

Stopping Online Foreign Piracy: The Current Challenge of Digital Copyright Law

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Internet users fought back against the United States Congress on January 18, 2012. In an impressive display of protest, the leading Internet companies encouraged their users to contact their respective state's Congressional representatives about the House of Representatives' Stop Online Piracy Act (SOPA) and the Senate's Protect IP Act (PIPA). (SOPA, however, was the original piece of legislation and will consequently be the focus of this paper.) Through online petitions and website blackouts, millions of Americans were informed of the impending legislation and the threats companies like Google and Wikipedia believed it posed to the freedom of the Internet. The Internet protests against SOPA foreshadow the future of legislation on combating online foreign piracy; Congress will have to keep the free flow of information on the Internet as a top priority when considering how to address the problem.

In Article 1, Section 8, Clause 8 of the U.S. Constitution, the Framers gave Congress the power "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" (*The United States Constitution*). From this, Congress enacted the Copyright Law, which protects original works of authorship; it is also intended to encourage creativity and innovation of authors (*Copyright Law of the United States*). It was the choice of the Framers to protect copyright owners.

With the rapid growth of technology, however, the rights of copyright owners are being threatened. In order to address this problem, the legislature and judicial branch have attempted to retool copyright law for digital media by balancing "[...] the rights of copyright owners (and hence private incentives to engage in creative activity) with the interests of consumers (and the

benefits to society)” (The Congress of the United States, The Congressional Budget Office 11). The most well-known effort in this area is the Digital Millennium Copyright Act (DMCA). The DMCA modified copyright law for digital media in a number of ways. It criminalizes the production and distribution of copyright protected technology, devices, or services when such an act is violating copyright law. The DMCA also increases the penalties for copyright infringement on the Internet (The Congress of the United States, The Congressional Budget Office 13-14). This act effectively deals with copyright infringement within the United States. The Internet, however, has created a larger problem for copyright law: foreign online piracy. The problem verges on becoming out-of-control as foreign piracy websites infringe on U.S. copyright law.

Representative Lamar Smith of Texas introduced SOPA in October 2011 to tackle this problem of foreign piracy. Existing United States copyright laws do not apply to foreign Web sites that operate outside the jurisdiction of American courts (Aaronson). The need for the bill stems from the problem of foreign websites pirating U.S. intellectual property. “According to the Institute for Policy Innovation, more than \$58 billion is lost to the U.S. economy annually due to content theft, including more than 373,000 lost American jobs [...]” (Gantman). Smith wanted to combat the damage to the American economy and potential harm to American lives. “Foreign Web sites that distribute American-made entertainment and counterfeit products, like fake pharmaceuticals, are ‘stealing our profits, [...] our jobs and they may be endangering the health of Americans’ [...]” (Aaronson). SOPA attempted to fix these problems.

The language of SOPA is very clear in its use of “foreign infringing site;” this is when a site, or portion of a site, illegally pirates U.S. intellectual property, conducts business with U.S. citizens, and is used by U.S. users (Smith). Under SOPA, when this type of website is identified, the copyright holder, as the plaintiff, could obtain a court order without giving the defendant

notice. The court would then issue an injunction to the offending foreign website to “[...] cease and desist from undertaking any further activity as a foreign infringing site” (Smith). The Web site would then have 48 hours to request an appeal to this decision. If this appeal does not occur, domestic websites would be required to block access to the offending website within five days of receiving a court order or face liability for enabling illegal activity. For example, “Google and Yahoo would be required to remove hyperlinks to the accused Web site in search results, PayPal and Visa would have to stop payment transactions on the site, and Google AdWords would have to discontinue advertisements” (Aaronson). From its advent in October, SOPA gained bipartisan support as the solution to the problem of online foreign piracy.

Simultaneously, opposition to SOPA mounted. “In a joint letter to Congress, Google, Facebook, Twitter, AOL, Yahoo, eBay and many other companies made it clear that they perceived a broader threat in the effort to thwart pirate sites” (Carr). These companies believed this legislation could lead to an Internet blacklist. While they supported combating foreign piracy, their view was “[...] the bills as drafted would expose law-abiding U.S. Internet and technology companies to new uncertain liabilities, private rights of action and technology mandates that would require monitoring of Web sites” (Carr). The companies did not want to become the police officers of the Internet for the Department of Justice. More importantly, they objected to any proposal that would potentially stifle creativity or the free flow of information on the Internet (Weisman).

Days before the House of Representatives and the Senate were scheduled to vote on SOPA and PIPA, the Internet fought back against the legislation. On January 18th, “[...] protests blanketed the Internet, turning Wikipedia and other popular websites dark for 24 hours. Google, Facebook, Twitter and others protested the proposed legislation but did not shut down” (Melvin).

The protests had immediate results. For example, the next day, Google Inc. reported its collection of over seven million online signatures against the legislation. The Wikimedia Foundation estimated 162 million people saw their blackout landing page, with over eight million of those visitors looking up their Congressional representatives' information through the site (Washington Post).

With the message of the protesters spreading like wildfire across the Internet, several sponsors of the legislation withdrew their support. The majority leader of the Senate, Senator Harry Reid, then delayed the vote. His actions were later followed by Smith, who said in a statement, "I have heard from critics and I take seriously their concerns regarding proposed legislation to address the problem of online piracy" (Puzzanghera). This marked a decisive victory for the Internet giants and their users. It also was a sign to legislators to either revise SOPA or search for better alternatives.

Professor William McGeeveran of the University of Minnesota Law School is a proponent of alternate legislation. McGeeveran, who specializes in information law, signed a letter along with 100 other law professors opposing SOPA. While he sees digital piracy as a problem, he believed the bill would change the architecture of the Internet, as well as put too much burden on intermediaries like Google. McGeeveran currently supports the Online Protection and Enforcement of Digital Trade Act (OPEN Act) (McGeeveran). This act would give oversight to the International Trade Commission (ITC), focus on foreign-based websites, include an appeals process, and only apply to websites that "willfully" promote copyright violation (DesMarais).

It is clear from the results of the SOPA protests that the companies and users of the Internet have become a force to be reckoned with. "Lawmakers will not be eager to brave another firestorm incited by Google, Twitter, Wikipedia and other popular websites" (Weisman).

If Congress is to pass anti-piracy legislation and address the problem of foreign piracy, they must make creativity and the free flow of information a top priority.

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Works Cited

- Aaronson, Becca. "Texan's Anti-Piracy Bill Gets Home State Pushback." *The New York Times*. The New York Times Company, 12 Jan. 2012. Web. 25 Jan. 2012. <<http://www.nytimes.com/2012/01/13/us/anti-piracy-bill-sopa-by-lamar-smith-gets-texas-pushback.html?pagewanted=all>>.
- Carr, David. "The Danger of an Attack on Piracy Online." *The New York Times*. The New York Times Company, 20 Jan. 2012. Web. 25 Jan. 2012. <http://www.nytimes.com/2012/01/20/business/media/the-danger-of-an-attack-on-piracyonline.html?_r=1&pagewanted=all>.
- The Congress of the United States, and Congressional Budget Office. *Copyright Issues in Digital Media*. Washington, D.C.: The Congress of the United States, 2004. 11-14. Web. 4 June 2012. <<http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/57xx/doc5738/0809copyright.pdf>>.
- Copyright Law of the United States*. Washington, D.C.: Congress, 2010. 201-05. Print.
- DesMarais, Christina. "SOPA, PIPA Stalled: Meet the OPEN Act." *PCWorld*. IDG Consumer & SMB, 21 Jan. 2012. Web. 15 May 2012. <http://www.pcworld.com/article/248525/sopa_pipa_stalled_meet_the_open_act.html>.
- Gantman, Howard. "MPAA Statement on Strong Showing of Support for Stop Online Piracy Act." Motion Picture Association of America, Inc., 16 Dec. 2011. Web. 27 Feb. 2012. <<http://www.mpa.org/resources/5a0a212e-c86b-4e9a-abf1-2734a15862cd.pdf>>.
- McGeeveran, William. Personal interview. 10 Apr. 2012.
- Melvin, Jasmin. "Congress withdraws SOPA, PIPA anti-piracy measures." *MSNBC.com*. MSNBC, 20 Jan. 2012. Web. 25 Jan. 2012. <<http://www.msnbc.msn.com/id/46072484>>.

/ns/technology_and_science-security/t/congress-withdraws-sopa-pipa-anti-piracy
measures/#.T80AEtVYuf6>.

Puzzanghera, Jim. "SOPA sent back to the drawing board in wake of Internet protests." *Los Angeles Times*. Los Angeles Times, 20 Jan. 2012. Web. 25 Jan. 2012. <<http://latimesblogs.latimes.com/technology/2012/01/sopa-bill-sent-back-to-the-drawing-board-in-wake-of-internet-protests.html>>.

Smith, Lamar. *H.R. 3261 - The Stop Online Piracy Act*. N.p.: House of Representatives, 2011. Print.

"SOPA petition gets millions of signatures as internet piracy legislation protests continue." *The Washington Post*. The Washington Post, 20 Jan. 2012. Web. 25 Jan. 2012. <http://www.washingtonpost.com/business/economy/sopa-petition-gets-millions-of-signatures-as-internet-piracy-legislation-protests-continue/2012/01/19/gIQAHaAyBQ_story.html>.

The United States Constitution. Philadelphia: Constitutional Convention, 1787. Article 1, Section 8, Clause 8. Print.

Weisman, Jonathan. "After an Online Firestorm, Congress Shelves Antipiracy Bills." *The New York Times*. The New York Times Company, 20 Jan. 2012. Web. 25 Jan. 2012. <http://www.nytimes.com/2012/01/21/technology/senate-postpones-piracy-vote.html?_r=2&scp=6&sq=SOPA&st=cse>.

For Further In-Depth Reading on Digital Copyright Law

Berkeley Technology Law Journal 13.3 (1998). Print.

Connecticut Law Review 28.4 (1996). Print.

Gurak, Laura J., Gretchen Haas, Laurie A. Johnson, Krista A. Kennedy, and Jessica L.

Reyman. *Minnesota Journal of Law, Science, & Technology* 6.2 May (2005). Print.

Herrington, Tyanna K. *A Legal Primer for the Digital Age*. New York City: Pearson Education, 2003. Print.

Litman, Jessica. *Digital Copyright*. Amherst: Prometheus Books, 2001. Print.