

THE WAR AGAINST ON-LINE PIRACY

US attempts to control what it identifies as rogue internet sites engaged in various forms of on-line piracy received a setback after the recent “blackout” protests by Wikipedia, the blog service WordPress and many other sites halted progress of two major pieces of draft legislation. Support for a Senate Bill, the Protect Intellectual Property Act (PIPA) introduced by Senator Patrick Leahy, and the Stop Online Piracy Act (SOPA), backed in the House of Representatives by Congressman Lamar Smith, melted away in the face of a concerted outpouring of anger from the internet community at what were perceived as attempts by politicians to impose draconian controls over the medium.

But although the internet may have won this particular battle, the regulatory war rages on. US law enforcement authorities opened up a new front with the decision announced on January 19 to charge seven men who run the on-line file-sharing site Megaupload with an array of offences including engaging in a racketeering conspiracy, conspiring to commit copyright infringement, conspiring to commit money laundering, and criminal copyright infringement. All concerned are accused by the Department of Justice of running an organised criminal enterprise allegedly responsible for the worldwide piracy of numerous copyrighted works through Megaupload.com and other related sites, generating more than \$175 million in proceeds and costing copyright owners more than \$500 million.

The law enforcement authorities in Megaupload and the politicians backing PIPA and SOPA are all targeting foreign-based websites, thereby reinforcing the mantle assumed by America as the world’s internet policeman. Megaupload is a Hong-Kong based site and four of the seven men being sought were arrested in New Zealand, including the founder “Kim Dotcom” (aka Kim Schmitz). The individuals, Megaupload, and a second corporation, Vestor Ltd, were indicted by a grand jury in the Eastern District of Virginia on January 5.

PIPA, supported by 40 senators, seeks to help protect American intellectual property by targeting rogue websites dedicated to the sale of infringing or counterfeit goods through foreign-based websites acting outside the scope of current US law. The Act targets the worst infringers by blocking access to the foreign-registered websites. Senator Leahy has a record of crusading for the protection of privacy rights, copyright protections and freedom of speech on the internet.

Congressman Smith has an established reputation in the field of IP rights, and was responsible for introducing the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) which increased civil and criminal penalties for trademark, patent and copyright infringement. The PRO-IP Act was used in a case involving a popular hip-hop blog, Dajaz1.com, where the site was seized over alleged copyright infringement relating to a number of published songs (the domain was subsequently returned to its owners after the authorities

Articles

The House of Lords Reform White Paper and draft Bill 2011 and a simpler alternative	2
650 years of the office of Justice of the Peace/Magistrate	5
The role the media should be playing in India	10

Institute News 14

Articles (cont'd)

Hybrid threats, cyber warfare, and NATO’s comprehensive approach for countering 21st century threats – mapping the new frontier of global risk and security management	24
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could not substantiate the claims and decided not to pursue forfeiture).

SOPA’s provisions include the power to authorise the US Attorney General to seek a court order against a US-directed foreign internet site committing or facilitating on-line piracy to cease further activities which constitute specified IP offences (eg criminal copyright infringement, unauthorised trafficking of sound recordings or videos of live musical performances, trafficking in counterfeit labels). On-line service providers, internet search engines, payment network providers or internet advertising services must, on receiving a copy of court order relating to an AG action, carry out certain preventive measures.

Many well-known names on the internet, such as Wikipedia, regard increased political interference under whatever guise as being more harmful to the medium than anything else. There is also general concern that sites pursuing legitimate file-sharing activities will fall foul of laws intended to curb piracy. Businesses operating outside the US resent what they see as American interference, and at home the actions of the authorities in Dajaz1 for example, where drastic enforcement action was taken but never justified, have bred mistrust.

On the other side of the argument, the politicians supporting PIPA and SOPA will attempt to amend and reintroduce both measures, backed by powerful organisations such as the Motion Picture Association of America which lobbies for Hollywood and wants to see tough anti-piracy legislation adopted. The US debate has been followed by the European Commission, which is contributing to the fight against on-line piracy and proposes a revised Intellectual Property Rights Directive by the end of 2012.

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