



Friends,

Since my first day in elective office, you, my constituents, and I have had an agreement. That you may not always agree with me, but you will always know where I stand. Likewise, you will know my reason for making decisions and how I have approached that decision making process. With the issues surrounding the specific bills of SOPA, PIPA, OPEN and the issue of piracy, I owe you the opportunity to hear my thoughts and to know how I have approached the issue.

In 1996, as the head of the Tennessee Film, Entertainment, and Music Commission, I held my first roundtable on the issue of piracy. The issue of pirated merchandise, at that point, CDs, movies, trademarked merchandise was beginning to be an issue for our performers and content producers. They were finding their pirated works readily available on the streets at a greatly discounted price. It affected primarily the ‘small stuff’. Some suggested it be left alone. Most, however, agreed that piracy was wrong and we needed to find a way to fight back. Just as so often happens, not nipping something quickly ends up causing larger problems later. Since 1996, while in the State Senate in Tennessee and after going to Congress, I have continued to meet with our creators and innovators, from companies large and small, to entrepreneurs working in the garage to create the next great gadget, to hear their concerns about piracy. Foreign-based piracy has quashed far too many dreams of our Tennessee patent and copyright holders.

In 1998 Congress passed the [Digital Millennium Copyright Act, DMCA](#) to extend the reach of copyright protection on the Internet while also limiting the liability for certain companies. The DMCA created a legal regime where a copyright holder could send a ‘take down notice’ to a domestic site notifying that the site is hosting infringing material and then as long as the site takes the material down, the safe harbor provision permits the site to escape liability for previously hosting the offending material. The DMCA deals with domestic piracy. This is current law. Now we are faced with the challenge of closing a loophole that has allowed these cyber criminals to attack from overseas. Thus, you have groups of software developers, content producers, entrepreneurs and innovators who have worked together to find a vehicle to address the issue. America is home to over 19 million people who work in IP based industries. These talented individuals annually contribute \$7.7 trillion to the US GDP, and are responsible for 60% of our country’s exports.

To allow foreign-based piracy to continue is simply wrong. It denies our innovators of their constitutional rights. Article I Section 8 of the constitution states: *“To promote the Progress of Science and useful Arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries; to constitute tribunals inferior to the supreme court; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations”*. Regardless of what a bill is called, we can’t ignore the threat foreign-based rogue websites pose to the millions of innovators that call America home. Not a day goes by that these hardworking people don’t see their inventions – from pharmaceuticals to ink pens, from aftermarket auto parts to batteries, from movies to music to paintings to heart monitors – ripped off, copied, or infringed upon and sold at a price point at which they the inventor cannot competitively match.

Bastiat in **The Law**, *“Plunder Violates Ownership”*-... *“I do not, as is often done, use the word in any vague uncertain approximate or metaphorical sense. I use it in its scientific acceptance- as expressing the idea opposite to that of property (wages, land, money, or whatever). When a portion of wealth is transferred from*

*the person who owns it- without his consent and without compensation, and whether by force or by fraud- to anyone who does not own it, then I say that property is violated that an act of plunder is committed.”*

So, this brings us to the present. My advice to House Judiciary Committee Chairman Lamar Smith (R-TX) is to start over. House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) should do the same. Tear up these bills and let's have a well-informed discussion of the very real problem of international piracy. I have great affection for many people on all sides of this issue, but we need to cut through the misinformation, develop an understanding of what has transpired in the virtual marketplace, define the problems and assess the risks. Let's focus on how this issue should be addressed to protect the innovation that can lead our nation back to an environment of jobs growth and productivity. Our innovators deserve a respectful debate. The innovators I have visited with don't want to be forced to the [International Trade Commission](#) to settle their claims. They want access to an Article III court.

In every economic revolution—from the agricultural revolution, to the industrial revolution, to the technology revolution—our nation has stood with America's innovators to protect their intellectual property and private property rights. I will continue to fiercely defend these rights. Today, with a virtual, global marketplace, our innovators must know that they will have these protections.

Here is what I would suggest we should do moving forward. Define the problem as narrowly as possible. Involve all the stakeholders and agree that no harm will be done to the backbone of the Internet, private property rights will be protected, and free speech not abridged.

A piece of legislation to continue this defense should be narrowly drawn and should contain 3 provisions: 1- due process for the rights holder. 2- common sense financial restrictions on the pirates, 3- reaffirming the constitutional protections due to our creators.

Despite the protestations of some of the companies complaining the loudest about piracy legislation, I do not want to see our country get on the slippery slope of denying or not protecting private property rights. Nor do I want to see any diminishment of our constitution. Those rights are precious and as we look at a 21st century global marketplace environment, so we must think long term and strategically.

As to those of you who have expressed concern regarding the shutdown of ideological based websites, these concerns are not found in the existing pieces of legislation. They are found in the [Net Neutrality order](#) that was passed by the Democrat led FCC on December 23, 2010. Those rules were enacted this November 2011—against the wishes of Congress. Many of you have worked with me over the past three years to help build support for my legislation [H.R. 96](#). Thank you for that support. I would appreciate your help with pushing this across the finish line in Congress this year. Let's rein the FCC back in and prohibit them from establishing priority and value to all content and then establish the speed at which that content can be received. I also take issue with paragraph 84, which requires our virtual space innovators to file with the FCC before they move their inventions from development to concept. This will have such a negative effect on US based developers that I fear we would lose our place as the planets most innovative nation.

As I have done since you first elected me, I want to encourage you to talk with me through this process. You know my goal. Let's continue the conversation to have a worthy debate on how we use this to strengthen - not diminish - our great nation.

My Best,

Marsha