

# Hacking Politics

## How Geeks, Progressives, the Tea Party, Gamers, Anarchists and Suits Teamed Up to Defeat SOPA and Save the Internet

EDITED BY

DAVID MOON,

PATRICK RUFFINI,

AND DAVID SEGAL

## THE ULTIMATE DOCUMENTATION OF THE ULTIMATE INTERNET KNOCK-DOWN BATTLE!

From Aaron to Zoe—they're here, detailing what the SOPA/PIPA battle was like, sharing their insights, advice, and personal observations. *Hacking Politics* includes original contributions by Aaron Swartz, Rep. Zoe Lofgren, Lawrence Lessig, Rep. Ron Paul, Reddit's Alexis Ohanian, Cory Doctorow, Kim Dotcom and many other technologists, activists, and artists.

*Hacking Politics* is the most comprehensive work to date about the SOPA protests and the glorious defeat of that legislation. Here are reflections on why and how the effort worked, but also a blow-by-blow account of the battle against Washington, Hollywood, and the U.S. Chamber of Commerce that led to the demise of SOPA and PIPA.

DAVID MOON, former COO of the election reform group FairVote, is an attorney and program director for the million-member progressive Internet organization Demand Progress.

PATRICK RUFFINI is founder and president at Engage, a leading digital firm in Washington, D.C. During the SOPA fight, he founded "Don't Censor the Net" to defeat governmental threats to Internet freedom. Prior to starting Engage, Ruffini led digital campaigns for the Republican Party.

DAVID SEGAL, executive director of Demand Progress, is a former Rhode Island state representative. While a state legislator, Segal pushed progressive initiatives involving the environment, affordable housing, civil rights and civil liberties. He has written for many publications, among them the *New York Times* and *Boston Globe*.



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## A MOMENT FOR AARON: 1986 - 2013



Aaron Swartz speaks at the New York City anti-SOPA rally on January 18th, 2012

This book was constructed over the course of the fall, and we intended to release it earlier this winter, but then tragedy struck: our friend and colleague Aaron Swartz committed suicide on January 11th, while under federal indictment for downloading too many academic articles housed by the online cataloguing service called JSTOR. The shockwave was powerful: thousands have attended memorial services across the country, hundreds of news stories have been written. As of the writing of this foreword, there are at least a dozen long-form articles being drafted about Aaron's life and his death, and multiple documentary films being edited. A swarm of events that were to commemorate the anniversary of the January 18th Internet blackout became bittersweet remembrances of our fallen ally.

Aaron has largely been memorialized as an advocate for copyright reform, information access, and Internet freedom. He was indeed such, but

he was also so much more. He probably first cared about those causes for their own sakes, but his work on them provided a window into politics that made it impossible to ignore broader systemic corruption and injustices. He wasn't a techno-utopian who believed that open access and an open Internet would alone fix all that ails humanity; he came to believe that a constant, directed, ideologically left-leaning layer of activism needed to be built on top of these platforms.

This transformation is perhaps best elucidated by Aaron himself in his own words, from a talk he gave at the Freedom to Connect conference in 2012. Here's how he reacted when his close friend Peter Eckersley of the Electronic Frontier Foundation first told him about the bill that would become SOPA:

"Oh, Peter," I said. "I don't care about copyright law. Maybe you're right, maybe Hollywood is right, but either way is it really such a big deal? I'm not going to waste my life fighting over a little issue like copyright. Health care. Financial reform. Those are the sorts of issues I work on. Not something obscure like copyright."

I could hear Peter grumbling. "Look, I don't have time to argue with you. But it doesn't matter for right now. Because this isn't a bill about copyright."

"It's not?"

"No, it's a bill about freedom of speech."

You can see that his focus, more and more, was on matters of economic and social justice—but these new passions were synthesized with the old, as neither was enough on its own: to realize one's vision of a better world, one must know how the world works (open access) and be able to share that information (freedom of speech) and be able to organize towards those ends (freedom to connect, online and off).

Rather than enriching himself—rather than assuming that he alone was responsible for his genius or deserved to benefit therefrom—he chose to employ his intellectual prowess and the modest fortune he achieved upon the sale of reddit to make the world a better place, for everybody. I've been fumbling for the precise words since his death, but he once told me something like, "Segal, I might seem a little cynical or misanthropic sometimes, but don't worry: whenever I encounter a problem, I always try to identify the utility-optimizing solution to it." He'd taken to calling himself an "applied sociologist." And—always wearing a white hat—he was trying to hack the whole world.

It's through social justice work that I first got to know Aaron, and that our organization Demand Progress came into existence: Aaron co-founded the Progressive Change Campaign Committee, which endorsed my run for Congress in 2010. The day after I lost that election he emailed me to say, "We should talk some time. Need your help to fix the world." So we joined forces

to build Demand Progress and fight against that very bill whose import Aaron nearly dismissed.

Much has been and will be written about Aaron's state of mind, why he did what he did. We can't purport to know what he was thinking down to the final detail, but it is unambiguous to those of us who knew him well that the stress and anxiety that followed from the draconian prosecution were the proximate causes of his decision to take his own life.

While there is indeed a mental health crisis upon us, it's important not to pathologize all those who despair. Therapists, medicine, and lifestyle changes will benefit many—presuming one can afford them. But Aaron's way to allay others' misery and reduce the likelihood that they might suffer the fate that befell him would be to focus on what could have saved his own life: he'd aim for the root causes of so much human anguish. He'd strive to upend a system that hangs a lifetime in prison over the head of an activist who harmed nobody, or destroys people's lives over petty drug offenses, or forces millions of workers to spend decades slaving away at poverty wages without access to adequate healthcare.

We are sorrowful and we are angry, but we've found some solace in the vast public outcry at the injustice of his predicament—and in lawmakers' demonstrated willingness to take on Aaron's cause, and ours, as their own by addressing some of these structural problems.

Aaron was an ideologue, but not a partisan. He was definitively progressive, but didn't care much about party stripe, and was willing, or even excited, to work with conservatives and right-libertarians when he agreed with them. The familiar left-right, single-axis paradigm sometimes breaks down, frequently so in the civil liberties and Internet freedom space. As was the case during the SOPA fight, as described in detail in this book, some of our staunchest allies will be on the right, inclusive of Republican lawmakers, and we are pleased to have an opportunity to work in common cause with them.

As of this writing the House Government Oversight Committee led by Darrell Issa (R-CA) and Elijah Cummings (D-MD) has initiated an investigation into his prosecution. Senator Ron Wyden (D-OR) and Representative Zoe Lofgren (D-CA) have drafted legislation called Aaron's Law, to reform the statute under which he was prosecuted. Legislation to provide open access to publicly funded research has been introduced by Senator John Cornyn (R-TX)—it was already planned prior to his passing, but Demand Progress and others are excited to support it.

It's hard to know exactly what Aaron would make of all of this: he seemed not to always understand how much he mattered, to his friends and family, to hundreds of people whom he worked with over the course of his short life, and to millions across the world who never even met him. But he'd be hopeful that something positive might emerge from the tragedy of his passing.

And he'd be happy that so many care to learn more about the SOPA fight that was one of the highlights of the last year or two of his life. One of the

hallmarks of his particularly humble brand of brilliance was that he didn't assume every idea he had was superior, just for being borne of his own mind: he developed hypotheses, and he tested them. He exhorted us, "Be curious. Read widely. Try new things. I think a lot of what people call intelligence just boils down to curiosity." He was adamant that "the revolution will be A/B tested." So read what follows critically, and let's try to gain a sense of what worked and what didn't, so that we can put up an even stronger effort the next time we need to come together to save the Internet.

—David Segal  
February, 2013

## FOREWORD

DAVID MOON, PATRICK RUFFINI, AND DAVID SEGAL

Between the fall of 2010 and early 2012, untold millions of Americans urged lawmakers to protect the Internet and oppose the Stop Online Piracy Act and its predecessor and companion bills.

It's quite possibly the largest single, directed form of (non-electoral) activism as far as number of American participants—and that's fitting, as the legislation would have undermined the greatest facilitator of the democratic impulse that's ever been known to humankind.

Together, we used the Internet to save the Internet, and registered a resounding victory against all apparent odds and in direct contradiction of the intuitions of the most seasoned establishment political actors and lobbies like the Chamber of Commerce and the Motion Picture Association of America. This is that story.

Most Americans are familiar with the extraordinary Internet Blackout of January 18th, 2012, but to get to that moment took months and years of toil by dedicated activists, online, in the streets, and in the halls of power. In an age of polarized partisan politics, it took an alliance between the far left, the far right, and countless concerned Americans whose proclivities span the vast spectrum in between. We looked past differences and came together to uphold values shared by the overwhelming majority of Americans—and people from around the globe, for that matter. In so doing, we cast a spotlight on much of what can still be good about our political processes, but also helped illuminate the underlying structural decrepitude that made it possible that politicians would blindly push legislation that so clearly controverted the will of so many of their constituents.

In order to win, the Internet would turn the SOPA/PIPA battle into a testing ground for activists' tools, messages, and techniques—and all manner of viral satire, meme, and webcam ranting you could possibly imagine. Countless developers, websites, organizations, and even businesses tried to outdo each other in their activist creativity. But behind the scenes and beneath the seeming chaos of the public disruption, there were very real conversations happening between groups that do not usually play together. The “white shoe” lobbyists, the “white paper” policy advocates, technologists, venture capitalists, bloggers, and activists were in regular contact to discuss timing and strategy considerations. The participants in these dynamic coalitions often held wildly divergent viewpoints, but all shared an interest in defending Internet Freedom.

Essentially, anyone with a web presence (and who could therefore steer impressions to SOPA/PIPA content) could participate in the advocacy battle. It was decentralized, but it was organized, as we were actively trying to orchestrate a calculated mayhem.

Contained herein are essays written by dozens of people who were involved in those efforts. Authors of the essays that comprise *Hacking Politics* don't necessarily endorse each other's opinions—and, in fact, their opinions vary widely and often contradict one another. That's precisely part of the point of this book: to demonstrate the ways in which people of distinct backgrounds, ideologies, and interests joined together in common cause to fight legislation that would've censored the Internet.

We don't claim this to be a comprehensive accounting of everything that happened during the anti-SOPA/PIPA fight. Far from it. But it does represent the vantage points of an important group of activists who were invested in this fight for months or even years. The following pages are an account of their perspectives on the effort to beat SOPA/PIPA, and so necessarily elevate these viewpoints. Countless others who aren't represented here also played critical roles in that fight, and surely have intriguing stories to tell as well. We are aware that this book is United States-centric. There's critical work being undertaken in support of Internet freedom the world over, but we operate predominantly in the domestic sphere and that's where the SOPA/PIPA fight was won, so it's where we've focused. Would that we had the resources to engage more deeply with our brothers and sisters around the globe!

Demand Progress and Don't Censor the Net—the organizations that the co-editors of this book help manage—are new groups without a longstanding institutional structure. We are well aware of the debts that we owe to longer-standing organizations like the Electronic Frontier Foundation, Public Knowledge, the Center for Democracy and Technology, Free Press, and others, as well as many key academics and myriad rank-and-file activists who care passionately about the issues at hand. Without their years (sometimes decades) of work, our organizations wouldn't exist, and we wouldn't have been able to play the roles we took over the course of this glorious effort. In fact, without the toil of so many conscientious groups and people, we'd surely have lost the fight for an open Internet long ago. We're honored that many activists and organizations for whom we have so much respect have contributed essays to this book, though it's impossible to do justice to their longstanding work over the course of just a few hundred pages. A stark indicator of the depth of the gratitude that we owe the longer-standing organizations: While most readers of this book will be well aware of the 2012 Internet Blackout, far fewer remember—and several were probably not yet alive for—the 1996 blackout to oppose the Communications Decency Act (which was later found to be unconstitutional).

As we strive to be as inclusive as possible, and in the spirit of the creative chaos of the Internet, this book mashes up dozens of contributions into a coherent chronological narrative of the blow-by-blow of the anti-SOPA/PIPA organizing effort. It opens in the early fall of 2010, when the editors of this book joined the fray. We have also included what we hope are insightful analyses of what happened, from a variety of different vantage points. Some essayists were engaged in the anti-SOPA/PIPA cause for more than a year—and some were party to Internet freedom efforts for years before that—while others joined the fight in its waning days, even while playing critical roles therein. So there

## FOR E W O R D

are necessarily some redundancies and some jumps forward and backward in time, but you're smart enough to keep it all straight.

Some brief explanations of frequently-cited legislation:

**Digital Millennium Copyright Act** (DMCA) is a comprehensive copyright bill that Congress approved in 1998. References herein to the DMCA typically refer to the so-called “Safe Harbor” provisions that passed as part of the larger bill. The idea behind “Safe Harbor” is that a website or platform could let its users upload content, but not have to fear getting sued by copyright holders when their users posted unlicensed content. In exchange for this shield from liability, site operators must remove infringing content upon being alerted of its presence.

**Prioritizing Resources and Organization for Intellectual Property Act** (PRO-IP Act), passed by Congress in 2008, ten years after the DMCA. It is the PRO-IP Act that United States law enforcement agencies claim gives them power to seize domain names of sites registered in the U.S. and accused of facilitating intellectual property infringement. But the legality of the application of this power to the distribution of non-tangible property is disputed.

**Combating Online Infringement and Counterfeits Act** (COICA), S.3804, was introduced by Senator Patrick Leahy (D-VT) on September 20, 2010 but never became law. COICA would have allowed the government to seek court orders to shut down websites deemed to be “dedicated to infringing activities,” and would have forced Internet service providers (ISPs), domain name registrars, payment processors, and others to cease doing business with them. It would also have allowed for the creation of a “blacklist” of Internet domain names that the government alleged to be infringing, but for which it had not achieved such court orders. ISPs and others would be immune from any liability for blocking access to, or otherwise refusing to do business with, sites on this blacklist.

**Commercial Felony Streaming Act** (Ten Strikes), S.978, was introduced by Amy Klobuchar (D-MN) on May 12, 2011 but never became law. It would have made it a felony crime to engage in unauthorized streaming of copyrighted works for “commercial advantage or personal financial gain.” Those accused of streaming copyrighted works more than ten times would have faced jail time and stiff fines.

**Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act** (PIPA), S.968, was introduced by Senator Patrick Leahy on May 12, 2011 but never became law. PIPA essentially adopted the court order provisions of COICA, while dropping the blacklist of domain names outlined above. It was limited to the targeting of foreign sites (ie: those not registered with domestic domain names), but it was clear that many of

its proponents yearned for legislation affecting U.S. domains too: They'd backed COICA, after all, and supported the PRO-IP domain seizures. PIPA also created the possibility that site operators would be prohibited from merely linking to disputed websites, and that search engines would be forced to remove these sites from users' search results. The bill contained a much-debated provision requiring an "information location tool" to "remove or disable access to the Internet site" named in court orders.

**Stop Online Piracy Act** (SOPA), H.R. 3261, was introduced by Lamar Smith (R-TX) on October 26, 2011 but never became law. Like COICA and PIPA, SOPA would also have compelled ISPs, advertisers, payment processors, and "information location tools" (eg: search engines) to cease interaction with sites that were "dedicated to the theft of U.S. property." SOPA's provisions were thought to cover platforms for user-generated content—even if the platform's owners harbored no intent to host infringing material, and even if they were unaware of said content. It was ostensibly targeted at foreign sites—*bad enough in its own right*—but COICA's proponents had also targeted the domestic web, making clear their ultimate designs. Many feared that under SOPA domestic sites like search engines or social media platforms that merely *linked to* targeted foreign sites could also be penalized.

## HACKING POLITICS: TLDR

### 1. "... This Isn't a Bill About Copyright"

**Aaron Swartz (Internet freedom activist and founder of Demand Progress)**

For me, it all started with a phone call.

It was way back in September 2010, when I got a phone call from my friend Peter.

"Aaron," he said. "There's an amazing bill you have to take a look at."

"What is it?" I said.

"It's called COICA. The Combatting Online Infringement and Counterfeiting Act."

"Oh, Peter," I said. "I don't care about copyright law. Maybe you're right, maybe Hollywood is right, but either way is it really such a big deal? I'm not going to waste my life fighting over a little issue like copyright. Health care. Financial reform. Those are the sorts of issues I work on. Not something obscure like copyright."

I could hear Peter grumbling. "Look, I don't have time to argue with you. But it doesn't matter for right now. Because this isn't a bill about copyright."

"It's not?"

"No, it's a bill about freedom of speech."

**Mike Masnick (CEO and co-founder of Techdirt)**

The way that the law ... would have worked is that the Justice Department could ask a court to declare a site as a "pirate" site and then get an injunction that would force the domain registrar or registry to no longer resolve that domain name—you'd land on an error message or be redirected to a government notice instead.

**Aaron Swartz**

I knew that if the Supreme Court had one blind spot around the First Amendment, more than anything else—more than slander or libel; more than pornography; more, even, than child pornography—it was copyright. When it came to copyright it was like part of the justices' brains shut off and they totally forgot about the First Amendment. You got the sense that, deep down, they didn't even think the First Amendment applied when copyright was at issue.

**Mike Masnick**

Two very relevant cases on this front are *Near vs. Minnesota* and *Center for Democracy and Technology vs. Pappert*. *Near vs. Minnesota* involved striking down a state law that barred "malicious" or "scandalous" newspapers from publishing, allowing the state to get a permanent injunction against the publications

of such works. In most cases, what was being published in these newspapers was pure defamation. Defamation, of course, is very much against the law (as is copyright infringement), but the court found that barring the entire publication of a newspaper because of some specific libelous statements barred other types of legitimate speech as well. The court clearly noted that those who were libeled have recourse to libel law to sue the publisher, but that does not allow for the government to completely bar the publication of the newspaper.

**David Segal (executive director of Demand Progress)**

COICA would've created a list of "rogue" websites that the government could block access to with minimal due process. Perhaps even worse: it would create a second accounting of sites that wouldn't formally be blocked—because the Feds only had much weaker cases against them, even by the bill's lax standards—but would be put on a separate, public, list of sites that the U.S. government wasn't very happy with. Internet Service Providers would then be encouraged to steer users clear of them.

**Aaron Swartz**

It's so easy to accidentally copy something. So easy, in fact, that we found the leading Republican supporter of COICA, Orrin Hatch, had illegally copied a bunch of code into his own Senate website.

**Josh Levy (Internet Campaign Director for Free Press)**

In 2007, Comcast blocked file-sharing protocol BitTorrent for any use at all—even downloading the Bible. This forced the FCC to take action and sanction Comcast, which in turn led to Comcast suing the FCC and claiming the agency lacked the authority to regulate Internet access. Given the FCC's prior deregulatory decisions upheld in the Brand X case, another federal court ultimately agreed with Comcast.

Then came candidate Obama and his promise that he'd "take a back seat to no one on Net Neutrality." That stance, and FCC Chairman Julius Genachowski's early promises, inspired the hope that Net Neutrality would finally be protected once and for all. But the comments from Obama and Genachowski also prompted the phone and cable companies to do what they do best: fight back with lobbyists and lawyers.

**Mike Masnick**

Remember that YouTube, which is now considered by Hollywood to be mostly "legit," was once derided as a "site dedicated" to "piracy" just a few years ago. It's no surprise that the Justice Department—with a bunch of former RIAA/MPAA lawyers on staff—would love to have powers to shut down many sites, but it's difficult to see how such a law would be Constitutional, let alone reasonable. And finally, we must ask: why does the U.S. government consistently seek to get involved in what is, clearly, a civil business model issue?

**Ron Paul (former U.S. Representative for Texas' 14th Congressional District)**

Indeed, important media and political figures in the U.S. (such as Secretary of State Hillary Clinton) frequently bemoan the Internet's "lack of a gatekeeper." University of Chicago law professor and former Obama Administration "regulatory czar" Cass Sunstein has suggested that the federal government create an office to debunk "conspiracy" theories on the Internet. Former President Bill Clinton, that champion of honesty, has even suggested the creation of an entirely new cabinet department devoted to "fact checking" the Internet! These proposals are done in the name of preventing the spread of factual errors, misinformation, and "conspiracy theories."

**Josh Levy**

"Network Neutrality" forms the basis for the Internet's historical openness. Sir Tim Berners-Lee could have adopted proprietary technologies to build his vision of a web of interconnected documents. Instead, he opted for openness when inventing the software that became the Web.

**Dave Dayen (reporter for Firedoglake)**

At the exact same time Senate Democrats voted down net neutrality repeal, many of them were scheming to bring so-called anti-piracy legislation to the floor. The two bills coming up at the same time represents a common, devious tactic: make a big show of solidarity with a community or interest group on one bill, while selling them out on the side. So if the interest groups complained, individual members could simply point to the other vote, and add, "This other thing isn't that bad, trust us, we just showed you we're on your side, right?"

**Zoe Lofgren (U.S. Representative for California's 19th Congressional District)**

I've represented areas of Silicon Valley as a Member of Congress since 1995. In those years in the House, I've tried to ensure that copyright enforcement does not come at the expense of technology, innovation, or privacy and free speech rights. This has become even more important as the Internet developed and became a part of our daily lives. Championing technology and free speech when considering copyright in the digital age can often be a lonely position in Congress.

**Mike Masnick**

Case law around the First Amendment is clear that you cannot block a much wider variety of speech just because you are trying to stop some specific narrow speech. Because of the respect we have for the First Amendment in the U.S., the law has been pretty clear that anything preventing illegal speech must narrowly target just that kind of speech. Doing otherwise is what's known as prior restraint.

**Cory Doctorow (writer and co-editor of “Boing Boing”):**

In perhaps the ultimate abuse of intermediary liability, Viacom, in a lawsuit against Google, argued that YouTube was complicit in acts of infringement because it allowed its users to mark videos as “private.” Private videos couldn’t be checked by Viacom’s copyright-enforcement bots, and Viacom wanted the privacy flag banned. Under Viacom’s legal theory—supported by all the major studios, broadcasters, publishers, and record labels—online services should not allow users to share files privately, or, at the very least, must allow entertainment corporations access to all private files to make sure they aren’t copyrighted.

**Mike Masnick**

The Pappert case—a much more recent case—involved a state law in Pennsylvania that had the state Attorney General put together a blacklist of websites that were believed to host child pornography, which ISPs were required to block access to. Again, child pornography is very much illegal (and, many would argue, much worse than copyright infringement). Yet, once again, here the courts tossed out the law as undue prior restraint, in that it took down lots of non-illegal content as well as illegal content … One of the complaints we’ve heard is that such past prior restraint cases do not apply here since “copyright infringement is illegal.” But, both defamation and child pornography also break the law. The point is that in all of these cases, there are existing laws on the books to deal with that specific content, which can be handled with a scalpel. Adding an additional layer that takes down an entire publication is where it stretches into clear censorship.

**Cory Doctorow**

This is like requiring everyone to open up their kids’ birthday parties to enforcers from Warner Music to ensure that no royalty-free performances of “Happy Birthday” are taking place. It’s like putting mandatory spy-eye webcams into every big-screen TV to ensure that it’s not being used to run a bootleg cinema. It’s like a law that says that each of the big six publishers should get a key to every office in the land to ensure that no one is photocopying their books on the sly. This is beyond dumb. It’s felony stupidity.

**Mike Masnick**

While much of the case focused on the fact that the techniques ISPs were using took down adjacent websites on shared servers, the court did also note that taking down an entire URL is misguided in that “a URL … only refers to a location where content can be found. A URL does not refer to any specific piece of static content—the content is permanent only until it is changed by the web site’s webmaster … The actual content to which a URL points can (and often does) easily change without the URL changing in any way.” The argument was that taking down a URL, rather than focusing on the specific, illegal content constituted an unfair prior restraint, blocking the potential publication of perfectly legitimate content.

**Aaron Swartz**

If you wanted to censor the Internet, if you wanted to come up with a way the government could shut down access to particular websites—this bill might just be the only way to do it. If you said it was about pornography, it'd probably get overturned by the courts—just like that adult bookstore case. But by claiming it was about copyright, it might just sneak through. And that was terrifying, because copyright was absolutely everywhere. If you wanted to shut down WikiLeaks, it'd be a bit of a stretch to claim you were doing it because they were distributing child pornography. But it wouldn't be hard at all to claim they were violating copyright.

**Patrick Ruffini (Republican Party political strategist, cofounder of Engage)**

When I first read the bill that October, the notion that a bill like this could see the light of day was jaw-dropping. On the one hand, elected officials celebrated the Internet, used it in their campaigns, and extolled its disruptive potential in visits to Silicon Valley. Yet, under the guise of anodyne anti-piracy measures, we were about to give the U.S. government the power to disrupt its core architecture by allowing the U.S. Department of Justice the power to blacklist websites and tinker with the DNS system in ways the vast majority of Internet engineers thought unworkable.

**Cory Doctorow**

When movies were invented, Thomas Edison, who held key film-related patents, claimed the right to authorize the production of films, tightly controlling how many movies could be made each year and what subjects these movies could address. The filmmakers of the day hated this, and they flew west to California to escape the long arm of Edison's legal enforcers in New Jersey. William Fox, Adolphe Zukor, and Carl Laemmle, of Fox Studios, Famous Players, and Universal, respectively, founded the great early studios because they believed that their right to expression trumped Edison's proprietary rights.

**2. The Petition****Patrick Ruffini**

The early strategy was no more and no less than: stall. Play for time. And hope that in the intervening time enough doubts could be raised that proponents could be persuaded to amend the bill. Not defeat it. But improve it.

**Aaron Swartz**

"Look," they said. "This bill is going to pass. It's going to pass unanimously. As much as we try, this is not a train we will be able to stop. So we're not going to support it—who could support it?—but in opposition, let's at least try to make it better." That was the strategy: lobby to make the bill better. They had lists of little changes that would make the bill less obnoxious, or less expensive for them, or whatever—but the fact remained, at the end of the day, it was going to censor the Internet. And there was nothing we could do to stop it. So I did what

you always do when you're a little guy, facing a terrible future, with long odds and little hope of success: I started an online petition. I called my friends and we stayed up all night setting up a website for a new group, Demand Progress, with an online petition opposing this noxious bill. And I sent it to a few friends and posted it on some websites.

**David Segal**

I was still technically a Rhode Island State Representative, a lame duck about to retire—or at least take a break—from a nearly decade-long career in politics that had chewed up most of my 20s. I'd lost a Democratic primary for Congress a couple months prior during which I'd garnered the support of a number of progressive Netroots groups, one of which was called the Progressive Change Campaign Committee and had been co-founded by whiz kid Aaron Swartz, renowned across the web for his Python coding skills and Internet evangelism. Aaron was based in Boston and spent much of the last couple months of my campaign camped out in our Providence headquarters, helping us rig up cheap polls and robo-calls and that sort of thing. One day he told me he was quitting PCCC; and here I was, six weeks later, working with him at Demand Progress.

**Aaron Swartz**

Now I've actually done a few online petitions before. I've worked at some of the biggest groups in the world that do online petitions. I've written a ton of them and I've seen even more. But I've never seen anything like this. Starting from literally nothing, we went to ten thousand signers, then a hundred thousand signers, then two hundred thousand, then three hundred thousand. And it wasn't just signing a name—we asked those people to call into Congress, to call urgently. There was a vote coming up this week—in just a couple days. We had to stop it!

**David Moon**

When I first joined Demand Progress, I offered to host Swartz and Segal at my house in Washington for a retreat to plot out six-month and one-year goals for the organization. Our mission and methods were still up for debate, but during the retreat we decided to kick forward a broad work plan and focus our energies on those efforts where our members expressed the most interest. We basically treated the effort like a startup.

**David Segal**

We did pick up a fascinating new tidbit or two as we roamed the Hill that day: the one that stuck with me was that one of the leading proponents of the bill—in addition to Hollywood, the Recording Industry Association of America, and the other usual suspects whose prints were all over the thing—was Deckers Shoes. You see, they own the brand Ugg, and the struggle they face—apparently worthy of legislation that would sabotage the fundamentals of the web—is that the

term “ugg” is one of common usage in Australia and New Zealand: it denotes a whole variety of sheepskin boot. Deckers wanted to be able to block Americans’ access to sites that claimed to sell lower-case uggs, based eight thousand miles or so from the shores of the continental USA, foisting on unsuspecting Americans shoes that actually had some modicum of cultural relevance somewhere.

#### **David Moon**

It was obvious that the pro-Internet forces were going to be massively outspent by industry proponents of COICA. We also knew that as a brand new group, Demand Progress would enter the debate with little-to-no credibility among status quo policymakers, that mainstream media coverage of our efforts would be almost non-existent, and that nobody thought we had any real chance to stop the legislative threat.

#### **David Segal**

What was tremendously useful about that day was the meeting we had later: we navigated the bowels of the Capitol complex, dodging stacks of cardboard moving boxes piled full with the belongings of defeated and otherwise departing members, and dropped in on Matt Stoller. Matt had cut his chops as an early blogger and online activist and so cared deeply about bills that might compromise Internet freedom. We wanted to know what he thought we should do, whom we should talk to about lining up (virtual) bodies to stand with us. One critical tip: some guy named Patrick Ruffini. We also wanted to make sure that conservatives on the Hill were aware of the legislation, and so alerted Ron Paul’s office to it before we left the Capitol grounds that day.

#### **Patrick Ruffini**

Demand Progress was an activist group on the left, and advocated on the sorts of issues that would have placed us as diametric opposites on the political spectrum, especially during the Bush years.

#### **Ron Paul**

It is not too difficult to imagine how various government agencies might want to use the state’s vast resources to control what ordinary citizens say and do online. It is in their interest to stand on the Internet’s metaphorical street corner and tell the American people, “Move along, nothing to see here.”

#### **Patrick Ruffini**

If we didn’t act, however, there was a danger that the bill would move so quickly, and opposition from the tech sector seem so esoteric, that these arguments could easily have been missed entirely. For their part, Hollywood had tried to portray COICA as no more controversial than renaming a post office. Looming large over the debate was a sense that content industry lobbyists had this sown up, and numerous times, tech industry sources warned that this could be passed, perhaps by voice vote, in the closing days of the 111th Congress.

**Aaron Swartz**

And at the same time we told the press about it—and about this incredible online petition. And we met with the staff of members of Congress and pleaded with them to withdraw their support for this bill.

**David Segal**

The Senate staffer wasn't enthused. We'd created a petition in opposition to the Combating Online Infringement and Counterfeits Act—we'd branded it as the "Internet Blacklist Bill"—and written it up on a few websites. We had front-page placement on the Huffington Post, and Boing Boing had given us a great write-up; somehow, within a week or so, three hundred thousand people had made known their opposition to the bill. We'd eventually understand this to be an opening grassroots salvo in what would become the movement that killed SOPA, but this guy seemed to be overestimating our standing—Aaron and I certainly didn't feel all that formidable at the time.

**Gabriel Levitt (vice-president of PharmacyChecker)**

Section 105, called "Immunity For Taking Voluntary Action Against Sites That Endanger The Public Health," made it a vehicle to prevent Americans' access to safe, foreign online pharmacies where brand name drug prices are often 85% lower than at U.S. pharmacies. The provision defined safe non-U.S. online pharmacies as ones that endanger the public health and could be subject to government actions. This section was more pernicious than those dedicated to copyrighted materials because acquiring necessary medication is essential to one's health and well-being, and sometimes is a matter of life or death. Not so for the shared MP3 download.

**Ernesto Falcon (special advisor, Public Knowledge)**

The sad truth is that very few Americans were telling Congress that they opposed COICA or PIPA because very few Americans actually knew what their Congress was up to—or, worse yet, very few believed they could stop Congress. As a result, the major studios and record labels had a field day with the Senate by repeating the process outlined above. Since none of the offices had their phones ringing off the hook or stacks of letters and emails from their voters back home voicing opposition to the bills, it seemed like an easy choice coupled with a healthy infusion of campaign money. Many policy decisions made on Capitol Hill are a calculation of the people versus the money, but when the people do not show up, money will always win.

**Aaron Swartz**

It was amazing, it was huge, the power of the Internet rose up in force against this bill. And then it passed the committee unanimously.

### 3. COICA Becomes SOPA and PIPA

#### **Patrick Ruffini**

Two different versions of online censorship passed the Senate Judiciary Committee by unanimous 18-0 votes. Oregon Democrat Ron Wyden stood as the Senate's lone opponent, and was twice able to place a "hold" on the bill, delaying further action. (As revealed in the Judiciary Committee's vote count, Wyden was not even a member of the relevant committee tackling the issue.) In 2010, Wyden's hold was accurately described as killing the COICA bill—which had emerged too late that year to pass. When Wyden did the same after the initial Judiciary Committee vote on PIPA in May 2011, the "hold" merely ensured delay. Senate Majority Leader Harry Reid would still be able to bring the legislation to the floor with a simple motion to proceed.

#### **Ernesto Falcon**

The only reason the full Senate did not pass the bill shortly afterwards was because one courageous senator, Ron Wyden of Oregon, stood against the bill from the onset. He understood from the beginning that what was being proposed would fundamentally alter the Internet in a negative way and that it would be unacceptable to the public (once they found out about it, that is). If it was not for his "hold," then it is likely that PIPA would already be law. Americans owe him, and most importantly his dedicated staff, a lot for their bravery in the face of fierce political pressure.

#### **Dave Dayen**

In November, Sen. Ron Wyden had vowed to place a hold on the bill, but I knew that wouldn't mean much. "Holds" and other Senate rules don't matter to leaders when they really want to make the effort to pass the legislation in question. Here's an example: throughout the first two years of Democratic Senate control in 2007–2008, Republican Tom "Dr. No" Coburn would routinely hold up virtually any spending bill on the grounds that the country's deficit was too high. In almost every case, the holds got honored, even when the bills held widespread support. Harry Reid didn't want to take the floor time to beat the filibuster. But in 2008, Democrat Chris Dodd placed a hold on legislation to immunize telecoms from their liability from participating in warrantless wiretapping. Despite Dodd's longtime tenure, despite the typical practice of honoring holds, despite his own party's control of the chamber, eventually the Senate took the time and broke Dodd's filibuster and immunized the telecoms. This seemed like the same thing. If they really wanted SOPA and PIPA, they could break Wyden.

#### **Aaron Swartz**

Now, as you may know, a single senator cannot actually stop a bill by themselves. But they can delay it. By objecting to a bill, they can demand that Congress spend a bunch of time debating it before getting it passed. And Sen. Wyden

did—he bought us time. A lot of time, as it turned out—his delay held all the way through the end of that session of Congress, so that when the bill came back it had to start all over again. And since they were starting all over again, they decided they might as well give it a new name. And that's when it began being called PIPA and eventually SOPA.

#### **Larry Downes (author, *Unleashing the Killer App*)**

When SOPA was unveiled in October, the seventy-page draft was worse—far worse—than PIPA, offering a virtual Christmas list of new legal powers and technical remedies for copyright and trademark holders, none of which would have done much to stop infringement even as they rewrote basic rules of digital life.

In the name of combating rogue foreign websites, SOPA would have allowed law enforcement agencies and private parties to force U.S. ISPs to reroute user requests, force search engines to remove valid links, and require ad networks and payment processors to cut ties with condemned sites. Users who streamed a minimal amount of licensed content without permission, including through YouTube, would face felony charges. And most of the new powers made use of short-cut legal procedures that strained the limits of due process.

#### **Gabriel Levitt**

It made sense for SOPA supporters to sell the bill as one protecting the public health. In fact, SOPA lobbyists regularly invoked Section 105 to convince members of Congress to support the bill as a matter of protecting seniors who order medication online. It also gave members of Congress great political cover to support the bill, despite not really understanding it.

#### **Patrick Ruffini**

Approached from the outside, if the issue could be framed as an issue of government overreach, rank-and-file Republicans, many of them Tea Party freshmen, could be rallied to oppose the bills as a sort of default anti-government, anti-Obama Administration position. Shortly after the new Congress convened, we made a point of going to the annual Conservative Political Action Conference with flyers talking up the dangers of giving Barack Obama and Eric Holder's Justice Department broad discretionary power to take down websites.

#### **Ernesto Falcon**

On September 20, 2011, after a full year of fighting in the Senate against the Combating Online Infringements and Counterfeits Act (COICA) and its follow up bill, PIPA, I figured we were going to lose the fight on Capitol Hill unless a massive public outcry woke up Congress. At this point, more than one-third of the Senate cosponsored PIPA and responses to our concerns on free speech, overly broadband government authority over the Internet's architecture, cybersecurity, and additional lawsuits killing innovative startups were virtually unheeded by most.

**Gabriel Levitt**

Price controls in other countries mean that drug prices are much lower abroad. Before the Internet, the only way for Americans to take advantage of lower prescription drug prices in other countries was to travel, usually in the form of trips to Canada and Mexico. In fact, in the beginning of the last decade members of Congress would lead bus trips up to Canada to help their constituents afford needed medication. Now the Internet has created a marketplace in which Americans who struggle to afford prescription medication in the U.S. can access lower-priced foreign pharmacies. Since lower drug prices correlate with more Americans filling their prescriptions, the online marketplace in pharmaceuticals benefits the public health, but U.S. laws serve the economic interests of producers at the expense of consumers. That's because federal law bans individuals from importing the same medicine sold in U.S. pharmacies from Canada and other countries where it's much more affordable.

**Patrick Ruffini**

Only Silicon Valley Democrat Zoe Lofgren could be counted on as a firm ally in early 2011, raising questions that February about the Department of Homeland Security's takedown program for domestic websites, and the fact that eighty-four thousand run-of-the-mill websites were shut off for three days as part of a misdirected order against a domain hosting company. The incident also made for an instructive horror story about the lack of due process involved: the government had only meant to target one site, but in the process, had plastered a notice on tens of thousands of sites effectively accusing their owners of child pornography.

**Zoe Lofgren**

The effort to pass the SOPA/PIPA legislation tracked prior road maps used by what my friend Senator Wyden lightheartedly dubbed "Big Content." Their game plan was to create momentum by lining up both business and labor allies, and support from both Republicans and Democrats. The costs of infringement were emphasized and sometimes exaggerated while the costs of crippling technological innovation were ignored. There was an almost complete unwillingness to solicit savvy technological input. So it came as no surprise when the first hearing on "online parasites" in March included testimony from the motion picture studios endorsing the need for legislation. The issue was soon reinforced by domain seizures through U.S. Immigration and Customs Enforcement's (ICE) "Operation In Our Sites" of websites accused of infringing copyrights. Some of these seizures, including the seizure of Dajaz1.com, appeared to violate the rights of the site owner and the free speech rights of users.

**Victoria A. Espinel (U.S. copyright czar)**

Operation In Our Sites ... is the first coordinated effort by the U.S. government to go after Web sites that are engaged in substantial amounts of criminally infringing activity. In the United States our legal system incorporates fundamental principles of due process and free speech, and those policy principles are

extremely important to this administration. So Operation In Our Sites, and the manner in which it's being carried out, has safeguards to protect to those policy principles. And I think that having increased law enforcement that is consistent with those values is what the United States should be doing, and I think that can and will be a good example to other countries as they are assessing how to fight online infringement.

**Joshua Bauchner (writer and researcher)**

No warning was made to site operators in advance of the seizure. Beyond the IPR Center press release, the government offered very little public comment on the seizures. The application and affidavit for a seizure warrant and the seizure warrant itself, with the specific charges levied against the sites, were not released for several more weeks. Notably, the five music-related sites were the first with domains seized by ICE that were more than just link and ad dumps. This was especially true of Dajaz1, Rap Godfathers, and On Smash, all of which were prominent and vital parts of the online rap community. Serving as a sort of amalgamation of radio station, MTV, fanzine, label liaison, PR, record shop, and local bar frequented by rap fans, each site hosted video and song premieres, broke news related to both niche and popular acts, and provided open message boards and chat rooms for fans and artists.

**Ernesto Falcon**

In essence, SOPA changed the debate from the original argument for PIPA (targeting foreign websites) to targeting everything Americans use and cherish today on the Internet. SOPA targeted user generated websites and open platforms in a way that would have destroyed the ecosystem of YouTube, Twitter, Facebook, and Tumblr. When I first saw the bill, I was floored that some in Congress would go so far as to engage in a scorched earth policy to fight piracy (and ultimately do very little to curb it).

**Nicole Powers (managing editor of SuicideGirls)**

Richard O'Dwyer, a 24-year-old from Chesterfield, England, founded TVShack.net in December 2007 while studying for a degree in computer science at Sheffield Hallam University. The site, which O'Dwyer started as a hobby, was essentially a boutique, entertainment-oriented search engine, which provided users with links to streaming movies, TV shows, documentaries, anime, and music. TVShack.net hosted no content on its servers, it merely pointed users in the direction of third party sites that did.

Without warning, on June 30, 2010, the TVShack.net domain was seized by U.S. Immigration and Customs Enforcement [ICE] and a boilerplate copyright notice was posted on the site. Richard continued to run TVShack. cc unimpeded, until one day when he got a rather unexpected knock at the door. The very long arm of the law, in the form of two American ICE officers, had come a-calling at his university accommodation in the north of England, accompanied by an escort of Her Majesty's boys in blue. Richard was arrested.

Richard, and his mother Julia, a National Health Service nurse, are currently in the process of appealing this autocratic extradition ruling.

#### **Ernesto Falcon**

Essentially while I would explain to an office that DNS filtering is used by countries like China and Iran and that, according to the experts, filtering makes the network vulnerable to cybersecurity attacks, the SOPA lobby would tell Congress that DNS filtering happens all the time for child pornography and malware and that experts have shown it is ok. But that's technically untrue—Comcast, for example, does not filter anything because that would make its network unsecure.

#### **Patrick Ruffini**

Unlike the skin-deep remedy of DNS blocking (where the content would remain online, just not at a domain name), follow the money had already shown its effectiveness in cutting off online offshore gambling. Credit card companies, including Visa and MasterCard, already had well-established policies against supporting merchants who dealt in pirated or counterfeit goods, making censorship concerns a non-issue. Studies released during the debate showed that 95% of the trade in spam or online counterfeit goods flowed through just three offshore banks. This approach addressed these choke-points. Ironically, though the DNS blocking provisions in SOPA and PIPA represented a drastic departure for how the Internet was architected and policed, its net impact on rogue website activity would have been minimal.

#### **Gabriel Levitt**

Despite the statutory barriers to personal drug importation, the FDA has never prosecuted an individual for personally importing prescription medication for his or her own use. It is reasonable to view the practice as, de facto, decriminalized.

#### **David Segal and David Moon**

We anticipated little outcry from beyond the usual cadre of activists when Senator Amy Klobuchar sponsored S.978, an effort to subject online streaming to harsh criminal penalties. (It was later rolled into SOPA.) We first heard about the draconian prospective law through Mike Masnick's Techdirt blog. In a June 1, 2011 article he alerted readers to the ramifications of Klobuchar's proposal: "If you embed a YouTube video that turns out to be infringing, and more than ten people view it because of your link ... you could be facing five years in jail."

Since the bill had not been introduced with a formal name, we dubbed S.978 "Ten Strikes" and blasted a call to action to our email list.

#### **Julia O'Dwyer**

The other thing was they didn't know what bail conditions to impose on [Richard]. The judge was like, "We've got the money, we've got the passport, what else can we do to him?" The barrister said we could say that he mustn't

access the Internet, but then the judge was saying he's got exams the next week, he's at university, so we can't do that, can we? And how could we police that anyway, he could just go in an Internet café. So Richard had to tap on the glass, because he was behind this glass wall in the court, to get somebody to come over so that he could make suggestions to them about his bail. He just said, "You could tell me not to access the TVShack website"—which he'd already taken down anyway—and "You could tell me not to buy any new domain names." So he chose his own bail restrictions because they didn't know what to do. It was funny. Well it would have been funny if it hadn't been so frightening.

#### **Patrick Ruffini**

The DMCA required any website, including social networks and search engines (termed "intermediaries" as they routed most of the link-clicks on the Internet), to take down specific links to offending content at the rights-holder's request. SOPA would go much further: takedowns of entire domains if owners were aware that their sites were being used to upload pirated content (alongside legitimate content), and continued to provide an avenue for that activity. This would create massive legal uncertainty for social platforms large and small, as it was a virtual certainty that any social or mobile startup would have users who would post pirated content at some point in time.

#### **Aaron Swartz**

I was at an event and I got introduced to a U.S. senator—one of the strong proponents of the original COICA bill. And I asked him why, despite being such a progressive, despite giving a speech in favor of civil liberties, he was supporting a bill that would censor the Internet. And the typical politician's smile faded from his face and his eyes started burning a fiery red. (And he started shouting. Something like, "Those people on the Internet!" He yelled, "They think they can get away with anything! They think they can just put anything up and there's nothing we can do to stop them! They put up everything! They put up the plans to our fighter jets and they just laugh at us! Well, we're going to show them. There's got to be laws on the Internet—it's got to be under control.")

#### **Andrew McDiarmid (senior policy analyst at the Center for Democracy and Technology)**

Despite the growing opposition through the summer and early fall, there was little indication that Congress was listening. In the Senate, PIPA had been approved without objection by the Judiciary Committee, had numerous bipartisan cosponsors, and looked like it would have the votes to pass. Then, in late October, the leaders of the House Judiciary Committee introduced SOPA. Rather than addressing the problems with PIPA, SOPA was far worse. It expanded the field of sites that could be targeted and not only kept PIPA's problematic remedies, but added new ones that threatened a broad range of legal sites. Even though it moved in the wrong direction, SOPA had similarly ominous bipartisan support.

**Zoe Lofgren**

By the fall of 2011, “Big Content’s” forces were advancing on all fronts, culminating in SOPA’s introduction by Congressman Lamar Smith (R-TX), Chairman of the House Judiciary Committee. I had warned my colleagues in private discussions that SOPA was one-sided and lacked any meaningful input from the tech community, and I pressed for a delay so it could be better balanced. Democrats no longer controlled the House and these requests were unavailing. With legislation in both the House and Senate, the situation appeared favorable for steam rolling the bills through Congress. Because proponents “had the votes” there seemed little interest in negotiating to fix problems.

**David Segal**

[Lamar] Smith thought he was being savvy. He’d introduce legislation that was more extreme than PIPA, making PIPA look reasonable, thereby helping ensure its passage: it would be the new “compromise” between the extremes of “leave well enough alone” and “that runaway train loaded up with dirty bombs that Lamar Smith introduced last week.” Maybe, just maybe, he’d even get lucky and pass SOPA outright: Hollywood had its talons in the bulk of the Democratic caucus; the Chamber of Commerce could force enough Republicans to the table and offer them nose-plugs that they could use to avoid the stench of those pansy Los Angeles effetes whose bidding they were being compelled to do ...

**Dave Dayen**

The timing also struck me. Congress, which typically did almost nothing in November and December without a good reason, had planned hearings and markups and votes for SOPA and PIPA during this period. From the beginning, the key sponsors sought passage at the end of 2011, when public attention focused anywhere but Washington. They obviously wanted it to slip through unnoticed.

**4. Big Content vs. the Tea Party and the Tech Industry****Tiffiny Cheng (co-founder of Fight for the Future)**

Under the pretext of protecting the rights of artists, the corrupt and very powerful copyright industry spent a record \$92 million on a push for the House’s Stop Online Piracy Act (SOPA) and the Senate’s Protect-IP Act (PIPA). These laws—laws that could censor or even shut down any website without due process—faced minimal public resistance despite their stifling impact on entrepreneurial, intellectual, creative, religious, and political expression. With overwhelming bipartisan support, their passage was seen as inevitable.

**Ernesto Falcon**

It doesn’t help that the tech industry, despite being very well known to the public, is still fairly new and small in the Washington D.C. political scene, while the movie and music industry have lobbied successfully on copyright law for

decades. So while we opposed the bills and conducted as much Capitol Hill outreach as possible, it had very little impact.

#### **David Segal**

It seemed obvious that the libertarian-right should be opposed to this legislation: after all, it was a robust new regulatory regime being foisted upon Americans by one of conservatives' very favorite boogymen: Hollywood.

#### **Patrick Ruffini**

Because passage in the Judiciary Committee seemed assured, the anti-SOPA lobbyists had to hustle and get creative, going places where Hollywood's underworked lobbyists wouldn't. They talked to freshman members on the Government Oversight committee, who might be looking to do a favor for their chairman, Darrell Issa. More generally, they viewed any backbencher without a previous history with Hollywood as a potential get.

#### **David Segal**

inside baseball vernacular :)

Mark [Mark Meckler—co-coordinator of the Tea Party Patriots] is conservative, but the kind of guy who's willing to go on fringe left-wing TV or radio and have a real dialogue with the "enemy." During one session in which neither of us was a participant I cornered him and convinced him to join me in the Green Room, where we co-authored this snippet of propaganda: "Have your own Web site?" the group wrote, "Maybe the government will shut it down tomorrow ... without any notice to you. Republicans are going to introduce this (bill) in the House, Democrats in the Senate. What? Big labor, Hollywood, U.S. Chamber of Commerce all in this together ... against you." We linked it back to an article that Patrick Ruffini, Charlie Turner, and I had written for the Portland Oregonian in support of Wyden's hold, and sent it to eight hundred thousand members of the Tea Party—via Facebook. And then I looked over Mark's shoulder as he reloaded the page about one hundred times—in a fit of juvenile delight that's all-too-familiar to me as somebody who also works with a large online activist list—as he watched hundreds of people "like" the post.

#### **Zoe Lofgren**

There is a saying that politics makes strange bedfellows. I don't agree with Congressmen Darrell Issa (R-CA) and Jason Chaffetz (R-UT) on many things but we could agree on SOPA/PIPA. I was happy to join forces with these fellow members of the House Judiciary Committee to make an effort to derail the oncoming freight train that SOPA had become. We were joined by Congressman Polis who would soon be appointed to the Judiciary Committee.

#### **Ernesto Falcon**

During the months of PIPA, I met with countless Congressional staffers who were concerned about the national security implications of DNS filtering and the First Amendment concerns raised by the free speech community. However, given the fact that the politics looked extraordinarily one-sided, many staffers

and their bosses fell into one of two spaces: a) If so many other offices cosponsored the bill, then maybe our concerns were unwarranted, and b) why should they stick their neck out against a bill that seemed all but certain to pass?

#### **David Segal**

Shortly thereafter Tea Party Caucus chair Michelle Bachmann came out against the bill—first reported via a response she sent to a constituent who'd emailed her using one of Demand Progress's petition pages.

#### **Patrick Ruffini**

"I have serious concerns about government getting involved in regulation of the Internet," wrote Bachmann. "And about ambiguities in this legislation which could lead to an explosion of destructive, innovation-stalling lawsuits."

#### **David Segal**

Silicon Valley tends to hold quite liberal positions on matters of social policy, to which I absolutely adhere: support for gay rights, drug policy and broader criminal justice reform, less militarism, and the like. But a substantial sub-portion of tech tends towards an anarcho-capitalist economic vision whereby an optimal society is one in which perfectly networked people-points engage in frictionless commerce, with very low taxes and a minimal social safety net, and in which unions—were they ever useful—are endemic to the ossified industrial structures that governed the **Old Economy**.

Capital O Capital E

#### **Patrick Ruffini**

SOPA could be read to cover social sites like Twitter and Facebook, demanding they actively take steps to prevent pirated content before it was posted. Not only were newer, venture-funded social and mobile startups the darlings of the Internet economy; they were exactly the tools one would use to defeat government censorship, whether earlier in 2011 in Egypt or, now, in the United States.

It was this dynamic, triggered by SOPA but not by PIPA, which caused the Internet—led by smaller players like Tumblr and reddit, more than by established players like Google—to go on nuclear alert.

#### **David Segal**

Not only was PIPA a priority for both Hollywood and its major unions like the Teamsters, but the analogous dynamic was playing out at the national scale, with storybook antagonists like the Chamber of Commerce and AFL-CIO both supportive, and even purveying joint propaganda at their various Capitol Hill lobby days. Indeed, noting organized labor's support for the legislation was one of proponents' mantras throughout the battle.

#### **Patrick Ruffini**

One lobbyist involved in the anti-SOPA effort described the scene early one morning in the cafeteria at the Rayburn House Office Building at the height of

the debate. Their team would convene at around 7:30 a.m. for member and staff meetings, and had so much ground to cover with that no more than one person was ever in meeting with a member or staffer at once; usually, in-house lobbyists and consultants teamed up. They also noticed the entertainment lobby was out in full force, with around fifty lobbyists convened at eight or nine tables pushed together. The anti-SOPA lobbyists set forth for their first wave of meetings, and reconvened at 9 a.m. When they returned, they noticed something odd: few if any of the pro-SOPA lobbyists appeared to have moved from their seats in an hour and a half.

#### **David Segal**

Labor's support for SOPA/PIPA was by no means uniform: institutional leadership tended to support the bills, but without exception, actual rank-and-file union members and organizers whom I spoke to were aghast to learn of the work that labor officials were undertaking in their names. And even some institutional players broke free from the apparent pro-SOPA/PIPA consensus. One unsung hero of this story is the Writers Guild of America, West, which in 2007 had gained the nation's attention and sympathy when its members went on strike over DVD and new media residuals.

#### **The WGAW**

"On the House side, Keyser and Barrios met with Reps. Henry Waxman, Howard Berman, and Janice Hahn. They thanked Waxman for his strong support of Guild issues and discussed concerns with the recently introduced Stop Online Piracy Act (SOPA). Because Berman is a co-sponsor of SOPA, the pair discussed their concerns with the bill's implications for competition and an open Internet. Although the WGAW strongly supports combating piracy, the competition, First Amendment, and due process concerns the bill creates must be addressed."

#### **David Segal**

As Fight for the Future launched that October, they had in mind the mobilization of an entirely different crowd that was similarly predominantly apolitical: people who pay attention to Justin Bieber. Klobuchar's bill could've turned him (more likely his mom) into a felon. FFTF's campaign entailed launching a satirical site that was to serve as the hub of the "Free Bieber" movement. Their crack design staff mocked up several images of the Biebs behind bars, which straddled the line between hilarious and genuinely disturbing—one had him stuck in a cell, crying a L'il Wayne tattooed tear, caught in the gaze of a much older inmate. Within a few days we'd struck the mother lode: a radio host confronted Bieber about the bill and the concocted controversy. His response was to deliver a rather heartfelt (though clearly teenaged) soliloquy about how important it is that people be free to perform and share music; that he loves watching fans' YouTube performances of his hits; and, most critically, that Amy Klobuchar "needs to be locked up, put away in cuffs."

LOL

## 5. American Censorship Day

### **Tiffiniy Cheng**

During a freak snowstorm on Halloween, FFTF discussed how disturbed they were by what SOPA would do if it passed. We realized that if SOPA passed, we could wake up someday to see some of our favorite websites seized by the government without due process or even a real warning. That became the driving concept we latched onto: we'd work to raise awareness of the censoring power of these bills by convincing websites to "take down" their own sites in an Internet-wide protest. As an early salvo, FFTF began to plan a day of protest called "American Censorship Day" on November 16—the date of the first SOPA hearing.

### **David Segal**

Fight for the Future (for which I was doing some contract work at the time) took the lead in organizing the critical "American Censorship Day" in mid-November. It's when reddit and Tumblr formally joined the effort—and Demand Progress provided some tech support for them. The effort steered many hundreds of thousands of new constituent contacts to Congress.

### **Patrick Ruffini**

Ahead of the hearing, ten House members—among them Ron Paul, Jared Polis, Issa, and Lofgren—sent a letter to Smith and ranking Democrat John Conyers warning that SOPA would target domestic websites and urging them to go slow. While Silicon Valley was heavily represented on the letter, the signatures also began to tell the story of the coalition's broadening reach, with representatives from tech corridors in Austin, Boulder, and Pittsburgh signing on. The letter also meant that there would be a divided house on SOPA right off the blocks—the opposition numbered a dozen members, to the twenty-four who had signed on as SOPA co-sponsors as of November 15th. While not numerically even, it was better than the 40-to-1 split that persisted in the Senate. And it would mean that there would be substantial opposition in both parties, raising the specter of chaos on the House floor.

### **Elizabeth Stark (co-founder of the Open Video Alliance)**

As I learned more about it, I knew it was really bad. When I say really, I mean really fucking bad. I have been a long-time open-Internet advocate, and many of my colleagues said, "This is the worst bill we have seen in the past decade."

Here was a bill proposed by lobbyists of the content industry—in the U.S., the RIAA and MPAA; internationally, the IFPI and many more. They said it was about piracy, but it was really about something more. It was part of a war on sharing, a fight against the way that the open, distributed Internet works. It was a blatant attempt to preserve their business models to the detriment of artists, innovators, and the public at large. And it was poised to pass. I called up some of my friends at Mozilla (you may have heard of their browser, Firefox) and said that we had to do something, and quick.

**Aaron Swartz**

When the bill came back and started moving again, it all started coming together. All the folks we had talked to suddenly began really getting involved—and getting others involved. Everything started snowballing. It happened so fast. I remember one week, I was having dinner with a fellow in the technology industry. He asked what I worked on and I told him about this bill. “Wow,” he said. “You need to tell people about that.” And then, just a few weeks later, I was chatting with this cute girl on the subway. She wasn’t involved in the technology industry, but when she heard that I was, she turned to me, very seriously, and said “You know, we have to stop SOPA.” Progress.

**Ernesto Falcon**

For those keeping count, more than 140 Internet engineers and cybersecurity experts, including the people that built the Internet, told Congress that filtering is dangerous while a grand total of three individuals said it was totally fine. Another argument was that the mere fact that the cable industry endorsed SOPA was proof that DNS filtering was not that big of a deal. I suppose it is just a coincidence that the NBCU (also Comcast) merely happens to be the largest and most powerful member of the National Cable and Telecommunications Association.

**Zoe Lofgren**

Despite all the advances in connecting with representatives and senators, emails and online petitions just don’t get the same immediate attention from most Members of Congress that is created by a massive inpouring of phone calls. Petitions get noticed too, but elected officials know that a person who takes the time to call is also likely to take the time to walk into a voting booth. A few social network sites made an initial effort to generate phone calls in opposition, but it fell short. There were not enough phone calls, and many calls were made to the district offices of Members of Congress—when policy staffs and Members were in Washington. Hardly anyone noticed. But the effort was getting attention from tech bloggers and some online media sources. It was clear SOPA was being taken seriously as the threat it was. But would a large enough effort come in time?

**Edward J. Black (President and CEO of the Computer & Communications Industry Association)**

If SOPA were to have passed it is within reason to believe—depending on how the Courts interpreted “engage in, enable, or facilitate” copyright infringement—that Facebook posts, Twitter links, and really any Internet service or app that allows a user to post and others to view would have to screen material. A site like YouTube would need to preview the seventy-two hours of video uploaded each minute, and then approve the video. The companies would have to screen material either manually or using automatic filters with high false positive rates and no real way to check for “fair use.” They would have done this filtering either preemptively or very quickly after it was posted.

**Patrick Ruffini**

The political case for passing SOPA had been utterly decimated by the way its proponents handled the process in the Judiciary Committee, starting with a propagandistic one-sided November hearing that singled out Google as the bill's sole opponent, and ignored the other "nerds" beating down Smith's door to testify. Dismissal of the technical concerns—and of any real debate whatsoever—was cited by many in the technology industry as the catalyst for first getting involved and spurring their users to action.

**Alexis Ohanian (co-founder of reddit)**

My foray into the political arena began with an email on November 6, 2011. Christina Xu, who works with me at Breadpig—a social enterprise I'd started—sent along a note from a friend who alerted her to a pair of bills that looked destined to pass the House and Senate before the New Year. Written with over \$94 million in lobbying from the entertainment industry, the first versions of SOPA and PIPA read as though a technologist had never even been consulted. If either of these bills had been law back in 2005 when Steve and I founded reddit together, the site wouldn't exist today.

**Elizabeth Stark**

And like that, the alarms went off. We had to do something huge. And luckily the Internet is the perfect platform for doing big things.

**Larry Downes**

The political philosophy of the Internet, though still largely unformed, is by no means inarticulate. The aspirations of Internet users largely reflect the best features of the technology itself—open, meritocratic, non-proprietary, and transparent. Its central belief is the power of innovation to make things better, and its major tenet is a ruthless economic principle that treats information as currency, and sees any obstacle to its free flow as inefficient friction to be engineered out of existence.

Those seeking to understand what kind of governance Internet users are willing to accept would do well to start by studying the engineering that establishes the network and how it is governed. The key protocols and standards that make the Internet work—that make the Internet the Internet—are developed and modified by voluntary committees of engineers, who meet virtually to debate the merits of new features, design changes, and other basic enhancements.

**Mark Zuckerberg (cofounder of Facebook)**

The word "hacker" has an unfairly negative connotation from being portrayed in the media as people who break into computers. In reality, hacking just means building something quickly or testing the boundaries of what can be done. Like most things, it can be used for good or bad, but the vast majority of hackers I've met tend to be idealistic people who want to have a positive impact on the world. Hacker culture is also extremely open and meritocratic. Hackers believe that the

best idea and implementation should always win—not the person who is best at lobbying for an idea or the person who manages the most people.

### **Larry Downes**

In their political youth, Internet users are still profoundly idealistic and even a little naïve. They believe in democracy, freedom of expression, and transparent governance; they have little tolerance for draconian rules, for back-room deals, or for imposed legalistic “solutions” to poorly-defined problems that might be better solved with more technology. They are, if anything, more libertarian than anything else. But even that label implies a willingness to engage in traditional political theater, a willingness that doesn’t exist.

### **Brad Burnham (managing partner at Union Square Ventures)**

I recently heard a woman from the Occupy movement say the most poignant thing. She said “no one is coming for us.” Her generation does not expect the government to be there when they need it, nor do they think the incumbent industrial hierarchies are structured or motivated to address the challenges they expect to face. Remarkably, she was not depressed, defeated, or bitter. She was determined. The kids who grew up inside AOL chat rooms and came of age on Facebook have an intuitive understanding of the power of networks that our generation will never have. They are not asking us to fix the problems we left them with. They are asking us not to get in their way as they try to dig themselves out. I think we owe them that.

Is  
This  
True???

### **Larry Downes**

The engineering task forces are meritocratic and open. The best ideas win through vigorous debate and testing. No one has seniority or a veto. There's no influence peddling or lobbyists. The engineers are allergic to hypocrisy and public relations rhetoric. It's as pure a form of democracy as has ever been implemented. And it works amazingly well.

### **John Perry Barlow**

We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear. We must declare our virtual selves immune to your sovereignty, even as we continue to consent to your rule over our bodies. We will spread ourselves across the Planet so that no one can arrest our thoughts. We will create a civilization of the Mind in Cyberspace. May it be more humane and fair than the world your governments have made before.

### **Aaron Swartz**

I remember at one point during this period, I helped organize a meeting of startups in New York, trying to encourage everyone to get involved in doing

their part. And I tried a trick that I heard Bill Clinton used to fund his foundation, the Clinton Global Initiative. I turned to every startup founder in the room in turn and said “What are you going to do?”—and they all wanted to one-up each other.

#### **David Segal**

Brad leaned on his portfolio companies to participate, and with that came a scatter shot of some of the moment’s most influential social media start-ups, and a home base for the meeting: [Tumblr’s hipster-chic offices in lower Manhattan](#). I leaned on Zoe Lofgren’s office to have the Congresswoman open the call, and she quickly accepted: her gravitas would help draw people in, and she would be able to walk us through the nuts-and-bolts of the markup process. And the techies whom we were hoping would participate would be impressed by her savvy about issues that many of them seemed to assume every last member of Congress was completely ignorant of.

#### **Alexis Ohanian**

Apparently I was the only one celebrating SantaCon that day. Nonetheless, before celebrating with hordes of my fellow Kringles, I took a seat and we went around the room, volunteering contributions from our websites that might help spread the word about SOPA and PIPA. Today, reddit is one of the one hundred most popular sites online, but it’s rare in that the platform is rather open—much like the Internet itself. My offering was simple: we’d present the threat to the reddit community and give them our rationale behind the opposition. I didn’t know how our millions of users would react to the imminent threat, but [I knew the best ideas for action wouldn’t come from me or even this room of “experts.”](#)

#### **Elizabeth Stark**

We decided on a strategy. On November 16, sites such as Mozilla, Tumblr, reddit, and even 4chan would blackout their logos in protest of SOPA. Fight for the Future set up a central site called American Censorship Day, where all the sites involved were listed. And there was a call for the Internet community to get involved. [This was a watershed moment in the politics of the Internet: sites like Mozilla and Tumblr took a public stance for the first time ever on a political issue.](#)

### **6. The Markup**

#### **Patrick Ruffini**

Our path to victory was dangerously narrow. As best, I could predict, it would play out as follows: Lamar Smith would succeed in ramming the bill through markup on the Judiciary Committee, and at that point, we would need to rely on Tea Party pressure to save us at the eleventh hour by persuading House majority leader Eric Cantor not to schedule SOPA for the floor. It seemed more plausible than any other SOPA death scenario, especially as the Senate seemed far more likely to pass its own tamer version of the bill. Nonetheless, given the deference

normally given powerful committee chairs like Smith, it was a perilous path forward for the opposition.

#### **Zoe Lofgren**

A “markup” of a bill is a time when the committee of jurisdiction meets to go through the bill, line by line, with Members of the Committee offering amendments. It is a formal proceeding, televised and now webcast. December 15, 2011 was the beginning of the Judiciary Committee “markup” of SOPA. [Showtime](#).

#### **Patrick Ruffini**

On the night of the 14th, I received a frenzied call from a tech industry lobbyist. Smith had been twisting arms, we didn’t know who was on our side anymore, and we were down to as few as half a dozen votes on the committee. The Internet needed to light up the phones. At the suggestion of a Capitol Hill veteran in my office, I would tweet out the direct line to the Judiciary committee staff room. It was reasoned that members would be taking meetings there in between votes. We brainstormed creative ways for members to experience the crescendo of outrage firsthand.

#### **Aaron Swartz**

Big stories like this are just more interesting at human scale. The director J. D. Walsh said good stories should be like the poster for *Transformers*. There’s a huge robot on the left side of the poster and a huge army on the right, but in the middle, at the bottom, there’s just a small family, trapped in between. Big stories need human stakes.

#### **Jonny 5 (lead vocals, the Flobots)**

In the winter of 2011 when my friend David Segal approached me about creating a YouTube video in opposition to SOPA, I knew it must be the right thing to do, because I trust David to be on the right side of things. I knew that, despite the hanging questions for artists as to how we will survive the transforming music industry, the answer would never resemble the heartless clampdown on fans proposed by SOPA. I knew that fans covering our songs at school talent shows and using our music as a soundtrack to personal slideshows deserve our gratitude, not legal action.

#### **Patrick Ruffini**

Issa’s crafty and resourceful social media team had set up a website, [KeeptheWebOpen.com](#), initially to showcase their government transparency initiatives (including a platform called MADISON allowing wiki-style edits to legislation), that would be used as a platform to live-stream the hearings. A core of opposition quickly formed around Issa ([himself a senior Republican](#) and chairman of the Government Oversight committee), Lofgren, Polis, and Republican Jason Chaffetz of Utah.

**Elizabeth Stark**

You know that old slogan from Texas? Don't mess with Texas. Well, some of us wanted to make sure Lamar Smith, the congressman from Texas who proposed SOPA, heard our version of the slogan: don't mess with the Internet. A group of us, led by reddit cofounder Alexis Ohanian, started a crowd-funding effort that turned the slogan into a billboard in Lamar's Texas district.

**Andrew McDiarmid**

During the pivotal committee markup in mid-December, the analyses regarding cybersecurity—the whitepaper, the Sandia letter, the op-eds by Stewart Baker, a new EFF-organized letter signed by eighty-three Internet engineers—were cited repeatedly by Reps. Lofgren, Issa, Chaffetz, Polis, and the other SOPA skeptics as they criticized the bill. Rep. Chaffetz memorably chided his colleagues, “We’re going to do surgery on the Internet … without bringing in the doctors. To my colleagues I would say, if you don’t know what DNSSEC is, you don’t know what you’re doing” with this legislation.

**Patrick Ruffini**

The first sign that the opposition would not go down without a fight came with a relatively simple procedural motion: they forced a full reading of the bill before the committee—a process which would take more than an hour at the outset of the proceedings. This delay set the tone for the next two days and was set against the backdrop of an impending recess and Congress rushing to tie up loose ends before heading home for the holidays.

**Zoe Lofgren**

Hacking Politics, for realiously.

We had prepared well over one hundred substantive amendments to SOPA, to be offered by a bipartisan group of Members. We started the markup at 10:00 a.m. and by the time the Committee recessed twelve hours later around 10:00 p.m., we hadn't reached all of the amendments that needed to be offered.

**Patrick Ruffini**

The opposition on the committee planned to offer as many amendments as possible. Democratic Rep. Jared Polis, an avid gamer and the only Internet entrepreneur in Congress, planned to force the committee to vote yea or nay on barring federal funds being used to benefit pornographers—who were some of the most aggressive copyright litigators. Rep. Zoe Lofgren, a Democrat from northern California, would ask movie theater owners to participate in SOPA's rigid enforcement mechanisms; after all, movie theaters were themselves intermediaries for movie piracy, with “users” making bootleg recordings. Why not hold them accountable like you would the owners a website with millions of users, some of whom traffic in pirated content? In total, fifty-five amendments would be submitted.

**Larry Downes**

In Washington, the accepted wisdom by year-end was that the technology industry had matured at last into a lobbying force commensurate with its size and pocketbook. But what everyone missed was that the users had opened a third front in this fight, and clearly the one that determined its outcome. The bitroots movement wasn't led by Google. It wasn't led by anyone. Even to look for its leaders is to miss the point. Internet users didn't lobby or buy their way into influence. They used the tools at their disposal—Tumblr, Facebook, Twitter and the rest—to make their voices heard. They encouraged voluntary boycotts and blackouts, and organized awareness days. This was a revolt of, by, and with social networks, turning the tools that organized them into groups in the first place into potent new weapons for political advocacy. The users had figured out how to hack politics.

**Patrick Ruffini**

Reflecting the indifference of most members to the dry technical issues behind the bill, Rep. Steve King (R-Iowa) began venting his frustration on Twitter: "We are debating the Stop Online Piracy Act and Shiela Jackson [sic] has so bored me that I'm killing time by surfing the Internet." Jackson Lee spoke up to object, calling the remark "offensive." Representative F. James Sensenbrenner (R-WI), a former committee chairman hostile to SOPA, piled on, demanding that Jackson Lee withdraw her remarks. Chairman Smith suggested she withdraw the word "offensive." After some back and forth involving the body's Parliamentarian, and a long delay, Jackson Lee agreed to strike her one word rejoinder, and instead deem King's tweet "impolitic and unkind."

**Larry Downes**

One of the unforgivable sins of the PIPA and SOPA process ... was a complete failure to engage with anyone in the engineering community; what lawmakers on both sides of the issue regularly referred to as "bringing in the nerds." And engineers were essential to getting it right, assuming that's what the bills' supporters really wanted to do. Both bills would have required ISPs to make significant changes to key Internet design principles—notably the process for translating web addresses to actual servers. Yet lawmakers freely admitted that they understood nothing of how that technology worked. Indeed, many seemed to think it was cute to begin their comments by confessing they'd never used, let alone studied, the infrastructure with which they were casually tinkering.

Same words used  
for Net Neutrality  
Debates :)

**Patrick Ruffini**

While televised House proceedings were nothing new (think C-SPAN), committee live-streams were rare, and this would become one of the most watched markups (if not the most watched) in history.

**Open Congress (grassroots political activists)**

What made SOPA different was that much of the exchange between constituents and officials was being posted online, thus merging many private one-to-one

conversations into a massive one-to-many conversation. And the back-and-forths between different citizens and the same senator thus changed from iterations of the same query-and-response into a continuing discussion between that senator and the public at large.

#### **Elizabeth Stark**

Over two hundred thousand people watched the live stream of the hearing, and they tweeted and laughed about it. Why were they laughing? It was so painfully obvious that the U.S. Congress, the people we entrust to create our laws, fundamentally did not understand the Internet. There were members of Congress who had no idea what a domain name is, let alone how the Domain Name System, or DNS, works, voting on a bill that would change the very nature of this system. This was a huge wake up call. People were angry. In one of the only planned moments of levity, Congressman Jared Polis, probably the person in Congress who knows the most about the Internet, proposed an amendment saying that SOPA should not be used for porn. Basically, he was trolling. He not only told Congress about the song “The Internet Is for Porn” but asked to enter it into the Congressional record.

#### **Tiffiny Cheng**

Tumblr went above and beyond the call of duty with one of the most creative actions of the protest: they blacked out the dashboards of their over sixty million members, the overwhelming majority of whom had surely never heard of SOPA, or ever engaged in political protest.

#### **Zoe Lofgren**

The markup and amendment process helped to detail the failings of SOPA, from cyber-security to privacy to free speech. Finally, the delay gave time and opportunity to organize opposition among Internet users.

#### **Elizabeth Stark**

Tumblr had built an incredible tool that enabled all its users to easily call their politicians. And like that, we had nearly one hundred thousand calls to Congress—quite possibly the largest number of calls that had ever been made to Congress in one day. We shut down the lines.

#### **Patrick Ruffini**

That morning, there was talk that Chaffetz’s DNSSEC objection, encapsulated by his “bring in the nerds” riff, had struck a chord in the committee. He went to Smith, asking for a hearing on the technical and security implications of the bill before voting the bill out of committee, and wasn’t shot down. A concession like this would have been unprecedented. Capitol Hill watchers couldn’t recall a time when a bill entered the markup phase, only to go back for further fact-finding hearings. It was an embarrassing concession by the proponents that they hadn’t done their homework, and a sign of the full retreat to come.

Things didn't have a chance to play out like that. At 1:30 p.m., eleven hours and twenty-eight minutes into the proceedings, Smith took the microphone and announced that the committee would stand in recess, following word of a full House recess.

**Zoe Lofgren**

The following day the House recessed for the year and Congress left town, so the Committee was unable to finish the markup and kicked it over to January.

This was an important development for several reasons. First, I was later advised that over two hundred thousand people watched the telecast or webcast of the markup. Many who watched were apparently unimpressed by the arguments for the bill and by the apparent lack of Internet knowledge shown by some of the pro-SOPA Members of Congress.

**David Segal**

That just doesn't happen: chairs simply don't try this hard to move bills out of their own committees, advance them to votes in front of audiences of hundreds of thousands—with an unheard-of more than one hundred thousand people said to be have watching the live stream, and myriad others anxiously awaiting the results—and have the whole endeavor melt down before them, leaving them only to stand aside, consider the wreckage, and wallow in alternating despair and denial. Not only did the poor stooge not know that his cause was toast—he was deluded enough to publicly insist that he would bring the bill back before the committee when the House next reconvened, ostensibly to somehow achieve a vote tally in its favor.

It was a shocking, public rebuke for Smith, of the sort that someone of his stature seldom suffers—and we heard through the grapevine that John Boehner and Eric Cantor agreed about the severity of the embarrassment, and that they wanted the ~~Whole Damned~~ Thing shut down.

**Ernesto Falcon**

The result was simply amazing. Normally a couple of dozen people watch a Congressional hearing. But here, more than one hundred thousand Americans watched the legislative hearing on SOPA on the Internet and millions of people signed petitions opposing the bill. At that point, I finally began to believe we could realistically water down or outright stop these bills. Once people started calling Congress, writing letters, and attending town halls to express their displeasure, groups like mine finally had the leverage necessary to start winning.

**David Segal**

There were cracks in the armor now: Nancy Pelosi, the leader of the House Democrats, had made her opposition to the bill known on American Censorship Day—via Twitter, no less. We'd collectively steered in a few million more emails to Congress. There was increased resonance among the public.

**Zoe Lofgren**

Capitalizing on the extra time, I did an “Ask Me Anything” (AMA) on reddit.com on December 16, 2011. In this forum, a site which is a favorite community for many of the Internet-savvy, I encouraged folks to contact their Members of Congress, and argued that SOPA was a grave threat to the Internet. I reassured the reddit community that, indeed, their representatives would listen to them if they spoke up.

**David Segal**

During the markup, Illinois Democrat and Judiciary Committee member Mike Quigley berated his own constituents as he argued that many SOPA opponents who’d contacted him had “a vision of the Internet that [was] unacceptable.” His office also seemed to think it unacceptable, or unfathomable, that they’d have been inundated with so much concern from their residents of Illinois’s 5th—or that some constituents might even have emailed them twice.

**Tiffiny Cheng**

American Censorship Day successfully turned SOPA into a viral sensation, but the bills were still, somehow, expected to pass. Our work served to set the stage for an even larger protest to come on January 18. Coming up, there was still the SOPA committee hearing and a final vote on PIPA in the Senate. Ernesto at Public Knowledge made us well aware that we needed further action, and kept the SOPA list up to date on the latest legislative events. FFTF and its allies went into high gear, seeking to expand the number of participating websites.

**Patrick Ruffini**

The initial House hearing and the markup were action-forcing events that drove spikes in public and social media attention. But after the markup on December 15th and 16th, with Congress in recess, events acquired a momentum of their own. The markup, combined with the buildup to the Senate vote, triggered a categorical shift up in the volume of attention. The next big spike, the planned boycott of GoDaddy (which had issued statements supportive of the bills), came two days before Christmas and arose entirely from the community.

**Huffington Post**

“Walt Disney Co. President and CEO Bob Iger declined the invitation on behalf of content providers. ‘Hollywood did not feel that a meeting with Silicon Valley would be productive at this time,’ said a spokesperson. The meeting took place with only tech companies present. Feinstein, once a reliable vote for the existing version of Protect IP, is now working hard to amend the bill, according to Senate Democratic aides.”

**Aaron Swartz**

If there was one day that this shift happened, I think it was the day of the hearings on SOPA in the House, the day that we got the phrase “It’s no longer OK to

not understand the Internet.” Something about watching those clueless members of Congress debate the bill, watching them insist that they could regulate the Internet and a bunch of nerds couldn’t stop them—that really brought it home for people. This was happening. Congress was going to break the Internet and it just didn’t care.

#### **David Segal**

After the markup, but well before the blackout, we’d already heard from several offices that the volume of constituent contacts that they were receiving had been surpassed only by the immigration reform debate, Obama’s health care reform push, or for many offices, never at all. Even more spectacularly: in the case of the prior debates, America’s sentiments were substantially divided. But when it came to SOPA, something like 99% of us—regardless of party, geography, or ideological self-identity—were on the same side.

#### **Tiffiny Cheng**

Whether or not we’d sunk the bill was still unclear, but the fruits of the campaign were many: it generated over two million petition signers as well as two million emails and eighty-four thousand calls to Congress—four calls per second from Tumblr users alone. Videos and infographics built for the event eventually attracted over six million views and almost three million views, respectively. This was the first major attempt by Internet platforms to mobilize their users en masse. Rep. Zoe Lofgren redacted the logo of her Congressional website. Google, Huffington Post, AOL placed a full-page ad in the *New York Times* about SOPA.

### **7. The Blackout**

#### **Patrick Ruffini**

The idea of an Internet blackout was first seriously floated in a CNET story on December 29th. And it was one of the industry’s leading lobbyists, Markham Erickson, who was quoted in the story, lending added credibility to the report.

January 18th was not initially blackout day. It was actually conceived as the day SOPA opponents would get the hearing they were denied by Lamar Smith two months earlier.

#### **Tiffiny Cheng**

Many Wikipedia users were individually interested in participating in a blackout, and we got the support of the Wikimedia Foundation, but we were told that the decision for Wikipedia to participate in the blackout would require a community-wide conversation and decision-making process. We followed their advice and posted the idea of Wikipedia blacking out on the Village pump section of Wikipedia, where active users congregate to discuss meta-concerns about the site. We crossed our fingers.

**Zoe Lofgren**

I had talked a lot about melting the phone lines, and using the Internet's communication power to impact Congress. Now, Internet leaders emerged, and the idea of a blackout was considered. A group of sites decided to participate. Along with others, I began to lobby tech leaders to try to increase the size and effectiveness of the blackout. On Monday, January 16th Craigslist jumped the gun and used its platform to sound the alarm about SOPA. I emailed Craig Newmark to thank him and then emailed others in the tech world to urge that they join the cause. I was later told that in the two weeks prior to mid-January, SOPA was the number one news topic for Americans under age 30. Most Americans over age 30 had never heard of it.

**Patrick Ruffini**

Monday, January 9th saw a small burst of Hill activity, with Darrell Issa's office announcing a hearing before the full Government Oversight Committee on the DNS blocking provisions in SOPA. The hearing would gather some of the most influential anti-SOPA voices from the business community: Union Square Ventures' Brad Burnham, Rackspace CEO Lanham Napier, and reddit's irrepressible co-founder Alexis Ohanian. Reddit's involvement in the hearing is what turned the blackout from a source of speculation into reality. The day after the hearing was announced, reddit posted about their plans to their blog. "Stopped they must be; on this all depends," was the title. On January 18th, reddit.com would shut down from 8 a.m. to 8 p.m., and in part given over to a live-stream of Issa's hearing.

**Elizabeth Stark**

As anger on the Internet rose, the ever-energetic reddit community decided to fight back. How? Shut down the site for an entire day. The Wikipedia community then decided to follow suit. As did Mozilla, Google, Tumblr, I Can Haz Cheesburger, and many, many more. All in all, over eighteen million people took action. Hell, even my mom told me that she "voted" for "privacy" (not quite Mom, but thanks for the support!).

**Tiffiniy Cheng**

The blackout was still days away, but things were already snowballing out of control. Ultimately, more than one hundred fifteen thousand sites pledged to blackout their sites or prominently display the FFTF widget for 24 hours. This included four of America's top ten sites by traffic—Craigslist, Wikipedia, Google, and eBay—and 13 top 100 sites. Wordpress (used by over 16% of the top million websites) and Wikipedia blacked out entirely, as did reddit and Craigslist (**which to date maintains a victory link** on every housing, job, and "for sale" search result). Other major sites like Google, Amazon, Pinterest, and Flickr blocked out their logos and/or displayed links to take public action.

**Nicole Powers**

Reading the tweets that bore the #SOPA hashtag that swarmed within our stream, it rapidly became apparent that this legislation would have a chilling effect on sites such as SuicideGirls, which incorporate massive amounts of user generated content. It would be utterly impractical and economically unviable to police the providence of all the links and content posted by our models and members on their blogs and in the countless forums and comments threads prior to publishing. And being forced to do so would seriously stifle the freedom of speech that our community currently enjoys.

Under the restrictive and open-ended terms of SOPA, it would be virtually impossible for a site such as ours to function, which is why we—along with other social media sites such as reddit, Tumblr, Flickr, Fark, and 4chan—participated in the January 18th day of action. Unlike the more editorially-driven sites we love such as Wired, Boing Boing, and Rawstory, as a subscriber-funded online community offering a service to our members, blacking out entirely wasn't an option on #J18. We therefore had to find other creative ways to protest SOPA, and show solidarity with the sites that were able to go dark.

**Dave Dayen**

You could have watched the nightly news every day during these few months, and wouldn't have known that any of this happened. The progressive watchdog Media Matters noted in mid-January 2012 that none of the major broadcast or cable news networks ever produced a segment on the SOPA/PIPA fight in their primetime coverage. That's because ABC, CBS, NBC, Fox and CNN all supported the bill.

↑  
This is probably kind of important...

**Tiffiny Cheng**

The Wikipedia community got closer and closer to approving a site-wide blackout on U.S. Wikipedia, with Jimmy Wales going public about his position in support of a SOPA protest: more and more people understood that SOPA would've been narrowly destructive of Wikipedia, but also would have undermined other efforts to use the Internet to broaden access to information. (One of the most extraordinary artifacts from the blackout would be the stream of tweets from jilted middle and high school students whose lack of access to the site stymied schoolwork for a day and provided a fleeting glimpse of what life was like in the prehistoric 1990s.)

**David Moon**

A number of us had been working for months (some for years) to raise public awareness of the looming threat, but by January 18th it was laughably obvious our collective efforts paid off. Proof? Even Kim Kardashian got in on the action. That night the celebrity most famous for being famous tweeted the following warning to her millions of followers: "We must stop SOPA/PIPA to keep the web open & free."

**Nicole Powers**

We posted a special “Tease of the Day” which featured the gorgeous Arabella Suicide in a set of photographs entitled “Pirate Girl.” Despite the fact that pertinent parts of her anatomy had been redacted with black bars that bore the words “STOP SOPA!” in large pink Helvetica type, it remains to this day one of the most re-tweeted items on our blog. Similarly, other posts explaining the problems with SOPA and covering the deafening #J18 silence count among our most read and shared posts. We also had fun with self-censored tweets containing messages such as “Stop #SOPA Now!!! … Before it [REDACTED] to your Internet.”

**Alexis Ohanian**

Wikipedia going dark on January 18 in protest of SOPA and PIPA made the story unavoidable for the mainstream media, but it was volunteer moderators of the most popular subreddits who first advocated for the blackout. Enough moderators agreed to go dark, that the administrative team at reddit announced an overall blackout of the site. They would replace the stream of popular links and discussions with calls to action on how to stop SOPA.

It was a movement indeed. Anonymous redditors pushed reddit into being the first of thousands of sites, including Wikipedia and Google, to take action on that fateful day. Similarly, another redditor suggested a boycott of GoDaddy, which supported the bills for long enough to feel the wrath of a coordinated domain transfer away from their service before relenting and apologizing for backing the legislation. As people called their senators and representatives to argue their position, they shared their stories online, encouraging others to do the same.

**David Segal**

On January 18th 2012 the New York Tech Meetup took the lead, as Demand Progress, and allied groups buttressed their efforts to organize an anti-SOPA rally outside of the midtown tower that houses [Chuck Schumer’s] office. We’d concentrate the movement’s focus on the office of this powerful senator, and provide the press with a 3D spectacle that would serve as an accessible representation of the otherwise abstract online activism. Even the likes of Congressman Mike Quigley’s staffers—who literally didn’t believe how many emails they were receiving—would be forced to contend with the concept that there are, indeed, real, live people who care about these issues. *The New Yorker’s* write-up affectionately (and accurately) called it a “Nerd Parade.”

**Patrick Ruffini**

The effect was immediately felt. That morning, countless members of Congress took to their websites, Facebook pages, and Twitter feeds to announce their opposition to SOPA and PIPA. In the Senate, freshmen Republicans were among the first to announce their opposition, including Scott Brown of Massachusetts, and Marco Rubio of Florida, a key PIPA co-sponsor. Though new opposition that day was overwhelming, there seemed to be a Republican tilt to the early

announcements. By 3 p.m., twenty-six of the twenty-nine new opponents of the bills were Republicans

### **David Segal**

The police extended the barriers away from the stage, so they now ran the whole length of the block. Ten minutes later we'd taken over two lanes of midtown, noontime traffic in addition to half of the sidewalk. Then so many people filled the sidewalk that all the police could do was to keep a clear walkway as wide as a couple of concrete panels: there were more than two thousand of us.

The crowd didn't quite know what to do: it was easy to catch ambient exclamations along the lines of "this is the first time I've ever really protested anything!" These weren't veteran activists, and nobody had yet invented whatever chants one's supposed to recite at an Internet rally: this was something new.

### **Aaron Swartz**

First the Republican senators pulled out. Then the White House issued a statement opposing the bill. Then the Democrats, left all alone, announced they were pulling the bill so they could have a few further discussions before the vote.

### **Zoe Lofgren**

<http://opensource.com/life/12/1/january-18-captured-sopa-blackout-gallery>

On January 18th, the Stop SOPA blackout occurred. An estimated seventy-five thousand websites went black in protest. I had my Congressional Web site go dark. Over one hundred sixty-two million people were said to have viewed Wikipedia's blacked out page. Google put a notice on its famous front page, with a click-through to scholarly analyses of the measures and an easy way to contact Members of Congress. The phone calls started to flood into Capitol Hill offices. All told, an estimated eight million Americans called their representatives and senators to voice their opposition to SOPA and PIPA. The phone meltdown had arrived.

### **Aaron Swartz**

Wikipedia went black. Reddit went black. Craigslist went black. The phone lines on Capitol Hill flat-out melted. Members of Congress started rushing to issue statements retracting their support for the bill. It was just ridiculous.

There's a chart from that time that captures it quite well. It says something like:

January 14 and then it has this big long list of names supporting the bill, and just a handful of lonely ones opposing it.

And then: January 15. And suddenly it's totally reversed—everyone is opposing, with just a few lonely people left in support.

### **Ernesto Falcon**

By the time January 18th rolled around, even the most dedicated protectors of the MPAA and RIAA scurried away from SOPA and PIPA. I recall warning one staffer weeks before the blackout that the MPAA and RIAA had completely lost the public debate and it would be a really bad idea politically to move forward.

The Internet Blackout made it crystal clear to all in Congress that a vote for one of these bills would be political suicide.

### **Zoe Lofgren**

By January 23rd, the bills were officially killed when Chairman Lamar Smith announced the indefinite delay of the SOPA markup and Senate Majority Leader Harry Reid (D-NV) pulled PIPA from the agenda in the Senate.

### **Aaron Swartz**

We killed the bill dead. So dead that when members of Congress propose something that even touches the Internet, they give a long speech beforehand about how it is definitely not at all like SOPA. So dead that when you ask Congressional staffers about it, they groan and shake their heads, like it's all a bad dream they're trying hard to forget. So dead, that it's hard to believe this story.

## **8. "We Killed the Bill Dead"**

### **Casey Rae-Hunter (co-founder of The Future of Music coalition)**

In the post-SOPA spin cycle, some in the media were keen to paint this as a pitched battle between big content and big tech. The corporate entertainment industry was happy to play along, painting a conspiratorial picture of the protests. This was far from the case. First, the entertainment industry had quite a head start in terms of lobbying, having already poured millions of dollars into Washington before most of the tech companies even showed up. Second, the opposition to SOPA (and to a lesser extent, PIPA) was diverse, diffuse, and powered from the bottom-up.

### **Aaron Swartz**

Hard to remember how close it all came to actually passing. Hard to remember how it could have been any other way.

### **Patrick Ruffini**

First, SOPA and PIPA's opponents were united. The fact that all the technical experts and engineers who weighed in opposed the bills was weighed heavily. Second, we marshaled detailed arguments. Using that technical background to our advantage, we were able to present a detailed case for why SOPA and PIPA broke the Internet, laying out networking and cyber security concerns that were not initially obvious. Opponents were more communicative and open—something also seen in the media—and proponents more circumspect and reluctant. Finally, we knew who our targets were.

### **Lawrence Lessig (director of the Edmond J. Safra Center for Ethics at Harvard University)**

Congressmen will always be dependent upon their funders. That's human nature. But we can change who their funders are. Rather than a tiny fraction of the 1%, we could create a system in which we all are the effective funders of political

campaigns—whether a system of public funding, like most other mature democracies, or a system of “citizen funding,” where all citizens, but only citizens, contribute to the funding of campaigns. Imagine, for example, that every citizen had a \$50 democracy voucher that she could give to any candidate who agreed to fund his or her campaign with vouchers plus contributions limited to \$100.

**That system would produce an economy of influence radically different from the one we have today.**

#### **Casey Rae-Hunter**

In many ways, the goal of intellectual property enforcement could be made easier by taking a hard look at how music and other creative content is licensed. What we want are more legal services that compensate artists and where fans can find the music they love. This will require figuring out how to more quickly and efficiently get large catalogs of music from service to user.

#### **Erin McKeown (musician)**

One of the main victories of the fight against SOPA/PIPA was the realization by many artists that they are also copyright holders, and that the Internet offers them an opportunity to exercise these rights however they choose. The work around SOPA/PIPA showed the world that copyright holders are not necessarily large media companies. Instead, copyright holders are a diverse group that will not all make the same decisions on how to manage their rights. **Many artists understood, perhaps for the first time, that being a copyright holder doesn't mean you want to or have to wall your art off and make people pay for entry.**

#### **Edward J. Black**

An independent Government Accountability Office report in April 2010 showed that no reliable evidence or statistics exist to support the extreme claims of the entertainment industry of about \$20 billion in losses from online copyright infringement. The entertainment industry has actually thrived over the last decade and is not suffering from Internet abuse, as is sometimes claimed.

#### **Lawrence Lessig**

The striking fact about the SOPA/PIPA victory was that it was essentially cross-partisan. It was the Cato Institute as well as Demand Progress. It was net business as well as Wikipedia. There was no Left/Right valence to the fight against this Internet censorship. There was instead a brilliant campaign that succeeded in neutralizing those differences enough to allow all of us to focus on our common enemy.

**That in itself was an amazing victory. And if we learn anything from the SOPA/PIPA fight, we should learn how to do that again.** Why is this so much different than the discussion on Net Neutrality? Why is it so partisan? The Whitehouse coming out later, or not being in an election season?

#### **Aaron Swartz**

It wasn't a dream, or a nightmare. It was all very real. And it will happen again. Sure, it will have a different name, and maybe a different excuse, and probably do its damage in a different way. But make no mistake. The enemies of the

freedom to connect have not disappeared. The fire in those politicians' eyes has not been put out.

#### **Larry Downes**

Right now, it takes little more than a few key phrases—“open,” “censorship,” “privacy,” “break the Internet”—to hook the outrage of the Internet masses. But maintaining momentum requires something more sophisticated. And the accusations have to prove true. To become a permanent counterbalance to traditional governments, the bitroots movement will need to become more nuanced and more proactive. To avoid the very real possibility of mob rule, Internet activists must use their power responsibly. SOPA was a gimme.

#### **Andrew McDiarmid**

What we saw in SOPA and PIPA was an attempt to make Internet policy from a narrow perspective, with little if any input from the community of people who best understand and care about how the Internet actually works. One of the key reasons we were successful in defeating these bills was that the community spoke up anyway. Millions of Internet users all over the country—indeed, all over the world—demanded that their concerns be heard. Imagine how much better Internet policymaking could work in the future if the public—and the experts—are included in the discussion from the start.

#### **Kim Dotcom (founder of Megaupload)**

My main disagreement with the current state of the copyright debate is that the political balance is tilted too much in favor of content owners to the detriment of Internet innovation. Hollywood and the United States seem to be picking and choosing who they like and don't like and that does not provide for the fairness, due process, and predictability that dual use technology companies like Megaupload need to grow and thrive. I believe it would be better for society to allow breathing room for Internet innovation. This case is at its core not about a criminal issue but rather an economics and political debate that is better suited to be dealt with in Congress.

#### **Aaron Swartz**

There are a lot of powerful people who want to clamp down on the Internet. And, to be honest, there aren't a whole lot who have a vested interest in protecting it. Even some of the biggest Internet companies, to put it frankly, would benefit from a world in which their little competitors could be censored. We can't let that happen.

## PART 1

### THE WORLD BEFORE SOPA/PIPA

*It's appropriate to read the SOPA/PIPA battle in the broader context of ongoing debates over copyright policy, access to information, and the freedom of expression—both online and off. In the pieces that follow, several contributors to Hacking Politics help set the table for the SOPA/PIPA fight. Activist and author Cory Doctorow discusses the long history of battles over the breadth of copyright law; Josh Levy from Free Press links the SOPA/PIPA effort to the fight for Net Neutrality (arguably the most well-known prior Internet policy battle); and technology blogger Mike Masnick of Techdirt provides a primer on the Combating Online Infringement and Counterfeits Act, which eventually morphed into SOPA and PIPA.*

## FOR ME, IT ALL STARTED WITH A PHONE CALL

### AARON SWARTZ

*Aaron Swartz was a writer, a technologist, and an Internet freedom and social justice activist. The essay below is adapted from a talk Aaron gave in conjunction with the software consulting firm ThoughtWorks, where he worked for most of 2012.*

For me, it all started with a phone call.

It was way back in September 2010, when I got a phone call from my friend Peter.

“Aaron,” he said. “There’s an amazing bill you have to take a look at.”

“What is it?” I said.

“It’s called COICA. The Combatting Online Infringement and Counterfeiting Act.”

“Oh, Peter,” I said. “I don’t care about copyright law. Maybe you’re right, maybe Hollywood is right, but either way is it really such a big deal? I’m not going to waste my life fighting over a little issue like copyright. Health care. Financial reform. Those are the sorts of issues I work on. Not something obscure like copyright.”

I could hear Peter grumbling. “Look, I don’t have time to argue with you. But it doesn’t matter for right now. Because this isn’t a bill about copyright.”

“It’s not?”

“No, it’s a bill about freedom of speech.”

Now I was listening.

Peter explained what all of you have probably long since learned. That this bill would let the government devise a list of websites that Americans weren’t allowed to visit. Over the next day, I came up with lots of ways to try to explain this to people. I said it was a Great Firewall of America. I said it was an Internet blacklist. I said it was online censorship. But I think it’s worth taking a step back, putting aside the rhetoric, and thinking about just how radical this bill really was.

Yes, there are lots of times where the government makes rules about speech. If you slander a private figure. If you buy a television ad that lies to people. If your wild party plays booming music all night. In all these cases, the government can stop you.

But this was something radically different. It wasn’t that the government went to people and asked them to take down particular material that was illegal. It shut down whole websites. Essentially, it stopped Americans from communicating entirely with certain other groups.

There’s nothing really like it in U.S. law. If you play loud music all night, the government doesn’t slap you with an order requiring you play mute for the next couple weeks. They don’t say nobody can make any more noise inside your house. There’s a specific complaint, which they ask you to specifically remedy, and then your life goes on.

The closest I can find is a case where the government was at war with an adult book store. The place kept selling porn, the government kept getting it declared illegal, and then, frustrated, they decided to shut the whole bookstore down. But even that was declared unconstitutional, a violation of the First Amendment.

You might say: surely COICA would get declared unconstitutional too!

But I knew that if the Supreme Court had one blind spot around the First Amendment, more than anything else—more than slander or libel; more than pornography; more, even, than child pornography—it was copyright. When it came to copyright it was like the part of the justices' brains shut off and they totally forgot about the First Amendment. You got the sense that, deep down, they didn't even think the First Amendment applied when copyright was at issue.

Which means that if you wanted to censor the Internet, if you wanted to come up with a way the government could shut down access to particular websites—this bill might just be the only way to do it. If you said it was about pornography, it'd probably get overturned by the courts—just like that adult bookstore case. But by claiming it was about copyright, it might just sneak through.

And that was terrifying, because copyright was absolutely everywhere. If you wanted to shut down WikiLeaks, it'd be a bit of a stretch to claim you were doing it because they were distributing child pornography. But it wouldn't be hard at all to claim they were violating copyright.

Because everything is copyrighted. These words are copyrighted. And it's so easy to accidentally copy something. So easy, in fact, that we found the leading Republican supporter of COICA, Orrin Hatch, had illegally copied a bunch of code into his own Senate website. If even Orrin Hatch's Senate website was found to be violating copyright law, what's the chance they wouldn't be able to pin something on any of us?

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This bill, COICA, was introduced on September 20, 2010, a Monday. And in the press release heralding the introduction of this bill, way at the bottom, it said it was scheduled for a vote on September 23—just three days later.

And while of course there had to be a vote—you can't pass a bill without a vote—the results of that vote were a foregone conclusion. Because if you looked at the introduction of the law, it wasn't just introduced by one rogue, eccentric member of Congress. It was introduced by the chair of the committee—and co-sponsored by nearly all the other members—Republicans and Democrats. So there would be a vote, but it wouldn't be much of a surprise, because nearly everyone who was voting had signed their name to the bill—before it was even introduced.

I can't stress enough how unusual this is. This is emphatically not how Congress works. I'm not talking about how Congress should work, the way you

## FOR ME, IT ALL STARTED WITH A PHONE CALL

see on Schoolhouse Rock. I mean the way it really works. I think we all know that Congress is a dead zone of deadlock and dysfunction. There are months of debates and horse-trading and hearings and stall tactics.

I mean, here's how it happens:

First, you announce that you're going to hold hearings on a particular problem. Then you bring a bunch of experts to Congress for days of testimony on the issue. Then you propose a possible solution and bring the experts back for their thoughts on that. But other members have different ideas, so they propose different solutions.

Then you spend a bunch of time debating and trying to rally other members to your side. Finally you spend hours talking one-on-one with the combatants to come up with some sort of compromise, which you painfully hash out in endless meetings.

And when it's finally done, you take that, and go through it, line by line, in public, to see if anyone else has any objections or wants to suggest any changes.

It's a painful, arduous process. You don't just introduce a bill on Monday and pass it unanimously a couple days later! That just doesn't happen! But this time, it was going to happen.

And it wasn't because there were no disagreements on the issue. There are always disagreements. Some senators thought the bill was much too weak and needed to be stronger. As it was introduced, the bill only allowed the government to shut down websites—these senators wanted any company in the world to have the power to get a website shut down. Other senators thought it was a drop too strong.

But somehow, in the kind of thing you really never see in Washington, they'd manage to put all their personal differences aside and come together to support one bill that they were all persuaded they could live with. A bill that would censor the Internet.

Whoever was behind this was good.

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Now the typical way you make good things happen in Washington is you find a bunch of wealthy companies who agree with you. Social Security didn't get passed because some brave politicians decided that their good conscience couldn't possibly let old people die, starving, in the streets. I mean, are you kidding me? No, Social Security got passed because John D. Rockefeller was sick of having to take money out of his profits to pay for his worker's pension funds. Why do that when you can just let the government take the money from the workers?

Now my point is not that Social Security is a bad thing—I think it's fantastic—it's just that the way you get government to do fantastic things is to find a big company that wants to back them.

The problem is, of course, that big companies aren't really huge fans of civil liberties. You know, it's not that they're against them—it's just that there's not that much money in it.

Now if you've been reading the press, you probably didn't hear this story. As Hollywood has been telling it, the great good copyright bill was stopped by the evil Internet companies who make millions off of copyright infringement.

But it really wasn't true. I mean, I was in on the meetings with these Internet companies. And if all their profits depended on copyright infringement, I can tell you they would have put a hell of a lot more money into changing copyright law. The fact is that the big Internet companies would do just fine if this bill passed. I mean, they wouldn't be happy about it, but I doubt it would even cause a noticeable dip in their stock price. They were against it, like the rest of us, on grounds of principle—but principle doesn't have a lot of money to spend on lobbyists.

So they were practical about it. "Look," they said. "This bill is going to pass. It's going to pass unanimously. As much as we try, this is not a train we will be able to stop. So we're not going to support it—who could support it?—but in opposition, let's at least try to make it better."

That was the strategy: lobby to make the bill better. They had lists of little changes that would make the bill less obnoxious, or less expensive for them, or whatever—but the fact remained, at the end of the day, it was going to censor the Internet. And there was nothing we could do to stop it.

So I did what you always do when you're a little guy, facing a terrible future, with long odds and little hope of success: I started an online petition.

I called my friends and we stayed up all night setting up a website for a new group, Demand Progress, with an online petition opposing this noxious bill. And I sent it to a few friends and posted it on some websites.

Now I've actually done a few online petitions before. I've worked at some of the biggest groups in the world that do online petitions. I've written a ton of them and I've seen even more. But I've never seen anything like this.

Starting from literally nothing, we went to ten thousand signers, then a hundred thousand signers, then two hundred thousand, then three hundred thousand. And it wasn't just signing a name—we asked those people to call into Congress, to call urgently. There was a vote coming up this week—in just a couple days. We had to stop it!

And at the same time we told the press about it—and about this incredible online petition. And we met with the staff of members of Congress and pleaded with them to withdraw their support for this bill. It was amazing, it was huge, the power of the Internet rose up in force against this bill. And then it passed the committee unanimously.

Now, to be fair, several of the members gave speeches before casting their vote. And in their speeches they said their office had been overwhelmed with comments about the First Amendment aspects of the bill, comments that had them very worried. So worried, in fact, that they weren't sure they supported the bill. But even though they didn't support it, they were going to vote for it anyway, because they needed to keep the process moving and they were sure that any problems would be fixed later.

(Again, I ask you: does this sound like Washington, D.C. to you? Since when do members of Congress vote for things they oppose to "keep the process moving"? Whoever was behind this was good.)

## FOR ME, IT ALL STARTED WITH A PHONE CALL

And then, the process suddenly stopped. Sen. Ron Wyden, the Democrat from Oregon, put a hold on the bill. Calling it a “bunker-busting cluster bomb” aimed at the Internet, he announced he would not allow it to pass without changes.

Now, as you may know, a single senator cannot actually stop a bill by themselves. But they can delay it. By objecting to a bill, they can demand that Congress spend a bunch of time debating it before getting it passed. And Sen. Wyden did—he bought us time. A lot of time, as it turned out—his delay held all the way through the end of that session of Congress, so that when the bill came back it had to start all over again.

And since they were starting all over again, they decided they might as well give it a new name. And that’s when it began being called PIPA and eventually SOPA.

## THE HISTORY OF THE COPYRIGHT WARS

### CORY DOCTOROW

*Cory Doctorow (craphound.com) is a science fiction novelist, blogger, and technology activist. He is the co-editor of the popular weblog Boing Boing (boingboing.net), and a contributor to The Guardian, the New York Times, Publishers Weekly, Wired, and many other newspapers, magazines, and websites. He was formerly Director of European Affairs for the Electronic Frontier Foundation (eff.org), a non-profit civil liberties group that defends freedom in technology law, policy, standards, and treaties. He holds an honorary doctorate in computer science from the Open University (UK), where he is a Visiting Senior Lecturer; in 2007, he served as the Fulbright Chair at the Annenberg Center for Public Diplomacy at the University of Southern California. This essay and one that appears later in this book are adapted from Doctorow's forthcoming book, Information Doesn't Want to Be Free.*

The copyright wars are nothing new. Five hundred years ago, Europe convulsed in war over who could access the Bible and under what circumstances, battling over whether the uncertain benefits of universal access to scripture were worth more than the undeniable accomplishments and majesty of the incumbent religious institution.

Things went on in this vein for quite some time.

Eventually, the state stepped in, aiming to mediate between the different interests surrounding the ever-expanding print industry—hence, copyright, though for varied specific reasons and rationales. The 1710 English Statute of Anne set out to protect publishers who invested in producing works. The framers of the U.S. Constitution included a clause “promoting the useful arts and sciences” by granting monopolies of limited time to authors. The Berne Convention (created by Victor Hugo in the 1880s) talked about the “moral right” of authors to control their works. The UN Declaration of Human Rights has a section on “protection of the material and moral interests” in your “scientific, literary or artistic productions.”

But persistent throughout was the battle between technology and the culture industry. At the turn of the 20th century, composers called performers pirates and insisted that recording music was a form of theft. John Philip Sousa, the great American composer, fought the record player: “Today you hear these infernal machines going night and day. We will not have a vocal cord left. The vocal cords will be eliminated by a process of evolution, as was the tail of man when he came from the ape.”

Thirty years later, the same record producers, now dominant in the music industry, turned to fight the emergent radio broadcasters, who had the audacity to argue that they should be able to play records over the air. The record industry was furious and tried to block radio from playing records without explicit permission from the artists. Their argument was, “When we used technology

to appropriate and further commercialize the works of composers, that was progress. When these upstart broadcasters do it to our records, that's piracy."

Flash forward another forty years: along came cable TV, which appropriated the broadcasts that were sent over the air and retransmitted them over cables. The broadcasters argued (unsuccessfully) that this was a form of piracy and that the law should put an immediate halt to it. Their argument? The familiar one: "When we did it, it was progress. When they do it to us, that's piracy."

And then only a few short years later, in 1976, Sony's VCR arrived, instigating a landmark lawsuit from the cable operators and the studios. The eight-year legal battle, concluding with the 1984 Supreme Court "Betamax" ruling, featured anti-VCR briefs that fundamentally went like this: "When we took the broadcasts without permission, that was progress. Now that someone's recording our cable signals without permission, that's piracy."

Sony won, and fifteen years later, it was one of the first companies to get in line to sue Internet companies that were making it easier to copy music and videos online. And so the copyright wars continue.

Historically, copyright has worked as a form of industry regulation. The rule of thumb that copyright uses to figure out if you're part of the copyright industry is whether you are making copies. This made perfect sense in the past century. Anyone who was pressing a record had a million-dollar record factory. Anyone printing a book had a printing press, a bunch of skilled printers, and a building to house the whole operation.

Equating copying with industrial activity made sense when copying was hard. The problem is that over time, computers have made copying exponentially easier and cheaper. Before the Internet, it was very difficult for the state or rights holders to discover that copies—possible offenses—were being made. Therefore, there was almost no pressure on intermediaries to police copyright on the behalf of the rights holders. No one asked the companies that sold school notebooks to ensure that fanfic was never scribbled in their pages. No one asked art teachers to police their students to ensure that they were staying on the right side of copyright in their figure-drawing classes.

But all this changes in an era of Internet-scale intermediaries, networked communities, and automated notice-and-takedown procedures. Flickr or Facebook becomes the preferred way for kids to share their drawings with one another. Fanfic.net becomes the preferred place for fanfic authors to share their work with one another. Technically, the companies providing this service are "making money off copyright infringement," but no more than the mall food court near the local high school makes a few bucks off the students who gather there to show off their infringing art while eating lunch.

It's impossible to control who loans a friend lunch money, but that doesn't mean financial regulation is dead. It just means that financial regulation has to limit itself to the kinds of transactions that take place at an industrial scale, among industrial players. There's nothing wrong with the idea of a big, high-stakes industry having legally enforceable rules. But the key is that these regulations apply to industries, not individuals, families, or private groups. As an

industrial regulation, copyright is alive and well. Yet copyright as a means of regulating cultural activities among private individuals isn't dead, because it's never been alive.

The World Intellectual Property Organization, founded in 1967 as a private group for "rights holders" (big companies from the entertainment, pharmaceuticals, and broadcast sectors) and now a specialized agency of the United Nations, writes the world's major copyright treaties. In 1996, WIPO agreed upon the WIPO Copyright Treaty (WCT), and its cousin, the WIPO Performers and Phonograms Treaty (WPPT). There are two key aspects to the WCT: anti-circumvention and intermediary liability. Anti-circumvention requires laws that prevent "picking" digital locks. These locks are the subsystems hidden in digital devices that allow the use and playback of encrypted files while keeping them encrypted. Intermediary liability requires notice-and-takedown laws. Such laws make online intermediaries, such as ISPs, game servers, and payment processors, comply with requests to take down any file they host or be held to "strict liability"—that is, possibly be sued for damages if the file's creator is deemed infringing.

In practice, recent national copyright laws (the Digital Millennium Copyright Act [DMCA] in the U.S. and the EU Copyright Directive [EUCD] in the EU) have gone beyond the WCT. In terms of anti-circumvention, the WCT only requires laws against breaking a lock to commit an act of copyright infringement. The DMCA makes it illegal to break all digital locks, period. Other countries around the world have followed suit. In terms of intermediary liability, since 2008, the U.S. Trade Representative has been working through closed-door "plurilateral" negotiations to create copyright treaties with its major trading partners. In concordance with domestic bills, these treaties—the Anti-Counterfeiting Trade Agreement (ACTA) and the Trans-Pacific Partnership (TPP)—have across the board sought to increase intermediary liability, while diminishing checks and balances related to it.

The overreach of these new copyright laws and proposals is large. In terms of anti-circumvention, laws of preventing the circumvention of all digital locks for any purpose make it illegal to determine what your computer is doing—including stopping it from doing things that you don't like. The inevitable consequence is that bad things will happen on our computers. And since digital locks don't work against determined attackers, the only way to keep files, programs, and keys out of wide circulation is to give rights holders the legal authority to demand that files be removed without court orders, to establish national censor walls that monitor Internet traffic and interdict requests for sites that rights holders have added to blacklists, and to ban tools that defeat any of this censorship.

The Stop Online Piracy Act (SOPA) and the Protect Intellectual Property Act (PIPA), as well as related proposals, would ban the circumvention of Domain Name System (DNS) blocks and allow for IP blocking. DNS converts human-friendly Internet addresses (like ThePirateBay.se) into machine-readable numeric addresses (like 194.71.107.50). Efforts, like DNSSEC, to add a layer of security to DNS and detect and evade shenanigans at DNS servers would be

illegal under SOPA and PIPA, as DNSSEC can't (and shouldn't be expected to) distinguish between the false DNS records doctored by a criminal, an oppressive government, and a record label. Conversely, SOPA and PIPA would require ISPs to block traffic from certain known IP addresses, such as 194.71.107.50, the address of ThePirateBay.se, and outlaw the tools that get around this block.

At the same time that anti-circumvention laws have threatened networks and other core technologies, laws upping the ante on intermediary liability have instantiated a regime of petty censorship and placed privacy under attack. Under current DMCA notice-and-takedown rules, it is already trivial to silence one's political enemies or people with whom you simply disagree. Examples of takedown abuse include:

- Police departments whose officers are recorded committing illegal acts claiming copyright on and demanding takedown of the videos of these acts
- Diebold using takedown notices to suppress a memo detailing its complicity in selling flawed voting machines
- “The Church of Scientology using takedown to attack opponents publishing secret church documents.”

Takedown notices are the measure of first resort for rich and powerful people and companies who are threatened by online disclosures of corruption and misdeeds. Moreover, there are almost never penalties for abusing the takedown process.

In perhaps the ultimate abuse of intermediary liability, Viacom, in a lawsuit against Google, argued that YouTube was complicit in acts of infringement because it allowed its users to mark videos as “private.” Private videos couldn’t be checked by Viacom’s copyright-enforcement bots, and Viacom wanted the privacy flag banned. Under Viacom’s legal theory—supported by all the major studios, broadcasters, publishers, and record labels—online services should not allow users to share files privately, or, at the very least, must allow entertainment corporations access to all private files to make sure they aren’t copyrighted.

This is like requiring everyone to open up their kids’ birthday parties to enforcers from Warner Music to ensure that no royalty-free performances of “Happy Birthday” are taking place. It’s like putting mandatory spy-eye webcams into every big-screen TV to ensure that it’s not being used to run a bootleg cinema. It’s like a law that says that each of the big six publishers should get a key to every office in the land to ensure that no one is photocopying their books on the sly. This is beyond dumb. It’s felony stupidity.

It’s not as though this is the first time we’ve had to rethink what copyright is, what it should do, and whom it should serve. The activities that copyright regulates—copying, transmission, display, performance—are technological activities. So when technology changes, it’s usually the case that copyright also has to change, and it is rarely pretty.

When movies were invented, Thomas Edison, who held key film-related patents, claimed the right to authorize the production of films, tightly controlling

how many movies could be made each year and what subjects these movies could address. The filmmakers of the day hated this, and they flew west to California to escape the long arm of Edison's legal enforcers in New Jersey. William Fox, Adolphe Zukor, and Carl Laemmle, of Fox Studios, Famous Players, and Universal, respectively, founded the great early studios because they believed that their right to expression trumped Edison's proprietary rights.

Today's big five movie studios are rightly proud of their maverick history. But they and the entertainment industry as a whole keep saying that their demands are the existential minimum. "Give us a kill switch for the Internet, the power to monitor and censor, the power to control all your devices, and the right to remake general purpose networks and devices as tools of control and spying, or we will die."

If we have to choose between that vision of copyright and a world where more people can create and more audiences can be served, where our devices are our honest servants and don't betray us, and where our networks are not designed for censorship and surveillance, then I choose the latter. I hope you agree.

## BEFORE SOPA THERE WAS NET NEUTRALITY

### JOSH LEVY

*Free Press advocates for universal and affordable Internet access, diverse media ownership, vibrant public media, and quality journalism. As Internet Campaign Director, Josh Levy leads Free Press's work to secure an open Internet, strong protections for mobile phone users, public use of the public airwaves, and universal access to high-speed Internet. Before joining Free Press, Josh was the managing editor of Change.org, where he supervised the launch of more than a dozen issue-based blogs. Josh holds a B.A. in English and religion from the University of Vermont and an M.F.A. in integrated media arts from Hunter College.*

Before there was SOPA, there was Net Neutrality. Indeed, the fight to keep the Internet open—to stop big companies from becoming the ultimate gatekeepers of what we do, say and share online—has a long history.

Back in 2005, Ed Whitacre, then-CEO of SBC (which soon joined with other Baby Bells to become the reconstituted AT&T) described his company's vision for the Internet:

There's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using. Why should they be allowed to use my pipes? The Internet can't be free in that sense, because we and the cable companies have made an investment, and for a Google or Yahoo! or Vonage or anybody to expect to use these pipes [for] free is nuts!<sup>1</sup>

Whitacre's so-called “shot heard ‘round the Web” jumpstarted the Net Neutrality movement, made up of more than two million activists—including Internet superstars like Tron Guy and Ask a Ninja—and a bipartisan collection of hundreds of organizations united under the SavetheInternet.com umbrella.

Net Neutrality’s initial rise as a hot-button issue was notable—suddenly a relatively obscure piece of Internet policy was coming up everywhere from the Daily Show to the messaging for Barack Obama’s first presidential campaign. And it was the first time Internet users realized they were a politically powerful constituency. As for tactics, it was the first time we, in the words of organizers at the time, “used the Internet to save the Internet.”

In fact, from 2006 through 2010, activists, civil society groups, academics, artists, bloggers, and everyday Internet users laid the groundwork for effective networked activism. If it weren’t for these efforts, the anti-SOPA Internet blackout on January 18, 2011 very likely would not have had close to the same reach and impact.

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<sup>1</sup> Roger Crockett, “At SBC, It’s All About ‘Scale and Scope,’” *Businessweek*, Nov. 7, 2005, <http://www.businessweek.com/stories/2005-11-06/online-extra-at-sbc-its-all-about-scale-and-scope>

### **Net Neutrality: A Brief History**

From the time most users started going online in the mid-1990s, they assumed that the Internet was simply “open.” When you clicked a link—and waited for your dial-up modem to transfer data at a glacial speed—there was no reason to think that MyWebsite.com wouldn’t load at the same rate as YourWebsite.com.

In fact, it’s essentially illegal for phone companies to give preferential treatment to websites or censor the content that flows over these telephone network connections.

That’s because these connections are just that: they’re transmission lines that carry network users’ messages. The phone company that provides the transmission line isn’t allowed to decide what you say or who you can talk to when you use its network.

This *de facto* “Network Neutrality” forms the basis for the Internet’s historical openness. Sir Tim Berners-Lee could have adopted proprietary technologies to build his vision of a web of interconnected documents. Instead, he opted for openness when inventing the software that became the Web.

But then along came cable and DSL. The advent of high-speed broadband connections in the home changed—and is still changing—the ways in which we communicate, learn about our communities, find entertainment, share information, and engage with politics.

This new delivery system also changed—for the worse—the way the Federal Communications Commission regulates Internet access. In 2002, the FCC responded to lobbying from the phone and cable companies and made the terrible decision to reclassify high-speed Internet access as an “information service” and exempt it from most of the Communications Act’s requirements. These rules had kept dial-up service neutral and required phone companies to open up their lines to competing ISPs.

In 2005’s controversial *Brand X v. FCC* case, the Supreme Court upheld the agency’s decision to deregulate. The FCC’s action and the Supreme Court ruling exempted broadband from some of the longstanding “open access” requirements that apply to other communication services.<sup>2</sup>

It was the moment executives at companies like AT&T, Verizon, Comcast, and Time Warner Cable had been waiting for. They had started to both fear and loathe the Internet’s emergent, people-powered culture. Their top-down corporate empires were built not on innovation, free speech, and inclusion, but on controlling markets and squelching new competition.

The phone and cable companies’ aggressive push to control not only the pipes we use to communicate, but the content that flows through those pipes, prompted Internet users to act. It was time to start the movement to save the Internet.

<sup>2</sup> The Supreme Court didn’t actually approve on its merits the FCC’s decision to change the regulatory treatment for broadband. The Court simply ruled that, as an “expert agency,” the FCC was entitled to make this decision. Justice Scalia wouldn’t even go that far, however, and in a withering dissent he argued that the FCC had made the wrong decision. He thought it was wrong for the FCC to treat broadband Internet access differently, noting that it provides exactly the same “physical pipe” for delivery of content that telephone lines provide for dial-up ISPs. <http://www.law.cornell.edu/supct/html/04-277.ZD.html>

The SavetheInternet.com coalition launched in April 2006. It quickly grew to include more than eight hundred organizations, an unlikely alliance covering the political spectrum and including groups like the Christian Coalition and MoveOn.org as well as a host of tech innovators and two million online activists signed a petition supporting Net Neutrality, and thousands of bloggers took up the cause. This show of public support for Net Neutrality derailed a dangerous overhaul of the Federal Communications Act that would have failed to protect Internet openness. This public advocacy morphed into a movement to “Save the Internet” that continues to inspire the larger Internet freedom movement. Sound familiar?

In 2007, Comcast blocked file-sharing protocol BitTorrent for any use at all—even downloading the Bible. This forced the FCC to take action and sanction Comcast, which in turn led to Comcast suing the FCC and claiming the agency lacked the authority to regulate Internet access. Given the FCC’s prior deregulatory decisions upheld in the Brand X case, another federal court ultimately agreed with Comcast.

Then came candidate Obama and his promise that he’d “take a back seat to no one on Net Neutrality.” That stance, and FCC Chairman Julius Genachowski’s early promises, inspired the hope that Net Neutrality would finally be protected once and for all. But the comments from Obama and Genachowski also prompted the phone and cable companies to do what they do best: fight back with lobbyists and lawyers.

These incumbent companies, looking to preserve their old business models in the face of pro-consumer innovations, funneled tens of millions of dollars to nearly five hundred Washington lobbyists. Their mission: drive a wedge into the nonpartisan coalition of Net Neutrality supporters, politicize the issue, further consolidate industry control over Internet access, and kill Net Neutrality before the public got a say. The telecoms invested in fake grassroots operations, corporate-funded “Astroturf” groups that spread misinformation about Net Neutrality to sway policymakers and the media.

The strategy worked. Thanks to the rise of these industry-funded groups—which helped turn technological neophytes like former Fox News host Glenn Beck into rabid Net Neutrality opponents—Net Neutrality went from being a no-brainer to a supposedly partisan issue that divided left and right, progressive and conservative.

This effort to re-engineer the politics of Net Neutrality succeeded in another way: FCC Chairman Julius Genachowski lost his will to check the power of these powerful incumbents. He and the agency he led should have tried to clarify the FCC’s authority over broadband and ensure that broadband providers were subject to the same oversight as dial-up ISPs. But after a series of backroom meetings with big telecoms and tech giants, Genachowski deemed the strategy to “reclassify” broadband as a basic transmission service as too politically risky.

(See Alexis Ohanian’s Internet freedom advocacy for a look at the current state of popular Internet activism: <http://www.buzzfeed.com/jwherrman/why-is-this-man-running-for-president-of-the-inter>).

After several failed attempts at compromise, Genachowski's FCC adopted "Open Internet" rules in December 2010, but it did so using much of the same legal framework that was shot down in the Comcast case. And the rules the FCC adopted are too weak. They offer decent protections for people using wired broadband connections, but almost no protections for the mobile Internet—which will soon be the predominant way most people get online.

Soon after the FCC passed these rules, Verizon announced it was suing; even these industry-friendly regulations were too much for the phone giant. That lawsuit is moving through the same court that ruled in Comcast's favor last time, and the new case could be decided as early as spring 2013. If the FCC loses—and many fear that it will—then it's back to the drawing board: there will be no Net Neutrality protections on the books.

The millions of Internet users who became engaged during the Net Neutrality fight spent 2011 getting ready for another big threat to the open Internet to emerge. It didn't take long.

### **SOPA and PIPA: The Next Fight to Save the Internet**

The first mass protests against the Stop Online Piracy Act and the Protect IP Act took place in November 2011, nearly a year after the FCC passed its Open Internet rules. This time things were a little different.

By late 2006, when the Net Neutrality fight got going, Facebook was just opening up to everyone, Google had just purchased YouTube, and Twitter had just launched. The digital activists that made up the Netroots were few in number, despite the success they were having in framing the political agenda.

By 2011, there were nearly a billion people on Facebook. Tens of millions were using Twitter. Everyday Internet users from around the world had grown accustomed to using the Web to organize protests. President Obama's 2008 campaign had shown what online activism on a massive scale could look like. The growing numbers of people with Internet access—especially on mobile devices—meant more people could organize and share information.

With SOPA and PIPA, digital activists once again had a clear enemy. The entertainment industry and its friends in Congress were attacking something fundamental to the Web: our culture of online sharing and communication. These bills would hurt Internet users and the online platforms they depend on. With the danger posed to platforms like Google, reddit, Tumblr, and Wikipedia it was only a matter of time before they—along with tens of thousands of startups and individual entrepreneurs—got directly involved in the fight.

SOPA/PIPA was also the second coming of a truly nonpartisan movement for Internet freedom. As in the early days of the Net Neutrality fight, a varied coalition of groups and individuals formed to protect the open Internet. Progressives, libertarians, Tea Partiers, party-line Republicans, startup founders, mom-and-pop business owners, artists, academics, technologists, geeks, and newbies all rallied to the cause ... it was as diverse an alliance as one could hope to find, especially in a country as politically polarized as ours.

## BEFORE SOPA THERE WAS NET NEUTRALITY

This confluence of factors—an airtight ethical case, the engagement of millions of everyday Internet users, corporate villains showering cash on Washington lobbyists—echoed previous save-the-Internet campaigns. In many ways, the fight to stop SOPA and PIPA was the heir to the Net Neutrality fight.

## COICA / PIPA / SOPA ARE CENSORSHIP

MIKE MASNICK

*Mike Masnick is the CEO and founder of Techdirt, a website that focuses on technology news and tech-related issues. Masnick is also the founder and CEO of the company Floor64 and a contributor at Businessweek's Business Exchange. Techdirt has a consistent Technorati 100 rating and has received "Best of the Web" thought leader awards from Businessweek and Forbes. For many, Masnick and Techdirt blew the whistle on COICA—the predecessor to PIPA and SOPA. This entry is adapted from blog posts that he wrote in the fall of 2010.*

In the fall of 2010, two of the entertainment industry's favorite senators, Patrick Leahy (who keeps proposing stronger copyright laws) and Orin Hatch (who once proposed automatically destroying the computers of anyone caught file sharing ... before his own Senate office was found to be using unlicensed software, that is) proposed a new law that would give the Justice Department the power to shut down websites that are declared as being "dedicated to illegal file sharing."

Perhaps these senators should brush up on their history.

Dare I ask if they realized that Hollywood (who was leaning on them for this law) was established originally as a "pirate" venture to get away from Thomas Edison and his patents? Things change over time. Remember that YouTube, which is now considered by Hollywood to be mostly "legit," was once derided as a "site dedicated" to "piracy" just a few years ago. It's no surprise that the Justice Department—with a bunch of former RIAA/MPAA lawyers on staff—would love to have powers to shut down many sites, but it's difficult to see how such a law would be Constitutional, let alone reasonable. And finally, we must ask: why does the U.S. government consistently seek to get involved in what is, clearly, a civil business model issue? The senators quoted an already well-refuted series of U.S. Chamber of Commerce reports on the supposed "harm" of intellectual property theft—which just shows how intellectually dishonest they were being: they were willing to base a censorship law on debunked data.

Even worse, this proposed law was supposed to have covered sites worldwide, not just in the U.S. For a country that had just passed a libel tourism law to protect Americans from foreign judgments, it's a bit ridiculous that we were now trying to reach beyond our borders to shut down sites that may be perfectly legal elsewhere. The way that the law, called the "Combating Online Infringement and Counterfeits Act," would have worked is that the Justice Department could ask a court to declare a site as a "pirate" site and then get an injunction that would force the domain registrar or registry to no longer resolve that domain name—you'd land on an error message or be redirected to a government notice instead.

It's difficult to consider this anything other than a blatant censorship law. I can't see how it passed even a simple First Amendment sniff test. It's really quite sickening to see U.S. senators propose a law that is nothing less than censorship, designed to favor some of their biggest donors in the entertainment industry, who refuse to update their own business models.

There are many serious problems with the way COICA is written, but let's highlight why it is a bill in service of censorship, and how it opens the door to wider censorship of speech online.

First off, the bill would have allowed the Justice Department to take down an entire website, effectively creating a blacklist, akin to just about every Internet censoring regime operated by the likes of China or those Axis-of-Evil-style foreign states our politicians are prone to shaming and using as evidence of American civil libertarian exceptionalism. Now, it is true that there was sometimes to be a judicial process involved in website blocking under COICA: the original bill had two lists, one that involved the judicial review, and one that did not. The latter was a "watch list" of sites which law enforcement would encourage ISPs and registrars to block, meaning they would block them; you just don't go out of your way to step on the Attorney General's big toe.

Case law around the First Amendment is clear that you cannot block a much wider variety of speech just because you are trying to stop some specific narrow speech. Because of the respect we have for the First Amendment in the U.S., the law has been pretty clear that anything preventing illegal speech must narrowly target just that kind of speech. Doing otherwise is what's known as prior restraint.

Two very relevant cases on this front are *Near vs. Minnesota* and *Center for Democracy and Technology vs. Pappert*. *Near vs. Minnesota* involved striking down a state law that barred "malicious" or "scandalous" newspapers from publishing, allowing the state to get a permanent injunction against the publications of such works. In most cases, what was being published in these newspapers was pure defamation. Defamation, of course, is very much against the law (as is copyright infringement), but the court found that barring the entire publication of a newspaper because of some specific libelous statements barred other types of legitimate speech as well. The court clearly noted that those who were libeled have recourse to libel law to sue the publisher, but that does not allow for the government to completely bar the publication of the newspaper.

The *Pappert* case—a much more recent case—involved a state law in Pennsylvania that had the state Attorney General put together a blacklist of websites that were believed to host child pornography, which ISPs were required to block access to. Again, child pornography is very much illegal (and, many would argue, much worse than copyright infringement). Yet, once again, here, the courts tossed out the law as undue prior restraint, in that it took down lots of non-illegal content as well as illegal content.

While much of the case focused on the fact that the techniques ISPs were using took down adjacent websites on shared servers, the court did also note

that taking down an entire URL is misguided in that “a URL … only refers to a location where content can be found. A URL does not refer to any specific piece of static content—the content is permanent only until it is changed by the web site’s webmaster … The actual content to which a URL points can (and often does) easily change without the URL changing in any way.” The argument was that taking down a URL, rather than focusing on the specific, illegal content constituted an unfair prior restraint, blocking the potential publication of perfectly legitimate content. The court here noted the similarities to the *Near* case:

“Additionally, as argued by plaintiffs, the Act allows for an unconstitutional prior restraint because it prevents future content from being displayed at a URL based on the fact that the URL contained illegal content in the past … Plaintiffs compare this burden to the permanent ban on the publication of a newspaper with a certain title, *Near vs. Minnesota*, 283 U.S. 697 (1931), or a permanent injunction against showing films at a movie theater, *Vance v. Universal Amusement Co.*, 445 U.S. 308 (1980). In *Near*, the Court examined a statute that provided for a permanent injunction against a ‘malicious, scandalous, and defamatory newspaper, magazine, or other periodical.’

“There are some similarities between a newspaper and a web site. Just as the content of a newspaper changes without changing the title of the publication, the content identified by a URL can change without the URL itself changing … In fact, it is possible that the owner or publisher of material on a web site identified by a URL can change without the URL changing. … Moreover, an individual can purchase the rights to a URL and have no way to learn that the URL has been blocked by an ISP in response to an Informal Notice or court order … Despite the fact that the content at a URL can change frequently, the Act does not provide for any review of the material at a URL and, other than a verification that the site was still blocked thirty days after the initial Informal Notice, the OAG did not review the content at any blocked URLs …”

One of the complaints we’ve heard is that such past prior restraint cases do not apply here since “copyright infringement is illegal.” But, both defamation and child pornography also break the law. The point is that in all of these cases, there are existing laws on the books to deal with that specific content, which can be handled with a scalpel. Adding an additional layer that takes down an entire publication is where it stretches into clear censorship.

The other argument that says COICA (and its successor bills) were not censorship is that the legislation claims that it was only directed at sites “dedicated to infringing activities” that have “no demonstrable, commercially significant purpose or use other than” infringement. However, what supporters of COICA hate to admit is that “dedicated to infringing activities” is very much in the eye of the beholder, and the same folks who supported COICA—such as the MPAA and the RIAA—have a very long and troubled history of declaring all sorts of new technologies as “dedicated to infringing activities.” The VCR, cable TV, the DVR, and the MP3 player were all lambasted as being dedicated

to infringing activities with no demonstrable, commercially significant purpose, when each was introduced. In hindsight, supporters of COICA liked to ignore this, and insist they always knew that each of those technologies could have perfectly legitimate non-infringing uses. But that's only because they were allowed to go forward after a series of legal fights. With COICA, no such chance would have been given. It's easy to declare something as dedicated to infringing activities if your financial or political interests make you unwilling to see how it can be useful.

## PART 2

### THE SOPA / PIPA BATTLE BEGINS

*The fight to stop SOPA culminated in the Internet Blackout of January 18th, 2012. However, for Demand Progress and Don't Censor the Net, the effort started nearly a year and a half earlier. Our work, in turn, was made possible by decades of activism by a number of organizations and myriad activists who'd been toiling to keep the Internet free and open. This string of essays tells the story of the effort to defeat SOPA and its predecessor and companion bills, beginning with Demand Progress's entry into the fray in the fall of 2010.*

## NOW I WORK FOR DEMAND PROGRESS

### DAVID SEGAL

*David Segal is the executive director of the Demand Progress. He was previously a city councilman in Providence, Rhode Island and a state representative representing Providence and East Providence. He ran for Congress in 2010. His writing on a variety of topics has appeared in a number of outlets, such as the New York Times and Boston Globe.*

The Senate staffer certainly wasn't enthused. We'd created a petition in opposition to the Combating Online Infringement and Counterfeits Act—we'd branded it as the "Internet Blacklist Bill"—and written it up on a few websites. We had front-page placement on the Huffington Post, and Boing Boing had given us a great write-up; somehow, within a week or so, three hundred thousand people had made known their opposition to the bill. We'd eventually understand this to be an opening grassroots salvo in what would become the movement that killed SOPA, but this guy seemed to be overestimating our standing: Aaron and I certainly didn't feel all that formidable at the time, as we flitted between Senate offices, handing staffers stacks of signatures, hoping the recipients might be at least conscientious enough to toss them into recycling bins rather than trash cans.

I'd called Leahy's office to let them know that there was now officially a popular movement in opposition to COICA and to try to get a meeting with his staff. A member of the corps of lawyers who worked for Leahy's powerful Judiciary Committee returned the call an hour later. Leahy was wrong on this issue—he'd been very supportive of Hollywood's interests during his lengthy Senate tenure—but he had a record of support for online privacy rights, so we hoped that we'd be able to work with him.

I was still technically a Rhode Island State Representative, a lame duck about to retire—or at least take a break—from a nearly decade-long career in politics that had chewed up most of my 20s. I'd lost a Democratic primary for Congress a couple months prior during which I'd garnered the support of a number of progressive Netroots groups, one of which was called the Progressive Change Campaign Committee and had been co-founded by whiz kid Aaron Swartz, renowned across the web for his Python coding skills and Internet evangelism. Aaron was based in Boston and spent much of the last couple months of my campaign camped out in our Providence headquarters, helping us rig up cheap polls and robo-calls and that sort of thing. One day he told me he was quitting PCCC; and here I was, six weeks later, working with him at Demand Progress as we began our quest to save the Internet.

COICA would've created a list of "rogue" websites that the government could block access to with minimal due process. Perhaps even worse: it would create a second accounting of sites that wouldn't formally be blocked—because the Feds only had much weaker cases against them, even by the bill's

lax standards—but would be put on a separate, public list of sites that the U.S. government wasn’t very happy with. Internet Service Providers would then be encouraged to steer users clear of them. Hence the “blacklist bill” framing.

Leahy’s guy agreed to see us, and Aaron came down from Boston to join. I think we were all a bit surprised that we actually managed to have a genial, even if mostly unproductive, meeting. There was one concern they even seemed to take seriously: we suggested that at the very least the bill could be amended to make it clear that it wouldn’t apply to domestic sites, since the government would have ways of getting at “rogue” domestic operators that didn’t entail the obliteration of speech rights. (That change would eventually be made in a later draft, but was countervailed by enough new disconcerting language that we couldn’t claim a win.)

We did pick up a fascinating new tidbit or two as we roamed the Hill that day: the one that stuck with me was that one of the leading proponents of the bill—in addition to Hollywood, the Recording Industry Association of America, and the other usual suspects whose prints were all over the thing—was Deckers Shoes. You see, they own the brand Ugg, and the struggle they face—apparently worthy of legislation that would sabotage the fundamentals of the web—is that the term “ugg” is one of common usage in Australia and New Zealand: it denotes a whole variety of sheepskin boot. Deckers wanted to be able to block Americans’ access to sites that claimed to sell lower-case uggs, based eight thousand miles or so from the shores of the continental USA, foisting on unsuspecting Americans shoes that actually had some modicum of cultural relevance somewhere.

What problem was this legislation solving, at the risk of disrupting the business models of myriad web-based firms and undermining Americans’ freedom to connect online? Deckers manufactures Uggs in China at bottom-of-the-barrel wages; COICA would help them hock their wares in the United States at a markup relative to manufacturers of generic uggs, reducing consumer surplus that could be saved or spent somewhere more useful. It would help the management of Deckers make more money and protect various other special interests. Meanwhile, Internet usership now approaches breather-of-air as an interest of general concern, the epitome of “un-special” interests. (Some of the considerations relative to the impact of COICA, PIPA, and SOPA on Americans’ access to pharmaceuticals are similar, and illuminated in more detail in an essay later in this book.) Yet a bipartisan group of senators was proudly promoting this legislation.

Deckers’ website still admonishes visitors to “Beware fake Uggs,” but it strikes me that the decades-old, lower-case version has a stronger claim to legitimacy.

We navigated the bowels of the Capitol complex that afternoon, dodging stacks of cardboard moving boxes piled full with the belongings of defeated and otherwise departing members, and dropped in on Matt Stoller. Matt was a friend and had spent the previous two years working for Congressman Alan Grayson. (He was, sadly, among said defeated members, but recently scrapped his way back in and will be installed as part of the 113th Congress in January.)

Somewhat unusual on the Hill, Matt and his boss actually paid attention to the nitty-gritty of policy considerations (they'd been providing critical oversight of the largess that ordinary Americans had bestowed upon the banks in the wake of the economic collapse). Matt had cut his chops as an early blogger and online activist and so cared deeply about bills that might compromise Internet freedom. He was one of the few House staffers who had even heard of COICA at this early stage. We wanted to know what he thought we should do, whom we should talk to about lining up (virtual) bodies to stand with us. One critical tip: some guy named Patrick Ruffini. We also wanted to make sure that conservatives on the Hill were aware of the legislation, and so alerted Ron Paul's office to it before we left the Capitol grounds that day.

The Judiciary Committee passed COICA unanimously a few weeks later, but it was clear that the bulk of its members had very little concept of what they were voting on, and certainly no notion whatsoever of the movement that would build in opposition to COICA's successor bills, SOPA and PIPA. One senator expressed dismay eighteen months later when I reminded him that he'd helped vote COICA out of committee; he'd always been sympathetic to the concerns of Internet users, was now an avowed opponent of SOPA, and his conception of self was such that he literally couldn't believe that he'd voted for such a bad bill.

Then Ron Wyden intervened, putting a "hold" on COICA, and the process ground to a halt until the new Congress was installed in January. Demand Progress had a list of three hundred thousand new members who would comprise a key regiment in the anti-SOPA grassroots army, and whose ranks would swell to about one million before the bill was put to bed: thank you, Hollywood!

## BEGINNINGS ON THE RIGHT

### PATRICK RUFFINI

*Patrick Ruffini is an entrepreneur and the founder of Don't Censor the Net, an organization that supports freedom of speech and commerce on the Internet. Ruffini and Don't Censor the Net were early opponents of SOPA/PIPA and organized support against the bills' predecessor bill, COICA. Ruffini is also the founder of digital strategy firm Engage, which specializes in working with technological innovators. An award-winning political strategist, his writing has appeared in The Atlantic, The National Review, and other outlets.*

One of my earliest memories of being politically active on the Internet came when I placed a blue anti-censorship ribbon and blacked out my website in the wake of President Clinton's signing of the Communications Decency Act, part of a broader 1996 overhaul of telecom law. The CDA's goal: outlawing "indecent" pornographic material on the Internet.

Even before the act was—inevitably—struck down as unconstitutional, it's safe to say that the law did very little to actually stem the flow of such content.

On February 1, 1996, the Web went dark after Congress passed a bill censoring the Internet. Sixteen years later, the Internet was just a bit more ahead of the game, using a massive blackout on January 18, 2012 to stop an all-important Senate vote on the Protect IP Act. Rather than an ineffectual, after-the-fact protest, 2012's blackout would generate hundreds of thousands of phone contacts to Capitol Hill, with lawmakers falling all over themselves to remove their names from PIPA, and its House companion, the Stop Online Piracy Act, or SOPA.

The Internet has been at the center of my story in the intervening years. In the late '90s, I stumbled on the Internet as a remarkably effective tool for political organizing, eventually using it to build a career in Republican politics. I started emailing with pollsters, IM'ing with fellow activists, and setting up an online community ahead of the 2000 election that caught the attention of Karl Rove.

Being one of a few dozen people in the country who spent their days and nights on Internet politics in those early days led to me fulfill a childhood dream of working in Presidential politics, eventually founding successful companies at the intersection of politics and technology. Simply by being one of the first—whether it was setting up a website (1995), blogging (2001), or joining Twitter (2007)—I found a voice I otherwise wouldn't have had. Like many others who pursue their passions and make a livelihood for themselves online, I owe a lot to the Internet.

What I loved about the Internet was that it leveled the playing field and disrupted traditional ways of doing things. As a libertarian, I marveled at the complete freedom it afforded its participants. The Internet could serve as a

model for self-government. No bureaucrat controlled it, and you didn't need permission to hit the Publish button. Free speech was finally and truly, free.

The words penned by former Grateful Dead lyricist John Perry Barlow, in his Declaration of the Independence of Cyberspace (itself issued in the immediate aftermath of the CDA), have stuck with me in the years since:

Governments of the Industrial World, you weary giants of flesh and steel,  
I come from Cyberspace, the new home of Mind. On behalf of the future,  
I ask you of the past to leave us alone. You are not welcome among us. You  
have no sovereignty where we gather.

We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear.

Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. Do not think that you can build it, as though it were a public construction project. You cannot. It is an act of nature and it grows itself through our collective actions.

And:

Your increasingly obsolete information industries would perpetuate themselves by proposing laws, in America and elsewhere, that claim to own speech itself throughout the world. These laws would declare ideas to be another industrial product, no more noble than pig iron. In our world, whatever the human mind may create can be reproduced and distributed infinitely at no cost. The global conveyance of thought no longer requires your factories to accomplish.

These increasingly hostile and colonial measures place us in the same position as those previous lovers of freedom and self-determination who had to reject the authorities of distant, uninformed powers. We must declare our virtual selves immune to your sovereignty, even as we continue to consent to your rule over our bodies. We will spread ourselves across the Planet so that no one can arrest our thoughts.

We will create a civilization of the Mind in Cyberspace. May it be more humane and fair than the world your governments have made before.

Barlow's Declaration had a certain bombastic idealism that one feels funny about quoting, but at its core, it is a well-placed warning about arrogant power,

which knowing nothing about decentralized networks seeks to control them anyway.

In “cyberspace”—a quaint way of describing this new world—order emerges organically from the edges of the network, rather than from law books or government directives. As Larry Downes writes in these pages, the system by which the Internet governs itself couldn’t be more democratic:

The political philosophy of the Internet, though still largely unformed, is by no means inarticulate. The aspirations of Internet users largely reflect the best features of the technology itself—open, meritocratic, non-proprietary, and transparent. Its central belief is the power of innovation to make things better, and its major tenet is a ruthless economic principle that treats information as currency, and sees any obstacle to its free flow as inefficient friction to be engineered out of existence.

Those seeking to understand what kind of governance Internet users are willing to accept would do well to start by studying the engineering that establishes the network and how it is governed. The key protocols and standards that make the Internet work—that make the Internet the Internet—are developed and modified by voluntary committees of engineers, who meet virtually to debate the merits of new features, design changes, and other basic enhancements.

The engineering task forces are meritocratic and open. The best ideas win through vigorous debate and testing. No one has seniority or a veto. There’s no influence peddling or lobbyists. The engineers are allergic to hypocrisy and public relations rhetoric. It’s as pure a form of democracy as has ever been implemented. And it works amazingly well.

For libertarians (like myself), the Internet holds the great hope of re-injecting ideals of freedom into the rest of society by allowing a parallel economic space to develop outside the reach of government. And in the movement against SOPA, among the digital elite on both the right and left, we saw a beautiful consensus emerge in favor of emergent, peer-to-peer innovation against would-be oligarchs of all stripes. Right and left may embrace different facets of the Internet ideal, but at its core lies a shared belief in people and networks, not governments, shaping the future.

At the beginning of this story, in 2010, the appeal of Internet freedom was at a low ebb. Governments across the globe were increasingly putting their stamp on the medium with nationalistic laws censoring certain types of content and stepping up their regulatory scrutiny of the world’s most hyper-competitive industry.

When Senator Patrick Leahy introduced the Combating Online Infringement and Counterfeits Act, or COICA, on September 20, 2010, only a small handful of tech policy experts took notice. At the time, it did not occur to most senators or their staffs that manipulating the Domain Name System,

or DNS, solely at the behest of a single industry, would cause any controversy whatsoever.

When I first read the bill that October, the notion that a bill like this could see the light of day was jaw-dropping. On the one hand, elected officials celebrated the Internet, used it in their campaigns, and extolled its disruptive potential in visits to Silicon Valley. Yet, under the guise of anodyne anti-piracy measures, we were about to give the U.S. government the power to disrupt its core architecture by allowing the U.S. Department of Justice the power to blacklist websites and tinker with the DNS system in ways the vast majority of Internet engineers thought unworkable.

The COICA crisis became an opportunity for the Internet to make its stand, as forcefully as it had since 1996. And to make an impact, given its sizeable reach into every corner of society and the economy. For me, this was an opportunity to recapture the spirit of the Internet's pioneer days and defend the medium from a clear and present danger, uniting political activists on the left and the right in the process.

The grassroots campaign began a few days ahead of a planned November 2010 markup in the Senate Judiciary Committee on the bill. I bought the domain dontcensorthen.com, which got right to the heart of the matter: COICA would censor the Internet.

While startups rightly saw COICA as an affront to their business models and economic livelihoods, the bill would succeed or fail to the degree that regular people believed it censored them. Because this was a political fight, it was critical that our message be well understood by political activists who had the ear of Congressional representatives.

Tea Party activists, like the liberal netroots before them, had used the Internet to organize politically, recently fueling Republican victories in the November 2010 midterm elections. If pressure from the grassroots could be brought to bear, it was unlikely that the new Republican House would ever bring a bill to the floor that would grant Eric Holder's Justice Department the power to regulate the Internet.

If we didn't act, however, there was a danger that the bill would move so quickly, and opposition from the tech sector seem so esoteric, that these arguments could easily have been missed entirely. For their part, Hollywood had tried to portray COICA as no more controversial than renaming a post office. Looming large over the debate was a sense that content industry lobbyists had this sewn up, and numerous times, tech industry sources warned that this could be passed, perhaps by voice vote, in the closing days of the 111th Congress.

The early strategy was no more and no less than: stall. Play for time. And hope that in the intervening time enough doubts could be raised that proponents could be persuaded to amend the bill. Not defeat it. But improve it. Such was the pessimism in the technology policy community at the time.

Don't Censor the Net would launch with a core group of conservative bloggers co-signing our petition when it went live on November 16, 2010.

Right before launch, I traded emails with Aaron Swartz, founder of Demand Progress and an early force in reddit, marking the beginning of the collaboration between the two groups:

From: Aaron Swartz  
To: Patrick Ruffini  
Date: Mon, 15 Nov 2010 16:03:23 -0500  
  
Subject: coica

Hi, Patrick—I've noticed you've tweeted a couple times about COICA. We'd love to do some more work with the conservative/libertarian community—it seems like they should be against this big government takeover of the Internet—and I was curious if you had any advice on how to get their attention.

Thanks,  
Aaron

From: Patrick Ruffini  
To: Aaron Swartz  
Date: Mon, 15 Nov 2010 16:17:57 -0500  
  
Subject: Re: coica

Working on this right now actually.  
What we're hoping to do is provide a friendly spot for people on the right to engage on this issue.  
We've seen the usual message board chatter and think this is a good opportunity to elevate and get some bipartisan movement going.

Demand Progress was an activist group on the left, and advocated on the sorts of issues that would have placed us as diametric opposites on the political spectrum, especially during the Bush years. Yet I would develop a fruitful collaboration with David Moon and David Segal who carried the organization forward through the SOPA & PIPA battle, continuing with this book.

A right-left alliance was not only essential to building a broad, bipartisan populist coalition aligned against an out-of-touch lobbyist-driven elite, but in the process I learned a life's worth of lessons about winning policy fights from all angles—both in playing the inside game, and knowing when to apply outside pressure. I had been used to winning (and losing) in the context of a political campaign, and I valued the similar experience Demand Progress brought to the table from the other side of the political spectrum.

Many in Washington talk about applying political campaign tactics to policy fights, but the truth is that we were overdue for an Internet-driven disruption

of the lobbying and policy process of the kind we had seen time and again in politics. Much of my career has been about fostering this sort of technological shift in the campaign world, and so I relished the challenge of applying the same lessons to the impregnable world of Congressional influence.

Today, “social media revolutions” are happening with increasing frequency and speed. Unlike past grassroots movements, these movements are self-organized, decentralized, and global in scope. The anti-SOPA movement had no leader and no central organizing hub. It shared this trait in common with movements ranging from the Tea Party to the Arab Spring. Post-SOPA, it appears to be getting progressively easier for social media to force its way on those in power. When Planned Parenthood prevailed over the Susan G. Komen Foundation, instant comparisons were drawn to SOPA. ACTA—the Anti-Counterfeiting Trade Agreement, a document with many SOPA-like provisions that had languished in relative obscurity for years—became a cause celebre, primarily in Europe, with Poland leading the way. And there is also a sense that, with enough of a knack for making something go viral, social media movements can be conjured up at a moment’s notice. There is no better example of this than the early March KONY 2012 video, which generated forty six million YouTube views in 48 hours.

We live in a changed world because of the distributed actions of millions of people during the SOPA and PIPA battle. The people in this story happened to see and observe how this change unfolded, starting in the very beginning, when things looked quite bleak and no one gave the Internet any chance of succeeding.

## DEMAND PROGRESS NEEDS A “WASHINGTON GUY”

### DAVID MOON

*David Moon is the Program Director for Demand Progress, a group dedicated to mobilizing the public to challenge power and promote civil liberties. He is a progressive policy attorney and political consultant based in metro-Washington, D.C. and also edits the state politics blog Maryland Juice.*

With the amazing synergy between ordinary Internet users, activist groups, and online businesses, this was a coalition unlike any I had ever worked with before. Demand Progress and its membership of vocal Internet users was suddenly in league with major website operators, librarians, rightwing libertarians, cat-photo enthusiasts, hardcore gamers, and more.

I've made a career out of running progressive activists for elected office in the greater Washington, D.C. region, and the SOPA/PIPA campaign once again placed me in a position of trying to bring the leaders of the Democratic Party closer to the grassroots. That many Democrats in Congress were so quick to embrace these wretched censorship bills was further evidence that outside of constituency-driven hot-button issues like abortion or gay rights, big businesses were continuing to dominate policymaking decisions even in a party that prides itself on being the voice of the un-moneyed.

That's why for me, beyond the specific policy concerns, the SOPA/PIPA fight has been and continues to be about projecting a political voice for the Internet. Policymakers need to understand that Internet users have emerged as a serious political constituency, and they need to grasp a simple fact: every day that passes, we are closer to a voting population comprised of a majority of people who came of age in a post-Internet world. But does Lamar Smith himself even use common social media sites like Twitter, Facebook, or YouTube? I don't mean the government aide behind @LamarSmithTX21, either. I'm asking whether Lamar Smith *himself* actually uses the Internet the way the rest of us do?

For my colleagues on the left, it's obvious that we should want the Democratic Party to be the one that “gets” technology and the Internet. The idea that the current evangelical-driven Republican Party could be competitive with us for an emergent Internet constituency makes my stomach turn and makes me wish Democrats would form a Congressional caucus paralleling the increasingly successful politics of the “Pirate” parties in Europe. I guess that's why it makes sense that I've ended up serving as that “Washington” presence for Demand Progress.

Today, Demand Progress is an organization with over one and a half million members and its primary function is to mobilize the public to advance civil liberties and progressive causes. We do so primarily during key moments in

the public dialogue, when the actions of a few can be leveraged into results for many more—like blowing the whistle at an early stage in the vetting of new bill that's supposed to sneak through without controversy, as we did with COICA or Amy Klobuchar's felony online streaming bill, discussed later herein. Our work to stop SOPA/PIPA over the course of the last year is just one example of this model, but it fits the paradigm for activism today: harnessing grassroots (often Internet user-generated) disruption to advance social change, demonstrated by an increasing impatience and a do-it-yourself attitude among activists across the spectrum. In the era of the Internet, (potential) change agents no longer need to filter their messages through tone-deaf media outlets and mercenary lobbyists, and they no longer need to abide by the past generation's rules of civic engagement.

The Arab Spring protests, Occupy, the Tea Party, and Anonymous have all illuminated this paradigm shift. But if you look closely, you'll see less obvious but still powerful examples in unexpected places. In one high-profile instance last year, a victim of perhaps perpetual child abuse secretly videotaped a seven-minute belt beating she received from her father, a Texas family law judge. She held onto the tape and years later published the shocking video on YouTube, where it was instantly watched by millions of people. It is worth noting that the reason why she was being beaten was her father was punishing her for downloading music on the Internet.

To be sure, harnessing the opportunities caused by a disruption of the public consciousness is nothing new. That's kind of the point of any protest, right? But the speed, scale, and successes of the efforts today are hard to ignore. What allows them to be so successful is the critical mass of human beings now interacting on the Internet, and the speed at which the networks and apps allow us to share information with others. But it sure helps to have good read on what types of campaign tactics are likely to generate action.

### Lunch with Aaron Swartz

My involvement with Demand Progress began on December 20, 2011, when I met the young Internet activist Aaron Swartz for coffee in Washington, D.C.'s Dupont Circle. I had never heard of Aaron or his work—but over time, I quickly saw that he was trying to trigger many of the same policy changes I sought to advance.

I first heard of Aaron through my childhood friend and on-and-off activist colleague David Segal. A former Rhode Island State Representative, Segal had just decided to join Aaron in helping to launch Demand Progress. I had just finished another election cycle of campaign work and was looking for new projects, so Segal insisted that I meet with Aaron. The two of them were trying to set up a "Washington presence" to help fight COICA and whatever might next come careening down the pike.

But my first meeting with Aaron wasn't even really about COICA or Demand Progress. Instead I asked Aaron to describe his broad vision and what he hoped Demand Progress might achieve. Aaron expressed immense frustration with the political process and stated that his dream was to see well-meaning

grassroots candidates running for office in every district in the nation. Surely that would send a message. Privately, I thought the idea sounded a bit grandiose (at least in the context of trying to create a short-term strategic plan for an organization), but that was mostly beside the point: it was clear that I shared Aaron's sense of impatience with a broken political system and his desire to go big.

Over the few weeks after my coffee with Aaron, David continued to pester me to come work for Demand Progress. They needed a "Washington guy," he kept telling me. But other than the mere coincidence of living "Inside the Beltway," I wasn't quite sure that I would be the Capitol Hill advocacy presence they had in mind.

To be fair, on paper I had some characteristics of a "Washington" person. I had a law degree, I had managed political campaigns, I had worked in issue advocacy, and I had worked inside government. But those vague descriptions masked the consistent progressive activism that undergirded my work. Moreover, as a young Asian-American male with thick-framed glasses and distaste for suits, I didn't quite look the role to be hobnobbing with Washington's K Street elite. But in the world of the Internet, these barriers mattered less than they used to. And so in January of 2011, I let them know that I was in.

When I first joined Demand Progress, I offered to host Swartz and Segal at my house in Washington for a retreat to plot out six-month and one-year goals for the organization. Our mission and methods were still up for debate, but during the retreat we decided to kick forward a broad work plan and focus our energies on those efforts where our members expressed the most interest. We basically treated the effort like a startup. But the one thing we did know was that fighting Internet censorship would be one of our primary endeavors. After all, our initial members joined the organization because of their concern over COICA, so we had a duty and greater standing to fight that bill and its successors.

It was obvious that the pro-Internet forces were going to be massively out-spent by industry proponents of COICA. We also knew that as a brand new group, Demand Progress would enter the debate with little-to-no credibility among status quo policymakers, that mainstream media coverage of our efforts would be almost non-existent, and that nobody thought we had any real chance to stop the legislative threat. As a result, we faced constant obstacles and were forced to hunt down opportunities to leverage our limited assets for maximum effect.

When we first took on COICA (and later SOPA/PIPA), the establishment curtly brushed aside our concerns without further thought. Neither the special interests backing the bills—nor the bills' sponsors, should we feel charitable enough to draw a distinction between them and the lobbies whose bidding they were doing—had realized the extent to which the Internet had become such a dominant force in many people's lives, nor had they fully digested the advocacy potential of millions of people who interact on social networks and share information online, especially when the matter of concern was Internet policy. For much of 2011, most of our allies assumed that the big content-owning companies would be able to pass *some* sort of Internet regulating legislation that year.

### **Recruiting a Bigger Army to Fight SOPA/PIPA**

In April 2011, I dropped a stack of flyers criticizing COICA outside a Congressional hearing for the bill. Our small coalition had been struggling to broaden opposition to the legislation, but we soon found ourselves with a completely new issue angle and set of allies. One of Moon's anti-COICA info packets made it into the hands of Gabriel Levitt from PharmacyChecker.com—a website that helps consumers find websites that sell safe and authentic prescription drugs. Levitt wanted to make Demand Progress aware that COICA (and later SOPA/PIPA) threatened to shut down legitimate pharmacies and services that allowed U.S. seniors to purchase authentic prescription drugs from lower-priced Canadian pharmacies. This was a fairly mainstream issue, as seniors advocates like Lee Graczyk from Rx Rights (another anti-SOPA/PIPA advocate) had for years been working with members of Congress on safe drug importation.

But SOPA/PIPA turned out to be grab-bag of special interest goodies, and provisions threatening online pharmacies were included In the bills. As early as May 2011, major pharmaceutical companies like Eli Lilly were blogging that PIPA "helps protect patients." To fight back, Rx Rights, PharmacyChecker.com and other affected websites joined the fight against SOPA/PIPA and added thousands of senior citizens to our coalition of Internet users. Thousands of seniors from across the country contacted their lawmakers, and we and other activists made sure that lawmakers who'd been sympathetic to the importation cause were aware of the bill's impacts thereon. Rx Rights wisely targeted seniors living in Florida and other politically influential states to contact their members of Congress.

## SOPA'S ELEVATION OF PROFITS OVER PATIENTS: THE ONLINE PHARMACY STORY

### GABRIEL LEVITT

*Gabriel Levitt is the vice president of PharmacyChecker.com and president of the United Nations Association Brooklyn Chapter. He has an MA in International Relations from American University.*

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”*

—Article 24 of the UN Declaration of Human Rights

The Stop Online Piracy Act (SOPA) was most commonly criticized because its passage would have allowed the U.S. Government to curtail online publishing without due process, violating the cherished right of freedom of speech. Opponents argued that the bill grossly overreached and took a sledgehammer to protect intellectual property rights where a scalpel at most may be needed. But too few people were aware that SOPA could also deprive Americans of access to safe and affordable prescription medication. Access to affordable prescription medication is often a matter of life and death. Blocking it transcends traditional censorship issues and becomes a basic human rights violation.

This is the story of how the pharmaceutical and U.S. pharmacy industries supported SOPA to assert greater control over the online distribution of prescription medication and protect their high prices. They joined the movie and music industries to support SOPA in search of special government protections for their profits.

For full disclosure, I'm vice president of PharmacyChecker.com, which helps consumers find safe online pharmacies and compare their drug prices. SOPA's passage could have led to private or government actions to shut down PharmacyChecker.com, even though we do not sell prescription medication but only provide information.

PharmacyChecker.com joined a coalition of non-profit organizations, businesses, and individual Americans called RxRights.org, which advocates for safe personal prescription drug importation. When SOPA's predecessor, the Combating Online Infringement and Counterfeits Act (COICA), was introduced, it was clear as day that the pharmaceutical industry had its paws on this legislation. Defeating SOPA became RxRights.org's greatest priority.

SOPA's Section 105, called “Immunity For Taking Voluntary Action Against Sites That Endanger The Public Health,” made it a vehicle to prevent Americans' access to safe international online pharmacies, meaning, for our purposes, non-U.S., international mail-order pharmacies, where brand name drug

prices are often 85% lower than at U.S. pharmacies. The provision, in effect, defined safe international online pharmacies as dangers to the public health, making them subject to takedown actions, such as refusal of service by registrars. This section was more pernicious than those dedicated to copyrighted materials. As important as is the free speech right to creative content, the right to affordable and necessary medication is often a matter of life or death. Not so for the shared MP3 download.

Drug affordability is a serious problem in America. Almost half of Americans—and 90% of seniors—rely on prescription medication to treat or prevent disease. The Commonwealth Fund reported that in 2010 forty-eight million Americans between the ages of 19–64 (not including seniors) did not fill a prescription because of cost. According to the National Consumers League, one hundred twenty-five thousand Americans die annually because they do not take needed medication. The U.S. Food and Drug Administration (FDA) reports \$290 billion in additional healthcare spending (for more emergency room visits and hospitalizations) resulting from failure to take needed medicines.

Price controls in other countries mean that drug prices are much lower abroad. Before the Internet, Americans required travel to Canada or Mexico for lower-priced medicine. In fact, in the beginning of the last decade several members of Congress led constituents on bus trips to Canada for the purpose. Now the Internet has created a marketplace in which Americans access lower-priced and safe international online pharmacies.

U.S. laws serve the economic interests of pharmaceutical companies at the expense of American consumers. Federal law technically prohibits individuals from importing the same medicine sold in U.S. pharmacies from Canada and other countries, but the practice, while discouraged by the FDA, is generally permitted.

Let's examine the FDA's position on personal drug importation. The FDA has regulations in place to protect the U.S. drug supply, presumably to insure safety and efficacy. The FDA cannot guarantee the safety of medicines sold in other countries, so for their own protection Americans are not supposed to buy medication from Canada or anywhere.

But how strong is the FDA "guarantee" of the domestic supply to begin with? Are FDA-approved drugs sold here really safer than personally imported ones from licensed sources? If they're not, then the law protects pharmaceutical profits from lower cost competition, but not the public health.

America has experienced two tragedies over the past five years due to drug quality lapses: neither had anything to do with international online pharmacies. The first occurred in 2007–2008 when tainted Heparin imported from China killed about one hundred fifty Americans. The second occurred last year when forty-six people were killed and six hundred sickened by fungal meningitis contracted by bad steroid injections, which were manufactured and sold by a Massachusetts compounding pharmacy.

Americans might believe that most of our pharmaceuticals are "American." The truth is that most are foreign! According to the FDA, 80% of the active pharmaceutical ingredients (APIs)—main ingredients—in prescription medication

sold in U.S. pharmacies are imported from countries all around the world, mostly India and China. This is not a new development. According to a Government Accounting Office report from 1998, 80% of APIs in “American” medications were imported. Drug and drug component importation is the pipeline of medicine into U.S. pharmacies, but the industry seems to use every available ploy and falsehood to control the pipeline and thus its prices—such as SOPA.

Americans are lead to believe that the FDA vigilantly maintains a “closed” drug supply chain. Yet a GAO report from 2010 based on FDA’s data found that “of the three thousand seven hundred sixty-five foreign establishments in FDA inventory for fiscal year 2009, there were two thousand three hundred ninety-four foreign establishments that may never have been inspected by the FDA ...” In other words, the FDA’s claim that it can’t guarantee the safety of personally imported medicines should extend to *legally imported* APIs and finished products.

Gaps in foreign drug plant inspections are serious but there are also many documented failures at American plants. According to Erin Fox, manager of the Drug Information Service at the University of Utah, “In the industry, everyone knows that all of the factories are in terrible shape ... I think people think this is a foreign outsourcing problem, but these factories are in our own country.” A recent article in the *New York Times* reported on the unsanitary conditions of some U.S. manufacturing plants, including discovery of rusty tools, mold, and a barrel of urine at one plant; at another, human hair and fungal growth in pharmaceutical vials.

America’s domestic pharmaceutical distribution system is far more chaotic than in many other countries. The U.S. has thousands of wholesalers trading medication in a domestic gray market marred by loose and inconsistent state regulations. It is through these offline channels that counterfeit and adulterated medicines have often found their way to and harmed patients.

The drug and pharmacy industries misinform policy-makers and the media that personal drug importation from all online pharmacies is dangerous. When Canadian pharmacies first went online about thirteen years ago, the pharmaceutical industry audaciously propagated that “drugs from Canada” were not safe. They now argue that online pharmacies pretend to be “Canadian”—conceding that Canadian pharmacies are safe—but actually sell medications imported from other dangerous countries. The truth is that online pharmacies can be dangerous if people order from dangerous foreign or domestic sources. But international online pharmacies can be as safe as U.S. pharmacies, and for many Americans it is their only channel of affordable medication.

Studies show the high degree of safety found at properly credentialed international online pharmacies. They require valid prescriptions, and meds are dispensed by licensed pharmacists working in licensed pharmacies, and are mailed safely to the patient, all of which are verifiable by the consumer through companies like PharmacyChecker.com. One 2012 study, published by the National Bureau of Economic Research, called “In Whom We Trust: The Role of Certification Agencies In Online Drug Markets,” demonstrated the safety of and savings found at credentialed international online pharmacies. All of them

required a prescription and passed all drug authenticity tests and their prices were on average 52% lower.

The law against personal drug importation has been “on the books” for years, yet the FDA (to its credit) has never prosecuted anyone for importing prescription medication for his or her own use. It is reasonable to view the practice as, de facto, decriminalized. Over a million Americans annually import medication for personal use from online pharmacies, and many millions have over the past decade. The FDA’s enforcement policies are usually limited to disrupting illegal wholesale drug importation, and they have stepped up enforcement actions against demonstrably dangerous online pharmacies from reaching Americans but mostly left alone those known to operate safely.

Recently, FDA seems more willing to overreach in its enforcement efforts, notably getting Google, Bing, and Yahoo to stop permitting Canadian and other online pharmacies, whether safe or not, from online advertising. Congress recently passed a bill to facilitate greater seizures and destruction of personally imported medication by Customs and Border Patrol (CBP). The FDA is spending more tax-payer dollars on “public education” campaigns to allegedly help Americans find safe U.S. online pharmacies, but discouraging purchases of affordable medication from all international online pharmacies.

Why is the government doing this? Over the last decade, pharmaceutical interests have spent almost two billion dollars lobbying U.S. government branches to meet commercial goals, such as preventing drug price negotiations and new importation laws to lower domestic prices. Additionally, the Obama administration made a deal with the pharmaceutical industry; the administration would drop its tacit support of drug importation in exchange for industry support of Obamacare and modest price rebates to government health care programs.

Had SOPA become law, search engines, domain registrars and registries, credit card companies, payment processors and advertisers would be encouraged to refuse their services to safe online pharmacies. Supporters of SOPA obtusely pointed to the bill’s language on online pharmacies to argue that the bill was not only about protecting intellectual property and copyrights but protecting lives. Their conflation between dangerous and safe online pharmacies is found in SOPA’s Section 105 definition of “sites that endanger the public health”:

(2) INTERNET SITE THAT ENDANGERS THE PUBLIC HEALTH—  
The term “Internet site that endangers the public health” means an Internet site that is primarily designed or operated for the purpose of, has only limited purpose or use other than, or is marketed by its operator or another acting in concert with that operator for use in offering, selling, dispensing, or distributing any prescription medication, and does so regularly without a valid prescription; or offering, selling, dispensing, or distributing any prescription medication that is adulterated or misbranded.

The language looks reasonable but was intentionally deceptive because safe, effective, genuine, and unadulterated prescription drugs can be deemed

“misbranded” under the U.S. Food Drug and Cosmetic Act (FDCA). If the label on the packaging is slightly different from FDA requirements, even if the pill is the exact same, then the medicine is sometimes categorized as “misbranded”. Thus, under SOPA, websites that sell genuine medication may nevertheless “endanger the public health.”

Interestingly, a statement published by the Pharmaceutical Researchers and Manufacturers of America (PhRMA) in support of SOPA was not ambiguous in this regard:

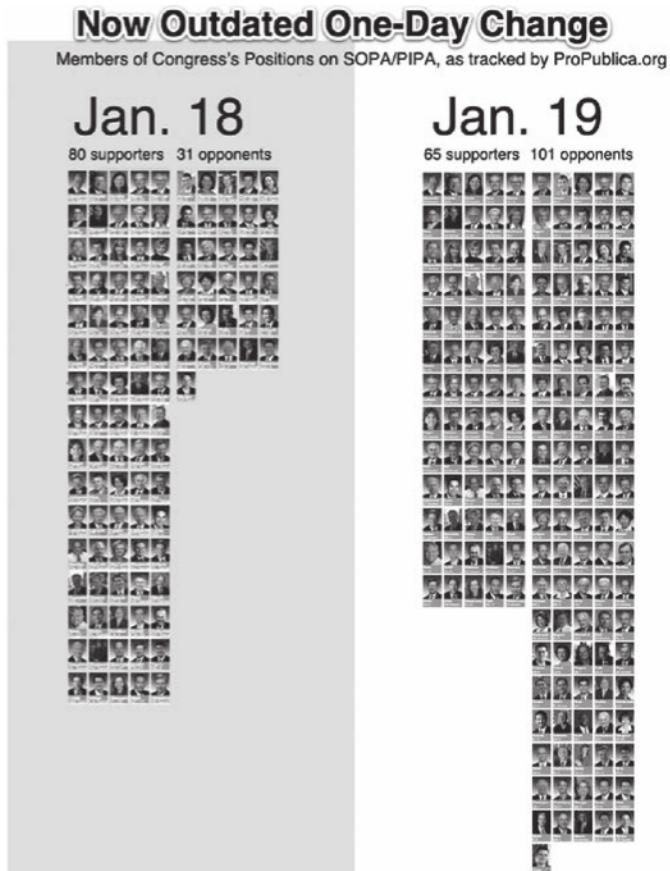
PhRMA applauds the introduction of the Stop Online Piracy Act ... America's pharmaceutical research and biotechnology companies invest billions of dollars each year researching and developing new medicines, and they depend on strong and reliable IP protections to continue their important work in research labs across the nation. Intellectual property rights afforded to America's pharmaceutical research companies help them recoup their incredible investments in the discovery of new medicines, and give them a chance to survive and fund further research in a highly competitive environment.

A passage in this compilation written by Ernesto Falcon of Public Knowledge, a leading organization that battled SOPA and its legislative predecessors, is very descriptive here. Mr. Falcon writes of his jousts on Capitol Hill: “Sometimes the discussion would degrade into arguments over whether the government should just stand idly by while grandma purchased bad drugs on the Internet and subsequently died—the lead sob story lobbyists used to make the case for passage.” Thus SOPA's blatant effort to block Americans from protecting their own health by online access to safe medications was camouflaged as intended to protect the public health.

The battle against SOPA was won. But the war against corporate agendas to undermine Internet freedom including online access to medicine continues. Public health authorities, such as the FDA, should operate under our most basic medical principle—the Hippocratic Oath—do no harm. Thus, even in protection, or drafting, of the law, any action to prevent people from obtaining needed medications online or offline, including supporting legislation such as SOPA, violates fundamental medical ethics and threatens our human rights.

LOBBYING THE REPUBLICANS THROUGH THE  
SUMMER  
PATRICK RUFFINI

Once the dust had settled from the January 18th blackout, no single image was shared and emailed more than this one, created by ProPublica:



This chart shows support for SOPA/PIPA in Congress on January 18, 2012 and then later on January 19, 2012. In just one day, dozens of lawmakers finally saw the writing on the wall and quickly aligned themselves with the Internet community.

The fight against SOPA and PIPA is often told as a story of the Internet grass-roots. But it is also a story about Congress, and how the good guys can sometimes

maneuver within the legislative process to win. The opposition went from having no legislative strategy to engineering a total collapse of the position held by the chairman and ranking members of Judiciary in both houses, winning over top leadership on both sides.

It is instructive to note the position from which we started. Two different versions of online censorship passed the Senate Judiciary Committee by unanimous 18–0 votes. Oregon Democrat Ron Wyden stood as the Senate’s lone opponent, and was twice able to place a “hold” on the bill, delaying further action. (As revealed in the Judiciary Committee’s vote count, Wyden was not even a member of the relevant committee tackling the issue.) In 2010, Wyden’s hold was accurately described as killing the COICA bill—which had emerged too late that year to pass. When Wyden did the same after the initial Judiciary Committee vote on PIPA in May 2011, the “hold” merely ensured delay. Senate Majority Leader Harry Reid would still be able to bring the legislation to the floor with a simple motion to proceed, which was the precipitating factor in the January 18, 2012 Internet blackout.

Arrayed against Wyden were forty senators who would eventually cosponsor PIPA. Thirty-one of these senators remained as cosponsors of S. 968, the PROTECT IP Act, through the end of the 112th Congress.

This forty-to-one tally allowed the proponents of the bills to portray the opposing position as unworthy of consideration. Unable to marshal technical arguments for how the proposed scheme for combating online piracy would actually work, lobbyists for the content industry would resort to sob stories about jobs lost to piracy, and derision of opponents. Almost nobody—not the press, not the lobbyists, and not the policy people involved on either side—believed we could win in any conventional sense.

In retrospect, and as is often the case when David eventually beats Goliath, the hubris of the proponents made them sloppy, causing them to expect a staid, lobbying-only playbook that would be thrown out the window once millions of people got involved.

When they were first hired by NetCoalition to build a lobbying strategy against PIPA in the lead up to the spring 2011 vote in the Senate Judiciary Committee, Andrew Shore and Jim Jochum didn’t see victory as an option. “It wasn’t even about winning,” recalled Shore. “It was about coming in to just run out the clock.”

In the summer of 2011, the Senate was completely lost. In theory, the filibuster makes it easier to stop legislation in the Senate than in the House, but mostly only when party politics is involved. Bipartisan populist coalitions, like those against SOPA and PIPA, tend to get less purchase in the Senate than in the House.

Shore saw the House as the key to everything, and this premise was also behind the anti-SOPA/PIPA strategy of Don’t Censor the Net. Approached from the outside, if the issue could be framed as an issue of government overreach, rank-and-file Republicans, many of them Tea Party freshmen, could be rallied to oppose the bills as a sort of default anti-government, anti-Obama

Administration position. Shortly after the new Congress convened, we made a point of going to the annual Conservative Political Action Conference with flyers talking up the dangers of giving Barack Obama and Eric Holder's Justice Department broad discretionary power to take down websites.

On the inside, the story was more nuanced, since lobbyists typically don't march into Hill offices using "big government" as a boogeyman. There, it was about poisoning the atmosphere, creating a sense of uncertainty and chaos around the bill. Winning was about understanding what the leadership would need in order to not move forward on the issue.

"What dynamic do you create so the leaders say, 'You know what, it's not worth it, we're not going to touch it?'" recalled Shore, "Then we kind of worked backwards from there."

At the outset, the vocal House opposition was as meek as that in the Senate. Only Silicon Valley Democrat Zoe Lofgren could be counted on as a firm ally in early 2011, raising questions that February about the Department of Homeland Security's takedown program for domestic websites, and the fact that eighty-four thousand run-of-the-mill websites were shut off for three days as part of a misdirected order against a domain hosting company. The incident also made for an instructive horror story about the lack of due process involved: the government had only meant to target one site, but in the process, had plastered a notice on tens of thousands of sites effectively accusing their owners of child pornography.

In late summer, however, the opposition began to gather steam. The quiet steps taken in this period highlight the impact that substance-driven outreach to Congressional offices can have in convincing members not only to switch sides on a bill, but to become leaders in the opposition.

Today, Senator Jerry Moran and Representative Darrell Issa are considered two of Congress's biggest Internet enthusiasts. Issa—chairman of the Government Oversight Committee, which handles investigations of alleged wrongdoings in the Executive Branch—is depicted as a stick-figure policeman on his Twitter profile, and was the first to slap a "Censored" banner on top of it to protest SOPA.

Prior to entering Congress, Issa was a successful entrepreneur and inventor of the Viper car alarm. As an IP rights-holder, Issa could have been considered a natural supporter of expanded intellectual property enforcement, and remained undecided on the issue until the fall. But he was also a strong supporter of tort reform, and PIPA had introduced a private right of action enabling Hollywood and rights-holders to sue directly in order to compel Internet companies to take down websites.

Issa weighed both sides, and with his legislative director Laurent Crenshaw, vetted SOPA and alternative proposals from the technology industry. The handful of lobbyists working the issue for the technology industry had hoped Issa, with his IP background, could serve as a bridge to Lamar Smith to soften the bill. But once Issa was in, he was all-in. Presented with proposals to merely improve the worst-of-the-worst in SOPA, Issa's office scoffed: they would kill it.

Issa was in a unique position in that he was also a member of the Judiciary Committee—one of the first members of one of the committees of jurisdiction

to speak out against SOPA. As a chairman himself, he set up a chairman-on-chairman battle that threatened to fracture the House Republican conference, which could force the GOP leadership's hand on the bill.

On June 23, 2011, Kansas freshman Jerry Moran had signed on as a PIPA cosponsor, one of a wave of Senate backbenchers that Hollywood lobbyists had recruited in their drive to the symbolically crucial goal of fifty cosponsors. Four days later, he withdrew his cosponsorship with no explanation. Moran's departure from the bill was a mystery to our coalition. Who had gotten to him, we wondered? Regardless, it provided an immediate boost: the ranks of senators who had rejected PIPA had doubled, from one to two.

At the time, this was momentum.

In the months following, Moran, like Issa, would become a vocal advocate for Internet startups, sponsoring the Startup Act 2.0, a series of legislative proposals designed to foster Internet entrepreneurship. Ironically, it took a senator from largely rural Kansas to appreciate the value the Internet could bring in reviving the Heartland's struggling economy. Even in the months after SOPA, Moran evinced little in the way of tech-savvy (in contrast to Issa's ebullient jump into social media, holding forth in a reddit AMA) but he put the issue this way: In Kansas, a startup could create one hundred jobs—and really make an impact on the local economy.

In the summer of 2011, we weren't necessarily looking to Issa and Moran to lead a movement. As Shore explained it, we simply needed allies to get a "better" bill. What the House would do was shrouded in mystery, as the expected introduction of the bill kept getting pushed back, stretching into the fall. The hope from the anti-PIPA forces was that they could play to conservative resistance to private rights of action to craft a narrow bill that would serve as a Republican counterpoint to PIPA. The approach was centered around a simple strategy for dealing with rogue sites called "follow the money."

Follow the money focused squarely on cutting off payment processing to rogue websites, and would form the crux of Issa and Wyden's alternative bill introduced in December, titled the OPEN Act. Unlike the skin-deep remedy of DNS blocking (where the content would remain online, just not at a domain name), follow the money had already shown its effectiveness in cutting off online offshore gambling. Credit card companies, including Visa and MasterCard, already had well-established policies against supporting merchants who dealt in pirated or counterfeit goods, making censorship concerns a non-issue. Studies released during the debate showed that 95% of the trade in spam or online counterfeit goods flowed through just three offshore banks. This approach addressed these choke-points. Ironically, though the DNS blocking provisions in SOPA and PIPA represented a drastic departure for how the Internet was architected and policed, its net impact on rogue website activity would have been minimal.

## THE TEA PARTY ENTERS THE FRAY

### DAVID SEGAL

We had a pretty clear sense of what our role in the effort needed to be, at least for the time-being: Demand Progress was substantially under-resourced, and certainly wouldn't win this fight on its own, or as party to the small coalition that was responsible for organizing the bulk of the anti-COICA and PIPA work to date. We'd have to fend off the bill's backers long enough to build a more robust coalition, or for somebody to intervene from the heavens.

It seemed obvious that the libertarian-right should be opposed to this legislation: after all, it was a robust new regulatory regime being foisted upon Americans by one of conservatives' very favorite boogymen: Hollywood.

We got incredibly lucky during the spring, when Mark Meckler—then the co-coordinator of the Tea Party Patriots—agreed to co-host a conference I was organizing with Lawrence Lessig. I hounded him over the next couple of months, begging him to take a deep look at PIPA and start to muster conservatives in opposition to it. Patrick pestered him as well.

I've had a bit of a fetish for alliances between the Left and Right for a while now. Not the pissant yearning for middling agreement somewhere in that supposedly vast chasm that separates the tendencies of the corporatist wings of the two major parties—striving for a Grand Bargain around fiscal policy, for instance. The notion that there's insufficient bipartisanship in Washington is transparently absurd. Please see the following counterexamples: foreign policy writ large, subservience to the banks, bipartisan deficit-hawking, an ongoing multi-presidency assault on civil liberties, and, of course, support for SOPA and PIPA. No, what gets me going is those moments where there's actually true-to-God agreement among left- and right-ideologues

Opposition to the bank bailouts, auditing the Federal Reserve, ending the P.A.T.R.I.O.T. Act, even votes against wars and defense spending will all draw a not-insignificant amount of cross-partisan support, from people on both sides of the aisle who straight-up agree about things. Our political systems haven't completely accommodated to those alliances, so they still offer the occasional chance to throw a wrench into machinations of the powers-that-be, relative to those issues where such solidarity can be achieved.

There are of course substantial, critical differences between the left and the right which should not be downplayed, but opportunities for this sort of cross-partisan organizing are often overlooked because of undue presumptions of utter, complete polarization between the two major parties and the rank-and-file Americans who affiliate with one or the other of them. The standard single-axis left-right ideological paradigm is fraying—if it ever truly held to begin with—and the dynamic quickly degenerates into even greater confusion when one strives to map ideological tendencies onto the mainstream political parties.

Fighting PIPA seemed like an opportunity to build a powerful Left-Right alliance and shock the establishment into recognizing the broad base of (still largely latent) opposition to the bill. The conference, to be attended by a mix of activists of all stripes, presented the perfect backdrop upon which to start to pull such a coalition together. Its purpose was to convene people from across the political spectrum to examine the advisability and feasibility of starting to organize towards an Article V Constitutional Convention, at which amendments to the Constitution would be offered through a process outlined in said Constitution.

In practice, successful Constitutional Amendments have always been offered by Congress, but the framers left open the possibility of states compelling a convention to offer amendments as, essentially, a way of hacking around an inert, institutionally corrupt Congress. It's never happened, but the transition to elected U.S. senators followed from pro-convention organizing: the Senate's self-interest was in preserving the status quo, via which they were appointed by state legislatures (though some states had popular referenda which guided the legislatures' choices). Senators didn't want to have to face the voters, but they'd much rather take that risk than let the rabble have their experiment in a deeper democracy. So we got the 17th Amendment, and now, in their wisdom, the people may exercise their hexennial right to elect solons like Joe Lieberman to the Senate.

Mark is conservative, but the kind of guy who's willing to go on fringe left-wing TV or radio and have a real dialogue with the "enemy." So we got along. The conference took place in September, before SOPA was introduced, but after Wyden had put his hold on PIPA. Mark was on our side on the issue, but in high demand, so I'd had trouble pinning him down. But during one session in which neither of us was a participant I cornered him and convinced him to join me in the Green Room, where we co-authored this snippet of righteous propaganda:

"Have your own Web site?" the group wrote, "Maybe the government will shut it down tomorrow ... without any notice to you. Republicans are going to introduce this (bill) in the House, Democrats in the Senate. What? Big labor, Hollywood, U.S. Chamber of Commerce all in this together ... against you."

We linked it back to an article that Patrick Ruffini and I had written for the Portland Oregonian in support of Wyden's hold (we should acknowledge Demand Progress's Charlie Turner, who penned the first draft), and sent it to eight hundred thousand members of the Tea Party—via Facebook. And then I looked over Mark's shoulder as he reloaded the page about one hundred times—in a fit of juvenile delight that's all too familiar to me as somebody who also works in online activism—as he watched hundreds of people "like" the post.

We made sure that Capitol Hill newspapers got wind of the message, and within a few days it seemed like there was a veritable anti-PIPA Tea Party rebellion. It was exactly the break we needed, and, to be honest, we were giddy and felt a bit like alchemists: the political establishment was reacting to an article we'd planted about a Facebook post that we'd helped author, about an op-ed that we'd co-written. Working with our right-wing allies a couple of left

wingers—formerly of the Green Party, for chrissakes—had helped foment an (apparent) intervention of the scariest sort that the political establishment could imagine: an uprising by the Far Right.

But nothing of it felt false, as when it came to PIPA, our ideals and those of the Tea Party Patriots were genuinely aligned. It was indeed nauseating to watch Hollywood, the Chamber of Commerce, organized labor, and the leadership of both parties cavorting, so ready to line up against the interests of ordinary Americans. So it made perfect sense that we should cry out against it in harmony.

Shortly thereafter Tea Party Caucus chair Michelle Bachmann came out against the bill—first reported via a response she sent to a constituent who'd emailed her using one of Demand Progress's petition pages. As Politico noted at the time:

Bachmann's stance is a victory for critics of the bill, who have previously been mostly civil liberties groups, liberal lawmakers and trade associations that represent Web companies. Advocacy groups have been lobbying to get more tea party members and conservatives on board to speak out against the legislation and, so far, it seems to be working. The Tea Party Patriots recently lambasted the legislation on its Facebook page ...

Demand Progress, which describes itself as a left-leaning civil liberties group, has been working with Republican political consultant Patrick Ruffini to launch a bipartisan assault against the bill.

Bachmann's email responded to a message from a Demand Progress member who raised concerns over the PROTECT IP Act. The group hopes the 2012 presidential contender's concern about the bill will lead more conservatives to question its potential implications on innovation and First Amendment rights.

Around the same time as the Bachmann letter, we were delighted to see a story published by CNET under the headline: "Is Google lining up Republicans against antipiracy bill?"

People were really starting to take notice. It was a pseudo-investigative piece that tried to, as they say, follow the money. It connected dots, stumbling from point-to-point as spurred forward by the paranoid inklings of Content Industry operatives—who still couldn't fathom that they were up against something that was growing much broader and more powerful than Google alone.

It was sub-headed "Google has some interesting links to a right-wing political group called the Tea Party Patriots, which recently began criticizing the Protect IP Act, the bill that would make it easier for authorities to shut down pirate sites. Google opposes the legislation."

According to the article, "What supporters of Pro IP suspect is that Google is somehow responsible for the Tea Party Patriots' new found interest in copyright."

Said supposed links largely reduced to the fact that Meckler had co-sponsored that conference at Harvard.

Then there's Lawrence Lessig, a Harvard University professor who is one of the most notable proponents of free content and less restrictive copyright laws. Last week, he co-hosted a gathering called the Conference on the Constitutional Convention. The conference doesn't appear to have had much to do with copyright, but Lessig's fellow co-host was Mark Meckler, co-founder of the Tea Party Patriots.

This Lessig-Meckler connection triggered warning bells among Pro IP supporters.

For any number of policy and political impetuses, and because of the work of several advocates and hundreds of thousands of rank-and-file Americans, Republicans were starting to run away from SOPA and PIPA, and were posturing for political support from Internet users and Silicon Valley. Just a few months later during a live debate on national television Newt Gingrich, Mitt Romney, and the whole gang of presidential contenders would be tripping over each other to be the most adamantly opposed to SOPA.

## GAMERS AND JUSTIN BIEBER JOIN THE CAUSE

### DAVID SEGAL AND DAVID MOON

We anticipated little outcry from beyond the usual cadre of activists when Senator Amy Klobuchar sponsored S.978, an effort to subject online streaming to harsh criminal penalties. (It was later rolled into SOPA.) We first heard about the draconian prospective law through Mike Masnick's Techdirt blog. In a June 1, 2011 article he alerted readers to the ramifications of Klobuchar's proposal: "If you embed a YouTube video that turns out to be infringing, and more than ten people view it because of your link ... you could be facing five years in jail."

Demand Progress's membership had swelled to several hundred thousand, affording us a precious perch from which to sound the alarm about bad bills like this one. We dubbed S.978 "Ten Strikes" and blasted a call to action to our members. We were amused to see the "Ten Strikes" moniker catch on when we searched for articles about the bill—several Minnesota blogs and weeklies had alerted their readers to their senior senator's doings. It was particularly exciting since we were in the Twin Cities for the Netroots Nation conference in late June, a convening of online activists where we spent a week bending every last attendee's ear about Ten Strikes and PIPA.

Then we were absolutely astonished to discover that thousands of new Internet users were using our system to send emails to their officials opposing Ten Strikes. It was especially surprising since these concerned Internet users weren't coming to us through any one source. There was a sudden swarm of dozens of YouTube videos sounding the alarm. Some videos were crudely made and barely had a few dozens of viewers, while others had racked up thousands of views. But this decentralized YouTube mob helped generate over one hundred fifty thousand emails against the Ten Strikes bill in a matter of days.

Klobuchar's legislation was mobilizing entire online communities that certainly weren't renowned for political activism. We began noticing that video gamers in particular were trepidatious, and then furious, about Ten Strikes. The video gaming sites Game Informer and Shoryuken both posted warnings that Ten Strikes could make criminals out of those who videotaped themselves playing video games: known as play-through videos, gamers regularly use them to review new games, share tips on how to make it through tough levels, or just brag about their feats.

Shoryuken highlighted various categories of implicated activities:

"Just to hit you over the head with this, that means that if you stream a game like Street Fighter 4 or Starcraft 2 (or a movie or a song etc) only ten or more times in a full half year, and if you make a bit of money doing it, you either need to have a license from Capcom or Blizzard etc or you risk going to jail ... it almost certainly also includes recorded YouTube videos of copyrighted

audiovisual works, whether they be match vids, game footage/live shot hybrids, movies, TV shows, music, and so on.”

It was enough to make a game enthusiast go nuts. For the most avid video game players, such as Philip Burnell (aka DarksydePhil), online play-throughs were a key hobby and could generate thousands of views. But after finding out about the Ten Strikes bill, Philip Burnell used the YouTube video game channel he had operated for months to mobilize his viewers to oppose Klobuchar’s bill. In a tirade against S.978, Burnell sought to highlight “the unfair (and inadvertent) consequences” Ten Strikes would have on the Internet gaming community. Nearly seven hundred thousand viewers tuned in to watch his unvarnished, protracted, backlit tirade, and we could see that the Internet was beginning to use its strongest weapon—the ability to democratize the sharing of information—to save itself.

Incidentally, there’s an interesting ongoing discussion about the metaphysics of these videos as pertains to copyright law: no gamer traces the exact same path as he or she plays a game, so does a particular player’s handiwork amount to new intellectual property? Or is it a creation of the software’s originator, since all of the player’s moves are necessarily allowed for by the work of the engineers and artists who put the game together? It’s an intriguing, if obscenely esoteric, debate of the sort that might be fodder for an undergrad’s final paper in a media studies class, or ought to be had as technologists and hippies confab over peyote in the Nevada desert at Burning Man each summer—but suffice it to say that we don’t think the world should be such that the answers to these questions might determine whether or not somebody goes to prison or has to pay exorbitant fines. The fact that these considerations are even at hand is just further evidence that we’ve drawn copyright laws along ludicrously fundamentalist lines.

One ongoing criticism of our activism from certain quarters, particularly on this front but also on others, is the notion that even if the letter of the law allows for Terrible Thing X to happen, odds are that nobody’s going to go after the small fry, petty violator—the Feds will only prosecute the industrial infringers. This argument holds especially little water in the copyright realm, where music publishers have readily tried to squeeze teenagers for hundreds of thousands of dollars in statutory damages. We also know from several incidents outlined in this book, perhaps most starkly illustrated in the case of the Dajaz1 website takedown explicated by Joshua Bauchner in a later chapter, that Content Industry flaks have extraordinary influence over the government, including law enforcement, there being a well-oiled revolving door between the two realms. Readers might consider perusing Harvey Silvergate’s excellent “Three Felonies A Day: How the Feds Target the Innocent” whose thesis is that federal statutes are written in such an over-broad manner that the average American regularly commits unknowing felonies. We’re all sitting ducks, should we ever wind up in the sights of a federal prosecutor.

With the vein of gaming enthusiasts taking up arms against the Klobuchar “ten strikes” legislation, a population of largely previously apolitical people had taken to activism and helped stall out a terrible bill. As Fight for the Future launched that October, they had in mind the mobilization of an entirely different

crowd that was similarly predominantly apolitical: people who pay attention to Justin Bieber. (Full disclosure: Co-editor David Segal did work for FFTF through that fall, helping them get their email activism underway.)

Bieber got his start circa 2008 when a music promoter discovered YouTube videos his mom had posted of him singing other artists' songs. Klobuchar's bill could've turned him (more likely his mom) into a felon. FFTF's campaign entailed launching a satirical site that was to serve as the hub of the "Free Bieber" movement. Their crack design staff mocked up several images of the Biebs behind bars, which straddled the line between hilarious and genuinely disturbing—one had him stuck in a cell, crying a L'il Wayne tattooed tear, caught in the gaze of a much older inmate. Within a few days we'd struck the mother lode: a radio host confronted Bieber about the bill and the concocted controversy. His response was to deliver a rather heartfelt (though clearly teenaged) soliloquy about how important it is that people be free to perform and share music; that he loves watching fans' YouTube performances of his hits; and, most critically, that Amy Klobuchar "needs to be locked up, put away in cuffs."



An image created by Fight for the Future as part of their satirical "Free Bieber" campaign.

Demand Progress and Fight for the Future quickly made sure that all of the Minnesota press knew about the reigning king of pop's decree, and produced a 30-second commercial whose thrust was: "Everybody's out of work, yet somehow Amy Klobuchar's in a throw-down with a Canadian teenage pop star. What gives?"

We had pledged to get it into rotation for a week on cable stations in the Minneapolis-St. Paul area, and our strategy made it into the pages of *Politico*. On November 11, 2011, they wrote "two opponents of Klobuchar's bill ... are looking to buy 'a few thousand dollars' worth of ad time ... on major cable networks such as CNN, MSNBC, Fox and Comedy Central ... The ad features shots of Occupy Wall Street protesters and then fades to an audio clip of Bieber speaking out against Klobuchar ..."

Our ad campaign appeared to strike some nerves with backers of PIPA and Ten Strikes. On Friday, November 11, 2011, the spot was ready to air and we submitted both the ad and payment information to our Comcast sales contact, Mike in Minnesota. He promised to check back with us on Monday, so that our ad would start airing the next Tuesday. We never heard back from Mike, and instead later received a voicemail demanding substantiation for the claims in the ad. After providing Comcast with copies of articles and statements by attorneys documenting the potential ramifications of Klobuchar's anti-streaming legislation, Comcast still refused to air our ad.

Next we tried our luck with another Minnesota cable company called Charter Media. Just as with Comcast, our Charter Media sales rep Nicole was more than happy to try to reserve ad space for us. It seemed normal enough when she wanted to know who the clients were, and even to see the spot in advance. But after reviewing the footage and finding out that the client was Demand Progress and Fight for the Future, Nicole came back to us with an additional request: "Legal has asked for the substantiation. Can you send that please."

Once again, we forwarded line-by-line documentation about the potential impacts of Klobuchar's proposal, but this time Charter Media never even bothered responding. When I pushed Nicole for information about what was going on and how long ad approval would take, she acknowledged the unusual circumstances we were facing: "That is a really good question. I haven't had to do this yet this year ..." It was late October. The corporate backers of PIPA and Ten Strikes had decided to play hardball and were now doubling down on their ongoing media embargo by not only refusing to report on the legislation, but by actively censoring our political speech.

Some local affiliates had run stories on the Bieber-Klobuchar spat, but there was an ongoing, impenetrable national blackout on network coverage of this affair, the streaming bill in general, PIPA, and COICA before it. It would continue until well after SOPA was introduced. In fact, the hosts and producers of various programs made it known to us that they feared that they'd face professional repercussions for airing any criticism of the legislation.

We ended up spending our ad budget by targeting the Klobuchar ad at Minnesota YouTube viewers. The episode was a perfectly-packaged microcosm of what we worried we'd face at a much broader scale if bills like these were to pass, or if Net Neutrality is undermined: the conglomerates that run the media very much want to constrain their viewers from accessing information that might be used to the detriment of corporate interests.

In spite of the various impediments, Klobuchar and many Minnesotans were now well aware of our concerns, and we learned that we had unwittingly generated some collateral damage: Klobuchar's apparently (and completely understandably) mortified teenage daughter. And let that be a lesson to any Fortunate Sons and Daughters who might happen to read these pages: the rest of us rely on you guys to make sure your parents know what the Internet is, and to provide a check on their proclivities to let power go to their heads.

There's perhaps no better way to know that you're being effective than when you're taken seriously by your antagonists. A friend later related this

(paraphrased) vignette about a Klobuchar fundraiser that fall: the question-and-answer session at the \$500-per-head happening was winding down when a man raised his hand and opened his query with a cheeky “Senator, I just have to ask your opinion on a matter of utmost import.”

She answered, “Well, let me guess—does it have anything to do with a certain Canadian pop idol?”

“Well, no—I have no idea what you’re talking about. I was going to ask if you agree with Republicans who think pizza should be considered a vegetable for school lunch purposes.”

But the damage was done, and now she had to address the mop-topped elephant in the room. And she did so by launching into an ad hominem attack against Demand Progress (even though FFTF deserved the credit for enticing Bieber into the fray).

## CLASHES WITH THE BIG GUNS

DAVID MOON

As we meandered through the awkward process of helping to string together an anti-PIPA coalition, we found comfort, and even great pleasure, in a number of public skirmishes we had with the bill's major proponents: The Motion Picture Association of America and the Chamber of Commerce.

First, the MPAA accused Demand Progress of an inappropriate alliance with file sharing sites. On a May 24, 2011 blog post, the MPAA wrote: "in its latest campaign to generate attention, demandprogress appears to have allied itself with at least one—and who knows how many more—offshore rogue websites that promote the theft and illegal marketing of American products like movies, video games and software." Never mind that their only proof of an "alliance" was that a link to our website was posted on the popular file sharing site Demonoid. The Techdirt blog pointed out how ridiculous the MPAA's charges were: "[Demand Progress] has been doing a bang up job trying to point out problems with the PROTECT IP Act, and apparently the lovely folks over at the MPAA finally noticed, and decided that rather than respond with facts, it was instead going to smear the well respected organization in a blog post (which, of course, you can't comment on, because the MPAA knows that very few people actually support its stance)."

We took this as further evidence that we were actually having an impact. We were a small, underfunded, brand new shop that was regularly told that we were taking on the Sisyphean task of fighting a bill that was certain to pass. Very often, that felt like an accurate assessment of our predicament, but we saw these attacks as demonstrations that our opponents weren't so certain. Why else would they be taking swipes like these at the likes of us?

The sensational reactions to our work continued unabated. On October 28, 2011, an intellectual property attorney from the U.S. Chamber of Commerce posted an unusually screechy blog article criticizing us for characterizing SOPA as an Internet blacklist bill, as we had with PIPA and COICA before it. In his tirade against Demand Progress, Steve Tepp wrote:

Well, it looks like Halloween came a few days early for the anti-IP crowd this year ... First up is Demand Progress. Before they even saw the House bill, they started calling it the "New Internet Blacklist Bill." Blacklist? That sounds pretty bad. But before we get carried away, let's take a look at the actual language of the actual legislation. Can YOU find a blacklist? No? Can you find a list of ANY kind? No?

Oooh, oooh, wait. There's a study! ... Wow. So, the only thing Demand Progress can hang its hat on is a study and a report to Congress ...

Undeterred by the facts, Demand Progress continues to try to scare people with this rhetoric.

This was posted on a blog belonging to the Chamber of Commerce, the big business behemoth, the face of corporate America—and it was completely unhinged. It raised a few eyebrows, and one journalist sought a reaction from us, noting that the full-throttle attack “seems a bit unlike what they usually do.” But with each wild swing in our direction we saw further evidence that our action campaigns were making the backers of SOPA/PIPA at least a little bit nervous. And thus we pressed on ...

We didn’t realize this phenomenon had a name until reading the recent book, *Bailout*, by Neil Barofsky, who was the inspector general of the Toxic Assets Relief Program (TARP), or what most of us know as the bank bailout. It’s generally understood in political circles that it is folly to “punch down”: you don’t attack somebody who’s lower than you on the totem pole, or it gives your antagonist a chance to drag you down to their level and advance their cause.

And drag them down we did, gleefully using these attacks to excite our members and grow our organization. The Chamber of Commerce’s maniacal post became fodder for a fundraising appeal to our membership, and raised several thousand dollars. A few months after it launched, Creative America—an AstroTurf (faux grassroots) group that was funded by the major Hollywood studios—announced that it had achieved a membership of ten thousand PIPA supporters. We pushed our list to help us recruit ten thousand new PIPA opponents (deemed such once they’d emailed the Senate against the bill) in 24 hours. It took 72.

## LABOR SIDES WITH THE BOSSSES

DAVID SEGAL

As I've set about editing this book I've noticed that several essays espouse—or at least seem situated upon a background of—the libertarian economic tendencies that comport with the leanings of many people in the tech community. Let me try to add some balance.

I ran for city council in 2002 spurred in large part by a living wage organizing campaign in Providence, led by labor vanguard groups like Rhode Island Jobs with Justice and unions like the Service Employees International Union and the Hotel and Restaurant Employees Union. We were striving to enact legislation that would guarantee that full-time employees for the city and major city contractors earn at least \$10.19 per hour—not much to ask for in high-cost New England. Our efforts to pass the ordinance fell just short—our mayor flipped his position on the issue and brought a key councilmember with him—but several bargaining units that would have benefited from the law organized into unions and achieved wages at that level or higher through collective bargaining, and many of the activists who cut their teeth in that effort still serve as the heart of Providence's progressive activist community. Over the course of my near-decade in politics I racked up a 100% voting record as per the various unions' legislative scorecards, was endorsed by several major unions for my Congressional run in 2010, and regularly wore a Jobs with Justice hooded sweatshirt on the floor of the House of Reps. (I was pretty poor—we made about \$14,000 to serve in the Assembly—and there's a certain power of notoriety that follows from underdressing.)

As I closed out my tenure as a state rep in late 2010, it was thus terribly awkward to find that I was now lined up against much of organized labor, as unions stood with Hollywood and other business interests as they opposed the efforts of millions of Americans—including myriad union members—to defend the open Internet.

Silicon Valley tends to hold quite liberal positions on matters of social policy, to which I absolutely adhere: support for gay rights, drug policy and broader criminal justice reform, less militarism, and the like. But a substantial sub-portion of tech tends towards an anarcho-capitalist economic vision whereby an optimal society is one in which perfectly networked people-points engage in frictionless commerce, with very low taxes and a minimal social safety net, and in which unions—were they ever useful—are endemic to the ossified industrial structures that governed the Old Economy, and whose agitation unduly protects incumbents and generates economic inefficiencies. This is, in fact, much of the essence of the so-called California Ideology, an influential strain of Cyber Utopianism. (For a detailed historiography of these tendencies, watch any—ideally all—of Adam Curtis's wonderful films, especially *All Watched Over by Machines of Loving Grace*.)

I am not a Cyber Utopian. I think the Internet is critically important and has, and will continue to, improve peoples' lives the world round—but only so long as we fight to make sure it remains a force for the democratization of society, rather than a tool that the already-powerful can use to entrench themselves. The Internet can create efficiencies and reduce costs, but it doesn't inherently serve to reduce inequalities or otherwise create a more economically just society.

Government intervention in the economy is imperative to its functioning in any remotely humane fashion. Organized labor is as needed as ever, its atrophy over recent decades coinciding with, and helping stir, a vicious cycle that's led to vast wealth inequality. Just a small percentage of the last 40 years' worth of productivity gains have accrued to the average worker, with real-dollar median wages growing by about 20% while real GDP has doubled. The so-called economic recovery in whose midst we still struggle, four years on from the collapse, has skewed wealth distribution even further towards the already wealthy: the rich have scabbled back to where they stood pre-recession far faster than the rest of us. This is, in part, a direct consequence of the labor movement's too-limited influence over governmental decisions and boss-employee power dynamics: labor's weakened bargaining position within the workplace has made it easier for management to keep the bulk of profits for themselves, reducing employees' quality of life, and meaning that there's less money in the hands of people who are actually likely to spend it in the real economy.

Labor's diminished power over political actors is much of why the government's reaction to the economic crisis has been so pathetic. Deficit spending that's too little to replace lost demand—and insufficient to compel banks and the wealthy to recommence lending—has enabled a collapse in government revenues, which has, in turn, led to the elimination of public employees' jobs, remaining workers' income growth stalling out, and waves of panic over pension liabilities that wouldn't be a substantial burden under more sane national-level economic leadership. Now even Social Security and Medicare look likely to fall beneath lawmakers' axes.

Even were we all, indeed, the rational, omniscient, self-interested atoms posited by the California Ideology, it's clear that many economic problems would best be solved through collective action. Two illustrations that I hope might appeal to my data-driven friends in Silicon Valley and Alley follow.

First of all: there's an essential game theory problem that helps sustain the decrepit state of our economy—it can be illuminated by that most canonical game theory thought experiment, in fact: in the Prisoners' Dilemma, two partners in crime are hauled into jail and separated for questioning. If one snitches and the other doesn't, the rat walks and the one who stays quiet goes to jail for ten years; if each gives up the other, they both go to jail for three years; if neither talks, they both go free. In the Prisoner's Dilemma the rational decision, yielding the best-expected outcome for each criminal, has the pair ratting one another out, and taking the middling sentences. It's a tragic (for the criminals) function of the inability to engage in collective action, as in a world in which the duo could communicate with and trust one another they'd both keep their lips sealed and neither would go to prison at all.

Lack of confidence that investments in a struggling economy will pay off is a partial explanation for ongoing hoarding and liquidity traps. Nobody wants to stick their neck out on their own, without an understanding that other lenders are likely to start lending, and that consumers are likely to consume. Just as the prisoners would optimize their respective outcomes were they able to confer and act in a binding unison by which they agreed to stay mum, so too would our economy be best off if all of the economic actors agreed that they'd spend together, and kick-start a real recovery. That's another way of looking at some of the effects of deficit spending: a form of enforceable collective action, decided upon through the deliberation of our (somewhat) democratic governmental institutions.

This is not to say that our government's actions are determined in an altruistic fashion with the public welfare as decision makers' highest end—quite frequently the opposite, in fact. Which puts me and my progressive allies in the awkward position of arguing for the importance of intervention by a government that's so clearly corrupted by the overbearing influence of the wealthiest, many of whom strive to manipulate the levers of power towards the end of self enrichment and protection of the incumbent institutions that helped them achieve their riches to being with. We can surely improve upon this dynamic: public financing of elections, with one innovative such scheme proposed later in this book, would go a long way. It's not hard to see why many don't trust the government to help solve our economic problems, but the government's current failings don't mean that a near government-less society would yield better outcomes.

Secondly: During my time spent with the tech community I've heard many stirring soliloquies about Creative Destruction and the benefits that would flow to all humankind—new efficiencies, consumer surplus—were we to institute unfettered, no-holds-barred capitalism and just let 'er rip. But to engage in such paeans to capitalism is to recognize—and specifically lionize—the most brutal structural aspects thereof. Industries rise and fall, taking with them the livelihoods of untold workers who've invested their lives therein. If a given industry is in such a precipitous collapse its workers may have no other skills to parlay into basic sustenance, at no fault of their own. This is all the more reason for those who care about their fellow human beings to want to see a strong social safety net—even the likes of Hayek and Friedman, who are invoked as the spiritual leaders of so many on the modern Right, understood as much. There's also a modicum of rational self interest to be had here: if workers weren't (rightfully) scared to death at the prospect of losing employment, they might do less to seek government subsidy for industries that were in decline or in need of stark changes to their business models. Ahem ... Hollywood? Or the hotel industry, from the perspective of bed-and-breakfast facilitator Airbnb, or the taxi industry, from the vantage of the on-demand car service Uber, and on and on.

Specifically, government guarantees of health care—a Medicare-for-all program, more efficient than the private insurance system—and pensions more robust than Social Security—would give Americans some assurance that they wouldn't starve. They'd enable entrepreneurship, as health care access is a concern that forces people to scurry towards and hold onto jobs they don't want

instead of starting their own shops (though this predicament will be somewhat improved under Obamacare). The appropriate societal response to hard economic times and workers' desires for portable retirement plans isn't to convert traditional pensions into 401(k)s—rather, it's to institute a robust federal pension system. A step between here and there would be to adopt the plans most Europeans have access to—much more robust even under austerity than the crumbs we toss at American seniors. Such programs would also relieve employers of the burdens of carrying the cost of benefits and would generate economies of scale from which society doesn't benefit at present.

Some would assert that resources are scarce, that we must learn to do more with less. To the extent to which this is the case, it's a function of decisions made by politicians and financiers, not of fundamental economic limitations. Global warming and other physical resource constraints can be limiting factors, but in no meaningful respect is this what political actors with any standing consider when they make arguments about the supposed need to cut government spending. (For a better understanding of how government spending works, read the writing of any economist who identifies with the Modern Monetarist school.)

Despite the best efforts of our plutocracy, via the off-shoring of jobs and infrastructure and the apparent willingness to let the minds of myriad young Americans go to mush by denying them the jobs and skills development that would follow from a real investment in economic recovery, the potential productive capacity of this country remains quite strong, and will for at least a bit longer. (The children are our future! Save them from debt by cutting education and social programs which imbue them with the knowledge and skills they need to live full lives and which nourish them and their families.)

This is all to say: there are already deep, longstanding ideological fissures between Labor and (a substantial subset of) Tech. When considering debates wherein these divides manifest, I've usually landed squarely in line with the former camp. But not at all in the instance of COICA, PIPA, and SOPA: labor's role represented a terrible betrayal of the interests of the common American and the overwhelming majority of union members. It risked undermining the Internet—in its current form a godsend to activists for the respects in which it provides forums to inform, agitate, and organize. And it represents an at-least-partial antidote to a mainstream media that's increasingly antagonistic towards labor, as its ownership grows ever more concentrated in the hands of a few multinational conglomerates. (This is much of why maintaining Net Neutrality is so important: without it, the Internet could quickly become yet another tool by which the already-powerful can exert, concentrate, and grow their authority by determining what content users would have access to—a counterexample to any notion that the Internet must necessarily yield a more utopian society.) And, in particular, SOPA would have thwarted precisely those portions of the Internet that most abide by and facilitate the democratic impulse: those that allow for ordinary people to post and share content of their own creation.

There's always a symbiosis between labor and management. A company and its employees' bargaining units will squabble over pay, benefits, and working conditions, but not beyond the point where doing so threatens to undermine the

fundamental viability of the shop. Likewise, if there's a way to benefit a particular company or the industry of which it's a part, labor and management will team up to try to do so. So it wasn't a huge surprise to see many Hollywood unions line up in support of COICA, PIPA, and SOPA. In this statement from May of 2011 several entertainment industry unions used milquetoast rhetoric about protecting jobs and American consumers as they indicated support for the bill:

"As the Guilds and Unions that represent four hundred thousand creators, performers and craftspeople who create the multitude of diverse films, television programs and sound recordings that are enjoyed by billions of people around the world, we unequivocally support this bill which, by providing protection for our members' work, clearly shows that our government will not condone or permit the wholesale looting of the American economy and American creativity and ingenuity—regardless of how that looting is disguised on the Internet to fool the American consumer."

But the far-reaching impacts these bills would have had on rank-and-file Americans, and the lack of narrow benefit to most other union members—the notion of benefit to even Hollywood unions is certainly contestable too—made it surprising that so much of the broader labor movement weighed in in support. Not only was PIPA a priority for both Hollywood and its major unions like the Teamsters, but the analogous dynamic was playing out at the national scale, with storybook antagonists like the Chamber of Commerce and AFL-CIO both supportive, and even purveying joint propaganda at their various Capitol Hill lobby days. Here's what AFL-CIO President Richard Trumka wrote in the spring of 2011:

The economic well-being of workers in the United States—jobs, income, and benefits—turns more and more on our protecting the creativity and innovation that yield world-class entertainment, cutting-edge and sustainable manufacturing and construction, and disease-ending pharmaceuticals. In a tough economic time, the PROTECT IP Act will help to protect U.S. workers and consumers against digital thieves and counterfeit scammers.

Indeed, noting organized labor's support for the legislation was one of proponents' mantras throughout the battle. For Democratic lawmakers, standing in opposition to organized labor is not a prospect to be taken lightly, especially if one hails from a state like Oregon with a robust activist base. Just after he made it known that he'd filibuster PIPA in the spring of 2011, Hollywood exploited the unions' stances to try pressure Senator Wyden into standing down:

Senator Wyden has stated that he will try to prevent the full Senate from debating or voting on this critical legislation, claiming that it would "muzzle speech and stifle innovation and economic growth."

We respectfully disagree—and so do American workers. In a recent blog post, the AFL-CIO, which represents 12.2 million working men and women in this country, praised the PROTECT IP Act, saying it would preserve jobs and strengthen intellectual property rights.

The MPAA called us anti-labor too, in a typically shrill, several-hundred word May blog posting devoted to attacking our work:

“The website demandprogress.org, a paid lobbying organization that promotes itself as a progressive voice, forgets that being anti-labor is hardly progressive.”

It’s hard to know what the phrase “paid lobbying organization” is supposed to imply, coming from an organization whose executive director was paid \$1.5 million in 2011—or about six times as much as Demand Progress’s entire annual budget that year.

Demand Progress and Don’t Censor the Net quickly penned an op-ed for the Sunday Portland *Oregonian*, which posited our cross-ideological coalition as a counterweight to anti-Wyden collusion by Labor and the Chamber of Commerce.

And then things just got silly, as unions concocted ever more far-fetched pleas for support for SOPA/PIPA. I had a laugh with a prominent local union activist and member of the International Association of Fire Fighters after the IAFF released a letter in support of the legislation. “At the local level cities make tough choices every day, and lost tax revenue means fewer police officers and firefighters. First responders ought not to have to worry about losing their jobs on account of foreign based criminals counterfeiting goods and deceiving U.S. consumers online.” The letter continued, “Counterfeit batteries, gloves, brake pads, fire alarms, tourniquets, and fire extinguishers put us at risk.” The national Fraternal Order of Police joined the party around the same time. We tried to guess at what sort of deals must have been cut to elicit this degree of absurd support.

Labor’s support for SOPA/PIPA was by no means uniform: institutional leadership tended to support the bills, but without exception, actual rank-and-file union members and organizers whom I spoke to were aghast to learn of the work that labor officials were undertaking in their names.

And even some institutional players broke free from the apparent pro-SOPA/PIPA consensus. One unsung hero of this story is the Writers Guild of America, West, which in 2007 had gained the nation’s attention and sympathy when its members went on strike over DVD and new media residuals. (The Content Industry might point to the plight of its workers as it tries to railroad through Internet censorship legislation or sues teenagers for downloading music, but one need look no further than the writers’ strike or listen to any of myriad songs about exploitative record deals to gain a sense of just how much esteem and concern Hollywood or the record labels really have for the creators who’ve made them rich.)

The WGAW was strongly supportive of Net Neutrality regulations, and so had representatives on various media reform listservs that we used to communicate with other organizers over the course of the SOPA/PIPA battle. When someone from the WGAW responded to a notice that I’d put out about a key December conference call to say that they’d join, I was initially terrified that they were taunting us—letting us know that we’d have a narc on the phone

who'd be reporting back to Hollywood. But we were pleasantly surprised, and a bit humbled, to find this update about the WGAW's recent lobbying trip on their website even though the union had previously expressed support for PIPA:

"On the House side, Keyser and Barrios met with Reps. Henry Waxman, Howard Berman, and Janice Hahn. They thanked Waxman for his strong support of Guild issues and discussed concerns with the recently introduced Stop Online Piracy Act (SOPA). Because Berman is a co-sponsor of SOPA, the pair discussed their concerns with the bill's implications for competition and an open Internet. Although the WGAW strongly supports combating piracy, the competition, First Amendment, and due process concerns the bill creates must be addressed."

During the call we took a moment to pause and recognize the WAGW's work, and for them to be cheered by a cohort of web freedom activists that spanned the political spectrum from MoveOn to CATO.

One hopes that the WGAW's change of heart is indicative of a broader new sentiment within organized labor, and that unions will become a consistent ally of those who seek to defend online freedoms.

There's no reason to suspect that labor will do anything other than continue to support efforts to institute Net Neutrality regulation, and there are indications that the unions are making strides towards taking a more holistic, informed approach to Internet policy in general: several national-level activists have expressed remorse about the role that labor played during the SOPA/PIPA debacle, and the unions even proactively engaged us and other Internet freedom activists as they sought to work with us to combat attempts by the International Telecommunication Union (an agency of the United Nations, not a labor union) to assert greater, unaccountable control over the Internet this fall.

As Republicans make plays for financial support from Silicon Valley and electoral support from Americans who care about Internet freedom, Democratic partisans among us might ask that labor perform a more public expression of its contrition. They also ought reach out to the Silicon Valley entrepreneurs—especially those of my generation and younger—who have had limited prior interactions with labor, might not have a complete understanding of so much good that unions have done, and, sadly, are now even more disposed to look at them skeptically.

## TURNING THE TIDE ON SOPA

### JONNY 5

*Jonny 5, nee Jamie Laurie, is the singer for and founder of the band the Flobots. They are best known for the single "Handlebars" from their 2007 album Fight With Tools, which peaked at #15 on the Billboard 200 chart. The Flobots' new album, "The Circle in the Square", was released in late 2012. Laurie is a long-standing social justice activist whose affiliations include Rhode Island's Youth in Action and the Providence Youth Student Movement, the Colorado Progressive Coalition, and many more.*

The world is an island now  
The water level's rising  
Who will turn the tide?

Those are the words my band, Flobots, used as a thematic centerpiece for our second album, "Survival Story." They are meant to recognize our current state of global interdependence and transformation. The World Wide Web, clearly, is a, and perhaps the, fundamental reason for this new reality.

Ironically, another part of the new reality is that being a professional recording artist doesn't pay what it used to. When a product is essentially free it takes a lot to convince people to buy it. A lot of people like to say, "but you make most of your money on touring, right?" Unfortunately, this we don't. We still make it mostly on attempting to sell the music, we just make less money than we would have ten years ago. How much less? I've heard people say that everything has been divided by 4, but I really don't know, and I doubt anyone does.

If our primary concern were making money, this would all be cause for alarm, but fortunately, we have bigger fish to fry. Our goal as a band has always been to create music geared toward social change, to help foster social movements, and enhance local resilience through our work. Whatever our immediate financial interests may be, an allegiance to the global democracy movement comes first.

So, in the winter of 2011 when my friend David Segal approached me about creating a YouTube video in opposition to SOPA, I knew it must be the right thing to do, because I trust David to be on the right side of things. I knew that, despite the hanging questions for artists as to how we will survive transforming music industry, the answer would never resemble the heartless clampdown on fans proposed by SOPA. I knew that fans covering our songs at school talent shows and using our music as a soundtrack to personal slideshows deserve our gratitude, not legal action. I knew that my own creative endeavor at the time (posting a new rhyme a day for 365 days in a row) relied on the fair use of instrumentals found on YouTube.

I knew that I had to raise my voice.

What I didn't know was that in a few days, the entire Internet would be rebelling against SOPA, successfully turning the tide on a piece of legislation whose passage had days before seemed all but certain.

My testimony, which I had assumed would be a small quixotic gesture protesting a foregone conclusion, ended up being just one more voice in a resounding global chorus, one which simultaneously defended and demonstrated the power of a free and open Internet.

The defeat of SOPA was a true victory. But for those of us (un?)lucky enough to work as professional recording artists, the question that still looms is, how, or perhaps even if, we should be trying to make a living on our art. Do we forego labels and CD sales completely and take a leap of faith on Kickstarter? Do we have the kind of fan base that will support that? Is there a cloud-based model that is fair to artists?

To be honest, though I consider myself both an activist and a musician, I actually find myself surprisingly UNinterested in learning the ins and outs of the music industry itself; both the one that is dying, and the new one that is being born. I want our message to get out, and I want to be able to work full time as a musician, but how exactly that happens I don't particularly care. I want to create art that engages people to take part in transforming this world, but when it comes to my own place in a rapidly transforming industry, I would be happy to let someone else do it.

This, of course, is not really an option. We're all going to have to chart our own course, both individually as creators, and in dialogue with one another as a creative community. We're all going to have to care. Ultimately, the new direction will require the same faith that the old one required, a faith that if people find enough value in our art, we will be able to make a living at it. If we believe that, we're going to be alright.

### Leaks and Torrents and Sails Oh My!

An Open Source Rap by Jonny 5

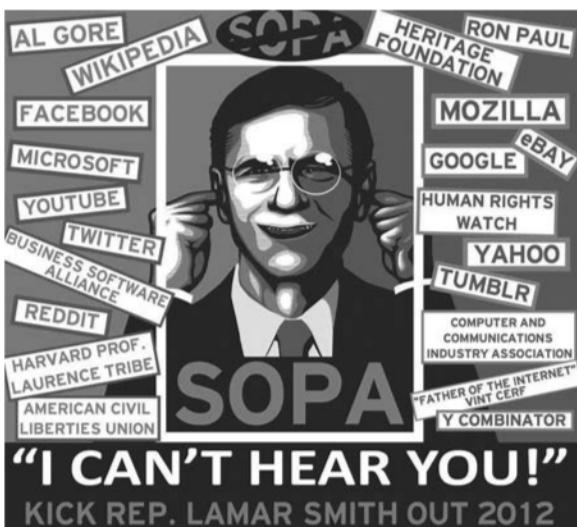
Leaks and torrents and sails oh my  
 leaks and torrents and sails oh my  
 leaks and torrents and sails oh my  
 the cracks in the surface are hailstone-sized  
 leaks and torrents and sails oh my  
 leaks and torrents and sails oh my  
 leaks and torrents and sails oh my  
 and everything depends who the tale's told by  
 the world is an island now  
 crowded but desolate  
 limited resources  
 forces to wrestle with  
 some try to chart but their course is directionless  
 so we built a vessel that's poised on the precipice

on the high seas seekin' refugees to rescue with  
personal floatation devices for the desperate  
leavin' a trail of green bottles with messages  
treasure's hidden in the crevices beneath our deficits  
by the time you get this it's  
gonna be expected that  
you can lend your breath to this  
mission and the effort this  
ships been invested in  
so we can press ahead with it  
you provide wind for the sales that's the etiquette  
but the seas change  
no warnings  
Leaks in the frame  
rein by the torrents  
and all aboard went forth in accordance  
pickin' at the floorboards and pullin'em towards them  
they took the bundles of wood for their fortune  
every one of them they wanted a portion  
some of them normally couldn't afford'em  
some of them could and just took'em from boredom  
and I wondered if I should thwart them  
and make'em stop like abortion  
but some of them were swordsmen  
and might get loud like distortion  
insistin' they should take it from me like foreskin  
so now I'm staring out at the north wind  
as things go south tellin crowds what's important:  
to maintain a platform  
to peak our performance  
to keep on course to reach these coordinates  
and the old days are over  
the vessel ekes forward  
she's okay if you row'er  
weather the torrents ripped off the mast'r not  
everything leaks now and the sales are lower  
so we're  
in the middle of nowhere  
but headed for a paradigm shift  
floating on a metaphor  
catch my drift  
with no stream  
everyone must subsist on protein  
if you blow steam  
listen don't think  
that I think that my "cop that shit" don't stink

but the water level's rising  
we're trying to turn the tide  
so I hope that our ship don't sink!  
everybody!  
leaks and torrents and sails oh my  
leaks and torrents and sails oh my  
leaks and torrents and sails oh my  
the cracks in the surface are hailstone-sized  
leaks and torrents and sails oh my  
leaks and torrents and sails oh my  
leaks and torrents and sails oh my  
and everything depends who the tale's told by

## WHAT WAS LAMAR SMITH THINKING?

DAVID SEGAL



As SOPA's sponsor, Rep. Lamar Smith became a popular target for Internet artists, satirists, and others looking for a villain in the fight. The art above was created by Chad Rocco and was a frequently circulated image among SOPA opponents.

Introduced a few days before Halloween, it's clear in hindsight that SOPA was a grab-bag full of unimaginably valuable treats for Internet activists—even if it at first looked like the Content Industry was absconding with all the candy. Protect IP was a very bad bill, but it was a bit too abstract to explain in a sound bite, and if, as Senator Wyden repeatedly asserted, COICA and PIPA were “bunker-busting cluster bombs,” that meant that SOPA was the Nuclear Option. The Internet Blacklist Bill framing had worked with our audience of grassroots activists, but it was difficult to take things to the next level and get the web platforms involved: Google, the music streaming service Grooveshark, and a few others had been tracking the legislation closely, but the likely impacts of PIPA were too nebulous to explain to tech start-ups with minimal or non-existent legal teams and which weren't attuned to (or actively recoiled from) whatever icky thing was going on in D.C., no matter its public policy implications.

SOPA would undermine all of the best parts of the Internet, forcing sites that relied on user-generated content to police that material before it ever even made it online. Foreign sites would have to prevent certain content from being uploaded or risk being blocked from American view. Domestic sites would have to scrub out any links to such blocked sites. And SOPA's authors had targeted the domestic web, via COICA and PRO-IP before it, betraying their ultimate

designs. All of that is what spurred millions of people into action and what convinced countless online platforms to mobilize their users.

It's impossible to know exactly what Lamar Smith was thinking, but if I may pull my stuffy old legislator's garb out of the closet it's been in for a couple of years and speculate: Smith thought he was being savvy. He'd introduce legislation that was more extreme than PIPA, making PIPA look reasonable, thereby helping ensure its passage: it would be the new "compromise" between the extremes of "leave well enough alone" and "that runaway train loaded up with dirty bombs that Lamar Smith introduced last week." Maybe, just maybe, he'd even get lucky and pass SOPA outright: Hollywood had its talons in the bulk of the Democratic caucus; the Chamber of Commerce could force enough Republicans to the table and offer them nose-plugs that they could use to avoid the stench of those pansy Los Angeles effetes whose bidding they were being compelled to do.

This sort of negotiation is standard fare in legislative bodies: Lawmakers are constantly introducing legislation that they never intend to see pass. One might be trying to make a particular piece of legislation look more reasonable, or to neutralize another bad bill: it's a strange metaphysics that governs the workings of a legislative chamber and the decisions by its leaders about which bills to move forward.

For instance, during most of my four years in the Rhode Island House of Reps, the Speaker of the House managed a detente between two wings of the coalition who backed him, governed by a farcical calculus housed somewhere inside of his cranium. There was an understanding that gay marriage and legislation to require a 24-hour waiting period before abortions were inextricably bound to one another: either both bills would move forward in tandem, or neither would proceed.

There's a broad base of conservative Democrats in deep-blue Rhode Island, so the waiting period would have vested, while gay marriage probably would've failed, and certainly would have been vetoed by our conservative Republican governor if it had managed to sneak through. (He'd even vetoed a bill I'd sponsored allowing one member of a domestic partnership to claim the other's remains and oversee his or her funeral.) The equation spurred a framework of corollaries that were even more absurd yet: when civil unions or other domestic partnership legislation inched forward, the anti-choice activists expected a bill in return—something lesser than a full-fledged waiting period: perhaps a pre-abortion ultrasound mandate.

I was usually happy to play the progressive activist and introduce bills that served a purpose even though they weren't meant to pass: one year a variety of vicious anti-immigrant bills came far too close to passage, so the next year we put in a menu of pro-immigrant bills, altering the metaphysical balance and neutralizing the bad ones—doing nothing became the compromise. A friend introduced a pot legalization bill, in part to make pot decriminalization more palatable, which in turn made medical marijuana seem more reasonable—and the latter two subsequently passed.

For all of his inanities, Glenn Beck was astute to have pinpointed the importance of what's known on the right as the "Overton Window"—that

portion of the political spectrum whose ideas are treated as part of the “legitimate” discourse—and the importance of having ideological vanguards to “move the middle” and broaden scope of the debate. I’m already lamenting the inevitable collapse in the spectrum of allowable discourse in Congress, now that the left and right poles—Dennis Kucinich and Ron Paul—are both departing. (I’m especially concerned about Kucinich’s departure, as the left fringe of the spectrum gets far less attention in “serious” circles than does the right.)

But there’s a danger in the sort of negotiation Smith was undertaking: if you propose something that’s too far beyond the pale you risk making a mockery of yourself and undermining the whole project. That’s what Smith did, and the poor guy surely had no clue what was coming. If Smith had simply introduced his own version of PIPA word-for-word it almost certainly would have passed. Instead we have him to thank for a newly politicized Internet public that will fight to make sure that nothing half as bad as PIPA ever passes again.

Once SOPA was introduced we could run to the highest hilltops in Farmville (are there hills in Farmville?) and cry out: “SOPA (or at least the line of reasoning that led to it) would shut all of this down! Would you people please start paying attention?”

And that’s what we did.

We shot out a Halloween-costumed write-up of SOPA to our members—“It’s Alive … It’s a grab-bag of Halloween goodies for a handful of big corporations—but for us it’s Frankenstein’s monster, cobbled together from half-born bills, set to suffocate free speech and innovation and terrorize consumers and Internet users”—and steered in a quick hundred thousand or so emails to Congress, asking members not to sign on as co-sponsors. We’d been buoyed by the low number of cosponsors at introduction—far fewer than had supported PIPA, even though it was drawing from a legislative body with more than four-fold the members—and the fact that they were only Hollywood’s hardest shills; we wanted to freeze out other potential backers before they became wedded to it.

Fight for the Future (for which I was doing some contract work at the time) took the lead in organizing the critical “American Censorship Day” in mid-November—described below, it’s when reddit and Tumblr formally joined the cause—and Demand Progress provided some tech support for them. The effort steered many hundreds of thousands of new constituent contacts to Congress.

Then Demand Progress worked with Senator Wyden’s office on a new tactic to help make contacting lawmakers more compelling, one that’s replicable beyond just this fight: Wyden had been threatening to filibuster PIPA since May, and his staff had been turning over what he’d actually do to eat up some floor time and turn the event into a spectacle (you don’t need to filibuster Jimmy Stewart-style under the current rules of the Senate, but you create more havoc and get more credit with your supporters if you do). We offered up a suggestion: no reading out of the phone book, no reciting Portland’s hippest recipes for free-range venison with ambercup, kale, and peppercorn sauce, or engaging with other traditional fodder for filibuster floor-time filling. Let us tell the Internet that you’ll read the names of people who send emails in opposition to SOPA/PIPA, announcing them as proud protectors of Internet freedom—that’ll really

get activists going make them feel like there's an extra value in emailing their lawmakers. His office, ever willing to collaborate with activists and help test out new tactics, bit.

I forced my CompSci Phd roommate to spend a Saturday and Sunday cobbling together a slapdash site to which we appended a call-to-arms video that we'd filmed with Wyden earlier that week. We emailed Demand Progress members to alert them to the senator's offer, and the idea took off. And it was heartening to see some of the more established progressive online activist groups like MoveOn—which we'd been leaning on for months—use this as their first foray into the SOPA/PIPA battle.

For better or worse, the bill died before Wyden had a chance to make good on his promise to read those names. I'd always envisioned him using the list to scold pro-PIPA senators by reading off the names of their states' residents: Katherine of Essex Junction, Jimmy of Brattleboro, Arthur of Provo, Melanie of Park City—an hour of floor time and he could've read the names of two-thirds of Patrick Leahy and Orrin Hatch's constituents. But I doubt that would've happened: For all of the talk of a Washington that's embittered to unprecedented extremes, the Senate is so faux-collegial that watching C-SPAN 2 gives me toothaches.

So there were cracks in the armor now: Nancy Pelosi, the leader of the House Democrats, had made her opposition to the bill known on American Censorship Day—via Twitter, no less. We'd collectively steered in a few million more emails to Congress. There was increased resonance among the public.

But Lamar Smith was still pressing forward, insisting that he would mark up the bill before New Year's and get it voted out of the Judiciary Committee, which he chairs.

## A PUNCH IN THE GUT

PATRICK RUFFINI

Throughout the summer, the bill's drafters on the House Judiciary Committee made public statements indicating they had heard the tech community's concerns, and that the House bill would work to resolve many of them. In the second half of October, it was clear that nothing of the sort had occurred. Rumors began to emerge that SOPA would be worse than anything we'd seen to date, with Demand Progress, Don't Censor the Net, the EFF and Public Knowledge sounding early alarms. PIPA's changes from COICA had been a mixed bag—it removed a dreadful "blacklist" provision to encourage domain registrars and Internet service providers to block an informally cobbled-together list of "rogue" sites, while adding in the right-to-sue and search engine liability. The authors of SOPA not only refused to walk back any of PIPA's most egregious provisions, but doubled down with new provisions bludgeoning the Digital Millennium Copyright Act's safe harbors for third parties like Twitter, YouTube, and Facebook.

The DMCA required any website, including social networks and search engines (termed "intermediaries" as they routed most of the link-clicks on the Internet), to take down specific links to offending content at the rights-holder's request. SOPA would go much further: takedowns of entire domains if owners were aware that their sites were being used to upload pirated content (alongside legitimate content), and continued to provide an avenue for that activity. This would create massive legal uncertainty for social platforms large and small, as it was a virtual certainty that any social or mobile startup would have users who would post pirated content at some point in time.

Looking back, while numerous players agreed that the December markup hearing in the House Judiciary Committee was the moment the legislative push effectively died, its introduction on October 26, 2011 definitively set in motion the chain of events that led to the Internet rising en masse in opposition.

Pre-SOPA, there was a sense that PIPA, though highly problematic, was not enough of a threat to Silicon Valley as a whole to inspire the companies to move their users to action. A top House aide interviewed for this book noted the widespread belief held by Hill staff that PIPA was simply not in the same league as SOPA; though distasteful, the Senate bill was a bitter pill that many tech companies could swallow with the right amendments. At the time, the best-case scenario was an amended PIPA that might placate the content industry for a few years.

Underlining this sense of inevitability, PIPA sailed through committee with minimal comment earlier in the year. The only company truly singled out by the Senate bill was Google, which would be held liable for pirate links in search

results. Yet as the process moved on, it seemed as though the content industry had ratcheted up the pressure on Congress to deal with other avenues of content discovery, like social media. Thus, SOPA could be read to cover social sites like Twitter and Facebook, demanding they actively take steps to prevent pirated content before it was posted. Not only were newer, venture-funded social and mobile startups the darlings of the Internet economy; they were exactly the tools one would use to defeat government censorship, whether earlier in 2011 in Egypt or, now, in the United States.

It was this dynamic, triggered by SOPA but not by PIPA, which caused the Internet—led by smaller players like Tumblr and reddit, more than by established players like Google—to go on nuclear alert. The added legal burden on Internet companies would fall less on large companies—Google could afford to spend tens of millions of dollars annually on a “content ID” platform for YouTube—than it would on venture-backed startups who wouldn’t get funded in the first place because of the legal risks associated with user-generated content. It was this point that was driven home by Brad Burnham of Union Square Ventures: many venture firms, including his, would not invest in music or video startups because of the likelihood they would be eventually be sued into oblivion. SOPA would take the same chilling effect, and apply it to the rest of the venture-backed technology ecosystem.

For entrepreneurs, engineers, VCs, and technology enthusiasts, the introduction of SOPA became a gut-punch moment that clarified the stakes for millions who identified with and made a living on the Internet. That’s when this became more than an issue, but a cause.

“We were very disheartened once the bill got introduced,” explained one source involved in the fight. “It took a lot of the wind out of our sails. We thought we had made a lot of progress. We thought we had convinced them policy-wise there was a better way to do this.”

From there on out, there would be no talk of a deal and no compromise. Even the Capitol Hill veterans on the anti-SOPA/PIPA team understood that this was now guerrilla warfare. And Shore and Jochum’s team understood if there was an enemy common to all legislative proposals, it was time. Hundreds (if not thousands) of bills are introduced every year to great fanfare and little opposition, yet only a handful see the President’s desk. In the vast majority of cases, bills don’t die because they are voted down; they’re simply not gotten to and fade away. Getting to a floor vote on SOPA or PIPA would have been deadly, as floor outcomes are pre-ordained. From a legislator’s point of view, SOPA had to be seen as too controversial to risk even voting on.

“If you’re the proponent, if you’re pushing legislation, your job is to get it introduced and get off the floor as quickly as possible,” said Shore, describing a death-by-a-thousand-cuts victory strategy where the delay itself could be used to sow doubts about SOPA’s viability. “What I wanted to do was create a dead elephant carcass rotting in the sun with vultures and flies—and the longer that dead elephant carcass just sat in the sun, the more I knew we could kick the can and win.”

Meanwhile, as November rolled around, it would be clear that SOPA would be no PIPA in terms of near-unanimous assent from both sides of the aisle.

On October 1st, the Tea Party Patriots had made good on a long-standing commitment to speak out on our side of the issue. Numerous reporters had been calling me, looking for something to write about the populist, Tea Party opposition angle, and overnight, this development gave us exactly the boost we needed.

Two weeks later, seemingly out of nowhere, Tea Partier (and presidential candidate) Michele Bachmann added fuel to the fire with a constituent letter opposing the Senate bill. “I have serious concerns about government getting involved in regulation of the Internet,” wrote Bachmann. “And about ambiguities in this legislation which could lead to an explosion of destructive, innovation-stalling lawsuits.”

Following the bill’s introduction, Smith had scheduled a quick hearing on the bill for November 16th, and it was clear it would be a show trial. Of the six witnesses invited, only one would come from a group not supportive of the bill, Google’s copyright counsel Katherine Oyama. By deliberately ignoring Internet engineers, public interest groups, and the startup community, and singling out the biggest commercial player, Smith hoped to portray the opposition as one driven entirely by Google. Numerous others who volunteered to testify were shut out.

This moment was recalled by politicos and technologists alike as a turning point. Congressional hearings were supposed to be dispassionate fact-finding missions, but a bill with drastic effects on the architecture of the Internet featured not one engineer. “It was like an inquisition court for the MPAA,” recalled a senior House staffer, who was appalled at the damage this could do the public’s perception of the institution. The notion that Congress wouldn’t even listen to technical concerns probably radicalized Silicon Valley to the point where something big, like a blackout, was seen as the only way to get a point across.

Ahead of the hearing, ten House members—among them Ron Paul, Jared Polis, Issa, and Lofgren—sent a letter to Smith and ranking Democrat John Conyers warning that SOPA would target domestic websites and urging them to go slow. While Silicon Valley was heavily represented on the letter, the signatures also began to tell the story of the coalition’s broadening reach, with representatives from tech corridors in Austin, Boulder, and Pittsburgh signing on. The letter also meant that there would be a divided house on SOPA right off the blocks—the opposition numbered a dozen members, to the twenty-four who had signed on as SOPA co-sponsors as of November 15th. While not numerically even, it was better than the 40-to-1 split that persisted in the Senate. And it would mean that there would be substantial opposition in both parties, raising the specter of chaos on the House floor.

It was in late October, once the opposition had something concrete to rally against, that the lobbying effort kicked into high gear. And “high gear” for

technology companies still meant they were vastly outnumbered on Capitol Hill by their counterparts from the entertainment industry.

One lobbyist involved in the anti-SOPA effort described the scene early one morning in the cafeteria at the Rayburn House Office Building at the height of the debate. Their team would convene at around 7:30 a.m. for member and staff meetings, and had so much ground to cover with that no more than one person was ever in meeting with a member or staffer at once; usually, in-house lobbyists and consultants teamed up. They also noticed the entertainment lobby was out in full force, with around fifty lobbyists convened at eight or nine tables pushed together. The anti-SOPA lobbyists set forth for their first wave of meetings, and reconvened at 9 a.m.

When they returned, they noticed something odd: few, if any, of the pro-SOPA lobbyists appeared to have moved from their seats in an hour and a half. After their next round of meetings, they returned to compare notes and found the scene almost unchanged, with dozens of the same lobbyists still milling about in the cafeteria. The organizations that supported SOPA had spent \$94 million on lobbying activity up to that point in 2011 (and \$185.5 million the year before)—compared to \$15.1 million across the entire technology industry. By all accounts, the proponents were running a professional, by-the-book lobbying operation, and doing so at massive scale. Yet, the lobbying colossus we all feared was starting to look like a sleeping giant.

The content industry had showered its attention on a few go-to members on its target committees, primarily Judiciary (which had a heavy IP emphasis). That a near-unanimous consensus on the committees came about, with both Chairmen and ranking members leading the way, was a testament to the effectiveness of the MPAA and RIAA, and the longstanding bipartisan consensus on IP enforcement, spanning Presidents and Congresses. SOPA and PIPA were a direct assault on the Internet coated in banality. The content industry had carefully cultivated a sense that Congress should simply acquiesce to more copyright enforcement, as they had done overwhelmingly countless times before.

Because passage in the Judiciary Committee seemed assured, the anti-SOPA lobbyists had to hustle and get creative, going places where Hollywood's underworked lobbyists wouldn't. They talked to freshman members on the Government Oversight committee, who might be looking to do a favor for their chairman, Darrell Issa. More generally, they viewed any backbencher without a previous history with Hollywood as a potential get. They also talked to lawyers at the Congressional campaign committees, explaining how the bills could be used to target campaigns that relied on the fair use exemption to copyright their advertising. (Having worked with campaigns, this was an issue I had faced numerous times before—and also exploited with Republicans, who often bore the disproportionate share of copyright complaints from left-leaning artists.)

Another X-factor in the debate was the role of an emerging crop of young, social-media savvy staff on Capitol Hill, and the subsequent attention that Hill

staff and even some members themselves paid to their social media feeds. More than one email or Twitter direct message exchange with our allies in political or communications roles went like this: Except for our LA [legislative assistant] on this issue, we all hate this bill.

We will never know who was present at every meeting, but it seems safe to assume that pro-SOPA lobbying efforts didn't extend far beyond members and staff directly involved in the issue. Yet it was this emerging crop of digitally-savvy communications staffers who were among the most vocal in raising red flags with their bosses after witnessing the outcry on Twitter. In many cases, these relatively junior staff had the ear of influential members with decision-making authority.

The pathway to influencing this staff was more direct than a lobbying meeting; they read and write on Twitter. While only a handful of members (like Missouri Sen. Claire McCaskill or Iowa's Chuck Grassley) are known for tweeting themselves, a handful of other members—particularly those in leadership positions—have made social media the province of a more senior staff member who often has the ear of the member. And when an issue was exploding on Twitter or reddit, these staff became the default go-tos on all things Internet.

"House Judiciary is embarrassing our majority today," an aide direct messaged me during the December 15th SOPA markup. "You and everyone hate this bill, right?" emailed a press secretary for a senior Republican member. Internal debates over whether individual Republican member offices would release statements condemning the bills involved twenty-something communications and social media staff who were experiencing the outcry first-hand. When rattled RIAA lobbyists arrived to discuss objections to the bills with the office of an influential Republican member, they expressed marked displeasure with a staffer's Twitter activity.

In the case of some members, social media shaped reactions even more directly. Republican Rep. Tim Griffin of Arkansas, a former colleague of this author, was initially a SOPA co-sponsor on the Judiciary Committee. In his statement switching his position the day of the blackout, he cited concerns raised by his constituents on Facebook and Twitter. Nor was this lip service: He tweets himself and has used his personal Facebook profile to solicit feedback on issues being voted on in the House.

Larger Senate offices who would later announce their newfound opposition via social channels would proudly report back on the record number of Facebook likes these announcements had gotten, seeing firsthand how fiercely protective their constituents seemed to be when it came to their online rights. For more than a decade, Congressional offices felt increasingly disconnected from their constituents. Mail wasn't getting delivered post-9/11 and most of the email was spam. During SOPA, social media showed its potential to forge an authentic and real connection between the public and their representatives.

As the debate grew larger and more public, Hill reactions seemed to become more reflexive and automatic, driven by a growing anti-SOPA political

consensus. This was the actualization of a parallel reality that groups like Demand Progress, Fight for the Future, and ourselves had been nudging along in relative obscurity for the past several months. In this world, SOPA and PIPA were dangerous encroachments on our rights that would spawn universal revulsion from the online world. We believed it, but few others did; bloggers and interest groups who were approached about making statements months earlier, to chilly or no response, now gleefully weighed in bashing the bills. Post-markup, the debate seemed to be on autopilot, at least to those of us on the outside.

## WAKING THE SLEEPING GIANT

### TIFFINNY CHENG

*Tiffiny Cheng co-founded Fight for the Future with Holmes Wilson in the fall of 2011. They'd previously started an Internet freedom/copyright reform group called Downhill Battle way back in 2003. FFTF is dedicated to protecting and expanding the Internet's transformative power in our lives by creating civic campaigns that are engaging for millions of people. They played a critical role in organizing protests like American Censorship Day and the wildly successful SOPA Blackout of January 2012. (Demand Progress coordinated closely with FFTF, and co-editor David Segal worked for them a bit as they got underway.)*

On January 18, 2012, the day of the Internet blackout, the Internet did more than just kill some bad legislation in Congress. On that day, millions of people showed the world that the networks and technologies they had developed over the past couple decades were capable of introducing real democratic participation to the American political process. We learned that politics doesn't always have to be controlled by political parties, corporations, and special interest groups. We showed that regular people—*independent* of entrenched organizations and unaided by infusions of cash—can in fact win.

With more money than ever flowing through American politics, and the media more consolidated and more dependent on corporate interests, how exactly did the Internet pull off such a major win?

From the first second they realized the disruptive (and potentially very lucrative nature) of the Internet, the copyright and content industry—think Hollywood, Internet service providers, Big Media—have been trying to wrest control of it from the mostly horizontal networks that have defined it since its creation. It's what they did with radio and television (anyone remember free TV?), and it's what they will try to do with every future technology that revolutionizes content distribution by making it more horizontal, and less top-down. Armed with gargantuan lobbying budgets and flush with money to donate to campaigns, these industries will spare no expense to control both what content is allowed to flow on the Internet as well as how this content is distributed.

But here's the rub. From its very inception, the Web's open architecture has been a given, and its users have come to expect that they can connect to one another without impediments and express themselves without being censored. There are no formal strictures, but it's an unspoken right—and one that's yelled about quite loudly when it comes under threat.

Recognizing how pervasive and dearly-held these values are, the industry has taken a surreptitious route, exploiting copyright (jobs losses!) and security (terror!) laws as vehicles to make unpopular policy changes. Copyright is perceived as arcane and deadly boring, and nobody would dare throw a wrench into the machinations of the national security complex, so these “fine print” regulations easily fly beneath the public's radar.

And because many of the players behind these bills are responsible for feeding the public infotainment pabulum instead of real news, they assumed no one would notice or care anyway.

This time, anyway, they were wrong.

Power to the wonks: while it's true that developments in Internet policy—particularly copyright issues—are hardly the subject of *People* magazine, over the past decade, a grassroots faction of media reform advocates and activists has emerged as a vocal movement. For years they have been warning the public about threats to the sanctity of the open Internet, using terms like Net Neutrality that made most people's eyes glaze over. And that was one of the most successful pre-SOPA branding and legislative efforts! Unless we acted to pass laws that would prohibit government or industry from blocking legal content, they cautioned, players like Comcast, Verizon, and even repressive regimes, would be able to seize control of the most transformative technology of all time. But few listened.

Then, in 2011, under the pretext of protecting the rights of artists, the corrupt and very powerful copyright industry spent a record \$92 million on a push for the House's Stop Online Piracy Act (SOPA) and the Senate's Protect-IP Act (PIPA). These laws—laws that could censor or even shut down any website without due process—faced minimal public resistance despite their stifling impact on entrepreneurial, intellectual, creative, religious, and political expression. With overwhelming bipartisan support, their passage was seen as inevitable.

When SOPA and PIPA were poised to be introduced in Congress, some of the best Internet activist groups and blogs started to sound the alarm. Then, in early October, Fight for the Future (FFTF), a small upstart group of technologists with deep roots in the digital grassroots organizing arena, began brainstorming about how to set off a much needed viral distress signal. Our first major salvo was an anti-PIPA video released by FFTF's 501(c)3 arm, the Center for Rights—over the next few months it was viewed more than four million times on Vimeo and YouTube.

When SOPA's language was finally released, and after speaking to policy groups on the impact and likelihood of these bills passing, we believed that our only chance to stop these bills would be to mobilize millions into a unified, organized, and massive protest. We knew the Web was large and increasingly integrated into every aspect of people's lives. We suspected—and were right—that using the appropriate strategies, we could unleash unprecedented public power.

During a freak snowstorm on Halloween, FFTF discussed how disturbed we were by what SOPA would do if it passed. We realized that if SOPA passed, we could wake up someday to see some of our favorite websites seized by the government without due process or even a real warning. That became the driving concept we latched onto: we'd work to raise awareness of the censoring power of these bills by convincing websites to "take down" their own sites in an Internet-wide protest.

As an early salvo, FFTF began to plan a day of protest called “American Censorship Day” on November 16—the date of the first SOPA hearing. We proposed that websites display our “Contact Congress” widget tool designed as a “government seizure” message on the front pages of their site or, on the suggestion from Harvey Anderson at Mozilla, blackout their logo. Our “Contact Congress” widget, built with the help of Aaron Swartz, gave sites, blogs, and individuals a way to further spread the word and at the same time protest SOPA. (This tool and associated site in particular set the messaging and tactics for the January 18 blackout to come.)

The initial groundwork of the SOPA fight was hashed out by phone and over email, but to spread the message far and wide we knew we needed to work with policy, academic, and advocacy Internet policy groups and operators of larger websites. First we approached our closest allies, Demand Progress, Public Knowledge, and the Electronic Frontier Foundation. We then reached out to friends we knew at Mozilla, Techdirt, Boing Boing, Hype Machine, Open Congress/Participatory Politics Foundation, and Free Software Foundation, who agreed to sign on.

To get the ball rolling, FFTF worked with Demand Progress and individuals like *Hacking Politics* contributor Elizabeth Stark to organize a brown bag gathering at Mozilla attended by representatives of CDT, EFF, Public Knowledge, Union Square Ventures, Yale and Stanford Universities, Silicon Valley, and others.

These groups joined together on a listserv that became the core venue for anti-SOPA activist organizing over the months to come. Ernesto Falcon at Public Knowledge led legislative strategy on the mailing list and on conference calls. His timely work on the Hill and when he interfaced with grassroots groups was essential. Blogs used videos, infographics, and info sheets to report on the issue.

We began to approach more friends and more people we knew at sites, like reddit, Wikipedia, and Google, who, in turn, knew more people at sites like Scribd and Urban Dictionary. Many Wikipedia users were individually interested in participating in a blackout, and we got the support of the Wikimedia Foundation, but we were told that the decision for Wikipedia to participate in the blackout would require a community-wide conversation and decision-making process. We followed their advice and posted the idea of Wikipedia blacking out on the Village Pump section of Wikipedia, where active users congregate to discuss meta-concerns about the site. We crossed our fingers. Elizabeth Stark reached out to sites like Tumblr and 4chan. Aaron Swartz and David Segal spearheaded outreach to progressive “Netroots” groups like Avaaz, Credo, and MoveOn.

Twitter was chirping about the following day’s protest. In the evening, when 4chan’s founder tweeted that he wished he could support American Censorship Day, we responded immediately and were buoyed by the potential for small ideas to grow. We still did not know if the site itself would participate.

On November 16, huge sites like reddit, Mozilla, Boing Boing and 4chan either linked to our “Write Congress” pages, or included our widget on their

site. In the early morning, we got a call from Tumblr who wanted to make sure we could handle the volume of traffic. We were definitely ready.

Tumblr went above and beyond the call of duty with one of the most creative actions of the protest: they blacked out the dashboards of their over sixty million members, the overwhelming majority of whom had surely never heard of SOPA, or ever engaged in political protest.

Whether or not we'd sunk the bill was still unclear, but the fruits of the campaign were many: it generated over two million petition signers as well as two million emails and eighty-four thousand calls to Congress—four calls per second from Tumblr users alone. Videos and infographics built for the event eventually attracted over six million views and almost three million views, respectively. This was the first major attempt by Internet platforms to mobilize their users en masse. Rep. Zoe Lofgren redacted the logo of her Congressional website. Google, Huffington Post, and AOL placed a full-page ad in the *New York Times* about SOPA. And there was a crack in the armor of the Democratic Party establishment, which had been largely supportive of the bill: responding to the day of protests, Nancy Pelosi tweeted her opposition to SOPA.

American Censorship Day successfully turned SOPA into a viral sensation, but the bills were still, somehow, expected to pass. Our work served to set the stage for an even larger protest to come on January 18. Coming up, there was still the SOPA committee hearing and a final vote on PIPA in the Senate. Ernesto at Public Knowledge made us well aware that we needed further action, and kept the SOPA listserv where activists undertook most of their coordination up to date on the latest legislative events. FFTF and its allies kicked into even higher gear, seeking to expand the number of participating websites.

## WHO'S CRAZY NOW?

AARON SWARTZ

There was probably a year or so of delay. And, in retrospect, we used the time to lay the groundwork for what came later. But that's not what it felt like at the time. At the time, it felt like we were going around telling people we thought these bills were awful and, in return, they thought we were crazy. I mean, kids wandering around waving their arms about how the government is going to censor the Internet? It sounds crazy.

You can ask my friends. I was constantly telling them about what was going on, trying to get them involved, and I'm pretty sure they just thought I was exaggerating. Even I began to doubt myself! I started wondering: was this really that big a deal? Why should I expect anyone to care? It was a tough period.

But when the bill came back and started moving again, it all started coming together. All the folks we had talked to suddenly began really getting involved—and getting others involved. Everything started snowballing.

It happened so fast. I remember one week, I was having dinner with a fellow in the technology industry. He asked what I worked on and I told him about this bill.

"Wow," he said. "You need to tell people about that."

I groaned.

And then, just a few weeks later, I was chatting with this cute girl on the subway. She wasn't involved in the technology industry, but when she heard that I was she turned to me, very seriously, and said "You know, we have to stop SOPA."

Progress.

But that's illustrative of what happened during those couple weeks. Because the reason we won wasn't because I worked to stop SOPA or reddit did or Google or Tumblr or anyone else. It was because there was this enormous mental shift. It was suddenly everyone's responsibility. Everyone was thinking of ways they could help—often clever, ingenious ways. They made videos and infographics and started PACs and designed ads and bought billboards and wrote news stories and held meetings. Everyone wanted to help.

I remember at one point during this period, I helped organize a meeting of startups in New York, trying to encourage everyone to get involved in doing their part. And I tried a trick that I heard Bill Clinton used to fund his foundation, the Clinton Global Initiative. I turned to every startup founder in the room in turn and said "What are you going to do?"—and they all wanted to one-up each other.

If there was one day that this shift happened, I think it was the day of the hearings on SOPA in the House, the day that we got the phrase "It's no longer OK to not understand the Internet." Something about watching those clueless members of Congress debate the bill, watching them insist that they

could regulate the Internet and a bunch of nerds couldn't stop them—that really brought it home for people. This was happening. Congress was going to break the Internet and it just didn't care.

I remember when that moment first hit me. I was at an event and I got introduced to a U.S. senator—one of the strong proponents of the original COICA bill. And I asked him why, despite being such a progressive, despite giving a speech in favor of civil liberties, he was supporting a bill that would censor the Internet.

And the typical politician's smile faded from his face and his eyes started burning a fiery red. And he started shouting. Something like, "Those people on the Internet!" He yelled, "They think they can get away with anything! They think they can just put anything up and there's nothing we can do to stop them! They put up everything! They put up the plans to our fighter jets and they just laugh at us! Well, we're going to show them. There's got to be laws on the Internet—it's got to be under control."

Now, as far as I know, no one has ever put the plans to U.S. fighter jets up on the Internet. I mean, that's just not something I've heard about. And there's absolutely no way whatsoever that COICA, PIPA, or SOPA would've addressed that issue: it's simply not what the bills were constructed to do—even a cursory reading of them makes that evident. But that's sort of the point. It wasn't a rational consideration—it was an irrational fear that things were out of control. Here was this man, a United States senator! And those people on the Internet? They were just mocking him. They had to be brought under control. Things had to be under control.

That was the attitude of Congress. And just as seeing that fire in the senators' eyes scared me, I think it scared a lot of people. This wasn't the attitude of a thoughtful government trying to resolve tradeoffs in order to best represent its citizens. This was the attitude of a tyrant.

And the citizens fought back.

## NEARING THE POINT OF NO RETURN

DAVID SEGAL

As a former legislator, I see a committee vote as a key choke point—and typically a point of no return: if a bill makes it through committee it typically means that it has the backing of legislative leadership and that it's greased and ready to go before the full floor for a final vote, where, for having leadership's backing, it's pretty certain to pass. Floor votes are theater. If it fails to make it through committee after an earnest push, it's likely not going anywhere anytime soon.

To most of the public, a mid-December committee vote is but a form of legislative arcana that's much less interesting than getting blissful on egg nog. It's much easier to rally people to take action in front of a floor vote, even though the outcome of such votes is almost always pre-ordained and quite unlikely to be influenced by public pressure.

There was a standing sense that we needed to pull together another meeting of Internet and activist big wigs to try to mobilize more people for the next round of the fight, whenever that might be. I worked hard to convince as many people as possible that it was RIGHT NOW, before the scheduled "markup" of SOPA in the House Judiciary Committee.

A core group of us—Holmes and Tiffiniy at FFTF, Elizabeth Stark, Brad Burnham, and Aaron and I—began to organize in New York. (The Silicon Alley folks, for whatever reasons, got mobilized in opposition to SOPA far faster than the West Coast.)

Brad leaned on his portfolio companies to participate, and with that came a scatter shot of some of the moment's most influential social media start-ups, and a home base for the meeting: Tumblr's hipster-chic offices in lower Manhattan.

We asked Congresswoman Zoe Lofgren to open the call, and she quickly accepted: her gravitas would help draw people in, and she would be able to walk us through the nuts-and-bolts of the markup process. And the techies whom we were hoping would participate would be impressed by her savvy about issues that many of them seemed to assume every last member of Congress was completely ignorant of. (A handful of them actually know a thing or two, and several others are at least aware, and willing to admit, that they don't know much.)

Millions of people had already joined forces to fight SOPA and PIPA—but that work had overwhelmingly taken part in the virtual space. For me a "meeting" used to mean a face-to-face encounter around a bulky wooded table at the State House or City Hall; now it meant any of dozens of conference calls that took place two or three times a day with people whom I'd never met in real life.

Part of me longed for more real, in-person negotiation and collaboration, and the Tumblr meeting served that purpose and has remained an important marker when I look back on organizing efforts of last fall and winter. Nearly

one hundred people participated, about half of them in person and half on the phones, from throughout the country. Participants ranged from reddit and Tumblr employees to progressive MoveOn organizers to libertarian wonks at Cato, and the meeting provided me with the sense that this was coalescing into a real movement. We were now a team that actually identified as such, with a clear, unified purpose at hand. The mood was upbeat, with a newfound sense that we could win this fight, and the Holiday spirit was in the air: reddit's Alexis Ohanian showed up in costume, just back from a flashmob of Santas.

Lofgren implored us to turn up the volume of emails and phone calls—the notion that we should “melt the phones” on Capitol Hill was ubiquitous, but I can’t recall whether or not she uttered that precise phrase. We immediately started brainstorming new sites and tools that we could use to make that happen. Demand Progress and Fight for the Future (who generally had access to a more robust tech team than we did) launched a refresh of several sites and conspired on activism tools, the most novel of which (FFTf’s brainstorm) allowed users to “self-censor” posts to Facebook. Their friends would need to email Congress in opposition to SOPA in order to read the text beneath the redaction.

At this point we’d been posting updates about COICA, PIPA, and SOPA to the websites FireDogLake and DailyKos for well over a year as part of my attempt to rally the Left in opposition; we did the same now, with the sense that people were finally attuned to the cause, and invested in winning it. Here’s one version of an exhilarated summary of the Tumblr meeting we posted to such sites and several listservs that weekend, which outlines the game plan we’d concocted to support our allies like Lofgren as they carried our water through the markup.

**ACTION NEEDED THIS WEEK: JOIN THE FIGHT AGAINST THE STOP  
ONLINE PIRACY ACT (SEE BELOW)—PLEASE FORWARD THIS, POST TO  
LISTS, BLOGS, ETC.**

- Please email David Segal at [David@DemandProgress.org](mailto:David@DemandProgress.org) if you want to receive direct updates as action pages and tools go live

This Saturday, more than seventy representatives from leading tech companies and advocacy groups from across the political spectrum participated in a meeting to coordinate action against the Stop Online Piracy Act (SOPA). The meeting, which included leaders from Tumblr, Foursquare, Etsy, Kickstarter and reddit was remarkable for the array of participating organizations and its focus on how to mobilize to inspire millions of Americans to take action to tell Congress that this bill is deeply flawed.

Representative Zoe Lofgren opened the meeting with an overview of the current state of the legislation, emphasizing the need for Americans to call their representatives **EARLY THIS WEEK** to voice their strong discontent with the bill: It is slated for a vote in the House Judiciary Committee on **THURSDAY**.

Please read the below to find out how you can get involved. If we're going to beat SOPA—and future bills like it—we must expand the network of involvement fast ...

Action Plan: 12/15 House Judiciary SOPA Markup

The most important thing to know:

We have the best chance of making a difference on this bill if we can push hundreds of thousands of calls into the House of Representatives Monday through Thursday. This is because it's crucial our voices are heard BEFORE the bill enters the markup (voting) stage in the House Judiciary committee.

Here's what you can do:

- 1) Use whatever means necessary to drive users to our central portal—[FightForTheFuture.org](http://FightForTheFuture.org)—where people will be prompted to call their House representative and given the tools to know what to say and how to say it.
- 2) Spread our censorship tools—please visit [AmericanCensorship.org](http://AmericanCensorship.org) to find a tool that lets anyone redact portions of a tweet, Facebook post, blog post, etc. The redaction will be a link back to the [AmericanCensorship.org](http://AmericanCensorship.org) page to drive calls.
- 3) Drive people to [IWorkforTheInternet.org](http://IWorkforTheInternet.org) to post pictures of themselves to tell the world that the Internet is an engine of jobs growth in this country.
- 4) Develop your own tools to drive calls to the U.S. House of Representatives (calls to the Senate are not a priority this week)—please let us know if you need any assistance with scripts or other materials to support these tools.
- 5) Forward this email to anybody and everybody who is in a position to help (sites that might participate, activist orgs, reporters and bloggers, etc)

**FACT SHEET ABOUT THE LEGISLATION (SOPA)**

SOPA's provisions would directly:

- 1) Undermine the DMCA safe harbor by forcing sites to start policing user-generated content BEFORE it gets uploaded, or risk being shut down for facilitating infringement.
- 2) Give the government new powers to block Americans' access to domains that are accused of facilitating copyright infringement.
- 3) Ban others from linking back to said sites, and ban search engines from listing them in the indexes.
- 4) Make it a felony for people to upload unlicensed content, punishable by five years in prison. (Think background music, cover bands, karaoke vids, etc.)

The consequences we predict are that SOPA will:

- 1) Kill existing and prospective jobs; 2) Stifle innovation; 3) Undermine web security—more on that in this letter from Sandia National Lab; 4) Allow our government to engage in new forms of censorship; 5) Give comfort (and know-how) to regimes abroad that are seeking to use censorship to stymie democracy and political unrest.

Thanks so much for taking on this fight—we can absolutely still win if we keep working together and mobilize our membership and user bases like never before. It'll go down in history, and leave a lasting infrastructure that we can use to fight back against future attacks on the web. If you want some quick inspiration and a sense of how far we've come, check out this great Slate piece on the rise of the “Geek Lobby.”

### **The Markup**

The markup (described below in more detail by Patrick Ruffini) probably was indeed the point of no return for the bill—despite the tremendous happenings that were yet to come. We had a singular mission throughout: to keep bombarding Congress with calls and emails until the markup ended, driven by email alerts to the Demand Progress and Fight for the Future email lists, each now on the order of seven hundred fifty thousand people strong, whom we steered to the American Censorship landing page. Several sites that had participated in the meeting at Tumblr, and many others, urged their users to participate too. We expected the effort to be a one-day endeavor, but as Patrick explains, it became much more complicated than that as Lamar Smith dropped his reins and utterly lost control of his committee—Republicans and Democrats alike.

That just doesn't happen: chairs simply don't try this hard to move bills out of their own committees, advance them to votes in front of audiences of hundreds of thousands—with an unheard-of more than one hundred thousand people said to have been watching the live stream, and myriad others anxiously awaiting the results—and have the whole endeavor melt down before them, leaving them only to stand aside, consider the wreckage, and wallow in alternating despair and denial. Not only did the poor stooge not know that his cause was toast—he was deluded enough to publicly insist that he would bring the bill back before the committee when the House next reconvened, ostensibly to somehow achieve a vote tally in its favor.

It was a shocking, public rebuke for Smith, of the sort that someone of his stature seldom suffers—and we heard through the grapevine that John Boehner and Eric Cantor agreed about the severity of the embarrassment, and that they wanted the Whole Damned Thing shut down.

The growing consternation put other politicians in compromising positions, and they took notice of the striking doings before the House Judiciary Committee. California Senator Dianne Feinstein went home for the holidays with the (perhaps naive) hope of brokering a ceasefire in the civil war that was brewing between her state's North (Silicon Valley) and South (Hollywood).

Tech titans expressed that they were more than happy to meet—any indication that their concerns were being taken seriously representing clear evidence that their standing was improving. However, when she sought the presence of Hollywood, via a communiqué to Disney President Bob Iger, he made it clear that he and his associates sure weren't going to waste their time meeting with that measly senior senator from the nation's most populous state: they'd done more than enough talking already, and had their votes sewn up.

It's important to remember not to stare directly at the sparks that fly when egos this large collide. But even were their stances equally righteous, it'd be hard not to preference the will of an elected official who's third only to the president and vice president in the size of her constituency, rather than an over-paid peddler of Hollywood schlock—who's overseen the ruination of the Muppets franchise, and now holds *Star Wars* in his clutches.

Feinstein would shift from oblivious supporter of PIPA to ambivalent, to moderately opposed, and eventually asked Harry Reid to postpone action on the legislation. We made sure that legislative staff was put on notice, as the Huffington Post reported.

In December, HuffPost reported that Sen. Dianne Feinstein (D-Calif.), a Protect IP co-sponsor with deep ties to both Hollywood and the technology industry, thought disputes between two of her most prominent corporate constituencies had been worked out. After that story ran, Feinstein attempted to broker a compromise, calling both tech companies and film studios.

"Walt Disney Co. President and CEO Bob Iger declined the invitation on behalf of content providers. 'Hollywood did not feel that a meeting with Silicon Valley would be productive at this time,' said a spokesperson. The meeting took place with only tech companies present. Feinstein, once a reliable vote for the existing version of Protect IP, is now working hard to amend the bill, according to Senate Democratic aides."

Then, in Maryland, we soon broke new ground by achieving our first formal Democratic convert: an original cosponsor who would publicly oppose the bill. (Jerry Moran of Kansas was an early Republican pick-up.)

This is where David Moon's hobby of editing a Maryland state politics blog would prove invaluable. Senator Ben Cardin (a PIPA sponsor) was nervous about a particular challenger in his April 2012 Democratic primary. With the election but months away, we signaled these dynamics to our coalition partners and went about using Moon's online perch to drum up discontent among Maryland residents about Cardin's support for PIPA. The senator should have already been receiving a barrage of communications about the bill, but we sought to crank up their volume and resonance.

Soon Cardin's constituents who were employed in the tech sector began requesting meetings with him, and we aggressively pushed social media efforts to pressure Cardin to ditch the bill. In tandem, we made sure to send evidence of the unrest to Cardin's campaign staff: campaign apparatchiks always have a finger to the air to detect shifting political winds, which can hit them with gale force before the much more insulated Hill staffers know a light breeze was

ever blowing. In early January, Cardin put out a statement responding to the controversy.

I have heard from many constituents in person, online, and through calls and correspondence regarding the PROTECT IP Act (PIPA). Individuals and groups continue to meet with my staff and provide detailed information that is helpful as we seek to find a better path forward. There is a common awareness that something must be done to stop this theft of American intellectual property.

PIPA is narrowly tailored legislation that does differ from the House's Stop Online Piracy Act (SOPA); however, there are real concerns still to be addressed. For example, I was very pleased to hear that Senator Leahy has proposed further study of the potential impact on how ISPs respond to rogue websites, putting those provisions on hold ... I would not vote for final passage of PIPA, as currently written, on the Senate floor.

It was replete with the standard fear mongering about piracy, but we were thrilled to have finally picked off a Democratic sponsor. He would prove the only one to publicly disclaim the bill, though others maneuvered behind the scenes to ensure they'd not have to cast a vote on it.

The legislation was in a free fall now, in both the House and the Senate.

## THE MARKUP

### PATRICK RUFFINI

The days before the planned House Judiciary Committee markup on SOPA were accompanied by a sense of foreboding. The game could soon be up. If SOPA were to be voted out of committee in a landslide, as looked likely, it would be very hard to stop on the House floor.

Our path to victory was dangerously narrow. As best, I could predict, it would play out as follows: Lamar Smith would succeed in ramming the bill through markup on the Judiciary Committee, and at that point, we would need to rely on Tea Party pressure to save us at the eleventh hour by persuading House majority leader Eric Cantor not to schedule SOPA for the floor. It seemed more plausible than any other SOPA death scenario, especially as the Senate seemed far more likely to pass its own tamer version of the bill. Nonetheless, given the deference normally given powerful committee chairs like Smith, it was a perilous path forward for the opposition.

Chairman Smith had played the game perfectly prior to the markup. Speculation swirled about his planned Manager's Amendment to tamp down the worst of the worst of the bill. And indeed, for those steeped in legislative maneuvering, the final product of Smith's deliberations was a game-changer. The Manager's Amendment narrowed the private right of action and included language designed to clarify that U.S. websites would be exempt from take-down. If there was a general consensus amongst the lobbyists and policy-types, it's that Smith's revisions brought SOPA in line with the PROTECT IP Act. And PIPA looked like a slam dunk in the Senate. This was particularly worrisome for the chances of stopping the legislation entirely.

Smith had also worked the phones among outside groups who had threatened to oppose SOPA and lobbied his members hard, successfully moving past critics off to the sidelines. Momentum for the anti-SOPA forces seemed to have stalled.

At a House staff briefing on December 13th, interest in the issue seemed relatively high judging from the level of attendance, but I couldn't help but notice how unmoved the staff seemed, as though we were discussing a routine piece of legislative business. Upon reflection, until the Internet blew the doors open, to them it was. As my co-panelists took on the legal arguments, and Engine Advocacy's Josh Mendelsohn made a powerful case for the destructive effect of the bills on startup innovation, I tried to ground the debate in some outside-the-Beltway realities: remember the eighty-four thousand phone calls on American Censorship Day? That was just the tip of the iceberg. Activists on both the right and left would fight mightily to protect their freedom of speech online, and they had the majority of Americans on their side.

Truth be told, I had no idea if the phone calls to Congress would materialize again or not. This depended in part on whether networks like Tumblr would

create the “inventory”—to use online advertising speak—to drive eyeballs and ultimately action to the cause. In this sense, the movement was still looking for the cavalry to ride to its rescue. For months, groups like ours, Demand Progress, CDT, EFF, and a smattering of others, were fighting a lonely battle against PIPA, and then SOPA. Nobody in Washington believed this coalition could beat Hollywood’s lobbying behemoth, so when tech companies were willing to encourage their users to take action, that elevated the fight to a new plane, beyond where the advocacy groups could go.

The whole thing had the feel of a guerrilla operation. We knew, or assumed, we could not win in the committee, but had to live to fight another day. What could be done to force the other side to win ugly? To bring millions more people into the fight and ratchet up the pressure?

The opposition on the committee planned to offer as many amendments as possible. Democratic Rep. Jared Polis, an avid gamer and the only Internet entrepreneur in Congress, planned to force the committee to vote yea or nay on barring federal funds being used to benefit pornographers—who were some of the most aggressive copyright litigators. Rep. Zoe Lofgren, a Democrat from northern California, would ask movie theater owners to participate in SOPA’s rigid enforcement mechanisms; after all, movie theaters were themselves intermediaries for movie piracy, with “users” making bootleg recordings. Why not hold them accountable like you would the owners of a website with millions of users, some of whom traffic in pirated content?

In total, fifty-five amendments would be submitted. This was a delaying tactic. It would force the committee to stretch out its considerations for days, all the while giving time for the Internet to ratchet up the pressure on Congress.

In hindsight, this amendment strategy looks significant, but at the time, it was assumed to be little more than a rearguard action, a prelude for the real war for the full House.

December 14th, the day before the markup, was probably the low point for the anti-SOPA forces. Tech industry lobbyists spent the run-up to the markup fielding calls about defections from their ranks, and working feverishly to stave off more. This ranged from skeptics on the Judiciary Committee, to outside groups, to companies like Visa, a major backbone of Internet commerce, which endorsed the bill on the morning of the 15th, the day of the markup.

On the night of the 14th, I received a frenzied call from a tech industry lobbyist. Smith had been twisting arms, we didn’t know who was on our side anymore, and we were down to as few as half a dozen votes on the committee. The Internet needed to light up the phones. At the suggestion of a Capitol Hill veteran in my office, I would tweet out the direct line to the Judiciary committee staff room. It was reasoned that members would be taking meetings there in between votes. We brainstormed creative ways for members to experience the crescendo of outrage firsthand.

As the hearing was gavelled in on Thursday—a day late to allow for the Manager’s Amendment to be digested—it was before an audience of thousands online. Rep. Darrell Issa’s crafty and resourceful social media team had set up a website, [KeeptheWebOpen.com](http://KeeptheWebOpen.com), initially to showcase their government

transparency initiatives (including a platform called MADISON allowing wiki-style edits to legislation), that would be used as a platform to live-stream the hearings. While televised House proceedings were nothing new (think C-SPAN), committee live-streams were rare, and this would become one of the most watched markups (if not the most watched) in history, with one hundred fifty-seven thousand unique visitors on the first day of the markup.

The first sign that the opposition would not go down without a fight came with a relatively simple procedural motion: they forced a full reading of the bill before the committee—a process which would take more than an hour at the outset of the proceedings. This delay set the tone for the next two days and was set against the backdrop of an impending recess and Congress rushing to tie up loose ends before heading home for the holidays. The only bit of unfinished business that was keeping the full House in session was a fight with the White House over extending payroll tax cuts. To the extent SOPA couldn't be voted out of Judiciary before a final floor vote on the payroll tax, the bill would be held up in committee heading into the election year.

Circling the wagons also had a side effect: demoralizing Smith's troops on the committee. For months, the Judiciary rank and file had been told that the bill was noncontroversial and its passage was a slam dunk. Now, a vociferous and bipartisan opposition was forming against the type of bill—highly arcane and industry backed—that was supposed to be immune from rancorous debate and even public notice. Loyalty to Smith, and the sense that he would protect his committee members from having to attach their name to a politically suicidal bill, was cited by Judiciary Committee insiders as a key reason why SOPA had the support it did. Now, that foundation was starting to show cracks.

A core of opposition quickly formed around Issa (himself a senior Republican and chairman of the Government Oversight committee), Lofgren, Polis, and Republican Jason Chaffetz of Utah. This core group would eventually succeed in effectively filibustering the bill with repeated amendments, though the decisive success of their strategy wouldn't be clear until the bill finally died after the January 18th blackout.

Chaffetz struck the first blow once the hearing was underway. Up until that point, not a single Internet engineer had been consulted—in the drafting stage or in the public hearings—on a bill that proposed to change how the core architecture of the Internet worked. (The initial hearing on SOPA was stacked 5-to-1 in favor of industry representatives in support of the bill.) The committee needed to slow down, listen to the experts, or in a Chaffetz turn of phrase that stuck, “Bring in the nerds.”

Members of the committee may not have been all that interested in arguments about Internet freedom, so Chaffetz worked another angle: cybersecurity. Monkeying with the DNS system to save Hollywood profits could undermine national security and cybersecurity by thwarting the implementation of the new DNSSEC standard. The protocol was designed to ensure that people always accessed the real website behind a domain name—no matter the site’s purpose.

Phishing attacks are rampant online, and impeding this critical security protocol could have increased their frequency and severity.

The proponents not only seemed unwilling to mount a technical defense of DNS blocking, but completely bored and uninterested in the subject. A few words spoken by North Carolina's Mel Watt, the committee's ranking Democrat, came to symbolize what was wrong with the entire process. In response to Chaffetz's refocusing the debate around listening to the "nerds" who knew what the bill was about, Watt would insist that technical expertise wasn't necessarily required, telling us "I am not a nerd. Hey, I may look like one, I may act like one sometimes, but you know, hey, I'm not trying to operate my congressional office without paper, you know." Elsewhere in the hearing, Watt explained, "I am a pretty old-fashioned guy who still hasn't figured out how, or even whether I want to use all the fancy technological advances that are out there."

The words "I am not a nerd" spawned a tweet storm laced with derision and mockery, becoming a rallying cry for the Internet opposition as a whole. Technical expertise was essential to understanding SOPA, and the second highest ranking member of the Judiciary Committee and original sponsor of the legislation didn't know much or care about the provisions in the bill that would break the Internet. His stumbling comments became fodder for YouTube—for Jon Stewart's first foray into SOPA.

When it came time to vote on amendments, SOPA supporters still outnumbered supporters by a 2-to-1 margin. When Issa and Lofgren offered an amendment that would strike DNS blocking of overseas sites and filtering of search results, it went down on 12-22 vote—and this was one of the stronger performances by the opposition. The method of tabulating votes in the House Judiciary Committee also offered a telling insight in the tech-savviness of that body.

The hearing continued to drag along, but another moment of comic relief would prove to be a turning point. Reflecting the indifference of most members to the dry technical issues behind the bill, Republican Representative Steve King of Iowa began venting his frustration on Twitter:

We are debating the Stop Online Piracy Act and Shiela Jackson [sic] has so bored me that I'm killing time by surfing the Internet.

Jackson Lee spoke up to object, calling the remark "offensive." Representative F. James Sensenbrenner (R-WI), a former committee chairman hostile to SOPA, piled on, demanding that Jackson Lee withdraw her remarks. Chairman Smith suggested she withdraw the word "offensive."

After some back and forth involving the body's Parliamentarian, and a long delay, Jackson Lee agreed to strike her one word rejoinder, and instead deem King's tweet "impolitic and unkind."

Nonetheless, in that hour, the ground continued to shift towards the opponents. The hearing had dragged out, with proceedings bordering on the absurd. Members were growing restless. Some wondered why they were there. Was this

not supposed to be a slam dunk—supported by all the usual suspects? Why were they being put through this? This seemed like a circus, not a markup.

And as the hearing's first day gaveled to a close, the committee was not much closer to a final vote to move the bill to the House floor—which almost certainly would have passed.

Officially, opponents had every reason to be pessimistic. “It’s become clear we’re going to lose and lose in the worst way possible,” Issa told the full committee. “We’re going to lose without deference to the facts.”

But interviews given by MPAA lobbyists after the blackout indicated that they knew they had lost the battle on that first day. In private conversations, the content industry knew it was in trouble—and the unexpectedly fierce opposition on the committee backed up by the rising storm of tweets and phone calls from outside the hearing room were beginning to tip the scales. On that first day, over one hundred fifty-seven thousand people had watched the live video stream at [KeeptheWebOpen.com](http://KeeptheWebOpen.com), where would-be citizen legislators were busy making proposed edits to SOPA.

Earlier in the week, I had worried that opposition to the bill might not materialize in the same numbers if a major platform like Tumblr didn’t engage as they had done in November. Moreover, there was a sense that even a massive outpouring of online energy wouldn’t do much good if it came after a key vote. This had been the pattern up to this point. Most of the phone calls on American Censorship Day came during and following the lopsided hearing, but not before. The online organizer in me knew that it would be easier to mobilize online attention during the big event, but the lobbyists kept pressing for activity before: tweets, op-eds, petition signatures, and briefings that would rattle committee members before the even set foot in the hearing room. Working to strike this balance would be a key task for the rest of the campaign, and it changed the organizers’ strategy. During the markup, online activity peaked concurrently with the hearing. The Internet provided moral support for Issa, Lofgren, Chaffetz, and Polis as they fought a guerrilla campaign inside the hearing room, but it would not have been enough to forestall a committee vote without procedural maneuverings of those members. The opposition would adapt its strategy for the endgame, scheduling the January 18th blackout ahead of a big vote, on its own timeline and not Congress’s.

On December 15, Slurp140, a Twitter analytics service, reported that there were eighty-four thousand seven hundred seventy-one SOPA-related tweets—a record for the fight up to that point—and with the exception of the online blow-up against GoDaddy a week later, the most activity we would see until the days prior to the blackout.

At Don’t Censor the Net, our numbers were following a hockey stick-like growth trajectory. The day before the markup, we had launched a petition with Senator Rand Paul to rally conservatives and libertarians against SOPA and PIPA. Throughout the campaign, we were seeing several signups per minute, and we nearly doubled our existing base of support in a week. The conversion rate on our petition far exceeded what was normal for candidates and causes,

and we saw a doubling of signatures thanks to those who shared the petition to Facebook or Twitter. Where the opposition to SOPA prior to the markup felt like a brushfire with the potential to be snuffed out by the proponents' vaster arsenal, after the markup it became a raging wildfire that wouldn't be extinguished until the bill died.

The markup would resume for a second day on Friday, December 16th. Thirty-six hours earlier, a victory for SOPA seemed to be in the bag, and now there was a palpable sense of optimism that opponents could delay further action on the bill into 2012—an election year when Congress would get little done. Few of the fifty-five amendments had been voted on after the first full day of hearings, and Smith was running out of time before Congress adjourned, possibly for the rest of the year.

That morning, there was talk that Chaffetz's DNSSEC objection, encapsulated by his "bring in the nerds" riff, had struck a chord in the committee. He went to Smith, asking for a hearing on the technical and security implications of the bill before voting the bill out of committee, and wasn't shot down. A concession like this would have been unprecedented. Capitol Hill watchers couldn't recall a time when a bill entered the markup phase, only to go back for further fact-finding hearings. It was an embarrassing concession by the proponents that they hadn't done their homework, and a sign of the full retreat to come.

Things didn't have a chance to play out like that. At 1:30 p.m., eleven hours and twenty-eight minutes into the proceedings, Smith took the microphone and announced that the committee would stand in recess, following word of a full House recess. This was to be the last time Congress formally considered SOPA or PIPA.

This was the moment I became convinced that we had won. The bills that get passed through Congress fit into one of two categories: highly partisan bills designed to score political points at the expense of the other party, or uncontroversial bills supported by those in both parties that legislators can use back home to tout their problem-solving bona-fides. The MPAA and RIAA had hoped to slip SOPA through under the latter, and their messaging around the bill had the whiff of "Nothing to see here, move along." For decades, the entertainment lobby had used the glitz and glamour of Hollywood to seduce members on both sides of the aisle, even conservatives worried about sex and violence in movies and music. And they threw better parties (I had attended a few).

SOPA and PIPA were always controversial on the Internet, and the markup is when they became controversial in Congress and with the American people. Hollywood had strong relationships with members of Congress on the relevant committees, but these only went so far: members who hadn't thought much about technology or IP issues would now be weighing in, and Hollywood hadn't showered them with campaign contributions. These members would have no reason to do anything but default to the voice of the people back home.

The political case for passing SOPA had been utterly decimated by the way its proponents handled the process in the Judiciary Committee, starting with a propagandistic one-sided November hearing that singled out Google as the

bill's sole opponent, and ignored the other "nerds" beating down Smith's door to testify. Dismissal of the technical concerns—and of any real debate whatsoever—was cited by many in the technology industry as the catalyst for first getting involved and spurring their users to action.

Now, the bill was controversial, without a clear political rationale for passage. Indeed, the politics now swung strongly the other way: Americans had shown they cared about keeping the government's hands off the Internet more than they did about "foreign theft." After decades of ever-expanding copyright, it was assumed that aggressive intellectual property enforcement was a political winner on Capitol Hill. Now, with a rising Internet economy driven by remix culture and user-generated content, Congress could no longer be sure.

The first tweets after the adjournment could have come from a liberated World War II capital. SOPA was dead until 2012! An election year! When nothing would get done. Congressional obstruction would save the day for once. And the bill would die.

Minutes after adjourning, Issa tweeted:

I'm proud to have made my #stopSOPA stand w/ @RepZoeLofgren @JaredPolis @Jasoninthehouse in Judiciary these last two days. #sopa #OPEN

—@DarrellIssa, December 16, 2011, 2:04pm

Sensing that they gave up a bit too soon, Smith's forces put out word that the markup would resume the next week once the House was back in session to deal with the payroll tax. But this wasn't a sure thing: the Senate could—and eventually did—pass changes to the payroll tax bill that wouldn't require the House to go back into session, thus definitively tabling any discussion of SOPA until 2012.

Reflecting on the markup, it's instructive to take a step back and consider how insiders and outsiders experienced these events differently. Prior to the markup, the insiders who fought the fight were extremely pessimistic—at least at the Judiciary Committee level—and the Manager's Amendment was seen as a huge setback, bringing SOPA in line with the milder PIPA. Lobbyists involved in the fight repeatedly voiced concern that SOPA gave Patrick Leahy and the Senate proponents an opportunity to frame PIPA as the reasonable, uncontroversial alternative.

Smith's Manager's Amendment moving SOPA in the direction of PIPA was an implicit embrace of this dynamic, and yet it turned out not to matter. The Internet was just as vehement in its campaign against SOPA (and later PIPA) as before. This holds important lessons for future legislative fights.

Smith's changes might have seemed a game-changer for inside players on the Hill, but they were virtually ignored by the online community. Once SOPA had been branded as the bill that killed the Internet, nothing bearing its name could pass. Nor were the substantive changes enough to placate the technology community. SOPA and PIPA were still bad bills, and as detailed elsewhere in these pages, the "follow the money" approach in the OPEN Act was the only palatable solution to the "rogue website" issue for technology companies.

Smith was in effect asking the tech community to negotiate with itself, positing a series of bogus remedies, any of which would have fundamentally damaged the Internet ecosystem. Fortunately, tech companies didn't take the bait, and only pressed harder for SOPA's total defeat. Later on, when we worried if the Internet was too riled up on SOPA, and not PIPA, the community would pivot around the action in the Senate, scheduling the Internet blackout to coincide with planned floor action in the upper chamber.

When it comes to online reaction to controversial bills affecting the Internet, amendments don't matter. Once a bill has been branded a certain way, changing that perception is very difficult. A better way would be to put out legislation in draft form, and allow the online community to shape the bill prior to its introduction. This is the crux of Darrell Issa's Madison Project, where the public was invited to co-author the alternative to SOPA.

In hindsight, we can say that the markup marked the moment the tide turned. All along, the bills depended on a sense that they were sleepy and uncontroversial. The assumption that they could stay as such had always been a colossal error in judgment by the proponents, but the markup brought home this reality in stark terms. Once we got word that the markup had been postponed, we were very optimistic that we had dealt a serious blow, but we couldn't yet fathom how big this issue would become in the course of the next month.

## BRING IN THE NERDS: THE IMPORTANCE OF TECHNICAL EXPERTS IN DEFEATING SOPA AND PIPA

ANDREW MCDIARMID AND DAVID SOHN

*Andrew McDiarmid and David Sohn both work for the Center for Democracy and Technology, where McDiarmid is a senior policy analyst and Sohn is general counsel. The Center for Democracy and Technology is a nonprofit public policy organization and the leading Internet freedom organization working at the critical edge of policy innovation. When the Internet was in its infancy, CDT helped shape the first legislative choices and court decisions that allowed this technology of freedom to flourish. Today, it is committed to finding innovative, practical and balanced solutions to the tough policy challenges facing this rapidly evolving medium.*

The scene is familiar to many among the millions who mobilized to defeat SOPA: some Members of Congress proudly declaring technical ignorance and defiantly dismissing free speech and cybersecurity concerns over DNS-blocking, while a vocal few underscored these problems and insisted that Congress “bring in the nerds” to learn more.

This dynamic at SOPA’s December 2011 markup meeting of the House Judiciary Committee became a rallying point for opponents of the legislation. We saw articles declaring it “no longer ok” for Congress not to know how the Internet works, and proponents’ steadfast refusal to entertain the technical objections to the bill fueled the sentiment that experts, Internet communities, and the public at large had been shut out of the behind-the-scenes work that went into both SOPA and PIPA.

Now, it isn’t exactly realistic to expect politicians to write code or understand all the technical workings of networks and the DNS. Nobody is seriously suggesting that they should. These intricacies are worlds away from the many pressing issues on policymakers’ minds, and we hire them to be effective representatives of their constituents, not network engineers.

Nonetheless, when the issue on the table is undeniably technical—and fiddling with Internet addressing is nothing if not technical—it’s not unreasonable to expect at least engagement with the details. Lucky for us, despite skewed hearings and the unwillingness of PIPA and SOPA’s sponsors to budge on the technical concerns (at least until it was too late), a small group of opponents used the SOPA markup as a platform to ask the right questions and bring attention to issues too long ignored in the lead-up to what could have otherwise been easy passage out of committee.

But where did those arguments come from? The efforts of Reps. Lofgren, Issa, Polis, Chaffetz, and others were invaluable in stalling SOPA and fueling the fire over the next five weeks until the January 18th protests—but what fueled their fire? In this chapter we want to make a case for the important groundwork done before SOPA grabbed the Internet’s attention, in particular

the contributions of impartial technical experts who weighed in not on the side of copyright or the “copyleft,” but on behalf of the integrity and security of the world’s most important communications network. It is not at all certain that things would have played out as they did without these experts’ written contributions and on-the-ground efforts to educate Congress about the risks they identified.

When COICA (PIPA’s predecessor, the “Combating Online Infringements and Counterfeits Act”) was introduced in September 2010, a small handful of familiar voices in Internet-meets-copyright policy circles weighed in with a laundry list of arguments against the bill. Our organization, CDT, published one of the first analyses of the bill, focusing in large part on the overblocking and cybersecurity concerns that DNS-filtering presents. The same day, the Electronic Frontier Foundation organized a letter from over ninety prominent Internet engineers who decried the bill as censorship and expressed their fear that it would fragment and destabilize the Domain Name System (DNS).

We were joined over the next weeks and months by other D.C.-based advocates like Public Knowledge and the library associations, Internet trade associations, and the human rights community. But despite our growing coalition, we faced long odds to overcome the well-connected momentum behind the bill. The bill’s supporters worked to brand us as apologists for infringers and insisted that the legislation was a simple matter of deciding to take a stand against rampant theft. Despite our community’s expertise and deep understanding of both the policies and technologies that have made the Internet such a remarkable vehicle for innovation and free expression, our warnings about the folly of mandated interference with the DNS went largely unheeded.

As fall turned into winter, the 111th Congress into the 112th, and COICA eventually into PIPA, new voices began to weigh in. Dan Kaminsky, the DNS security folk hero who would go on to play a major part in educating Congress about the risks of mandated blocking, reiterated concerns about stability and governance and raised new issues in a short letter on COICA. He also participated in a panel debate on the subject at the January 2011 State of the Net conference in Washington. His fear was that mandating filtering in an attempt to block what is, for better or for worse, hugely popular content would drive users to use untrusted and risky DNS servers. He argued that such a migration would undermine the benefits of securing U.S. nameservers against malicious sites, exposing users and networks to botnets and phishing attacks. Kaminsky also worried that the migration would weaken ISPs’ “eyes and ears” into their networks; DNS traffic can provide a rich dataset on network usage to help diagnose and mitigate attacks as they occur.

In March 2011, as his name was invoked by COICA’s supporters and opponents alike, Paul Vixie entered the debate with a pair of blog posts describing the relationship between mandated blocking and DNSSEC (secure DNS) and the long-term risks of mandated blocking to the DNS’s primary value, universal naming. For Vixie, founder of Internet Systems Consortium and one of

the world's leading experts on DNS, a key issue was "alignment of interests" and the fragility of Internet infrastructure. He feared that the interference envisioned by COICA would for the first time put nameservers in the role of frustrating rather than fulfilling user requests, create widespread motivation for users to circumvent current DNS arrangements, and ultimately fracture the Internet into a network without a single naming system for reaching everything.

Kaminsky and Vixie, respected in computer security circles but relative newcomers to Internet copyright debates, lent new credibility to the argument of CDT and others that the legislation carried serious risks for cybersecurity. They also started a serious conversation in engineering circles about the technical implications of the bills, including the extent to which the legislation would conflict with or undermine DNSSEC. The growing attention and involvement of the technical community would prove invaluable in PIPA and SOPA's demise.

During the spring of 2011, CDT worked to bring the analysis of the DNS experts into the legislative debate. In March, CDT's David Sohn flagged the technical and cybersecurity issues in hearing testimony to the key panel of House lawmakers, the House Judiciary Committee's subcommittee on intellectual property. Meanwhile, CDT helped organize an effort to have top DNS experts document the technical concerns in detailed yet accessible fashion. In the late 1990s, a technologists' report coordinated by CDT had helped swing the hard-fought debate over encryption policy; CDT urged that an authoritative explanation of the technical implications could be similarly pivotal now.

Kaminsky, Vixie, and three other heavyweights in DNS and Internet-security circles answered the call and co-authored a whitepaper, "Security and Other Technical Concerns Raised by the DNS Filtering Requirements in the PROTECT IP Bill". They released the paper in May 2011, shortly after PIPA was approved unanimously by the Senate Judiciary Committee, and it quickly had a powerful impact on the debate.

The whitepaper offered more detailed examinations of several key arguments against DNS filtering: the tension with DNSSEC deployment, the problems for security and network intelligence that flow from user-circumvention, and the potential for collateral damage due to interdependencies in the DNS. For those of us working against the bills in Washington, the paper was an invaluable asset. We joined Ernesto Falcon of Public Knowledge and other colleagues at many of his meetings on the bills, and once it was published this paper was the first thing we would hand to staff as we urged them to reject the bills' approach. Of course, the technical problems were far from our only concerns, but having experts with unassailable credentials—and without strong interests one way or the other on copyright enforcement questions—made the technical arguments harder to ignore.

On several occasions, some of the authors even joined us in meetings with congressional staff to explain their concerns.

The whitepaper garnered significant media attention as well. Beyond being picked up by the tech-press outlets already covering the issue, it was cited prominently in a *Los Angeles Times* editorial opposing PIPA and urging a “more measured approach”. The *New York Times* also relied on the experts’ analysis in declaring that the bill “shouldn’t pass” as it then stood. The closing line of the *NYT* editorial nicely summed up opponents’ reasonable position: “If protecting intellectual property is important, so is protecting the Internet from overzealous enforcement.”

Pro-PIPA critics tried to dismiss the arguments made in the whitepaper, but more often than not their rebuttals took the form of “but something needs to be done” or “surely the technical standards community can come up with a way to fix these problems” instead of actually refuting the problems themselves. Within most of the technical community, the paper met with general consensus. In the fall, groups such as the Internet Society, the Anti-Phishing Working Group, and the Brookings Institute released papers or letters reiterating the technical concerns posed by the legislation. Most prominently, the director of computer sciences and information systems at Sandia National Labs, Dr. Leonard Napolitano, assessed the technical claims in November at the request of Rep. Zoe Lofgren. His office’s response cited the whitepaper and was unequivocal: “we agree with the conclusions of that report.” In addition, Stewart Baker, former NSA General Counsel and former Head of Cyber Policy for DHS, penned two widely read op-eds in which he focused on the harm mandated blocking would cause for DNSSEC deployment.

The whitepaper’s authors remained active as well. On several occasions they joined CDT, PK, or other advocates to meet in person with congressional staff and explain the technical arguments. They sent letters to Congress in October and December rebutting efforts by the legislation’s supporters to dismiss the whitepaper’s conclusions. Importantly, they also spoke to Executive Branch officials. In particular, CDT arranged a high-level meeting in early December between the paper authors and key White House staff. That meeting included Howard Schmidt, the Cybersecurity Coordinator, and Victoria Espinel, the Intellectual Property Enforcement Coordinator—both of whom would go on in January to coauthor the critical blog post announcing the Obama Administration’s opposition to DNS filtering.

### **SOPA and the Unraveling**

Despite the growing opposition through the summer and early fall, there was little indication that Congress was listening. In the Senate, PIPA had been approved without objection by the Judiciary Committee, had numerous bipartisan cosponsors, and looked like it would have the votes to pass. Then, in late October, the leaders of the House Judiciary Committee introduced SOPA. Rather than addressing the problems with PIPA, SOPA was far worse. It expanded the field of sites that could be targeted and not only kept PIPA’s problematic remedies, but added new ones that threatened a broad range of

legal sites. Even though it moved in the wrong direction, SOPA had similarly ominous bipartisan support.

In contrast to the earlier Senate committee process, however, the House Judiciary Committee included some lawmakers who opposed or were at least skeptical of the legislation. SOPA was too extreme, and the technical and other arguments against it too serious, for it to command unanimous support. The whitepaper and other warnings of cybersecurity and technical problems gave these opponents crucial ammunition for the fight.

At the November 16th committee hearing on SOPA, a number of Members raised questions about the cybersecurity impact of the legislation. This included not only Rep. Lofgren, a leading critic of PIPA even before SOPA's introduction, but also Members who said they were still undecided on SOPA. Rep. Lungren, the Chairman of the House subcommittee on cybersecurity, was particularly outspoken, asking panel members about DNSSEC and noting that serious concerns had been raised by expert engineers with no axe to grind in the fight over copyright policy. MPAA's witness expressed the view that the cybersecurity issues were greatly overstated, but Lungren and at least a few other Members were clearly troubled by the absence at the hearing of any engineers or cybersecurity experts who could speak to the issue on a technical level.

During the pivotal committee markup in mid-December, the analyses regarding cybersecurity—the whitepaper, the Sandia letter, the op-eds by Stewart Baker, a new EFF-organized letter signed by eighty-three Internet engineers—were cited repeatedly by Reps. Lofgren, Issa, Chaffetz, Polis, and the other SOPA skeptics as they criticized the bill. Rep. Chaffetz memorably chided his colleagues, “We’re going to do surgery on the Internet … without bringing in the doctors. To my colleagues I would say, if you don’t know what DNSSEC is, you don’t know what you’re doing” with this legislation.

One of critics’ principal frustrations was the way the harms and risks of DNS-filtering were simply brushed aside by SOPA’s proponents. Opponents asked, at the very least, that the committee slow down and fully consider the consequences. While they were not successful in getting the committee to do a careful assessment of the potential negative consequences, the skeptics’ constant refrain of questions focused attention on what had been ignored—SOPA’s myriad problems, technical and otherwise—and exposed the flawed process that gave rise to the bill in the first place. What had been intended as a smooth markup of a bipartisan bill turned into a two-day slog of debate and amendments that never made it to a final vote.

What followed the markup is the truly remarkable story of how various communities on the Internet woke up to the dangers on the path Congress was heading down. The markup was streamed online, and the spectacle of the debate—with SOPA’s supporters at times acknowledging little understanding of the cybersecurity or technical questions but insisting that the bill be passed anyway—gave rise to rallying cries like “Bring in the nerds” and “It is no longer ok to not know how the Internet works.” Bill supporters were mocked on social networks for their fumbling or dismissive reactions to the technical

side of the debate. Popular dissatisfaction mounted, both with the legislation and the process by which it was being considered, and it spread like wildfire in the online communities fostered by popular social networking platforms. As Congress headed home for the winter holidays, grassroots activists had powerful new fodder and a huge receptive audience for organizing petitions and call-in campaigns.

By early January, the criticism was hitting home in the Senate as well. PIPA's lead sponsors, probably sensing growing concern among other Senate offices about whether the technical questions had received fair consideration, organized a private briefing for Senate staff on the cybersecurity issue specifically, with opportunities for both the legislation's supporters and opponents to explain their side of the cybersecurity question.

Then, on January 14th, the Obama Administration finally weighed in. In a response to two petitions against the bills that had received more than fifty thousand signatures, three key White House officials—Intellectual Property Enforcement Coordinator Victoria Espinel, U.S. Chief Technology Officer Aneesh Chopra, and Cybersecurity Coordinator Howard Schmidt—stressed that antipiracy measures must not come at the expense of free expression, legitimate use of the Internet, and cybersecurity. The response specifically and unambiguously rejected DNS filtering and confirmed that SOPA and PIPA, as drafted, posed a threat to cybersecurity:

“Proposed laws must not tamper with the technical architecture of the Internet through manipulation of the Domain Name System (DNS), a foundation of Internet security. Our analysis of the DNS filtering provisions in some proposed legislation suggests that they pose a real risk to cybersecurity and yet leave contraband goods and services accessible online. We must avoid legislation that drives users to dangerous, unreliable DNS servers and puts next-generation security policies, such as the deployment of DNSSEC, at risk.”

Around the same time, the bills' lead authors, Chairpersons Leahy and Smith, both issued statements acknowledging that the DNS portions of their respective bills would need to be removed. But it was too little, too late. The technical problems were not the bills' only problems, and the various communities of opponents were mobilized and well prepared to make that known. The debate over the technical arguments had also highlighted fundamental flaws in the process that produced PIPA and SOPA. The Internet-engaged public was not going to be satisfied by grudging and last-minute concessions; the bills were viewed as too flawed and too much the product of back-room deals and a process that had been rigged from the start.

Much has been and will continue to be written about the public SOPA/PIPA protests that followed, and deservedly so. The petitions, calls, and black-out that took place on January 18th in response to the bills were unprecedented in scale, and may indeed stand out as a watershed moment for Internet policy-making and the democratic process. But they were fueled by a growing body of powerful arguments regarding the nitty-gritty substance of the legislation, including impartial technical analysis that exposed glaring flaws. That analysis,

and the role it played in the ultimate withdrawal of the bills, should not be overlooked.

What we saw in SOPA and PIPA was an attempt to make Internet policy from a narrow perspective, with little if any input from the community of people who best understand and care about how the Internet actually works. One of the key reasons we were successful in defeating these bills was that the community spoke up anyway. Millions of Internet users all over the country—indeed, all over the world—demanded that their concerns be heard. Imagine how much better Internet policymaking could work in the future if the public—and the experts—are included in the discussion from the start.

## PEOPLE POWERED POLITICS

### ERNESTO FALCON

*Ernesto Falcon was the director of government affairs for Public Knowledge from 2010–2012 after having worked in telecommunications policy on Capitol Hill for six years. His work involved informing Members of Congress and Congressional staff on Capitol Hill of the impact of policies involving copyright law and telecommunications law on the public interest. During his time at Public Knowledge, he was involved in successful efforts to protect the Federal Communications Commission Open Internet rules, to defeat the AT&T and T-Mobile merger, and to stop Congress from passing the PROTECT IP and Stop Online Piracy Act. He played an absolutely critical role in coordinating efforts to kill SOPA.*

On January 18th, 2012, the largest Internet protest in American history took place, with more than one hundred fifteen thousand websites going dark as well as more than 14 million Americans contacting Congress through petitions, emails, and phone calls. Many of my friends on Capitol Hill told me afterwards that the level of vocal opposition back home matched the volume of healthcare reform, one of the most contentious debates in decades. While many thought this final act against the Stop Online Piracy Act (SOPA) and the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (PIPA) came together out of the blue, for me it was the culmination of more than a year of working with local and national grassroots groups, engineers, venture capitalists, entrepreneurs, human rights groups, and Washington D.C.-based public interest groups.

For more than the fourteen months Congress considered these bills. During that time, I met with well over one hundred Congressional offices, ranging from skeptics to strong supporters of SOPA and PIPA. Also, equally as importantly, I worked with one of the most amazing coalitions ever assembled on a political issue. Throughout the year we worked together on countless coalition meetings and conference calls. My role was to provide as much insight as possible into the legislative process based on my engagement with Capitol Hill and propose strategy to reach out to grassroots communities. Members of Congress and their offices were crucial in mobilizing their constituencies and getting the word out about the details of the bills. And all of this was dependent on the public engaging with Congress.

Now that the dust has settled and the bills are more or less dead, many of these groups today remain engaged with Congress in the aftermath of the SOPA and PIPA in hopes of charting a positive agenda for copyright law. To help facilitate that process, Public Knowledge launched the Internet Blueprint to propose ways that copyright law can be improved for innovation rather than continue on the path of scorched earth and punishment.

At this point, the bottom line is that people should understand how and why Congress came so close to passing SOPA and PIPA, and that no matter how

much campaign money major corporations contribute, an engaged public will always win.

### **Internet Blackout Minus Four Months: Things Are Bleak**

On September 20, 2011, after a full year of fighting in the Senate against the Combating Online Infringements and Counterfeits Act (COICA) and its follow up bill, PIPA, I figured we were going to lose the fight on Capitol Hill unless a massive public outcry woke up Congress. At this point, more than one-third of the Senate cosponsored PIPA and responses to our concerns on free speech, overly broadband government authority over the Internet's architecture, cybersecurity, and additional lawsuits killing innovative startups were virtually unheeded by most. They were only taken seriously by Sen. Ron Wyden (D-OR), Sen. Jerry Moran (R-KS), Rep. Zoe Lofgren (D-CA), and Rep. Jared Polis (D-CO). Needless to say, things were looking very grim.

Campaign money plays a primary role in how the legislative process operates when the public is not engaged, and at this point, the Recording Industry Association of America (RIAA), Motion Picture Association of America (MPAA), and their allies outspent the technology industry on the scale of about four to one—more than \$100 million for PIPA alone. If you are a politician who needs to raise several million dollars every two-to-six years and powerful lobbying groups give you the impression that your support for a proposal is non-controversial, it is easy to see why money alone would make support easy to come by.

It doesn't help that the tech industry, despite being very well known to the public, is still fairly new and small in the Washington D.C. political scene, while the movie and music industry have lobbied successfully on copyright law for decades. So while we opposed the bills and conducted as much Capitol Hill outreach as possible, it had very little impact.

But that all changed on Oct. 26, 2011, when House Judiciary Committee Chairman Lamar Smith (R-TX) and many of his colleagues from both parties introduced SOPA. Because the MPAA and RIAA were so confident (rightfully so) that they could get any bill they wanted out of Congress given the last twelve months or so, they decided to shoot for the moon. They advanced a bill that not only dealt with copyright, but with the basic workings of the Internet. Once it became clear to the public that some in Congress were looking to completely restructure the Internet, the fight completely changed—but only because an alert and engaged public started getting involved in a big way.

The fight between gatekeepers (large movie studios and large record labels) and distribution (communications technology) dates back decades. Incumbents in the marketplace will always exist and old ways of distributing (and monetizing) information will always fight the new way. Open platforms on the Internet are simply just the fight that exists today.

On June 30, 2010, the Immigration and Customs and Enforcement (ICE) agency started Operation In Our Sites, likely as the result of intense lobbying by the RIAA and MPAA to “do something” to fight piracy. The agency seized

domain names (.com and .org addresses). The ICE initiative resulted in some serious negative consequences, such as thousands of websites being mistakenly accused of child pornography, and most importantly, Americans having their free speech violated by the government. Now, not every website ICE goes after is innocent, but currently the legal authority ICE uses does not lend itself to things like due process and protecting free speech. Nevertheless, the pro-SOPA lobby (who are also the people giving ICE the list of targets) sang the government's praises.

Simultaneously, the lobbyists for the content industry and a few related powerful interest groups were going to Congress and showing them how to pirate things on the Internet (yes I know, irony). Without having witnessed it personally, but having been told how it was demonstrated, a lobbyist would have your senator, your Congressman, or their staff sit down in front of a computer and have them type in piratebay.org (which is now piratebay.se to bypass ICE) or do a Google search and then wow them with how much pirated material is available on the Internet.

After showing them that it is possible to pirate things on the Internet, the lobbyists then explained to them that Congress can stop this by passing a new law. They pointed to how ICE is already doing something similar and explained how it is slowing piracy (factually untrue). Keep in mind, the average age of a Member of Congress is 55 years old and they are not very technically adept. However, they are always eager to resolve issues that they are led to believe are within their power to resolve, which in this instance was to "fight foreign criminals from stealing American stuff." The problem, of course, would be the mechanisms in how you would do it.

#### **Bad Things Happen When the Public Does Not Engage**

The sad truth is that very few Americans were telling Congress that they opposed COICA or PIPA because very few Americans actually knew what their Congress was up to—or, worse yet, very few believed they could stop Congress. As a result, the major studios and record labels had a field day with the Senate by repeating the process outlined above. Since none of the offices had their phones ringing off the hook or stacks of letters and emails from their voters back home voicing opposition to the bills, it seemed like an easy choice coupled with a healthy infusion of campaign money. Many policy decisions made on Capitol Hill are a calculation of the people versus the money, but when the people do not show up, money will always win.

With a near silent public, the entire legislative process was dominated by influence peddling and campaign contributions with honest and serious debate non-existent. For example, when PIPA was introduced on May 12, 2011, Public Knowledge reacted immediately with our concerns. Two weeks later, on May 25, Public Knowledge and other public interest organizations raised substantive concerns with the legislation in a letter to the Senate Judiciary Committee. The following day that Committee voted out the legislation unanimously, without debate. They decided a hearing to examine the impacts on free speech, cybersecurity, and innovation was unnecessary.

The only reason the full Senate did not pass the bill shortly afterwards was because one courageous senator, Ron Wyden of Oregon, stood against the bill from the onset. He understood from the beginning that what was being proposed would fundamentally alter the Internet in a negative way and that it would be unacceptable to the public (once they found out about it, that is). If it was not for his “hold,” then it is likely that PIPA would already be law. Americans owe him, and most importantly his dedicated staff, a lot for their bravery in the face of fierce political pressure.

#### **Meeting with a Supporter of PIPA on Capitol Hill**

I will not provide names of any individual staffer I met with, but I want to give folks a peek into how policymakers view these things. Congressional staffers who work for a particular Member of Congress who supported PIPA did not believe there were legitimate concerns about free speech, censorship, cybersecurity, or excessive litigation that we believed the bill would cause. The lobbyists for the bill were very effective at portraying anyone that opposed them as people who did not take piracy seriously and believed that it was fine for artists to have their content stolen. The lobbyists would paint our concerns as just gimmicks to stop the bill, which naturally would make it very hard to be taken seriously if you actually believed that to be true.

Often after raising the fact that the mechanisms in the bill would take down lawful content with unlawful content, the well-trained response would be, “Do you expect us to do nothing to stop piracy?” Sometimes the discussion would degrade into arguments over whether the government should just stand idly by while grandma purchased bad drugs on the Internet and subsequently died—the lead sob story lobbyists used to make the case for passage. In other instances, concerns would be met with the flagrant disbelief that the government could ever harm an innocent in going after criminals (this was before the Dajaz1.com story came out). The mental block to taking these issues more seriously revolved around their belief that PIPA was a good bill and the arguments against PIPA were somehow out of touch. After all, if PIPA was really that bad, wouldn’t the public be complaining to Congress about it?

The worst part of these discussions revolved around Domain Name Server (DNS) filtering, which would essentially allow the government to reroute the roads of the Internet (though never actually taking down the infringing content). The bill’s sponsors were dealing with the fundamental nature of the Internet but had no idea what they were doing. It is also ironic that my point that users could just bypass that filter in seconds with a plug-in or a router setting change, was met with skepticism. I commented to a friend of mine that perhaps I need to bring sock puppets to explain the difference between DNS, Domain Names, and Internet Protocol Addresses.

Now I do not fault anyone for lacking the basic understandings or a router or a broadband modem, but I do fault the lobbies in favor of filtering for exploiting it. Having spoken with engineers who work with law enforcement and deal with cybersecurity on a day-to-day basis, it was breathtaking to me to see how

a mixture of technological ignorance and blind faith in the MPAA and RIAA lobby could be so dangerous. Despite countless hours of intense research done by the Center of Democracy and Technology on how DNS filtering would harm our national security and Public Knowledge's own understanding of the international implications on human rights should the United States adopt filtering as a policy choice, this provision almost made it into law.

This was only possible because the content industry's lobbyists engaged in a very sophisticated game of misinformation. I summarized in detail the extent of their misinformation campaign on DNS filtering in a blog post. Essentially while I would explain to an office that DNS filtering is used by countries like China and Iran and that, according to the experts, filtering makes the network vulnerable to cybersecurity attacks, the SOPA lobby would tell Congress that DNS filtering happens all the time for child pornography and malware and that experts have shown it is ok. But that's technically untrue—Comcast, for example, does not filter anything because that would make its network unsecure.

For those keeping count, more than one hundred forty Internet engineers and cybersecurity experts, including the people that built the Internet, told Congress that filtering is dangerous while a grand total of three individuals said it was totally fine. Another argument was that the mere fact that the cable industry endorsed SOPA was proof that DNS filtering was not that big of a deal. I suppose it is just a coincidence that the NBCU (also Comcast) merely happens to be the largest and most powerful member of the National Cable and Telecommunications Association.

Now, all things being equal, my arguments would win and theirs would lose. But keep in mind that the content industry, through their access to campaign cash and dozens of lobbyists, was able to gain direct access to Members of Congress to spin their story, while my capacity to inject the truth was limited to just me and a few other public interest advocates. Simultaneously, in order for our concerns to reach the attention of Members of Congress, the public needed to force them to care.

### **Meeting With a Skeptic on Capitol Hill**

Only a very small number of people in Congress were actually hardcore supporters of SOPA and PIPA. A substantial majority of staff were skeptical about the effectiveness and the constitutionality of the proposals. The challenge here, though, is that true courage on Capitol Hill is scarce—particularly if the public is silent. This is not the fault of any staffer or legislator, because I think most of us tend to conform to what seems to be inevitable. Rather, a lot of Capitol Hill operates on a “safety in numbers” mentality because it is politically safer to be with a group. That is why it is so rare to see individual senators stand up on any particular issue (with some rare exceptions).

Congressional staffers are also responsible for both informing their boss and protecting their boss on a multitude of issues. In debates where the public is silent, the issues the players in these offices often concern themselves with are determined by the influence lobby and campaign money that is prevalent in the

political system. If they do not have the confidence that the public will have their back in a tough election—especially in the age of Super PACs—because they did the right thing, they will almost always do the wrong thing. During the months of PIPA, I met with countless Congressional staffers who were concerned about the national security implications of DNS filtering and the First Amendment concerns raised by the free speech community. However, given the fact that the politics looked extraordinarily one-sided, many staffers and their bosses fell into one of two spaces: a) If so many other offices cosponsored the bill, then maybe our concerns were unwarranted, and b) why should they stick their neck out against a bill that seemed all but certain to pass?

Some may wish the system worked differently and that Members of Congress, on their own accord, would always do the right thing for the public. But I will tell you that this will never happen in a representative democracy if the public itself does not stay informed and engaged with their government. This is why the only players that want you to believe you do not have the power to make your Congress work for you are the very players in Washington D.C. who rely on your silence. The deaths of SOPA/PIPA are proof.

#### **How the Public Saved Congress from SOPA and PIPA**

On October 26, 2011, having captured nearly forty senators into supporting PIPA, the content lobby got greedy and pushed the House Judiciary Committee to create the abomination known as SOPA. Throughout the drafting process of SOPA, the public interest community (regardless of political affiliation) was shut out of the process and only major corporations were consulted with a heavy bias towards the movie and music industry. This process was so closed and lopsided that Republican leaders like Rep. Darrell Issa (CA) and Rep. Jason Chaffetz (UT) came out fiercely in opposition to the bills.

In essence, SOPA changed the debate from the original argument for PIPA (targeting foreign websites) to targeting everything Americans use and cherish today on the Internet. SOPA targeted user generated websites and open platforms in a way that would have destroyed the ecosystem of YouTube, Twitter, Facebook, and Tumblr. When I first saw the bill, I was floored that some in Congress would go so far as to engage in a scorched earth policy to fight piracy (and ultimately do very little to curb it).

At the same time, I was hopeful that this overreach would garner the public's attention because, at this point, we were losing on Capitol Hill. At this point, the powerful coalition of those of us working in Washington, with our fabulous allies working online and in the rest of the country, began to show its influence as they began to show the public what was going on with those bills.

The result was simply amazing. Normally a couple of dozen people watch a Congressional hearing. But here, more than one hundred thousand Americans watched the legislative hearing on SOPA on the Internet and millions of people signed petitions opposing the bill. At that point, I finally began to believe we could realistically water down or outright stop these bills. Once people started

calling Congress, writing letters, and attending town halls to express their displeasure, groups like mine finally had the leverage necessary to start winning.

Now, meetings with offices revolved around the discussion of what needed to come out of the bills in order to address the free speech harms, the cyber-security issues, and the cost of excessive litigation. I even had one staffer preemptively call me before my meeting to tell me that their boss would oppose the bills and questioned whether we needed to meet at all (but we met anyway so I could explain the specific problems). It was now politically necessary for all of Congress to find out what the Judiciary Committees were pushing, but only because voters back home were both upset and engaged. Once Members of Congress realized it would be wildly popular to be against SOPA and PIPA, they begin instructing their staff to pro-actively contact opponents for more information.

Believe me, when an office receives even one hundred letters on an issue, it garners a lot of attention from the Member of Congress. Having worked on Capitol Hill for more than six years, I can say it is absolute fact that many Members of Congress actually read the emails they receive from their constituents. Some even take the time to make personal calls back if the email or letter is personally impactful. One of the most memorable instances of this during the SOPA debate was when Rep. Steve Cohen (D-TN) spoke about the college student who started their own web business and was afraid that SOPA would bankrupt their dream. Your story and your engagement will always have an impact.

#### **The Final Days of SOPA and PIPA**

The floodgates were open. Throughout November, as the House Judiciary Committee held its lopsided SOPA hearing (five witnesses for the bill, one against) and the Senate prepared to vote on PIPA, more and more people around the country responded to the information we and our allies were sending out. People around the country also became more aware of the injustice of the legislative process with their own eyes. The House Judiciary Committee started two days of voting on the bill, but due to the heroic efforts Rep. Darrel Issa (D-CA), Zoe Lofgren (D-CA), Jared Polis (D-CO), and Jason Chaffetz (R-UT), opted to wait on finishing work on the bill until after the Christmas break. The Internet Blackout was scheduled for the day the Committee voting would resume, as well as for the planned Senate vote the next week, the week of Jan. 24. I did my part by explaining why the 24th of January was so critical to the entire process and laid it out to the coalition that we either won this fight or lost it on PIPA, not SOPA.

By the time January 18th rolled around, even the most dedicated protectors of the MPAA and RIAA scurried away from SOPA and PIPA. I recall warning one staffer weeks before the blackout that that the MPAA and RIAA had completely lost the public debate and it would be a really bad idea politically to move forward. I gave this warning with confidence because, at this stage, many offices had received on average more than two thousand letters and emails from their voters—a number that had only occurred in response on issues like the Iraq War

or privatizing Social Security. The Internet Blackout made it crystal clear to all in Congress that a vote for one of these bills would be political suicide.

While Public Knowledge and other organizations spent countless hours in strategizing, organizing, distributing information, meeting with Congress, and initializing other components of a national campaign, we were never going to win this fight without your participation. It is only due to your willingness to pick up those phones, tell your friends, write those emails, and visit those town halls that SOPA and PIPA died. I hope that my story will help show you the transformative impact your engagement had on the legislative process because it is possible that the next copyright war will actually not be a war at all but rather a positive agenda for innovation and the Internet. In order for that to be the future, though, you the reader must remain informed, active, and engaged with your government.

**TO THE WHITE HOUSE**  
**DAVID SEGAL AND DAVID MOON**

In mid-January members of President Barack Obama's administration delivered a serious blow to SOPA/PIPA by announcing their opposition to the bills on the White House blog. The administration had recently launched a new website allowing Internet users to create online petitions to the President, and officials promised a response to any efforts that quickly generated at least twenty-five thousand signatures.

On December 18, 2011 a petition emerged with the title, "VETO the SOPA bill and any other future bills that threaten to diminish the free flow of information." In a short period, fifty-one thousand six hundred eighty-nine people signed the petition and triggered a response from three key administration figures: Victoria Espinel, Intellectual Property Enforcement Coordinator; Aneesh Chopra, U.S. Chief Technology Officer; and Howard Schmidt, Special Assistant to the President.

On January 14, 2012, the three Obama officials wrote that the administration would "not support legislation that reduces freedom of expression, increases cybersecurity risk, or undermines the dynamic, innovative global Internet." The increasingly hobbled SOPA/PIPA bills now faced public opposition from the White House.

What many did not know was that Obama's team had been signaling their concerns with SOPA/PIPA for a month or two prior. In late November, Demand Progress reached out to the White House, and received a surprisingly gracious response. After months of email campaigns, phone calls, and public criticism of the pair of legislative proposals, our coalition of Internet freedom advocates was granted a December 9th meeting with Espinel. Our conversation buttressed a series of face-to-face discussions between White House officials and concerned venture capitalists and web platform proprietors.

We pulled in groups like Avaaz, MoveOn, and Reporters Without Borders, delivered hundreds of thousands of petition signatures to the Obama administration, and expressed our concerns about the various free speech and human rights implications of SOPA/PIPA. It was a bit surreal to find ourselves invited to the Executive Office Building to meet with White House staff after months of insistence by insiders that our pleas were falling upon deaf ears. But we could tell at our December meeting that the bureaucrats were beginning to actually listen to what we were saying. Somewhat to our surprise, this was more than a perfunctory endeavor whose purpose was simply to check off the box next to "meet with those annoying activists" on the White House's to do list.

For example, our sit-down with Espinel was attended not only by her colleagues with intellectual property-related job titles, but also by officials like Carl Shapiro, then a member of the White House Council of Economic Advisers. The grouping of Obama officials asked our ragtag coalition of free speech advocates

## TO THE WHITE HOUSE

to cite which portions of SOPA/PIPA we saw as particularly problematic and gauged our support for various potential fixes. The day after the meeting, I contacted a reporter about the interaction and noted that I thought the White House officials “showed genuine interest in hearing what the groups had to say.” As it turns out, they ended up siding with our side. It’s hard to know exactly how these decisions were made, to what extent the various in-person meetings might have had an impact above and beyond the regular rhythm of emails, petitions, and concerned phone calls the White House was receiving. But with the focus of hindsight, this feels like a healthy reminder that taking the online protests offline can sometimes be a useful exercise.

A few weeks later we received a note from Espinel as the White House released its statement:

David—thanks again for organizing the group you put in. We just put out an official response to the concerns raised in We the People that I think you will be interested in.

Demand Progress has been, and will remain, a vocal critic of the Obama White House relative to its record on a number of civil liberties issues: from the extension of warrantless wiretapping authorities to its support for the P.A.T.R.I.O.T. Act; from its drone wars to its defense of the recently enacted power to indefinitely detain civilians without charge or trial. But the administration deserves credit for the even-handed manner in which it addressed activists’ concerns about SOPA/PIPA and for its eventual opposition to the bill. White House response to anti-SOPA/PIPA petition:

### **COMBATING ONLINE PIRACY WHILE PROTECTING AN OPEN AND INNOVATIVE INTERNET**

By Victoria Espinel, Aneesh Chopra, and Howard Schmidt

Thanks for taking the time to sign this petition. Both your words and actions illustrate the importance of maintaining an open and democratic Internet.

Right now, Congress is debating a few pieces of legislation concerning the very real issue of online piracy, including the Stop Online Piracy Act (SOPA), the PROTECT IP Act, and the Online Protection and Digital Enforcement Act (OPEN). We want to take this opportunity to tell you what the Administration will support—and what we will not support. Any effective legislation should reflect a wide range of stakeholders, including everyone from content creators to the engineers that build and maintain the infrastructure of the Internet.

While we believe that online piracy by foreign websites is a serious problem that requires a serious legislative response, we will not support legislation that reduces freedom of expression, increases cyber security risk, or undermines the dynamic, innovative global Internet.

Any effort to combat online piracy must guard against the risk of online censorship of lawful activity and must not inhibit innovation by our dynamic businesses large and small. Across the globe, the openness of the Internet is increasingly central to innovation in business, government, and society and it must be protected. To minimize this risk, new legislation must be narrowly targeted only at sites beyond the reach of current U.S. law, cover activity clearly prohibited under existing U.S. laws, and be effectively tailored, with strong due process and focused on criminal activity. Any provision covering Internet intermediaries such as online advertising networks, payment processors, or search engines must be transparent and designed to prevent overly broad private rights of action that could encourage unjustified litigation that could discourage startup businesses and innovative firms from growing.

We must avoid creating new cybersecurity risks or disrupting the underlying architecture of the Internet. Proposed laws must not tamper with the technical architecture of the Internet through manipulation of the Domain Name System (DNS), a foundation of Internet security. Our analysis of the DNS filtering provisions in some proposed legislation suggests that they pose a real risk to cybersecurity and yet leave contraband goods and services accessible online. We must avoid legislation that drives users to dangerous, unreliable DNS servers and puts next-generation security policies, such as the deployment of DNSSEC, at risk.

Let us be clear—online piracy is a real problem that harms the American economy, threatens jobs for significant numbers of middle class workers and hurts some of our nation's most creative and innovative companies and entrepreneurs. It harms everyone from struggling artists to production crews, and from startup social media companies to large movie studios. While we are strongly committed to the vigorous enforcement of intellectual property rights, existing tools are not strong enough to root out the worst online pirates beyond our borders. That is why the Administration calls on all sides to work together to pass sound legislation this year that provides prosecutors and rights holders new legal tools to combat online piracy originating beyond U.S. borders while staying true to the principles outlined above in this response. We should never let criminals hide behind a hollow embrace of legitimate American values.

This is not just a matter for legislation. We expect and encourage all private parties, including both content creators and Internet platform providers working together, to adopt voluntary measures and best practices to reduce online piracy.

So, rather than just look at how legislation can be stopped, ask yourself: Where do we go from here? Don't limit your opinion to what's the wrong thing to do, ask yourself what's right. Already, many members of Congress are asking for public input around the issue. We are paying close attention to those opportunities, as well as to public input to the Administration.

TO THE WHITE HOUSE

The organizer of this petition and a random sample of the signers will be invited to a conference call to discuss this issue further with Administration officials and soon after that, we will host an online event to get more input and answer your questions. Details on that will follow in the coming days.

Washington needs to hear your best ideas about how to clamp down on rogue websites and other criminals who make money off the creative efforts of American artists and rights holders. We should all be committed to working with all interested constituencies to develop new legal tools to protect global intellectual property rights without jeopardizing the openness of the Internet. Our hope is that you will bring enthusiasm and know-how to this important challenge.

Moving forward, we will continue to work with Congress on a bipartisan basis on legislation that provides new tools needed in the global fight against piracy and counterfeiting, while vigorously defending an open Internet based on the values of free expression, privacy, security and innovation. Again, thank you for taking the time to participate in this important process. We hope you'll continue to be part of it.

Victoria Espinel is Intellectual Property Enforcement Coordinator at Office of Management and Budget

Aneesh Chopra is the U.S. Chief Technology Officer and Assistant to the President and Associate Director for Technology at the Office of Science and Technology Policy

Howard Schmidt is Special Assistant to the President and Cybersecurity Coordinator for National Security Staff

## ON THE WHITE HOUSE'S STATEMENT

### DEREK SLATER

*Derek Slater is a Policy Manager on Google's public policy team, where he helped lead Google's anti-SOPA advocacy strategy. He supports the company's global advocacy efforts on innovation policy, including copyright and telecom. Derek has been writing about digital media since he bought a Diamond Rio PMP300 MP3 player as a teenager. This contribution reflects his opinions, rather than those of Google. It's adapted from an essay he wrote immediately after the White House released its statement on SOPA/PIPA.*

Today, the Obama Administration said that any new IP enforcement legislation must be narrowly tailored to a compelling interest and must meet strict yet carefully designed specs. It also said that (1) countries can balkanize the Internet along the lines of commerce, but it must leave the global, non-commercial speech, creativity and innovation of the Internet alone, and (2) governments should not regulate online content businesses through the network and code layers of the Internet, or through non-commercial content layer activities. The Administration laid down these principles to protect job creation, innovation, creativity and free expression.

The White House showed immense courage today, and now we'll see if it has real leadership. After all, the White House's statement today on piracy and an open Internet can only be measured in historical perspective, based on the impact it ends up actually having.

How might we measure this impact?

One way is through comparison, and in this case the right baseline is former FCC Chairman Michael Powell's Internet Policy Principles, which became the foundation for those who support the end goal of network neutrality (even though this large group disagreed on whether to accomplish this through law, market competition, norms, and/or code). Five years down the road, will the White House's statement have had as much influence? Will it have been repeated as many times by other policymakers, third parties, media, and the public? Will Victoria Espinel become a champion for the Internet? Will it have been the foundation for both policy and norms, nudging the market gently in the right direction without being overly prescriptive or demur?

Another way to measure is more direct: what actual policies are (or are not) implemented? This measurement is more difficult than it sounds, because the White House included many lawyer weasel words throughout—they're against censorship, but they hedge a little bit on search engines (despite the fact that data shows this is both an ineffective and bad vehicle for regulation: <http://www.techdirt.com/articles/20111130/05022316931/data-shows-removing-rogue-sites-search-wont-make-much-difference.shtml>), and they're only against “overly broad” private rights of action.

That said, the Administration laid down what appears to be a pretty clean Line of Demarcation: “new legislation must be narrowly targeted only at sites beyond the reach of current U.S. law, cover activity clearly prohibited under existing U.S. laws, and be effectively tailored, with strong due process and focused on criminal activity.”

Let's break this all the way down:

- (A) “Must be”—not could be, not should be, but a mandate.
- (B) “Narrowly targeted”—focused on a specific, defined, measurable problem, like in strict scrutiny under First Amendment law.
- (C) “Only at sites”—only, not some of the time, but all of the time, new enforcement legislation must be focused at sites that meet all of the following qualities ...
  - (1) “Beyond the reach of current U.S. law”—in other words, they won’t show up and be subject to jurisdiction in a U.S. federal court.
  - (2) “cover activity clearly prohibited under existing U.S. laws”—which means that new legislation should not substantively increase copyright’s penalties or create new systems of liability. Liability and penalties in copyright law have reached their upper limit, and shall go no further.
  - (3) “and be effectively tailored”—remember, strict scrutiny! And it also has to actually be effective at addressing the identified problem.
  - (4) “with strong due process”—I think here they mean taking into account fundamental rights, like freedom of speech. If they only meant procedural due process (ie, notice, time, and information for the accused to respond), they would have just said “procedural.”
  - (5) “focused on criminal activity”—related to criminal copyrighted infringements, which is a higher standard than typical civil actions.

To play it back, “new legislation (A) must be (B) narrowly targeted (C) only at sites (C1) beyond the reach of current U.S. law, (C2) cover activity clearly prohibited under existing U.S. laws, and (C3) be effectively tailored, with (C4) strong due process and (C5) focused on criminal activity.”

If you compare this standard to other attempts at governments setting Internet policy principles—for instance, the OECD’s recent statement—then the U.S. Administration was quite a bit clearer. In relative terms, it’s a straight talk express.

They also went substantively further by demarcating a line in the sand across which Internet regulation shall not pass.

If I read it correctly, the Administration is saying IP enforcement could go as far as the OPEN Act, but no further. Abstracted up a layer, the Administration is saying that in some cases, it may be ok to balkanize the Internet when it

comes to commercial transactions. The U.S. can make decisions about how foreign businesses and Americans exchange money with one another—in other words, the guts of trade policy. But the U.S. must not take actions to prevent an American from engaging and encountering Chinese speech, creativity, and innovation—just as we would say China should not prevent its citizens from engaging and encountering Americans online.

That isn't just an Internet Policy Principle. That's a Global Internet Policy Line of Commercial/NonCommercial Demarcation.

The roots of the Internet are non-commercial. It came from academia. The Web was built on open standards and open code. It has given rise to open content.

All of this non-commercial activity provides the infrastructure for a huge commercial ecosystem. All the jobs and economic growth generated by the Internet industry are built on top of this non-commercial infrastructure. This is a hybrid economy.

The Administration said today that this infrastructure must remain open and innovative, and governments should never seek to regulate online content layer businesses through messing with underlying infrastructure, whether non-commercial content layer activities, or the code and network layers of the Internet.

**PROPOSAL TO REACH CONSENSUS ON  
STATEMENT AGAINST THE STOP ONLINE  
PIRACY ACT  
OCCUPY WALL STREET**

The accumulation of power is a tyrant's wont, and the defense of liberty is a citizen's sacred duty. It is inside the dialectic of these forces where the arc of human drama unfolds. Our story is long, and our progress has been great in our march towards a freer world. Yet much of our motion has been in retrograde—each epoch of our history eventually regresses into a gradual ceding of much that's been accomplished. Humanity is either profoundly patient, profoundly lazy, or both. We tolerate much, and revolt very little. Yet, from time to time, the abuses of a government against its people become impossible to bear. From time to time, we reverse course, and once again make great strides in our quest for true justice. When the arrogance of the powerful reaches a critical point, the apathy and lethargy and complacency with which the people are programmed can vanish quickly. We are here to sound a warning to those within the barricades of wealth and power: reverse course, or wake the sleeping giant of the true body politic.

The erosion of our essential liberties has been slow, and at times subtle, but it has also been constant and insidious. Nearly complete disenfranchisement of the general populace has been achieved via social, political, economic and environmental means. We gather here in defense of our treasured rights. We know that these rights are natural and god given, and we will not allow them to be subject to the will and whim of a shadow government or kleptocratic cadre. We will defend them to our death rather than live under the yoke of plutocratic despotism. Yet, we still believe that reparation can be achieved through means political and civil.

Though the string of trespasses which we protest is long, we wish to voice our grievances with the ruling regime in no uncertain terms. In the name of the American people, we beseech those who supposedly serve our interests to oppose the passage of HR.326 and S.968. Should these bills become law, our nation will transgress a line of moral sanity from beyond which it will be difficult to return. In the hope that we might still preserve and restore our republic, we implore our representatives to oppose these key pieces of legislation.

HR.3261 is the Stop Online Piracy Act, and S.968 is the Protect IP Act. The provisions of those bills would make it possible for the judiciary to censor content on the Internet with exceedingly low burdens of proof, and extremely high risk of collateral damage. It is the consensus of leading technology and civil liberties groups that the authors of these bills had little regard for the technical reality of our telecommunications systems or the rights of the populous to freely express itself. Multinational corporations have used the U.S. Chamber

of Commerce and Motion Picture Association of America to lobby heavily for these pieces of legislation—exerting their corrupting influence in the halls of power, so that our duly sworn servants might act against the interests of their constituencies. While a desire to stop the piracy of intellectual property may be justifiable, it is clear to the leading technologists of our day that the legislation in question would not do so. We will not once again allow ourselves to be fooled by the doublespeak of lobbyists and their puppet politicians. We will no longer look the other way.

Over the course of the last decade, much damage has been done to the moral fabric of our democracy. Longstanding principles have been breached. Those in power have shown their colors as self-appointed lords who think it justified to capture, detain, torture, and execute individuals anywhere on the planet. We have become a nation that spies upon its own citizenry, without need for warrant or subpoena. Dissent is quashed, vast swaths of the population are incarcerated and systematically undereducated, laws are bought and paid for. We seem to have forgotten, as a nation and as a people, that the only justified derivation of sovereignty is the voluntary association of free individuals. Recent events around the world strengthen our belief that a government sustained by the practice of coercion will not last. We are hopeful that we can repair this damage through means that are political and peaceful. A great deal of this hope lies in our newfound ability to communicate globally by means of digital transmission. We caution the so-called servants of the public that the ongoing and aforementioned attempts to legalize censorship of the Internet would spell moral ruin for our government, and disaster for our nation.

To the soul of any faithful citizen, the first part of this new millennium has been painful. We have watched as our nation's legislators have proven themselves to be myopic and guided by corrupt influence. By all accounts, they no longer fulfill the role envisioned for them in our Constitution. They do not represent the interests of the many. The essential checks and balances required of the executive and judicial branches have similarly failed, as the power of such great wealth concentrated in so few pervades all levels of government in their interlocking dependencies. It is natural to be humbled by failure. That humility propels evolution towards success. Though we see no evidence of it, we hope that those in power will be humbled by their failure, will awaken to their mandate, and will turn to the many for guidance.

We are still, in the words of Lazarus, the huddled masses yearning to breathe free—yet in this age of information, our yearning has taken a new shape. We yearn to share, to exchange ideas—to realize our common humanity, and in so doing transcend the ultimately destructive impulse of nationalism and narrow self-interest. Therefore, we will protect with all our might our right to have unfettered access to free speech via the Internet. At this critical hour in our history, we consider that right to be, in essence, concomitant with those stillinalienable rights acknowledged in the Declaration of Independence—to life, liberty and the pursuit of happiness.

It is not too late to save the soul of our state. It is not too late to turn back from the route of corruption and tyranny, but it must begin now, and it

## PROPOSAL TO REACH CONSENSUS

must begin by recognizing the critical importance of our ability to associate and exchange ideas in cyberspace. Any attempt to abridge our ability to do so will be viewed as an attack on our natural rights, and an egregious misstep. SOPA and Protect IP are horrendously crafted and dangerous pieces of legislation that will not achieve the ends purported by their corporate backers, but will endanger liberties most prized. They must not become law.

## THEN, THE BLACKOUT

### TIFFINIY CHENG

We'd all made a ton of progress, but there was still a sturdy wind at our backs and it made sense to keep pressing forward and make sure the bill was really done-for. EFF, FFTF, Public Knowledge, Mozilla, Demand Progress, CDT and several other organizations and platforms got to work on building towards another day of action. Mozilla helped connect us to WordPress—a top 30 site—and we got a commitment from them that they'd participate. We heard that Craigslist—a top ten site—wanted to get involved.

The Wikipedia community got closer and closer to approving a site-wide blackout on U.S. Wikipedia, with Wikipedia founder Jimmy Wales going public about his position in support of a SOPA protest: more and more people understood that SOPA would've been narrowly destructive of Wikipedia, but also would have undermined other efforts to use the Internet to broaden access to information. (One of the most extraordinary artifacts from the blackout would be the stream of tweets from jilted middle and high school students whose lack of access to the site stymied schoolwork for a day and provided a fleeting glimpse of what life was like in the prehistoric 1990s.)

Even as these major pieces began to shift into place, Congress continued to suffer a baseline bombardment of constituent contacts via phones and emails—and, for the first time, Twitter was playing a critical role in impacting a legislative endeavor in the United States. Tweets were especially useful because lawmakers' handlers could see them right away and Twitter was built to spur virality, since a tweeter's friends would see the message to Congress—educating others to the danger of the bill, and spinning off waves of additional tweets from the given social network. Tweets from celebrities were especially encouraging, as several courageous musicians and actors bucked their paymasters and stood up for the Internet—and, in doing so, their fan bases.

We launched SOPAStrike.com to serve as a hub for the new wave of organizing. Countless websites popped up in support of the effort, and coders and designers from all over the web developed a wide array of plugins, widgets, badges, twitter avatar badges, and countless other ways for people to get in on the action.

Taking advantage of the January recess when members of Congress were in their home states, FFTF and Public Knowledge organized in-person meetings in most states on [my.americancensorship.org](http://my.americancensorship.org) and Meetup, and myriad Americans showed up at least fifty town halls and peppered their lawmakers with questions about the bill. They were generally quite polite, but perhaps they took a little inspiration from the Tea Party's success at doing the same during the Health Care fight.

On January 14, the Obama administration published an iconic blog post opposing SOPA/PIPA, and ever more members of Congress start to come out

against the two bills, citing meetings with constituents. The blackout was still days away, but things were already snowballing out of control.

Ultimately, more than one hundred fifteen thousand sites pledged to blackout their sites or prominently display the FFTF widget for 24 hours. This included four of America's top ten sites by traffic—Craigslist, Wikipedia, Google, and eBay—and 13 top 100 sites. Wordpress (used by over 16% of the top million websites) and Wikipedia blacked out entirely, as did reddit and Craigslist (which to date maintains a victory link on every housing, job, and “for sale” search result). Other major sites like Google, Amazon, Pinterest, and Flickr blocked out their logos and/or displayed links to take public action. The quantity and quality of press coverage was unprecedented for any concern even remotely connected to online freedoms, with the campaign earning worldwide press and extensive front page, above-the-fold coverage in virtually every American daily paper. There were over three million tweets and the “SOPA and PIPA bills,” “piracy,” “censorship,” and “blackout” were among the top ten trending search terms on Google.

Washington and Hollywood insiders didn't know what was coming, but on the morning the blackout began, it was clear that the fight against SOPA and PIPA was destined to be a watershed moment in the history of the Internet, and even in political history. There were over one billion impressions of the anti-SOPA messaging, with more than twenty-four million people taking action in the form of emails, phone calls, and signing petitions—millions each from Google and Wikipedia alone. The protests moved offline too: thousands protested outside senators' offices in NYC, San Francisco, Seattle, and D.C. In the end, dozens of lawmakers who'd backed the bills, including several cosponsors, publicly withdrew their support. OpenCongress.org, the Congressional transparency website, organized a collaborative whip count project, and on the day of the blackout you could watch lawmakers' support for the bill crumble in real time as you refreshed the page.

The end result: both bills—both seen as unbeatable just months before—were shelved indefinitely. The *New York Times* described the flabbergasted reaction of the MPAA's Chris Dodd, who'd become Hollywood's top lobbyist immediately after ending his decades-long career in the Senate. The ferocity of the movement was a wakeup call to Washington, signaling, that:

... no Washington player can safely assume that a well-wired, heavily financed legislative program is safe from a sudden burst of Web-driven populism. “This is altogether a new effect,” Mr. Dodd said, comparing the online movement to the Arab Spring. He could not remember seeing “an effort that was moving with this degree of support change this dramatically” in the last four decades, he added.

Within days of the defeat of SOPA and PIPA, momentum from this global online uprising helped inspire scores of street protests across Europe against the Anti-Counterfeiting Trade Agreement (ACTA), a measure that has been coined “Europe's SOPA.” The international treaty would have infringed upon online

freedoms in service of cracking down on supposed intellectual property violations. Poland was even in the unfortunate position of having announced its support for the agreement on the same day as the blackout, and became fast fodder for protests. The synergies between the anti-SOPA protests and the anti-ACTA organizing created an additive effect that scared the bejesus out of European lawmakers and compelled many jurisdictions that had announced their support for ACTA—or whose executives had even formally signed it—to decline to ratify it or actively announce their opposition. The resounding defeat of this trade agreement by the European Parliament in July 2012—on a 478–39 vote—was directly attributed to the emergence of Internet users as a powerful force in shaping policy.

And while our domestic opponents have written off our success as a one-time phenomenon, the Internet freedom constituency earned another big legislative win shortly thereafter: as of this writing, the civil liberties grassroots groups had helped to stall out the Cyber Intelligence Sharing and Protection Act (CISPA). CISPA began making its way through Congress in early 2012, passing the House in April 2012. The bill, which was ostensibly intended to prevent threats to cybersecurity, was written so broadly that it could easily be used for government spying and censorship. FFTF helped organize in-person meetings with senators and created [doyouhaveasecret.org](http://doyouhaveasecret.org), a site that drove thousands of emails and phone calls to Congress.

Our opponents will no doubt be back with similar laws in different packaging. A genuinely open Internet is simply too much of a threat to powerful, establishment forces. Anticipating this, FFTF is now working to transform the ad hoc coalition that formed around SOPA into a stable, self-sustaining force capable of stopping future bad tech legislation. FFTF has already begun setting up an emergency alert system for the Internet—the Internet Defense League—that is designed to take the tactics that killed SOPA and PIPA and turn them into a permanent force for defending the Internet and making it better. Early members of the league include Mozilla, Wordpress, reddit, OpenCongress, and hundreds of other websites of all sizes that will be ready to leap into action as soon as a threat arises. Beyond this, the fight against SOPA and PIPA has built a massive new constituency of Internet users who now better understand the threats that Congress, the content industry, and other powerful actors pose to their networks. Most importantly, we're ever-more astute activists—and now we know what winning tastes like.

## CONGRESS SAYS: "THIS CAN'T BE HAPPENING"

### DAVID SEGAL

After the markup, but well before the blackout, we'd already heard from several offices that the volume of constituent contacts that they were receiving had been surpassed only by the immigration reform debate, Obama's health care reform push, or for many offices, never at all. Even more spectacularly: in the case of the prior debates, America's sentiments were substantially divided. But when it came to SOPA, something like 99% of us—regardless of party, geography, or ideological self-identity—were on the same side.

Some of these offices—like Ron Paul's—were congratulatory. Others, particularly those that were complicit in attempting to foist SOPA on the American public, were a bit less gracious.

During the markup, Illinois Democrat and Judiciary Committee member Mike Quigley berated his own constituents as he argued that many SOPA opponents who'd contacted him had "a vision of the Internet that [was] unacceptable." His office also seemed to think it unacceptable, or unfathomable, that they'd have been inundated with so much concern from their residents of Illinois's 5th—or that some constituents might even have emailed them twice. We'd run several anti-SOPA and PIPA actions, first urging lawmakers to decline to cosponsor the bill, then urging them to take action to oppose it, and so on. Thousands of new people participated in each successive action, and many of the bills' most adamant opponents became repeat offenders.

Each contact we generated included a name, email address, and street address—not terribly difficult for a Congressional office to corroborate. Even so, here's the email we received from Quigley's office after we forwarded along the notes our members had generated:

Thank you for this information; it is useful. However, because many of the names are repeated, but with slightly different messages, it appears as though these addresses and messages were fabricated. Perhaps you could explain how these messages were created. Providing more legitimate constitute letters would make taking this information into account more acceptable to our office.

Consider that for a moment: a Congress so insulated from its constituencies, a so-called Republic in which public participation is so depressed, that a substantial number of its lawmakers—including a robust bipartisan cadre in the Senate—even pursue as a priority fiercely unpopular Internet censorship legislation to begin with. And then its members' first impulse upon receiving emails from five thousand or so constituents (representing less than 1% of the population of even

the smallest Congressional district) to express their discontent with such is to believe that those constituents couldn't possibly be real. Simply cross-referencing the ample identifying information with the districts' voter file and—if overkill is your style—sending inquiries to a handful of email-senders would've done the trick. The people who emailed the congressman most frequently are precisely those whose concerns he should have taken most seriously, for being the most engaged in the political process.

Though he'd been among Congress's most intransigent, even Quigley eventually came around, releasing a statement after the blackout that read "I have decided to oppose the Stop Online Piracy Act and will continue to oppose anti-piracy legislation until a compromise can be struck that protects the free and open nature of the Internet." What a glorious testament to the new found power of the Internet public—and to the foolishness of Quigley's brand of pomposity.

## I LIVE, WORK, PLAY, AND LOVE ONLINE

### NICOLE POWERS

*Nicole Powers (@nicolepowers) is a writer, photographer, conversationalist, armchair anarchist, and painfully polite protester. She serves as managing editor and undercover tweeter for SuicideGirls, many of whose users engaged in creative anti-SOPA/PIPA activism—and has done time at occupations in New York, London, Chicago, and Los Angeles. Nicole was born in the UK, currently lives in the United States, but as a denizen primarily of the Internet imagines a world where there's no countries to live or die for (and no religion too). Her main goal in life is to live long enough to be able to upload her consciousness to the matrix. As a backup plan, she's currently looking for an entity that is capable of keeping her online persona alive when she dies.*

I live, work, play, and love online, so if you mess with the Internet you're messing with my world.

As the Managing Editor of the SuicideGirls' blog, I spend my days writing, editing, and posting content that's relevant to our community, and as one of the undercover tweeters on the @SuicideGirls account, I spend much of my spare time interacting with our followers there.

What I do at SG is so much more than a job—it's a privilege and a vocation. As a writer, I've been given an incredible amount of freedom to raise awareness for the issues I'm passionate about. As an editor, my greatest joy is to allow other similarly passionate voices to be heard. And as a member of the social media team, I have the pleasure of interacting with a group of tweeps that really "get it."

Founded in 2001, SuicideGirls was actually one of the first social networks, predating Friendster, MySpace, and Facebook. As such, it has a long history of attracting tech savvy early adopters, and free and forward thinkers. Though most outsiders know us as an alternative pinup site, behind the photographs of staunchly individual ladies on our homepage—images that we hope help redefine beauty—there's a boutique community that allows members to make friends, post blogs, and interact as adults. The conversations in the myriad of groups and boards are as colorful and creative as our members, and the friends I've made over the years on the site are of the caliber that I will retain for life.

On the blog we cover many topics that are obviously related to the site, such as tattoos, piercings, sex, relationships, and geek culture. But SuicideGirls also has a long tradition of campaigning for freedom of expression and social issues, and covering the politics that relate to them too. I can hear the needle scratching off the record in the minds of the uninitiated at the mention of politics being posted alongside our bewbs, but this is actually more logical than you may think when you consider the origins of our name.

SuicideGirls doesn't refer to any lemming-like tendencies to jump off cliffs. Rather it was a phrase coined by *Fight Club* author Chuck Palahniuk, which he used in his 1999 novel *Survivor*. We use it to describe women who choose to commit social suicide from the mainstream by permanently marking their bodies with tattoos. This concept of social suicide also explains why there's a natural

affinity between us and social justice movements that promote progressive ideas that exist outside of the mainstream.

When SOPA and its ugly sister PIPA first reared their ugly heads, unlike the technological Neanderthals who drafted it, the hive mind on Twitter soon zoned in on the problematic small print and the ramifications thereof. Reading the tweets that bore the #SOPA hashtag that swarmed within our stream, it rapidly became apparent that this legislation would have a chilling effect on sites such as SuicideGirls, which incorporate massive amounts of user generated content. It would be utterly impractical and economically unviable to police the providence of all the links and content posted by our models and members on their blogs and in the countless forums and comments threads prior to publishing. And being forced to do so would seriously stifle the freedom of speech that our community currently enjoys.

Under the restrictive and open-ended terms of SOPA, it would be virtually impossible for a site such as ours to function, which is why we—along with other social media sites such as reddit, Tumblr, Flickr, Fark, and 4chan—participated in the January 18th day of action. Unlike the more editorial driven sites we love such as Wired, Boing Boing, and Rawstory, as a subscriber funded online community offering a service to our members, blacking out entirely wasn't an option on #J18. We therefore had to find other creative ways to protest SOPA, and show solidarity with the sites that were able to go dark.

We posted a special “Tease of the Day” which featured the gorgeous Arabella Suicide in a set of photographs entitled “Pirate Girl.” Despite the fact that pertinent parts of her anatomy had been redacted with black bars that bore the words “STOP SOPA!” in large pink Helvetica type, it remains to this day one of the most re-tweeted items on our blog. Similarly, other posts explaining the problems with SOPA and covering the deafening #J18 silence count among our most read and shared posts. We also had fun with self-censored tweets containing messages such as “Stop #SOPA Now!!! … Before it [REDACTED] to your Internet.”

Despite the fact that crickets could be heard in all the coolest corners of the web, January 18, 2012 went down as an #EPIC day in Internet history, and was a veritable riot on Twitter. The day of action garnered massive support from all corners of the web, from giant organizations such as Wikipedia and Google, to grassroots blogs and Twitter accounts run by our Occupy and Anon friends.

After being bombarded by phone calls, emails and online petitions, several senators distanced themselves from SOPA, with at least ten withdrawing their support by day's end. With many of their fave sites offline, Internet lovers in New York, Los Angeles, San Francisco, and Vegas took to the streets. Meanwhile members of the artistic community made their voice heard with an open letter to Washington.

However the MPAA and much of Hollywood's old guard remained defiant. Their refusal to understand the new paradigm, and their determination to wage war against their greatest consumers—and turn their customers into a criminal class—merely serves to underline how out of touch they are with their future

sales base. Meanwhile their actions ironically alienate many of the outlets that promote their wares (as ours does with entertainment-based columns, reviews, and interviews). In a statement and via multiple (and quite absurd) tweets, the MPAA explained/excused their pro-SOPA stance by blaming “foreign criminals,” claiming that they were taking action to defend “American jobs”—an argument that doesn’t really hold up when you consider research which indicates the biggest sharers of copyrighted material are also the biggest consumers.

Though many of the politicians that support SOPA, and the corporations that bought them, remain unrepentant, the unprecedented day of online action thrust the issue of Internet freedom to the fore, educating many who were previously unaware of the bills and forcing the mainstream media—however unwillingly—to report a little of the Orwellian reality that laws like SOPA and PIPA would bring.

But the fight is far from over. Though #SOPA and its supporters made a hasty retreat, many of the provisions are rearing their ugly heads in a seemingly endless barrage of new SOPA-like Return of SOPA / Son of SOPA legislation. However this time the online massive is ready for the onslaught of those who purport to represent us but in reality kowtow to lobbyists and serve those who contribute the most to their campaigns.

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Many lines were drawn in the sand on January 18th. Between the outlets who prioritize their readers and those that serve their advertisers. Between media corporations that understand the digital generation, and those that don’t. And between out of touch lawmakers, and those plugged into the collective online consciousness.

Many bonds were forged on that day too. As those that joined in the fight to #StopSOPA worked their magic on Twitter, allies were found and new friendships were born. Those who self-identify as Occupiers and/or Anons, who are more used to working outside the system, stood shoulder-to-shoulder online with mainstream businesses that had the balls to stick their necks out for the cause. Tactics were learned and shared. Hashtags were trended and jacked. A seemingly disparate group of activists, non-profits, and progressive corporations worked together as powerful machines of dissent, and have continued to do so in the months since, not only coordinating protests against the curtailment of Internet rights, but real world ones too, such as those threatened by the #NDAA.

Another lesson was learned that day too. For too long, our politicians, and the corporations that have pwned them, have had it too easy, ruling over an apathetic, ill-informed, distracted, and, for the most part, docile population that might run riot over a lost Giants game but by and large won’t fight for basic human rights. But that’s changing. Rebellion is in the air and it was online like never before on #J18.

An exceedingly bright young man called Jake Davis (a.k.a. Lulzsec hactivist Topiary) once said that “laws are to be respected when they’re fair, not obeyed without question.” Unfortunately, the laws that rule the Internet are often decidedly unfair, and are frequently so arbitrary and arcane that they’d be laughable but for the fact that good people are languishing in jail and businesses have been destroyed because of them.

At best these laws are outdated, as is the case with those that fall under the 1986 Computer Fraud and Abuse Act, which predates the hyperlinked Internet as we know it. At worst, they’re stacked in favor of big business and special interest groups, as was the case with the MPAA-promoted travesties of judgment that were PIPA and SOPA. Indeed the labyrinth of archaic and/or poorly drafted legislation with regards to computers and the Internet is so confusing that even our judiciary has a hard time navigating them. So how on earth do we expect the average end user to?

As I write these final paragraphs, two fairly random recent news items come to mind that are not entirely unconnected. The first is the story of a 9-year-old girl, who had her Winnie the Poo laptop confiscated by Finnish police after she attempted to preview a song by pop star Chisu’. After she inadvertently clicked on a Pirate Bay link, the Copyright Information and Anti-Piracy Centre in Finland (TTVK) sent a missive demanding six hundred Euros from her father, who responded with a letter and photographs of a bought album and concert tickets. I’m not sure what lesson that 9-year-old girl learned about copyright and respect for authority, but I’m sure it wasn’t the one the copyright clowns or agents of the law intended.

The second story draws from a study conducted by the Munich School of Management and Copenhagen Business School, which indicates that the U.S. Government’s decision to shut down file hosting site Megaupload anyway in the wake of SOPA’s failure—an action that was done at the behest of the RIAA and MPAA—actually negatively impacted Hollywood box office revenues both in the U.S. and around the globe. Not surprisingly, non-blockbuster films that rely on word of mouth rather than big marketing budgets appeared to be most affected by Megaupload’s demise, which doesn’t bode well for the long term health of independent movie or music making if we’re to continue on this course of litigation and criminalization.

Indeed, there is a mounting weight of evidence which suggests that those who fileshare the most also legitimately buy the most. The irony here is that those who will likely be harmed by any future PIPA and SOPA-like legislation include those who are lobbying the hardest for it. Instead of investing in shoddy and mean-spirited legislation, the entertainment industry would be better served investing their money in talent and products worthy of our consumption. If they spent less time biting the 9-year-old hand that feeds them, and tying the hands of websites that either intentionally or unintentionally evangelize for them, we’d all be better off—and better entertained.

## BLOWING CONGRESS WIDE OPEN

### DAVID MOORE AND DONNY SHAW, FOR OPENCONGRESS

*OpenCongress became an important source of information for countless thousands of concerned Americans who wanted to track developments in the SOPA/PIPA fight. OpenCongress brings together official government data with news coverage, blog posts, public comments, and more to give you the real story behind what's happening in Congress. Small groups of political insiders and lobbyists already know what's really going on in Congress. Now, everyone can be an insider.*

We launched OpenCongress back in February 2007—recognizing the cliché, that’s some ancient history in Web time. Every day since then, we’ve watched the work of the publicly despised, partisan gridlocked, historically unproductive, systemically corrupt U.S. Congress. Along the way, huge issues have come up: in 2008, a global financial crisis and stimulus bill; in 2009, President Obama’s major health-care reform bill; in 2010, the Dodd-Frank financial reform legislation; plus unemployment insurance, immigration bills, and many more.

Since 2007, OpenCongress has grown to receive up to one million visits per month from visitors searching to track and understand what’s happening in the U.S. Congress—averaging around twenty-five thousand visits per weekday. But over the past five years, our single biggest-ever day of traffic was January 18th, 2012—the day of the SOPA strike against net censorship. OpenCongress received over two hundred sixty thousand visits and more than half a million pageviews that day alone to bill pages for SOPA/PIPA—beating our previous single-day traffic peak of one hundred forty-five thousand on March 22nd, 2010, around the health-care bill.

The PPF team and I are proud of how OpenCongress served as a go-to public resource in the stop-SOPA movement. OpenCongress combines official government information with news and blog coverage, campaign contribution data, social wisdom from around the Web, and free public participation tools. We’re a free, open-source, not-for-profit, and non-partisan public resource with primary funding support from the Sunlight Foundation.

On the day of the SOPA/PIPA strike, organized by a diverse coalition including our sibling non-profit Fight For the Future, OpenCongress received links to our bill page for SOPA and PIPA from major sites like Craigslist, reddit, Mozilla, and especially from search engines. Our extensive blog coverage of the net censorship threat and movement to oppose it received significant traffic and helped explain the arcane legislative process to a wide audience. Our wiki community project on PIPA urged our user community to whip their members of Congress, and especially members on key committees, in opposition to SOPA and PIPA.



Screenshot of Open Congress' SOPA/PIPA whip count tool

Our non-profit organization, the Participatory Politics Foundation, and the OpenCongress project took a strong stance in opposition to SOPA for a number of reasons—not least of which being that we viewed it as an existential threat to OpenCongress’s mission of government transparency. A post-SOPA hypothetical world in which websites could be taken down unilaterally by the government without due process simply for linking to an allegedly offending site—as OpenCongress automatically aggregates links—would be chilling beyond belief. It was an almost unbelievably fundamentally-flawed piece of legislation that perfectly encapsulated the systemic corruption of the U.S. Congress—both of the major parties—by lobbyists and campaign contributions. Any notion of public benefit was very nearly steamrolled by a rushed push to vote on the bill with minimal expert or public input. PPF’s mission is to increase civic engagement over the Web, so we believe in strong net freedom and digital rights.

Since Nov. 26, 2011—American Censorship Day, protesting the bills—pages with SOPA info on OC received over seven hundred thousand views and PIPA over two hundred fifty thousand—totaling over a million pageviews combined. Since its introduction in October 2011, SOPA info has received over eight hundred fifty thousand pageviews; PIPA info, since May 2011, approx. three hundred fifty thousand pageviews; totaling 1.2 million pageviews on OpenCongress.

One popular OpenCongress feature is that we let users vote “aye” or “nay” on individual bills by our users. Together, SOPA/PIPA were the least-popular legislation with our user community in the past year, with a less than 1% approval rating.

The wiki community project to Whip Count on PIPA exceeded our wildest expectations. Using the Whip Count, citizens were able to pin down the position of each and every senator (though for 23 of them, that position was “undeclared”). The call log shows that users contacted those senators more who were undeclared or supported PIPA, exactly as a lobbyist would pressure those senators on her whip sheet who had noncommittal or undesired positions.

The mobilization of a vast number of citizens contacting their members of Congress is only half of the story of how the Great SOPA Showdown of 2012 shows that the Internet is changing politics. To be sure, the calls deluging congressional offices were the decisive factor in the bills' defeat, but the use of free and open-source Web tools for online activism marked this as the first substantial case of the conversation between citizens and elected officials to happen in full public view. At OpenCongress, we built two tools that helped make this possible, with our wiki whip count and our free Contact-Congress feature.

Contact-Congress on OC bypasses the clunky webforms on individual congressional webpages, letting users send emails to their representative and senators from one place and includes information like campaign contributions they received from industries involved in the legislation. OpenCongress visitors used a number of other tools, including our money-in-politics analysis, supporter and opposition list, bill version tracking, and user-marked-up text of the bills.

Part of what makes Contact Congress particularly useful from a social perspective are its fidelity and sharing features. Users have the ability to make a letter publicly viewable, which enables them to share not only their letter but also the response from their senator or representative. Because the letter is routed through OpenCongress' system, others can trust that the response has not been altered. It now becomes a public, verifiable source for a congressperson's position on a bill. Because this was largely a one-day campaign, our users didn't have time to receive many responses to post, but here's a great example from one senator.

Grassroots campaigns to influence Congress have typically picked an upcoming vote or bill and asked citizens nationwide to call or email both their senators and/or their representative. The more sophisticated versions might only target citizens who live in the district of the members of the particular committee hearing a bill or pre-fill a letter in a webform that people can amend (or not) and send with a click. Constituents may receive a call or email back, but that usually concludes the conversation.

What made SOPA different was that much of the exchange between constituents and officials was being posted online, thus merging many private one-to-one conversations into a massive one-to-many conversation. And the back-and-forths between different citizens and the same senator thus changed from iterations of the same query-and-response into a continuing discussion between that senator and the public at large.

It might have ended there, but citizens started using social media to track the conversations and coordinate responses. Some top-voted threads on reddit posted the defections from the bill and senators took to their Facebook pages to announce their opposition to the bill, which were promptly commented on, liked, and shared on the personal pages of constituents at volumes many times the average post. What transformed these public conversations from an effective way for people in any state to influence their senators into a way for the people to influence the senate as a body was the adoption of a common lobbyists' tool: the whip sheet. Whip sheets are simple lists of every member of the House or Senate with their current position on a bill. Well-funded lobby shops will chop up the list and send delegates to buttonhole each member and then target and re-target

the members opposite their position until they get the necessary number of votes to win. They are even used by congressional leaders to make sure they have the votes to forward their party's agenda.

SOPA Opera (<http://projects.propublica.org/sopa/>, now at ProPublica) was the first effort to put a people's whip sheet online. It used members' sponsorship of SOPA/PIPA or votes on previous, similar bills to make a rough prediction of where the current vote stood, which staff then augmented as more of them made public positions on the bills. Then OpenCongress posted the Protect IP Act Senate Whip Count, a user-editable form with every senator's phone numbers, email contact forms, last known position on PIPA, and a call log for users to record the date, time, and content of their communications with Congress.

SOPA and PIPA showed that citizens can overwhelm Washington with public sentiment, at least when prompted to by the highest-traffic websites in the world. Short of such likely rare events, however, it is the adaptation and adoption of traditional lobbyist tools like vote counting—through whip sheets—and coordination of communications—through social media and tools like Contact Congress—that will help level the playing field between the body politic and the lobby.

To quote one of Prof. Yochai Benkler's presentations on his ongoing research on the SOPA strike actions: "What you see is a complex relationship between NGOs and commercial organizations, between V.C.'s and activists, between traditional media and online media, between political media left and right and tech media, all weaving together a model of actually looking, learning, mobilizing for action, and blocking [SOPA]. This, ideally, is the shape of the networked public sphere."

Prof. Benkler's vision is core to PPF's founding mission—that the open Web can and will generate networks for peer-to-peer watchdogging of our elected officials, mitigating systemic corruption in government, and improving political outcomes for the public benefit. For example, the free OCv3 online organizing features used in the stop-SOPA movement can help groups engage with any of the bills and issues they're tracking at the federal level. Our ongoing work to turn OpenCongress into a two-way platform for continual, reciprocal communication with elected officials will result in a more deliberative and participatory democracy.

## WHY REDDIT HELPED KILL SOPA

### ALEXIS OHANIAN

*Alexis Ohanian is a startup founder and investor in Brooklyn, NY. After graduating from UVA in 2005, Alexis co-founded reddit, now a top 100 website. Now a reddit board member, Alexis focuses on social enterprise Breadpig, publishing authors like xkcd and SMBC, and donating profits to worthy causes. Alexis helped launch hipmunk and ran marketing/pr/community before becoming an advisor and joining the fight against SOPA & PIPA.*

As an entrepreneur, I never expected to find “political activist” in my bio, but here we are.

At the time I started “hacking politics,” I’d been running marketing and PR for hipmunk, a travel search startup I’d helped launch just a year earlier with my reddit co-founder Steve Huffman and our friend Adam Goldstein. Other than work, my days were spent outlining my book, *Without Your Permission*, trying to be a good angel investor, and agonizing over my favorite team, the Washington Redskins.

My foray into the political arena began with an email on November 6, 2011. Christina Xu, who works with me at Breadpig—a social enterprise I’d started—sent along a note from a friend who alerted her to a pair of bills that looked destined to pass the House and Senate before the New Year.

Written with over \$94 million in lobbying from the entertainment industry, the first versions of SOPA and PIPA read as though a technologist had never even been consulted. If either of these bills had been law back in 2005 when Steve and I founded reddit together, the site wouldn’t exist today.

I got in touch with Christina’s friend, who’d started a non-profit called Fight From The Future, and I offered to help. I’d do whatever they needed to help beat the bad legislation.

Fortuitously, just a few days later, a group of entrepreneurs and technologists led by the Consumer Electronics Association were meeting with senators, representatives, and their staffs in Washington D.C. They invited me along. I live in Brooklyn, but it just so happened I was already scheduled to be in D.C. for a speaking event with Mashable. Life is funny like that. My dad even had a tie I could borrow.

We went from meeting to meeting telling our stories; each of us was given only a few minutes to get our points across. I represented the token “startup entrepreneur” who’d been fortunate enough to live the American Dream with his college roommate. What got Washington’s attention was the pitch I’d refined the night before with the help of the reddit community. I asked redditors (in the subreddit r/technology) for feedback on my talking points, and they helped strengthen and hone my argument.

It all boiled down to one thing. At a time when the American economy was still finding her swagger, our sector was growing, hiring, and leading the world in innovation. I wanted to be sure each person in that room imagined a constituent back in their home district not unlike me or my peers, who could be the next great entrepreneur—prematurely squelched by some thoughtless legislation. Or as many redditors repeated: “Jobs. Jobs. Jobs.”

No one, no matter how much or how little he or she understood about technology, wanted to be responsible for threatening the already weakened U.S. economy.

It was the same message I brought to a meeting of New York tech executives hosted by tumblr a couple weeks later. I was surprised by the chosen date, but apparently I was the only one celebrating SantaCon that day. Nonetheless, before celebrating with hordes of my fellow Kringles, I took a seat and we went around the room, volunteering contributions from our websites that might help spread the word about SOPA and PIPA.

Today, reddit is one of the 100 most popular sites online, but it’s rare in that the platform is rather open—much like the Internet itself. My offering was simple: we’d present the threat to the reddit community and give them our rationale behind the opposition. I didn’t know how our millions of users would react to the imminent threat, but I knew the best ideas for action wouldn’t come from me or even this room of “experts.” The best idea would come from the crowd. The magic of reddit comes from an appreciation Steve and I had from the day we launched—nothing would work without a truly empowered community. So we’d guide people to a common subreddit ([r/SOPA](#)) and see what bubbled up.

I posted a quick YouTube video explaining why I was publicly in opposition: “The story of reddit, where Steve Huffman and I started it from an apartment in Medford, MA with 12k in funding from Y Combinator simply could not have happened in a world with this bill … and it’s not just reddit, it’s every single other social media site out there that would be threatened by this bill. And that is devastating. It’s something we simply cannot afford to do from an economic standpoint.”

An unprecedented display of democracy in action culminated on January 18, with simultaneously offline and online protests. Before our eyes, we saw what most Washington insiders called a “sure thing” become the biggest upset they could recall. This all happened thanks to the millions of empowered Americans using the very social media platforms we wanted to protect along with our Internet freedom.

Wikipedia going dark on January 18 in protest of SOPA and PIPA made the story unavoidable for the mainstream media, but it was volunteer moderators of the most popular subreddits who first advocated for the blackout. Enough moderators agreed to go dark, that the administrative team at reddit announced an overall blackout of the site. They would replace the stream of popular links and discussions with calls to action on how to stop SOPA.

It was a leaderful movement indeed. Anonymous redditors pushed reddit into being the first of thousands of sites, including Wikipedia and Google, to take action on that fateful day. Similarly, another redditor suggested a boycott of

GoDaddy, which supported the bills for long enough to feel the wrath of a coordinated domain transfer away from their service before relenting and apologizing for backing the legislation. As people called their senators and representatives to argue their position, they shared their stories online, encouraging others to do the same.

Thanks to the millions of individuals who engaged and took action for something they believed in, Internet freedom was preserved (at least for the time being). It is my hope that this success is only the first of many triumphs of citizens over lobbying dollars. Even a startup founder like me who has no business in politics found a way to be helpful in this fight, which is sadly far from over. Remember: our politicians work for us. Make sure you're being a good boss—make sure they remember, as my favorite protest sign read: "It's no longer OK to not know how the Internet works."

## IF REDDIT'S TURNED OFF, MAYBE THEY'LL LEAVE THE HOUSE THAT DAY

### DAVID SEGAL

We kept hearing that we should target our messaging at Senator Chuck Schumer (D-NY), given his particular sensitivity to potential political liabilities for Democratic Senate candidates. Schumer, the third-ranking Democrat in the U.S. Senate, previously served as the Chair of the Democratic Senatorial Campaign Committee where he'd been in charge of getting Democrats elected to the Senate. He is still incredibly ambitious, angling to be the leader of Senate Democrats once Harry Reid retires, so he needs to pay attention to changing political currents.

A coalition of Internet freedom advocates, many from the burgeoning New York Silicon Alley tech scene which Schumer cares to impress, took this advice to heart.

On January 18th, 2012, the New York Tech Meetup took the lead as Demand Progress and allied groups buttressed their efforts to organize an anti-SOPA rally outside of the midtown tower that houses Schumer's office. We concentrated the movement's focus on the office of this powerful senator, and provided the press with a 3D spectacle that served as an accessible representation of the otherwise abstract online activism. Even the likes of Congressman Mike Quigley's staffers—who literally didn't believe how many emails they were receiving—were forced to contend with the concept that there are, indeed, real, live people who care about these issues. *The New Yorker's* write-up affectionately (and accurately) called it a "Nerd Parade." Activists in San Francisco organized a smaller rally, and several others were scattered about the rest of the country.

I showed up around noon, a half hour before show time, to find a dozen reporters and maybe thirty activists already milling about inside and around the protest cage that the NYPD had erected. It was about twenty feet wide, taking up perhaps a third of the width of the sidewalk along Third Avenue, and stretching half of the length of the block. We had no idea what to expect, and the cops even less so—some amalgam of New York tech bigwigs, Anonymous, Occupy Wall Street, the Tea Party, painfully hip hipsters, and angry video gamers, and a sprinkling of Guy Fawkes masks?

The rally's organizers had spread word to one hundred thousand or so of the Tri-State's geeks and activists over the few days prior. Several hundred had RSVPed, but we had no way of knowing how many would actually show up for what we were shamelessly calling the biggest (non-virtual) Internet freedom rally in U.S. history. We weren't sure exactly what threshold we needed to hit to legitimize this branding, but were certain that the bar wasn't too high.

Though he'd eventually see the light and help halt SOPA/PIPA, Schumer had largely been ignoring our pleas. Out of frustration or something else, his

staff had even told a couple of constituents who'd called that the senator was "pro-censorship." He'd already received hundreds of thousands of emails, and over the previous few days thirty thousand or so Demand Progress members had tweeted at him. (His office was conveniently located in the same building as New York's junior Senator Kirsten Gillibrand, who was just as intransigent but less important.)

On the day that thousands of sites went dark to protest SOPA, we forsook our (non-mobile) electronic screens and took to the streets. Losing the Internet had helped swell the ranks of protesters in Tahrir Square: perhaps we could make something marginally analogous happen here.

I'd only slept a few hours the night before, in a cheap hotel near Penn Station—we were launching a "money-bomb" for pro-Internet politicians to coincide with the blackout that morning—so I was struggling to stay awake while fending off my psychosomatic inklings that I'd been colonized by an extended family of bedbugs. Demand Progress had helped organize the rally, but I'd only just realized I'd landed on the speaking program and was struggling to force my foggy brain to focus on what I might say to whoever happened to make it out.

And then there were people. The police extended the barriers away from the stage, so they now ran the whole length of the block. Ten minutes later we'd taken over two lanes of midtown, noontime traffic in addition to half the sidewalk. Then so many people filled the sidewalk that all the police could do was keep a clear walkway as wide as a couple of concrete panels: there were more than two thousand of us.

The crowd didn't quite know what to do: it was easy to catch ambient exclamations along the lines of "this is the first time I've ever really protested anything!" The call-and-response chant, ubiquitous at left-leaning protests, "Tell me what democracy looks like? THIS is what democracy looks like!" lost its sing-song rhythm as it was soliloquized: "What does democracy look like? This is what democracy looks like," both asked and answered by a speaker on the stage. He was probably hedging: who can say if the protesters would've known how to respond if they'd been beckoned? These weren't veteran activists, and nobody had yet invented whatever chants one's supposed to recite at an Internet rally. This was something new. And that was one of the most consistently inspiring elements of the fight against SOPA and its predecessor bills. Over the course of the effort, untold numbers of Americans were politicized for the first time. Seniors who import cheap prescription drugs took to Internet activism. Video gamers took to the streets. Political antagonists—or those who are told they're forever and always supposed to be political antagonists—found common cause as they took on a corrupt and ossified political establishment. Two days later, SOPA and PIPA were formally declared dead, and we (tens of millions of us) had pulled off the impossible. The other side was holding the straight flush of American politics: a bipartisan, political establishment-backed, industry-supported, horribly esoteric piece of legislation, coverage of which had been blacked out by the mainstream media—and yet we'd managed to beat them.

## INTERNET 1, CONGRESS 0

### PATRICK RUFFINI

In the Senate, a partisan dimension emerged late in the game. Once SOPA had been dealt a blow with the inconclusive end of the House markup, supporters decided to play their ace-in-the-hole, the Senate. Within 24 hours, Harry Reid announced that the motion to proceed on PIPA would be taken up as the Senate's very first order of business in January.

This move caught the Republican cosponsors by surprise, among them influential Judiciary Committee veteran Orrin Hatch of Utah. The ground was shifting from underneath the bills by the minute, and Leahy had gone directly to Reid to the surprise of the other cosponsors, some of whom were starting to get cold feet. It's likely that proponents could have weathered this rift had the political situation not worsened, but the bill was now going to be left hanging out for a month over the holiday season, when Congress was in recess but the Internet most definitely wasn't.

Hatch, in particular, had emerged as a key Senate bellwether. A songwriter and one of Hollywood's staunchest allies over the years, he also faced a Tea Party primary challenge that spring, a threat he did not take lightly. Sitting alongside Hatch on the Judiciary Committee was Mike Lee, a Utah freshman who had knocked off 18-year incumbent Bob Bennett at the state party convention the year before. Back in Utah, Hatch was working furiously to avoid Bennett's fate, and PIPA was emerging as a potential complication for re-election—as it was an easy issue for the Tea Party to attack Hatch as part of an out-of-touch establishment. If Lee were to get out ahead of Hatch in opposing the bills, it would have been read as an ominous signal that Lee's successful Tea Party challenge to an incumbent was now repeating itself. From Hatch's perspective, there could be no daylight between himself on Mike Lee on any major issue, especially one like PIPA that came to embody a grassroots struggle against the Washington establishment.

As it was, both Hatch and Lee were part of the unanimous 18-0 committee vote reporting PIPA out of committee, but it was Hatch, with his long-standing track record on IP issues, who cosponsored the bill. As the PIPA vote neared, he was having doubts and was looking for a way out.

On January 9th, Lee would become the first Judiciary Committee member to publicly threaten to vote against PIPA. It was a harbinger of the bill's declining fortunes, and an indicator of which way the more senior Hatch was going.

Four days later, Lee and Hatch would join together on a remarkable letter from senior Republicans that heightened the partisan stakes and made clear that PIPA's prospects were now no better than SOPA. Signed by a majority of the Judiciary Committee's GOP membership, including ranking member (and cosponsor) Chuck Grassley of Iowa, the letter pleaded with Harry Reid to slam the brakes on PIPA and delay the cloture vote now scheduled for January 24th:

Since the markup, we have increasingly heard from a large number of constituents and other stakeholders with vocal concerns about possible unintended consequences of the proposed legislation, including breaches in cybersecurity, damaging the integrity of the Internet, costly and burdensome litigation, and dilution of First Amendment rights. Moreover, in light of potential cybersecurity implications, we believe hearing from the Administration and relevant agencies is imperative. As always, our current fiscal crisis demands we carefully consider legislation that would cost taxpayers up to \$43 million according to the Congressional Budget Office. These are serious issues that must be considered in an deliberative and responsible manner. This underscores the need to resolve as many outstanding concerns as possible prior to proceeding to floor consideration.

As detailed elsewhere in this volume, the pace of events had quickened and intensified starting with the House markup, with the planned January 24th closure vote exerting a gravitational pull that kept our momentum going over the holidays, while Congress was in recess. For those of us who had been involved day-to-day, it felt like a time warp. Single days saw more action than months-long stretches the previous summer and fall.

The actions of senators and representatives must be considered against this backdrop of rising public awareness. Immediately after the markup, right-leaning opposition had started to solidify, with two leading conservative bellwethers—the Heritage Foundation and RedState's Erick Erickson—joining the opposition on December 20th and 22nd respectively. In Erickson's case, the point was made in a manner highly likely to get the attention of members and staff: a suggestion that the left and right band together to primary any incumbent who supported this monstrosity, including staunch RedState allies like Tennessee's Marsha Blackburn, a vocal SOPA supporter in the House.

In late December and early January, SOPA and PIPA went from an issue of interest to "stakeholders" to one of intense interest to constituents. And this made all the difference in how members of Congress reacted.

The initial House hearing and the markup were action-forcing events that drove spikes in public and social media attention. But after the markup on December 15th and 16th, with Congress in recess, events acquired a momentum of their own. The markup, combined with the buildup to the Senate vote, triggered a categorical shift up in the volume of attention. The next big spike, the planned boycott of GoDaddy (which had issued statements supportive of the bills), came two days before Christmas and arose entirely from the community.

The idea of an Internet blackout was first seriously floated in a CNET story on December 29th. And it was one of the industry's leading lobbyists, Markham Erickson, who was quoted in the story, lending added credibility to the report.

January 18th was not initially blackout day. It was actually conceived as the day SOPA opponents would get the hearing they were denied by Lamar Smith two months earlier.

As Congressional staff trickled back to their desks in the first week of January, they were coming to grips with the magnitude of what had happened over the holiday break. Monday, January 9th saw a small burst of Hill activity, with Darrell Issa's office announcing a hearing before the full Government Oversight Committee on the DNS blocking provisions in SOPA. The hearing would gather some of the most influential anti-SOPA voices from the business community: Union Square Ventures' Brad Burnham, Rackspace CEO Lanham Napier, and reddit's irrepressible co-founder Alexis Ohanian.

Reddit's involvement in the hearing is what turned the blackout from a source of speculation into reality. The day after the hearing was announced, reddit posted about their plans to their blog. "Stopped they must be; on this all depends," was the title. On January 18th, reddit.com would shut down from 8 a.m. to 8 p.m., and in part given over to a live-stream of Issa's hearing.

As would happen numerous times over the coming days, things acquired such momentum that they kept going even when their initial impetus was gone. Now firmly on the defensive, Lamar Smith and Patrick Leahy had begun to suggest they would cave on the bill's key provisions, including the content industry's Holy Grail, DNS blocking.

The events of January 13th, a Friday, were a body blow to both SOPA and PIPA. In the Senate, Republican supporters of the bill had issued their letter urging Reid to go slow. In the House, Lamar Smith would announce that DNS blocking would now be removed from SOPA. As with his Manager's Amendment in December, this did nothing to slow the momentum behind the opposition, but it was one of two factors which led Issa to postpone his planned January 18th hearing.

That Friday night, Issa issued the press release effectively declaring SOPA's death in the House. Eric Cantor, the House majority leader, intervened to dampen SOPA's movement through the House, assuring Issa that no bill would move to the floor without broad consensus from Republicans—which SOPA clearly lacked. Issa's statement read, in part:

While I remain concerned about Senate action on the Protect IP Act, I am confident that flawed legislation will not be taken up by this House. Majority Leader Cantor has assured me that we will continue to work to address outstanding concerns and work to build consensus prior to any anti-piracy legislation coming before the House for a vote. The voice of the Internet community has been heard. Much more education for Members of Congress about the workings of the Internet is essential if anti-piracy legislation is to be workable and achieve broad appeal.

Earlier tonight, Chairman Smith announced that he will remove the DNS blocking provision from his legislation. Although SOPA, despite the removal of this provision, is still a fundamentally flawed bill, I have decided that postponing the scheduled hearing on DNS blocking with technical experts is the best course of action at this time. Right now, the focus of protecting the Internet needs to be on the Senate where Majority Leader

Reid has announced his intention to try to move similar legislation in less than two weeks.

Issa's statement spoke to a real sense that the Internet had focused too much energy on killing the House bill, while the content industry's clearest path to victory lay in sneaking the less objectionable PIPA through the Senate. At a basic level, this is seen in the Twitter traffic, which mentioned SOPA at far higher rates than PIPA. Early on, there was some concern from organizers on our side that the grassroots wouldn't get the message, allowing PIPA to sneak through. The community, though, pivoted hard towards PIPA and Senate action in the final days.

On Saturday morning, activists awoke to the news of a White House statement opposing the bills in their current form. Numerous SOPA/PIPA-related petitions on the White House's We the People website had reached a minimum threshold of twenty-five thousand needed for an official response. And when that response came, it seemed strategically calculated to bring the runaway train to a screeching halt. At this point, only the Democratic leadership in the U.S. Senate had any plans to take up the issue, and a White House statement served as a strong signal that the President had no intention of signing an election year bill that would alienate an increasingly important constituency, the tech community.

The next day, Reid was compelled to address the issue on Meet the Press, biding his time and talking up the prospect of further compromise. Reid's statement exemplified how legislative talk could so often be detached from facts on the ground. First, he suggested that California's Dianne Feinstein, a PIPA cosponsor who nonetheless had barely uttered a word about it, was serving as a sort of emissary between the two great industries in her state. He then expressed hope for a Manager's Amendment from Leahy that would make the bill palatable to all sides. Yet, neither side saw compromise as a possibility. Defenders of the bill had been totally cowed by this point, thus the talk of compromise, but the reality is that both sides saw this as an all-or-nothing fight-to-the-death, one that the Internet was now winning. And the most likely outcome was no bill.

At midnight eastern time on January 18th, Google, Wikipedia, reddit, Mozilla, Wired, the Huffington Post, and thousands of other websites went dark or carried some prominent acknowledgement of the historic blackout. And Wikipedia, often one of the top search results on Google, became the biggest site yet to urge its readers to contact Congress directly.

The effect was immediately felt. That morning, countless members of Congress took to their websites, Facebook pages, and Twitter feeds to announce their opposition to SOPA and PIPA. In the Senate, freshmen Republicans were among the first to announce their opposition, including Scott Brown of Massachusetts, and Marco Rubio of Florida, a key PIPA co-sponsor. Though new opposition that day was overwhelming, there seemed to be a Republican tilt to the early announcements. By 3 p.m., 26 of the 29 new opponents of the bills were Republicans.

The blackouts were not the final word. Proponents were shaken, but determined to forge a compromise, still not realizing that no bill named SOPA or

PIPA, or of the same genre, could ever pass—even without DNS blocking. In Washington, the process of haggling, of back-and-forth, of amending, was how you got things done. Yet the process over the last year had been so broken that scrapping the bills was now the only acceptable outcome for the online community.

The prospect of a vote on January 24th lingered on for a day after the black-out. Senator Jon Kyl, the Republican whip from Arizona, was working with Leahy in an attempt to broker a compromise. Even with the other Republicans on Judiciary jumping ship, Kyl's efforts had emboldened Reid to keep the process going. Finally, on the evening of January 19th, Mitch McConnell, the Republican leader, issued a statement urging Reid to withdraw the bill from consideration. On the morning of January 20th, this statement came from Reid's office:

In light of recent events, I have decided to postpone Tuesday's vote on the PROTECT I.P. Act.

There is no reason that the legitimate issues raised by many about this bill cannot be resolved. Counterfeiting and piracy cost the American economy billions of dollars and thousands of jobs each year, with the movie industry alone supporting over 2.2 million jobs. We must take action to stop these illegal practices. We live in a country where people rightfully expect to be fairly compensated for a day's work, whether that person is a miner in the high desert of Nevada, an independent band in New York City, or a union worker on the back lots of a California movie studio.

I admire the work that Chairman Leahy has put into this bill. I encourage him to continue engaging with all stakeholders to forge a balance between protecting Americans' intellectual property, and maintaining openness and innovation on the Internet. We made good progress through the discussions we've held in recent days, and I am optimistic that we can reach a compromise in the coming weeks.

Minutes later, Lamar Smith would do the same, postponing House activity. Though talk the bills might be revived would linger on for weeks, SOPA and PIPA were finally dead. As I was walking down the sidewalk on the way to the office, I got an email with the news. I immediately opened up Twitter and tapped, “Internet 1, Congress 0.” Politico.com would use this tweet as their main headline that day.

# CHAMPIONING TECHNOLOGY AND FREE SPEECH IN CONGRESS WAS LONELY ... BUT NOT ANYMORE

REP. ZOE LOFGREN

*Congressmember Zoe Lofgren represents California's 16th congressional district, serving since 1995. She is a member of the Democratic Party. She is a longstanding leader on matters of technology policy and was an early and vocal opponent of SOPA and related legislation.*

In the latter half of 2011, passage of the Stop Online Piracy Act (SOPA) legislation seemed certain, despite my opposition and the opposition of a few other Members of Congress. Yet by January 2012, Internet activists were popping the champagne to celebrate the end of what was probably the greatest threat to online free speech and an open Internet ever seriously considered by Congress. What happened?

I was one of the few who saw the threat coming long before the proposal became widely known; I worked for many months on efforts to stop the bill. In the end, the successful effort to stop SOPA, with millions of people participating, was a remarkable moment in U.S. political history. Will its legacy be a path forward for ensuring Internet-related innovation and economic growth continue? Only if we work to make it so. The job is by no means over.

I've represented areas of Silicon Valley as a Member of Congress since 1995. In those years in the House, I've tried to ensure that copyright enforcement does not come at the expense of technology, innovation, or privacy and free speech rights. This has become even more important as the Internet developed and became a part of our daily lives.

Championing technology and free speech when considering copyright in the digital age can often be a lonely position in Congress. In fact, for 16 years on the House Judiciary Committee, I found myself with only one reliable ally there in this effort, Congressman Rick Boucher (D-VA). Then in 2010 he was defeated by a conservative Republican.

Congress obviously can't create technology, but the laws we establish can help foster innovation, growth, and investment in research. It can empower and spur entrepreneurs to create new industries. Laws can determine how technology is permitted to develop. They can, if ill-considered, also put the brakes on all of these desirable matters.

For instance, at one time the question was whether to treat "cached" content used to speed up Internet browsing as a copy requiring permission and payment for use under copyright law. At first I thought this was some sort of joke, but it was an actual, although uninformed, proposal. Fortunately, this provision was not included in the Digital Millennium Copyright Act (DMCA) which President Bill Clinton signed into law in 1998.

To understand SOPA, it's important to understand the landmark DMCA legislation. One critical provision of the DMCA is its safe harbor, notice, and takedown provisions. The basic idea is that web sites, Internet service providers, search engines, social networks and the like aren't liable under copyright law for infringement by third parties—unless they have been notified by the copyright owner and refused to take down the infringing material.

Although these DMCA provisions were crafted when dial-up was the norm, a cell phone could not access the web, and a social network was The Well, not Facebook, they proved to be essential. Had this framework not been in place, it is hard to imagine that the technology we now take for granted could have been developed. Venture capital is shy about investing when the expected return on investment is threatened by money damages and endless copyright litigation over the actions of third parties who can't be controlled.

After the DCMA, there was an explosion of new technologies, products, and services. With these innovations came a hunger for more content. The technological changes upended existing business models and kicked off a transition period where new and traditional industries are trying to adjust to each other and locate their place in our economy, culture, and regulatory system. SOPA was one product of this transitional angst, reflecting primarily the effort of older industries dependent on selling content to obtain protection at any cost from insurgent technologies that were upending their old business models.

In addition to protecting free speech, the First Amendment also protects the right of people to “petition” their government. Over the decades, content owners have vigorously pursued this right, seeking wide ranging copyright enforcement laws that have often seemed to lack any concern about the impact on technological development.

The movie studios and record labels have every right to lobby Congress for what they think is in their interests. And they've been smart in reaching out to other, less interested parties, like the Chamber of Commerce and the AFL-CIO. By creating broad coalitions with groups not normally known to work together, expansive measures like SOPA have been pitched to both Congress and the public alike as “mom and apple pie” legislation that “everyone” is for.

In fact, I agree that artists and innovators deserve to be paid for their work. But one-sided arguments typically don't lead to good and balanced legislation. And for most of the last 18 years that has typically been the case when it comes to expanding copyright enforcement.

Technology companies, which might be expected to speak up for a free Internet, often had other fish to fry. Non-profit groups often gave thoughtful analyses, but did not bring much large-scale public support with their arguments. And of course, neither of these had the political clout that studios and labels had built up over the decades. While young technology companies were still gaining political awareness, movie studios and recording labels had decades of experience when it came to understanding and navigating Washington.

In the fall of 2010, after the midterm elections when Democrats lost the majority in the House of Representatives, it looked to me like the copyright

maximalists would be going for broke with a new legislative proposal that threatened online innovation, privacy and free speech rights. SOPA's predecessor, the Combating Online Infringement and Counterfeits Act (COICA), had been introduced by Senator Patrick Leahy (D-VT). I was an early and outspoken critic, especially of the Senate Judiciary Committee for rushing it forward.

COICA was a clear signal of where this was heading. Forces were aligning to push sweeping legislation that could imperil the technical workings of the Internet, threaten the privacy and free speech rights of Internet users, and threaten technology innovation by upending the framework established by the DMCA. Behind the scenes, I pressed a key democratic proponent to hold off on introducing a House version of COICA while we still held control of Congress. By early 2011, however, Republicans were in charge.

Starting early in 2011, in conversations with my colleagues, in hearings, and speeches I spoke out against the scheme embodied in COICA. Privately, I began contacting technology companies to urge them to get involved. Throughout March of 2011, I warned of a larger impending battle over online copyright. Despite these efforts, few people seemed to see the immediacy of the threat. Even fewer in Congress shared my point of view. Senator Ron Wyden (D-OR) and Congressman Jared Polis (D-CO) were some who did, and I met with them to discuss how to oppose the rumored new legislation.

The effort to pass the SOPA/PIPA legislation tracked prior road maps used by what my friend Senator Wyden lightheartedly dubbed "Big Content." Their game plan was to create momentum by lining up both business and labor allies, and support from both Republicans and Democrats. The costs of infringement were emphasized and sometimes exaggerated while the costs of crippling technological innovation were ignored. There was an almost complete unwillingness to solicit savvy technological input.

So it came as no surprise when the first hearing on "online parasites" in March included testimony from the motion picture studios endorsing the need for legislation. The issue was soon reinforced by domain seizures through U.S. Immigration and Customs Enforcement's (ICE) "Operation In Our Sites" of websites accused of infringing copyrights. Some of these seizures, including the seizure of Dajaz1.com, appeared to violate the rights of the site owner and the free speech rights of users.

April brought another hearing on "online parasites." In meetings with tech CEOs in Silicon Valley and tech leaders gathered in Washington, D.C., I continued to urge engagement in the coming battle over copyright enforcement. By the time I spoke in May to a brown bag lunch crowd at Mozilla in Mountain View, California, the Protecting IP Act (PIPA) had been introduced by Senator Leahy. Momentum was building.

There seemed to be growing interest from Internet activists. I hope in part this was because of my efforts, but I believe it may also have resulted from the publicity created by the ICE raids on Internet web sites. Organizing takes time and effort and sometimes, it can come too late. I continued to urge the need for action, making my case to tech companies as well as activists at conferences and

events. In June, along with some tech executives, I made an effort to discuss alternatives to PIPA with some proponents, but despite sincere intentions by all, no real progress was made.

By the fall of 2011, “Big Content’s” forces were advancing on all fronts, culminating in SOPA’s introduction by Congressman Lamar Smith (R-TX), Chairman of the House Judiciary Committee. I had warned my colleagues in private discussions that SOPA was one-sided and lacked any meaningful input from the tech community, and I pressed for a delay so it could be better balanced. Democrats no longer controlled the House and these requests were unavailing.

With legislation in both the House and Senate, the situation appeared favorable for steam rolling the bills through Congress. Because proponents “had the votes” there seemed little interest in negotiating to fix problems.

There is a saying that politics makes strange bedfellows. I don’t agree with Congressmen Darrell Issa (R-CA) and Jason Chaffetz (R-UT) on many things but we could agree on SOPA/PIPA. I was happy to join forces with these fellow members of the House Judiciary Committee to make an effort to derail the oncoming freight train that SOPA had become. We were joined by Congressman Polis who would soon be appointed to the Judiciary Committee.

In early November we sent a joint letter to our colleagues expressing the first bipartisan opposition to SOPA. However, we knew more than opposition was needed and so began discussions toward creating an alternative, ultimately the OPEN Act introduced by Senator Ron Wyden and Congressman Darrell Issa in December.

My colleague, Congresswoman Anna Eshoo (D-CA), doesn’t serve on the Judiciary Committee, but she was eager to help in these efforts. She helped craft a letter to be sent to the Judiciary Committee and we set out to gather bipartisan signatures. Congressman Ron Paul (R-TX) was running for President and consequently was often away from the House. But I found him one evening while he was there for votes. I asked him to sign the letter and he took it saying he would “look at it.” I was terrifically pleased when a short time later he found me on the House floor to tell me he would sign. It was a good start to reaching across the political spectrum in building our opposition to SOPA.

With the SOPA/PIPA freight train rolling through Congress on a fast track, we needed immediate action. Only a substantial public outcry could delay or stop this juggernaut. I huddled again with Representatives Eshoo and Polis and key tech advocates to organize opposition. In speeches, meetings and conference calls, I was telling Internet leaders and activists alike that the only way to derail SOPA/PIPA was to “melt the phone lines” with calls to Congress.

Despite all the advances in connecting with representatives and senators, emails and online petitions just don’t get the same immediate attention from most Members of Congress that is created by a massive inpouring of phone calls. Petitions get noticed too, but elected officials know that a person who takes the time to call is also likely to take the time to walk into a voting booth.

A few social network sites made an initial effort to generate phone calls in opposition, but they fell short. There were not enough phone calls, and many

calls were made to the district offices of Members of Congress—when policy staffs and Members were in Washington. Hardly anyone noticed.

But the effort was getting attention from tech bloggers and some online media sources. Sites like Techdirt were covering the issue persistently. Cyber security experts were speaking out against SOPA. By the time I participated one November Saturday in a conference call organized by Mozilla, tech companies, non-profits, and grassroots groups were coalescing to use their platforms to organize calls to Congress. It was clear SOPA was being taken seriously as the threat it was. But would a large enough effort come in time?

A “markup” of a bill is a time when the committee of jurisdiction meets to go through the bill, line by line, with Members of the Committee offering amendments. It is a formal proceeding, televised and now webcast. December 15, 2011 was the beginning of the Judiciary Committee “markup” of SOPA. Showtime.

The week before, a small bipartisan group of Judiciary Committee Members had prepared amendments, but Chairman Smith redid the bill in a “manager’s amendment”—a complete rewrite—shortly before the markup. Working on the fly, my legislative counsel Ryan Clough had to pull an all-nighter to work through the subtleties of the new 71-page proposal to craft new amendments that were needed.

Congress operates under long-standing rules, first created in the time of Thomas Jefferson and embodied even today in the book we consult on our rules, Jefferson’s Manual. One rule requires that bills and amendments be read aloud before they are acted on. This rule is almost always waived by “unanimous consent” to speed up proceedings. But when consent was requested to “waive the reading” of the 71-page manager’s amendment to SOPA, I objected and insisted that each word on every page of the new proposal be read aloud. After all, the public as well as the Committee Members needed time to consider Mr. Smith’s recent changes.

We had prepared well over 100 substantive amendments to SOPA, to be offered by a bipartisan group of Members. We started the markup at 10:00 a.m. and by the time the Committee recessed twelve hours later around 10:00 p.m., we hadn’t reached all of the amendments that needed to be offered. The following day the House recessed for the year and Congress left town, so the Committee was unable to finish the markup and kicked it over to January.

This was an important development for several reasons. First, I was later advised that over two hundred thousand people watched the telecast or webcast of the markup. Many who watched were apparently unimpressed by the arguments for the bill and by the apparent lack of Internet knowledge shown by some of the pro-SOPA Members of Congress. Second, the markup and amendment process helped to detail the failings of SOPA, from cyber-security to privacy to free speech. Finally, the delay gave time and opportunity to organize opposition among Internet users.

Capitalizing on the extra time, I did an “Ask Me Anything” (AMA) on reddit.com on December 16, 2011. In this forum, a site which is favorite community for many of the Internet-savvy, I encouraged folks to contact their Members of Congress, and argued that SOPA was a grave threat to the Internet. I reassured

the reddit community that, indeed, their representatives would listen to them if they spoke up.

I had talked a lot about melting the phone lines, and using the Internet's communication power to impact Congress. Now, Internet leaders emerged, and the idea of a blackout was considered. A group of sites decided to participate. Along with others, I began to lobby tech leaders to try to increase the size and effectiveness of the blackout. On Monday, January 16th Craigslist jumped the gun and used its platform to sound the alarm about SOPA. I emailed Craig Newmark to thank him and then emailed others in the tech world to urge that they join the cause. I was later told that in the two weeks prior to mid-January, SOPA was the number one news topic for Americans under age 30. Most Americans over age 30 had never heard of it.

On January 18th, the Stop SOPA blackout occurred. An estimated seventy-five thousand websites went black in protest. I had my Congressional Web site go dark. Over one hundred sixty two million people were said to have viewed Wikipedia's blacked out page. Google put a notice on its famous front page, with a click-through to scholarly analyses of the measures and an easy way to contact Members of Congress. The phone calls started to flood into Capitol Hill offices.

All told, an estimated eight million Americans called their representatives and senators to voice their opposition to SOPA and PIPA. The phone meltdown had arrived. SOPA proponents seemed astonished that millions of Americans were calling Congress to oppose SOPA. Cosponsors of the bill started to remove their names from the bill. SOPA was done, although the proponents didn't fully realize it for a few days.

By January 23rd, the bills were officially killed when Chairman Lamar Smith announced the indefinite delay of the SOPA markup and Senate Majority Leader Harry Reid (D-NV) pulled PIPA from the agenda in the Senate.

Proponents had set out to run the freight train at high speed right through Congress, drowning out or marginalizing dissenting voices. They had not bargained for a group of Internet insurgents who tore up the tracks and took to the barricades. Their train had been derailed.

What a wonderful thing: when millions of Americans spoke up, they were listened to. But was SOPA more than just a one-time victory? Was it a teachable moment? If so there may be at least three distinct lessons. The first lesson is about process, that when it comes to laws that will affect a free Internet, the days of major legislation being written through backroom deals, without meaningful public discussion, should be over.

The second lesson is about the danger of being out of step with the public's intuitions. Most Americans agree with the basic aims of copyright and trademark law. They agree that artists should be paid for their work, and that companies should be able to defend their brands from counterfeiters and counterfeit products. I do, too. But that does not mean Americans will agree to extreme measures that trample on their rights in the rush to enforce the rights of copyright owners.

The third lesson is that laws shouldn't be crafted by paying attention to the views of just one part of the body politic. To the movie studios and the record

labels, it seemed common sense to enlist the government to enforce their rights without regard to the consequences to others. Through hard and skillful lobbying, they seemed to have the votes inside the beltway, until the public found out what they were doing. For measures that affect the rights of the public, it is unwise to ignore the interests of the public.

President Kennedy had it right when he remarked that “victory has a thousand fathers, but defeat is an orphan.” As the public outcry grew and continued after SOPA failed, the opposition in Congress that had begun with a handful of Members grew to hundreds of representatives.

Today, I no longer feel isolated in the effort to fight for innovation, free speech, and privacy. But this will not be the last time a free and open Internet is challenged. The next time—or the next dozen times—we may not be so lucky. The threat is real and will likely recur.

The Internet is a thriving and vibrant engine for cultural and economic growth because it empowers people to connect and share information globally with limited restrictions. SOPA’s legacy should be more than a moment in history—it should jumpstart a conversation about the kind of Internet we want going forward.

With the DMCA approaching its second decade, we may need proactive laws designed to preserve an open and truly global Internet from destructive legislation, unduly restrictive treaties and trade agreements, and overbroad government surveillance. Is it time for a new generation of forward-thinking laws to protect Internet users’ free expression and privacy, preserve user trust in online services, and reaffirm the open and decentralized structure of the Internet? Will those who rose up to protect the free Internet from SOPA/PIPA rise again for a proactive effort to pass those laws? Only time will tell. But I’m ready if you are.

## AFTER THE BLACKOUT

### AARON SWARTZ

The wheels came off the bus pretty quickly after the markup. First the Republican senators pulled out. Then the White House issued a statement opposing the bill. Then the Democrats, left all alone, announced they were pulling the bill so they could have a few further discussions before the vote.

And that was when, as hard as it was for me to believe, we won.

The thing that everyone said was impossible, that some of the biggest companies in the world had written off as a pipe dream—had happened.

We did it.

We won.

And then we started rubbing it in.

You all know what happened next: Wikipedia went black. Reddit went black. Craigslist went black. The phones lines on Capitol Hill flat-out melted. Members of Congress started rushing to issue statements retracting their support for the bill.

It was just ridiculous.

There's a chart from that time that captures it quite well. It says something like:

January 14

and then it has this big long list of names supporting the bill, and just a handful of lonely ones opposing it.

And then: January 15.

And suddenly it's totally reversed—everyone is opposing, with just a few lonely people left in support.

This really was unprecedented. Don't take my word for it. Former Sen. Chris Dodd, now chief lobbyist from Hollywood, who admitted after this that he had masterminded the whole SOPA plan, told the *New York Times* he'd never seen anything like it during his many years in Congress.

Everyone I've spoken to agrees.

The people rose up and caused a sea change in Washington. Not the press, which refused to cover the story (coincidentally, their parent companies all happened to be lobbying for the bill). Not the politicians, who were pretty much unanimously in favor of it. And not the companies, who had all but given up trying to stop it, decided it was inevitable. It was stopped by the people.

The people themselves.

We killed the bill dead. So dead that when members of Congress propose something that even touches the Internet, they give a long speech beforehand about how it is definitely not at all like SOPA. So dead that when you ask Congressional staffers about it, they groan and shake their heads, like it's all a bad

dream they're trying hard to forget. So dead, that it's hard to believe this story. Hard to remember how close it all came to actually passing. Hard to remember how it could have been any other way.

But it wasn't a dream, or a nightmare. It was all very real. And it will happen again. Sure, it will have a different name, and maybe a different excuse, and probably do its damage in a different way. But make no mistake. The enemies of the freedom to connect have not disappeared. The fire in those politicians' eyes has not been put out.

There are a lot of powerful people who want to clamp down on the Internet. And, to be honest, there aren't a whole lot who have a vested interest in protecting it. Even some of the biggest Internet companies, to put it frankly, would benefit from a world in which their little competitors could be censored.

We can't let that happen.

I've told this as a personal story. Partly, because I think big stories like this are just more interesting at human scale. The director J. D. Walsh said good stories should be like the poster for *Transformers*. There's a huge robot on the left side of the poster and a huge army on the right, but in the middle, at the bottom, there's just a small family, trapped in between. Big stories need human stakes.

But mostly, it's a personal story because I haven't had the time to research anyone else's.

We won this fight because everyone made themselves the hero of their own story. Everyone took it as their job to save this crucial freedom. They threw themselves into it, did whatever they could think of to do, didn't stop to ask anyone for permission.

Did you hear how Hacker News users spontaneously organized a boycott of GoDaddy over their support of SOPA? Nobody told them they could do that. A lot of people even thought it was a bad idea. It didn't matter. The senators were right. The Internet really is out of control.

But if we forget that. If we let Hollywood rewrite the story so that is was just Big Company Google who stopped the bill. If we let them persuade us we didn't actually make a difference. If we start seeing it as someone else's responsibility and go home and pop some popcorn and curl up on the couch to watch *Transformers* ...

Well then, next time, they might just win.

Let's not let that happen.

## WHO REALLY STOPPED SOPA—AND WHY LARRY DOWNES

*Larry Downes is a consultant and speaker on developing business strategies in an age of constant disruption caused by information technology. His book Unleashing the Killer App: Digital Strategies for Market Dominance was named by the Wall Street Journal as one of the five most important books ever published on business and technology.*

I split my time these days between Silicon Valley and Capitol Hill, and the week of the Blackout was not a very good week to be in Washington. In the fall, I witnessed the beginnings of a unique revolt over proposed legislation that would have dramatically changed the Internet's business landscape. That revolt achieved a stunning victory, sending Congress into a tailspin of retreat from bills that seemed certain, only months ago, to pass with little notice or resistance.

The two bills were the Senate's Protect IP Act and the House's Stop Online Piracy Act, or #PIPA and #SOPA as they became known on Twitter, where millions of tweets condemned them and their supporters in and out of Congress. Heavily backed by D.C. favorites including the U.S. Chamber of Commerce and the music and motion picture industries, the legislation was superficially aimed at combating the scourge of foreign websites selling unlicensed or counterfeit American goods to U.S. consumers outside the legal reach of criminal and civil enforcement.

But to Internet users, the proposed legislation and the process by which it was steamrolled through a supine Congress took on mythic attributes. By January the firefight had morphed into a battle of old economy vs. new, of business as usual in Washington vs. the organized chaos of online life, of K Street lobbyists vs. ordinary users.

The Internet was having its Howard Beale moment—users were mad as hell, and they weren't going to take it anymore. The legislation needed to be stopped, by any means necessary. PIPA and SOPA became nothing less than a referendum on who controlled the evolution of digital life. And amidst the smoke and noise on the field, it was hard to tell who was really directing the troops.

One thing is now entirely clear. The Internet won, at least for now. A week or two before, at the annual Consumer Electronics Show, lawmakers and industry representatives were clearly in retreat, calling at last—but with panic in their eyes—for constructive dialogue. Sandra Aistars, executive director of the Copyright Alliance, even complained that the technology community had failed to propose concrete “tweaks” to fix the bills. “A lot of the response has been amped up rhetoric that misstates the bills and the intentions of its proponents,” Aistars said. “It is not directed to particular fixes.”

But the time for constructive dialogue, which Congress and industry groups had overtly snubbed all year, was over. As CES attendees made their way home over the holiday weekend, the Obama administration, which had been notably silent, weighed in against the bills in their current form. “While we believe that online piracy by foreign websites is a serious problem that requires a serious legislative response,” administration officials said, “we will not support legislation that reduces freedom of expression, increases cybersecurity risk, or undermines the dynamic, innovative global Internet.”

Another nail.

By the time the Congressional Internet Caucus convened its annual “State of the Net” meeting a few days later, it was clear that something dramatic was happening. Defections accelerated to an unprecedented rate as advocacy groups opposed to the bills shuttled between Congressional offices. Co-sponsors were now condemning the legislation. By Tuesday, it was no longer clear if Senate Majority Leader Harry Reid (D-Nev.) even had enough votes to stop a promised filibuster from Sen. Ron Wyden (D-Ore.) on Jan. 24th, when Reid intended to force a floor vote on PIPA.

On Wednesday, the rebels detonated their nuclear option. Wikipedia and reddit, along with other popular websites, went black, generating thousands of calls and millions of emails, many from constituents who had likely never heard of the legislation the day before. Online petitions picked up ten million signatures, members of Congress received three million emails and a still-unknown number of phone calls. Thirty-four senators felt obliged to come out publicly against the legislation. That night, all four Republican candidates condemned the bills during a televised debate.

The State of the Net, as I said at one of several events that week, was very very annoyed.

By Friday, what had long been seen even by opponents as a done deal had become a deal undone. Both Sen. Patrick Leahy (D-Vt.) and Rep. Lamar Smith (R-Tx.), chief sponsors of PIPA and SOPA respectively, threw in the towel. Scheduled votes were off, planned markups were canceled; the legislation was dead. The war was over, at least for now, and perhaps until after the 2012 elections.

After sixteen successful efforts to extend or enhance copyright law over the last thirty-five years, the content industry’s perfect winning streak had finally ended. There was only now to cart off the dead and count up the wounded, and the battle would be over. At least until the next time.

### **Who Were Those Masked Men?**

Meanwhile, now seems as good a time as any to ask what the uprising really meant. Who was behind the remarkable campaign to stop the bills? How did they turn a bi-partisan majority against the legislation? Why did they care?

These are not merely academic questions. A new and profoundly different political force has emerged in the last few months, a constituency that identifies itself not by local interests but as citizens of the Internet. Understanding who

they are and what they want is essential for both the winners and losers in the slugfest. Ignore the lessons of the great uprising—of the dramatic introduction of “bitroots” politics—at your peril.

While there was plenty of traditional interest group politics at work here, the big story of the Blackout week (largely missed by traditional media) was the great awakening of Internet users. To be sure, the Consumer Electronics Association and advocacy organizations including NetCoalition were early in sounding the alarm about the proposed legislation nearly a year prior.

And a joint letter to Congress in mid-November from leading technology companies including Google, Yahoo, Facebook, Twitter, LinkedIn, and eBay expressing concern over PIPA and SOPA was clearly one of many key events in turning momentum against the proposed laws. Visits from Silicon Valley entrepreneurs and venture capitalists played a role as well.

But to imagine that the millions of Internet users who took to the virtual streets over the last few months were simply responding to the clarion call of technology companies misses the real point—dangerously so.

Rather, it was the users who urged and sometimes pressured technology companies to oppose the bills, not the other way around. While the big companies eventually came on board, the push for them to do so came largely from activists using social networking and social news sites, including Facebook, Twitter, Tumblr, and reddit, to build momentum and exert leverage, sometimes on the very companies whose tools they were using.

If there is a first mover in this creation story, it would start with the influential blog Techdirt and its founder Mike Masnick. When PIPA passed out of a Senate committee in May without any debate, Masnick started writing every day (sometimes many times a day) about the potential danger of the bill and the disingenuous process by which it was being railroaded through Congress.

Progress seemed to be made. Over the summer, House leaders promised to fix the many problems in PIPA in their soon-to-be-introduced version of the bill. The technology community had been heard.

But when SOPA was unveiled in October, the seventy-page draft was worse—far worse—than PIPA, offering a virtual Christmas list of new legal powers and technical remedies for copyright and trademark holders, none of which would have done much to stop infringement even as they rewrote basic rules of digital life.

In the name of combating rogue foreign websites, SOPA would have allowed law enforcement agencies and private parties to force U.S. ISPs to reroute user requests, force search engines to remove valid links, and require ad networks and payment processors to cut ties with condemned sites.

Users who streamed a minimal amount of licensed content without permission, including through YouTube, would face felony charges. And most of the new powers made use of short-cut legal procedures that strained the limits of due process.

That's when the activists, online and off, shifted into high gear. The crusade was picked up on the social news site reddit, which in turn drove protests

at Tumblr and Mozilla, among others. At one point, reddit users organized a boycott of domain registrar GoDaddy, which was forced to beat a hasty retreat from its longstanding support for the bills in a very public and embarrassing about-face.

The rebels had learned the Death Star's fatal design flaw, and were massing to exploit it.

It was this groundswell of opposition—the first signs of a coherent and powerful bitroots movement—that pushed executives at these companies and later their more established peers to go public with what had been more discreet opposition to the bills. In particular, Google, which had hedged on PIPA earlier in the year, took up the anti-SOPA flag and ran it through anyone on Capitol Hill who got in the way. And they brought many of their competitors along for the fight.

### **What are They Fighting For?**

In Washington, the accepted wisdom by year-end was that the technology industry had matured at last into a lobbying force commensurate with its size and pocketbook. But what everyone missed was that the users had opened a third front in this fight, and clearly the one that determined its outcome.

The bitroots movement wasn't led by Google. It wasn't led by anyone. Even to look for its leaders is to miss the point. Internet users didn't lobby or buy their way into influence. They used the tools at their disposal—Tumblr, Facebook, Twitter and the rest—to make their voices heard. They encouraged voluntary boycotts and blackouts, and organized awareness days. This was a revolt of, by, and with social networks, turning the tools that organized them into groups in the first place into potent new weapons for political advocacy. The users had figured out how to hack politics.

Now that the prototype has proven effective, we can expect similar responses to proposed legislation and regulation affecting other aspects of digital life in the future. And Internet activists will continue to co-opt the latest technology in singular pursuit of their goals and agendas.

Which are what, exactly? The answer is easy to find. And necessary. Those who are serious about channeling the energies of the PIPA and SOPA revolt into productive uses need to understand not just the how but also the why of the big victory.

The political philosophy of the Internet, though still largely unformed, is by no means inarticulate. The aspirations of Internet users largely reflect the best features of the technology itself—open, meritocratic, non-proprietary, and transparent. Its central belief is the power of innovation to make things better, and its major tenet is a ruthless economic principle that treats information as currency, and sees any obstacle to its free flow as inefficient friction to be engineered out of existence.

Those seeking to understand what kind of governance Internet users are willing to accept would do well to start by studying the engineering that establishes the network and how it is governed. The key protocols and standards that make the Internet work—that make the Internet the Internet—are

developed and modified by voluntary committees of engineers, who meet virtually to debate the merits of new features, design changes, and other basic enhancements.

The engineering task forces are meritocratic and open. The best ideas win through vigorous debate and testing. No one has seniority or a veto. There's no influence peddling or lobbyists. The engineers are allergic to hypocrisy and public relations rhetoric. It's as pure a form of democracy as has ever been implemented. And it works amazingly well.

Today's Internet activists have adopted those engineering principles as their political philosophy. In that sense, their core ideals have not changed much since 1996, when John Perry Barlow published his prophetic "Declaration of the Independence of Cyberspace" in response to an equally ill-considered law that banned "indecent" content from the then-primitive World Wide Web (the U.S. Supreme Court quickly threw it out as unconstitutional). "We have no elected government," Barlow wrote, "nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks."

Barlow went on to "declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear." Barlow explains both the good and the bad, the productive and destructive, of the spirit that brought Congress to its knees. And does so, as with Jefferson two hundred years before, in the language of a poet. (Seriously, just follow the link and read the whole thing.)

In their political youth, Internet users are still profoundly idealistic and even a little naïve. They believe in democracy, freedom of expression, and transparent governance; they have little tolerance for draconian rules, for back-room deals, or for imposed legalistic "solutions" to poorly-defined problems that might be better solved with more technology. They are, if anything, more libertarian than anything else. But even that label implies a willingness to engage in traditional political theater, a willingness that doesn't exist.

Like most online communities, this political activism is largely nonhierarchical, relying on consensus and open debate rather than delegation. Titles and resumes play little part in deliberations—each user and her point of view is evaluated on the strength or weakness of their argument.

And there are no permanent allegiances or mutual back-scratching. Google has been on both sides of similar, albeit smaller, outbursts, as has Apple, Facebook, and other leading technology companies. In their stampede for Internet freedom, users will trample anyone perceived to stand in the way—Republicans, Democrats, mainstream media, technology companies, industry groups, and governments from local to international.

In the bitroots community, engineers play a unique role as trusted and objective commentators on what is and is not good for the Internet's underlying technology. They are the shamans who interpret the cryptic (and encrypted) messages of the gods, and they must be consulted before making any great

or small change to the architecture that has delivered the users into the new world.

Engineers are trusted because they have proven themselves objective. They simply don't have the capacity for double-talk. Ask them how the network will respond to a proposed alteration—whether of technology or law—and they will tell you. Their candor may be novel for those used to governments built on subterfuge, but that doesn't make it any less valuable.

One of the unforgivable sins of the PIPA and SOPA process, consequently, was a complete failure to engage with anyone in the engineering community; what lawmakers on both sides of the issue regularly referred to as “bringing in the nerds.”

And engineers were essential to getting it right, assuming that's what the bills' supporters really wanted to do. Both bills would have required ISPs to make significant changes to key Internet design principles—notably the process for translating web addresses to actual servers. Yet lawmakers freely admitted that they understood nothing of how that technology worked. Indeed, many seemed to think it was cute to begin their comments by confessing they'd never used, let alone studied, the infrastructure with which they were casually tinkering.

### **The Next Internet Revolt**

Internet users have revolted in the face of earlier efforts to regulate their activities, but never on this scale or with this kind of momentum. Perhaps that's because PIPA and SOPA presented a perfect storm. The draft legislation was terrible, the legislative process was cynical and undemocratic, and the public relations efforts of supporters fell flat on every level.

Yet it's already clear that the losers in the PIPA/SOPA fight have learned nothing from the profound activation of Internet users. Rep. Lamar Smith, SOPA's chief sponsor, dismissed the Wikipedia blackout as a “publicity stunt,” while Sen. Patrick Leahy (D-Vt.), PIPA's author, blamed defecting Republicans (defections were bi-partisan, as was opposition to both bills from the beginning). And supporters are already looking for opportunities to snatch victory from the jaws of defeat. “My hope is that after a brief delay, we will, together, confront this problem,” Leahy said yesterday.

The content industry has proven equally tone deaf. Speaking at the Sundance Film Festival, MPAA President (and former senator) Chris Dodd called the protests “white noise” that “has made it impossible to have a conversation.” That is, now that the industry has deigned to lower itself to having a conversation at all.

John Fithian, CEO of the National Association of Theatre Owners, unintentionally summed up everything that was wrong with the process from the beginning: “The backlash occurred,” he said, “Google made its point, they're big and tough and we get it. Hopefully now reasonable minds will prevail.”

They don't get it at all. It wasn't Google who made “the point,” it was the company's millions of users. The sponsors of SOPA and PIPA don't even know

who stopped them cold. But supporters of the proposed laws are retrenching anyway, preparing to launch a new assault on an enemy it hasn't identified.

Given both their arrogance and ignorance, it goes without saying that the content industries are unlikely to avoid similar catastrophes in the future, let alone find a way to work collaboratively with a political force they don't know—or believe—exists.

On the other side, it's hardly time to declare victory and go home. The SOPA win aside, the future success of the bitroots movement is far from certain. Whether the next issue is rogue websites, electronic surveillance, FCC oversight or government censorship (foreign or domestic), it may not always be so easy to call the Internet faithful to put up a united front.

Right now, it takes little more than a few key phrases—"open," "censorship," "privacy," "break the Internet"—to hook the outrage of the Internet masses. But maintaining momentum requires something more sophisticated. And the accusations have to prove true.

To become a permanent counterbalance to traditional governments, the bitroots movement will need to become more nuanced and more proactive. To avoid the very real possibility of mob rule, Internet activists must use their power responsibly. SOPA was a gimme. But legislators and regulators won't go quietly from this or future efforts to exert their influence over the Internet.

As the information economy increasingly becomes the economy that matters, we'll need to find ways to accommodate Internet values to traditional rulemaking, to bridge the expanding chasm between Capitol Hill and Silicon Valley. The stakes are high—the future of the economy as well as the technology depends on getting it right. We can't afford to mess it up. And we can't afford to dismiss the bitroots movement as a sporadic, random outburst.

It's worth remembering that some legislative interference has been valuable to the infant digital economy. These include protections in the U.S. against holding websites responsible for third party content (hard to imagine Facebook or Twitter or reddit existing without that) and laws that minimize the authority of the Federal Communications Commission to work its particular brand of poison against broadband providers (they still oversee dial-up Internet services, and look how healthy that is).

Those acts of happy foresight seem far from the minds of tomorrow's would-be regulators, however. In an interview Thursday, former Senator Dodd called for a summit between "Internet companies" and content companies, in hopes of finding a compromise on PIPA and SOPA. "The perfect place to do it is a block away from here," said Dodd, pointing to 1600 Pennsylvania Avenue.

No, Mr. Dodd, the White House is not the "perfect place" to engage with Internet companies. And it isn't the companies who matter the most. If you really want a "conversation," you need to engage with Internet users, and you need to do so nearly anywhere except inside the beltway.

The only place to really engage your new adversaries is where they live—online, in chat rooms and user forums and social networks, on Twitter and

Facebook and Tumblr and reddit and whatever comes next. If you want to understand what went so horribly wrong with your business-as-usual efforts, you'll need to take up residence in the digital realm and learn its new rules of engagement.

And if you want to persuade Internet users to help you innovate solutions for your industry's many problems, you'll need to come without your handlers and spin doctors, and without any expectation that your credentials or past accomplishments will carry weight in a serious debate about the costs and benefits of changing the architecture of the Internet to reduce copyright infringement. Come armed with facts, not rhetoric. Bring an open mind. And some engineers.

Oh, and if you're serious about making real progress, stop calling us nerds.

## LEGISLATIVE FIGHTS ARE LIKE ICEBERGS

EDWARD J. BLACK

*Edward Black is the President and CEO of the Computer & Communications Industry Association. CCIA is a nonprofit membership organization for a wide range of companies in the computer, Internet, information technology, and telecommunications industries, represented by their senior executives. Created over four decades ago, CCIA promotes open markets, open systems, open networks, and full, fair, and open competition. The organization was an early outspoken opponent to SOPA/PIPA.*

Legislative fights are like icebergs: a lot happens underwater for every issue that breaks through to the surface. Legislative battles over intellectual property rarely evolve to the point of making front-page headlines as they did in the case of the Stop Online Piracy Act (SOPA).

SOPA became a lead story because it represented not just a battle among industry sectors over policing the Internet for copyright infringement, but an ongoing fight over the future of the Internet that impacts millions of users.

The public saw the House Judiciary Committee wrangle over cyber security and private censorship provisions during the markup of SOPA in December 2011. Tech reporters and bloggers wrote about how lawmakers—some of whom did not appear to understand how the Internet worked—were pushing legislation that would drastically regulate the web. Public outrage built up over the holiday break until the Internet blackout in mid-January 2012 became a top story on CNN and other major news outlets.

But the key underlying debate had been building for nearly two decades. The central question of that debate is to what degree Internet companies and businesses should become privatized Internet police.

While this debate wore on, the Internet itself continued to change. The Internet is no longer composed primarily of static websites that offer information to users. Today, the successful business model for many of the companies that my organization, the Computer and Communications Industry Association, represents is to build platforms that empower Internet user participation.

This question of deputizing Internet companies to monitor their users is anathema to industry for a few reasons. First, no one wants to be in the business of spying on customers. Second, business models that empower millions of users' communications and commerce would no longer be viable if companies had the added mandate to thoroughly police that sheer volume of content. Nevertheless, politically established corporate rights holders—from Hollywood, to the recording industry, to the Chamber of Commerce—have long sought to shift to online platforms the cost and responsibility of identifying material that may have infringed intellectual property rights.

### Some History

Four years before the SOPA standoff, the online copyright issue first gained traction on Capitol Hill among a few members of Congress who were preparing to introduce rights-holder-backed legislation called the Combating Online Infringement and Counterfeiting Act (COICA). The bill would have created blacklists of websites and the U.S. Attorney General would have then required Internet service providers, advertisers, and others to stop doing business with these sites.

This proposal would have weakened the Digital Millennium Copyright Act (DMCA) “safe harbor” provision that gives Internet companies legal protection from liability for what others do on their sites—as long as companies quickly remove infringing content once it is reported. With COICA, copyright extremists instead wanted Internet platforms to proactively guess whether content might be infringing, and risk prosecution if they failed to remove it.

The lobbying challenge for technology companies was to combat misinformation about the scope of the infringement problem and to offer appropriate remedies that wouldn’t have broad consequences for legitimate e-commerce or the smooth functioning of the Internet. Our industry explained that having a U.S. blacklist for seemingly legitimate reasons like combating piracy gives the green light to Internet restricting countries to have their own blacklists for more nefarious reasons. Such policy is at odds with our diplomatic agenda, which discourages Internet filtering and censorship.

In the case of SOPA and its Senate companion the PIPA, the entertainment industry asked Congress to require that tech companies take on the crippling responsibility of proactively monitoring and controlling all the content and conduct that passes, even momentarily, through their sites and services. This would be achieved by gutting the liability protections that current DMCA law provides to tech companies that quickly respond to notices of copyright violations and remove such content.

SOPA was even more heavy-handed than COICA and would have also conflicted with new security protocols the government developed to curb phishing and spam. It would have required Internet companies to redirect Internet traffic from sites users requested.

If SOPA were to have passed it is within reason to believe—depending on how the Courts interpreted “engage in, enable, or facilitate” copyright infringement—that Facebook posts, Twitter links, and really any Internet service or app that allows a user to post and others to view would have to screen material. A site like YouTube would need to preview the 72 hours of video uploaded each minute, and then approve the video. The companies would have to screen material either manually or using automatic filters with high false positive rates and no real way to check for “fair use.” They would have done this filtering either preemptively or very quickly after it was posted.

Among the biggest business-related negative impacts of SOPA would have been the increased liability concerns and monitoring costs not just for existing

companies, but for the next Google, Facebook, or Twitter. SOPA would have made it far more difficult for new platform startups to get funded and reach commercial viability.

Tech companies were frustrated by the legislative campaign because they were already doing so much to respond to and remove infringing content. YouTube, for instance, offers watermarks to help rights holders track and identify copyright infringing content and Google demotes sites with high rates of illegal sharing. Others have taken creative steps to combat specific problems, like counterfeit drug sales online. Our companies correctly recognize that fake pharmaceuticals are a unique public health and safety threat that should take precedence over other commercial squabbles over trademarks, brands, patents, and copyrights.

Yet in addition to the lack of understanding among policymakers about these voluntary measures, there are often not similar questions being asked of the entertainment industry about what it's doing to help solve the problem—aside from suing others and lobbying for laws like SOPA.

Much more could be done to further reduce piracy by following the models of iTunes and Netflix—offering legal content that consumers could easily buy online and watch or listen to on the device of their choice.

### The Economics

The entertainment industry has spent years fighting innovation rather than capitalizing on the Internet's role as a low cost distribution method.

The industry hoped to create a sense of urgency on Capitol Hill so the logic of its proposed solution—even greater control and censorship of the Internet—would not get much scrutiny. To do this they repeatedly used misleading data on piracy. Part of CCIA's strategy to fight against SOPA-like legislation has been to deploy hard economic data to show the reality of the entertainment industry profits, online piracy and the collateral damage to other industries if SOPA were enacted.

An independent Government Accountability Office report in April 2010 showed that no reliable evidence or statistics exist to support the extreme claims of the entertainment industry of about \$20 billion in losses from online copyright infringement.

The entertainment industry has actually thrived over the last decade and is not suffering from Internet abuse, as is sometimes claimed. The most recent evidence comes in “The Sky is Rising,” an independent study commissioned by CCIA that shows entertainment production is in a renaissance period. More content is being created and more money per household is being spent on entertainment than a decade ago—a 15-percent increase in fact. This renaissance has created new winners and losers however, and some established players, who have been disrupted, are seeking to secure through political measures what they're losing in the marketplace.

In addition to not understanding the real scope of the piracy problem, those pushing SOPA both outside Congress and within did not consider the collateral

costs to other industries and users that would have suffered under SOPA. These include news organizations, libraries, academic institutions, and other sectors that rely on fair use exceptions to copyright rules. Released in 2007 and updated in 2010, CCIA's Fair Use Study found the economic contribution of fair use industries is greater than that from the industries pushing SOPA. The economists from Capital Trade Inc. found that one out of eight U.S. workers is employed by a company that benefits from the protections afforded by fair use. And industries relying on fair use and other copyright exceptions make up one-sixth of the U.S. economy—a significantly higher portion than those industries claiming damage from online piracy.

Internet industry lobbyists, including company executives, spent countless hours in meetings on Capitol Hill explaining how the Internet actually works and advocating for more targeted, less draconian measures to curb the specific problem of foreign websites dedicated to piracy of U.S. copyrighted material. It was difficult for Internet industry CEOs to take the SOPA threat too seriously at first because it seemed so obviously wrongheaded. What they may have not fully realized then is that the political clout of the established corporate right holders in Washington put the Internet ecosystem at a severe disadvantage from the start. That meant that even solid legal and policy arguments delivered by very capable underlings would not be enough.

Company executives understood the scope of potential damage to the Internet and simply expected “the powers that be” would understand that and bring the legislation to a quick halt. It took several months for the senior management of very popular Internet companies to accept that no, Congress did not understand the Internet and yes, they were really going forward with the bill anyway.

A bipartisan group of House members had also urged lobbyists to get these Internet company CEOs to call them and be more personally public in their advocacy. This was of course to counterbalance CEOs in the politically established entertainment rights owner industries, which had already been doing so consistently. Members of Congress pay much more attention to CEOs, and to their underlings afterward, if the CEO has been in to visit. On the other hand, lobbyists tend to want to protect their CEOs from the rough and tumble of the fray as long as possible.

Many members of Congress seemed to naively believe that Google and Facebook were so all-powerful on the Internet that they could “fix anything” they really wanted to—if only they were willing. Of course even the most popular Internet sites do not control the underlying physical network infrastructure. Internet backbone networks and access providers do, but they are not supposed to be blocking or censoring anything either. That’s why a “follow the money and the perps” approach to cutting off operators of foreign websites dedicated to piracy is the only way to go. Witness MegaUpload and the irony that Kim Dotcom got arrested in New Zealand immediately after the legislation died.

Most members of Congress and staff were totally unaware that Google was already taking down thousands of items a day under existing copyright law—the

DMCA. Many on Capitol Hill were simply unfamiliar with the DMCA statute itself. At first the oft repeated line “we just disagree with you” was code for “we have the votes to defeat you, so we don’t really need to refute your arguments on all this technical nerdy stuff.”

But after the December House Judiciary Committee markup, in which members admitted they didn’t understand the impact of SOPA on cyber security or the Internet, some staffers and members were more receptive to hearing details about the collateral damage related to the wording of the bill. A staffer in one office was noncommittal about his member’s support, but did comment that we were the only ones to bring a copy of SOPA to their meetings.

In another case, CCIA lobbyists happened to be in the office with a staffer telling us his boss had not taken a position, when the Member walked in, and asked what our meeting was about. When the staffer says SOPA, an intern pipes up, “we’ve been getting tons of calls about it. It hasn’t stopped.” The Member replied, “I’m voting against this bill.” It seemed his staff was blind-sided: he’d made the decision on the spot. Learning of his constituents’ concerns had pushed him over on the issue—further proof that meetings might have influenced the analysis, but the grassroots were undeniably important.

In lobbying against COICA, SOPA, and PIPA, the CCIA engaged in countless meetings and briefings in Congress to explain the collateral damage to the security of the Internet. We were fortunately able to utilize letters from dozens of top Internet architects, engineers and cyber security experts, which raised serious concerns about the bills. As a young industry, we were slowly but surely nurturing a bipartisan group of champions of our own. These efforts helped focus attention on the technical and business pitfalls of the legislation and chip away at the structure and support for it. However, legislative staff questions and concerns were too often brushed aside in favor of a political agenda driven by a few well-connected constituents and special interest groups. This of course led to the huge “generational mistake” that was the crash and burn of SOPA/PIPA.

The letters, documents and news reports by tech beat reporters did help build a record. Fortunately, when Internet users awoke to a blackout in January 2012, they were quickly able to find that record and see that some in the House Judiciary Committee were ready to regulate the Internet without hearing from Internet experts, consumers, or even a broad swath of technology and fair use industries. Internet users could learn with a few mouse clicks that this action was proceeding against the advice of law professors, Internet engineers, cyber security experts, and a growing number of Internet companies—and they called their representatives.

My colleagues at CCIA and others in the trenches were grateful to have these experts willing to voice their opposition, and heartened by the growing awareness by companies not usually focused on policy battles. We all also owe a huge debt to a handful of key enlightened members of Congress, who took courageous stands for Internet freedom, who worked to block SOPA and PIPA until the significance and danger of the legislation became more clear to a wider group of companies, Internet leaders, and concerned Internet users.

Our industry and our users are also indebted to the public interest groups from Demand Progress to TechFreedom who sounded the alarm, drew the attention of Internet users, and encouraged them to make their voices heard in Congress. Had activists not rallied the cavalry, rights holders with long-time Washington lobbyists might have rammed these sweeping changes to the Internet through Congress before they started their holiday break.

### **The Future**

Based on my 30 years of fighting battles on behalf of innovation and Internet freedom, I don't believe we've seen the last of this kind of bill. Too few members of Congress adequately understand the Internet, and the difficulties of protecting its core principles, and there is too little real understanding of the size, scope, and complexities of the problems surrounding online infringement. The legislative and legal framework that has nurtured the growth of the Internet evolved over several decades, based on the hard work of the few. To preserve that framework will also now require the constant vigilance of the many.

We need to communicate consistently with Congress about the realities and benefits of a free and open Internet. We also need to explain the proactive ways in which Internet companies can act as responsible corporate citizens in the matter of intellectual property protection. But the entertainment industry must also look at what else it can do to adapt its business and profit models to fully exploit the opportunities presented by the global Internet without trampling on the rights and legitimate concerns of others.

We need to have a better understanding of the real costs to industries of both the problem and the different proposed responses. Congress will then be in a better position to tailor legislative responses. Any proposed solutions must weigh the real seriousness and the scope of the problem, while minimizing collateral damage to other dynamic industries and to the Internet as a tool for communications and democratic activities.

The battle to preserve Internet freedom will probably never end. Democracy works best when participation is active and informed, as the Internet blackout and Internet user protests have demonstrated. The Internet community has been empowered to protect its vital interests. But since the disruptive power of the Internet will constantly challenge the entrenched status quo and politics as usual, such entrenched vested interests will always fight back.

This time, those willing to sacrifice Internet integrity and freedom for their own financial gain did not win. We are encouraged to see how many Internet users and stakeholders recognized the importance of the Internet as an engine for innovation, economic growth, and political participation—and were willing to take action to defend it.

## NOT IN OUR NAME: ARTISTS STAND UP FOR EXPRESSION

### CASEY RAE-HUNTER

*Casey Rae-Hunter is a musician, recording engineer, educator, journalist and media pundit and the Deputy Director of the Future of Music Coalition, which took a strong stand against SOPA/PIPA. FMC is a national nonprofit organization that works to ensure a diverse musical culture where artists flourish, are compensated fairly for their work, and where fans can find the music they want. Rae-Hunter works alongside leaders in the music, arts, and performance sectors to bolster understanding of and engagement in key policy and technology issues, and has written dozens of articles on the impact of technology on the creative community.*

Music and protest have a long shared history. From Woody Guthrie to Dead Prez, artists have stepped up and used their voices to push back against the forces that seek to limit freedom and speech. And why not? Artists depend on free expression to create their next great song, movie, novel, or even video game.

And now, more than ever, this expression is connected to a digital infrastructure that lets artists spread their creativity to the entire world with the tap of a finger. When policies are proposed that could curtail the vibrant ecosystem of ideas we call the Internet, creators will cry foul, including many of the amazing artists and managers I have the privilege to work with as deputy director for the Future of Music Coalition.

Here in Washington D.C., debates about Internet policy and intellectual property enforcement are commonplace. These issues are often complex, but they nevertheless reflect some essential concerns shared by musicians and other artists. Namely, how to preserve an Internet that amplifies creativity and expression while encouraging lawful commerce. When the Stop Online Piracy Act (SOPA) brouhaha erupted, my email inbox was quickly flooded with inquiries from musicians, music managers, arts organizations, professional writers and others who expressed unease about the scope of the proposed legislation. These are busy people, and it was telling that so many actually took the time to read the bill.

This is more than I can say for a lot of the well-compensated D.C. operatives who touted SOPA as a panacea to all the content industry's problems. When I asked these folks to explain the more troubling aspects of the legislation, the least evasive answer I ever got was "we fix all that later; we need to pass something now." In contrast, the artists I talked to were more than willing to probe deeper. That's why you saw the direct involvement of Trent Reznor, MGMT, OK Go, the Flaming Lips, Erin McKeown, Hank Shocklee, Jason Mraz, Zoe Keating and many more musicians, indie labels, authors, comics, graphic novelists, and designers.

Their concerns extend to the broader arts community, including the performing arts sector. These copyright holders are as much stakeholders as the

motion picture studios and major labels, and their perspectives must be considered in any debate around intellectual property. Arts organizations like Fractured Atlas are doing amazing work to ensure these important voices are heard, and they deserve recognition.

Make no mistake: protecting artists' interests is incredibly important. Musicians and other creators depend on their intellectual property as part of how they earn a living. The stated goal of the SOPA and PROTECT IP—to fight back against commercially infringing sites based overseas—isn't inherently insane. I'm a musician, and so are many of my friends. When we find our stuff on a sketchy foreign site that rakes in cash we'll never see a penny of, we are understandably upset. The vast majority of artists aren't rich, so the fact that there are commercial enterprises taking our creativity to the bank is deeply offensive. But so are policies that would compromise our ability to compete in today's marketplace using the tools we've come to depend on.

At the end of the day, SOPA would have set limits on our own entrepreneurial and creative ambitions. And this is why so many of us in the creative community opposed this legislation.

In today's dynamic digital environment, it's hard to know what new platform will grow to be a powerhouse for creators. Who could have predicted the impact of YouTube, Twitter, Facebook, or Tumblr? Then there are the platforms that help musicians distribute their work to legitimate sites and services like iTunes, Amazon and Spotify. Had SOPA been in place a decade ago, commerce-facilitating sites like TuneCore and Topspin may have never gotten off the ground due to having to monitor all user activity for potential infringement. The legal costs alone would have likely made these sites unattractive to investors. And, even if they had gotten off the ground, it's doubtful they'd have been able to provide a full suite of services to their users, which include countless musicians and other creators.

Any workable policy would protect expression without sacrificing the innovations that are so important to today's creative landscape. SOPA was most certainly not it. Today's artists understand intuitively how the Internet can leverage their creativity. What they really need are business models that better support their endeavors. You certainly don't get there by placing heavy-handed mandates on emerging technologies.

In many ways, the goal of intellectual property enforcement could be made easier by taking a hard look at how music and other creative content is licensed. What we want are more legal services that compensate artists and where fans can find the music they love. This will require figuring out how to more quickly and efficiently get large catalogs of music from service to user. It is also true that certain licenses—like broadcast royalties, for example—are much easier to obtain and enforce. Furthermore, the task of safeguarding copyrights is made even more difficult by the fact that isn't always easy to know who owns what. It seems kind of crazy that, in an era of smart databases, there is no comprehensive authentication system for music. Addressing this would not only aid enforcement, but also help more artists get paid more often.

Now is the time for all stakeholders to come together to discuss how we can create a rising tide to lift all boats.

Which brings me to another point. In the post-SOPA spin cycle, some in the media were keen to paint this as a pitched battle between big content and big tech. The corporate entertainment industry was happy to play along, painting a conspiratorial picture of the protests. This was far from the case. First, the entertainment industry had quite a head start in terms of lobbying, having already poured millions of dollars into Washington before most of the tech companies even showed up. Second, the opposition to SOPA (and to a lesser extent, PIPA) was diverse, diffuse and powered from the bottom-up. I had a pretty good vantage point, and I recall the protests taking place in the following sequence: Tumblr self-censored; the reddit community started making noise; some time later Wikipedia went dark (but not before careful deliberation among its community). I think Google eventually put up a banner.

None of this was particularly coordinated, but all of it was democratically-driven. Can the MPAA say the same? It's time to put the tall tales behind us. A false dichotomy between "content" and "tech" benefits no one, as these industries are inextricably linked. Without stuff to listen to and watch, today's popular online hubs would be digital ghost towns. Without an efficient and powerful means with which to reach audiences, the creative sector would be at a permanent disadvantage. For all these reasons and more, it is incumbent on all participants in the digital ecosystem to find ways to work together. And from the artists' point of view, it's important that users consider more closely the impact of their online choices. Smarter business models and more attractive products and services will only get us halfway. We all need to do our part to ensure a sustainable online ecosystem that rewards creators, empowers fans, and inspires greater innovation. I believe that world is possible.

For me, the biggest takeaway from the SOPA skirmish is that artists and arts ambassadors will no longer stand for cultural policy being set by less than a handful of powerful Washington interests.

Our voices will be heard. We want to work with policymakers as well as the entertainment and technology industries to identify solutions. But we aren't going to let any of these interests speak for us. We have our own voices, and can speak—and sing, and strum, and scratch—plenty loud.

## I STOPPED SOPA AND SO DID YOU

### ELIZABETH STARK

*Elizabeth Stark has taught at Stanford and Yale about technology and the Internet, was one of the key organizers in the anti-SOPA movement that engaged eighteen million people worldwide, and has spent years working on open Internet issues, including cofounding the Open Video Alliance. She has researched and spoken on the future of knowledge and learning, serves as a mentor for the Thiel Fellowship, and is an Entrepreneur-in-Residence at Stanford's StartX.*

It all started in about November. I had heard of this bill called SOPA—the Stop Online Piracy Act. And as I learned more about it, I knew it was really bad. When I say really, I mean really fucking bad. I have been a long-time open-Internet advocate, and many of my colleagues said, “This is the worst bill we have seen in the past decade.”

Here was a bill proposed by lobbyists of the content industry—in the U.S., the RIAA and MPAA; internationally, the IFPI and many more. They said it was about piracy, but it was really about something more. It was part of a war on sharing, a fight against the way that the open, distributed Internet works. It was a blatant attempt to preserve their business models to the detriment of artists, innovators, and the public at large. And it was poised to pass.

I called up some of my friends at Mozilla (you may have heard of their browser, Firefox) and said that we had to do something, and quick. So we held a small informal and interactive meeting of entrepreneurs, technologists, and activists to strategize on a plan. Fortunately, we had some people that worked for Congress in the room, and they told us, “This bill is pretty much a done deal. Unless you do something really huge, it will pass.”

And like that, the alarms went off. We had to do something huge. And luckily the Internet is the perfect platform for doing big things.

We decided on a strategy. On November 16, sites such as Mozilla, Tumblr, reddit, and even 4chan would blackout their logos in protest of SOPA. Fight for the Future set up a central site called American Censorship Day, where all the sites involved were listed. And there was a call for the Internet community to get involved. This was a watershed moment in the politics of the Internet: sites like Mozilla and Tumblr took a public stance for the first time ever on a political issue.

And on November 16 something huge did happen. Tumblr had built an incredible tool that enabled all its users to easily call their politicians. And like that, we had nearly one hundred thousand calls to Congress—quite possibly the largest number of calls that had ever been made to Congress in one day. We shut down the lines.

Things were looking pretty good, but the other side was ready to fight back. Round two came along: the SOPA markup hearing. Over two hundred thousand people watched the live stream of the hearing, and they tweeted and

laughed about it. Why were they laughing? It was so painfully obvious that the U.S. Congress, the people we entrust to create our laws, fundamentally did not understand the Internet.

There were members of Congress who had no idea what a domain name is, let alone how the Domain Name System, or DNS, works, voting on a bill that would change the very nature of this system. This was a huge wake up call. People were angry.

In one of the only planned moments of levity, Congressman Jared Polis, probably the person in Congress who knows the most about the Internet, proposed an amendment saying that SOPA should not be used for porn. Basically, he was trolling. He not only told Congress about the song “The Internet Is for Porn” but asked to enter it into the Congressional record.

As anger on the Internet rose, the ever-energetic reddit community decided to fight back. How? Shut down the site for an entire day. The Wikipedia community then decided to follow suit. As did Mozilla, Google, Tumblr, I Can Haz Cheeseburger, and many, many more. All in all, over eighteen million people took action. Hell, even my mom told me that she “voted” for “privacy” (not quite Mom, but thanks for the support!).

We created a movement. One that was decentralized, bottom up, and insanely chaotic. One that very much resembles the Internet. We created a meme—the SOPA meme—that propagated throughout the web and mutated into various forms (show toilet paper, tshirt, the day the lolcats died, etc). We harnessed the power of the Internet to reach out to millions upon millions of people. We rode the energy and momentum arising from the SOPA meme to kickstart the ACTA meme in Europe—members of the Polish parliament even wore Guy Fawkes masks in protest! And we showed the other side that we would not stand for backroom deals, special interests, or companies trying to preserve their outmoded business models at the expense of the open Internet. People called it the “Internet Spring.”

The other side has lots of money; in fact, they spent nearly \$100 million last year trying to get SOPA passed. But we have one thing that they don’t: the Internet. You know that old slogan from Texas? Don’t mess with Texas. Well, some of us wanted to make sure Lamar Smith, the congressman from Texas who proposed SOPA, heard our version of the slogan: don’t mess with the Internet. A group of us, led by reddit cofounder Alexis Ohanian, started a crowd-funding effort that turned the slogan into a billboard in Lamar’s Texas district.

It’s up to all of us to keep fighting, because this is far from over. The content industry is trying to fight from every angle they can. Their networks extend from executives of global corporations through various national trade representatives down to local mayors and city council members. We cannot let them win with their old school tactics. We do things differently on the Internet. Talk to your friends, tell your local politicians, and stand up for Internet freedom. Build technological tools, make videos, blog about it. The open Internet gives us the power to break free from the constraints and control of old media. This is not

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about Hollywood versus Silicon Valley. It's about preserving the very nature of the most vital tool of communication and expression and the millions of people who rely on it.

I am here to say loud and clear: Do not mess with the Internet. We are here. We are legion. And our voices will be heard.

## WHY DID THE ANTI-SOPA/PIPA MOVEMENT GO VIRAL SO QUICKLY?

BEN HUH

*Ben Huh is an Internet entrepreneur and the CEO of The Cheezburger Network, which receives three hundred seventy-five million views a month across its fifty sites. Huh was an outspoken opponent of SOPA/PIPA and helped lead the fight against SOPA by blacking out his sites on January 18, 2012.*

To understand any viral movement requires an understanding of the zeitgeist of their anger. Right now, thousands of sites big and tiny have gone dark or shut down in protest of SOPA and PIPA. What's more remarkable is that for most of us, we are engaging in a new form of protest—the Social Disobedience.

Unlike the Civil Disobedience of half a century ago, the Internet Generation (my 34-year-old self included) is using a more accessible and web-centric form of protest. The Internet Generation has virtually no money to speak of and doesn't consider themselves influential in any way, but the groundswell of anger and frustration against censorship has encouraged a generation raised on apathy and recessions to take up arms against the powers that be. And the only arms they know of is their voices.

It would be foolish and irresponsible for politicians to ignore this form of protest. While it's harder to ignore the protester on your doorstep, ignoring Social Disobedience will erode the social capital of any campaign—just ask any company who dealt with a user-revolt on Facebook or Twitter.

While the blackouts of Google and Wikipedia are notable and far-reaching, the insecure, unemployed graduate student expending their social capital to call attention to a political issue is the heart and soul of Social Disobedience. By leveraging their blogs, Twitter, Facebook, and their iPhones, the accidental protester is finding out just how power feels—and it feels right.

When the “young people” showed up to vote for Obama and when the “youth vote” put Ron Paul in the race—turning out and defying stereotypes—they are succeeding in their form of Social Disobedience. This is a generation that is highly educated, highly expressive, and restless.

The rallying cry of the 1960's was Love and Peace. The 2010's brought us Openness and Free Expression. The groundswell against SOPA and PIPA isn't just a reaction to the censorship, it's the reaction to a real threat to these values we hold closest to our hearts. This is a generation who has seen the erosion of influence from voters to corporate interests with money. The only power that remains in the hands of this generation is their self expression, and SOPA/PIPA sought to restrict this last bastion. This is the zeitgeist of their anger.

During all my debates and interviews, it's hard not to notice the growing chasm between those born of the Web and those born before. For men like Rupert Murdoch, the Internet is something to be controlled, feared, and

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regulated. For the Internet Generation, it's a rare freedom to be protected, celebrated, and shared. It's difficult to feel any sympathy for the Rupert Murdochs of the world (and their businesses) who complain that the politicians he paid changed positions in the face of voter protest. And it's painful to watch former Senator Chris Dodd take the top job with the MPAA and call our Social Disobedience "an abuse of power."

We can criticize the Internet Generation for being superficial, shallow, and self-interested, but so is every generation in their youth. And now, we watch in awe as they flex their voices in unison in Social Disobedience.

We're all proud of you, Internets. And don't let anyone silence you.

# THE INTERNET BEAT SOPA AND PIPA. AND I MEAN THE ENTIRE DAMN THING

## DAVE DAYEN

*Dave Dayen has been writing about politics since 2004. He engaged in the SOPA/PIPA battle as both an activist and as somebody who makes his living through work on the web, on FireDogLake—a site that relies on user-generated content and would have been harmed by the passage of this legislation. He spent three years blogging for the FDL News Desk at news.firedoglake.com, he's written for a variety of publications, online and off-, and his work has been cited in a variety of traditional and new media. He lives in Los Angeles.*

Writing about Congressional policy during the 112th Congress could be best summarized as the journalistic equivalent of working as a crash test dummy: your task was to dutifully slam into a brick wall every day for two years, as any legislation that you wrote about would almost certainly fall prey to obstruction and gridlock, without any hope of progress. So it was rare indeed in these years when I would hear about legislation on the fast track to swift passage.

In fact, the first time I wrote about SOPA and PIPA came in the context of a separate failed bill. Senate Democrats had just voted down a resolution of disapproval, put together by Republicans, on the Federal Communications Commission's net neutrality regulations (which, incidentally, aren't terribly good). Every Senate Democrat rejected this resolution, which would have invalidated the regulations, and from the outside, you would have concluded that the caucus favored the principles of Internet freedom and rejected corporate profiteering of the World Wide Web. This actually represented an advance; Senate Democrats weren't always explicitly on board with net neutrality, and to hold the entire caucus, from Bernie Sanders to Ben Nelson and everyone in between, is quite a legislative feat on anything of consequence.

But at the exact same time as Senate Democrats voted down net neutrality repeal, many of them were scheming to bring so-called anti-piracy legislation to the floor. The two bills coming up at the same time represents a common, devious tactic: make a big show of solidarity with a community or interest group on one bill, while selling them out on the side. So if the interest groups complained, individual members could simply point to the other vote, and add, "This other thing isn't that bad, trust us, we just showed you we're on your side, right?"

The timing also struck me. Congress, which typically did almost nothing in November and December without a good reason, had planned hearings and markups and votes for SOPA and PIPA during this period. From the beginning, the key sponsors sought passage at the end of 2011, when public attention focused anywhere but Washington. They obviously wanted it to slip through unnoticed.

In November, Sen. Ron Wyden had vowed to place a hold on the bill, but I knew that wouldn't mean much. "Holds" and other Senate rules don't matter to leaders when they really want to make the effort to pass the legislation in question. Here's an example: throughout the first two years of Democratic Senate control in 2007–2008, Republican Tom "Dr. No" Coburn would routinely hold up virtually any spending bill on the grounds that the country's deficit was too high. In almost every case, the holds got honored, even when the bills held widespread support. Harry Reid didn't want to take the floor time to beat the filibuster. But in 2008, Democrat Chris Dodd placed a hold on legislation to immunize telecoms from their liability participating in warrantless wiretapping. Despite Dodd's longtime tenure, despite the typical practice of honoring holds, despite his own party's control of the chamber, eventually the Senate took the time and broke Dodd's filibuster and immunized the telecoms. This seemed like the same thing. If they really wanted SOPA and PIPA, they could break Wyden.

By this point, those of us who create content online understood the dangers of empowering the government to demand that ISPs slow down or block individual sites based on subjective copyright claims. Firedoglake is not just a group blog, but a site that encourages and facilitates user-generated content. Anyone with an FDL account can post a diary at MyFDL. If a diary—potentially even a comment—contained what a copyright holder perceived as proprietary content, the entire site could conceivably get shut down. In the event of SOPA/PIPA passage, the next logical step for FDL would have been to take down all the user-generated functionality, and obsessively monitor the remaining posts to ensure copyright-free content. This defeats the entire purpose of a site like FDL, where community content gives people ownership in the site, creates an activist base and ultimately brings people back every day. Cutting off their voice would quickly lead to an atrophying of the site. People flocked to political blogs to get away from the one-way, top-down dissemination of traditional media. This legislation would return us there, and would probably result in the end of my job as an online journalist.

What happened on SOPA and PIPA was truly unprecedented. You can usually chart the success of legislation by determining the relative power of the lobby pushing for it. SOPA and PIPA had not just Hollywood, a critical fundraising source for Democrats, behind it, but also the U.S. Chamber of Commerce, just as critical a fundraising source for Republicans. Eventually, major Silicon Valley tech companies came out against SOPA/PIPA. But they were smaller players in Washington, newer to the scene, and without the same institutional links to members and their staffs. The aforementioned ex-Senator Dodd, after all, now ran the Motion Picture Association of America. House Judiciary Committee Chair Lamar Smith's staffers wrote the bill right before becoming entertainment industry lobbyists. In a straight-up fight between the two sides, I would have taken Hollywood in a second.

In short, the Internet beat SOPA and PIPA. And I mean the entire damn thing.

Regardless of political ideology or even a political background, content providers and the users who loved them bombarded Congress in ways we have not seen before or since. At one point Tumblr announced they were generating 3.6 calls per second to Congress. And it worked. Once the bill gained a high profile among the online community, lazy endorsements from politicians and corporations turned toxic. Members of Congress, corporate supporters and even the White House walked away from the bill in droves. The lead sponsors in the House and Senate tried to bargain and tweak and alter the bill to appease the opposition. But in the end, SOPA and PIPA never got a vote, even at the committee level.

You could have watched the nightly news every day during these few months, and wouldn't have known that any of this happened. The progressive watchdog Media Matters noted in mid-January 2012 that none of the major broadcast or cable news networks ever produced a segment on the SOPA/PIPA fight in their primetime coverage. That's because ABC, CBS, NBC, Fox and CNN all supported the bill.

Online, however, this was a major story for months, culminating in the SOPA Strike, on January 18, 2012, the largest online strike in history, when sites from Wikipedia on down redacted their content and posted nothing but links and information to help users contact Congress and register their dissent. Only then did traditional media, pretending they hadn't heard of SOPA or PIPA until this point, acknowledge the issue. By that time, the story was over. The bills died just two days later. Legislation that would have knee-capped the Internet ended up displaying the power of the Internet to drive the national policy conversation, without any participation from its Big Media counterparts.

You can get very triumphalist about the power of ordinary people to engage politically and force their leaders to heel, even when fighting the largest and most influential interests in the country. In reality, it doesn't happen that often. Activism and people power does not always work. Sometimes the opposing forces are too big, and sometimes the activist strategy is too diffuse. Stopping policy is hard and often futile work. What's more, it never ends: the next-wave version of SOPA or PIPA surely sits in the desk of an entertainment industry lobbyist. But every once in a while, the right combination of political muscle, innovative activism, and indefatigable will can disrupt the normal course of business on Capitol Hill.

About a month after the SOPA fight ended, I attended a debate between two Congressional Democrats, Howard Berman and Brad Sherman, in the shadow of the movie studios and production facilities in the San Fernando Valley. Berman and Sherman had been drawn into the same district for the 2012 election, and due to new California election laws, would face one another in a head-to-head matchup in November. Both of them, being Southern California Democrats, took massive amounts of money from Hollywood. Sherman took a populist line throughout the campaign, and at the debate he called SOPA "not well-designed." Berman, still in thrall to Hollywood

cash, described SOPA as a “property rights” issue, and chalked up the recent takedown of the legislation to a “disinformation campaign.” You couldn’t drive around the Valley without seeing Berman campaign material after that. Berman held fundraising events at the homes of just about every big donor in Hollywood. He was even a special guest when President Obama held a fundraiser at George Clooney’s house.

They just finished the campaign. Sherman beat Berman by 21 points.

## A POLITICAL COMING OF AGE

### DAVID MOON

On June 22, 2011, I started Googling around to find contact information for the head of Google's lobbying division, as well as for the person that designs the art for their search engine. I wanted to ask them to join in the disruption of public consciousness by placing a message about Internet censorship legislation on the homepage of Google.com. I finally found email addresses for Alan Davidson (Google's head of lobbying at the time) and Ryan Germick—the man responsible for creating the art that Google rotates on its search engine page. See an excerpt from my email message to the Googlers below:

Our four hundred thousand members are primarily concerned with stopping PIPA and have sent over fifty thousand emails to Congress on the issue. Thousands have also called their senators to urge opposition to the bill. We now have agreement from a few Congressional offices to hold a staff briefing to highlight the various flaws of PIPA.

Meanwhile, we've been reaching out to dozens of groups to generate additional opposition to the bill (see attached list). We've made inroads with seniors' groups on prescription drug issues in PIPA, as well as right wing groups concerned with the speech implications.

Even with all this, it seems we are lacking broad public awareness (and the resulting fear from members of Congress). But we were realizing that you at Google are sitting on perhaps the world's greatest pedestal, given your massive presence on the web.

Would you be willing to use your rotating Google search engine art to highlight the free speech implications of what Congress is about to do?

By the fall of 2011, as the coalition of groups working with us on this campaign began to mushroom, I had begun dreaming of the advocacy possibilities latent in pushing websites under attack to draw their visitors' attention toward the legislative fight in Congress. On November 14, 2011, I emailed a message to our coalition partners asking the following question by email:

Will a time come when the private sector net firms/sites will be willing to mobilize their user/customer bases for constituent contacts? I would just point out that the airline industry does this fairly regularly now ... witness ie: United and other companies mobilizing their email lists to send in comments to the FAA re: new desired airline routes (ie: when a direct to Beijing line opened) ...

I can only imagine the impact of Google, for example, changing its search engine art to a SOPA/PIPA-related image—one can only dream. :)

It took months of additional work by our coalition of Internet Freedom fighters, but my mouth still dropped on January 18, 2012 as the following image appeared on Google's homepage:



Thousands of websites across the Internet “blacked out” and staged online protests to raise public consciousness about the dangers of SOPA/PIPA. In response, I emailed my colleague David Segal the following message: “ha. 2 months later it’s a new day. my god.” It was indeed a new day, and perhaps more than we are still able to grasp. It was the final dramatic action in a campaign that took a year and a half.

Though the downward slide of SOPA/PIPA had been well in progress for months, by January 18, 2012 it was impossible even for the bills’ proponents to deny that they were dead. Epic win. Ironically, throughout much of this process, Demand Progress was accused of being puppets of Google. But this email chain hopefully debunks the idea that Google owned or served as puppet-master of the anti-SOPA/PIPA coalition. In fact, for many months it felt like we were trying to draft them into our guerilla battles. Indeed, this fight was much bigger than Google or any one company or website.

Proof? Even Kim Kardashian got in on the action. On the evening of January 18, 2012, the celebrity most famous for being famous tweeted the following warning to her millions of followers: “We must stop SOPA/PIPA to keep the web open & free.”

The epic downfall of SOPA & PIPA was a turning point in the Internet’s political coming of age story, but it was a critical moment not because a celebrity (or many celebrities as was the case) swooped in and blessed the rebels. Indeed, before mid-January, Kardashian’s opposition to SOPA/PIPA had already been preceded by celebrity alerts from actors Ashton Kutcher and Olivia Wilde, filmmaker Kevin Smith, musician Trent Reznor and numerous other creators.

What made the participation of celebrities like Kim Kardashian notable, was not actually their fame. It was that on January 18th and the days that followed, many celebrities reacted like the rest of us did when they found out about SOPA.

Like millions of others, Kim Kardashian simply recognized her own identity as an Internet user and drew a very public line in the sand (well, we can at least say that of the person who manages Kardashian's Twitter account). In fact, Congressional staffers later reported that the SOPA/PIPA battle had been the impetus for as many constituent contacts as any issue in memory—including recently contentious issues like health care and immigration. Somehow a bill related to DNS blocking rose to a similar level of public prominence—for at least a brief moment—but while Americans were sharply divided when it came to health care and immigration reform, they were overwhelmingly united in favor of the Internet.

It was a political coming of age: the Internet had truly arrived in Washington. In the weeks leading up to the blackout, most lawmakers were treated to decentralized barrages of hundreds of emails and phone calls about SOPA/PIPA. Their social media pages were filled with inquiries about the two bills from incredulous Netizens. Twitter announced that in the first 16 hours alone on January 18th, over 2.4 million users tweeted about SOPA/PIPA. Meanwhile, programmers and web developers were connecting online to coordinate visits with lawmakers, while in New York a tech meet-up group anchored a rally that saw thousands of protestors gather outside the offices of their senators. Along the way, coders interested in the effort went to work programming new contact tools for constituents, and witty individuals took to sites like YouTube and Facebook to launch viral alerts and satirical memes about SOPA/PIPA. Some bill sponsors like SOPA-backer Rep. Lamar Smith were particularly vilified by Internet humorists (some clever, some not).

In short, Internet users harnessed the very platforms endangered by the bills to spread knowledge of the legislative threat—and they brought the creative energy of dozens of web-savvy individuals to find ways to cut through the clutter. Above all else, these digital activists—whether experienced warriors or newbie agitators—seemed stunned that Congress could look at the same facts that they had and come to the impossible conclusion that the Internet deserved to be restricted and censored. Their very persistence in opposing legislation that conventional wisdom declared headed for passage proved that in a way, ignorance of Washington's game logic allowed the rebels to achieve an outcome that many saw as unrealistic. The Internet had overcome party leaders and committee chairs, and violated norms of seniority and power in the course of defeating SOPA/PIPA.

As Kim Kardashian herself demonstrated, Internet users around the world put on their tricorn hats and went Paul Revere on the political establishment. But where the Arab Spring protests had used the Internet to take down governments, the SOPA/PIPA battles used the Internet to defend the Internet itself. After waves of public outcry, the bills were declared dead, and the politics of the Internet in the United States have not been the same since. Weeks after the legislative defeat, Democratic Rep. Jared Polis told reporters at Politico that the successful opposition was evidence of a “coming of political age.” Republican Rep. Jason Chaffetz further commented, “Nobody wants another SOPA moment ... The nerds are more powerful than anyone

thought.” Both lawmakers opposed SOPA/PIPA and have since seen the shifts in mindset from their colleagues.

In spite of the spectacularly public way in which SOPA/PIPA was defeated, many backers of the legislation appear confused or in denial about how this came to be. Instead of recognizing that the integration of the Internet into the lives of almost every American has led the emergence of a powerful new constituency for Internet freedom, some politicos spent the days following the SOPA/PIPA defeat bowing down to Google and congratulating the company’s lobbyists for successfully misinforming the public.

Filmmaker David Newhoff, for example, published a January 18th op-ed in *The Hill* where he took the view that tech companies manipulated the opinions of their users: “Silicon Valley’s fear campaign has worked its magic … If SOPA and PIPA are defeated not because of legal merit but because of a desire to throw off the shackles of a media oligopoly, we will only have donned the shackles of the tech oligopoly who scared us into doing their political bidding.” In this version of the story—and it was shared by a surprising number of people—the defeat of SOPA/PIPA was overwhelmingly driven by (specious) propaganda purveyed by Big Internet companies like Google. These observers had squeezed and contorted the effort to make it fit into the standard Washington paradigm: it was but another sandbox war between rival industries.

The persistence of these misinformed views keeps me hoping that *Hacking Politics* helps demonstrate just how emergent and grassroots the outcry really was. Setting the record straight is not just a matter for the history books; it is critical to ensuring that in the future Congress charts a sensible course for the Internet. Otherwise, SOPA/PIPA backers who believe that Google was responsible for their defeat will simply assume that they can negotiate with a single company to prevent problems in the future. To be fair, Google had a large presence during the Congressional debates over SOPA/PIPA, but to credit them for the win would be missing the biggest lesson—specifically, that the perspectives of Internet users now demanded a seat at the table. In fact, U.S. Senator Ron Wyden—who in the early days of the fight practically stood alone in opposition to PIPA—reflected that the citizen outpouring “was not something that anybody could have dreamed up. This was organic.” For Wyden, the successful citizen defense of the Internet was not something that hired guns could have staged and was instead evidence of potential new policymaking dynamics.

At a gathering of SOPA/PIPA opponents after the bills were defeated, Wyden quipped that his colleagues “practically had me in a corner with a dunce hat.” But that when all was said and done, he saw an example of an “extraordinarily powerful antidote to all the frustration” with Washington. What Wyden could see—and that most of his colleagues could not—was that together millions of Americans had effectively come up with a hack around Congress’ otherwise unaccountable policy process. Indeed, the story of how the SOPA and PIPA bills were defeated is really a rallying call for anyone searching for signs of hope in our political system.

## THIS TIME, THE SYSTEM ACTUALLY MOSTLY WORKED

### PATRICK RUFFINI

In the year since these events, a narrative has taken root that SOPA and PIPA fundamentally changed how Americans interacted with Congress. The process wasn't working, until the Internet came in and fixed it. "Don't get SOPA'd" was a directive heard in many Hill offices in the weeks and months after the bill.

Yet, there is another story here, one that may surprise the cynics: members of Congress and their staff want to do the right thing. They want to be convinced on the merits. Make a better argument, and they will listen.

An influential voice on Capitol Hill broke down why he thought our coalition was finally able to crack the inside game, in addition to bringing a phenomenal outside game.

First, SOPA and PIPA's opponents were united. Once we had said "go," not a single serious voice in the technology industry dissented. The fact that all the technical experts and engineers who weighed in opposed the bills was weighed heavily.

Second, we marshaled detailed arguments. Using that technical background to our advantage, we were able to present a detailed case for why SOPA and PIPA broke the Internet, laying out networking and cyber security concerns that were not initially obvious. The proponents may have been well intentioned and genuinely concerned about foreign piracy, but they did not know enough about what their bill would do. They would simply dismiss these arguments as propaganda fomented by companies like Google, ignoring how so many others from diverse backgrounds came to the same conclusion, not to mention the thirteen million Americans who took action on blackout day. Opponents were more communicative and open—something also seen in the media—and proponents more circumspect and reluctant. Staffers would ultimately notice.

Finally, we knew who our targets were. In a legislative battle, thanking those who take a risk on your behalf is just as important as excoriating your opponents. The online community had Issa and Wyden's back from the very beginning. It effectively targeted members who were far-gone, like Lamar Smith, without alienating those in the middle. It gave those who were undecided a reason to become newly minted champions of technology and innovation, creating new social media heroes in the process.

In the end, this one time, the system worked. The traditional lobbying gatekeepers continue to have an outsized voice in the process, but were outdone by the opposition's superior organizing hustle. When it came to saving the Internet, it turned out there was no better tool for the job than the Internet itself.

## PART 3

### SOME ACTIVISM SINCE SOPA

*The world has kept turning even as we've taken some time to bask in the glory of the SOPA/PIPA victory and consider its lessons and implications for future activism. This part focuses on a few key moments of activism from the last year or so: the defeat of privacy-obliterating cyber-security legislation (at least for the time-being); the institution of formal Internet freedom planks by the major political parties; a skirmish within the influential Republican Study Committee over copyright policy; and efforts to end domain seizures by United States law enforcement.*

## PROTECTING PRIVACY AND PUSHING PARTY PLATFORMS

### DAVID SEGAL AND DAVID MOON

Activists were tested again quickly on the heels of the SOPA victory—and we rose to the challenge, as we mustered hundreds of thousands of web users to contest the passage of legislation that would have obliterated online privacy rights: the Cyber Intelligence Sharing and Protection Act (CISPA) literally included language preempting any and all standing privacy protections. CISPA's purported purpose was to protect Americans (and private and public infrastructure) from cyber security threats. On the House side, the thrust of the legislation was to afford the government and corporations new authorities to share information about their users with one another if it was deemed germane to neutralizing cyber security threat. Cyber security threats were defined in a typically nebulous fashion that would have allowed for obscenely expansive data collection and swapping. Even the violation of intellectual property laws was enumerated as a threat that could trigger data sharing.

Under early versions of CISPA a company that thinks you're a cyber security threat would have been able to monitor any of your communications to which it had access and then share that and other intel on you with other corporations and the government.

Demand Progress has box seats lined up for the opening night of Joe Lieberman's post-senatorial one-man show at the Hartford Civic Center: that guy has always had amazing comedic timing. In early 2011 Demand Progress launched a campaign in opposition to Lieberman-backed cyber-security legislation which included a so-called "kill switch" which would have effectively enabled the government to shut off the American Internet in a time of crisis. The idea didn't gain much Joementum, as Hosni Mubarak shut down the Egyptian Internet within days of the bill's introduction, and Lieberman was forced to back down.

Now he was back with a new cyber security bill, standing on soft footing as he was repeatedly forced to assure the Internet public that it was neither a SOPA in new clothes nor a kill switch. The House passed CISPA in late April but with much more vocal opposition than ever would've manifested during a pre-SOPA political dynamic. When the debate moved to the Senate a bloc of a dozen or so privacy-concerned senators, mostly Democrats, but including some Republicans, worked in concert with activist groups like ours, EFF, CDT, FFTF, and the like and succeeded in extracting several key concessions from leadership—and even convinced third-ranking Democrat Chuck Schumer (NY) to join their ranks and cosponsor a critical amendment. These privacy activists included not only some SOPA era heroes, like Ron Wyden and Rand Paul, but

also people who'd lined up on the wrong side of that bill, like Al Franken. Even more encouraging: the various amendments haven't even become relevant as of this writing, as several privacy-concerned senators joined with the bulk of the Republican caucus to defeat a motion for cloture and prevent the bill from coming up for a vote.

Much less encouraging has been the lack of anti-CISPA participation by web-concerned firms and platforms that got active during the SOPA fight. The cyber security bills either didn't impact them—or actually helped them by affording them certain immunities and relieving regulatory burdens—so most demurred at the opportunity to once again stand shoulder-to-shoulder with web activists. Other tech companies, like Facebook, actively supported the legislation. Here's an excerpt from their letter to the sponsors of CISPA:

“Effective security requires private and public sector cooperation, and successful cooperation necessitates information sharing. Your legislation removes burdensome rules that currently can inhibit protection of the cyber ecosystem, and helps provide a more established structure for sharing within the cyber community while still respecting the privacy rights and expectations of our users. Through timely sharing of threat information, both public and private entities will be able to more effectively combat malicious activity in cyberspace and protect consumers.”

Demand Progress ran a campaign against Facebook, whose positions on Internet policy fit in remarkably precise correlation precisely to the firm's business interests, and not to any higher concern for an open Internet that protects the rights of its users. One meme template that's taken off over the last couple of years is probably the world's most efficient mechanism for calling someone out for being a hypocrite: find a goofy photo of the antagonist, plaster the noble thing they said they'd do above their head, and note how they sold out below.

A couple hundred thousand Facebook users shared the photo. Days later Facebook to issue a response, written in corporatese and promising that oh, goodness no, they'd never ever use the legislation to abuse their users' privacy. How ever did you come up with an idea like that?

“The concern is that companies will share sensitive personal information with the government in the name of protecting cyber security. Facebook has no intention of doing this ...”

Demand Progress and our members—who've bombarded Congress with nearly half a million emails in opposition to these bills—are standing watch, alongside many of the other groups which have contributed essays to *Hacking Politics*.

### **Pushing for Party Platforms**

It wasn't obvious beforehand, but the defeat of SOPA/PIPA amounted to a clear signal that the Internet had truly arrived as an issue in American politics—one that some people would even base their votes on, and certainly one that would be the basis for where campaign contributions were steered.

Though backers of the ill-fated legislation were loathe to call their loss a victory for Internet freedom, many operatives and politicians sensed the growing benefits that would accrue to political actors who established their bona fides on Net issues. And for those of us involved in opposing SOPA/PIPA, the aftermath of the legislative battle posed an opportunity to prove that our victory wouldn't be fleeting, but represented a true watershed: we could look for ways to help the issue vest as being of ongoing political relevance (and not just something that is good for the world). So as our flagship campaign wound down, many of us began thinking through concrete steps by which to keep building the political space for Internet freedom issues. Several organizations were trying to establish broad, high-value principles, so a number of us signed onto an effort to create a Declaration of Internet Freedom, as outlined herein by Free Press.

We contrived to try to explicitly play the major political parties off of one another in a scramble to adopt the best positions on Internet issues: There are very few remaining “swing” political constituencies—groupings that split or oscillate back and forth between the major political parties. The prize of becoming the Party of The Internet (or, more cynically, the Party of Silicon Valley and the attendant campaign cash) is worth fighting for. The SOPA battle had already made cameos in the presidential race, and we decided to keep pushing along that axis: as the parties moved towards their quadrennial conventions, the moment was ripe try to get them to adopt robust, formal Internet freedom platform planks for the first time. (Each platform had contained but an oblique reference or two to the web in prior years—by no means seeing it exclusively in a positive light.)

Rep. Darrell Issa was leading the Republicans’ charge towards Silicon Valley and had become one of the most outspoken SOPA/PIPA opponents—and his and other Republicans’ efforts were beginning to pay off: their pitch was resonating with adherents to the anarcho-capitalist, network utopian, “California” ideology that represents a substantial strain of belief in tech-centric communities. Political donations from tech interests were going to Republicans at a higher rate than in the past. Who could possibly blame them, given the ease with which traditional Democratic paymasters like Hollywood had that party doing their bidding during the SOPA/PIPA fight?

Issa’s office began pitching specific language to the Republican platform drafting committee. Behind the scenes, we were also told that the GOP platform committee was full of libertarian-minded supporters of Ron Paul, and that they would be pushing for Internet Freedom language. It should be noted that in 2008, when the parties last revised their platforms, Republicans included practically no positive language about the Internet. In fact, most of the Internet references in the 2008 Republican Platform treated the online world as a terrifying space, rife with criminals, pornographers, and gamblers who needed to be restrained. The remaining Internet clauses in 2008 sought to use the web as a publishing tool for GOP policies related to taxes and immigration.

A core group of Republicans, including our co-editor Patrick Ruffini, were clearly pushing their party leaders to adopt popular stances on Internet issues,

and gain the dollars and constituencies that would come with them. We were fully supportive of this effort, but once we knew that some of our Republican allies from the SOPA/PIPA fight were already working on pushing their party to embrace Internet freedom, we had to do the same on our side of the political spectrum. In spite of the SOPA/PIPA misstep, Democrats must surely understand that they ought not cede Internet freedom as an issue to the Republicans. Their 2008 platform already included the following language: “We will protect the Internet’s traditional openness and ensure that it remains a dynamic platform for free speech, innovation, and creativity.”

So in July and August, we started scrambling to find contacts on the Democratic Platform committee so we could have conversations in parallel with the Republicans. As luck would have it, we knew a couple of members of the committee and connected with them via email. We asked one, who was on not just the Platform Committee, but also the drafting subcommittee thereof, to consider a stronger Internet freedom plank, he replied, “You’ll be happy to know I brought up this topic at last weekend’s meeting in Minneapolis.” We’d lucked out. Our platform committee contact asked for our input on very short language for the Democratic platform. We quickly tossed him a suggestion that was intended to cover the major concerns from recent legislative fights: “The Democratic Party stands for a free, equal and open Internet, unfettered by censorship or undue violations of privacy.” In the meantime, we rounded up endorsements for the effort from numerous organizations—including many of those involved in stopping SOPA/PIPA. We buttressed the work of sympathetic party insiders and convention delegates by creating a website that would serve as the hub of the effort, and shortly thereafter several tens of thousands of people joined in the clamoring by signing petitions and sending emails asking the parties to adopt strong Internet freedom planks. Perhaps a dozen reporters took to hounding platform committee members—on both sides of the aisle—about what they were going to do to prove that they cared about online freedoms.

The Republican Party would end up adopting a robust 2012 platform plank titled “Protecting Internet Freedom” and outlined very specific goals for resisting regulation of the Net and respecting online privacy. According to today’s Republican Party, the Internet’s “independence is its power.” A lawmaker who was abiding by it would have voted against SOPA/PIPA and against the cyber-security bills we’d be fighting. (Though they’d also abide by the party line that government-enforced Net Neutrality regulations were an undue regulatory intervention into the online space.) The platform as a whole is a bit schizophrenic, still containing language about the need for more stringent anti-obscenity law enforcement, but at least they’re with us on the days when they get up on the right side of the bed.

On the Democrat side we were thrilled to see that the final product was more thorough and robust than before and reflected our suggestions, inclusive of privacy-protecting language which seemed critical in the wake of the cyber security fight: “President Obama is strongly committed to protecting an open Internet that fosters investment, innovation, creativity, consumer choice, and

free speech, unfettered by censorship or undue violations of privacy.” For the first time, it included a broader, formal, Internet freedom-section, wedding Obama and the Party to support for online rights, and mirroring much of the sentiment expressed in the White House’s anti-SOPA statement and another which it had put out in support of privacy principles during the cyber security debate:

Internet Freedom. The Obama administration has led the world to recognize and defend Internet freedom—the freedom of expression, assembly, and association online for people everywhere—through coalitions of countries and by empowering individuals with innovative technologies. The administration has built partnerships to support an Internet that is secure and reliable and that is respectful of U.S. intellectual property, free flow of information, and privacy. To preserve the Internet as a platform for commerce, debate, learning, and innovation in the 21st century, we successfully negotiated international Internet policymaking principles, support the current multi-stakeholder approach to Internet governance, and oppose the extension of intergovernmental controls over the Internet.

When we’d joined the effort to agitate in earnest for platform language, we were worried that we were a bit late to the game and prepared to be ignored, but we thought the process of educating party leaders would itself be a useful exercise. It’s hard to discern what the incremental effect was, but the success activists had in compelling the adoption and expansion of these planks was but further evidence that the Internet was now a first-tier, mainstream political issue, and that means that the growing numbers of us who prioritize Internet freedom should become more bold and confident in our policy goals. After all, getting the parties to say they’ll commit to Internet freedom is one thing, but getting lawmakers to actually behave like they believe in the cause when the rubber hits the road is another matter entirely, and will require monitoring and agitating by millions of ordinary Internet users. We think we’ll be ready, and it will help to have platform planks to point to, and to which to hold party officials to account.

## FALLOUT FROM THE COPYFIGHT

### DEREK KHANNA

*Derek Khanna (@derekkhanna) was a professional staff member for the House Republican Study Committee (RSC), a caucus of over 165 conservative Members of Congress, until January 3, 2013. He was the author of the RSC's report advocating copyright reform—a memo which was widely endorsed by conservative organizations and technology blogs but which was removed from the RSC's website within 24 hours. Previously, Derek worked for Senator Scott Brown and was involved in Governor Romney's 2008 and 2012 campaign. Additionally, he has served as a consultant for the DoD's Defense Science Board on Cloud Security.*

Working on Capitol Hill during SOPA was humbling. For weeks, many of the more technology-savvy staffers had seen the storm clouds of opposition to SOPA building, but we had no idea how massive or sudden the surge would be. As the opposition organized, eventually going viral, voters crashed Congressional circuit boards and websites, tweeting and Facebooking at representatives and senators in record numbers. For many this was an abrupt reminder of what democracy really is.

Many of us were strongly against this Internet censorship from the beginning, working behind the scenes to try to get our bosses on what we saw as the right side of the issue. Many were brushed aside. But on January 18th, the effect of the movement was deafening. Most of us had never seen anything like this before—such a significant change in momentum in only 24 hours.

Members' sudden, vocal opposition of legislation that they were co-sponsoring was nothing short of a watershed moment—but I would argue that it was proof of concept of something even bigger.

SOPA proved that a united movement can stop legislation that is expected to pass despite overwhelming odds, special interests cronies, and the support of powerful politicians.

Before SOPA it seemed like few staffers or Members had much interest in technology-related legislation. After SOPA, staffers and Members have asked me several times in regard to technology legislation: “Is this SOPA?”

Members of Congress are particularly sensitive to interests from their constituents as expressed through letters, emails, and phone calls to their office. This is why a united and coordinated movement can be so successful in stopping legislation. But this activist movement cannot rest after stopping one bad piece of legislation. Instead, we must take the next step—which is actually passing good legislation.

I am confident that we are on the cusp of such online activism. The digital generation is ready to change politics and policies, and we will succeed. We will do this by rallying behind new ideas, coalescing around legislation, and championing a campaign for passage.

As a Professional Staff Member with the House Republican Study Committee, I was told to push the envelope by developing new policy solutions. I have always believed that being a public servant means that I have an obligation to the citizens to be an agent of change within the system by reforming it on a daily basis. Simply being part of a dysfunctional system without advocating for new, innovative, common-sense solutions makes you part of the problem.

On this quest, it had become clear to me that our current copyright regime was written by special interests, to serve and protect their agendas, and does not reflect sensible policy. This perspective is shared by a number of Democrats and Republicans alike.

The current body of copyright law is a regulatory scheme that benefits one industry above the broader economy, particularly over disruptive industries and new market models. In October we reached out, as we did every month, to Members and staff with potential bill ideas. I included copyright reform—lowering the time period for protected works—as a legislative idea looking for a home.

The idea received no response. I decided to fully flesh out what copyright reform would look like, starting with specific problems with the current copyright system and how we could start to “fix” it.

In order to develop sound policy, you must first agree to certain principles that undergird what you are looking to do, and I did that by debunking the three foremost myths that I believe have justified our current system of indefinite copyright and the destruction of any future public domain:

- The purpose of copyright is primarily to compensate the creator of the content.
- Copyright is free market capitalism at work.
- The current copyright legal regime leads to the greatest innovation and productivity.

These points require critical examination because they address how we approach the issue of copyright. I wanted to take on this issue in a manner that would appeal to a transpartisan audience of libertarians, conservatives, and liberals alike.

In speaking to the first myth, the Constitution provides a clear justification for good copyright law, which I believe is a perfect place to start. We don’t take the extraordinary step of granting these effective monopolies to just to be nice. Rather, we endeavor “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.”

Belief in the second myth is widely held and actively promoted by copyright holders. But it is of course the case that our copyright system is actually government imposed—rather than something organic to the free market. Once it’s established that it’s a form of regulation, it provides us with the question of whether this regulation is most effective.

To dispel the third myth is to challenge the notion that our system of copyright strikes the optimal balance of providing sufficient incentive to content producers without discouraging or eliminating new markets—what I call the Goldilocks test. This last point is critical because most people don't know that our current copyright term is so long compared to that of our Founders:

- Original Copyright Law: 14 years, plus 14 year renewal if author is alive.
- Current Copyright Law: Life of author plus 70 years, and for corporate authors 120 years after creation or 95 years after publication.

I demonstrated that our system is suboptimal at best, and significantly counterproductive at worst. Most complicated, I was essentially trying to prove a negative by explaining that if our current copyright system were different, then we would have new industries that do not currently exist. I argued:

"Today's legal regime of copyright law is seen by many as a form of corporate welfare that hurts innovation and hurts the consumer. It is a system that picks winners and losers, and the losers are new industries that could generate new wealth and added value. We frankly may have no idea how it actually hurts innovation, because we don't know what isn't able to be produced as a result of our current system."

Our copyright paradigm has:

- Retarded the creation of a robust DJ/Remix industry.
- Hampered scientific inquiry.
- Stifled the creation of a public library.
- Discouraged added-value industries.
- Penalized legitimate journalism and oversight.

Some of these examples, such as the DJ/Remix industry, have been ridiculed as being silly or irrelevant. But they are no laughing matter to an aspiring DJ who would like to make mix-tapes without being sued, or to their throngs of fans, or the employees of the venues in every major city in America in which they play.

I then identified four potential solutions to address these problems. I am not arguing that the paper presented an exhaustive list of the problems with copyright or a thorough list of potential solutions—rather, I wanted to start a conversation among Members and staffs on this important issue. Scholarly work on the subject goes into greater detail (Jerry Brito's new book is a good place to start) and there is always a give-and-take process behind the development of seaworthy legislation—but overall I thought these ideas were a good place to start the conversation in a package that was understandable for Congressional staffers.

I felt it was appropriate for the Republican Study Committee to put out the paper because a number of conservative/libertarian groups were in favor of copyright reform and a few of our Members were as well—I believed that more of our Members would be supportive once they knew more about the issue.

This policy brief was fully vetted and approved through the normal process within our office and was revised accordingly. All edits were incorporated, and at 3:30 p.m. on Friday I was given the green light to submit this to our staff and Members. At that time I took my phone off the hook, grabbed my gym bag and said, “I hope I see you guys on Monday” and I pushed send and headed to the gym.

Controversy in itself should not be a reason to avoid doing the right thing—but it should be the type of thing that you walk into with eyes wide open. I was not ignorant as to what this would mean—in fact I was hoping for it to start a major debate between all concerned parties. A big mistake in politics is to avoid controversial topics until it’s too late and then try to get Washington to turn on a dime—but in my experience that simply doesn’t work. It takes time to develop the underlying impetus for major changes in policy, and I hope that this memo started or furthered a longer term conversation and put copyright reform on the table with a host of other issues.

After the memo went out, the strangest thing happened—tech blogs spoke in favor of copyright reform but also various conservative groups chimed in to support it as well. Essentially every major conservative or libertarian group on record has come out in favor of copyright reform—and there are several others that have told me privately that they too support these types of reforms.

When our office received push-back, the decision was made, against my protests, to pull the memo online but not to officially retract or disavow it. In the process, via the so-called Streisand Effect—the singer tried to have photos of her mansion pulled from the web, her request angered free speech activists, which led to the photos spreading far more virally than if she’d kept her mouth shut—the memo only became a bigger sensation. During this time I was approached by a number of staffers who told me that their bosses supported copyright reform and a few even talked about patent reform. That inclination is bubbling under the surface of the Republican Party, and it has allies on the left that could form a coalition to have substantive reform in this area.

I wasn’t surprised when some of the Members who were displeased with the copyright memo approached our incoming chairman and asked that I not be retained. But the unfortunate message that sends to other Congressional staffers, young people or anyone with an earnest desire to initiate productive policy changes is not to rock the boat.

It’s a message that effectively communicates that we don’t need and don’t want new ideas. Unfortunately, if the system is allowed to continue to function the way it currently does and has in this case, processes that discourage policy innovation will kill many of these promising new ideas.

To all incoming Hill staffers: I ask that you never lose this passion to try to fix the system and that you never lose the courage to put new ideas forward.

Despite losing my job, and despite going through quite a lot personally in the couple of months since publication, I do not regret writing this memo. If this marks the end of my career in public service, it will be an incident that I can look back on and remember—I was part of the solution. I had an idea and I put it on the table. I was part of opening a much-needed dialogue on this issue.

In the end, actually passing common-sense, pro-innovation legislation on technology issues will take a movement that re-engages and even expands the SOPA coalition. In my two months since leaving Capitol Hill, I have started by spearheading activism on cellphone unlocking, which I believe is a critical first post-SOPA battle for technology reform. We have succeeded with a White House petition reaching one hundred fourteen thousand signatures, resulting in the White House endorsing an FCC investigation and four bills in Congress. These small victories demonstrate that the anti-SOPA coalition can result in positive victories going forward. If the digital generation enacts its own legislation going forward, the effect will be even more profound than was the victory against SOPA.

## THE SEIZURE OF DAJAZ1

### JOSHUA BAUCHNER

A notable black mark on the Obama administration's record on Internet matters is the series of several hundred domain name seizures it has undertaken. With very limited due process, law enforcement agencies have seized United States-registered domain names of sites that are accused of facilitating substantial intellectual property infringement.

Targeted sites have included ones that engage in what had previously been understood to be protected activities, such as the indexing of links to other sites, or the embedding of video streams that are hosted elsewhere on the Internet. In some cases, proprietors thereof have even been confronted with prosecution for criminal copyright infringement. Law enforcement claims that it was granted these powers by the 2008 PRO-IP Act.

Operation In Our Sites ... is the first coordinated effort by the U.S. government to go after Web sites that are engaged in substantial amounts of criminally infringing activity. In the United States our legal system incorporates fundamental principles of due process and free speech, and those policy principles are extremely important to this administration. So Operation In Our Sites, and the manner in which it's being carried out, has safeguards to protect to those policy principles. And I think that having increased law enforcement that is consistent with those values is what the United States should be doing, and I think that can and will be a good example to other countries as they are assessing how to fight online infringement.

—Victoria A. Espinel, U.S. copyright czar, Media Decoder blog,  
*New York Times*, June 8, 2011

At the time of the *New York Times'* June 2011 interview with Victoria A. Espinel, the U.S. attorneys André Birotte, Robert E. Dugdale, and Steven R. Welk were readying an application to extend the deadline for filing a civil forfeiture complaint against Dajaz1.com. Prosecutors had already received one extension in May and would receive two more; the domain was returned with no complaint ever filed and no explanation for the delays in December 2011. Until April 2012, all interactions between the government and the court regarding Dajaz1, including the applications for extensions, remained sealed—even from Dajaz1's owner and lawyer.

When the documents were released—only after the court was petitioned by Wired, the Electronic Frontier Foundation, and the First Amendment Coalition—it was revealed that the prosecutors had been waiting for “rights

holders” and the RIAA to respond to questions and requests from the investigating agencies for more information.

Moreover, the prosecution alleged that criminal copyright infringement had occurred. In pursuing the investigation of this supposed infringement—which seemed to hinge on information from third parties—the government refused Dajaz1 due process and censored the site. Only to hear nothing from rights holders and the RIAA—except an admission that in fact all of the supposedly infringing material had been provided by artists or labels themselves!

The domain Dajaz1.com had been seized, along with eighty-one others, over a period of days around November 29, 2010, as part of “phase two” of Operation in Our Sites. The operation, an ongoing effort helmed by the National Intellectual Property Rights Coordination Center (IPR Center) and Homeland Security Investigations (HSI), both parts of the Immigrations and Customs Enforcement (ICE) division of Homeland Security, began in June 2010. Then, the agencies seized the domains of ten sites purportedly related to the piracy of movies, including TVShack.net and NinjaVideo.net. Praised by representatives of the MPAA, the Directors’ Guild of America, and the International Alliance of Theatrical Stage Employees, the seizure took place after agents “observed links to more than two hundred movies and more than three hundred television programs” and “downloaded various newly released movies from the Web sites and their affiliates,” according to the IPR Center press release.

Phase two of Operation in Our Sites—alternately called Operation in Our Sites v. 2.0—was billed by the IPR Center as a “Cyber Monday crackdown” on “online retailers of a diverse array of counterfeit goods, including sports equipment, shoes, handbags, athletic apparel and sunglasses as well as illegal copies of copyrighted DVD boxed sets, music and software.” The press release made no mention of Dajaz1.com or the four other music-related sites whose domains were also seized: OnSmash.com, RapGodfathers.com, Rmx4u.com, and Torrent-Finder.com. Anyone seeking any of these sites the day after the Thanksgiving holiday found a stock splash page, peppered with the logos of various involved federal agencies, reading, “This domain name has been seized by ICE-Homeland Security Investigations, pursuant to a seizure warrant issued by a United States District Court under the authority of 18 U.S.C. §§ 981 and 2323.” Each logo featured a fearsome screaming (or at least soaring) eagle—with outstretched talons, poised to perhaps seize the site’s domain. The word Seized, in a garish orange, repeated diagonally across the clashing red backdrop.

No warning was made to site operators in advance of the seizure. Beyond the IPR Center press release, the government offered very little public comment on the seizures. The application and affidavit for a seizure warrant and the seizure warrant itself, with the specific charges levied against the sites, were not released for several more weeks. Notably, the five music-related sites were the first with domains seized by ICE that were more than just link and ad dumps. This was especially true of Dajaz1, Rap Godfathers, and On Smash, all of which were prominent and vital parts of the online rap community. Serving as a sort of amalgamation of radio station, MTV, fanzine, label liaison, PR, record shop,

and local bar frequented by rap fans, each site hosted video and song premieres, broke news related to both niche and popular acts, and provided open message boards and chat rooms for fans and artists.

Moreover, these sites' operators weren't just facilitators for the culture—they were enmeshed in the business of rap. For the editors of Dajaz1, On Smash, and Rap Godfathers, new music "leaks" were no longer dripping from obscure and unnamed sources; leaks had become stock in trade for label employees and artist management, who maintained close and generally above-board contact with editors. Some of the allegedly infringing material on Dajaz1 had even been supplied directly by Kanye West, Diddy, and an unnamed vice president of a major label. As Kevin Hofman, editor of OnSmash, told the *New York Times* after the seizure, "I see myself as a legitimate source of content online, and I have no reason to believe that I was ever perceived as otherwise." He continued, saying of Kanye West, "If what I'm doing is so wrong and is harming the artist, then why is he retweeting stuff to two million-plus people?"

Though Rap Godfathers and On Smash were quickly back online at different URLs ([RapGodfathers.info](http://RapGodfathers.info) and [FreeOnSmash.com](http://FreeOnSmash.com)), Dajaz1 had only just started its year-long odyssey. The affidavit that accompanied the application for a seizure warrant, by Homeland Security Investigations special agent Andrew Reynolds, stated that a page on Dajaz1, titled "MP3 Downloads," had "links for numerous pirated songs," including Jamie Foxx's "Fall for Your Type," Nelly's "Making a Movie," and T.I.'s "Ya Hear Me."

Reynolds submitted samples of these songs to Carlos Linares, vice president of antipiracy legal affairs at the RIAA, who confirmed "that the pirated songs were unauthorized copies of rights holder's works." This, along with a variety of pedestrian factual notes on the ownership, operation, and technical aspects of Dajaz1, made up the bulk of the affidavit's section on Dajaz1. The seizure warrant was issued on the same day.

Following the domain seizure, ICE initiated administrative forfeiture proceedings against Dajaz1. Mike Masnick, of the blog Techdirt, explained the ins and outs of seizure and forfeiture law:

Under the seizure laws, the government has sixty days from seizure to "notify" those whose property it seized. ... Once notified, the property owner has thirty-five days to file a claim to request the return of the property. If that doesn't happen, the government can effectively just keep the property. ... However, if such a claim is filed, the government then has ninety days to start the full "forfeiture" process, which would allow the government to keep the seized property and never have to give it back. If the claim to return the property is filed and the government does not file for forfeiture, it is required to return the property.

At a certain point within the provided sixty days, Dajaz1 was informed of the administrative forfeiture proceedings. Dajaz1's editor Andre Nasib (commonly known by his online nickname, "Splash") and lawyer Andrew P. Bridges responded with a claim requesting the return of Dajaz1.com, thereby

moving the case to a U.S. attorney's office in California for judicial forfeiture proceedings. The government then had ninety days to file a complaint for forfeiture of the property; yet the time period passed and Nasib and Bridges heard nothing. After querying the court, Bridges was informed that the prosecutors had filed for the first sixty-day extension. When he asked for records of the court's decision to grant the extension, he learned that they were sealed. As were the request for the extension and the docket itself. Bridges asked the prosecutors to inform him if they decided to file for another extension; they refused. The three extensions were filed and approved with no information available to Dajaz1.

During the third extension of sixty days, sometime in September or October 2011, the government finally decided to not file a complaint, ending the forfeiture proceedings. Yet even after this final extension expired, no notification was given to Dajaz1; Bridges had to ask what the status of the case was before being informed that Dajaz1.com would be returned to Nasib. It was returned with no explanation from the U.S. attorneys, and none of the proceedings related to the case were public until April 2012. As Bridges told the *New York Times* when Dajaz1.com was finally returned, "I have never seen a piece of paper in this case, period."

The three requests for extensions are nearly identical, with only the last few paragraphs differing. Each extension requests notes that "further criminal investigation" is appropriate and claims "the filing of the complaint would have an adverse effect on a related criminal investigation." The first extension does not go beyond these bland assertions; the third has the fullest detail, with the explanatory declaration by Special Agent Reynolds noting, "A sampling of content obtained from the DAJAZ1.com website and its purported affiliate websites was submitted for rights holder evaluation and has yet to be returned to HSI, SAV/LA. Additionally, a representative with the Recording Industry Association of America (RIAA) has stated that he will provide a very comprehensive statement to ICE's and CBP's outstanding questions, in coordination with corresponding rights holders, which will be forthcoming in approximately 30 days."

There is no evidence that the "rights holders" or the RIAA ever responded to the the HSI's queries. All of the songs described as pirated in the original affidavit were ultimately revealed to have been sent to Dajaz1 by the artists or labels. No specific crime was ever publicly alleged by the U.S. attorneys' office. For over a year, the government held Dajaz1.com, suppressing entirely lawful speech and with no effort made toward having due process in the case. Throughout and beyond this year, hundreds more domain seizures were initiated under Operation in Our Sites, with over ten total phases conducted by summer 2012 (when the use of the term phase with regard to the operation seems to have ended). Despite the debacle surrounding Dajaz1—about which the government still has not commented, despite public pressure from some members of Congress—Immigrations and Customs Enforcement and the Department of Homeland Security seem to believe the strategy to be working; after the July

2012 Operation in Our Sites seizure, ICE released a press release highlighting some metrics of its success:

This enforcement action coincides with the two-year anniversary of the 2010 launch of IOS [Operation in Our Sites]. Since then, the seizure banner has received more than one hundred three million individual views.

Of the 769 previous domain names seized, 229 have now been forfeited to the U.S. government. ... A public service announcement, launched in April 2011, is linked from the seizure banner on each of the 229 forfeited websites. This video educates the public about the economic impact of counterfeiting.

On November 26, 2012, the day the first draft of this essay was composed, ICE seized another 132 sites. And progress against piracy continues.

## AN INTERVIEW WITH JULIA O'DWYER

### NICOLE POWERS

*Julia O'Dwyer is the mother of Richard O'Dwyer, the proprietor of the website TVShack.net. TVShack indexed links to media—including some copyrighted video streams—housed on other sites. On June 30th, 2010 United States law enforcement agencies seized TVShack.net and several other domains that were accused of violating United States copyright laws. In May of 2011, O'Dwyer was charged with conspiracy to commit copyright infringement and criminal infringement of copyright, and the United States government initiated the extradition process. Wikipedia cofounder Jimmy Wales initiated a series of public petitions in support of O'Dwyer's cause. They were signed by hundreds of thousands of people across the globe, including more than eighty thousand Demand Progress members. As of late fall of 2012, just after this interview was conducted, O'Dwyer had agreed to a "deferred prosecution" agreement that will let him avoid jail time.*

Anyone who's ever posted a link online without thoroughly investigating its providence should be concerned about the fate of a British student who is facing extradition and a ten year prison sentence in America—despite the fact that the crimes U.S. prosecutors allege he is guilty of were not committed on U.S. soil or servers and are not considered by experts to be against the law in the UK.

Richard O'Dwyer, a 24-year-old from Chesterfield, England, founded TVShack.net in December 2007 while studying for a degree in computer science at Sheffield Hallam University. The site, which O'Dwyer started as a hobby, was essentially a boutique, entertainment-oriented search engine, which provided users with links to streaming movies, TV shows, documentaries, anime, and music. TVShack.net hosted no content on its servers, it merely pointed users in the direction of third party sites that did.

Without warning, on June 30, 2010, the TVShack.net domain was seized by U.S. Immigration and Customs Enforcement [ICE] and a boilerplate copyright notice was posted on the site. Since Richard wasn't operating from within the U.S., he wasn't alarmed by this setback. Unperturbed, he switched over to TVShack.cc—a Top Level Domain based in the Cocos Islands (an Australian territory)—and soon had the website back up and running.

Richard continued to run TVShack.cc unimpeded, until one day when he got a rather unexpected knock at the door. The very long arm of the law, in the form of two American ICE officers, had come a-calling at his university accommodation in the North of England, accompanied by an escort of Her Majesty's boys in blue. Richard was arrested, but the investigation in the UK was subsequently dropped.

However, the Southern District Court in New York is attempting to prosecute Richard on one count of conspiracy to commit copyright infringement and one count of criminal infringement of copyright. The application of existing intellectual property law in this way stretches it far beyond the boundaries—and borders—that lawmakers could possibly have originally envisioned. Furthermore,

the U.S. Government's determination to prosecute this test case—at the MPAA's behest—is chilling when you consider how it may affect the very fabric of the web.

Even though Richard has committed no crimes that the British legal system is remotely interested in prosecuting, on January 13, 2012, a UK magistrate ruled that Richard could be extradited to America to face charges there. The judge was acting under the auspices of the highly contentious Extradition Act of 2003, a lopsided piece of legislation that was drafted in the wake of 9/11 and was sold to the public as an anti-terrorism measure.

Richard, and his mother Julia, a National Health Service nurse, are currently in the process of appealing this autocratic extradition ruling. As the legal process sluggishly moves towards a seemingly inevitable conclusion—since very few extradition requests from the U.S. are declined—Richard is attempting to keep his head focused on his studies and his e-books. I therefore spoke with Julia, who has been spearheading the fight to keep Richard in the UK, about her son's situation and the implications it could have for all webmasters and denizens of the net.

**Nicole Powers:** Were you aware at the time that Richard was doing this website?

**Julia O'Dwyer:** Well I knew he had a website, but he was at university. He wasn't actually living at home all the time, so I wouldn't be seeing him working on it that often because he wasn't here. He would come home every few weeks or at the end of the university term. I knew he'd got a website. I didn't really know the details of it ... he did the website as a hobby. That's all it was. One of his mates made a suggestion to him and he said, "Alright, I'll do that." So he did it.

**NP:** Had your son ever been in trouble before?

**JD:** No, no, never.

**NP:** When did you first realize something was wrong?

**JD:** I think it was in the summer of 2010. He was actually at home because it was the college holidays. I remember him saying, "Somebody's taken down my website." He was here in the room with me and he was like muttering away [saying], "Well, I'll fix that." America had put on this big red banner that is still on the website onto his original domain name, so he just fixed it and got it up and running on a new domain name. I can remember him saying, "America has nothing to do with me." That was the end of it. He had it fixed and up and running again within a day or two.

**NP:** I've seen the banner. It just looks like one of those standard notices that you see and ignore at the start of a DVD. Aside from that, at the time, did anyone from the U.S. government contact him?

**JD:** Nobody had contacted him at all. He'd said he'd had a couple of takedown requests, which were not correctly formatted, so that meant he couldn't find the links that they were trying to refer to. He had a takedown request to remove a link from a British film company, and he complied with that request. But apart from those, there was no correspondence or communication from anybody in

America to Richard about his website. All his mail would come to this address. When he's at university, because he changes accommodation every year on the course, he always gives his home address as his mailing address. I know that nothing came here because I always open the mail in case there's anything urgent ... so I can safely say that no correspondence came to this address, and they did have this address because his domain was registered in his name with his home address. After they took down his first domain name in July we never heard anything from anybody until the police arrived in November wanting to question him about his website ... that very same day he closed down the domain name and any of his email addresses that were associated with that website

**NP:** So before the police knocked on his door, he had no way of really knowing what he'd done wrong.

**JD:** I think he just thought, well I'm not in America; I'm not subject to the laws of America. That's how he would think. That's why he said, "They're nothing to do with me, so I'll fix it." Which he did. Then they didn't like that so they came after him.

**NP:** Where was he when the police arrived?

**JD:** He was in Sheffield at his student accommodation. It was early in the morning. He was just getting ready to go to classes and some police knocked on his door ... there was police from the City of London, and two American agents. We assume it was ICE agents. They weren't present when Richard was being questioned. I don't know why they were there, but they didn't come in on any of the questioning.

**NP:** So they took him down to the police station.

**JD:** In Sheffield, yes.

**NP:** I was watching an interview that Richard did with *The Guardian* in which he talked about how he asked if he should have a solicitor present and they brushed him off by saying it'd take too long.

**JD:** Yeah ... they said to him it's going to take a few hours to get one here. Because they said that, and because he had no previous dealings with the police, he didn't ask for a solicitor. And he wanted to get to his classes. He didn't want to be late.

**NP:** What's your understanding of what was said during the questioning?

**JD:** Well I have the transcript of the police interview ... it wasn't a long interview. It was about forty minutes ... [They said] they were arresting him under copyright, designs, and patents offenses. They said the website is streaming films and TV, and that's infringing copyright legislation, so therefore the money you're making is effectively money laundering; it's the proceeds of your criminal activity. That's why you're being arrested. They asked him about the website, when he made it. They asked him did anybody else help him with the website. They asked him about how he managed the website, and if he generated an income from it. They asked him how it technically worked. It was just links on the

website, there was no copyrighted content ... they asked him how people would go on it, select a link, would be directed to YouTube or some other video sites. They asked him about how it gained popularity ... they asked him more technical stuff about the website, where the servers were. No servers were in America. He told them it was all his own work, nobody helped him. He did it as a hobby. That's about it really ... he was actually in tears for most of the interview. I didn't find that out until I got this transcript. I was a bit annoyed about that.

**NP:** How old was he at this time?

**JD:** He was questioned in 2010, so he was 22 ... the police were also here at my house at the same time questioning me. They probably had this address down for Richard as well you see.

**NP:** So simultaneously to the police knocking on Richard's door at his digs they're knocking on your door?

**JD:** Yes ... same time, early in the morning. I wasn't going to work that day because we had the joiners here. They were taking out the staircase and putting new stairs in. They came and I was really worried and thought Richard had been in an accident. That's the first thing I thought when I saw these police. It was about half 6 or 7 in the morning. It was dark. Anyway, they said they wanted to speak to me about a website that Richard had.

**NP:** Under what circumstances did Richard finally get released?

**JD:** When they finished questioning me I just sent him a text telling him to come home or he texted me and said he was coming home, and so he did. Nobody mentioned extradition at this point. That wasn't even something that entered our minds. So I just said, "Don't worry about it, Richard. We'll get a solicitor, we'll sort it all out." He was told that he was on bail and that he would have to go back to the City of London Police Station, which is where those police came from, six months later, which he did. We both went there.

**NP:** What happened when you went down to London six months later in May of 2011?

**JD:** It was just to go to the police station to answer to the bail. Richard by now had got a solicitor who also knew nothing about extradition. He got us somebody to meet Richard at the police station ... he went in with Richard, and then quickly came out and said the criminal investigation in the UK had been dropped. I felt an immediate sigh of relief, but then in the next sentence he said, but we've got this extradition warrant instead, and we have to go straight to the courts. That happened quickly. Richard was put straight into a police car and taken to the court. I had to go and find my way to the court, and that's the first we heard about the mention of extradition.

**NP:** So with no warning, all of a sudden you're in a UK court fighting extradition.

**JD:** Yes. Richard was put straight into a cell at the police station. He was locked up. I had to make my way there and the lawyer said that a barrister would meet

me there ... I had to be there for 2 and I don't think the barrister came 'til about 4. Richard was locked up all this time so I couldn't have any contact with him.

**NP:** I'm guessing your lawyer would have had to scrabble around to find a barrister because he didn't even know he was going to need one.

**JD:** Exactly, yes. While Richard was locked up and I was waiting to go into this court, loads of people were there waiting for the same purpose, not to go America but to Europe ... I went into the court to wait Richard's turn. They just keep coming in, one after the other ... they were all just being processed through ... and I was just thinking, oh my God, this is going to happen to Richard next. We didn't get any information. Nobody gave us a leaflet about what happens if you're given an extradition warrant. I only knew what I could see going on there. The fact was everybody was getting their extradition requests rubber-stamped.

When Richard came into the court there was a prosecutor there for America and this barrister that we had. Of course, she knew nothing either. Nobody knew about the case because we didn't know there was a case. The prosecutors wanted Richard to be kept in prison, so they were arguing for that. It was really terrifying because they were so nasty. Because Richard had got exams the following week, and we'd told all this to the barrister woman. She managed to get bail for Richard, but he had to go in prison overnight because they wanted his passport. We didn't go to London with a passport, it was here at home, and they wanted some cash as well. Then it was 5 o'clock, and the court was closing. We couldn't physically get the money and get the passport by 5 o'clock when we didn't even go into the court until 4, so Richard had to go to Wandsworth Prison. Luckily my sister lives in London so I was able to give her a call. I went to her house and then the next day we got the money and I phoned home and got my partner to get the passport. None of it was straightforward.

**NP:** I can imagine; Chesterfield's one hundred fifty miles away from London.

**JD:** You have to take the passport to a local police station, and they have to contact the prison. But the trouble is I was trying to do this at 5 o'clock after Richard had gone off to Wandsworth Prison. They make them sit in a van for hours outside, they take hours to process them into the prison, and until they're actually processed into the prison and moved onto their computer system, they wouldn't accept the passport. My partner ... he was in Worksop [a town sixteen miles from Chesterfield] at the time, and the police were like, "We don't know how to do this. We can't take your passport." It was just hopeless, the whole thing. But by the next day, we got that sorted, and he was able to come out in the afternoon.

The other thing was they didn't know what bail conditions to impose on him. The judge was like, "We've got the money, we've got the passport, what else can we do to him?" The barrister said we could say that he mustn't access the Internet, but then the judge was saying he's got exams the next week, he's at university, so we can't do that, can we? And how could we police that anyway, he could just go in an Internet café. So Richard had to tap on the glass, because he was behind this glass wall in the court, to get somebody to come over so that

he could make suggestions to them about his bail. He just said, “You could tell me not to access the TV Shack website”—which he’d already taken down anyway—and “You could tell me not to buy any new domain names.” So he chose his own bail restrictions because they didn’t know what to do. It was funny. Well it would have been funny if it hadn’t been so frightening.

**NP:** So now he’s back studying at university and you’re fighting extradition, which is just a ridiculous thing because he’s not committed any crime that anyone’s interested in prosecuting him for in the UK, and it’s arguable that he’s committed no crime at all.

**JD:** Yes, that’s right. He never went to America. America is claiming jurisdiction over somebody who has never set foot in their country. They don’t allow it to happen to their own citizens. We can’t do it to them. I have a freedom of information request which shows that not one American has ever been extradited to the UK for something that they’d done in America. And the UK has never asked for an extradition of an American for something that they’ve done in America. So it’s mad.

**NP:** What’s the process to fight the extradition? And where are you at with it right now?

**JD:** Well we’ve just received a date for the appeal in December … the main argument is that Richard’s website operated in the same way as the TV Links website … and the TV Links case was thrown out of court. It was dismissed … it was thrown out because they said that linking to any content is not a crime basically.

**NP:** As I understand it, they were claiming the difference with Richard’s case was that he was curating content?

**JD:** No, they didn’t say that actually. In fact it was quite a cock up at the court … we had a few hearings where we presented the arguments through October and November of 2011 … in order to be extradited the alleged crime must be a crime in both countries. We were trying to prove that it is not a crime in the UK. If we had won that argument, then Richard couldn’t be extradited. At that court hearing the judge was saying yes, you’ve got a good, strong argument. And so was the prosecutor. We had another hearing booked, because there’s other arguments that you put forward like human rights …

The next court appearance, the night before we were going to London we got a late submission from the other side. When you get a document through, you have to read it and you’re meant to rebut it, provide a response. But it came to us at something like 7 o’clock at night; we were going to get on a train at 5 in the morning. Normally we would look at these documents for a week or so and with the solicitor write a response. I was really cross about this … I just sent a bit of a ranty email saying, “Why are we getting this crap? It’s full of inaccuracies. The prosecution clearly don’t have the technical knowledge to understand what it’s all about.”

The next morning, we got to London, I was still mad about this, because we had to do a very quick response to it. The barrister came and he said, “Oh, I’ve

sent your email to the prosecution barrister, and he's decided not to submit that document." It was rubbish anyway. We weren't afraid for him to submit it, just annoyed that it was sent so late. But he'd decided not to [submit it]. Because of that, the barrister said let's leave it now as we left it last time, which is when the judge said we've got a good strong argument. We still had some other material to send in, but he said let's leave it. I didn't want to leave it. I wanted to carry on because I wanted it done good and proper, so that they wouldn't be able to come back. But because he felt that the judge and the prosecutor were agreeing that we had a good argument, he thought we would win it, so we didn't then submit this extra stuff ... but then it all changed. Six weeks later the judge changed his mind. So we have to appeal against that decision, and this is the date that we're waiting for, the appeal.

**NP:** I presume this is all costing an incredible amount of time and money ...

**JD:** Well Richard has legal aid, because he's a student, so we don't have to pay legal costs. We've had to pay for a couple of things, like we had a video made to explain to the judge how linking works. Because you get judges who are not technically literate ... there's been the costs associated with traveling up and down to London quite a lot. That's expensive.

**NP:** And I understand that you had to temporarily give up work.

**JD:** Yes, I was off work for about six months as soon as this started happening.

**NP:** This is so chilling, because what Richard's done, putting links on a website, if America is successful in this case, the way it could be extrapolated will mean that virtually anyone that's ever put a website up could be extradited and/or subject to similar prosecution.

**JD:** I've checked the American Department of Justice website, I've checked ICE's website, I've checked the British Home Office website, they all have links on, and what do they say? We are not responsible for any content on any third party links ... which is what Richard said on his website. Because when you go to a link on somebody's website, you leave that website and go to elsewhere—don't you? You don't stay on that website. The content that you link to isn't on your website. It's like if you have an email that somebody sends you with a link on, if you click on the link, you get sent somewhere else. It's not lodging on your email is it? So yes, it's worrying, isn't it, certainly?

**NP:** Do you have a sense that what you're fighting isn't just for Richard? It's for thousands of people just like Richard, and also for sanity to reign on the Internet.

**JD:** I've had to educate myself more about the Internet and about extradition law as well. In the course of that I found out all about SOPA and PIPA and all that. So, yes, it is a very important issue isn't it? And I think you're right by saying if this is allowed to happen, then there are implications for many others worldwide, and for the Internet. So yeah, it's very important, but obviously I do have to put Richard first. He's only a little fish really. I'm sure they've got bigger fish to fry than a little lad from Derbyshire.

**NP:** The U.S. Government has virtually unlimited resources, so to drag a 22-year-old student through the courts like this, it feels like they're choosing a test case that they thought would be easy pickings.

**JD:** Well this happened when they were doing this big clamp down called "Operation in Our Sites" in America. I only know this now, afterwards ... they seized several domain names on that same day, the 29th of November, 2010. After this had all happened, after the police came here, we received through the post documents about the domain name seizure. It wasn't just a document about Richard's website, it was a big document where all these other websites were listed as well. It was like a group thing, and it showed the addresses of the owners of all the websites. Richard's was the only one that had his name and address at the side of it. All of the others had post office box numbers. So in that group, he was easy because they had his name and address, whereas the others, they didn't. Because Richard did it as a hobby, he wasn't thinking he needed to conceal anything ... if it was criminal, he wouldn't put his name and address on it, would he?

**NP:** It's also chilling that the website was seized first and questions were asked later. It was seized and shut down without any due process. They wouldn't do that to a terrestrial business.

**JD:** Well he wasn't running it as a business. It was a hobby. He did make money out of it, but he didn't set out to make money from it. The ad companies approached him. He didn't go looking to make money. When the advertising companies, who by the way were American, approached him, he just thought, "Yeah, that will be alright. It will pay for my servers and stuff." He didn't think it was going to grow into this massively popular website—that just happened by the fact of how the Internet works and how things spread. He never set out to make money from it at all. So yes, they did, they seized the domain with no due process.

**NP:** Basically it would be the equivalent of seizing a shop and all its contents and closing it down without so much as a court hearing, or even a formal mailed warning.

**JD:** No warning, no takedown notice. I mean when these documents came ... eventually, we got one saying if you want to show any interest in this domain name you'll have to come over here. He just signed to say he wasn't interested in it because we obviously didn't want to go over there. But yes, no warnings, no takedown, just that banner slapped on his domain ... No correspondence, no communication about takedowns or anything.

**NP:** Again, this is worrying for anyone who run a website anywhere in the world. If you apply the precedent America is attempting to set, other countries could start doing the same with the various other national domains, and any online business that falls in the sights of a government agency can just be taken down without any due process and people's livelihoods ruined.

**JD:** Yes, I mean they have been doing that, haven't they? I know they have. I've been watching. There have been lots of domain seizures and I've seen people having to go to court to get their domains back.

**NP:** How let down do you feel by the UK government? Because they don't seem to be standing by their own citizen—which is unconscionable when you consider Richard hasn't done any crime that any English court is remotely interested in prosecuting.

**JD:** Very let down. But I'm not the only one in that position. They're just following the law that the previous government created. That's what I'm doing as well, campaigning for that law to be changed ... I thought extradition was for fugitives, people who had gone to America, committed a crime, and then ran away. That's what a fugitive is. Not to go and get somebody who's never set foot in America, which is what they're doing. America can do that because the British side of the extradition law allows them to. They protect their own citizens in America; the UK does not. If an American was to be requested to be extradited to this country, they would have the right to a proper hearing and bit of a trial beforehand ... the government, they've done nothing ... there's a few good MPs who are fighting for reform, and they have been very good. But, historically, nobody wins this fight because the British government and the judiciary have got an obligation to stand by their extradition arrangements with America.

**NP:** Which are one-sided.

**JD:** Which are lopsided, yes.

**NP:** How can people help Richard?

**JD:** Well we've really had loads of support. Richard keeps out of the way mostly. I just wanted him to make sure that he continued his university courses and that that wasn't going to be disrupted. He is doing that; he's on his final year now.

There's a few other people in the same position, and people that have been extradited and come back. We're all working together lobbying the MPs and getting plenty of stories into the media. A friend has launched a fighting fund recently, we're just trying to get some money together ... I have had lots of offers through Twitter from American lawyers who have said don't worry, there's loads of people here who would take this case for free. I'm not worried about that, but I am worried about other costs that might appear if we have to go there.

If you get extradited, you are put straight into a federal prison in America, because they consider that you're a flight risk—even though they take your passport. You are taken straight to a federal prison and you have to fight then to get bail. And if you haven't got an address in America, somewhere to live, then you're not going to get bail. And if you don't get bail, they leave you there to stew in until they are ready for a trial. Part of the rationale for doing that ... well firstly, they're not ready for a trial, and secondly, they leave you in prison until you get so fed up and want to go home that you agree to a plea bargain. That's

how they resolve ninety-seven percent of their cases in America. Also, if they did grant him bail, they'd want a load of money. So it's going to be costly enough going to America, because if Richard goes to America I'm going to be going there ... I'm just trying to anticipate and plan ahead really ... if you fail your appeal, they don't give you long before they take you. You can be gone within two weeks.

**NP:** I cannot imagine what you've been through and how much of a shock this must be.

**JD:** It was terrifying at the beginning ... I've got a bit used to it now because I've spent the last six months of my life on the Internet finding out more, finding out about copyright law in America, about copyright law in the UK, finding out about the extradition law.

**NP:** It's just staggering, the fact that lobbying by bodies such as the RIAA and MPAA have turned something that would otherwise be a civil matter into a criminal one.

**JD:** Yes. They buy what they want, don't they, from the government, from the law enforcement agencies by lobbying and stuff. It's legalized bribery, isn't it? And they have got people working for them that used to work for the Department of Justice and vice-versa. It's all a bit incestuous, that relationship between America's law enforcement agencies and the MPAA. I'm not saying that people should commit copyright infringement, but that organization, those industries need to move with the times ... Richard in one of his Guardian interviews said there's nothing better than watching a movie at the cinema. He has always been a big cinemagoer. He still is. He was there yesterday. He goes there as often as he can. He loves movies. Yes, he'll watch movies on his computer, but if he wants to see a movie proper, he'll go out to cinema like everybody else does.

**NP:** People may think that this is never going to affect them, that this is some arcane copyright infringement case. But if they can go after Richard, they can go after anyone with a Wordpress blog. No one is safe.

**JD:** That's right. I mean, what is Richard to them? He's just a little nobody in England. He's nothing really. Why pick on him? He's small fry ... It's not even clear that Richard has broken a law in America. It's questionable whether he's broken one in the UK. But you see you just get shipped over there and you have to fight that in a court.

**NP:** In effect, it's guilty until proven innocent.

**JD:** That's the way he's being treated. Because extradition is another punishment, which is given to you before you've even had a chance to go into a court to defend yourself. Putting you and your family through this whole process, and then taking you to America and putting you in jail when you haven't even been found guilty of anything ... and just for something like this. He's not a murderer or a rapist or terrorist or anything.

## DEMAND PROGRESS RAPS WITH MEGAUPLOAD FOUNDER KIM DOTCOM

One day after the January 18, 2012 SOPA/PIPA blackouts, Demand Progress and its allied organizations were busy celebrating a successful day of protests against Internet censorship and plotting our next moves. But in spite of our victory in Congress, we would soon discover that our content industry foes and their political allies already had contingencies in place. On January 19th—merely hours after the end of the SOPA/PIPA blackouts—the United States Department of Justice announced it was going after the popular cloud storage website Megaupload using novel legal theories to allege a criminal conspiracy for copyright infringement because the site allows file sharing.

Our government had decided to take matters into its own hands. The DOJ seized Megaupload's domain—using the powers it claims from the PRO-IP Act, described at the beginning of this book—and servers, along with the assets of the company and its leaders. The website was one of the world's most popular online services at the time, and never mind that it wasn't even a U.S. company, or that Megaupload's founder Kim Dotcom was living in New Zealand. Demand Progress couldn't help but wonder if the timing of the U.S. Government's actions was deliberate.

We had seen plenty of signs that the content industry apparatchiks who pushed SOPA/PIPA were employing an “any means necessary” approach to preserving their business models, but the Megaupload takedown was above and beyond. The case is currently tied up in courts of law on either ends of the world, as Megaupload founder Kim Dotcom fights his extradition from New Zealand to the United States.

As it turned out, in the course of shutting down Megaupload, the U.S. Government created massive collateral damage by cutting innocent users of Megaupload off from their non-infringing content. In short, untold businesses and ordinary Megaupload users who stored their family photos, business documents and other data on Megaupload were out of luck and without any way of recovering their files. This would never happen, for instance, if the government filed charges against a bank: depositors would get to access their money.

Our allies at EFF are in on the fray, opposite our legislative nemeses at the MPAA. Demand Progress even filed a brief in the case to decry the content industry's attempts to deprive innocent Megaupload users of their files—and we “crowd-backed” it, with nearly one hundred thousand Internet users signing on to make sure the judge understands that his decision could affect millions of people who use cloud storage.

On the day of the U.S. Government raids on Megaupload, Techdirt blogger Mike Masnick wrote about the alarming developments:

If you've been paying attention to the MPAA/U.S. Chamber of Commerce/RIAA claims about why they need PIPA/SOPA, a key argument is that they need it to go after these "foreign rogue sites" that cannot be reached under existing U.S. law. Among the most prominent sites often talked about is Megaupload—which accounts for a huge percentage of the "rogue site traffic" that the U.S. Chamber of Commerce and other bill supporters love to cite. However, it certainly appears that the U.S. Justice Department and ICE don't think they need any new law to go after people in foreign countries over claims of criminal copyright infringement. As lots of folks are currently digesting, the Justice Department, along with ICE, have shut down the site and arrested many of the principals (with the help of New Zealand law enforcement) and charged them with massive amounts of criminal copyright infringement.

Of course, just last week, we had noted that Megaupload was immune from SOPA/PIPA because it doesn't apply to dot coms—but this is still interesting and crazy for a whole variety of reasons:

ICE and DOJ have a pretty freaking dreadful record so far in bringing these kinds of cases for online copyright infringement. It's kind of amazing that they did this so soon after they totally screwed up and had to give back Dajaz1 (without an apology, by the way). Megaupload may be a different type of site ... but, still ...

Similar cyberlockers, like RapidShare, have already been declared legal in both Europe and the U.S. I don't know the details of Megaupload's situation—and certainly its founder has a ... um ... colorful history ... but it seems pretty extreme to totally shut down the site prior to any adversarial hearing.

In the last few days and months, Megaupload had announced plans to help artists make more money ... and had announced that very successful and famous music producer Swizz Beatz had become CEO of Megaupload. Beatz is also married to recording superstar Alicia Keys and was responsible for getting all those RIAA artists to endorse Megaupload. All indications were that the company was clearly building a legitimate system for artists to make money and fans to get content. And it seemed that many artists clearly supported the site.

So why do we need SOPA/PIPA again? It seems like the DOJ/ICE just undermined the key argument of the MPAA/RIAA/U.S. CoC for why they need these laws. After all, Megaupload was one of the key examples used for why the law was needed.

At the same time there are huge questions about why the government is involved here. Megaupload is currently engaged in a lawsuit in the U.S.—and contrary to claims of SOPA/PIPA supporters, the company seemed more than willing to appear in court to deal with civil copyright claims. Why leap to criminal claims?

Is this really the message the U.S. DOJ and White House want to be giving the day after mass, widespread protests happened concerning a fear that this new law would be used to take down websites? Honestly, this is a big “fuck you” to the protestors, showing that the government already has this power thanks to the last law they passed: ProIP (which they promised they’d never abuse).

The indictment itself is so full of hyperbole (“Mega Conspiracy”) it sounds like it was written by the entertainment industry itself ...

Anyway, I’m sure we’ll have much more to say about all of this ... but wow is the timing dumb on the government’s part. Not only does it undermine the argument for PIPA/SOPA, but it raises significant questions about whether or not the feds already have too much censorship power.

Many media outlets have spent a disproportionate amount of time focusing on the Hollywood-style raid on Dotcom’s mansion and his flashy lifestyle. But Demand Progress believes that beneath the tabloid-ready story elements lie critical questions about due process and the exercise of government power. We tracked down Megaupload founder Kim Dotcom to discuss the intersection of the SOPA/PIPA battle and his own case.

**DEMAND PROGRESS:** One day after the January 18, 2012 SOPA/PIPA blackouts in the United States, you were apprehended in New Zealand for alleged criminal copyright charges related to Megaupload. Do you think the timing was a coincidence?

**KIM DOTCOM:** I am doing the best I can to defend against what I believe is unjustified government aggression arising out of what appears to be a politically motivated prosecution. The timing and manner of the raid and the method of prosecution strongly suggest that the takedown of Megaupload is a highly political prosecution to win favor with Hollywood.

The raid occurred on January 19th, 2012 around the same time SOPA was going down to defeat in Congress. The raid was like a Hollywood performance complete with helicopters, real time cameras, and a SWAT team against a family with children in a nonviolent case.

The DOJ apparently leaked the raid to their favorite reporters before the raid was completed in a Hollywood-like publicity stunt. The prosecutors used a concocted ex parte procedure to take down the entire Megaupload family of sites. The prosecutors used methods that provided us and site users without notice or an opportunity to be heard by the court before the Megaupload sites were taken offline and all of our assets frozen.

Time has shown us that the end game for the Government was the take-down of the Megaupload sites without fair procedures to appease Hollywood in light of the SOPA defeat as they have delayed the substantive hearings in this case, violated the law and my rights in multiple ways, and refused to provide the evidence or discovery that formed the basis for their claims even though two courts have ordered them to do so.

**DEMAND PROGRESS:** To what extent do you think the U.S. Government's sudden interest in website seizures represents an end-run around the legislative process?

**KIM DOTCOM:** My main disagreement with the current state of the copyright debate is that the political balance is tilted too much in favor of content owners to the detriment of Internet innovation. Hollywood and the United States seem to be picking and choosing who they like and don't like and that does not provide for the fairness, due process, and predictability that dual use technology companies like Megaupload need to grow and thrive. I believe it would be better for society to allow breathing room for Internet innovation. This case is at its core not about a criminal issue but rather an economics and political debate that is better suited to be dealt with in Congress.

I believe in a system that promotes creativity and protects creative works and at the same time doesn't unduly burden the growth of Internet service providers like cloud storage companies. The Government took down the entire Megaupload cloud storage site and apparently did not care about consumer data or free speech; they cared about making friends with the MPAA.

**DEMAND PROGRESS:** Have any clues been revealed during the course of your trial about how the decision to shut down Megaupload was made and who shaped the policy?

**KIM DOTCOM:** I am pragmatic—Megaupload was a relatively large cloud storage service with high profile celebrities praising it and an attractive test case for a Government interested in winning favor with Hollywood to the detriment of Internet innovation and growth. If you are politically in favor of Hollywood copyright extremism you will likely side with the Government; if you are politically in favor of Internet growth, free speech, and fair use you will likely side with us. This case should never have been brought as a criminal action it is rather a political-economic debate for Congress or other law making bodies.

**DEMAND PROGRESS:** The media has paid a great deal of attention to your personal lifestyle and possessions in the course of covering your trial. But do you think this case is having an impact on the public discussion of the Internet policy and copyright?

**KIM DOTCOM:** I describe myself as a father and husband first and as a technology entrepreneur second. I am somewhat of an accidental defender of civil liberties—I would have preferred for my home not to be invaded and assets not taken away and I would have preferred for the police to have not used an illegal search warrant, the Government to have not spied on me illegally, and for the U.S. to have not taken my data offshore illegally. But I am mindful that the court rulings in my case finding government misconduct not only benefit me but also act as case law to benefit all New Zealand residents from such future government abuse.

Same thing on the copyright issues. If we prevail it helps protect other Internet companies from government aggression and provides more of a safe harbor for Internet innovation. The takedown of Megaupload has catalyzed the legal and public policy discussion around cloud storage and we are hopeful it will

lead to changes in criminal copyright policies and the law to prevent a chilling effect on Internet growth and innovation.

**DEMAND PROGRESS:** What kind of impact do you think your prosecution is having on potential online businesses and innovation on the Internet?

Simply put the Megaupload prosecution is having a chilling effect on Internet innovation especially on Internet sites and services that host user generated content. Before this case any copyright issues with cloud storage intermediaries was dealt with using DMCA takedown notices and in some rare circumstances secondary copyright infringement civil lawsuits but never a criminal indictment. Megaupload was started as a solution to reduce the need for email attachments. Users would upload files to their storage area, get unique links or URLs, and include the URL in the body of the email. The recipient can then decide to download the file by clicking on the unique link. Emails can then be sent and received more quickly and presumably with fewer bounces. People started using Megaupload for more general cloud storage and to provide links beyond emails such as in blogs and web pages.

The debate is whether the provision of dual use cloud storage to society, where consumers use it in both good and bad ways, renders the cloud storage provider criminally liable resulting in the entire site being shut down. We think the government is wrong and we believe we will prevail. We hope that a court finds that an ISP like Megaupload providing freemium cloud storage to users across the world, some of whom may misuse the system, is not a criminal violation by the online services provider—if we prevail it will help all tech companies worldwide by providing greater predictability against future criminal indictments.

I am an Internet entrepreneur who is the target of an experimental copyright matter and case of first impression. I am an accidental liberty defender. When I win society wins. My legal team has already helped protect the rights of other New Zealand residents by creating case law precedent against illegal search warrants and illegal U.S. conduct in removing private data from New Zealand. I hope that a court finds that an ISP providing freemium cloud storage to users across the world (some of whom may misuse the system) is not a criminal violation by the ISP. If that occurs it will help all tech companies worldwide and reduce the chilling effect Hollywood has on the growth of cloud storage.

**DEMAND PROGRESS:** What are some things you think Internet users can do about these issues?

**KIM DOTCOM:** In terms of what Internet users can do about government aggression is to change government and insist on leaders and policy makers that reflect your values. Helping organizations like Demand Progress is a good place to start. I am part of a mosaic of faces that are evolving the Internet—my face may be highlighted now but it takes a village for society to evolve the Internet the way it wants.

I hope that the future will be more balanced and will not lead to aggressive government takedown of an entire cloud storage site, where consumers lose

access to their data such as family photos. I have no choice but to be committed to the fight—my liberty depends on it.

**DEMAND PROGRESS:** We filed a brief in your case to fight the MPAA's attempts to block Megaupload users from retrieving their files. There appears to be tons of collateral damage from the U.S. shutdown of Megaupload, including lots of users who had their personal files stored on your site. Can you comment on what sort of precautions the U.S. government has made to preserve this data and whether you think users will ever see their files again?

**KIM DOTCOM:** We are litigating the consumer data preservation and access issue now in the United States. The DOJ seems to have little interest in preserving the Megaupload user data or allowing for access. Currently much of the user data is stored on servers that are turned off and stacked in a warehouse in Virginia. The Department of Justice took down the entire Megaupload cloud storage site to appease Hollywood and in doing so destroyed free speech and consumer rights to access their own data. The DOJ is supposed to be seeking justice for all people, not just the MPAA.

## PART 4

### WHAT WE'VE LEARNED

*In this section, we reflect on what made the SOPA/PIPA victory possible. Professor Yochai Benkler and his team map the networks that helped defeat the legislation; Dave Karpf speaks to why this activism was different from all other activism; and David Segal looks at what happened from the perspectives of an activist and former politician.*

## GLIMPSES OF A NETWORKED PUBLIC SPHERE

YOCHAI BENKLER, HAL ROBERTS, ALICIA SOLOW-NIEDERMAN, BRUCE ETLING, ROB FARIS

*Yochai Benkler is the Berkman Professor of Entrepreneurial Legal Studies at Harvard, and faculty co-director of the Berkman Center for Internet and Society. Since the 1990s he has played a part in characterizing the role of information commons and decentralized collaboration to innovation, information production, and freedom in the networked economy and society. His work can be freely accessed at [benkler.org](http://benkler.org). This essay is adapted from a broader study of SOPA activism.*

In the days following the defeat of SOPA and PIPA, two conflicting narratives developed to describe the events. The politics-as-usual narrative interpreted the events as “Google and Facebook have come to town”; the new major industry players had become new players in the same old lobbying game. The more radical narrative was that the networked public sphere had come into its own; that the events reflected a new model of political organization and democratic participation. The game itself had changed, not merely its players.

We set out to try to understand which narrative contained more truth by using a platform we developed, Media Cloud, that allows us to map the evolution of a public controversy by collecting time slices of thousands of sources, and using text and link analysis to map the progress of the debate over time. We map who is saying what, and who is citing whom, at what point in the emerging public conversation. What emerged from our study of over ten thousand articles, web pages, and blog posts that discussed SOPA, PIPA, or COICA over a period of eighteen months was a map that supports the proposition that what we had seen was quite a different game from what we had seen in the traditional, mass-mediated public sphere.

A diverse network of actors, for-profit and non-profit, media and non-media, individuals and collectives, left, right, and politically agnostic, had come together. They fundamentally shifted the frame of the debate; experimented with diverse approaches and strategies of communication and action; and ultimately blocked legislation that had started life as a bi-partisan, lobby-backed, legislative juggernaut. While it is certainly possible that behind-the-scenes maneuvering was more important and not susceptible to capture by our methods, what is clear is that by ProPublica’s tally, before January 18, 2012 SOPA/PIPA had 80 publicly declared supporters and 31 opponents, but by the next day the bills had 65 supporters and 101 opponents.

The January 18th online protest campaign and its anchor, the Wikipedia blackout, were the core interventions that blocked the acts. But our study suggests that that day’s events cannot be understood in terms of lobbying or back

room deals; rather, this outcome represents the fruits of the online discourse and campaign whose participants are so many of the authors of this volume.

Our approach focuses on mapping the public online portion of the networked public sphere. We combine three core elements. First, we understand the relevant communicative sphere not in terms of a stable, broad category of sites that are “blogosphere” or “political blogs,” but rather in terms of discrete “controversies.” By “controversy” we mean a set of communications and actions around a core set of connected issues, irrespective of whether they originate in blogs or mainstream media, websites or even the customer-service discussion boards of gaming companies.

Controversies have linguistic markers, a temporal dimension, and a political-economy valence or potential outcome. We use textual cues, here SOPA, PIPA, and COICA, as ways of filtering a broader range of blogs, online media, organizational and personal sites to draw in sites that addressed the controversy. Second, we emphasize the time dimension. We understand controversies as having a beginning, an end, and internal dynamics that can shift and change in ways that are revealing. Temporally-sensitive tools offer better insights into the shape of influence, framing, and action than do tools that capture broad, time-independent states. As a result, we find a public sphere that is more diverse and dynamic than has generally been portrayed by prior computationally-instantiated analyses of the networked public sphere. Third, we combine the text and link analysis with detailed human analysis, including interviews, desk research, and coding, particularly around highly-visible stories and sites that emerge as significant from the network analysis.

This allows us to typify the phenomena we observe in the data in terms of the unfolding political economy and the discursive structure of the controversy over time. In this, our work preserves a bit more of the richness and complexity of historical and sociological analysis of social movements, using computation to create a corpus of objective data guiding our selection of particular interventions and organizations for more detailed analysis, and highlighting relations among sites and interventions at given moments over the course of the controversy.

The following narrative and maps present the storyline of the seventy months between the introduction of COICA in September of 2010 and the defeat of PIPA in January of 2012. The data are 10,456 stories from one thousand three hundred seventy-nine distinct sites that mentioned one or more of the bills during that period. The maps represent the stories published each week. The size of each node reflects the number of other nodes active during that week that linked to the node, giving us an initial observation of who was a highly-linked node during that week. Node colors represent media type; we identify 11 different media types.

Consistent with most prior work on the blogosphere, we treat links as evidence of attention. The location of the node provides a measure of how close any two nodes are based on how many other nodes link to both nodes during that period. We treat such nodes as related in attention. The use of the maps reflects our sense that attention is time-dependent, not constant over long periods, and that a highly-linked node at time  $t_1$  will be influential on everyone at that time,

even if that particular node is barely noticeable from the perspective of a full 18 month period. It allows us to capture who set the agenda in any given week, so that when that agenda is then taken up by later nodes we can still observe the origins of an intervention. Our approach suffers several obvious lacunae. We do not analyze Facebook or Twitter data; nor do we cover mailing lists, IRC, or simple email. All these likely played a large role. Nonetheless, our approach captures a larger ratio of the diverse sources operating in a defined controversy than prior studies have generally sought to analyze.

We coded 11 media types, with nodes colored as indicated below. The numbers that follow refer to the respective [r,g,b] value, and color names are descriptive. Listed in alphabetical order, these media types are: (1) Blogger(s): blue, [0,0,255]; (2) Gaming Site: azure blue, [0,119,255]; (3) General Online News Media: light blue, [0,238,255]; (4) Government: sea green, [0,255,153]; (5) Independent Group: lime green, [0,255,38]; (6) News Aggregator: chartreuse, [81,255,0]; (7) Private Sector: yellow green, [200,255,0]; (8) Tech Media: red, [255,0,43]; (9) Social Linking Site: light orange, [255,196,0]; (10) SOPA/PIPA/COICA-Specific Campaign: orange, [255,77,0]; (11) User-Generated Content Platform, Networking Site, or Internet Tool: pink, [255,0,157].

We identify nine core findings from our analysis.

First, the networked public sphere is much more dynamic than previously observed. In any given week or month, a major node like Wikipedia may be secondary, while an otherwise minor node, such as the blog of a law professor commenting on an amendment or a technical paper on DNS security, may be more important. The dynamic nature of attention in controversies over time means that prior claims regarding a re-concentration of the ability to shape discourse miss important major fluctuations in influence and visibility. Perspective, opinions, and actions are developed and undertaken over time. Fluctuations in attention given progressive development of arguments and frames over time, allow for greater diversity of opportunity to participate in setting and changing the agenda early in the debate compared to the prevailing understanding of the power law structure of attention in the blogosphere. It also likely provides more pathways for participation than were available in the mass-mediated public sphere.

Second, individuals play a much larger role than was feasible for all but a handful of major mainstream media in the past. A single post on reddit, by one user, launched the GoDaddy boycott; this is the clearest example in our narrative. But we also see individuals embedded in what would in the past have been peripheral organizations playing a role in ways that would have been historically impossible. Notably, Mike Masnick of Techdirt became the single most important professional media site over the entire period, overshadowing the more established media. Individual blogs by academics were able to rise at various moments, like the visible role that law professor Eric Goldman's blog posts played in early December 2011, when the manager's amendment to SOPA came out and the OPEN Act was introduced.

Third, traditional non-governmental organizations like the Electronic Frontier Foundation and Public Knowledge played a critical role as information

centers and as core amplifiers in the attention backbone (below) that transmits the voices of various, more peripheral players to the wider community.

On several occasions various letters would be written by experts, and then posted and amplified by the EFF or Public Knowledge. These organizations also played a critical role in informing the network about changes and upcoming legislative events.

Fourth, widespread experimentation of new and special-purpose sites played a critical role in converting discussion into action. Several different organizations and individuals experimented with dozens of special-purpose sites and mobilization drives, some of which were indeed successful in garnering attention and converting it to action, emails or phone calls to Congress, the symbolic strike of January 18, 2012, or consumer boycotts. Among these, Demand Progress was an early player against COICA, Dontcensorthenet played a large role around the introduction of PIPA, and Fight for the Future emerged as a force around the introduction of SOPA; each of these players instituted successful efforts prior to the ultimate Wikipedia boycott. Similarly, the reddit boycott on GoDaddy was a transformative moment in the campaign over corporate support or opposition to the bill. The widespread experimentation in these sites was their critical feature. It replicated with regard to online mobilization the same kind of innovation model we have seen for Internet innovation more generally: rapid experimentation and prototyping, cheap failure, adaptation, and ultimately rapid adoption of successful models.

Fifth, highly visible sites within the controversy cluster were able to provide an attention backbone for less visible sites or speakers, overcoming the widely perceived effect of “power law” distribution of links. Fight for the Future benefited from links from more established sites, like the Mozilla front page. The phenomenon was not limited, however, to the largest emerging sites, but was available for more discrete interventions as well. Julian Sanchez of the Cato Institute, for example, authored a careful critique of the oft-repeated but poorly founded claim that piracy cost the copyright industries fifty-eight billion dollars a year. Cato itself did not receive a very substantial number of links, but was sufficiently visible within the link economy for Techdirt to link to it, and the Techdirt story was, in turn, linked to by both reddit and the EFF, further amplifying this critique. Sometimes amplification is direct—a top site links directly to an initial intervention. Sometimes an intervention can be transported to larger audiences over a series of amplification hops of increasing visibility. This dynamic, interventions that get noticed by increasingly more visible sites, and are then themselves amplified by yet-more visible sites, is what we call an “attention backbone.”

Sixth, at least on questions of intellectual property, the long-decried fragmentation and polarization of the Net was nowhere to be seen. Political activism crossed the left-right divide throughout the period; the opposition was every bit as bipartisan as was congressional support. Demand Progress and Dontcensorthenet are the two most obvious nodes in this bipartisan effort, but we also see more traditional left and right political blogs, like DailyKos and HotAir, joining in the fight on the same side.

Seventh, subject area, professional media, in this case tech media, played a much larger role in shaping the political debate than the traditional major outlets.

Techdirt, CNET, ArsTechnica, and Wired carried the burden of media coverage throughout the period.

Eighth, consumer boycotts and pressure played a role in shaping business support and opposition. The two most visible instances were the reddit boycott on GoDaddy and the pressure gamers put on game companies to oppose SOPA/PIPA, which bore fruit in the last six weeks of 2011.

Ninth, the network was highly effective at mobilizing and amplifying expertise to produce a counter-narrative to the one provided by proponents of the law. Technologists, law professors, and entrepreneurs emerged at various stages of the controversy to challenge proponents and make expert assertions that went to the core of the debate: the meaning of changes in various drafts; the effects of the laws on DNS security or innovation, or the constitutionality of the bills.

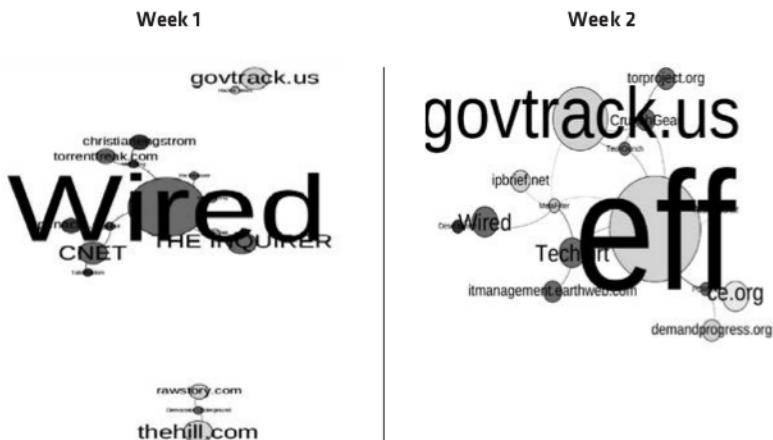
#### **Phase I: COICA**

The Combating Online Infringements and Counterfeits Act (COICA) was introduced in September 2010. A September 20, 2010 report in The Hill framed the bill as an uncontroversial, bi-partisan effort, spearheaded by Senators Leahy (D-VT) and Hatch (R-UT) and backed by all major industries involved and the U.S. Chamber of Commerce. Senator Leahy stated that “Protecting intellectual property is not uniquely a Democratic or Republican priority—it is a bipartisan priority.”

The basic framing that this new law would save millions of jobs and billions of dollars and had broad bipartisan support remained the core narrative of proponents over the following year and a half. The counter-narrative that drove the major Internet protests of January 18, 2012 and ultimate abandonment of the statutes began to emerge almost immediately. Its progression suggests a more dynamic, diverse, and decentralized networked public sphere than was true of the mass mediated public sphere or has been described in prior computationally-instantiated descriptions of its shape and structure.

The first fortnight after the introduction of COICA consisted of a two-stage pump. Traditional media paid no attention to the law, with the exception of The Hill’s single story. The alarm was raised by West Coast tech media, in particular CNET and Wired, which were the first sites to report on COICA critically on September 20, 2010, and Techdirt, which linked to both stories and framed them in terms of threat. By the following week, however, action had shifted from tech media to NGOs, most prominently the Electronic Frontier Foundation and the left-leaning Demand Progress. We do, however, also see efforts by industry—in this case CE.org, the consumer electronics industry, opposing the bill. In this second week, EFF plays two roles that it will sustain during this first wave of the controversy. First, it provides an information clearinghouse about what is happening in the legislative arena. And second, it plays a role that others like Public Knowledge or Techdirt play in future iterations of the debate: it amplifies peripheral voices and makes them visible throughout the (still small) network engaged in the controversy. In this case, EFF is amplifying a letter by eighty-seven Internet engineers who wrote

to the Senate Judiciary committee that the legislation “will risk fragmenting the Internet’s global domain name system (DNS), create an environment of tremendous fear and uncertainty for technological innovation, and seriously harm the credibility of the United States in its role as a steward of key Internet infrastructure.” By posting this letter on a site of major visibility, the EFF here, and others later, essentially create an attention backbone, along which an otherwise peripheral intervention can travel to the attention of many more participants than the initial speakers could have reached given the visibility of whatever outlets are directly under their control.



To see these graphs in color, scan the QR code below, or go to: [bit.ly/13xX2XR](http://bit.ly/13xX2XR)



Demand Progress, by contrast, begins to lead during this period the translation of online outrage into political action by initiating a petition drive that ultimately collects over three hundred thousand signatures. This model of translating online debate into congress-focused communications will, of course, become a core force of the efforts to block the laws.

Little occurs in October, but mid-November, as the Senate Judiciary Committee considers and approves COICA, sees a burst of activity. Several features are notable. First, while the Fox News, the *Los Angeles Times*, and other mainstream media outlets begin to take notice, online tech media continue to anchor the flow of information within the controversy. Second, Public Knowledge joins EFF, and begins to take on both the information clearinghouse and attention backbone amplifier roles, roles that it will later play to a much greater degree.

Most dramatically, however, we see the right wing of the blogosphere taking up the resistance to COICA, and we see the left-right coalition online that continues to typify the entire controversy emerge very clearly. In the detail of the map from November, we see a range of libertarian blogs and organizations, like Cato, Atlas Shrugs, or Techfreedom, and the core blogs in the right wing of the general political blogosphere, such Hot Air, Instapundit, and Red State. This emergence of the right wing resistance is initiated by Patrick Ruffini of Engage LLC, a consultancy that specializes in building online campaigns for the political right, which also launches Dontcensorthenet. Ruffini continued to collaborate with David Moon and David Segal of the left-leaning Demand Progress throughout the campaign. Interestingly, the focal point for the right wing was not the Senate's action on COICA, but the Immigration and Customs Enforcement (ICE) Operation In Our Sites, an allegedly anti-piracy operation which involved extensive seizure of domain names and was seen as sweeping too broadly and aggressively that brought home to libertarians and the right-wing more generally the threat created by COICA.

**November 2010, detail.**



In late November 2010, Senator Wyden blocked lame duck passage of COICA, setting the stage for the reemergence of the controversy in the Spring of 2011, when Senator Leahy introduced the successor bill, PROTECT-IP, or PIPA.

**Phase II: PIPA**



Looking at the entire month of May 2011, we see four major elements. The tech media, with Ars Technica partly replacing Wired and CNET alongside Techdirt; Public Knowledge and EFF share subject-area NGO leadership; special-purpose online campaign, here most prominently the Dontcensorthenet online petition, similar to the Fall of 2010 drive by Demand Progress; and Senator Ron Wyden's own announcement that he is placing a hold on PIPA but may not be able to stop the flood, which raises the alarm more generally.

When we break May down into before and after Senator Wyden's hold, we see very clearly that the NGOs and online campaign play a core role in the lead

up to Wyden's placing the hold, and then tech media take the role of disseminating and amplifying Wyden's action after the fact.

#### Week 2, May 2011



At that point traditional media do begin to pay attention; for, example, the *Washington Post* and the *LA Times* appear, but online these major news sites play a relatively small role. The larger visibility of Forbes in the third week owes to a single online opinion piece by Larry Downes, a highly articulate critic of PIPA.

June 2011 still sees some of the same voices and dynamics already described continue; we note here only significant new observations. First, we see for the first time that a June 8 *New York Times* editorial plays a significant role in the conversation. Second, while in May it was the right-of-center petition drive, Dontcensorthenet, that was growing, in June Demand Progress is highly visible. The collaboration between the two groups continues. Third, we see that Union Square Ventures, and its principals Brad Burnham and Fred Wilson as individuals, organizes a letter from venture capitalists explaining how PIPA would endanger innovation on the Net. Finally we see here, as we see elsewhere during this period, that efforts by industry-side interventions, while successful in getting on the editorial pages of the *LA Times* and other media, do not seem to thrive in the online environment.

Here, Digital Media Law is an effort by the screen actors' guild to support the law; and while it is linked to by the Huffington Post, it does not link to the rest of the conversation.

#### Phase III: SOPA



After a summer lull, Congress returned to the arena with the introduction of SOPA in the House on October 26, 2011. The three most important "newcomers" to the maps during these weeks are Wikipedia, Fight for the Future, and Open Congress. Wikipedia at this stage plays a purely informational role. The protest that would emerge almost three months later had not yet been hatched, and our analysis of which parts of Wikipedia are being linked to over this period makes it clear that links to Wikipedia are informational: they

are links to the articles on SOPA and PIPA, not to mobilization on talk pages. Fight for the Future (FFT) and Open Congress, co-founded by Tiffiny Cheng and Holmes Wilson, come to play a central role from here to the end of the campaign. Here, FFT marks the first major successful use of video in the anti-SOPA/PIPA campaign, presenting a video informational polemic with a point of action to contact legislators. Open Congress offers a complementary model of access to the written materials on the Act, again, with a point of contact and an ability to “vote” publicly on the bill. The screen actors’ guild (SAG) is active, but does not garner as much attention.

**Week of October 24, 2011**



The following week, the first in November, is notable as the only weekly or monthly time slice we observe that looks remotely similar to the prevailing conception of the blogosphere or networked public sphere. It is the only week where Huffington Post, Politico, DailyKos, etc., and traditional media like the *LA Times* or the *Hill*, appear prominently. Similarly, Free Press and the Screen Actors’ Guild (SAG) make a significant appearance. On the other hand, this week also exhibits the possibility that in this network, academic work tackling the issues, rather than simply dueling press releases, can gain visibility. Here, the links to Derek Baumbauer’s paper in SSRN are prominent, driven at least in part by his own cross-posting and linking to them on several platforms like Prawfsblawg. The more “normal” look of this first week provides sharp relief for the remainder of the month, and in particular for the development and emergence of activism, in this case, American Censorship Day. Beginning in the second week in November and continuing from then on, that newly-created site, initiated by the co-founders of Fight for the Future, Participatory Politics Foundation, and Demand Progress with Public Knowledge, the EFF, and support from the Mozilla Foundation, became a major point for coalescence on action, and ultimately the model for the January 18, 2012 protests.

**November 7-14, 2011**



The prominent appearance of the *New York Times* during this period reflects, however, the continued importance of the major outlets. It reflects widespread linking to Rebecca McKinnon's opinion piece explaining how SOPA and PIPA would strengthen China's repressive firewall and import part of its capabilities to the United States.

In the map of the last week of November, several interesting features emerge. In addition to the obvious continuity, YouTube becomes a prominent platform, although no single video dominates this effect. The Business Software Alliance (BSA) receives much attention when it announces, on November 21, that it has reversed its position and now opposes SOPA. Research papers receive substantial attention; here, Allan Friedman's analysis of the effects of SOPA on cybersecurity, published on brookings.edu, and survey results of research conducted by Joe Karaganis at the Social Sciences Research Council (SSRC) suggesting that the practices targeted by SOPA and PIPA are rare, and that public opinion supports a certain level of "copy culture." Finally, the possibility of individual voices emerging periodically at critical moments is exhibited by the visibility here of Brad Burnham's tumblr.

#### **Week of November 21**



A weakness of simple visual examination of the maps, however, is revealed by the discrepancy between size and location of the node describing Alex Howard at O'Reilly Radar. His posts link to all of these highly-visible sites, and his node is located at the center of the link economy. However, because he acts by identifying and linking out to these nodes, rather than being linked-to, his bridging role does not "pop out" in a simple visual examination of the maps.

In the first two weeks of December of 2012 some of the action shifts back to D.C.; the National Review conducts dueling editorials as the right wing tries to reconcile between its members who support SOPA and those who oppose it. Sunlight Foundation's review of contributions to members gets some linking, but the most interesting observation, from the perspective of the role of individuals and the mobilization of expertise, is the prominence of the analysis of the SOPA managers' amendment developed by law professor Eric Goldman on his blog.

#### **December 2011, Weeks 2, 3, and 4**



On December 21, 2011, the House Judiciary committee released a long list of corporate supporters of SOPA, in the hope of bolstering the claim that SOPA was good for business and innovation. The difference between the map before and after that event is stark, and provides one of the clearest examples we have of (a) the dynamism of the networked public sphere and (b) the possibility of converting discourse into action. It marks a major mobilization by online users, initiated by a single reddit user, to boycott Go Daddy for its support of SOPA/PIPA. Go Daddy retreated and abandoned the acts almost immediately. Following this boycott, we later see gamers follow a similar path in January, with users pressing customer support sites and sharing their queries and answers from vendors on sites like Kotaku, Joystic, mommysbestblog, and epicgames. The bottom half of the map during the fourth week of December is a stark instance of converting talk into action in the networked public sphere, as well as an instance of how a single speaker, with an idea, can move a large group.

Furthermore, while this map cannot distinguish between reasons for links to Wikipedia, an analysis of the actual links that make up the aggregate reemergence of Wikipedia as a major node in the fourth week of December shows a mix, with a significant portion linking to the debate launched by Jimmy Wales within Wikipedia as to whether SOPA is so dangerous to the open Internet that Wikipedia should shut down in protest for a day. The debate within the Wikipedia community, including over two thousand participants in the decision, was itself a fascinating instance of direct democracy—in this case, within the community of contributors to one of the world's more visited and important Web sites.

The overwhelming story of January is the explosion of action and attention around the blackout on January 18, 2012. The single week of January 16–23 saw over three thousand five hundred stories on SOPA and PIPA, about 40% of the total number of stories between the introduction of SOPA and its defeat, and about one third of all stories throughout the 18-month period we studied. In this particular moment of massive mobilization, certain of the long-standing core nodes remain visible: Techdirt, CNET, and Ars Technica; Wikipedia; the EFF; and Open Congress and Fight for the Future. The new major node, which had already emerged during the prior week, Whitehouse.gov, is the administration's public declaration of its opposition to SOPA/PIPA, a declaration made in direct response to a petition drive that garnered over fifty thousand signatures using the platform of petition.whitehouse.gov. The only other notable feature is the growing role that reddit came to play in the last three weeks of the campaign, following the initial activation around the GoDaddy boycott. By the week of the boycott itself, reddit is located at the very heart of the map.

The major flip in support in the House and Senate between January 18 and 19 clearly shows that the protest of January 18 closed the deal. But it is impossible to understand that day without also understanding the discourse, framing, and organizing dynamics of the preceding 17 months. This period, as we saw, was comprised of a highly dynamic, decentralized, experimentation-rich public

sphere, where different actors played diverse roles in diagnosing the problems with the act, re-framing the public debate from “piracy that costs millions of jobs” to “Internet censorship,” and organizing for action. Clearly, our analysis does not cover all aspects of the organization. We have not studied Twitter; we have not studied back channels we know existed, such as mailing lists. There are individuals, like Marvin Ammori, whom we know from interviews and available published accounts played a major organizational and intellectual role, but do not show up in our data using public-facing communications alone. Despite these limitations, the data do cohere to a remarkable extent with our qualitative understanding of the dynamics.

#### January 2012, Weeks 1 and 3



Perhaps the SOPA/PIPA events were unique. Perhaps the high engagement of young, net-savvy individuals is only available for the politics of technology; perhaps copyright alone is sufficiently orthogonal to traditional party lines to traverse the left-right divide; perhaps Go Daddy is too easy a target for low-cost boycotts; perhaps all this will be easy to copy in the next cyber-astroturf campaign.

Perhaps.

But perhaps SOPA/PIPA follows William Gibson’s “the future is already here, it’s just not very evenly distributed.” Perhaps, just as was the case with free software that preceded widespread adoption of peer production, the geeks are five years ahead of a curve that everyone else will follow. If so, then SOPA/PIPA provides us with a richly detailed window into a more decentralized democratic future, where citizens can come together to overcome some of the best-funded, best-connected lobbies in Washington D.C. Time will tell.

## REFLECTING ON THE SOPA BLACKOUT: WHY DID IT WORK, AND WHAT DOES IT MEAN? DAVID KARPF

*David Karpf is an assistant professor in the George Washington University School of Media and Public Affairs and an active blogger. He researches online activism and is the author of the recent book The Moveon Effect.*

The January 18th SOPA blackout was the single most successful organizing tactic of the Internet era. Over seven million people signed Google's online petition. Over seventy-five thousand websites took part in the protest. The day of action produced immediate results. Six senators ended their cosponsorships of the bill, while twenty-six more announced their opposition. Opposition to the bill approximately tripled in the House, leading Speaker John Boehner to announce that the bill would be returned to committee and reworked. The SOPA blackout is not the end of the story (legislative proposals are like comic book villains; they never stay dead for long) but the SOPA day of action now stands as the gold standard for Epic Wins in political organizing.

In the realm of political advocacy, it doesn't get much better than this. Amidst the high fives and hat tips, I think it is particularly instructive to think through why the tactic proved so successful. This will not be the last time that legacy content industries seek to extract control from the medium. Often in issue politics, winning a victory only buys you time until the next fight. If we take the wrong lessons away from the successful Day of Action, then the next effort may not turn out so well. I would argue that the blackout succeeded on three levels—mediating citizen mobilization, directly driving the news agenda, and direct exposure to Members of Congress.

First, consider the Day of Action through the normal lens. Most advocacy tactics in American politics revolve around mobilizing citizens to contact their elected representatives. This is basically a souped-up version of the standard action alerts that MoveOn, Demand Progress, Organizing for America, and other advocacy groups send daily to their members. The numbers are quite high, but we should put those in perspective: heavy phone and email traffic is nothing new for Congressional offices. The side that generates heavier constituent outrage doesn't always win. Constituent outrage is just one of many signals that Congress considers.

They also consider expert testimony (firmly opposed to the bill, in this case), and the will of wealthy donors/affected industries (often expressed through lobbyists—an excess of Hollywood money and lobbying influence is what got us the terrible bill in the first place). Viewed through this traditional lens, the tactic is a limited success. One should not expect that similarly-sized e-petitions would usually produce such dramatic results.

The second level was a news event in itself. The average Day of Action is, simply put, not very newsworthy. Advocacy groups churn out press releases, but journalists generally ignore them. That isn't because of a corporate bias in newsrooms. It's because advocacy campaigns are an everyday occurrence in the nation's capital. They usually aren't particularly newsworthy. The SOPA blackout was different. Wikipedia going dark drew wide coverage. Even if you didn't happen to visit Wikipedia on January 18th, you may have visited a news site or tuned in to the *Colbert Report*. This forces politicians who were otherwise ignoring the issue to take a stand. Congress discusses thousands of bills every year. Reporters don't call and ask for positions on every issue, every day. On the day of the blackout, reporters were calling about SOPA. And Members of Congress treat news coverage itself as an approximation of public opinion—if an issue is in the news, they presume their constituents care about it (Herbst 1998). So part of what made the blackout effective was that it was, itself, a news event.

Notice, however, that the blackout was treated as news specifically because it was original. This was the “Internet public” speaking out like never before. Wikipedia doesn't take political stances. Google doesn't call on web-searchers to contact Congress. The freshness of the tactic is what makes it newsworthy. If Wikipedia did this once a month, it would quickly cease to merit wider media attention. This is a process I call “advocacy inflation” (Karpf 2012). The value of any given tactic is often tied to its novelty—as a rule of thumb, you want to craft tactics that are either larger than your target is used to (if they usually receive one hundred phone calls on every issue, mobilize one thousand phone calls) or different than your target is used to (if they're used to phone calls, organize twenty people to show up at their town hall meeting instead).

Advocacy inflation happens for two reasons. First, tactics lose their novelty and, thus, become less newsworthy in their own right. This is particularly important in online organizing. There are plenty of reporters and news outlets that cover technology and society. The first time we use the Internet in a new way for politics, reporters will write stories about the effort itself. By the fifth time, it will be treated as the new normal. The second reason is that advocacy organizations imitate each other. Think of it as a noise-to-signal problem. If an organization finds that a new tactic is successful in attracting Congressional attention, peer organizations will start to emulate. The first emails to Congress were fresh and original, a way to hear from constituents that cut through the pile of form letters submitted every day. Today, emails to Congress often go basically unread. They are even spammier than the form letters. There's greater marginal value in being the first activists to try a new form of pressure tactic than in catching up with the innovators.

There's a third level of influence here as well: direct exposure. Congressional offices are busy places. The nice thing about the blackout is that it cut directly through the clutter. At some point in the day on January 18th, at least one staffer in every office Googled something or looked something up on Wikipedia. Many Members of Congress probably did so themselves, in fact. And when they did, they were confronted with something they'd never seen before on those sites.

The blackout cut through the din of constituent calls and emails, lobby visits, and policy briefings. The targets of the action saw it themselves, and it grabbed attention in a way that everyday persuasion and influence tactics rarely can.

Notice that this third level only works because of the major sites involved. The anti-SOPA campaign was not led by Google and Wikipedia, and its success cannot be laid solely at their feet. But, as great as it was that DailyKos and Boing Boing took part in the day of action, the tactic would have been much weaker if those had been the largest sites involved. Those sites draw tech-savvy and/or politics-savvy audiences. Even with the cross-partisan support of conservative sites like RedState, the average American is unlikely to see the content, and the only Congressional staffers who will see it are the ones (usually, interns) charged with monitoring the blogs.

Let's be clear about this third level of influence, then. It was a remarkable tactic, and demonstrates that the big companies in the digital environment are beginning to recognize that they have to push back against the big companies from the traditional entertainment environment. But that's a pretty meek revolution. Google is still a corporation, "Don't Be Evil" motto notwithstanding (Vaidhyanathan 2011). If the digital companies start expending more resources pressuring Congress, that will provide a more pluralistic balance in the MPAA's policy playground, but it doesn't necessarily put power in the hands of the "Internet public."

The fight over Internet censorship is far from over. What do these three levels of influence mean for the future of Internet politics? The way I see it, there are three potential outcomes:

1. It's entirely possible that Hollywood will just work harder next time, bulldozing past the coalition that organized the blackout. The MPAA was taken by surprise this time. You can't count on that happening twice. The result would likely be a slightly-less-awful Internet Piracy bill, but that still leaves plenty of room for them to ruin the Internet we know and love. Legislative victories can be fickle things, and advocacy inflation means that the next blackout may be met with a resigned shrug by many newsrooms. At the second level of influence, the next SOPA will be tougher to beat than the last one was.
2. It's possible that major tech firms will get a seat at the table in the next round of negotiations. It is possible to craft an Internet piracy bill that serves the interests of Google and the interests of Hollywood without serving the interests of smaller content creation sites. We would do well to recall the Net Neutrality compromise that Google made in the summer of 2010. Sometimes "Don't Be Evil" is just a motto. The problem here is that, without Google, the third level of influence is much reduced. Google occupies a unique space in the geography of the Internet.
3. Most hopefully, it is possible that the SOPA blackout will allow a new public—what David Parry calls "the Internet Public" (Parry 2011) to

take root. Social movements are built from the grist of shared campaign efforts like this one. You can use these moments to build movements, crafting new institutions that pressure government and educate the citizenry about the values of and threats to an open network. Movement-building is hard, slow work. But it has the benefit of yielding increasing returns at the first level of influence. As your movement grows, you build a capacity to mobilize constituent pressure. Your movement becomes newsworthy in its own right, either attracting existing media or creating its own.

I have to imagine that the readers of this essay likely prefer this third outcome. I do myself as well. But the point here is that we cannot expect any such movement to arise naturally. It requires work, and skill, and a bit of luck here and there. We cannot look to the anti-SOPA blackout as a monument, declaring victory and assuming that the open web now has its champion. Social movements are not that easy. Unless we are willing to settle for Hollywood's Internet, or Hollywood-and-Google's Internet, we have to treat this third outcome as a shared goal to work toward, rather than as a prediction or expectation.

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## THAT WAS AMAZING. CAN WE DO IT AGAIN SOMETIME? DAVID SEGAL

The SOPA fight was a near perfect storm—a confluence of effects that will rarely, if ever, repeat.

Web platforms faced a near-existential threat: if SOPA had passed, many of those with a foreign presence would literally have had to shut down or alter their business models to such an extent that they would've been unrecognizable—and far less profitable. SOPA would have forced sites to police user-generated content before it was uploaded, fundamentally redefining the operations of sites similar to YouTube, Facebook, reddit, and even blogs that allow for comments from readers. Even many domestically-registered sites would have been impacted: search engines would've had to have scrubbed out links. Sites reliant on user-posted content would've had to have policed links to any domains that had been blacklisted. And then they'd probably come directly for domestic sites next. It became easy for proprietors of platforms to justify participating in the blackout and other activism to themselves and to their boards and investors. It was a no-brainer: even if it meant distracting users with information about the bill or, more costly yet, steering them off-site so they could email Congress, it was still an astute business decision—that's just how dangerous SOPA was.

What the SOPA activism didn't do was create an algorithm that can be repeated for most other causes: Wikipedia won't shut down to prevent war with Iran. Google won't change its doodle to help protect Social Security. Tumblr—one of the truest heroes of this story—probably won't generate eighty thousand phone calls to Congress out of concern about global warming.

Critically, even if platforms did take to activism around these non-Internet issues, activism would be substantially depressed compared to SOPA: everybody who uses the Internet cares about (or should care about) Internet freedom. Not everybody who uses the web cares about war, the social safety net, or the environment—and many of those who do are far from being in agreement. When Google prompted millions of its users to email Congress about an Internet censorship bill, Congress faced a tsunami of angry constituents; if Google asks users to email Congress about health care reform far fewer will participate and they'll break 50-50ish and cancel each other out.

When there's legislation in play that does threaten the operations of certain web platforms it makes sense to try to organize those sites. Demand Progress has had a modicum of success (though two or three orders of magnitude smaller than the SOPA effort) at spurring sites that sell used goods to inform their users about a key lawsuit that's before the Supreme Court, whose ruling thereon is likely to kickstart a legislative fight this Congress. The court case is called *Kirtsaeng v. John Wiley & Sons*; its outcome could make it illegal to sell or resell things that

are manufactured abroad unless you have a specific license to do so. Antiquers, video game resale shops, and others participated in a day of action we organized in October. We hope sites like eBay and Craigslist will eventually mobilize their users, once the effort moves to the legislative phase. That would generate a huge outpouring of constituent contacts to Congress, but would almost necessarily be less substantial than the effort that took down SOPA: Internet freedom affects every website; the right to resell things impacts but a substantial minority of them.

SOPA-style activism is indeed probably a replicable response to other attempts to impede negative online liberties: legislation that bans broad swaths of users from posting and sharing content. But the magnitude of the SOPA victory has made lawmakers loathe to introduce legislation of that sort for the time-being. One Capitol Hill newspaper wrote an article about the prominence of a new meme echoing through the corridors of power in D.C.: fear of “getting SOPA’ed”.

The anti-SOPA coalition is not even replicable relative to all legislation that many of us—at least those on the left—would consider integral to a free and open Internet, as we’d see many of the more Right-leaning platforms and activists drop out of a grouping that sought government-enforced Net Neutrality regulations.

Last spring many of the activist organizations (from across the spectrum) that helped beat SOPA quickly pivoted to fight against cyber-security bills that would have undermined many basic online privacy rights: they’d essentially have broken down intra-governmental information silos, and also privacy-protecting walls between the government and corporations, allowing sensitive data about users to slosh around unimpeded, facilitating surveillance and even (potentially) being exploited for private profit. As of this writing we’ve managed to stymie this legislation—but without the help of the platforms that took to anti-SOPA activism, because the cyber-security bills either didn’t harm them, or actually helped them, by shifting certain liabilities away from those firms and onto the government.

There’s another structural respect in which the SOPA effort was unusual. There were two distinct power nodes/monetary centers of gravity lined up on opposing sides of the legislation: Big Content (Hollywood, the recording industry, and the like) on one hand and Silicon Valley on the other. Many politicians—especially Democrats, but a few powerful Republicans like Lamar Smith—have traditionally been caught in Hollywood’s gravitational field. Silicon Valley, because it’s younger and—for better or worse—has had a cultural antipathy towards engaging with Washington, D.C., claimed hooks in fewer politicians at the outset of the SOPA fight. But what it did have was the potential, and eventually concrete, support of something like 99% of the rank-and-file Americans who would come to pay attention to the issue. Hollywood is always whining about its diminishing profits (which strikes me as a questionable lobbying strategy in our money-obsessed political system); meanwhile Silicon Valley is an ascendant power center that demonstrated a newfound

willingness to engage in lobbying and politicking over the course of the SOPA effort.

At a risk of mixing metaphors: if one were a free radical in this scenario—as most Republicans were—it’s not a hard political calculus to determine which node to associate with: zip as fast as possible towards the one that has a lot of money, is still on the rise, and has the esteem of 99% of the voters. Uncommitted Republicans lined up against SOPA—even nutty Michele Bachmann issued an important, early, oppositional statement—and several Republican sponsors withdrew their support; key Democrats continued to back the legislation out of fear of alienating their traditional allies in Hollywood, or out of genuine allegiance to the bill’s philosophical underpinnings.

Today the Republicans are making a play to become the Party of Silicon Valley, with Congressman Darrell Issa helming the charge. A sub-caucus of the GOP called the Republican Study Committee recently went so far as to issue a scathing report about the impact of maximalist copyright enforcement on the American economy. (Though backlash from Big Content spooked them into withdrawing the paper, and its author has since been terminated.)

SOPA was an earthquake, revealing new fault lines that will remain on the map for some time to come, and compelling a shelf to fall off of the traditional copyright maximalist consensus: we’re not likely to see another abrupt shift of that magnitude anytime soon, but we’re tending towards a new equilibrium in that political space wherein considerations about Internet freedom and intellectual property rights abut one another.

Yet there are indeed some respects in which lessons learned during the SOPA effort can be applied to other organizing.

Many of the tools and mini-campaigns that activists built during the fight can be used in support of other causes or inspire new tactics. The game-ification of activism was incredibly useful: the self-censor tool that FFTF developed, the commitment from Wyden to read names on the floor of the Senate, and other tools and actions increased the impetus for people to contact Congress. They imbued the rote “clicktivism” with an extra increment of meaning—and they were fun—making it more likely that people would take part and encourage others to do the same. There was also something important happening on the back-end of those constituent contacts that’s a bit esoteric, but worth mentioning: Demand Progress (namely, Aaron Swartz) built a tool which we shared with Fight for the Future that generated actual emails to Congress each time somebody signed up on one of our petition or email pages. Many activist organizations simply deliver PDFs with lists of names to Capitol Hill offices (frequently with email addresses and complete street addresses scrubbed out). Sending discrete emails carries more weight, as each individual note compels the office to work a bit harder, forcing staffers to log the contact and draft and send a response, thereby imparting a deeper sense that the emailer is a real, live constituent. I’ve spoken with dozens of lawmakers and staffers at all levels of governance, and they adhere to this point without exception. So it may seem wonky, but I regularly evangelize on this point.

The ideological left and the right came together to win this fight, and that sort of cross-partisan coalition is likely to form with increasing frequency: power structures in Washington have become so stagnant and corrupt that the relevant political divide is less and less so that between the two major parties—whose leaders are fairly consistent advocates for bailouts for the wealthy, perpetual warfare, diminished civil liberties—but between those who have institutional power and all of the rest of us.

There are sharp, important, ideological divides about the role of the state in the economy, the need for a social safety net, and the like. But there are important points of solidarity that should not be obscured by party stripe or reductionist ideological labels: nobody likes corporate welfare (as the left would call it) or rent-seeking (as it's named by the right) unless one is among those insiders directly benefitting from said largess. The left and right came together to fight against the bank bailouts and to audit the Federal Reserve. There's a substantial antiwar, pro-civil liberties flank that identifies as conservative/libertarian. There's solidarity in support of ending the war on drugs and instituting other criminal justice reforms.

And to some extent, the left and right can fight side-by-side in service of that ultimate goal of devising an election funding structure that makes politicians accountable to voters and not to the interests of wealthy campaign financiers. It shocks many of my allies on the left who've proved easy prey to propaganda about the right, but polls consistently show that upwards of two-thirds of Republicans agree that the system of private money that we use fund elections has a corrupting influence on politics, and want to reduce its import and impact. Institutional heavyweights serve as their gatekeepers. Reformers must devise an end run around them and conspire with the conservative rank-and-file.

With that we arrive at my ultimate hope, explicated in more detail in Lawrence Lessig's excellent contribution towards the end of this book: that the platforms that helped kill SOPA will, out of an enlightened self-interest or a noblesse oblige (that's hopefully concomitant with their newfound political power), facilitate activism towards the end of implementing a bottom-up, networked, democratic system of financing elections and thereby help us reclaim a republic wherein lawmakers are accountable to the electorate rather than concentrated private capital. There are tremendous differences between the Left and Right, but let's agree that we should get to duke them out on a level playing field—rather than one whereon the corporatists have the high ground on all of the rest of us.

## PART 5

### WHERE DO WE GO FROM HERE?

*In this chapter, several authors pick up on themes that are threaded throughout this book, and suggest directions in which we might steer the energy and redeploy some of the tools and tactics that made the defeats of SOPA and PIPA possible. Congressman Ron Paul speaks to the importance of Internet freedom for libertarians; Erin McKeown issues a call-to-arms to artists; Brad Burnham writes on the importance to innovate, from the perspective of a venture capitalist; Marvin Ammori writes of changing understandings of free speech rights as the public sphere relies ever more heavily on privately-owned online platforms; Cory Doctorow offers one (of many) potential paths forward for copyright reform; Lawrence Lessig urges those who were active in the SOPA/PIPA fight to muster once more, to tackle the sorts of institutional corruption that allowed those bills to progress as far as they did.*

## THE BATTLE FOR INTERNET FREEDOM IS CRITICAL FOR THE LIBERTY MOVEMENT

### RON PAUL

*Former Congressman Ron Paul of Texas enjoys a national reputation as a premier advocate for liberty in politics. Dr. Paul was and is a leading spokesman in Washington for limited constitutional government, low taxes, free markets, and a return to sound monetary policies based on commodity-backed currency. He is known among both his colleagues in Congress and his constituents for his consistent voting record in the House of Representatives: Paul never voted for legislation unless he determined the proposed measure was expressly authorized by the Constitution. In the words of former Treasury Secretary William Simon, Paul was the "one exception to the Gang of 535" on Capitol Hill.*

The liberty movement has undergone tremendous growth over the last few years, aided in large part by the Internet revolution. Today, thanks to the Internet, it is easier than ever before for liberty activists to spread news and other information regarding the evils of government power and the benefits of freedom. For the first time in human history, supporters of liberty around the world can share information across borders quickly and cheaply. Without the filter of government censors, this information emboldens millions to question governments and promote liberty.

In America, websites like the Drudge Report and LewRockwell.com have broken the mainstream media's de facto monopoly on news and information, enabling the widespread dissemination of stories concerning government malfeasance. Before the Internet revolution, many of these stories would have been untold by state-loving, establishment reporters eager to protect their access to power. The Internet also has made it possible for websites like Mises.org to spread knowledge of the freedom philosophy across the globe. Until the late 1990s, individuals interested in Austrian economics, U.S. constitutional history, and libertarian philosophy had to spend hours scouring used book stores or the back pages of obscure libertarian periodicals to find the great works of Mises, Rothbard, Hayek, and other giants of liberty. Local libraries and universities ignored libertarian politics and economics.

Today, however, the greatest classics of libertarian thought, libertarian philosophy, and libertarian economics are available instantly to anyone with Internet access.

The Internet also has enabled individuals in the liberty movement to increase their political effectiveness and thus have a major impact on American politics. My 2008 and 2012 presidential campaigns are the most obvious example of how liberty activists use the Internet to spread the message of liberty. Many of my supporters first heard about my campaign via YouTube or other online videos of my speeches and campaign events.

These converts quickly began sharing information with others. They also used the Internet to coordinate activities and events organically, without any

centralized coordination with my official campaign. This radical, decentralized, organic support for my campaigns—with the Internet serving as the primary organizing tool—was an incredible demonstration of true “grassroots” organizing. This army of mostly young, Internet savvy activists is what enabled my campaigns to overcome the deeply biased mainstream media’s virtual blackout, allowing my campaign to outperform several better-funded candidates.

Perhaps the signature issue of my political career has been exposing the ways in which the U.S. Federal Reserve Bank enables the growth of the warfare-welfare state and erodes the American people’s standard of living. For years, our efforts to inform the American public about the Fed’s unchecked power were blocked by self-appointed academic and media gatekeepers, who considered criticism of the Fed outside the bounds of acceptable discourse. Thanks to the Internet revolution, however, these gatekeepers have lost their power to relegate issues like monetary policy to the margins of political discussion. As a result, the Federal Reserve has become a major political issue for the first time in American history.

Clearly the Internet can serve as a means for advancing liberty only to the extent it remains relatively free (at least in many countries) of government regulation. American politicians condemn foreign governments like China for restricting access to the Internet, yet many of those same politicians support increased government control of the Internet here in America.

Indeed, important media and political figures in the U.S. (such as Secretary of State Hillary Clinton) frequently bemoan the Internet’s “lack of a gatekeeper.” University of Chicago law professor and former Obama Administration “regulatory czar” Cass Sunstein has suggested that the federal government create an office to debunk “conspiracy” theories on the Internet. Former President Bill Clinton, that champion of honesty, has even suggested the creation of an entirely new cabinet department devoted to “fact checking” the Internet!

These proposals are done in the name of preventing the spread of factual errors, misinformation, and “conspiracy theories.” It is not too difficult to imagine how various government agencies might want to use the state’s vast resources to control what ordinary citizens say and do online. It is in their interest to stand on the Internet’s metaphorical street corner and tell the American people, “Move along, nothing to see here.”

For example, some Pentagon officials might want to discredit those sharing information about how the American public were misled into believing Saddam Hussein had weapons of mass destruction. Federal Reserve Chairman Ben Bernanke might seek to prevent exposing the role of the Federal Reserve in bailing out up both American and European banks. Some supporters of the Patient Protection and Affordable Care Act (or “Obamacare”) might want the government’s fact checkers to discredit those who expose how the pharmaceutical industry and the insurance lobby provided sought to enrich themselves by supporting the bill. Taxpayers should not be forced to subsidize a propaganda machine designed to keep them from knowing the truth about their government.

Proposals to use the power of the government to discredit and marginalize those who use the Internet to disseminate information are not the only threat to Internet freedom. Some of the biggest threats come in the form of legislation ostensibly designed to protect intellectual property rights or thwart cyberterrorism.

In 2012 Congress considered two such measures, namely the Stop Online Privacy Act (SOPA) and the Cyber Intelligence Sharing and Protection Act (CISPA). SOPA allegedly was justified by the need to stop intentional piracy of intellectual property such as movies and videos. This bill achieved its goal by forcing website owners to act as government agents and allowing the government—oftentimes at the behest of politically-powerful corporations—to shut down entire websites if merely one single user was found to have improperly posted copyrighted material. Thus, the millions of Americans who use sites like Facebook or YouTube could have been denied access to these sites because someone, perhaps inadvertently, posted a film clip in violation of a copyright.

The potential for abuse of this power is obvious. Regardless of where one stands on the question of whether protecting intellectual property is a legitimate function of the government, I am sure everyone agrees that the federal government should abide by the constitutional limits on federal power and not disregard or abuse the First and Fourth Amendments.

Fortunately, grassroots activists, aided by Internet companies who would be affected by SOPA, organized one of the largest campaigns opposing a bill that I have ever seen in my time in office. Congressional offices were buried under a sea of angry emails and phone calls, and the legislation was pulled from the congressional calendar.

Unfortunately, a few months after the victory over SOPA, the House passed CISPA. CISPA gave the federal government new powers to monitor online communications without a warrant as long as the monitoring was done in the name of “cyber security.” Unfortunately, many of the same corporations who opposed SOPA favored CISPA. Why? In large part they supported the bill because it provided them protections from being held accountable when they violate their consumer’s privacy at the behest of the government. So while Internet activists could influence the political process to prevent SOPA, CISPA demonstrated that corporatism and lobbying still rule Washington D.C.

As of this writing, it appears that the House and Senate will not agree on a final version of CISPA this year. However, the Obama administration seems ready to impose provision of this bill by executive order.

Another threat to Internet freedom is the possibility that freedom of expression may be curtailed in the name of cracking down on “hate speech” or pornography. This is a very dangerous mentality, shared by many on both the political right and left who alternatively seek to legislate morality or enforce political correctness with force. But I believe giving the government power to censor any form of government speech will lead to censorship of all forms of speech. Therefore we cannot allow our strong moral objections to pornography or speech that degrades other human beings to serve as justification for government censorship of any form of Internet speech.

Supporters of Internet freedom must also engage in the battle to restore the right of adults to gamble on the Internet. Like all forms of prohibition, the ban on Internet gambling will not succeed in preventing gambling. Instead such a ban simply ensures that organized crime or offshore operations fill the void and run online gambling businesses. Rest assured that the supposed need to protect gamblers from themselves will be used to justify ever more stringent police state controls on everyone's Internet activity.

The past five years have seen an explosion in the liberty movement, fueled in large part by the Internet. Preserving that freedom is crucial if the liberty movement is to continue its progress. Therefore, all activists in the liberty movement have a stake in the battle for Internet freedom. We must be ready to come together to fight any attempt to increase government's power over the Internet, regardless of the supposed justifications. Copyright protection, pornography, "conspiracy theories," gambling, and "hate speech" are merely excuses for doing what all governments have done throughout human history: increase their size, scope, and power.

My organization, Campaign for Liberty, is going to make Internet freedom a key issue in its grassroots efforts over the next several years. I hope those who realize the critical importance of Internet freedom will consider joining Campaign for Liberty and taking up the battle against government control over the free flow of online information.

## A CASE FOR DIGITAL ACTIVISM BY ARTISTS

### ERIN MCKEOWN

*After eight records, three EPs, and 12 years of touring the globe non-stop, Erin McKeown is just getting warmed up. Over the last decade, Erin has spent an average of two hundred nights onstage each year. She has appeared on Late Night with Conan O'Brien, Later with Jools Holland, NPR, BBC, and has had her music placed in numerous films, television shows, and commercials. In the last several years, McKeown has launched a successful side-career as a political activist, lobbying regularly on Capitol Hill in an effort to connect the worlds of policy, music, and technology. Her anti-SOPA video may be viewed here: <http://www.youtube.com/watch?v=da-XkA6746U>*

As a songwriter, I get asked all the time, “which comes first, the words or the music?” In twenty plus years of writing, I’ve never found a predictable pattern in my creativity. My friends who are also writers say the same. You never know, until you just know. You constantly labor, trying out many ideas, and then, there comes a moment when the ideas stick together and become inextricable. Something ignites, and a song comes into being. It is a singular thrill.

I think the defeat of SOPA/PIPA was a similar, singular moment when the many strands of Internet culture (the geeks, the critics, the creators, the users) all lifted their heads out of their respective sandboxes, became inextricable, and spoke with a unified voice: “NO.” I’ll go ahead and say it: the defeat of SOPA/PIPA was a moment when the words and the music arrived at the same time, and you just knew. It was absolutely thrilling to be a part of.

Now, post-thrill and pre-next battle, I would like to make a case for digital activism by artists.

When I started my career in the late ’90s, I kept my political self separate from my musical self. I feared writing terrible, un-musical work that was bogged down with a message. I was trying to connect to the more established music industry, and I feared alienating anyone in my search for the widest possible audience.

However, as time went on and I became less and less concerned with participating in a music business that was rapidly crumbling anyway, I began to narrow that gap between my political self and my musical self. It was tiring to maintain, and I was burnt out on the ego-centric business of promoting myself constantly. There had to be a better reason to be a musician than just talking about yourself all the time.

I began by practicing the vocabulary of activism. Could I simply talk about what I believed? I remember being on Rachel Maddow’s radio show in the mid 2000s and trying to desperately to keep up with her as she articulated her views on issues and policies I cared about as well.

“I’ve got to get better at this,” I thought.

I looked to other artists whose political work I admired, and I learned by watching their skills. Slowly I gained confidence; I began to find my own voice; and I began to move toward actions.

For a long time, it's been a cliché about artists that we don't know what's going on beyond whatever drug or show is right in front of us. Sometimes this cliché has had truth behind it. Sometimes artists have been willing participants in a tacit agreement to leave the art to the artist and the business to the business owners.

But sometimes artists have been unwilling participants in this agreement too, forced by all kinds of pressures to agree to contracts and situations that keep people with money and power rolling in their own, continued money and power. And there are a great many artists who take enormous pride in paying attention to what is happening around them and to them. Some of us refuse to shut up and sing. It is my experience that the more you engage with the world around you, the better your art is for it.

Here's this word again: inextricable. As an artist, I find I am inextricable from the Internet. It is my instrument, my storefront, my megaphone, my audience, and my distributor. Thus I have found it is also the perfect arena for my activist self. It is a pipeline to get at the social justice work that matters most to me: access, participation, finding solutions to structural inequalities. As a visual / textual / auditory medium, it's right in my wheelhouse as a creator. In my activism, I get to play with the Internet.

Artists are uniquely built for this sort of thing. This is what we do. The Internet is both our cause and the toolbox to fight for it.

So much gets said about how the Internet offers endless freedom for the artist. There is a mistaken belief that somehow, left to its own devices, the Internet levels the playing field between the haves and the have nots. Another myth: In the paradise of infinite storage, there is infinite attention to be paid even the smallest artist. Yet, it's been my experience that the Internet is still subject to the same pressures as any other venue for expression. People with money and power will always want to keep their money and power.

However, for the artist the Internet does offer a pathway to change in that it is not done growing; it is not done evolving; and in its growth spurts, artists do have a unique opportunity to disrupt and push back at some of the usual suspects.

One of the main victories of the fight against SOPA/PIPA was the realization by many artists that they are also copyright holders, and that the Internet offers them an opportunity to exercise these rights however they choose. The work around SOPA/PIPA showed the world that copyright holders are not necessarily large media companies.

Instead, copyright holders are a diverse group that will not all make the same decisions on how to manage their rights.

Many artists understood, perhaps for the first time, that being a copyright holder doesn't mean you want to or have to wall your art off and make people pay for entry. It simply means you are the one that gets to make the choice about

what you want to do with your art. There is a vast world between “sue your pants off” and “everything is free.”

Lest we lapse into too much self-congratulation, there is much work to do. I have no doubt that the folks that brought forth SOPA/PIPA will try once again to restrict Internet freedom in order to maintain their own profit margins. As artists, we must speak to each other about this way of framing the rights of creators. It is a pathway to increased creativity, collaboration, and income. It is my personal mission to recruit more and more artists for this fight. And we will make you look and listen to our activism in ways that will be thoughtful, playful, artistic, and engaged. Words and music, inextricable.

## ON THE FREEDOM TO INNOVATE

BRAD BURNHAM

*Brad Burnham is a managing partner at Union Square Ventures, an investment firm based out of New York City. Before USV, Burnham began work for AT&T in 1979 and oversaw a number of successful mergers and investments. As an active member of the information technology community, Burnham used his knowledge to fight against the passage of SOPA and PIPA. He made appearances on TV talk shows, Internet media, and social forums where he advocated against the bills. Burnham currently serves on the boards of a number of popular social media and networking sites, such as Tumblr, Stack Exchange, and others. This essay is adapted from a talk he gave at the Center for Democracy and Technology.*

I started working in technology 30 years ago and for most of that time thought that the work I did had very little to do with policy. Back then, I was either building or investing in the technology infrastructure that became the foundation for the Internet. In the last several years, however, the investment opportunity has shifted from infrastructure to the applications and services that ride on top of that infrastructure. All of a sudden, every policy decision made in Washington impacts our work. Many impinge on what I believe is a core freedom: the freedom to innovate.

I want to spend a few minutes tonight sharing my view of how that happened, and what it means to our economy and our society going forward.

At Union Square Ventures, we invest in networks. We were the first institutional investor in Twitter, Tumblr, Foursquare, Etsy, and Kickstarter. We have also invested in many other less familiar networks in markets like education, employment, and finance. As we spend time with these networks, we learn more and more about their extraordinary economics.

They are easy to bootstrap, create remarkable efficiencies, optimize the value of scarce resources, and cost very little to promote.

Like most of these networks, Foursquare was built on open source software and its services are delivered over the Internet. They were able to grow to over one hundred thousand users on less than \$25,000. Craigslist radically reduced the cost of classified advertising. They replaced the call centers, printing presses, trucks and trees that used to be necessary to alert the world that you wanted to sell your couch—with a digital photo and a drop-dead simple electronic posting mechanism. Airbnb has re-invented the way travelers are matched with beds, and in the process enabled hundreds of thousands of people around the world to capture the value in their spare bedroom.

Twitter, Tumblr, and Foursquare spend little or nothing to acquire new users or to propagate a new feature. We hear a lot about viral marketing but I did not internalize its implications until I watched David Karp, the founder of Tumblr, introduce a new feature: by hiding it.

When I was an entrepreneur in the software business we spent a ton of money and time to introduce a new feature. We did analyst tours, issued press releases, threw parties, and bought billboards to promote a new feature. David hides it. But then he sends an email to a few popular bloggers and tells them if they mouse over this one section of the site, they will see a drop down menu with a couple of new capabilities. He encourages them to play with the features but asks them not to tell too many people about it because he is not committed to releasing it generally.

So they use the features and of course someone reading their blog sees they have done something cool and asks how they did it. Two weeks later there is a kid in Akron, Ohio, telling a kid down the street, “I am not really supposed to tell you this but if you mouse over this part of the site.” And the feature is now ubiquitous.

These economics create enormous opportunity. The combination of low costs, cheap capital and relatively free access to markets has created an unprecedented era of decentralized, emergent, start-up innovation. By creating novel new services and dramatically reducing the cost of existing services, that innovation has unlocked value for consumers that they are now redeploying in other new services.

But at the same time, that process, the classic creative destruction of free market capitalism, has created new challenges for incumbent industrial companies.

For the last 130 years the economy has been dominated by firms structured as bureaucratic hierarchies. That model worked well to mass produce products for mass consumption, but the inefficiency of communicating customer needs up through the hierarchy and management decisions back down, and the natural tendency of any organization to protect its current organization structure makes it difficult if not impossible for bureaucratic hierarchies to innovate as quickly as the emerging network-based model of decentralized innovation.

So the incumbents who have a fiduciary duty to their share holders to maximize profits look for ways to stave off competition from networks and protect their current cost structures. Increasingly, they ask policymakers and regulators to change the rules in ways that tilt the market in their favor.

Policymakers and regulators who have longstanding relationships with these incumbents are receptive to these requests because they are usually couched in language about the safety or security of consumers, and because there are only a few people—most of whom are in this room—who are explaining the risks of these proposed policies and regulations.

Over the next few years there will be a steady stream of these requests. The hotel lobby in New York City has already convinced the city council to outlaw temporary hotels. The bill was presented as a consumer safety measure to prevent slumlords from turning dilapidated tenements into squalid, unsafe hotels. The councilmembers never considered the bills’ impact on Airbnb but the hotel lobby knew exactly what their proposed language meant.

The Research Works Act played out in a very similar way in Washington. Its original sponsors understood it as the elimination of a government mandate

that forced researchers to embrace a specific business model. The academic publishers who sponsored the bill knew very well that it would slow competition from open-access journals.

I could go on and on.

Telecom companies asking regulators to impose new burdens on Skype, or toy manufacturers asking regulators to force Etsy sellers who make hand-carved wooden toys to be subjected to a rigorous certification process that only makes sense for large manufacturers.

The point is that we have to step back and see these policy proposals as the inevitable byproduct of the transformation of our economy. We have to see them as a part of the competition between the bureaucratic hierarchical model for the creation of economic value that has dominated the economy for the last 130 years and the new emergent economics of networks.

We need to be smart enough to recognize that it is not consumers asking for these regulatory or legal restrictions, it is the incumbents. We need to defend the freedom to innovate because it is critical to the health of our economy. Our economy is today one of the most innovation-friendly economies in the world. Until recently, no one investing in or creating a business on the Internet would have considered building their business anywhere else.

But the recent enforcement actions against MegaUpload and JotForm have forced entrepreneurs and investors in Internet services that enable users to upload content to the web to rethink where their businesses are based.

I don't know the particulars of the JotForm case and it is very hard to defend the behavior of the MegaUpload founders but it is also impossible to ignore the fact that the site takedowns made it impossible for hundreds of thousands or millions of users to get to the completely legitimate content they stored on those services.

In the weeks that followed those takedowns every one of our portfolio companies had to reconsider where their users' data is stored. A lot of them are now wondering if they should be moving to domain name servers outside this country.

The Internet is a global network. There are countries out there that recognize the opportunity to create an Internet Enterprise Zone. They are working to establish a policy framework that protects user data, and more broadly the freedom to innovate. I cannot tell when or even if data and the good systems administration jobs that go with it will move offshore, but I can tell you that the conversation has already started.

But networks are not just critical to our economy. They are crucial to a vital civil society. It is pretty clear that we will not be able to continue to live in the manner in which we have become accustomed. We are very likely not going to be able to support things we value like the arts or social services in the way that we'd like. We are going to have to learn to do more with less.

Networks can play a role here as well. Kickstarter, a crowd-funding network, launched only a few years ago, will provide more support for creators this year than the National Endowment for the Arts.

In the UK, lawmakers are just as frustrated as we are that banks are still not lending to small businesses, but the irregulatory framework has allowed FundingCircle, a peer-to-peer network of lenders and borrowers, to flourish. Lawmakers have begun encouraging their constituents not just to “shop local” and “eat local.” They are asking them to “lend local,” creating a brand new source of working capital for small businesses and an emotional and financial return for lenders.

There are many other examples of networks making a difference in civil society from mapping slums in Kenya, to getting at-risk kids in New York to take better care of their health, to empowering mothers in Boston to take on gang violence. If we defend the freedom to innovate, we will find lots of ways to efficiently deliver important social benefits.

Of course, we should expect the same resistance from the incumbent bureaucracies in the public sector who regard those services as their turf.

Innovation depends on keeping the costs of innovation down, making sure that financing is available, and making sure that markets are accessible. It does not depend on R&D grants or targeted industrial policy.

So the next time you see a piece of legislation that has an impact on an open Internet, software or business method patents, copyright enforcement, free and fair competition, open government, or cyber security, I urge you to see it through the lens of the competition between incumbent industrial hierarchies and emergent networks.

Consider who is sponsoring the legislation. Does it really protect consumers or does it protect the business models and cost structures of the incumbents?

I recently heard a woman from the Occupy movement say the most poignant thing. She said “no one is coming for us.” Her generation does not expect the government to be there when they need it, nor do they think the incumbent industrial hierarchies are structured or motivated to address the challenges they expect to face.

Remarkably, she was not depressed, defeated, or bitter. She was determined. The kids who grew up inside AOL chat rooms and came of age on Facebook have an intuitive understanding of the power of networks that our generation will never have.

They are not asking us to fix the problems we left them with. They are asking us not to get in their way as they try to dig themselves out. I think we owe them that.

## SOPA AND THE POPULAR FIRST AMENDMENT

### MARVIN AMMORI

*Marvin Ammori is internationally recognized as a leader in Internet law and public policy, combining first-rate legal analysis with creative political strategies. In 2012, Fast Company named Ammori one of the 100 Most Creative People in Business in 2012 (#32) for his role in helping to defeat the Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA) bills. He served as the head lawyer of Free Press, as a technology advisor to the 2008 Obama Campaign and Transition, and now represents some of the nation's largest companies.*

The debate over SOPA and PIPA should be a turning point in the way people think about the First Amendment, which forbids government officials from abridging the freedom of speech and press.

Traditionally, for perhaps 100 years, people tended to think of the First Amendment as something judges enforce. It is a part of the Constitution and a limit on what Congress, the executive branch agencies, and states and cities could do. In this First Amendment mythology, an official in a “political” branch of government (the mayor, the governor, the President) tries to silence someone (the dissenter, the flag burner, the hate speaker). Then the heroic judge strikes down the law, sets free the prisoner, or refuses to impose a fine.

It was seen, in short, as a judicial right. As a judicial right, the public had little involvement. Judges are not elected. They do not count votes. They accept amicus briefs, but they also simply adjudicate issues. Unlike Congress, they are somewhat insulated from politics.

Increasingly, however, the most important decisions determining our freedom to speak to one another here (and around the world) are those that will shape the emerging architecture of the Internet. Judges do not make these decisions. For many decades, scholars told a joke that that freedom of the press belonged to those who owned one. The Internet changed all of that. The Internet is our most important speech medium today—because it enables anyone to reach a wide audience without relying on a newspaper editor or broadcast producer. The Internet has an open architecture for speech and innovation—that promotes greater levels of commerce and communication.

The Internet has been an effective popular speech medium not primarily because of judicial decisions. We have not relied on speech heroes wearing black robes but on engineering decisions in technical standard-setting bodies, on decisions made by lawyers at technology companies over whether to take down videos or keep them up, on decisions made at federal agencies, and those made at Congress, including the notice-and-takedown provisions of the Digital Millennium Copyright Act of 1998, which protects websites like YouTube, Facebook, and Twitter from copyright infringement suits based on their users’ posts—so long as these companies follow simple takedown procedures.

If judges are not the key players, does that mean the First Amendment is irrelevant? No. Judges are bound to uphold the Constitution—but so is Congress. So are members of federal agencies. So are state government officials. So is the President. They all took an oath to uphold the Constitution, and so they should all be guided by the principles in the First Amendment. They have sworn not to restrict freedom of speech. The decisions that govern our basic communications infrastructure—from broadcast TV rules to cable, phone, and Internet rules—are all subject to that requirement.

Once we determine the obvious—but overlooked—role that Congress and popular branches play in shaping our free speech universe, we still have to ask, what should the First Amendment’s guarantee of “freedom of speech” mean? Should it mean that we protect the largest corporations, the largest cable companies, the largest billionaire campaign funders in federal elections? Or does it mean that we adopt a vision that all Americans should have a voice in advocating their viewpoints, in having an ability to persuade other Americans, and being able to associate and organize with others online and in person. Once we have to debate the meaning of freedom of speech not before a judge, but before popular branches of government, then it’s the American people who give meaning to the words of the Constitution through elections, through debates, and through reaching out to elected officials and making their voices heard.

In our democracy, the First Amendment should be read to empower the speech of the little person, the Everyman, not just the billionaire and the cable TV executive. It should not be on the side of the copyright holder, the large media company that claims to have broad “property” rights in storylines, characters, songs, and movies. While they have a claim to their original creations, for limited times under the Constitution, they should not be able assert “property” rights that limit the average American’s ability to speak and communicate with other Americans. But I am just one voice among many. With a First Amendment centered not on judicial opinions but on the very future of the Internet, the public’s voice is what matters most.

The SOPA and PIPA debates were an example of millions of Americans engaging in an important free-speech debate. Lawyers for the copyright industries tried to suggest the debate should turn on technocratic, difficult legal questions reserved for constitutional legal experts who understand the law and 200 years of legal precedents (like me!). But the questions underlying those laws are fit for any citizen. Any American that uses the Internet can have an informed opinion of how the Internet should evolve. SOPA and PIPA were particularly problematic. Those laws would have censored some websites without adequate due process based on the new legal standards of whether they facilitated copyright infringement. The impact of the law would have been to punish companies like Twitter, YouTube, Google, Facebook, Tumblr, WordPress. All these companies enable people to speak and to share. Because people can speak through these sites into the Internet, they can also “facilitate copyright infringement.” Copyright industries wanted all of these companies to be “on the hook” whenever any

of their individual users (up to one billion people) shared copyright-infringing material on those platforms.

It is very expensive and dangerous to be on the hook for the potential infringement of one billion people. It would be dangerous to be a platform for others' speech. The entire Internet would've moved increasingly towards controlled spaces, and spaces for corporate speech. Only someone who could afford a copyright lawyer would be willing to take on the risk of opening up their own platforms for others' speech. At stake was the "social" Internet.

The American public rebelled at this thought of crippling social platforms. Rather than writing a brief to a court, they made their voices known to the political branches of the U.S. governments, branches that are also bound by the Constitution and bound by the First Amendment. That massive public outcry resulted in pro-free speech outcome—one that benefited the speech of all Americans whose creativity and passions have made the Internet the world's greatest medium for free and democratic discourse.

## BLANKET LICENSES: ONE OF MANY POTENTIAL PATHS FORWARD IN COPYRIGHT REFORM

### CORY DOCTOROW

We are headed inexorably toward a world made of computers and networks—a world strung together by the Internet. And there is no way to communicate on the Internet without making copies. We can't stop copying on the Internet because the Internet is a copying machine. Literally. With regards to copyright today, copying isn't a problem. In the twenty-first century, copying is a fact. You can't and won't solve copying. If we are going to regulate the Internet and the computer, let us regulate them as the building blocks of the information age, not as glorified cable-TV delivery services.

If anti-circumvention and intermediary liability don't work in regulating the Internet and computers, what does? Blanket licenses do. Almost all the uses of copyrighted works in the world can be covered by blanket licenses. For example, if you operate a karaoke bar and someone wants to sing Jimmy Buffet's "Why Don't We Get Drunk and Screw?" at 3 a.m. (a good time for that number, I'm told), you don't have to get Buffet out of bed and dicker over whether the royalty for the performance will be \$0.10 or \$0.25. No, you buy a blanket license that covers all the copyrighted music performed in your premises, from what's played by cover bands to CDs and MP3s servers play on slow afternoons. Blanket licenses are how radio DJs are able to play music. In many countries, blanket licenses are collected to compensate writers for library lending and for the use of their works in university course packs.

Here's how blanket licenses work: 1) We collectively decide that the "moral right" of creators to decide who uses their work and how is less important than the "economic right" to get paid when your works are used. 2) We find entities that would like to distribute or perform copyrighted works, negotiate a fee structure, and put the resulting money into a "collective licensing society." 3) We use some combination of statistical sampling methods to compile usage statistics for the pool of copyrighted works; the licensing society divides the money proportionately based on the stats and remits it to rights holders.

This not only is a tried-and-true scheme for paying rights holders for the use of their copyrights but also moves users and intermediaries from the realm of the illegal to the realm of the legal. ISPs around the world are desperate to stave off the legal headaches of policing their users' music downloading. With blanket licenses, ISPs could advertise that their service comes with "free downloads of all music, ever!" The ISP pays a per-user fee to the collective, and the users and ISP become legit. And just as a radio DJ can legally play music regardless of source, so too could users use any service and any protocol to download any music, knowing that rights holders will get compensated for their activity. "Illicit" download

services could start to focus on delivering excellent user experience, artist-discovery tools, and bandwidth-friendly network designs that minimize the costs borne by ISPs as a result of user downloading.

The devil, of course, is in the details. How much should each user cost? The sweet spot is the price at which it is cheaper to get legit than it is to skirt the law. How to divide up the money? Collective licensing societies have a poor track record when it comes to fairly distributing the fees they collect. Historically, they have been liable to capture by the major labels, who squeeze out the funds that are rightly owed to smaller competitors and indies. This funny accounting is only compounded when statistical sampling is done using several different methods—surveys, network monitoring, self-reporting—as the way each of these numbers is weighted can substantially alter who gets paid what.

But this is the twenty-first century. If there is one signal characteristic that defines today's technology world, it is analytics. Every major tech company and ad brokerage is in the business of analyzing hard-to-measure, disparate data sources. A collecting society run with the smarts of Google and the transparency of GNU/Linux has the potential to see to it that the sums collected are fairly dispersed.

This is a complex scheme, it's true. But it has some great advantages when compared to the current record-industry plan, which is based on attacking fundamental human rights in the hopes of realizing the utterly speculative piracy-free Internet that no one (apart from corporate execs and their friends in government) believes to be remotely possible.

First: It is possible. It's been done. A lot. It works.

Second: It pays investors. If you're running a record company, your shareholders want dividends, not pie-in-the-sky talk about the money that will pour in when "the piracy problem is licked."

Third: It pays artists. This is a policy, created by statute. The statute can be designed to protect creators' income.

Fourth: It encourages investor competition. A world with four major labels is stupidly anticompetitive. A level playing field, with equal access to distribution for all, makes it easy for new kinds of investment businesses to emerge.

Fifth: It encourages intermediary innovation. Any company that wants to produce a music service today must first negotiate a deal with the big four, a Herculean task that is often more expensive and difficult than building the service itself. Better music service will result in more listeners and more license fees and pay more to more artists and more investors.

Blanket licenses are just one example of how we can craft regulations for the entertainment industry that value creation, investment, and innovation without criminalizing fans or attacking the Internet. The Internet era is not—and should not be—silent on the question: how do we ensure that creators and investors get a chance at money?

That's all copyright ever really wanted an answer to.

## ON STRIKING THE ROOT

### LAWRENCE LESSIG

*Lawrence Lessig is the director of the Edmond J. Safra Foundation Center for Ethics at Harvard University, and a professor of law at Harvard Law School. For much of his academic career, Lessig has focused on law and technology, especially as it affects copyright. His current academic work addresses the question of "institutional corruption"—roughly, influences within an economy of influence that weaken the effectiveness of an institution, or weaken public trust.*

No one should doubt the significance of the SOPA/PIPA victory. A decade ago, it would have been literally unimaginable. Ten minutes before it was complete, it was still, to many on Capitol Hill, unimaginable. Yet a netroots movement succeeded in dislodging one of the most effective machines for lobbying on the Hill, through little more than the coordinated activity of millions of souls who depend upon the Net.

Yet however important this victory was, its longterm significance will be lost unless we can learn something here. SOPA and PIPA are just symptoms of a much deeper pathology. And like aspirin with a fever, we delude ourselves if we ignore this underlying disease. The net could play a role in saving this democracy. But not if it rests with stopping stupid copyright legislation.

D.C. is an insiders' game. Those who work on that inside recognize an incredibly extensive economy of influence that in the end turns upon the ability of lobbyists to deliver results for their clients. Lobbyists can do that because they exploit an obvious dependence: Candidates for Congress need campaign cash. Lobbyists are a reliable channel for that cash—so long, at least, as the clients of these lobbyists get what they want.

Everyone profits when that system works smoothly—except, of course, us. Lobbyists profit, because billings go up. Businesses and other wealthy interests profit, because crony capitalism pays. And Members and their staff profit, because campaigns get funded and Capitol Hill, as Congressman Jim Cooper puts it, remains a “farm league for K. Street.” The business model of government service is temporary governmental service—a temporary stop on the way to a lucrative career as a lobbyist. No one inside wants to threaten this money making machine. Too many just want to get out in time to cash in.

Which leaves it to us, the outsiders, to force a fix for this system. We all must recognize first the particular addiction that Washington has evolved. That addiction is as old as government, though maybe never as profitable. It manifests itself in the drive to bend legislation to profit those who pay to play. It secures itself by making those who ostensibly have the most power—Members of Congress—the most dependent, indeed, fatally dependent upon those (in theory at least) with the least power—the lobbyists.

Members are desperate to raise campaign funds. Lobbyists play a crucial role in channeling campaign funds. Like an addict and his supplier, this mutual

dependency is practically impossible to fix. And especially when the body that suffers—our nation—remains removed from those trapped by this dependency. Unlike the drug addict, Congressmen don't get the shakes. They don't lose their appetite. They may work an insane life, but it is on a path to a comfortable life. They don't pay for the harm this system imposes. We do.

So we need a way to leverage the power SOPA made manifest to do something more than stop a stupid copyright bill. We must instead leverage that power to change the way power works in Washington. The reason the system works as lucratively (for them) as it does is that we have allowed the funding of campaigns to become incredibly concentrated.

Candidates often spend the majority of their time raising money from the tiniest fraction of the 1%. Until we change that, the tiniest fraction of the 1% will continue to have the biggest chunk of our government's power, and demand an endless list of 1%-enhancing reforms, with SOPA and PIPA possibly among the least significant.

So how do we bring about this change?

We need to force them to fund their campaigns differently. Congressmen will always be dependent upon their funders. That's human nature. But we can change who their funders are. Rather than a tiny fraction of the 1%, we could create a system in which we all are the effective funders of political campaigns—whether a system of public funding, like most other mature democracies, or a system of "citizen funding," where all citizens, but only citizens, contribute to the funding of campaigns.

Imagine, for example, that every citizen had a \$50 democracy voucher that she could give to any candidate who agreed to fund his or her campaign with vouchers plus contributions limited to \$100. That system would produce an economy of influence radically different from the one we have today. Candidates would still need to work hard to raise money, but they would work hard pleasing the 99% and not just a tiny fraction of the 1%. There would be influence and power, but it would be spread among "the People." There would still be dependency, but it would be, as Federalist 52 puts it, a "dependence upon the People alone."

Such a change could be made without changing the Constitution. Even this Supreme Court has affirmed the legitimacy of such a system for funding elections. Nothing in their Citizens United radicalism would render it vulnerable.

But to bring about such a change would require us outsiders to do something we rarely do—speak, and act, in a cross-partisan way. The business model of organizing—and media, and political parties, and politicians—is polarization. Each side profits the more it convinces its own to hate the other side. We rally to our difference. We send money to those who express that difference best.

Yet the striking fact about the SOPA/PIPA victory was that it was essentially cross-partisan. It was the Cato Institute as well as Demand Progress. It was net business as well as Wikipedia. There was no Left/Right valence to the fight against this Internet censorship. There was instead a brilliant campaign that succeeded in neutralizing those differences enough to allow all of us to focus on our common enemy.

That in itself was an amazing victory. And if we learn anything from the SOPA/PIPA fight, we should learn how to do that again. Big fights must be exclusive fights: they must be important enough to unite us, and get us to ignore the much less important differences that divide us. Somehow we must learn to inspire that again.

The current system is a cancer. There is nothing—save the death of this Republic—that will naturally stop it. It must instead be stopped by a movement of us: not politicians, but citizens, who accept the responsibility of every generation or so to turn away from private concerns, and take up a fundamental public challenge. The progressives did it a century ago. The abolitionists did it 60 years before that. And the framers of our constitution did it four score before them.

Today is the Internet public's moment: Web users joined together to defeat SOPA, buttressed by hundreds of online platforms which took to explicit activism for the first time because they faced an existential crisis. Now those same platforms must recognize that they face an ongoing threat: Concentrated, incumbent powers will continue to try to exert control over the Internet and its users unless we fundamentally reconstrue the incentives that define the behavior of lawmakers.

To institute these reforms will surely demand an outcry far broader and louder than that which defeated SOPA—and that will require the active participation of the platforms that facilitated anti-SOPA activism: Imagine a blackout, in support of democracy vouchers and other good government reforms.

Platform proprietors could mobilize their users to fight for these measures because it's the right thing for society and will forestall future SOPAs, but better for them yet: Distributed, small dollar fundraising regimes would put those very platforms at the center of that new, more democratic, political dynamic, as the networks that the Internet utopians created would not only help save our republic by compelling government reform—they'd then become integral to the basic functioning of the new way. We'd see a broad subset of the public use Daily Kos, Red State, reddit and the social networks to decide which candidates to support with their vouchers and small dollar donations. And politicians would be loathe to ever again mess with the Internet if they understood that it had become the lifeblood via which the (newly righteous, democratically construed) campaign funds flowed.

That is our challenge. Our government is corrupt. Deeply and fundamentally, even if openly and even legally. The challenge to end this corruption is as difficult as any, ever. The odds are equally as long. But if we love the ideals that this nation claims for itself, we have no choice but to do everything we can to restore it to those ideals. The freedom to create and innovate, no doubt. But also the freedom to govern ourselves. We may work for the 1%. But as for our government—no longer.

## CONCLUSION

We've been deservedly hard on Facebook, in this book and in much of our work, but that company's famed CEO Mark Zuckerberg recently wrote something that speaks to the spirit of the SOPA/PIPA fight, which we've in turn tried to capture in this book.

Just as the world was abuzz with news that he was launching an initial public offering of stock in the company Zuckerberg drafted an explanation of the values that supposedly undergird Facebook's management culture. His statement included a description of something he calls "The Hacker Way." A few highlighted sentences:

**MARK ZUCKERBERG:** The word "hacker" has an unfairly negative connotation from being portrayed in the media as people who break into computers. In reality, hacking just means building something quickly or testing the boundaries of what can be done. Like most things, it can be used for good or bad, but the vast majority of hackers I've met tend to be idealistic people who want to have a positive impact on the world.

The Hacker Way is an approach to building that involves continuous improvement and iteration. Hackers believe that something can always be better, and that nothing is ever complete. They just have to go fix it—often in the face of people who say it's impossible or are content with the status quo ...

Hacking is also an inherently hands-on and active discipline. Instead of debating for days whether a new idea is possible or what the best way to build something is, hackers would rather just prototype something and see what works ...

Hacker culture is also extremely open and meritocratic. Hackers believe that the best idea and implementation should always win—not the person who is best at lobbying for an idea or the person who manages the most people.

Your editors agree with Zuckerberg's take on hacking—and on hackers. The meaning and merits of hacking have been prominent in our minds in recent weeks, since the passing of Demand Progress's Aaron Swartz. This tragedy has afforded us a rare chance to illuminate the contrast between white hat and black hat hackers. The former try to do right by humankind, or at least earn an honest living—and have built countless tools and companies that define the ways in which we now engage with computers and the Internet. The latter—a small minority—seek to exploit vulnerabilities out of malice or for personal gain. The law should distinguish between the two, but it doesn't always. Nor does

## CONCLUSION

our culture at large: it was sad, but perhaps should not have been surprising, that at least one pledged contributor to *Hacking Politics* withdrew upon learning the name of the book. Let's appropriate the appellation "hacker" for the good guys—and fix the Computer Fraud and Abuse Act to make sure they're no longer in harm's way.

It was the noblest elements of the hacker spirit that drove the defeat of SOPA/PIPA, even if most participants in the effort had never in their lives written a line of code. Activists from across the political spectrum worked in parallel—and sometimes in coordinated unison—to defeat legislation that was an affront to some of our most broadly shared values: the freedoms to gather and communicate with one another without restriction. We developed new memes, created new apps, started new organizations, and invented new tactics. We grew an ever more powerful movement by improving, building off of, and remixing one another's ideas.

We used the Internet to save the Internet, growing ever more formidable as we built off of one another's ideas and work—in ways that precisely illuminate the folly that undergirds the sort of institutional consensus that could spawn the likes of SOPA to begin with. The surest evidence of the nefariousness of that legislation is the gloriousness of the work that millions of us undertook together to defeat it—and that much of that very work might have been made impossible had the bill passed, and if activists had abided by the scruples of the copyright maximalists and free speech skeptics who wrote it.

The conditions that allowed for it—broad access to powerful technology; an Internet that's integrated into the lives of a majority of Americans; a generalized, cross-ideological skepticism of the product of the institutional structures of American politics—are new, but they are growing and will stay with us for the foreseeable future. The SOPA/PIPA win was the first great American political hack of the Internet age, but it won't be the last.

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