

**Memorandum to: ACTA Negotiators**

**Subject: Business Perspectives on International Cooperation, Enforcement Education and Internet-related Issues**

**From: Concerned business groups operating in ACTA nations**

**Date: December XX, 2008**

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A strong framework for international cooperation and enforcement is important not only to coordinate efforts between participating governments and to create a climate to integrate ACTA provisions into national practices, but also to address the global challenges in fighting trademark counterfeiting and copyright piracy across borders.

Since the start of the ACTA negotiations in June 2008, the Business Response Group has provided input on the provisions on which the legal framework for ACTA is being created: civil enforcement, border measures and criminal enforcement. We understand that criminal enforcement will continue to be a topic under discussion at the next ACTA meeting. We would like to reiterate our view that while administrative and civil enforcement are important tools in combating counterfeiting and piracy, they cannot substitute for effective criminal enforcement. This continues to be a key issue for governments as well as industry and we encourage ACTA negotiators to come to an agreement on this important topic. We would like to refer the negotiators back to the Business Response Group memo of 8 October 2008 for our specific recommendations on criminal enforcement provisions.

As with our past memos, the business associations represented in this submission stand ready to provide further assistance and comments to the drafting process of ACTA.

### **Recommendations for International Cooperation**

With counterfeiting and piracy crossing all borders, international cooperation is crucial, especially in the areas of information exchange, capacity building and best practice exchange. The spirit in which ACTA is being negotiated sets an example for how future cooperation can be conducted. We hope that the final agreement on the provisions of ACTA will allow the negotiating governments to enact an ACTA that will truly set a higher standard of IP protection for national governments. We encourage the framework of international cooperation in ACTA to:

- Facilitate and create concrete incentives for cooperative enforcement actions among countries through renewed and strengthened existing systems of sharing information and exchange of best practices;

- Establish mechanisms for international cooperation that will be available to both ACTA signatories and non-signatories;
- Establish national coordination mechanisms, such as designating a chief intellectual property enforcement officer with high-level authority to raise the profile of the issue, oversee coordination of relevant government officials and agencies, and allocate necessary financial and personnel resources; and
- Assist non-signatory countries to develop assessments of the economic and social benefits of participating in the ACTA process.

### **Recommendations for Education on Enforcement**

- Foster specialized skills, training, capacity building programs and expertise in handling of IPR cases by law enforcement officials and courts. Creating specialized IP units within enforcement agencies, for example, will vastly improve the handling of counterfeiting and piracy cases;
- Establish internal government and external public education programs to enhance the understanding of the harms associated with counterfeiting and piracy, particularly the immediate and extenuating dangers and risks of producing, distributing, marketing, purchasing and consuming counterfeit and pirated products. Governments are encouraged to work with industry as well as with other governments on a coordinated approach, which would send a strong message to consumers, counterfeiters and pirates that they are serious about fighting counterfeiting and piracy.

### **Recommendations for Internet-Related Issues**

- An effective ACTA should address the growing problem of sale of counterfeit items and pirated copyright material through the Internet, which underscores the need for government and industry cooperation across borders. Relevant provisions in ACTA should encourage creative and innovative solutions and cooperation among the many actors including government and industry to explore market-driven, voluntary measures to remove counterfeit and pirated materials and/or deter the sale of counterfeits and pirated material on the Internet.
- Governments should work to ensure that data protection policy does not impede the legitimate protection of intellectual property rights. This should be achieved through a balanced approach that protects the rights of content providers and the interests of individuals and other stakeholders in the digital-networked environment.
- Governments should implement appropriate legal frameworks so as not to discourage the development of effective technological protection measures to address large-scale counterfeiting and piracy over the Internet. Furthermore, governments should provide

effective legal remedies to deter circumvention of anti-counterfeiting/anti-piracy technological solutions.

**On behalf of:**