



U.S. CHAMBER OF COMMERCE

Software & Information Industry Association
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The Internet Association



Information Technology Industry Council

November 3, 2014

The Honorable Harry Reid,
Democratic Leader
United States Senate

The Honorable Mitch McConnell
Republican Leader
United States Senate

The Honorable Barbara Mikulski
Chairwoman, Appropriations Cmte.
United States Senate

Richard Shelby
Ranking Member, Appropriations Cmte.
United States Senate

The Honorable John Boehner
Republican Leader
United States House of Representatives

The Honorable Nancy Pelosi
Democratic Leader
United States House of Representatives

The Honorable Harold Rogers
Chairman, Appropriations Cmte.
United States House of Representatives

The Honorable Nita Lowey
Ranking Member, Appropriations Cmte.
United States House of Representatives

Dear Congressional Leaders,

Over more than half a century, the United States' bilateral Mutual Legal Assistance Treaties (MLATs) and related multilateral agreements with foreign governments have served as a trusted and reliable mechanism for law enforcement to resolve criminal investigations across borders. These MLAT-related processes have been critical to not only ensuring that foreign government requests conform to U.S. legal requirements, but also countering the growing number of foreign government calls to enact restrictive laws that would undercut the structure of the Internet and competitiveness of U.S. companies.

Unfortunately, resource constraints have put a severe strain on the Department of Justice's personnel and technological capabilities to efficiently process MLAT requests, as the demand from foreign governments has skyrocketed. In the last decade alone, there was a 60 percent increase in

foreign evidence requests and a 1,000 percent increase in requests for electronic records, submitted to the Department of Justice's Office of International Affairs. The increase in MLAT requests has coincided with a decrease in staffing within the Office of International Affairs, creating a substantial backlog in foreign evidence requests, with response times that can extend beyond a year for a single request. As a result, foreign governments have attempted to forego the MLAT process by requesting data directly from U.S. companies operating overseas, even though under U.S. law many of the requests must be processed by the Department of Justice, leaving U.S. companies to face difficult conflicts of law.

In July, Assistant Attorney General Leslie Caldwell testified that this problem "has harmed our relationships with foreign law enforcement agencies"¹ and stressed that the Department of Justice is seeking \$24.1 million in dedicated FY 2015 funding² to streamline the U.S. processing of MLAT requests. With additional prosecutors, support personnel, and technology, the Department of Justice estimates it would narrow MLAT response times to a matter of weeks by the end of 2015, thereby strengthening international relationships on cyber investigations. We strongly support this request on behalf of our members and believe that it is critical to rebuilding trust in the effectiveness of the U.S. MLAT process, while maintaining the rule of law around the world.

We recognize the difficult fiscal environment and short calendar this Congress faces in addressing appropriations for fiscal year 2015. We likewise appreciate that there are any number of worthy measures that could compete for additional flexibility that might be achieved during the balance of this funding cycle. But in consonance with the sentiments expressed in the reports of both the Senate and the House Appropriations Committees, we urge you to assign the highest priority to funding the urgently needed improvements in the MLAT process on the basis that it represents an investment that can pay dividends across a range of economic and geopolitical fronts. To that end we offer an example³ of a form of action to secure in the next vehicle that funds our government the \$24.1 million in funding for MLAT improvements that was requested by the President and endorsed by the respective Committees on Appropriations.

¹<http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-testifies-senate-committee-judiciary>

² <http://www.justice.gov/sites/default/files/jmd/legacy/2014/07/13/mut-legal-assist.pdf>

³ Possible form of action using a full-year extension of the pending continuing resolution as the illustrative case: Amend the Continuing Appropriations Resolution, 2015 (P.L. 113-164) by adding at the end the following new section:

"Sec. 150. Notwithstanding section 101, amounts are provided for the Federal Bureau of Investigation, for United States Attorneys, and for the Criminal Division of the Department of Justice at respective rates for operations necessary to support Mutual Legal Assistance Treaty programs at a level \$24,100,000 above the level provided in fiscal year 2014, provided that the additional increment of funding hereby provided is available only for Mutual Legal Assistance Treaty activities."

Thank you in advance for your consideration of this request. We stand ready to help in any way possible to assist the Congress in taking a critical step needed to remove barriers preventing U.S. businesses from competing effectively in the global information economy.

Sincerely,

Application Developers Alliance
BSA – The Software Alliance
Computer and Communications Industry Association
Information Technology Industry Council
Internet Association
Software & Information Industry Association
U.S. Chamber of Commerce
U.S. Council for International Business

cc: The Honorable Patrick Leahy, Chairman, U.S. Senate Judiciary Committee
The Honorable Chuck Grassley, Ranking Member, U.S. Senate Judiciary Committee
The Honorable Bob Goodlatte, Chairman, U.S. House Judiciary Committee
The Honorable John Conyers, Ranking Member, U.S. House Judiciary Committee