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## Online Piracy Legislation

During the last session of Congress, several legislative approaches have emerged to help copyright holders and the Department of Justice (DOJ) uphold intellectual property rights online. Current enforcement efforts are focused on users who download or stream copyrighted content; pursuing websites which host pirated content or sell counterfeit goods is considerably more difficult, and taking action against websites hosted overseas is harder still. In addition to a number of smaller, more targeted bills, three comprehensive bills have emerged to drive the discussion of online piracy: the Senate's PROTECT IP Act, the House's SOPA, and the bicameral OPEN Act, presented as an alternative to the first two bills. Supporters of the House and Senate legislation have signaled their intent to take up the bills within a few weeks of Congress coming back in session, but the critics are as numerous and fervent as the supporters, and the outcome is still uncertain.

### Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (PROTECT IP) – S. 968

Senate Judiciary Committee Chairman Patrick Leahy (D-VT), along with Ranking Member Charles Grassley (R-IA) and member Orrin Hatch (R-UT), introduced PROTECT IP in the Senate on May 12, 2011. The bill was intended to provide additional tools to U.S. law enforcement and copyright holders to pursue websites – including non-U.S. based websites – “dedicated to infringing activities.” PROTECT IP was unanimously approved by the Judiciary Committee two weeks later. After six months on the Senate calendar, Senate Majority Leader Harry Reid (D-NV) announced in December that he would seek a cloture vote on PROTECT IP on January 24, when the Senate returns from recess.

#### Major Provisions:

1. The DOJ may file a civil action against U.S. owners of foreign-based pirate websites as well as foreign-based domain names themselves.
2. The DOJ can then seek a court order requiring U.S.-based third parties to suspend business with (in the case of advertisers and payment processors) or restrict access from (in the case of search engines, internet service providers, and domain name registries) the websites.
  - a. Copyright holders may also file suit, but only advertisers and payment processors would be subject to the granted court order.
3. Third parties who voluntarily cease activities with infringing websites are granted immunity.
4. The Department of Homeland Security is authorized to share certain information related to copyright violations with the copyright holders.
5. The DOJ must make annual reports to Congress on actions taken under the bill.

### Stop Online Piracy Act (SOPA) – H.R. 3261

SOPA was introduced in the House on October 26, 2011 by Judiciary Subcommittee on Intellectual Property, Competition, and the Internet Chairman Lamar Smith (R-TX). While the bill included many of the same provisions as PROTECT IP, it also contains significant differences. Prior to consideration by the Judiciary Committee, outspoken criticism from a variety of stakeholders prompted several changes to the original language via a manager's amendment offered. A two-day Judiciary Committee bill

markup in December didn't result in a final vote, but Chairman Smith said that he hopes to resume work on the bill as soon as Congress is back in session.

**Differences from PROTECT IP:**

1. Any website which does not actively police for copyright-violating site use is subject to a lawsuit and subsequent shutdown from copyright holders.
2. Copyright holders may take action against websites by providing written notification of infringement to third-party payment processors or advertisers, compelling them to suspend their business with the infringing website.
3. Counterfeit prescription drugs are included under the definition of "inherently dangerous goods" for the purposes of criminal trafficking penalties.
4. The definition of "criminal copyright infringement" is expanded to include making copyrighted work available on a computer network or by digital transmission.

**Changes from manager's amendment:**

1. Private copyright holders may no longer compel action from third parties doing business with infringing websites without a court order (negates #2 provision above).
2. The definitions of third parties required to comply with court orders based on their interactions with rogue websites were narrowed.
3. Certain time limits for third parties to comply with court order were removed.
4. The range of targeted websites was narrowed to focus on foreign-based sites.
5. Internet service providers will not be required to redirect traffic from rogue websites.

## Criticism and Support

Critics of both bills have expressed concerns that the need to patrol partner websites for infringing activities places too heavy a burden on third-party actors. Conversely, the broad legal protection provided to those who cut off services to websites suspected of pirating could facilitate anticompetitive practices and free speech violations. A coalition of technology industry advocate groups sent a [letter](#) to lawmakers in November arguing that both bills would create overwhelming regulatory burdens for internet-based firms and hamper innovation. Many online and technology companies also oppose the bills on the grounds that the legislative definition of websites "dedicated to infringing activities" is too broad and could open up a host of legitimate websites to harmful actions. Lawmakers and cybersecurity experts have argued that the tools granted to law enforcement in the pursuit of infringing websites could have unforeseen impacts on network integrity and the strength of cybersecurity. Members of the House Judiciary Committee requested additional hearings on the cybersecurity implications of SOPA before a final Committee vote is taken.

Supporters of the bills are adamant that anti-piracy legislation is needed to correct the gap in U.S. copyright law where foreign-based websites are concerned, and encourage innovation by protecting intellectual property online. Several lawmakers who support SOPA remarked at a hearing that technology and internet companies opposed to the bill may be profiting from pirated content. Nearly 400 companies and the U.S. Chamber of Commerce sent a letter urging Congress to "enact legislation that targets" rogue websites, although the letter does not mention a specific bill. Senator Sheldon Whitehouse (D-RI), co-chair of the Congressional International Anti-Piracy Caucus, responded to SOPA's detractors by pointing to a [report](#) from the International Intellectual Property Alliance which found that copyright-based industries employed nearly 5.1 million U.S. workers in 2010 and saying that the antipiracy protections in SOPA are needed to protect jobs.

## Online Protection and Enforcement of Digital Trade (OPEN) Act

After criticizing other anti-online piracy efforts, House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) and Senate Finance Subcommittee on International Trade, Customs and Global Competitiveness Chairman Ron Wyden (D-OR) released their own legislative draft on December 8. Their bipartisan, bicameral proposal also takes steps to address the growing problem of websites trafficking in pirated or counterfeit goods, but would give responsibility for enforcement to the International Trade Commission (ITC) rather than the DOJ. Congressman Issa said that the OPEN Act “empowers owners of intellectual property by targeting overseas infringers while protecting the rights of lawful Internet entrepreneurs and users.” Critics of the new proposal, including the Recording Industry Association of America (RIAA), say that it is too lenient and does not provide sufficient tools to pursue foreign-based copyright violators. RIAA [criticized](#) the OPEN Act this month on their website, saying that the ITC does not move quickly enough to address online piracy effectively.

### More Information

- Read [the PROTECT IP Act](#).
- Read [SOPA](#), as introduced on October 26.
- Read the [manager's amendment](#) to SOPA.
- Read more information on [the OPEN Act](#), including full text.