Preface

The Agreement on Trade Related Aspects on Intellectual Property Rights ('TRIPS Agreement'), which was adopted by the members of the World Trade Organization (WTO) in 1994 and which came into effect in 1995, contained a battery of enforcement measures to deal with a growing trade in counterfeit and pirate products which was estimated to be worth US\$60 billion annually. Ten years later this trade was estimated to have grown at least ten fold. At the TRIPS Council meeting in June 2006 the EU had called for an 'in-depth discussion' of enforcement issues.¹ This proposal met with strong opposition from the leading developing countries such as Argentina, Brazil, China and India, who considered the enforcement issue a diversion from the Doha Development Agenda. At the TRIPS Council meeting in October 2006, the EU, with support from Japan, Switzerland and the US, submitted a joint communication which asserted that the TRIPS Council was 'an appropriate forum to examine and assist Members in the implementation of enforcement provisions of the TRIPS Agreement' and that the work of the TRIPS Council 'should complement Members' efforts to use other cooperative mechanisms to address IPR enforcement'.² These efforts to raise the issue of enforcement at the WTO were unsuccessful. Contemporaneously with these initiatives, at the WTO Japan had proposed a Treaty on Non-proliferation of Counterfeits and Pirated Goods at meetings of the Global Congress on Combating Counterfeiting and Piracy hosted by INTERPOL and the World Customs Organization in 2005 and 2006.

The increasing estimates of the amount of world trade in infringing products, its impacts upon economic life, as well as its implications for organized crime and terrorism had resulted in the subject of counterfeiting and piracy being placed on the agenda of the G8 group of countries. The 2005 meeting at Gleneagles issued a statement announcing that the participants would take steps to 'promote and uphold laws, regulations and/or procedures to strengthen effective intellectual property enforcement'; this was reaffirmed by the St.

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¹ *Enforcing Intellectual Property Rights: Border Measures: Communication from the European Communities*, WTO doc., IP/C/W/471, 9 June 2006.

² *Enforcement of Intellectual Property Rights: Joint Communication from the European Communities, Japan, Switzerland and the United States*, WTO doc., IP/C/W/485, 2 November 2006, para.4.

Petersburg G8 meeting in 2006, which issued a declaration on the subject, and the 2007 G8 Summit in Heiligendamm saw the establishment of an Intellectual Property Rights Task Force, which was given the responsibility to determine measures to improve international IPR protection and enforcement. On 23 October 2007, a statement was issued by the US, EU, Japan, South Korea, Mexico, New Zealand, Switzerland and Canada announcing the commencement of negotiations between them for a Plurilateral Anti-Counterfeiting Trade Agreement (ACTA).

After a controversial three years of negotiations, which had been conducted for the first two years in conditions of enforced secrecy, a final version of the text was published by the negotiating parties on 3 December 2010. The ACTA was finally adopted by the negotiating parties on 15 April 2011 and was opened for signature for two years from 1 May 2011. On 1 October 2011 a special signing ceremony was held in Tokyo with the United States, Australia, Canada, Japan, Morocco, New Zealand, Singapore and South Korea all signing the agreement.

The joint press statement issued by the negotiating parties explained that the agreement provides for: (1) enhanced international cooperation; (2) promotion of sound enforcement practices; and (3) a legal framework for IPR enforcement in the areas of criminal enforcement, enforcement at the border, civil and administrative actions, and distribution of IPR infringing material on the Internet and that 'with respect to the legal framework, the ACTA establishes a strengthened standard that builds on the minimum standards of the [TRIPS Agreement] marks a considerable improvement in international trade norms for effectively combating the global proliferation of commercial-scale counterfeiting and piracy in the 21st Century.'³

This book examines the ACTA negotiations, the debate about the metrics and impacts of the global trade in counterfeit and pirate products and undertakes a detailed annotation of the provisions of the ACTA.

One of the major contributions of the ACTA to the weaponry of those seeking to enforce intellectual property rights against those trading in counterfeit and pirate products is the principle that both the direct and indirect benefits obtained by those participating in this trade should be subject to confiscation. Louise Blakeney, who has considerable practical experience as a prosecution lawyer in implementing confiscation actions in Australia and the UK, has contributed Chapter 9, which addresses this subject.

Michael Blakeney
Perth
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³ See <http://www.ustr.gov/about-us/press-office/press-releases/2011/october-joint-press-statement-anti-counterfeiting-trade-ag>

For Louise, in anticipation of a lifetime of Myalup sunsets