

# United States Senate

WASHINGTON, DC 20510

November 23, 2009

The Honorable Ron Kirk  
United States Trade Representative  
600 17th Street NW  
Washington, D.C. 20508

Dear Ambassador Kirk:

We write to request that the public be allowed to review and comment on substantive proposals for a new Anti-Counterfeiting Trade Agreement (ACTA).

For nearly two years the United States and 37 other countries have been engaged in negotiating this agreement, which deals exclusively with the enforcement of intellectual property rights.

The ACTA involves dozens if not hundreds of substantive aspects of intellectual property law and its enforcement, including those that have nothing to do with counterfeiting. ACTA will impact businesses and the public in a wide range of areas, including those relating to access to information, and products such as pharmaceutical drugs. There are concerns about the impact of ACTA on the privacy and civil rights of individuals, on the supply of products under the first sale doctrine, on the markets for legitimate generic medicines, and on consumers and innovation in general.

The ACTA is being negotiated as an executive agreement that will not be subject to approval by Congress, yet its contents will have a large and likely durable impact. The negotiating countries have a population of 1.2 billion persons and a combined annual GDP of more than \$40 trillion.

The public has a right to monitor and express informed views on proposals of such magnitude. For that to happen, they need to have access to information, including relevant meeting details such as time, place, agenda and participants, reports or minutes of meetings, and key documents and negotiating texts distributed to all members of the negotiation.

We were encouraged by the President's January 21, 2009, Memorandum on Transparency and Open Government, in which he made clear to all members of his Administration the importance of transparency, public participation, and collaboration in government. We are concerned that the ACTA negotiations have not been conducted in a manner consistent with these principles.

We are surprised and unpersuaded by assertions that disclosures of basic information about the negotiation would present a risk to the national security of the United States, particularly as regards documents that are shared with all countries in the negotiations, and with dozens of

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representatives of large corporations. We are concerned that the secrecy of such information reflects a desire to avoid potential criticism of substantive provisions in the ACTA by the public, the group who will be most affected by the agreement. Such secrecy has already undermined public confidence in the ACTA process, a point made recently by Dan Glickman, the CEO of the Motion Picture Association of America – a group highly supportive of the ACTA negotiation, as well as by the members of the TransAtlantic Consumer Dialogue - a group more critical of the negotiations.

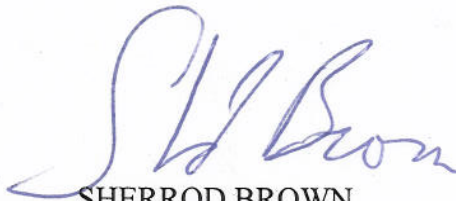
We firmly believe that the public has a right to know the contents of the proposals being considered under ACTA, just as they have a right to read the text of bills pending before Congress.

Thank you for your consideration.

Sincerely,



BERNARD SANDERS  
United States Senator



SHERROD BROWN  
United States Senator

cc: The Honorable Joseph Biden, Vice President