



**TECHFREEDOM**

The Honorable Lamar Smith  
2138 Rayburn House Office Building  
U.S. House of Representatives  
Committee on the Judiciary  
Washington, D.C. 20515

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
U.S. House of Representatives  
Committee on the Judiciary  
Washington, D.C. 20515

Dear Chairman Smith and Ranking Member Conyers:

As public interest groups dedicated to free enterprise and property rights, we strongly support legislative efforts to ensure the meaningful protection of copyrights and trademarks. Yet we have also raised serious concerns about the unintended consequences of the Stop Online Piracy Act (SOPA), consistent with our general skepticism of all Internet regulation.<sup>1</sup> While we applaud the manager's amendment proposed by Chairman Smith, there simply has not been time to properly evaluate its real-world consequences. Although the proposed changes would indeed improve the bill, they leave several legitimate objections unaddressed. Thus, we urge Members of the Committee not to report the bill to the full House until these concerns have been resolved through further hearings and a second markup.

Enforcing copyrights online is an extremely provocative issue: witness the massive grassroots campaign mounted in recent weeks against so-called "Internet censorship," as allegedly provided for by SOPA. Underlying this opposition to the bill is profound public skepticism about the unintended consequences of enhanced copyright enforcement in terms of collateral damage to legitimate expression and innovation. This skepticism has been galvanized by recent high-profile mistakes involving the improper seizure of innocent websites by federal officials in "Operation In Our Sites."<sup>2</sup>

If SOPA is ultimately enacted, any public perception that Congress failed to carefully balance the competing interests of copyright enforcement, free speech, due process, and Internet freedom will further erode public support not only for Congress, but also for *copyright* itself. The erosion of public respect for copyright is a primary factor behind the dramatic increase in infringement in recent years. Even a perfect bill cannot cure this cultural problem, to be sure, but ill-considered legislation *can* exacerbate it. If the widespread conflation of copyright enforcement with censorship is to be dispelled, SOPA must be refined carefully through a transparent process, with ample time for deliberation and consideration of all relevant expertise.

However, since SOPA was introduced in October, the Committee has held just one hearing on the bill. To date, no Internet engineers have testified as to the bill's implications for the Domain Name

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<sup>1</sup> TechFreedom et al., joint public interest coalition letter to the U.S. House of Representatives Committee on the Judiciary regarding H.R. 3261, November 15, 2011, *available at* [http://techfreedom.org/sites/default/files/TechFreedom\\_SOPA\\_Letter.pdf](http://techfreedom.org/sites/default/files/TechFreedom_SOPA_Letter.pdf).

<sup>2</sup> See Ben Sisario, *How a Music Site Disappeared for a Year*, N.Y. Times, December 9, 2011, *available at* <http://mediadecoder.blogs.nytimes.com/2011/12/09/how-a-music-site-disappeared-for-a-year/>.

System (DNS). Rep. Dan Lungren expressed his frustration about the absence of such experts at that hearing, stating that “[i]f we’re going to [report SOPA] we ought to at least talk about it. ... Saying we’re not going to take a position or we’re not experts on this is upsetting.”<sup>3</sup> Similarly, no law professors have testified as to the bill’s constitutional concerns, and no venture capitalists have testified as to how it would impact Internet start-ups at home and abroad. No Internet governance experts or U.S. diplomats have testified as to how our “going it alone” approach to DNS filtering might undermine U.S. efforts to maintain the current multi-stakeholder system of Internet governance as an alternative to control by the ITU or another inter-governmental bureaucracy.

The manager’s amendment proposed by Chairman Smith would improve SOPA in important respects. In particular, the proposed changes to section 103 would substantially reduce the likelihood that law-abiding sites based around user-generated content might face adverse judgments in actions brought by private rights holders. The amendment would also exempt most domestic websites from SOPA’s private right of action.

Despite this amendment, however, many aspects of the bill remain hotly contested among major technology firms, Internet engineers, legal scholars, and venture capitalists. Critics have noted, among other objections, that section 102 still encompasses a vast range of legitimate foreign websites, and includes domain name remedies that may endanger U.S. policy goals on Internet governance and cybersecurity. Whatever the merits of these concerns, the Committee simply has not spent enough time on this legislation to properly address the complex and important issues at stake.

Although the bill’s sponsors have worked to address such concerns through the manager’s amendment, that amendment — made public only three days before Thursday’s scheduled markup of the bill — is a complex proposal spanning over 14,000 words. It raises a slew of new questions that the Committee cannot, in good faith, resolve in markup without the benefit of expert witnesses. Thus, the Committee will not yet be in a position to report to the entire House a complete legislative proposal based on a thorough factual and legal record.

Therefore, we urge the Committee to schedule further hearings in early 2012 on the bill as amended in Thursday’s markup. These hearings should include the kind of experts mentioned above, and be followed by an additional markup scheduled far enough in advance to allow careful consideration of proposed amendments. There is ample time in the legislative calendar to move this legislation to the floor in early 2012, reconcile House and Senate versions, and enact a final bill.

Whatever rogue websites legislation Congress ultimately adopts will profoundly impact the development of the Internet as a vehicle for innovation, expression, and democratization — for better *and* worse. If the public perceives this copyright legislation to be the product of a hasty and opaque process, respect for copyrights and trademarks will be diminished, not enhanced.

Sincerely,

Berin Szoka	Ryan Radia	Stephen DeMaura	William Wilson
TechFreedom	Competitive Enterprise Institute	Americans for Job Security	Americans for Limited Government

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<sup>3</sup> See, e.g., Declan McCullagh, *New flap over SOPA copyright bill: Anti-Web security?*, CNET.com, November 16, 2011, available at [http://news.cnet.com/8301-31921\\_3-57326228-281/new-flap-over-sopa-copyright-bill-anti-web-security](http://news.cnet.com/8301-31921_3-57326228-281/new-flap-over-sopa-copyright-bill-anti-web-security).