

ANTI-COUNTERFEITING TRADE AGREEMENT: ACTA

On Wednesday, July 11th 2012 the President of the Republic, through the Mexican ambassador in Japan, signed the Anti- Counterfeiting Trade Agreement (ACTA), which comprises a series of regulations supported by the governments of the United States of America and the European Union to fight piracy.

The Mexican Industrial Property Institute issued a statement the same day declaring that by signing ACTA, Mexico joined countries such as Australia, Canada, the United States, Japan, Morocco and the European Union to fight piracy.

In order for this treaty to be enforced, it has to be ratified by the Senate of the Mexican Republic, and this may take a long time because for the past few months the government had been reluctant to sign the treaty despite international pressure, since it contains provisions contrary to Mexican laws.

ACTA was created by the European Council, establishing that certain countries (all those belonging to the European Union, Australia, Canada, Japan, the United States, Mexico, the Republic of Korea, among others) have until the year 2013 to sign the treaty, which is being kept by Japan acting as depositary, and will enter into force 30 days after being signed and ratified by at least six countries.

None of the countries that have signed the document have ratified ACTA, in fact the European Parliament refused to ratify it on July 4th, 2012.

ACTA's most important aspects are the following:

- (i) An international entity will be created to persecute copyright violations, regardless of the nature and location of the counterfeit product as long as it is found within one of the signatory countries;
- (ii) Due to the large size of the market for non-approved or experimental drugs in developing countries, the access to low-cost medication in said countries will be restricted;
- (iii) Internet Service Providers (ISPs) will be asked to exert surveillance over users' communications via satellite, to identify users whose web sites have piracy-related content;

- (iv) it shall regulate all materials distributed for information purposes (for example: book excerpts, academic articles, videos, etc.) thus achieving greater registration of these documents; and
- (v) Customs authorities will be able to act on their own initiative to prevent shipping of suspicious merchandise; and when convenient, the rights holders will be able to request the appropriate authorities to prevent shipment of suspicious merchandise.

ACTA has been mistaken for the Stop Online Piracy Act (SOPA); a bill introduced by house representative Lamar S. Smith in the United States on October 26th, 2011, with the purpose of expanding the scope of American laws to fight trafficking in copyrighted materials and counterfeit goods through the Internet, which has not yet been enacted.

These two instruments should not be confused, since SOPA is a U.S. bill, while ACTA is a trade treaty to be entered by various countries to which others may accede once they determine whether it does not contravene internal law from their own legal and operational perspectives.

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