

Update on ACTA

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The Anti-Counterfeiting Trade Agreement (ACTA) has courted controversy ever since its inception in 2007, when several developing and non-developing nations began to discuss the formation of an international intellectual property rights-oriented treaty.

The negotiations have faced significant opposition from civil rights campaigners, Internet users, ISPs and individuals. Many are concerned at the lack of transparency attributed to what has become a highly secretive negotiation process. Others fear that the ACTA champions the global implementation of draconian Internet IP enforcement measures, aimed at combating online piracy and copyright infringement but curtailing rights to free speech and expression.

The backlash has increased significantly in recent months now that the text of the ACTA has been finalised and several parties to the Agreement, New Zealand included, have forged ahead and signed the instrument. Today, protests are continuing to take place throughout Europe with a petition calling for the ACTA's rejection having already attracted over 1.75 million signatures.

Cause for Kiwi concern? Apparently not. According to the New Zealand government and Ministry of Economic Development any changes to current legislation will be minimal and uncontroversial. New Zealand's intellectual property regime is arguably already at a stage where it is relatively compliant with the ACTA's provisions. This is especially so given the recent legislative changes addressing illegal online file-sharing and expanding the powers of the New Zealand Customs Service in relation to intercepting and detaining imported counterfeit goods.

Perhaps the most significant change will be a further extension to border protection measures under the Copyright Act 1994 and the Trade Marks Act 2002 whereby the powers of Customs officials in relation to detaining goods that infringe copyright and registered trade marks will have to be extended to cover *exported* as well as imported goods. This is good news for rights holders who, as a result, will be able to have Customs intercept or suspend the release of export shipments of counterfeit goods.

Additionally, the ACTA anticipates criminal procedures and penalties directed at those who wilfully import counterfeit labels and packaging (not just the infringing goods themselves). The Courts' powers for delivery up and disposal of counterfeit labels and packaging will also have to be extended accordingly.

Finally, we should anticipate changes to how the Copyright Act currently deals with technological protection measures (TPMs) and copyright management information (CMI) for works protected by copyright. The ACTA aims to replicate the WIPO Copyright Treaty and WIPO Performers and Performances Treaty (WIPO Internet Treaties), neither of which New Zealand is currently a party to.

The ACTA uses the term “performances” when referring to TPMs and any copyright works in respect of which TPMs are installed. The same is true also for “performances” subjected to CMI interference. Eventually, the Copyright Act will need to be amended in a manner that treats “performances” as copyright works when applying TPMs or CMI.

Ultimately, it is worth remembering that a State's signature does not constitute a binding treaty action. Further consultation and discussion – supported by a national interest analysis of all proposed legislative and regulatory changes – is needed before New Zealand decides to ratify and become a State Party to the ACTA.

With panic and paranoia still spreading through Europe, it is comforting to hear the ACTA being described as having “given birth to an ocean full of red-herrings”. For New Zealand at least, the ACTA simply signals a promising move towards greater international cooperation in combating trade in

counterfeit goods and pirated copyright works. The proverbial shark appears to have lost its bite.

For more information, visit the [Ministry of Economic Development's website](#).