



Chairman Terry  
House Energy and Commerce Committee  
Subcommittee on Commerce, Manufacturing, and Trade  
2266 Rayburn House Office Building  
Washington, DC 20515

July 10, 2014

Dear Chairman Terry:

On behalf of BSA | The Software Alliance<sup>1</sup>, I am writing to express appreciation and support for you and your staff's hard work to produce legislation to provide a nationwide tool addressing the problem of abusive demand letters while not adversely affecting normal business licensing program practices that have proven to be good for innovation. Targeting Rogue and Opaque Letters Act of 2014 (TROL Act) takes the right approach and we look forward to working with you and other Committee members to further improve this legislation, with the objective of including this tool as part of an overall patent reform legislative package.

As the leading global advocate for the software industry, BSA is comprised of members that find themselves on both sides of this issue. Our members both receive specious demand letters and send good faith, legitimate letters offering to license and cross-license our patent portfolios in an effort to collaborate and partner with other technology companies. We are true believers in a robust patent system and collectively hold hundreds of thousands of patents. It is critical that that any bill take a balanced approach to address the problem of scurrilous demand letters while not hurting the legitimate licensing activities of innocent inventors. In short, balanced legislation should make life harder for bad actors and better for innovators.

BSA believes that no single proposal alone can solve the abuses currently happening in our patent system, and for this reason, it is essential that, before becoming law, your demand letter bill, with improvements, be made part of an overall patent reform package, such as

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<sup>1</sup> *BSA's members include: Adobe, Altium, Apple, ANSYS, Autodesk, AVG, Bentley Systems, CA Technologies, CNC/Mastercam, Dell, IBM, Intel, Intuit, Microsoft, Minitab, Oracle, PTC, Rockwell Automation, Rosetta Stone, Siemens PLM, Symantec, Tekla, The MathWorks, and Trend Micro.*

the provisions of H.R. 3309 passed by the House in December of 2013.

The TROL Act, scheduled for markup July 10, provides a solid framework to deter those who believe that sending a nefarious demand letter is a quick way to benefit financially. In particular, we are strong supporters of the bill's provisions that create a single national standard for prosecuting bad actors that can be used by both the Federal Trade Commission (FTC) and state attorneys general. The bill also preserves the ability of the FTC and state prosecutors to continue to use their general consumer protection laws to seek redress against the senders of abusive letters. In addition, we support the bill's requirement that "bad faith" be proven in order to prevail against a bad actor. This approach will ensure that the FTC and state attorneys generals have an effective tool that will survive any constitutional challenges made to the legislation.

The concerns we have, and improvements we seek, relate to building in safeguards to ensure that patent holders are not put at risk for making innocent mistakes and that the bill does not prevent companies from continuing their legitimate licensing practices. These include the following examples: the bill should include a provision that allows a patent holder to cure an innocent mistake. In addition, rather than initially forcing patent holders to disclose the information in Sec. 2(a)(3)B-D, the bill should provide the patent holder with the option of notifying the recipient that information will be provided upon request by the sender. If the recipient requests the information and the patent holder fails to promptly provide the information, the sender will be considered to have acted in bad faith.

Oftentimes potential patent licensees do not want to be on notice of the information in Sec. 2(a)(3)B-D because this information may create additional liability for willful infringement. A provision that provides recipients with a choice will help all involved in the licensing process. Another improvement we believe should be made is that the bill should not regulate ongoing intellectual property licensing arrangements. Such relationships do not require the same types of regulation that the bill affords to parties that have no relationship to each other.

BSA believes the TROL Act bill is the right framework and provides a solid approach to the demand letter problem. We look forward to working with you to make improvements to this legislation as the process moves forward.

Sincerely,



Timothy Moline  
Director, Policy