



**WRITERS  
GUILD OF  
AMERICA, WEST**

## **WGAW Opposes H.R. 3261 In Its Current Form**

The WGAW has significant concerns regarding H.R. 3241, the Stop Online Piracy Act (SOPA) and cannot support the bill in its current form. While diminishing piracy is an important objective, anti-piracy efforts must be balanced with the similarly important objectives of free speech, due process, the right to privacy and an open Internet. Legislation targeting piracy must be carefully developed to ensure the Internet is not foreclosed as a competitive platform for free expression. The WGAW strongly urges lawmakers to address these concerns by narrowing the scope of this bill to allow only the Department of Justice to take action and target sites clearly profiting from copyright infringement. Such action will create a process for diminishing copyright infringement while balancing free speech, due process and the continued openness of the Internet.

### **WGAW Concerns with SOPA**

#### **1. Definition of Infringing Sites is Overly Broad and Vague**

The definition of foreign infringing sites in Section 103 is overly broad and does not include any standard that such a site be dedicated to copyright infringement. Inclusion of sites that are “facilitating” infringement further expands the potential sites targeted by this bill to encompass those hosting third-party content. This vague and broad definition makes it unclear what types of sites might fall within the scope of foreign infringing sites. For instance, foreign web sites that operate similarly to YouTube or other video aggregation sites would fall within the scope of this definition. While these sites may host infringing content they also serve as important vehicles for free expression, allowing independent content creators to distribute their works, free of gatekeeper control of access to consumers. However, this bill would enable the wholesale blocking of access to such sites in the U.S.

The definition of an infringing site in Section 104 is also of significant concern as it includes sites that enable or facilitate copyright infringement without sufficiently limiting the type of sites included within this meaning. Similarly, a definition that incorporates a site operator that “is taking, or has taken, deliberate actions to avoid confirming a high probability of the U.S.-directed site to carry out acts” of copyright infringement as an infringing site, without defining “high probability” or “avoid confirming” is broad and creates significant uncertainty for new sites. Further, because Section 104 does not impose a requirement that the site be foreign-operated, U.S. based sites that follow the notice and takedown procedure required by the Digital Millennium Copyright Act could, despite adhering to current law, be termed an infringing site.

#### **2. Affirmative Policing of Sites will Stifle Free Expression and Limit Competition**

The infringing sites definitions offered in H.R. 3261 will have an undeniable effect on free expression. For sites to avoid being deemed infringing under the current definitions, they may have to affirmatively police the content they host and institute restrictive policies that will limit the ability of individuals to freely post lawful material, including fair use of copyrighted material. Sites allowing independent producers and citizens to post their own material, free of the gatekeeper

control of both traditional media and many other large Internet sites, are vital to our nation's creativity and democracy. These sites provide a necessary outlet for free expression and protect online competition by lowering entry barriers for content creators. Their continued ability to operate in such a manner is jeopardized by this bill.

### 3. Notification Process in Private Right of Action Lacks Due Process

The notification process outlined in Section 104 is of significant concern to the WGAW as it allows copyright holders to instruct payment network providers and Internet advertising services to cease business relations with websites absent proper due process. Without having to contact the alleged infringing site, a copyright holder may send a letter to payment providers and advertising service companies alleging infringing behavior and instructing these businesses to cease completion of payments from U.S. based users, serving ads to the site or providing ad space for the site within 5 days of notification. Only failure to comply with the notification or counter notification by the site places the process before a judge.

### 4. Immunity from Liability Incentivizes Potentially Harmful Behavior

By providing payment network providers and Internet advertising services with immunity from liability for following a copyright holder notification, while outlining a legal process for refusal to follow the notification, the bill incentivizes these businesses to immediately cut off financial support to the alleged infringing website, prior to any form of due process. Such action could cause irreparable harm to the site and should not be contemplated without a court order.

## **About the WGAW**

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA"). These are often the same programs and films that are made available on pirated web sites.

WGAW members rely on residuals – compensation for the continued use of creative works – as a vital form of compensation. In 2010, professional writers represented by the WGAW earned \$316 million in residual payments. This compensation represents 26 percent of total writer compensation for that year. Residual payments derived from the reuse of content are essential to sustain careers and support industry health and pension plans. These payments serve as research and development funding for the entertainment industry, allowing writers to develop new material while waiting for their next employment opportunity. As such, the WGAW supports efforts to reduce copyright infringement.