Insight

A Question of Process: SOPA vs. Net Neutrality

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Major websites blacked themselves out. Twitter and Facebook feeds were inundated with links to fact sheets and petitions. And if you were one of the poor souls charged with answering congressional phone lines, you have my deepest sympathies. It all makes sense, though. Regulation, especially Internet regulation, is serious business.

Wednesday's righteous, massive, and uniquely viral uproar over the "Stop Online Piracy Act" (SOPA) and its Senate companion, "Protect IP Act," (PIPA) marked a fairly new development in the politics of the Internet. Serious and well-founded questions regarding the intended and unintended consequences of the two bills spurred a surprisingly broad campaign that ultimately drove multiple legislators to shift their positions. It was the democratic process at its core.

Interestingly enough, only a few short months ago, another measure seeking to regulate the Internet came on the books. Back in September 2011, the Federal Communications Commission published its final rule on "net neutrality." The actual vote on the rule took place back in December 2010. With far less fanfare than this recent episode, three out of five unelected government officials made that decision. It was the bureaucratic process at its core.

Granted, SOPA and net neutrality deal with separate issues and concern disparate interests. Yet they both establish their own unprecedented regulatory apparatus over the Internet. Such decisions require significant input. SOPA received it; net neutrality did not. SOPA is

still stuck, mortally wounded, in committee; net neutrality is the law of the land.

The contrast in process stands as a stark example of how major regulatory measures are enacted without serious public input or legislative oversight. The only attempt at legislative action on net neutrality was a failed Congressional Review Act (CRA) resolution of disapproval. It should be noted, the CRA is generally the only legislative recourse for bureaucratic rules and has been successfully invoked only once in its history.

Some argue that further legislative oversight of rulemaking will bring nefarious "special interests" into the fold. The recent SOPA episode saw "special," corporate entities such as Google aligning with public interests to affect change. If anything, the sheltered government agency approach often favors narrowly interested parties that bring overwhelming resources and expertise to the table.

The past week demonstrated a major shift in political awareness surrounding the Internet. Hopefully it presages a major shift in our regulatory process.