

THE PROTECT IP ACT: COMBATING ONLINE INFRINGEMENT

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

Websites that decided to "go dark" Jan. 18 in protest of the PROTECT IP Act would not be affected by enactment of the legislation.

The PROTECT IP Act Narrowly Defines An Infringing Website as One Dedicated to Infringement

The PROTECT IP Act defines an "Internet site dedicated to infringing activities" as an Internet site that:

- "[H]as no significant use other than engaging in, enabling, or facilitating the –
 - reproduction, distribution, or public performance of copyrighted works in complete or substantively complete form, in a manner that constitutes copyright infringement under section 501 of title 17, United States Code;
 - violation of section 1201 of title 17, United States Code; or
 - sale, distribution, or promotion of goods, services, or materials bearing a counterfeit mark, as that term is defined in section 34(d) of the Lanham Act; or
- [I]s designed, operated or marketed by its operator or persons operating in concert with the operator, and facts or circumstances suggest is used primarily as a means for engaging in, enabling or facilitating the activities described above." (See S. 968, [The PROTECT IP Act](#), page 32.)

FACT: None of the following websites meet the definition of a site dedicated to infringing activities: Wikipedia; YouTube; Flickr; Twitter; Google; craigslist; eBay; The Huffington Post; Yahoo!.

In fact, **none of these websites meet the definition of a "nondomestic domain name,"** which is defined as "a domain name for which the domain name registry that issued the domain name and operates the relevant top level domain, and the domain name registrar for the domain name, are not located in the United States." (See S. 968, [The PROTECT IP Act](#), page 33.)

While some of these websites do contain infringing content, **each one clearly has a significant use other than infringement** and therefore could never meet the definition contained in the PROTECT IP Act, even if they were based overseas.

No Provision in the PROTECT IP Act Will Shut Off Access to Any Site That Has Any Non-Infringing Use

The PROTECT IP Act is clear: the definition of an Internet site means "the collection of digital assets, including links, indexes or pointers to digital assets, accessible through the Internet that are addressed relative to a common domain name." (See S. 968, [The PROTECT IP Act](#), page 32.) This includes sub-domains linked from a top-level domain name.

Websites like Wikipedia, YouTube, Flickr, Twitter, Google, craigslist, eBay, The Huffington Post and Yahoo! do not meet the definition of a website "dedicated to infringing activities," and **the PROTECT IP Act does not reach websites where only a sub-domain is dedicated to infringement.**

While some sub-domains generated from these top-level domain names do host infringing content, and may even be dedicated to infringing content, the top-level domain and its sub-domains cannot be "taken down" as opponents suggest because **the entire website must be dedicated to infringing activity.**

Nothing In the PROTECT IP Act Can Reasonably Be Construed As Promoting Censorship

Protecting copyrighted materials promotes free expression, and courts have long-held that enforcing intellectual property rights – including copyright – does not stand in opposition to the First Amendment freedoms that promote free speech.

The PROTECT IP Act does not make any activity illegal that is not already illegal – and stealing another’s intellectual property or copyrighted materials is illegal, in the physical marketplace, or in the virtual world of the Internet.

The PROTECT IP Act does not expand the scope of existing copyright law and **preserves important protections such as fair use**, which remain in place as they would in any other context. It merely strengthens the tools available to combat online activities that are already illegal under U.S. law. As renowned First Amendment scholar Floyd Abrams has written in support of the PROTECT IP Act, “copyright violations are not protected by the First Amendment.”