

The Changing Index of Censorship

Chris Forster

<http://cforster.com/2011/12/copyright>

(Jan. 17 Update: In a truly remarkable show of solidarity, as you dear reader have likely noticed by now, major sites (including wikipedia) across the internet are mainting their protest of SOPA on January 18th. I've add this bit of javascript to show solidarity with them. Despite the shelving of the house bill, these sites all recognize the continued threat of SOPA, PIPA, or any similar legislation.)

(Jan. 16 Update: With the news that, at least for now, SOPA is shelved, I've removed the javascript mentioned below.)

Depending on when you visit this page, you may notice that a whole bunch of it is blacked out; that's a result of this bit of javascript, protesting SOPA. If you haven't heard about SOPA, here is a fine place to start.

As someone with an interest in the history of obscenity and censorship I have been impressed at how quickly groups like the EFF have described SOPA as a matter of censorship and free speech. Unlike the 1996 Communications Decency Act (I recall the blue ribbon GIFs it inspired well), the object of SOPA is not online obscenity. As these groups recognize, however, matters of "free speech" are increasingly questions of intellectual property and the technologies of copyright enforcement.

This development is entirely consistent with the narrative offered by one of my favorite early-twentieth century anti-censorship tracts, *To the Pure: A Study of Obscenity and the Censor*, co-authored by William Seagle and Morris Ernst (the lawyer who, a few years later, defended *Ulysses* in front of Judge John Woolsey). *To The Pure* outlines a political history of censorship which proceeds through three stages; in a section titled “The Changing Index of Censorship” Ernst and Seagle explain:

With the invention of printing in the middle of the fifteenth century, the first condition for the censorship of literature began to be fulfilled: literature was on its way to popular distribution. The three forms of censorship which we know today began to develop: (1) the religious (2) the political (3) the sexual, which is the modern culmination. The course of evolution may be stated to be from heresy to treason to obscenity. The purpose of authority remains always the same, but the index of censorship changes. Each age produces those formulae of suppression which coincide with its dominant interest. (140)

Each age produces those formulae of suppression which coincide with its dominant interest. The three chief categories of prohibited speech—blasphemy, sedition, obscenity—reflect a historical trajectory. Despite its obvious oversimplifications, Ernst and Seagle’s account of this progression surprises me with its insight whenever I return to it.

If one were to continue the history of censorship Ernst began nearly a century ago, it would pass through questions of intellectual property. Rather than obscenity, it is *piracy* which is the object of contemporary censorship just as obscenity and blasphemy were the objects of a previous age’s censorship regime.

We certainly shouldn’t ignore other, more traditional, types of censorship which continue to exist (particularly outside of the United

States and western Europe); however, if *blasphemy* was the object of censorship in (what Ernst calls) the “Age of Faith,” *sedition* in the “Age of Divine Right,” and *obscenity* in the “Age of Democracy,” piracy is the crime that the censorship regimes of our own information age seek to control. The *Index Librorum Prohibitorum* and Customs lists of previous eras bear a striking resemblance to the index of prohibited foreign domains that SOPA would create.

Works Cited

- Ernst, Morris and William Seagle. *To The Pure: A Study of Obscenity and the Censor*. New York: Viking Press, 1928. Print.