



Counterfeit conclusions: Why Australia should adopt the Anti- Counterfeiting Trade Agreement

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EXECUTIVE SUMMARY

Globally there are serious issues with the trade of pirated and counterfeit intellectual property protected goods.

A 2009 study by the OECD concluded that the global trade in tangible counterfeit and pirated goods in 2007, totalled up to USD\$250 billion annually, without considering goods produced for domestic consumption or those traded on the internet. Estimates with these include reach several hundred billion dollars.

Domestically, the picture for Australia is not much rosier. Minimum estimates put the economic value of a small handful of calculable pirated and counterfeit goods of at least \$1.8 billion, and probably rising. Such a figure is likely to grossly under value the economic cost of counterfeit and pirated goods to Australia.

The costs affect business, investors and creators and flow through the entire economy through undervaluing of investment and job creation. Drops in piracy rates would deliver real economic benefits.

Despite popular perceptions, the drivers of counterfeit and pirated goods into Australia aren't travellers importing pirated DVDs. Nor is it limited to such products; Instead they're increasingly ranging from food products, to pharmaceuticals, pesticides, electrical components, tobacco and even household cleaning products, with an increase in goods which are dangerous to health and safety.

International policing agencies are increasingly linking the activities of the trade of counterfeit and pirated goods to international criminal groups. By the nature of the activity anyone engaging in an illegal trade is engaged in criminal behaviour, however links between counterfeit trade as a vehicle for financing terrorism are also becoming clear.

In response countries proposed negotiating an agreement to deal principally with IP enforcement provisions against the illegal trade of counterfeit and pirated goods in 2005. Last year negotiations for the Agreement, the Anti-Counterfeiting Trade Agreement ("ACTA"), concluded and will shortly be ready for ratification.

Throughout the Agreement's negotiations numerous criticisms have been made against it ranging from requiring increased IP rights obligations, increasing the convoluted nature of the international IP regime, requiring governments to share private information about citizens, enforcing frivolous searches at airports to creating a 'three strikes' notice for IP infringement through the internet. None have materialised in the final ACTA text.

Now that negotiations have concluded and the text is publicly available this paper advocates for its ratification by Australia because it:

- Maintains existing IP standards.
- Encourages protection of Australian IP owners' rights in foreign markets.
- Encourages international cooperation against the trade of counterfeit and pirated goods.
- Doesn't require amendments to existing Australian law.

All of these measures are in Australia's national interest.

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ABBREVIATIONS

ACTA	Anti-Counterfeiting Trade Agreement	IPA	Institute of Public Affairs
AUD	Australian dollar	IPRs	Intellectual property rights
AUSFTA	Australia United States Free Trade Agreement	ISPs	Internet service providers
CDs	Copyrighted discs	NGOs	Non-government organisations
DFAT	Department of Foreign Affairs and Trade	P2P	Peer-to-peer
DVD	Digital versatile discs	OECD	Organisation for Economic Cooperation and Development
EC	European Commission	TPM	Technical protection measures
ERM	Electronic rights management	TRIPS	Agreement on the Trade-Related Aspects of Intellectual Property Rights
FTA	Free Trade Agreements	USD	United States Dollar
GATT	General Agreement on Tariffs and Trade	WCO	World Customs Organisation
GCCC	Global Congress on Combating Counterfeiting	WHO	World Health Organisation
GDP	Gross domestic product	WIPO	World Intellectual Property Organisation
IP	Intellectual property	WTO	World Trade Organisation

1.0 INTRODUCTION

In 2006, in response to concerns about digital piracy a handful of developed countries commenced preliminary discussions on a plurilateral trade agreement to tackle the global epidemic of counterfeiting and piracy.

With Canada, the EU27, Japan, Mexico, Morocco, New Zealand, Republic of Korea, Singapore, Switzerland and the USA, Australia commenced official negotiations in June 2008 of the Anti-Counterfeiting Trade Agreement (“ACTA”).¹

ACTA was negotiated to establish new international standards on intellectual property (“IP”) rights enforcement, whilst addressing the various challenges posed by digital technology and the online environment.²

But throughout its negotiating life ACTA has drawn rebukes regarding its intentions and impact.

A number of non-government organisations (“NGOs”) and online activist groups have criticised the mere negotiation of ACTA, the process and details surrounding ACTA’s negotiation as well as the final Agreement.

This paper seeks to assess the criticisms of ACTA, its impact should it be formally ratified and consideration of any legal instruments needed to enable the implementation of the Agreement.

Further, this paper will assess whether ACTA continues the promotion of artistic creation and innovation that IP rights are designed to achieve, or act as a hindrance that would harm Australia’s economic welfare.

¹ DFAT, *ACTA – Summary*, 1.

² Australian Department of Foreign and Trade, Trade Division: *ACTA - Fact Sheet*, Canberra, 2010, 1.
<http://www.dfat.gov.au/trade/acta/factsheet.html>

2.0 COUNTERFEITING AND PIRACY

The terms “counterfeiting” and “piracy” are used to describe a range of illegal activities linked to the infringement of IP-protected goods because they either unauthorised duplicate copies of patented, copyrighted or trademarked innovations, creations or goods and services.³ As a result of being unauthorised counterfeit IP-related goods don’t ensure the relevant income or royalties for the property right are provided to the property owner.

Counterfeit goods and services are mislabelled and raise issues surrounding unfair competition as well as raising issues of trademark violations and concerns of quality control.⁴ Pirated goods are illegally copied goods and thereby constitute infringement of copyrights and related rights.⁵

Technically patented goods can also be counterfeit, but the primary violation of patentable innovation occurs as a result of trademark violations which shall be the focus of this paper.

2.1 Counterfeit goods growth

In recent years, counterfeiting has evolved from a localised industry, concentrating on the petty reproduction and trade of high-end designer goods, into a sophisticated global business involving the mass production and international trade of various consumer products.⁶

In 2007, the OECD reported the scope of counterfeit products to include food, pharmaceuticals, pesticides, electrical components, tobacco and even household cleaning products.⁷ The European Commission (“EC”) has noted a number of qualitative changes in the general trade of counterfeit products:

- A large increase in fake goods which are dangerous to health and safety;
- Most products seized are now household items rather than luxury goods;
- Growing number of sophisticated hi-tech products;
- Production is on an industrial scale.⁸

These trends are linked to growth of the global economy, international trade and the expansion of the use of customs and free trade zones. Ultimately, counterfeiters exploit jurisdictional boundaries and the ordinary channels of commerce to make significant profits with minimal risk.

³ Organization for Economic Co-operation and Development: *The Economic Impact of Counterfeiting and Piracy – Executive Summary*, (OECD, 2007), 8. <http://www.oecd.org/dataoecd/13/12/38707619.pdf>

⁴ Charles R. McManis, “The Proposed Anti-Counterfeiting Trade Agreement (ACTA): Two Tales of A Treaty,” *Houston Law Review* 46, (2009): 1247. <http://www.heinonline.org/>

⁵ McManis, “Two Tales of a Treaty,” 1247.

⁶ Office of The United States Trade Representative , Executive Office of The President: *2009 Special 301 Report – Executive Summary*, Washington D.C., 2009, 4. <http://www.ustr.gov/about-us/press-office/reports-and-publications/2009/2009-special-301-report>

⁷ OECD, *The Economic Impact of Counterfeiting and Piracy*, 12.

⁸ European Commission, Communication to the Council, *The European Parliament and the European Economic and Social Committee on a Customs Response to Latest Trends in Counterfeiting and Piracy*, Brussels, October 11, 2005, COM(2005) 479 final.

2.2 Piracy goods growth

Piracy has traditionally related to the illegal copying of physical goods ranging from copyrighted books to pirated musical and audio visual compact discs (“CDs”) and digital versatile discs (“DVDs”).

However, modern technology, such as peer-to-peer (“P2P”) software, has facilitated a rapidly growing phenomenon of digital piracy. Digital copyright infringement has been exacerbated by the spread of inexpensive copying technology, the increased availability of high speed broadband connections, and the efficient means by which the Internet disseminates digital information.⁹

The scope of products subject to piracy has thus broadened to include music, motion pictures, TV programmes, software, computer games and digital books.¹⁰ The online environment is also exploited by counterfeiters, who utilise e-commerce channels to deceive consumers with relative ease.¹¹

Ultimately both pirated and counterfeit goods plague ordinary channels of commerce and threaten to undermine legitimate international trade, the resourcefulness of digital technology and sustainable economic development.¹²

⁹ Office of the USTR, *Special 301 Report*, 5.

¹⁰ OECD, *The Economic Impact of Counterfeiting and Piracy*, 12.

¹¹ *Ibid.*, 14.

¹² Michael Blakeney, “International Proposals for the Criminal Enforcement of Intellectual Property Rights: International Concern with Counterfeiting and Piracy,” *Queen Mary University of London* 29, 2009, 6.
<http://www.heinonline.org/>

3.0 COUNTERFEITING AND PIRACY COSTS

Due to the nature of the activity the exact cost of counterfeiting and piracy are unknown, however there have been estimates to attempt to approximate the risk to legal trade.¹³ In an endeavour to deal with the unreliability of counterfeiting and piracy statistics the Organisation for Economic Cooperation and Development (“OECD”) undertook an intensive study to quantify the impact of counterfeit and pirated goods on international trade.

The study, *The Economic Impact of Counterfeiting and Piracy*, concluded that the global trade in tangible counterfeit and pirated goods in 2007, totalled up to USD\$250 billion.¹⁴ However, this calculation does not include counterfeit and pirated goods that are produced and consumed domestically, nor does it include non-tangible digital goods that are pirated and disseminated via the internet.¹⁵ The OECD estimates that if these items were included, the overall magnitude of counterfeiting and piracy worldwide could total several hundred billion dollars.¹⁶

It is now believed that counterfeit and pirated goods are being produced and consumed in virtually every national economy.¹⁷ Although the highest concentration of IP infringement is in Asia, various reports have shown that counterfeiting and piracy thrives in most developing economies.¹⁸

The scale of international trade in counterfeit and pirated products has significant consequences for the Australian economy.

In 2008, a report commissioned by the Australian Attorney General’s Department comprehensively identified the economic and financial cost of IP crime in Australia,¹⁹ including the following economic impacts of counterfeit and pirated goods:

- reduced direct investment in creative industries;
- reduced rates of return available to IP rights holders, thereby reducing incentives for innovation and further investment in goods and services with an IP component;
- long term effects, including economic growth, reduced taxation collections, reduced employment levels in industries focused on goods and services with an IP component;
- reduced sales of goods and services with an IP component, as legitimate items are forced to compete with lower-priced pirated copies.²⁰

These economic consequences stem from the impact of counterfeit and pirated goods on legitimate business. Commercial enterprises that are forced to compete with illegitimate versions of their

¹³ Blakeney, “International Concern with Counterfeiting and Piracy,” 4.

¹⁴ Organization for Economic Co-operation and Development: *Magnitude of Counterfeiting and Piracy of Tangible Products – An Update*, (OECD: 2009), 1. <http://www.oecd.org/dataoecd/57/27/44088872.pdf>

¹⁵ OECD, *Magnitude of Counterfeiting and Piracy of Tangible Products*, 1.

¹⁶ OECD, *The Economic Impact of Counterfeiting and Piracy*, 16.

¹⁷ *Ibid.*, 16.

¹⁸ Office of the USTR, *Special 301 Report*, 11.

¹⁹ Australian Institute of Criminology: *Intellectual Property Crime and Enforcement in Australia*, Canberra, 2008. http://www.ipaustralia.gov.au/pdfs/news/IP_crime_enforcement.pdf

²⁰ AIC, *IP Crime in Aus*, 8.

products, struggle to access sources of investment;²¹ which is predominantly hampering growth of creative industries.²² For example, the *IP Crime and Enforcement in Australia* investigation documented the following financial costs of IP infringement to various sectors of the Australian economy:

- \$233 million per year due to piracy and counterfeiting of films;
- \$677 million of lost sales, in 2002, in the Australian toy, software and video games industry. This includes \$445.7 million lost sales in the business software industry;
- \$515 million in absolute losses in software piracy in 2006;
- \$45 million per year as the cost to Australian subscription television industry;
- \$300 million per year in breaches of trademark as losses to the textile, clothing and footwear industry.

These are not insignificant costs reflecting a total economic impact valued around at least \$1.8 billion dollars if all occurred in any given year assuming rates have continued to rise. The inability of business to attract investment also depreciates their economic incentive to innovate and develop new products.²³

Less innovation leads to deficient competition within the market, as business is unable to compete with substitute goods through diversification and modernisation. Reduced competition further leads to higher prices, monopolies and inefficient allocation of resources within the market. Counterfeiting and piracy also cheats consumers on the underlying quality of a branded product, which negatively impacts on consumer sentiment.²⁴

Ultimately, the confidence of business, investors and creators, in the overall protection and enforcement of IP, stimulates innovative activity, which positively influences competition, investment and sustainable economic growth.²⁵

In social terms, the cost of counterfeiting and piracy to business and job creation.²⁶ The Australian software industry has argued that a 10-point drop in global piracy could create 2.4 million jobs worldwide, \$400 billion in economic growth and \$67 billion in additional taxes.²⁷ Such a boost to international employment as well as global economic development would significantly aid global economic recovery.

Furthermore, although the acts of counterfeiting and piracy are perceived as exclusively harming private interests, the modern scale of this affliction affects every day consumers, general economic welfare and public health and safety.

For example, the World Health Organisation (“WHO”) has emphasised the major public health risks of counterfeit medicines for both developed and developing countries,²⁸ arguing counterfeit medicines kill

²¹ Ibid., 8-10

²² Blakeney, “International Concern with Counterfeiting and Piracy,” 8.

²³ Allison Cychosz, “The Effectiveness of International Enforcement of Intellectual Property Rights,” *Marshall Law Review* 37, (2003-2004): 990. <http://www.heinonline.org/>

²⁴ Blakeney, “International Concern with Counterfeiting and Piracy,” 10.

²⁵ Ibid., 8.

²⁶ Ibid., 9.

²⁷ AIC, *IP Crime in Aus*, xiii.

²⁸ Blakeney, “International Concern with Counterfeiting and Piracy,” 4.

more people every year than illegal narcotics and that global counterfeit drug revenues may reach up to \$75 billion in 2010.²⁹

Another major concern is the empirical evidence linking counterfeiting and piracy to organised crime and terrorism.³⁰ According to the OECD high profits, low risk and light penalties have provided an attractive environment for organised crime and terrorist networks.³¹

In July of 2002, INTERPOL responded by forming the Intellectual Property Crime Action Group.³² In 2005 it initiated its new mandate with the World Customs Organisation (“WCO”), named “Operation Jupiter”, to link evidence of organised crime, terrorist networks and the acts of counterfeiting and piracy:

*“...foreign nationals and nationals of Middle Eastern countries were well represented in these criminal conspiracies. Analysis indicated that typically transnational organized criminals of Arab, Indian and Pakistani origin have a controlling influence in informatics. Typically transnational organized criminals of Chinese origin have a controlling influence over CD/DVD pirate manufacturing and distribution, as well as sports clothes and luxury goods”.*³³

Phase III of Operation Jupiter in Brazil detected a criminal network that was headed by Lebanese nationals and engaged in the production of counterfeit pesticides, cigarettes, electronics, watches and computers, and whose counterfeiting helped finance other illegal activities.³⁴ Criminals involved with counterfeiting and piracy include the European mafias and the American and Asian triads. These organisations are also responsible for heroin trafficking, people smuggling, extortion and money laundering.³⁵

In 2006 a report released by the RAND Corporation revealed further disturbing information about the South American tri-border region, (the focus of INTERPOL’s Operation Jupiter) as the most important centre for financing Islamic Terrorism outside of the Middle East.³⁶

The report estimated that this region channels USD\$20 million annually to Hezbollah, which includes proceeds in excess of USD\$3 million; generated solely from the sale of pirated DVDs.³⁷

Other terrorist organisations involved in commercial scale counterfeiting and piracy include the paramilitary groups of Northern Ireland, Al Qaeda and D-Company (group responsible for the *Black Friday* bombings in Mumbai).³⁸

²⁹ Intergroup on Law Enforcement, *Organised Crime & Law Enforcement in Europe*, (last visited Sep, 2010)

<http://www.organisedcrime.info/index.php?mode=12&id=27>

³⁰ McManis, “Two Tales of a Treaty,” 1239.

³¹ OECD, *The Economic Impact of Counterfeiting and Piracy*, 15

³² Intellectual Property Crimes Action Group, INTERPOL, *Intellectual Property Crimes: Trademark Counterfeiting and Copyright Piracy* (2007), <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp>

³³ INTERPOL, Operation Jupiter 2004-2009,

<http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/OperationJupiter/Default.asp>

³⁴ Ibid.

³⁵ Ibid.

³⁶ Gregory F. Treverton, RAND Corporation, “*Film Piracy, Organized Crime And Terrorism*,” (2009), 75-82.

<http://www.rand.org/>

³⁷ RAND Corporation, “*Film Piracy, Organized Crime And Terrorism*,” 80.

INTERPOL has also highlighted this disturbing relationship, with IP crime said to be becoming the preferred method of financing for a number of terrorist groups.³⁹

Ultimately, this information demonstrates the negative impact of counterfeiting and piracy on national and international security, as well as the obvious financial costs of supporting enforcement agencies in their battle against organised crime and terrorist networks.⁴⁰

The exponential growth, diversification and trade in counterfeit and pirated goods, combined with their negative impact on global socio-economic welfare, has prompted the developed world to seek appropriate means of improving international IP protection.

While there is a clear benefit for IP rights holders, governments and consumers are also clear beneficiaries of enforcement at the expense of criminal networks seeking to profit off illegal trade.

³⁸ Ibid.

³⁹ OECD, *The Economic Impact of Counterfeiting and Piracy*, 15.

⁴⁰ McManis, "Two Tales of a Treaty," 1246.

4.0 RECENT AUSTRALIAN IP LAW REFORMS

In Australia, copyrights and trademarks are protected by the *Copyright Act (1968)*, the *Trade Marks Act (1995)* and the *Trade Practices Act (1974)*; or the corresponding provisions of the *State Fair Trading Acts*. Infringement of these IP can either be settled by criminal or civil litigation, and in some cases both.⁴¹

In recent years, the protection afforded under Australian law to copyrights and trademarks has been modified substantially. Legislative amendments have implemented Australia's international obligations and responded to IP protection challenges posed by digital technology and the internet.⁴²

The *Copyright Act* was amended in July 1995 to implement Australia's obligations under the World Trade Organisation's ("WTO") Agreement on the Trade-Related Aspects of Intellectual Property Rights ("TRIPS").

The *Copyright Act* was also amended to extend the scope of copyright to materials in digital form (computer software) and the right to control the online distribution of digital materials. A variety of exceptions to these exclusive rights were also introduced to balance the interests of copyright holders with IP consumers.⁴³ The *Copyright Act* was later amended to establish civil and criminal liability for the removal or alteration of digital rights management information, the manufacture and supply of circumvention devices and services, and the circumvention of technological protection measures.⁴⁴

On 4th March 2001, the *Copyright Amendment (Digital Agenda) Act (2000)* was enacted, which gave effect to Australia's obligations under the World Intellectual Property Organisation's ("WIPO") *WIPO Copyright Treaty 1996*, as well as various recommendations from the Copyright Law Review Committee in its *Simplification of the Copyright Act Report* (1998 and 1999).⁴⁵ Significant changes to copyrights were also introduced by the *Copyright Amendment (Computer Programs) Act (1997)* and the *Copyright Amendment (Moral Rights) Act (2000)*.

More recently, the *US Free Trade Agreement Implementation Act (2004)* and the *Copyright Legislation Amendment Act (2004)* were enacted to implement Australia's obligations under the Australia-United States Free Trade Agreement ("AUSFTA").⁴⁶ Chapter 17 of AUSFTA deals specifically with IP enforcement measures and included controversial extensions in the period of copyright.

On 1 January 2007, amendments to the *Copyright Act* introduced further IP enforcement mechanisms to tackle digital and online piracy. These amendments included a new tiered offences regime, various

⁴¹ AIC, *IP Crime in Aus*, xv.

⁴² B Fitzgerald, A Fitzgerald, G Middleton, Y Lim and T Beale, *Internet and E-Commerce Law: Technology, Law and Policy* (Pymont: Thomson Lawbook Co, 2007), 156.

⁴³ Fitzgerald and Fitzgerald, *Internet and E-Commerce Law*, 156.

⁴⁴ *Ibid.*, 157.

⁴⁵ Copyright Law Review Committee, *Simplification of The Copyright Act: Part 1* (1998) and *Simplification of the Copyright Act: Part 2* (1999):

http://clrc.gov.au/www/agd/agd.nsf/Page/Copyright_CopyrightLawReviewCommittee_CLRCReports_SimplificationoftheCopyrightAct1968

⁴⁶ (signed 18 May 2004, entered into force 1 January 2005):

http://www.dfat.gov.au/trade/negotiations/us_fta/index.html

remedies for proceeds of crime, strengthened evidential presumptions, and finally, additional powers for courts to order higher penalties in certain cases of online IP infringement.⁴⁷

Both the *Copyright Act* and *Trade Marks Act* also outline the authority of Customs officials when dealing with counterfeit and pirated goods. The *Trade Marks Amendments Act (2006)* and *Intellectual Property Laws Amendment Act (2006)* also introduced provisions that grant Customs officials the authority to seize and deal with infringing goods, once a trademark owner has filed a "Notice of Objection".⁴⁸

⁴⁷ AIC, *IP Crime in Aus*, 42.

⁴⁸ Michael Wolnizer, Elizabeth Godfrey, Sally Foreman, *Developments in Australia Trade Mark Law*, Davies Collison Cave, Melbourne, 2008. <http://www.davies.com.au/pdfs/0805%20TM%20Update%20for%20INTA.pdf>

5.0 ACTA'S DEVELOPMENT

The idea of ACTA was first proposed by Japan at the Global Congress on Combating Counterfeiting ("GCCC") in 2005,⁴⁹ by proposing measures to address omissions from the border control provisions of TRIPS, including the distribution and sale of counterfeit and pirated goods over the internet.⁵⁰

The proposal received further consideration at the 2005 G8 summit, which manifested in a statement outlining the foundations and purpose of ACTA:

"In particular, we [the parties] will take further concrete steps to:

- strengthen and highlight analysis of underlying trends, issues and domestic and international enforcement actions;*
- promote and uphold laws, regulations and/or procedures to strengthen effective IPR enforcement, where appropriate, in areas such as the seizure and retention of suspected counterfeit goods, the destruction of such goods and the equipment used to produce them, and the use of clear, transparent and predictable judicial proceedings, policies and guidelines related to IPRs enforcement; enhance detection and deterrence of the distribution and sale of counterfeit goods through the internet and combat online theft.*"⁵¹

The G8 also endeavoured to raise public awareness about the significant costs associated with IP infringement and improve international cooperation amongst enforcement authorities, creative industry and countries.

The Japanese proposal was superseded by an announcement on 23 October 2007, (by Japan, the USA, Switzerland and the EU) that official negotiations were to create ACTA, with the first negotiations beginning in June 2008.⁵² Australia, Canada, Morocco, Mexico, New Zealand, The Republic of Korea and Singapore subsequently joined negotiations. Following eleven rounds, negotiations concluded on the 2 October 2010 in Tokyo, Japan resulted in a draft that has since been legally verified and is now in the process of being translated into relevant languages.⁵³ It is expected that the agreement will be finalised and signed in 2011.⁵⁴

In November 2007, the Department of Foreign Affairs and Trade ("DFAT") issued a discussion paper outlining the proposed details of ACTA and the government's receptiveness towards a new international agreement on IP enforcement.⁵⁵ The government qualified its position, maintaining that ACTA could not

⁴⁹ Barry Sookman, "Fear Mongering and Misinformation Used to Slag ACTA," Barry Sookman: Copyright, Intellectual Property, Computer, Internet, E-Commerce Law, <http://www.barrysookman.com/2009/11/18/fear-mongering-and-misinformation-used-to-slag-acta/> (accessed 10th September 2010)

⁵⁰ Michael Blakeney, "International Enforcement of IPRs: Negotiating the International Trade Agreement," 46. <http://www.law.qmul.ac.uk/people/academic/blakeney.html>

⁵¹ G8 Gleneagles Summit, 2005. http://www.g7.utoronto.ca/summit/2005gleneagles/ipr_piracy.pdf

⁵² Blakeney, "International Enforcement of IPRs," 46.

⁵³ Australian Department of Foreign Affairs and Trade, Trade Division, "Anti-Counterfeiting Trade Agreement," Canberra, (accessed 10th October 2010) <http://www.dfat.gov.au/trade/acta/index.html>

⁵⁴ Leanne O'Donnell, "Analysis: Where to Now for ACTA?" *itnews for Australian Business*, October 14th 2010. <http://www.itnews.com.au/News/235159,analysis-where-to-now-for-acta.aspx>

⁵⁵ Australian Department of Foreign Affairs and Trade, Trade Division, *ACTA: Discussion Paper*, Canberra, 2007. <http://www.dfat.gov.au/trade/acta/discussion-paper.html>

require the implementation of extensive border measures and the criminalisation of IP infringements, beyond current Australian standards. Furthermore, the costs of implementing the Agreement could not exceed the overall benefits to the Australian people.⁵⁶ The paper emphasised that the value of ACTA would be in its ability to attract the support of countries where counterfeiting and piracy is much more problematic.⁵⁷

Subsequently the government also released *A summary of the key elements* under discussion,⁵⁸ as well as a *fact sheet* delineating the specific objectives of ACTA,⁵⁹ both which inferred what Australia hoped to achieve by joining the negotiation process:

- An Agreement that will effectively combat global counterfeiting and piracy by improving international cooperation, developing best practices for enforcement authorities, and establishing more effective IP enforcement standards for the digital environment.
- An Agreement that will not impose new substantive IP law or strengthen existing IP rights; and instead focus upon harmonising national procedural law and raising international standards of IP enforcement.⁶⁰

The *fact sheet* separately emphasised the importance of preserving individual civil liberties and targeting commercially-orientated counterfeiting and piracy.

Resulting from the success of negotiations by April 2010 then Trade Minister Simon Crean announced the government would not be seeking to change national laws.⁶¹

⁵⁶ DFAT, *ACTA: Discussion Paper*.

⁵⁷ *Ibid.*,

⁵⁸ DFAT, *ACTA – Summary*.

⁵⁹ DFAT, *ACTA – Fact Sheet*.

⁶⁰ *Ibid.*

⁶¹ Trevor Clarke, "Anti-Counterfeiting Trade Agreement Draft Released," *Computerworld*, 21st April 2010. <http://news.idg.no/cw/art.cfm?id=22EBEC68-1A64-6A71-CE50CC29B73FDB71>

6.0 ACTA AND INTERNATIONAL LAW

The first coordinated effort to improve international IP protection was manifested in the *Paris Convention for the Protection of Industrial Property* in 1883 and the *Berne Convention for the Protection of Literary and Artistic Works* in 1886.⁶²

The *Paris Convention* applies to inventions (patents), trademarks, industrial designs, indications of origin and unfair competition. The *Berne Convention* applies to all forms of literary and artistic works; in the literary, scientific and artistic domain.⁶³

At the time, these agreements were far from representing comprehensive international law on the subjects of copyright and industrial property. Nonetheless, they were multilateral in character and represented significant diplomatic and political achievements for their time.⁶⁴

The most powerful IP protection devices enforced by these agreements are for signatory states to apply the full operation of their national copyright and industrial laws to foreign nationals.⁶⁵ Today there are 173 and 164 signatory states to the *Paris* and *Berne Conventions* respectively.

However, neither Convention deals with detailed enforcement measures and thereby leaves the issues of remedies and procedures to the discretion of member states.

Furthermore, neither Convention (nor any of their associated agreements) contains sufficient detail on the protection of IP and lacks any real means of enforcing compliance with the substantive standards they seek to protect.⁶⁶

Other international agreements and treaties affording IP protection against counterfeiting and piracy include:

- *The Trademark Law Treaty 1994.*
- *The Madrid Agreement Concerning the International Registration of Marks 1891,*
- *The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods 1891,*
- *The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961,* and
- *The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks 1957.*

The most significant leap in codifying obligations and enforcement of IP resulted from the successful negotiation of TRIPS as part of the General Agreement on Tariffs and Trade's ("GATT") Uruguay Round of multilateral negotiations that also gave birth to the WTO.

⁶² Sam Ricketson, "The Future of The Traditional Intellectual Property Conventions in the Brave New World of Trade-Related Aspects of Intellectual Property Rights," *International Review of Intellectual Property & Competition Law* 26, (1995): 873.

⁶³ Bainbridge, *Intellectual Property* (2009, Pearson Longman) Chapter 1.

⁶⁴ Ricketson, "The Future of the Traditional Intellectual Property Conventions," 874.

⁶⁵ *Ibid.*, 874.

⁶⁶ Ricketson, "The Future of the Traditional Intellectual Property Conventions," 880.

TRIPS broke new ground by linking IP protection standards to the broader issue of international trade and legally required countries participating in the WTO system to adopt substantive provisions outlined in the *Paris* and *Berne Conventions*, as well as other explicit minimum standards related to IP. Like the rest of the Agreements, TRIPS standards are enforceable under the WTO dispute settlement process adding a new international dimension to international IP obligations.

WIPO has also played a significant role in combating counterfeit and pirated goods by overseeing the development of the *WIPO Copyright Treaty 1996* and the *WIPO Performance and Phonograms Treaty 1996* (The Internet Treaties); both of which are designed to offer greater IP protection and enforcement in the online environment.

TRIPs and the Internet Treaties made significant progress in the area of IP enforcement. However, the continued growth in global counterfeiting and piracy demonstrates their inability to provide effective international IP protection and the negotiation of free trade agreements (“FTAs”) has fragmented international IP standards.⁶⁷

This deficiency in effective and coordinated international protection is also exacerbated by jurisdictional uncertainties over the Internet and the inherent complexities of digital technology. Accordingly, new minimum IP enforcement standards are necessary to prevent vulnerabilities in the international protection regime and to maintain regulatory consistency across national boundaries.

Ultimately, collaborative international action on IP enforcement will more adequately respond to contemporary counterfeiting and piracy and thereby enhance global socio-economic welfare.

ACTA is designed to achieve that objective.

⁶⁷ (See Diagram 1 for scope of international protection and enforcement of IPRs under international law)

7.0 EXTENDING ENFORCEMENT, BUT NOT PROPERTY RIGHTS

There are two ways of enhancing international IP protection to more adequately tackle the contemporary scale of counterfeiting and piracy.

First, countries can extend the scope of existing IP rights so that a broader range of acts will constitute infringement, but it likely to be domestically and internationally controversial.

National IP law is complex and has been developed over many years through national legislation and judicial determinations. Copyrights and trademarks are so entrenched within domestic law that every country has a unique interpretation as to the appropriate scope, standard and exception for these rights.

Any attempt to harmonise national laws on substantive issues would inevitably lead to slow multilateral discussions and heavily diluted international agreements. Such treaties would have a negligible effect on improving international IP protection.

It would equally be difficult to achieve increased minimum levels of protection at an international level should government seek to do so.

Second, countries can promote effective penalties and procedures for IP infringement and enforcement. This approach requires multilateral consensus on national procedural law rather than substantive IP law:

“Procedural law, civil as well as criminal, encapsulates a whole set of balances concerning the fundamental freedoms of individuals when they face the operations of the justice system. How much of their private affairs should defendants be obliged to reveal? Who will keep control over their proceedings? Who will decide on the merits, who on the remedial consequences? In procedural law lie the real tests of how punitive, and therefore preventative, legal redress should be.”⁶⁸

Harmonising national procedural law and enhancing IP enforcement standards are much simpler than strengthening existing IP.

Improving international penalties and procedures for IP infringement is also an effective way of disincentivising counterfeiting and piracy.⁶⁹ Stripping IP rights offenders of their economic power and removing counterfeit and pirated products from the ordinary channels of commerce will ultimately have a significant punitive effect on infringement.⁷⁰

Improving international cooperation and coordination on border protection will also undermine efforts to exploit the international trading system.

⁶⁸ William Cornish, Joseph Drexel, Reto Hilty and Anette Kur, “Procedures and Remedies for Enforcing IPRS: The European Commission’s Proposed Directive,” *European Intellectual Property Review*, (2003): 447.
<http://www.heinonline.org/>

⁶⁹ Blakeney, “International Concern with Counterfeiting and Piracy,” 17.

⁷⁰ *Ibid.*, 18

Ultimately, a harmonised IP enforcement system will benefit all countries by providing greater certainty for IP holders, encouraging foreign investment, spreading a trans-national deterrent for offences, and promoting the negative consequences of counterfeit and pirated goods.

Furthermore, improved enforcement measures will provide greater access to justice,⁷¹ enhance sustainable global economic development, and thereby raise the average socio-economic welfare of all nations.

These are the issues ACTA was designed to address.

⁷¹ AIC, *IP Crime in Aus*, 12.

8.0 ACTA CONCERNS AND REALITIES

The process of negotiation has now concluded for all intents and purposes and governments are finalising formalities including ensuring consistent language and international translations of the Agreement before any necessary legal or regulatory reforms are introduced to implement its intent. The following analysis is based on the 3 December 2010 legally verified text.⁷²

The legally verified final negotiating text requires no amendment to existing Australian law.

During negotiation the key concerns raised against the Agreement included that it:

1. Would create an unnecessary and ineffective addition to an already convoluted international regime.
2. Could lead government agencies to inappropriately share private information of individuals and enterprises.
3. Would require parties to impose a “three strikes” notice and “take down” procedure on Internet Service Providers (“ISPs”).⁷³
4. Requires frivolous and invasive searches into individual’s private property, such as iPods and laptops, for travellers at the border.
5. Would undermine the legitimate trade in generic medicines.⁷⁴
6. Amends the scope of IP rights.
7. Was the result of negotiations that lacked transparency and were undemocratic.
8. Erodes the flexibility of Australia’s IP regime.
9. Provides no substantive change or benefit for Australia.

None of the concerns raised above have resulted in identifiable issues in the final negotiating text.

Instead of expanding IP obligations, ACTA’s design is to make numerous improvements and build on existing standards through enforcement while addressing the evolving realities posed by technology as outlined in the below respective responses to concerns raised above.

⁷² Australian Department of Foreign Affairs and Trade, *Anti-Counterfeiting Trade Agreement*, Legal Verification Text, 3rd December 2010. <http://www.dfat.gov.au/trade/acta/ACTA-Consolidated-Text-20101002.pdf>

⁷³ Australian Digital Alliance, “Anti-Counterfeiting Trade Agreement: Impact on Individuals and Intermediaries,” Submission to the Australian Government Department of Foreign Affairs and Trade, May 2010. <http://www.digital.org.au/submission/documents/20100519ADA-ACTAimpactonindividualsandintermediaries.pdf>, and Google, “Anti-Counterfeiting Trade Agreement – Invitation for Submissions About Intellectual Property Rights Enforcement in The Digital Environment,” submitted to the *New Zealand Ministry of Economic Development*, 31st March 2010. http://www.med.govt.nz/templates/MultipageDocumentPage_42584.aspx

⁷⁴ Information Justice and Intellectual Property, *ACTA Section Analysis*, and Claudia Brenni, “The Anti-Counterfeiting Trade Agreement (ACTA): a New Obstacle to Human Rights?” *Information Note 10*, (2010) 2. http://www.3dthree.org/pdf_3D/201006ACTAInformationnote.pdf, and HAI Europe, “Comments on ACTA Stakeholder Consultation,” La Quadrature du Net, Amsterdam, 22nd March 2010. http://www.laquadrature.net/files/hai_europe_comments_on_ACTA_stakeholder_consultation.pdf

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1. ACTA does the reverse. Instead of creating a more convoluted scheme it works more closely to harmonise standards between existing Agreements, in a similar what to TRIPS,⁷⁵ while respecting TRIPS established minimum floor requirements for IP enforcement standards, not ceilings.⁷⁶ The Agreement also covers all existing IP rights to ensure consistency with TRIPS.⁷⁷ The opening Articles of the Agreement explicitly state the nature of harmonisation and ensure to avoid IP protection and enforcement forum shopping.
 2. ACTA includes appropriate provisions and caveats to ensure measures exist for the protection of civil liberties without unnecessarily hindering appropriate transfer of information regarding individuals and enterprises between government agencies. The Agreement also requires that any information attained in accordance with this Agreement be used only for the purposes for which it is has been attained addressing concerns about the Agreement threatening privacy for individuals and enterprise.⁷⁸
 3. The Agreement imposes voluntary obligations on member states regarding the operation of ISPs, and Australian law is already more extensive and stringent in this area.
 4. The Agreement reaffirms Article 60 of TRIPS which provides for exemptions of infringing imports by travellers through international channels and clarifies that any searches for counterfeit or pirated goods relate to those of a commercial nature sent in small consignments.
 5. The Agreement recognises in its preamble that the *Doha Declaration on TRIPs and Public Health* which gives wide scope for developing countries to manufacture and trade generic medicines should be considered in the implementation of this Agreement.⁷⁹
 6. There is no evidence to demonstrate IP rights are being amended. The Agreement is clearly a customs and enforcement treaty, not an attempt to strengthen existing IP requirements.⁸⁰ As Figure 1 outlines reforms for Australia are negligible as the principles and standards included in ACTA already operate under Australia's existing obligations and are entrenched in Australian law.

⁷⁵ Office of the United States Trade Representative, "Trade Facts: Anti-Counterfeiting Trade Agreement," Executive Office of the President, August 4th 2008.

http://www.ustr.gov/sites/default/files/uploads/factsheets/2008/asset_upload_file760_15084.pdf

⁷⁶ Monika Ermert, *European Commission on ACTA: TRIPs Is Floor Not Ceiling*, Intellectual Property Watch, 22nd April 2009, <http://www.ip-watch.org/weblog/2009/04/22/european-commission-on-acta-trips-is-floor-not-ceiling/>

⁷⁷ Karl De Gucht, European Commissioner for Trade, "*Speaking Points: State of Play of Negotiations on the Anti-Counterfeiting Trade Agreement (ACTA)*," European Parliament, Committee for International Trade, Strasbourg, 8th September 2010. http://trade.ec.europa.eu/doclib/docs/2010/september/tradoc_146465.pdf

⁷⁸ Kimberley G. Weatherall. "ACTA - Australian Section by Section Analysis" 2010, 32 (accessed 5th September 2010) <http://works.bepress.com/kimweatherall/21>

⁷⁹ Doha WTO Ministerial 2001: *Ministerial Declaration*, WT/MIN(01)/DEC/1, (Adopted 14th November 2001). http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.pdf

⁸⁰ Program on Information Justice and Intellectual Property, *ACTA Section Analysis*, Washington College of Law American University, 2010 – Comprehensive List of ACTA Critics (accessed 15th September 2010). <http://sites.google.com/site/iipenforcement/acta-section-analysis>

Figure 1 International IP Regime – Scope of IP Protection & Enforcement

IP Protection/ Enforcement Measures	The Paris & Berne Conventions	The WTO's TRIPs Agreement	The WIPO Internet Treaties	AUSFTA (Australia & US FTA)
National Treatment Principle	Art 5(1) Berne Art 2 Paris	Art 3(1) TRIPs	Art 4(1) WPPT	Art 17.1.6 to 17.1.8
Substantive Protection of IP	Literary/Artistic Works & Industrial Prop.	Part II: Scope of all existing IP	Digital Copyright Materials (WCT/WPPT)	Art17.2 to 17.10: covers all IP
Civil Procedures/ Remedies		Part III: Sec 2. Arts 42 to 49	Art 14 (WCT) Art 23 (WPPT)	Art 17.11.5 to 17.11.15
Border/ Customs Procedures		Part II: Sec 4. Arts 51 to 59		Art 17.11.19 to 17.11. 25
Criminal Procedures/ Penalties		Part III: Sec 5. Art 61	Art 14 (WCT) Art 23 (WPPT)	Art 17.11.26 to 17.11.28
Protection of TPMs & ERM info			Arts 11, 12 (WCT); 18,19 (WPPT)	Art 17.4: definitions incl.
ISPs Liability				Art 17.11.29: safe harbour provisions

Source: IPA comparison

7. Copies of negotiating texts were released in a comparable way to the traditional process for release for plurilateral negotiations. Secrecy in negotiations is common. Furthermore, the negotiation process was not completely undemocratic with the governments negotiating the Agreement elected.
8. Doesn't erode flexibilities as it establishes no new standards and includes 'without prejudice' clauses, which preserve the scope and standard of existing IP rights as they have been defined under national laws.⁸¹ Accordingly, member states maintain the necessary flexibility to ensure that the more stringent ACTA enforcement procedures apply to a limited set of activities.

⁸¹ See Art 1.2, *Anti-Counterfeiting Trade Agreement*.

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9. The amount of evidence demonstrating exponential growth in global counterfeiting and piracy, as well as its links with organised crime and terrorist financing, demonstrate the necessity of further international action on IP enforcement. The majority of infringing material is produced within developing countries and then traded internationally. Therefore, the primary benefits of signing ACTA will be achieved indirectly for Australia as was highlighted by Trade Minister, Craig Emerson, who stated that what matters is a “secure trading environment for Australia’s creative and knowledge intensive industries by ensuring copyright and trademarks are enforced in a number of important foreign markets”.⁸² The disparities between Australian and international standards ensure that IP holders are left to the mercy of lenient foreign protection regimes.⁸³ By ratifying ACTA Australia will encourage other countries with much weaker IP regimes to adopt more effective standards of IP enforcement.

Of note for Australia, what ACTA does is establish standards for the calculations for damages for IP infringement granting judicial authorities the authority to consider, inter alia, any legitimate measures of value submitted by a plaintiff, who has suffered from rights infringement. Exclusively in relation to copyright and trademark infringement, judicial authorities also have the capacity to order an infringer to pay an IP holder the amount equivalent to any profits attained in the course of infringement. It also requires minimum standards for the calculation of damages in cases of copyright and trademark infringement, which was an optional measure under Article 45 of TRIPs, as well as addressing issues surrounding court fees. But they are consistent with existing Australian law.⁸⁴

Additional judicial proceedings are also included for IP infringements where courts shall have the authority to order infringers and alleged infringers to provide relevant information within their possession. This broadens judicial power to the extent that courts are more adequately equipped to prevent infringers from exploiting procedural weaknesses in the judicial system. Judicial authorities are also required to have the capacity to order seizure of suspected infringing goods, as well as materials and implements relevant to the act of infringement. Parties also maintain the right to impose appropriate limitations on such procedures and remedies to compensate those that suffer unnecessarily from incorrect seizures of property.

ACTA also raises the TRIPS standard concerning the suspended release of imported counterfeit and pirated goods to include exported goods (excluding patented goods), as well as recognising such procedures can be adopted for goods that are in transit. ACTA even establishes news standards to facilitate the transfer of information between competent authorities and right holders.

But the most significant change in international standards resulting from ACTA relate to criminal enforcement which dramatically raises existing international minimum standards requiring criminal procedures for wilful commercial undertakings so long as they are for direct or indirect economic or commercial advantage to the infringer. The scope of criminal offences under ACTA is consistent with but also less stringent than currently adopted by Australian law.⁸⁵

⁸² The Honourable Dr Craig Emerson, Minister for Trade, “Media Release: Breakthrough in Anti-Counterfeiting and Piracy Talks,” *Department of Foreign Affairs and Trade*, Canberra, 7th October 2010.

<http://www.craigemersonmp.com/files/100610%20Emerson-Crean%20ACTA%20Negotiations.pdf>

⁸³ Office of the USTR, *Special 301 Report*.

⁸⁴ Weatherall, “ACTA - Australian Section by Section Analysis,” 14

⁸⁵ Weatherall, “ACTA - Australian Section by Section Analysis.”

ACTA also broadens many of the enforcement procedures against infringement that operate on physical goods to those that occur in the online environment, requiring enforcement procedures for copyright and trademark infringement over digital networks, including through the use of P2P file sharing technology. Importantly, ACTA stipulates that any such obligations must not create barriers to legitimate activity, such as electronic commerce, or undermine fundamental principles of civil liberty.

The closest legitimate criticism of ACTA is that it seeks to further entrench IP obligations that exist under WIPO Treaties, TRIPS, the Internet Treaties and individual FTAs.

But the real litmus test of those Agreements relate to acceptance of those individual Agreements rather than ACTA, and exposes a prejudicial agenda and undermines effective protection of IP.⁸⁶

And in many regards the opposition to the negotiation of ACTA has been driven by opponents philosophically against IP first, and the Agreement, second.

⁸⁶ Winterford, "Analysis: Netizen's Temporary Victory on ACTA"

9.0 CONCLUSIONS

Inadequate protection of IP rights, the complexity of digital technology, and the growth of the international trading system, have allowed the evolution of counterfeiting and piracy into a global business, which plagues legitimate channels of commerce and sustainable economic development.

Empirical and quantitative evidence suggests that counterfeit and pirated goods are becoming the preferred source of financing for a number of terrorist networks and criminal organisations. Further investigations have also established the significant financial and economic consequences of IP infringement.

Counterfeit and pirated goods undermine innovative activity, market competition, national unemployment and economic growth. Overall, counterfeiting and piracy destabilises international security and costs the global economy an estimated USD\$250 billion annually.

The contemporary scale and socio-economic impacts of trans-national IP crime demand a collaborative response from the international community.

ACTA is the first step in what could become a multilateral endeavour to enhance minimum standards of IP enforcement.

ACTA will achieve its goals through the harmonisation of national procedural law, encouraging cooperation on IP enforcement, and promoting the negative consequences of IP crime on national welfare.

However, the true potential of ACTA will only be realised if it can persuade other nations, which did not participate in the official negotiation process, to implement these new minimum standards of IP enforcement. Therefore, Australia should adopt ACTA to encourage other countries to support the Agreement.

And despite the deluge of uninformed and deeply prejudicial criticism against ACTA the final Agreement's text aligns with promises made by negotiating parties.

ACTA exclusively focuses upon improving customs and IP enforcement measures, without strengthening existing IP rights, undermining individual civil liberties, stifling the utility of the internet, or hampering public health and safety.

As a consequence it should be ratified by Australia and promoted as part of a new international standard in IP enforcement.

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11.0 ABOUT THE INSTITUTE OF PUBLIC AFFAIRS

The Institute of Public Affairs (“IPA”), founded in 1943, is the world’s oldest free market think tank.

The IPA is a not-for-profit research institute based in Melbourne, Australia with staff and associates based around Australia.

Think tanks act as public policy incubators and develop public policy solutions. The objective of the IPA is to promote evidence-based public policy solutions rooted in a liberal tradition of free markets and a free society. The IPA achieves these objectives by:

- undertaking and disseminating research.
- participating in national and international policy debate through the media.
- engaging with opinion leaders, stakeholders and public policy makers.

All work completed by the IPA is published in the public domain for the consumption of governments, politicians, domestic and international policy makers and the public-at-large.

The IPA has a demonstrated track record of contributing to, and changing the terms of the public policy debate in Australia and internationally. In particular, in recent years the IPA has been at the centre of public discussion in Australia and in appropriate international fora on:

- Regulation
- Trade
- Intellectual property
- Water
- Energy
- Housing
- Industrial relations
- Taxation
- Investment

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He also serves on the Department of Foreign Affairs and Trade's IP industry consultative group, as a Senior Fellow at New York's Center for Medicine in the Public Interest and the Steering Committee of the Sydney Opera House's Festival of Dangerous Ideas.

He regularly appears on Australian and international television and radio including previously co-hosting ABC News 24 TV's *Snapshot* segment, appearing fortnightly on ABC News 24's *News Breakfast* and *The Drum*, Sky News TV's *Lunchtime Agenda* and *The Contrarians*, a 'Wrapper' on Jon Faine's ABC Melbourne radio program, as well as many others. He's also regularly published in Australian and international print media including *The Australian*, the *Wall Street Journal Asia* and *Europe*, the *Australian Financial Review* as well as contributing chapters to academic journals and books.

He's previously worked in international development across South East Asia, consulting and politics, including delivering Australia's aid program for the Vietnamese government to host APEC and advising State and Federal politicians.

In 2009 *The Australian* newspaper recognised him as one of the ten emerging leaders of Australian society and received an Australian Leadership Award from the Australian Davos Connection. At University Tim was twice elected President of the Student Union as well as to the University's Board of Directors.

A trained carbon accountant, Tim's currently completing a Graduate Diploma of Energy and the Environment (Climate Science and Global Warming) at Perth's Murdoch University. He has a Masters of Diplomacy and Trade and a Bachelor of Arts from Monash University, a Diploma of Business and has completed Asialink's Leaders Program at the University of Melbourne. He has also completed specialist executive education on IP at the WIPO Worldwide Academy and international trade and global health diplomacy at the Institut de Hautes Études Internationales et du Développement, Geneva.

Jordan Shopov, Researcher

Jordan Shopov was a researcher at the Institute of Public Affairs throughout 2010 before departing to work in the Commonwealth Public Service in early 2011.

He is currently employed as a graduate trainee with the Department of Prime Minister & Cabinet and has previously been employed as an articulated clerk in a boutique Adelaide law firm.

Jordan has completed a Bachelor of Laws and a Master of Laws (International & Comparative Law) from Monash University, as well as a Graduate Diploma of Legal Practice from the Law Society of South Australia. In December of 2010, Jordan successfully sought admission to the Supreme Court of South Australia as a Barrister & Solicitor.

Note: Mr Shopov's comments included in this report are his own.