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ACTA and the EU - the story so far

European Commissioner refers Anti-Counterfeiting Trade Agreement to the European Court of Justice to consider its legality.

By *Alan McKenna*
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A controversial Treaty

The European Union Trade Commissioner, Karel de Gucht, has asked the European Court of Justice to rule on the legality of the highly controversial, Anti-Counterfeiting Trade Agreement (ACTA), and whether it is incompatible in any way with the European Union's fundamental rights and freedoms. His request follows a Europe-wide protest campaign that sees the Treaty as being used to limit online freedom of speech.

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In announcing the referral, de Gucht stated that he shared, "people's concern for fundamental freedoms such as the freedom of speech", and welcomed "that people have voiced their concerns so actively - especially over the freedom of the internet", and recognised there was "uncertainty on what ACTA will really mean for these big issues". But he warned the "debate must be based upon facts and not upon the misinformation or rumour", that he claimed had "dominated social media sites and blogs in recent weeks."

Harmonisation of intellectual property rights

So it should be asked what the ACTA Treaty is all about and what does it contain that managed to bring thousands of demonstrators on to the streets of cities across Europe in early February in protest against it? The plurilateral Treaty seeks amongst the signing states to harmonise and improve the enforcement of intellectual property rights by the creation of common enforcement standards and more effective co-operation amongst those signatory states in order to prevent the infringement of intellectual property rights, especially in relation to piracy and counterfeiting. The creation of the Treaty can be seen as an expression of dissatisfaction amongst the participant states with the perceived failure of existing international arrangements to combat abuses of intellectual property rights.

'Lack of transparency'

However, the suspicion and distrust of the Treaty and its implications are perhaps understandable given that the public first became aware of discussions concerning its creation in 2008, when details were leaked to the Wikileaks website, and later in early 2010 when a draft of the Treaty text was similarly leaked. Thus, whilst the general overarching aims may be uncontentious, the lack of transparency in the process of creating the Treaty can be seen as highly problematic and even it may be considered un-democratic. The lack of general transparency was again highlighted in January of this year, when French MEP, Kader Arif, who had been acting as Rapporteur for ACTA for the European Parliament resigned. He cited among his reasons for quitting his role, that the process lacked transparency, with the European Parliament being effectively ignored in its drafting stages, and civil society not given a role in discussions.

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