

## **Where Did My Wikipedia Go? Just the Facts on SOPA and PIPA**

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If you used to think that SOPA was a misspelling of soap, after January 18<sup>th</sup>, 2012 you know better. What is now being called, National SOPA Blackout Day, the internet was flooded with thousands of articles, hundreds of petitions and most chilling to many users - blocked websites. Wikipedia shut down its services for the day and Google's home screen icon contained a censorship box that led to even more petitions and articles. Over twenty high volume websites, ranging from Craigslist.com to Moveon.org, blocked out their websites. All this internet activity was done to protest two pieces of highly controversial legislation currently pending in the House and Senate: SOPA and PIPA. Amid this frenzy, it's important to understand what these bills mean; and more importantly, how they can affect your business.

Although the SOPA and PIPA legislation is still being debated, if these bills are passed it would significantly change the current law dealing with internet piracy and copyright violations.

### ***What do SOPA and PIPA actually mean?***

SOPA or the "Stop Online Piracy Act" was introduced to the House of Representatives this past October. PIPA or the "Protect Intellectual Property Act" was introduced to the Senate in May, 2011. Both bills act in conjunction with each other and have the stated goal of enabling the United States to get tougher with foreign pirates who steal American made intellectual property and consumer goods. PIPA enables private companies, such as SONY or Paramount, to sue search engines, directories or any website for hosting content that infringes on copyright. PIPA also provides for a DNS filtering system that basically allows the government, upon court order, to divert users from accused websites. SOPA provides steep penalties for websites that knowingly distribute infringing content. Penalties range from fines to prison time, but the so called "blacklist" has received the most media attention. While you won't find the word, "blacklist" in either SOPA or PIPA, the text of the bills essentially encourages the government to block the accused websites and encourage private companies to create target lists. These target lists are used to directly send notice to payment service providers –like Visa – demanding a cut off of payment to the accused websites. It is this threat of a blacklist that caused so much commotion that over a dozen tech companies participated in "blackout" protests on January 18, 2012.

### ***Do SOPA and PIPA really change things?***

The new penalties embedded in SOPA and PIPA represent a big change in the current law, which is codified in the DMCA, "Digital Millennium Copyright Act." The DMCA grants a safe harbor to websites and internet service providers ("ISP") as long as they act in good faith to take down infringing content upon notification (the take down notice procedure). Under the current law, websites and ISPs are generally not liable for copyright infringement by others as long as they remove the content upon proper notification. There are some provisions in SOPA that arguably remove that safe harbor in that they create liability even in the absence of actual notice. In other words, an innocent

website or ISP could be found liable for third party infringement if this law is passed. Additionally, the bills would allow copyright holders to sue different level of websites (i.e. not just those hosting the illegal material but also those sites associated with it) and instill much harsher penalties, such as 5 years in prison or millions of dollars in fines.

### ***What are the arguments for and against SOPA/PIPA?***

Supporters of these bills argue that it enables the government and copyright holders to take a firm stance against copyright violations in the United States. SOPA/PIPA creates new tools for combating online piracy, while providing holders with more avenues of recourse. Websites will be forced to take a more proactive role to ensure compliance with the law or they face harsh consequences.

While combating copyright infringement is a laudable goal, those opposed to the bills point out that the law goes too far. The internet is supposed to be open medium of expression that is not controlled by the government or private company interests. SOPA changes this by allowing the government to essentially hack websites by rerouting users through the DNS filters provisions. PIPA provides private companies with incentives to sue and maintain lists of websites that allow copyright violations. Broadly speaking, the language of these bills could impact free speech at every level and inhibit innovation.

Supporters and opponents of the bill are not confined to one political party and many politicians have changed their position. PIPA is scheduled for a debate and vote on January 24, 2012 by the Senate. SOPA is also making its way through the House, but was delayed from a scheduled hearing on January 18, 2011, due to lack of consensus on proposed amendments. Right now SOPA is not scheduled to reach the House floor until these amendment issues can be resolved.

### ***So how does this affect me?***

It is particularly important to pay attention to these bills if your company has a website that permits others to post content or contains links to other websites (i.e. sister or referral sites). If it does, passage of these laws could create liability unless you ensure that users of your site do not post infringing material and that you do not link to websites that contain infringing material.

Additionally, if your business heavily relies on websites such as Wikipedia, YouTube, Mozilla Firefox, Facebook or Twitter, you may see interruptions with their service or possibly a complete shutdown. Business may also see sent or received emails blocked by their email providers if the messages contain links to an accused website.

For now SOPA and PIPA will remain in debate in the House and Senate. However, its important that your business understands what will happen if either or both of these bills are passed.

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