

-----Oprindelig meddelelse-----

Fra: Ante Wessels [mailto:ante@ffii.org]

Sendt: 24. maj 2011 09:32

Til: Signe Riis Andersen

Emne: FFII calls upon European Parliament to resolve uncertainties regarding ACTA

Dear Members of Cosac,  
Dear Permanent Representatives,

Please find below the FFII's letter to the Members of the European Parliament on ACTA.

--

Dear Members of the European Parliament,

We are writing to express our concerns with ACTA (Anti-Counterfeiting Trade Agreement). Whether the Parliament will ratify or reject ACTA, it will be a landmark decision. Yet, ACTA is still surrounded by uncertainties. We call upon you to decisively resolve these uncertainties. We urge the Parliament to seek an opinion of the European Court of Justice on the compatibility of ACTA with the EU Treaties, and to commission independent assessments of the effects ACTA will have on access to medicine, diffusion of green technologies needed to fight climate change, fundamental rights within and outside the Union, innovation, small and medium sized companies and a fair balance of interests.

Prior to ratifying the 1994 WTO TRIPS agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), the Commission asked the European Court of Justice whether TRIPS complied with the Treaties. The Court decided that the Community was not competent to ratify the criminal measures.

A few years later, the AIDS epidemic took millions of lives in Africa. Protected by TRIPS, pharmaceutical companies sold AIDS medicine in Africa for prices higher than in the US. They only served a very small part of the market. The death toll was very high. This was an unforeseen effect of TRIPS. A what-if question comes to mind: if it would have been possible to foresee this effect, would the Community have ratified TRIPS?

We now know the devastating effects that IP ("intellectual property") enforcement may have on societies. With trial and error, the world learns to deal with TRIPS (for instance, the Doha Declaration on the TRIPS Agreement and Public Health, and the WIPO Development Agenda). At this point, ACTA is proposed.

How to proceed? The "Hargreaves Review"  the UK government-commissioned study on the relationship between intellectual property and growth, indicates the direction. The Review urges the UK Government to ensure that in future, policy on Intellectual Property issues is constructed on the basis of evidence, rather than weight of lobbying. "On copyright issues, lobbying on behalf of rights owners has been more persuasive to Ministers than economic impact assessments." [1] We urge the EU to base its IP policy on evidence as well.

Regarding piracy, the Hargreaves Review refers to the MPEE (Media Piracy in Emerging Economies) report. Relative to local incomes in Brazil, Russia, or South Africa, the MPEE report shows, the price of a CD, DVD, or copy of Microsoft Office is five to ten times higher than in the United States or Europe. Licit media goods are luxury items in most parts of the world, and licit media markets are correspondingly tiny. [2]

We see the same pattern as in the 1990s in Africa, multinationals only serving a small part of the market. Some 90% of the people in emerging markets can only turn to illegal media copies. Under such circumstances, stronger enforcement can not solve the piracy problem. Yet, ACTA criminalises these people. Multinational media companies have asked the Parliament not to seek the opinion of the European Court of Justice on the compatibility of ACTA with the EU Treaties. For a marginal gain, the multinational media companies are willing to compromise the EU's fundamental principles and to exclude and criminalise some 90% of the people in emerging markets. The consequences of this aggressive approach are far-reaching, both within and outside the EU.

Lobbying on behalf of rights owners has been persuasive to the Commission as well.

The Commission refused to commission independent assessments of the effects ACTA will have on access to medicine and the diffusion of green technologies needed to fight climate change. Could ACTA be just as detrimental as TRIPS, or even worse?

The Commission does not want to know.

Regarding patents, the Hargreaves Review observes that given the pace of change in the digital world and the strongly sequential nature of innovation in computer programs, the problems arising from patent thickets in this environment are particularly severe and it is essential that changes do not worsen the situation.

We fully agree, FFII members often report that patent minefields are an increasingly severe problem, especially in the software sector. Our analysis shows ACTA's heightened measures against patent infringements will make things worse. [3]

In January 2011, prominent European academics issued an "Opinion of European Academics on ACTA". The academics invite the European institutions, in particular the European Parliament, and the national legislators and governments to withhold consent of ACTA, "as long as significant deviations from the EU acquis or serious concerns on fundamental rights, data protection, and a fair balance of interests are not properly addressed".

In April 2011, the European Commission's services put on-line comments to the European Academics' Opinion on ACTA. The Commission denies that ACTA is incompatible with EU law. It appears the Commission does not have any reasonable objections against the academics' Opinion. Even a partial scrutiny of the Commission's comments shows the Commission misrepresents ACTA, does not address points raised by the academics and even uses nonsensical reasoning. Regarding the border measures, an issue with consequences on access to medicine, the Commission actually agrees with the academics, while denying that. We invite you to take note of our analysis. [4]

The Commission refused to commission independent assessments and gave a very weak response to the European Academics' Opinion on ACTA. It never provided proof ACTA's criminal measures are essential. We believe the European Parliament now has to take

responsibility.

We urge the Parliament to seek an opinion of the European Court of Justice on the compatibility of ACTA with the EU Treaties. Parliament does not have to wait with this, according to ECJ Opinion 1/09. This is an essential step, as it will clarify whether ACTA complies with the EU's fundamental principles.

We also urge Parliament to commission independent assessments of the effects ACTA will have on access to medicine, diffusion of green technologies needed to fight climate change, fundamental rights within and outside the Union, innovation, small and medium sized companies and a fair balance of interests.

Yours sincerely,

Ante Wessels  
Foundation for a Free Information Infrastructure

[1] <http://www.ipso.gov.uk/ipreview-finalreport.pdf>

[2] <http://piracy.ssrc.org/about-the-report/>

[3] <http://action.ffii.org/acta/Analysis>

[4] <http://acta.ffii.org/?p=598>