

ACTA and Its Complex Politics

Peter K. Yu

The Anti-Counterfeiting Trade Agreement (ACTA) has raised important questions about the future development of the international intellectual property system. Although countries traditionally develop intellectual property standards in WIPO and the WTO, ACTA provides a new model under which powerful developed countries and their supportive industries can sidestep the existing multilateral framework. The Agreement also provides new insights into how governments interact with their own citizens on important matters concerning daily life. The secrecy surrounding the Agreement was unprecedented, but the public efforts to circumvent such secrecy were equally intriguing.

While commentators have examined these important issues since the inception of the ACTA negotiations, they tend to overlook the fact that the governance debate can no longer be described in binary terms. Although ACTA was presented as an effort by developed countries to impose TRIPS-plus standards on developing countries, including those not invited to the negotiation process, the participants in the process are actually more diverse and include both emerging and developing countries. As far as the disclosure of negotiation positions is concerned, countries such as Singapore and South Korea (which have recently completed their highly controversial free trade agreements with the United States) may have as big a stake as the United States, if not a bigger one.

Likewise, it is uneasy to describe ACTA as a collective effort driven by intellectual property rights holders to push for a new and higher international benchmark on border measures and criminal sanctions. In fact, there remains a significant divide within the intellectual property community, especially in the United States. Many patent-based industries, for example, have uncharacteristically sided with consumer advocates, civil liberties groups, and academic commentators to oppose the extension of criminal liability on patent infringement. It is also quite revealing that the ACTA negotiations thus far have been dominated by the multinational entertainment and luxury goods industries.

Taking note of this diverse multitude of players and their respective policy positions, this article uses ACTA as a case study to examine the increasingly complex governance structures in the international intellectual property system. It draws on documents from the Office of the U.S. Trade Representative and the European Commission, negotiating documents leaked on to the internet, as well as the latest commentary by policymakers, industry representatives, academic commentators, consumer advocates, and civil liberty groups. The article aims to foster a better understanding of both information and knowledge governance and the political economy of intellectual property rights.