New Copyright Infringement Law Could Change the Way We Live and Do Business on the Internet

The way we live and do business on the Internet may soon change. Congress is fiercely debating the Stop Online Piracy Act ("SOPA"), H.R.3261, a proposed law which would dramatically expand the rights of United States copyright holders and give unprecedented authority to the Department of Justice to police online activity. In a departure from the current law that regulates Internet copyright infringement—known as the Digital Millennium Copyright Act--SOPA would give courts the authority to:

- Bar online advertising networks and payment facilitators from doing business with allegedly infringing websites,
- Bar search engines from linking to such sites, and
- Require that Internet service providers block access to allegedly infringing sites.

Proponents of SOPA believe that the new bill is needed to protect jobs and revenue in the intellectual property market. Opponents worry that the bill will shut down businesses, create legal uncertainty, and threaten First Amendment rights.

SOPA's Expansion of Copyright Holder's Rights

SOPA establishes a two-step process under which copyright holders may seek relief. First, the copyright holder must notify in writing an infringing website's payment facilitators and ad networks of the identity of the infringing website. The website's revenue generators must then forward that notification and suspend services to the identified website, unless the website provides a counter notification explaining how it is not in violation. The rights holder can then sue for injunctive relief against the owner, operator, or domain name registrant of the allegedly infringing site. Another option, available under certain circumstances, is to sue the site or domain name itself.

SOPA's Expansion of the Justice Department's Authority

SOPA would allow the Justice Department to seek court orders stopping online ad networks and payment processors—such as PayPal—from doing business with foreign websites accused of enabling or facilitating copyright infringement. These court orders could also bar search engines from linking to the allegedly infringing sites and order domain name registrars to take down the websites and Internet service providers to block subscriber access to the sites accused of infringing.

Additionally, SOPA would make unauthorized streaming of copyrighted content a felony.

What This Means for Websites
Under the bill, any copyright holder who “knowingly and materially” misrepresents that a website is dedicated to infringement can be held liable for damages.

Additionally, SOPA gives immunity to Internet services that voluntarily take action against websites dedicated to infringement. This creates a new duty for web services to self-police material posted on or linked to their sites, including material posted by website users.

Critics of the bill believe that SOPA effectively overturns the Digital Millennium Copyright Act provision known as “safe harbor.” This feature protects websites with potentially infringing material from liability if the websites promptly remove infringing material brought to their attention by a copyright holder’s "Takedown Notice." Courts have generally held that under the Digital Millennium Copyright Act, websites are not liable for linked material.

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The Future of SOPA

After two days of heated debate, the House Judiciary Committee adjourned its markup session on the measure without a vote. The committee will resume the debate after Congress returns from its winter recess.

If the committee votes to approve SOPA, the bill would then move to the House floor for a vote. The Senate would also have to approve SOPA or similar legislation before the bill is sent to the President for his signature or veto.

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Getting Started

Contact your Hemenway & Barnes attorney or the author of this advisory if you have questions.

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