

The Right Honourable Stephen Harper
Prime Minister of Canada
Langevin Block
Ottawa, Ontario
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The Honourable Michael Fortier
Minister of International Trade
Foreign Affairs and International Trade Canada
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
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September 9, 2008

Dear Prime Minister and Minister Fortier:

Re: Anti-Counterfeiting Trade Agreement (ACTA)

Thank you for your response (August 21, 2008 letter from the Hon. Minister Michael Fortier) to our letter of June 10, 2008 regarding the ACTA initiative. We write to express our deep concern that the rights and freedoms of individual Canadians will be injured by the ACTA initiative. We ask that you move strongly to protect those and to assure Canadians that your government is committed to that course. On April 17, 2007 in the House of Commons you stated:

“Mr. Speaker, this government believes that instead of paying lawyers, we must act to protect citizens’ rights. This government and those that preceded it supported the Charter of Rights and Freedoms. All parties in this House supported it. Today, we continue to support it. This party has a proud history of human rights protection, not just with the Charter, but beginning of course with the first legislative act: the Bill of Rights of Mr. Diefenbaker in 1960. It is an important legacy that this party defends.”

The proposed ACTA initiative appears to us likely to lead to more litigation and less clarity about the rights of ordinary Canadians. It appears that the rights of individuals will get trampled in the process. The response from Minister Fortier has not allayed those concerns. We want assurances that basic freedoms of Canadians will be protected, not that years of litigation over new legislation under the ACTA initiative complies with the *Charter* or not.

In the response provided to us, Minister Fortier says:

“... the proposed ACTA would focus on three main elements: increased international cooperation, better enforcement practices and enhanced legal frameworks. It aims to deal with commercial scale counterfeiting and piracy activities, which can often involve organized crime. The intent of ACTA is not to target goods of a non-commercial nature that travellers may be carrying with them.”

We have seen nothing that would provide comfort that the legislative proposals and the administrative protocols concerning enforcement will be as limited as this sentence indicates. Bland references to “border measures, civil enforcement... internet distribution and information technology” as being part of what the “Fact Sheet” the government website says may be impacted by ACTA heighten, rather than allay concerns.

We appreciate that the Ministry of International Trade may be the lead Ministry on this file, however it would appear that many of our concerns are outside the purview of this Ministry. While it is understandable that the Ministry’s focus is on promoting economic growth and attracting investment, our letter deals exclusively with the issues of citizens’ constitutional rights and of governmental accountability and transparency – matters which are not really addressed by the letter we received from the Ministry of International Trade.

We are gravely concerned that an agreement that may involve a mandate for invasive and sweeping police search practices appears to be being introduced by stealth under the rubric of a “trade” agreement. While your letter assures us that the government is committed to transparency and consultations with the public, Canadians are nevertheless almost entirely in the dark as to the actual substance of the agreement that is being negotiated and want public assurances from the government that the commitment to protect individual rights to privacy, security of the person and rights to free expression will be protected.

The announcement in 2007 that the Government was involved in preliminary discussions on ACTA does not inform the public of the issue and of the serious impact that the proposals would have on basic rights. Similarly, citizens can have no understanding of the scope and import of this initiative on the basis of the information that you described as the “key elements of the proposal” on which the views of the public were sought last spring. The “Fact Sheet” published about ACTA was so vague as to be effectively meaningless. For example, as we touched on earlier, here what it said about the impact of the proposed agreement on citizens’ rights: “Areas for possible provisions include: criminal enforcement; border measures; civil enforcement; optical disc piracy; and internet distribution and information technology”. What possible basis does this single sentence afford the public for “seeking views”? Nothing of substance about what ACTA means in real terms to Canadians is disclosed. It might as well have been published on a back page in the Canada Gazette for the

utility of public information and publicity it contained. In order to learn about what our own government is negotiating, citizens have been reduced to looking to Wikipedia for access to relevant documents.

We are concerned that this represents a failure to be transparent and accountable in the process thus far. Further, we question the utility of future public consultations given that it appears that significant portions of the agreement are apt to have been negotiated in secret before the public is “consulted” as to its views.

Where, as here, citizens’ constitutional rights are at issue, the mere statement that a problem is of a purportedly “global nature” is insufficient to justify effectively circumventing democratic process in favour of secret international negotiations. We call on the government publicly to commit to protect citizens’ rights, to provide a full, detailed and accurate description of what is being negotiated in the ACTA initiative and to ensure that there is a meaningful process of consultation that is timely enough to be relevant to Canada’s participation at the negotiations.

Further, we call upon the government to provide assurances that there will be no participation by Canada in an agreement that does not explicitly recognize Charter rights and values in an appropriately worded preamble to any bill that is presented. We are not comforted by the comments in your letter indicating that the “target” of ACTA is large-scale commercial traffickers in pirated copyright materials. Such assurances frequently rest on the notion that prosecutorial and regulatory discretion as to enforcement is sufficient to safeguard rights. It is not. The little that you have revealed about this issue does not make us confident that citizens’ rights are being adequately accounted for in this process. And the great deal that is unknown inspires even deeper concerns.

All of which is in your power to remedy very expediently. And we respectfully ask that you do so.

Yours truly,

A handwritten signature in cursive script, appearing to read "R. Holmes".

Robert D. Holmes
President

cc. Honourable Stephane Dion, Leader of the Opposition
Honourable Jack Layton, MP
M. Gilles Duceppe, MP

