



31 March 2010

Ministry of Economic Development
33 Bowen Street
Wellington, New Zealand

By email to trademarks@med.govt.nz

**RE: NEW ZEALAND MINISTRY OF ECONOMIC DEVELOPMENT
INVITATION FOR SUBMISSIONS ABOUT INTELLECTUAL PROPERTY
RIGHTS IN THE DIGITAL ENVIRONMENT (ACTA)**

The Internet Society (ISOC) respectfully submits its comments for the New Zealand Ministry of Economic Development's *Invitation for Submissions about Intellectual Property Rights in the Digital Environment (ACTA)*.

Introduction

The Internet Society commends the New Zealand Ministry of Economic Development for inviting interested persons to provide views regarding what should be included in the digital provisions of the proposed Anti-Counterfeiting Trade Agreement (ACTA), and for providing us with this opportunity to comment. Unfortunately, since no official copy of the text has been released to the public, the Internet Society is unable to provide substantive comments on the text of the proposed agreement.

Open, transparent, and inclusive

The Internet is a shared resource.

The Internet Society appreciates the sensitivity of treaty negotiations and governments' desire not to hamper ongoing treaty negotiations by prematurely releasing details of their discussions and positions. However, we encourage the participants in the ACTA negotiations (the ACTA participants) to recall the considerable benefits that have been derived from open, transparent, and inclusive multistakeholder engagement in the development of Internet standards and governance.

Further, we encourage the ACTA participants to draw on the insight and experience of the Internet technical community, civil society, business, Internet users, and others in developing solutions to address the challenging issue of online intellectual property rights infringement.

We urge the ACTA participants to publish the digital provisions under consideration at an appropriate point, as early as possible, while the negotiations are still going on, and to invite public comment so that all relevant stakeholders have an opportunity to properly consider the proposals and provide their views and suggestions, drawing from their own unique expertise and experience. We also urge the ACTA participants to take those views and suggestions into account in their ongoing negotiations.

Technology is neutral

Intellectual property rights infringement occurs offline as well as in the online environment. New Zealand has developed a suite of tools to deal effectively with illegal activities in the offline world. Those tools should provide the framework for developing mechanisms to deal with illegal activities online, for intellectual property rights as for others. We also caution against any measures which would have the effect of transferring the responsibility for enforcement to private entities.

People – not technologies – breach intellectual property rights.

Any policies to curtail online intellectual property rights infringement should not stifle the development, evolution, and legitimate use of Internet technologies.

They should not abrogate applicable privacy laws and principles, and other fundamental rights, including the right to the protection of due process and judicial oversight.

Furthermore, while the technologies may be new, the behaviour at issue is not. Policies should focus on this behaviour rather than the technologies that could be used to infringe intellectual property rights.

We urge the ACTA participants to recall these fundamental principles in their continuing negotiations.

Conclusion

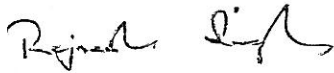
The Internet is an extraordinary platform for innovation. It has benefitted from broad participation in both the use and development of Internet technology, services, applications, and policy. The Internet's openness has been critical to its development and continued success. Openness is

the key to continued innovation and investment in the Internet and all the associated social, economic, and cultural benefits it brings.

Deciding how to appropriately protect intellectual property rights in an online environment is an important and relevant issue for the Internet community, not just content owners and governments. We call upon the ACTA participants to adopt an inclusive and transparent multistakeholder approach to these negotiations.

We welcome the initiative of the New Zealand Ministry of Economic Development to consult and seek substantive input on this very important treaty negotiation. We look forward to greater transparency and the opportunity to provide more substantive comments in the future when the official text is available.

Respectfully submitted,



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Internet Society

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