

Sen. Ron Wyden (D-Ore.) didn't make any friends in the entertainment industry when he put a hold on the PROTECT IP Act, a bill (S 968) that tries to make foreign websites disappear from the Internet if they are dedicated to piracy. But Wyden isn't simply saying "no" to Hollywood; he and nine other lawmakers, including four from California, have proposed an alternative to S 968 and its House counterpart, the Stop Online Piracy Act (HR 3261).

It's just a discussion draft at this point, so the details are subject to change. But the group's approach is far more in line with Silicon Valley's point of view than Hollywood's.

As with the Senate and House bills, Wyden's draft would enable copyright and trademark holders to obtain orders blocking the online flow of infringing or counterfeit digital goods into the U.S. Those orders would require payment processors such as Visa and Paypal and online advertising networks to stop doing business with sites that are primarily and willfully infringing. But the draft would have rights holders seek such orders from the International Trade Commission, not a U.S. District Court.

The shift in venue would exclude sites based in the United States from the measure's reach, in sharp contrast to the House bill. It would also answer some of the due-process concerns about the Senate bill, which doesn't require that the operator of an allegedly infringing site be made aware of the action being brought against him.

Another major difference is that the draft would not try to make an infringing site disappear from the Web by requiring Internet service providers to stop recognizing its domain name and search services to stop recognizing links to its pages. Those provisions of the House and Senate bills have come under fire from tech companies, who argue that they'd be ineffective and hinder efforts to create a more secure domain name system.

Finally, the draft would not obligate sites that allow users to upload content, such as online locker services, to monitor that content for infringements. Critics of the House bill say that it would effectively impose such a duty, overriding an important safe harbor provided by federal law. Supporters of the bill say it would do no such thing but instead would merely outlaw sites designed deliberately to prevent their operators from observing rampant infringements.

The authors are still working on key details, including provisions that would enable rights holders to obtain orders quickly from the International Trade Commission in emergency situations. The commission isn't known for moving with alacrity, but that's largely because its caseload is mainly composed of patent disputes -- matters that are far more complex than copyright and trademark claims. Nevertheless, the commission's pace is likely to be an issue for copyright holders.

Wyden's group, which includes Reps. Darrell Issa (R-Vista) Zoe Lofgren (D-San Jose), Anna Eshoo (D-Menlo Park) and **John Campbell (R-Irvine)**, is also struggling to come up with a way to deal with piracy hotbeds buried within larger sites that have legitimate uses. That's a problematic issue for the House and Senate bills as well, and it's one of the main points of contention between the backers of those bills (e.g., rights holders) and tech-industry critics. The latter worry that the House bill in particular puts entire sites at risk when individual users share infringing content on the pages they control.

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