No. 7

To whom it may concern,

This is a brief submission concerning the Anti Counterfeiting and Trademarks Agreement(ACTA) which New Zealand has been participating in and whom will be hosting the next consultation round.

My position comes from an educated Legal, Economic and Psychology based research perspective on issues which the proposed agreement relates to and has implications for.

I have been able to review a draft of the of which a leaked mostly intact copy was made available publicly at the start of March 2010 ( http://blog.die-linke.de/digitalelinke/wp-content/uploads/ACTA-6437-10.pdf ). These comments are directed at the text outlined in this source document. And also in relation to the full text leek as of 25/03/2010 ( http://www.laquadrature.net/files/201001_acta.pdf )

I would like to draw attention to the fact that the agreement has been negotiated mostly away from scrutiny of the public; more so use the fact that the leakage and availability of the agreement itself highlights the very issues which it hopes to address. This demonstrates both the execution process of the agreement and the content within are contrary to both common sense and generally accepted societal behaviours and norms.

I propose three hypothesis which are demonstratively provable :

1) That the unauthorized availability of digital content, the redistribution thereof in an electronic form and reproduction and re-use in derivative works of a non-commercial nature, **do not** have an associated economic cost to the rights holder. Rather the above sequence of behaviours and events **in fact increases** the value of the rights holders content, nor should they be able to determine what is a 'fit' purpose for content.

   - This point is in relation to underlying assumptions around arguments used in support of increasing Copyright strength and protections, and issues of Economic cost.

2) That the circumvention of protection measures (whether digital, physical, political or religious protections) is a demonstrable human right under the International Bill of Human Rights, and any legal mechanism which removes the right to circumvent protections is universally (across cultures) abhorrent to the fundamental human condition. Legally it is the **intent** that **must be proven** to be against a societies laws, any deviation from this principle is unjustifiable .

   - This point in relation to Digital Rights/Restrictions Management(DRM) and general principles outlined in the agreement.

3) That the parties involved are using international trade treaties to continue to extract the same high value economic positions as they have traditionally held. This is being accomplished via means of lobbying for increasing protections around Trademark/Patent and Copyright agreements **rather than adapting their business methods** to the market realities and changes in the behaviours of their markets. Furthermore that the consequences of this behaviour by suppliers is causing massive global economic costs, and more recently social and political costs that are slowing market and economic innovation.

   - This point in relation to Trademark/Patent and Copyright, Economic costs and Legal/Political support of particular industries/business methods through legislation.

The provisions outlined in the agreement around counterfeit products of a physical/chemical nature with the intent of commercial viability and/or intent to mislead consumers are sound.

However almost all of the other legal provisions centred around Patents and Copyright do not support the current economic or societal realities which the act proposes to address, namely because the the prepositions it has been drafted upon are incorrect.

I support the agreements addressing of Trademarks, however note concerns that increasingly Trademark law is being used as a form of censorship, and control of information. There are several high profile cases where companies are using Trademark law to restrict discussion/search and index among other clearly beneficial practices by way of trademark law. Any agreement around trademarks should be centred on brand/trust and identification issues around **physical** products and services to mitigate these problems. This issue is common place in domain name disputes also, and my personal perspective on this is that it is the sole responsibility of the marketplace to determine non-physical issues. Cybersquating (the practice of registering a desirable domain name I.e nike.com, for the purpose of on-selling) etc is acceptable so long as the **intent** is not to mislead, again any law should be centred on intent.

Yours in confidence

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S9(2)(a)

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