

# Anti-Counterfeiting Trade Agreement

Ministry of Economic Development  
December 2009

Peter Ferguson, Ministry of Foreign Affairs and Trade  
George Wardle, Ministry of Economic Development

# Overview

- What is ACTA?
- New Zealand's participation
- Transparency and consultations
- The draft ACTA text

# What is ACTA?

- An international treaty
- Under negotiation since 2008, hope to conclude 2010
- Aimed at combating trade in counterfeit and pirated goods
- Focus on better enforcement mechanisms and greater international cooperation

# Why?

- **Increase** in trade in counterfeit goods/pirated works
  - OECD global trade US\$200 billion in 2005  
increasing to US\$250 billion in 2007 (1.95%)
  - Organised crime networks
  - Changes as technology develops
- As well as **cost**, public **health and safety risks**
- A **global problem**: need cooperative solution

## What ACTA is about:

- Developing common and effective standards for enforcement
- Enhancing international cooperation
- Addressing large-scale infringement
- Respecting civil rights, freedoms and liberties
- Consistency with existing international obligations

# What ACTA is NOT About:

- Setting new intellectual property rights standards
- Customs seizing MP3 players and laptops
- Preventing parallel imports of generic medicines
- Enforcement agencies or ISPs filtering Internet traffic
- Limiting access to generic pharmaceuticals
- Reducing the court's power to determine infringement
- Lowering evidentiary standards
- Overriding privacy rights
- Taking assets of suspected infringers
- Guilt on accusation

# ACTA Chronology

<b>2005-2007:</b>	Informal discussions and launch
<b>May 2008:</b>	NZ decides to join negotiations
<b>June 2008:</b>	Round 1, Geneva
<b>July 2008:</b>	Round 2, Washington DC
<b>October 2008:</b>	Round 3, Tokyo
<b>December 2008:</b>	Round 4, Paris
<b>July 2009:</b>	Round 5, Rabat
<b>November 2009:</b>	Round 6, Seoul
<b>January 2010:</b>	Round 7, Mexico
<b>April 2010:</b>	Round 8, Wellington

# Why is NZ participating?

- Importance of IP protection in fostering innovation, productivity and economic prosperity
- Risk to New Zealand businesses from increasing trade in counterfeit goods and pirated works
- An opportunity to influence international standards

# New Zealand's Participation

- Cabinet provides negotiators with mandate
- Government will decide whether to join ACTA, once negotiations conclude
- ACTA text and a National Interest Analysis reviewed by Parliament
- Consideration by Select Committee
- If any changes to our law required, separate Bill to Parliament

# Transparency

- New Zealand calling for greater transparency in negotiations
- Reluctance to release draft text while it remains incomplete and not agreed to
- Agendas and summaries available online

# Consultation

- Stakeholder meetings
- Public submissions:
  - May/June 08 – What should be the focus of ACTA for New Zealand
  - May/June 09 – Enforcement measures in the physical world
  - Feb 10 – Enforcement measures in the digital environment

# ACTA Participants

- Australia
- Canada
- European Union
- Japan
- Korea
- Mexico
- Morocco
- New Zealand
- Singapore
- Switzerland
- United States

# The draft text: what will ACTA contain?

## **Six Chapters Proposed**

1. Initial Provisions and Definitions
2. Legal Framework for Enforcement of IPRs
3. International Cooperation
4. Enforcement Practices
5. Institutional Arrangements
6. Final Provisions

# 1. Initial Provisions & Definitions

Covers cross-cutting issues such as:

- Objective
- Scope
- Definitions
- Interpretative principles (if necessary)

## 2. Legal Framework for Enforcement of Intellectual Property Rights (IPRs)

- Section 1: Civil Enforcement
- Section 2: Border Measures
- Section 3: Criminal Enforcement
- Section 4: Enforcement of IPRs in the Digital Environment

# Section 1 – Civil Enforcement

- Scope – what IPRs will be covered
- What remedies will be available:
  - Damages
  - Injunctions
  - Other remedies, e.g. disposal of infringing goods
- Provisional measures
- Reimbursement of legal fees and costs

## Section 2 – Border Measures

- Scope, including exports or goods in transit
- *De minimis* exception
- Procedures for detaining suspected infringing goods
- Customs action without a notice from a right holder
- Procedures for determining whether goods are infringing
- Disposal of infringing goods
- Security/assurances
- Liability for storage and destruction costs
- Disclosure of information to right holders

# Section 3 – Criminal Enforcement

- Scope
- Deterrent penalties
- *Ex officio* action by authorities
- Authority to order search and seizure
- Disposal of infringing goods
- Forfeiture of assets
- Criminalisation of camcording
- Trafficking in counterfeit labels

# Section 4 – Enforcement of IPRs in the Digital Environment

Proposals for the availability of remedies, including availability of exceptions and limitations, related to:

- third party liability
- infringing material online, incl. limitations on the application of remedies to online service providers (i.e. ISP safe harbours)
- circumvention of technological protection measures
- protection of rights management information

### 3. International Cooperation

- Cooperation among competent authorities
- Competent authorities sharing information
- Exchanging statistical data and information on best practices
- Privacy/data protection
- Capacity building and technical assistance

## 4. Enforcement Practices

- Fostering of expertise within competent authorities
- Collection and analysis of data and other relevant information
- Internal coordination, including public/private advisory groups
- Measures to better identify and target suspected shipments
- Publication of information on procedures
- Public awareness and outreach

## 5. Institutional Arrangements

- Provision for joint committee and its functions
- Administration: - holding meetings
  - secretarial functions
- Transparency
- Consultations between Parties

## 6. Final Provisions

Basic functioning of the agreement:

- accession
- future amendment
- withdrawal
- etc

# ACTA Contacts

## Ministry of Economic Development

- George Wardle
  - Phone 04 474 2196
  - Email inquiries: [trademarks@med.govt.nz](mailto:trademarks@med.govt.nz)

## Ministry of Foreign Affairs and Trade

- Jennifer Troup
  - Phone 04 439 8046
  - Email inquiries: [jennifer.troup@mfat.govt.nz](mailto:jennifer.troup@mfat.govt.nz)