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Forget SOPA, Hollywood Already Had a Field Day with the Justice System



BY ANDREW P.
BRIDGES
ON JANUARY 18,
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Copyright justice: Steal a subway ric song and pay \$150,000.

The controversial Stop Online Piracy PROTECT IP Act (PIPA) bills and the language to describe the problem th “theft of U.S. property” and “IP theft argue for sweeping new powers affe system, Internet search, online adve payments.

It’s a great example of the way Holly carefully in constructing its propaga and accurate word is “infringement,” the visceral responses that “theft” d exclusively to “theft.”

The trigger for this was Hollywood’s frustration several years ago that “file s After all, we learned in kindergarten that “sharing” is a good thing. The mo spokesperson, Jack Valenti, hated the term. He liked to compare a chocol Internet: if you share some of your cake, you’re not supposed to still have ; share a file you still have the file. Thus, he argued, it’s not “sharing” at all. ; distinguish between chocolate cake and information — which is what musi resembles Hollywood’s profound misunderstanding of the Internet today. C information while keeping it.

Over the last ten years I have watched Hollywood loyalists, undoubtedly re industry messaging directive, start talking exclusively about “theft” when th can tell who has signed on as a Hollywood partisan in the current debates l loaded term “theft” instead of the accurate term “infringement.” The facts ; references to “theft,” and that many government officials have changed the new, industrially correct language, reveal a lot about Hollywood’s capture o

When the big content companies talk about “IP theft” or “copyright theft,” what are they talking about? The essence of theft is *deprivation* – when someone steals your wallet and you don’t have it any longer. But if I like your haircut and get one just like yours, I have just copied it. Theft and copying are inherently different things.

But let’s stick with the “theft” concept for a while and see where Hollywood would “copyright theft” mean? How does one steal a copyright, which is just like the same way one can steal someone’s real estate ownership, by forging a deed or tricking someone into signing one. That’s pretty rare. Looking at it differently, it’s like stealing copyrighted work, say by shoplifting a book. But neither stealing copyright nor copying is the types of so-called IP “theft” that the pending bills try to stop. The bills try to stop copying (copying/downloading), transmissions (streaming), and other traditional forms called “infringement.”

Under the “theft” conception of copyright law, what, exactly, is the *deprivation* of illegal copies? It really boils down to just one thing: money. Copyright infringement is copyright theft – deprives the copyright holder of some of his or her expected money from the copyright.

What are other, similar kinds of “theft” by depriving someone of expected money? Not paying the agreed rent to a landlord is one. Parking in a parking space without paying is another. Jumping the turnstile to ride on a subway without paying the fare is a third. Failure of a studio or record label to pay artists or actors the promised contract is a fourth. But something tells me the studios and labels in the pending bills won’t go near that topic. The bills don’t include rogue studios and labels in the pending bills.

How do the civil damages or penalties for the different types of such “theft” compare? Failure to pay the expected money under a contract doesn’t trigger a penalty: contract law usually allows a party to recover the money she expected but not punitive damages or attorneys fees (attorneys fees specifically bargained to pay attorneys fees for a breach). Failure to pay rent to cure the default. Failure to put money in the parking meter prompts a fine. Failure to pay the \$2.50 subway fare results in a maximum fine of \$100.

Copyright “theft” is a very different story. Copyright infringement statutory damages can be as high as \$150,000 for infringement of a single work. Yes, a single work can be worth an iTunes download value of \$1. *A copyright holder can claim such statutory damages to prove a single penny of damage or loss.* Think such sky-high damages as in the RIAA’s case against single mother Jammie Thomas, a jury awarded \$1.5 million for infringement of 24 songs, with no proof that she had transmitted songs to others. The court found the award ridiculous and reduced the total award to \$54,000 – and the RIAA and MPA strenuously on appeal that the jury verdict should return to the original figure of \$1.5 million.

If we take copyright law’s maximum-penalty-to-price ratio as applied to an iTunes download and that same penalty-to-price ratio to the New York subway, the maximum per download and avoiding the \$2.50 fare would be \$375,000 instead of \$100. Copyright

good thing *under current law*. One could say it's a steal.

And the copyright industries haven't gotten their fill of penalties and enforcement. They are back in Washington today, enlisting an army of Senators and Congress members to give more power in the PIPA and SOPA bills to distort the domain name system (through secret amendments not yet released), to censor search results and online advertising, and to turn payment systems into enforcers.

They say that the legislation targets "foreign rogue sites," even though *current* foreign rogues such as Grokster and Kazaa, and even though there are experienced persons within the US, and even though the legislation regulates American companies in different ways. On five occasions I have asked the backers to identify any individual who has been sued in the US without being able to secure legal relief to which they are entitled. They have never given me a single example. They say that the legislation doesn't change current law, but it creates new laws that distort the principles of current copyright law.

The backers are trying to rush this legislation through without truly opening it to a wide variety of interests, including the public interest. Read up on these bills and contact your member of Congress to let them know whether you believe Hollywood needs

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Andrew P. Bridges

Andrew P. Bridges is a San Francisco/Silicon Valley lawyer at Fenwick & West who has handled many important high-stakes and cutting-edge cases for tech, Internet, and consumer-focused industries, starting with the defense of the first MP3 player (the Diamond Rio PMP 300), which the RIAA tried to ban as a "piracy" device.

25 THOUGHTS ON "FORGET SOPA, HOLLYWOOD ALREADY HAD A FIELD DAY WITH THE JUSTICE SYSTEM"



Michael Arrington

on **January 18, 2012 at 8:45 am** said:

Great post. Keep fighting, Andrew.



Blake J. Graham

on **January 18, 2012 at 8:49 am** said:

Sound exploration of the language that tilts the scales.



Steve Rozanski (@SteveRozanski)

on **January 18, 2012 at 8:52 am** said:

Did you steal that image?

Pingback: [Urheberrechtsverletzungen haben das teuerste Strafe-Preis-Verhältnis von allen Arten von 'Diebstahl'](#)



Stu Rees

on **January 18, 2012 at 9:31 am** said:

We have five new SOPA cartoons at <http://www.stus.com/techwars> that anyone can use to raise awareness. The execution cartoon would have been a good choice for this article.



Chris Rindone (@chrisrindone)

on **January 18, 2012 at 10:46 am** said:

The labels/studios have only themselves to blame. They missed out on the greatest distribution medium ever, and they'd rather sue than make an honest buck by selling their works online at a reasonable price (see iTunes). Co-sponsors of both SOPA and PIPA bills have already withdrawn...even congress is starting to wake up to what a farce this really is.

Pingback: [Beyond SOPA: Let's Iterate Politics | PandoDaily](#)



Corbin Smith

on **January 18, 2012 at 12:19 pm** said:

Great post, Andrew. Thanks for putting it out there so clearly...



irritant

on **January 18, 2012 at 1:13 pm** said:

It's worth noting that it's not just "rogue studios" that swindle artists out of promised or expected royalties and other payments. It's in the DNA of the entertainment industry to screw the primary producers at every opportunity. Of course a lucky few end up making more money than they know what to do with, but for every Jay-Z there are thousands of forgotten chumps whose first or second albums got stuck in the web of studio ownership, never to see the light of day, effectively killing their careers. I often wonder how much the average music industry "star" really takes home. My guess is not much more than your run of the mill office worker, and significantly less than those with advanced degrees and/or lots of experience.



harvey

on **January 18, 2012 at 2:39 pm** said:

well done andrew. nice to see your voice in the interwebs.



SteveG

on **January 18, 2012 at 3:48 pm** said:

Many of the old school content providers have seen the writing on the wall and all of this is simply a delaying tactic to allow

them to grab as much cash as they can while they can. As the old men get replaced with people who grew up never knowing how to record music off of the radio we will finally see real change happen and those industries will learn and explore new territory, along with new revenue models.

Too bad all of this posturing has kept them from leading the revolution through things like iTunes, Pandora, Spotify, Hulu and a host of others. When they finally realize that they can't stop it and need to evolve, they will be on the endangered species list.



Jeremy

on **January 18, 2012 at 4:10 pm** said:

Agreed. Legislators need to take a step back and ask themselves what problem they're trying to solve.

"Piracy" Oh, buccaneers off the coast of Somalia is it? (no, not 'piracy')

"Theft" Oh, ninja infiltrates MGM studios and makes off with priceless master reels? (that incidentally will never see the light of day, are disintegrating in the can and will not reach the age of public domain for decades)

"We're not making as much money" Oh, the film industry is shrinking because box offices are closing all over the country? (revenues did finally actually go down this year after rising since 1995, but probably more because of stupid 3d movies, high prices, and big cheap tvs)

"We're not making as much money as we imagine" Oh, you dreamed up a number that you wish would come out of thin air, despite not offering any new services or tapping new markets created by innovation like you've been forced to do in the past when your attempts to block progress through litigation and legislation failed. (the player piano, the radio, the television, the photocopier, the phonograph, cable tv, the vcr, the mp3 player, the DVR)

MAN UP and start adapting to the market instead of whining about how your legacy gatekeeper status is fading into the 20th century.



nilayp

on **January 20, 2012 at 11:39 am** said:

The US constitution authorizes copyright with one sentence:
"The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

The keyword there is “limited”.

According to Wikipedia, a copyright endures for 70 years AFTER the death of the author. For corporations, it endures for 120 years after the creation of the work or 95 years after first publication, whichever is shorter. In what world are these durations “limited” ? In fact, copyright will last forever. Nothing of note created after 1923 is in the public domain. When these latest durations threaten them, it will continue to be extended.

Hollywood wants it all ways. Copyright that lasts forever, complete control of enforcement and draconian punishments.



Ed

on [January 20, 2012 at 4:09 pm](#) said:

Andrew, in case you didn't catch it, Jon Stewart did a hilarious bit on SOPA.

<http://www.thedailyshow.com/watch/wed-january-18-2012/ko-computer>

Pingback: [Hollywood and the Justice System – Matt Mullenweg](#)

Pingback: [Matt: Hollywood and the Justice System | WordPress Planet](#)

Pingback: [Killing Hollywood | Social Proof](#)

Pingback: [Two interesting blog postings on #SOPA, Hollywood and the legal system | Thoughts and Rantings](#)



Gary

on [January 21, 2012 at 4:17 pm](#) said:

Great article. Thanks Andrew. It's going to be very interesting how the whole SOPA and PIPA saga gets settled.

Pingback: [Modern Entertainment Industry Logic « Rube Reality](#)

Pingback: [Unless You Are A Lawyer, Please Don't Comment On This Post | PandoDaily](#)

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Pingback: [How Does The Penalty For 'Content Theft' Match Up With Similar 'Crimes'? « waweru.net](#)

Pingback: [Is copying Theft ??? | knowallstuffs.com](#)



Seegras

on **February 14, 2012 at 2:08 am** said:

I've been arguing for years that the correct german term is "schwarzkopieren", and I think it was used in the nineties. The term happens to be analogous to "schwarzfahren", which means "riding without paying the fare".