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The Contested Terrains of Digital Democracy, Open Source Innovation, and Intellectual Property in the USA: The PIPA and SOPA Case

In the last quarter of 2011, a series of bills were introduced into the US Representative House and the Senate respectively called The Stop Online Piracy Act (SOPA) and the Protect Intellectual Property Act (PIPA). The legislation was designed to stop copyright infringement and counterfeiting goods. It enforced laws and court orders against illegal downloading and streaming of TV shows and movies online. The bills received bipartisan support and were backed by many media companies such as Hollywood majors, the U.S. Chamber of Commerce and AFL-CIO. Large-scale corporations, labor groups and numerous trade organizations had intensely lobbied in favor of harder forms of legal regulations against rebellious digital activists, libertarian web founders and aggressive hackers. Disciplining foreign “rogue websites” registered overseas and shutting down sites abusing copyright was also seen as a strategic economic target for many domestic business enterprises. Such process of law making, a standard practice of representative democracy and pluralist deliberation between established constituencies, also seemed legitimate and constitutionally sound (cf. copyright clause in the Constitution). Protecting the intellectual-property market generated by many industries meant keeping jobs and revenues and reducing trade deficits.

However, such legislation that apparently merged national and special interests against piracy was strongly opposed. It has been provisionally turned down thanks to a very effective contestation rallying a coalition of web activists, venture capitalists of the Silicon Valley, start-up entrepreneurs and technology leaders that have birthed businesses like Google, Facebook, eBay. The bills was considered as an emanation of “illiberal democracy” that should be contested in the name of civil liberties, the democratic claim for free access and use of internet and the centrality of open source innovation in the capitalist economic model. In defiance of excessive regulation, opponents formed larger “civic society alliances” and counter forces so as to seize the momentum in the debate and reverse the balance of political forces. 10,000 websites and prominent players like Wikipedia protested with blackouts. A people powered movement of 7 million people signed a Google.com petition opposing those controversial bills. A new form of “stakeholder democracy” based on a “counter-democracy” principle and the networked use of common resources has emerged. The internet and web sites are seen as democratic open “commons”, a particular space and institutional arrangement for governing the use and disposition of resources in which no single person or entity has exclusive control. As a consequence, collaborative platforms, social media foster participation, crowdsourcing and the formation of powerful electronic communities. Digital and network organizations appear as a new democratic vector for the co-construction of the law through dissent, protest and contest, extending democracy beyond the political system and the voting process.

The Sopa and PIPA bills provide a good illustration of the important role of contestation and networked participation in the construction of the democratic process. It reveals the test of political strength of net users but also the coming of age of a web tech industry that both use and exploit the internet commons. In an age of distrust and institutional fragmentation, indirect powers disseminated in society but agglomerated thanks to grassroots internet activists and high tech entrepreneurs have allowed the rise of an effective countervailing power and political force. This new political economy of the “commons” may give birth to a “netocracy” that favors civil liberties, contestation, innovation and entrepreneurship but clashes with a “corpocracy” that is intent on defending proprietary rights and traditional forms of representative democracy. The interplay between representative democracy and deliberative democracy appears as a joint practice that opposes and unites the two visions and practices.

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