



Site Blocking Myths v Facts

What You Need to Know About How Site Blocking Fails To Work

Myth: The United States has a major piracy problem.

Fact: Through the DMCA's notice-and-takedown regime, the United States offers a cooperative and effective solution to combat piracy online.¹

The DMCA acts as a neutral baseline to ensure creators have the ability to find infringing content and notice ISPs to have it removed. In addition, certain companies have employed what is known as "DMCA-Plus" solutions to combating piracy online. YouTube, for example, built ContentID to scan content uploaded on its website to assess whether or not it infringes on another creators' copyright.² Between notice and takedown and increased access to legitimate content on platforms like Netflix, Hulu and Spotify, creative industries are thriving in the new digital economy.³

Myth: Website seizure and blocking is an effective solution to piracy.

Fact: Domain name service (DNS) seizure and blocking on-its-face is inoperable and remarkably easy to circumvent.

Seizing a domain name orders the registrar or registry to revoke the website's domain name registration and issue blocking orders to an ISP to not respond to any user request to look up the IP address associated with the common language name. Savvy infringers can bypass this in a number of ways: using the numerical address, accessing a plug-in, in addition to other creative solutions. In the case of domain name blocking, a website's users can easily switch the DNS-lookup provider to avoid the blocking order or in the case of the less-savvy, software tools can be created to bypass the block. Simply put, neither seizing nor blocking a website removes the infringing content from the internet, it just cannot be easily as reached.⁴

Myth: Site blocking is easy to implement.

Fact: As Americans demand privacy online, companies have listened and many have implemented safeguards, such as fully encrypted browsers and platforms.

Mozilla Firefox is rolling out encrypted DNS over HTTPS (DoH) by default for United States based users.⁵ Facebook is looking to a similar method,⁶ and Google Chrome offers users the ability to encrypt their search.⁷

Myth: Site blocking will not impact legitimate sites.

Fact: Site blocks and seizures have led to innocent websites getting impacted.

¹ <https://www.law.cornell.edu/uscode/text/17/512>

² <https://www.theverge.com/2016/7/13/12165194/youtube-content-id-2-billion-paid>

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<https://www.ccianet.org/2019/04/sky-is-rising-report-shows-entertainment-industry-growing-in-revenue-more-diverse-offerings-online-industry-helping-fuel-it/>

⁴ <https://cdt.org/wp-content/uploads/pdfs/Perils-DNS-blocking.pdf>

⁵ <https://blog.mozilla.org/blog/2020/02/25/firefox-continues-push-to-bring-dns-over-https-by-default-for-us-users/>

⁶ <https://engineering.fb.com/security/dns-over-tls/>

⁷ <https://www.maketecheasier.com/enable-dns-over-https-various-browsers/>

While rightsholders would like you to believe they have a perfect record, a recent study found that as much as a third of notices of copyright infringement are in error.⁸ When Customs Enforcement seized sites in the past, multiple businesses were destroyed without due process that were later found completely innocent.⁹ Our system is designed for courts to provide due process to those who an alleged infringement has been levied against to be able to defend themselves before something as big as their website is blocked or seized. All blocking systems to date have failed to provide the due process at the cornerstone of our democracy.

Myth: Europeans have embraced website seizure and site blocking.

Fact: States within the European Union are already protesting.

34 countries require internet service providers (ISPs) to seize or block websites which may be hosting infringing content online.¹⁰ The majority of the countries employing this method are due to the recent passage of Article 17. While Directives may be binding on each member state, each state must implement the legislation, thus creating a patchwork of laws for companies and users to follow. As of May 2019, Poland is seeking an action for annulment in the Court of Justice of the European Union due to the likely effect of censorship, which is expressly forbidden in the Polish constitution and EU treaties.¹¹

Myth: There is U.S. support for website seizure and blocking.

Fact: Website blocking is highly controversial in the U.S., most recently in 2011-2012 with the introductions of Stop Online Piracy Act (SOPA) and the PROTECT IP Act (PIPA).

The bills were considered so onerous that platforms like Reddit, Creative Commons, Google Search, and many others went dark in protest. The legislation also caused physical protests in cities like Seattle, New York, and San Francisco, and eventually Members of Congress withdrew their sponsorship due to backlash.¹² European policymakers' decision to move the controversial Directive was not simply to combat infringing content online, but to disadvantage "big California companies" and favor European companies.¹³ Today, if the United States were to seek a similar solution again, it not only will decimate speech online, but deplete American dominance in the international market.

⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2755628

⁹ <https://www.eff.org/deeplinks/2016/03/american-bridal-and-prom-industry-association-slinks-away-after-being-called-out>, <https://arstechnica.com/tech-policy/2011/03/ars-interviews-rep-zoe-lofgren/>, <https://www.techdirt.com/blog/?tag=dajaz1>

¹⁰ <https://thehill.com/blogs/congress-blog/politics/486704-breaking-the-rhetorical-stalemate-not-the-internet>

¹¹

<https://www.theverge.com/2019/5/25/18639963/poland-european-union-copyright-directive-filed-complaint-court-of-justice>

¹²

<https://www.forbes.com/sites/andygreenberg/2012/01/18/amidst-sopa-blackout-senate-copyright-bill-loses-a-key-supporter/#243bb29d7cc2>

¹³ <https://www.judiciary.senate.gov/imo/media/doc/Schruers%20Testimony.pdf>