



Better Anti-Piracy Bill Introduced in Wake of SOPA, PIPA

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We previously wrote about the broad protests over two bills in Congress targeting online copyright infringement – the House’s Stop Online Privacy Act (SOPA) and the Senate’s Protect Intellectual Property Act (PIPA). We were pleased that the protests and other activities were effective in ending efforts to pass those versions of the legislation.

The protests were led by Internet businesses that argued that the bills would lead to censorship of the Internet and to the cutting off of useful, legal online content. Under these bills, websites such as Facebook and YouTube could have been found liable if they hosted infringing content. As a result of the massive protests, Congressional leaders were forced to table PIPA and SOPA for the time being.

Many critics of SOPA have instead announced their support for legislation sponsored by Sen. Ron Wyden (D-Ore.) and Rep. Darrell Issa (R-Calif.) as a means of preventing online piracy without threatening free speech. The Online Protection and Enforcement of Digital Trade Act (OPEN Act) would allow people or groups that own content on the Internet to ask the International Trade Commission (ITC) to investigate whether a foreign website is dedicated to piracy. The ITC would be given power to collect fees from complainants and to hire additional personnel for investigations. The website owner would be allowed to offer evidence to rebut the claim. If the ITC ruled in favor of the content owner, it could then direct payment firms and advertising networks to stop doing business with the site and require search engines to delete links.

SOPA and PIPA had contained language that would allow for the Department of Justice to “disappear” a website, meaning that it would require Internet service providers to disable the resolution of the site’s name by the Domain Name Service to an IP address. This would effectively eliminate the web site from the Internet. The OPEN Act would not give DOJ this power.

The OPEN Act would be able to deal with a primary concern of copyright holders — that the process would not be able to catch up with the speed that pirates are stealing intellectual property. Under the OPEN Act, copyright holders could request temporary restraining orders to protect their intellectual property in the short term, a provision that



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would be particularly important for websites seeking to protect live broadcasts over the Internet, such as sporting events.

NetCoalition, a technology industry group that counts Google, Yahoo!, Amazon, eBay, PayPal, Expedia, Bloomberg LP, and Wikipedia among its members, has said that it supports the OPEN Act.

The Senate version of the OPEN Act has been referred to the Finance Committee, and the House bill has been referred to the Judiciary Committee.

It is good news for Internet entrepreneurs, and for free speech, that SOPA and PIPA were defeated. In addition to the chilling effect on the Internet that would have occurred under either SOPA or PIPA, it makes no sense to use scarce criminal resources to prosecute piracy cases. The OPEN Act would represent a much better approach to combating online piracy.

The dispute resolution process under the OPEN Act would provide both parties with the opportunity to present their positions before an experienced tribunal that could resolve the issues on the facts before them.

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The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrah and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!

