

The Protect IP Act Headed For Cloture Vote In Senate

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The Protect IP Act is set for a cloture vote in the Senate on January 24, 2012, which will attempt to end an announced filibuster.

The Protect IP Act (Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act, S.968), and similar legislation introduced in the House of Representatives, commonly referred to as the Stop Online Piracy Act (HR 3261), have created a storm of opposition from individuals and groups claiming that the bills, aimed at rogue websites that engage in copyright and trademark infringing activity, go too far.

According to [Public Knowledge](#), a group whose motto is “Stop Censorship” and whose mission is to preserve the openness of the Internet and public access to knowledge through balanced copyright, [the Protect IP Act would](#):

1. Enable removing access to websites before those websites have the chance to defend themselves in court, raising substantial concerns about the bill’s impact on free speech and the First Amendment, and giving rise to a situation that is ripe for abuse.
2. Define a number of key terms broadly enough to potentially harm many legitimate and beneficial services. For example, PIPA adds “information location tools” to the list of intermediaries that can be issued an injunction, making nearly every actor on the Internet potentially subject to enforcement.
3. Have an unintended impact on the safe harbor status of services like YouTube because they specifically target sites that “enable or facilitate” infringement, and also requires action by third parties such as online service providers, financial transaction providers, and ad networks.
4. Create [conflicts between DNS servers](#) by requiring the operators of certain domain name servers to blacklist certain DNS requests—you can see the potential for instability in the system.
5. This instability could also lead to increased cybersecurity risks, including cyber attacks and identity theft, as users migrate to offshore DNS providers not subject to PIPA’s provisions.
6. Possibly lead to retaliation by foreign governments to take similar action against U.S. websites.

7. Seriously undermine a key value in our foreign policy—how could we, as a country, support openness and access in communication and condemn the use of DNS blocking, when we are doing it ourselves?

8. Risk setting a precedent for other countries to justify measures that would hinder online freedom of expression and association.

The legislative and public battles over the Protect IP Act and the Stop Online Piracy Act are just rolling into high gear and will be fascinating to follow for weeks and months to come.

Schein & Cai LLP, focused business and intellectual property law firm advising startups and established companies in the Silicon Valley and beyond, including San Jose, Santa Clara, Mountain View, Sunnyvale, Morgan Hill, Oakland, San Francisco, Palo Alto, San Mateo, Santa Cruz, South San Francisco, Daly City, Cupertino, Saratoga and Emeryville.