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ACTA Negotiators Still Aiming For Agreement By Year's End

By Kaitlin Mara on 25 September 2010 @ 5:00 pm

Countries negotiating a semi-secret trade agreement against piracy and counterfeiting this week in Tokyo are still aiming to reach agreement by the end of this year, a negotiator told *Intellectual Property Watch* today. The negotiator also did not reject outright the notion that patents might still be included in the draft treaty text, instead saying it is still a matter for discussion.

Negotiators for the Anti-Counterfeiting Trade Agreement (ACTA) are meeting from 23 September to 1 October in Tokyo for what some have said could be the final round of the negotiation.

Civil society groups have stepped up expressions of concern in the lead-up to this meeting, not only over issues with the text itself but also over issues of non-transparency in the negotiating process (*IPW, Bilateral/Regional Negotiations, 24 September 2010* ^[1]).

As far as whether the negotiation will finish this week, participants are "aiming at concluding this year, as soon as possible," the Japanese negotiator told *Intellectual Property Watch*, but it depends on the progress in each round.

The definition of intellectual property rights in ACTA references sections of the World Trade Organization Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement.

On whether this means patents will be enforced by ACTA, the negotiator said TRIPS already has patents in it and "it is not ACTA that defines what is included in intellectual property rights."

As a general principle "there's no definitive decision with regard to scope, coverage by ACTA as to what IPRs should be covered... [it is] still an issue that should be addressed in the negotiations."

When asked about sticky issues of customs actions to enforce patent rights interfering with trade in legitimate generic medicines, the negotiator said the "intention of negotiating parties is to avoid constraints on legitimate transactions of trade in medicines and other goods."

But "even without ACTA a number of countries" already have laws in place regarding customs seizures for infringing goods and "we don't see why there should be additional concern." When *Intellectual Property Watch* asked about an ongoing dispute settlement process over one such law in the EU, the negotiator said the intent is "to ensure full consistency between TRIPS and ACTA."

Geographical indications are also a matter that continues to need more discussion, the negotiator added.

Geographical indications, or product names associated with a particular location and characteristics, are highly valued by the European Union, which has several: Parmesan, Champagne, and Bordeaux, for example. But in the United States many names protected in Europe – parmesan, for example – are considered generic. GIs is a critical area of disagreement between the US and the EU and had been thought by some commentators to be enough of an issue that it might derail the negotiating process.

ACTA is being negotiated by Australia, Canada, the European Union, Japan, Korea, Mexico, New Zealand, Singapore, Switzerland and the United States.

Transparency Issues

There is a "recognition among participants in Japan" that transparency should be enhanced "as much as possible... that has never been changed," the negotiator from Japan said. But there needs to be a consensus to release text.

After increasingly strong demands for transparency, including among democratically elected bodies such as the European Parliament, ACTA negotiators released a draft version of the text in April. But this text did not include which countries have asked for which provisions, and there has been no text officially released since despite there being several more negotiating rounds. Several updated draft texts have been leaked through non-governmental groups concerned about the public interest in the talks ([IPW, Bilateral/Regional Negotiations, 24 September 2010](#)^[1]). The international press has had very limited access to substantive information about the talks other than the leaks.

"It is not necessarily international practice to release after each negotiating meeting" a text, the negotiator said, adding that there are negotiations where text is made available to civil society, but it depends on how participating countries like to organise and where it is deemed useful to inform interested people.

A number of issues on most areas of the agreement remain to be discussed and there is "continuing evolution at this stage" in several areas, including on issues of environment and internet.

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- [ACTA Negotiators: Maximal Protection Proposals Unlikely In Final Text](#)^[2]
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[1] *IPW*, Bilateral/Regional Negotiations, 24 September 2010: <http://www.ip-watch.org/weblog/2010/09/24/civil-society-fights-for-participation-as-acta-counterpoint-to-wipo-rises/>

[2] ACTA Negotiators: Maximal Protection Proposals Unlikely In Final Text: <http://www.ip-watch.org/weblog/2010/02/18/acta-negotiators-maximal-protection-proposals-unlikely-in-final-text/>

[3] ACTA Negotiators Vow To Mesh With National-Level Rights; Withhold New Text: <http://www.ip-watch.org/weblog/2010/07/02/acta-negotiators-vow-to-mesh-with-national-level-rights-withhold-new-text/>

[4] ACTA Negotiators Report No Breakthroughs On Transparency: <http://www.ip-watch.org/weblog/2010/01/31/acta-negotiators-make-no-breakthroughs-on-transparency/>