

Successful Internet protests: A potential turning point?

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Yesterday's internet protests were overwhelmingly successful â€“ it was an event of potentially historical magnitude. While the ongoing battle against expansionary (and innovation-destructive) IP legislation in the United States is nothing new, (and will continue even if these bills are defeated) there is something very different about the intensity and reach of SOPA/Protect IP ActÂ as its implications would extend well beyond copyright enforcement.

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Was this event a one-time phenomena, or will it stand as marking a turning point in the ongoing debate about the over-expansion of restrictive copyright enforcement measures?

Â To protest the bills, (aka the â€œBlacklist billsâ€œ) Wikipedia shut down its website on Wednesday January 18th. They pointed out that the billsÂ are a threat to Wikipedia: â€œin its current form, SOPA would require Wikipedia to actively monitor every site we link to, to ensure it doesn't host infringing content. Any link to an infringing site could put us in jeopardy of being forced offline.â€•Â Many other websites took part in the protests and the issue has attracted widespread media attention. [Washington Post, NY Times, Al Jazeera, Globe and Mail, CBC, BBC] Â In a recent essay in the Stanford Law Review OnlineÂ entitled "Don't Break the Internet " legal scholars Mark Lemley, David Levine and David Post explain how the bill would disrupt the operation of the Domain Name System (DNS), interfere with legitimate internet commerce payment systems, and introduce a system of extra-judicial prior restraints. Â Back in July 2011, a group of 108 law profs sent a letter to the U.S. Congress detailing numerous problems with the bill and there has also been excellent coverage of the issue on the websites of U.S. based groups like EFF and Public.Â And in response to petitions (Stop the E-PARASITE Act) in opposition to the bills, the Obama AdministrationÂ recently issued a statement indicating â€œwe will not support legislation that reduces freedom of expression, increases cybersecurity risk, or undermines the dynamic, innovative global Internet.â€•Â While it is generally understood that national legislation can only be effective within the enacting jurisdiction, Internet users outside of the United States have particular reason to be concerned about the breadth and scope of these bills. Despite well established doctrines of â€œterritorialityâ€• the â€œextra-territorialâ€• effects of the bill are no less a cause for further concern.Â As Lemley, Levine and Post warn: Â Â

These drastic consequences would be imposed against persons and organizations outside of the jurisdiction of the U.S. courts by virtue of the fiction that these prosecutorial actions are proceedings in rem, in which the 'defendant' is not the operator of the site but the domain name itself. Both bills suggest that these remedies can be meted out by courts after nothing more than ex parte proceedingsâ€“proceedings at which only one side (the prosecutor or even a private plaintiff) need present evidence and the operator of the allegedly infringing site need not be present nor even made aware that the action was pending against his or her 'property.' Â As for the implications for Canada, the Montreal Gazette reports :

Canadian copyright expert and University of Ottawa law professor Michael Geist also says the Stop Online Piracy Act (SOPA), also known as House Bill 3261 would have the power to work in Canada, shutting down websites for copyright infringement even if they aren't running afoul of Canadian laws. "The goal in many ways of SOPA is to reach beyond the borders of the United States," Geist said. "It's Canadian sites and sites around the world that would find themselves a target for these kinds of actions."

Â There are two main reasons why Canadians need to worry about how these measures will creep across the border.Â First, among the proposals are actual measures in the bills aimed at â€œforeignâ€• websites that contain allegedly infringing materials. This would include Canadian websites. Keeping in mind that there are several instances where Canadian copyright law might allow a posting where U.S. would not (for example the public domain is broader in Canada because the copyright term is shorter than it is in the US), the measure could affect Canadian websites who are well within the law. Â Secondly, if these or similar measures are enacted in the U.S. Canada would come under pressure to follow suit and enact similar measures. The pressure from the U.S. on Canada (and other countries) to enact measures similar to the digital locks provisions in the U.S. DMCA has been well documented.Â Â Given its potential cross-border implications, effective action needs to be taken outside of the United States as well to block such legislation. Wikipedia urges its readers outside of the U.S. to: Â Contact your local State Department, Ministry of Foreign Affairs, or similar branch of government. Tell them you oppose SOPA and PIPA, and any similar legislation. SOPA and PIPA will affect sites outside of the United States, and actions to sites inside the United States (like Wikipedia) will also affect non-American readers -- like you. Calling your own government will also let them know you don't want them to create their own bad anti-Internet legislation.Â

As many of the commentators point out, one of the more disturbing aspects of the bills are their extra-territorial effect.Â That is, the fallout from the laws will not be limited to the US (indeed "foreign"websites are a target of some of the more onerous provisions) .Â Not only will the services of non-US websites be disrupted without any real due process, but there is no doubt that the US would undertake to pressure other countries to enact similar measures.Â This is the historical pattern which is currently being played out over the digital locks provisions in C-11 and we should expect the same dynamic to recur.Â Stopping this legislation now, before it can be elevated to the next level of a standard is crucial not just from the point of view of educators, librarians, civil libertarians, computer end-users and the like, but also a broad

grouping of businesses that rely on a vibrant internet (which includes the ISPs, equipment manufacturers, retail distributors and a growing number of start-ups in a variety of fields).

Now with the Obama Administration statement expressing concern about the bill, it is likely that substantial amendments will be introduced. The fall-out from yesterday's blackout will in no small part help determine how extensive these amendments will be.

All in all, the protest was a huge success [see WSJ and CNN clips]. Back online this morning, Wikipedia reports that during the blackout:

- "More than 12,000 people commented on the Wikimedia Foundation's blog post announcing the blackout. A breathtaking majority supported the blackout.
- More than 162 million saw the Wikipedia blackout page.
- More than eight million looked up their elected representatives' contact information via the Wikipedia tool.
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Anti-SOPA and PIPA topics began trending globally on Twitter immediately after the blackout began. Hashtags included #factswithoutwikipedia, #SOPAstrike, and #wikipediablackout. At one point, #wikipediablackout constituted 1% of all tweets, and SOPA accounted for a quarter-million tweets hourly during the blackout.

A quick search of "SOPA blackout" on Google News produced more than 8,000 links as of this writing."

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Whether yesterday's protest and the heightened awareness it has generated was a one-time phenomena, or will it stand as a turning point in the ongoing debate remains to be seen. But SOPA/PIPA aside, there are certainly no shortages of other over-reaching measures on the table or in the works.

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