



# THE ANTI-COUNTERFEITING TRADE AGREEMENT



## COUNTERFEITING AND PIRACY: A GLOBAL PROBLEM

**The world-wide trade in counterfeit and pirated goods has grown steadily over the past decade. In addition to causing significant financial losses for those targeted in the trade of legitimate goods, there can also be a significant risk to consumers who may be deceived about the quality and legitimacy of what they are buying.**

Internationally, trade in counterfeit and pirated goods has grown steadily. In 2007 it is estimated that the value of illegal trade amounted to up to US\$250 billion.

New Zealand is not immune to the problem: in the year to June 2009, the New Zealand Customs Service seized over 270,000 counterfeit items, including clothing, footwear and electronic goods.

Goods commonly targeted by counterfeiters in the past include fashion clothing, footwear and accessories like perfume, sunglasses, handbags, watches, caps and jewellery. New technologies have facilitated the copying, distribution and sale of pirated movies, music and software. More recently many other types of goods are now being counterfeited, such as auto parts, electronic goods, motorcycles, cigarettes, medicines, sporting equipment, toys, food and drink.

Internationally, governments and businesses are working to try and establish effective means to fight the growing problem of counterfeiting and piracy and to reduce the risks to both rights-holders and consumers.

Trade marks and copyright are **intellectual property rights** that are protected under New Zealand law and internationally under agreements such as the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). It is a breach of these intellectual property rights to make copies of a trade mark (**counterfeiting**) or a copyrighted work (**piracy**) without the consent of the owner of the intellectual property right.



## **AN INTERNATIONAL RESPONSE: THE ACTA INITIATIVE**

In response to growing global concerns, a group of countries including New Zealand have been negotiating an international treaty aimed more effectively combating the trade in counterfeit and pirated goods. The treaty is known as the **Anti-Counterfeiting Trade Agreement (ACTA)** and focuses on establishing better mechanisms to enforce the rules against counterfeiting and piracy.

ACTA negotiations began in June 2008 and the aim is to conclude by the end of 2010. The participants are Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States. New Zealand's negotiating team is made up of officials from the Ministry of Foreign Affairs and Trade, the Ministry of Economic Development, and the New Zealand Customs Service.



## **ACTA'S AIMS**

In developing ACTA, the participants have agreed that it should focus on three areas:

- Increasing the **international cooperation** between the enforcement agencies (such as customs authorities), by encouraging agencies to share information (such as statistical data) about the trade in counterfeit and pirated goods, and share expertise in ways to tackle the trade.
- Establishing **best practices** for the **enforcement** of intellectual property rights, including the best practices for targeting shipments of counterfeit and pirated goods, collecting data about counterfeiting and piracy, and raising public awareness about counterfeiting and piracy.
- Providing a **more effective legal framework** to combat counterfeiting and piracy (including where this occurs over the internet). ACTA will set out some of the remedies for copyright and trade mark owners and tools that judicial authorities should have available to them to impose sanctions when civil and criminal rules against counterfeiting and piracy are breached.



ACTA will be consistent with existing international agreements on intellectual property, such as the TRIPS Agreement and other WTO agreements and World Intellectual Property Organization (WIPO) Agreements.

A regularly updated summary of the key elements under discussion under ACTA is available on the ACTA page at [www.mfat.govt.nz](http://www.mfat.govt.nz) or [www.med.govt.nz](http://www.med.govt.nz)

### **WHAT ACTA WILL NOT DO**

- ACTA is not designed to be intrusive and will not have an impact on consumers' ability to purchase and consume legitimate goods or otherwise interfere with the established consumer rights.
- ACTA is concerned about enforcing existing standards and rules for the protection of trade marks and copyright: it is not about setting new standards.
- ACTA is aimed at large-scale counterfeiting and piracy activities, which often can involve criminal elements and pose a threat to public health and safety. It is not designed to target individual citizens: for example, Customs will not be required to search travellers' laptops or mp3 players for pirated movies, music or software.

- ACTA will not require Internet Service Providers to take over the role of authorities to determine whether or not intellectual property rights have been infringed over the Internet.
- Because ACTA will not alter existing standards for the protection of intellectual property rights, it will not affect New Zealanders' ability to access genuine parallel-imported products.
- ACTA will not interfere with the rights enshrined in, for example, the Privacy Act 1993 and the Bill of Rights Acts 1990, nor will enforcement agencies be provided with any additional surveillance powers under ACTA.

### **THE NEGOTIATING PROCESS**

New Zealand is keen to see that the negotiating process is as open as possible and has been active in ensuring this to date. As with any negotiation however, it is important that when working towards an agreement on complex issues, participants are able to exchange views in confidence. For this reason, following the standard practice for trade negotiations, the participants in ACTA have agreed that the actual text under debate should be kept in confidence between the participants.



New Zealand needs to respect our negotiating partners' views on this, and work with them over the release of information about the negotiations.

The ACTA participants have taken a number of steps to ensure greater transparency in the process, including by publishing a regularly updated Summary of Key issues Under Discussion. Agendas for upcoming meetings, and reports on meetings that have taken place, are also published. These documents are available at [www.mfat.govt.nz](http://www.mfat.govt.nz) or [www.med.govt.nz](http://www.med.govt.nz)

## CONSULTATION

New Zealand's negotiating team has been seeking input from New Zealand stakeholders throughout the ACTA negotiation, including through public submissions and providing briefings about ACTA to individuals and representatives from the information, communications and technology (ICT) sector, internet user groups, and copyright and trade mark owners. Summaries of public submissions received and copies of past presentations are available at [www.med.govt.nz](http://www.med.govt.nz)

Once the ACTA negotiations have concluded and an agreement has been reached, it will be up to individual participants to decide whether and when to bring ACTA into force. Other countries will also be able to join ACTA at that stage, with the goal of establishing global mechanisms for addressing counterfeiting and piracy.

As with all international agreements that New Zealand enters into, ACTA must pass the test of being in our national interests. In New Zealand, this process begins with the Government taking the decision whether or not to sign the negotiated ACTA treaty, following public consultation. If the decision is taken to sign the agreement it would then need to be ratified by Parliament. This process would include further careful consideration of ACTA's potential effects and further public consultation through the Parliamentary Select Committee process.

## FOR FURTHER INFORMATION

For further information see [www.mfat.govt.nz](http://www.mfat.govt.nz) and [www.med.govt.nz](http://www.med.govt.nz) or contact: [tplu@mfat.govt.nz](mailto:tplu@mfat.govt.nz) or +64 4 439 8000.