

# Editorial: ACTA Has Changed the European IP Climate

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The rejection of the Anti-Counterfeiting Trade Agreement (“ACTA”) on July 4, 2012, by a vote of 478 to 39 of the European Parliament, was a remarkable historical event. Rejections of international trade agreements negotiated by the European Commission are rare incidences. In February 2010, the first rejection case under the new rules of the Lisbon Treaty concerned the EU-US SWIFT-Agreement on the processing and transfer of financial messaging data from the European Union to the United States – also an information society issue. Now ACTA has turned out to be the second occasion for the European Parliament to flex its legal muscles.

The legal text, as such, is a highly technical instrument. ACTA had been designed to foster intellectual property enforcement on an international scale and to go beyond TRIPS. Although less evident, ACTA turned out to be stricter than the European aquis communautaire on a number of specific issues. These *acquis-plus* effects provoked critical remarks from intellectual property scholars from different European jurisdictions, which have been published in JIPITEC.<sup>1</sup> However, the reason to reject the Agreement was the public outcry of Internet users, mainly in East and Central Europe, who organized mass demonstrations and raised their voices against the (initially) intransparent negotiations and some harsh copyright enforcement instruments found in the leaked drafts of the Agreement.

The Commission’s concessions came too late and too hesitantly to finally save the Agreement. ACTA had already become the symbolic battleground for the political project of digital natives, i.e. the generation of young people born during or after the introduction of the Internet who became accustomed to digital technology from an early age. Ultimately, it turned out to be an unwise strategy for the Commission and pro-ACTA activists to postmark the critics as insufficiently informed teenagers who could not distinguish a draft from a final document. Rather, this arrogance of power prepared the ground for the emergence of a new social movement. Indeed, the main concerns with regard to copyright enforcement on the Internet had been allayed in the final text. However, ACTA still represented a one-sided intellectual property policy, which was vigilant to the needs of rightholders and industries, but too easily set aside the fundamental rights of users, such as the right to information and education, the freedom of expression, the right to accessible health care, the right to privacy and protection of personal data, and the right to due process.

In the years to come, the general political claim for a balanced approach to intellectual property, which was hidden behind all ACTA criticism, could provide the basis for an enduring if not permanent role of IP critical fundamentalists. Whether the European and national Pirate Parties have already seen their peak or whether the movement will play a permanent role in European IP policy largely depends on the ability of the European Commission to internalize the legitimate interests of users when undergoing its rulesetting activities. At the end, the most dangerous scenario for rightholders would be an ongoing erosion of the acceptance of intellectual property rights. Against this background, the European Parliament has made a wise decision.

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<sup>1</sup> See <http://www.jipitec.eu/issues/jipitec-2-1-2011/2965>.