



June 21, 2013

The Honorable Carl Levin  
Chairman  
Committee on Armed Services  
United States Senate

The Honorable John McCain  
Ranking Member  
Committee on Armed Services,  
Subcommittee on Seapower  
United States Senate

The Honorable John D. Rockefeller IV  
Chairman  
Committee on Commerce, Science and  
Transportation  
United States Senate

The Honorable Tom Coburn  
Ranking Member  
Committee on Homeland Security and  
Government Affairs  
United States Senate

Dear Chairmen Levin and Rockefeller, and Ranking Members McCain and Coburn:

Theft of America’s valuable intellectual property and trade secrets through cyber espionage, or other means, is a serious economic security problem for U.S. companies and our country. In today’s dynamic marketplace, a company’s success is highly dependent on its innovations and competitive advantage, both of which are closely tied to the development and protection of intellectual property. Collectively, the U.S. tech sector spent \$80 billion in 2011 protecting and securing their networks against threats, including cyber espionage, and we commend the cosponsors for their demonstrated interest in protecting intellectual property (IP) from theft.

However, we have significant concerns with S. 884, the “Deter Cyber Theft Act,” as introduced, particularly the impact the legislation may have on international commerce and trade at a time when cyber policies are of heightened importance for the global technology ecosystem, as well as the long-term impact on U.S. economic security. For that reason, we urge the cosponsors to engage in a thorough review of this and similar legislation through hearings and markup in the Senate Finance Committee, where S. 884 is currently pending. We would like the optimum opportunity to work with legislators on any proposals in this regard.

Our initial concerns with the Deter Cyber Theft Act include:

**Impediment to international relations:** As mentioned above, to advance international trade and commerce, this and many related cyber issues are in need of a constructive and ongoing international dialogue. We are concerned that the approach taken in S. 884 could have an adverse impact on ongoing efforts to build those dialogues among governments and the private sector.

**Impact on U.S. exports:** The bill as written sets a precedent for other governments to create their own mechanisms to erect market access exclusions against U.S. goods and services based on designations from their intelligence communities, especially for goods or services that are IP intensive or derive their competitiveness from their IP.

**Broad importation ban authority:** The bill would create broad authority for the president to unilaterally block entrance to the United States of goods, services, and articles manufactured -- including some legitimate, non-infringing products manufactured by certain entities -- based on classified and unclassified lists compiled by the Office of the Director of National Intelligence. This bill would create uncertainty in the market as to trade in legitimate goods, and consequently, could substantially harm U.S. companies seeking to do business in their own country and abroad.

**Unclear due process:** As written, S. 884 would not provide notification to companies when their products have been identified by the intelligence community as qualifying for a presidentially directed ban on entrance or importation into to the United States. In addition, there is no mechanism for recourse to petition or request removal of banned products from the list.

**Potential trade barriers in violation of existing trade agreements:** It is unclear that the Deter Cyber Theft Act would be compliant with international trade agreements, because its provisions may (i) subject legitimate, non-infringing goods to exclusion from importation into the U.S., and (ii) lack procedures to verify and contest a determination of infringement. The provision in S. 884 that mandates compliance with U.S. international obligations may result in the executive branch effectively reinterpreting the bill when implementing it. The bill raises questions as to whether it is possible to implement S. 884 in a manner that complies with international obligations, and thus avoids the risk of significant sanctions if the U.S. is found to be non-compliant.

We applaud the bipartisan interest in protecting our economically vital intellectual property. However, we believe that we can advance intellectual property protection in a way that does not have a negative impact on our nation's economic security and competitiveness. For that reason, we look forward to working collaboratively with the cosponsors to ensure that S. 884 and similar legislation will effectively achieve these important shared goals.

Thank you for your time and consideration of the important issue of intellectual-property theft.

Sincerely,

BSA | The Software Alliance  
Information Technology Industry Council (ITI)  
National Foreign Trade Council  
TechAmerica  
U.S. Chamber of Commerce  
U.S. Council for International Business (USCIB)

CC:

- The Honorable Max Baucus, Chair, Senate Committee on Finance
- The Honorable Orrin Hatch, Ranking Member, Senate Committee on Finance
- The Honorable James Inhofe, Ranking Member, Senate Committee on Armed Services
- The Honorable John Thune, Ranking Member, Senate Committee on Commerce, Science and Transportation
- The Honorable J. Michael Daniel, Special Assistant to the President and Cybersecurity Coordinator, Executive Office of the President
- Ambassador Miriam Sapiro, Office of the United States Trade Representative
- Allen Gina, Assistant Commissioner, Office of International Trade, U.S. Customs and Border Patrol