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Anti-Counterfeiting Trade Agreement (ACTA)

I would like to put forward comments concerning the Anti-Counterfeiting Trade Agreement. My name is David Puglielli and I am a graduate student at Queen's University in Kingston, Ontario. I have followed developments in the area of intellectual property enforcement for many years and I speak as a private citizen and a concerned consumer. My comments will focus on copyright infringement over the internet.

I agree with the importance of effectively addressing the illicit trade in counterfeit goods, but it is critical that the scope of the treaty be limited so as not to negatively affect innovation and consumers. I would therefore like to stress the importance of the following:

1. The treaty should focus primarily on addressing criminal activities that affect health and public safety, such as counterfeit pharmaceuticals or piracy operations that fund organized crime.
2. The treaty should ensure that intermediaries such as ISPs are not liable for infringing material travelling across their networks. Increasing intermediary liability would negatively impact innovation and increase costs for consumers by placing the burden for enforcement on an entity that historically is not liable for infringing transfers.
3. All enforcement measures provided for by the treaty should preserve all due process rights. For example, policies that require disconnection of infringing users (policies that the entertainment industry has recently been lobbying for) risk violating due process by making it difficult for accused individuals to defend themselves. In such cases, ISPs are not equipped to protect due process - only the courts can do that.
4. Related to the above, any enforcement measures embraced by the treaty should not weaken privacy protections provided for in law, or allow ISPs or law enforcement officials to examine data transfers without a warrant. Policies that require ISPs to filter out infringing material risk running afoul of privacy protections by forcing ISPs to examine the contents of individual data transfers.
5. The treaty should not allow for policies that could negatively affect fair dealing, such as requiring intermediaries to check for and filter out infringing data transfers. In addition to the above-mentioned privacy implications, only the courts are qualified to determine whether or not a use is infringing and does not qualify as fair dealing. With the recent push by consumers to expand fair dealing regulations, it is critical that consumers' wishes for expanded fair dealing rights not be trampled.
6. The treaty should not contain provisions protecting technological protection measures from circumvention. Such policies are already provided for by the WIPO internet treaties and their implementations (by, for example, the Digital Millennium Copyright Act in the U.S.) have had a clearly negative effect on innovation, on consumers' rights, and stifled legitimate competition having nothing at all to do with piracy by locking down

technology solely to prevent competition.

7. The enforcement measures provided for by the treaty should focus exclusively on commercial infringement rather than on non-commercial infringement.

I hope that the Canadian government will take these thoughts into account when negotiating the terms of the treaty. It is critical that the treaty appropriately limit the scope of criminal penalties and liability to ensure that innovative products and services and consumer rights are not stifled by restrictive copyright laws.

I thank you for the opportunity to express my views.

David Puglielli