

Why SOPA, PIPA, and Their ilk Matter to the Open Internet, and Why the Open Internet Matters to the Present and Future of Publishing

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27 January 2012

The Man tried to get the Internet down, but the Internet fought back.

I refer to the events of January 2012 that unfolded in relation to the Stop Online Piracy Act (SOPA) and the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (PIPA—and how's that for a mouthful?). Both bills, the current incarnations of which can be read online ([SOPA here](#) and [PIPA here](#)), were put forth with the intention of cracking down on online copyright infringement, but if passed they could introduce censorship and abuse by large powers while failing to stop piracy. It is not within the scope of this paper to analyze the bills (though [Jason Harvey's recommendations](#), posted to the Reddit blog, are worth reading) or even to summarize them, but rather to consider them in the context of the evolution of the open Internet and the changing definition of publishing.

The open Internet, or “net neutrality,” is described by the Federal Communications Commission of the United States as “the Internet as we know it. It's open because it uses free, publicly available standards that anyone can access and build to, and it treats all traffic that flows across the network in roughly the same way.” The FCC lauds the concept from both a creative and economic standpoint: “consumers can make their own choices about what applications and services to use and are free to decide what lawful content they want to access, create, or share with others. This openness promotes competition and enables investment and innovation” (FCC).

It is obvious that SOPA and PIPA are of great concern to anyone who is invested in the open Internet, and the saga surrounding them is likely more interesting to political scientists than to publishers (for they have insight into the sophisticated political maneuvering that was involved), but it ought also to be evident that the open Internet is relevant to publishing in the digital realm; blogs, for example, are explicitly mentioned in the FCC's definition of the open Internet. Also see Michael Bhaskar's ongoing [list of digital publishing startups](#). But does the open Internet matter to traditional print publishing companies? Yes, in a number of ways: it has provided great opportunities in marketing and circulation, it has contributed to distribution in (and because of) a world in which brick-and-mortar bookstores are disappearing, and it has engendered new forms of books and magazines (e-books and apps, for now). There also appear fears about e-book piracy, visibility in the online marketplace, and the stability of traditional publishing business models. Sam Harris, popular blogger and author, sums it all up with a vivid image: “[w]here publishing is concerned, the Internet is both midwife and executioner” (Harris).

Clay Shirky, author of *Here Comes Everybody* and *Cognitive Surplus*, recently gave a TED talk on SOPA and PIPA in which he pointed out that these two bills were largely drafted by “media companies that were founded in the 20th century” (Shirky, “Why...”). That is significant because the 20th century bred very particular ideas about copyright law and intellectual property, and they take strong copyright protection for granted. It is incredibly difficult for such companies, which operate on the assumption that there is one mass market that wants only to consume, to accept threats—even in the form of unstoppable technological change—against their tried-and-true methods. Shirky notes that when, over the past fifty years or so, new technologies—either analog or digital—have come into being, these media companies were shown again and again that the public liked not only to consume but to *produce* and to *share* (Shirky, “Why...”).

Traditional book publishers (namely the “Big Six”—Random House, Penguin, HarperCollins, Simon & Schuster, Hachette Book Group, and Macmillan) are among the content-production companies whose roots, and thus operating assumptions, are very much in the 20th century. Nay, they are part of an industrial business model that emerged in the 19th that hinges on the manufacturing principle of the economy of scale: if books are cheaper to make the more copies one prints, and they are, then the publishing industry can succeed by accepting few submissions but printing and selling many products to the reading public (the masses). This is the “gatekeeper” method, and it’s based on a scarcity model (Shirky, “Why...”). That model no longer holds up; today’s world is a world of abundance where reading material is concerned.

Those who argue against SOPA and therefore against the entrenched understanding of copyright have been nourished by Internet culture, in which “everyone has access to a medium that makes versions so identical that the old distinction between originals and copies has given way to an unlimited number of equally perfect versions” (Shirky 55). The Internet generation, however one demarcates that group, does not agree that copyright is the cornerstone of creative industry. This attitude represents a significant paradigm shift—one that will no doubt be a source of tension until some resolution is found. Thus the saga of SOPA serves as a case study of the relationship between the two current attitudes toward copyright. Generally these two stances are for and against.

Five of the Big Six support SOPA, as well as a number of other large publishing companies (Smith), but not all book publishers are taking such a hard line. O’Reilly Media, for one, has adapted well to the digital age and proves to be fairly forward-thinking when it comes to concerns about piracy and digital rights management (DRM):

At O’Reilly, we have published e-books DRM-free for the better part of two decades. We’ve watched the growth of this market from its halting early stages to its robust growth today. More than

half of our e-book sales now come from overseas, in markets we were completely unable to serve in print. While our books appear widely on unauthorized download sites, our legitimate sales are exploding. The greatest force in reporting unauthorized copies to us is our customers, who value what we do and want us to succeed. Yes, there is piracy, but our embrace of the Internet's unparalleled ability to reach new customers "though it may not be perfect still secures to authors more money than any other system that can be devised." (O'Reilly, quoting Fletcher Harper toward the end)

Tim O'Reilly himself wrote that not only would SOPA and PIPA potentially do harm to the Internet, they "are also bad for the content industries that have proposed them, and bad industrial policy as a whole" (O'Reilly) because they prop up business models that are in dire need of remodelling.

The Internet has proven itself as a viable springboard for social-media-driven collective action (as events of recent years in Egypt and elsewhere attest), and many Internet users took action against SOPA and PIPA through social media. The SOPA saga saw the first collective action taken not only by individuals but by corporations; major Internet stakeholders led the people in protest. Many popular websites—notably Wikipedia, Reddit, and WordPress (all of which are widely used online publishing platforms)—blacked themselves out on 18 January and redirected visitors to calls to action, petitions, and/or information about the two bills (Schroeder). O'Reilly Media, too, participated in the blackout.

Jane Wells, blogger for WordPress.com, briefly outlined the purpose of the blackouts: "to protest and try to mobilize more people to speak out against this bill [...] in an attempt to let U.S. lawmakers know how much opposition there is" (Wells). Wells wrote WordPress's call-to-action blog posts and shared instructions for WordPress.com bloggers who wished to add protest ribbons to their blogs and opt into the blackout. Wells used choice words to rally the troops: "Publishing freedom is a right we must protect" (Wells). Clearly, WordPress understands and freely admits its role in the open-Internet world: Web developer, yes, but also publisher.

The O'Reilly Radar soon enumerated the most significant responses: Google collected 7 million signatures for its petition ("End Piracy, Not Liberty"); the Progressive Change Campaign Committee collected more than 200,000 on its petition; more than 30,000 Craigslist users called Congress through the PCCC's website; 140,000 used Tumblr's platform to make calls; more than 2.4 million SOPA-related tweets were sent before 16:00 on 18 January; and nearly 1,000 protestors thronged New York's U.S. Senators' office in New York City. (Howard)

Some claimed that the blackout protest missed the mark, but it met with its desired success. Certain congressmen and media companies withdrew their support of SOPA and PIPA, and on 20 January it was announced that SOPA

would not be passed as drafted and would be postponed indefinitely.

But the bills are not dead yet. Shirky leaves his audience with a warning to this effect:

Get ready, because more is coming. SOPA is simply a reversion of COICA [Combating Online Infringement and Counterfeits Act, 2010], which was proposed last year, which did not pass, and all of this goes back to the failure of the DMCA [Digital Millennium Copyright Act, 1996] to disallow sharing as a technical means, and the DMCA goes back to the Audio Home Recording Act [1992]. (Shirky, “Why...”)

Shirky’s warning is fair; best we stay on our toes. Interested parties may wish to monitor the progress of the Anti-Counterfeiting Trade Agreement (ACTA), [as Redditors are already doing](#). In other recent and arguably parallel developments, the American Congress and the Supreme Court have been ruminating since March 2011 about whether or not to take certain (“foreign”) works out of the public domain and grant them copyright status (Kravets)—and they managed it on 19 January 2012 (just one day after the SOPA protest blackouts—was that on purpose?): works by composers Prokofiev and Shostakovich, authors Tolkien and Orwell, and artist Picasso were removed from the public domain (Kendall and Bravin). (Disturbing as such reports are, I can’t help but think of a proverbial point made by Princess Leia: “The more you tighten your grip... the more star systems will slip through your fingers.”)

The quest continues for legislation that confronts piracy without infringing on freedom of expression—which the Obama Administration acknowledged in its response to two petitions against SOPA (Espinel, Chopra, and Schmidt). Those who oppose SOPA/PIPA, including Google (Drummond), are now advocating the Online Protection and Enforcement of Digital Trade Act (OPEN), which aims to secure “two fundamental principles” and protect the rights associated with those principles: that “Americans have a right to benefit from what they’ve created. And second, [that] Americans have a right to an open Internet” (*KeepTheWebOpen.com*).

A clear divide between traditional print publishing companies and digital publishing-related startups appears when one places them on either side of SOPA and PIPA support. The former generally support these bills and the latter generally denounce them. This is no surprise; the open Internet is vital for the startups (in fact it is their lifeblood), and it presents significant challenges to the others.

One naturally infers that the print publishers are living in the past and the startups are forging ahead into the future—especially when one considers the impact of technological change on society at large:

The bigger the opportunity offered by new tools, the less completely anyone can extrapolate the future from the previous

shape of society. So it is today. The communications tools we now have, which a mere decade ago seemed to offer an improvement to the twentieth-century media landscape, are now seen to be rapidly eroding it instead. A society where everyone has some kind of access to the public sphere is a different kind of society than one where citizens approach media as mere consumers. (Shirky 189)

Is a creative-commons world on the horizon? The dawn of a culture of respect, in which creators are acknowledged but sharing is permissible?

Philosophically, perhaps—but, economically, how would it work? *How can something be both “mine” and “ours”—and make money?* The apparently forward-thinking publishers struggle to stay afloat. How publishers of all kinds will ultimately fit into the different kind of society mentioned by Shirky remains to be seen. This, and *not* concerns related to copyright, is the true cause of their unrest.

Unfortunately, the two camps I've been discussing seem to be talking right past one another. They need to establish a shared understanding and come to agreement, at least about the definition of publishing and the fact that that definition seems not to actually be changing. Publishing will still mean issuing the works of particular writers, though they may be issued in any number of forms. It will still mean preparing creative works, though they may be for public or private use or sale. It will still mean making announcements and disseminating knowledge, though that can be done in print or online. Publishing will mean becoming an expert in something, curating it well, and producing it with a high level of quality; this is what O'Reilly Media does, and this is also what professional bloggers do. Publishers will succeed by doing certain things better than others can (but they will no longer be able to claim that they can do *everything* better); there will emerge go-to publishers who work best with certain genres, subjects, people, devices, and formats—both print and digital. The lines and the job titles will blur; print book publishers and app developers alike will have to bury prejudices and admit that they are all legitimate publishers. There will be room for a diversity of publishers with a diversity of business models.

If the open Internet is ultimately to triumph in the face of establishments that do not understand it and have outmoded attitudes toward copyright and intellectual property, then we may safely relegate traditional publishers to the 20th century history books—or, rather, to Wikipedia entries—and march onward into the unknown as participants in an increasingly democratic publishing *culture* if not publishing *industry*.

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