

FACT VS. FICTION: THE PROTECT IP ACT

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

FICTION: *The PROTECT IP Act gives the government too much power to takedown sites on the Internet.*

- **FACT:** In response to concerns from constituents and the public, Senator Leahy announced in January 2012 that he would propose further study before implementing any provision requiring domain name server operators to “filter” the IP address of a rogue websites to prevent access to the site. This change would address concerns about websites being filtered without due process, and the U.S. setting a bad precedent for other nations.
- **FACT:** With this change, the PROTECT IP Act would only authorize methods that are already used to tackle illegal conduct on the Internet. Search engines can be asked to disable hyperlinks to infringing content (as in the DMCA and Online Gambling Act), and payment processors and advertising networks can be asked to stop doing business with infringing sites (as in the Online Gambling Act). Payment processors and advertising networks already do these actions voluntarily on a regular basis.

FICTION: *The PROTECT IP Act will target mainstream websites like YouTube and eBay that have a legitimate purpose, but contain some infringing material.*

- **FACT:** The PROTECT IP Act’s definition of a site “dedicated to infringing activities” is narrowly tailored to include only those sites that have no significant use other than theft. Websites like YouTube and eBay, which have clearly legitimate purposes, do not fall within the definition of the legislation. Nor do websites like Blogspot.com that may have some infringing sub-domains, but are not “dedicated to infringing activities”.

FICTION: *The PROTECT IP Act is a form of Internet censorship that inhibits free speech.*

- **FACT:** The PROTECT IP Act does not expand the scope of existing copyright laws: it merely strengthens the tools available to combat online infringement that is already illegal under U.S. law. As First Amendment scholar Floyd Abrams has written in support of the PROTECT IP Act, “copyright violations are not protected by the First Amendment.” The PROTECT IP Act provides a new tool to ensure that intellectual property receives the same protections on the Internet as it does in the physical world.

FICTION: *The PROTECT IP Act allows the government to stop credit card transactions and advertising on rogue sites without due process.*

- **FACT:** The PROTECT IP Act requires a court order before any action is taken against an infringing site. The process for obtaining such an order is the same process used for obtaining any injunction under current law, and explicitly incorporates the Federal Rules of Civil Procedure. Law enforcement and plaintiffs must give notice to the website’s registrant so that the registrant may defend itself in court. Further, if the court issues an order, the owner can move to have the order lifted at any time if the site no longer falls within the definition of a site dedicated to infringing activities.

FICTION: *The PROTECT IP Act will subject Internet actors to liability and provide a windfall for plaintiffs lawyers.*

- **FACT:** The only remedy available under the PROTECT IP Act is injunctive relief to target a rogue website that is dedicated to infringing activities. It creates a no-fault, no-liability system with no opportunity for money damages. Additionally, the Act protects third parties from liability for steps they take to comply with a court order issued under the bill. Even if a third party fails to comply with the bill, they cannot be sued for money damages – they can only be sued for to compel compliance with the court order.

FICTION: *The PROTECT IP Act changes the standard for secondary liability and the protections available under the Digital Millennium Copyright Act (DMCA), creating uncertainty for Internet actors.*

- **FACT:** The PROTECT IP Act will have no effect on secondary liability doctrines or the DMCA. The Act contains a “savings clause” clarifying that it does not change the scope of existing law. Moreover, the Act does not affect the safe harbors for certain Internet actors created by the DMCA. The PROTECT IP Act targets only websites that have no significant use other than theft, not legitimate websites that are DMCA-compliant.

FICTION: *The PROTECT IP Act will require third parties to constantly monitor their systems to determine if infringing activity is taking place.*

- **FACT:** The PROTECT IP Act is expressly designed to ensure that no third party is required to make determinations about whether a website is engaging in infringing activities or selling counterfeits. Instead, third parties are only required to take action against a site after they have been notified by a court order that a website is dedicated to infringing activities.

FICTION: *Online copyright infringement only has a marginal effect on the American economy and job creation.*

- **FACT:** Online infringement costs the U.S. economy billions of dollars annually. In a one-week period in 2011, one rogue website, later shut down by law enforcement, had more than half a million requests for infringing movies and more than one million requests for infringing television shows. Rogue websites also harm consumers by selling counterfeit drugs and other goods. Law enforcement has also increasingly linked the theft of intellectual property to international organized crime.