THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

March 6, 2012

The Honorable Ron Wyden
223 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your letter, dated January 5, 2012, regarding the Anti-Counterfeiting Trade Agreement (ACTA). As Ambassador Kirk has stated, the ACTA represents a crucial advance in the international fight against counterfeiting and piracy. It will support and promote American jobs in our innovative and creative industries by helping to protect them against the global proliferation of intellectual property theft in a manner fully consistent with the principles of freedom of expression and access to information in the digital environment. I welcome the opportunity to respond to your further questions regarding the Agreement.

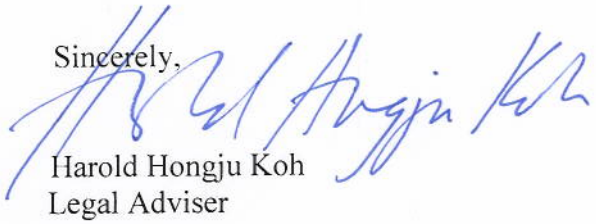
Under international law, the ACTA is a legally binding international agreement. By its terms, the ACTA enters into force when at least six parties have deposited instruments indicating their consent to be bound. Accordingly, once in force for the United States, the ACTA will impose obligations on the United States that are governed by international law. As in the case of other international agreements, it is possible that Congress could enact subsequent changes in U.S. law that are inconsistent with U.S. international obligations. If Congress were to enact a law that put the United States in breach of its ACTA obligations, the United States could, of course, seek to convince the other parties that the ACTA should be amended to make it consistent with the change in U.S. law. Alternatively, the United States could withdraw from the ACTA, in accordance with its provisions. Obviously, this answer is a general one; the precise ramifications of any subsequent legislation would depend on a careful analysis of that legislation, related laws, and the ACTA provisions implicated.

I share Ambassador Kirk's view that the Administration is currently in a position to accept the ACTA for the United States. As reflected in his letter, the United States would be relying on existing U.S. intellectual property law for implementation of the ACTA, including the Copyright Act of 1976, the Lanham Act, the Digital Millennium Copyright Act, and other statutes. Pursuant to these laws, the United States would be in a position to fulfill all of the obligations that it would undertake as a party to the ACTA, such as providing civil remedies, border enforcement mechanisms, and criminal penalties for certain intellectual property offenses. The ACTA was negotiated in response to express Congressional calls for international cooperation to enhance enforcement of intellectual property rights. Congress has passed legislation explicitly calling for the Executive Branch to work with other countries to enhance enforcement of intellectual property rights. For example, the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. No. 110-403, codified at 15 U.S.C. 8113(a), calls for the Executive Branch to develop and implement a plan aimed at "eliminating…

international counterfeiting and infringement networks" and to "work[] with other countries to establish international standards and policies for the effective protection and enforcement of intellectual property rights." The ACTA helps to answer that legislative call. As also pointed out by Ambassador Kirk, the ACTA is part of a long line of trade agreements that were similarly concluded by successive Administrations.

I hope you find this response helpful, and I thank you for your continued interest in the ACTA.

Sincerely,



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