

March 22, 2010

Ambassador Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

CC: Asst. USTR Stan McCoy
Dep. USTR Kira Alvarez

Hon. Max S. Baucus Hon. Charles E. Grassley Hon. Ron Wyden Hon. Michael D. Crapo Hon. Patrick Leahy Hon. Jeff Sessions	Hon. Sander M. Levin Hon. Dave Camp Hon. John S. Tanner Hon. Kevin Brady Hon. John Conyers, Jr. Hon. Lamar Smith
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RE: Anti-Counterfeiting Trade Agreement Negotiations

Dear Ambassador Kirk:

Now that details of the text of the proposed ACTA, and comments and proposals of national participants have apparently but unofficially been made public, the undersigned are more certain than ever that an open, public discussion of substance is essential.

This recent leak of a full text heightens our concern that this negotiation is not primarily about counterfeiting or piracy; nor is at all about trade law. The public rationale that the treaty would not impinge on domestic law has been placed in doubt – particularly when one considers *whose* domestic law would be endangered. As Google executives have recently experienced, it is not only U.S. domestic law that has consequences for U.S. technologists and service providers. Similarly, domestic interests in other participating countries should consider themselves at risk from provisions that are novel or antithetical to their national law.

The leaked text reveals detailed substantive attention to core principles of any nation's intellectual property law:

- Whether copyright plaintiffs *may* or *shall* have the option of receiving pre-established damage awards that have little or no relation to any harm that has been suffered.
- The extent to which principles of *inducement*, newly introduced by the U.S. Supreme Court in the *Grokster* case, are to be accepted as supporting a separate basis for copyright liability or are a gloss on existing principles of contributory and vicarious infringement. This is not yet clear even in the United States.

- The export of secondary liability principles to ACTA countries without simultaneously including the limitations and exceptions contained both in U.S. statutory law (e.g., fair use) and in the significant court decisions limiting secondary liability (e.g., *Sony*).
- How *technological measure* anti-circumvention provisions are to be interpreted and applied, whether they will apply to access to works, whether they are to be limited to circumventions for infringing purposes, and whether account will be taken of the variations in national law, practice, and context, such as U.S. adherence to fair use and the imposition of levies under other national law.
- The extent to which a “three strikes” approach and express or implied “filtering” mandates are to be imposed on ISPs.

U.S. negotiators have assured the Congress and the public that they cannot and will not agree to any provision that is contrary to domestic law. Other national negotiators have likely given similar assurances at home, publicly or privately. Hence the annotated documents appear rife with linguistic tugs and footnotes. To the extent compromise is achieved through ambiguity, no national of *any* participant nation will have assurance that domestic law will not be affected.

The time for public discussion as to exactly what this document will and won’t do is now.

Thank you for your consideration,

American Association of Law Libraries

Consumer Electronics Association

American Library Association

Electronic Frontier Foundation

Association of College And
Research Libraries

Home Recording Rights Coalition

Association of Research Libraries

Public Knowledge

Center for Democracy & Technology

Special Libraries Association