



A Legal Analysis of S. 968, the PROTECT IP Act - CRS Report

Jonathan Miller, Brian T. Yeh

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The global nature of the Internet offers expanded commercial opportunities for intellectual property (IP) rights holders but also increases the potential for copyright and trademark infringement. Piracy of the content created by movie, music, and software companies and counterfeiting of goods such as pharmaceutical drugs and consumer products negatively impacts the American economy and poses risks to the health and safety of U.S. citizens. Although rights holders and law enforcement agencies currently have some legal tools to pursue domestic infringers, they face difficult challenges in enforcing IP laws against actors located abroad. Many websites trafficking in pirated copyrighted content or counterfeit goods are registered and operate in foreign countries. These foreign “rogue sites” sell or distribute subject matter protected by federal IP laws to people located within the United States—without the authorization of the IP rights holders—yet the operators of the sites remain beyond the reach of U.S. courts and authorities.

Some believe that legislation is necessary to address this jurisdictional problem. In 2010, the Combating Online Infringement and Counterfeits Act (COICA) was approved by the Senate Judiciary Committee, but the full Senate took no action on the bill before the end of the 111th Congress. On May 12, 2011, Senator Leahy introduced S. 968, the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (PROTECT IP Act), which is similar to COICA in several respects. The act would allow the Attorney General to seek an injunction from a federal court against a domain name used by a foreign website that promotes infringement or the sale of counterfeit goods; such court order may then be served on U.S.-based domain name servers, Internet advertisers, search engines, and financial transaction providers, which would be required to take certain appropriate actions such as preventing access to the website or suspending business services to the site. The Senate Judiciary Committee voted to report S. 968 to the full Senate on May 26, 2011.

There has been considerable public debate about the PROTECT IP Act. Critics claim it is an “internet censorship” bill and that it tramples on free speech rights. There are also concerns that focusing on intermediary services, such as non-authoritative domain name servers, will disrupt the technical integrity of the Internet. Opponents of the bill believe that these problems will be exacerbated by the legislation’s inclusion of a private cause of action allowing content owners to sue intermediate service providers. Supporters of the legislation, however, argue that in order to reduce digital piracy and online counterfeiting committed by foreign websites, new enforcement mechanisms are vital for U.S. economic growth and needed to protect public health and safety.

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