

Thursday, June 23, 2011

Members of the U.S. Congress,

We write to express our concern with S. 968, the PROTECT IP Act (“PIPA”). As investors in technology companies, we agree with the goal of fostering a thriving digital content market online. Unfortunately, the current bill will not only fail to achieve that goal, it will stifle investment in Internet services, throttle innovation, and hurt American competitiveness.

Online innovation has flourished, in part, because the Digital Millennium Copyright Act (DMCA), though flawed, created clear, defined safe harbors for online intermediaries. The DMCA creates legal certainty and predictability for online services -- so long as they meet the conditions of the safe harbors, including an appropriate notice-and-takedown policy, they have no liability for the acts of their users. At the same time, the DMCA gives rights-holders a way to take down specific infringing content, and it is working well.

We appreciate PIPA’s goal of combating sites truly dedicated to infringing activity, but it would undermine the delicate balance of the DMCA and threaten legitimate innovation. The bill is ripe for abuse, as it allows rights-holders to require third-parties to block access to and take away revenues sources for online services, with limited oversight and due process.

In particular:

1. By requiring “information location tools” -- potentially encompassing any “director[ies], index[es], reference[s], pointer[s], or hypertext link[s]” -- to remove access to entire domains, the bill puts burdens on countless Internet services.
2. By requiring access to sites to be blocked by Domain Name System providers, it endangers the security and integrity of the Internet.
3. The bill’s private right of action will no doubt be used by many rights-holders in ways that create significant burdens on legitimate online commerce services. The scope of orders and cost of litigation could be significant, even for companies acting in good faith. Rights-holders have stated their interest in this private right of action because they worry that the Department of Justice will not have enough resources to initiate actions against all of

the infringing sites. Yet, why should costs be shifted to innocent Internet entrepreneurs, most of whom have budgets smaller than the Department of Justice's?

While we understand PIPA was originally intended to deal with "rogue" foreign sites, we think PIPA will ultimately put American innovators and investors at a clear disadvantage in the global economy. For one, services dedicated to infringement will simply make their sites easy to find and access in other ways, and determined users who want to find blocked content will simply shift to services outside the reach of U.S. law, in turn giving a leg up to foreign search engines, DNS providers, social networks, and others. Second, PIPA creates a dangerous precedent and a convenient excuse for countries to engage in protectionism and censorship against U.S. services. These countries will point to PIPA as precedent for taking action against U.S. technology and Internet companies.

The entire set of issues surrounding copyright in an increasingly digital world are extremely complex, and there are no simple solutions. These challenges are best addressed by imagining, inventing, and financing new models and new services that will allow creative activities to thrive in the digital world. There is a new model for financing, distributing, and profiting from copyrighted material and it is working -- just look at services like iTunes, Netflix, Pandora, Kickstarter, and more. Pirate web sites will always exist, but if rights holders make it easy to get their works through innovative Internet models, they can and will have bright futures.

Congress should not chill investment and reduce incentives to work on private sector solutions. Instead, we encourage Congress to focus on making it easier to license works and bring new, innovative services to market.

Sincerely,

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John Borthwick, Betaworks
Mike Brown, Jr., AOL Ventures
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Randy Castleman, Court Square Ventures
Tony Conrad, True Ventures
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