



PRESS RELEASE

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ACTA measures to enforce IP rights in the digital environment could threaten privacy and data protection if not properly implemented

Today, the European Data Protection Supervisor (EDPS) adopted his Opinion on the proposal for a Council Decision on the conclusion of the Anti-Counterfeiting Trade Agreement (ACTA). The Opinion shows that the lack of precision of the Agreement about the measures to be deployed to tackle infringements of intellectual property rights ('IP rights') on the Internet may have unacceptable side effects on fundamental rights of individuals, if they are not implemented properly. It underlines that many of the measures to strengthen IP enforcement online could involve the large scale monitoring of users' behaviour and of their electronic communications. These measures are highly intrusive to the private sphere of individuals, and should only be implemented if they are necessary and proportionate to the aim of enforcing IP rights.

Giovanni Buttarelli, Assistant EDPS, states: *"While more international cooperation is needed for the enforcement of IP rights, the means envisaged must not come at the expense of the fundamental rights of individuals. A right balance between the fight against IP infringements and the rights to privacy and data protection must be respected. It appears that ACTA has not been fully successful in this respect."*

In his Opinion, the EDPS stresses in particular that:

- measures that allow the **indiscriminate** or **widespread monitoring** of Internet users' behaviour, and/or electronic communications, in relation to trivial, small-scale, not for profit infringement **would be disproportionate** and in breach of Article 8 ECHR, Articles 7 and 8 of the Charter of Fundamental Rights, and the Data Protection Directive;
- many of the voluntary enforcement cooperation measures would entail a **processing of personal data by ISPs** which goes beyond what is allowed under EU law;
- ACTA does not contain **sufficient limitations and safeguards**, such as effective judicial protection, due process, the principle of the presumption of innocence, and the right to privacy and data protection.

Background information

ACTA is an international trade agreement aimed at tackling the enforcement of IP rights, by establishing a common approach to enforcement procedures and facilitating the international cooperation of countries and competent authorities. It addresses mainly counterfeiting of goods, piracy, unlawful use of trademarks and copyright. It contains also measures specific to the enforcement of IP rights in the digital environment. In February 2010, the [EDPS issued an Opinion](#) on his own initiative in order to draw the attention of the Commission on the privacy and data protection aspects that should be considered in the ACTA negotiations. The present second Opinion is based on a careful analysis of the final text of the agreement and aims to provide guidance on the privacy and data protection issues raised by ACTA which is presently subject of an assent procedure in the European Parliament.

The European Data Protection Supervisor (EDPS) is an independent supervisory authority devoted to protecting personal data and privacy and promoting good practice in the EU institutions and bodies. He does so by:

- monitoring the EU administration's processing of personal data;
- advising on policies and legislation that affect privacy;
- cooperating with similar authorities to ensure consistent data protection.

The [Opinion](#) is available on the EDPS website. For more information: press@edps.europa.eu

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