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Custom solutions for the IT/analysis interface

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Submission of Paton-Simpson & Associates Ltd in response to the
Ministry of Economic Development's Consultation Paper:

"Anti-Counterfeiting Trade Agreement Invitation for Submissions about
Intellectual Property Rights Enforcement in the Digital Environment."

Excessive enforcement of "rights" will hinder innovation – PSAL believes that overly zealous enforcement of intellectual property "rights" could have a chilling effect on innovation. As a society, we will gain more if we let new technologies develop on a loose leash. Letting representatives of old industries shape the direction of the new is like letting stagecoach and railroad interests control the development of the automobile industry.

In the late 19th Century, the introduction of the automobile resulted in opposition from special interest groups, including railroad corporations and stagecoach lines. These interests promoted legislation to regulate operation of motorized vehicles and prompted lawmakers to impose command and control policies under the guise of safety, with which to regulate behavior of, and impose nonpecuniary costs upon the motorists driving the new machines. [emphasis added]

In the United Kingdom, the Red Flag Law, a policy requiring self-propelled vehicles to be led by a pedestrian, waving a red flag or carrying a lantern, to warn bystanders of the vehicle's approach. (http://en.wikipedia.org/wiki/Red_flag_laws)

ACTA could be the Red Flag Law for modern times.

Issues of bias and democracy – PSAL is concerned that the interests of some sectors are being privileged over others in debate about intellectual property rights enforcement. There is a risk that the correct balance will not be struck between the interests of ordinary citizens and large international media conglomerates. Secrecy does not co-exist well with democracy.

Who benefits, who should pay – PSAL is uncomfortable with the idea that taxpayers should fund enforcement and thus subsidise the profits of primarily international companies *at the expense of their own rights and interests*.

The internet is increasingly vital to citizenship – termination is disproportionate – The importance of the internet for access to information, goods and services (e.g. Trademe), social connections etc is growing. Increasingly, the delivery of government services will be via internet technologies and it will become difficult for citizens to exercise their free speech rights and the other rights of citizens without access to the internet. Termination should not be a standard punishment for copyright or other intellectual property violations. Other sanctions must be used that are proportionate.

Setting up the means of controlling the free flow of information is a bad idea – PSAL is concerned about the use of technologies which enable centralised filtering/censorship of data around the internet. There will always be the temptation to misuse the power this gives government and enforcement agencies (e.g. the Great Firewall of China). It also provides hackers a single point of control for each ISP.

