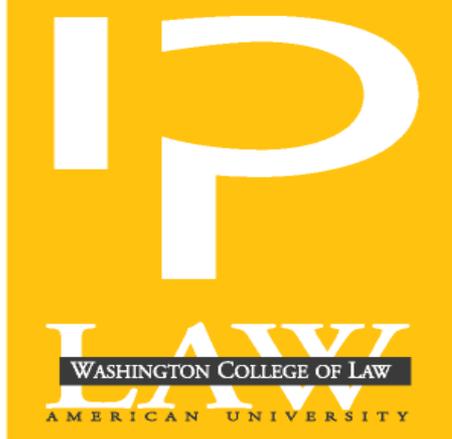


**PJIP**

Program on Information Justice  
and Intellectual Property



# Learning From ACTA: Toward a Positive Agenda for TPP

Sean Flynn  
American University Washington College of Law

# **Maximalist Enforcement Agenda**

# **Development & Innovation Agenda**

PROCESS

**Plurilateral  
Closed-door**

**Multilateral  
Open-door**

SCOPE

**One-size-fits-all protection,  
permissive L&E**

**Flexibility in protection,  
mandatory L&E**

ENFORCEMENT

**Public burden  
Consumer level  
Summary processes**

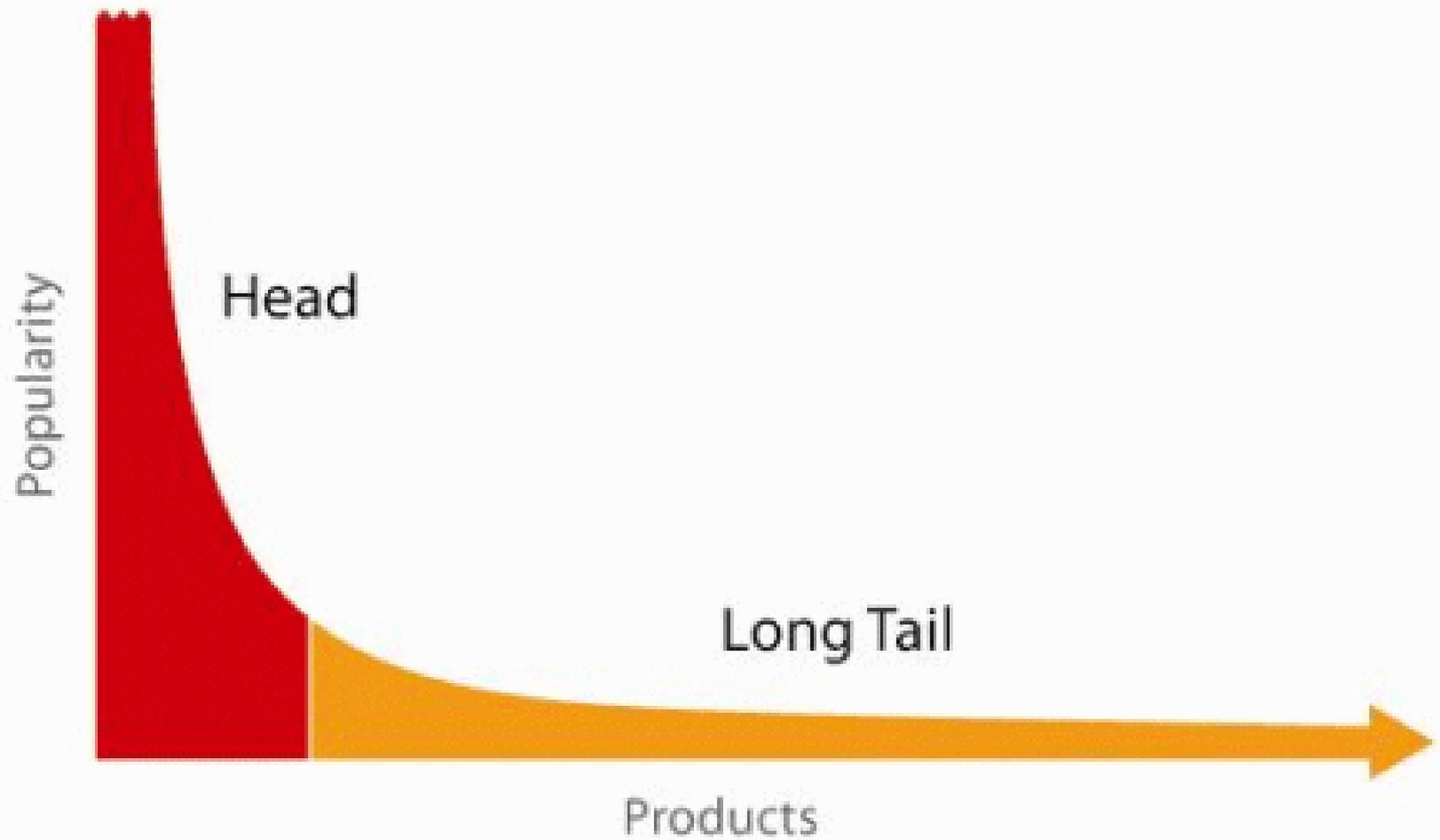
**Private burden  
Commercial scale  
Judicial safeguards**

PENALTIES

**“Deterrent” levels**

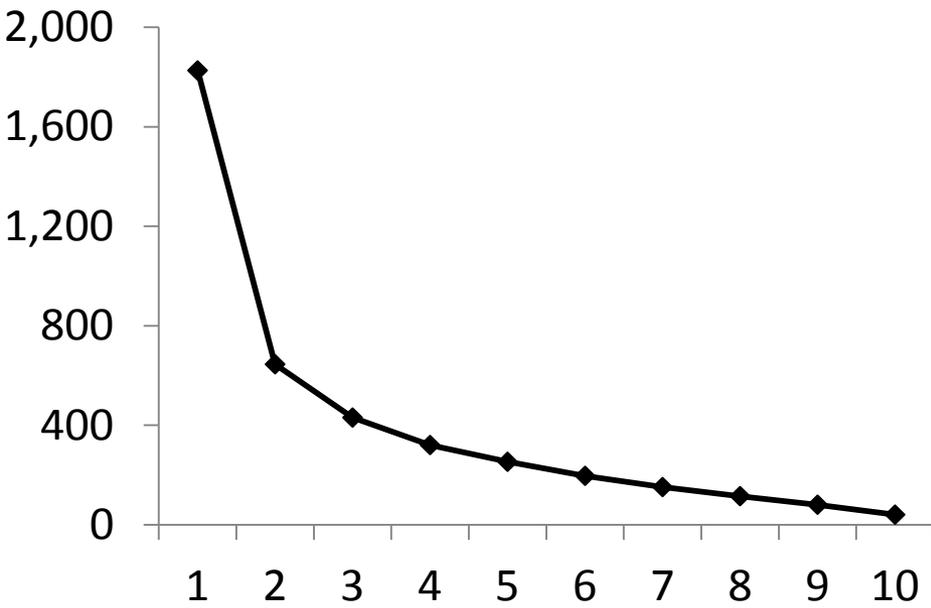
**“Adequate to compensate”**

# The New Marketplace

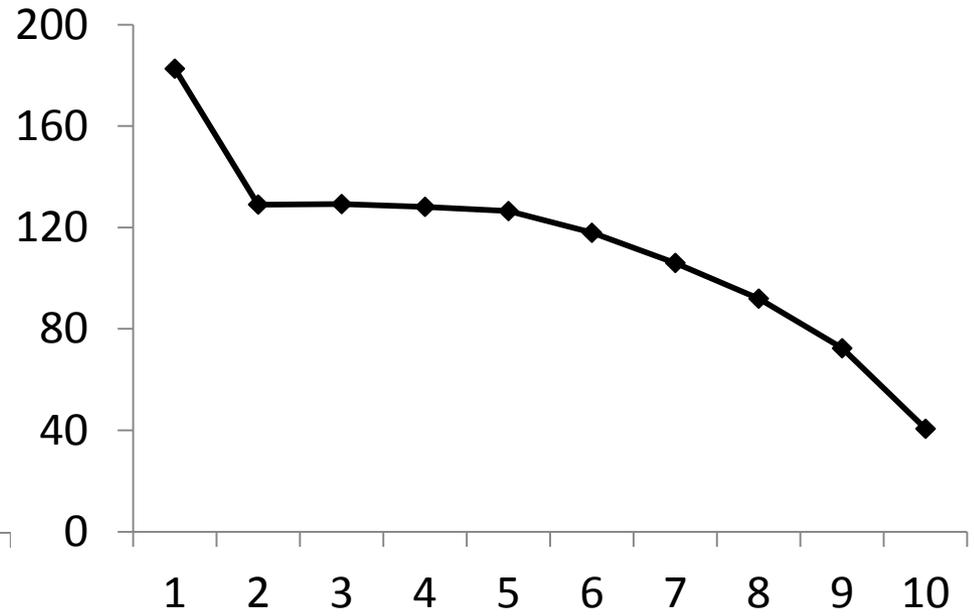


# Brazil

Price as equal to 5% of income by decile



Total revenue in millions



# Piracy Report

## II *Media Piracy in Emerging Economies*

PDF [Russian, 7MB]

\$27.95]

### by Chapter

y Joe Karaganis (74 pp.)

rnance Joe Karaganis and Sean Flynn (24 pp.)

## MEDIA PIRACY IN EMERGING ECONOMIES



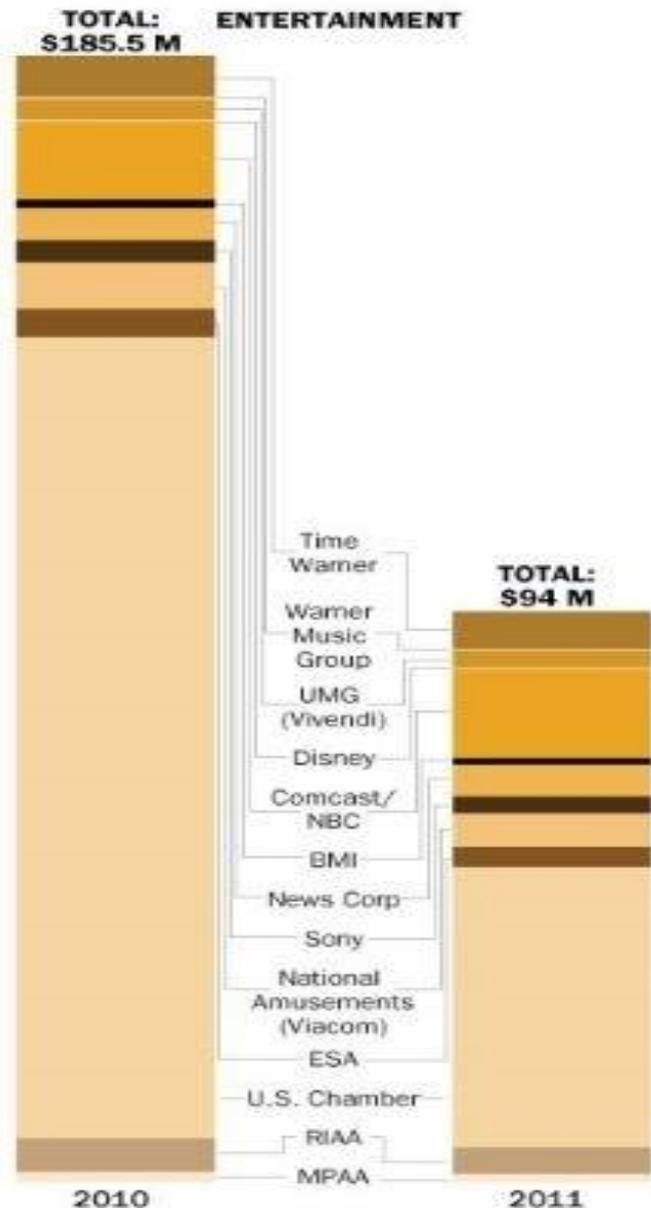
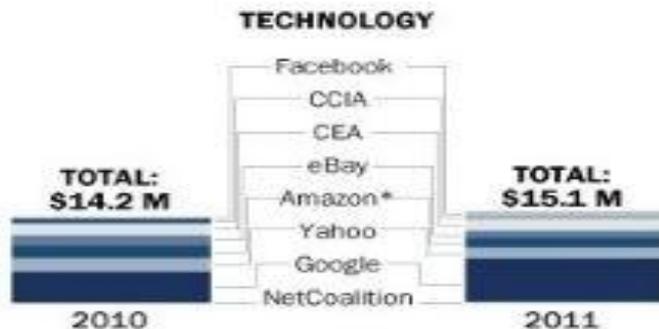
 SSRC

Edited by Joe Karaganis

МЕДИА ПИРАТСТВО В  
РАЗВИВАЮЩИХСЯ ЭКОНОМИКАХ

## COPYRIGHT POLITICS : SILICON VALLEY VS. HOLLYWOOD LOBBYING

The debate in Congress over how to crack down on pirated content found online pits tech companies against the entertainment sector.



\*A member of NetCoalition, which opposes the copyright bills, but has not spoken out against the legislation.

SOURCE: CENTER FOR RESPONSIVE POLITICS

SARAH LAUREN BELL — POLITICO

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America



Photo : Patrick Sanfaçon, La Presse



**Please note: In less than 9 hours,  
the English Wikipedia will be blacked out globally to protest SOPA and PIPA.**

# Poland Signs Anti-Counterfeiting Treaty Amid Protests, Hackers

By Alex Johnston  
Epoch Times Staff

Created: January 26, 2012  
Last Updated: January 27, 2012

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# Thousands wage war against ACTA on Internet

Published: 27 January, 2012, 11:36

Edited: 28 January, 2012, 07:27

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People hold banners as they demonstrate against Poland's government signing an international copyright agreement ACTA in Poznan. (REUTERS/Agencja Gazeta)

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**TAGS:** [Conflict](#), [EU](#), [Politics](#), [Europe](#), [Law](#), [Piracy](#), [Internet](#), [Aleksey Yaroshevsky](#), [Cary Johnston](#)

Poland is facing a new day of protests against a copyright agreement signed by Warsaw on Thursday. Opponents are staging demos and hacker attacks and say the ACTA treaty amounts to Internet censorship and gross violation of human rights.

Several thousand people have already gathered in front of the Presidential Palace in Warsaw and the crowd is growing, reports RT's Aleksey Yaroshevsky, who is following the protest against ACTA.

In order to become law, the Anti-Counterfeiting Trade Agreement must first be voted in by parliament. In a bid to stop this from happening, the hacktivist group Anonymous has targeted official websites in the countries that have already



27.01, 06:57

[2 comments](#)

[ACTA: prosecution for communication?](#)

The ACTA copyright protection treaty, which has recently been signed in Poland, represents outdated copyright legislation that could lead to punishment just for an act of communication.



26.01, 14:36

[22 comments](#)

[ACTA action: Poland signs up to 'censorship' as 20,000 rage](#)

After days of protests and hacker attacks, Poland has signed the controversial ACTA copyright protection treaty. Opponents call it an assault on online freedom, since it demands that internet service providers police user activity.



24.01, 21:40

[20 comments](#)

[An ACTA of war: Secret censor tool to shake up worldwide web](#)

As cyberspace turns its attention to the SOPA and PIPA bills in the US, the Anti-Counterfeiting Trade Agreement, or ACTA, has been quietly signed or ratified by most of the developed world and is arguably the biggest threat to Internet freedom yet.



## Polish government asks European Parliament not to sign ACTA

17th February 2012

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**PM Tusk has admitted he was wrong to support the treaty**



**Donald Tusk**

Courtesy of Flickr/KPRM

On Friday, Prime Minister Donald Tusk completed the about-face his government had started on the Anti-Counterfeiting Trade Agreement (ACTA).

"I sent a letter today to all the party leaders who cooperate with the Civic Platform and the Polish People's Party in the European People's Party, including prime ministers, the [German] chancellor, presidents of some countries and the leadership of the European People's Party, with a proposal to reject ACTA in the shape that was negotiated by the European

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## Anti-ACTA protest in Paris



Christian > **ACTA demonstration Stockholm**

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# ACTA rapporteur denounces ACTA masquerade

(Redirected from ACTA rapporteur denounces ACTA mascarade)

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Source: ACTA : une mascarade à laquelle je ne participerai pas - Kader Arif blog

[http://www.kader-arif.fr/actualites.php?actualite\\_id=147](http://www.kader-arif.fr/actualites.php?actualite_id=147) 

Kader Arif, rapporteur for ACTA in the European Parliament quit his role as rapporteur saying:

"I want to denounce in the strongest possible manner the entire process that led to the signature of this agreement: no inclusion of civil society organisations, a lack of transparency from the start of the negotiations, repeated postponing of the signature of the text without an explanation being ever given, exclusion of the EU Parliament's demands that were expressed on several occasions in our assembly."

"As rapporteur of this text, I have faced never-before-seen manoeuvres from the right wing of this Parliament to impose a rushed calendar before public opinion could be alerted, thus depriving the Parliament of its right to expression and of the tools at its disposal to convey citizens' legitimate demands."

"Everyone knows the ACTA agreement is problematic, whether it is its impact on civil liberties, the way it makes Internet access providers liable, its consequences on generic drugs manufacturing, or how little protection it gives to our geographical indications."

"This agreement might have major consequences on citizens' lives, and still, everything is being done to prevent the European Parliament its say in this matter. That is why today, as I release this report for which I was in charge, I want to send a strong signal and alert the public this unacceptable situation. I will not take part in this masquerade."



# Why I signed ACTA

🕒 31/01/2012 07:49 👤 NATAŠA 💬 0 KOMENTARJEV

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**On Thursday, 26<sup>th</sup> January, 2012, I signed the Anti-Counterfeiting Trade Agreement (ACTA) on behalf of the Republic of Slovenia, following the directive and authorisation of the Slovenian government.** A somewhat longer clarification of the signature can be found on the **Media section** of the Ministry of Foreign Affairs website, which explains the role of the Ministry and my role as the Slovenian Ambassador to Japan. This explanation states that I signed the agreement because I was instructed to do so by the government, and because it is a part of my job.

**And yet, why did I sign ACTA. Every day there is a barrage of questions in my inbox and on Facebook from mostly kind and somewhat baffled people, who cannot understand how it occurred to me to sign an agreement so damaging to the state and citizens.** With this reply, which is of a purely personal nature and expresses only my personal views, I wish to respond to all those people, all my friends and acquaintances who have remained quiet, all Anonymous, and not least also to myself and to my children.

**I signed ACTA out of civic carelessness, because I did not pay enough attention. Quite simply, I did not clearly connect the agreement I had been instructed to sign with the agreement that, according to my own civic conviction, limits and withholds the freedom of engagement on the largest and most significant network in human history, and thus limits particularly the future of our children.** I allowed myself a period of civic complacency, for a short time I unplugged myself from media reports from Slovenia, I took a break from Avaaz and its inflation of petitions, quite simply I allowed myself a rest. In my defence, I want to add that I very much needed this rest and that I am still having trouble gaining enough energy for the upcoming dragon year. At the same time, I am tackling a workload that increased, not lessened, with the advent of the current year. All in line with a motto that has become familiar to us all, likely not only diplomats: less for more. Less money and fewer people for more work. And

## Bulgarian MPs Wear Guy Fawkes Mask to Protest ACTA

Domestic | February 3, 2012, Friday | 16817 views

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Bulgarian MPs wear the mask of Guy Fawkes, symbol of the global protest against ACTA. Photo by Open Parliame  
A number of Members of the Bulgarian Parliament protested Thursday and Friday against the singing of the controversial international **ACTA** agreement.

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# Czech Republic, Slovakia freeze anti-piracy pact

(AFP) – Feb 6, 2012  

PRAGUE — Czech Prime Minister Petr Necas said Monday his country would freeze plans to ratify a controversial international online anti-piracy accord after mounting off-and-online protests.

"The cabinet cannot accept a situation in which the bedrock of liberty and free access to information is endangered," Necas was quoted as saying by the Czech news agency CTK.

He said the government would undertake a thorough review of the "real world" impact of ratifying the Anti-Counterfeiting Trade Agreement (ACTA).

The Czech Republic is one of 22 European countries that last month signed up to ACTA, which aims to set up international standards for intellectual property protection but has sparked fears it could curtail online freedom.

Despite mounting outcry among Internet users, governments gave a nod to ACTA with an initial signature of endorsement, but ratification by parliament is needed for it to come into force.

Later Monday, neighbouring Slovakia also suspended its ratification process, with Economy Minister Juraj Miskov saying a wide public debate needed to be initiated before the process could continue.

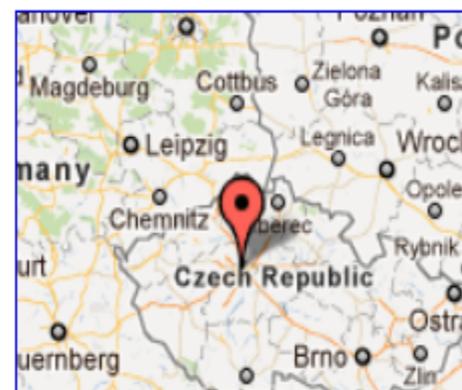
"I will not support a treaty that could limit human rights and freedoms," Miskov said in a statement.

The decision by the Czech and Slovaks government comes in the wake of a move last week by Poland, which also froze its ratification process.



Czech Prime Minister Petr Necas said the government would undertake a thorough review of accord's impact (AFP/File, Michal Cizek)

## Map



# Acta loses more support in Europe

Bulgaria and the Netherlands join Poland and Germany in refusing to ratify Acta, citing privacy and human rights issues

Reuters

guardian.co.uk, Wednesday 15 February 2012 12.10 GMT

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22 Feb 2012 – **E.U. Suspends A.C.T.A.** Pending Review by **Court of Justice**. Maybe the **E.U.** is learning to "expect" them. By Steve Huff 2/22 9:22am. Tweet ...

## [BBC News - Acta: EU court to rule on anti-piracy agreement](#)

[www.bbc.co.uk/news/technology-17125469](http://www.bbc.co.uk/news/technology-17125469)

22 Feb 2012 – The **European Union's** highest **court** has been asked to rule on the ... **Court of Justice** for a legal opinion to clarify that the **Acta** agreement and ...

## [EU suspends ACTA ratification, refers treaty to court — RT](#)



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## [Knowledge of Today | Awareness Shift: EU suspends ACTA ...](#)

[www.knowledgeoftoday.org/.../eu-suspends-acta-court-to-rule-on-an...](http://www.knowledgeoftoday.org/.../eu-suspends-acta-court-to-rule-on-an...)

22 Feb 2012 – The **EU** has **suspended** the ratification of the **Anti-Counterfeiting Trade Agreement (ACTA)** and referred the text to the European **Court of Justice** ...

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## **Human Rights Council**

**Seventeenth session**

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

# **Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue\***

### *Summary*

This report explores key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet. The Special Rapporteur underscores the unique and transformative nature of the Internet not only to enable individuals to exercise their right to freedom of opinion and expression, but also a range of other human rights, and to promote the progress of society as a whole. Chapter III of the report underlines the applicability of international human rights norms and standards on the right to freedom of opinion and expression to the Internet as a communication medium, and sets out the exceptional circumstances under which the dissemination of certain types of information may be restricted. Chapters IV and V address two dimensions of Internet access respectively: (a) access to content; and (b) access to the physical and technical infrastructure required to access the Internet in the first place. More specifically, chapter IV outlines some of the ways in which States are increasingly censoring

**OPINION**  
on the compatibility of the  
**Anti-Counterfeiting Trade Agreement (ACTA)**  
with  
**the European Convention on Human Rights &  
the EU Charter of Fundamental Rights**

by

**Douwe Korff**

*Professor of International law*

London Metropolitan University

London (UK)

&

**Ian Brown**

*Senior Research Fellow*

Oxford Internet Institute

University of Oxford (UK)

**Prepared at the request of**



**The Greens | European Free Alliance**  
in the European Parliament

**Out this Opinion:**

This Opinion was prepared at the request of the **Greens/European Free Alliance** group in the European Parliament. It follows a request by Jan A. P. to the EP Legal Affairs Committee to find out “if the final Version of ACTA and its foreseen legislative procedure is in line with the Treaty on and which legal possibilities there are for the European Parliament to challenge this in front of the European Court of Justice.” It seeks

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A	B	C	D
	US TPP Proposal	ACTA	Comparison/Analysis
	<b>Technological Protection Measures</b>		
	Art. 4.9(a): In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:	Art. 27.5: Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorized by the authors, the performers or the producers of phonograms concerned or permitted by law.	Essentially identical.
	Art. 4.9(a)(i): circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or	Art. 27.6(a)(i): In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5, each Party shall provide protection at least against: (a) to the extent provided by its law: (i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know	TPP does not require that unauthorized circumvention be carried out knowingly or with reasonable grounds to know.
	Art. 4.9(a)(ii): manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that: (A) are promoted, advertised, or marketed by that person, or by another person acting in concert with that person and with that person's knowledge, for the purpose of circumvention of any effective technological measure, (B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure, or (C) are primarily designed, produced, or performed	Art. 27.6(a)(ii), (b)(i), (b)(ii): In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5, each Party shall provide protection at least against: (a) to the extent provided by its law: (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that: (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or	TPP adds to the list of banned circumvention products; it explicitly includes accomplices and excludes nonprofit libraries, archives, educational institutions, and noncommercial broadcaster

# ACTA 'Is More Dangerous Than SOPA'



January 26, 2012 by Lance Ulanoff

36

3,554



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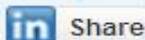
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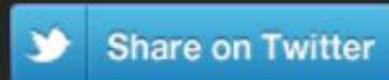
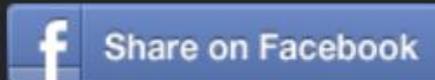


SOPA and PIPA are stalled (or dead) in the halls of the U.S. Congress. Yet, there may be a bigger, perhaps more dangerous threat to Internet freedoms on the way, called the Anti-Counterfeiting Trade Agreement, or ACTA. At least that's how U.S. Rep. Darrell Issa, R. – Calif., sees it, telling an audience, "As a member of Congress, it's more dangerous than SOPA. It's not coming to me for a vote. It purports that it does not change existing laws. But once implemented, it creates a whole new enforcement system and will virtually tie the hands of Congress to undo it."

# Stop ACTA & TPP! - Never use trade agreements to mess with the Internet

They tried to push internet censorship through Congress and we stopped them. But the companies behind SOPA & PIPA have a backup plan: secretive trade agreements like ACTA & TPP. If we can't stop these backroom deals, the internet's future belongs to SOPA's backers.

Thanks for standing up to defend the internet. Now, how can you get tons of others to do the same?



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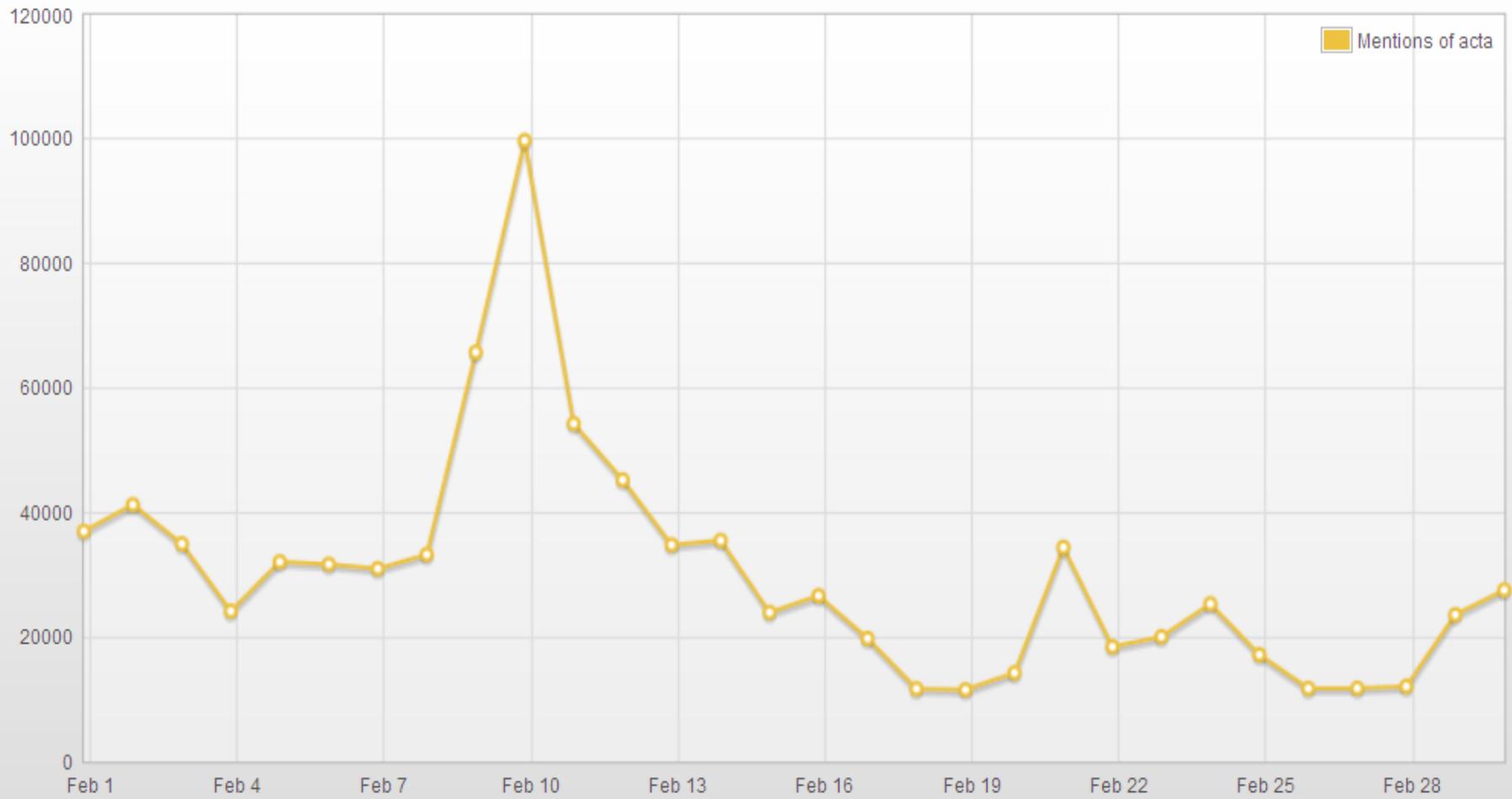
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STOP ALL THE  
CREATIVES



## ▶ European Parliament resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations

*The European Parliament*,

- having regard to Articles 207 and 218 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to its resolution of 9 February 2010 on a revised Framework Agreement between the European Parliament and the Commission for the next legislative term<sup>(1)</sup>,
- having regard to its resolution of 11 March 2009 regarding public access to European Parliament, Council and Commission documents and to the Commission's position as Parliament's position at first reading<sup>(2)</sup> (**COM(2008)0229** – C6-0184/2008 – **2008/0090(COD)**),
- having regard to its resolution of 18 December 2008 on the impact of counterfeiting on international trade<sup>(3)</sup>,
- having regard to the European Data Protection Supervisor's Opinion of 22 February 2010 on the current negotiations by the European Parliament and the Commission on the Anti-Counterfeiting Trade Agreement (ACTA),
- having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 8 thereof,
- having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, as last amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on Electronic Commerce'),
- having regard to Rule 115(5) of its Rules of Procedure,

A. whereas in 2008 the European Union and other OECD countries opened negotiations on a new multilateral agreement designed to strengthen the protection of intellectual property rights (IPRs) and combat counterfeiting and piracy (Anti-Counterfeiting Trade Agreement – ACTA), and jointly agree on the following clause,

2. Expresses its concern over the lack of a transparent process in the conduct of the ACTA negotiations, a state of affairs at odds with the letter of the Treaty of the European Union (TEU) and the Charter of Fundamental Rights of the European Union (CFR); is deeply concerned that no legal base was established before the start of the ACTA negotiations and that parliamentary approval for the mandate was not sought;
3. Calls on the Commission and the Council to **grant public and parliamentary access to ACTA negotiation texts and summaries**, in accordance with Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
4. Calls on the Commission and the Council to engage proactively with ACTA negotiation partners to rule out any further negotiations which are not in the interest of the EU, as a matter of course and to inform Parliament fully and in a timely manner about its initiatives in this regard; expects the Commission to make proposals for a new negotiation round in New Zealand in April 2010, to demand that the issue of transparency is put on the agenda of that meeting and to refer the negotiation round to Parliament immediately following its conclusion;
5. Stresses that, unless Parliament is immediately and fully informed at all stages of the negotiations, it reserves its right to take suitable action, including to bring a case before the Court of Justice in order to safeguard its prerogatives;
6. Deplores the calculated choice of the parties not to negotiate through well-established international bodies, such as WIPO and WTO, which have established frameworks for public information and consultation;
7. Calls on the Commission to conduct an impact assessment of the implementation of ACTA with regard to fundamental rights and data protection, to make efforts to harmonise IPR enforcement measures, and e-commerce, prior to any EU agreement on a consolidated ACTA treaty text, and to consult Parliament in a timely manner about the results of the assessment;
8. Welcomes affirmations by the Commission that any ACTA agreement will be limited to the enforcement of existing IPRs, with no prejudice to the development of substantive IP law in the European Union;
9. Calls on the Commission to continue the negotiations on ACTA and limit them to the existing European IPR enforcement system against counterfeits, and that further ACTA negotiations should include a larger number of developing and emerging countries, with a view to reaching a possible multilateral negotiation;
10. Urges the Commission to ensure that the enforcement of ACTA provisions – especially those on copyright enforcement procedures in the area of intellectual property – are fully in line with the *acquis communautaire*; demands that no personal searches will be conducted at EU borders and requests full clarification of the procedures that would allow for warrantless searches and confiscation of information storage devices such as laptops, cell phones and MP3 players by border control authorities;



## Polish Prime Minister Steps Up His Anti-ACTA Efforts After Hosting 7-Hour Open Q&A Via IRC

from the *wow* dept

A few weeks ago, we noted that Poland's Prime Minister Donald Tusk had agreed to **suspend** attempts to ratify ACTA while he explored the details -- completely flip-flopping on his earlier adamant support for the agreement. However, late last week he went even further. Rather than just putting off the issue, he's now **actively campaigning against ACTA** throughout Europe. While some are accusing him of bowing to public pressure and the protests throughout Poland (which wouldn't necessarily be a bad thing -- listening to the public and all), he insists that it had more to do with learning **more details** about the likely impact of ACTA.

And here's the thing: unlike most other politicians out there, Tusk actually set up a *real* and *open* interaction with people online. This happened a few weeks ago, but **Wired has the details**:

*On Feb. 6, all this activity culminated in an unprecedented conversation between Polish Prime Minister Donald Tusk and – for want of a better word – the internet, that lasted the better part of seven hours.*

Politics

by **Mike Masnick**

Wed, Feb 22nd  
2012 3:01pm

0



Filed Under:

**acta,**  
**conversation,**  
**donald tusk, irc,**



[Enlarge this image](#)

ANALYSIS

## How to anger the Internets: Just say 'No'

**PETER NOWAK**

Special to Globe and Mail Update

Published Thursday, Mar. 01, 2012 5:00AM EST

Last updated Thursday, Mar. 01, 2012 7:09PM EST

[comments](#)



< 21



Like < 7



< 3



Print



When companies, regulators and governments sit down to figure out what flies with the Internet community, they should probably start by analyzing the effects of two simple concepts: "Yes, you can," and "No, you can't."

Products and laws that succeed with the online community tend to have at their core the positive side of this opposing duality of permission. Netflix is a good example. The video streaming service has impressively signed up 23 million customers in only three years by telling people "Yes, you can" – in the form of availability and cost. Its convenient service can be used on just about every gadget at a price that many people have obviously found compelling.

# Seven Lessons from SOPA/PIPA/Megaupload and Four Proposals on Where We Go From Here

BY YOCHAI BENKLER | Wednesday, January 25 2012



ABOVE: Yochai Benkler photo by Joichi Ito, CC-BY 2.0

*We are pleased to publish this guest post on the lessons of the SOPA/PIPA/Megaupload fight by Yochai Benkler, Berkman Professor of Entrepreneurial Legal Studies at Harvard, faculty co-director of the Berkman Center for Internet and Society, and author of [The Wealth of Networks](#) and [The Penguin and the Leviathan](#).*

*Lesson 1: The Networked Public Sphere comes to Washington.*

On Wednesday, January 18, 2012, a new model of politics succeeded in bringing to a halt legislation that had been pushed by some of the most powerful industry lobbies in Washington, which began its life with broad bi-partisan support in both chambers of Congress. The Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA) were to be the most significant changes in intellectual property law since 1998, when a slew of laws, most importantly the Digital Millennium Copyright Act (DMCA) and

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**CIVIC TECHNOLOGISTS GET PLAUDITS  
GOVTECH'S 'DOERS, DREAMERS AND  
DRIVERS' AWARDS**

The magazine Government Technol  
has awarded 25 individuals and g  
as a part of their Top 25 Doers,  
Dreamers, and Drivers in Public S  
Innovation program. The magazin  
releases an annual issue that  
recognizes "people who cut throu  
the public sector's infamous bari  
innovation - tight budgets,  
organizational inertia, politics as  
usual, etc. - to reshape governme  
operations for the better." This ye  
list includes a few folks that may  
familiar to techPresident readers,  
including Jennifer Pahlka, the four  
and executive director of Code for  
America, Bryan Sivak, Maryland's  
chief innovation officer, and Chica  
social media director, Kevin Haus  
John Tolva, its chief technology of  
and Brett Goldstein, its chief data  
officer. **GOO**

**WITH PLAN FOR PRIZE. TED PROMISES**

“The starting point for negotiation cannot be that everything the industry got while networked citizenry was weak and dispersed is sacrosanct, and the only things on the negotiating table are Hollywood's shiny new regulatory toys. The politics have changed. Everything should be up for renegotiation . . . .”

-Yochai Benkler, Jan 25, 2012

dynamics whereby securing the business model of twentieth century content industries threatens freedom, creativity, and innovation in the twenty-first.

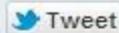
- *Legislatively re-instate the Sony doctrine and reverse Grokster.* Technology developers should only be liable for copyright infringements by users if there are no substantial non-infringing uses of the technology.
- *Decriminalize copyright to per-1998 levels: put the Golem to sleep.* Return the definition of criminal copyright to require large scale copying for commercial gain; reduce the funding to criminal enforcement and reduce the presence of federal functionaries whose role is to hype and then combating the piracy threat. In particular, as calls to shrink the federal government abound, it is critical to include in every legislation downsizing the federal budget provisions that would defund and eliminate most of the burgeoning apparatus of multi-agency criminal enforcement of copyright. The most direct pathway to this will be in appropriation bills, to defund implementation of PRO-IP until a more balanced substantive approach can be worked out.
- *Create a fair use defense to the anticircumvention and antidevice provisions of the DMCA.* Users should be exempt from DMCA liability if they propose, in good faith, to make a fair use of the encrypted materials. Decryption and circumvention providers should be exempt from liability on the model of the Sony doctrine, if there are “substantial non-infringing uses” for the circumvention technology or device they offer. This would fix a much older overreach by the industry, from 1998, that has been very slowly and imperfectly loosened by the Librarian of Congress under powers to exempt certain uses from liability.
- *Rein in the international trade pathway for copyright extension.* Another pathway, similar to criminalization in the sense that it harnesses federal functionaries to help the industry, distinct in the set of functionaries it harnesses, has been international trade. Through a set of trade agreements, both bilateral and multilateral, the U.S. government has pursued the passage of requirements more stringent than it could itself pass in the U.S. The recent adoption of SOPA-like laws in Spain is one example, as is the notorious Anti Counterfeiting Trade Agreement (ACTA). We need a law that would prohibit secret negotiation of IP-related provisions in international agreements, and a law that prohibits the U.S. from entering agreements that require of ourselves or our trading partners more restrictions on the public domain than then-current U.S. law permits.

The American political system has strong ratchet effects. It takes a lot less power to resist legislation than to pass it. This time, the mobilization was powerful enough to stop the ever-expanding IP ratchet from moving one more notch up. Future battles, whether precisely along

Feb 27, 2012

## CURB ABUSES OF COPYRIGHT TAKEDOWNS

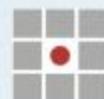
When it comes to takedown notices, it often seems like alleged infringers are assumed guilty until proven innocent. The process that allows content owners to remove allegedly infringing content from websites is far too often abused. Even in cases where there is no infringement, the content is usually removed immediately, taken down for a minimum of 10 days, and is sometimes never replaced.



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Events & Presentations

MSF Launches "Revising TRIPS for Public Health": An Ideas Contest



## MSF Launches "Revising TRIPS for Public Health": An Ideas Contest

**UPDATE (2/11/2011): For details on the conference and to register, visit the site created for the Ideas Conference.**

On the occasion of the ten-year anniversary of the Doha Declaration, MSF is launching an "Ideas Contest" on how to revise TRIPS so that it genuinely meets global public health needs.

Contestants are asked to respond to the following question:

**Question: Can TRIPS be reformed to meet public health needs?**

- If YES, describe your idea for how the treaty should be changed.
- If NO, explain why not, and propose an alternative.

# The Washington Declaration on Intellectual Property and the Public Interest

*The Global Congress on Intellectual Property and the Public Interest, August 25-27, 2011, convened over 180 experts from 32 countries and six continents to help re-articulate the public interest dimension in intellectual property law and policy.*

*The Washington Declaration on Intellectual Property and the Public Interest records the conclusions from the Congress. It has received more than 755 signatures to this day (26th September, 2011). To view the Declaration and the signatures or to add your support: <http://infojustice.org/washington-declaration>*

## **Preamble**

Time is of the essence. The last 25 years have seen an unprecedented expansion of the concentrated legal authority exercised by intellectual property rights holders. This expansion has been driven by governments in the developed world and by international organizations that have adopted the maximization of intellectual property control as a fundamental policy tenet. Increasingly, this vision has been exported to

## Strengthening Limitations and Exceptions

Limitations and exceptions are positive enabling doctrines that function to ensure that intellectual property law fulfills its ultimate purpose of promoting essential aspects of the public interest. By limiting the private right, limitations and exceptions enable the public to engage in a wide range of socially beneficial uses of information otherwise covered by intellectual property rights – which in turn contribute directly to new innovation and economic development. Limitations and exceptions are woven into the fabric of intellectual property law not only as specific exceptional doctrines (“fair use” or “fair dealing,” “specific exemptions,” etc.), but also as structural restrictions on the scope of rights, such as provisions for compulsory licensing of patents for needed medicines. Despite their importance in countering expansive trends in intellectual property, limitations and exceptions are under threat, especially from efforts to recast international law as a constraint on the exercise of flexibilities in domestic legislation. The signatories strongly support efforts to defend and expand as appropriate the operation of limitations and exceptions in the years to come. Specifically, we should work to:

- Continue efforts to assure that international law is interpreted in ways that give countries the greatest possible flexibility in adopting limitations and exceptions that are appropriate to their cultural and economic circumstances.
- Support the development of binding international

through measures that assure fair access to and use of educational materials from early literacy acquisition in the family setting through institutions of primary, secondary and higher education.

- Defend the principle of domestic “exhaustion” (or “first sale”) in national law, and the freedom of countries to choose to implement international or regional exhaustion to facilitate parallel importation.
- Facilitate public use of “orphan” and out-of-print works, and other difficult-to-access categories of content, and assure the freedom of researchers to engage in large-scale text-mining (or “nonconsumptive”) research.
- Explore the benefits of maintaining or reintroducing formalities requirements (such as notice and registration) for individuals and entities claiming the benefit of copyrights.
- Advocate for appropriate limits on the use of unfair contracts or technological protection measures that override limitations and exceptions.

## Setting Public Interest Priorities for Patent Reform

In a period of rapid technological change, the patent system has serious problems. In some industries, very low patenting standards and a proliferation of patents of questionable validity have fueled a culture of competition by intimidation and litigation, rather than

- Ensure that inventions that result from publicly funded research are available for public use.
- Introduce meaningful exemptions for research and for educational uses into national laws.
- Promote transparency in the documentation of patent ownership and licensing, particularly with respect to key technologies like medicines.

## Supporting Cultural Creativity

Maximizing opportunities for creativity and maximizing access to creative works are the two sides of the public interest in cultural life. It is increasingly clear, however, that the existing intellectual property system does poorly on both fronts, especially in regard to digital technologies. As business models based on sales of recorded media come under pressure from new technologies, a broader mix of models for rewarding and empowering authors and artists may be needed. More generally, we should encourage broad experimentation in the marketplace and—at a minimum—policy neutrality with regard to old and new business models. Such innovation can help to end today’s fruitless disputes over practices like noncommercial file-sharing, and to prevent new ones from emerging. In this context, we should support initiatives to:

- Encourage experimentation with, and research on, systems of indirect rewards, such as levies on media, equipment, or usage.

ensure that authors and artists can be identified.

## Checking Enforcement Excesses

The maximalist intellectual property agenda includes a push at all levels for stronger enforcement – in courts, on the street, at borders and now on the Internet. Government and private IP enforcement are commandeering greater social resources in order to impose stricter penalties than ever before, with fewer safeguards and less procedural fairness. This trend in enforcement brings IP into ever-sharper conflict with other rights and public policy objectives, including protecting privacy and freedom of expression, providing due process, and promoting health and education. It creates new risks of wrongful searches and seizures. And it threatens the Internet’s original – and enormously valuable – decentralized architecture as Internet service providers are drafted to act as enforcement agents. Recognizing the importance of reasonable enforcement of properly-bounded intellectual property rights, we should work to:

- Ensure that legal penalties, processes and remedies are reasonable and proportional to the acts of infringement they target and do not include restrictions on access to essential goods and services, including access to the Internet or to needed medicines and learning materials.
- Promote proportional approaches to enforcement and avoid excessively punitive approaches to enforcement through disproportionate statutory



**December 18-20, 2011**  
**University of Amsterdam**

*Hosted by the Institute for Information Law, University of Amsterdam and the American University Washington College of Law Program on Information Justice and Intellectual Property*

## Abstract

This meeting is the launch of a multi-stage project to form an international network of copyright experts to explore proposals for enhancing flexibilities in countries that currently operate with a "closed" set of limitations and exceptions. Additional activities broadening and mobilizing the network will be discussed as the last item on the December 19 agenda. These activities are projected to include a final product, likely in the form of an interactive web page, on the "Ways and Means of Promoting Copyright Flexibility in National Legislation."

The impetus for this project was discussion at the August 2011 Global Congress on Intellectual Property and the Public Interest. Its final communiqué, the "Washington Declaration," includes a section on "Strengthening Limitations and Exceptions," stating:

- "limitations and exceptions are under threat, especially from efforts to recast international law as a constraint on the exercise of flexibilities in domestic legislation,"
- "efforts [are needed] to defend and expand as appropriate the operation of limitations and exceptions in the years to come," and
- communities of scholars and advocates should "[p]romote discussion of employing 'open-ended' limitations in national copyright legislation, in addition to specific exceptions."

The immediate purpose of this meeting is to explore how we can create the necessary infrastructure and work plans to carry forward these important tasks.

## Attendees

[P. Bernt Hugenholtz](#)

[Michael Geist](#)

[Stef van Gompel](#)

[Lionel Bentley](#)

[Lucie Guibault](#)

[Robert Burrell](#)

[Peter Jaszi](#)

[Carolina Botero](#)

[Michael Carroll](#)

[Kim Weatherall](#)

[Fred Von Lohmann](#)

[Daniel Gervais](#)

[Niva Elkin-Koren](#)

[Ronan Deazley](#)

[Michael Birnhack](#)

[Dick Kawooya](#)

[Martin Senftleben](#)

[Hong Xue](#)

[Christophe Geiger](#)

[Denis Borges Barbosa](#)

[Agenda](#)

[Answers to Participant Questionnaires](#)

[Logistics Information \(addresses, reimbursements, etc.\)](#)

[Collaborative Meeting Notes](#)

[Document Library \(Laws and Articles\)](#)

[Participant Flight Details](#)

Country	Illustrative use (e.g. documentary)	Digitization of "special" collection for public	User-generated entertainment ("Guitar Baby")
EU	X	X	X
Netherlands	Maybe	+	X
France	Maybe	X	Maybe
Brazil	Maybe	X	Maybe
Columbia	X	X	X
China	Maybe	+	Maybe
U.S.	+	Maybe	Maybe
Israel	+	+	+
India	Maybe	Maybe	X
Australia	X	X	X
UK	Maybe.	Maybe	X
Canada C-11	Maybe.	X	+
South Africa	Maybe	X	Maybe
Uganda	X	X	Maybe.

## **Development & Innovation Agenda**

## **Positive Proposals**

**PROCESS**

**Multilateral  
Open-door**

**Ban watch lists and unilateral  
adjudications (e.g. “Special 301”)**

**SCOPE**

**Flexibility in protection,  
mandatory L&E**

**Require flexible limitations and  
exceptions for free expression  
and public interests**

**ENFORCEMENT**

**Private burden  
Commercial scale  
Judicial safeguards**

**Require due process, judicial  
determinations, and proportionate  
penalties**

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