Credibility Lost: How Hollywood’s Own Reality Undermines Its Position on Internet Policy
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The furor over the latest legislative proposals to address online copyright infringement in the United States have cast the major American intellectual property companies - most notably, the entertainment industry -- in a very negative light within the global Internet user community. I join with technologists, scholars, and industry observers who are amazed at the level of concentrated outcry over a single technology policy issue and hope it represents a more civic-minded Internet population when it comes to matters affecting Internet users both in the United States and around the world.

Much of the controversy surrounding The Stop Online Piracy Act (SOPA) [1] and the Protect IP Act (PIPA) [2] pertains to how they were drafted and their potential adverse consequences to the Internet itself, if not society generally. While a prolonged analysis or description of these proposals are beyond the scope of this article – but can be found quite easily online – they represent the latest attempts by the intellectual property (IP) industry (although ‘cartel’ might be a more appropriate term) to further extend its reach into cyberspace to enact what it believes are necessary measures to protect its copyrighted property such as movies, music, and software. Unfortunately, these legislative proposals were conceived and developed primarily by industry lobbyists with little input from Internet engineers, cybersecurity practitioners, or other subject matter experts who understand the technical, legal, and social consequences should these proposals, as written, become law. The secrecy surrounding the drafting of SOPA and PIPA are reminiscent of how these same industry organisations were adamant that the international development of 2011’s controversial Anti-Counterfeiting Trade Agreement (ACTA) occur in secret with little if any public consultation, comment, or discussion.[3]

 Apparently, developing laws to protect intellectual property on the Internet are exempt from Washington's alleged desire for greater transparency in the policymaking process. It also represents a shift in how technology issues previously were dealt with in the earlier days of the Internet -- i.e., involving all stakeholders in a public forum to reach a mutual consensus on a given matter. Such one-sided practices can lead to proposals like SOPA and PIPA, which indeed may endanger the effective and secure operation of the Internet, harm innocent Internet users, establish a “shoot first” policy based on accusation not proof, and potentially present assorted constitutional concerns over due process and online freedom of expression. [4]

Concerns over the technical and legal ramifications of SOPA and PIPA were voiced publicly by companies like Google and Facebook and a veritable Who's Who of Internet Engineering[5]. These concerns subsequently were marginalised or ignored[6] by American legislators wanting to enact them into law quickly while minimising public discussion about their potential consequences. In response, the Great SOPA Blackout of January 18th, 2012 was launched by major Internet companies, prominent Web sites, and individual luminaries to protest and raise public awareness of these proposals, building upon the successful online protest the prior month against Internet company GoDaddy.Com, a longtime SOPA supporter.[7] The significant public attention brought to these proposals during the January 18th Blackout forced legislators to realise these proposals might be a political problem for them; even before the one-day protest ended, politicians began scrambling to distance themselves from these proposals, including several of their original sponsors.[8][9][10] Political support turned so quickly against SOPA and PIPA that the president of the Motion Pictures Association of America (MPAA) publicly threatened to cut off campaign support for politicians who didn’t support its legislative desires once it was known
that Congressional leaders and the Obama Administration had removed those proposals from active consideration in their current form.[11]

That said, the enforcement of copyright on the Net is an ongoing concern for Hollywood and represents an significant, if not apocalyptic, problem to the entertainment industry, as evidenced in recent years:

- 2005: MPAA claims $6.1 billion in losses due to "continued camcording" of movies in theaters. [12]

- 2005: US Chamber of Commerce reports 750,000 jobs lost due to online 'piracy.'[13]

- 2006: A study based on Motion Pictures Association of America (MPAA) data from the Institute for Policy Innovation claims the US economy loses $20.5 billion a year from movie 'piracy.'[14]

- 2011: In a letter to the New York Times, the US Chamber of Commerce's Mark Elliot says online 'piracy' threatens more than 19 million American jobs.[15]

Clearly, the entertainment industry is suffering tremendous financial losses due to online theft. More frightening, the potential job losses have increased from 750,000 in 2005 to more than 19 million in 2011. This stark news suggests there must be severe financial and employment losses for the entertainment industry resulting from the online 'piracy' of its products. These statistics and predictions must be true -- after all, these are 'industry numbers' being reported!

Interestingly, despite this gloomy news, the MPAA reported that "global box office receipts reached an all time high" of $29.9 billion in 2010 --- and soon after announced new statistics showing how movie 'piracy' is killing its industry and destroying jobs. [16]

MPAA can't have it both ways. Either it is losing money and laying people off due to 'piracy' or it's making profits hand-over-fist and keeping its industry very much alive and profitable. Either way, it's offered up some very misleading statements about its profitability and well-being in the face of an alleged epidemic of online theft that only draconian measures like SOPA or PIPA can address.

Similar antics were used by the MPAA’s musical counterpart, the Recording Industry Association of America (RIAA) over the years to describe its alleged financial woes due to online theft. In the case of music, iTunes destroyed the decades-old concept of "album sales" -- yet recording industry statements and news articles continued to suggest that "declining album sales" was a direct consequence of the online 'piracy' problem rather than acknowledging that increasing number of customers now purchased individual tracks from iTunes instead of full albums. [17][18]

Nevertheless, these manipulated statistics are invoked by the entertainment industry at every opportunity to justify and perpetuate attacks on technology, customers, and the Internet itself while ignoring societal evolution and the evolving expectations of its customers. I do not dispute that the theft of copyrighted materials on the Internet is a problem and needs to be addressed, but we must be mindful of the statistics presented by the entertainment industry on this issue and not blindly accept their view as reflective of reality. Unfortunately, like all pieces of propaganda, repeat it often enough and the audience will believe it’s true.
The late Senator Daniel Patrick Moynihan once said, "you are entitled to your own opinion, but not your own facts." So let's dig a bit deeper into the statistics routinely cited by the entertainment industry as it plays the victim of 'piracy' in the eyes of legislators and the media to determine if these indeed are facts or merely fantasy:

- 2010: The US Government Accountability Office (GAO) releases a study that, while confirming online copyright infringement indeed is a problem, cast serious doubts on the intellectual property industry's 'piracy' statistics. It also concludes that measuring the impact of 'piracy' with any degree of meaningful accuracy may be impossible.[19]

- 2011: A 'piracy investigator' working for the entertainment industry describes how the entertainment industry worked to boost its piracy statistics to gain stronger media and political interest in its efforts.[20]

- 2012: Julian Sanchez of the Cato Institute notes that the statistics associated with online 'piracy' are flawed if not something purely in the fantasies of lobbyists and their paid-for legislators.[21]

In short, great doubts are, and should be, cast upon the statistics used by the entertainment industry regarding 'piracy' and the theft of its products. Therefore, in negotiating with the entertainment industry, lawmakers must be prudently critical in their analysis and due diligence of the facts presented --- or, as the late Ronald Reagan famously said, “trust, but verify.”

Sadly, these very metrics, flawed or fixed as they are, continue to define the entertainment industry's vision of reality and are used by its Congressional lobbyists to garner support for more far-reaching mechanisms to control the flow of information -- theirs or anyone else's -- on the Internet in the name of countering 'piracy.' After all, the flurry of widespread public criticism of SOPA was dismissed by lead SOPA sponsor Lamar Smith as "not based in reality"; in other words, the reality conveniently contrived by the entertainment industry lobbyists and subsequently believed as absolute truth by Congress.[22] Such sentiment, if not simply an excessive sense of self-entitlement, also helps explain why members of the entertainment industry have sued foreign governments that do not enact legislation favourable to them immediately upon request.[23]

Therefore, how can anyone take seriously the claims of Hollywood over its declared losses to 'piracy'? Not only do the entertainment industry's statements about 'piracy’s’ debilitating effects on its profitability conflict with its proclamations about strong annual sales, but it's been caught basing its actions on a misconstrued sense of reality and groupthink reinforced by an ongoing inability to work with those whose views differ or raise concerns about its agenda. But Congressional lawmakers routinely believe the entertainment industry's claims and cater to its needs, because they appreciate the flow of money received by enacting legislation favourable to those supporting their political campaigns. [24]

Interestingly, either through a superb act of irony or willful ignorance, the entertainment industry (and Congress) fails to note that the very technologies it lobbies (or votes) against are the ones that continue to make it so profitable over time. Technological innovations such as the VCR, DVR, iTunes, NetFlix, and yet-to-be-discovered (or invented) services all contribute to the long-term success of the entertainment industry by allowing customers to enjoy entertainment products in a manner conducive to and consistent with the modern age and societal expectations. For example, the launch of iTunes as the de facto Internet site to purchase music was a direct
response to the rampant theft of music over the Internet in the late 1990s when Napster, GnuTella, Limewire, and other services met an emerging customer need (portability of a purchased music to multiple devices and over the Internet) that the recording industry chose to ignore. iTunes transformed that mostly criminal venture – obtaining and sharing music over the Internet – into the recording industry’s standard, if not preferred, method of distributing commercial music to customers. Unfortunately, any new technology in the hands of average customers absolutely terrifies the entertainment industry. An insane fear of ‘piracy’ and zealous desire to protect its digital products at all costs have contributed to the imposition of restrictive technology controls, laws, and legislative proposals that created the uproar we see currently over SOPA and PIPA. Similar efforts over time explain why customers couldn’t easily duplicate VHS tapes in the 1980s, or DVDs in the 1990s, and are forced to watch un-skippable FBI “Anti Piracy Warnings” on DVDs and Blu-Rays in the 2000s. It’s why you hear terms like ‘safe harbour’, ‘circumvention’, HDMI, HDCP, DRM, TCP, CSS, TPM, ‘analog holes’, ‘broadcast flags’, and things called ‘content protection’ inflicted upon our computers, monitors, video cards, iPods, cell phones, home theater systems, movies, music, and other digital products we might place on our various ‘authorised devices.’ It’s why since 2005 you risk arrest on federal felony charges if you take a photos or quick movie clips of a relative in a movie theater and happen to also catch a film playing in the background.[25] Why? Because you might be a criminal looking to steal digital content. Even if you’re not, you might be. But that chance that you might be a criminal means everyone must be considered and treated as one, too -- and why every new piece of consumer technology is considered by the entertainment industry as a potential Weapon of Mass Infringement. [26] Remember that in 1982 the former MPAA president famously equated the VCR to the Boston Strangler [27] in terms of endangering the future success of the film industry; yet despite the proliferation of VCRs, DVRs, and streaming video services in the years since, that same industry reported record profits in 2010! Effectively working together to counter online copyright infringement requires trust -- trust in the data presented, and trust in the trustworthiness of those you are working with. Sadly, the entertainment industry repeatedly demonstrates it is not to be trusted -- and the flawed statistics endlessly cited to further its agenda confirms this belief, as does its repeated inability to work with people and groups whose views differ from their own. Those working to develop lasting solutions to the very real problem of contemporary copyright infringement must strive towards a mutually acceptable resolution to this problem and realise that a winner-take-all scorched-earth outcome may not be an appropriate solution. Legislation and treaties regarding copyright enforcement that raise serious concerns about Internet security, stability, and constitutionality (i.e., SOPA, PIPA, ACTA) must not be developed in secret by a committee of selected lobbyists but rather in full view of the public and with input from qualified external subject matter experts representing all sides of the issue. Finally, to reach such a solution, the entertainment industry must abolish its practice of treating its paying customers as potential criminals and overcome its paranoia about technologies that it doesn’t yet control or influence heavily[28][29]. Unlike Silicon Valley, Hollywood considers ‘innovation’ as the process of lobbying for newer and more stringent controls over information and the flow of information in modern society. By clinging to its own version of reality, the entertainment industry demonstrates that it prefers to inflict lasting damage on the rest of the world to protect its antiquated Industrial Age business models rather than evolve with the modern world and so-called Information Age. Moreover, I posit that the entertainment industry’s ongoing and frequently controversial efforts to deal with what it purports to be an apocalyptic threat of ‘piracy’ merely are attempts to justify its legitimacy
and self-perceived relevance in a world where the capabilities of quality production, marketing, and distribution of entertainment and other digital products now exist in the hands of Every Man[30][31] and not exclusively One Man[32][33].

Richard Forno is a long-time commentator on information age conflict and cyberculture. The views expressed are his own and may not represent those of his employer.

Sources:


(The GAO Report is @ http://www.gao.gov/products/GAO-10-423)


[31] http://www.youtube.com/
