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Opinion: Good intentions and tech apathy aggravate Internet risks

By Ed Black
Special to the Mercury News
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Every significant innovation in information technology -- from the photocopier to the VCR, DVR, mp3 player and YouTube -- brings legal or political responses aimed at restricting technology to protect government-granted copyright entitlements from disruptive new innovations.

Increasingly, the Internet itself is cast as the villain.

Such is the case with the Hollywood-backed Protect IP Act (PIPA, S. 968) introduced in the Senate this month. While its stated goal is to blacklist non-U.S. websites "dedicated to infringing activities," the bill is plagued by conceptual and practical flaws that create enforcement nightmares and threaten basic civil liberties and the very technical foundations of the Internet.

As a communications and technology association that represents rights holders as well as Internet companies, we recognize the value of encouraging creativity through copyrights.

But this proposal is a nuclear option that would break the Internet in pursuit of curbing infringement. Companies need to pay attention and get involved.

Like its predecessor introduced last year by Sen. Patrick Leahy, D-Vt., PIPA would allow rights holders to report sites for inclusion on U.S. government blacklists.

The Justice Department could then direct credit card companies, Internet access providers, ad networks and domain name servers to

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stop doing business with these blacklisted sites.

The new bill would go further by

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demanding that search engines eliminate allegedly offending sites from search results.

As a longtime member of a State Department panel that recognizes information freedom as a human rights issue, I am especially concerned about Internet filtering and censorship even for seemingly noble reasons. The biggest threat to our Internet now is from PIPA and other measures that set dangerous, sweeping legal precedents while battling legitimate problems like infringement.

Civil libertarians previously worried about the Leahy bill's lack of due process should have even greater concerns now. Like Chinese authorities who praise their media for "restraint" when they censor information about democracy, PIPA rewards private-sector censorship by immunizing companies that voluntarily "disappear" or blacklist sites that may contain or point to infringing content.

What's more, PIPA allows plaintiffs' lawyers to tack on their own sheriff's badge by creating a private cause of action under which they can force other businesses to collaborate in blacklisting.

It is baffling that the Chamber of Commerce, which has opposed legislation inviting litigation bonanzas, supports a provision that will invite foreign entities to sue our businesses into blacklisting Internet sites.

All this will be ineffective at curbing infringement. Just as tearing a page out of the phone book doesn't disconnect people's phones, blacklisting Internet domain names doesn't block websites. Those who know the IP address or tweak their Web browsers can easily access blacklisted sites.

The government's track record on this is not encouraging. So far, U.S. Immigration and Customs Enforcement has had little success interdicting domestic piracy online, while inflicting collateral damage on legitimate websites. Yet instead of resisting efforts to co-opt the private sector into government censorship abroad, we now risk institutionalizing it at home.

The First Amendment reflects our founders' conviction that governments shouldn't be in the business of deciding who can and can't stand on a soapbox. This principle applies at home and abroad. When Egypt shut down the Internet to silence political dissent, the U.S. rightly voiced opposition. If we endorse censorship here, we export a technological model for any government to crackdown on any Internet content it dislikes.

We strongly urge companies that may not be actively involved in Washington policy issues to realize the profound change this legislation will impose on an open Internet and to help stop this legislation.

ED BLACK is president and CEO of the Computer & Communications Industry Association. He wrote this for this newspaper.

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