



## Insight

# Stop (U.S. Innovation) Online Piracy Act of 2011:

OCTOBER 27, 2011

Yesterday the text for the [Stop Online Piracy Act of 2011](#) was released, instantly causing an enormous, justified, uproar from online communities globally. If passed, this bill threatens to suffocate US innovation in technology, jeopardize the free flow of information online, and create further capital uncertainty for the our most innovative domestic companies.

## Bill Overview

The bill is headed for the House of Representatives now to be heard by the House Judiciary Committee on November 16<sup>th</sup>. The authors, Representatives Lamar Smith (R-TX), John Conyers (D-MI), Bob Goodlatte (R-VA), and Howard Berman (D-CA) intended for the Stop Online Piracy Act to increase the government's ability to disable websites deemed "foreign infringing sites." A foreign infringing site is any "US Directed Site" that actively breaks the terms of a US law, agreement, or copyright. While this bill targets foreign sites, it applies to all sites that are "US Directed," in other words, any site that provides content accessable by a US consumer.

## Net Neutrality: Enabling a Free Exchange of Information

Net neutrality, in the simplest form, prohibits Internet Service Providers (ISPs) from restricting consumer's access to information on the Internet based on content. This means that ISPs cannot block information, leaving consumers free to make informed decisions about their own online usage. While net neutrality only covers lawful content, the threat posed by the Stop Online Piracy Act is contained in a clause that allows immunity for any ISPs, search engines, domain registries, or similar gatekeepers with reasonable belief that the content is a foreign infringing site

## Enabling "Reasonable Doubt" as a Competitive Tool

The online space is ripe for innovation because information is easily accessable and the barriers to entry are low. The "reasonable doubt" clause could change that by giving an incredible amount of power to giant search engines and ISPs. An example of how this could be abused involves the creation of a viable Google competitor – "Google2," as a hypothetical. Based on this bill, Google could block Google2 "in the reasonable belief that the internet site is a foreign infringing site." Google 2 would then need to prove their innocence to the U.S. Attorney General before they would appear in search results again. Further, because Google2 is a "US Directed Site" in that it is accessable by US consumers, Google could block Google2 globally until the courts resolved

the case. In the tech market, rapid innovation and reliability are critical; therefore, even a few months of restriction by Google could be fatal to a potential competitor like Google2.

## **Can a Site with User Generated Content Really Monitor Everything?**

This Act also threatens sites with user-generated content because they will now be liable for any infringing activity generated by a user. “Infringing activity” includes everything from a copyrighted song posted on Youtube to an infected Twitter account caused by a user clicking on a link containing a virus. More importantly, future open sourced online software platforms, breeding grounds for innovation, now have an incentive to avoid U.S. markets entirely rather than run the risk that a user will create infringing content. The alternative is to employ a large, skilled staff simply to monitor the work created by users for anything that may be deemed piracy. Creating higher barriers to enter the U.S. market for the world’s most innovative tech companies is a terribly misguided longterm growth strategy.

## **Additional Challenges for Initial Public Offerings (IPOs)**

The Act also suggests that any foreign infringing site may face restrictions on U.S. funding and capital, including in the form of IPO and stock sales to U.S. consumers. No thanks to recent regulations, the average age of a company at the time of IPO has nearly doubled from 4.29 to 9.4 years and the average number of IPOs per year has fallen from 547 in 1999 to less than 100 from 2000-2010.

U.S. Venture Capital (VC) firms are citing political and policy uncertainty as a main reason that VC investments in Internet companies recently fell 33 percent for the first time in several quarters. This sharp decline in IPOs and VC investment isn’t a global trend though, “in the 1990s, looking at yearly averages, the U.S. accounted for 27 percent of all IPOs worldwide. Since 2000, that share has fallen to 12 percent”

The intent behind this Act is honorable: to protect U.S. citizens from piracy in an increasingly dangerous and global online reality. I suggest that the U.S. government embrace the market forces already hard at work against online piracy rather than pass an act jeopardizing the free flow of information online, disadvantaging the U.S. in the global innovation field, and creating further uncertainty for U.S. venture capital – the lifeblood of our innovative technology companies.