Semester Project Proposal: Post-Mortem of Online Piracy Bills

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2012 was a landmark year for copyright legislation: SOPA and PIPA—and the resulting mobilization of the Internet community against these bills—brought issues of intellectual property enforcement back into the popular consciousness. Why did public opinion on these bills, which initially enjoyed broad bipartisan support, turn so dramatically in such a short period of time? In our semester project, we will retrospectively analyze the legal and technical factors that contributed to the failure of these online piracy bills. First, we will attempt to put the problem of Internet piracy into context, giving a broad overview of the development of modern copyright legislation, as well as a portrait of the market and legal environment that gave rise to SOPA/PIPA. We will review the tools currently available to rights holders and law enforcement, including the DMCA. Then, we will dissect the contents of the SOPA and PIPA bills from different perspectives, and analyze the potentially harmful effects they might have had on the Internet had they been passed, including implications for free speech, intermediary liability, cybersecurity, privacy, and web-based innovation at large. Based on these issues, the goal of this report will be to identify possible policy actions to address the piracy problem without harming the underlying structures of the open Internet and the civil liberties guaranteed by those structures.

To this end, we'll analyze the problem from both a business-oriented and a more policy-focused perspective. In the former, our report will cross-sectionally examine successful digital distribution platforms and how they have (and have not) managed to circumvent the issue of online piracy. We will review how user-generated-content sites such as YouTube, have navigated the market, looking at both statutory requirements and voluntary agreements between the technology platforms and content owners. We will also look at currated distribuitors. This will include case studies from the worlds of video gaming (e.g. Steam, Humble Indie Bundle), music (e.g. iTunes, Spotify), and television/film (e.g. Hulu, Netflix). We will attempt to answer the question why more content providers have not made larger investments in over-the-top television services. Identifying the key successes and failures of these services, we will attempt to translate these insights into concrete policy advic e. In the latter, we will investigate proposed policy mechanisms designed to address piracy (e.g. defunding advertisement networks, DNS changes), and assess their viability and effectiveness. We will also examine the suggestions laid out in OPEN, the bill proposed as an alternative to SOPA. To put this analysis into perspective, we will review the existing studies on the losses of the industry from pirated material. Moreover, we will attempt to categorize the losses due to piracy into a number of categories, so that we are better able to analyze which policy mechanism would be most effective at preventing piracy. This will require designing some sort of metric for evaluating the piracy-fighting effectiveness of each of these proposed solutions.

As we delve into our research and continue to develop this topic, there are a number of open questions worth exploring further. For one, we will do a comparative analysis of copyright law pre- and post-Internet, to see how notions of intellectual property and proper enforcement of those exclusive rights have changed over time. It would be interesting to see the evolution of the public discourse around SOPA and PIPA over time, particularly looking at the effects of the Internet blackout observed by Wikipedia and other websites. It might also be worthwhile to look at the lasting effect the debate over these bills has had on the Internet community's involvement in politics, looking at the more recent efforts to establish an Internet Defense League as well as the push to get Internet users registered to vote. It will also be worth investigating similar legislative efforts overseas; for example, international treaties such as ACTA. How are the supporters of SOPA and PIPA planning to move forward after public opinion turned againts them. What will be their next move?