



European Parliament Rejects Anti-Counterfeiting Trade Agreement.

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by [Phillip Barengolts](#), [Trademark Attorney](#)

The European Parliament voted against the Anti-Counterfeiting Trade Agreement (ACTA). Thus, it is highly unlikely to become law in the European Union. The E.U. had signed the agreement¹ and the European Commission referred it to the European Court of Justice for review.² The E.U. Parliament's vote signals, however, that ACTA is not likely to be ratified by the E.U. member states. According to the press release, this was the first time that the Parliament had exercised its Lisbon Treaty right to reject an international trade agreement.³ The vote was not even close with 478 votes against, 39 in favor and 165 abstentions.

As previously noted here,⁴ ACTA was negotiated among a select group of nations, including the U.S. and the E.U., to set a higher floor for laws against trademark counterfeiting and copyright piracy, including on the Internet. Most of these countries already have strong protection for intellectual property rights, but these protections were not consistent and, often, not consistently enforced.

ACTA's provisions establish a level of protection for trademarks and copyrights higher than the baseline embodied in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). ACTA achieves this enhanced protection primarily by harmonizing the participating nations' laws on remedies (e.g., criminal penalties for commercial counterfeiting and copyright piracy, statutory damages, seizures, preliminary injunctions) and customs authorities' ability to act. Some

¹ <http://www.wired.co.uk/news/archive/2012-01/26/eu-signs-up-to-acta>

² <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/354&format=HTML&aged=0&language=EN&guiLanguage=en>

³ http://www.europarl.europa.eu/pdfs/news/expert/infopress/20120703IPR48247/20120703IPR48247_en.pdf

⁴ <http://blog.pattishall.com/2011/10/12/the-anti-counterfeiting-trade-agreement-acta-strives-to-strengthen-protection-for-copyright-and-trademark-owners-throughout-the-world-against-counterfeiting-and-piracy-of-their-products-by-attemptin-2/>



PATTISHALL
McAULIFFE
NEWBURY
HILLIARD &

GERALDSON LLP • 311 South Wacker Drive, Suite 5000 • Chicago IL 60606 • T (312) 554-8000 • F (312) 554-8015 • www.pattishall.com

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countries, like the U.S., already had these types of laws in place, while others, like Canada, will now have to make minor changes to come into compliance.

ACTA remains signed by 8 of the negotiating nations: the U.S., Australia, Canada, South Korea, Japan, New Zealand, Morocco, and Singapore. Thus, it can go into effect for those nations once their signatures are properly deposited, despite the likely rejection of the agreement by the E.U.

The negotiations over ACTA generated much controversy because of non-governmental non-IP rights-holder stakeholders generally were not invited to participate. After early texts were leaked and a draft text officially released, as well as other stakeholders invited to make comment, the final text of the agreement⁵ was released by the participating nations in December 2010.

The primary controversy that lingers in the U.S. is whether the President can simply enter into this agreement without ratification by the Senate – as required with a treaty. Throughout the E.U., however, a mass movement developed against ACTA because of fears that individual rights on the Internet would be threatened. The agreement generated protests, with some of the largest in Poland, and even a 2.8 million signature petition.

The provisions of ACTA, as ultimately written, simply did not merit such anger in large part because most European nations already have enforcement mechanisms as tough or even tougher than ACTA would have put in place. In this author's opinion, because the debate in the E.U. over ACTA coincided with the debate in the U.S. over the Stop Online Piracy Act (SOPA) at the beginning of this year, the perception of ACTA grew far more negative than was warranted, even though SOPA and ACTA have almost no resemblance and served very different purposes in the overall goals of the IP community. It remains to be seen where international protection for intellectual property rights goes from here.

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Phillip Barengolts is a partner with [Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP](#), a [leading intellectual property law firm](#) based in Chicago, Illinois. Pattishall McAuliffe represents both plaintiffs and defendants in [trademark](#), [copyright](#), and [unfair competition trials and appeals](#), and advises its clients on a broad range of domestic and international intellectual property matters, including [brand protection](#), [Internet](#), and [e-commerce](#) issues. Mr. Barengolts' practice focuses on litigation, transactions, and counseling in domestic and international [trademark](#), [trade dress](#), [Internet](#), and [copyright law](#). He teaches trademark and copyright litigation at John Marshall Law School, and co-authored [Trademark and Copyright Litigation](#), published by Oxford University Press.

⁵ http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147937.pdf