

The Politics of Copyright

Tuesday, June 12, 2012

8:30 AM – 9:45 AM

Moderator:

Jay Rosenthal, *National Music Publishers Association*

Panelists:

Robert Brauneis, *George Washington University Law School*

Mitch Glazier, *Recording Industry of America (RIAA)*

Robert Levine, *Author, Free Ride: How Digital Parasites are Destroying the Culture Business, and How the Culture Business Can Fight Back*

Why No Web Blackout For CISPA? Google It

BY [Robert Levine](#) | 05-09-2012

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To understand why “the Internet community” isn’t up in arms over the new cyber security bill, you have to follow the money.

According to the blog-and-[Twitter](#) hive mind, a kind of “Internet spring” blossomed early in 2012. On January 18, major websites including Wikipedia, “went dark” to protest SOPA (the Stop Online Piracy Act), and [Google](#) blacked out its logo and explained its objections to the bill in an official blog post. The threat of online censorship--rooted in reality but grossly exaggerated--generated a wave of calls and emails to Congress that proved more powerful than a push from the media companies and artists organizations that supported the bill. When SOPA died, pundits declared “the Internet community had spoken.”

But that’s not who spoke the loudest. It’s not worth mourning SOPA, a sprawling bill full of vague definitions that made it nearly impossible to fairly enforce (although it also contained some good ideas and its Senate counterpart was less problematic). But what’s often misunderstood is that Internet companies pushed against the bill as hard as media companies lobbied for it. That’s mostly because bill would have given online companies more responsibility for copyright infringement, or “sharing” as well-funded startups like to call it. When you consider [Google's recent disclosure](#) that it spent more than \$5 million on lobbying in the first quarter of 2012 alone, the real reasons for SOPA's abrupt death start to come into focus. That figure doesn’t count the money Google gave to groups that opposed the law--or the space it devoted to the issue on its home page, the most valuable piece of online real estate in the world. Say what you will about the lobbying power of media companies, but NBC Universal didn’t run a pro-SOPA crawl on *Sunday Night Football*.

Google spends so much on lobbying that it's hard to celebrate with a straight face the people-power that supposedly slayed SOPA. That \$5 million--for just one quarter--represents a 240% increase from the same period last year. That's more than the official lobbying budget of the MPAA (\$570,000 for the same time period), the RIAA (\$1.67 million), or media companies like Disney (\$1.3 million) or News Corp. (\$1.57 million). It's more than Microsoft (\$1.79 million), Facebook (\$650,000), Amazon (\$650,000), and Apple (\$500,000) combined. It's even more than Exxon Mobil (\$4.17 million), which doesn't have a cool, catchy bbmotto like "Don't be evil."

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Following the money is important since so many activists crowed about how "the Internet community" resisted the power of corporations. Most neglected to mention that much of this activity was funded by another powerful corporation, as well as the venture capitalists that count on a lawless web to turn companies like Pinterest into rich IPOs. In November, the Open Congress blog ran a post about "[Why SOPA and PROTECT-IP Are So Hard to Kill](#)," suggesting that the entertainment industry spent many times more lobbying for the bill than technology companies pushing against it. While media companies almost certainly did spend more on the issue--unfortunately, it's almost impossible to figure out what companies spend to lobby for or against a particular bill--the post grossly exaggerated the difference by including in the pro-SOPA column all of the spending by the U.S. Chamber of Commerce. The Chamber did a lot of the heavy lifting on SOPA, but the Chamber also lobbies on dozens of issues that have nothing to do with SOPA or technology. It's worth noting in this context, too, that the Open Congress blog, which detailed the entertainment industry's massive support of SOPA, is funded by the Sunlight Foundation, whose board includes former Google lobbyist and White House staffer [Andrew McLaughlin](#) and tech venture capitalist [Esther Dyson](#).

On Google's end, its \$5 million doesn't include money it gives to technology trade groups like NetCoalition and CCIA, which played their own parts in stoking the fury against SOPA. On December 29, Markham Erickson, the executive director of [Error! Hyperlink reference not valid.](#), told [CNet](#) that "there have been serious discussions" about major companies blacking out their websites. (Three weeks later, the organization minimized its role, telling the *New York Times* that "The Internet responded the way only the Internet could.") And lawmakers had 5 million reasons to attend the NetCoalition's Capitol-building briefing on SOPA the day after the blackout.

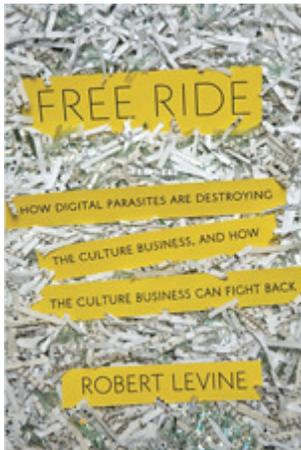
Since lobbying disclosures only measure money spent on formal "big-L" lobbying, they don't count the donations Google makes to universities like Stanford, which held a panel on "What's Wrong With SOPA" that didn't bother to present the opposing point of view. Or the cash it spends hiring consultancies like Engage, which builds online political campaigns like DontCensorTheNet.com. (Engage says it works for Google on other issues and that staffers there put together an anti-SOPA campaign on their own time.) Or the money Google gives to groups like Public Knowledge—quoted by the *New York Times* as being sympathetic to Google's plight in Washington in a story that didn't mention the financial connection.

To get a sense of how effective the SOPA protests would have been without the support of technology giants, consider the debate over [CISPA \(the Cybersecurity Information Sharing Act\)](#), if you've even heard of it. From a civil liberties perspective, the bill is far more worrying than SOPA, and some of the same digital rights groups are against it. But the subject hasn't generated nearly as much controversy, at least in part because Facebook supports it and [Google is said to do so](#), although the company has not revealed its position. So much for transparency.

The new digital activism might be best summed up by a January 18 anti-SOPA demonstration in New York, an event organized by the local trade

group New York Tech Meetup and Andrew Rasiej, who has helped politicians raise money from technology companies and championed their interests in Washington. He got right to the heart of the matter, calling SOPA “an unprecedented attack on the future of our industry.” Then he led the crowd--many of whom work in that very same industry--in a chant of “This is what democracy looks like.”

At the moment, unfortunately, he’s probably right.



Robert Levine is the author of [Free Ride](#), which Businessweek found “timely and impressive” and the New York Times Book Review called “a book that should change the debate about the future of culture.” He has been the executive editor of Billboard and a features editor at Wired and New York, and he has contributed to Vanity Fair, Rolling Stone, and the New York Times. He attended Brandeis and Northwestern University’s Medill School of Journalism. He covers the culture business from New York and Berlin. Follow [@RobertBLevine_](#) on Twitter.

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The New York Times
May 20, 2007
OP-ED CONTRIBUTOR

A Great Idea Lives Forever. Shouldn't Its Copyright?

By **MARK HELPRIN**

Charlottesville, Va.

WHAT if, after you had paid the taxes on earnings with which you built a house, sales taxes on the materials, real estate taxes during your life, and inheritance taxes at your death, the government would eventually commandeer it entirely? This does not happen in our society ... to houses. Or to businesses. Were you to have ushered through the many gates of taxation a flour mill, travel agency or newspaper, they would not suffer total confiscation.

Once the state has dipped its enormous beak into the stream of your wealth and possessions they are allowed to flow from one generation to the next. Though they may be divided and diminished by inflation, imperfect investment, a proliferation of descendants and the government taking its share, they are not simply expropriated.

That is, unless you own a copyright. Were I tomorrow to write the great American novel (again?), 70 years after my death the rights to it, though taxed at inheritance, would be stripped from my children and grandchildren. To the claim that this provision strikes malefactors of great wealth, one might ask, first, where the heirs of Sylvia Plath berth their 200-foot yachts. And, second, why, when such a stiff penalty is not applied to the owners of Rockefeller Center or Wal-Mart, it is brought to bear against legions of harmless drudges who, other than a handful of literary plutocrats (manufacturers, really), are destined by the nature of things to be no more financially secure than a seal in the Central Park Zoo.

The answer is that the Constitution states unambiguously that Congress shall have the power “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.” (The italics are mine, the capitalization was likely James Madison’s.)

It is, then, for the public good. But it might also be for the public good were Congress to allow the enslavement of foreign captives and their descendants (this was tried); the seizure of Bill Gates’s bankbook; or the ruthless suppression of Alec Baldwin. You can always make a case for the public interest if you are willing to exclude from common equity those whose rights you seek to abridge. But we don’t operate that way, mostly.

Furthermore, one should not envy the perpetrators of sensationalist trash, but rather admire them, in the hope that someday, somehow, without prostituting, debasing and degrading oneself while recklessly destroying what is left of the literary culture, one might enjoy a fraction of their wealth. They represent, however, only a small fraction of writers, and their good fortune is a poor excuse for seizing either their property or that of their leaner colleagues.

And Barnes & Noble is able to publish price-reduced non-copyrighted works not so much because it saves the 10 percent to 15 percent of revenue that would go to the gruel-eating authors, but because it saves the 50 percent that would go to the publishers. Booksellers that publish their own titles benefit not from escaping the author’s copyright, but the previous publisher’s exercise of a grant of rights (limited, authors take note, to 35 years). “Freeing” a literary work into the public domain is less a public benefit than a transfer of wealth from the families of American writers to the executives and stockholders of various businesses who will continue to profit from, for example, “The Garden Party,” while the descendants of Katherine Mansfield will not.

Absent the government’s decree, copyright holders would have no exclusivity of right at all. Does not then the government’s giveth support

its taketh? By that logic, should other classes of property not subject to total confiscation therefore be denied the protection of regulatory agencies, courts, police and the law itself lest they be subject to expropriation as payment for the considerable and necessary protections they too enjoy? Should automobile manufacturers be nationalized after 70 years because they depend on publicly financed roads? Should Goldman Sachs be impounded because of the existence of the Securities and Exchange Commission?

Why would the framers, whose political genius has not been exceeded, have countenanced such an unfair exception? Jefferson objected that ideas are, “like fire, expansible over all space, without lessening their density at any point, and, like the air in which we breathe, move and have our physical being, incapable of confinement or exclusive appropriation.”

But ideas are immaterial to the question of copyright. Mozart and Neil Diamond may have begun with the same idea, but that a work of art is more than an idea is confirmed by the difference between the “*Soave sia il vento*” and “*Kentucky Woman*.” We have different words for art and idea because they are two different things. The flow and proportion of the elements of a work of art, its subtle engineering, even its surface glosses, combine substance and style indistinguishably in a creation for which the right of property is natural and becoming.

And in Jefferson’s era 95 percent of the population drew its living from the land. Writers and inventors were largely those who obtained their sustenance from their patrimony or their mills; their writings or improvements to craft were secondary. No one except perhaps Hamilton or Franklin might have imagined that services and intellectual property would become primary fields of endeavor and the chief engines of the economy. Now they are, and it is no more rational to deny them equal status than it would have been to confiscate farms, ropewalks and other forms of property in the 18th century.

Still, it is the express order of the Constitution, long imprinted without catastrophe upon the fabric of our history. But given the grace of the Constitution it is not surprising to find the remedy within it, in the very words that prohibit the holding of patents or copyrights in perpetuity: “for limited Times.”

The genius of the framers in making this provision is that it allows for infinite adjustment. Congress is free to extend at will the term of copyright. It last did so in 1998, and should do so again, as far as it can throw. Would it not be just and fair for those who try to extract a living from the uncertain arts of writing and composing to be freed from a form of confiscation not visited upon anyone else? The answer is obvious, and transcends even justice. No good case exists for the inequality of real and intellectual property, because no good case can exist for treating with special disfavor the work of the spirit and the mind.

Mark Helprin, a fellow at the Claremont Institute, is the author of, among other works, “Winter’s Tale.”

A Cyberspace Independence Declaration

By John Perry Barlow, Cognitive Dissident
Co-Founder, Electronic Frontier Foundation
February 8, 1996

Yesterday, that great invertebrate in the White House signed into the law the Telecom "Reform" Act of 1996, while Tipper Gore took digital photographs of the proceedings to be included in a book called "24 Hours in Cyberspace."

I had also been asked to participate in the creation of this book by writing something appropriate to the moment. Given the atrocity that this legislation would seek to inflict on the Net, I decided it was as good a time as any to dump some tea in the virtual harbor.

After all, the Telecom "Reform" Act, passed in the Senate with only 5 dissenting votes, makes it unlawful, and punishable by a \$250,000 to say "shit" online. Or, for that matter, to say any of the other 7 dirty words prohibited in broadcast media. Or to discuss abortion openly. Or to talk about any bodily function in any but the most clinical terms.

It attempts to place more restrictive constraints on the conversation in Cyberspace than presently exist in the Senate cafeteria, where I have dined and heard colorful indecencies spoken by United States senators on every occasion I did.

This bill was enacted upon us by people who haven't the slightest idea who we are or where our conversation is being conducted. It is, as my good friend and Wired Editor Louis Rossetto put it, as though "the illiterate could tell you what to read."

Well, fuck them.

Or, more to the point, let us now take our leave of them. They have declared war on Cyberspace. Let us show them how cunning, baffling, and powerful we can be in our own defense.

I have written something (with characteristic grandiosity) that I hope will become one of many means to this end. If you find it useful, I hope you will pass it on as widely as possible. You can leave my name off it if you like, because I don't care about the credit. I really don't.

But I do hope this cry will echo across Cyberspace, changing and growing and self-replicating, until it becomes a great shout equal to the idiocy they have just inflicted upon us.

I give you...

A Declaration of the Independence of Cyberspace

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.

You have not engaged in our great and gathering conversation, nor did you create the wealth of our marketplaces. You do not know our culture, our ethics, or the unwritten codes that already provide our society more order than could be obtained by any of your impositions.

You claim there are problems among us that you need to solve. You use this claim as an excuse to invade our precincts. Many of these problems don't exist. Where there are real conflicts, where there are wrongs, we will identify them and address them by our means. We are forming our own Social Contract . This governance will arise according to the conditions of our world, not yours. Our world is different.

Cyberspace consists of transactions, relationships, and thought itself, arrayed like a standing wave in the web of our communications. Ours is a world that is both everywhere and nowhere, but it is not where bodies live.

We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth.

We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.

Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are based on matter, There is no matter here.

Our identities have no bodies, so, unlike you, we cannot obtain order by physical coercion. We believe that from ethics, enlightened self-interest, and the commonweal, our governance will emerge . Our identities may be distributed across many of your jurisdictions. The only law that all our constituent cultures would generally recognize is the Golden Rule. We hope we will be able to build our particular solutions on that basis. But we cannot accept the solutions you are attempting to impose.

In the United States, you have today created a law, the Telecommunications Reform Act, which repudiates your own Constitution and insults the dreams of Jefferson, Washington, Mill, Madison, DeToqueville, and Brandeis. These dreams must now be born anew in us.

You are terrified of your own children, since they are natives in a world where you will always be immigrants. Because you fear them, you entrust your bureaucracies with the parental responsibilities you are too cowardly to confront yourselves. In our world, all the sentiments and expressions of humanity, from the debasing to the angelic, are parts of a seamless whole, the global conversation of bits. We cannot separate the air that chokes from the air upon which wings beat.

In China, Germany, France, Russia, Singapore, Italy and the United States, you are trying to ward off the virus of liberty by erecting guard posts at the frontiers of Cyberspace. These may keep out the contagion for a small time, but they will not work in a world that will soon be blanketed in bit-bearing media.

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.