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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

November 25, 2014

Ajaypal S. Banga
President and Chief Executive Officer
MasterCard, Inc.
2000 Purchase Street
Purchase, New York 10577

Dear Mr. Banga,

Online copyright infringement remains a serious problem for America's artists and creators. The Internet has made large-scale distribution of music, films, television shows, and books possible in a way that was previously unimaginable. While this has encouraged the welcome growth of lawful services and websites to access content, it has also caused the rise of illegitimate websites that are dedicated to illegal copyright infringement. These illegitimate enterprises, many of which operate abroad but target American Internet users, profit from the hard work of our Nation's creators and undermine the diverse lawful, innovative services that are flourishing online.

In recent years, strides have been made to help reduce online infringement—and payment processors have played a role in that progress. For example, the June 2011 set of best practices developed by major payment processors included a standard for copyright owners to register a complaint about an online site and have that complaint investigated. But more can and should be done. A report recently released by NetNames and the Digital Citizens Alliance analyzed the financial performance of leading cyberlockers, which (unlike lawful cloud storage services) exist to unlawfully store and disseminate infringing files around the world. The study shows that a vast majority of the most pernicious cyberlockers rely on payment processors such as MasterCard for their financial viability.

Based on research for the report, 29 of the 30 cyberlockers analyzed accept payment via MasterCard. MasterCard's participation unwittingly contributes to these websites' viability, which for some cyberlockers comprises revenues of millions of dollars per year. What's more, the fact that MasterCard is accepted by, and its logo appears on, these websites lends the sites a harmful imprimatur of legitimacy. A consumer wondering whether a site is offering lawful access to copyrighted content may easily trust the cyberlocker's legitimacy if world-respected payment processors service the site.

The study estimates that the cost to the 30 identified cyberlockers for using payment processors is over $130,000 per month. While not all of that money is paid to MasterCard, I would hope

MasterCard agrees that no amount of money derived from unlawful activity should make its way onto MasterCard's balance sheet.

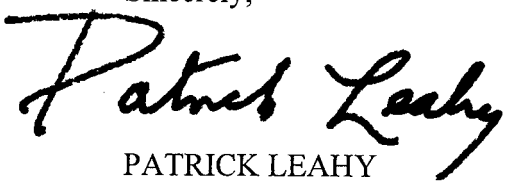
I understand that MasterCard has long had a policy prohibiting the use of its cards for illegal activities. In response to a question that I asked during a 2006 Senate Judiciary Committee hearing, MasterCard executive Joshua Peirez testified that "We prohibit and deplore the use of our system for any illegal activities," including copyright infringement. Mr. Peirez went on to explain that MasterCard was working on ensuring its services were not used by a Russian-based illegal music download site.

I welcomed that commitment by MasterCard, but eight years later, further work is clearly needed. Accordingly, I ask MasterCard to revisit its policies for how its cards are used by infringing websites and services. The cyberlockers listed in the NetNames report bear clear red flags of having no legitimate purpose or activity. I ask MasterCard to swiftly review the complaints against those cyberlockers and to ensure that payment processing services offered by MasterCard to those sites, or any others dedicated to infringing activity, cease.

I also urge you to continue working with copyright owners and their representatives to develop methods and practices for the efficient investigation of sites alleged to engage in infringement. Voluntary agreements, developed and refined over time between the relevant stakeholders, hold great promise for addressing the problem of infringement online.

I look forward to your response.

Sincerely,



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COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

November 25, 2014

Charles W. Scharf
Chief Executive Officer
Visa, Inc.
270 Park Avenue
New York, New York 10017

Dear Mr. Scharf,

Online copyright infringement remains a serious problem for America's artists and creators. The Internet has made large-scale distribution of music, films, television shows, and books possible in a way that was previously unimaginable. While this has encouraged the welcome growth of lawful services and websites to access content, it has also caused the rise of illegitimate websites that are dedicated to illegal copyright infringement. These illegitimate enterprises, many of which operate abroad but target American Internet users, profit from the hard work of our Nation's creators and undermine the diverse lawful, innovative services that are flourishing online.

In recent years, strides have been made to help reduce online infringement—and payment processors have played a role in that progress. For example, the June 2011 set of best practices developed by major payment processors included a standard for copyright owners to register a complaint about an online site and have that complaint investigated. But more can and should be done. A report recently released by NetNames and the Digital Citizens Alliance analyzed the financial performance of leading cyberlockers, which (unlike lawful cloud storage services) exist to unlawfully store and disseminate infringing files around the world. The study shows that a vast majority of the most pernicious cyberlockers rely on payment processors such as Visa for their financial viability.

Based on research for the report, 29 of the 30 cyberlockers analyzed accept payment via Visa. Visa's participation unwittingly contributes to these websites' viability, which for some cyberlockers comprises revenues of millions of dollars per year. What's more, the fact that Visa is accepted by, and its logo appears on, these websites lends the sites a harmful imprimatur of legitimacy. A consumer wondering whether a site is offering lawful access to copyrighted content may easily trust the cyberlocker's legitimacy if world-respected payment processors service the site.

The study estimates that the cost to the 30 identified cyberlockers for using payment processors is over $130,000 per month. While not all of that money is paid to Visa, I would hope Visa

agrees that no amount of money derived from unlawful activity should make its way onto Visa's balance sheet.

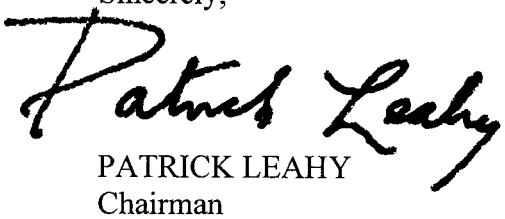
I understand that Visa has long had a policy prohibiting the use of its cards for illegal activities. In response to a question that I asked during a 2006 Senate Judiciary Committee hearing, Visa's then-General Counsel Joshua Floum testified that "Visa deplores any illegal use of its cards, and as you mentioned, whether the issue is Internet pornography, online pharmaceuticals [or] illegal downloading of music, our rules expressly forbid the unlawful use of the card." Mr. Floum went on to explain that Visa was taking action to suspend its services to a Russian-based illegal music download site.

I welcomed that commitment by Visa, but eight years later, further work is clearly needed. Accordingly, I ask Visa to revisit its policies for how its cards are used by infringing websites and services. The cyberlockers listed in the NetNames report bear clear red flags of having no legitimate purpose or activity. I ask Visa to swiftly review the complaints against those cyberlockers and to ensure that payment processing services offered by Visa to those sites, or any others dedicated to infringing activity, cease.

I also urge you to continue working with copyright owners and their representatives to develop methods and practices for the efficient investigation of sites alleged to engage in infringement. Voluntary agreements, developed and refined over time between the relevant stakeholders, hold great promise for addressing the problem of infringement online.

I look forward to your response.

Sincerely,



PATRICK LEAHY
Chairman