



# The Anti-Counterfeiting Trade Agreement (ACTA)

**MYTHS VS. FACTS** Recognizing the need to enhance cooperation on intellectual property (IP) enforcement and to combat the burgeoning business of counterfeiting and piracy on a global scale, nearly 40 countries<sup>1</sup> entered into formal negotiations for the Anti-Counterfeiting Trade Agreement (ACTA) in mid-2008. After three years and nine negotiating rounds, the text was finalized in November 2010. Eight countries (Australia, Canada, Japan, Korea, Morocco, New Zealand, Singapore, and the United States) formally signed ACTA in October 2011. In January 2012, the European Union and a significant number of its member countries followed suit.

As highlighted in a joint statement at the October 2011 signing, the primary goals of ACTA are to (1) enhance international cooperation, (2) promote sound enforcement practices, and (3) establish a legal infrastructure for IP rights enforcement. The agreement builds on the minimum standards put forth in the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), representing a significant step forward in promoting global cooperation in the fight against counterfeiting and piracy.

ACTA has recently been subject to unjust and inaccurate attacks. Here, we take common misconceptions and put them side by side with the realities of the agreement. ▶

MYTH	FACT
ACTA ups the penalties on activities like noncommercial file sharing from a civil infringement to a criminal offense.	The plain language of ACTA says that only willful infringement being carried out for an economic or commercial advantage is a criminal offense. ACTA does not require or authorize prosecution for trivial infringements.
ACTA encroaches on free speech.	The text of ACTA states that enforcement measures shall be implemented in a manner that “preserves fundamental principles such as freedom of expression, fair process, and privacy.” In addition, ACTA clearly allows for signatory countries to consider the appropriate balance between protecting IP and other public interests. However, protecting IP promotes creativity by ensuring that investments in creative works are rewarded.
ACTA allows a government to seize goods that are in transit in their country, which could prevent legitimate generic drugs from getting to where they need to go.	ACTA specifically says that signatory countries “agree that patents and protection of undisclosed information do not fall within the scope of this section.” As such, while ACTA authorizes customs authorities to seize potentially dangerous counterfeit products, a legitimate generic drug would not be considered trademark infringing and therefore would not fall within the scope of this agreement.
ACTA is a secret agreement that was negotiated behind closed doors.	ACTA was discussed through a public, open process from the very beginning, consistent with other trade agreement negotiations. Stakeholders had numerous opportunities to engage directly with the ACTA negotiators between and even during the negotiating rounds. In addition, Article 30 of the agreement requires continuing transparency, mandating each signatory to publish the applicable procedures, laws, and enforcement efforts related to enforcing IP rights under each country’s national law.
ACTA makes Internet Service Providers (ISPs) liable for copyright infringement on their networks. This will overburden ISPs and make those ISPs engage in surveillance of legitimate communications.	ACTA creates no new liability for ISPs. ACTA specifically allows countries to limit the liability of ISPs from what it was before. Absolutely nothing in ACTA requires or even hints at an obligation for ISPs to monitor their networks.
ACTA requires people to pay huge amounts of damages for every stolen copy of a movie or piece of music, even if the author of those works doesn’t prove any damages.	Just as is the case now, those who break the law can be held accountable. ACTA leaves it to the judge to decide what the right damages award is, which is in accordance with the time-honored approach to guaranteeing that crime doesn’t pay.
A “three strikes” policy would be forced upon Internet users, blacklisting them from ISPs after a series of warnings if they were found to have shared files illegally.	There is no “three strikes” policy in ACTA. Plain and simple.
ACTA mandates seizure of personal items such as laptops or mp3 players at an airport if customs even suspects you have infringed copyright.	Seizure of small quantities of goods in a traveler’s personal luggage is specifically excluded by Article 14 of ACTA.
Rights holders and companies can collect damages for copyright infringement without due process.	ACTA is entirely consistent with due process. Article 6 of ACTA encourages a high standard of due process protections to be applied to national enforcement laws. These protections also apply to the digital environment as Article 27 further states that enforcement procedures online must be implemented in a way that “preserves fundamental principles such as freedom of expression, fair process, and privacy.”