



REPUBLIC OF POLAND
Human Rights Defender

Irena LIPOWICZ

BRPO-WM-081-10112

Warsaw, 8 February 2012

P. Nikiforos Diamandouros
The European Ombudsman

Dear Mr Diamandouros,

I would like to share with you some information about an issue which has recently triggered a heated public debate in Poland – both in traditional media and in the Internet, namely the Anti-Counterfeiting Trade Agreement (ACTA). Its most determined adversaries did not hesitate to appeal to the Internet users to take to the street, thus expressing their discontent with Polish Government having signed the Agreement. The demonstrations, organised in several Polish towns, attracted huge crowds of people, mostly young, protesting against this decision. An overwhelming public reaction, to which I also contributed, inspired the Government to undertake public consultations to find out what the stakeholders (Internet users) perceive as major threats for civil rights and freedoms resulting from Poland adopting ACTA. Polish Prime Minister then announced that Poland would suspend the ACTA ratification process until all the doubts have been cleared.

According to expert opinions, signing and ratifying ACTA may lead to changes in the legal systems of EU Member States, caused by a new international legal act, which may impose new obligations on both public and private entities. It may be assumed that after ACTA is ratified, a strong pressure may arise to introduce in individual signatory states the protection model advocated by the creators of ACTA.

Leaving aside the essence of copyright and other intellectual property rights protection, the question should be posed what impact would the ratification of ACTA have upon the future of protection of intellectual property rights in Europe, and on the correlated access of citizens to cultural assets. It seems inevitable that an instrument of international law, such as ACTA, may somewhat contribute to pertification of the system, at the same time limiting a possible debate on solutions that in the era of development of new technologies would ensure on one hand the widest possible access to cultural assets, and on the other hand, an adequate copyright protection. The need to find a balance between different values, goods and rights is the task for public authorities.

Major concerns in this area result from the provision which aims to involve private entities, i.e. network services providers, in prosecuting infringements of copyright, which can be achieved by securing personal details of users making such infringements and transmitting such details to collective copyright management organisations.

In the light of the facts and opinions presented above, I would appreciate your assessment of the possible threats to civil rights and freedoms of ACTA implementation. Your expertise and your view would be of great help and importance for me in developing the position on ACTA in my country. I would much appreciate to receive an answer from you preferably till 17 February 2012.

On my part, I declare that I am open and willing to share with you the information on how the situation in Poland develops, which – I assume – might be of interest to you, especially in view of the fact that the work on ACTA in the European Parliament is far from being finalised.

I would like to thank you in advance for your cooperation and avail myself of the opportunity to express to you the assurances of my highest consideration.

A handwritten signature in blue ink, appearing to read "Jacek Jędrzejowski". The signature is written in a cursive style with a large, sweeping initial 'J'.