

BREAKING: Copyright Lawyers Oppose SOPA ... And Say It Won't Even Work

By [Washington's Blog](#)

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SOPA Won't Work

Many experts have said that the Stop Online Privacy Act (SOPA) and Protect IP Act (PIPA) are not only draconian, but that they fail to address the root problem.

A former intellectual property law school professor [points out](#):

[SOPA and PIPA] aim to curb online copyright piracy ... but end up using a sledgehammer, when a fine scalpel is instead needed.

As reported by [Forbes](#), the [Atlantic Monthly](#) and others, coders are already developing work-arounds to SOPA and PIPA. For example, a developer using the alias "Tamer Rizk" launched [DeSopa](#), an add-on for the popular Firefox browser that would allow users to visit sites blocked by the proposed copyright protection measures proposed under SOPA. So not only these bills are not only draconian, but they won't work.

Jay McDaniel – a plaintiff's attorney for content providers fighting torrent-based copyright infringement – agrees, and [proposes a better alternative](#):

There is a simple solution to the dilemma of digital piracy, however, one that will cost the government nothing, that will protect free speech and that will ultimately bring an end to a practice that is undermining the viability of our cultural industries. More importantly, it will enable Congress to avoid polluting legitimate free speech issues with behavior that is neither protected by the Constitution nor lawful.

Simply let copyright holders exercise the right to efficiently discover the identity of infringers. Copyright law as it presently exists with its substantial civil remedies will take care of the rest of the problem.

The answer is simple. Congress should overrule two decisions that held that copyright owners could not use the Digital Millenium Copyright Act (DMCA) to subpoena the identities of infringers directly from cable internet service providers. These two decisions, Recording Indus. Ass'n of America v. Verizon Internet Servs., Inc., 351 F.3d 1299 (D.C. Cir. 2003) and In re Charter Communications, Inc., 393 F.3d 771 (8th Cir. 2005), have made it extremely difficult for copyright owners to find and prosecute civil claims against the

wide-spread piracy that occurs on peer-to-peer networks.

Both cases involved attempts by copyright owners to use a provision in the DMCA that allows the owners to issue takedown notices to Internet Service Providers (ISPs) and to also obtain a subpoena to learn the identity of the infringer. The Verizon and Charter Communications courts held that the takedown notice-subpoena provisions did not apply to claims seeking to discover the identity of Internet account holders.

It was a strained reading of the statute to begin with, and it has led to a morass of litigation and discovery disputes in which there are conflicting jurisdictional and venue decisions on a nearly daily basis. More significantly these decisions closed the courthouse doors to any copyright holder that cannot demonstrate widespread copying sufficient to justify bringing a large “John Doe” action just to find out who the culprits are. Moreover, in a relatively small number of cases, hostile district judges are unwilling to let the cases go forward in any reasonably economic manner.

Copyright holders know that their works are being pirated. They know where they are being pirated and how they are being pirated. But they simply cannot get to the pirates. If Congress were to overrule these decisions, the problem would disappear as the people who break the law would find themselves facing the serious consequences of a civil infringement suit. The infringers would pay for the remedy through statutory fee shifting.

Private enforcement litigation would replace the need for government oversight of our Internet habits, and those who break the law would fund the system. Digital piracy, in its present form, would quickly come to a halt for the same reason that we don’t shoplift copies of DVDs from Walmart. It’s too easy to get caught and the penalties are too severe.

Obviously, the law should be crafted so that discovery can only be used against actual copyright pirates, not political commentators or bloggers who – under the [fair use](#) and [My Lai/Zapruder](#) exceptions to copyright law – use portions of copyrighted material for political or social commentary, or for educational purposes. In other words, copyright law should *never* be used to crush dissent. (We understand that some – like [Amir Taaki](#) – promote the destruction of *all* copyright laws. We don’t agree with that view.)

Many Copyright Lawyers Oppose SOPA

Indeed, many of the nation’s top copyright lawyers oppose SOPA and PIPA, [including](#):

1. [Marvin Ammori, Affiliate Scholar, Center for Internet & Society, Stanford Law School](#)
2. [Brook K. Baker, Northeastern University School of Law](#)
3. [Stewart Baker, former NSA General Counsel and Head of Cyber Policy for DHS](#)
4. [Derek E. Bambauer, Brooklyn Law School](#)
5. [Margreth Barrett, Hastings College of Law University of California-San Francisco](#)
6. [Mark Bartholomew, University at Buffalo Law School](#)
7. [Ann M. Bartow, Pace Law School](#)
8. [Marsha Baum, University of New Mexico School of Law](#)
9. [Yochai Benkler, Harvard Law School](#)
10. [Oren Bracha, University of Texas School of Law](#)
11. [Annemarie Bridy, University of Idaho College of Law](#)

12. [Chris Bronk, Rice University](#)
13. [Dan L. Burk, University of California-Irvine School of Law](#)
14. [Irene Calboli, Marquette University School of Law](#)
15. [Adam Candeub, Michigan State University College of Law](#)
16. [Michael Carrier, Rutgers Law School – Camden](#)
17. [Michael W. Carroll, Washington College of Law American University](#)
18. [Brian W. Carver, School of Information University of California-Berkeley](#)
19. [Anupam Chander, University of California-Davis School of Law](#)
20. [Andrew Chin, University of North Carolina School of Law](#)
21. [Ralph D. Clifford, University of Massachusetts School of Law](#)
22. [Julie E. Cohen, Georgetown University Law Center](#)
23. [G. Marcus Cole, Stanford Law School](#)
24. [Kevin Collins, Washington University-St. Louis School of Law](#)
25. [Danielle M. Conway, University of Hawai'i Richardson School of Law](#)
26. [Dennis S. Corgill, St. Thomas University School of Law](#)
27. [Christopher A. Cotropia, University of Richmond School of Law](#)
28. [Thomas Cotter, University of Minnesota School of Law](#)
29. [Julie Cromer Young, Thomas Jefferson School of Law](#)
30. [Ben Depoorter, Hastings College of Law University of California – San Francisco](#)
31. [Eric B. Easton, University of Baltimore School of Law](#)
32. [Anthony Falzone Director, Fair Use Project Stanford Law School](#)
33. [Nita Farahany, Vanderbilt Law School](#)
34. [Thomas G. Field, Jr., University of New Hampshire School of Law](#)
35. [Sean Flynn, Washington College of Law American University](#)
36. [Brett M. Frischmann, Cardozo Law School Yeshiva University](#)
37. [Jeanne C. Fromer, Fordham Law School](#)
38. [William T. Gallagher, Golden Gate University School of Law](#)
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40. [Deborah Gerhardt, University of North Carolina School of Law](#)
41. [Llew Gibbons, University of Toledo College of Law](#)
42. [Eric Goldman, Santa Clara University School of Law](#)
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44. [James Grimmelman, New York Law School](#)
45. [Leah Chan Grinvald, St. Louis University School of Law](#)
46. [Richard Gruner, John Marshall Law School](#)
47. [Robert A. Heverly, Albany Law School Union University](#)
48. [Laura A. Heymann, Marshall-Wythe School of Law College of William & Mary](#)
49. [Herbert Hovenkamp, University of Iowa College of Law](#)
50. [Dan Hunter, New York Law School](#)
51. [David R. Johnson, New York Law School](#)
52. [Faye E. Jones, Florida State University College of Law](#)
53. [Amy Kapczynski, University of California-Berkeley Law School](#)
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55. [Anne Klinefelter, University of North Carolina College of Law](#)
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61. [Yvette Joy Liebesman, St. Louis University School of Law](#)

62. [Peter Linzer, University of Houston Law Center](#)
63. [Lydia Pallas Loren, Lewis & Clark Law School](#)
64. [Michael J. Madison, University of Pittsburgh School of Law](#)
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83. [Aaron Perzanowski, Wayne State University Law School](#)
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108. [Sarah K. Wiant, William & Mary Law School](#)
109. [Darryl C. Wilson, Stetson University College of Law](#)

110. [Jane K. Winn, University of Washington School of Law](#)
111. [Peter K. Yu, Drake University Law School](#)
112. [Tim Zick, William & Mary Law](#)

For further background on the internet copyright bills, see:

- [The Tide Is Turning Against SOPA ... And We Might Actually Succeed In Stopping It](#)
- [SOPA Is "Unconstitutional", Would "Criminalize" the Internet ... Modeled On China](#)
- [Job Creators, Internet Architects and Security Experts Hate SOPA](#)
- [Sopa Would DESTROY Jobs and the Economy ... So Why are Unions Supporting It?](#)
- [Hypocrite Alert: SOPA Supporters Encouraged People to Use File-Sharing Software for Pirating Copyrighted Material](#)

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