

ONLINE PIRACY

Stop Online Piracy Act: issues surrounding online piracy

Online piracy is a global problem and as yet is without an adequate solution. Authorities in the US are taking action by looking to pass a piece of legislation that will authorise the shut down of websites that fail to remove copyright infringing material, in the form of the Stop Online Piracy Act, also known as SOPA. Both hugely controversial and yet not without support, those in opposition to the Act fear that it is the first steps towards internet censorship, as Vanessa Barnett and Natalie Elsborg of Charles Russell LLP discuss.

On 18 January 2012 Wikipedia asked all of its users to 'imagine a world without free knowledge' in a day of internet black-outs and protests that were larger than any seen before. The cause of the widespread restriction on using popular internet sites; SOPA, the Stop Online Piracy Act, currently making its way through the US Congress. SOPA is an anti-piracy bill which authorises the Attorney General and private rights holders to seek a court order against a US directed foreign internet site that is considered to infringe copyright laws.

The internet black-out in January of approximately 7,000 sites successfully caused the congressional vote on the Act to be shelved until the legislation has been amended and an attempt has been made to come to an agreement on a solution to stop online piracy. However, the bill is not yet dead in the water and it is likely that it will be debated in an amended form some time this year. Those in support of the Act claim that the online piracy industry is costing the US millions of dollars a year and thousands of jobs. Those who want to drop the SOPA (pardon the pun) say that in its current form it will fail to resolve the genuine problem of online piracy but will shut down the internet as we know it. What is the legislation trying to do and are these opposing views reconcilable?

The Legislation

The original SOPA legislation was proposed in October 2011 but following widespread uproar an amended version was proposed less than 2 months later removing some of the most offending provisions. The main controversy around SOPA stems from two sections in which SOPA allows attacks on foreign websites either by the Attorney General or, more

unusually, by private rights holders. Under Section 102 of the Act, the Attorney General could seize a 'foreign infringing site' that is 'committing or facilitating the commission of criminal violations'. More controversially, Section 103 of the Act allows the holder of an intellectual property right 'harmed by the activities' of the website to obtain a court order preventing US financial support to 'sites dedicated to the theft of US property' by means of a notice prohibiting search engines from listing the website in their results; stopping payment sites, such as Paypal, from processing payments from the website; and stopping internet advertising services from advertising the site.

Why the Legislation?

House Judiciary Committee Chairman Lamar Smith, the author of the bill, claims that the 'problem of online piracy is too big to ignore.' He claims that the annual cost of online piracy is \$100 million and results in the loss of thousands of American jobs. The main supporters of the legislation come from Hollywood; big media and music industry groups such as the Motion Picture Association of America who claim that online piracy deprives the creators of the content from their income. In fact, Mark Elliot, an executive from the US Chamber of Commerce claimed that piracy threatened 19 million American jobs. Although probably an over-exaggeration, the point is clear; provisions are felt to be needed to stop rogue foreign websites from taking hard earned American jobs and money.

Why the Uproar?

The uproar, which has come mostly from Silicon Valley, stems from the wide scope of interpretation of the words of the legislation. This is backdoor

copyrights. As far as companies such as Wikipedia, Google, Facebook, and Twitter are concerned. As Wikimedia Foundation General Counsel, Geoff Brigham, put it 'SOPA has earned the dubious honour of facilitating Internet censorship in the name of fighting online infringement'. Those who oppose the legislation support the goal; rid the internet of genuine online piracy, but not the means currently being suggested. The claim is that SOPA in its current form would effectively cause censorship of the internet and would put an enormous strain on such websites to police the content users uploaded. Their concern is that if users uploaded links to, or content from, any 'foreign infringing site' then they would be legally obligated to remove the content and if they did not - their website could be shut down. The only way for them to know if this is happening before receiving such a notice is to constantly police the content.

Whilst Facebook, Twitter and other such social media sites do have the money and power to carry out such an operation, they are reluctant to do so and they claim to be championing the rights of internet start-ups who would not be able to police their websites on this scale. Mark Zuckerberg, the founder of Facebook said that 'the internet is the most powerful tool we have for creating a more open and connected world. We can't let poorly thought out laws get in the way of the internet's development'. Google, Yahoo and other search engines are in an even more onerous position; whilst the position of social media sites under the legislation is less than certain, the result for search engines is clear: they could be served with a notice to remove all links to an offending website from all search

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results. An anathema to a corporation founded on the ideals of free and universal access to all corners of the internet.

A noteworthy effect has been the impact in other countries. There are reports on Wikileaks that US are encouraging Spain to introduce SOPA-style legislation. However, the European opponents of the Anti-Counterfeiting Trade Agreement (Acta) got louder; Germany and Poland, among others, refused to sign and we saw lobbying against Acta in the UK. It is now looking unlikely that Acta will ever find its feet in Europe.

The argument against SOPA is equally as clear as the argument for it: this could change the internet as we know it. It would allow internet censorship orchestrated by private rights holders (as well as the Attorney General) and could put a stop to ordinary internet users uploading and sharing content, relegating them to mere consumers of a professionalised internet.

Can there be a Solution?

The goalposts are not so far apart in the fight between Hollywood and Silicon Valley that success is impossible. Everyone who has been vocal whether in their support or opposition of SOPA has agreed on the underlying aim of the legislation; online piracy is a problem and a problem that is too big to ignore. It is the method by which the Judiciary Committee are trying to combat the problem that is the source of tension.

The January black-out has at the very least bought some time for those who oppose the legislation to try and propose an alternative way to reach the same end result. This is not impossible but it will require a complete overhaul of the current legislation to remove any potential obligation on internet sites to monitor content and remove the onerous provisions on internet

search engines, payment providers and advertising services which are pushing the US in the direction of internet censorship.

The difficulty with the modern age is that now more than ever, the copyright rules impact on ordinary people, not only businesses. While it remains unclear what an individual's limits are with respect to their activities on the internet, there are always going to be problems. As Jimmy Wales put it, a person is going to have a hard time understanding why an uploaded clip of their child's birthday party should be taken down simply because a copyrighted song was playing in the background. Quite rightly, the public feel this goes too far and want the rules explained and justified to them. Whatever the outcome of the latest objections to SOPA it is likely that any successful legislation in the US will be the start of a worldwide attempt at defeating the current problem of online piracy.

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