



A NEW APPROACH TO FOREIGN COMMERCIAL-SCALE INFRINGEMENT

The best way to combat infringement overseas is to improve the legitimacy of copyright law through the support of balanced copyright frameworks similar to that of the United States.

The servers hosting large-scale sites with infringing content are located in developing countries where copyrights are difficult to enforce. SOPA (Stop Online Piracy Act) and PIPA (Protect IP ACT) attempted to address this problem by requiring U.S. service providers to block U.S. consumers from accessing this infringing content. This legislation failed ten years ago because it would have been ineffective and it raised serious constitutional concerns.

The other approach to offshore infringing activity pursued by the U.S. government has been to use the threat of trade sanctions to force countries to adopt more stringent copyright laws and to more systematically enforce them. This approach has had only limited success because copyright has little legitimacy in developing economies. Copyright laws are viewed as foreign (often colonial) impositions that do not respond to local needs. In a country where a college textbook costs as much as a family's monthly income, one cannot expect the general population—or the government—to respect copyright. Further, the U.S. government's argument that stronger copyright will encourage the growth of domestic creative industries rings hollow when 90 percent of the license fees paid to collective management organization are remitted to large multimedia corporations in the global north.

Moreover, in most developing countries, the copyright laws are out of date and do not accommodate the use of digital technology to promote economic development, particularly through improved access to education. When the countries do try to update their laws, any effort to adopt the limitations and exceptions present in the copyright laws of developed countries, such as fair use, is met with fierce opposition from U.S. copyright interests and sometimes hostility from the U.S. government. Local stakeholders are disappointed by what they see as the hypocrisy of the U.S. copyright industries and government, which further undermines the legitimacy of copyright and promotes infringing activity.

In short, to date, the U.S. approach has been all stick and no carrot. The U.S. government has advocated strong enforcement provisions while discouraging balancing exceptions and limitations that would accelerate economic development through education. Going forward, U.S. government representatives should advocate in other countries for adoption of well-crafted exceptions just as strongly as they call for stronger enforcement mechanisms. Modern copyright laws that reflect the needs of the entire population will gain greater acceptance, leading to more

voluntary compliance and more vigorous efforts by local law enforcement to pursue commercial-scale infringement.¹

¹ Approaches such as site-blocking should not be adopted because they have been proven to be ineffective and over-inclusive. Thus, they have a negative impact on lawful activity while having a minimal impact on infringing activity.