
FOLKETINGET



Europaudvalget

Til: Udvalgets medlemmer og stedfortrædere

Dato: 6. januar 2011

Henvendelse vedr. ACTA (Anti-Counterfeiting Trade Agreement)

Hermed omdeles en pressemeddelelse fra Foundation for a Free Information Infrastructure (FFII), som er fremsendt til alle medlemmer af COSAC - og dermed Europaudvalgets medlemmer.

Henvendelsen drejer sig om ACTA-aftalen (Anti-Counterfeiting Trade Agreement), som skal fastlægge grundlæggende regler for distribution af indhold på internettet.

Med venlig hilsen

Signe Riis Andersen
Udvalgssekretær

Dear Members of COSAC,

Please find below the FFII press release: FFII requests proof ACTA's criminal measures are essential.

Yours sincerely,

Ante Wessels
FFII

[ACTA / Economy / Innovation]

=====
FFII requests proof ACTA's criminal measures are essential
=====

Brussels, 5 January 2011 -- The Foundation for a Free Information Infrastructure (FFII) requests proof that the Anti-Counterfeiting Trade Agreement's criminal measures are essential. The EU can only harmonise criminal measures if approximation of criminal laws and regulations of its Member States proves essential to ensure the effective implementation of a Union policy. The same is true for harmonisation by way of trade agreement. The FFII also requests documents which discuss the proportionality of the Anti-Counterfeiting Trade Agreement's criminal measures.

The Anti-Counterfeiting Trade Agreement (ACTA)'s criminal measures criminalise ordinary companies and individuals. ACTA can be used to criminalise newspapers revealing a document, office workers forwarding a file and private downloaders. A whistle blower or weblog author revealing a document in the public interest, may easily be prosecutable, for instance if the webpage contains advertisements. Remixers and others sharing a file are included if there is an advantage. This advantage may be "indirect", a concept the FFII believes to be too unclear to incorporate in criminal law: it may be fulfilled by others. ACTA is not limited to large scale activity, as claimed earlier by the Commission. There is no de minimis exception either.

FFII analyst Ante Wessels: "The criminal measures are intrusive. The Treaties demand proof that these measures are essential, we want to see this proof. If the measures are essential, the Commission should have negotiated them. If they are not, the EU Commission and Parliament cannot give consent to ACTA including criminal measures."

The Commission left the Parliament in the dark about the criminal measures, it repeatedly answered questions with: "The relevant provisions of ACTA were negotiated by the

rotating EU Presidency on behalf of the EU Member States. Therefore, the Presidency is best placed to respond to this question."

Ante Wessels: "The Commission is the guardian of the Treaties, it has to take its responsibility and provide proof the measures are essential. Without proof, the EU cannot ratify ACTA's criminal measures."

=====
FFII request
=====

Dear Commission,

1. At the end of September 2007, the Commission launched a questionnaire addressed to the Member States in order to conduct a study on the situation of the intellectual property legislation in the Member States. See Reply P-0541/2008 from Commission
<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2008-0541&language=EN>

I would like to receive the questionnaire, the answers given by the Member States and study, conclusions, etc and other documents relevant to this study.

2. I would like to receive documents which discuss whether approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of the Union policy with regards to intellectual property rights. (Compare art 83.2 TFEU)

3. I would like to receive documents which discuss the proportionality of the Anti-Counterfeiting Trade Agreement's criminal measures.

Yours sincerely,

Ante Wessels

=====
Background information
=====

Behind closed doors, the European Union, United States, Japan and other trade partners are negotiating the Anti-Counterfeiting Trade Agreement. ACTA will contain new international norms for the enforcement of copyrights, trade mark rights, patents and other exclusive rights.

The EU power to negotiate criminal measures in trade agreements is not unlimited. The criminal measures in

trade agreements are limited by the same rules that limit the power to make internal EU legislation. Art 207.6 TFEU: "The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation."

The Treaty of Lisbon entered into force on 1 December 2009. The EU is competent to make criminal law. Criminal IP measures have to be based on art 83.2 TFEU: "If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76."

=====
Links
=====

FFII analysis ACTA's criminal measures:
<http://acta.ffii.org/wordpress/?p=34>

FFII general ACTA analysis:
<http://action.ffii.org/acta/Analysis>

FFII ACTA blog:
<http://acta.ffii.org/wordpress/>

Answers to Parliamentary questions:
P-9025/10EN
<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2010-9025&language=EN>
P-8952/10EN
<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2010-8952&language=EN>
P-8950/10EN
<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2010-8950&language=EN>

Parliamentary questions:
http://en.act-on-acta.eu/20_October_Priority_Questions

Permanent link to this press release:

<http://press.ffii.org/Press%20releases/FFII%20requests%20proof%20ACTA%27s%20criminal%20measures%20are%20essential>

=====
Contact
=====

Ante Wessels
ante (at) ffii.org
+31 6 100 99 063

FFII Office Berlin
Malmöer Str. 6
D-10439 Berlin
Fon: +49-30-41722597
Fax Service: +49-721-509663769
Email: office (at) ffii.org
<http://www.ffii.org/>

=====
About FFII
=====

The FFII is a not-for-profit association active in twenty European countries, dedicated to the development of information goods for the public benefit, based on copyright, free competition, open standards. More than 1000 members, 3,500 companies and 100,000 supporters have entrusted the FFII to act as their voice in public policy questions concerning exclusion rights (intellectual property) in data processing.