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Free Speech in Cyberspace: A Rhetorical Analysis of SOPA and PIPA Cyberprotests

Catherine L. Langford

On January 18, 2012 cyber-industrialized leaders blacked out their sites to protest proposed congressional legislation. They opposed Protection IP Act (PIPA) and Stop Online Piracy Act (SOPA), two laws that would grant unprecedented power to the U.S. government to regulate the Internet. The protests offer an important rhetorical moment in protest rhetoric as it illuminates the ways in which a brief rupture to normal operating procedures can impact significant change. The 24-hour protest, led by power brokers in the industry, did not encourage civil disobedience but promoted petitioning government, leading to an unparalleled awareness of the issue and the failure to pass the legislation.

Keywords: Internet; Cyberprotest; SOPA/PIPA; Blackout

Rights are not simply a fixed set of protections that the state affords or fails to afford. Rights are a terrain of struggle in a world of continuous change—a site of ongoing controversies, a battleground where the shape and contours of the terrain are remade with each victory. Rights, and particularly fundamental rights, far from being fixed and immovable, are moving targets. They are worth fighting over because the discourse of rights has power and because that discourse can be reshaped and is reshaped through intellectual debate and political struggle.¹

—Jack Balkin

In 1984, counterculture writer Stewart Brand opined,

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Information wants to be free. Information also wants to be expensive. Information wants to be free because it has become so cheap to distribute, copy, and recombine—too cheap to meter. It wants to be expensive because it can be immeasurably valuable to the recipient. The tension will not go away. It leads to endless wrenching debate about price, copyright, “intellectual property,” the moral rightness of casual distribution, because each round of new devices makes the tension worse, not better.²

Brand’s prophetic statement refers to the increasing technologization of information and alludes to the battle over censorship and intellectual property. What is the delicate line between fostering and disseminating creativity versus the protection of intellectual property and profit? And, importantly, what is government’s role in regulating these things? Brand’s remark encapsulates the idea of technological determinism, the belief that technological advances fundamentally alter the ways in which our system operates by shaping social structures and cultural values. His comment personifies information, which in and of itself has no agency. Missing, however, is the invisible hand of the acting agent, for at issue in this struggle is the way in which people advance or use such information.

In his landmark work, *Amusing Ourselves to Death*, media scholar Neil Postman contends that advances in technology are not additive; they are transformative. New media of communication, which create new channels of communication, bring new questions of law regarding freedom of expression to the courts. Justice Stevens declared in his *FCC v. Pacifica* (1978) opinion, “[w]e have long recognized that each medium of expression presents special First Amendment problems.”³ More than a quarter of a century earlier the high tribunal declared, “[e]ach method [of communication] tends to present its own peculiar problems. But the basic principles of freedom of speech and the press, like the First Amendment’s command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule.”⁴ Free speech scholar de Sola Pool explains, “[w]hen wires, radio waves, satellites, and computers became major vehicles of discourse, regulation seemed to be a technical necessity. And so ... the five-century growth of an unabridged right of citizens to speak without controls may be endangered.”⁵ According to de Sola Pool, the status of the right to free speech comes into question when the channels of communication distribution move outside of direct verbal and written expression.

Governmental attempts to regulate the transmission of information via the Internet have led to charges of censorship. Censorship, the suppression or filtering of content, varies from alteration of the communiqué to banning of the message to denial of access to information channels. Historian César Saerchinger tells us that radio censored controversial speakers such as Father Coughlin by denying him access to the public airwaves.⁶ Legal scholar Chad M. Muir describes how shifting notions of decency mean that community standards can enable the courts to censor based upon notions of decency—for example, George Carlin’s use of profanity can be edited (“bleeped out”) to ensure that listening children might not be exposed to such language during the daytime.⁷ Moreover, it is common

practice for certain programming to be restricted from being shown during prime time on network television. Censorship extends beyond US borders, however. The human rights advocacy group Freedom House identifies China as having the most thorough system of Internet controls. Their *Freedom on the Net 2011* report states, “as various dissent groups in the late 1990s began using the internet [sic] to share information with audiences inside and outside the country, the government devoted tremendous human and material resources to the construction of a multi-layered surveillance and censorship apparatus.”⁸ Specifically, China has established a national firewall through which Websites are filtered and sites that contain political messages are blacklisted. Legal practitioner Andrew W. Lloyd reports that Cuba, Laos, North Korea, China, Saudi Arabia, Syria, Tunisia, and Vietnam are the worst censorship violators.⁹ In these countries, citizens are denied access to the Internet either in total or part as the nation states attempt to regulate the movement of information within and across their borders. Freedom House also reports that democratic nations—“such as Brazil, India, Indonesia, South Korea, Turkey, and the United Kingdom”—are engaging in similar forms of censoring activities.¹⁰

The Internet plays an increasingly prominent role in news gathering and reporting, as well as offering an additional site for people to obtain news—a practice that scholars refer to as a “digital tsunami.”¹¹ In an analysis of the intersection of new media and mass media, Wendy Robinson and David Robison write, “[l]ate 2001 marked a moment of change for the cross-cultural practices of newsgathering, signified by average people who carried ordinary portable electronic equipment but were able to cover important news stories before, alongside, and after the professionals.”¹² Traditional news media now augment their reporting with online offerings, including staff blogs and audience response.¹³ Rutgers journalism professor John Pavlik encourages reporters to incorporate Internet resources into their stories.¹⁴ A growing number of journalists are leaving traditional television and print media in favor of the Internet news sector and blogging.¹⁵ Although mass communication scholars David Tewksbury, Andrew Weaver, and Brett Maddex tell us that, historically, news-gathering was the result of conscientious action, meaning that auditors would seek out information, the Internet provides an opportunity for what journalism scholars are calling “incidental exposure”—the habit of encountering news while engaging in other non-news related activities online.¹⁶

Incidental exposure highlights the importance of the Internet as the information superhighway. The reporting of news online and collecting resources to substantiate that news is critical for online journalists today, but also for everyday users in learning the news or being aware of what is happening around the world. The reports about various authoritarian regimes supplied by digital news sources are vital for raising awareness of conditions in those parts of the world. Reports facilitated by the Internet include the 2010–11 uprisings in the Middle East (also known as the Arab Spring), which various nations protested (for different reasons), with the hope of a freer nation. The network of user-generated shared information sites—content created by end-users—helped to raise awareness for the cause of these protests. Consequently, the digital tsunami has grown from

mere data collection to include content generation and data reformation. Technological advances now allow for user-generated content, a practice in which end-users—amateurs, not professional journalists—publish their own content. Users also have the ability to alter information that exists within the cybersphere, creating what Harvard law professor Lawrence Lessig terms the “remix culture.”¹⁷

The Internet offers a unique site of contest for proponents and opponents of censorship. Until recently, most discussion regarding censorship online has revolved around the issues of foreign countries limiting speech and the protection of children from pornography.¹⁸ In a recent article in the *Free Speech Yearbook* [now *First Amendment Studies*], Pat Arneson and David Dewberry map communication studies research regarding the freedom of speech over the course of four decades.¹⁹ Their project stemmed from the lack of an intelligible doctrine of what is protected speech or expression by the United States Supreme Court. Although they consider the form of speech transmission, notably absent from their review of scholarship is a consideration of free expression and the Internet. Brett Luncford takes up the issue in his consideration of digital protest via the activity of “hacktivism” in his article, “The Rhetoric of the Web.” Although the practices of “hacktivism” are short lived—Websites are in a constant state of flux so the hacker’s work is undone quickly—they provide important moments of protest. According to Luncford, “[h]acktivism allows dissent to be heard through the very channels that would silence them.”²⁰ Access to information is so important that Marshall McLuhan, Quentin Fiore, and Jerome Agel characterize the concept of total war as an information war.²¹

On January 18, 2012, a critical moment occurred in the information war as cyber-industrial leaders enacted an organized protest against proposed congressional legislation. Two bills, known as PIPA and SOPA (see Current Legislation section), troubled these technological entrepreneurs. Their objections stemmed, in large part, to the bills granting of unprecedented power to the United States government to regulating the Internet. Going dark was their way of foreshadowing what could occur if certain proposed legislation were adopted into law.

This purpose of this paper is not to disparage forms of protest that utilize forms of civil disobedience. I recognize that many injustices will only be alleviated through the use of radical or extreme action. This paper locates the transformative technology within the boundaries of established First Amendment doctrine and examines the ways in which the protests were consistent with the ethos of the sites. I first consider the history of free speech in the United States relating to the issue of censorship in mediated communications. I then turn to a summary of the legislation relating to online piracy and cyber security. I next analyse several key protest sites to understand the ways in which the First Amendment operates in digital public forums. I then conclude with a summary of what has happened since the protests.

Free Speech and Censorship in Mediated Communications

Regardless of channel, the Court has found that free speech cannot be restricted based upon the message. Technological advances in mediated communication have

influenced the decisions of the High Court. The Court has concluded that prior restraint on speech is not acceptable merely because a group does not approve of the message. Furthermore, different media invite different standards, as television must abide by the Fairness Doctrine but newspapers do not. The Court finds the Internet to constitute a unique technology that should not be bound by judicial doctrine that regulates other channels of communication.

The courts have not held the constitutional guarantee of freedom of speech and expression to be without limitation. Rather, the judicial branch has instilled time, manner, and place restrictions upon expression. These restrictions are enacted upon the speech act itself, not upon the content of the communication, for in *United States v. O'Brien* (1968) the Court determined that any regulation must: (1) be content neutral, (2) serve a significant governmental purpose, and (3) be narrowly tailored to meet that interest.²² The High Court has used both narrow and broad construction of time. Narrowly, the Court has found that speech can be restricted during school hours and prime time. Broadly, they have determined that speech can be proscribed during times of war. Regarding place, in *Perry Educational Association v. Perry Local Educator's Association* (1983) the Supreme Court identified three different types of forums for face-to-face communication: traditional (examples include public streets, parks, town halls, and sidewalks), designated/limited (spaces not typically public but set aside for a specific, limited governmental purpose), and non-public (either private or restricted areas).²³ Each forum elicits a different level of judicial scrutiny, with the traditional forum requiring the highest level of scrutiny (and therefore the greatest protection for the individual), and the non-public having the lowest level of scrutiny, with legislation merely needing to be reasonably related to its goal. Manner restrictions refer to the fashion in which the message is communicated. Historically, the Court has considered questions of picketing, marching, leafleting, or handbilling, as well as the use of amplification devices or symbolic communication. Although the courts have determined the constitutionality of several questions of law by considering time, place, and manner restrictions individually, the constitutionality of a particular act is determined by considering them in conjunction with one another. For example, a person can picket if he or she does so peacefully (manner) on a public sidewalk (place) in the evening (time). That same person might not be engaging in protected speech if the picketing turns violent (manner) and occurs within the lobby of a building (place) during a meeting of foreign diplomats (time).

Specific questions arise because of the nature of the different media of communication. For example, as the political autonomy of newspapers increased (from their early days as publications of political parties), the question became necessary to answer: Can a governmental entity use prior restraint or executive privilege to censor a message? In *Near v. Minnesota* (1931), the Supreme Court overturned a state law that legalized injunctions against messages (in this case distributed via newspaper periodicals) deemed a "public nuisance."²⁴ In *Hannegan v. Esquire, Inc.* (1946), the Court rejected the United States Postal Service's ability to deny a periodical its postal class based upon material that the postmaster general

found to be offensive (namely, sexual humor).²⁵ In *New York Times Co. v. United States* (1971), the Court rejected the Executive Branch's argument that the Pentagon Papers could not be published under the prohibitions set forth in the Espionage Act.²⁶ In a concurring opinion, Justice Stewart recognized the need for newspapers to be unrestrained in the information that they present, declaring, "without an informed and free press, there cannot be an enlightened people."²⁷ What are the expectations for the presentation of information made by mass media channels, however? The High Court has differed in its response regarding mediated communication and the Fairness Doctrine. In *Miami Herald Publishing Co. v. Tornillo* (1974), the Court overturned a state law, which required equal space for political candidates in newspapers.²⁸ Yet, in *Red Lion Broadcasting Co. v. FCC* (1969), the Court determined that broadcast radio stations should adhere to the Fairness Doctrine by requiring that public issues receive equal time.²⁹ And, finally, what are the burdens of different channels to warn about possible indecent, obscene, or profane content? Ultimately, the courts have concluded that the relationship between the consumer and the producer matters. Stevens explains, "[b]ecause the broadcast audience is constantly turning in and out, prior warnings cannot completely protect the listener or viewer from unexpected program content."³⁰ Consequently, *FCC v. Pacifica Foundation* (1978) ruled that indecent material could be regulated via the public airwaves.

The Internet presents unique time, manner, and place quandaries unprecedented in earlier technologies of communication. The forms of communication transmitted via the Internet ranges widely, including email, chat room, blogs, listservs, instant messaging, social networking, news reporting, Web feeds, file sharing (including video and MP3), Voice over Internet Protocol (including Skype and Google Talk), and Internet Protocol television. "Taken together," Justice John Paul Stevens states in his *Reno* (1997) majority opinion, "these tools constitute a unique medium—known to its users as 'cyberspace'—located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet."³¹ The Internet is a vast collection of connected computers linking various networks. As such, the place of the Internet is uncertain and does not fall within the three forums identified within *Perry* (1983). The Internet is not located on any particular computer in any particular country. Information, moreover, may not reside within the location originally posted but "go viral." Moreover, the communications can be viewed once or repeatedly, as well as be viewed immediately or over the course of months or years (if the site does not change). Regardless of the earlier decision in *Pacifica* (1978), the Court overturned the federal Communications Decency Act—which made it illegal to knowingly distribute indecent material to minors—in *Reno v. ACLU* (1997). The Court distinguished communication via the airwaves from communication via the Internet, concluding that the Internet is not invasive in the same manner as the radio or television. In order to view mature content sites, viewers are warned about the content prior to entering the site.

The United States Congress has struggled in its attempt to figure out how to legislate this medium of communication. Concerns include both piracy and security. Copyright infringement first comes to mind when people think of piracy—the theft of music and movies, although the extent of the problem cannot be determined. At the end of 2011, the Motion Picture Association reported that the United States loses \$58 billion in profit and 373,000 jobs are lost from piracy.³² In 2012 the Recording Industry Association of America reports that music sales have decreased by 31 percent between 2004 and 2010.³³ Yet in 2010 the United States Government Accountability Office (GAO) reported, “Three widely cited US government estimates of economic losses resulting from counterfeiting cannot be substantiated due to the absence of underlying studies.”³⁴ Cato Institute researcher Julian Sanchez goes further, to state that the artistic industry’s statistics, repeated by congressional sponsors in defense of their proposed legislation, reflected “absurd numbers” and “ludicrous statistics” that are “entirely bogus.”³⁵ Although commentators disagree that copyright infringement presents a need for the proposed legislation, all agree that cyber-security threats are valid. Hackers use viruses to disrupt Internet connections.³⁶ National security is threatened by the possible usurpation of critical infrastructure, including our financial systems, telecommunications, power grids, transportation, and security systems, which are connected online in order to be remotely controlled by centralized systems.³⁷

Current Legislation

Congresspersons responded to industry lobbies to regulate illegal piracy by introducing legislation in 2011. These bills were an extension of earlier efforts to regulate the Internet. The two bills that galvanized protests were Senate Bill 968 and House Bill 3261. The Senate bill was the Protection IP Act (Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act), or “PIPA,” introduced to the Senate committee by Patrick Leahy (D-VT) on May 12, 2011.³⁸ Five months later on October 26, 2011, SOPA, the Stop Online Piracy Act, was introduced to the House committee by Lamar Smith (R-TX).³⁹ Both bills generated quick and intense criticism.

Critics of PIPA and SOPA contend that the bills extend too much power to the government to intrude into the marketplace. SOPA, in particular, would allow the government to shut down any domain in possession of content that is not put online at that domain by the copyright holder of that content—even if it was posted unbeknownst to the holder. For example, it would be possible for the government to shut down YouTube following the posting of the 2012 Olympic swim team’s cover of Carly Rea Jepsen’s “Call Me Maybe” on the flight to London. Even if the artist herself does not protest the violation of copyright, or supports fans posting clips from concerts (as does musical group Straight No Chaser), the government would shut down the entire site. Specifically, PIPA and SOPA provide the government and copyright holders with an excessive amount of power in regards to enforcement for violations of intellectual property. A process for

prosecuting digital violation of intellectual property rights has been in effect for more than 14 years. The Digital Millennium Copyright Act of 1998 (DMCA) Title 11, Section 202 includes a provision allowing the copyright holder to forward notice to a Website holding content belonging to the copyright holder that violates copyright infringement.⁴⁰ This notice allows the site to take down the content if they are in violation of copyright laws. Consequently, critics argue that the 2011 legislation is unnecessary.

Critics worry that this type of regulatory power will have a chilling effect on creativity and free expression. The SOPA bill would enable the government to bypass the DMCA provision.⁴¹ Such broad legal action could negatively impact user-generated Websites such as YouTube and social networking sites, where content is shared at a much higher rate than the average Website. Many Internet sites popular today disseminate information through user-generated interfaces. This practice opens them up to copyright infringement violations if one of their users posts content copyrighted by someone else. Under the proposed legislation, the entire Website could be shut down rather than just the user being blocked. As such, this procedure undermines due process because no mechanism exists for the Website operator or the user to prove his or her innocence.⁴² According to intellectual properties expert Jonathan Band,

[t]he basic structure of both bills also raises serious jurisdictional questions. The bills authorize an *in rem* proceeding against property (a website [sic] or a domain) that is outside the United States but is accessible by US users. This is a legal fiction (suing property rather than a person) built on a legal fiction (the assertion of jurisdiction over a person because that person has minimum contacts with a jurisdiction).⁴³

Such legislation contributes to a possible chilling effect on free speech and expression by instilling fear of punishment against user-generated site owners. It could also suppress the marketplace of ideas, since Website operators would be forced to monitor content being uploaded to their sites in fear of having their site taken down for violating SOPA and PIPA regulations.

In addition to the suppression of speech, this legislation could have a detrimental impact on human rights in the global community. While political dissent and protest is a protected right in the United States of America, it is not in other countries. For example, a 2008 University of Washington study tracked the number of arrests of bloggers who report political issues over the span of five years.⁴⁴ The study found that most of the arrests occurred in the Middle East and Asia. Time spent in jail varied, but the average time incarcerated was 15 months. Communications professor Phil Howard, who performed the study, reports, “[m]ore and more citizens are expressing themselves online, and being punished for it.”⁴⁵ The report cites justifications for arrests, varying from subverting state power to presenting a security threat to criticizing the arrest of fellow bloggers to providing foreign media information about protests to racist or inflammatory material. In the Freedom House analysis, social networking sites were blocked in 12 out of

37 countries, and persons were arrested for content posted online in 23 out of 37 countries.⁴⁶ The Internet, and user-generated content sites accessed via the Internet, enables the distribution of news and an awareness of global issues from persons persecuted for the right to speak. Consequently, possible censorship resulting from bills such as PIPA and SOPA, which threaten the ability to share different opinions and viewpoints within the public sphere, are concerning in a nation state that values freedom of speech and expression as a fundamental right, much less in other nation states that do not value different opinion and political dissent.

This legislation could erect a digital wall in cyberspace, segregating user-generated content from its audience—the global public. Although sponsors of the bills claim that they would be directed toward foreign Websites, they would apply as well to domestic Websites.⁴⁷ Foreign sites would have to abide by US policy, even if the act was legal in the originating nation state. A virtual wall would be erected between the United States and other nation states for the authors of user-generated content. Bond predicts that the bills would create heightened security risks through domain blocking (which requires authenticated and unencrypted responses) and because users would use domains at foreign sites that do not adhere to domestic cyber-security policies. Such concerns as charted above led to an organized digital protest in January of 2012.

The Protest

The cyber-protests of SOPA and PIPA generated much public awareness of the controversy, in large part because of participating sites' large user base. The online encyclopedia Wikipedia reports almost 470 million unique users over a two-month period in 2012.⁴⁸ The online blog site WordPress reports 100,000 new pages are created on its site every day, with 328 million users viewing more than 2.5 billion pages each month.⁴⁹ The social news Website Reddit reported in January of 2012 that it had 2.07 billion page views and 240 services.⁵⁰ "That's an increase of 149% for pageviews and 101% for servers," Jason Harvey blogged. As of June 2012, 34.4 percent of a reported 2.25 billion Internet users choose Mozilla Firefox as their Web browser, the second most popular one after Google Chrome.⁵¹ Online gaming site Minecraft has an online counter that continually updates the number of people who are registered and who have purchased the game. They report over 36 million users, with more than 100,000 who had registered within the past 24 hours.⁵² Public advocacy group MoveOn reports seven million members within the United States.⁵³

Protest within the digital sphere began quickly in response to the censorship bills. On November 16, 2011, several technology companies organized an American Censorship Day. For the day, they posted a black banner across their logos with the words "stop censorship" across the banner. On December 10, less than a month later, Wikipedia co-founder Jimmy Wales published a statement warning about SOPA and published a community page entitled "SOPA Initiative" on Wikipedia to consider what actions—if any—should be taken in response.⁵⁴ Wales

reports that 1,800 editors voted to participate in a 24-hour global blackout of the English Wikipedia site.⁵⁵ Others agreed and Wikipedia, Reddit, Mozilla, WordPress, Minecraft, and MoveOn were just a few of the sites that voluntarily “went dark” in protest of the PIPA and SOPA legislation being debated in the United States Congress. For a limited time period on January 18, 2012, these sites blocked user access to their content, enacting a rupture within the digital public sphere. They timed their protest less than a week before a Senate vote in order to give the public time to contact their Senators and Representatives to declare their objections to the legislation.

Reddit was the first Website to announce its participation in the protest. Following the introduction of SOPA, the end-users of Reddit did as so many others in cyberspace were doing: They used digital public forums to discuss SOPA. 13,809 subscribers to a SOPA subreddit, a bulletin board whose content is generated and directed by the end-user, used their site to inform others about SOPA. As users posted links about SOPA, other users then decided the value of the posted information, as they directed the posts up or down on the message board. On January 10, 2012, the administrators of Reddit interrupted the traditional culture of Reddit to announce that they would be blacking out their Website. The title of the blog employs anastrophe, the rhetorical device that inverts normal word order. The blog title declares, “Stopped they must be; on this all depends.”⁵⁶ Made famous by the Jedi Master Yoda, the inversion alludes to wisdom while emphasizing the importance of blocking the legislation. The post displays the Reddit rabbit transposed into the image of William Wallace as portrayed by Mel Gibson prior to going into battle: blue and white painted face with sword held aloft. The blog explained:

Instead of the normal glorious, user-curated chaos of reddit, we will be displaying a simple message about how the PIPA/SOPA legislation would shut down sites like reddit, link to resources to learn more, and suggest ways to take action. We will showcase the live video stream of the House hearing where Internet entrepreneurs and technical experts (including reddit co-founder Alexis “kn0thing” Ohanian) will be testifying [hyperlink]. We will also spotlight community initiatives like meetups to visit Congressional offices, campaigns to contact companies supporting PIPA/SOPA, and other tactics.⁵⁷

The references to Yoda and William Wallace stylistically reinforce the content of the message: to call its members to fight for freedom and justice. Several days later, however, it still was not known publically if other sites would join the protest. It was not until January 16 that Jimmy Wales tweeted that the English Wikipedia would go dark two days later.⁵⁸

The media moguls framed their protest as a “blackout.” Within broadcasting, a media blackout refers to the practice of not airing a program in a particular market. Labeling their action as “going black” or a “blackout” has important rhetorical implications. In his consideration of archetypal metaphors, Michael Osborn explicates the meaning of the light/dark metaphor. Light represents all that is good, while dark signifies all that is bad. “With light and sight one is informed of his

environment, can escape its dangers, can take advantage of its rewards, and can even exert some influence over its nature,” Osborn explains.⁵⁹ He continues, “[i]n utter contrast is darkness (and the night), bringing fear of the unknown, discouraging sight, making one ignorant of his environment—vulnerable to its dangers and blind to its rewards. One is reduced to a helpless state, no longer able to control the world about him.”⁶⁰ The dark metaphor is an apt one for the sites threatened by the legislation. The dualistic metaphor represents an epic struggle. Knowledge, historically viewed as a tool of light and liberation, is essential for a free society. User-generated content sites are public forums in which information is shared and democratic deliberation occurs. When information, and thus knowledge, cannot be shared, the light is extinguished and darkness reigns.

Even in their moment of protest, no site actually blacked out their URL (uniform resource locator) by presenting a dead link or having a black screen. All sites used their Web portals as platforms through which they could provide information about the legislation and direct their users to contact their congresspersons. Some sites engaged in a universal collective activity, by blacking out their content but presenting information about the protest in such a fashion as to be consistent with the ethos of the organization. Wikipedia crafted an elegant, simple message. Reddit presented a chaotic, aggressive approach to user involvement in the protest. MoveOn wrote a petition that visitors could digitally sign to send to Congress. Other Websites supported the blackouts by blacking out their logo and posting hyperlinks to sign a petition to Congress or by allowing their members to self-select to participate in the protest by blackening out their individual pages.

The Wikipedia protest page is an example of style reinforcing content, as their use of color, word choice, and time emphasizes the purpose of their message: to make their public aware of the legislation in order to protest it. The visual presentation is black and white, with shades of grey. The eye is drawn immediately to a large black “W” set in the font of Wikipedia’s traditional typeface. Underneath the W is Wikipedia spelled out in black. A mirrored reflection of the blackened name and a larger black W extend from the image. The light source is behind Wikipedia, alluding to the content behind Wikipedia being the light. The blackened image buttresses the concept that Wikipedia could be shut down permanently. The Website summarizes its protest in five short sentences. The administrators framed the debate through a hypothetical heading: “Imagine a World Without Free Knowledge.” Wikipedia’s use of “free” has multiple meanings. The average person would understand “free” as without financial cost. The more savvy technology user understands “free” to mean open source—able to see the code that created the site—and open content—able to be altered by the end-user. The message, written in white, reads, “[f]or over a decade, we have spent millions of hours building the largest encyclopedia in human history. Right now, the US Congress is considering legislation that could fatally damage the free and open Internet. For 24 hours, to raise awareness, we are blacking out Wikipedia. Learn more.”⁶¹ Time is a predominant feature of this message. The three sentences that explain the protest each begin with a reference to time: “[f]or over a decade,”

“[r]ight now,” and “[f]or 24 hours.” The temporal movement directs the auditor forward as the history of the site is described (the past), current legislation is elucidated (the present), and immediate protest and user action is explained (the future). Directed to “learn more” and provided a link through which to access information about the controversy, Wikipedia provides a space for the user to input his or her zip code to find out who his or her congressional representative is in order to contact that person. The last two elements of the page are consistent with Wikipedia’s mission of creating a database of information for its users.

The Reddit protest page is the antithesis of the Wikipedia page, in keeping with their ethos as a hectic, interactive site. Most of the elements on the page are aggressive statements of contest, including calls to action for the user to participate in the protest. The title reifies the blog posting from almost a week earlier: “SOPA and PIPA damage the Internet. today [sic] we fight back.” Site administrators address their users, provide avenues for response (“make a call,” “sign the petition,” and “learn more”), suggest an “action of the hour,” highlight important upcoming legislative dates, respond to frequently asked questions (clarifying what the proposed bills would do and how it affects different parties), post a link to the Khan Academy that explains SOPA and PIP, and provides a space for updates about the blackout by Reddit members. In the opening address to site members, the site informs users about the blackout. “Today, for 12 hours, reddit.com goes dark to raise awareness of two bills in congress [sic] which could radically change the landscape of the Internet.”⁶² Importantly, the administrative team’s grammatical choices indicate a lack of respect for the deliberative body in Washington. In the text, Congress is not capitalized. While one might assume that this is a stylistic selection, seeing as how Reddit does not capitalize its own name on its site, the administrative team nevertheless capitalized Internet (which it does not do in another part of the same page). This rhetorical choice indicates a deferential attitude toward the globally linked computer network and a disdainful attitude for policy-makers. Reddit also goes farther than Wikipedia in explaining the harm that could be caused by the legislation. Although both sites indicate that “damage” will be done, Reddit explains, “[t]hese bills provide overly broad mechanisms for enforcement of copyright which would restrict innovation and threaten the existence of websites with user-submitted content, such as reddit.”⁶³ Reddit uses aggressive language in explanatory material: “fight” (twice), “damage,” “threaten,” and “destructive.” The extent of the harm leaves the reader with no other option than to support the site in its protest.

During the blackout, MoveOn narrowed its public advocacy to one issue: Internet censorship. The Website crafted a visual image that supported that the protest was a patriotic act while briefly envisioning a censored site. The wallpaper on the site was black. The text on the page was bookended by a blue banner with white stars waving as they would on the American flag. A black bar with the word “censored” in all caps blocks out the MoveOn logo, offering only a hint of its motto —“Democracy in Action”—peeking out from below the bar. Immediately below is a letter with a petition. The letter begins, “[d]ear visitor.” This framing of the

persons who access the site alludes to a reality in which MoveOn does not exist. All persons, therefore, are visitors instead of community members, users, or team members (the typical language used to describe MoveOn's Web users). MoveOn next declares, "[t]his is what Internet censorship looks like." MoveOn's initiatives are directed by users joining together to petition for initiatives. Following this ethos, MoveOn lists key technology groups with whom they are partnered: Wikipedia, Reddit, and Mozilla. Consistent with their mission, they provide a petition for visitors to the blackout site, which reads, "[t]he government must not be allowed to censor the Internet at the request of powerful lobbyists. Say NO to Internet censorship." Neither SOPA nor PIPA receive specific mention in the petition. The actual petition allows visitors to share the petition via Facebook, Twitter, and email. The page concludes, "[w]e hope that you will stand with us, and many others, to defend free speech online."⁶⁴ MoveOn was the first site to mention free speech as a goal, as well as the communal nature of the protest.

Google and Craigslist displayed solidarity with the censorship protest by posting symbolic representations of the blackout and by encouraging their users to contact members of Congress to express their objection to SOPA and PIPA. They also both directly addressed economic issues not taken up by other protest sites. Google, so known for altering its logo to pay homage to special events that the modifications have become known as Google Doodles, placed an angled black rectangular box over its logo. Below the search box, Google posted a hyperlink that read, "[t]ell Congress: Please don't censor the web!" Unless a user followed the link, the logo was the only indication that he or she would have about the protest. If the user clicked on the link they were led to the Google blog. On the blog, Google posted a graphic that demonstrated the way the grassroots movement grew. The heading for the graphic asked, "Congress, can you hear us?" The graphic itself was a red man and a blue woman, both with a hand raised to their mouth as if shouting. Imagined as sonic ripples materializing in a megaphone from their mouth is the growing echo of protests, spanning out in alternating blue and red bands. First to speak out against the bills was Vint Cerf, integral to the founding of the Internet, in an open letter to Congress.⁶⁵ Next to speak up were Internet security experts, followed by Internet companies, followed by public interest and human rights organizations, followed by venture capitalists, law professors, and entrepreneurs, and lastly by the general public. The graphic represents an argument from authority, relying upon experts who represent different interests. The vocal projection ends at the petition form that the user can send to Congress and Google admonishing its users to "[t]ell Congress not to censor the Web and not to cripple our innovation economy."⁶⁶

Craigslist posted a page unlike its normal page: a black background with red, white, and blue text. A single red line admonishes visitors to "STOP PIPA (Senate 968) & SOPA (HR 3261)" followed by four lines of white text that explain the protest. A blue line is a hyperlink to additional information regarding actions of protest. The most notable element of the Craigslist site was the final line presented in white text: "PS: corporate paymasters, KEEP THOSE CLAMMY HANDS OFF

THE INTERNET!” The phrase “corporate paymasters” can be attributed to a remark by Democratic Alan Grayson on the Joy Behar Show in the fall of 2009.⁶⁷ Clammy hands indicate either anxiety or a health problem in the person with the hands. The remark, therefore, indicates that the “corporate paymasters” are nervous that they will lose their financial advantage. Although neither site restricted user access, both enacted symbolic solidarity with the protest.

WordPress adopted a different strategy by offering their members the opportunity to self-select to black out their blogs. The day before the protest, WordPress announced in their News section that they would be joining in the protest. In typical blogging fashion, Jane Wells posted about the blackout, hyper-linking to additional information within the text of the blog. She then announced that members of the WordPress community would be able to select from a variety of different types of plug-ins to illustrate their support of the protest. The aesthetic of the announcement maintained WordPress’s standard format: a white background with black text and blue hyperlink. The format of the blog also points outward toward additional information (via the hyperlinks) and allows for nuanced commentary. As such, Wells declares, “[w]hile joining the protest in this manner is laudable, please don’t forget to also make those phone calls to US Senators—they’re the ones with the voting power.”⁶⁸ She posted two links below: one to the plug-in options for end-users to blacken their blogs and the other to the American Censorship Website to register their protest. As blogs are personal sites of amateur publishers, members of WordPress were able to determine their level and form of participation in the protest.

Other Websites joined the protest, also in fashions personalized to their ethos. Minecraft shut down operations for a day, presenting gamers with a red screen and a logo that read, “PIPA & SOPA? How about NOPA!” The color red indicates a high alert time period or that an action should be stopped. *Wired* magazine blacked out headlines when users pointed their mice over them. Several articles on the *Wired*’s “Threat Level” blog, which highlights security and privacy issues, explained their involvement in the protest. The Oatmeal uploaded an animation that exemplified how user-generated content could be threatened by the legislation. The Oatmeal adopted a personal tone absent from other sites, speaking in the first person. A humorous protest, the site encouraged visitors to “[p]lease pirate the shit out of this animated GIF,” in an effort to explain and to draw attention to the protest. McSweeney’s, penned by Ben Greenman, posted random “trivia” that he characterized as “[a] day’s worth of facts to get you through Wikipedia’s 24-hour blackout.” I Can Has Cheezburger created a pop up about PIPA and gave visitors the option of “Tell Me More” or “No Thanks” before continuing onto the Website.

The January 2012 SOPA and PIPA protest was an important rhetorical moment in protest rhetoric as it illuminates the ways in which a brief rupture to normal operating procedures can impact significant change. First, the demonstration did not encourage acts of civil disobedience but heightened awareness of a current legislative debate and promoted petitioning the government via a letter writing

campaign. Second, the protest was organized not by persons outside of the political process, but by power brokers within the industry who already had active lobbying efforts before Congress. Third, this protest created an unparalleled awareness of the issue it addressed in an extremely short amount of time. The envisioned movement adopted an overarching theme—an Internet blackout—yet each protesting agent deployed the protest in ways that were consistent with the ethos of the organization. This single moment—one day of protest—shifted the debate from online piracy to cyber security. The moment resulted in Congress abandoning the legislation in favor of cyber-security legislation proposed in one month's time.

Conclusion

Although the freedom of speech and expression has existed within the United States since the adoption of the First Amendment to the Constitution, the belief that competing and contentious ideas present in the public sphere should be protected made its way into official governmental documents in Justice Oliver Wendell Holmes' landmark *Abrams* (1919) dissenting opinion.⁶⁹ In his dissent, Holmes declared,

[b]ut when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.⁷⁰

Holmes advocated allowing the worthiness of all ideas to be considered within the public sphere, believing that the best idea would win public favor and persist, while lesser ideas would fade. Although in the minority in 1919, Holmes's argument undergirds contemporary free expression philosophy.

Consistent with Holmes's vision of a marketplace of ideas, the Internet exists as a medium of communication for individuals to express themselves to other individuals. Public address scholar Franklyn Haiman warned more than four decades ago, "[i]t is not easy to determine, in any given setting, the degree to which the democratic process, and hence the opportunities for reasoned discourse, are indeed available."⁷¹ In the digital age, with the cybersphere serving as a digitized form of the public sphere, Haiman's warning invites us to ask: Who controls the Internet? He continues,

and the situation may be perceived quite differently from various vantage points. Perhaps the best one can do is to avoid the blithe presumption that the channels of rational communication are open to any and all who wish to make use of them and attempt, instead, a careful assessment of the power structure of the situation.⁷²

As society struggles to outline new norms of cyber control, Haiman's words caution us to act in a thoughtful manner that considers multiple perspectives. Intellectual activity and knowledge sharing need to be fostered in innovative ways that do not restrict the free expression of ideas. The Internet is a potential site for dynamic democratic deliberation. It is not, however, a perfect medium, as not all persons can access it. But to what medium does everyone have access?

Advocates of open code contend that the benefits of open code outweigh the costs. The Internet presents unprecedented possibilities for information dissemination via transmission and sharing, as information can travel around the world instantaneously and cheaply (once its infrastructure is in place). The Internet has the ability of a message to be received, and to be responded to, by a larger audience not constrained by geopolitical borders.

Research trends reveal a strong correlation between participation in social interaction through Web-based connectivity and various tools for interactivity, resulting in an open network of communication because of the growing online digital media provided. In her analysis of how technologies positively impact deliberative democracy via mediated public spheres, new media scholar Maria Simone concludes that broadband policies regulating access and content should be avoided.⁷³ Digital technologies promote a democratic atmosphere by connecting persons around the world in a different fashion than historical communication channels and forums. Computer technology and software researchers Elizabeth Churchill, Andreas Girgensohn, Les Nelson, and Alison Lee concur with Simone's findings, reporting that a person's interactivity is increased due to message boards available via online digital media.⁷⁴ Constitutional scholar Jack Balkin contends that digital technologies are tools for connecting cultures in a cost effective manner via user-generated blogging Websites. Balkin also argues that the use of such technologies encourages the spread of democratic values across geopolitical borders. The important underlying factor for Balkin is that the purpose of free speech is to promote a democratic culture. Lessig contends that the fight to regulate piracy is not worth the cost. These scholars conclude that increased participation levels enable an enhanced democratic society because more people can participate and voice their opinions. These studies lead to the conclusion that there is a correlation between online digital media and social participation for promoting an open democratic culture.

In the face of such a weighty importance, it is appropriate that the proposed legislation shifted from issues of piracy to security. As the cyberprotests framed the legislation as an attack on freedom of speech, and envisioned what the global community would resemble without free content (a rumored 70,000 Websites participated in the protest), Washington was unable to move forward with the legislation. Both PIPA and SOPA were dropped and a bill that resembled them was altered.

On November 30, 2011, Michael "Mike" Rogers (R-MI) introduced House Resolution 3523—the Cyber Intelligence Sharing and Protection Act—known as "CISPA."⁷⁵ An amendment to the National Security Act of 1947, CISPA would

allow for the sharing of information between cyber-security organizations and the US government. In contrast to PIPA and SOPA, which garnered unprecedented cyberprotests that led to the two bills being tabled, CISA has received significant support. The measure has been endorsed by technology and telecommunications businesses (including IBM, Microsoft, Facebook, AT&T, and Verizon), as well as trade groups and financial entities (such as Financial Services Roundtable and the US Chamber of Commerce) and passed the House of Representatives on April 26, 2012. Opponents of CISA include the White House, civil liberties groups (such as the ACLU and the Constitution Project), technology businesses (such as Mozilla), and libertarian-minded groups and individuals (such as Electronic Frontier Foundation and Ron Paul). Opponents of CISA protested the violation of individual privacy and civil liberties, as well as the broad and undefined powers that would be granted to the government via the legislation. According to a statement released December 1, 2011 from the ACLU Website and written by Laura W. Murphy and Michelle Richardson, “[t]he Cyber Intelligence Sharing and Protection Act would create a cyber-security exception to all privacy laws and allow companies to share the private and personal data they hold on their American customers with the government for cyber-security purposes.”⁷⁶ The general consensus from the opposition is the broad powers authorized from this new legislation are too similar to SOPA. Consequently, CISA failed to pass Senate deliberations and a revised cyber-security bill was introduced—SB 3414, the Cybersecurity Act of 2012.⁷⁷ The bill, originally introduced February 15, 2012 by Joseph Lieberman, was revised and reintroduced on July 19, 2012 by a group of five senators. The revised bill relies upon incentives, rather than mandates, to entice businesses to follow “best practices” and collaborate with US government regarding issues of national security following from cyber threats. The new bill has received presidential support.

On July 19, 2012, the architects of the cyberprotest joined together to create the Internet Defense League, a Website devoted to raising awareness to legislative threats to the Internet.⁷⁸ Before January of 2012, protest agents were not organized, nor had they implemented a vehicle through which to communicate protest actions. The new Website allows concerned denizens of the cyber community the option to link their Websites to the site, thus enabling quick information dissemination and calls to action for future threats to a free Internet. At parties in major urban areas across the nation, the League projected a “cat signal” into the night sky, in a play on the distress signal used in the Batman series as a way to communicate urgent need for action from affiliated members. At the first sign of a threat to the Internet, the League will launch the cat signal and members will spread the signal in a viral manner and display whatever call(s) to action the League deems appropriate to the existing threat.

The recent controversy, framed as a contest of free speech against censorship and as intellectual property versus piracy, the interests of free speech triumphed. Protesters crafted the legislation as a threat to the existence of the Internet that would result in the absence of user-generated content, and the public accepted

their message and responded by following their directives to contact their congressional representatives. Because of the protest, Holmes's marketplace of ideas persists in the cybersphere as it had prior to the introduction of the legislation. Although most scholars agree that protections against intellectual property theft need to be fortified, all now agree that SOPA and PIPA are not the avenues through which to accomplish this end. Brand's tension between information wanting to be free and to be expensive continues. One year later, the only change is that advocates of open source have been put on high alert, they have organized, they have been successful in defeating the proponents of copyright restrictions, and they now have a permanent structure in place to respond to future threats. They are poised, in the shifting terrain of struggle over rights, to "[m]ake sure the internet never loses. Ever."

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