



EUROPEAN COMMISSION  
Directorate-General for Trade

C. 13

Brussels, 3 November 2010  
Ref:

**NOTE FOR THE ATTENTION OF THE INTA COMMITTEE**

**SUBJECT:** *ACTA Information regarding next steps*

**ORIGIN:** *DG Trade*

**(REMARKS:)**

1. Please find enclosed a document agreed by the EU and US negotiators for a package solution to the outstanding reservations in the ACTA text at the end of the Tokyo round.
2. This is also to inform that Parties agreed to have a technical meeting to finalise the legal scrub of the ACTA text. Australia has offered to host the meeting on 30 November - 3 (or if necessary 4) December. The meeting will be held in Sydney.

The hosts propose that delegations included a legal expert and also a person familiar with the history of the negotiations, to avoid the re-opening of previously agreed issues. They are also asking for a modest sized delegation, as the issues involved will solely be of a technical nature.

## **1. Scope of civil measures (Section 2 of ACTA – page 6)**

Introduce a footnote in the title of Section 2: Civil Enforcement, to make the inclusion of patents and undisclosed information optional.

### *Section 2: Civil Enforcement<sup>1</sup>*

(...)

<sup>1</sup> For the purpose of this Agreement, Parties may exclude patents and protection of undisclosed information from the scope of this section.

## **2. Border measures – Scope definition (Art. 2.X.1 - page 9)**

The word "unreasonably" is replaced by the word "unjustifiably".

### *ARTICLE 2.X: SCOPE OF THE BORDER MEASURES*

*In providing, as appropriate, and consistent with a Party's domestic system of IPR protection and without prejudice to the requirements of the TRIPS Agreement, for effective border enforcement of intellectual property rights, a Party should do so in a manner that does not discriminate unjustifiably unreasonably between intellectual property rights and that avoids the creation of barriers to legitimate trade.*

## **3. Border measures – export controls (Art. 2.X.1 - page 10)**

The EU withdraws its reservation and accepts the inclusion of the expression "where appropriate", in Article 2.X.1, alínea b).

## **4. Camcording (Art. 2.14.3 and Art. 2.15 - pages 13-14)**

- In Article 2.14.3, the US withdraws its reservation and accepts the current "may" provision.
- In article 2.15, EU and US agree to **remove the reference to "2.14.3"**.

### *ARTICLE 2.15: PENALTIES*

*For the offences specified in 2.14.1, 2.14.2, 2.14.3, and 2.14.4, each Party shall provide penalties that include imprisonment as well as monetary fines<sup>1</sup> sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.*

## **5. Internet – infringements in digital networks (Art. 2.18.2 - page 15)**

The EU lifts its reservation and the following changes (highlighted in 6.below) are introduced to the text of article 2.18.2:

- a) Add "Further to paragraph 1," at the beginning of the Paragraph, and
- b) replace "including" by "may include".

#### **6. Internet – scope of covered infringements (Art. 2.18.2 to 2.18.4 – page 15)**

Make the scope of IP rights covered by Article 2.18.2 to 2.18.4 as follows:

- a) 2.18.2 – "copyright";
- b) 2.18.3 – "trademarks and copyright";
- c) 2.18.4 – "trademarks or copyright".

#### **ARTICLE 2.18: ENFORCEMENT IN THE DIGITAL ENVIRONMENT**

1. (...)

2. *Further to paragraph 1, e*Each Party's enforcement procedures shall apply to infringement of ~~at least trademark and copyright or related rights over digital networks, including which may include~~ the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with each Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.<sup>2</sup>

3. Each Party shall endeavour to promote cooperative efforts within the business community to effectively address ~~at least trademark and~~ copyright or related rights infringement while preserving legitimate competition and consistent with each Party's law, preserving fundamental principles such as freedom of expression, fair process, and privacy.

4. Each Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of infringement of ~~at least trademark rights or~~ copyrights or related rights and where such information is being sought for the purpose of protecting or enforcing ~~at least the right holder's trademark rights or~~ copyright or related rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with each Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.