



ACTA - Anti-Counterfeiting Trade Agreement

The Anti-Counterfeiting Trade Agreement ([ACTA](#)) is a plurilateral agreement between the EU, its Member States (MS) and ten other countries, including the USA and Japan. It has provoked controversy in the EP and protests on the streets.

Content of the treaty

ACTA aims to prevent trade in counterfeit physical and digital goods by enforcing the protection of intellectual property rights (IPR). The [Commission](#) estimates that counterfeit goods entering Europe cost our economy more than €8 billion yearly. ACTA is a minimum level agreement intended to complement the WTO agreement on Trade-Related Aspects of IPR ([TRIPS](#)). However, a group of [European academics](#) argues that some ACTA provisions go beyond TRIPS rules.

Business organisations ([Eurochambres](#) and a [group of industry lobbies](#)) and the Commission put forward the following arguments **in favour of ACTA**: protecting intellectual property preserves jobs, research and development in Europe, and strengthens European exports. ACTA is about ensuring better enforcement of existing IPR protection, and does not create new legislation.

Opponents claim that the treaty will have few such positive effects, because the countries in which most counterfeit goods originate (e.g. China) are not among the parties to the treaty. Stakeholders (such as grassroots internet activists) also say that ACTA goes beyond the EU *acquis* and thus tips the balance of IPR protection unfairly towards rights-holders as opposed to (legitimate) users of IPR-protected material.

ACTA and fundamental rights

The group of [European academics](#) considers that ACTA could touch upon: right to information and education, freedom of expression, rights to accessible healthcare, to privacy and protection of personal data, and to due process, other human rights and good governance in general. Art.27.4 ACTA raises the prospect of states introducing laws forcing

internet service providers (ISPs) to **disclose information** about a subscriber whose account has allegedly been "used for infringement". A simple allegation by a rights-holder could be enough for such a disclosure. Art.23.1 ACTA aims to punish "commercial scale" IPR infringers through criminal law, but fails to define the term "commercial". This term is however claimed to be sufficiently defined in European Court of Justice (CJEU) jurisprudence.

ACTA and access to medicines

International development stakeholders are concerned that ACTA could compromise the export of generic drugs to poorer countries. Such drugs in transit through the EU were held up in 2008 and 2009 under [EU legislation on IPR](#), because they were patented in the EU (if not in the exporting and importing countries). A [DG EXPO PD study](#) explains that two categories of IPR have an influence on access to medicines: patents and trademarks. The study agrees with the [Commission](#) that ACTA's criminal and border measures do not apply to patents. [Health Action Network](#) and [Oxfam](#) concur that the real danger for public health in developing countries does not stem from trademark infringement, but from poorly functioning drug-regulatory authorities. Furthermore, ACTA's title "counterfeit" could contribute to the "dangerous confusion between crucial generic medicines and counterfeit medicines".

Activities of the EU institutions

The EP must give its consent for ACTA to enter into force. On 22 February 2012, following public demonstrations and heated debates in the EP, the [Commission decided](#) to ask the CJEU for an opinion on ACTA's compatibility with the EU treaties. This put ratification by 22 EU MS on hold. Cyprus, Estonia, Germany, Slovakia and The Netherlands, have not yet signed ACTA. The EP's INTA committee [rejected](#) the treaty on 21 June 2012, as did LIBE, JURI, DEVE and ITRE in their opinions.