

SOPA and PIPA - Fact sheet for Australian Internet Users

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SOPA and PIPA are acronyms that generated intense global interest in late 2011 and early 2012.¹ We offer material below to assist readers to locate original documents and help understand the recent history of these proposed US laws.

The *Stop Anti-Piracy Act* - 'SOPA'

Background

- The *Stop Online Piracy Act* (SOPA) was introduced by the Judiciary Committee Chair Texas Republican Representative Lamar Smith in the United States House of Representatives on 26th October 2011.²
- You can read the text of SOPA here:
<http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.3261>: (US Library of Congress, *Thomas*, 112th Congress (2011-2012) H.R.3261.IH) or [here](#)

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¹ Eg discussion of potential impact on the underlying principle of interconnectivity in Mark Lemley, David Levine and David Post, 'Don't Break the Internet,' *Stanford Law Review Online*, Vol. 64, p.34, December 2011, posted January 3, 2012. Available at SSRN: <http://ssrn.com/abstract=1978989>

² Brian Barret, 'What is SOPA,' *Gizmodo*, 18 January 2012, at: <http://www.gizmodo.com.au/2012/01/what-is-sopa/>

- The bill was not put to the vote and was shelved in late January 2012.³ The US President had declined to support it⁴ and raised the prospect of a veto, and members of Congress and Senate had also indicated loss of support.⁵
- According to Rep. Smith it will be reintroduced in February 2012.⁶ Music industry organisation IFPI's *Digital Music Report 2012* envisages further governmental support.⁷ An alternative, *Online Protection and Enforcement of Digital Trade (OPEN) Act*,⁸ was introduced with bipartisan support on 18 January, the day of online protests.

The SOPA Bill

- SOPA aims to protect intellectual property through combating online piracy by blocking access to sites with material that may be in breach of US copyright laws.
- Currently, US federal law enforcement has the authority to shut down US based websites that offer pirated content however are unable to directly take action against foreign websites.
- The bill would allow the US Department of Justice and copyright holders to seek court orders against any web sites and web-based services accused of US copyright infringement.
- Orders could include:
 - barring online advertising networks,
 - payment facilitators (such as PayPal) and search engines from linking to the sites, and

³ Dominic Rushe, 'Sopa plans set to be shelved as Obama comes out against piracy legislation,' *The Guardian*, 16 January 2012, at: <http://www.guardian.co.uk/technology/2012/jan/16/sopa-shelved-obama-piracy-legislation>

⁴ See Administration's response by Victoria Espinel, Intellectual Property Enforcement Coordinator at Office of Management and Budget, Aneesh Chopra, U.S. Chief Technology Officer, and Howard Schmidt, Special Assistant to the President and Cybersecurity Coordinator for National Security Staff, 'Combating Online Piracy while Protecting an Open and Innovative Internet: Official White House Response to Stop the E-PARASITE Act and 1 other petition', *We The People* [online petitioning service on Whitehouse.gov], undated (14 January 2012?) at: <https://www.whitehouse.gov/petition-tool/response/combating-online-piracy-while-protecting-open-and-innovative-internet>

⁵ Senate 158 *Congressional Record* S23 (2012), 23 January 2012, via Hein Online.

⁶ Committee on the Judiciary, 'Stop Online Piracy Act Markup to Resume in February,' Media Release, US House of Representatives, 17 January 2012, at: <http://www.judiciary.house.gov/news/01172012.html>

⁷ International Federation of the Phonographic Industry, *Digital Music Report 2012*, January 2012, At: <http://www.ifpi.org/content/library/DMR2012.pdf> [13Mb download]. See *ArsTechnica* summary at: <http://arstechnica.com/tech-policy/news/2012/01/after-terrific-year-music-biz-demands-that-world-adopt-sopa-plus.ars>

⁸ *Online Protection and Enforcement of Digital Trade (OPEN) Act*, at: <http://www.keepthewebopen.com/>

- requiring internet service providers to block access to the sites accused of infringing.
- The bill would also criminalise unauthorised streaming of copyrighted content with a maximum penalty of five years in jail for 10 infringements within six months.⁹
- Legal immunity is provided to any service provider, payment network provider, internet advertising service, advertiser, internet search engine, domain registry for voluntarily taking action against a website dedicated to infringement.¹⁰
- US investors may face difficulty dealing with sites identified as ‘notorious foreign infringers’ by a regulator acting on suggestions from rights holders and public, even where the alleged infringement may be a marginal aspect of their operation, as with social networking sites.¹¹

The *Protect IP Act* – ‘PIPA’

Background

- The *Protect IP Act* (PIPA) was introduced by Senator Patrick Leahy in the U.S Senate on 12th May 2011.¹²
- It is a re-write of the *Combating Online Infringement and Counterfeits Act* (COICA), which failed to pass in 2010.¹³
- You can read the bill at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:s.00968;> <http://www.govtrack.us/congress/billtext.xpd?bill=s112-968> or [here](#)

Differences between the SOPA and PIPA bills

PIPA and SOPA are both online anti-piracy bills, similar in approach but with key differences in certain provisions:

- PIPA does not have a provision requiring search engines to remove links to infringing foreign web sites.
- PIPA provisions require greater court intervention when a web site is accused of US copyright infringement.

⁹ SBS, ‘Factbox: The ‘Stop Online Piracy Act’ explained,’ *SBS online*, 17 January 2012, at: <http://www.sbs.com.au/news/article/1619481/Factbox:-The-%27Stop-Online-Piracy-Act%27-explained>

¹⁰ Grant Gross/IDG News, ‘The US *Stop Online Piracy Act*: A Primer,’ *PC World*, 17 November 2011, at: http://www.pcworld.com/businesscenter/article/244011/the_us_stop_online_piracy_act_a_primer.html

¹¹ Jonathan Zittrain, Kendra Albert and Alicia Solow-Niederman, ‘A Close Look at SOPA’, *The future of the Internet and how to stop it* blog, 2 December 2011, at: <http://futureoftheinternet.org/reading-sopa>

¹² See sources in Wikipedia, ‘The Protect IP Act’, at: http://en.wikipedia.org/wiki/PROTECT_IP_Act as at 31 January 2012.

¹³ S. 3804: Combating Online Infringement and Counterfeits Act, *Govtrack.US* (Civic impulse), <http://www.govtrack.us/congress/bill.xpd?bill=s111-3804>

- PIPA does not penalise copyright holders for misrepresenting the alleged infringing activities of the accused website.
- In SOPA there is a provision (section 103(b)(6)) which penalises copyright holders who 'knowingly materially misrepresent' the infringement by 'making them liable for damages incurred by the misrepresentation'.¹⁴ This could potentially act as a restraint on making unwarranted assertions that an item is infringing; its absence from PIPA means that others, including ISPs and content posters, would be more likely to bear the costs of unsubstantiated assertions by copyright holders under that Act.
- SOPA is often considered to be the 'more extreme' version as it defines a 'foreign infringing site' as any site that is 'committing or facilitating' copyright infringement, whereas PIPA limits sites to those with 'no significant use other than' copyright infringement.¹⁵

Responses to SOPA/ PIPA

The bills were supported by the US movie and music industries, Chamber of Commerce, and parts of other US creator and rights-holding sectors, but triggered controversy especially among online businesses, users and technical communities.¹⁶ Issues raised in opposition include:

- The bills would enable internet censorship and threaten free speech by providing the U.S government and copyright holders with unprecedented powers to shut down websites, including those in other jurisdictions, that are alleged to be infringing U.S copyright laws.¹⁷
- The broad powers would allow websites that weren't knowingly hosting pirated content – particularly those based on 'user-generated content' such as Facebook, Twitter or Wikipedia – to be exposed to court orders against them.¹⁸

¹⁴ Andrew Couts, 'SOPA vs. PIPA: Anti-piracy bills, uproar explained,' *Digital Trends*, 16 January 2012, at: <http://www.digitaltrends.com/computing/sopa-vs-pipa-anti-piracy-bills-uproar-explained/>

¹⁵ Jared Newman, 'SOPA and PIPA: Just the Facts,' *PC World*, at: http://www.pcworld.com/article/248298/sopa_and_pipa_just_the_facts.html

¹⁶ See for instance Fight for the Future's SOPA Strike page, at: <http://americancensorship.org/>. Also Chris Heald, 'Why SOPA is dangerous,' Mashable, at: <http://mashable.com/2012/01/17/sopa-dangerous-opinion/>, and Washington's blog, 'Copyright Lawyers Oppose SOPA ... And Say It Won't Even Work', *Global Research*, 18 January 2012, at: <http://www.globalresearch.ca/index.php?context=va&aid=28733>

¹⁷ SBS, 'Factbox: The 'Stop Online Piracy Act' explained,' above.

¹⁸ Amy Schatz, 'What Is SOPA Anyway? A Guide to Understanding the Online Piracy Bill,' *Wall Street Journal*, 18 January 2012, at: <http://online.wsj.com/article/SB10001424052970203735304577167261853938938.html>

- The ‘vigilante’ aspect of SOPA/PIPA has been strongly criticised as internet service providers (ISPs) are allowed to voluntarily block access ‘in good faith’ if they have ‘credible evidence’.
- Those acting in this way would receive legal immunity (from litigation against them by, for instance, others asserting their interests have been adversely affected by this ‘good faith’ action) even if the alleged infringements cannot be proven, hence potentially allowing an abuse of power, and pre-empting or usurping the role of courts in determining whether infringements of the law have occurred.
- Opposition from technical experts to DNS and DNSSEC impacts prompted proponents to agree to withdraw DNS-poisoning proposals from both bills in December.¹⁹

Forbes magazine carried an analysis of the impact of these objections, the involvement of major leading technology companies including Google, Yahoo, Facebook, Twitter, LinkedIn and Ebay²⁰ and online community sites like Reddit, Tumblr, Mozilla, Wikipedia, Facebook and Twitter, the central role of ‘engineers’, and the process by which they undermined support for the Bills.²¹

Impact of SOPA and PIPA on Australian consumers and businesses

SOPA and PIPA are intended to target ‘rogue’ websites, but collateral damage may arise and potentially affect legitimate sites due to the broad scope of the bills, and provisions which could in some situations shield misuse from legal consequences.

- Potential examples include:
 - **Social media** websites that share photos, videos, music and written content could be forced to shut down – Tumblr, Twitter, Flickr, Facebook, Youtube

¹⁹ Parker Higgins and P Eckersley, ‘An Open Letter From Internet Engineers to the U.S. Congress,’ *Electronic Frontier Foundation* site, 15 December 2011, at: <https://www.eff.org/deeplinks/2011/12/internet-inventors-warn-against-sopa-and-pipa>. Internet Society, ‘Internet Society Perspectives on Domain Name System (DNS) Filtering,’ at: <http://www.internetsociety.org/sites/default/files/Internet%20Society%20Perspectives%20on%20Domain%20Name%20System%20%28DNS%29%20Filtering.pdf>. Leslie Daigle, ISOC CTO, ‘Beyond SOPA: Why ‘Easy’ Solutions Don’t Stop Net Crime,’ *Forbes.com*, 18 January 2012, at: <http://www.forbes.com/sites/ciocentral/2012/01/18/beyond-sopa-why-easy-solutions-dont-stop-net-crime/>

²⁰ AOL Inc., eBay Inc., Facebook Inc., Google Inc., LinkedIn Corporation, Mozilla Corp., Twitter, Inc., Yahoo! Inc., Zynga Game Network, letter to chairs and ranking members of Senate’s and House of Representative’s Committees on the Judiciary, 15 November 2011, at: <http://www.protectinnovation.com/downloads/letter.pdf>

²¹ Larry Downes, ‘Who Really Stopped SOPA, and Why?,’ *Forbes.com*, 25 January 2012, at: <http://www.forbes.com/sites/larrydownes/2012/01/25/who-really-stopped-sopa-and-why>

- **Blog syndication** sites could be shut down due to a single violation from an entry or comment that contained a copyright infringement.²²
 - A substantial portion of the **top 500** web sites used by Australians are US based. Suspension of access to them would directly affect Australian consumers who use them.²³
- Australian online business may be unable to access the US market if internet service providers are able to block infringing web sites. This would be of significant relevance for businesses that operate on American e-commerce website such as Etsy, DeviantArt and Ebay.²⁴
 - If either SOPA or PIPA was passed, there could potentially be pressure on Australia to propose and pass similar legislation, due to the provisions of instruments like the *Australia-US Free Trade Agreement 2004*.²⁵ The Attorney-General's Department has denied this is likely,²⁶ though they have shown limited long term interest or capacity to resist pressure from MPAA for favourable amendments to local law.
 - As both bills extend to foreign sites (web sites not based in US), all content on any website used or created by an Australian consumer would need to be actively monitored to ensure it would not be hosting infringed US content. Australian websites that are based in the US or where the internet domain names are registered in the US could fall under the proposed law's jurisdiction.²⁷
 - If SOPA were passed, there may be a potential loss of income if a web site or online web service relies on advertising income. And as the owner of the web site would in effect be responsible for the content on the advertiser's site, if the advertiser's site contained US copyright infringements the owner of the site may similarly face court orders for 'facilitating' copyright infringements.²⁸

²² John McTigue, 'The Potential Impact of SOPA and PIPA on Content Marketing,' *Kunocreative*, 18 January 2012, at: <http://www.kunocreative.com/blog/bid/70966/The-Potential-Impact-of-SOPA-and-PIPA-on-Content-Marketing>

²³ Alexa, Top Sites page for Australia, at: <http://www.alexa.com/topsites/countries/AU>

²⁴ David Ramli, 'Murdoch rant an early taste of campaign,' *Australian Financial Review*, 16 January 2012, at: http://www.afr.com/p/business/technology/murdoch_piracy_rant_an_early_taste_wkEvucsZpBTtIXJW13ra2H (subscription may be required).

²⁵ Ramli, above. A-US FTA is at: <http://www.dfat.gov.au/fta/ausfta/final-text/>, or as [2005] ATS 1 at: <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/2005/1.html>

²⁶ Suzanne Tindal and Stilgherrian, 'No SOPA for Australia: AG,' *ZDnet*, 20 January 2012, at: <http://www.zdnet.com.au/no-sopa-for-australia-ag-339330107.htm>

²⁷ Nate Cochrane, 'Long arm of US piracy law will reach further than you think,' *SMH*, 19 January 2012, at: <http://www.smh.com.au/opinion/society-and-culture/long-arm-of-us-piracy-law-will-reach-further-than-you-think-20120118-1q6h0.html>

²⁸ Morgan (site owner), 'How SOPA Affects Mompreneurs-IMPORTANT!,' *Business and Moms*, 18 January 2012, at: <http://businessamongmoms.com/blog/2012/01/18/how-sopa-affects-mompreneursimportant/>