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Brake the Internet Pirates

How to slow down intellectual property theft in the digital era

Wikipedia and many other websites are shutting down today to oppose a proposal in Congress on foreign Internet piracy, and the White House is seconding the protest. The covert lobbying war between Silicon Valley and most other companies in the business of intellectual property is now in the open, and this fight could define—or reinvent—copyright in the digital era.

Everyone agrees, or at least claims to agree, that the illegal sale of copyrighted and trademarked products has become a world-wide, multibillion-dollar industry and a legitimate and growing economic problem. This isn't college kids swapping MP3s, as in the 1990s. Rather, rogue websites set up shop oversees and sell U.S. consumers bootleg movies, TV shows, software, video games, books and music, as well as pharmaceuticals, cosmetics, fashion, jewelry and more.

Often consumers think they're buying copies or streams from legitimate retail enterprises, sometimes not. Either way, the technical term for this is theft.

The tech industry says it wants to stop such crimes, but it also calls any tangible effort to do so censorship that would "break the Internet." Wikipedia has never blacked itself out before on any other political issue, nor have websites like Mozilla or the social news aggregator Reddit. How's that for irony: Companies supposedly devoted to the free flow of information are gagging themselves, and the only practical effect will be to enable fraudsters. They've taken no comparable action against, say, Chinese repression.

Meanwhile, the White House let it be known over the weekend in a blog post—how fitting—that it won't support legislation that "reduces freedom of expression" or damages "the dynamic, innovative global Internet," as if this describes the reality of Internet theft. President Obama has finally found a regulation he doesn't like, which must mean that the campaign contributions of Google and the Stanford alumni club are paying dividends.

The House bill known as the Stop Online Piracy Act, or SOPA, and its Senate counterpart are far more modest than this cyber tantrum suggests. By our reading they would create new tools to target the worst-of-the-worst black markets. The notion that a SOPA dragnet will catch a stray Facebook post or Twitter link is false.

Under the Digital Millenium Copyright Act of 1998, U.S. prosecutors and rights-holders can and do obtain warrants to shut down rogue websites and confiscate their domain names under asset-seizure laws. Such powers stop at the water's edge, however. SOPA is meant to target the international pirates that are currently beyond the reach of U.S. law.

The bill would allow the Attorney General to sue infringers and requires the Justice Department to prove in court that a foreign site is dedicated to the wholesale violation of copyright under the same standards that apply to domestic sites. In rare circumstances private plaintiffs can also sue for remedies, not for damages, and their legal tools are far more limited than the AG's.

If any such case succeeds after due process under federal civil procedure, SOPA requires third parties to make it harder to traffic in stolen online content. Search engines would be required to screen out links, just as they remove domestic piracy or child pornography sites from their indexes. Credit card and other online financial service companies couldn't complete transactions.

(Obligatory housekeeping: We at the Journal are in the intellectual property business, and our parent company, News Corp., supports the bills as do most other media content companies.)

Moreover, SOPA is already in its 3.0 version to address the major objections. Compromises have narrowed several vague and overly broad provisions. The bill's drafters also removed a feature requiring Internet service providers to filter the domain name system for thieves—which would have meant basically removing them from the Internet's phone book to deny consumer access. But the anti-SOPA activists don't care about these crucial details.

The e-vangelists seem to believe that anybody is entitled to access to any content at any time at no cost—open source. Their real ideological objection is to the concept of copyright itself, and they oppose any legal regime that values original creative work. The offline analogue is Occupy Wall Street.

Information and content may want to be free, or not, but that's for their owners to decide, not Movie2k.to or LibraryPirate.me or MusicMP3.ru. The Founders recognized the economic benefits of intellectual property, which is why the Constitution tells Congress 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" (Article I, Section 8).

The Internet has been a tremendous engine for commercial and democratic exchange, but that makes it all the more important to police the abusers who hijack its architecture. SOPA merely adapts the current avenues of legal recourse for infringement and counterfeiting to new realities. Without rights that protect the creativity and innovation that bring fresh ideas and products to market, there will be far fewer ideas and products to steal.