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Disastrous IP Legislation Is Back – And It's Worse than Ever

We've reported here often on efforts to ram through Congress legislation that would authorize massive interference with the Internet, all in the name of a fruitless quest to stamp out all infringement online. Today Representative Lamar Smith upped the ante, introducing legislation, called the Stop Online Piracy Act, or "SOPA," that would not only sabotage the domain name system but would also threaten to effectively eliminate the DMCA safe harbors that, while imperfect, have spurred much economic growth and online creativity.

As with its Senate-side evil sister, PROTECT-IP , SOPA would require service providers to "disappear" certain websites, endangering Internet security and sending a troubling message to the world: it's okay to interfere with the Internet, even effectively blacklisting entire domains, as long as you do it in the name of IP enforcement. Of course blacklisting entire domains can mean turning off thousands of underlying websites that may have done nothing wrong. And in what has to be an ironic touch, the very first clause of SOPA states that it shall not be "construed to impose a prior restraint on free speech." As if that little recitation could prevent the obvious constitutional problem in what the statute actually does.

But it gets worse. Under this bill, service providers (including hosting services) would be under new pressure to monitor and police their users' activities. Websites that simply don't do enough to police infringement (and it is not at all clear what would qualify as "enough") are now under threat, even though the DMCA expressly *does not* require affirmative policing. It creates new enforcement tools against folks who dare to help users access sites that may have been "blacklisted," even without any kind of court hearing. The bill also requires that search engines, payment providers (such as credit card companies and PayPal), and advertising services join in the fun in shutting down entire websites. In fact, the bill seems mainly aimed at creating an end-run around the DMCA safe harbors. Instead of complying with the DMCA, a copyright owner may now be able to use these new provisions to effectively shut down a site by cutting off access to its domain name, its search engine hits, its ads, and its other financing even if the safe harbors would apply.

And that's only the beginning: we haven't even started on the streaming provisions.

We'll have more details on the bill in the next several days but suffice it to say, this is the worst piece of IP legislation we've seen in the last decade — and that's saying something. This would be a good time to contact your Congressional representative and tell them to oppose this bill!