

COICA and the Internet "Ecosystem"

by [David Sohn](#) [1]

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The Senate Judiciary Committee today held a hearing on the [Combating Online Infringement and Counterfeits Act \(COICA\)](#) [2] and the problem of online intellectual property infringement. CDT submitted a [written statement](#) [3] expressing our serious concerns with the legislation proposed last year. Watching the hearing, though, there were so many references to the "ecosystem" that I felt like I had stumbled upon an Environment Committee hearing by mistake. Various witnesses and Senators suggested that everyone in the "Internet ecosystem" needs to take strong action to fight infringement. The underlying assumption for many, stated explicitly at several points, was that Internet companies that provide basic functions like domain name services, transmission capability, and search should be viewed as "enabling" or "facilitating" piracy and should bear responsibility for policing infringing material on the Internet.

Ecosystems, however, are composed of many different organisms occupying different niches and playing very different roles. Some parties in the Internet ecosystem may have direct business relationships with infringement sites. Others may have a more indirect relationship - or no relationship at all. It's one thing to tell companies not to do business with identified "bad guys." It's quite another to tell companies that simply transmit traffic or search the Web that they have to monitor and police the content of websites with whom they have no relationship. Is it fair to characterize these kinds of services as "enabling" infringement? If so, do personal computer makers "facilitate" infringement as well? At the end of the day, I think it is important to draw some lines, rather than lumping all players together into a big, undifferentiated "ecosystem." The truth is that some tactics, like having ISPs block lookup requests for certain domain names, will be easily circumvented and risk collateral damage in a number of ways, as we explained in CDT's statement. Other tactics, like trying to cut off the flow of money to illegal sites by having ad networks and payment systems refuse to do business with them, may offer better prospects for success with lower risks. If Congress wants to enact legislation in this area, it should take a careful look at the pros and cons of the specific obligations it proposes to impose. Treating it all as one ecosystem obscures important differences.

Just as important, the Internet ecosystem is more than just a group of companies that perform various technical functions. It also includes a longstanding legal and policy framework that has been crucial to the Internet's success. CDT described this framework in our [comments to the National Broadband Plan](#) [4].

Through laws like [section 230](#) [5] and the DMCA safe harbor provisions, the United States has made the deliberate policy choice to allow providers of Internet access and online services to focus on empowering communications by and among users without having to monitor, supervise, or play any other kind of "gatekeeping" role with respect to such communications. That aspect of the ecosystem is what has enabled the rise of user-generated content platforms, "Web 2.0," and the almost limitless range of online tools and services that foster speech, collaboration, civic engagement, and economic growth. The Internet and the Web would not be what they are today without the ecosystem's favorable legal climate.

The hearing seemed stacked with former prosecutors, from Scott Turow to several of the Senators. So perhaps it is natural that many participants came at the issue principally from a law enforcement angle. But from the Internet policy angle and the free expression angle, Congress needs to think twice before tossing overboard longstanding policy and legal principles that are the underpinning of the Internet's success. As Verizon's witness pointed out, government-sanctioned website blocking raises complex issues and represents a significant change in approach. Senator Franken urged caution as well, and Senator Coons talked about balancing intellectual property protection with America's role as a nation that protects and promotes free expression. Hopefully Congress will heed that advice.

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- [Senate Judiciary Committee](#)
- [COICA](#)

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