



Position Statement

Issue: SOPA (Stop Online Piracy Act)

FSC Position: FSC supports aggressive action to stop online piracy and is in favor of many of the components included in Representative Smith's proposed legislation. However, FSC is concerned that some of the provisions contained in SOPA may lay the groundwork to abolish legitimate online businesses by oppressive governments wishing to squelch unpopular content, overzealous competitors wishing to squelch competition, and extremist organizations wishing to promote censorship.

Background: October 26, 2011 Representative Lamar Smith (R-TX) introduced H.R. 3261, the Stop Online Piracy Act (SOPA) in the US House of Representatives. The bill enables copyright holders as well as the Department of Justice (DOJ) to seek court orders against websites accused of enabling or facilitating copyright infringement. The bill extends liability and compliance to third party service providers and makes unauthorized streaming of copyrighted content a felony.

Statement: FSC supports aggressive action to stop online piracy and is in favor of some of the components contained in Representative Smith's proposed legislation. However, FSC is concerned that some of the provisions contained in SOPA may lay the groundwork to abolish legitimate online businesses by oppressive governments wishing to suppress unpopular content, overzealous competitors wishing to squelch competition, and extremist organizations wishing to promote censorship.

SOPA is correct in recognizing the challenges that U.S. copyright holders have in enforcing DMCA provisions and indeed any copyright laws overseas. Litigation is expensive and even if the U.S. copyright holder prevails in court, collection of the damage award is nearly impossible. Often the violating company and site will disappear, only to reappear the next day as a new entity with the same business model based in infringement. The adult entertainment industry is primarily made up of small businesses that lack the resources to file multimillion dollar lawsuits that have little to no chance of financial return or of curtailing the infringing behavior.

Under these conditions, it is tempting to support SOPA provisions designed to follow the money and target infringing sites by cutting off revenue streams through third party service providers and advertisers. However, as an industry that has been held hostage by some of the very same service providers, the adult industry--more than most--has a keen understanding of how taking action through a third party service provider can be abused. Time and time again, businesses in our industry have been cut off by payment processors or other service providers because of bogus complaints from those hostile to our industry or from overzealous competitors. This has resulted in our industry paying outrageous fees to service providers seeing an opportunity to profit from the misfortune of adult businesses fighting these fraudulent claims. One might believe that this circumstance only pertains to the adult entertainment industry, but in the case of SOPA, it would be wise to view the adult entertainment industry as the canary in the coal mine.

Through SOPA, third party service providers and advertisers have only five days to cut off support for allegedly offending websites. Those sites have five days to file a counter notice resulting in the company incurring legal fees, while the ad networks and payment processors have no obligation to show consideration to the notice. The adult industry's experience is that these providers typically take a conservative approach. While SOPA's third party service provider provision could prove significantly problematic to online businesses as a whole, it could be catastrophic for adult online businesses by further complicating, or even fracturing, already tenuous relationships that accompany businesses steeped in controversial expression.

SOPA functionally sets up site blocking through the DNS system. While the intention of the bill is clear, to curtail and eliminate copyright infringing sites (and again, FSC supports action to do so), the result of creating a platform for this type of blocking could prove to be ill-fated. Countries such as Russia already have used copyright laws to censor political

expression¹, and setting precedents for blocking through the DNS lays the groundwork for suppressing objectionable speech. The adult entertainment industry is especially vulnerable to this, both domestically and overseas. In 2007 it was revealed that US Attorney General Alberto Gonzales fired a number of federal prosecutors for not aggressively pursuing empty obscenity cases against US adult companies². Remember, SOPA falls under the jurisdiction of the US Attorney General. One has to wonder what would have happened to adult businesses had Attorney General Gonzales had DNS blocking in his tool belt.

In addition, SOPA contains a provision that makes certain forms of streaming a felony. Again FSC supports aggressive copyright laws, but this provision is so broad and ill-defined that it puts many online businesses, adult and non-adult, at risk. The broad definition of “performance” contained in SOPA could be easily interpreted to mean that one line of code, linking to another site, containing embedded videos of which you have no control, could be a felony with a 5-year prison sentence. Specifically for the adult entertainment industry, this could significantly compromise adult social networking sites as well as adult affiliate programs.

One promising characteristic of SOPA is the notion of “proactive monitoring”. This concept is attractive to content producers in that it puts the onus of preventing copyright infringement on the potentially infringing site. FSC has experienced initial success through its Anti Piracy Action Program (APAP) by partnering with previously infringing tube sites and utilizing technology that will either block or monetize copyrighted content that users attempt to upload. The important component in this process is that it costs nothing for the copyright owner. Through proactive monitoring like FSC’s APAP, content providers are protected and UGC (User Generated Content) sites can be confident that they are acting legally and responsibly. This is why UGC sites have voluntarily undertaken this proactive monitoring through APAP. Additional focus and clarity on this portion of SOPA could prove advantageous to all parties. Technological advances have created the problem of online piracy, and it makes a great deal of sense to encourage innovative technological solutions.

Copyright infringement has proven devastating to the adult entertainment industry, and FSC appreciates the efforts of those attempting to provide a solution. However, this is a complex issue and finding solutions is equally complex. At its most general level, the intent of SOPA is laudable, but some components could damage already struggling online companies and have the adverse effect of limiting free expression. It is critical that the ramifications of the aforementioned issues be addressed prior to moving forward with the copyright legislation.

¹ <http://www.techdirt.com/articles/20100912/12440610969.shtml>

² http://www.salon.com/2007/04/19/doj_obscenity/