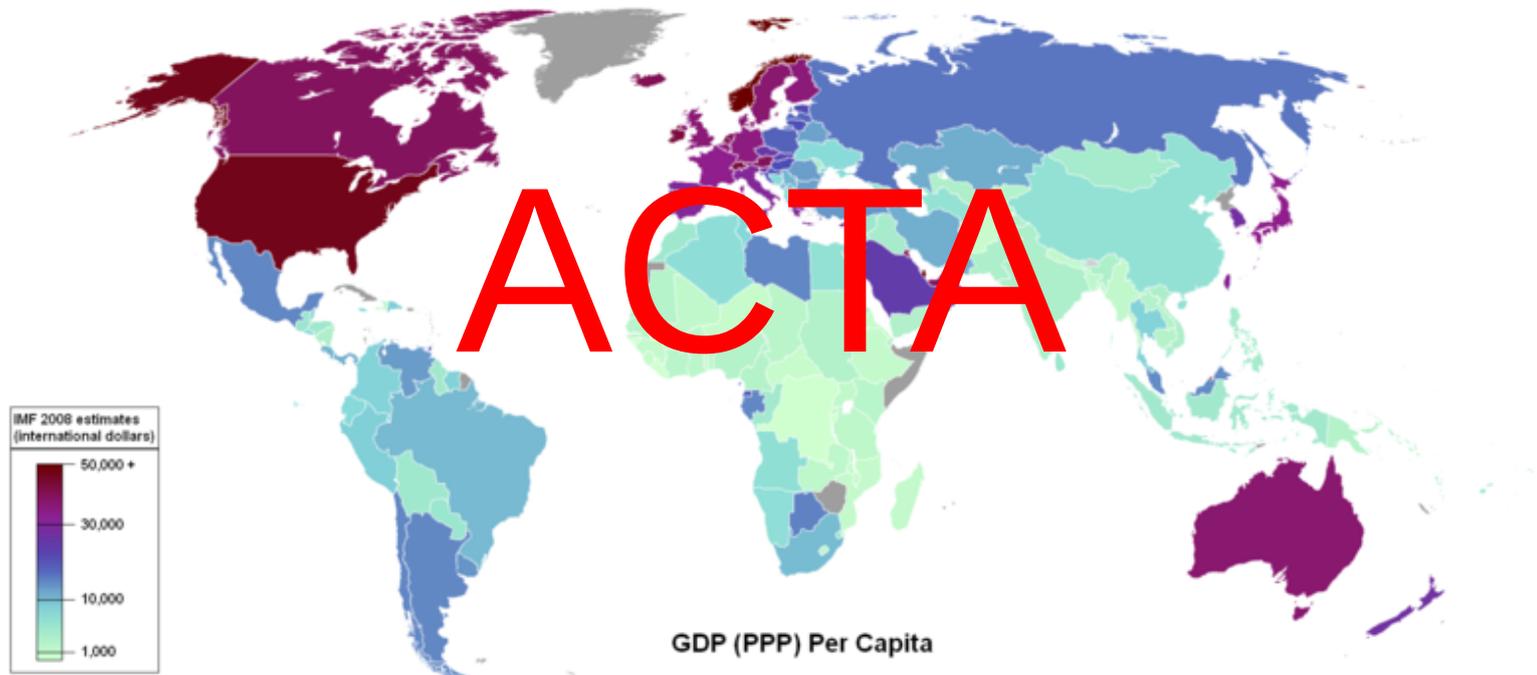


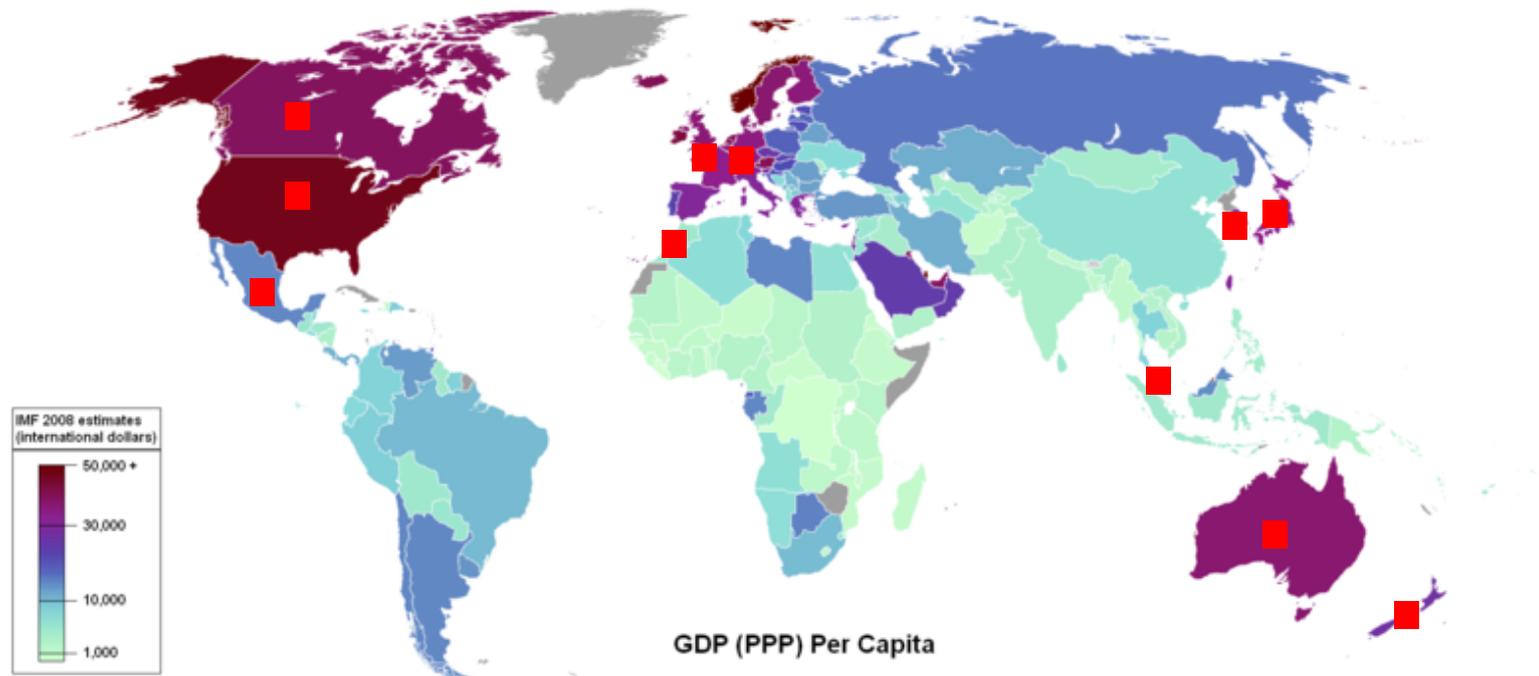
# Anti-Counterfeiting Trade Agreement



**New legislation for billions of people,  
made behind closed doors**

Ante Wessels, FFII, Vrijschrift  
Eth0, August 2010

# Anti-Counterfeiting Trade Agreement



- United States, European Union, Japan, Australia, Canada, Mexico, Morocco, New Zealand, Republic of Korea, Singapore, Switzerland
- ~ billion people

# Anti-Counterfeiting Trade Agreement

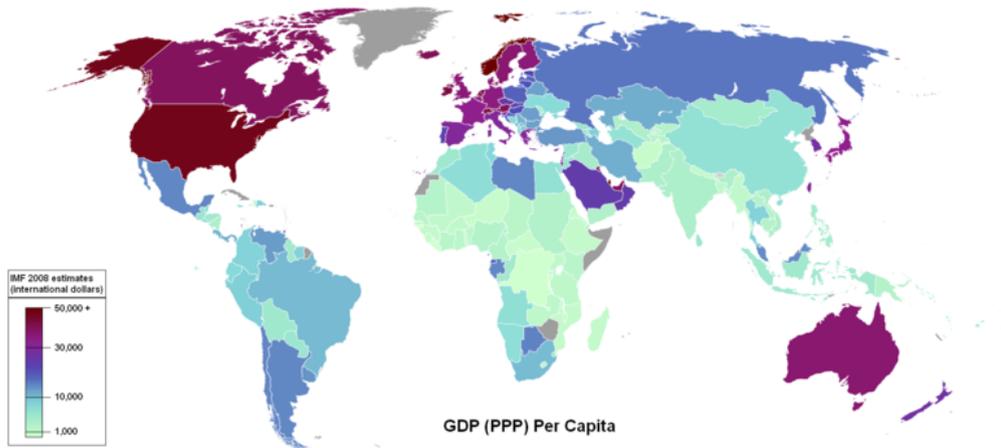


- US: ACTA is State secret
- Executive Agreement,
- Congress not involved

- announced 23 October 2007
- behind closed doors
- after much pressure:
- April 2010 text released
- new round of negotiations:  
no text
- compare WTO, WIPO
- EU: Council will decide,  
European Parliament veto,  
member states veto on  
criminal measures

# Anti-Counterfeiting Trade Agreement

***not only trade mark  
counterfeiting***

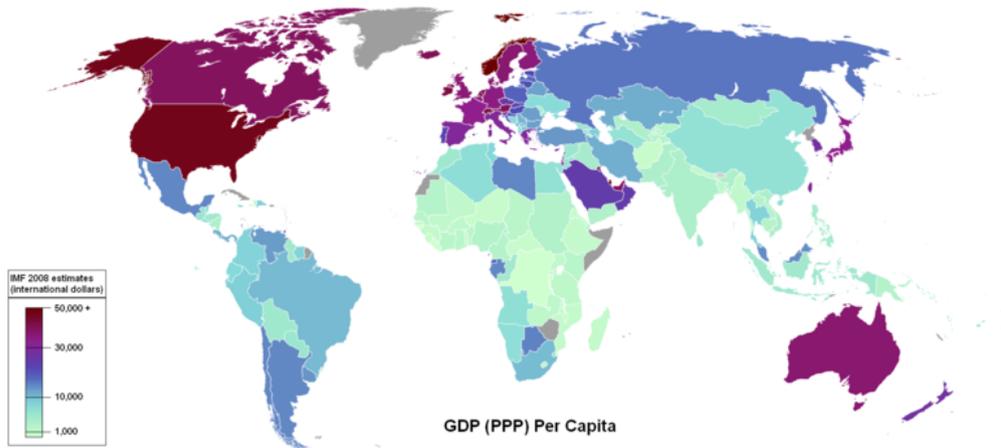


***not only fake  
Gucci handbags***

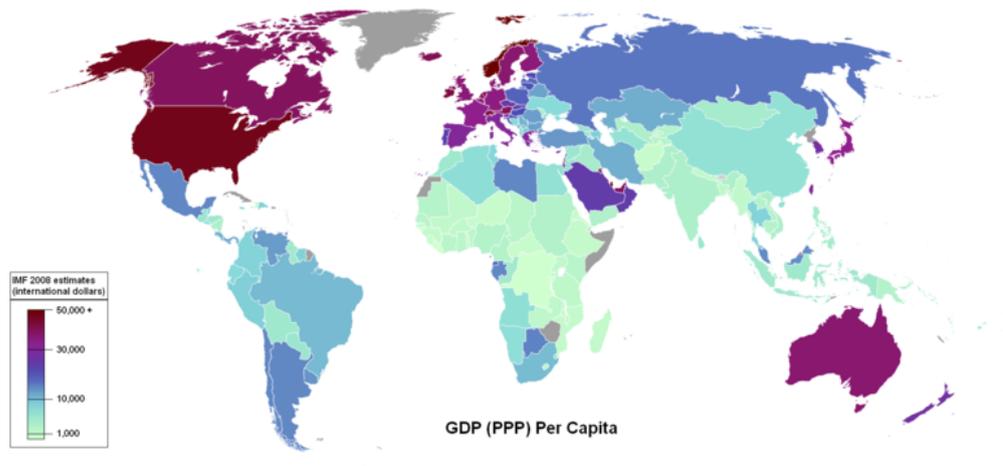
- new rules for the enforcement of
- Copyright and Related Rights
- Trademarks
- Geographical Indications
- Industrial Designs
- Patents
- Layout-Designs (Topographies) of Integrated Circuits
- Protection of Undisclosed Information

# Anti-Counterfeiting Trade Agreement

- threatens Internet freedom,
- access to medicine,
- fundamental rights and liberties,
- the right to a fair legal process



# ACTA: new institution

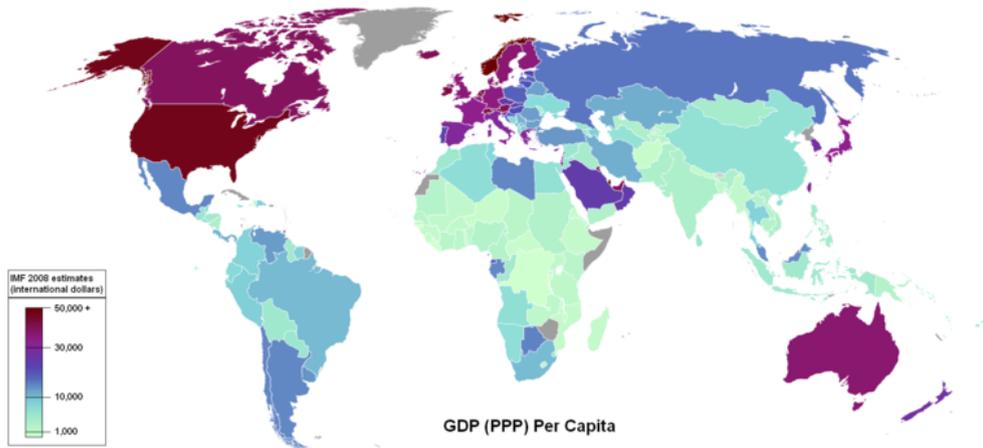


***New institution***

- not transparent
- not accountable to non-Parties and public interest organizations
- may push for ever-higher levels of intellectual property protection and enforcement
- without adequate safeguards and evidence-based policy making
- undermines WTO, WIPO

# Trade mark counterfeiting

## *Counterfeiting*

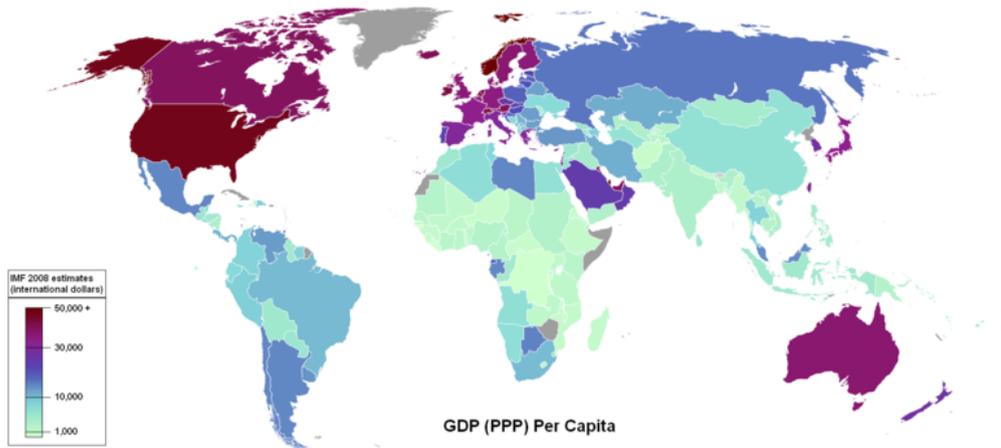


- protected trademark on same type of goods
- Gucci label on handbags
- fake medicine
- criminal organization

*may justify destruction of production facilities*

# ACTA: other trade mark infringements

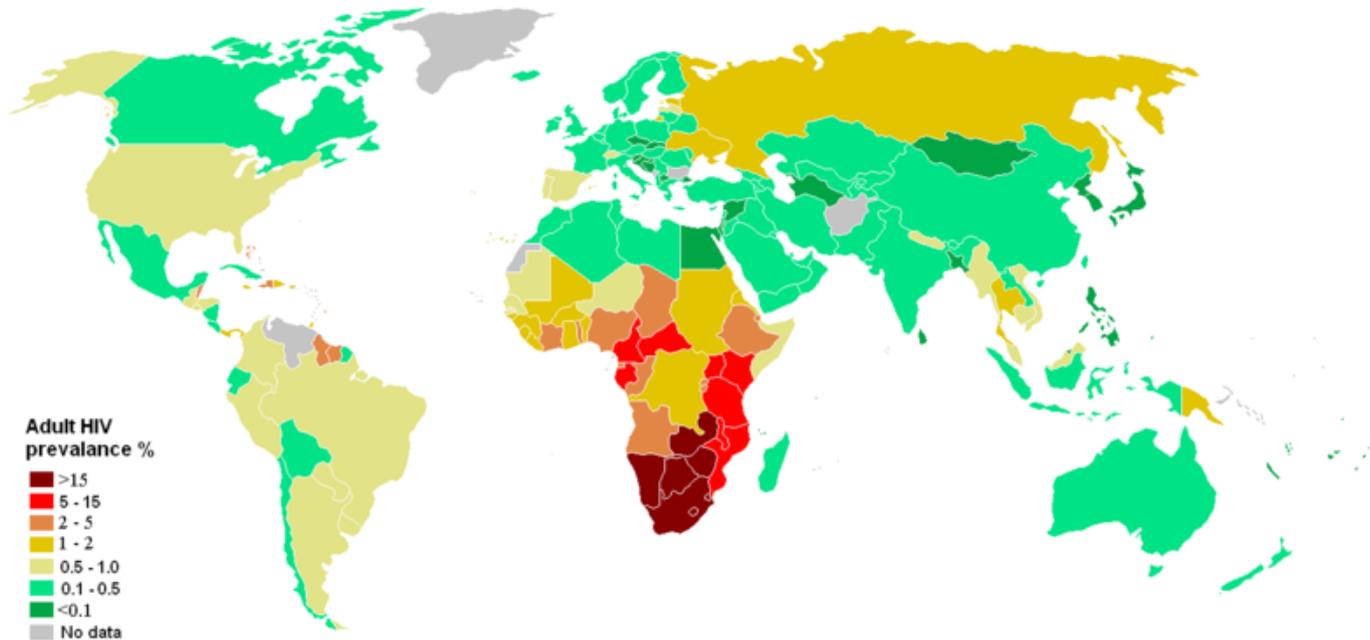
- Apple records versus Apple Computer
- protected trademark not used
- no counterfeiting
- confusion?
- trade mark infringement



***destroy Apple Computer's production facilities ?***

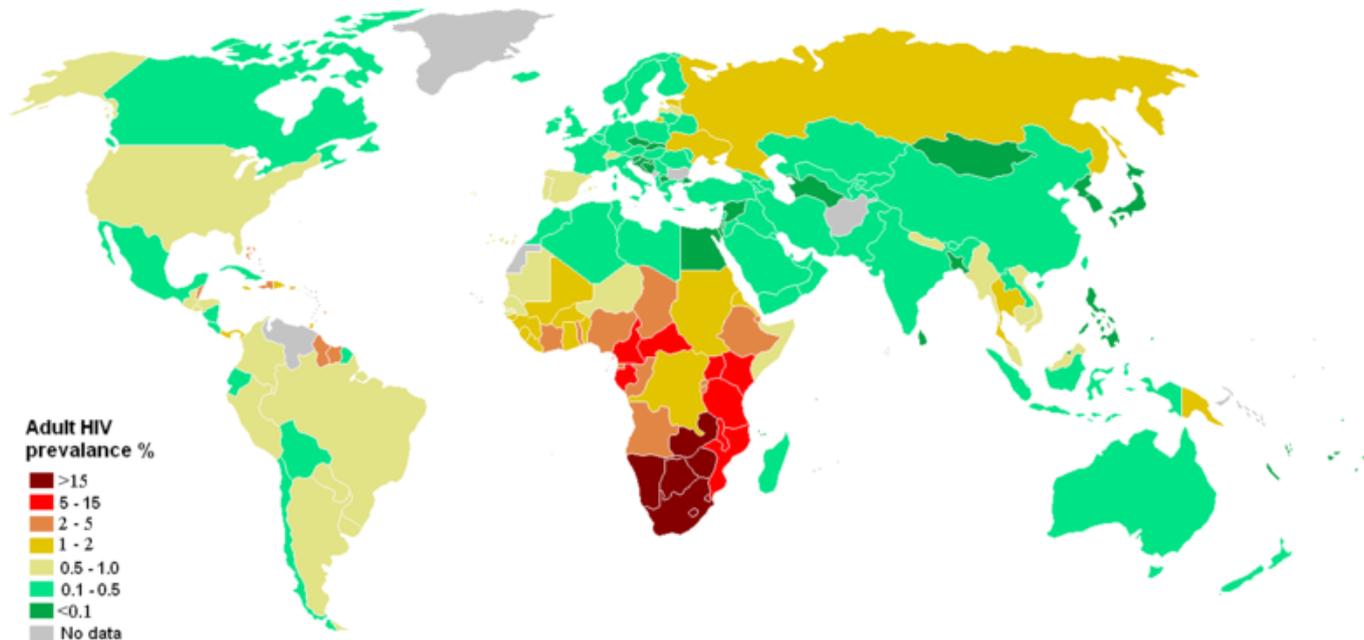
**basic pattern: extreme measures for normal infringements**

# Patents - AIDS



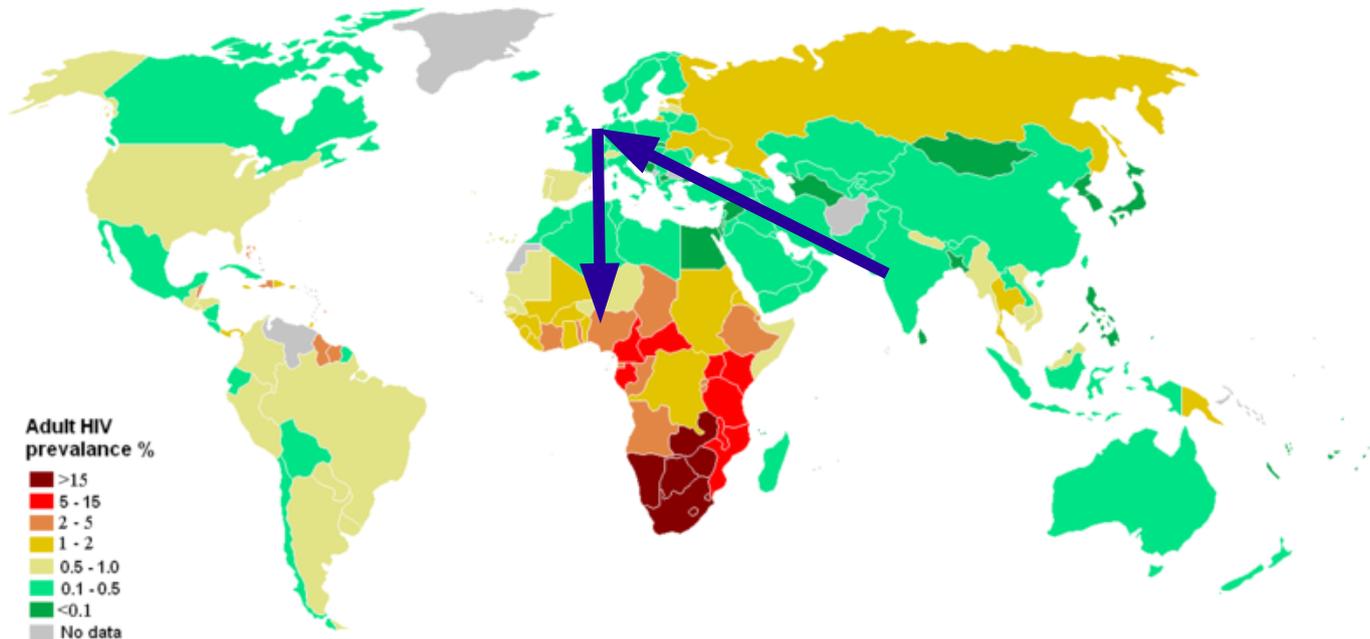
- took millions of lives in Africa, 90ties
- medicine prices higher than in the US
- because of TRIPS, countries could not abolish patent system
- (NL abolished patents 1869 until 1912)

# South Africa



- 1997, Mandela signs law to ensure affordable medicines
- U.S. prepares trade sanctions, 41 companies sue Mandela
- public outrage
- WTO Doha Declaration on TRIPS and Public Health, 2001
- pharma: minimize Doha, label generic medicine as counterfeit

# Dutch seizures of essential medicine



- 2008, 2009, NL seized essential generic medicine (f.i. AIDS), in transit
- not patented in India, not patented in developing countries, not enter EU markets - violation Doha Declaration
- EU Customs regulation: *in transit* – WTO case

# Software development



- full of ideas
- full of patents
- legal minefield
- infringement unavoidable
- ignore software patents to some extent

# Patent trolls



- broad claims on trivial methods
- infringement is unavoidable
- extort entrepreneurs
- ***damages based on retail price***
- ***injunctions without exception***
- ***destruction of production facilities***

# Remove patents from ACTA



- access to medicine
- spread of green technology
- spread of food technology
- software development

*remove patents*

# ACTA: Criminal Measures

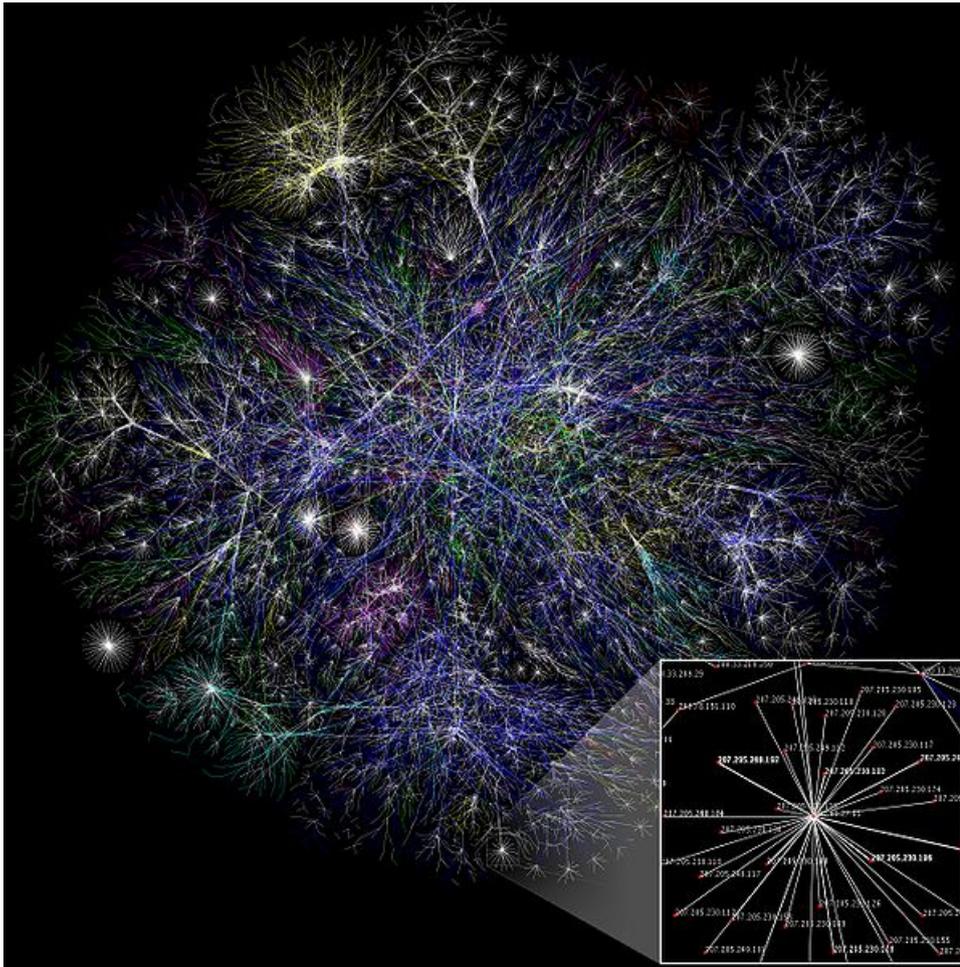
- Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale.
- [EU: [J: For the purpose of this Agreement,] [US: Infringements] Acts [Can: of piracy] carried out on a commercial scale are [US/CH: include at least] those carried out in the context of commercial activity for **direct or indirect economic or commercial advantage**;
- [[US/J/CH: however a Party may exclude][EU: this excludes] such acts carried out by **end consumers**.][US: Each Party may treat acts carried out by end consumers as outside the scope of this Section.]

# ACTA: Criminal Measures



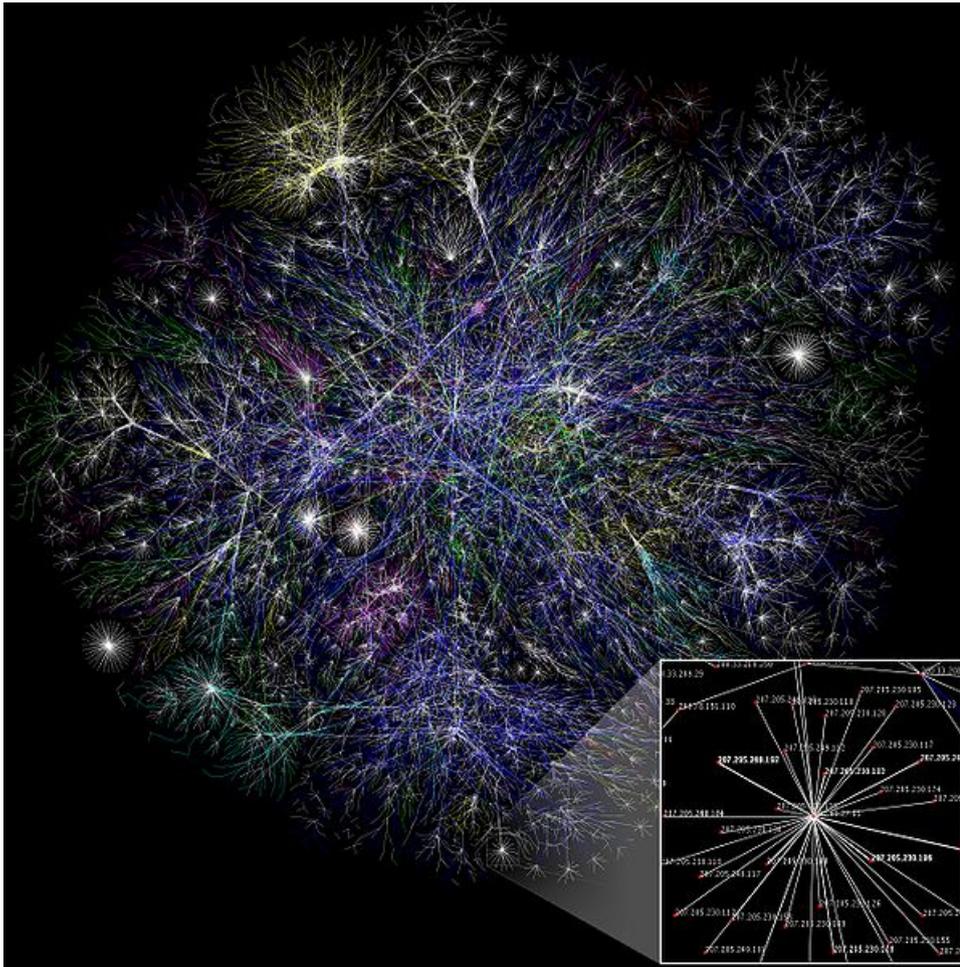
- **commercial advantage:** spending less money, downloading, advertisement on web page
- **end consumers:** not if you share a file
- newspaper, whistle blower, weblog author revealing a document
- office worker forwarding a document
- remixer, file sharer

# ACTA: Internet



- Internet providers responsible for the actions of subscribers
- act expeditiously on alleged infringements
- not only upon notice
- aware of facts and circumstances from which infringing activity is apparent

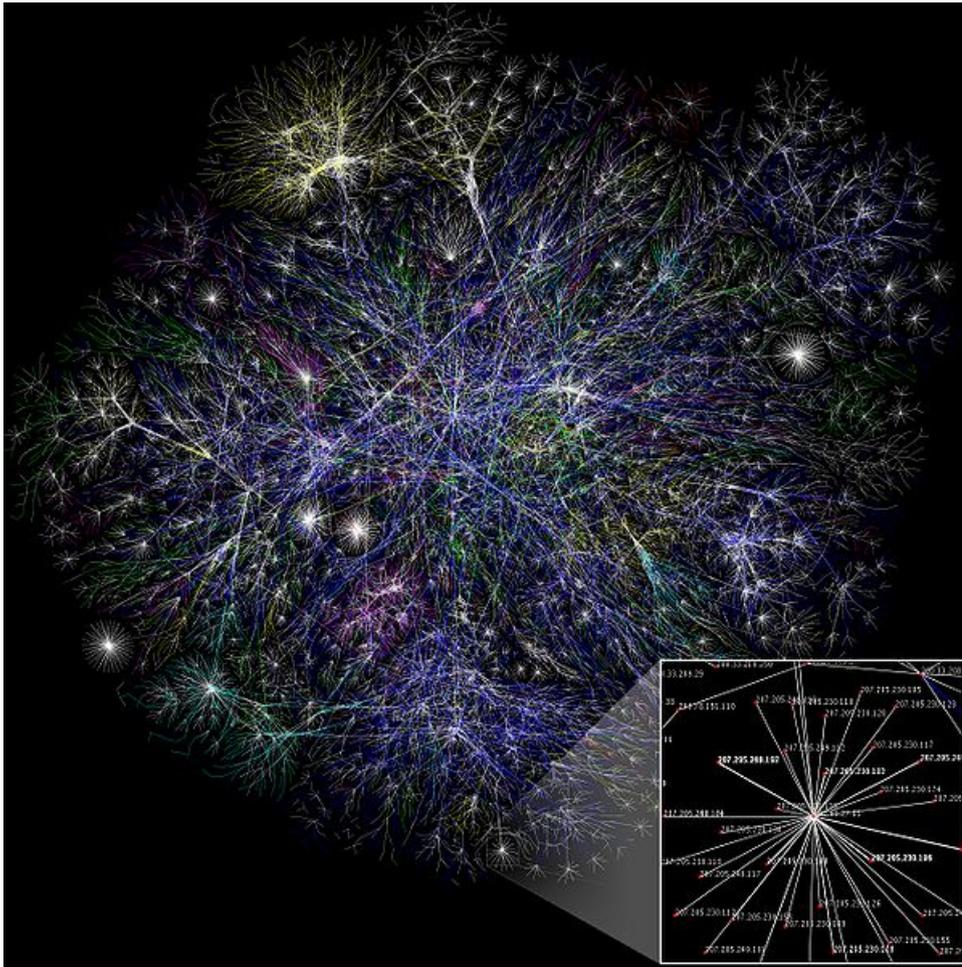
# ACTA: Internet



- ISP: police and judge
- no checks and balances, no procedural safeguards
- cost effective to give in to rights holders
- remove links to infringing material



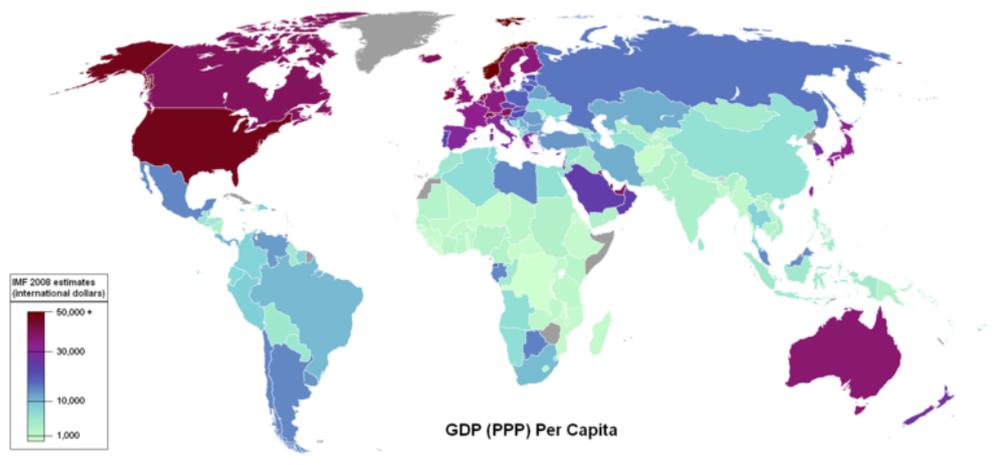
# ACTA: Internet



- vertical integration content industry and Internet providers
- will Hollywood define our freedom on the Internet?
- freeze broken, old-school measures on new developments?
- protect the right of access to the Internet
- fundamental discussion of copyright in the digital era

***Remove copyright***

# No evidence fighting counterfeiting is needed

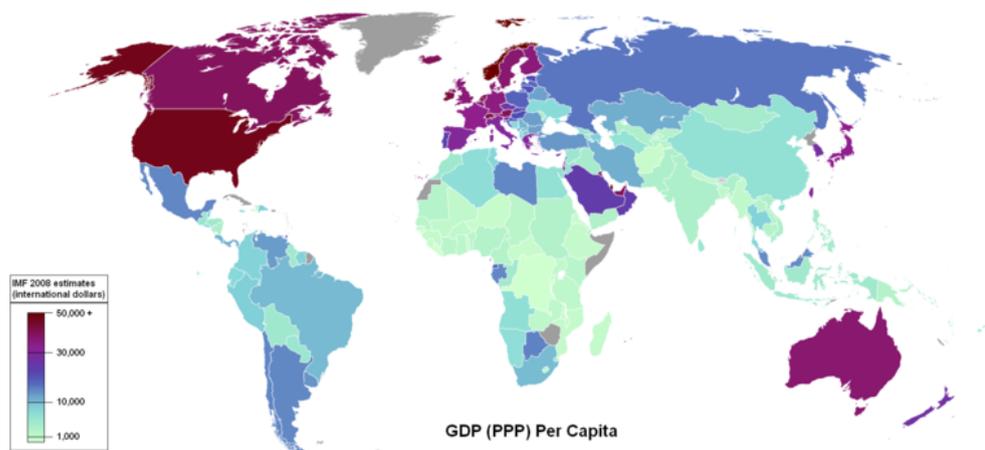


- GAO study suggests claims are massively overstated
- study: within two years, 46 percent of buyers of fake luxury apparel subsequently purchased the authentic version of the same product

# Prof. Annette Kur, MPI Munich:

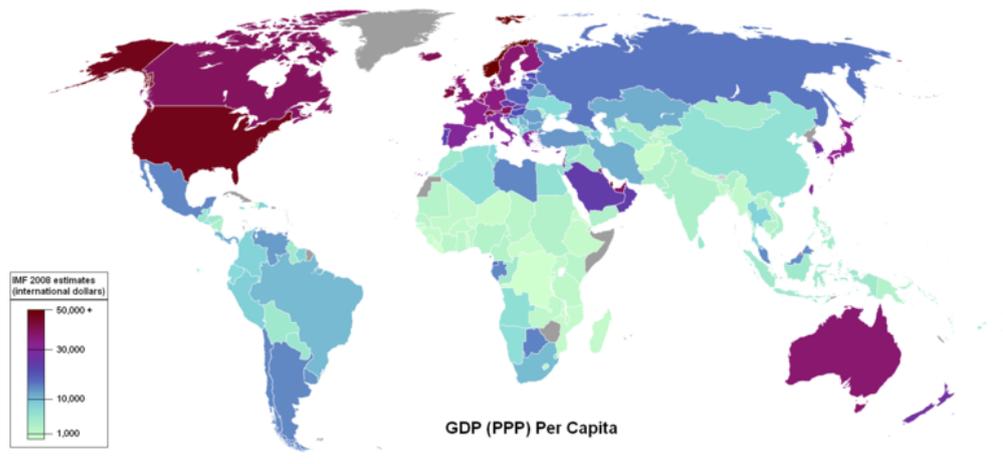
- “Lastly, some rather “incorrect“ thoughts...
- The modern plagues of counterfeiting and piracy did not come out of nowhere – to some extent, they are rooted in the development of IP protection itself
- The wider the gap becomes between production costs and the gains achieved by protected items, the more illegal copying it will attract...
- If rightholders are compensated for their losses by granting ever stronger rights, also the attraction will increase, and so on
- It is doubtful whether imposing (ever more) drastic sanctions is able to break the vicious circle – experiences in other areas tell a different, sad story”

# Fight dangerous products



- combat risks for public health is not primarily an IP issue
- resources are limited, especially in developing countries
- focus is needed
- fight dangerous products, whether IP rights are involved or not

# Stop ACTA negotiations



- wrong focus
- flawed process
- if not stopped:
- remove patents and copyright
- limit to product counterfeiting
- introduce TRIPS and WIPO safeguards in ACTA

Thank you!

ante@vrijnschrift.org

<http://wiki.vrijnschrift.org/acta>