other honorable guests to a press conference announcing the Anti-Counterfeiting Trade Agreement (ACTA). Co-Chairs of the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention will host the event on October 23 at 12 noon on Capitol Hill.

I am very pleased that Japan will partner with us in this groundbreaking leadership initiative. The announcement will demonstrate that those in the international community committed to strong intellectual property rights (IPR) protection can join together to set a new standard in combating counterfeiting and piracy. With ACTA, we will pave the way toward improved international collaboration on IPR enforcement to enhance the global climate for innovation and creativity.

I look forward to seeing you on October 23. My staff will contact your staff to provide further details on the event. In the meantime, if you have any questions, please contact Rachel Bae on my staff at 202-395-4510.

Sincerely,



Susan C. Schwab

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 17 2007

His Excellency John Bruton  
Ambassador (Head of Delegation)  
Delegation of the European Commission to the United States  
2300 M Street, N.W.  
Washington, D.C. 20037

Dear Ambassador Bruton:

I am pleased to invite you to join me and other honorable guests to a press conference announcing the Anti-Counterfeiting Trade Agreement (ACTA). Co-Chairs of the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention will host the event on October 23 at 12 noon on Capitol Hill.

I am very pleased that the European Union will partner with us in this groundbreaking leadership initiative. The announcement will demonstrate that those in the international community committed to strong intellectual property rights (IPR) protection can join together to set a new standard in combating counterfeiting and piracy. With ACTA, we will pave the way toward improved international collaboration on IPR enforcement to enhance the global climate for innovation and creativity.

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Sincerely,



Susan C. Schwab

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 17 2007

His Excellency Michael Wilson  
Ambassador Extraordinary and Plenipotentiary of  
Embassy of Canada to the United States of America  
501 Pennsylvania Avenue, N.W.  
Washington, D.C. 20001-2111

Dear Ambassador Wilson:

I am pleased to invite you to join me and other honorable guests to a press conference announcing the Anti-Counterfeiting Trade Agreement (ACTA). Co-Chairs of the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention will host the event on October 23 at 12 noon on Capitol Hill.

I am very pleased that Canada will partner with us in this groundbreaking leadership initiative. The announcement will demonstrate that those in the international community committed to strong intellectual property rights (IPR) protection can join together to set a new standard in combating counterfeiting and piracy. With ACTA, we will pave the way toward improved international collaboration on IPR enforcement to enhance the global climate for innovation and creativity.

I look forward to seeing you on October 23. My staff will contact your staff to provide further details on the event. In the meantime, if you have any questions, please contact Rachel Bae on my staff at 202-395-4510.

Sincerely,



Susan C. Schwab

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 17 2007

His Excellency Urs Ziswiler  
Ambassador Extraordinary and Plenipotentiary  
Embassy of Switzerland to the United States of America  
2900 Cathedral Avenue, N.W.  
Washington, D.C. 20008

Dear Ambassador Ziswiler:

I am pleased to invite you to join me and other honorable guests to a press conference announcing the Anti-Counterfeiting Trade Agreement (ACTA). Co-Chairs of the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention will host the event on October 23 at 12 noon on Capitol Hill.

I am very pleased that Switzerland will partner with us in this groundbreaking leadership initiative. The announcement will demonstrate that those in the international community committed to strong intellectual property rights (IPR) protection can join together to set a new standard in combating counterfeiting and piracy. With ACTA, we will pave the way toward improved international collaboration on IPR enforcement to enhance the global climate for innovation and creativity.

I look forward to seeing you on October 23. My staff will contact your staff to provide further details on the event. In the meantime, if you have any questions, please contact Rachel Bae on my staff at 202-395-4510.

Sincerely,



Susan C. Schwab

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 17 2007

His Excellency Roy Ferguson  
Ambassador Extraordinary and Plenipotentiary of  
Embassy of New Zealand to the United States of America  
37 Observatory Circle, N.W.  
Washington, D.C. 20008

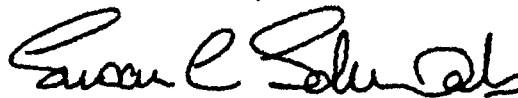
Dear Ambassador Ferguson:

I am pleased to invite you to join me and other honorable guests to a press conference announcing the Anti-Counterfeiting Trade Agreement (ACTA). Co-Chairs of the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention will host the event on October 23 at 12 noon on Capitol Hill.

I am very pleased that New Zealand will partner with us in this groundbreaking leadership initiative. The announcement will demonstrate that those in the international community committed to strong intellectual property rights (IPR) protection can join together to set a new standard in combating counterfeiting and piracy. With ACTA, we will pave the way toward improved international collaboration on IPR enforcement to enhance the global climate for innovation and creativity.

I look forward to seeing you on October 23. My staff will contact your staff to provide further details on the event. In the meantime, if you have any questions, please contact Rachel Bae on my staff at 202-395-4510.

Sincerely,



Susan C. Schwab



EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 17 2007

His Excellency Arturo Sarukhan Casamitjana  
Ambassador Extraordinary and Plenipotentiary  
Embassy of Mexico to the United States  
1911 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Ambassador Sarukhan:

I am pleased to invite you to join me and other honorable guests to a press conference announcing the Anti-Counterfeiting Trade Agreement (ACTA). Co-Chairs of the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention will host the event on October 23 at 12 noon on Capitol Hill.

I am very pleased that Mexico will partner with us in this groundbreaking leadership initiative. The announcement will demonstrate that those in the international community committed to strong intellectual property rights (IPR) protection can join together to set a new standard in combating counterfeiting and piracy. With ACTA, we will pave the way toward improved international collaboration on IPR enforcement to enhance the global climate for innovation and creativity.

I look forward to seeing you on October 23. My staff will contact your staff to provide further details on the event. In the meantime, if you have any questions, please contact Rachel Bae on my staff at 202-395-4510.

Sincerely,



Susan C. Schwab

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 22 2007

His Excellency Lee Tae Sik  
Ambassador Extraordinary and Plenipotentiary of  
Embassy of the Republic of Korea to the United States of America  
2320 Massachusetts Avenue, N.W.  
Washington, D.C. 20008


Dear Ambassador Lee:

I am pleased to invite you to join me and other honorable guests to a press conference announcing the Anti-Counterfeiting Trade Agreement (ACTA). Co-Chairs of the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention will host the event on October 23 at 12 noon on Capitol Hill.

I am very pleased that Korea will partner with us in this groundbreaking leadership initiative. The announcement will demonstrate that those in the international community committed to strong intellectual property rights (IPR) protection can join together to set a new standard in combating counterfeiting and piracy. With ACTA, we will pave the way toward improved international collaboration on IPR enforcement to enhance the global climate for innovation and creativity.

I look forward to seeing you on October 23. My staff will contact your staff to provide further details on the event. In the meantime, if you have any questions, please contact Rachel Bae on my staff at 202-395-4510.

Sincerely,



Susan C. Schwab

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 22 2007

His Excellency Joao de Vallera  
Ambassador Extraordinary and Plenipotentiary  
Embassy of Portugal to the United States  
2012 Massachusetts Ave, NW  
Washington, DC 20036

Dear Ambassador de Vallera:

I am pleased to invite you, in your capacity representing the Presidency of the European Union, to join me and other honorable guests at a press conference announcing the Anti-Counterfeiting Trade Agreement (ACTA). The Congressional Caucus on Intellectual Property Promotion and Piracy Prevention will host the event on October 23 at 12 noon on Capitol Hill.

I am very pleased that European Union will partner with us in this groundbreaking leadership initiative. The announcement will demonstrate that those in the international community committed to strong intellectual property rights (IPR) protection can join together to set a new standard in combating counterfeiting and piracy. With ACTA, we will pave the way toward improved international collaboration on IPR enforcement to enhance the global climate for innovation and creativity.

I look forward to seeing you on October 23. My staff will contact your staff to provide further details on the event. In the meantime, if you have any questions, please contact Rachel Bae on my staff at 202-395-4510.

Sincerely,



Susan C. Schwab

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

**FEB 15 2008**

The Right Honorable Peter Mandelson  
Commissioner for Trade  
European Commission  
200 Rue De La Loi  
1049 Brussels  
Belgium

Dear Commissioner Mandelson:

I am writing to express the U.S. Government's keen interest in starting formal negotiations on an Anti-Counterfeiting Trade Agreement (ACTA) as soon as possible. The problem of intellectual property theft demands our urgent leadership, and the ACTA negotiations represent an important part of that work.

Last October, in a watershed moment in the global fight against piracy and counterfeiting, I was pleased to join you, Minister Amari of Japan, and other key trading partners in simultaneously announcing our commitment to seek such an agreement. Since then, we have held two pre-negotiation meetings and are planning a third. Last week, we welcomed Australia's public announcement that it was joining the ACTA initiative.

We have made great strides in a year of pre-announcement and pre-negotiation work, but we are only at the beginning. We must continue to move the ACTA process forward by promptly launching substantive negotiations. We look to Europe to join us in taking that step.

We recognize and respect that on your side important internal issues relating to the EU negotiating mandate remain under active consideration by the EU institutions. I urge you, however, to do everything possible to ensure that any issues are resolved without further delay so that we may get down to the real business of negotiations.

I look forward to working with you and our other partners to promptly launch, and then complete, the ACTA negotiations.

Sincerely,



Susan C. Schwab

cc: Ambassador Igor Senčar, Permanent Representative of the Republic of Slovenia

The Rt Hon PETER MANDELSON PC  
MEMBER OF THE EUROPEAN COMMISSION

B-1049 BRUSSELS  
+32(0)2-298 85 90

Brussels, 16 April 2008  
A(08) 418 - D(08) 409

Ambassador Susan C Schwab  
United States Trade Representative  
USTR  
Washington

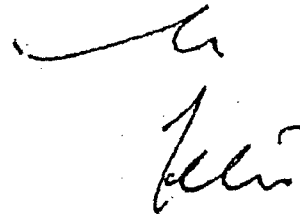
*Dear Susan,*

Thank you for your letter of 15 February 2008 in which you express the U.S. Government's keen interest in starting formal negotiations on an Anti-Counterfeiting Trade Agreement (ACTA) as soon as possible.

The EU shares the same concerns as the U.S. with regard to the problem of intellectual property theft and agrees that adequate and effective measures should be put in place to halt this phenomenon on a global scale. The need for the establishment of an improved international legal framework put forward by ACTA is strongly supported by the EU.

I am therefore pleased to inform you that the EU is now ready to fully engage in negotiations on ACTA after the formal adoption of the negotiating mandate by the Council of Ministers on 14 April 2008. As you point out, work on this issue now needs to be intensified by launching substantive ACTA negotiations in order to deliver the best possible outcome of this exercise.

In this context, the EU remains committed to fully cooperating with you and our other partners in an inclusive manner with a view to moving the ACTA process forward and to concluding the ACTA, allowing us to make progress in the fight against IPR infringements at international level.



Peter Mandelson



**EUROPEAN UNION  
DELEGATION OF THE EUROPEAN COMMISSION**

2300 M Street, NW Washington, DC 20037, U.S.A.  
telephone: 202-862-9500 fax: 202-429-1768

**Fax No:**  
**Date:** April 17, 2008  
**Total** 2+1 **Pages**  
**Pages**  
**Chrono:** 432

<b>to:</b>	Ambassador Susan Schwab USTR	<b>From:</b>	John Bruton, Head of Delegation
<b>ccs:</b>		<b>Ccs:</b>	Via Nikolas Zalmis
<b>Fax:</b>	(202) 395 4549	<b>Ext:</b>	9525
<b>Subject:</b>	Letter from Commissioner Mandelson		

**Message:**

Please see letter attached.



EUROPEAN UNION  
DELEGATION OF THE EUROPEAN COMMISSION

Head of Delegation

April 17, 2008  
D/432

The Honorable Susan C. Schwab  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20505

Dear Ambassador Schwab,

Please find attached a copy of a letter dated April 16, 2008, from Commissioner Peter Mandelson.

With the assurance of our highest consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Bruton".

John Bruton  
Ambassador

COMMITTEE ON INDIAN AFFAIRS

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

RANKING MEMBER  
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,  
GOVERNMENT INFORMATION AND  
INTERNATIONAL SECURITY

# United States Senate

Senator Tom Coburn, MD  
Russell Senate Office Building, Room 172  
Washington, DC 20510-3604  
Phone: 202-224-5754  
Fax: 202-224-6008

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

COMMITTEE ON THE JUDICIARY

RANKING MEMBER  
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

July 28, 2008

Susan C. Schwab  
Ambassador and U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 Seventeenth Street, NW, Room 215  
Washington, DC 20508

Dear Ambassador Schwab,

U.S. TRADE  
REPRESENTATIVE

8 JUL 30 19 54

RECEIVED  
OFFICE OF  
GENERAL COUNSEL

I have attached two constituent concerns regarding the Anti-Counterfeiting Trade Agreement (ACTA). I would appreciate a response to myself and to these two constituents addressing their concerns and providing an update on the ongoing ACTA negotiations.

I look forward to hearing from you soon. Thank you for your service to our great country.

Sincerely,



Tom Coburn  
United States Senator

TC: hvd



iawormsg.txt  
Capitol Correspond  
Incoming Email Message

Constituent ID: 108070

Mr. Billy Noble  
324 S 5th Ave  
Fairview, OK 73737-2008

Email: billydnoble@att.net

Phone(s): (H) (580)227-3983

Activity Created: 6/23/2008  
File Location: 119274  
Interest Code(s): TRADE

Incoming Message:

Auto reply letter sent(REPLY\_LETTER)  
RSP: Yes.

Date Received: 6/23/2008 3:09:46 PM  
Topic/Subject Desc: Other

I am a constituent and I'm very concerned about the proposed Anti-Counterfeiting Trade Agreement (ACTA) that is currently being negotiated by the Office of the United States Trade Representative. As an avid supporter of technology and the Internet, I'm concerned about reports that the trade agreement being negotiated behind closed doors may contain provisions that could harm my civil liberties and privacy rights, and damage the environment for innovation and technological development within the United States.

I am particularly disturbed that such a wide-reaching treaty is being rushed through negotiations by the end of this year, with no Congressional debate or oversight and no opportunity for meaningful public consultation.

I urge you to:

- (1) request more information about the content of ACTA from the Office of the United States Trade Representative and colleagues on the United States Senate Committees on Finance; on Foreign Relations; and on the Judiciary,
- (2) furnish your constituents with more information as soon as possible, and
- (3) call for Senate hearings on this matter before negotiation of the agreement is finalized by the United States Trade Representative

Thank you for your consideration.

iawrmmsg.txt  
Capitol Correspond  
Incoming Email Message

Constituent ID: 10857

Mr. Mark Bales  
1900 Renaissance Drive, #405  
Norman, OK 73071

Email: markbales@hotmail.com

Phone(s): (H) (405)447-0852

Activity Created: 6/27/2008  
File Location: 119315  
Interest Code(s): TRADE

Incoming Message:

Auto reply letter sent(REPLY\_LETTER)  
RSP: Yes.

Date Received: 6/27/2008 11:13:59 AM  
Topic/Subject Desc: Other

I am a constituent and I'm very concerned about the proposed Anti-Counterfeiting Trade Agreement (ACTA) that is currently being negotiated by the Office of the United States Trade Representative. As an avid supporter of technology and the Internet, I'm concerned about reports that the trade agreement being negotiated behind closed doors may contain provisions that could harm my civil liberties and privacy rights, and damage the environment for innovation and technological development within the United States.

I am particularly disturbed that such a wide-reaching treaty is being rushed through negotiations by the end of this year, with no Congressional debate or oversight and no opportunity for meaningful public consultation.

I urge you to:

- (1) request more information about the content of ACTA from the Office of the United States Trade Representative and colleagues on the United States Senate Committees on Finance; on Foreign Relations; and on the Judiciary,
- (2) furnish your constituents with more information as soon as possible, and
- (3) call for Senate hearings on this matter before negotiation of the agreement is finalized by the United States Trade Representative

Thank you for your consideration.

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

AUG 18 2008

The Honorable Tom Coburn  
United States Senate  
Washington, D.C. 20510

Dear Senator Coburn:

Thank you for forwarding to me your constituents' concerns about the Anti-Counterfeiting Trade Agreement (ACTA). I appreciate the opportunity to clarify the goals of ACTA and how it will advance the global fight against counterfeiting and piracy.

On October 23, 2007, I was pleased to be joined by a bipartisan group of Members of Congress in announcing that the United States, together with key trading partners, would be negotiating a new anti-counterfeiting agreement to combat global counterfeiting and piracy. The problems to be addressed by ACTA result in a loss of billions of dollars to workers, artists and entrepreneurs each year and can jeopardize the health and safety of citizens across the world. The global counterfeiting and piracy problem is characterized by increasing amounts of trade in fake pharmaceuticals, airplane parts, brakes, batteries, and DVDs, among many other products.

ACTA has brought together countries – including Australia, Canada, the EU, Japan, Jordan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, the United Arab Emirates and the United States – committed to strong intellectual property rights (IPR) enforcement to seek an agreement that will effectively address today's challenges surrounding IPR theft. The principal means we expect to employ under ACTA are increasing international cooperation, strengthening the framework of practices that contribute to effective enforcement, and strengthening relevant IPR enforcement measures themselves.

We have completed two rounds of negotiations; a third round is tentatively planned for early October. The substantive topics discussed so far have been provisions on civil remedies and border measures as they pertain to IPR. I have enclosed an ACTA Fact Sheet to provide you and your constituents with more details on the type of agreement that is envisioned and responds to frequently asked questions.

If you have any further questions, please do not hesitate to contact my office again.

Sincerely,

  
Susan C. Schwab

Enclosure

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

AUG 18 2008

Mr. Billy Noble  
324 S. 5<sup>th</sup> Avenue  
Fairview, OK 73737-2008

Dear Mr. Noble:

Senator Coburn forwarded your message on the Anti-Counterfeiting Trade Agreement (ACTA) to me. I appreciate the opportunity to clarify the goals of ACTA and how it will advance the global fight against counterfeiting and piracy.

On October 23, 2007, I was pleased to be joined by a bipartisan group of Members of Congress in announcing that the United States, together with key trading partners, would be negotiating a new anti-counterfeiting agreement to combat global counterfeiting and piracy. The problems to be addressed by ACTA result in a loss of billions of dollars to workers, artists and entrepreneurs each year and can jeopardize the health and safety of citizens across the world. The global counterfeiting and piracy problem is characterized by increasing amounts of trade in fake pharmaceuticals, airplane parts, brakes, batteries, and DVDs, among many other products.

I have enclosed an ACTA Fact Sheet to provide you with more details on the type of agreement that is envisioned and responds to frequently asked questions. Thank you for your interest in this issue.

If you have any further questions, please do not hesitate to contact my office again.

Sincerely,



Susan C. Schwab

Enclosure

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

AUG 18 2008

Mr. Mark Bales  
1900 Renaissance Drive, #405  
Norman, OK 73071

Dear Mr. Bales:

Senator Coburn forwarded your message on the Anti-Counterfeiting Trade Agreement (ACTA) to me. I appreciate the opportunity to clarify the goals of ACTA and how it will advance the global fight against counterfeiting and piracy.

On October 23, 2007, I was pleased to be joined by a bipartisan group of Members of Congress in announcing that the United States, together with key trading partners, would be negotiating a new anti-counterfeiting agreement to combat global counterfeiting and piracy. The problems to be addressed by ACTA result in a loss of billions of dollars to workers, artists and entrepreneurs each year and can jeopardize the health and safety of citizens across the world. The global counterfeiting and piracy problem is characterized by increasing amounts of trade in fake pharmaceuticals, airplane parts, brakes, batteries, and DVDs, among many other products.

I have enclosed an ACTA Fact Sheet to provide you with more details on the type of agreement that is envisioned and responds to frequently asked questions. Thank you for your interest in this issue.

If you have any further questions, please do not hesitate to contact my office directly.

Sincerely,



Susan C. Schwab

Enclosure



# Trade Facts

Office of the United States Trade Representative

[www.ustr.gov](http://www.ustr.gov)

August 4, 2008

## Anti-Counterfeiting Trade Agreement (ACTA)

On October 23, 2007, U.S. Trade Representative Susan C. Schwab announced that the U.S. Government was seeking to negotiate an Anti-Counterfeiting Trade Agreement (ACTA). The ACTA effort aims to provide a framework for countries committed to strong IPR protection to more effectively combat the challenges of IPR infringement today, particularly in the context of piracy and counterfeiting. We envision that:

- The ACTA will be a leadership agreement, setting a positive example for nations that aspire to strengthen IPR enforcement.
- Participation will grow over time, reflecting the growing international consensus on the need for strong IPR enforcement.

### Benefits of ACTA:

- Enhancing international IPR enforcement by partnering with countries that recognize the critical importance of such enforcement.
- Strengthening the international fight against pirates and counterfeiters who steal from businesses and workers, discourage innovation and creativity, threaten health and safety, provide an easy source of revenue for organized crime, and cause loss of tax revenue.
- Building on the successes of the Strategy Targeting Organized Piracy (STOP) initiative, a government-wide effort started in October 2004 to confront piracy and counterfeiting.

**Our goal is to achieve a new kind of agreement** combining commitments to strong laws with a framework for ongoing cooperation and the promotion of effective enforcement practices. This approach aims not only to strengthen legal frameworks, but also to bridge the gap between laws on the books and strong enforcement on the ground, and to foster ongoing cooperation and leadership. This combination builds on solid foundations:

- Past agreements have addressed the legal framework for IPR enforcement.
  - The WTO TRIPS Agreement defines international minimum standards for IPR enforcement – a base on which the ACTA will build.
  - U.S. free trade agreements (FTAs) also provide models for building on the enforcement standards contained in TRIPS.
- International cooperation and enforcement practices have already been enhanced through growing efforts in international fora such as the G8 and APEC, and efforts with the EU and with Canada and Mexico starting with the US-EU and SPP summits in 2005.

**A critical mass of key trading partners** is engaged in the ACTA effort. Participants in the first round of negotiations (June 2008) included Australia, Canada, EU, Japan, Jordan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, the United Arab Emirates and the United States.

The G8 Summit Declaration on the World Economy in July 2008 encouraged “the acceleration of negotiations to establish a new international legal framework, the Anti-Counterfeiting Trade Agreement (ACTA), and seek to complete the negotiation by the end of this year.” U.S. and EU leaders declared in June 2008 that they would “work together with other trading partners to seek to conclude a strong Anti-Counterfeiting Trade Agreement (ACTA) by the end of the year.”

**Provisions of the ACTA** are still under negotiation, but participants aim to reach agreement in three main areas:

- *International Cooperation:* Potential provisions include capacity building and technical assistance in improving enforcement, and international cooperation among enforcement agencies.
- *Enforcement Practices:* Potential provisions include formal or informal public/private advisory groups; fostering of specialized intellectual property expertise within law enforcement structures to ensure effective handling of IPR cases; and measures for raising consumer public awareness.
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### **Questions and Answers About ACTA**

***Q: How long will it take to negotiate?***

A: We are seeking to complete the negotiation by the end of this year.

***Q: Where did the idea for ACTA come from?***

A: ACTA represents the coming together of many related efforts by the United States and our trading partners. On the U.S. side, the STOP initiative announced in October of 2004 led to increased cooperative engagement with a wide range of trading partners to step up the fight against piracy and counterfeiting. That engagement gave impetus to the ACTA.

***Q: Do you think other countries will join in the future?***

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***Q: Why are you not pursuing this agreement through the G8, WTO, WIPO or other formal structure?***

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A: Yes. We look forward to partnering with developing countries through ACTA, and cooperating with ACTA partners to provide technical assistance to developing countries.

***Q: Some of the countries involved are on USTR's Special 301 Watch List. Why are they part of this?***

A: Some of the ACTA participants are still working toward important and necessary IPR reforms, which we hope to see completed as soon as possible. Participation in the ACTA may help these countries to carry out their goals of enhancing IPR enforcement.

***Q: Why has the ACTA been kept from the public?***

A: This process has not been kept from the public. On October 23, 2007, the partners involved in the proposed agreement at that time publicly announced that they had initiated preliminary discussions on the development of ACTA. The United States has invited and received public comments on the ACTA negotiations, as have several other participating governments. The following materials are available on the USTR website:

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A: No. Only the U.S. Congress can change U.S. law.

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A: No. The focus of the discussion on border measures has been on how to deal with large-scale intellectual property infringements, which can frequently involve criminal elements and pose a threat to public health and safety. Past U.S. free trade agreements have called for *ex officio* authority for border enforcement, meaning that border officials are empowered to enforce the law on their own initiative, without waiting for a complaint from a right holder. But this in no way requires searches of travelers' music players or computers.

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A: There is a definite threat to health and safety from a variety of counterfeit products such as medical supplies, batteries, brake pads, and electrical cords. Other counterfeit and pirated products may not cause such direct harm to health and safety, but they can still hurt businesses and workers, provide an easy source of funding for organized crime, and reduce incentives to innovate.

**Web Mail Message**

Web Mail Subject:      Constituent Opinion Form

I am a constituent and I'm very concerned about the proposed Anti-Counterfeiting Trade Agreement (ACTA) that is currently being negotiated by the Office of the United States Trade Representative. As an avid supporter of technology and the Internet, I'm concerned about reports that the trade agreement being negotiated behind closed doors may contain provisions that could harm my civil liberties and privacy rights, and damage the environment for innovation and technological development within the United States. I am particularly disturbed that such a wide-reaching treaty is being rushed through negotiations by the end of this year, with no Congressional debate or oversight and no opportunity for meaningful public consultation. I urge you to: (1) request more information about the content of ACTA from the Office of the United States Trade Representative and colleagues on the United States Senate Committees on Finance; on Foreign Relations; and on the Judiciary,

(2) furnish your constituents with more information as soon as possible, and

(3) call for Senate hearings on this matter before negotiation of the agreement is finalized by the United States Trade Representative Thank you for your consideration.

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

NOV 03 2008

The Honorable Jack Reed  
United States Senate  
Washington, D.C. 20510

Dear Senator Reed:

Thank you for recent letter inquiring about the Anti-Counterfeiting Trade Agreement (ACTA). I am happy to provide you with information so that you can respond to constituent inquiries about the initiative.

On October 23, 2007, I was happy to be joined by a bipartisan group of Members of Congress in announcing that the United States, together with key trading partners, would be negotiating a new anti-counterfeiting agreement to combat global counterfeiting and piracy. The problems to be addressed by ACTA result in a loss of billions of dollars to workers, artists and entrepreneurs each year and risk the health and safety of citizens across the world. The global counterfeiting and piracy problem is characterized by increasing amounts of trade in fake pharmaceuticals, airplane parts, brakes, batteries, and DVDs, among many other products.

ACTA has brought together countries – including Australia, Canada, the EU, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States – committed to strong intellectual property rights (IPR) protection and enforcement to seek an agreement that will effectively address today's challenges surrounding IPR theft. The principal means we expect to employ under ACTA are increasing international cooperation, strengthening the framework of practices that contribute to effective enforcement, and strengthening relevant IPR enforcement measures themselves.

We have completed three rounds of negotiations; a fourth round is tentatively planned for early December. The substantive topics discussed so far have been provisions on civil remedies, criminal remedies and border measures as they pertain to IPR. I have enclosed an ACTA Fact Sheet to provide you with more details on the type of agreement that is envisioned and responds to frequently asked questions. As you will see from the fact sheet and from the USTR website ([www.ustr.gov](http://www.ustr.gov)), ACTA has been and will continue to be the subject of extensive congressional, private sector and public consultation.

If you have any further questions, please do not hesitate to contact my office again.

Sincerely,



Susan C. Schwab

Enclosures



# Trade Facts

Office of the United States Trade Representative

[www.ustr.gov](http://www.ustr.gov)

August 4, 2008

## Anti-Counterfeiting Trade Agreement (ACTA)

On October 23, 2007, U.S. Trade Representative Susan C. Schwab announced that the U.S. Government was seeking to negotiate an Anti-Counterfeiting Trade Agreement (ACTA). The ACTA effort aims to provide a framework for countries committed to strong IPR protection to more effectively combat the challenges of IPR infringement today, particularly in the context of piracy and counterfeiting. We envision that:

- The ACTA will be a leadership agreement, setting a positive example for nations that aspire to strengthen IPR enforcement.
- Participation will grow over time, reflecting the growing international consensus on the need for strong IPR enforcement.

### Benefits of ACTA:

- Enhancing international IPR enforcement by partnering with countries that recognize the critical importance of such enforcement.
- Strengthening the international fight against pirates and counterfeiters who steal from businesses and workers, discourage innovation and creativity, threaten health and safety, provide an easy source of revenue for organized crime, and cause loss of tax revenue.
- Building on the successes of the Strategy Targeting Organized Piracy (STOP) initiative, a government-wide effort started in October 2004 to confront piracy and counterfeiting.

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August 7, 2008

*Via FedEx*

The Honorable Susan Schwab  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

U.S. TRADE  
REPRESENTATIVE

8 AUG 13 94:03

RECEIVED  
OFFICE OF  
GENERAL COUNSEL

Re: The Anti-Counterfeiting Trade Agreement

Dear Ambassador Schwab:

Recent intellectual property law decisions by European courts will have the effect of preventing U.S. Internet companies and other intermediaries from competing fairly in the European market. By increasing the potential liability of Internet companies and intermediaries worldwide, the proposed Anti-Counterfeiting Trade Agreement (ACTA) could worsen this pernicious trend. To prevent this result, the scope of the agreement must be carefully circumscribed.

The fundamentally different approach towards Internet company liability is demonstrated by two cases involving eBay: the June 30, 2008 ruling by the Paris Commercial Court in a case brought by Louis Vuitton and other luxury goods manufacturers; and the July 14, 2008 decision by a U.S. District Court in New York in a case initiated by Tiffany. The U.S. court ruled that eBay had no obligation to proactively police its site to prevent the sale of counterfeit Tiffany products by third parties. The court found that so long as eBay responded promptly to Tiffany's identification of auctions of counterfeit goods, eBay did not infringe Tiffany's trademarks.

In contrast, the French court found that eBay "amplified" the unlawful marketing of goods by failing to adopt adequate measures to prevent the illegal activity. The French court imposed liability for services eBay did not locate in or direct towards France. Moreover, many of the products at issue were not counterfeit under U.S. law. Rather, these products were legitimately manufactured, but their manufacturer had not authorized their sale through eBay. Unlike U.S. law, French law allows a manufacturer to prohibit the sale of its products outside of a "selective distribution network."

In short, the French court imposed liability on a U.S. company for sales that were legal in the U.S. and did not occur in France. The court ordered eBay to pay over \$60 million to the plaintiffs for the "harm" they suffered globally. The court also imposed a \$100,000 penalty for each day eBay did not comply with the court's remedies, which include a



prohibition on any display of the plaintiffs' trademarks, including in comparative advertising.

Unfortunately, this French judicial decision is not an isolated event. Last year, for example, the Belgian Court of First Instance found that Google's caching of websites, and subsequent display of the cache copies to users, infringes copyright. U.S. courts, conversely, have found this same search activity protected by the fair use doctrine.

We appreciate your objective of protecting the intellectual property of American rightsholders from infringement overseas. However, in light of these European decisions, there is a very real possibility that an agreement that would require signatories to increase penalties for "counterfeiting" and "piracy" could be used to challenge American companies engaging in online practices that are entirely legal in the U.S., that bring enormous benefit to U.S. consumers, and that increase U.S. exports.

Accordingly, before the ACTA negotiations address Internet issues, consensus must be reached on the precise scope of the agreement. To avoid adversely affecting exports and the other overseas activities of U.S. companies, the term "counterfeit" must be carefully defined to exclude lawfully manufactured goods sold outside authorized distribution channels. Specifically, to comport with U.S. law, ACTA must reflect the limitation in 15 U.S.C. § 1116(d)(1)(B), which clarifies that "counterfeit" does not extend to "any mark or designation used on or in connection with goods or services of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced ...." ACTA must clearly not apply to parallel imports. ACTA also should not apply to garden variety trademark infringement, which is not subject to the heightened enforcement regime of counterfeiting under U.S. law.

Second, "piracy" should be defined as willful copyright infringement on a commercial scale for commercial purposes. The agreement should not address secondary liability or target intermediaries such as shippers, payment systems, search engines, online market places, or interactive computer service providers. Limiting the scope of the agreement in this manner would reduce its potential negative impact on intermediaries.

Third, ACTA should not contain provisions that encourage the creation of intellectual property rights, obligations or government-fostered "best practices" that could extend beyond or modify rights and obligations existing under U.S. law. The agreement also should explicitly exclude moral rights and patents.

Fourth, because ACTA risks having such an adverse impact on intermediaries operating in full compliance with U.S. law, the negotiating process should be as open and transparent as possible. We appreciate your office's efforts to work with us. Going forward, we respectfully request the opportunity to review the text of draft proposals before USTR submits them as the position of the U.S. government, and that USTR provide to U.S. intermediaries the same information about its plans for the negotiations and potential texts that it may decide to provide to rights owner organizations that include

significant numbers of non-U.S. companies. The exact wording of proposals could significantly affect the business interests of U.S. companies.

Finally, given the importance and complexity of the issues under discussion, we urge you to proceed with the negotiations at a more deliberate pace. It is critical that there be sufficient time to ensure that the agreement is in the broad national interest.

Respectfully,

Amazon.com  
AT&T  
Computer & Communications Industry Association  
Consumer Electronics Association  
eBay Inc.  
Information Technology Association of America  
Internet Commerce Coalition  
NetCoalition  
U.S. Internet Service Provider Association  
USTelecom Association  
Verizon Communications  
Yahoo! Inc.



# Homeland Security

AUG 07 2008

The Honorable Susan C. Schwab  
Ambassador  
Office of the United States Trade Representative  
Executive Office of the President  
600 17th Street, N.W.  
Washington, D.C. 20508

U.S. TRADE  
REPRESENTATIVE

8 AUG 26 AM 11:21

RECEIVED  
OFFICE OF  
GENERAL COUNSEL

Dear Ambassador Schwab:

I understand that the Office of the United States Trade Representative (USTR) is leading an effort to negotiate a multilateral Anti-Counterfeiting Trade Agreement (ACTA). While the U.S. Department of Homeland Security (DHS) supports this effort, I am concerned that some possible outcomes of the ACTA negotiations may harm national security and the ability of Customs and Border Protection to exercise managerial discretion in setting priorities for intellectual property-right (IPR) enforcement.

I urge the USTR to consider the DHS concerns laid out in the enclosed white paper and to adopt the recommendation of including a preamble in the ACTA language that will safeguard DHS against any resource commitment that may detract from other important Departmental priorities. While IPR enforcement remains a duty of DHS, we must balance our resources to accommodate both our traditional customs revenue functions and our critical anti-terrorism mission.

I would be happy to discuss this issue with you further.

Sincerely,

Stewart Baker  
Assistant Secretary  
for Policy

Enclosure



Homeland  
Security

**DHS Policy Position on the Border Measures Draft Language  
of the Anti-Counterfeiting Trade Agreement**

The United States Trade Representative (USTR) is leading an effort, co-sponsored by the Government of Japan (GOJ), to negotiate a multilateral Anti-Counterfeiting Trade Agreement (ACTA). The U.S. Department of Homeland Security (DHS) supports this effort, but is concerned that some possible outcomes of the ACTA negotiations may harm national security and the ability of Customs and Border Protection (CBP) to exercise managerial discretion in setting priorities for intellectual property-right (IPR) enforcement.

DHS, therefore, seeks to ensure that, in the ACTA negotiations, (1) CBP will not be committed to IPR-enforcement processes we may need to alter in the future, (2) other nations' customs and border authorities will not be required or encouraged to devote resources to IPR enforcement at the expense of more important anti-terrorism efforts, and (3) DHS's discretion to set priorities in its own border-enforcement mission will not be restricted.

Given these significant concerns, DHS suggests that, as ACTA is reduced to a written proposal, a preamble be included in the proposal clearly stating that ACTA does not obligate the U.S. government (or other nations) to act in any way that might infringe on national security priorities.

**Recommendation**

DHS urges USTR to add the following passage to the ACTA preamble in order to mitigate DHS concerns:

*The United States approves the Anti-Counterfeiting Trade Agreement (ACTA) with the following reservations, which shall apply to the obligations of the Signatories under this agreement:*

*That nothing within this agreement shall be understood to restrict the United States customs authority [or the customs authorities of other Signatories] to exercise discretion in setting the priority given to intellectual property right enforcement and to reprioritize its enforcement activities in response to national and homeland security or other changing circumstances.*

*That nothing within this agreement shall be understood to limit the United States customs authority [or the customs authorities of other Signatories] to establish or revise future fee collection policy.*

*That nothing within this agreement shall be understood to require Signatories to significantly alter the allocation of intellectual property right and customs enforcement authority and resources to the detriment of existing responsibilities and higher priority mission areas, such as national and homeland security.*

**DHS concerns with ACTA explained:**

**1. ACTA language could bind the United States to unrealistic and unfavorable rules relating to fees for services**

The proposed language on the "Border Measures" section of ACTA could codify in international law, certain provisions that would be unfavorable to CBP and, once adopted as an international agreement, even Congress would be unable to alter the rules to make them more economically justifiable. For example, the proposed U.S.-Japan language of the ACTA Border Measures section currently states:

**Chapter 2, Section 2.12:** *"Each Party shall provide that any application fee, merchandise storage fee, or destruction fee to be assessed in connection with the procedures described in this Section shall not be allocated in a manner or set at an amount that unreasonably burdens right holders or unreasonably deters recourse to these procedures."*

While CBP currently bears the costs of storage and destruction, it does so as a matter of grace. The cost of enforcing private rights, such as trademarks, can reasonably be placed on the beneficiary. That is particularly true in a context such as this; rights holders often have a choice whether to bring enforcement actions on their own or through border measures. That choice should not be influenced by the consideration that using government enforcement resources will save the rights holder the cost of storing and destroying the infringing goods. For these reasons, if CBP concludes that waiving storage or destruction fees has created an unhealthy incentive to shift enforcement from the private sector to government, it should have authority to recommend that fees for storage and destruction be charged to the beneficiary of the enforcement action.

This section of ACTA could be interpreted as taking away that authority and protecting rights holders from measures to recover costs incurred for their benefit. This is imprudent and difficult to justify on fiscal or policy grounds.

**2. ACTA would expend international goodwill by requiring other governments to change organizational and legal structures**

The language being proposed under the ACTA negotiations seeks to put other countries' IPR enforcement on par with U.S. standards. For example, the proposed language states:

**Chapter 2, Section 2.7:** *"Each Party shall provide that its customs authorities may act upon their own initiative, to suspend the release of suspected counterfeit or confusingly similar trademark goods or suspected pirated copyright goods with respect to imported, exported [Option US:, or in-transit] goods including suspected counterfeit or confusingly similar trademark goods or suspected pirated copyright goods admitted to, withdrawn from, or located in free trade zones."*

In essence, this language would encourage foreign customs authorities to bar imports and exports if the authorities concluded on their own initiative that the goods *might* violate copyright or be confusingly similar to trademarked goods. These are sweeping powers to act against suspected IP violators, and the powers can easily be misused either intentionally or unintentionally. Misuse could even harm small U.S. exporters competing with foreign companies favored by local governments. Generally speaking, the customs agencies of the other participating countries do not possess the same level of authority as CBP – many of them are not designated competent authorities to make determinations on IPR infringements. This substantially increases the risk that the sweeping powers will be misused.

The draft agreement also seeks to establish processes and timelines regarding infringement determination, penalty application, and destruction of goods. Hence, for these countries to comply with the proposed ACTA language would require significant legal and organizational changes, as well as resource commitments for staffing and training purposes. No one is more aware than DHS of how costly a reorganization of government functions can be. With this proposal, we are running the risk of setting off turf wars inside other governments – and of alienating the agencies that have IPR authority today. This could cost us cooperation from those agencies. Without a clear, demonstrated improvement in enforcement from such a reorganization, we should not push reorganization as a U.S. priority in the talks.

### 3. ACTA could limit CBP's discretion in its enforcement of IPR

While recognizing that CBP continues to maintain traditional customs responsibilities, including IPR enforcement, the current ACTA language would require DHS to allocate a certain level of resources to enforcing trademark and copyright IPR infringements and restrict the Department's flexibility to re-prioritize the issue in the future. DHS has been fully supportive of IPR enforcement, but it does not support the U.S. Government (USG) entering into international obligations that would limit CBP's future ability to respond to changing circumstances by reprioritizing all of its enforcement activities. In particular, the USG should not obligate the Department, through an international document, to pursue IPR enforcement at the expense of other serious enforcement priorities, and certainly not at the expense of the anti-terrorism mission of the Department. CBP should retain the ability and flexibility to re-prioritize resources and attention to the ever-changing demands facing the Department.

Similarly, we should also be quite cautious about pressing foreign governments to "fence off" dedicated resources to non-terrorism mission areas, for fear of sending a message that would be inconsistent with the need for increased cooperation on and commitment of resources to anti-terrorism activities, which we emphatically advocate in other multilateral and bilateral venues. In managing relationships with international counterparts, DHS has and will continue to emphasize resource commitment and cooperation on priority anti-terrorism mission areas and will appropriately try to minimize expending our partners' goodwill in areas of lesser priority.

Ambassador Susan C. Schwab  
United States Trade Representative  
Office of the USTR  
600 17th Street NW  
Washington, DC 20508  
Tel: 202-395-7360  
Email: [kwashington@ustr.eop.gov](mailto:kwashington@ustr.eop.gov)

Re: "Anti-Counterfeiting Trade Agreement"

Dear Ambassador Schwab:

Since late 2007, the United States and a number of other countries, including Australia, Canada, the European Union, Japan, Mexico, and South Korea, have been negotiating an "Anti-Counterfeiting Trade Agreement" (ACTA). The aggressive timetable of the negotiation effort, together with a pronounced lack of transparency, create a risk that controversial or ill-advised provisions could find their way into the final text of an agreement with no meaningful opportunity for debate or modification.

ACTA's stated goal is to establish a new set of high standards for enforcement efforts to combat "counterfeiting and piracy." ACTA would be separate from existing international agreements and institutions such as TRIPS, the WTO, and WIPO. It would set benchmarks regarding intellectual property enforcement, which individual nations could then adopt and (probably more importantly in the view of U.S. negotiators) press other nations to adopt.

Beyond the broad statement of goals, however, there is little public information about what specific provisions or commitments negotiators envision. The Office of the United States Trade Representative (USTR) has issued a Fact Sheet outlining three categories of expected provisions. The first category is "International Cooperation," which according to USTR could include measures relating to technical assistance and improved cooperation among different nations' enforcement agencies. The second category, "Enforcement Practices," could include "best practices" on subjects like public/private advisory groups, specialized training for intellectual property enforcement personnel, and public awareness campaigns. The third category, "Legal Framework," appears largely open-ended, calling for a "strong and modern legal framework" in areas such as criminal enforcement, civil enforcement, border measures, optical disk piracy, and - importantly for CDT - "Internet distribution and information technology."

These general categories and accompanying examples offer limited insight into ACTA's likely scope and details. They give no specifics concerning what ACTA might actually require on the enumerated topics, and to date no text of any possible provisions have been released.

In February 2008, USTR requested public comments in response to its Fact Sheet. CDT submitted comments as part of a group that included the Consumer Electronics Association, NetCoalition, the Library Copyright Alliance, and Visa. CDT and its fellow

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REPRESENTATIVE

commenters argued that ACTA's focus should be enforcement of current I.P. law against bad actors engaged in commercial-scale counterfeiting or infringement. The comments cautioned against delving into substantive issues of I.P. law or imposing special burdens on online intermediaries.

I commend to you comments of CDT, et al. to USTR:  
[http://cdt.org/copyright/20080321 ACTA Principles.pdf](http://cdt.org/copyright/20080321_ACTA_Principles.pdf).

I hope you will give these comments the weight they deserve.

Yours sincerely,  
Robert E. Rutkowski

cc:  
House Leadership

2527 Faxon Court  
Topeka, Kansas 66605-2086  
P/F: 1 785 379-9671  
E-mail: [rutkowski@terraworld.net](mailto:rutkowski@terraworld.net)



PATRICK J. LEAHY, VERMONT, CHAIRMAN

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STEPHANIE A. MIDDLETON, *Republican Staff Director*  
NICHOLAS A. ROSS, *Republican Chief Counsel*

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 2, 2008

The Honorable Susan C. Schwab  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, D.C. 20508

Dear Ambassador Schwab:

We applaud your efforts, through discussion of an Anti-Counterfeiting Trade Agreement (ACTA), to elevate the importance of strong intellectual property protection. We write to express our concern, however, about the breadth of the issues it could cover, and the specificity with which it could be written.

Protecting intellectual property through better international coordination and improved standards of enforcement abroad is a valuable pursuit. We have steadfastly supported funding in the Foreign Operations Appropriations bill to assist foreign countries in combating the piracy of U.S. intellectual property rights. A top priority of ours in this Congress is legislation to provide greater tools and resources for law enforcement to combat intellectual property theft, and to improve coordination of such efforts within the Federal government. We are disappointed that the Administration has been resistant to this effort and has opposed additional enforcement authority, such as civil enforcement in copyright cases where the violation rises to the level of criminal activity.

We are concerned, however, that the ACTA under consideration will prescribe rules for protection so specifically that it could impede Congress's ability to make constructive policy changes in the future. Our concern that ACTA, if not drafted with sufficient flexibility, could limit Congress's ability to make appropriate refinements to intellectual property law in the future is institutional and one that we raised when the United States Senate implemented the US-Peru Free Trade Agreement. It is compounded in this situation by the lack of transparency inherent in trade negotiations and the speed with which the process is moving.

Regarding the potential breadth of ACTA, we strongly urge you not to permit the agreement to address issues of liability for service providers or technological protection measures. The contours of the law and liability exposure in these areas continue to be debated in the courts and in Congress. As technology is not static, Congress must have the ability to tailor the law as developments warrant without concern that a change may run afoul of ACTA.

U.S. TRADE  
REPRESENTATIVE

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GENERAL COUNSEL

The Honorable Susan C. Schwab  
October 2, 2008  
Page 2 of 2

We urge you not to rush into a new, broad Anti-Counterfeiting Trade Agreement that may have a significant impact on intellectual property protection at home and abroad and which can take effect without formal Congressional involvement. We encourage you to limit the agreement to improved coordination among nations and robust, but flexible standards for civil, criminal, and border enforcement.

We look forward to continuing to work with you on this important issue and appreciate your commitment to protecting the intellectual property.

Sincerely,



PATRICK LEAHY  
Chairman



ARLEN SPECTER  
Ranking Member

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 29 2008

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your support for strong enforcement of intellectual property rights (IPR) around the world. This Administration has made it a top priority to work with our trading partners to fight counterfeiting and piracy that rob our workers and businesses of billions of dollars each year and put public health and safety at risk. Negotiation of the Anti-Counterfeiting Trade Agreement (ACTA) is an important part of that global effort.

I also thank you for sharing your concerns regarding the scope and specificity of the ACTA. Since I announced the launch of the negotiations on the ACTA last year, my staff has continuously provided information to, and solicited feedback from, congressional staff and interested stakeholders. In that spirit, we appreciate your letter and your committee staff's regular engagement with us.

The scope of the ACTA negotiations to date has encompassed issues of criminal, civil, and border enforcement of IPRs, and we have shared details of our positions with your staff. These same issues have been included under the heading of IPR enforcement in the intellectual property chapters of every free trade agreement (FTA) approved by the U.S. Congress under trade promotion authority (TPA) since 2002, as well as the FTAs now pending Congressional approval.

Our approach to IPR enforcement in our FTAs has been guided by the negotiating objectives that Congress set out in the Bipartisan Trade Promotion Authority Act of 2002. Those negotiating objectives call for a standard of protection similar to U.S. law through providing strong protection for new technologies and new methods of transmission, ensuring that rightholders have the legal and technological means to control the use of their works through the Internet and other media, and providing overall strong enforcement. Consistent with this guidance, the multiple FTAs that this Administration has negotiated and the Congress has approved, include detailed enforcement provisions relating to the Internet and emerging technologies, including provisions on limitation of liability of Internet service providers and on technological protection measures.

Even though the ACTA negotiation is not subject to TPA procedures, I am confident that the outcome we achieve will remain consistent with the IPR goals that the Congress articulated in connection with TPA.

The Honorable Patrick Leahy  
Page Two

We have not yet put forward a U.S. position on these issues in the ACTA negotiations, but I reiterate our willingness to work with your staff and to consider less detailed provisions as long as they remain fundamentally strong. In addition to working with Congress, we are carefully considering concerns of all interested stakeholders.

I appreciate that Congress has the authority to legislate in these areas, and we expect that the ACTA will complement the steps the Congress has already taken in this regard. The livelihoods of American creators and innovators increasingly depend on working with our trading partners to secure and deliver on firm commitments to provide for IPR enforcement. The ACTA, like our FTAs, will achieve a strong balance of firm and appropriately flexible enforcement commitments, and we wish to continue working with you to ensure that result.

I have instructed my staff to make every effort to work with our trading partners to achieve a high-quality ACTA by the end of the year. However, I also have made it clear that the quality of the ACTA is my highest priority. If a high-quality agreement is not possible by the end of this Administration, I am prepared to pass the baton to my successor. We will not rush to sign an agreement that does not reflect appropriately high standards.

Finally, I greatly appreciate your commitment to advancing strong IPR enforcement through legislation. I made a point of sharing your letter with my counterparts in other agencies, including law enforcement agencies, to ensure that they are aware of your views.

I look forward to continuing to work with you to advance the international effort to strengthen enforcement of intellectual property rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan C. Schwab". The signature is fluid and cursive, with the first name "Susan" being the most prominent part.

Susan C. Schwab

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

OCT 29 2008

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Senator Specter:

Thank you for your support for strong enforcement of intellectual property rights (IPR) around the world. This Administration has made it a top priority to work with our trading partners to fight counterfeiting and piracy that rob our workers and businesses of billions of dollars each year and put public health and safety at risk. Negotiation of the Anti-Counterfeiting Trade Agreement (ACTA) is an important part of that global effort.

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The Honorable Arlen Specter  
Page Two

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Finally, I greatly appreciate your commitment to advancing strong IPR enforcement through legislation. I made a point of sharing your letter with my counterparts in other agencies, including law enforcement agencies, to ensure that they are aware of your views.

I look forward to continuing to work with you to advance the international effort to strengthen enforcement of intellectual property rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan C. Schwab". The signature is fluid and cursive, with the first name "Susan" being the most prominent part.

Susan C. Schwab

An ICC Initiative  
**BASCAP**  
 Business Action to Stop  
 Counterfeiting and Piracy



To: Ambassador Susan Schwab  
 From: ICC-BASCAP and INTA  
 Re: Memorandum to ACTA Negotiators  
 Date: October 8, 2008  
 No. Pages (Incl. cover): 4 pgs

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 OFFICE OF  
 GENERAL COUNSEL  
 OCT 15 10:39  
 U.S. TRADE  
 REPRESENTATIVE

Please find enclosed recommendations and business perspectives on criminal enforcement measures in light of the next meeting of the negotiators of the Anti-counterfeiting Trade Agreement (ACTA) this week in Tokyo, Japan. We encourage you to share this with your representatives who are participating in the negotiation process.

The business response group has previously submitted recommendations on the general framework of ACTA as well as on border measures and civil enforcement in June and July, respectively. As noted in previous submissions, the associations that have signed on to the attached memo will likely continue to submit comments separately to their respective governments. However, as a group, we believe the attached recommended provisions should be included to ensure an effective ACTA. We hope you will give them thoughtful consideration.

We look forward to additional opportunities to share our expertise and experience as you continue to develop the various provisions in ACTA. Should you have any questions or further information requests, please feel free to contact us.

Sincerely,

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 Coordinator  
 Business Action to Stop Counterfeiting and Piracy  
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## Business Views on ACTA | October 2008

**Memorandum to:** ACTA Negotiators

**Subject:** Business Perspectives on Criminal Enforcement Provisions

**From:** Concerned business groups operating in ACTA nations

**Date:** October 08, 2008

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While administrative and civil enforcement are important tools in combating counterfeiting and piracy, they cannot substitute for effective criminal enforcement in addressing today's counterfeiting and piracy issues. The undersigned business associations believe in the critical importance of strict criminal enforcement measures and have compiled the nine critical recommendations set forth below on criminal enforcement provisions for the Anti-Counterfeiting Trade Agreement (ACTA).

We would like to note that some of our recommendations with regards to seizure and destruction of counterfeit and pirated goods, development of calculation methods for fines, providing *ex officio* authority to enforcement officials and elimination of bond requirements to rights holders, among others, appear in previous submissions on border measure and civil enforcement. We have reiterated them in this submission as these provisions should also apply to criminal enforcement.

In some instances, counterfeiting and piracy are conducted by transnational organized crime groups and although some countries have well-developed programs to address counterfeiting and piracy, many governments have insufficient legislative guidance and budget authority to meaningfully deter criminal behavior and prosecute criminals who engage in IP theft. Inconsistencies and differing standards in determining and applying criminal sanctions also add to the many loopholes exploited by infringers to engage in counterfeiting and piracy activities across borders. The business community encourages ACTA negotiators to remove jurisdictional gaps and weaknesses that enable infringers to find safe havens between countries by harmonizing, at an international level, criminal sanctions against counterfeiting and piracy. This would ensure that a common minimum level of deterrence is applied throughout the world through the trade agreement.

We understand that the third meeting of the ACTA negotiators will take place in October 2008. We strongly urge the negotiating countries to continue to engage industry and other stakeholders to create an ACTA with stronger and clearer international guidelines and standards for addressing counterfeiting and piracy. The business associations represented in the memo stand ready to provide further assistance and comments to the drafting process of ACTA.



## Business Views on ACTA | October 2008

**Recommendations for Criminal Enforcement Provisions**

Criminal enforcement provisions in ACTA should:

1. Provide for criminal procedures and penalties to be applied to willful acts of counterfeiting and copyright piracy, which includes acts that cause substantial commercial harm. In addition, governments should treat importation or exportation of counterfeit or pirated goods as illegal activities subject to criminal penalties.
2. Encourage judicial authorities to impose penalties at levels sufficient to deter future infringements, including imposing imprisonment and fines for willful counterfeiting and piracy actions. Governments should be encouraged to develop calculation methods that lead to fines against counterfeiters and pirates commensurate to the harms caused in order to increase the deterrent impact of fines, and impose sanctions, such as contempt of court, for failure to pay such fines.
3. Criminalize the laundering of proceeds from counterfeiting and piracy. To ensure that counterfeiters and pirates are not profiting from their crimes and strengthen confiscation regimes that provide for the identification, freezing, seizure and confiscation of funds and property acquired through counterfeiting and piracy.
4. Take measures to disrupt the sale of counterfeit and pirated goods on leased premises by establishing a legal framework under which landlords would be held liable for failure to terminate existing leases and preventing or otherwise controlling future IP violators on their premises.
5. Ensure the ability of law enforcement authorities to take action at their own initiative and provide relevant officials with the authority to seize all materials and implements used to manufacture or package counterfeit and pirate goods and any documentary evidence relevant to the offense and assets traceable to the infringing activity. Officials should also be given the authority to impose imprisonment as a sanction against failure to comply with a disclosure order.
6. Require that all counterfeit and pirate goods be destroyed, definitively removed from channels of commerce, or disposed of with the rights holders' consent where there is no health or safety risk. Bond requirements and the imposition of the costs of storage and destruction of goods on rights' holders should be eliminated.
7. Provide prompt and reasonable access by rights holders to relevant documents and information on counterfeiters and pirates held by government agencies for the rights holders' use in conducting private investigations, filing of complaints or pursuing proceedings in the courts or with other government agencies.
8. Create specialized intellectual property crimes investigation and prosecution units in law enforcement and prosecution structures, respectively, and allocate resources towards training judges and other relevant enforcement authorities.

Business Views on ACTA | October 2008

- 9. Establish a system for exchange of information between relevant enforcement officials in the signatory countries on subjects such as criminal counterfeiters and pirates and best practices in investigating and prosecuting them.

On behalf of:



United Kingdom



European Union



Spain



Germany



Canada



European Commission Trade Policy Forum

European Union



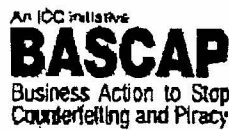
USA



European Union



Mexico



The European Association of Trade Mark Owners



USA



Austria



France

September 15, 2008

Ambassador Susan C. Schwab  
United States Trade Representative  
600 17th Street, NW  
Washington, DC 20508  
U.S.A  
Fax 202-395-4549

Dear Ambassador Schwab,

**Re: Anti-Counterfeiting Trade Agreement Negotiations**

We are writing to urge the negotiators of the Anti-Counterfeiting Trade Agreement (ACTA) to immediately publish the draft text of the agreement, as well as pre-draft discussion papers (especially for portions for which no draft text yet exists), before continuing further discussions over the treaty. We ask also that you publish the agenda for negotiating sessions and treaty-related meetings in advance of such meetings, and publish a list of participants in the negotiations.

There is no legitimate rationale to keep the treaty text secret, and manifold reasons for immediate publication.

The trade in products intended to deceive consumers as to who made them poses important but complicated public policy issues. An overbroad or poorly drafted international instrument on counterfeiting could have very harmful consequences. Based on news reports and published material from various business associations, we are deeply concerned about matters such as whether the treaty will:

- \* Require Internet Service Providers to monitor all consumers' Internet communications, terminate their customers' Internet connections based on rights holders' repeat allegation of copyright infringement, and divulge the identity of alleged copyright infringers possibly without judicial process, threatening Internet users' due process and privacy rights; and potentially make ISPs liable for their end users' alleged infringing activity;
- \* Interfere with fair use of copyrighted materials;
- \* Criminalize peer-to-peer file sharing;
- \* Interfere with legitimate parallel trade in goods, including the resale of brand-name pharmaceutical products;
- \* Impose liability on manufacturers of active pharmaceutical ingredients (APIs), if those APIs are used to make counterfeits -- a liability system that may make API manufacturers reluctant to sell to legal generic drug makers, and thereby significantly damage the functioning of the legal generic pharmaceutical industry;
- \* Improperly criminalize acts not done for commercial purpose and with no public health consequences; and
- \* Improperly divert public resources into enforcement of private rights.

Because the text of the treaty and relevant discussion documents remain secret, the public has no way of assessing whether and to what extent these and related concerns are merited.

Equally, because the treaty text and relevant discussion documents remain secret, treaty negotiators are denied the insights and perspectives that public interest organizations and individuals could offer. Public review of the texts and a meaningful ability to comment would, among other benefits, help prevent unanticipated pernicious problems arising from the treaty. Such unforeseen outcomes are not unlikely, given the complexity of the issues involved.

The lack of transparency in negotiations of an agreement that will affect the fundamental rights of citizens of the world is fundamentally undemocratic. It is made worse by the public perception that lobbyists from the music, film, software, video games, luxury goods and pharmaceutical industries have had ready access to the ACTA text and pre-text discussion documents through long-standing communication channels.

The G8's recent Declaration on the World Economy implored negotiators to conclude ACTA negotiations this year. The speed of the negotiations makes it imperative that relevant text and documents be made available to the citizens of the world immediately.

We look forward to your response, and to working with you toward resolution of our concerns.

Sincerely,

Essential Action  
Robert Weissman, Director  
P.O. Box 19405  
Washington, DC, USA 20036  
Tel +1 (202) 387-8030  
Fax +1 (202) 234-5176

Act Up East Bay  
Oakland, CA, USA

Act Up Paris  
Paris, France

African Underprivileged Children's Foundation (AUCF)  
Lagos, Nigeria

AIDS Access Foundation  
Thailand

AIDS Healthcare Foundation  
Los Angeles, CA, USA

AIDS Treatment News  
Philadelphia, PA, USA

American Medical Student Association  
Reston, VA, USA

AIS Colombia  
Bogotá, Colombia

ASEED Europe  
Amsterdam, The Netherlands

Asia Pacific Network of People Living with HIV/AIDS (APN+)

Australian Digital Alliance  
Kingston, Australia

Australian National University  
Canberra, Australia

Australian Privacy Foundation  
Sydney, Australia

Bharatiya Krishak Samaj  
New Delhi, India

BUKO Pharma-Kampagne  
Bielefeld, Germany

The Canadian HIV/AIDS Legal Network  
Toronto, Canada

The Canadian Internet Policy & Public Interest  
Clinic (CIPPIC)  
University of Ottawa, Faculty of Law  
Ottawa, Canada

The Canadian Library Association  
Ottawa, Canada

The Canadian Treatment Action Council  
Toronto, Canada

Center for Democracy and Technology  
Washington, DC, USA

Center for Digital Democracy  
Washington, DC, USA

Center for Policy Analysis on Trade and Health (CPATH)  
San Francisco, CA, USA

Centre for Safety & Rational Use of Indian Systems of Medicine  
Ibn Sina Academy of Medieval Medicine & Sciences  
Aligarh, India

The Center for Women's Culture & Theory  
Korea

Chinese Domain Name User Alliance  
Beijing, China

Christian Media Network  
Korea

CHOICE (Australian Consumers Association)  
Marrickville, Australia

Community HIV/AIDS Mobilization Project (CHAMP)  
New York, NY, USA

Consumentenbond  
The Hague, Netherlands

Consumer Action  
San Francisco, CA, USA

Consumer Federation of America  
Washington, DC, USA

Consumers Union (Publisher of Consumer Reports)  
Yonkers, NY, USA

Consumers Union of Japan (Nihon Shohisha Renmei)  
Tokyo, Japan

La Corporacion Opcion por el Derecho a Ser y el Deber de Hacer, NIT  
Bogotá, Colombia

Corporate Europe Observatory  
Amsterdam, The Netherlands

Cultural Action  
Korea

Diverse Women for Diversity (DWD)  
New Delhi, India

Drug Study Group (DSG)  
Thailand

Ecologist Collective (Colectivo ecologista Jalisco A.C.)  
Guadalajara, México

Egyptian Initiative for Personal Rights  
Cairo, Egypt

Electronic Frontier Foundation  
San Francisco, CA, USA

Electronic Frontiers Australia  
Adelaide, Australia

The Electronic Privacy Information Center (EPIC)  
Washington, DC, USA

European AIDS Treatment Group (EATG)  
Brussels, Belgium

Foreign Policy in Focus  
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Washington, DC, USA

Foundation for Integrative AIDS Research (FIAR)  
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Fundación Ifarma  
Bogotá, Colombia

Foundation For Consumers (FFC)  
Thailand

Foundation for Media Alternatives  
Philippines

Foundation for Research in Science Technology & Ecology (RFSTE)  
India

Free Press  
Washington, DC, USA

FTA Watch  
Thailand

Global AIDS Alliance  
Washington, DC

Global Health through Education, Training & Service (GHETS)  
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Global Trade Watch  
Washington, DC, USA

Gram Bharati Samiti Society for Rural Development  
Amber, India

Gyeonggi NGO Network  
Korea

Health Action International (HAI) – Africa  
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Health Action International – Latin America & Caribbean  
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Health GAP (Global Access Project)  
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HealthWrights (Workgroup for People's Health and Rights)  
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Healthy Skepticism Inc.  
Adelaide, Australia

Home Recording Rights Coalition  
Washington, DC, USA

INEGroup  
Atlanta, GA, USA

Information & Culture Nuri for the Disabled  
Korea

Initiative For Health Equity & Society (IHES)  
New Delhi, India

International Federation of Library Associations and Institutions (IFLA)  
The Hague, Netherlands

International Peoples Health Council (South Asia)

Intersect Worldwide  
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IPLeft  
Seoul, Korea

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Korean Progressive Network Jinbonet  
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Labour, Health and Human Rights Development Centre  
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Medsin-UK

Médecins sans Frontières (Doctors without Borders)  
Campaign for Essential Medicines  
Geneva, Switzerland

Media Access Project  
Washington, DC, USA

La Mesa de ONGs Con Trabajo en VIH/SIDA  
Bogotá, Colombia

Misión Salud  
Bogotá, Colombia

National Consumer Council (NCC)  
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National Working Group on Patent Laws  
New Delhi, India

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People's Coalition for Media Reform  
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Phasuma Consultancy & Training  
Amsterdam, The Netherlands

Positive Malaysian Treatment Access & Advocacy Group (MTAAG+).  
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Privacy Activism  
USA

Privacy Rights Clearinghouse  
San Diego, CA, USA

Public Knowledge  
Washington, DC, USA

Rural Reconstruction Nepal (RRN)  
Kathmandu, Nepal

Social movement to combat private media ownership and enhance public media  
Korea

Student Global AIDS Campaign  
USA

Swisslinux.org  
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The Transparency and Accountability Network  
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Third World Network  
Malaysia

Universities Allied for Essential Medicines (UAEM)  
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U.S. Public Interest Research Group (PIRG)  
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Women & Health ! (WAH ! )  
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## OPENNESS IN TRADE AND OTHER MULTILATERAL NEGOTIATIONS

Negotiating texts are commonly made public in multilateral trade negotiation, although some trade negotiations are characterized by secrecy.

Examples of negotiations where texts are or were made public include:

*\* The current Doha Round negotiations at the World Trade Organization;*

[http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm)

*\* The Free Trade Area of the Americas;*

[http://www.ftaa-alca.org/FTAADraft03/Index\\_e.asp](http://www.ftaa-alca.org/FTAADraft03/Index_e.asp)

*\* The Multilateral Agreement on Investment (although initial texts were not made public)*

[http://www.oecd.org/document/35/0,3343,en\\_2649\\_33783766\\_1894819\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/35/0,3343,en_2649_33783766_1894819_1_1_1_1,00.html)

*\* Draft text at the World Health Organization, where resolutions are published in advance of consideration and treaty or treaty-like negotiations are handled openly, including this example of follow-on negotiations for the Framework Convention on Tobacco Control:*

<http://www.who.int/gb/fctc/>

*\* The World Intellectual Property Organization, including this example of a draft Treaty on the Protection of Broadcasting Organizations:*

[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=57213](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=57213)



**Intellectual  
Property  
Owners  
Association**

July 9, 2009

The Honorable Ron Kirk  
Ambassador  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

U.S. TRADE  
REPRESENTATIVE

9 JUL 20 PM 2:30

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DuPont  
Stuart Wall  
Amgen, Inc.  
William D. Zahrl, II  
Seagate Technology, LLC

**RE: Negotiations Related to the Anti-counterfeiting Trade Agreement (ACTA)**

Dear Representative Kirk:

We write to share with you our organization's priorities as you begin again this year to engage in discussions related to an international Anti-Counterfeiting Trade Agreement. Intellectual Property Owners Association (IPO) supports efforts to harmonize intellectual property laws and coordinate enforcement efforts with other countries to ensure that IP owners can effectively and efficiently enforce their rights. We support these negotiations and urge USTR to ensure that current tools in place to aide enforcement and preserve the value of intellectual property rights are enhanced and not undercut.

IPO, established in 1972, is a trade association for companies, inventors, law firms and others who own or are interested in patents, trademarks, copyrights and trade secrets. IPO is the only association in the U.S. that serves all intellectual property owners in all industries and all fields of technology. Governed by a 50-member corporate board of directors, IPO advocates effective and affordable IP ownership rights in the U.S. and abroad on behalf of its more than 150 corporate members and more than 10,000 individuals involved in the association.

Last year, the IPO Board of Directors adopted the following resolution:

**RESOLVED**, IPO urges U.S. negotiators to consider the following principles as provisions of the Anti-Counterfeiting Trade Agreement (ACTA) are discussed:

- (a) Seek provisions that are consistent with IP provisions in existing U.S. Free Trade agreements and U.S. Law;
- (b) Require parties to address the pervasive use of the Internet to facilitate dissemination and marketing of pirated works and counterfeit goods;
- (c) Eliminate burdensome evidentiary requirements such as monetary or quantitative thresholds for administrative and criminal liability that may frustrate enforcement efforts; and

General Counsel  
Eva H. Davis  
Kirkland and Ellis, LLP

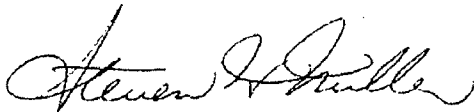
Executive Director  
Herbert C. Wamsley

INTELLECTUAL PROPERTY OWNERS ASSOCIATION

- (d) Focus the agreement on trademark counterfeiting and copyright piracy offenses and advocate against addressing patents within ACTA's legal framework, particularly any provisions on criminal liability and enforcement.

We would be happy to work with you and your staff to provide additional information on any of these issues in advance of or following your discussions this month in Morocco. If you have any questions, please contact Dana Colarulli, IPO's Director of Government Relations at [dana@ipo.org](mailto:dana@ipo.org) or (202) 507-4500. Thank you for your support of these issues.

Sincerely,

A handwritten signature in cursive script that reads "Steven W. Miller".

Steven W. Miller  
President

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

AUG 25 2009

Steven W. Miller  
President  
Intellectual Property Owners Association  
1501 M Street, Suite 1150  
Washington, DC 20005

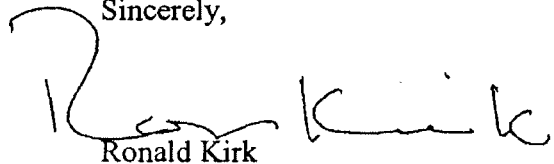
Dear Mr. Miller:

Thank you for your letter of support for the Anti-Counterfeiting Trade Agreement (ACTA). I also appreciate the detailed comments on the type of provisions you would like to see in the ACTA.

To understand the U.S. approach for the legal framework section of the agreement, I invite you to review the enforcement section of the intellectual property chapter of recent U.S. Free Trade Agreements. Those agreements in addition to other information on the ACTA may be found on the ACTA webpage, which we created to keep the public well-informed on the negotiations. The address is <http://www.ustr.gov/trade-topics/intellectual-property/anti-counterfeiting-trade-agreement-acta>. I think you will be pleased with the U.S. approach.

If you have any additional comments, please feel free to contact my staff negotiating the ACTA, Kira Alvarez or Rachel Bae at 202-395-4510.

Sincerely,



Ronald Kirk