



Written by [Raven Clabough](#) on December 15, 2011

## Republicans Spar Over Anti-Piracy Law

Some top Republicans are clashing over an Amendment to the Stop Online Piracy Act. Texas Republican Rep. Lamar Smith proposed an amendment to SOPA that House oversight committee Chairman Darrell Issa (left) said would not fix piracy and instead would give too much broad power to Attorney General Eric Holder's Department of Justice.



The bill would virtually assign authority over websites and copyright infringement under the jurisdiction of the Justice Department. *The Daily Caller* explains, Under SOPA, the Justice Department would have to lay out its case before a federal court that the foreign site is illegal and infringes upon copyright law before obtaining a court order to block the site or sever its financial ties.

The managers amendment retains the fundamental flaws of its predecessor by blocking Americans ability to access websites, imposing costly regulation on web companies and giving Attorney General Eric Holders Department of Justice broad new powers to police the internet, said Issa.

According to [BNA.com](#), the amendment has its pros and cons.

It narrows the definition of what type of website would be subject to enforcement actions by the U.S. Attorney General, which provides clarity to some of the broader points in the Stop Online Piracy Act that provoked criticism. The amendment language refines the law so that the only sites subject to law enforcement are ones that are either primarily designed or operated with the object of promoting trademark or copyright infringement, not merely a site that failed to avoid confirming the presence of infringement or block a website using feasible and reasonable measures to prevent access by their subscribers to such sites. New language instead mandates that a service provider take measures to prevent access by its subscribers located within the United States to the foreign infringing site that is subject to the order issued by the courts.

A number of sites, like Google, pointed out that under the original law, the definition of websites that were dedicated to infringement was too broad and could be misinterpreted to include sites that are working in compliance with the Digital Millennium Copyright Act.

At the same time, however, the mere fact that the DOJ has the power to block websites still undermine[s] the structural integrity of the Internet if the bill becomes law, observes BNA.

Similarly, Bill Wilson, president of Americans for Limited Government, said, This bill will still risk placing unfeasible, court-ordered technology mandates on Internet service providers requiring websites to somehow prevent their services from being use to post infringing material, even if doing so it technically impossible. To avoid litigation, Internet companies will simply stop allowing uploading and



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file sharing.

Despite these concerns, Smith contends that Issas complaints are unfair. Smith responded to Issas comment, asserting, Comments that the entire Justice Department cannot be trusted because of Attorney General Holder demean the hard work of thousands of career prosecutors and attorneys-in-the-field who have no political, personal, or professional affiliation with the Obama administration.

Issa has lost confidence in Holders and the DOJ's ability to oversee programs as of late due to his alleged involvement in Operation Fast and Furious, an operation run by the Bureau of Alcohol, Tobacco, Firearms and Explosives and overseen by the DOJ which resulted in a number of illegal guns being permitted to walk and land in the hands of violent drug cartels. Guns permitted to walk under this operation turned up at various crime scenes.

Along with Issa, the bill also has been opposed by other lawmakers, social networking sites, and political advocacy for its broad reach, but also has the support of 29 bipartisan cosponsors, as well as the U.S. Chamber of Commerce, MPAA, RIAA, Comcast and Go Daddy.

Critics note that the Obama administration has already significantly expanded its power over the Internet, by way of the recent Federal Trade Commissions recent settlements with Google and Facebook, and through the passage of net neutrality regulations. Likewise, the U.S Immigration and Customs Enforcement has also been working on targeting and taking down rogue sites determined by ICE to be helping to infringe upon U.S. intellectual property.

The Internet seems to have always been a source of contention for Holder. While serving as Deputy Attorney General, Holder said in response to the Columbine Massacre, The court has really struck down every government effort to try to regulate it. We tried with regard to pornography. It is gonna be a thing, but it seems to me that if we can come up with reasonable restrictions, reasonable regulations in how people interact on the Internet, that is something that the Supreme Court and the courts to favorably look at.

Issa instead believes he found a better solution to the issue of online piracy, and plans to introduce an alternative to SOPA, called the Open Protection and Enforcement of Digital Trade Act, which would grant law enforcement authority to the International Trade Commission. That Commission reports to both the executive and legislative branches and works with the Department of Commerce.

But Smith takes issue with Issas OPEN Act, noting a double standard by asserting that opponents of SOPA express concern over DOJ's role in the enforcement of intellectual property law, but have no problem giving President Obama the authority to pardon foreign policy rogue websites for mere policy reasons.

Sponsors of the OPEN Act seem fine with President Obama being able to use this authority at his political will, but are unwilling to trust the judiciary and federal courts who have handled intellectual property enforcement for decades, said Smith.

SOPA is expected to see full committee markup before the House Judiciary Committee as early as today.



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