

November 23, 2011

The Honorable Lamar Smith
Chairman, House Committee on the Judiciary
2138 House Rayburn Office Building
Washington DC, 20215

The Honorable John Conyers
Ranking Member, House Committee on the Judiciary
2426 Rayburn House Office Building
Washington DC, 20515

RE: *Oppose Section 103 of H.R. 3261, the Stop Online Piracy Act*

Dear Chairman Smith and Ranking Member Conyers:

On behalf of The Electronic Funds Transfer Association (EFTA), I am writing in opposition to several provisions within H.R. 3261, the Stop Online Piracy Act (SOPA). As you know, H.R. 3261 is designed to combat the theft of intellectual property, primarily by obligating payment network providers to block payment transactions involving pirated goods from taking place.

EFTA is the nation's leading non-profit, inter-industry trade Association dedicated to the advancement of electronic payment systems and commerce. The Association's nearly 300 members represent a broad spectrum of perspectives that engender accurate and effective analysis of electronic payments and commerce issues. Members include the nation's leading financial institutions, electronic payments networks, card companies, ATM networks, owners, and processors, hardware and software manufacturers, and technology providers.

The EFTA does not oppose H.R. 3261's overall objective to protect U.S. trademarks and copyrights from foreign "rogue" Web sites. However, we believe that certain aspects of the bill are overly broad, subject to multiple interpretations, and will create an undue burden on the payments industry. Our concerns lie primarily with sections 102 and 103, which would establish a Digital Millennium Copyright Act-like (DMCA) notification/counter notification regime for plaintiffs and payment network providers in cases of Internet copyright infringement.

Without amendments to the timeframe and process by which payment network providers are notified and obligated to block transactions associated with pirated material, the EFTA is concerned that payment network providers would be exposed to liability and crushed by an avalanche of litigation costs. Additionally, the definition of a payment network found in H.R. 3261 is so broad that it could include a number of businesses that don't even touch the transaction. In short, payment network providers simply are not equipped to be in the business of Internet copyright infringement arbitration.

As H.R. 3261 moves to mark-up we ask the Committee to consider the following changes:

1. Section 102(c)(1)(C) and Section 103(b)(1). The five-day period to suspend services in order to block payment transactions is too short, given the time needed for the order to be received, routed to the right entity within the payments chain, reviewed, acted on, etc. In addition, the bill language requiring action to occur "as expeditiously as possible, but in any case within 5 days..." is ambiguous and leaves open the possibility of multiple interpretations from law enforcement and/or policymakers about the appropriate timeframe for action.

Suggested Amendment: EFTA recommends that the payment card network be required to acknowledge receipt of the court order/communication from the authorized representative of the intellectual property right holder within five days, but do not require a definitive timeframe for the payment network to prevent, prohibit or suspend the transaction (i.e., terminate the merchant from its processing systems).

2. Section 102(c)(1)(C). EFTA is concerned that payment network providers could be served with a court order relating to a Web site for which the order doesn't include sufficient information from an operational standpoint to block the merchant's transactions (e.g. the merchant name in a providers system may not match up with the name or entity in the order).

Suggested Amendment: EFTA recommends the inclusion of the following language: "... after being served a copy of the order which includes sufficient information to identify the customer in the payment network provider's information systems..."

3. Section 102(c)(1)(C). This section fails to mandate the modifications or vacating of orders be distributed to all parties that originally received them.

Suggested Amendment: EFTA recommends that language be included to provide that any modifications or vacating of orders be sent to all parties that originally received them.

4. Section 103(b)(1). This section would require payment network providers to stop processing payment transactions within five days if the payment network provider receives a notice from a person alleging that a site is primarily in business to infringe, unless the payment network provider receives a "counter notice" from the merchant. Among the criteria in the bill for an acceptable communication from the intellectual property right holder, no court order is required. In other words, a payment network provider would be statutorily required to take significant action against another person based merely on a claim. We believe this approach is not sound policy and runs counter to our nation's judicial system and due process.

Suggested Amendment: EFTA recommends that this language be structurally modified to mirror the requirement in Section 102 mandating that a court order be required before a payment network provider can be obligated to take such action against an alleged offender.

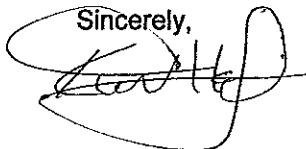
5. Section 104. This section, Immunity for Taking Voluntary Action, does not clearly interplay with the other sections of the legislation. Does Section 104 provide for immunity for compliance with Section 103 of the bill?

Suggested Amendment: EFTA recommends that Section 104 be strengthened to clearly and explicitly provide immunity if action is taken under the Section 103 notification provision. Specifically, EFTA urges that Section 103 be modified per EFTA's #4 concern above, and that the immunity provisions mirror those established in Section 102.

The EFTA would like to be in a position to support a sound bill and hopes that we can work together with the Committee to reach that point. However, EFTA sees the potential for significant abuse of this legislation and believes it is a risky precedent to impose such dramatic regulatory requirements on the Internet and the payments industry. Therefore, the EFTA must oppose H.R. 3261 unless the aforementioned issues are adequately addressed for the payments industry.

Please do not hesitate to contact me if I can provide any additional information on the payments industry's perspectives and concerns with H.R. 3261. Thank you, in advance, for your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt Helwig", written over a large, loopy flourish.

Kurt Helwig
President & CEO