

T S Vishwanath: ACTA as the villain

The Anti-Counterfeiting Trade Agreement is finding more detractors than supporters
T S Vishwanath / May 10, 2012, 0:55 IST

The plurilateral Anti-Counterfeiting Trade Agreement (ACTA) that has been mired in controversy since its signing in 2010 faces another roadblock with one of its members, the European Union, likely to reject the Agreement.

The rapporteur in the European Parliament for ACTA, David Martin, has in his report asked the Parliament to reject the accord owing to its possible impact on civil liberties. Mr Martin had taken over as the rapporteur earlier this year after his predecessor Kader Arif resigned, saying he was disillusioned following several loud protests in the EU, especially Poland, against ACTA.

Mr Martin has now suggested that the European Commission should look for alternative solutions to protect the EU's intellectual property. The agreement was concluded in 2010 between the European Union, Australia, Canada, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the US.

Signatory countries are in the process of ratifying the agreement, which in the European Union requires ratification by the member states and consent from the European Parliament before the agreement can come into force.

The rapporteur in his report to the International Trade Committee of the EU Parliament has said that the "unintended consequences of the ACTA text is a serious concern". He has also raised doubts on some of the areas covered in the agreement including individual criminalisation, the definition of "commercial-scale", the role of Internet service providers and the possible interruption of the transit of generic medicines, stating that the text was not precise.

He is of the view that the intended benefits of this international agreement "are far outweighed by the potential threats to civil liberties". He concludes his report by stating that "given the vagueness of certain aspects of the text and the uncertainty over its interpretation, the European Parliament cannot guarantee adequate protection for citizens' rights in the future under ACTA."

The agreement has been under fire from activists across the globe since the time the negotiations began. The main contention had been that the deliberations had not been transparent.

The agreement had also been a topic of discussion at the World Trade Organisation where the developed and developing countries had sparred over what was referred to as the TRIPS-plus obligations that this agreement had introduced. Some of the developing countries like Brazil and China had reportedly described the agreement as being narrow and repressive.

India had also not favoured the ACTA. The main area of concern for Indian companies in the pharmaceutical sector had been the provision in the agreement to set up procedures for IPR rights-holders to petition customs authorities to seize suspected goods in transit between third countries. This clause has been controversial for Indian companies since the seizures of Indian medicines in the Netherlands on their way to Brazil stating that they do not meet the EU's IPR requirements.

Indian industry has pointed out that there are several TRIPS-plus obligations in the ACTA. It was feared that if EU ratifies the agreement then it would like India

to be party to it as part of the on-going India-EU bilateral trade and investment agreement (BITA) . However, with the EU now likely to reject the agreement due to internal opposition the inclusion of these provisions in the India-EU bilateral agreement have been removed.

What is important is to now understand how the other countries will react to the EU decision. Reports indicate that there is a possibility of another treaty in the works to replace the ACTA. If so, then it would be important for the countries to ensure that the future deliberations remain transparent and the existing agreement is not transformed into a new document. There have been some significant issues raised against the ACTA and it will be important for member countries to look into those suggestions before a new agreement is formulated.

Protection of intellectual property has to remain an important objective for countries across the globe. However, the policy for protection of IPR must address the concerns of the larger population.

The writer is Principal Adviser APJ-SLG Law Offices