

**Massachusetts Pirate Party
Information Packet for Representatives Regarding SOPA (HR 3261)
December 14, 2011**

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Massachusetts Pirate Party Information Packet for Representatives Regarding SOPA

The Stop Online Piracy Act (SOPA, H.R.3261) is being marked up on December 15, and promises to stifle innovation on the Internet as well as civil liberties. It is rightly being called a "censorship" bill, and its *proponents* see China as the model to emulate. This packet explains why SOPA is dangerous. These concerns have not been addressed by Lamar Smith's December 12 Manager's Amendment. By way of information, two related bills, similarly problematic, are pending in the Senate: the Protect Intellectual Property Act (PIPA or "Protect IP," S.968) and its companion bill, the Commercial Felony Streaming Act (CFSA, S.978).

The proponents of these bills claim that they are narrowly tailored to target "rogue" websites. Nothing could be further from the truth. This legislation threatens every website that allows users to upload content, and every user who wishes to engage creatively with preexisting media. Further, the legislation provides for unprecedented censorship of the Internet and makes users more vulnerable to malicious hackers.

Packet Contents

- 1. ISSUE: Censorship**
- 2. ISSUE: Criminalizing Infringers**
- 3. ISSUE: Third-Party Liability**
- 4. ISSUE: Undermining Internet Security and Privacy**
- 5. Policy Statement**

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ISSUE: Censorship

SOPA would permit the government to block a website based on an accusation that part of the website infringes someone's intellectual property rights. This is accomplished by cutting off funding to the site, requiring search engines to de-list the site, and requiring advertisers to withdraw their ads from the site and block that site's ads. In addition, SOPA requires Domain Name System (DNS) operators to stop directing Internet users to the accused website. The effect is that a user typing in the web address would not be able to reach the website.

A website operator enjoys the right of free speech, a right that does not vanish simply due to hosting some infringing content. Even infringing speech enjoys a degree of First Amendment protection. The doctrine of fair use, for example, protects a wide range of speech. The proposed censorship regime is particularly reckless and disrespectful of the right to free speech because it permits websites to be censored *without an opportunity for their opposition to be heard*.

Imagine if all of YouTube or Facebook were shut down because some users employed the platform in infringing ways. Or if a political candidate's website were censored because he used quotations or video clips from his opponent's campaign, or even popular music or unlicensed photographs, without permission. Now imagine that an unproven accusation of such infringement were sufficient for censorship to take place.

In recent years, the Department of Justice has seized hundreds of domain names and redirected them so as to display NBC propaganda about the perceived need for ever more extreme anti-copying measures. A Nevada judge recently ordered that 600 accused domain names be transferred to Chanel, the luxury goods company. If SOPA were to become law and ratify these actions, the government would regularly be asked to transfer hundreds of website domain names to rightsholders, likely for use as further propaganda platforms. Judges have shown a willingness to permit these mass seizures without an opportunity for defendants to be heard, at a very early stage of litigation, an approach sanctioned by SOPA.

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ISSUE: Criminalizing Infringers

SOPA provides that infringement of the performance right would become a criminal offense. An infringer can be imprisoned for up to five years for a first offense, and ten years for a second offense.

Practically everyone under the age of thirty will be a criminal under SOPA. Clicking a 'share' button on a website will carry a sentence comparable with armed robbery, involuntary manslaughter, or assault and battery with a deadly weapon.

An example: a student films herself and her friends singing a pop song (without a license) and uploads the video. She may be guilty of a crime that could send her to jail for five years, as are any of her friends who re-share her video.

Criminal penalties will also cause people to pull even further back from the theoretical bounds of fair use, out of fear that their conduct will be found not to qualify. This will reduce creative output, not stimulate it. Statutory damages are already draconian and, in typical cases, disproportionate to any harm suffered by the rightsholder. Adding jail time is an extreme measure, and a step in the wrong direction.

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ISSUE: Third-Party Liability

SOPA would impose liability on intermediaries and those who provide tools and platforms that support websites that involve infringement, such as advertising companies, payment processors, and search engines. SOPA also provides for penalties against an entire website based on infringing use of the website (e.g. infringing videos on YouTube).

The collateral burden to search engines, payment processors, and advertisers is why some have likened the bill to replacing the scalpel of a copyright infringement action with a chainsaw. Not only is an entire website put at risk for containing infringing content, but new burdens and liabilities are imposed on entities that have nothing to do with the infringement, and may not even have a business relationship with the website.

Further, the most popular and successful websites are those that permit people to speak and share with one another, and every website that permits users to upload content enables infringement. The bill would attempt to force innovative websites to police their users. This is a task that would simply be impossible for small innovators, and the high risk of liability would strongly deter investment in such businesses and curtail the strong job growth enjoyed in this industry.

ISSUE: Undermining Internet Security and Privacy

SOPA would require Domain Name System (DNS) operators to divert users from accused websites, resulting in US DNS operators becoming out of synch with those in the rest of the world.

Internet security and privacy measures rely on an uncompromised DNS system. When this system is broken, users are more vulnerable to malicious hackers.

POLICY STATEMENT

The ostensible purpose of intellectual monopolies such as copyright was to promote the creation of eligible works, by granting creators the exclusive right to duplicate their creations for a limited time.

We live in an era where nearly every American has access to a system designed to instantly duplicate information, a system that has done wonders for our economy and empowered citizens to speak and create to an unprecedented degree. We also have tools to modify the cultural works we engage with and re-share them as part of a vast "remix" culture that is incredibly prolific.

These advances have come in spite of intellectual monopolies, not because of them, and have been threatened at every step by the handful of organizations that hold huge libraries of copyrighted works. Strengthening intellectual monopolies is a step in the wrong direction. Crippling our information infrastructure and criminalizing harmless citizens to strengthen intellectual monopolies is simply madness and an embarrassment to the ideal of a free society.

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