

Pitchfork

Shades of Grey: Anti-Piracy Legislation and Independent Labels

Indies express frustration over an issue that is anything but clear-cut.

By

Marc Hogan

, January 27, 2012

Millions of people learned about the Stop Online Piracy Act (SOPA) House anti-piracy bill and its Senate sibling, the Protect IP Act (PIPA), through a web-wide protest last week supported by Google, Facebook, Tumblr, and other technology companies, along with not-for-profit Wikipedia. The legislation got as far as it did in part thanks to the efforts of trade groups representing the movie and recording industries. But one special interest group close to our hearts has a significantly smaller megaphone: independent music.

The perspectives of several leading independent record labels who responded to Pitchfork's requests for comment reveal the issue to be more complicated than slogans on either side suggest. To recap: SOPA and PIPA attempt to stop copyright infringement by foreign websites, but many, including us at Pitchfork, argue that they go too far. By the end of last week, both chambers of Congress had stepped away from the bills, leaving their fate in doubt. While it was easy to see the piracy debate in terms of us vs. them, small vs. big, or good vs. evil, the independent music community's awkward position suggests a binary view is too simplistic.

None of the labels we contacted expressed support for SOPA or PIPA. But most tended to say copyright infringement is a problem that needs to be solved-- and that it demands a better solution than either approving the bills in their current form or maintaining the status quo. One of the organizations pushing for a better answer is the Beggars Group, which includes Matador, XL, Rough Trade, 4AD, True Panther, Young Turks, and Too Pure. "Every effective piece of new forward-thinking law needs to strike a fair balance between competing interests," says Beggars chairman

Martin Mills, in a prepared statement. "Everyone needs legal protections, but everyone's livelihoods must be respected and considered. We hope that the lines are a little more open for an open dialogue to craft new legislation that will be fair to all and strike the best balance between the needs of creators, technology companies, and the general public."

Merge co-founder and Superchunk bass player Laura Ballance said she would also like to see piracy addressed, though she acknowledged she doesn't know exactly how. "Piracy especially hurts our smaller artists," Ballance observed in an email. "The small releases that used to sell 3,000 copies are now selling less than 1,000. It makes releasing these records not fiscally viable for us or the artists who recorded them." She went on to say she understands the existing bills have negative civil liberties implications and that she would prefer "if we could self regulate... but that seems unlikely."

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At least a few other indie labels have taken a similarly nuanced view, worrying about SOPA's perils while also raising concerns about piracy's effects. On January 18, Saddle Creek published a [blog post](#) titled "Saddle Creek does not support SOPA." Label head Robb Nansel added in an email: "I suspect that many indie labels and artists would support legislation if it could be written in a way that secured artist rights while maintaining the internet's independence and spirit of innovation. We have yet to see such a bill." Bloodshot co-founder Nan Warshaw called on Congress to start over and talk with actual musicians: "We're all for combating piracy," she wrote. "Independent artists and labels are especially hard hit by the problem, but the question is how to best go about doing it."

As TV and film producer Gary Polone recently [maintained](#) in *New York* magazine, supporters of the law didn't exactly help their cause. An otherwise-informative [MSNBC forum](#) on the bill pitted a villainous-looking NBC Universal lawyer who reductively argued the law wouldn't impact U.S. sites against a fresh-cheeked Reddit co-founder who reductively argued the bill would "break the internet," and the host appeared unable to explain why either was right or wrong.

A *Wall Street Journal* **editorial** drawing an otherwise-plausible link between the anti-SOPA movement and corporate speech went so far as to list Wikipedia, a nonprofit, among "'powerful' corporations" backing the protests.

Further complicating the discussion is the evolving stance of the organization that represents **many well-known independent labels**, the [American Association of Independent Music](#) (A2IM). Last fall, the group initially **supported** SOPA, a position it **reiterated** on a few different occasions, including in a **Billboard.biz op-ed** by A2IM president Rich Bengloff that also acknowledges that "improvements should be made where appropriate." In a **statement** dated January 18, the organization at last identified the bill's potential failure, but continued to press for legislation that targets piracy by foreign websites.

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A2IM's final statement backing away from its SOPA endorsement leaves the group in a position that appears to be little different from the positions of most individual member labels commenting for this article. That is, A2IM would like to see piracy addressed, but it isn't deadset on an either-or proposition of passing the current legislation or doing nothing. Still, the rapid change of public opinion on the bills-- and the seeming lack of prominent indie labels willing to defend them-- raises questions about whether A2IM was really speaking for its constituents on this issue. (A spokeswoman for A2IM said Bengloff was unavailable to comment due to preparation for the **Midem** industry conference in Cannes, France.)

Nevertheless, it's not only labels and trade groups who might see a middle ground between Rupert Murdoch and Anonymous. In a **Seattle Weekly blog post**, former Guns N' Roses bassist Duff McKagan argued that the legislation's opponents were defending the business interests of internet companies with more passion than most had shown for defending record stores, studios, and other creative businesses when they had to shut down. And *New York Times* tech writer David Pogue recently **contended** that the "scare language" of SOPA's opponents was "just as flawed" as the text of the bill.

Wanting to see less copyright infringement doesn't necessarily mean being irrationally opposed to downloading. The music business has come a long way since Metallica sued Napster a dozen years ago. Secretly Canadian co-founder Ben Swanson is another indie label head who said he opposes both piracy and SOPA, but he further acknowledged how much piracy has helped the labels he co-owns, which also include Jagjaguwar and Dead Oceans. In an email, he said he suspects unauthorized downloading has led to people supporting the label roster in so many other ways that it's been "a net gain for us."

Fool's Gold co-founder Nick Catchdubs argues that regulation isn't a solution to piracy and, on a macro level, music companies should continue to innovate. Still, on a micro level, he echoed Merge co-founder Ballance's ideal of self-regulation: "There's an mp3 etiquette, use it," he wrote of album-sharing sites, while also pointing out that "sometimes these bootleg sites are now the ONLY WAY to get a hold of certain artists' music."

At this point, music fans can choose from various legal ways of paying for music, and download plenty of other music for free from mp3 blogs and webzines like Pitchfork. But they can also listen to music for free in ways that ensure artists are still compensated, at least a little bit, thanks to advertiser-supported services like Spotify and YouTube. "That's not piracy," Dead Oceans co-founder Phil Waldorf said. "Those are paid plays."

To a certain extent, like many political battles, the anti-piracy fight appears to be less about ideals or free speech than business-- in this case, the tech companies versus the entertainment industry. "Maybe there should be some responsibility on technology companies to protect media companies, to protect the rights of creators," says Jagjaguwar founder Darius Van Arman. A recent *New Yorker* article recounts how the founders of YouTube made a conscious decision early on not to remove content for copyright infringement until a copyright holder asked them to-- an approach that reduces costs for tech companies while raising them for independent labels. (YouTube owner Google didn't respond to a request for comment.)

How complicated is all this? Well, a scholar at the libertarian Cato Institute, writing for technology blog Ars Technica, recently **enthused** that the whole controversy could ultimately turn Silicon Valley into an ally of the Republican party. In other words,

even after millions of people organized successfully against Rupert Murdoch, somehow he might still win. Not so lucky are independent musicians and music entrepreneurs, whose perspectives on the anti-piracy furor have so far gone mostly overlooked.