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If the feds can shut down Megaupload, why do we need SOPA?

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For more than a year, the Motion Picture Association of America and the Recording Industry Association of America have argued that existing laws were insufficient to deal with the problem of "rogue sites" hosted overseas. They've been pushing bills like the Stop Online Piracy Act (SOPA) and the PROTECT IP Act as essential weapons in the fight.

But evidently, American law enforcement didn't get the memo that they were powerless against overseas file-sharing services. The day after the Internet's [historic protest](#) of SOPA and PIPA last week, the United States government unsealed an indictment against the people behind Megaupload, one of the largest sites on the Internet. Four senior Megaupload officials were arrested in New Zealand on Thursday, and officials seized millions of dollars in assets.

As we [reported Thursday](#), the FBI worked with authorities from New Zealand, Hong Kong, the Netherlands, Canada, Germany, the UK, and the Phillipines to catch the defendants and seize their assets. Law enforcement officials froze accounts at banks based in Singapore, Hong Kong, New Zealand, the Phillipines, and Germany. The feds also seized numerous servers, cars, pieces of artwork, televisions, and other assets. The list of seized assets in the indictment was six pages long.

So if the US government already has the power to arrest people and seize assets in places as far away as Germany, New Zealand, and the Phillipines, are the new enforcement powers sought by content companies even necessary? We posed that question to two people on opposite sides of the SOPA debate. Cara Duckworth is a spokeswoman for the Recording Industry Association of America. And Julian Sanchez is a [research fellow](#) at the Cato Institute and an occasional contributor to Ars Technica.

Beyond domain seizures

Duckworth told Ars that "under the 2008 PRO IP law, the federal government has the authority to shut down US-registered sites that are overwhelmingly dedicated to piracy—sites with a .com or .org domain. So Megaupload.com falls within US jurisdiction." She argued that new laws are needed to deal with sites at domain names not under US control, such as .hk or .ru.

But Sanchez argued that the seizure of the megaupload.com domain was a fairly minor part of the government's offensive against Megaupload. "If you're really interested in shutting down an illegal enterprise that is located overseas, shutting down one domain or another is a lot less effective than getting your hands on the people and subjecting them to penalties or jail," he said.

By itself, seizing megaupload.com would have simply caused the site to move to megaupload.tv or megaupload.ru, he said. It was the government's ability to lock up Kim Dotcom and his lieutenants, and to take their servers and freeze their bank accounts, that took the site down for good.

We pressed Duckworth on this point, and she suggested that the Megaupload operation may not work as a good model for counter-piracy operations in general. "Law enforcement cooperation for US criminal investigations may not go as far in certain countries such as Russia and China where they have lax copyright laws and a huge piracy problem," she said. In addition, countries like Russia will also not extradite their citizens.

It's true that many countries won't help the US with such investigations (note that the countries involved in investigating Megaupload are all traditional US allies), but sticking your rogue site in such a country comes with its own set of problems. Sanchez pointed out that Megaupload's business model depends on hosting large volumes of user-submitted material without scrutinizing their contents. That business model is unlikely to work well in repressive regimes. For example, he said, it's true that the Iranian government would be unlikely to help the FBI take down an Iranian version of Megaupload. However, he said, "I hear there was quite a lot of pornography on Megaupload."

A similar point applies to China. "If you try to create Megaupload in China, SOPA would be the least of your worries," Sanchez said. China requires websites based inside its Great Firewall to comply with a comprehensive censorship regime. It would be difficult to comply with those rules while maintaining Megaupload's anything-goes philosophy to file hosting.

For rogue site operators, the trick is to find a country with great Internet infrastructure, weak IP enforcement, and little censorship. But finding all three is tricky, as shown by the fact that Megaupload actually leased hundreds of servers within the US to provide a good experience to US residents despite the obvious risks this posed.

Diplomatic pressure

Moreover, while relations between the US and countries like China and Russia can be frosty, Sanchez said it's not true that the US government has no leverage there. For example, in 2007, the Russian government shut down [AllOfMP3](#), a notorious source of unauthorized copies of major-label music.

Sanchez pointed out that the Chinese government does conduct periodic crackdowns on traditional, physical piracy, often under pressure from the US. Shutting down a website like Megaupload would be a much easier job than clearing Chinese markets of merchants hawking bootleg DVDs.

"This is a familiar story," he told Ars. "The whole international intellectual property system has basically been operating on treaties, on diplomatic pressure. This is how we've been working internationally to have a stable IP system for decades. So I don't know why that suddenly doesn't work" for rogue sites.

Disclosure: I'm an adjunct scholar at the Cato Institute, an unpaid position.