

2013

The Public Policy Process and Analysis of the Stop Online Piracy Act

Paul Palamattam

Follow this and additional works at: <https://scholarship.shu.edu/pa>



Part of the [Political Science Commons](#)

Recommended Citation

Palamattam, Paul (2013) "The Public Policy Process and Analysis of the Stop Online Piracy Act," *Political Analysis*: Vol. 15 , Article 4.
Available at: <https://scholarship.shu.edu/pa/vol15/iss1/4>

The Public Policy Process and Analysis of the Stop Online Piracy Act

Paul Palamattam

Paul "Chip" Palamattam is an MPA candidate specializing in Leadership, Governance, and Policy, and an MA Diplomacy and International Relations candidate specializing in Global Negotiation and Conflict Management. He is currently the Graduate Assistant for the MPA program, the Executive Editor for the Whitehead Journal, and will be a summer intern for the NYC Mayor's Office for International Affairs.

H.R. 3261, the Stop Online Piracy Act (SOPA) was referred to the House Judiciary Committee on October 26th, 2011 by its Chairman, Congressman Lamar Smith (R-TX). The bill aimed to empower the U.S. Attorney General's office and American law enforcement to combat foreign websites illegally spreading copyrighted intellectual property and counterfeit goods (Smith). A similar bill called the PROTECT IP Act (PIPA) was introduced months earlier to the U.S. Senate on May 12th, 2011 by Senator Patrick Leahy (D-VT) and

referred to the Senate Judiciary Committee (Leahy). But in the wake of a massive online protest on January 20, 2012 that included the shutdown of multiple websites, Senate Majority Leader Harry Reid (D-NV) and Congressman Smith announced that further consideration of the piracy bills would be postponed (Weisman).

SOPA had the wide support of organizations (such as Time Warner, Viacom, and the Motion Picture Association of America) that depend on copyright

law to protect and profit from the property they create (Chozick). Supporters often argue that passage of SOPA and PIPA would give law enforcement the necessary tools to enforce copyright laws against foreign websites. Opponents include Google, Wikipedia, the ACLU, and Kaspersky Lab, who fear the legislation infringes on free speech and would essentially censor the Internet. Others oppose the bill simply because of the technical difficulty associated with ‘shutting down the Internet’. The bill included mandates to shut down copyright-infringing web sites by changing the Domain Name System in a way that would allow authorities to blacklist certain domains and prevent US IP addresses from accessing them (McCullagh). The two bills quickly became a hot button issue in the American political landscape, and they present an interesting case study of the political policy process. This paper will examine the rhetoric used to frame the issue of Internet piracy

and privacy, describe two theories of the policy process (elite theory and political systems theory) and determine which does the better job of explaining why SOPA’s discussion was postponed in the House of Representatives.

Support for SOPA

SOPA aims to prevent Internet service providers (ISPs) and search engines from conducting business with sites found to violate copyright laws. The bill has significant support because of the immense cost of online piracy, with the Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA) claiming this issue costs their respective industries billions of dollars a year globally (Vieria). In front of reporters on Capitol Hill in April of 2011, Chairman Leahy and Chairman Smith echoed this public value of bolstering the economy. Smith stated that these “intellectual

property industries (IP industries) provide an estimated 19 million jobs to American workers” and Leahy stated that piracy “results in hundreds of thousands of lost jobs”. Supporters often point to the poor state of the American economy, and say SOPA is an essential part of improving this problem and providing jobs to American workers.

Supporters also use the public value of fairness in advocating for the passage of SOPA. In the aforementioned statement, Smith and Leahy used words like “cheat”, “theft”, and “crime” to frame the issue as one that was unfair not only to IP industries, but the American people as a whole. Such language makes the argument a moral one, where IP industries are unfairly denied the benefits of their productions. This in turn reduces the incentive of these industries to develop and improve upon the intellectual services they provide to the world.

Opponents of SOPA

Much of the opposition to SOPA is not directed at the bill’s general idea but at its broad scope and poorly constructed enforcement mechanisms. Congressman Darrell Issa (R-CA) was quoted by Politico saying that Congress is “realizing there are so many unintended consequences”, that there is “a very broad coalition from far left to far right who realize this will hurt innovation”, and that the bill is “way too extreme” (Martinez). Interestingly this shows that both supporters and opponents feel there is a threat to innovation and are appealing to the American value of entrepreneurship. Nine Democrats, including House Minority Leader Nancy Pelosi (D-CA), and Republican presidential hopeful Congressman Ron Paul (R-TX), signed a letter to Chairman Smith stating that SOPA’s passage “will be an explosion of innovation-killing lawsuits and litigation” (Esho).

Jeff Silva, an analyst with Medley Global Advisors, also said that the bill was not politically feasible because of the cross-party divisions in the debate (Martinez). Legislators see a potential benefit in avoiding the issue and possibly benching the bill until after the 2012 election. Bertram Levine comments that legislators are incredibly concerned with the need to be reelected (Levine, Ch. 2) and of what their constituents think of their policy, an issue even more important for members of the House given their short terms. In short, opponents of SOPA accept that online piracy is a valid concern and appeal to the values of freedom, entrepreneurship, and political feasibility.

Internet Blackout

The turning point of the SOPA's postponement was the Internet blackout over the winter of 2011-2012. Over 115,000 websites

joined in a coordinated protest of the legislation to raise public awareness of a previously unknown issue. The popular user-moderated encyclopedia Wikipedia, 'went dark' by removing access to its articles for a day, as did Reddit, another well-known site. On the same day, the most popular search engine in the world, Google, placed a black frame over its logo and linked to information about why the company opposed SOPA. Links to petitions and forms encouraging citizens to contact their elected officials spread throughout numerous websites, and legislators began to change their position on the issue (Wortham). SOPA was initially sponsored by 12 Representatives, but by January 18th, the day of the mass coordinated blackout, 3 of the original 12 withdrew their support. Of the 23 total cosponsors of the bill, all 10 that withdrew support did so in the wake of the public protest and blackout (SOPA Bill Summary & Status).

Political Analysis

This coordinated grassroots effort was the major linchpin in the policy process surrounding SOPA. Senate Majority Leader Reid announced after the blackout that the PIPA vote would be postponed and gave no indication of when it might be reexamined. Congressman Smith, sponsor of SOPA, also announced that further voting on his bill would be postponed, but added that he remained committed to stopping online piracy (Pepitone). Congressman Issa directly connected the blackout to the bills' shelving saying "this unprecedented effort has turned the tide against a backroom lobbying effort" (Issa).

The Failures of Elite Theory in Explaining SOPA

Elite theory contends that public policy is determined by a handful of governing elites that have different values than the general public and the nation's elected officials. These elites can be very

diverse in their opinion and occupations, but the common thread is that they decide bills before they are even written (Kraft 67-68). One method the elites have of ensuring their influence is heard is through the use of campaign contributions. These contributions do not necessarily buy the passage or defeat of a bill, but often at least buy access to legislators or their senior staff. Appendix A examines campaign contributions from relevant industries to Congressmen Smith and Issa. Proponents of elite theory would likely point to the entertainment and recording industry executives and Congressman Issa's statement mentioning the 'backroom lobbying effort' as evidence of elite influence on the SOPA debate.

However, the failure of elite theory was illustrated by the clear public demonstrations that occurred during the policy legitimation phase of the policy process. Policy legitimation refers to

the drumming up of political support for a given policy, and elite theory argues that elites have already made the decisions. While it is possible that SOPA is an outlier or fluke, the grassroots movement of the non-elite marked the turning point against SOPA. The views, values, and preferences of the general public shaped the development of public policy more than the views, values, and preferences of the elite (composed of entertainment industry executives, the IP industry, etc.), in stark opposition to the basic tenets of elite theory. It is possible that the elites in control recognized the political impossibility of the legislation in an election year climate, and suggested the bill be shelved until a more opportune time. But even that argument demonstrates that the elites were forced to respond to the will of ordinary people.

The Merits of Political Systems Theory

Political systems theory stresses the public environment's intersection with and effect on the political system. The system responds to demands from individuals and groups seeking to maximize their own benefit and further their own interest. Legislators are concerned with approval from their constituencies, and so are generally responsive to what their constituency claims is most important. The electorate demonstrates its support when the citizens respect the system and continue cooperation. As the political environment changes, the public responds with new demands and expectations (Kraft, 71-72).

When SOPA was introduced in October 2011, the demands of the public were focused elsewhere (the economy, the presidential election, and more). However, as awareness of the purported danger of the bill spread, more and more people made

Political Analysis

stopping SOPA one of their demands, culminating in the internet blackout. Washington legislators realized that the demands of the public environment were enough to change the system from general support of SOPA, to stark opposition and a real fear of losing the vote. The public made its lack of support for SOPA known through the shutdown of websites, letters and phone calls to legislative offices, at least two demonstrations in major cities, mass social networking, and more. Legislators quickly realized that the public would not respect the system if SOPA passed, and decided to shelve the bill despite interest group pressures from major companies. It is quite clear that the political systems theory has strong explanatory power for SOPA's ultimate fate.

Conclusion

Internet piracy and privacy are issues that have not been at the

top of the collective public mind and have been characterized by low-conflict, and low-salience. The most recent high-profile piracy case was over a decade ago in 2002, when Napster was shut down for allowing users to download copyrighted content. However, the Internet blackout, advocacy of influential members of Congress such as Nancy Pelosi and Darrell Issa, and the grassroots public outcry all shifted the political climate and forced Washington legislators to take a step back and reexamine the issue.

SOPA advocates (such as legislators, lobbyists and elites) initially thought their bill would be politically feasible, but realized in the wake of the blackout that they should reassess the election year climate and policy alternatives. This proves that the political systems framework, which focuses on how the institutions of government respond to public opinion and other pressures (in this case, expressed

partially through the internet blackout), is an excellent model that explains the indefinite postponement of the Stop Online Piracy Act. While elite theory has some merit it cannot account for the important grassroots opposition to the bill.

It is clear that SOPA advocates have now regrouped and are currently attempting to pass a similar bill titled the Cyber Intelligence Sharing and Protection Act (CISPA). The proponents, opponents and issues framing of CISPA are remarkably similar to that of SOPA. The American Civil Liberties Union is once again opposing IP legislation because of the dangers of breaching online privacy, while intellectual property industries are emphasizing the moral need to protect U.S. intellectual products and American jobs. A promising future research area would be to compare and contrast CISPA's passage through the political process with SOPA/PIPA.

There is already an interesting shift in the rhetoric advocating for CISPA from a focus on online piracy to an emphasis on the threat of cyber attacks from abroad. Time will tell if this change in language is enough to prevent the level of public opposition surrounding SOPA/PIPA.

Appendix A

Campaign Contributions to Congressman Lamar Smith (pro-SOPA) and Congressman Darrell Issa (anti-SOPA)

With respect to the concerns of legislators in getting reelected, money certainly comes to mind. The influence of the elite interest groups, in this case the immense wealth of the Hollywood/music industry (pro-SOPA), and the not inconsequential wealth of the internet industry (anti-SOPA) it could be beneficial to examine the campaign contributions of both sides to legislators. Given

Political Analysis

that this paper focused most on the pro-stance of Congressman Smith and the anti-stance of Congressman Issa in examining statements by legislators, below is a description of

campaign contributions divided by year based on a division between those companies affiliated with the Computer/Internet industry and the Movies/TV/Music industry.

Congressman Lamar Smith

<http://projects.propublica.org/sopa/S000583>

Industry	Election Cycle	Amount
Computers/Internet	2010	\$47,250
	2008	\$59,561
Movies/TV/Music	2010	\$90,850
	2008	\$60,550

Congressman Darrell Issa

<http://projects.propublica.org/sopa/I000056>

Industry	Election Cycle	Amount
Computers/Internet	2010	\$60,324
	2008	\$27,125
Movies/TV/Music	2010	\$33,300
	2008	\$32,300

While the contributions over the two cycles from the Computers/Internet industry are not as striking, the stark difference between the Movies/TV/Music industries is telling. Congressman Smith received far more from the industry than Congressman Issa, and if money buys influence, perhaps this could be one reason why Congressman Issa feels more comfortable standing in opposition to the industry. His campaign coffers would not be as depleted by opposing the industry's wills than those of Congressman Smith. It is also worth noting that the TV/Movies/Music industry is the number one industry in terms of monetary support to Congressman Smith (Lamar Smith: Campaign Finance/Money).