

April 28, 2015

The Honorable Fred Upton & Frank Pallone, Jr.
Chairman & Ranking Member
Energy & Commerce Committee, House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Upton and Mr. Pallone,

The undersigned organizations represent the small business, consumer, and public interests in the area of patent policy. We write in regretful opposition to the draft Targeting Rogue and Opaque Letters (TROL) Act that was previously marked up by the Subcommittee on Commerce, Manufacturing and Trade on April 22, 2015, and that is scheduled for markup by the full Committee today.

Abusive patent demand letters are a major problem today, and we support legislation that curbs such abuses and strongly protects the public. But this bill fails to do so, only weakly protecting businesses and individuals, and even going so far as to undo stronger protections for residents of the twenty-two states that have enacted individual demand letter laws.

Specifically, we have at least the following concerns with the bill in its present form:

- **The bill preempts state laws** that currently provide, or that may provide in the future, stronger and more innovative protections from abusive demand letters. This prevents individual states from addressing unique circumstances of their citizens and unique abuses that may arise in years to come.
- **The bill imposes unnecessarily strict requirements** on authorities seeking to enforce the law, demanding that they prove a “pattern or practice” of “bad faith” in sending abusive demand letters. These requirements create loopholes that abusers may exploit, and neither requirement is necessary in its current, highly limiting form either to comport with case law or to distinguish legitimate patent assertion efforts.
- **The bill fails to account for the future.** It deems only an enumerated list of acts associated with sending of demand letters to be improper, thus guaranteeing that the bill will quickly become outdated once new abusive tactics are devised. It furthermore provides neither opportunity for states to enact further legislation nor authority for the Federal Trade Commission to promulgate rules, two standard ways by which laws dealing with fast-paced areas such as technology can keep apace with new developments.

We do recognize the Committee’s significant efforts in dealing with this difficult issue, and thank the Committee for taking many steps toward improving this draft bill, in several circumstances at the suggestion of the undersigned. Work on this bill can and should continue. Even though this bill cannot be the beginning and the end of patent reform—the problems with the

The Honorable Fred Upton & Frank Pallone, Jr.

April 28, 2015

Page 2

system go beyond demand letters—fixing the demand letter problem is a critical piece of that reform effort.

But it would be a mistake for this Committee to place its imprimatur on the bill as currently drafted. The bill should protect small businesses, consumers, and the public from abusive patent demand letters. It does not sufficiently do so. Accordingly, we are unable to support it, and urge you and members of the Committee to vote against it.

Sincerely,

Electronic Frontier Foundation

Engine Advocacy

Public Knowledge

R Street Institute

cc: Members of the House Energy & Commerce Committee