



Protecting Small Business Innovation

December 14, 2011

The Honorable Lamar Smith
Chairman
House Judiciary Committee
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith:

I write today about H.R. 3261, the Stop Online Piracy Act reportedly scheduled for markup tomorrow. On behalf of ACT's 4,000 small business software developers who rely upon intellectual property, we appreciate your long-standing commitment to protect innovation and creativity.

Given concerns expressed within the technology industry about the legislation, ACT appreciated your office's willingness to meet with us last week to discuss our five suggestions to improve the bill. We were further encouraged with the release of the manager's amendment addressing some of the points raised in our meeting.

Specifically, the issues we raised about the bill's lack of due process, allowing websites to be blocked without a hearing, have been addressed in the latest version. It is now clear that intermediaries do not have to respond to notices pending adjudication, and these notices will not be treated as "red flags" that will harm the intermediaries in court proceedings. The bill now requires potentially three rounds of judicial process before a U.S. intermediary could be required to cease providing support to a foreign rogue website. This redresses First Amendment concerns about "prior restraints."

Further concerns about subdomains have been addressed with clarifying language providing that remediation can be limited to a problematic part of a site without designating the entire site infringing. Additionally, concerns about DMCA safe harbors have been clearly addressed with strong protections in the revised bill language. It is now clear that intermediaries do not have to treat to rogue-website adjudications as "red flags" that could undermine the intermediary's entitlement to DMCA safe harbor provisions.

While these changes have improved H.R. 3261, two significant concerns remain regarding the potential impact of the bill that could be remediated without materially affecting the protections provided by the bill. In particular, small business technology companies still express fears that judges may inadvertently implement technology mandates while attempting to apply reasonableness standards. One manner in which these concerns could be addressed would be to convene multi-stakeholder meetings and report the results in the form of guidance for the courts. And while the language regarding communicating with consumers has been improved, we still believe that the bill could best avoid claims of DNSSEC conflicts by stating explicitly what all versions of the bill have always permitted: The required consumer information can be conveyed through a DNSSEC-compliant error message.

While highlighting these concerns with the legislation, we would like to reiterate our acknowledgement that the tech community also bears considerable responsibility to help find a solution. Accordingly, ACT

The Honorable Lamar Smith
Page 2

calls on industry leaders to undertake strong measures to fight piracy and stop the flow of counterfeit goods endangering our children, compromising our safety, and costing American jobs.

Small business entrepreneurs are the leading force of growth in a thriving technology marketplace. Our members need strong intellectual property laws to protect their innovation and enable them to add more jobs to the economy, but those laws must provide the clarity and flexibility necessary for startups to raise funds and create jobs. ACT's members are thankful for Congress's renewed commitment to fight piracy and protect innovative companies, and we look forward to continue working with you to address our outstanding concerns.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Zuck". The signature is written in a cursive, slightly slanted style.

Jonathan Zuck
President