

September 15, 2008

Dear Minister,

Re: Anti-Counterfeiting Trade Agreement Negotiations

We are writing to urge the negotiators of the Anti-Counterfeiting Trade Agreement (ACTA) to immediately publish the draft text of the agreement, as well as pre-draft discussion papers (especially for portions for which no draft text yet exists), before continuing further discussions over the treaty. We ask also that you publish the agenda for negotiating sessions and treaty-related meetings in advance of such meetings, and publish a list of participants in the negotiations.

There is no legitimate rationale to keep the treaty text secret, and manifold reasons for immediate publication.

The trade in products intended to deceive consumers as to who made them poses important but complicated public policy issues. An overbroad or poorly drafted international instrument on counterfeiting could have very harmful consequences. Based on news reports and published material from various business associations, we are deeply concerned about matters such as whether the treaty will:

- * Require Internet Service Providers to monitor all consumers' Internet communications, terminate their customers' Internet connections based on rights holders' repeat allegation of copyright infringement, and divulge the identity of alleged copyright infringers possibly without judicial process, threatening Internet users' due process and privacy rights; and potentially make ISPs liable for their end users' alleged infringing activity;
- * Interfere with fair use of copyrighted materials;
- * Criminalize peer-to-peer file sharing;
- * Interfere with legitimate parallel trade in goods, including the resale of brand-name pharmaceutical products;
- * Impose liability on manufacturers of active pharmaceutical ingredients (APIs), if those APIs are used to make counterfeits -- a liability system that may make API manufacturers reluctant to sell to legal generic drug makers, and thereby significantly damage the functioning of the legal generic pharmaceutical industry;
- * Improperly criminalize acts not done for commercial purpose and with no public health consequences; and
- * Improperly divert public resources into enforcement of private rights.

Because the text of the treaty and relevant discussion documents remain secret, the public has no way of assessing whether and to what extent these and related concerns are merited.

Equally, because the treaty text and relevant discussion documents remain secret, treaty negotiators are denied the insights and perspectives that public interest organizations and individuals could offer. Public review of the texts and a meaningful ability to comment would,

among other benefits, help prevent unanticipated pernicious problems arising from the treaty. Such unforeseen outcomes are not unlikely, given the complexity of the issues involved.

The lack of transparency in negotiations of an agreement that will affect the fundamental rights of citizens of the world is fundamentally undemocratic. It is made worse by the public perception that lobbyists from the music, film, software, video games, luxury goods and pharmaceutical industries have had ready access to the ACTA text and pre-text discussion documents through long-standing communication channels.

The G8's recent Declaration on the World Economy implored negotiators to conclude ACTA negotiations this year. The speed of the negotiations makes it imperative that relevant text and documents be made available to the citizens of the world immediately.

We look forward to your response, and to working with you toward resolution of our concerns.

Sincerely,

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Australian Digital Alliance
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Center for Policy Analysis on Trade and Health (CPATH)
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Centre for Safety & Rational Use of Indian Systems of Medicine
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The Center for Women's Culture & Theory
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Chinese Domain Name User Alliance
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Christian Media Network
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CHOICE (Australian Consumers Association)
Marrickville, Australia

Community HIV/AIDS Mobilization Project (CHAMP)
New York, NY, USA

Congress of South African Trade Unions (COSATU)
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Consumentenbond
The Hague, Netherlands

Consumer Action
San Francisco, CA, USA

Consumer Federation of America
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Consumers Union (Publisher of Consumer Reports)
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Consumers Union of Japan (Nihon Shohisha Renmei)
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La Corporacion Opcion por el Derecho a Ser y el Deber de Hacer, NIT
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Cultural Action
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Diverse Women for Diversity (DWD)
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Drug Study Group (DSG)
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Ecologist Collective (Colectivo ecologista Jalisco A.C.)
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Egyptian Initiative for Personal Rights
Cairo, Egypt

Electronic Frontier Foundation
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European AIDS Treatment Group (EATG)
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Foreign Policy in Focus
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Foundation for Integrative AIDS Research (FIAR)
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Fundación Ifarma
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Foundation For Consumers (FFC)
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Foundation for Media Alternatives
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Foundation for Research in Science Technology & Ecology (RFSTE)
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Free Press
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FTA Watch
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Health GAP (Global Access Project)
Philadelphia, PA, USA

HealthWrights (Workgroup for Peoples Health and Rights)
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Healthy Skepticism Inc.
Adelaide, Australia

Home Recording Rights Coalition
Washington, DC, USA

INEGroup
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Information & Culture Nuri for the Disabled
Korea

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New Delhi, India

International Federation of Library Associations and Institutions (IFLA)
The Hague, Netherlands

International Peoples Health Council (South Asia)

Intersect Worldwide
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IP Justice
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Knowledge Ecology International (KEI)
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Privacy Activism
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Privacy Rights Clearinghouse
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Public Knowledge
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Rural Reconstruction Nepal (RRN)
Kathmandu, Nepal

Social movement to combat private media ownership and enhance public media
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Student Global AIDS Campaign
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OPENNESS IN TRADE AND OTHER MULTILATERAL NEGOTIATIONS

Negotiating texts are commonly made public in multilateral trade negotiation, although some trade negotiations are characterized by secrecy.

Examples of negotiations where texts are or were made public include:

* *The current Doha Round negotiations at the World Trade Organization;*

http://www.wto.org/english/tratop_e/dda_e/dda_e.htm

* *The Free Trade Area of the Americas;*

http://www.ftaa-alca.org/FTAADraft03/Index_e.asp

* *The Multilateral Agreement on Investment (although initial texts were not made public)*

http://www.oecd.org/document/35/0,3343,en_2649_33783766_1894819_1_1_1_1,00.html

* *Draft text at the World Health Organization, where resolutions are published in advance of consideration and treaty or treaty-like negotiations are handled openly, including this example of follow-on negotiations for the Framework Convention on Tobacco Control:*

<http://www.who.int/gb/fctc/>

* *The World Intellectual Property Organization, including this example of a draft Treaty on the Protection of Broadcasting Organizations:*

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=57213