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TO MEMBERS OF THE UNITED STATES SENATE:

We are writing in response to the September 20, 2011 letter by the Motion Picture Association of America (MPAA) and a number of its allies concerning S. 968, the PROTECT IP Act. There is no substantial disagreement with the bill's goal of combating the online infringement of copyrights and trademarks; that is a valid and important aim. But some of the specific provisions of S. 968 are far more controversial and would do far more damage than MPAA's letter suggests. We would like to respond in particular to the following points.

- § MPAA's letter says that the bill's tactic of requiring ISPs to block domain-name lookup requests is already in use today to fight spam and malware, and can be employed without endangering the emerging security technology known as DNSSEC. But the principal author of the preeminent domain-name blocking technology says that the approach *can't work* for copyright infringement; it is an approach that only works when the users *want* to be protected.<sup>1</sup> Even more important, Internet engineers with unassailable domain name system expertise have warned that S. 968 could stop DNSSEC – a crucial effort to improve Internet security, over 15 years in the making – dead in its tracks.<sup>2</sup> The Internet Society likewise states that domain-name filtering will impede DNSSEC and decrease global security.<sup>3</sup> There is no basis for the MPAA's breezy dismissal of the serious technical and security problems with portions of S. 968.
- § MPAA's letter cites Ofcom, the United Kingdom's independent communications regulator, as concluding that domain-name blocking could deter casual and unintentional infringers. But the same Ofcom report found that blocking domain names is "incompatible" with DNSSEC, and that therefore "a replacement for DNS blocking would be required

<sup>1</sup> Paul Vixie, "Alignment of Interests in DNS Blocking," Jul 23, 2011, [http://www.circleid.com/posts/20110723\\_alignment\\_of\\_interests\\_in\\_dns\\_blocking/](http://www.circleid.com/posts/20110723_alignment_of_interests_in_dns_blocking/).

<sup>2</sup> Steve Crocker, David Dagon, Dan Kaminsky, Danny McPherson, and Paul Vixie, *Security and Other Technical Concerns Raised by the DNS Filtering Requirements in the PROTECT IP Bill*, May 2011, <http://www.shinkuro.com/PROTECT%20IP%20Technical%20Whitepaper%20Final.pdf>.

<sup>3</sup> *Internet Society Perspectives on Domain Name System (DNS) Filtering*, Sept. 15, 2011, [http://www.isoc.org/internet/issues/docs/dns-filtering\\_20110915.pdf](http://www.isoc.org/internet/issues/docs/dns-filtering_20110915.pdf).



within the next three years.”<sup>4</sup> Tellingly, the U.K. government responded to the Ofcom report by deciding *not* to move ahead with site-blocking regulations that had been proposed.<sup>5</sup>

- § MPAA’s letter cites a favorable editorial by the *Washington Post*. But other major newspapers have urged caution. The *Los Angeles Times* observed that, despite its laudable goals, the bill’s “details are problematic” – in large part because it “could undermine efforts to build a more reliable and fraud-resistant domain name system.”<sup>6</sup> The *New York Times* likewise called some of the bill’s remedies “problematic,” especially the domain-name blocking, and concluded that S. 968 “shouldn’t pass as is.”<sup>7</sup>
- § MPAA’s letter quotes a constitutional scholar who believes the bill does not pose First Amendment concerns. But 108 law professors have signed a letter expressing the view that the bill has “grave constitutional infirmities” because it would suppress speech at blocked domain names *before* a final determination of illegality.<sup>8</sup> Under prior restraint jurisprudence, the government cannot restrict access to expressive material based on a finding that the material is *probably* illegal; rather, government must first determine that the material *actually is* illegal.
- § MPAA’s letter says that S. 968 will safeguard American jobs. But over 50 of the country’s most prominent venture capitalists have warned that S. 968 will “stifle investment in Internet services, throttle innovation, and hurt American competitiveness.”<sup>9</sup> Technology trade associations have cautioned that portions of the bill “will undoubtedly inhibit innovation and economic growth.”<sup>10</sup> Payment systems and technology companies have serious concerns regarding the impact of the bill’s private right of action.<sup>11</sup> Parts of S. 968 threaten more jobs than they would safeguard.

We believe it would be possible to craft an effective bill that would combat online infringement without the major collateral damage that S. 968 threatens to cause. In particular, there is general consensus that a “follow the money” approach – cutting off the revenue sources for foreign infringement websites – has real promise. A study earlier this year found that blocking

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<sup>4</sup> Ofcom, “*Site Blocking*” to reduce online copyright infringement, Aug. 3, 2011, <http://stakeholders.ofcom.org.uk/binaries/internet/site-blocking.pdf>, p. 43.

<sup>5</sup> See U.K. Department for Culture, Media and Sport, *Next steps for implementation of the Digital Economy Act*, Aug. 2011, <http://www.culture.gov.uk/images/publications/Next-steps-for-implementation-of-the-Digital-Economy-Act.pdf>); Mike Sweeney, “Government scraps plan to block illegal filesharing websites,” *The Guardian*, Aug. 3, 2011, <http://www.guardian.co.uk/technology/2011/aug/03/government-scraps-filesharing-sites-block>.

<sup>6</sup> “Policing the Internet,” *L.A. Times*, June 7, 2011, <http://articles.latimes.com/2011/jun/07/opinion/la-ed-protectip-20110607>.

<sup>7</sup> “Internet Piracy and How to Stop It,” *N.Y. Times*, June 8, 2011, [http://www.nytimes.com/2011/06/09/opinion/09thu1.html?\\_r=1](http://www.nytimes.com/2011/06/09/opinion/09thu1.html?_r=1).

<sup>8</sup> Professors’ Letter in Opposition to “Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011,” July 5, 2011, <http://www.scribd.com/doc/59241037/PROTECT-IP-Letter-Final>.

<sup>9</sup> Letter to Members of the U.S. Congress, June 23, 2011, [https://docs.google.com/document/d/14CkX3zDyAxShrqUqEkewtUCjvvFdcilbKjC18\\_eUHkg/edit?hl=en\\_US&authkey=CNHr314L&ndplr=1&pli=1](https://docs.google.com/document/d/14CkX3zDyAxShrqUqEkewtUCjvvFdcilbKjC18_eUHkg/edit?hl=en_US&authkey=CNHr314L&ndplr=1&pli=1).

<sup>10</sup> Letter of CCIA, CEA, and NetCoalition to Sens. Leahy and Grassley, May 25, 2011, [http://cdt.org/files/Tech\\_Assn\\_Letter\\_re\\_PIPA\\_5-25-11.pdf](http://cdt.org/files/Tech_Assn_Letter_re_PIPA_5-25-11.pdf).

<sup>11</sup> Letter to Sens. Leahy and Grassley, May 25, 2011, [http://cdt.org/files/NC-Letter\\_on\\_PRA\\_on\\_Protect\\_IP\\_Act-4.pdf](http://cdt.org/files/NC-Letter_on_PRA_on_Protect_IP_Act-4.pdf).

the money flow is the best way to achieve a real reduction in spam,<sup>12</sup> and we believe that the same is true with respect to infringement. Unfortunately, S. 968 goes far beyond the money- focused approach to include highly controversial provisions that would ultimately do significant harm in exchange for what would likely be a negligible and fleeting impact on infringement. S. 968 in its current form should not pass.

Thank you for your careful consideration of the concerns raised by S. 968. We stand ready to work with the Senate to craft a bill that can achieve the goal of reducing online infringement without so much collateral damage.

Sincerely,

/s/

Leslie Harris  
President and CEO

/s/

David M. Sohn  
Senior Policy Counsel

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<sup>12</sup> See John Markoff, "Study Sees Way To Win Spam Fight," *N.Y. Times*, May 19, 2011, <http://www.nytimes.com/2011/05/20/technology/20spam.html>.