

New Online Anti-Piracy Initiatives in the U.S. and Europe

What is the Legislation?

- **SOPA/PIPA** (U.S.) - Stop Online Piracy Act (H.R. 3261, Oct. 26, 2011)/Protect IP Act (S. 968, May 12, 2011)

Objective: protect intellectual property right holders from foreign infringing websites

SOPA: authorizes U.S. Attorney General to seek court orders to stop internet service providers (ISPs), search engines (e.g. Google), payment network providers (e.g. Paypal), and Internet advertising services from supporting rogue Internet sites “*dedicated to theft of U.S. property*”; also authorizes private actions against foreign infringing sites

PIPA: authorizes U.S. Attorney General to seek courts orders to stop payment providers and Internet advertising services from supporting rogue Internet sites “*dedicated to infringing activities*” (i.e. “no significant use other than engaging in, enabling, or facilitating” copyright infringement)

Proponents: media and pharmaceutical companies, U.S. Chamber of Commerce

Opponents: public, ISPs, social media websites, search engines

Benefits: online piracy protection against foreign infringers outside the scope of the DMCA

Concerns:

Erodes freedom of speech - website blacklisting, will lead to censored and restricted internet

Invades privacy rights - encourages ISPs to monitor user activities

Lack of due process

Economic burden on ISPs/websites to police user traffic and content

Weakens cybersecurity - DNS filtering would “fracture the Internet”

- **OPEN Act** (U.S.) - Online Protection & Enforcement of Digital Trade Act (S. 2029, Dec. 17, 2011/H.R. 3782, Jan. 18, 2012)

Objective: “take action against unfair digital imports or unfair imports that are digitally-facilitated by foreign rogue websites”

Expands the Tariff Act of 1930 to allow International Trade Commission (ITC) proceedings to cut infringing website’s revenue sources (payment network providers and internet advertising services)

Proponents: ISPs, social media websites, search engines

Opponents: media companies

Benefits:

Less extreme alternative to SOPA/PIPA

ITC ruling provides due process

Eliminates the filtering and website blocking obligations imposed on ISPs and search engines from SOPA/PIPA

Concerns:

Not strong enough

Burdensome ITC proceedings

Increased workload on ITC

Vague definitions

- **CISPA (U.S.)** - Cyber Intelligence Sharing and Protection Act (H.R. 3523, Nov. 30, 2011)

Objective: improve cybersecurity and protect websites and network infrastructure from hackers

Proponents: U.S. government, telecommunications and information technology companies

Opponents: public, civil liberties groups

Benefits: allows government and companies to share information on emerging cyber threats

Concerns: “Internet spying”; allows social media companies and ISPs to use the threat of copyright infringement to monitor communications and turn over private data to the government

- **ACTA (E.U.)** - Anti-Counterfeiting Trade Agreement (drafted Nov. 15, 2010, signed Oct. 10, 2011)

Objective: establish global standards for enforcing intellectual property rights; curb cross-border proliferation of pirated goods

Proponents: European Union and 22 member states; United States, Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea; media and pharmaceutical companies

Opponents: public, civil liberties groups, ALDE, David Martin (rapporteur on ACTA)

Benefits:

 - Implemented under local laws
 - Increases penalties for IP infringement, imprisonment
 - Obliges states to extend criminal liability for copyright piracy and trademark counterfeiting
 - Injunctions against third parties (e.g. website blocking)
 - Establishes permanent ACTA Committee

Concerns:

 - Infringes fundamental rights and freedoms - freedom of expression, communication privacy, data protection
 - Lacks specific safeguards - effective judicial protection, due process, presumption of innocence
 - Vague language - lack of definitions regarding “commercial scale,” “criminal offenses,” and “competent authorities”

- **CRR Regulations (Ireland)** - European Union (Copyright and Related Rights) Regulations 2012

Objective: “Ireland’s SOPA”; provide mechanism for copyright holders to seek an injunction against an intermediary service providers that provide facilities to third party copyright infringers

Proponents: media companies

Opponents: public, civil liberties groups

Benefits: balanced law against Internet piracy

 - No mandatory monitoring for ISPs (*SABAM vs. Scarlet*, Case C-70/10)
 - ISP measures not “unnecessarily complicated or costly”
 - Fundamental rights of users must be respected, including protection of personal data and freedom to receive or impart information

Concerns:

 - Restricts freedom of speech
 - Internet censorship
 - Legal defense costs
 - Impact on economy and digital industry (Google and Facebook are top technology employers in Ireland)

What is the Status of the Legislation?

- **SOPA/PIPA**
 - Jan. 2012 - widespread protests and website blackouts (Wikipedia, Google, Reddit)
 - Jan. 16, 2012 - White House issues official statement opposing current form of SOPA
 - Jan. 20, 2012 - House and Senate postpone consideration of SOPA and PIPA indefinitely
- **OPEN Act**
 - Senate bill - referred to Finance Committee; House bill - referred to Judiciary Committee
 - Open to public comment; has failed to gain traction
- **CISPA**
 - April 16, 2012 - U.S. House of Representatives Intelligence Committee *removes “intellectual property theft”* from the list of possible causes that could trigger disclosure of private information to the government; now limited to cyber security
 - April 26, 2012 - approved by the U.S. House of Representatives
- **ACTA**
 - Dec. 2011 - adopted unanimously by European Council
 - Jan. 26, 2012 - signed by the European Commission and 22 Member States (United States signed in Oct. 2011)
 - Apr. 4, 2012 - European Commission refers ACTA to European Court of Justice to determine: “Is ACTA compatible with the European treaties, in particular with the Charter of Fundamental Rights of the European Union?” (European Parliament voted against referral the week before)
 - Jun. 2012 - planned vote in European Parliament (no ratification suspension for ECJ proceedings)
 - As of Apr. 27, 2012 - not in force; needs ratification by six (6) states
- **CRR Regulations**
 - Feb. 29, 2012 - signed into law
 - May 31, 2012 - deadline to submit public commentary to Copyright Review Committee

Questions

- How do we strike a balance between rights of intellectual property holders and the fundamental rights and freedoms of Internet users?
- How should U.S. laws address foreign owned and operated sites and U.S. search engines that promote piracy?
- To what extent should the internet service providers, search engines, and other websites have the burden and costs of policing for alleged infringers?
- Can legislation be crafted that limits free speech and innovation but protect rights holders?
- What safe harbor protections from liability should be included in the legislation, such as those presently afforded to Internet sites by the DMCA?
- What legislation or solutions from Europe may assist in crafting balanced legislation in the U.S.?

Biographical Information

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