

IP UPDATE: ACTA May Need a Second Act

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The Internet has created a number of challenges for rights holders and the law. The Anti-Counterfeiting Trade Agreement (ACTA) – a plurilateral agreement that seeks to establish worldwide standards for enforcing Intellectual Property rights — was first developed by the U.S. and Japan in 2006, and was signed last October by the U.S., Australia, Canada, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore and Switzerland; in January 2012, the European Union and its 22 member states signed as well.

ACTA is currently at a critical stage. Anti-ACTA protests have flared up all over Europe and in February, the European Commission referred ACTA to the European Court of Justice to determine whether it is compatible with EU law and the European Charter of Human Rights.

A major bone of contention from the early drafts of the treaty was the requirement of signatories to adopt measures that combined protection for online service providers with a notice and takedown procedure and a requirement to take steps to address “the unauthorized storage or transmission of materials protected by copyright or related rights”.

However, the final text of ACTA watered down these provisions. Although signatories are required to ensure that their law permits “effective action against an act of infringement of intellectual property that takes place in the digital environment”, there is considerable discretion as to what form that effective action should take and the balance to be struck with other considerations such as freedom of expression and privacy.

According to an [April 13 article in The Telegraph](#), the European Parliament is set to kill the controversial agreement. The White House still supports ACTA, but without the EU on board, it appears as though ACTA will need a second act in the form of a treaty all nations can sign on to.

Despite these roadblocks, ACTA is a sign of an increased determination to tackle the problem of counterfeits at the international level.

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