

Draft trade pact more palatable to tech companies

October 7 2010, By JOELLE TESSLER , AP Technology Writer

(AP) -- For three years, technology and telecommunications companies have watched nervously from the sidelines as the United States and nearly a dozen trading partners have negotiated a trade agreement that critics feared could undermine all sorts of online activities.

But on Wednesday, the U.S. Trade Representative released the latest draft of the Anti-Counterfeiting Trade Agreement, or ACTA. And several proposals that had the high-tech sector most worried - including language that some expected to hold Internet service providers and other technology companies responsible for [copyright infringement](#) by their users - are missing.

In their place are broader, more flexible provisions that expose tech companies to less legal risk and are likely to be more palatable to the industry.

The Bush administration began negotiating ACTA in the fall of 2007 in an effort to harmonize intellectual property protections across different nations. The far-reaching agreement would encompass everything from counterfeit pharmaceuticals to fake Prada bags to online piracy of music and movies.

From the start, ACTA has been mired in controversy and encountered significant opposition both inside the U.S. and beyond, particularly in Europe. A number of academics, companies and public interest groups have painted the agreement as an attempt by the U.S. government to

export harsh anti-counterfeiting rules, based in large part on existing U.S. law, to other countries with very different standards for protecting intellectual property - all under the guise of a trade agreement.

What's more, with 10 rounds of negotiations held behind closed doors, critics complain that there has been little opportunity for public comment or outside input. "This was presented as take it or leave it," said Sherwin Siy, deputy legal director for Public Knowledge.

Still, it appears that "public backlash, corporate backlash and political backlash" have helped produce a "watered-down version of ACTA ... that I suspect many Internet and [telecommunications companies](#) can live with," said Michael Geist, a law professor at the University of Ottawa who specializes in Internet and electronic commerce issues.

The industry was particularly concerned that ACTA would include so-called "secondary liability" language that would require Internet companies to cut off access to users who violate copyright protections online and possibly even hold the companies themselves liable for violations. This could have far-reaching implications for big Internet service providers such as AT&T Inc. and Verizon Communications Inc. and popular online platforms such as Facebook and Google Inc.'s YouTube.

But the ACTA draft released Wednesday is far less specific and simply commits countries that sign the agreement to "take effective action against an act of intellectual property rights infringement which takes place in the digital environment."

The tech industry was also worried that ACTA would mandate overly harsh measures to punish people who circumvent digital locks protecting copyrighted material. But the draft released Wednesday gives countries flexibility to allow exceptions to those rules - for instance, permitting

consumers to break digital locks to make use of copyright-protected material for commentary, criticism, research and teaching.

Even with these issues off the table, however, technology companies and public interest groups are still wary of ACTA. For one thing, the latest draft opens the door to expanding the scope of the agreement beyond just copyright protections to encompass trademarks and possibly even patents and other types of [intellectual property](#) - all of which are governed by different laws in the U.S.

"The language has been improved, but there is still a lot that is unclear," said Matthew Schruers, senior counsel for litigation and legislative affairs at the Computer & Communications Industry Association.

Jeremie Zimmermann, a spokesman for La Quadrature du Net, a public interest group based in Paris, also remains concerned about a provision in the latest draft that would promote cooperation between Internet service providers and copyright holders to crack down on infringement. "This kind of private police and private justice of the Net is very dangerous," he said.

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