



PARLEMENT EUROPÉEN

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2011/0167(NLE)

21.5.2012

AMENDMENTS

1 - 50

Draft opinion
Dimitrios Droutsas
(PE480.574v01-00)

on the compatibility of the Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, the Republic of Korea, the United Mexican States, the Kingdom of Morocco, New Zealand, the Republic of Singapore, the Swiss Confederation and the United States of America with the rights enshrined in the Charter of Fundamental Rights of the European Union
(12195/2011 – C7-0027/2012 – 2011/0167(NLE))

AM\902367EN.doc

PE489.544v01-00

AM_Com_NonLegOpinion

Amendment 1
Cornelia Ernst

Draft opinion
Paragraph 1

Draft opinion

Amendment

1. Acknowledges that intellectual property rights (IPRs) are important tools for the Union in the ‘knowledge economy’ and that adequate enforcement of IPRs is key; recalls that infringements of IPRs harm growth, competitiveness and innovation; points out that ACTA does not create new IPRs, but is an enforcement treaty aimed at tackling effectively IPR infringements; ***deleted***

Or. en

Amendment 2
Simon Busuttil, Anna Maria Corazza Bildt, Frank Engel, Zuzana Roithová, Salvador Sedó i Alabart, Csaba Sógor, Axel Voss, Manfred Weber

Draft opinion
Paragraph 1 a (new)

Draft opinion

Amendment

1a. Reiterates that Europe needs an international agreement to step up the fight against counterfeit products as these products are causing billions of Euros of damage every year to European companies, thereby also putting European jobs at risk; notes that in addition, counterfeit products often do not fulfil European safety requirements, posing significant health hazards to consumers;

Or. en

Amendment 3

Simon Busuttil, Frank Engel, Anna Maria Corazza Bildt, Zuzana Roithová, Salvador Sedó i Alabart, Csaba Sógor, Axel Voss, Georgios Papanikolaou, Manfred Weber

Draft opinion

Paragraph 1 b (new)

Draft opinion

Amendment

1b. Notes that ACTA must fully respect Union law, especially the Charter and the data protection acquis; reiterates that it is important that ACTA is not open to any interpretation that could lead Member States to infringe the Charter when implementing provisions of ACTA and therefore calls on the Commission and Member States to ensure legal clarity in the provisions of ACTA;

Or. en

Amendment 4

Zuzana Roithová

Draft opinion

Paragraph 2

Draft opinion

Amendment

2. Recalls that ***both*** the content of previous versions of the agreement ***as well as the current text*** together with the level of transparency connected with the negotiations of the agreement have been questioned repeatedly by Parliament;

2. Recalls that the content of previous versions of the agreement together with the level of transparency connected with the negotiations have been questioned repeatedly by Parliament;¹

¹See, for example, EP resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations, P7_TA(2010)0058;

¹See, for example, EP resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations, P7_TA(2010)0058; ***The lack of a transparent process for the Anti-Counterfeiting Trade Agreement (ACTA), declaration of the European Parliament of 9 September 2010 on the lack of a transparent process and potentially objectionable content of the Anti-Counterfeiting Trade Agreement (ACTA), P7_TA(2010)0317.***

Amendment 5
Dimitrios Droutsas

Draft opinion
Paragraph 2

Draft opinion

2. Recalls that both the content of previous versions of the agreement as well as the current text together with the level of transparency connected with the negotiations of the agreement have been questioned repeatedly by Parliament;

Amendment

2. Recalls that both the content of previous versions of the agreement as well as the current text together with the level of transparency connected with the negotiations of the agreement have been questioned repeatedly by Parliament;
underlines that in line with Article 218(10) of the Treaty on the Functioning of the European Union (TFEU) Parliament must be immediately and fully informed at all stages of the procedure; takes the view that adequate transparency has not been achieved throughout the negotiations on ACTA; recognises that efforts to inform Parliament have been undertaken by the Commission¹, but regrets that the requirement of transparency has been construed very narrowly and only as a result of pressure by Parliament and civil society;

¹ <http://ec.europa.eu/trade/tackling-unfair-trade/acta/transparency/>

Amendment 6
Sonia Alfano, Stanimir Ilchev, Sophia in 't Veld, Sarah Ludford, Gianni Vattimo, Renate Weber, Alexander Alvaro

Draft opinion
Paragraph 3

Draft opinion

3. Underlines, at the same time, that it is crucial to strike the appropriate balance between enforcement of IPRs and fundamental rights such as freedom of expression, the right to privacy and protection of personal data, the right to due process and recalls the case-law of the Court of Justice of the European Union (CJEU) as regards this fair balance,

Amendment

3. Underlines, at the same time, that it is crucial to strike the appropriate balance between enforcement of IPRs and fundamental rights such as freedom of expression, the right to privacy and protection of personal data **and confidentiality of communications**, the right to due process **-notably the presumption of innocence and effective judicial protection¹** - and recalls the case-law of the Court of Justice of the European Union (CJEU) as regards this fair balance;

¹ See also in this sense the Opinion of the EDPS of 24 April 2012

<http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2012/12-04-24_ACTA_EN.pdf.

Or. en

Amendment 7 **Zuzana Roithová**

Draft opinion **Paragraph 3**

Draft opinion

3. Underlines, at the same time, that it is crucial to strike the appropriate balance between enforcement of IPRs and fundamental rights such as freedom of expression, the right to privacy and protection of personal data, the right to due process and recalls the case-law of the Court of Justice of the European Union (CJEU) as regards this fair balance;

Amendment

3. Underlines, at the same time, that it is crucial to strike the appropriate balance between enforcement of IPRs and fundamental rights such as freedom of expression, the right to privacy and protection of personal data, the right to due process and recalls **international treaties¹, European law² and** the case-law of the Court of Justice of the European Union (CJEU) as regards this fair balance;

¹In this regard, see Article 7(1) of the TRIPS Agreement and the preambles to the WCT and the WPPT.

²See recitals 3, 9 and 31 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. In this regard, see point d) of the Opinion of European Academics on Anti-Counterfeiting Trade Agreement. http://www.iri.uni-hannover.de/tl_files/pdf/ACTA_opinion_200111_2.pdf (in English); See C-275/06, *Promusicae*, 200, ECR I-271 (points 62–68), case C-70/10, *Scarlet Extended SA v. Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)* (point 44), case C-360/10, *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v. Netlog NV* (points 42–44) and case C-461/10, *Bonnier Audio AB, Earbooks AB, Norstedts Förlagsgrupp AB, Piratförlaget AB, Storyside AB v. Perfect Communication Sweden AB*. In this regard, see point d) of the Opinion of European Academics on Anti Counterfeiting Trade Agreement. http://www.iri.uni-hannover.de/tl_files/pdf/ACTA_opinion_200111_2.pdf (in English); See C-275/06, *Promusicae*, 200, ECR I-271 (points 62–68), case C-70/10, *Scarlet Extended SA v. Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)* (point 44), case C-360/10, *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v. Netlog NV* (points 42–44) and case C-461/10, *Bonnier Audio AB, Earbooks AB, Norstedts Förlagsgrupp AB, Piratförlaget AB, Storyside AB v. Perfect Communication Sweden AB*.

Or. cs

Amendment 8 Zuzana Roithová

Draft opinion Paragraph 3a (new)

Draft opinion

Amendment

3a. In this respect stresses that intellectual property rights are themselves among the fundamental rights protected under Article 17(2) of the EU Charter of Fundamental Rights and under international agreements¹;

See, for example, Article 27 of the Universal Declaration of Human Rights, Article 15 of the International Covenant on Economic, Social and Cultural Rights.

Or. cs

Amendment 9
Alexander Alvaro, Sarah Ludford

Draft opinion
Paragraph 3a (new)

Draft opinion

Amendment

3a. Notes the safeguards contained in ACTA on privacy, due process and proportionality and the fact that implementation of ACTA in the Union must be subject to and constrained by the requirements of Union and national law on the protection of fundamental rights;

Or. en

Amendment 10
Zuzana Roithová

Draft opinion
Paragraph 3b (new)

Draft opinion

Amendment

3b. Recalls that a number of internal and external limits on intellectual property rights, such as the prevention of unilateral abuse¹, contribute to establishing an appropriate balance between the enforcement of intellectual property rights and the fundamental rights and interests of the public;

¹See Article 8(2) of the TRIPS Agreement.

Or. cs

Amendment 11
Zuzana Roithová

Draft opinion
Paragraph 3c (new)

Draft opinion

Amendment

3c. Points out that fundamental rights are, by nature, based on a number of assumptions¹: they are universal, based on rights relating to the personality and on non-material interests; they are non-transferable and do not cease; they emanate from the person, are innate and are governed by public law; in this regard, a number of objects protected by intellectual property rights only exhibit some of these characteristics, thus it is necessary to distinguish the use of effective tools to protect such rights, e.g., in the case of life-saving medicines on the one hand or industrial patents to protect designs on the other, from other interests deriving from other fundamental rights such as, for example, protecting human health;

¹GROSHEIDE, W. *Intellectual Property and Human Rights: A Paradox*. 1st edition, Cheltenham: Edward Elgar Publishing, 2010. p328. ISBN 978-1848444478. p21.

Or. cs

Amendment 12
Zuzana Roithová

Draft opinion
Paragraph 3d (new)

Draft opinion

Amendment

3d. Recalls that ACTA, if adopted, would be equivalent to an international agreement signed by the EU, would be binding upon the European institutions and the Member States and would be an integral part of the EU legal order having direct effect¹;

¹See case C-135/10 SCF v. Del Corso, Decision points 37 - 39.

Or. cs

Amendment 13
Zuzana Roithová

Draft opinion
Paragraph 3e (new)

Draft opinion

Amendment

3e. Points out that, according to European Court of Justice case law, individuals may only rely directly upon the provisions of international agreements signed by the EU when such provisions are, in terms of their content, unconditional and sufficiently precise (i.e., clear and precise obligations have been laid down which are not subject, in their implementation or effects, to the adoption of any subsequent measure); furthermore, the nature and broad logic of the provisions should not preclude their being so relied upon; nevertheless also points out that, where European law features concepts identical to those contained in relevant international agreements, the European provisions must be interpreted, as far as possible, in the light of international law, i.e., taking account of the context in which those concepts are found and the purpose of the relevant provisions of international agreements²;

¹See case C-135/10 SCF v. Del Corso, Decision points 43 - 44.

¹See case C-135/10 SCF v. Del Corso, Decision points 51 - 55.

Or. cs

Amendment 14
Zuzana Roithová

Draft opinion
Paragraph 3 f (new)

Draft opinion

Amendment

3f. Considers that Section 5 'Enforcement of Intellectual Property Rights in the Digital Environment' is in particular need of greater clarity and coherence, as inaccuracies and incompleteness may result in divergent national rules, and such a fragmented system would act as an obstacle to the internal market, which, in the case of the internet environment, would preclude the wider cross-border use of the object protected by intellectual property rights;

Or. cs

Amendment 15
Zuzana Roithová

Draft opinion
Paragraph 3 g (new)

Draft opinion

Amendment

3g. Considers that ACTA does not contain explicit guarantees concerning the protection of sensitive personal information, the right of defence (particularly the right to be heard) or the presumption of innocence;

Or. cs

Amendment 16
Zuzana Roithová

Draft opinion

Paragraph 3 h (new)

Draft opinion

Amendment

3h. Recalls that according to Article 49 of the EU Charter of Fundamental Rights: ‘no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed’; points out in this regard that the scope of several provisions set out in Section 4: Criminal Enforcement is ill-defined;

Or. cs

**Amendment 17
Zuzana Roithová**

**Draft opinion
Paragraph 3 i (new)**

Draft opinion

Amendment

3i. Considers that ACTA does not provide guarantees on preserving the right to respect for private life and communications arising from Article 7 of the EU Charter of Fundamental Rights;

Or. cs

**Amendment 18
Zuzana Roithová**

**Draft opinion
Paragraph 3 j (new)**

Draft opinion

Amendment

3j. Wonders whether the concepts set out in ACTA, such as the basic principles or

the concept of 'fair process', are compatible with the concepts set out in the EU Charter of Fundamental Rights, such as fundamental rights or the right to a fair trial arising from Article 47;

Or. cs

Amendment 19
Dimitrios Droutsas

Draft opinion
Paragraph 7 a (new)

Draft opinion

Amendment

7a. Reiterates that limitations on the exercise of the rights and freedoms recognised by the Charter must comply with the provisions of the ECHR and with Article 52 of the Charter which prescribe that such limitations be provided for by law, necessary and proportionate to the legitimate aims pursued;

Or. en

Amendment 20
Alexander Alvaro, Sarah Ludford, Louis Michel

Draft opinion
Paragraph 9

Draft opinion

Amendment

9. Recalls that the Commission has decided to refer ACTA to the CJEU on the question of whether ACTA is compatible with Union Treaties, in particular the Charter;

9. Recalls that the Commission has decided to refer ACTA to the CJEU on the question of whether ACTA is compatible with Union Treaties, in particular the Charter, *and believes that the Parliament's final position on ACTA should only be taken after the CJEU has given its judgement on this matter;*

Amendment 21
Anthea McIntyre

Draft opinion
Paragraph 9

Draft opinion

9. Recalls that the Commission has decided to refer ACTA to the CJEU on the question of whether ACTA is compatible with Union Treaties, in particular the Charter;

Amendment

9. Recalls that the Commission has decided to refer ACTA to the CJEU on the question of whether ACTA is compatible with Union Treaties, in particular the Charter;
urges that the Parliament's final decision be taken only after the judgement of the CJEU is known;

Amendment 22
Simon Busuttil, Frank Engel, Anna Maria Corazza Bildt, Salvador Sedó i Alabart, Csaba Sógor, Axel Voss, Manfred Weber

Draft opinion
Paragraph 9 a (new)

Draft opinion

Amendment

9a. Notes that concern has especially been raised on those provisions that leave room for flexibility in their implementation, on the basis that these provisions might be implemented in the Union in a manner that could be illegal or contrary to fundamental rights; considers that this is an unsubstantiated assumption which is contrary to the general principles of law and to the letter of ACTA itself as it explicitly requires that the optional or flexible provisions therein be implemented in compliance with fundamental rights and applicable domestic provisions; reiterates however that this does not

justify ambiguities contained in ACTA;

Or. en

Amendment 23

Simon Busuttil, Anna Maria Corazza Bildt, Csaba Sógor, Axel Voss, Manfred Weber

Draft opinion

Paragraph 9 b (new)

Draft opinion

Amendment

9b. Notes that despite the ambiguities that remain in ACTA, there is no evidence whatsoever, not even in the European Data Protection Supervisor's opinion on ACTA, that it goes contrary to Union law or that it violates fundamental rights and freedoms in any manner;

Or. en

Amendment 24

Dimitrios Droutsas

Draft opinion

Paragraph 12

Draft opinion

Amendment

12. Underlines that there is still significant legal uncertainty in the manner in which some key provisions of ACTA have been drafted (e.g. Article 11 (Information related to Infringements), Article 23 (criminal offences), Article 27 (scope of the enforcement measures in the digital environment), especially Article 27(3) (cooperation mechanisms), and Article 27(4)); warns against the potential to deliver 'fragmented approaches within the EU' with risks of inadequate compliance with the right to protection of personal data;

12. Underlines that there is still significant legal uncertainty in the manner in which some key provisions of ACTA have been drafted (e.g. Article 11 (Information related to Infringements), Article 23 (criminal offences), Article 27 (scope of the enforcement measures in the digital environment), especially Article 27(3) (cooperation mechanisms), and Article 27(4)); warns against the potential to deliver 'fragmented approaches within the EU' with risks of inadequate compliance with the right to protection of personal data; ***points out that these risks are***

especially present as regards Article 27(3) and 27(4) in light of the lack of precision of those texts but also having in mind the practices currently taking place in some Member States (e.g. large scale monitoring of Internet by private parties) whose conformity with the Charter is questionable;

Or. en

Amendment 25
Cornelia Ernst

Draft opinion
Paragraph 12

Draft opinion

12. Underlines that there is still significant legal uncertainty in the manner in which some key provisions of ACTA have been drafted (e.g.: Article 11 -Information related to Infringements; Article 23 on 'criminal offences'; scope of the enforcement measures in the digital environment (Article 27); Article 27(3) on cooperation mechanisms; Article 27(4)); warns against the potential to deliver 'fragmented approaches within the EU' with risks of inadequate compliance with the right to protection of personal data;

Amendment

12. Underlines that there is still significant legal uncertainty in the manner in which some key provisions of ACTA have been drafted (e.g.: Article 11 -Information related to Infringements; Article 23 on 'criminal offences'; scope of the enforcement measures in the digital environment (Article 27); Article 27(3) on cooperation mechanisms; Article 27(4)); warns against the potential to deliver 'fragmented approaches within the EU' with risks of inadequate compliance with ***fundamental rights, particularly the right to protection of personal data, the right to due process and the right to conduct business;***

Or. en

Amendment 26
Josef Weidenholzer

Draft opinion
Paragraph 12

Draft opinion

12. Underlines that there is *still* significant legal uncertainty in the manner in which some key provisions of ACTA have been drafted (e.g. Article 11 (Information related to Infringements), Article 23 (criminal offences), Article 27 (scope of the enforcement measures in the digital environment), especially Article 27(3) (cooperation mechanisms), and Article 27(4)); warns against the potential to deliver 'fragmented approaches within the EU' with risks of inadequate compliance with the right to protection of personal data;

Amendment

12. Underlines that there is significant legal uncertainty in the manner in which some key provisions of ACTA have been drafted (e.g. Article 11 (Information related to Infringements), Article 23 (criminal offences), Article 27 (scope of the enforcement measures in the digital environment), especially Article 27(3) (cooperation mechanisms), and Article 27(4)); warns against the potential to deliver 'fragmented approaches within the EU' with risks of inadequate compliance with the right to protection of personal data;

Or. de

Amendment 27
Dimitrios Droutsas

Draft opinion
Paragraph 13

Draft opinion

13. Moreover, points out, that while several ACTA provisions (e.g. Article 27 (3) and (4)) are of non-mandatory nature and thus do not establish 'any legal obligation of the Parties which would be contrary to fundamental rights', the lack of specificity of the provisions, of sufficient limitations and safeguards casts a doubt on the necessary level of legal certainty required from ACTA (e.g. safeguards against misuse of personal data or to protect the right of defence);

Amendment

13. Moreover, points out, that while several ACTA provisions (e.g. Article 27 (3) and (4)) are of non-mandatory nature and thus do not establish 'any legal obligation of the Parties which would be contrary to fundamental rights', the lack of specificity of the provisions, of sufficient limitations and safeguards casts a doubt on the necessary level of legal certainty required from ACTA (e.g. safeguards against misuse of personal data or to protect the right of defence); ***emphasises that these deficiencies should not be acceptable in an agreement where the Union is a contracting party; recalls that other international agreements with fundamental rights implications have secured a higher level of precision and***

safeguards¹

¹ See for example Council of Europe - Convention on Cybercrime CETS No. 185, Budapest 23 November 2001.

Or. en

Amendment 28
Dimitrios Droutsas

Draft opinion
New Title (after paragraph 14)

Draft opinion

Amendment

The duty to uphold fundamental rights

Or. en

Amendment 29
Dimitrios Droutsas

Draft opinion
Paragraph 14 a (new)

Draft opinion

Amendment

14a. Finds it disappointing that additional and substantial efforts to further consult all the stakeholders and incorporate their views were not undertaken in the run-up to the negotiations on ACTA; deplores that the high standards of transparency and good governance the Union is striving to set have not been met as regards ACTA; believes, therefore, that ACTA comes at a very premature stage in particular with regard to areas where the Union has not yet had the chance to have thorough public deliberation;

Amendment 30

Simon Busuttil, Anna Maria Corazza Bildt, Frank Engel, Georgios Papanikolaou, Zuzana Roithová, Salvador Sedó i Alabart, Csaba Sógor, Axel Voss, Manfred Weber

Draft opinion

Paragraph 14 a (new)

Draft opinion

Amendment

14a. Emphasises that Internet Service Providers (ISPs) should not police the Internet and therefore calls on the Commission and the Council to ensure legal clarity on the role of ISPs under ACTA;

Amendment 31

Simon Busuttil, Anna Maria Corazza Bildt, Frank Engel, Csaba Sógor, Axel Voss, Manfred Weber

Draft opinion

Paragraph 14 b (new)

Draft opinion

Amendment

14b. Considers that ACTA only targets large-scale infringement of intellectual property rights (IPRs), allowing for signatory states to exempt non-commercial use from its provisions on criminal enforcement procedures; notes, however, that it is unclear where to draw the line between commercial and non-commercial use; calls therefore on the Commission and on Member States to define the notion of infringement of IPRs on a commercial scale and to add legal clarity as to when Member States could impose criminal enforcement measures on internet users;

Amendment 32

Sonia Alfano, Stanimir Ilchev, Sophia in 't Veld, Sarah Ludford, Gianni Vattimo, Renate Weber

Draft opinion**Paragraph 15***Draft opinion*

15. Considers that when fundamental rights are at stake ambiguity ***must be avoided and at the least reduced to a minimum;*** moreover, and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures, takes the view that in the current state of affairs precaution should be exercised as regards ACTA in light of the serious and remaining question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental rights and its level of legal certainty.

Amendment

15. Considers that when fundamental rights are at stake ***there shall be no place for any*** ambiguity; ***recalls that the European Court of Human Rights jurisprudence affirms that any limitation to the fundamental rights and freedoms foreseen by law must be foreseeable in its effects, clear and precise and accessible, as well as necessary in a democratic society and proportionate to the aims pursued; underlines that ACTA might create a legal basis for third countries controls and subsequent measures, notably at the borders, on Union citizens travelling outside of the Union, as well as on their properties;*** moreover and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures takes the view that in the current state of affairs precaution should be exercised as regards ACTA in light of the serious and remaining question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental rights and its level of legal certainty;

Amendment 33

Dimitrios Droutsas

Draft opinion

Paragraph 15

Draft opinion

15. Considers that when fundamental rights are at stake ambiguity must be avoided and at the least reduced to a minimum; ***moreover, and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures, takes the view that in the current state of affairs precaution should be exercised as regards ACTA in light of the serious and remaining question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental rights and its level of legal certainty.***

Amendment

15. Considers that when fundamental rights are at stake ambiguity must be avoided and at the least reduced to a minimum; ***is of the view that ACTA has not avoided such ambiguity, but, on the contrary, has entailed additional and various layers of ambiguity;***

Or. en

Amendment 34

Simon Busuttil, Anna Maria Corazza Bildt, Salvador Sedó i Alabart, Csaba Sógor, Axel Voss, Manfred Weber

Draft opinion Paragraph 15

Draft opinion

15. Considers that when fundamental rights are at stake ambiguity must be avoided and at the least reduced to a minimum; moreover, and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures, takes the view that in the current state of affairs ***precaution should be exercised as regards ACTA in the light of the serious and*** remaining question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental rights and its level of legal certainty.

Amendment

15. Considers that when fundamental rights are at stake ambiguity must be avoided and at the least reduced to a minimum; moreover, and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures, takes the view that in the current state of affairs ***the*** remaining ***serious*** question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental rights and its level of legal certainty ***need to be addressed;***

Or. en

Amendment 35
Josef Weidenholzer

Draft opinion
Paragraph 15

Draft opinion

15. Considers that when fundamental rights are at stake ambiguity must be avoided **and at the least reduced to a minimum**; moreover, and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures, takes the view that in the current state of affairs precaution should be exercised as regards ACTA in light of the serious and remaining question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental rights and its level of legal certainty.

Amendment

15. Considers that when fundamental rights are at stake, ambiguity must be avoided; moreover, and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures, takes the view that in the current state of affairs precaution should be exercised as regards ACTA in light of the serious and remaining question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental rights and its level of legal certainty.

Or. de

Amendment 36
Josef Weidenholzer

Draft opinion
Paragraph 15

Draft opinion

15. Considers that when fundamental rights are at stake ambiguity must be avoided and at the least reduced to a minimum; moreover, and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures, takes the view that in the current state of affairs precaution should be exercised as regards ACTA in light of the serious and remaining question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental

Amendment

15. Considers that when fundamental rights are at stake ambiguity must be avoided and at the least reduced to a minimum; ***underlines in this context the importance of differentiating between non-commercial filesharing (data exchange between private persons) and piracy***; moreover, and without assigning any wrongful intentions ("procès d'intention") to the ACTA implementation measures, takes the view that in the current state of affairs precaution should be exercised as

rights and its level of legal certainty.

regards ACTA in light of the serious and remaining question-marks surrounding the balance reached within the agreement between IPRs and other core fundamental rights and its level of legal certainty.

Or. de

Amendment 37

Simon Busuttil, Anna Maria Corazza Bildt, Frank Engel, Georgios Papanikolaou, Zuzana Roithová, Salvador Sedó i Alabart, Csaba Sógor, Axel Voss, Manfred Weber

Draft opinion

Paragraph 15 a (new)

Draft opinion

Amendment

15a. Calls therefore on the Commission and on Member States to provide solutions for the concerns identified in this opinion, so as to address ambiguities in ACTA and ensure that the strict observance of fundamental rights and freedoms is clearly guaranteed;

Or. en

Amendment 38

Dimitrios Droutsas

Draft opinion

Paragraph 15 a (new)

Draft opinion

Amendment

15a. Is of the view that ACTA fails to secure adequate safeguards and an appropriate balance between IPRs and other core fundamental rights, as well as failing to secure the necessary legal certainty for key provisions of ACTA;

Or. en

Amendment 39

Sonia Alfano, Stanimir Ilchev, Sophia in 't Veld, Gianni Vattimo, Renate Weber

Draft opinion

Paragraph 15 a (new)

Draft opinion

Amendment

15a. Shares the concerns expressed by the EDPS in its opinion on ACTA, notably in relation to the unclear scope, the vague notion of "competent authority", the processing of personal data by ISPs through voluntary enforcement cooperation measures and the lack of appropriate safeguards in relation to fundamental rights;

Or. en

Amendment 40

Sonia Alfano, Stanimir Ilchev, Sophia in 't Veld, Gianni Vattimo, Renate Weber

Draft opinion

Paragraph 15 b (new)

Draft opinion

Amendment

15b. Is of the opinion that ACTA does not comply with the rights enshrined in the Charter;

Or. en

Amendment 41

Sonia Alfano, Stanimir Ilchev, Sophia in 't Veld, Gianni Vattimo, Renate Weber

Draft opinion

Paragraph 15 c (new)

Draft opinion

Amendment

15c. Invites the Committee on International Trade, as the committee responsible, to recommend that Parliament declines to consent to the conclusion of ACTA;

Or. en

**Amendment 42
Dimitrios Droutsas**

**Draft opinion
Paragraph 15 a (new)**

Draft opinion

Amendment

15a. In light of all of the above and without prejudice to the CJEU's assessment on the matter, but taking into consideration Parliament's role in the protection and promotion of fundamental rights, concludes that ACTA is incompatible with the rights enshrined in the Charter and calls on the Committee on International Trade, as the committee responsible, to recommend that Parliament declines to consent to the conclusion of ACTA.

Or. en

**Amendment 43
Cornelia Ernst**

**Draft opinion
Paragraph 15 a (new)**

Draft opinion

Amendment

15a. Takes the view therefore that the conclusion of ACTA would be detrimental

to European values and incompatible with the European model; calls on the Committee on International Trade, as the committee responsible, to recommend that Parliament declines to consent to the conclusion of ACTA.

Or. en

Amendment 44
Jacek Protasiewicz

Draft opinion
Paragraph 15 a (new)

Draft opinion

Amendment

15a. The Committee on Civil Liberties, Justice and Home Affairs therefore calls on the Committee on International Trade, as the committee responsible, to recommend that Parliament declines to consent to the conclusion of ACTA.

Or. en

Amendment 45
Carl Schlyter

Draft opinion
Paragraph 15 a (new)

Draft opinion

Amendment

15a. Calls on the Committee of International Trade, as the committee responsible, to recommend that Parliament declines to consent, pursuant to Article 218(6) TFEU, to the conclusion of ACTA;

Or. en

Amendment 46
Zuzana Roithová

Draft opinion
Paragraph 15 a (new)

Draft opinion

Amendment

15a. Considers that the current ACTA text contains articles that pose certain risks of possibly breaching the fundamental rights that European citizens have enjoyed thus far;

Or. cs

Amendment 47
Zuzana Roithová

Draft opinion
Paragraph 15 b (new)

Draft opinion

Amendment

15b. Emphasises that the states where the greatest infringements of intellectual property rights occur, such as China, Pakistan, Russia and Brazil, were not invited to sign ACTA, and it is unlikely that those states will sign up to ACTA in the near future, and this raises important questions about the efficacy of the measures proposed by ACTA;

Or. cs

Amendment 48
Zuzana Roithová

Draft opinion
Paragraph 15 c (new)

Draft opinion

Amendment

15c. Is convinced that counterfeiting and piracy, when carried out with criminal intent and on a commercial scale, are significant phenomena in an information society and that it is necessary to develop a comprehensive EU strategy to tackle them. Such an EU strategy should not focus solely on combating the effects of counterfeiting and piracy, but should also focus on their causes; it must fully respect fundamental rights in Europe and be effective, acceptable and easily understood by society as a whole;

Or. cs

**Amendment 49
Zuzana Roithová**

**Draft opinion
Paragraph 15 d (new)**

Draft opinion

Amendment

15d. Recalls that, following a request from the European Parliament¹, the European Commission, in its Digital Agenda for Europe strategy, made a commitment to adopting a Code of EU online rights in 2012; considers that the Code of EU online rights should unambiguously define European citizens' users' rights and set out what they may or may not do in the digital environment, thereby establishing a basis for a comprehensive EU strategy to tackle counterfeiting and piracy;

¹European Parliament resolution of 21 June 2007 on consumer confidence in the digital environment (2006/2048(INI)), points 25-28.

Or. cs

Amendment 50
Zuzana Roithová

Draft opinion
Paragraph 15 e (new)

Draft opinion

Amendment

15e. In the light of the above considerations, does not recommend that consent be granted to ACTA in its current form.

Or. cs