



**RE: STOP ONLINE PIRACY ACT (HR 3261) (“SOPA”)**

**DATE: NOVEMBER 28, 2011**

### **Overview**

The issue of online piracy and copyright infringement by websites located overseas needs attention. The latest move by Congress to address the problem is the Stop Online Piracy Act (HR 3261). Unfortunately, as drafted, SOPA presents serious free speech and free press concerns, and would allow the First Amendment rights of uninvolved Americans to be curtailed. If targeting the bad actors overseas is the real focus, then why aren't U.S. based businesses and individuals, which are already subject to all federal laws protecting copyrights and trademarks, exempted?

SOPA would also reverse the protections of the Digital Millennium Copyright Act of 1998 (“DMCA”) by creating liability for Internet Service Providers (ISPs) to affirmatively block customer access to the web and specific websites claimed, but not adjudicated, to be pirating content. This is like shooting an ant with an elephant gun, and resembles the actions China required of search engine Google when it expanded in that country. Before moving to approve any legislation on this issue, Congress should go back to the drawing board and write a narrowly-tailored bill that reaches only the bad actors and offending parties.

### **Sample of Issues:**

- Reverses the Protections of the DMCA and Interferes With the Market: SOPA creates liabilities and obligations on ISPs and Internet companies that merely provide conduits for communications by third-parties. This reverses the protections of the DMCA, which has allowed the Internet and World Wide Web to experience spectacular growth and innovation without government involvement, and remain one of the strongest job creation sectors in the U.S. economy.
- Undermines Due Process: SOPA requires ISPs, credit card and payment processing companies, and advertisers to stop access and all ad or payment services when a copyright or trademark interest holder asserts a site is “dedicated to the theft of U.S. property.” No court involvement or action is necessary, and none would ensue unless the site operator files a counter-notice.
- Enables “Lawfare” and Viewpoint Discrimination, and Fails to Exempt U.S. Based Actors Already Subject to Existing Federal Laws: SOPA’s private causes of action would allow anyone asserting a copyright or trademark right to effectively attack and silence

both foreign and domestic speakers and viewpoints they may disagree with or find objectionable. There are no corresponding exceptions or affirmative defenses provided, and if, as SOPA's proponents claim, SOPA is intended to only target overseas online piracy and copyright infringement, domestic U.S. businesses and individuals should be exempted.

- Definitional Issues: The following are examples of SOPA's over-broad language and definitions: I) "qualifying plaintiff" is too broad and includes "holder of an intellectual property right harmed"; ii) "dedicated to the theft of US property" includes a website that "enables or facilitates" another party's infringement; "internet search engine" is any service or use of any website that "searches, crawls, categorizes, or indexes information or websites available elsewhere on the Internet."

\* \* \* \* \*