

December 21, 2011



The Honorable Lamar Smith Chairman Committee on the Judiciary 2409 Rayburn House Office Building Washington, D.C. 20515	The Honorable John Conyers, Jr. Ranking Member Committee on the Judiciary 2426 Rayburn House Office Building Washington, D.C. 20515

Subject: The Stop Online Piracy Act

Dear Chairman Smith and Ranking Member Conyers:

We, the undersigned, are CEOs, founders, entrepreneurs and independent businesspeople representing a rapidly growing number of U.S. jobs and an industry collectively generating over \$46 billion dollars in revenue and rising.

We write to express that, after careful review of H.R.3261 – the Stop Online Piracy Act of 2011 (SOPA), we believe that this legislation will lead to significant loss of high-wage, high-tech jobs in our industry and other industries that are directly or indirectly supported by our industry. This impact will diminish the attractiveness of U.S. companies to foreign customers, while also reducing the U.S. hosting industry’s ability to compete with foreign competition within our own borders. Further, and of equal importance, weaknesses in SOPA may actually lead to less protection for intellectual property owners by undermining the stability of the Digital Millennium Copyright Act (DMCA). Finally, SOPA undermines the U.S. judicial system’s reputation as a fair and transparent method of resolving business disputes.

The Hosting Industry

The hosting industry is the worldwide conduit for all forms of internet business. Hosting providers provide the underlying infrastructure on which many websites operate by providing data centers, servers, storage, bandwidth and technical support needed for the operation of all web sites. Web hosting providers sit in the middle of almost every internet transaction taking place today. The hosting industry is a very significant component of the 46 billion dollar global internet infrastructure market.¹The industry is growing at an average of approximately 20 percent² year over year. With this growth rate, it is arguably one of the fastest growing industries in the world and one of the fastest growing sectors of the U.S. economy.

Unlike many industries, the hosting industry is highly fragmented. 81.4 percent³ of the industry is owned and operated by small to medium sized businesses, making up the majority of the industry. There are over 20,000⁴ hosting businesses in the U.S. alone, located in every state and the District of Columbia. These businesses employ a large and rapidly increasing pool of individuals, providing them with high-wage, high-tech jobs. Importantly, the hosting business contributes mightily to U.S. international competitiveness: over 20 percent of the revenue received by hosting companies comes from outside the U.S.⁵ In addition, the hosting industry

¹ Statistics provided by Tier1 Research: Internet Infrastructure Market Overview: Spring 2011

² Ibid.

³ Ibid.

⁴ Webhosting.info statistic

⁵ Id at 1

is a key driver of the U.S. jobs market, responsible for the direct and indirect creation of at least 15,000 new jobs per year.⁶

Hosts Will be Subject to Claims Made by Content Owners

Simply put, hosting providers make the internet work. They are the engine that makes the internet available to consumers, and they facilitate almost all internet business transactions. As necessary parties to the operation of the DMCA, and now SOPA, hosts are squarely in the middle of the large amount of litigation that will inevitably result from the Act's passage and the undermining of the DMCA. \$30 billion of the revenue generated in the hosting industry comes from small to medium sized businesses.⁷ Under SOPA, the process required to respond to litigation or a complaint would likely absorb an average small host's entire yearly profit. Given the small business nature of the hosting industry, hosting businesses are not in a position to absorb the litigation costs associated with SOPA.

As with the Protect IP Act (PIPA), SOPA uses the terms "acting in concert" and "operator (of a website)." Organizations representing those in favor of legislation like the Combating Online Infringement and Counterfeits Act (COICA), PIPA and SOPA have said time and again that they believe that internet infrastructure providers, like hosts, are responsible for infringement taking place on their servers.⁸ . They will no doubt allege that hosts are the actual "operators" of the sites in question.

SOPA Fundamentally Contravenes Accepted Judicial Process

SOPA takes the closed judicial proceedings first attempted in COICA and ups the ante. Like COICA, the subjects of judicial orders have no opportunity to present defenses, such as fair use, prior to judicial action. Further, SOPA uses a broad brush to paint all infringement as equal. As a result, sites who are themselves novel uses of technology, or simply incorporate a nuanced use of intellectual property into their site, are subject to the same enforcement mechanism as straight infringers: a death sentence. While SOPA requires courts to provide notice to sites who are targeted for death, it does not provide the opportunity for these sites to present their defenses. As a result, SOPA undermines due process, a key element of the U.S. legal system.

Further, unlike COICA, the scope of the orders issued under SOPA include all elements of the internet infrastructure. For example, shared hosts may be required to disable servers containing possibly thousands of innocent websites simply because one website is the subject of an order. For shared hosts, simply disabling one or two servers would destroy their business and the shared hosting business model.

SOPA does not contain a limitation of technical feasibility, or allow hosts to present information that would allow courts to tailor orders to their unique infrastructure. As a result, hosts will be required to modify their infrastructure to accommodate judicial mandates. If a host fails to implement a court order, even if it is technologically infeasible, the private right of action provisions of SOPA will allow content owners to sue hosts.

SOPA Destroys Foreign Markets

Approximately 20 percent of the hosting industry revenue is generated by customers outside of the U.S. who choose to locate their infrastructure within the U.S.⁹ Accordingly, the hosting

⁶ Ibid.

⁷ Ibid at 1.

⁸ Statement of RIAA President Cary Sherman. http://news.cnet.com/8301-13578_3-20014468-38.html

⁹ Ibid at 1

industry generates \$9.2 billion dollars in positive trade flow into the U.S.¹⁰ SOPA, through a flimsy façade, attempts to direct its enforcement actions towards “domestic” internet assets. However, except in very limited cases, the internet is global. Our non-U.S. customers will see through this façade and direct their business to countries with a stable and transparent legal system.

An example of this façade is the use of the phrase “domain name registration authority” in the definition of “Domestic Domain Name.” Because the Internet Corporation for Assigned Names and Numbers (ICANN) is the domain name registration authority for the vast majority of top level domains powering the internet, virtually all currently existing websites are subject to SOPA. This will also drive domain registration, a rich source of business leads for hosting companies, to registries other than ICANN. This is but an example of the transparent attempt to cloak a jurisdictional “land grab” under the guise of legislation that “only targets domestic entities.” Other examples include use of the phrase “Domestic Internet Site” incorporating “domestic domain name” into its definition; and the definition of “U.S.-directed site” which includes the vague phrase “directed to residents of the United States.”

By eliminating due process from the judicial system, SOPA eliminates a key element that makes the U.S. an attractive place to do business: a fair and transparent legal system. Entities who are outside the U.S. do not understand laws and procedures in which their assets may be taken offline without due process. Indeed, recent seizures of domain names by the Department of Homeland Security have cast significant doubt on the ability of the U.S. legal system to provide due process rights. Leading webhosts, including SoftLayer, a signatory to this letter, saw an outflow of legitimate non-U.S. businesses immediately following the domain name seizures. Adding to the uncertainty and fear that already clouds the U.S. legal system, is the fact that PIPA does not mandate a hearing to determine the legitimacy of infringement complaints, to hear from those affected by any resulting orders.

SOPA Undermines the DMCA

Hosts have substantial motivation to minimize copyright infringement activities on their networks, including preventing abuse, maintaining high quality service for other customers, and reducing credit card fraud, which comes hand-in-hand with copyright infringement. The DMCA is an effective tool to address copyright infringement, as it provides almost immediate results for owners of intellectual property interests. Its safe harbor protects third parties, such as hosts, from the litigation costs associated with determining often unclear legal issues associated with intellectual property rights.

Hosts provide services to all manner of content owners. Indeed, many hosts have been in the position in which a customer is both the subject of a DMCA notice and has issued a DMCA notice. Hosts see firsthand the delicate balance struck by the DMCA in protecting intellectual property rights, while at the same time encouraging creative uses of the Internet. By “disappearing” web sites through DNS redirection or cutting off payment gateway and advertising funding, SOPA destroys this balance and is, in essence, an end-run around the DMCA.

We Will Work Together to Preserve a Globally Competitive U.S. Internet Industry

The fact that SOPA has brought together an industry previously uninvolved in the legislative process is testament to the fundamental problems it will pose. We look forward to working with you and your staff to create legislation that protects the rights of intellectual property owners, but does not fundamentally undermine a robust, growing industry.

¹⁰ Ibid

Signed,

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