Draft trade agreement worries technology companies

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Technology companies and public interest groups are warning that an international trade agreement being drafted could expose Internet access providers, Web search engines and other online businesses to damaging legal risks.

The U.S. and nearly a dozen trading partners released the current version of the Anti-Counterfeiting Trade Agreement, or ACTA, on Wednesday amid mounting complaints about the negotiations taking place behind closed doors. An eighth round of talks was held last week in New Zealand.

The far-reaching agreement aims to crack down on counterfeiting, copyright violations and other intellectual property theft, and would cover everything from fake pharmaceuticals to online piracy of music and movies. But critics fear it could cripple technology companies by holding them responsible for copyright infringement by their users.

"We appreciate this step toward transparency, but we're concerned ACTA could rewrite laws that have made the Internet a platform for economic growth, creativity and free expression," Google Inc. said in a statement.

Although ACTA negotiations began in the fall of 2007, many provisions in the agreement are still being debated. The nations taking part include the U.S., European Union member states, Japan, Korea, Canada, Mexico, Morocco, New Zealand, Singapore, Switzerland and Australia.

The countries that eventually sign on to the final treaty will be expected to bring their own laws and legal practices into compliance. For its part, the U.S. maintains that ACTA will not require any changes to domestic law.

That has led many opponents to charge that the U.S. is using ACTA to export its own copyright regime to other countries. And they fear that while the agreement will include tough sanctions that exist in the U.S. to protect copyright holders, it will lack legal safeguards that also exist in the U.S. to provide critical balance.

Many technology companies are particularly concerned that the treaty could open the door to broad "secondary liability" for Internet service providers, social networking sites, video-sharing sites and other online services for alleged copyright infringement by their users. That could hurt telecom giants such as AT&T Inc. and Verizon Communications Inc. and popular online platforms such as Facebook and Google Inc.'s YouTube.

"There is a lot of language that is still up for grabs that relates to the really central

point about how much responsibility ISPs and other Internet intermediaries should bear, and when they should be subject to legal demands or liability relating to conduct occurring on their systems," said David Sohn, senior policy counsel for the Center for Democracy & Technology, an interest group that advocates for civil liberties online.

At the same time, Sohn said he worries that the pact will lack meaningful language on immunity for Internet companies. He noted that the Digital Millennium Copyright Act, a 1998 U.S. law, requires companies to remove infringing content, but in return protects them from monetary damages. The ACTA draft, on the other hand, includes limitations on remedies, but lacks specifics, he said.

Sohn also said he fears that the draft agreement does not reflect a key precedent established in a landmark 1984 Supreme Court ruling upholding the legality of Sony's Betamax video recorder. The court ruled that even though the Betamax could be used to make illegal copies of movies, it also had significant non-infringing uses.

Other provisions in the draft agreement that concern public interest groups and technology companies include statutory damage awards for infringement violations and measures to punish people who circumvent digital locks protecting copyrighted material.

Despite these reservations, the ACTA draft drew praise from other corners.

In a statement, the Motion Picture Association of America said the draft "represents a solid building block, an important step forward in the work of like-minded governments to strengthen protection against Internet piracy, the fastest growing threat to filmed entertainment and other segments of the copyright industries."

That point was echoed by Nefeterius Akeli McPherson, a spokeswoman for the U.S. Trade Representative. Intellectual property theft, she said, is "a job killer, and it's an export killer."

She added that the U.S. Trade Representative is "attentive to the balance struck by the U.S. Congress" in weighing the need for both strong enforcement of copyright protections and measures to "shield Internet service providers who play by the rules."

Sherwin Siy, deputy legal director for Public Knowledge, another public interest group critical of ACTA, welcomed the release of the draft agreement. Yet Siy remains skeptical that public pressure will ultimately change the final shape of the treaty.

Plus, he said, "a lot of the public discussion about the details will take place two years after this should have started."

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