

**Public Comment on the Proposed "Anti-Counterfeiting Trade Agreement"
Submitted to the Office of the United States Trade Representative
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If governed effectively, the trade in knowledge-based goods offers an historic opportunity to promote global prosperity. Medicines, information and communications technologies, and cultural resources (like books and music) all contain the promise of a better world where citizens, communities, and nations have access to the means of their own well-being. However, this promise brings immense responsibilities. The policy-makers and officials charged with overseeing the global trade of intellectual properties must balance competing claims in order to design effective governance systems. The recent actions of the Office of the United States Trade-Representative (USTR) reject balance, evidence, and democratic values in favor of elitism.

Since October of last year, the Office of the USTR has sought to promote an "Anti-Counterfeiting Trade Agreement" (ACTA). In public documents and statements, The office has claimed that ACTA will promote the sustainable development of the world economy and international cooperation by "fighting fakes." These claims lack any empirical grounding. As proposed, ACTA will neither encourage economic growth nor cooperation. Instead, ACTA will stifle democracy, development and innovation by creating an exclusive, ineffective agreement outside of the multilateral institutions that govern global trade. **As a result, ACTA threatens the interests of the United States and the world and it ought to be abandoned immediately.**

The Office of the USTR has not been forthcoming with substantive information about the details of ACTA. This lack of public information is both alarming and disgraceful in a democratic society. However, even the few existing arguments the USTR has made in favor of the agreement do not withstand rigorous scrutiny. For example, the USTR's ACTA "Fact Sheet" begins with the following statement:

The proliferation of infringements of intellectual property rights ("IPR") particularly in the context of counterfeiting and piracy poses an ever-increasing threat to the sustainable development of the world economy.

This assertion - that counterfeiting and piracy threaten economic development - ignores current research on the nature of knowledge-based assets, IP-related trade, and innovation practices in the global economy. Numerous academic experts in the fields of economics, law, sociology, business, and political science have produced empirical analyses that undermine these claims. Furthermore, a growing consensus of legal and policy experts agree that the current system of strict IP-enforcement endorsed by the USTR does not serve the public interest. The fact that the USTR retains a myopic focus on devoting additional time and resources to strengthening enforcement reflects the office's inability to incorporate diverse perspectives into its policy-making process. Alternative models of IP regulation and management exist that can distribute

wealth, knowledge, and intangible assets more efficiently. *The USTR ignores these alternatives at the peril of the economic prosperity of the United States and the world as a whole.*

The “Fact Sheet” goes on to claim that international cooperation should play a crucial role in promoting economic development and safety through IP-related trade. Yet, the actions of the USTR on ACTA contradict this position. In the absence of widespread support for ACTA in public global governance forums such as WIPO and the WTO, the USTR has opted to pursue closed negotiations and consultations with wealthy states and industry lobby groups that stand to benefit from strict IPR regimes. In the process, the USTR has turned its back on transparent and accountable policy-making in public institutions. The USTR has also denied governments, civil society groups, academic experts, corporations, and citizens who disagree with the “strict IP enforcement” approach a seat at the bargaining table. Instead of truly cooperative and democratic dialogue, the USTR has demonstrated a preference for unilateralism, cronyism and corruption

In order for IP-related trade reform to produce sustainable economic growth and development, the USTR should pursue a more transparent and democratic approach. This means that the USTR must not create policy in a narrow-minded echo chamber, but through inclusive, deliberative process where all of the stakeholders have an equal ability to influence the outcome of the debate. The US government, other wealthy states, and a handful of large private firms can no longer afford to act as though they have a natural right to unilateral decision-making. More than ever, the possibility of global security, prosperity, and well-being depends upon the ability of the United States to embrace democratic due process in global governance. The knowledge-based economy will not produce public goods unless a broader public has a say in its control.

As a result, I recommend that the USTR take immediate action to ensure that the following three conditions for all future negotiations on IP governance and regulation are met:

(1) Abandon all efforts to pass ACTA and bring negotiations on future IP-related trade agreements into the global governance institutions where they belong. WIPO and the WTO remain far from democratic or public in many ways, but they would be a vast improvement over the fractious, power-politics embodied by ACTA today.

(2) Publicly recognize that strict enforcement of the existing, broken IP system does not advance the interest of the United States or the rest of the world. The USTR currently pursues a blinkered approach to IP policy. Part of the reason the gray-market in unlicensed reproductions of patented, copyrighted, and trademarked goods thrives around the world is that existing IP laws contradict legitimate social needs. By ignoring these issues the USTR does not make them go away. The United States and the world require a more forward-thinking policy and a public statement to this effect would be a positive first step towards meeting this need.

(3) Increase opportunities for substantive public participation in USTR policy-making and agenda-setting. Currently, the USTR values the interests of a small minority of the country’s businesses at the expense of other firms and many millions of its citizens. The existing approach of closed-door meetings with industry lobby groups will not correct this problem. The USTR

should regularly hold open public fora, debates, and hearings on trade-related issues in locations around the country. All possible steps should be taken to ensure that diverse perspectives on US trade policy are represented in these settings and that the USTR takes these perspectives into account. The office must also make available more information on existing policies and proposals.

Thank you for to opportunity to submit a comment on this proposal. Please do not hesitate to contact me with any questions or concerns regarding my submission.

Yours sincerely,

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