

Anti-piracy enforcement vs. a functional Internet

Written by ilkjester

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The Times' Richard Verrier offered a compelling piece today about [online piracy's effect on indie filmmakers](#), noting how Greg Carter's "A Gangland Love Story" (an updated take on "Romeo and Juliet" with rival black and Latino gangs) had found its way onto at least 60 bootlegged-movie websites. We can quibble about Carter's estimate of the monetary damage -- he says he's lost \$100,000 in revenue -- but there's no defense for the sites and uploaders who've made Carter's work available for free.

Many of the movie bootleggers are overseas, often in countries with no interest in enforcing U.S. copyrights. Their only points of contact with the U.S. may be with the companies that register their dot-coms or dot-net domain names and the Internet service providers that connect them to customers here.

Law enforcement officials earlier this year [seized the domain names of nine sites](#) accused of criminal copyright infringement, but at least one of them quickly [reopened for business](#) under a slightly different domain name. Eager for more protection, the Motion Picture Assn. of America and other lobbying groups for copyright holders are backing a bill by Sen. Patrick Leahy (D-Vt.), [S 3804](#), that would allow the Justice Department to seek an injunction from a U.S. court against the domain name of any site whose main purpose is to offer pirated goods through streams, downloads or links. Such an order would not only seize a site's domain name, it would also require ISPs, financial companies and online advertising networks to avoid connecting to or processing transactions from the site.

The bill would also require the Justice Department to maintain a list of sites it determines, by its own reckoning and without court intervention, to be "dedicated to infringing activities." ISPs, credit-card companies and ad networks would be encouraged to block those sites even without

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a court order to do so.

Introduced eight days ago, the bill was on a fast track -- the Senate Judiciary Committee was scheduled to act on it Thursday, even though no hearings have been held on the measure. But the Senate is likely to adjourn this week, putting off consideration of the bill until after the election -- and, more likely, into the new Congress next year.

That's a good thing. Online piracy is a real problem, especially the spread of sites streaming movies for free while they're still in theaters. Yet the mechanism the bill proposes for attacking the problem -- in essence, a legal shortcut that gives U.S. courts the ability to knock sites off the global Internet and dry up their revenue sources -- would open a nasty can of worms. It's a risky step that bears much more thought and debate than it could receive in the waning days of this year's session.

The Center for Democracy and Technology, a centrist technology advocacy group, released an analysis today that [outlines the bill's major problems](#). These include important free-speech and due-process issues. The most significant ones to me, though, dealt with the message the bill would send to the rest of the world about one nation's ability to control the global Internet. First, the CDT argued, the bill would give the U.S.'s blessing to foreign governments imposing their own laws and standards on Internet users outside their borders:

While the technical mechanisms may vary, the effect is the same: if enacted, S. 3804 would stand for the proposition that countries have the right to insist on removal of content from the global Internet in service to the exigencies of domestic law -- and nothing would limit the application of this approach to copyright infringement....

Further, once the United States sends the green light, the use of domain locking or ISP domain blocking to silence other kinds of content considered unlawful in a given country -- from criticism of the monarchy in Thailand to any speech that "harms the interests of the nation" in China -- will surely spread, impacting bloggers, citizen journalists, human rights advocates and ordinary users everywhere. The precedent that domain locking or blocking can be encouraged through an extrajudicial blacklist only intensifies this risk.

Second, according to the CDT, S 3804 would set a precedent for using ISPs to enforce a government's policy objectives:

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There is no shortage of illegal or unsavory content on the Internet, and well-intentioned advocates for various causes will look to ISP domain-name blocking as the new tool for addressing it. In short, once Congress endorses a new policing role for ISPs, that role will surely grow. As ISPs are enlisted for each new policy aim — however appropriate when viewed in isolation — the unsupervised, decentralized Internet will give way to a controlled, ISP-policed medium. This would be a fundamental change in how the Internet works.

Third, the bill would make the rest of the world even more nervous about the role played by the U.S. in [ICANN](#) (which administers the most popular top-level domains, including .com and .net) and Internet governance generally. The U.S. has gradually [loosened its oversight of ICANN](#) in response to concerns that decisions about governance were being swayed by [political pressure](#) from Washington. But taking advantage of ICANN being headquartered in the U.S., S 3804 would give the Justice Department the ability to take down .com or .net sites anywhere in the world. Said the CDT:

This type of assertion of global control is the kind of U.S. exercise of power about which other countries of the world have worried — and about which U.S. foreign policy has sought to reassure the world. Thus S. 3804 directly harms the United States' Internet governance agenda pursued through diplomatic channels over the past ten years.

Michael O'Leary, executive vice president for government affairs at the Motion Picture Assn. of America, said it's absurd to suggest that the motion picture industry would support legislation that encouraged governments to censor content. "The motion picture industry is built on the 1st Amendment," O'Leary said in an interview. "We're simply trying to deal with people that are stealing creative content that Americans produce and trying to profit from it."

Countries that are predisposed to censor don't need the U.S. to set an example for them to follow, O'Leary said. The CDT's opposition to S 3804 has less to do with free speech and Internet governance, he argued, than with "perpetuating piracy in this country." He added, "I think that their response to this has not been constructive."

If O'Leary were talking about any number of other Internet advocacy groups, he might have a

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point. But the CDT doesn't fall into the "content-should-be-free" camp. Its concerns about sending the Net down a slippery slope toward Balkanization should give lawmakers pause as they try to craft a response to foreign websites that advance their own interests by giving away the work of filmmakers like Carter.