

Patents, Standards and Remedies

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KEI Side event on Patents, Standards and Remedies
for Infringement

WIPO SCP 14

Open Standards

I will discuss from the handout, one of the proposals presented in Part 6 of a 2005 draft of a broader treaty on access to knowledge

The proposal on disclosure of standards should be considered without prejudice to views on the broader A2K treaty proposal, which is a more ambitious document.

[See attached file, [part6a2k2005draft.pdf](#)]

Important ACTA provisions on remedies to infringement

ACTA would change TRIPS norms on injunctions

TRIPS Article 44: Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.
2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

The following text is from one draft of ACTA:

Article 2.7: Injunctions

Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. The Parties shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

ACTA draft text on damages*

Such measures [Option J: shall][Option US: may] include the presumption that the amount of damages is (i) the quantity of the goods infringing the right holder's intellectual property right and actually assigned to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act of infringement or (ii) a reasonable royalty or (iii) a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorization to use the intellectual property right in question.

** This is one selection of text from one of the ACTA negotiating documents disclosed on wikileaks.*