

# Kluwer Copyright Blog

## Murder they wrote – the Dutch kill ACTA

Ana Ramalho (Maastricht University) · Wednesday, May 30th, 2012



As readers of this blog might recall, the Anti-Counterfeiting Trade Agreement (ACTA) has spurred fierce criticisms across Europe. Probably as a consequence of that, the EU has suspended the ratification process and, last 4th of April, the College of Commissioners has agreed on the wording of a question to refer to the Court of Justice of the European Union (CJEU): “Is ACTA compatible with the European Treaties, in particular with the Charter of Fundamental Rights of the European Union?”.

The Dutch decided not to wait for any European move and struck ACTA down. On the 29th of May, the Dutch Parliament approved three resolutions that oppose ACTA or any future similar agreement (a translated version of the three resolutions can be found on the website of [Bits of Freedom](#)).

In short, the two first resolutions draw the Government’s attention to the risks that ACTA carries for individual rights and freedoms, which outweigh any potential benefits of the agreement. The third resolution is more general and condemns ACTA–type of agreements. As a consequence, the Parliamentarians urge the Government not to sign ACTA or any other future agreement that resembles it, while calling for a new direction of copyright policies. According to the third resolution, copyright policy should aim at fostering economic growth through, for example, new Internet business models for legal content.

The relevance of the Dutch move is tremendous for several reasons. ACTA is a mixed agreement – i.e., an agreement falling under the competence of both the EU and the Member States. Its mixed nature is mainly attributed to the fact that ACTA contains criminal provisions, which would be part of Member States’ competence. So, in theory, we could try to precisely divide the powers between the EU and its Member States on this matter. Could this mean that the Dutch veto would flunk ACTA’s criminal enforcement measures but not the remainder of ACTA that falls under EU competence? This is very unlikely. The CJEU has discouraged such practices, while emphasizing the duty of close cooperation between the EU and the Member States (see, e.g., Ruling 1/78 or Opinion 1/94). In practical terms, the Dutch “no” could then endanger the entire agreement.

Also very telling is the Parliament’s warning regarding future agreements of this kind. There is undoubtedly an enforcement trend worldwide. As the ACTAs of today get splashed, other agreements are probably emerging tomorrow. What the Dutch are saying is “don’t even go down that road ‘cause we’re on to you.” And they top that with a sound piece of advice: focus more on

coming up with new business models and less on enforcing outdated ones.

Last but not least, the resolutions adopted by the Dutch Parliament pave the political way for the European Parliament to say “no” to ACTA. The Dutch just made the “yes” road a bit narrower, or at least rockier. To be continued.

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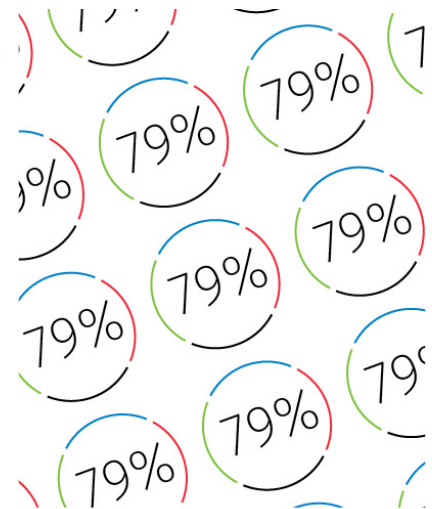
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