



PRESS RELEASE

12 June 2009

Intellectual property enforcement initiatives threaten consumer rights and public health

The TransAtlantic Consumer Dialogue (TACD), Health Action International (HAI) and Knowledge Ecology International (KEI) hosted a public meeting on the issue of intellectual property rights enforcement in Brussels on Wednesday, June 10th.

Everyday we hear about counterfeiting and piracy and about anti-counterfeiting and new enforcement initiatives of governments and industry. HAI, KEI and TACD presented two panels that challenged the direction and rationale of several of these intellectual property rights initiatives, including EU regulation 1383 on border measures and the proposed “Anti-counterfeiting” trade agreement (ACTA). The enforcement of private intellectual property right claims is a complex and important area of public policy that touches on issues such as personal privacy, civil rights, freedom, social and economic development, among others.

European Union leaders and the United States government are currently engaged in efforts to shape global norms for the enforcement of copyright, trademarks, patents and other intellectual property rights. These discussions are taking place in multilateral, plurilateral, bilateral and unilateral *fora*. Such policies raise concerns because of the delicate balance between on the one hand rights and exceptions, put in place by the international copyright and patent law “acquis”, and on the other hand public health principles such as access to medicines.

Speakers at the event represented consumer and public health organisations from both sides of the Atlantic: Médecins Sans Frontières (MSF), KEI, Essential Action, Electronic Frontier Foundation (EFF), HAI, The European Consumers Organisation (BEUC) and the Brazilian Permanent representation to the European Union, as well as respondents from DG-Trade and DG-Internal Market & Services. The diverse audience included representatives from pharmaceutical, seed, and software companies, the US Chamber of Commerce, academic experts, European Commission officials, members of the European Parliament, journalists, public health groups, consultants, business and civil society organisations.

Selected quotes by the speakers:

Alexandra Heumber, MSF

“Patent infringement should be excluded from the EU regulation 1383/2003 in order to avoid seizures of legitimate generic medicines in transit.”

“Regulation 3295/94, the law preceding 1383/2003, was much narrower in scope. Rather than including all violations of intellectual property, it focused on counterfeit and pirated goods, which are generally seen as trademark issues. The updated, broader law is problematic as we have seen no justification for the extension to this area and no impact assessment of the effects.”

Eddan Katz, EFF

“At a time when carefully considered public policy is critical for protecting the growth of the knowledge economy, the ACTA negotiations brazenly obscure decision-making in secret meetings outside of public debate and without legislative accountability. The leaked

provisions reveal a global information customs regime with radically broad powers for border officials and a grab bag of multi-national corporate lawmaking. As the Internet section is in the process of being mapped onto this border customs pact, the urgency of meaningful public debate demands a release of this ill-considered text.”

Anne-Catherine Lorrain from TACD announced at the meeting that the French Constitutional Court censored the graduated response proposal. The French Court echoed "Amendment 138" of the Telecoms Package voted by the European Parliament, saying that cutting access to the Internet is a sanction that can only be imposed by the judicial authority, taking into account the rights of defense and the presumption of innocence.

James Love, Knowledge Ecology International

“In a plethora of settings, publishers and pharmaceutical companies are pushing an aggressive new agenda to expand and enforce intellectual property rights. The proposals are often advanced in undemocratic and non-transparent fora, such as the top secret and highly classified ACTA negotiations. This is big government and big business at its worst, creating rules without input or sensitivity to the concerns of consumers, overriding civil rights, undermining privacy, increasing prices to consumers. The topics under review are not simple technical issues or directed at organized crime, they are big sweeping changes in our basic freedoms, and underhanded attempts to give lobbyists rules they can't get in a normal democratic setting.”

Peter Maybarduk, Essential Action

“Many new worldwide measures aggressively protect pharmaceutical monopolies under the guise of fighting counterfeits - blocking competition and jeopardizing global access to medicines in the process. For example, the secret, so-called Anti-Counterfeiting Trade Agreement – which in fact focuses on ratcheting-up patent, copyright and trademark protection, with little if any attention to drug quality – deliberately misrepresents its contents to consumers, and is therefore itself counterfeit. Counterfeits are a subset of a much larger drug quality issue. The enforcement agenda fails to address broader quality concerns, and indeed may divert much-needed public health resources away from strengthening drug regulatory authorities. Rather than investing taxpayer dollars enforcing private rights, public bodies should promote price-lowering competition, drug quality and affordable access to medicines.”

Henrique C. Moraes, Brazilian Permanent representation to the EU

"There are 'TRIPS Plus' initiatives emerging in fora where these kind of discussions are not expected. Public Interest organisations should be aware of this.”

Kostas Rossoglou, BEUC

“BEUC calls on decision makers in Brussels not to give in to the wish of the content industry to control the Internet. There remains confusion – whether deliberate or not - between consumers and organized operations, whereby consumers are blamed for copyright infringements. Clarification is needed: applying the same enforcement measures to both commercial scale infringers operating for profit and to individual citizens is, at a minimum, disproportionate. While consumers have been actively engaging with the technology and what they can do with it, it is disappointing that many producers and owners of content in the creative industry sector have seen the technology as a threat rather than a business opportunity.”

A Swedish participant at the meeting referred to a quote by *MP Johan Linander, Legal affairs spokesperson of the Swedish Center Party*, saying “If any of the other negotiating countries still would choose to put a stop to openness, Sweden and the EU will have to seriously consider stopping the negotiations altogether”. This quote is thought to be in reaction to the recent success of the Pirate Party in the European elections.