

FOR BACKGROUND PURPOSES

THE PROTECT IP ACT: COMBATING ONLINE INFRINGEMENT

CREATING AMERICAN JOBS, PROMOTING AMERICA'S ECONOMY, PROTECTING AMERICAN CONSUMERS

FACT: Nothing in the PROTECT IP Act will require websites, Internet service providers, search engines, ad networks, payment processors or any other party to monitor their networks.

The PROTECT IP Act: Partnering with Vital Sectors of the Internet Community

The PROTECT IP Act establishes a no-fault, no-liability mechanism that targets rogue sites by **leveraging the most relevant sectors of the Internet ecosystem**, including search engines, online advertising networks, payment processors, and Internet service providers. These parties can play an important role in preventing the theft of American intellectual property online, particularly for foreign rogue websites that operate outside the jurisdiction of law enforcement.

The PROTECT IP Act Limits the Burden on Third-Party Partners

The PROTECT IP Act is carefully worded to **minimize the burden on third-parties who are asked to take reasonable measures against websites that a court has found to be dedicated to infringing activities**. For example:

- A court must authorize any request for a third party to take action against an infringing site that is the subject of the court's order.
- Third parties need only take "technically feasible" and "reasonable measures" as "expeditiously as reasonable".
- The third party can challenge the order before it is issued, and may petition the court to modify, suspend or vacate the order at any time.
- Third parties determine whether and how to communicate their actions to users/customers.
- The third party is not required to continue monitoring its systems for infringers who reconstitute infringing websites under an alias.

The PROTECT IP Act Protects Third-Party Partners from Liability

The PROTECT IP Act **protects third-parties from liability** that may arise from their actions to comply with a court order.

- The PROTECT IP Act protects third parties from all liability arising from the court order (except an action to compel compliance with the order itself).
- The Act protects third parties from liability for actions they reasonably take to comply with the order, and for actions taken by users to circumvent the third party's good faith efforts to restrict access to an infringing website.
- The PROTECT IP Act expressly states that it does nothing to change existing law about secondary liability or other causes of action under the U.S. copyright and trademark law.

Third-Party Partnerships Are An Essential Tool to Combat Online Infringement

Relying on the actions taken by third-parties is **an essential way to disrupt the viability of rogue websites that are dedicated to infringing activities**. Internet Service Provider's and search engines direct traffic to infringing websites, and payment processors and online advertising networks allow rogue actors to monetize those sites and steal secure credit card information.

By partnering with these entities, the PROTECT IP Act will reduce the financial incentives to engage in online infringement. Especially for the growing number of foreign rogue websites that are beyond the reach of U.S.

jurisdiction, **the PROTECT IP Act ensures that legitimate U.S. companies and service providers are not being used to facilitate online fraud and abuse.**

Support for the PROTECT IP Act

“We urge Congress to enact legislation that targets those who abuse the Internet ecosystem and reap illegal profits by stealing the intellectual property of America’s innovative and creative industries...IP-intensive industries are a cornerstone of the U.S. economy, employing more than 19 million people and accounting for 60 percent of exports. Rampant online counterfeiting and piracy presents a clear and present threat to American jobs and innovation...**The United States cannot and should not tolerate this criminal activity. Not only are jobs and consumers at risk, but rogue sites contribute absolutely no value to the U.S. marketplace.**” – *Letter signed by more than 400 businesses, distributors, trademark associations, and creative industries, December 14, 2011*

Background on The PROTECT IP Act (S. 968)

The bipartisan PROTECT IP Act was approved by the Senate Judiciary Committee by a unanimous voice vote on May 26, 2011. The legislation will protect American businesses and American workers by making it more difficult for operators of rogue websites, often based overseas, to steal American intellectual property. More than 40 Senators are cosponsors of the legislation, which is supported by hundreds of businesses, consumer advocacy groups, labor organizations and intellectual property coalitions. Related, bipartisan legislation has been introduced in the House of Representatives.