



Global Forum 2011

PROTECT IP Act and SOPA

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Newly Proposed Laws

- The Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011 (“PROTECT IP Act” or “PIPA”) is a bill proposed in the U.S. Senate.
- The Stop Online Privacy Act of 2011 (“SOPA”) is a bill proposed in the U.S. House of Representatives.

PROTECT IP Act

- PIPA is aimed at curbing copyright infringement and trademark infringement that takes place on the Internet.
- The bill provides for a new cause of action against websites “dedicated to infringing activities,” defined as websites that:
 - have “no significant use other than engaging in, enabling, or facilitating” copyright infringement or trademark infringement; or
 - are “designed, operated, or marketed by its operator [...], and facts or circumstances suggest is used, primarily as a means for engaging in, enabling, or facilitating” copyright infringement or trademark infringement.

Foreign Websites

- PIPA allows the U.S. Department of Justice (“DOJ”)
 - to file a civil action against the registrant or owner of a nondomestic domain name, or against the nondomestic domain name itself
 - obtain a court order if the site conducts business directed to U.S. residents and harms holders of U.S. IP rights
- If the court order is granted, it could:
 - order ISPs to stop connecting traffic to the website (blocking via DNS)
 - order financial transaction providers to stop transactions to the website
 - order advertising services to stop providing advertisements to the website
 - order search engines to stop providing links to the website

Domestic Websites

- PIPA also allows the DOJ or an IP right holder
 - to file a civil action against the owner or registrant of a domain name, or against the domain name itself, whether foreign or domestic
 - obtain a court order if the domain name is registered or assigned by a domestic registrar, or conducts business directed to U.S. residents and harms holders of U.S. IP rights

- If the court order is granted, it could:
 - order financial transaction providers to stop transactions to the website
 - order advertising services to stop providing advertisements to the website

In Rem Actions

- Lawsuits may be filed against the domain name itself only if the plaintiff cannot, through due diligence, find a person in the U.S. that is the owner or registrant of the domain name.
- Notice of an *in rem* lawsuit must be sent to the postal or e-mail address that appears in the public domain registration database and to the domain name registrar.

Third-Party Action

- PIPA provides for remedies to be executed by third-parties.
 - ISPs, internet advertising providers, financial transaction providers, and search engine providers.
- Under PIPA, a court order can compel third-parties to take the “technically feasible” and “reasonable measures” in order to comply with the order.
 - PIPA does not require ISPs to modify their network, software, systems, or facilities in order to comply with the order.
 - However, PIPA does not include that exception for other third-parties, implying that they may be compelled to modify their systems in order to comply with the order.

Praise

- PIPA and SOPA have received praise from rights-holder trade groups like the MPAA and the RIAA:
 - Stopping foreign “rogue websites” cannot be accomplished through current law, PIPA provides necessary remedies to rights holders.
 - *In rem* lawsuits are the only feasible way to shut down these websites due to U.S. jurisdictional limits.
 - Allowing rights holders to prevent financial institutions from transacting money for “rogue websites” and preventing users from accessing those websites is the most effective tactic against those websites.
 - The bill streamlines the process for eliminating a rogue website that simply reconstitutes itself under a new name after being shut down via the court system.

Criticism

- PIPA and SOPA have been criticized by trade associations that represent venture capitalists and technology companies, as well as by free speech advocates:
 - The definition of sites “dedicated to infringing activities” is vague and overly broad.
 - The requirements on ISPs and search engine providers would effectively remove websites from the U.S. internet, amounting to a firewall akin to China’s “Great Firewall.”
 - Burdens and possible liability would be placed on third parties (e.g., search engines) meaning costly changes to infrastructure.
 - Innovation may be stifled because small companies would be unable to defend themselves against litigation filed by large media companies.

SOPA

- SOPA has the same goals as PIPA and is similar in scope.
- SOPA also provides for the same *in rem* actions and the same remedies executed by third-parties.

- A few differences in SOPA:
 - The definition of an infringing website includes websites that have taken “deliberate actions to avoid confirming a high probability” that the website is used to carry out copyright or trademark infringement.
 - The definition of search engine is narrower and cannot encompass any website with a link to the infringing website.

A light blue world map is centered in the background of the slide. The continents are shown in a slightly darker shade of blue, and the oceans are a lighter shade. The map is oriented horizontally.

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