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October 2, 2008

The Honorable Susan C. Schwab
United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Ambassador Schwab:

We applaud your efforts, through discussion of an Anti-Counterfeiting Trade Agreement (ACTA), to elevate the importance of strong intellectual property protection. We write to express our concern, however, about the breadth of the issues it could cover, and the specificity with which it could be written.

Protecting intellectual property through better international coordination and improved standards of enforcement abroad is a valuable pursuit. We have steadfastly supported funding in the Foreign Operations Appropriations bill to assist foreign countries in combating the piracy of U.S. intellectual property rights. A top priority of ours in this Congress is legislation to provide greater tools and resources for law enforcement to combat intellectual property theft, and to improve coordination of such efforts within the Federal government. We are disappointed that the Administration has been resistant to this effort and has opposed additional enforcement authority, such as civil enforcement in copyright cases where the violation rises to the level of criminal activity.

We are concerned, however, that the ACTA under consideration will prescribe rules for protection so specifically that it could impede Congress's ability to make constructive policy changes in the future. Our concern that ACTA, if not drafted with sufficient flexibility, could limit Congress's ability to make appropriate refinements to intellectual property law in the future is institutional and one that we raised when the United States Senate implemented the US-Peru Free Trade Agreement. It is compounded in this situation by the lack of transparency inherent in trade negotiations and the speed with which the process is moving.

Regarding the potential breadth of ACTA, we strongly urge you not to permit the agreement to address issues of liability for service providers or technological protection measures. The contours of the law and liability exposure in these areas continue to be debated in the courts and in Congress. As technology is not static, Congress must have the ability to tailor the law as developments warrant without concern that a change may run afoul of ACTA.

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We urge you not to rush into a new, broad Anti-Counterfeiting Trade Agreement that may have a significant impact on intellectual property protection at home and abroad and which can take effect without formal Congressional involvement. We encourage you to limit the agreement to improved coordination among nations and robust, but flexible standards for civil, criminal, and border enforcement.

We look forward to continuing to work with you on this important issue and appreciate your commitment to protecting the intellectual property.

Sincerely,



PATRICK LEAHY
Chairman



ARLEN SPECTER
Ranking Member