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**Sent:** Saturday, April 06, 2013 11:45 AM  
**To:** ATR-LPS-PAEPublicComments  
**Cc:** Danielle Sheer; Alex Blumberg (al[REDACTED] )  
**Subject:** Patent Assertion Entities and their damage to my company

To The Federal Trade Commission and the U.S. Department of Justice

Google's recent comments to you said, "Big tech companies face hundreds of PAE lawsuits, but small- and medium-sized companies are the most frequent targets." We are one of the small ones and I'd like to tell you our story.

We founded Carbonite in 2005 with the idea that if we could make computer backup over the Internet simple enough and inexpensive enough, everyone would buy it. Today Carbonite employees over 425 people and in 2011 we went public on the NASDAQ. Shortly thereafter we were sued by a Patent Assertion Entity (so-called "Patent Troll" ) called Oasis Research in the Eastern District Court in Texas. The demand was \$20 million plus a percentage of our ongoing revenue. \$20 million was roughly 1/3<sup>rd</sup> of all the money we had in the bank and more than our total R&D budget. The demand for ongoing "royalties" could have easily put us out of business in a few years.

18 other companies in the online backup space were named as defendants in this suit. Oasis' claim was around a set of obscure and nearly 20-year-old business method patents that had been purchased by Intellectual Ventures from one of the original inventors, and then transferred to a company named Oasis Research, LLC, a Patent Assertion Entity in Marshall Texas that was created for the sole purpose of suing us and others. Oasis Research, LLC became the subject of a story on NPR's *This American Life*. See the link below to hear this program and learn more about who Oasis Research really is.

A few weeks ago when the suit finally came before a jury in the Eastern District Court of Texas, only 2 defendants remained to fight Oasis in court: my company, Carbonite, Inc., and EMC, Inc., a NYSE technology company and our biggest competitor. The rest had settled for large sums or had had their cases dismissed because they were no longer in the backup business. After a week of testimony before the jury of eight women and men from Sherman, Texas, Carbonite and EMC were finally vindicated. The jury ruled in our favor and the court invalidated Oasis' patents.

While we are thankful for this **rare** win in the Eastern District of Texas Court, our little company was obliged to spend millions of dollars on legal fees. Indeed since the beginning of 2013, our legal bills have already exceeded our R&D budget, stifling innovation and curtailing our ability to introduce new products that will create jobs at Carbonite. In addition, the potential risk of having \$20M of cash wiped from our balance sheet was a *Sword of Damocles* that depressed our stock price and prevented us from growing our business through acquisition. Also, relations among my Board members were strained as arguments ensued over whether to settle or fight. So while we won in court, the damage can never be repaired and we have scant hope of ever recovering any of our costs. That is why we support the so-called SHIELD act before Congress – if the PAEs were required to reimburse companies like mine for legal expenses as the result of frivolous lawsuits, it would deter them from suing in the first place. The fight between patent trolls and companies like mine is not a fair fight: We cannot countersue a patent troll because they don't practice the patent or sell any products; we can't cross-license our own patents for the same reason. And when we win against these company-crushing claims, we can't even get our hard-earned money back. We need your help.

Fixing the patent troll problem is the number one thing that government can do for the high tech industry. We encourage you to take firm and decisive actions to curtail these abuses. And we hope that you will act quickly because PAEs have been flooding the court system in anticipation of your changes.

Sincerely,

David Friend, CEO  
Carbonite, Inc.  
Boston, MA

Cc: Danielle Sheer, General Council  
Alex Blumberg, NPR

<http://www.npr.org/blogs/money/2011/07/26/138576167/when-patents-attack>



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