

# Hollywood vs. Silicon Valley: The U.S. Stop Online Piracy Act *By K&L GATES*



Hong Kong 香港科技園  
Science & Technology Parks



To search patents of Hong Kong universities/institutes & more IP articles: [iplist.hkstp.org](http://iplist.hkstp.org)

Intellectual property owners and Internet Service Providers have recently squared off over hotly contested online piracy legislation now moving under parallel bills through both the U.S. House of Representatives and the Senate. If passed, this legislation would provide intellectual property owners a significant set of additional legal tools to battle copyright and trademark infringement, but impose new obligations on a broad set of online service providers. In the House, this legislation is embodied in H.R. 3261, the Stop Online Piracy Act (“SOPA”), while the Senate’s version is found under S. 968, the Protect IP Act. Because SOPA is the more expansive of the two and, on November 16, 2011, was the subject of controversial testimony before the House’s Committee on the Judiciary, this Alert focuses on SOPA.

While U.S. intellectual property owners have largely been limited to seeking redress against copyright infringers or trademark counterfeiters themselves, SOPA would permit the Attorney General or qualified intellectual property owners to seek court orders calling for Internet intermediaries to assist them with the enforcement of rights against infringing websites. Specifically, the court orders could require Internet Service Providers, search engines, payment processors and providers of online advertising networks to block access to or terminate financial affiliation with the infringing sites.

## ***Proposed Legislation Under SOPA***

SOPA was introduced in the House on October 26, 2011. The House Judiciary Committee held a hearing on the bill on November 16, 2011.

Section 103 of the bill, titled “market-based system to protect U.S. customers and prevent U.S. funding of sites dedicated to theft of U.S. property,” is the subject of heated debate. That section would allow copyright and brand owners to seek court orders requiring Internet advertising services and payment processors to stop support of (i.e., advertising for and payments to) allegedly infringing sites if those businesses do not comply with their initial request. The intellectual property owners could seek such court

# Hollywood vs. Silicon Valley: The U.S. Stop Online Piracy Act *By K&L GATES*



Hong Kong 香港科技園  
Science & Technology Parks

orders targeting U.S. or foreign websites that they in good faith believe have engaged in, enabled, or facilitated copyright infringement, circumvention of copyright protection systems, or trademark counterfeiting.

In addition, SOPA includes a section that would allow the U.S. Attorney General to seek court orders requiring certain actions of Internet intermediaries to stop payment and access to allegedly infringing sites. SOPA also provides for immunity of the Internet intermediaries who take action against infringing sites or sites that endanger public health. SOPA would also make it a crime to stream copyrighted works online without permission of the copyright owner.

## **Two Sides Square Off Over Legislation**

Proponents of SOPA claim that more effective tools are needed by both U.S. law enforcement and intellectual property owners to control online infringements, which have created dangers to U.S. consumers and cost the U.S. economy billions of dollars. Proponents also argue that U.S. copyright and brand owners bear a heavy burden of constantly monitoring the World Wide Web, and that current tools are particularly ineffective against foreign-based websites that sell infringing goods.

Opponents of the bill fear that content owners would use provisions proposed under SOPA to censor websites and online services that are hosting user generated content or offering legitimate services. These opponents also argue that the Digital Millennium Copyright Act (“DMCA”), enacted by the U.S. Congress in 1998 to provide a notice-and-takedown procedure involving Internet intermediaries, already provides an established legal regime for dealing with online infringements. While SOPA states that it will not alter the DMCA’s safe harbor provisions, it would place additional obligations on Internet intermediaries to assist the Attorney General and intellectual property owners with enforcement efforts. Opponents of SOPA assert that shifting part of the burden of intellectual property enforcement to Internet intermediaries would have a chilling effect on free speech and stifle innovation in social media and other online platforms.

## **Conclusion**

K&L Gates will continue to monitor both the House’s SOPA and the Senate’s Protect IP Act. SOPA is scheduled for markup and debate on the full floor of the House in December. The House sponsors have suggested changes may be forthcoming. The similar Protect IP Act may come up for a vote before the

# Hollywood vs. Silicon Valley: The U.S. Stop Online Piracy Act *By K&L GATES*



Hong Kong 香港科技園  
Science & Technology Parks

Senate in December, although filibuster is threatened. If you would like assistance in developing strategies in the event this legislation is implemented, please contact one of our attorneys.

**Authors:** Susan E. Hollander, Britt L. Anderson, Jocelyn M. Belloni

**Please contact us at [nathan.liu@hkstp.org](mailto:nathan.liu@hkstp.org) and we will connect you to K&L GATES shortly.**

## K&L GATES

**Enquiry** Mr. Nathan Liu (852) 2629 6695

**Email** [nathan.liu@hkstp.org](mailto:nathan.liu@hkstp.org)

**Web** [www.hkstp.org](http://www.hkstp.org)

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.