

Letter to Members of the House of Representatives

October 31, 2011

Dear Member of Congress:

Last week, Representatives Lamar Smith, Bob Goodlatte, John Conyers, Howard Berman and eight others introduced H.R. 3261, the "Stop Online Piracy Act" ("SOPA"). This legislation has been framed by its sponsors as a vehicle to protect U.S. trademarks and copyrights from foreign "rogue" websites. While we support this concept, H.R. 3261 puts lawful U.S. Internet and technology companies at risk by creating new liabilities, opening the door for vague new technology mandates, imposing significant costs on small businesses, and would create a new unprecedented private right of action regime for intellectual property.

Under this bill, a foreign or domestic Internet site that has broken no U.S. law can nevertheless have its economic lifeblood cut off upon a single notice from a copyright or trademark owner (or perhaps an owner of a patent or trade secret, or possibly even a celebrity with a right of publicity) who alleges that a **single page** of the site "enables or facilitates" illegal activity by third parties.

Moreover, a court can second-guess whether an Internet advertising network is taking all technically feasible and reasonable measures to prevent the placement of ads on a site that has not been found to infringe an existing intellectual property right.

As currently drafted, we believe SOPA is an alarming step backwards in Internet policy creating a thicket of Internet regulations containing 16 new legal definitions for evolving Internet technology (including a definition for the word "including"). Further, the definition of "dedicated to theft of U.S. property" is so broad it would unduly ensnare legitimate companies' websites, products and services.

For example, SOPA would:

- Effectively undermine provisions of the Digital Millennium Copyright Act and Supreme Court jurisprudence that have promoted electronic commerce, cooperation between intellectual property holders and Internet companies, and user privacy. In so doing, SOPA creates a litigation and liability nightmare for Internet and technology companies and social media;
- Create new litigation risks for cloud computing, social networks, and other new technologies that simply have the *potential* of being misused by consumers. Virtually every Internet site that allows user generated content can be subject to suit under SOPA and the bill could force Internet companies to police their users' activities;
- Allow intellectual property owners to seek actions including the termination of advertising and payment services for an entire site even if there is only one page of unlawful content on a site that has millions of pages;

- Institute a regime for Internet censorship by both law enforcement and private actors, undermining the U.S.'s ability to oppose Internet censorship by oppressive, undemocratic countries;
- Allow law enforcement and judges to impose technology mandates on Internet companies to prevent their products and services from being used for illegal conduct by third parties;
- Introduce serious security risks to our communications infrastructure and the critical national infrastructure that depends on it;
- Incentivize ISPs, registrars, registries, ad networks, payment processors, and search engines to take action against a domestic or foreign site when prompted by a rightsholder by providing complete immunity for taking such action while exposing those intermediaries to potential liability if they do not take such action. The property rights of the accused site are tossed away with no recourse and remedy for harm by the website owner;
- Provide for monetary sanctions against intermediaries (payment processors and ad services) in suits initiated by private actors (i.e. private right of action).

In short, this is not a bill that targets "rogue foreign sites." Rather, it allows movie studios, foreign luxury goods manufacturers, patent and copyright trolls, and any holder of any intellectual property right to target lawful U.S. websites and technology companies.

Our industry has and will continue to suggest alternative approaches that would target unlawful, foreign sites without the collateral damage inflicted by the proposals in H.R. 3261.

For the reasons above, we respectfully ask that you do not cosponsor H.R. 3261. A more detailed and substantive analysis of SOPA's most critical defects and impact on legitimate companies is forthcoming.

Sincerely,

