

May 25, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: S. 968, Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011

Dear Chairman Leahy and Ranking Member Grassley:

Although the undersigned entities harbor no sympathy for websites whose primary purpose is to sell illegal products online, we cannot support S. 968, the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011, in its current form. The legislation has been improved over its predecessor with the removal of provisions targeting domain name registries and registrars, and with the narrowing of certain definitions to avoid some of the overbreadth issues inherent in the Combating Online Infringement and Counterfeits Act. We appreciate your work on these matters. Nonetheless, certain provisions within S. 968 continue to threaten the stability, freedom, and economic potential of the Internet.

The new legislation maintains the provision to direct Internet Service Providers (ISPs) and others to interfere with Domain Name System (DNS) lookup services by tampering with their DNS responses. We continue to believe that such a provision would be ineffective and runs contrary to the US government's commitment to advancing a single, global Internet. Its inclusion risks setting a precedent for other countries, even democratic ones, to use DNS mechanisms to enforce a range of domestic policies, erecting barriers on the global medium of the Internet. Non-democratic regimes could seize on the precedent to justify measures that would hinder online freedom of expression and association. In addition, circumventing DNS blocking risks substantial collateral damage by making domestic networks and users more vulnerable to cybersecurity attacks, and would increase opportunities for identity theft as users migrate to offshore DNS providers not subject to S. 968. It is critical that the Committee, before endorsing such a change to U.S. law, explore whether DNS blocking would likely result in a sufficient decrease in for-profit Internet piracy to justify taking such risks.

Furthermore, the new inclusion of "information location tools" (also referred to as the "search engine" portion of the bill) has expanded the legislation's reach. The term "information location tools" appears to encompass "director[ies], index[es], reference[s], pointer[s], or hypertext link[s]." With this provision in place, S. 968 makes nearly every actor on the Internet potentially subject to enforcement orders under the bill, raising new policy questions regarding government interference with online activity and speech.

We continue to urge the Committee to proceed cautiously given the concerns of the undersigned and we look forward to working with you and your colleagues in a constructive manner on improving S. 968.

Sincerely,

American Association of Law Libraries

Association of College and Research Libraries

American Library Association

Association of Research Libraries

Center for Democracy and Technology

Demand Progress

EDUCAUSE

Electronic Frontier Foundation

Human Rights Watch

Rebecca MacKinnon, Bernard Schwartz Senior Fellow, New America Foundation

Public Knowledge

Reporters sans frontières / Reporters Without Borders

Special Libraries Association

cc: Senate Judiciary Committee