Canada should not ratify ACTA

I have met multiple times with bureaucrats in the departments of Canadian Heritage (Copyright Policy Branch) and Industry Canada (IPPD, Competition Bureau, etc) to discuss these issues over the past decade. Please consider meeting with me to discuss in detail. My full contact information is at http://flora.ca/#contact

My earlier submission at http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/acta-2009-mcormond.pdf is marked as "out of date". While it may have been submitted in 2009, most of the key points remain relevant http://teklaw.ca/5099 .

Deceptive name

In it's title the Anti-Counterfeiting Trade Agreement (ACTA) speaks about counterfeiting, an offense which harms the recipient of a product or service. Like how trademark law was intended to work, laws or trade agreements against counterfeiting should be focused on protecting the interests of the recipients of products and services in the marketplace.

These areas of law are very different to the government granted monopolies of copyright or patent. In these cases the potential harm is not to the recipient of the product or service, but to the entity that received the government granted monopoly. While there may or may not be harm from infringing copyright or patents (Copyright infringement is not theft http://c11.ca/5395) it is harmful to the respect of these very different areas of law to merge them together as if they were similar.

Ideal would have been if the parts of ACTA that discussed copyright, patent and other monopoly rights were removed, retaining only the parts of ACTA that related to counterfeiting or trademark violations that in the most extreme cases risk the lives of the recipients of the counterfeit products. Since this is not what happened, Canada should simply not ratify the agreement and withdraw any support.

Forum

I disagree with creating yet for fora for discussing consumer protection laws such as anti-counterfeiting and trademark laws, or the temporary government granted monopolies of copyright and patent. We already have WIPO and WTO/TRIPS, and creating yet another fora is harmful. A large number of critical stakeholders have been excluded from the proceedings relating to these agreements, and we have finally seen modernization in WIPO to enable a wider spectrum of viewpoints to be heard. It appears as if the purpose of ACTA is to create an alternative to WIPO that is less accountable and transparent to allow harmful policies pushed by extremely narrow special interests to get a more receptive audience.

Canada has a long history of preference for larger multilateral fora, and as a gesture of respect

to the work that needs to be done at WIPO Canada should reject ACTA.

Information Technology Property Rights

Canada should not ratify or otherwise support any agreement that contain the highly controversial and harmful "technological protection measures" (TPM) provisions.

There is work needed internationally to fix mistakes made at WIPO in 1996, including amending existing treaties to remove these provisions. While there are relatively harmless and very harmful interpretations of the language in those treaties, misinformation about how to interpret the treaties by some of the participants have lead to the most harmful possible interpretations being adopted in some countries (See: http://l.c11.ca/faq#wipoguide , with the inclusion of "access controls" being the most harmful provisions which are the least related to the substance of copyright law).

I have spent considerable time over the last decade trying to encourage governments to adequately protect the rights of the owners of information technology. (See: Protecting property rights in a digital world http://c11.ca/own)

Much of the conversation about these measures appears to the technical community to be "science fiction", or a belief that copyrighted content alone can make decisions. The fact is that TPMs are implemented in software and execute on computing hardware. It is critical to understand who the owners of these computers are, and how these TPMs often circumvent the property rights of these owners of tangible property.

(See Hill Times article: TPM provisions should be closely tied to copyright law as suggested in 1996 WIPO treaties http://c11.ca/5379)

These TPMs often involved a lock on content which makes the content only interoperable with specific brands of authorized devices. Copyright holders should have no more say over what technology an audience purchases than book authors had over what brand of eyeglasses we wore.

More controversially, these TPMs include a lock on devices where the owners of these devices are denied keys. This is clearly disrespectful of the rights of technology owners, who like the owners of every other type of property should expect to receive from the previous owner all the keys to any locks that had been applied to their property. There is no legitimate reason for governments to reject the protection of property rights, simply because the property happens to be a digital device.

The most recent ACTA draft from April 15, 2011, includes "technical measures" in article 27, paragraph 5. Paragraph 6 goes further and discusses devices and services to enable the circumvention of "technological measures".
(April 15, 2001 draft of ACTA http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/acta-crc_apr15-2011_eng.pdf)

It is critical to understand that these technical measures do not target infringing activity, but

most often infringe upon lawful activities of the owners of information technology. While there have been no independent peer reviewed studies that prove the effectiveness of these TPMs at reducing copyright infringement, the harm to the legitimate interests of technology owners from non-owner locks is considerable. These technologies are the tools that form a critical means of production and distribution in the modern economy, and our laws must protect the private ownership (and control) over these tools.

The devices and services discussed in ACTA article 27 paragraph 6 should be no more controversial than home or car owners having the right to hire a locksmith to change the locks on what they own. It is wrong and a disregard of property rights to disallow owners from removing or changing any locks that were placed on their property by a previous owner (including the manufacturer/builder).

In the government fact sheet for ACTA it claims:
http://www.international.gc.ca/trade-agreements-accords-commerciaux/fo/IP-factsheet-fiche.aspx?lang=en&view=d

> "The ACTA does not focus on private, non-commercial activities of individuals, nor will it result in the monitoring of individuals or intrude in their private sphere. "

With the inclusion of TPMs in ACTA, this statement becomes false. When non-owner locks on devices are legal and/or legally protected, it allows the previous owner (the entity with the keys) to monitor or manipulate the private, non-commercial activities of individuals including the monitoring or intruding on their private sphere. It may not be the government that is directly circumventing the citizens rights, but it is the government that is legalizing and legally protecting private sector entities who wish to do so.

I believe if studied that the harm from disallowing owners the right to change the locks on what they own, and in the case of devices to make their own software choices, has a far greater negative effect on the economy than the copyright infringement these technologies are alleged (without evidence) to reduce.