



**COUNCIL OF
THE EUROPEAN UNION**

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**6270/10
EXT 1**

**DROIPEN 15
WTO 34
PI 16**

PARTIAL DECLASSIFICATION

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Subject:	Anti-Counterfeiting Trade Agreement (ACTA) - Chapter 2 Criminal Provisions

Delegations will find attached the partially declassified version of the above-mentioned document.



ANNEX

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Brussels, 11 February 2010

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EXT 1 (1.10.2012)**

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NOTE

From : Presidency
To: Delegations

Subject : Anti-Counterfeiting Trade Agreement (ACTA)
 - Chapter 2
 Criminal Provisions

In view of the next "Friends of Presidency "Group meeting on 18 February 2010, the Presidency submits to the delegations the text of criminal provisions, which will be the basis for the discussions.

CHAPTER 2

Section 3: Criminal enforcement

Article 2.14: Criminal offences

1.- Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting¹ [and][or] copyright or related rights piracy² on a commercial scale³.

2.- Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation and domestic use in the course of trade on a commercial scale of material (including labels, packaging, advertisement and business paper),

- (i) to which a mark has been applied, which is identical to or cannot be distinguished from a trademark registered in its territory, and
- (ii) which is intended to be used on, or in relation to, to goods (including those used in the provision of services) which are identical to goods for which the trademark is registered⁴.

3.- Unauthorised cam-cording

(Deleted⁵)

¹ **NOT DECLASSIFIED**

² Negotiator's note: The term "related rights" is defined by each Party in accordance with its international obligations.

³ **NOT DECLASSIFIED**. [EU: delete footnote] .

⁴ Scrutiny reservation from **NOT DECLASSIFIED**.

⁵ Scrutiny reservation from **NOT DECLASSIFIED**.

Article 2.15: Liability, penalties and sanctions

1.- (i) Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the offences referred to in Article 2.14.

(ii) Subject to the legal principles of the Party, the liability of legal persons may be criminal or non-criminal.

(iii) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

2.- The provisions of this section shall apply to [inciting] [inducing] [deletion], aiding and abetting the offences referred to in Article 2.14.

3.- (i) For the offences referred to in Article 2.14, each Party shall provide for effective proportionate and dissuasive penalties. The available penalties shall include imprisonment and monetary fines¹.

(ii) For legal persons held liable under Article 2.15.1, each Party shall provide for effective, proportionate and dissuasive sanctions, including monetary sanctions.

Article 2.16: Seizure, forfeiture/confiscation and destruction

1.- In case of an offence referred to in article 2.14, each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implement used in the commission of the alleged offence, any documentary evidence relevant to the alleged offence, and any assets derived from or obtained, directly or indirectly, through the infringing activity.

¹ EU Negotiator's note: This does not imply an obligation for a Party to provide for the courts a possibility to impose both penalties in parallel.

Each Party shall, if a prerequisite for such an order, according to its national law, is the identification of the item, ensure that the order need not determine the items that are subject to seizure in more detail than necessary to allow their identification for the purpose of the seizure.

2.- (i) For the offences referred to in Article 2.14, each Party shall provide that its competent authorities shall have the authority to order confiscation/forfeiture and/or destruction of all counterfeit trademark goods or pirated copyright goods, of materials and implements used in the creation of counterfeit trademark goods or pirated copyright goods, of the assets derived from, or obtained directly or indirectly, through the infringing activity¹.

(ii) Each Party shall ensure that the counterfeit trademark goods and pirated copyright goods that have been confiscated/forfeited under this subparagraph shall, if not destroyed, be disposed of outside the channels of commerce, under the condition that the goods are not dangerous for the health and security of persons.

(iii) Each Party shall further ensure that confiscation/forfeiture and destruction under this subparagraph shall occur without compensation of any kind of the defendant.

(iv) Each Party may provide that its judicial authorities have the authority to order the confiscation/forfeiture of assets the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the infringing activity.

Article 2.17: *Ex officio* criminal enforcement²

Each party shall provide that its competent authorities may act upon their own initiative to initiate investigation and/or legal action with respect to the offences prescribed in article 2.14, at least in case of significant public interest³.

¹ **NOT DECLASSIFIED** asks for the inclusion either of the word "predominantly" or a reference to the necessity of taking into account the rights of good faith third parties.

² **NOT DECLASSIFIED** have a reservation on this point.

³ This wording comes from Doc. 14696/09 DROIPEN 130 WTO 217 PI 102 RESTREINT UE

Article 2.18: Rights of the defendant and third parties

Each Party shall ensure that the rights of the defendants and third parties shall be duly protected and guaranteed¹.

¹ For consideration by the Member States: Could this article be moved to the chapter one, section A, "initial provisions" so it would apply to the whole agreement?