



Foreign Affairs and
International Trade Canada

Affaires étrangères et
Commerce international Canada

Canada



The Anti-Counterfeiting Trade Agreement (ACTA)

Presentation by Douglas George
Intellectual Property, Information and Technology
Trade Policy Division (TMI)

Roundtable ACTA Consultation, April 6, 2009

Why ACTA?

- **Main objective:** To establish new global standards for the enforcement of intellectual property rights (IPR) and provide for increased cooperation
- Global problem = global solution
- \$200 billion annually - 2% of world trade
- Public health and safety risks
- Organized crime
- Little progress made on IP enforcement in traditional multilateral fora

ACTA Participants

- **Australia**
- **Canada**
- **European Commission/EU**
- **Japan**
- **Korea**
- **Mexico**
- **Morocco**
- **New Zealand**
- **Singapore**
- **Switzerland**
- **United States**



Why Canada is involved

- Importance of intellectual property protection in fostering innovation and promoting economic prosperity
- Bilateral relationship with key trading partners – U.S., Japan, EC/EU, Korea
- Risk to Canada of increasing presence of counterfeit/pirated goods
- Influence the outcome

ACTA: Chronology

1. 2005: G8 IP Group – Japan Proposal
2. Informal discussions
3. October 2007: Launch / Ministerial announcement
4. June 3- 4, 2008: First Round of Formal Negotiations, Geneva
5. July 29- 31, 2008: Second Round of Formal Negotiations, Washington
6. October 8-10, 2008: Third Round of Formal Negotiations, Tokyo
7. December 15-18 2008: Fourth Round of Formal Negotiations, Paris
8. May – Fifth Round of Formal Negotiations;

What ACTA is about

- Protecting expertise, innovation, quality and creativity
- Enhancing international cooperation
- Developing effective international standards
- Strengthening enforcement practices
- Addressing large-scale activities
- Respecting fundamental rights, freedoms and civil liberties
- Consistency with international obligations

What ACTA is NOT About:

- Seizing portable music players and laptops at the border
- Extending the term of protection for copyright
- Preventing “parallel” imports
- Filtering internet traffic for infringing copyright works
- Limiting access to generic pharmaceuticals
- Reducing the court’s involvement in determining infringement
- Weakening privacy laws
- Lower evidentiary standards for injunctions
- Freezing bank accounts of suspected infringers

ACTA: State of Play in Negotiations

Six Chapters:

1. Initial Provisions and Definitions
2. Legal Framework for Enforcement of Intellectual Property Rights
3. International Cooperation
4. Enforcement Practices
5. Institutional Arrangements
6. Final Provisions



1. INITIAL PROVISIONS AND DEFINITIONS

- No draft proposal yet
- Will include usual cross-cutting issues:
 - Preamble
 - Objective
 - Scope
 - Definitions



2. LEGAL FRAMEWORK FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

- Section 1: Civil Enforcement**
- Section 2: Border Measures**
- Section 3: Criminal Enforcement**
- Section 4: Intellectual Property Rights Enforcement in the Digital Environment**

SECTION 1 - CIVIL ENFORCEMENT

- Scope
- Definition of adequate damages
- Determination of amount of damages
- Injunctions requiring party to desist
- Destruction of infringing goods
- Provisional measures
- Reimbursement of legal fees and costs

SECTION 2 - BORDER MEASURES

- Scope
- *De minimis* exception
- Procedures for suspension of release of suspected goods
- *Ex officio* action for customs officials
- Security/assurance
- Disclosure of information
- Forfeiture/destruction/release of counterfeit goods
- Liability for storage and destruction fees

SECTION 3 - CRIMINAL ENFORCEMENT

- Scope of enforcement
- Deterrent penalties
- Circumstances for *Ex officio* action
- Authority to order search/seizure
- Authority for judicial authorities to order forfeiture and destruction
- Authority of judicial authorities to order the forfeiture of assets
- Camcording
- Trafficking in counterfeit labels



SECTION 4 – Intellectual Property Rights Enforcement in the Digital Environment

- No draft proposal yet
- To date : Information gathering on different legal regimes in place; exploring common understanding
- Need to find the right balance

3. INTERNATIONAL COOPERATION

- Cooperation among the competent authorities
- Consistency with privacy/data protection
- Sharing of information among competent authorities
- Exchange of statistical data and information on best practices
- Capacity building and technical assistance

4. ENFORCEMENT PRACTICES

- Fostering of expertise
- Collection and analysis of data and other relevant information
- Internal coordination, including public/private advisory groups
- Measures to better identify and target suspected shipments
- Publication of information on procedures
- Public awareness and outreach

5. INSTITUTIONAL ARRANGEMENTS

- Options for Secretariat/Oversight Committee
- Transparency
- Consultations among Parties

6. FINAL PROVISIONS

- Basic functioning of the agreement –
accessions, amendments, etc.

Transparency

- Canada's position is for **greater transparency**
- Discussions ongoing among the partners on how and when to make text public
- Currently, draft text is not complete; some parts have still not been drafted
- Document outlining key elements under discussion

Public Consultations

- Multi-faceted approach:
 - Ongoing web-based consultation
 - Informal stakeholder consultations
 - Provinces and territories

Next Steps

- Negotiations still at an early stage – progress expected in 2009
- Next meeting planned for mid-May in Morocco
- Ongoing public consultations

Contact

Intellectual Property, Information and
Technology Trade Policy Division (TMI)
125, Sussex Drive
Ottawa, ON

Email: acta-acrc@international.gc.ca

Website: <http://www.international.gc.ca/trade-agreements-accords-commerciaux>