



## Obama Tries to Bypass Congress with Deadly Global Internet Treaty ACTA

Before the American people were protesting the Stop Online Piracy Act and the Protect Intellectual Property Act, the president managed to sign an international treaty which would permit foreign companies to demand that ISPs (Internet Service Providers) remove web content in the United States without any legal oversight. Entitled the Anti-Counterfeiting Trade Agreement (ACTA), the treaty was signed by Obama on October 1, 2011, but it is currently a subject of discussion because the White House is circulating a petition demanding that senators ratify the treaty.



What's worse is that the White House has done some maneuvering — characterizing the treaty as an “executive agreement” — thereby bypassing approval by members of Congress. Concerned by this action of the administration, Sen. Ron Wyden (D-Ore., above left) sent a letter to President Obama in which he declared:

It may be possible for the U.S. to implement ACTA or any other trade agreement, once validly entered, without legislation if the agreement requires no change in U.S. law. But regardless of whether the agreement requires changes in U.S. law ... the executive branch lacks constitutional authority to enter a binding international agreement covering issues delegated by the Constitution to Congress' authority, absent congressional approval.

Similarly, TechDirt observes:

... [E]ven if Obama has declared ACTA an executive agreement (while those in Europe insist that it's a [binding treaty](#)), there is a very real [Constitutional question](#) here: can it actually be an executive agreement? The law is clear that the only things that can be covered by executive agreements are things that involve items that are solely under the President's mandate. That is, you can't sign an executive agreement that impacts the things Congress has control over.

But here's the thing: intellectual property, in Article 1, Section 8 of the Constitution, is an issue given to Congress, not the President. Thus, there's a pretty strong argument that the President legally cannot sign any intellectual property agreements as an executive agreement and, instead, must submit them to the Senate.

Twenty-two EU member states signed the treaty at a ceremony in Tokyo on January 26. Other nations interested in signing the agreement have until May 2013 to do so.

According to Wikipedia, the Anti-Counterfeiting Trade Agreement “creates a governing body outside national institutions such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) or the United Nations.” The scope of the agreement includes counterfeit goods,



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generic medicines, and pirated copyright-protected works.

The provisions of ACTA grant copyright holders direct powers to demand that ISPs remove material from the Internet, without the requirement of a court order, and permit foreign influence over ISPs in the United States.

Advocates of the treaty seek to give copyright holders the ability to demand that users who do violate intellectual property rights have their Internet connections terminated as a punishment. To enforce such a system would require the creation of an individual Internet ID.

[The Electronic Frontier Foundation](#) (EFF) reports:

The same industry rightsholder groups that support the creation of ACTA have also called for mandatory network-level filtering by Internet Service Providers and for Internet Service Providers to terminate citizens' Internet connection on repeat allegation of copyright infringement (the "Three Strikes"/Graduated Response) so there is reason to believe that ACTA will seek to increase intermediary liability and require these things of Internet Service Providers.

The EFF has been vehement in its opposition to ACTA, particularly regarding the secrecy surrounding the treaty negotiations. Likewise, Michael Geist, in writing for Copyright News, asserted that ACTA was "shrouded in secrecy." He pointed out that ACTA negotiations did not include civil society groups or developing countries, noting also that "reports suggest that trade negotiators have been required to sign non-disclosure agreements for fear of word of the treaty's provisions leaking to the public."

The European Commission denied this allegations in 2008, arguing, "It is only natural that intergovernmental negotiations dealing with issues that have an economic impact, do not take place in public and that negotiators are bound by a certain level of discretion."

As [noted](#) on Wikipedia, opponents of ACTA also assert that it will impinge upon freedom of expression and communication privacy. A large number of the World Trade Organization's 157 members have voiced concerns that the treaty would have a negative impact on trade. Others have pointed out that ACTA does not include provisions for legal safeguards protecting ISPs from liability for the actions of their subscribers. Without such provisions, ISPs will be forced to invade the privacy of their subscribers in order to protect themselves.

Aaron Shaw, research fellow at the Berkman Center for Internet & Society at Harvard University, stressed that "ACTA would create unduly harsh legal standards that do not reflect contemporary principles of democratic government, free market exchange, or civil liberties."

The technology news and information website ArsTechnica.com argues that ACTA encourages ISPs to collect and provide information about suspects by providing for those ISPs "safe harbor from certain legal threats."

In protest against the treaty, the hacktivist group Anonymous [hacked](#) into the Federal Trade Commission's cybersecurity advice website on January 24, replacing the homepage with the Anonymous logo, a rap song, and a message threatening more attacks if anti-piracy legislation in Congress were to pass. According to [The Next Web](#):

The message left temporarily on OnGuardOnline referred to the Stop Online Piracy Act, The Protect Intellectual Property Act and the Anti-Counterfeiting Trade Agreement. If they pass, the message said, "we will wage a relentless war against the corporate Internet, destroying dozens upon dozens of government and company websites."



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Both SOPA (in the House) and PIPA (Senate) are bills intended to combat piracy of intellectual property; however, both contain dangerous provisions which would require Internet service providers to block offending sites and search engines. Critics say their passage would amount to virtual censorship of the Internet.

On January 18, thousands of websites, including Reddit and Wikipedia, blacked out in protest against SOPA and PIPA, posting messages urging users to join their protest. Millions of Americans signed the petitions opposing the two bills which circulated throughout the Internet that day. Facebook users nationwide posted messages on their Facebook pages, including Facebook founder Mark Zuckerberg, who wrote:

The Internet is the most powerful tool we have for creating a more open and connected world. We can't let poorly thought out laws get in the way of the internet's development. Facebook opposes SOPA and PIPA, and we will continue to oppose any laws that will hurt the internet.

The world today needs political leaders who are pro-internet. We have been working with many of these folks for months on better alternatives to these current proposals. I encourage you to learn more about these issues and tell your congressmen that you want them to be pro-internet.

As a result of the massive protest staged against both SOPA and PIPA, the two bills have been put on hold indefinitely. However, if ACTA goes into effect, the two bills would be superfluous.

In August, 2010, Washington College of Law in the nation's capital held a Global Congress on Intellectual Property and the Public Interest, which was attended by a number of academics and public interest organizations from six continents. Participants concluded that the "terms of the publicly released draft of ACTA threaten numerous public interests, including every concern specifically disclaimed by negotiators."

In addition, a group of 75 law professors from top law schools around the country signed a letter on October 28, 2010 to President Obama demanding that ACTA be halted and changed.

When the Polish government announced on January 19 that it would be signing the treaty, websites in that country were shut down in much the same way that U.S. websites blacked out in opposition to SOPA and PIPA. Regardless of the opposition of the Polish people, however, Poland's Ambassador to Japan signed the treaty.

Kader Arif, European rapporteur for ACTA, resigned his position on January 26 in opposition to ACTA, declaring, "I want to send a strong signal and alert the public opinion about this unacceptable situation. I will not take part in this masquerade."



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