

# Summary: The PROTECT IP Act of 2011

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This Summary describes the problem of rogue websites. It also explains how the *PROTECT IP Act* fights back against the criminals who operate and profit from those sites. As often happens during the legislative process, the Act may undergo various versions as it moves towards eventual passage. This Summary highlights the most important components of the Act, but please note that the details described below may change prior to passage.

## What are Rogue Websites?

So-called “rogue websites” are foreign illegal websites that make money by distributing infringing copyrighted content or selling counterfeit goods. These offshore commercial websites receive more than 53-billion hits each year, and operate overseas with impunity because they cannot be reached by U.S. law enforcement. Rogue websites don’t pay U.S. taxes, contribute to the U.S. economy, promote U.S. jobs, manufacture creative content, or promote any social values. However, they are currently financed by U.S. consumers, U.S. advertisers, U.S. credit card companies, U.S. search engines, and domain name system server operators.

Illegal offshore websites threaten both U.S. businesses and consumers. They are disguised to appear legitimate, and a consumer may be unaware they are visiting an illegal website or purchasing stolen or counterfeited goods. The foreign criminals who operate rogue websites can steal identities, sell personal information, install malicious software, or provide substandard or dangerous counterfeit goods (such as defective medical devices, pharmaceuticals, military goods, and other hard goods). They operate without fear of U.S. law enforcement, even while they present a clear and present danger to U.S. businesses and consumers.

## What is the PROTECT IP Act?

The PROTECT IP Act is a simple and inexpensive way to fight back against the foreign profiteers who operate rogue websites. The legislation permits courts to compel advertising companies, credit card companies, search engines, and domain name system server operators to cease cooperating with for-profit websites dedicated to providing or selling illegal content.

The financial success of illegal offshore websites is dependent on them selling stolen content or counterfeit goods. The Act gives law enforcement the tools it needs to go after the “worst-of-the-worst” of these illegal websites by making them harder to access and by restricting their funding. By disrupting the business model of rogue websites, the Act will encourage the free expression of copyright creators and protect injured American businesses and the hundreds of thousands of jobs they provide. At the same time, it will protect consumers from the predatory business practices of illegal offshore websites, including identify theft and the sale of dangerous or defective counterfeit goods.

## How will the PROTECT IP Act be enforced?

Under this legislation, a court may issue orders to halt the unlawful sale of stolen works or counterfeit goods. Such orders – when requested by the Department of Justice, supported by sufficient evidence, and issued by federal courts – would prevent advertising companies, credit card companies, search engines, and domain name system server operators from doing business with illegal offshore websites.

## What websites will be affected by the PROTECT IP Act?

Very few websites will be affected by the Act because it targets only a narrow subset of blatantly infringing websites. Affected websites must be primarily dedicated to providing and selling stolen goods or copyrighted creativity. The Act establishes a rigorous standard for determining whether a website’s conduct rises to this level. Any website devoted to legal activities, such as commentary, socializing or commerce, cannot be pursued under the Act – even if it is frequently used for infringement.

## **How will domestic websites be affected by the *Stop Online Piracy Act*?**

Domestic businesses and websites that sell copyrighted and authentic goods will benefit from the Act as consumers purchase legal goods that support the U.S. economy and labor force. Domestic websites that make money by distributing infringing copyrighted content or selling counterfeited goods are already subject to U.S. law enforcement, and most will not be affected by the Act.

## **Does the PROTECT IP Act violate the First Amendment?**

No. Most legal scholars, including noted First Amendment advocate Floyd Abrams, agree that the PROTECT IP Act does not violate the First Amendment because it is narrowly tailored, provides strong procedural protections, and is consistent with existing copyright enforcement. Copyright is the “engine of free expression,” as noted by the U.S. Supreme Court, and actually encourages free speech by protecting its creators from theft and misappropriation of their work. Conversely, web surfers do not have a First Amendment right to access copyrighted creations illegally.

## **What about due process?**

The Act’s procedural protections are strong, uniform, and rooted in the Constitution. Rule 65 of the Federal Rules of Civil Procedure governs how judges may issue injunctions. Website operators subject to the Act would benefit from the exact same procedural safeguards afforded litigants in all other U.S. civil actions. The Act itself contains additional procedural safeguards to ensure operators of allegedly infringing websites have an opportunity to defend themselves when an order is issued. Website operators retain further rights to seek legal or equitable relief after a site is removed, and they are free to repost non-infringing content at any time.

## **How will the Act respond to changes in technology?**

The Act requires the Department of Commerce to report to the Senate and House Judiciary Committee within one year of enactment. The report will review the impact of the steps described in section 3 of the bill on an entity’s ability to deploy effectively and use the Domain Name System Security Extensions. In addition, the Copyright Office, in consultation with appropriate departments, agencies, and stakeholders, will conduct a study within two years of enactment on the enforcement and effectiveness of the Act. The study will also address any need to amend the Act to reflect emerging or declining technologies.