



Response of the Federal Government to the Parliamentary Question from Members Dr. Petra Sitte, Agnes Alpers and others and the DIE LINKE Parliamentary Party on the current state of the negotiations on the International Anti-Piracy Agreement (“Anti-Counterfeiting Trade Agreement” – ACTA)

UNOFFICIAL TRANSLATION

(Reference 17/63)

[Introduction by the questioner]

Since 1997, representatives of individual states, including the USA, Japan, Korea, Australia and the European Union are negotiating an Agreement on the protection of “intellectual property” – the Anti Counterfeiting Trade Agreement (ACTA). These negotiations are not public and are subject to exceptional security measures. Nonetheless, there are again documents and negotiating positions circulating on the Internet. Officially, the draft of the Agreement has only been shown to individuals on condition of confidentiality. According to the view of the Commission (the European Commission fact sheet) ACTA should neither restrict freedom nor be a burden for consumers or users. From 4 to 6 November 2009, the negotiating partners met in Seoul, in order to discuss the next steps. On 4 November the online service heise.de reported, making reference to various sources, that, at the demand of the USA, extensive regulation of Internet traffic would be proposed in the context of ACTA. Among other proposals, a “three strikes rule”, the cutting of an Internet connection after three breaches of intellectual property, was under discussion. The CDU/CSU and FDP opposed such a measure in their coalition agreement.

We ask the Federal Government:

1. When and where have negotiations on ACTA taken place?

So far, ACTA negotiations have taken place on 3 and 4 June 2008 in Geneva (Switzerland), from 29 to 31 July 2008 in Washington DC (USA), on 8 and 9 October 2008 in Tokyo (Japan), from 15 to 18 December 2008 in Paris (France), on 16 and 17 July 2009 in Rabat (Morocco) and from 4 to 6 November 2009 in Seoul (Republic of Korea).

2. Which countries are negotiating this Agreement? Were there changes in the participating states in the course of the negotiations?

Australia, the European Union and its 27 Member States, Japan, Canada, the Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the USA. Jordan and the United Arab



Emirates took part in the first round of negotiations on 3 and 4 June 2008.

3. In what way is the Federal Government participating in the ACTA negotiations??

The Member States of the European Union have given the Commission and the Presidency in office a negotiating mandate. They may participate as observers in the negotiations. The Federal Government has participated as an observer in all of the negotiating rounds to date.

4. What information does the Federal Government hold regarding the negotiating positions of the European Union, of its negotiating partners and about the concrete progress of the negotiations?

The Federal Government is informed by the European Commission and the Presidency in office in the form foreseen in the negotiating mandate. It was also able to gather information as an observer in the negotiating rounds held up until now.

5. In what way does the Federal Government influence the negotiating position of the European Commission?

The Federal Government influences the negotiating position of the European Commission in the way foreseen in the negotiating mandate. Influence is also exercised by the Member States via the special committee provided for in Article 207, paragraph 3, sub-paragraph 3, line 1 of the Treaty on the Functioning of the European Union (formerly Article 133 Committee).

6. What is the evaluation of the Federal Government of fact that the negotiations and their outcomes are secret, despite the likelihood that the Agreement may produce far-reaching consequences for policies in the EU Member States.

The Federal Government welcomes the fact that the European Commission provides information on the progress of the negotiations on its website (<http://ec.europa.eu/trade/creating-opportunities/tradetopics/intellectual-property/anti-counterfeiting/>) and that it held hearings with stakeholders on 23 June 2008 and on 28 April 2009.

7. Which German experts have been informed so far about the current state of negotiations?

Please refer to the answer to question 6. The Federal Government is not aware of which German experts have availed this opportunity.



8. From the Federal Government's perspective, what is the impact on the legitimacy of ACTA of the ruling of the Federal Constitutional Court on the Lisbon Treaty? Following the abovementioned ruling, does the Federal Government feel that the negotiations in their current form are in line with the German constitution?

The Federal Government has no concerns regarding the constitutionality of the ACTA negotiations?

9. Why was the German Parliament, contrary to the provisions of the accompanying laws to the Lisbon Treaty, not informed about the decision-making of the Federal Government, the progress of the deliberations by the organs of the EU nor the positions taken by the European Commission and by other Member States at the forefront of the negotiations of the ACTA in the negotiating round in Seoul?

The Federal Government is comprehensively fulfilling its information obligations in accordance with the Law on the Cooperation of the Federal Government and the German Parliament in European Union Affairs“(CFGGPEUA). The German Parliament is furthermore, in line with the CFGGPEUA, informed about the meetings of the special committee established under Article 207 (former 133 Committee).

10. How will the German Parliament receive information in the future regarding the progress of the ACTA negotiations?

Please refer to the answer to question 9.

11. Would the conclusion of such an agreement require the agreement of EU Member States and what is the basis of the Federal Government's position?

Despite the new classification of trade related aspects of intellectual property as an exclusive competence of the European Union as a result Art. 207 paragraph 1 and Art. 3 paragraph 1 bullet point e) of the Treaty on the Functioning of the European Union, this is a mixed Agreement as long as it continues to cover subject matter that falls within the competence of Member States. This means that, in addition to the EU as a whole, the individual Member States will have to conclude and ratify the Agreement.

12. Is the Agreement being negotiated under the umbrella of traditional international organisations, such as the World Trade Organisation or the World Intellectual Property Organisation? If not, why



not?

ACTA is being negotiated as an independent agreement, as the negotiating partners believe that a higher level of protection should be targeted. They continue to support the important work being done in WIPO, the WTO and other forums.

13. What relationship will ACTA have to existing international agreements on the enforcement of intellectual property rights, such as the Agreement on Trade Related Aspects of Intellectual Property Rights – (TRIPS)?

Existing international Agreements, such as the Agreement on Trade Related Aspects of Intellectual Property Rights – TRIPS, will not be impacted by ACTA.

14. What positions are taken by the Federal Government with regard to the ACTA negotiations and what is the central target that it is aiming for in this context?

The Federal Government approaches ACTA on the basis of the current German legal framework. It is not aiming for any change in the current legal framework in Germany.

15. To what extent will ACTA have an impact on the legal framework in Germany with regard to copyright and related rights? What effects would there be based on the current state of the negotiations?

The aim of the policy of the Federal Government is that the development of copyright and related rights in Germany will not be prejudiced by ACTA.

16. What concrete results were achieved by the most recent ACTA negotiating round?

The most recent negotiating round from 4 to 6 November 2009 focused on the enforcement of intellectual property rights in the digital world as well as the criminal enforcement of intellectual property rights. The European Commission provides information on the progress of negotiations on its website:

(<http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anticounterfeiting/>).

17. Are the media reports correct with regard to the pressure from the USA for an international



agreement on the extension of liability of Internet Service Providers, including through the use of the so-called “three strikes“ rule?

The Federal Government will not comment on media reports while the negotiations are ongoing. With regard to the arrangements in ACTA for the implementation of intellectual property rights in the digital world, the Federal Government thinks that ACTA should not impact existing EU legislation, in particular the stipulations with regard Internet liability (Directive 2000/31/EC, the E-Commerce Directive). The Federal Government rejects Internet blocking in cases of possible intellectual property infringements as the wrong approach to combating such infringements and will actively defend this position, if necessary during the ACTA negotiations.

18. How does the Federal Government view such approaches, in the context of the stated aim of ACTA not to restrict freedoms and consumer rights?

We draw your attention to the answer to question 17.

19. Will the Federal Government oppose such arrangements in the context of ACTA?

We draw your attention to the answer to question 17.

20. When does the Federal Government expect the ACTA agreement to be completed?

The negotiating partners are working towards a conclusion of the negotiations as early as possible in 2010.

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