

# Tech companies fear implications of trade pact

JOELLE TESSLER - AP Technology Writer - Associated Press

Companies across the technology industry — from Internet access providers to social networking sites to video-sharing services — are bracing for this week's release of a draft of a trade agreement that they fear could undermine all sorts of online activities.

The agreement, being negotiated by the United States and nearly a dozen trading partners, is intended to create an international framework to crack down on counterfeiting, copyright violations and other intellectual property theft. But skeptics warn that it could chill free speech and other online expression by making technology companies liable for the misdeeds of their users.

"If online platforms themselves are held liable in a way that is overly broad, the platforms themselves will start screening and censoring or scaling back how open to user participation they are," said David Sohn, senior policy counsel for the Center for Democracy & Technology, an interest group that advocates for civil liberties online. "They will have to exercise really tight control."

The Bush administration began negotiating the Anti-Counterfeiting Trade Agreement, or ACTA, in the fall of 2007 in an effort to harmonize intellectual property protections across different nations. The far-reaching agreement would encompass everything from counterfeit pharmaceuticals to fake Prada bags to online piracy of music and movies. Once ratified, trade agreements take full effect and a country can face complaints for noncompliance.

Since early on, the talks have been mired in controversy. For one thing, countries that are considered the biggest sources of intellectual property theft — such as China and Indonesia — are not participating. Nations taking part include the European Union member states, Japan, Korea, Canada, Mexico, Morocco, New Zealand, Singapore, Switzerland and Australia.

The negotiations have been held behind closed doors, with no opportunity for public comment or outside input. Earlier versions of the trade agreement have been leaked, but the first official draft won't be released until Wednesday — even though last week's talks in New Zealand marked the eighth round of negotiations. The next round will take place in Switzerland in June.

Michael Geist, a law professor at the University of Ottawa who specializes in Internet and electronic commerce issues, argues that because the agreement could reshape intellectual property laws in so many countries, the proper forum for such negotiations is the World Intellectual Property Organization. WIPO negotiations are more open to public scrutiny and include countries where much of the counterfeiting takes place, he noted.

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"Anyone in a democratic country should be uncomfortable when governments go behind closed doors to negotiate an agreement that will ultimately have a significant impact on domestic law," Geist said.

Many technology companies fear that ACTA could undermine existing legal precedent and intellectual property laws in the United States, including the landmark 1998 Digital Millennium Copyright Act. The current U.S. legal framework includes important protections for Internet service providers and other technology companies when their users are accused of copyright infringement. Although current law requires companies to remove infringing content, it limits their liability.

Most big technology companies are hesitant to comment on the record about ACTA until they see an official draft, but privately they say that immunity is critical not just for Internet service providers such as AT&T Inc. and Verizon Communications Inc., but also for any online company that hosts user-generated content. That includes social networking sites such as Facebook, video-sharing sites such as Google Inc.'s YouTube and even the online encyclopedia Wikipedia.

The darkest fear of the technology companies is that ACTA contains provisions that would require them to cut off access to users who violate copyright protections and possibly would hold the companies liable for violations.

The dangers of such "secondary liability" were underscored by a recent court ruling in Italy, which held three Google executives criminally responsible for hosting an online video of an autistic teenager being bullied, said Sohn of the Center for Democracy & Technology.

Sohn also said he worries that the trade agreement will exclude another "safeguard" in U.S. law — the "fair use" doctrine, which allows limited use of copyright-protected material for commentary, criticism, research, teaching and news reporting.

"While this is being characterized as an anti-counterfeiting agreement, it is really a copyright deal with rules that will affect the daily lives of millions of people both online and in the digital realm," Geist said.

ACTA skeptics aren't only worried that it will bring more-restrictive rules to the U.S. Sherwin Siy, deputy legal director for Public Knowledge, another public interest group, fears that ACTA could also export strict, punitive copyright enforcement measures that exist in U.S. law to other countries. That could include high statutory damage awards, he said.

To be sure, ACTA has plenty of defenders. In November, a long list of media companies and trade groups, including the Motion Picture Association of America and the Recording Industry Association of America, sent a letter to Congress expressing support for the agreement.

ACTA, they wrote, has the potential to "preserve high value American jobs, and create new ones" and "buttress our country's leading position in the creation,

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publishing and distribution of software, video games, films, music, books, television programs, journals, visual materials and other works protected by copyright."

The office of the U.S. Trade Representative, which is negotiating ACTA on behalf of the U.S., said in a statement that it is working to implement "President Obama's commitment to aggressively protect American intellectual property overseas" and is "respecting the balance struck by the U.S. Congress on these issues."

The trade representative added that secondary liability for copyright infringement already exists in U.S. and foreign laws. ACTA, it hopes, would "protect Internet intermediaries from secondary liability if they play by the rules."

**Source URL (retrieved on 07/24/2014 - 5:32pm):**

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