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## **Anti-Counterfeiting Trade Agreement (ACTA)**

Dear members of the Consultations and Liaison Division:

Thank you for your invitation to comment on the proposed Anti-Counterfeiting Trade Agreement. I greatly appreciate the Government's seeking public comment on this agreement.

I have major concerns about ACTA, and on the basis of the information so far available believe that Canada should not participate in any further negotiations. My concerns are as follows:

### **THERE IS NO DEMONSTRATED NEED FOR ACTA**

Canada and the other countries involved in ACTA discussions are members of the World Trade Organization, are signatories to the Berne Convention, and have legislation in place to protect copyrights, trademarks, and patents. I have not seen a single real-life incident cited which would suggest that the existing treaties and legislative acts are in any way inadequate.

### **SUPERFLUOUS TREATIES ARE DANGEROUS**

Unnecessary treaties add complexity to international politics and commerce. But an apparently unnecessary ACTA also poses a major risk to national sovereignty in such areas as

- competition policy (copyrights and patents are, after all, monopolies)
- cultural sovereignty and access to the cultural heritage (excessive copyright durations)
- privacy rights
- fair use of copyrighted materials
- providing a back door for compelling countries to engage in legislation contrary to their national interest in order to fulfill "international obligations"

### **INDIVIDUAL RIGHTS AND THE PUBLIC DOMAIN ARE NOT PROTECTED**

In an unanimous 2004 decision, (*CCH Canadian Ltd. v. Law Society of Upper Canada*), the Supreme Court of Canada emphasized the limited nature of copyright, and the necessity of considering the rights not only of copyright owners but also of copyright users.

I see no suggestion of any such thought in the description of ACTA. What is more, there have been no consultations that I am aware of with civil society groups. And I note with extreme concern that the list of participants in the ACTA talks is notable for the absence of developing countries. ACTA appears to be sponsored by a group of rich countries, without regard to the true international community.

## **THE HARM DONE BY AGGRESSIVE "INTELLECTUAL PROPERTY" AGREEMENTS**

To take one country as an example, the United States in recent years has signed a series of "free trade" agreements which featured twenty-year extensions in copyright durations, and increased patent protection for drugs.

The results: citizens of the mostly quite poor countries which signed these agreements will pay more for prescription drugs than would otherwise have been the case. And books by authors who died between between fifty and seventy years ago will be either unavailable, or more expensive than would otherwise be the case. Higher prices and decreased availability are results precisely opposite to what true free trade provides.

### **SUMMARY**

Since there has been no actual need demonstrated for ACTA, I believe that Canada should simply withdraw from the process. If the Government of Canada continues its participation in this completely unnecessary treaty process, it should focus on:

- protection of the public domain and individual rights
- preventing the use of ACTA as a secret back door for obtaining additional property rights while bypassing national legislatures and public debate
- preserving the due process and privacy rights of individual citizens
- ensuring that non-commercial infringements are not part of ACTA
- opposing any requirement for statutory damages, especially where infringement is not wilful, or causes negligible economic harm

In closing, I would once again like to thank the Government of Canada for inviting public comment on the ACTA negotiations.

Sincerely yours,

(Dr.) Mark Akrigg  
Toronto, Ontario