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To  
The ACTA Negotiators of New Zealand

Zürich, 2010-04-09

Dear Sir, dear Madam

As you are surely well aware, the Internet Community is highly critical of the inclusion of an "Internet Chapter" in ACTA. It appears to me however that so far it has not been successfully explained (in a way which makes sense also outside the context of shared intuitions of the Internet Community) why it is our view that this "Internet Chapter" is a very bad idea. In this letter, I aim to provide such an explanation.

My reason for sending this letter personally (rather than suggesting to one of the various civil society organizations which aim to represent the Internet Community that a letter should be sent) is that I feel that the points which I wish to bring to your attention need to be taken into consideration urgently already during the next round of ACTA negotiations, while I have the impression that the civil society organizations which really should be directly involved in these debates do not yet have a precise understanding of all of these aspects themselves. I hope that the arguments which I am going to present will speak for themselves.

## **1. Fast-changing environments need changeable rules**

*The Internet environment is still evolving fast* at the technical level, and the same is true for the various communities of people who use the Internet for various cultural and other non-commercial purposes, and it also true with regard to the use of the Internet for business purposes. Generally speaking, it is a quite general principle of system engineering that in the context of such a fast-changing environment, it won't work to have rules for action which can be changed only through a difficult and slow process. If ACTA member countries adopt such rules for the legal system governing important aspects of the Internet, the main effect of ACTA is likely to consist in creating a strategic advantage for countries which are not members of ACTA and which maintain their strategic freedom of being able to relatively easily adopt the best possible legal rules in regard to the Internet.

## **2. Concerns of international justice**

If on the other hand some kind of economic pressure will be used on

countries which were not involved in the ACTA negotiations to effectively force them to adopt the same rules, that would be a severe injustice, and it fact it could turn out to be a severe obstacle to economic development. The idea of linking a broad variety of areas of law in a single international agreement is very problematic from this perspective. According to the former executive director of the South Centre, Yash Tandon [1]: *The only way to get out of the inherited pattern of non-development is for the developing countries to selectively and smartly "de-link" from the neo-liberal process of globalization. However, the extent, modalities, and timing would differ from region to region and within each region from country to country. The "de-linking" does not have to be abrupt or total; it can be selected and sequenced. Furthermore, The North must recognize that every nation has a right to develop its own institutions, to secure its own destiny, to make its own mistakes.*

### **3. Commercial rights should not hinder the fullness of life**

It is not only with regard to the so-called developing countries that the long-established paradigm of economic rights ought to be reconsidered. Also in Europe, North America, Australia and New Zealand, a broad discourse to reconsider long-established principles of copyright law would be appropriate, since it is not clear at all that rules which were once needed by society in order to sustain a viable publishing industry are still appropriate today (see [2]). When in some area of its application, a legal rule ceases to serve society as a whole, but actually hinders the *freedom of culture and the dissemination of knowledge*, it needs to be reduced in its scope. More generally, we need a paradigm shift away from the ideology which asserts that whatever is good for businesses is necessarily by implication good for society as a whole, see [3].

### **4. Beware of problems that can not be effectively addressed**

In the Internet Community, we do not believe that it is even theoretically possible, short of instituting an entirely undesirable Orwellian police state, to effectively prevent music and films from being shared over the internet in non-commercial ways. We expect that any efforts by governments or any other party to stop this will fail, although they will surely be *harmful side-effects*, like for example the notice-and-takedown provisions of the DMCA in the USA are already being abused by enemies of the freedom of speech. (By contrast, the appropriate handling of copyrighted digital assets in commercial contexts is a solvable problem, as the international standard ISO/IEC 19770-1 on Software Asset Management proves. In my opinion, enforcement efforts should focus on that area where it is actually possible to achieve progress.)

## 5. Good faith and fair dealing in Internet Governance

Finally I would like to remind you of the *multistakeholder principle of Internet Governance* which has been informally endorsed in the context of the World Summit on the Information Society and the Internet Governance Forum by many stakeholders including all the governments participating in the ACTA negotiations. From the perspective of the Internet Community, it does not constitute good faith and fair dealing if now a plurilateral agreement with an "Internet Chapter" is negotiated with significant secrecy and without appropriate opportunities for the technical community and for civil society organizations to participate in the process.

### Conclusion

In summary, it is my view that it is inappropriate for the Anti-Counterfeiting Trade Agreement to contain an "Internet Chapter". Rather, ACTA should, in accordance with its name, focus on problems of trade in physical goods, and counterfeiting thereof, where the problems and the need for international action are much more well-understood.

Best regards,



Norbert Bollow,  
Owner/CEO of Adaptux GmbH

### References

- [1] Yash Tandon: *Building a Community of Mutual Trust and Tolerance*. [http://www.southcentre.org/index.php?option=com\\_content&view=article&id=963%3Amessage-from-yash-tandon&catid=140%3Aformer-ed&Itemid=250&lang=en](http://www.southcentre.org/index.php?option=com_content&view=article&id=963%3Amessage-from-yash-tandon&catid=140%3Aformer-ed&Itemid=250&lang=en)
- [2] Lawrence Lessig: *Free Culture. How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. The Penguin Press, 2004. Also available online at <http://www.free-culture.cc/freecontent/>.
- [3] Peter Ulrich: *Integrative Economic Ethics: Foundations of a Civilized Market Economy*. Cambridge University Press, 2008.

