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How PIPA Can Be Effective at Combating Internet Piracy

EARLIER THIS YEAR, TWO BILLS designed to combat foreign online piracy were defeated in the wake of massive online protests by Google, Wikipedia, and other Web sites. The Senate version of the defeated antipiracy legislation was known as the Protect Intellectual Property Act (PIPA). PIPA would have authorized the U.S. Department of Justice to seek court orders in rem against foreign Web sites directed at the United States that have "no significant use other than engaging in, enabling, or facilitating" copyright infringement. These actions would only be available if, through due diligence, an owner or operator could not be located. PIPA would have authorized private rights of action against "rogue websites" under certain circumstances.

A distinct bill, introduced in the House of Representatives, was called the Stop Online Piracy Act (SOPA). Under SOPA, any foreign-based Web site directed at the United States that was "committing or facilitating" the sharing of unlicensed works could have been subject to a shutdown. As attorneys for individual recording artists, songwriters, and filmmakers, we hope to see new legislation proposed that reflects the legislative intent of PIPA while eschewing the ambiguities that plagued SOPA.

In 2011, PIPA passed unanimously through the bipartisan Senate Judiciary Committee. Soon thereafter, vast numbers of tech companies, bloggers, and Internet users participated in large-scale public relations campaigns and online protests against SOPA and PIPA. Protesters identified the bills as virtually identical, predicting that both bills would result in widespread censorship of the Internet. Strange bedfellows Huffington Post and Fox News inaccurately described the two bills as the "Internet Censorship Bills."

On January 18, 2012, Wikipedia blocked access to its content in order to illustrate the bills' alleged potential censoring effects. Google redacted its logo on its home page in a similarly symbolic gesture. Blogs voiced concerns that each of the two bills would inevitably result in widespread Internet censorship. Within days of the protests, lawmakers announced that the bills would not proceed to a vote.

SOPA and PIPA shared many characteristics, but we believe that there was never a viable reason to think that widespread Internet censorship was an inevitable byproduct of either bill. Nevertheless, we believe that SOPA left open the possibility of chilling noninfringing activity, while PIPA was much more carefully drafted and did not deserve to be vilified as promoting censorship of noninfringing activities.

Under PIPA, the only Web sites that could have been blocked were those having "no significant use other than" the sharing of unlicensed copyrighted works. Under SOPA, theoretically, any site "committing or facilitating" the sharing of unlicensed copyrighted works could have been subject to a shutdown, even if the site had engaged in significant noninfringing activities.

Both bills would have allowed federal courts to require U.S.-based companies to cease doing business with foreign Web sites found to be violating copyright laws on a widespread basis. Such companies could include "rogue website" advertisers as well as payment facilitators such as PayPal.

The bills also originally had provisions that were designed to block or reroute Domain Name Service (DNS) requests for "rogue websites" dedicated to infringing activities. This methodology was particularly troublesome to opponents of the antipiracy bills, because blocking a DNS record requires ISPs to lower security levels, which could in turn make noninfringing Web sites more vulnerable to hackers. News reports have indicated that the bills' sponsors agreed to remove DNS-filtering mechanisms from any redrafts of their antipiracy bills.

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We believe that PIPA, as a model for future legislation, should be analyzed on its own merits and not equated with its more ambiguous SOPA counterpart. Under SOPA, it would have been relatively difficult for any judge to determine whether a given Web site was "dedicated to" infringing activity and therefore subject to such action, particularly if the given Web site engaged in both infringing activity and noninfringing activity. "Rogue websites" were much more narrowly defined in PIPA, and therefore would have been far easier to identify as criminal enterprises whose only purpose is to profit from the distribution of stolen intellectual property. Since ambiguities in SOPA could have lead to some curtailment of noninfringing activity, we believe that new antipiracy legislation should be modeled on PIPA, eliminating controversial DNS-blocking mechanisms. Such legislation can be an important tool for curtailing online infringement, thus enabling content owners—including individual musicians and filmmakers—to combat the unlicensed distribution of their copyrighted works.

Many framed the fight over antipiracy legislation as a case of Hollywood versus Internet users, or a battle by conglomerate content owners to protect their shareholders' interests. That characterization is inaccurate. The livelihoods of individuals—songwriters, recording artists, and independent filmmakers—are at stake in the debate about how to combat piracy. Copyright protection, guaranteed by the U.S. Constitution, was designed to allow creative people to focus on their crafts and be paid for the use of their work. For this reason, we hope to see a redraft of PIPA that omits troublesome DNS-blocking mechanisms. ■

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