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**DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE
PUBLIC CONSULTATIONS RESPONSES ON THE PROPOSED ANTI-
COUNTERFEITING TRADE AGREEMENT (ACTA)**

s.20(1)(b)

OVERVIEW

Following the announcement of Canada's participation in preliminary discussions with several countries¹ on the proposed Anti-Counterfeiting Trade Agreement (ACTA), the Department of Foreign Affairs and International Trade (DFAIT) launched public consultations, on April 1, 2008, to solicit feedback on Canada's involvement in formal negotiations. Respondents were provided with the Anti-Counterfeiting Trade Agreement Fact Sheet, as well as the October 23, 2007 News Release on the Agreement (Annexes 1 and 2), which served in many cases as the basis of their comments and views.

Consultations ran until April 30, 2008, during which time DFAIT received a total of 31 responses, 17 of which were provided by individual citizens, 13 from Canadian business associations, and one response from a Canadian academic research institute (see Annex 3 for a list of respondents).

Generally, the issues raised by stakeholders fell into two broad categories:

- 1) General concerns and views on the negotiation of the Agreement; and
- 2) Views on the broad areas to be addressed by the Agreement, as enumerated in the Anti-Counterfeiting Trade Agreement Fact Sheet.

In the former category, stakeholders have expressed a variety of concerns, including transparency, the impact of ACTA negotiations on ongoing domestic copyright reform, as well as on other multilateral IP agreements and negotiations. With respect to items listed in the Anti-Counterfeiting Trade Agreement Fact Sheet, stakeholders provided substantial input on various issues that they would and would not like addressed under each section of the Agreement.

On the whole, consultation responses received from Canadian business associations were largely supportive of Canada's involvement, while those responses received from individual Canadian citizens were generally critical of Canada's role in the formal negotiation of ACTA. Regardless, those critical of Canada's involvement nonetheless provided constructive input on Canada's participation in the negotiating process, as well as suggestions on the issues that ACTA, in their views, should and should not address. At the same time, a number of industry responses provided constructive suggestions on the various issues that they would like to be addressed, as well as anecdotal information on experiences with counterfeiting and piracy, to underline their requests for substantive enforcement provisions.

What follows is a summary of the various issues raised by stakeholders, as well as their requests under each of these issues. Further information on the nature of these requests and concerns can be found in Annex 4 of this document.

Please note that each "bullet point" under each of the following issues represents a request or recommendation made by one or more stakeholder. For privacy reasons, please note that the various requests/recommendations made under each issue are not attributed to specific stakeholders. A full list of stakeholders can be found in Annex 3.

¹ DFAIT has officially announced the involvement of the United States, Mexico, the European Union, Switzerland, Japan, New Zealand, and other countries, in ACTA negotiations.

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**1) GENERAL VIEWS AND REQUESTS MADE REGARDING ACTA NEGOTIATIONS (BY
ISSUE)**

Transparency

- The Government of Canada should insist on full public disclosure of ACTA negotiations.
- ACTA discussions should formalize a process for the involvement of civil society.
- The motivations for entering into the Agreement should be clarified and made publicly available.
- Definitions for "counterfeiting", "piracy", "theft" and "IP crime" should be clearly defined.

Perceived "exclusion" of developing countries from the negotiating process

- Developing countries should be invited to participate in the negotiation of ACTA.

Counterfeiting and piracy are already dealt with in other multilateral fora

- The Government of Canada should provide the general Canadian public with evidence that another treaty on this issue is required.
- It is encouraged that, rather than negotiating ACTA, existing treaties be amended.

Evidence of the need for ACTA

- Policymakers should provide evidence about the size and scope of the counterfeiting problem, evidence that the current legal frameworks are unable to address the problem, and support for the claim that the proposed provision will improve anti-counterfeiting activities.
- ACTA should not impose resource commitments in the absence of sound evidence that the commitment is warranted.
- Issues to be dealt with under ACTA should be based on empirical evidence and Canada's own innovation and creativity environment.

Impact on the ongoing domestic copyright reform process

- The Government of Canada should clarify its position on copyright prior to negotiating with other countries on the issue.
- ACTA negotiations "should not serve as a vehicle for domestic legislative reform".

Scope of the Agreement

- ACTA should focus on enforcement of existing intellectual property rights rather than creating substantive obligations.
- Canada should support a "narrow" ACTA that targets the most harmful conduct from counterfeiting.
- ACTA should prioritize health and safety concerns, such as counterfeit pharmaceuticals, electrical products.
- Criminal and civil provisions under ACTA should target large scale commercial operations, such as organized crime, rather than non-commercial infringement.

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- ACTA should focus on the protection of the public domain and individual rights, such as creator and user rights.

Substantive IP protection

- ACTA should not undermine existing fair use/fair dealing exemptions on copyrighted materials.
- ACTA should not alter existing Canadian legislation on competition policy.
- Obligations under ACTA should not require the extension of duration of copyright protection.
- Obligations under ACTA should not require an extension of patent term regulations.

Further consultation on ACTA

- Encourage further consultation with civil society groups and the broader public, creator groups, user communities, rights-holders, and intermediaries.
- Encourage consultation with developing countries.

Pace of ACTA negotiations

- Policymakers should take into account the implications of altering the existing balance between stakeholder interests before the completion of formal ACTA negotiations.

Alternatives to ACTA negotiations in their current form

- Rather than negotiating the ACTA, the Government of Canada should collect reliable data on counterfeiting and piracy, and conduct balanced and transparent analysis of the economic and public policy implications of any potential action to address these issues.
- ACTA negotiations should be moved to a traditional venue for addressing international IP standards, such as WIPO.

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**2) VIEWS ON THE BROAD AREAS TO BE ADDRESSED BY THE AGREEMENT (AS
ENUMERATED IN THE ACTA FACT SHEET)**

INTERNATIONAL COOPERATION

International cooperation among law enforcement authorities

- Request for the development of high-level standards on cross-border cooperation on investigation and enforcement of IP-related crimes.
- Provisions on formal intelligence-sharing and cooperation amongst customs authorities and other law enforcement authorities within countries, between Parties to ACTA, and between customs authorities and rights holders.
- Establishment of a forum for coordination between Parties to ACTA.
- Provisions on the standardization of data collection and analysis, based on internationally-accepted methodologies.
- Requested that all IP enforcement officials access to databases.
- Information sharing between law enforcement authorities should not undermine the protection of privacy under existing Canadian law.
- Another stakeholder has requested that privacy should be taken into account to the extent that this does not impede enforcement.

Capacity building and technical assistance in improving enforcement

- Request for provisions on capacity building and technical assistance among enforcement agencies.

ENFORCEMENT PRACTICES

Formal or informal public/private advisory groups

- Request for the establishment of advisory groups at both the domestic and international level.
- Ensure that advisory groups are representative of the broad spectrum of IP interests, including rights holders, intermediaries, and consumers.
- Ensure that advisory groups are "balanced", accountable and transparent.

Fostering specialized IP expertise within law enforcement structures to ensure effective handling of IPR cases

- Request for continuing education and training opportunities for enforcement personnel including police, customs officers, prosecutors and judges.

Measures for raising consumer public awareness about the importance of IPR protection and the detrimental effects of IPR infringements

- ACTA partners should promote broad based IP education and awareness on particular problems associated with IP crime.
- Public awareness should be directed not only at consumers, but "to all individuals involved in the purchasing and distribution of products".

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- Public awareness should take into account the exclusivity of IPR, as well as exceptions and limitations to these rights.
- Ensure that campaigns raise public awareness regarding fair use/fair dealing rights.
- Request for international cooperation between Parties to ACTA on awareness measures for the public, enforcement officials, and IPR holders worldwide.
- ACTA should provide flexibility to individual governments on the types of information presented in consumer awareness campaigns.

Other enforcement practices

- Request for the establishment of best practices for enforcement.

LEGAL FRAMEWORKS

Criminal enforcement

- Increase criminal penalties for counterfeiting and piracy.
- Another stakeholder has requested that ACTA should not increase criminal penalties for "counterfeiting and copyright".
- Request for the criminalization and "significant penalty" for the intentional manufacture, reproduction, distribution, importation and exportation or sale of counterfeit products.
- Request for the criminalization of "knowingly facilitating" these processes.
- Request for the criminalization of the intentional possession of counterfeit goods for the purpose of sale.
- Request for an amendment to section 408 of the *Criminal Code* "concerning the intent component of 'passing off' provisions" on counterfeit trademarks.
- Request for provisions stipulating trademark counterfeiting as a criminal offence under the *Trade-marks Act*.
- Request for the removal of the *Copyright Act* from the list of excluded acts under proceeds of crime legislation.
- Request for the establishment of an IP Crime Task Force at the domestic level.

Border measures

- Request for provisions providing for the disclosure to rights owners/RCMP of information concerning importer and source of counterfeit products
- Request for the provision of samples to rights holders for the purposes of determining whether detained goods are counterfeit.
- Request for provisions granting authority to "peace officers" to seize counterfeit and pirated goods, with all seizures to be reported to the appropriate enforcement authorities.
- Another stakeholder has requested that provisions under the Agreement do not vest "police-type" search and seizure measures in private sector organizations.

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- Provide customs authorities with *ex officio* powers to target, detain, seize and destroy counterfeit and pirated goods, as well as circumvention devices.
- Provide customs authorities with *ex officio* powers to seize and destroy products confirmed to be counterfeit *at the request of IP owners*.
- Request for the establishment of a centralized recordation system for trademarks and copyrights.
- Prohibition of the importation of counterfeit products under customs legislation.
- Legal authority for customs officials to enforce IPRs for goods under customs supervision or control.
- In contrast to some of the requests made for *ex officio* powers for customs officials, one stakeholder has also requested that the enforcement of IPR must not preclude, replace or assume the *domestic* adjudication and interpretation of the scope and limits of IPRs, at the judicial level.
- Similarly, a number of stakeholders have requested that any enforcement measures involving search and seizure are subject to due process rights.

Civil enforcement

- Request for provisions on summary proceedings for copyright and trademarks.
- Request for provisions on statutory damages for civil offenses.
- By contrast, another stakeholder has requested that ACTA not include provisions on statutory damages.
- Another stakeholder has requested provisions lowering statutory damages for cases of non commercial infringement.
- Request that provisions ordering infringers to pay the legal fees and costs of rights holders not be pursued.
- Request for provisions on the personal liability of directors and officers of corporate counterfeiters, and shareholder liability in the case of shell companies.
- Request that interim interlocutory injunctions, including the presumption of irreparable harm in counterfeiting cases, be made available.
- Request that the jurisdiction of the prosecution of IPR infringement be identified as the Federal Court and provincial superior courts.
- Request any new penalties preserve all due process rights.

Optical disc piracy

- Request that no distinction be made between penalties for commercial and non-commercial infringement.

Internet distribution and information technology

- Request for the implementation of the WIPO Internet treaties (WIPO Copyright Treaty, and WIPO Performances and Phonograms Treaty).
- Another stakeholder has requested the implementation of the WIPO Internet treaties prior to ACTA negotiations.
- Inclusion of specific anti-piracy provisions dealing with digital piracy and marketing of counterfeit and pirated hard goods over the internet.

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- By contrast, another stakeholder has requested that ACTA should be "technologically neutral", and not create differential obligations between digital and physical counterfeit goods.
- A number of stakeholders have requested provisions prohibiting acts of circumvention, trafficking in circumvention devices, as well as deterrent criminal and civil remedies against those engaged in the provision of services and tools that circumvent TPMs.
- Several other stakeholders have requested that ACTA not include provisions on TPMs, and/or provisions prohibiting the trade in technologies that facilitate the circumvention of TPMs.
- Another stakeholder has requested that provisions on TPMs should be limited to acts of copyright infringement, should not include device prohibitions, and should not impinge on the exercise of fair dealing or other user rights.
- Several stakeholders have requested that provisions under ACTA should not target consumer activity such as time-shifting, media-shifting, and/or format shifting.
- Another stakeholder has requested that DRM be made illegal or regulated.
- Several stakeholders have requested provisions under ACTA allowing for private copying.
- Another stakeholder has requested the removal of the private copying levy.
- Several stakeholders have requested provisions dealing with transparency of the Internet and ISP responsibilities.
- These stakeholders have also requested provisions providing incentives for ISPs to cooperate with rights holders when informed of infringing activity.
- Mechanisms for the disclosure of repeat infringement information to rights holders, as well as mechanisms to enable the termination of Internet access for repeat infringers, have also been requested.
- However, another group of stakeholders has requested that obligations under ACTA should not shift liability onto ISPs.
- Similarly, a number of stakeholders have requested that ACTA not include remedies for repeat infringement (i.e. termination of Internet access).
- Several stakeholders have requested that ACTA not include provisions allowing ISPs or law enforcement officials to examine data transfers without a warrant.
- Request that ACTA not include provisions enabling rights holders to obtain information from ISPs identifying alleged infringers.
- One stakeholder has also requested that provisions under ACTA should not replace Canada's Existing "Notice and Notice Regime" for ISPs with a "Notice and Take Down Regime".

Annex 1: Anti-Counterfeiting Trade Agreement – Fact Sheet

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The proposed Anti-Counterfeiting Trade Agreement (ACTA) aims to establish new global standards for the enforcement of intellectual property rights (IPR) to more effectively combat the increasingly prolific trade in counterfeit and pirated goods. The ACTA would focus on 3 areas: a) increasing international cooperation, b) establishing best practices for enforcement, and c) providing a more effective legal framework to combat counterfeiting and piracy.

International Cooperation: Cooperation among the parties to the agreement would be a vital aspect of the ACTA – specifically cooperation and sharing of information between law enforcement authorities, including Customs and other applicable agencies. Possible provisions in this area could include:

- International cooperation among enforcement agencies; and
- Capacity building and technical assistance in improving enforcement.

Enforcement Practices: Proponents of the ACTA believe it is crucial to establish enforcement "best practices" that promote strong IP protection in collaboration with trading partners and right holders. These practices would support the application of the relevant legal tools. Areas for possible provisions include:

- Formal or informal public/private advisory groups;
- Fostering of specialized intellectual property expertise within law enforcement structures to ensure effective handling of IPR cases; and
- Measures for raising consumer public awareness about the importance of IPR protection and the detrimental effects of IPR infringements.

Legal Frameworks: The final pillar of the ACTA would strive to provide private citizens, law enforcement agencies, and the judiciary with the appropriate tools to deal effectively with counterfeiting and piracy through a strong and modern legal framework. Areas for possible provisions include:

- Criminal enforcement;
- Border measures;
- Civil enforcement;
- Optical disc piracy; and
- Internet distribution and information technology.

To date, only informal discussions have taken place. Formal negotiations are expected to begin in the course of 2008.

Annex 2: Anti-Counterfeiting Trade Agreement News Release

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**CANADA JOINS DISCUSSIONS TOWARD
INTERNATIONAL ANTI-COUNTERFEITING TRADE AGREEMENT**

The Honourable David Emerson, Minister of International Trade, today announced that Canada will participate in preliminary discussions with the United States, Mexico, the European Union, Switzerland, Japan, South Korea, New Zealand and other countries toward an anti-counterfeiting trade agreement (ACTA).

"This government is working both at home and internationally to protect the intellectual property rights of Canadian artists, creators, inventors and investors," said Minister Emerson. "We are seeking to counter global piracy and counterfeiting more effectively, in an effort to foster an environment that allows for innovation, foreign investment and sustained economic growth."

The main objective of an ACTA would be to develop international standards to better combat the trade in counterfeit trademarked and pirated copyright goods. Provisions would focus on international cooperation, enforcement practices and legal frameworks, including enforcement systems.

Counterfeiting and piracy pose an ever-increasing threat to the growth of the knowledge economy. These illicit activities are also associated with organized crime, and can pose serious health and safety risks to consumers.

Discussions toward an ACTA complement a number of activities that Canada is currently undertaking to combat counterfeiting and piracy. These include international efforts at the G8, at APEC, and within the Security and Prosperity Partnership with Mexico and the United States, as well as the recent enactment of legislation to criminalize the unauthorized recording of films in movie theatres.

The government takes the threat of pirated and counterfeit goods seriously, and is strongly committed to improving the protection of intellectual property (IP) rights in Canada. It underscored its commitment to strengthening Canada's IP regime in the October 16 Speech from the Throne (<http://www.sft-ddt.gc.ca/eng/index.asp>).

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Annex 3: ACTA Consultation Respondents

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Annex 4: Summary of ACTA Consultation Responses

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GENERAL VIEWS AND CONCERNS REGARDING ACTA NEGOTIATIONS

Issue	Request	Comment
Transparency	The Government of Canada should insist on full public disclosure of ACTA negotiations.	A number of stakeholders have expressed the view that they have not received sufficient information on the content of the Agreement, including its origins and proposed scope. Stakeholders have also noted a lack of transparency regarding the state of ACTA negotiations, and the progress made in these discussions to date.
	ACTA discussions should formalize a process for the involvement of civil society.	
	The motivations for entering into the Agreement should be clarified and made publicly available.	
	Definitions for "counterfeiting", "piracy", "theft" and "IP crime" should be clearly defined.	
Perceived "exclusion" of developing countries from the negotiating process	Developing countries should be invited to participate in the negotiation of ACTA.	Several stakeholders have expressed concern that developing countries have been "excluded" from the negotiation process, and concern that this will produce standards "skewed" towards the interest of developed countries.
Counterfeiting and piracy are already dealt with in other multilateral fora	The Government of Canada should provide the general Canadian public with evidence that another treaty on this issue is required.	A significant number of stakeholders have expressed the view that ACTA is not necessary, and that such issues are already dealt with in WIPO and the WTO. It is also noted that Canada is currently addressing these issues domestically in discussions on the implementation of the WIPO Internet treaties. Stakeholders have also expressed concern that ACTA may be inconsistent with other multilateral negotiations, such as the negotiation of exceptions and limitations under the WIPO Development Agenda, and the WIPO Standing Committee on Copyright and Related Rights.

Annex 4: Summary of ACTA Consultation Responses

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Issue	Request	Comment
Counterfeiting and piracy are already dealt with in other multilateral fora	It is encouraged that, rather than negotiating ACTA, existing treaties be amended.	It is also maintained that the Government of Canada has not demonstrated where existing treaties are inadequate, and in this light, stakeholders have encouraged that these inadequacies be addressed by modifying existing treaties.
Evidence of the need for ACTA	Policymakers should provide evidence about the size and scope of the counterfeiting problem, evidence that the current legal frameworks are unable to address the problem, and support for the claim that the proposed provision will improve anti-counterfeiting activities.	
	ACTA <u>should not</u> impose resource commitments in the absence of sound evidence that the commitment is warranted.	One stakeholder has noted that the allocation of resources to ACTA is a concern, given that this will divert resources from other priority areas such as "other important security matters".
	Issues to be dealt with under ACTA should be based on empirical evidence and Canada's own innovation and creativity environment.	One stakeholder has expressed concern that ACTA may impact creativity and innovation in Canada. Along these lines, another stakeholder has requested that the Government of Canada conduct studies on the contributions to the economy made by industries benefiting from fair use exceptions and limitations, and the implications for these contributions under ACTA.
Impact on the ongoing domestic copyright reform process	The Government of Canada should clarify its position on copyright prior to negotiating with other countries on the issue.	Several stakeholders have expressed concern that copyright obligations under ACTA might sideline domestic, democratic debates on copyright reform.
	ACTA negotiations "should not serve as a vehicle for domestic legislative reform".	

Annex 4: Summary of ACTA Consultation Responses

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Issue	Request	Comment
Scope of the Agreement	ACTA should focus on enforcement of existing intellectual property rights rather than creating substantive obligations.	
	Canada should support a "narrow" ACTA that targets the most harmful conduct from counterfeiting.	
	ACTA should prioritize health and safety concerns, such as counterfeit pharmaceuticals, electrical products.	
	Criminal and civil provisions under ACTA should target large scale commercial operations, such as organized crime, rather than non-commercial infringement.	Several stakeholders have requested that ACTA focus on instances of commercial infringement, such as organized crime, as opposed to the non-commercial infringement actions of individuals, groups and institutions.
	ACTA should focus on the protection of the public domain and individual rights, such as creator and user rights.	
Substantive IP protection	Should not undermine existing fair use/fair dealing exemptions on copyrighted materials.	A number of stakeholders have expressed concern that, while Canada's existing copyright legislation contains fair use/fair dealing exceptions, provisions under ACTA may make Canadian citizens who exercise these exceptions liable for copyright infringement in other jurisdictions.
	Should not alter existing Canadian legislation on competition policy.	
	Should not require the extension of duration of copyright protection.	One stakeholder has noted that such provisions would undermine access to the cultural heritage in the public domain.
	Should not require an extension of patent term regulations.	

Annex 4: Summary of ACTA Consultation Responses

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Issue	Request	Comment
Further consultation on ACTA	Encourage further consultation with civil society groups and the broader public, creator groups, user communities, rights-holders, and intermediaries.	
	Encourage consultation with developing countries.	
Pace of ACTA negotiations	Policymakers should take into account the implications of altering the existing balance between stakeholder interests before the completion of formal ACTA negotiations.	Along these lines, one stakeholder has expressed concern that the envisaged timeline for the conclusion of ACTA negotiations by the end of 2008, will not provide sufficient time to take these interests into account.
Alternatives to ACTA negotiations in their current form	Rather than negotiating the ACTA, the Government of Canada should collect reliable data on counterfeiting and piracy, and conduct balanced and transparent analysis of the economic and public policy implications of any potential action to address these issues.	This request is based on a view that existing laws on counterfeiting and piracy are sufficient.
	ACTA negotiations should be moved to a traditional venue for addressing international IP standards, such as WIPO.	

Annex 4: Summary of ACTA Consultation Responses

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INTERNATIONAL COOPERATION

International cooperation among law enforcement authorities

Issue	Request	Comment
High-level standards for international cooperation	Development of high-level standards on cross-border cooperation on investigation and enforcement of IP-related crimes.	Request for provisions on strengthened cooperation on IP crime, including the manufacture, sale, import and export of infringing goods, and online violations of IPRs.
	Provisions on formal intelligence-sharing and cooperation amongst customs authorities and other law enforcement authorities within countries, between Parties to ACTA, and between customs authorities and rights holders.	
	Establishment of a forum for coordination between Parties to ACTA.	
Standardization and sharing of data	Provisions on the standardization of data collection and analysis, based on internationally-accepted methodologies.	Request for the standardization of data be developed in accordance with internationally-accepted methodologies, and in consultation with public and private stakeholders.
	Requested that all IP enforcement officials access to databases.	

Annex 4: Summary of ACTA Consultation Responses

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Issue	Request	Comment
Protection of privacy	Information sharing between law enforcement authorities should not undermine the protection of privacy under existing Canadian law.	Requested that information sharing provisions not undermine existing Canadian privacy laws. Suggested that ACTA include privacy provisions consistent with Canadian law.
		Suggested that "only information obtained under judicially approved warrants be shared, and then only if there continues to be evidence of criminal activity under Canadian law."
	Privacy should be taken into account to the extent that this does not impede enforcement.	Requests that provisions on the exchange of information "facilitate both criminal and civil enforcement in a manner that takes into account privacy rights but does not act as an impediment to enforcement."

Capacity building and technical assistance in improving enforcement

Support for capacity building and technical assistance	Provisions on capacity building and technical assistance among enforcement agencies.	
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Annex 4: Summary of ACTA Consultation Responses

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ENFORCEMENT PRACTICES

Formal or informal public/private advisory groups

Issue	Request	Comment
Coordination of advisory groups at the domestic and international levels	Establishment of advisory groups at both the domestic and international level.	Requested as a means towards promoting coordination and exchanges of information between enforcement authorities at both the domestic and international levels.
Representativeness, accountability, and transparency	Ensure that advisory groups are representative of the broad spectrum of IP interests, including rights holders, intermediaries, and consumers.	
	Ensure that advisory groups are "balanced", and are accountable and transparent.	

Fostering specialized IP expertise within law enforcement structures to ensure effective handling of IPR cases

Education and training of law enforcement officials	Continuing education and training opportunities for enforcement personnel including police, customs officers, prosecutors and judges.	As well, additional funding for customs, law enforcement and judicial officers has been requested.
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Annex 4: Summary of ACTA Consultation Responses

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Measures for raising consumer public awareness about the importance of IPR protection and the detrimental effects of IPR infringements

Issue	Request	Comment
Promotion of "broad based IP education"	<p>ACTA partners should promote broad based IP education and awareness on particular problems associated with IP crime.</p> <p>Public awareness should be directed not only at consumers, but "to all individuals involved in the purchasing and distribution of products".</p>	<p>Public awareness should "promote diligence" on the part of retailer purchasers, distributors, importers, exporters and all others involved in the domestic and international distribution of goods, and raise their capacity to detect, and lower their capacity to purchase, counterfeit and pirated goods.</p> <p>It has also been suggested that Parties to ACTA consider the establishment of best practices for public awareness.</p>
Balanced public awareness campaigns	Public awareness should take into account the exclusivity of IPR, as well as exceptions and limitations to these rights.	In developing these campaigns, it has been requested that Parties to ACTA seek input from creator and rights holders, consumers, educators, librarians, and civil liberties and privacy experts.
	Ensure that campaigns raise public awareness regarding fair use/fair dealing rights.	
International coordination on public awareness	International cooperation between Parties to ACTA on awareness measures for the public, enforcement officials, and IPR holders worldwide.	Suggested that ACTA partners hold international symposiums on public awareness.
	ACTA should provide flexibility to individual governments on the types of information presented in consumer awareness campaigns.	

Other enforcement practices

Best practices for enforcement	Establishment of best practices for enforcement.	One stakeholder has noted its support for establishing best practices for enforcement, as a means to protecting IPR and encouraging innovation and productivity.
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Annex 4: Summary of ACTA Consultation Responses

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LEGAL FRAMEWORKS

Criminal enforcement

Issue	Request	Comment
Increased penalties for counterfeiting and piracy	Increase criminal penalties for counterfeiting and piracy.	Suggested that penalties should be "more than a minor cost of doing business to counterfeiters and pirates".
		Requested that increased penalties include jail sentences in the case of commercial counterfeiting and piracy, and seizure of income and property derived from copyright piracy.
	Should <u>not</u> increase criminal penalties for "counterfeiting and copyright".	Rather than increasing criminal penalties, one stakeholder suggests that Parties to ACTA consider lowering statutory damages for cases of non-commercial infringement.
Amendments to criminal legislation	Criminalization and "significant penalty" for the intentional manufacture, reproduction, distribution, importation and exportation or sale of counterfeit products.	One stakeholder has also requested similar amendments to trademark and copyright legislation "where necessary".
	Criminalization of "knowingly facilitating" these processes.	
	Criminalization of the intentional possession of counterfeit goods for the purpose of sale.	
	Amendment to section 408 of the <i>Criminal Code</i> "concerning the intent component of 'passing off' provisions" on counterfeit trademarks.	
Amendments to trademark legislation	Provisions stipulating trademark counterfeiting as a criminal offence under the <i>Trade-marks Act</i> .	

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Issue	Request	Comment
Proceeds of crime	Removal of the <i>Copyright Act</i> from the list of excluded acts under proceeds of crime legislation.	
IP Crime Task Force	Establishment of an IP Crime Task Force at the domestic level.	This task force would be comprised of specialized IPR prosecutors and police officials dedicated to IP-related crime, to coordinate enforcement and prosecution efforts, and address the movement of counterfeit products across borders.

Border measures

Provision of information to rights holders and law enforcement agencies	Provide for disclosure to rights owners/RCMP of information concerning importer and source of counterfeit products	
	Provisions for samples to rights holders for the purposes of determining whether detained goods are counterfeit.	
Search and seizure powers of non-RCMP/CBSA officials	Grant authority to "peace officers" to seize counterfeit and pirated goods, with all seizures to be reported to the appropriate enforcement authorities.	
	Do <u>not</u> vest "police-type" search and seizure measures in private sector organizations.	
Ex officio powers regarding counterfeit and pirated goods	Provide customs authorities with <i>ex officio</i> powers to target, detain, seize and destroy counterfeit and pirated goods, as well as circumvention devices.	It has also been suggested that the Agreement include provisions addressing the use of free trade zones, and other distribution strategies used by counterfeiters.
	Provide customs authorities with <i>ex officio</i> powers to seize and destroy products confirmed to be counterfeit <i>at the request of IP owners</i> .	

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Issue	Request	Comment
Recordation system for border enforcement	Establishment of a centralized recordation system for trademarks and copyrights.	<p>Two stakeholders have requested the establishment of a centralized recording system, whereby rights holders may submit applications for enforcement actions directly to customs authorities.</p> <p>This would replace Canada's existing notification system, in which rights holders notify customs authorities of suspected counterfeit or pirated goods, and request their intervention by obtaining a judicial or administrative order.</p>
Other amendments to customs legislation	Prohibition of the importation of counterfeit products under customs legislation.	
	Legal authority for customs officials to enforce IPRs for goods under customs supervision or control.	
Interpretation of the scope and limits of domestic IPRs	Border enforcement of IPR must not preclude, replace or assume the <i>domestic</i> adjudication and interpretation of the scope and limits of IPRs, at the judicial level.	The stakeholder making this request maintains that only the judiciary is qualified to assess controversial claims regarding the subject matter, scope, and/or exceptions and limitations of IPRs at the domestic level.
Due process rights	Ensure that any enforcement measures involving search and seizure are subject to due process rights.	

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Civil enforcement		
Issue	Request	Comment
Summary proceedings	Provisions on summary proceedings for copyright and trademarks.	Specifically, "improved" summary proceeding provisions under trademark legislation, and the addition of summary proceedings provisions for copyright, have been requested.
Statutory damages	Provisions on statutory damages for civil offenses.	These provisions have been requested "to allow rights holders to pursue matters with a reasonable expectation of return".
	No provisions on statutory damages.	A number of stakeholders request that the Agreement not contain any requirement for statutory damages "especially where infringement is not wilful, or causes negligible economic harm".
	Provisions lowering statutory damages for cases of non commercial infringement.	
Legal fees and costs	Should not pursue provisions ordering infringers to pay the legal fees and costs of rights holders.	The stakeholder making this request questions why provisions ensuring the reverse case (i.e. provisions for rights holders to pay the legal fees and costs of alleged infringers, in appropriate cases) have not been pursued.
Personal liability	Provisions on the personal liability of directors and officers of corporate counterfeiters, and shareholder liability in the case of shell companies.	
Interim interlocutory injunctions	Make available interim interlocutory injunctions, including the presumption of irreparable harm in counterfeiting cases.	Along these lines, this stakeholder has also requested provisions on the right of defendants to apply to the court to lift the injunction if it has been granted improperly.

Annex 4: Summary of ACTA Consultation Responses

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Issue	Request	Comment
Prosecution of IPR infringement	Identify the jurisdiction of the prosecution of IPR infringement as the Federal Court and provincial superior courts.	Along these lines, one stakeholder also requests granting the federal Attorney General and provincial attorneys general the authority to prosecute.

Due process rights	Ensure that any new penalties preserve all due process rights.	
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Optical disc piracy

Commercial and non-commercial penalties	No distinction between penalties for commercial and non-commercial infringement.	Specifically, it has been requested that such penalties "are applied equally to scenarios where manufacturing is taking place using optical disc burners, whether in someone house, the back of their store or otherwise, as they are to more conventional manufacturing activities".
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Internet distribution and information technology

WIPO Internet treaties	Immediate implementation of the WIPO Internet treaties (WIPO Copyright Treaty, and WIPO Performances and Phonograms Treaty).	
	Implementation of the WIPO Internet treaties <u>prior</u> to ACTA negotiations.	

Digital piracy and marketing of counterfeit and pirated goods over the Internet	Inclusion of specific anti-piracy provisions dealing with digital piracy and marketing of counterfeit and pirated hard goods over the internet.	
	ACTA should be "technologically neutral", and not create differential obligations between digital and physical counterfeit goods.	Specifically, CCIA and CIPPIC have requested that the Agreement not include the imposition of technology mandates such as the filtering of internet traffic, or additional penalties specific to the Internet.

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Issue	Request	Comment
Technological protection measures (TPMs)	Provisions prohibiting acts of circumvention, trafficking in circumvention devices, as well as deterrent criminal and civil remedies against those engaged in the provision of services and tools that circumvent TPMs.	
	ACTA <u>should not</u> include provisions prohibiting the trade in technologies that facilitate the circumvention of TPMs.	The stakeholder making this request maintains that "such technologies are lawful in Canada and have lawful application even in countries that boast anti-circumvention laws".
	ACTA <u>should not</u> include provisions on TPMs.	The stakeholder making this request notes that "[s]uch policies are already provided for by the WIPO internet treaties".
	Provisions on TPMs should be limited to acts of copyright infringement, should not include device prohibitions, and should not impinge on the exercise of fair dealing or other user rights.	A number of stakeholders have noted that Canada's existing fair dealing provisions under section 30.1 of the <i>Copyright Act</i> allows libraries, museums and archives to make copies of entire copyrighted works for the preservation and maintenance of their collections, which includes format shifting from obsolete to current formats, while section 32 allows individuals and non-profit organizations to assist the perceptually disabled to convert copyrighted material to alternate formats.
Digital Rights Management (DRM)	Provisions should not target consumer activity such as time-shifting, media-shifting, and/or format shifting.	
	DRM should be made illegal or regulated.	
Private copying	Allowance for private copying.	A number of stakeholders have requested that provisions under ACTA do not undermine existing private copying provisions under Canadian legislation.
	Removal of the private copying levy.	

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Issue	Request	Comment
Internet service provider (ISP) responsibility	Provisions dealing with transparency of the Internet and ISP responsibilities.	
	Provisions providing incentives for ISPs to cooperate with rights holders when informed of infringing activity.	
	<u>Should not</u> shift liability onto ISPs.	One stakeholder has noted that Canada should address the issue of ISP liability domestically, before committing to this at the international level.
Remedies for repeat infringement	Mechanisms for the disclosure of repeat infringement information to rights holders.	
	Mechanisms to enable the termination of Internet access for repeat infringers.	
	ACTA <u>should not</u> include remedies for repeat infringement (i.e. termination of Internet access).	
Examination of data transfers by ISPs / law enforcement officials	Should not allow ISPs or law enforcement officials to examine data transfers without a warrant.	A number of stakeholders maintain that provisions requiring intermediaries to check for and filter out infringing data transfers risk undermining existing fair dealing exceptions.
Provisions enabling rights holders to obtain information from ISPs	Should not include provisions enabling rights holders to obtain information from ISPs identifying alleged infringers.	Noted that courts currently have this ability, and that judicial oversight should be maintained in such instances. Also requested that it be clarified what the burden of proof would be in this instance, and how privacy will be ensured.

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<p>"Notice and Notice" versus "Notice and Take Down" Regimes</p>	<p>Should preserve Canada's Existing Notice and Notice Regime for ISPs, rather than replacing this with a Notice and Take Down Regime.</p>	<p>One stakeholder has requested that Canada's existing <u>Notice and Notice Regime</u> (ex. ISP receives a notice that a user of its services is alleged to have infringed copyright, passes this notice onto its user, and is then required to track what the user does with the copyrighted material), should not be replaced with a <u>Notice and Take Down Regime</u> (an ISP is required to remove infringing websites or services within a number of days after receiving notice of alleged infringement).</p>
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