



Canadian Association  
of Research Libraries

Association des bibliothèques  
de recherche du Canada

The Honourable Peter Van Loan, P.C., M.P.  
Minister of International Trade  
Foreign Affairs and International Trade Canada  
125 Sussex Drive  
Ottawa, ON K1A 0G2

February 5, 2010

Dear Minister:

**Re: Anti-Counterfeiting Trade Agreement (ACTA)**

On behalf of the Canadian Association of Research Libraries, I would like to congratulate you on your recent appointment as Minister of International Trade and offer our best wishes for your success and personal satisfaction in the role. Insofar as the interests of research libraries and international trade may occasionally intersect, CARL looks forward to working with you and your new Department.

In this letter, I would also like to note some concerns that CARL has about the Anti-Counterfeiting Trade Agreement (ACTA) that is currently being negotiated by your Department. I would like to note clearly that we do not take issue with the idea that the trade in counterfeit goods needs to be controlled and we are opposed to piracy of copyrighted works over the Internet. We are concerned, however, about the lack of transparency in the ACTA negotiating process and about some of the content of this emerging agreement, especially its provisions relating to digital copyright and the Internet, such as these have been reported in the media. We are concerned that some of the ACTA provisions may lead to an altering of the necessary balance in Canadian copyright law, as described by the Supreme Court of Canada in the 2004 CCH decision, between the public interest in the dissemination of artistic and intellectual works and the creator interest in obtaining a just reward.

ACTA has been negotiated to this point with little substantive information being made publicly available and without the scrutiny of Parliament. While some international agreements may well need to be negotiated in secret for serious security reasons, it is hard to understand the need for such secrecy in an agreement that simply seeks to control the movement of counterfeit goods and piracy of intellectual property. From what has been reported in the media (correctly or not) about the emerging agreement, we believe there may be strong reasons for public concern and open discussion among Canadians of the terms of an agreement that may directly affect the everyday activities of average Canadians. We urge the government to adopt greater transparency about ACTA and to consult publicly and in detail on its proposed content.

**CARL requests that the negotiating documents relating to ACTA be released by the Canadian government so that parliamentarians, community stakeholders, and Canadian consumers at large can know about and comment on matters in the Agreement that will directly affect many Canadians.**

Libraries have specific concerns about some of the reported provisions in ACTA that would affect the enforcement of intellectual property rights in the digital realm. Libraries are respectful of copyright and agree that creators need to be compensated for their work. However, CARL believes that this will be best accomplished in the context of a made-in-Canada copyright enforcement regime as may be set out in an updating of the *Copyright Act*. We believe that it is unwise for the government to compromise its ability to create its own legislation for the protection of intellectual property; ACTA would likely severely limit the government's range of options for updating Canada's copyright law.



According to reported information, ACTA would compel signatory countries to adopt measures that we believe would be excessively restrictive. For example:

- Media have reported that ACTA would include a “notice-and-take-down” regime to deal with allegedly-infringing web materials; we believe that this would interfere with web users’ ability to share non-infringing content critical to the Canadian research library community’s educational and cultural missions. The “notice-and-notice” regime has proven to be effective and is much fairer to Internet Service Providers (ISP’s) and their subscribers. We believe that a decision on the legality of an individual’s posting of copyrighted materials to the Internet should be made by a court of law, not by an ISP or an alleged copyright holder.
- We have heard too that ACTA would impose a “three strikes” requirement on ISP’s such that a user must be deprived of Internet access if he or she has been identified as having shared copyrighted content illegally; we argue that the penalties already available in Canadian law are sufficient to address such infringement and that the blunt instrument of “three strikes” risks causing innocent family members, fellow students, and other groups excessive inconvenience in a day when shared Internet access and collaborative work is crucial for education, employment, and public engagement.
- We have also heard that ACTA would require the penalizing of the circumvention of digital locks (technological protection measures); we believe that penalties should apply only for circumvention for the purpose of copyright infringement, not for using materials in ways that are legal in themselves.

**The Canadian government has just concluded a thorough consultation with Canadians in preparation for introducing its own new copyright legislation. There are already well-established and more-fully international vehicles for discussing copyright legislation and enforcement (WIPO and WTO). Therefore, and in light of the above, CARL requests that the government refrain from signing an agreement containing the Internet-specific provisions of ACTA.**

I would very much appreciate the opportunity to speak in person regarding CARL’s concerns about ACTA with you at a time of your convenience. I thank you very much for your kind consideration of the Canadian research library community’s concerns and requests as noted above as well as my request to speak with you about them.

Yours truly,

Ernie Ingles, FRSC, President, CARL; Vice-Provost and Chief Librarian, University of Alberta

Cc: The Honourable Lawrence Cannon, P.C., M.P., Minister of Foreign Affairs  
The Honourable Tony Clement, P.C., M.P., Minister of Industry  
The Honourable James Moore, P.C., M.P., Minister of Canadian Heritage and Official Languages

CARL—the Canadian Association of Research Libraries—is the leadership organization for the Canadian research library community. The Association’s members are 31 major academic and national research libraries across Canada. CARL strives to enhance the capacity of member libraries to partner in research and higher education, and to seek effective and sustainable scholarly communication and public policy encouraging of research and broad access to scholarly information.