WONKBLOG

Do we need a better Internet piracy bill — or no bill at all?

Posted by Brad Plumer at 09:00 AM ET, 01/19/2012

Let's say the protests over SOPA and PIPA succeed, and Congress nixes its online-piracy bills. That's not a foregone conclusion yet, though more and more senators have been_backing off_. What then? Should Congress create a better anti-piracy bill? Or just drop the subject altogether?

(Nelson Ching/Bloomberg)There's certainly momentum for an improved piracy bill. Sen. Ron Wyden (D-Ore.) and Rep. Darrell Issa (R-Calif.) have been collaborating on the OPEN Act, which would focus on cutting off money from foreign sites dedicated to willful infringement. Law professor Eric Goldman has a good synopsis of the bill here. The OPEN Act complements existing law, rather than radically revamping it the way SOPA and PIPA do. Disputes would be handled by the International Trade Commission, which has experience handling these matters. And, unlike SOPA, the OPEN Act has stricter safeguards against

abuse. Perhaps most importantly, Wyden and Issa are <u>inviting public comment</u> on the bill, rather than crafting it behind closed doors.

Still, even the OPEN Act will garner its fair of criticism. The bill uses rather blunt instruments — going after payment providers and ad networks — to attack offending sites. Goldman, for instance, wonders whether perfectly innocent sites could see their funds cut off simply because payment providers wanted to avoid slogging through a hearing.

And that raises the question: Are "rogue" Web sites that engage in copyright infringement really such a big problem that we *need* a powerful new anti-piracy bill? That's a common assumption in the halls of Congress, but it deserves a lot more scrutiny. The Cato Institute's Julian Sanchez, for one, <u>assembles</u> a large body of evidence against the notion that online piracy is such a crippling problem that it absolutely must be addressed.. . .

For one, consider those staggering estimates of the damage caused by online piracy frequently tossed around by groups like the Motion Picture Association of America. Those numbers are typically over-inflated and <u>often impossible to substantiate</u>. (They also tend to omit the *benefits* that come from online piracy, which are hardly trivial.) By all accounts, the content industry is thriving, not suffering. What's more, a recent Harvard Business School <u>study</u> found that file-sharing did not appear to be discouraging the creation of new works, which is the whole rationale behind copyright in the first place. Everyone should read Sanchez's <u>full post</u> for some reasons why online piracy might not be as harmful as is commonly thought.

That's not a reason to scuttle anti-piracy bills altogether. Surely some content producers are harmed by copyright infringement, after all. But the second question that needs to be asked is whether blunt online enforcement is the best way to deal with this problem. That's not clear. Mike Masnick <u>discusses</u> a hefty new <u>report</u> from the Social Science Research Council noting that there's "little evidence... that enforcement efforts to date have had any impact whatsoever on the overall supply of pirated goods." Perhaps that's because the copyright industry has never had a sledgehammer as large as SOPA. Or maybe that's

because an enforcement approach simply isn't cost-effective. But this is a subject worth debating further out rather than simply assuming outright.