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February 1, 2010

Mr. Adam J. Szubin
Director
Office of Foreign Assets Control
Department of Treasury
Washington, DC 20220

Dear Mr. Szubin:

I am writing again with regard to the ability of citizens in sanctioned countries to use services that allow them to access the Internet, and to get your views on a new development that involves the ability of users in Cuba and elsewhere to obtain open source software.

In September 2009, you took the time to respond to my letter to Secretary Geithner about the decision by Microsoft and other IM providers to stop offering instant messaging services to users in Cuba and other countries under U.S. sanctions.

In your letter, you conveyed your assurance that the decision to discontinue IM was not directed by OFAC or any other Federal agency, that ensuring the flow and access to information through the Internet was consistent with the policy interests of the U.S., and that OFAC was participating in an inter-agency effort to review the discontinuation of IM services to sanctioned countries.

I very much appreciated your reply.

Unfortunately, a new incident has come to our attention in which a company is withdrawing services to users in sanctioned countries out of the belief that providing access to its site is a violation of our laws.

The site in question, SourceForge is now blocking access for users to its open-source software in Cuba, Iran, North Korea, Syria, and the Sudan. SourceForge is a community for open source software development. As we understand it, this site enables developers to host projects, solicit contributions from other developers, and post each version of software in its development lifespan.

A public statement¹ released by SourceForge about the cut off says the following:

The specific list of sanctions that affect our users concern the transfer and export of certain technology to foreign persons and governments on the sanctions list. This means users residing in countries on the United States Office of Foreign Assets Control (OFAC) sanction list, including Cuba, Iran, North Korea, Sudan, and Syria, may not post content to, or access content available through, SourceForge.net. Last week, SourceForge.net began automatic blocking of certain IP addresses to enforce those conditions of use.

As one of the first companies to promote the adoption and distribution of free and open source software, and one that still puts open source at the center of its corporate ideals, restrictions on the free flow of information rub us the wrong way. However, in addition to participating in the open source community, we also live in the real world, and are governed by the laws of the country in which we are located. Our need to follow those laws supersedes any wishes we might have to make our community as inclusive as possible. The possible penalties for violating these restrictions include fines and imprisonment. Other hosting companies based in the US have similar legal and technical restrictions in place.

This is their explanation. We tried to engage SourceForge in a dialogue and wanted to share with them your letter explaining U.S. policy, but have not yet heard back from the person in charge.

We know that OFAC is committed to the policy that you outlined to CDA last year. But, as with the case of IM providers (who, to our knowledge, have not restored their services to Cuba and other sanctioned countries), SourceForge appears to believe that it must cut off access to its site on the basis of the same theory that interrupted instant messaging. The message of what our policy is actually meant to accomplish – as Secretary Clinton described it on January 21, 2010 – appears not to be getting through: *“We stand for a single Internet where all of humanity has equal access to knowledge and ideas.”*

We wanted to bring this latest incident to your attention, and we will be interested in learning your reaction to it.

Sincerely,



Sarah Stephens

¹ <http://sourceforge.net/blog/clarifying-sourceforgenets-denial-of-site-access-for-certain-persons-in-accordance-with-us-law/>