

No. 7.

**George Wardle**

**From:** Rob Seddon-Smith S.92(a)  
**Sent:** Thursday, 4 March 2010 8:33 a.m.  
**To:** trademarks  
**Subject:** ACTA

Dear Sir

Further to your call for public submissions on the ACTA process, I should like to make the following comments:

1. Fundamentally, we need to ask ourselves WHY we are engaging in this process at all.

ACTA is unlikely to be of any benefit to New Zealand; quite the contrary, it will, potentially disadvantage many of our citizens and will protect few or none. We are being lobbied to take part by other states who in turn are lobbied by the recording industry, doing so for their own benefit, not ours.

2. ACTA will be almost unenforceable.

The recently proposed legislation is not enforceable without unacceptable levels of intrusion into personal privacy. I would point out that as stated, the copyright holder must identify the recipient of files and in order to do this, they must monitor internet traffic.

Further, there is no way to prevent the sharing of files by non-internet means.

3. ACTA will undermine other legislation.

With any threshold based legislation, the constant churn of disobedience that falls below the threshold will undermine that work and others both related and unrelated. (If we allow the breaking of one law, just a bit, why not others) We see this problem with drink driving and will see it with illegal downloads

4. ACTA seeks to prop up an outdated market model.

In the early days of art, copyright was not a problem because there was no way to record or copy music, pictures or the written word. Artists charged for their original works or handmade copies thereof with the costs reflecting the effort involved.

Later, as the technology became available to make recordings, we developed rules to ensure that this was kept under the control of artists or their agents. This has led to very high incomes for agents, high incomes for some artists and low incomes for most artists. Almost no effort is now required to make these large incomes, compared with the past when artists had to earn their living by performing.

Why should we, as a nation, shackle ourselves to such an outdated market model? Perhaps it would be to the benefit of everyone concerned if music concerts became the norm for income generation again. The best artists make more from concert tours than recording sales in any case as their studios take the lion's share of recording profits. Just because something has been, does not mean that it should continue to be.

5. ACTA will not encourage artists

It is a fallacy to state that preventing copying will stifle art generation. None of the best art produced is produced solely for money and most of the money made by that which is made in cinemas, where recording is difficult.

Despite rampant copying and sharing, the profits of recording studios and artists, though smaller than in the past, remain astronomical. There is no shortage of contestants for the various 'idol' contests nor a shortage of recordings being sent for the various studios' consideration.

6. We do need legislation

8/03/2010

Despite the comments above, there needs to be some distinction between the user who downloads music for personal use and the user who seeks to profit from the sale of another's work.

I propose that we should prosecute those who copy and sell (or allow sharing) of works for profit AND prosecute those who purchase copied works. However, we should not prosecute those who share and use music or other art files without cost to the recipient nor profit to the sender. In practical terms this cannot be stopped anyway and is not harmful to the generation of high quality music.

Thank You

Dr. R. Seddon-Smith

This comment may be freely distributed if required.

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