



ACTA and its impact on fundamental rights

The Internet has become a key enabler of rights such as the fundamental rights to communication and association. Any legislation which aims to regulate this medium must therefore be carefully considered to ensure compatibility with the Charter. At least as importantly, when dealing with countries with less robust fundamental rights protections, the EU must take care that any Internet-related policies it promotes fully respect the EU's Treaty obligation to consolidate democracy and the rule of law in its international relations.¹

Privatised enforcement outside the rule of law

In Article 27, ACTA imposes an obligation on States to support “cooperative efforts with the business community” to enforce criminal and civil law in the online environment. This obligation legitimises and promotes the policing and even punishment of alleged infringements outside normal judicial frameworks. The scale and extent of such measures is to be decided by private companies.² More worrying still, a leaked document published by the European Parliament itself,³ gives disconnection of users as an example of the private sanctions that could be imposed in such “cooperation”. Worse, ACTA does not ensure effective remedies against such interferences with fundamental rights: vague references to “fair process” in the text are not backed up by mandatory processes requiring respect for the Rule of Law (Article 21 TEU).

The UN Special Rapporteur on Freedom of Expression warns of the dangers of this approach in his most recent Annual Report: “[I]ntermediaries, as private entities, are not best placed to make the determination of whether a particular content is illegal, which requires careful balancing of competing interests and consideration of defences.”⁴

Suspiciousless mass surveillance in violation of the Charter

ACTA requires Internet intermediaries to disclose the personal information of alleged infringers to rightsholders – along the lines of the current IPR Enforcement Directive, which is causing major problems for citizens right across Europe. The practical effects of this Directive have never been assessed and the review process is now starting. There is already evidence of serious problems with this approach, as shown (particularly in Germany and the UK) by lawyers and alleged rightsholders using coercive tactics against innocent users. They use the information obtained under the Directive to contact consumers and give them a “Hobson’s choice” between a costly court battle or a “settlement” payment.⁵

ACTA envisages disclosure orders to cover “alleged infringers” in addition to “infringers”. The text also explicitly places the interests of rightsholders ahead of free speech, privacy, and other fundamental rights.⁶

The EDPS warns that ACTA could lead to the “unnoticed monitoring of millions of individuals and all users, irrespective of whether they are under suspicion”, and “the systematic recording of data [on Internet use]”⁷ The ECJ recently ruled that such suspiciousless mass monitoring of Internet users is incompatible with the Charter.⁸ ACTA flagrantly breaches this case-law.

Undermining democracy, fundamental freedoms and the rule of law

ACTA jeopardises free speech by prioritising private-sector repressive measures aimed at copyright protection over the fundamental rights to privacy and freedom of communication and association – rights that are prerequisites of democracy - without guarantees of due process and equality of arms.

In Europe, this violates the European Convention on Human Rights and the EU Charter of Fundamental Rights.

In the context of international cooperation, this is a clear violation of Article 21 of the TEU which requires support for democracy and the rule of law in the Union's international relations.

¹ Treaty on European Union, Article 21

² Article 27.2 & Article 8.1, ACTA

³ http://www.edri.org/files/acta_disconnection.pdf

⁴ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression <http://www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf> (Page 12)

⁵ One prominent example: Law Society Gazette: “Two solicitors accused over file-sharing ‘bully tactics’” <http://bit.ly/9aHDEN>

⁶ This is unequivocal in, for example, footnote 13

⁷ www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2010/10-02-22_ACTA_EN.pdf

⁸ See cases C-70/10 (Scarlet/Sabam) in particular, as well as C-275/06 (Telefonica/Promusicae) on balance of rights