



To: EFTA Members

From: Dennis Ambach, Legislative & Regulatory Council Chairman

Date: August 11, 2011

Re: S. 968, Protect IP Act

Legislation is pending in the U.S. Senate ([S. 968, the Protect IP Act](#)) which may have adverse consequences for many EFTA members. EFTA should not object to the bill's overall purpose which is to protect a Web site owner's intellectual property rights against infringers. However, S. 968 includes a troublesome provision requiring "financial transaction providers" to stop or suspend payments within the United States when presented a court order alleging IP infringement while allowing private rights of action should any financial transaction provider fail to comply with the order.

The bill uses the definition of financial transaction provider from the United States Code Title 31, section 5362(4) which is as follows:

(4) Financial transaction provider.— The term "financial transaction provider" means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic funds transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

The Senate Judiciary Committee approved S. 968 in May and it awaits action by the full Senate. A House companion measure does not exist at this time. The U.S. Chamber of Commerce, the Motion Picture Association of America and Viacom (to name a few) are supporting S. 968 but a growing number of high-tech companies and payment providers are raising concerns over the private rights of action provision. S. 968 already provides enforcement authority for the Attorney General.

We will discuss S. 968 further during the Legislative & Regulatory Council meeting on September 21 in Washington DC. EFTA will look to join coalition efforts in expressing concerns with the private rights of action provision to Congress. Or, we may wish to take an independent position after our discussion on September 21.

In the meantime, please do not hesitate to contact me (480-205-9243 or dennisambach@efta.org) or Kurt Helwig (703-934-6052 or kurthelwig@efta.org) should you have any concerns or questions on S. 968.