

THE VERGE

Project Goliath: Inside Hollywood's secret war against Google

SOPA was just the beginning

By [Russell Brandom](#) on December 12, 2014 12:59 pm [✉ Email](#) [🐦 @russellbrandom](#)



(Spencer Platt/Getty Images)

What is
"Goliath"
and why
are

Hollywood's most powerful lawyers working to kill it?

In dozens of recently leaked emails from the Sony hack, lawyers from the MPAA and six major studios talk about "Goliath" as their most powerful and politically relevant adversary in the fight against online piracy. They speak of "the problems created by Goliath," and worry "what Goliath could do if it went on the attack." Together they mount a multi-year effort to "respond to / rebut Goliath's public advocacy" and "amplify negative Goliath news." And while it's hard to say for sure, significant evidence suggests that the studio efforts may be directed against Google.

At the beginning of this year, the MPAA and six studios — Universal, Sony, Fox, Paramount, Warner Bros., and Disney — joined together to begin a new campaign against piracy on the web. A January 25th email lays out a series of legally and technically ambitious new tools, including new measures that would block infringing sites from reaching customers of many major ISPs. Documents reviewed by *The Verge* detail the beginning of a new plan to attack piracy after the federal SOPA efforts failed by working with state attorneys general and major ISPs like Comcast to expand court power over the way data is served. If successful, the result would fundamentally alter

the open nature of the internet.

THE FOLLOWING **PREVIEW** HAS BEEN APPROVED TO
BREAK THE INTERNET & STOP PIRACY
BY THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
(AND MOST MAJOR STUDIOS)

THE FILM ADVERTISED, **GOLIATH**, HAS BEEN RATED



"We start from the premise that site blocking is a means to an end," says MPAA general counsel Steven Fabrizio. "There may be other equally effective measures ISPs can take, and that they might be more willing to take voluntarily." According to the email, the group has retained its own technical experts and is working with Comcast (which owns Universal) to develop techniques for blocking or identifying illegally shared files in transit.

That strategy also involves significant political risks. "In the post-SOPA world, we need to consider the extent to which a strategy presents

Goliath Timeline

All emphasis below ours

October 17, 2013:

Torrent index site Isohunt **shuts down** after losing a \$110 million legal battle with MPAA. The MPAA effort was led by lawyer Steven Fabrizio.

November 14, 2013:

a risk of a public relations backlash," Fabrizio continues, "whether a strategy might invigorate and galvanize the anti-copyright forces we saw in the SOPA debates." SOPA, also known as the Stop Online Piracy Act, proposed ambitious new site-blocking measures in 2011, but was ultimately defeated by coordinated outcry from web companies and their users. The new emails suggest Hollywood hasn't given up on the idea. "We have been exploring theories under the All Writs Acts, which, unlike DMCA 512(j), would allow us to obtain court orders requiring site blocking without first having to sue and prove the target ISPs are liable for copyright infringement," one email reads.

The only thing standing in their way? Goliath.

The MPAA's venture is referred to over and over as "Project Goliath," an effort to take Goliath down, with each studio contributing funds towards a project that will benefit them all. One telling email — titled "Goliath data summary" — comes with an attachment titled "Search Engine Piracy Discussion (MPAA Discussion)," seeming to suggest the codename is a stand-in for Google. A number of Goliath-related emails also point to examples of copyright-infringing search results found on Google; the persistence of file-sharing links in Google search rankings has been a sore point in Hollywood for years.

***"WE START FROM THE
PREMISE THAT SITE***

Chris Dodd announces that **Fabrizio has joined MPAA** as Senior Executive Vice President and Global General Counsel.

January 25, 2014: First known mention of Goliath in an email titled "Site Blocking / ISP Measures - INPUT REQUESTED" — from Fabrizio to Rebecca Prentice (Paramount), Leah Weil (Sony), Maren Christensen (NBC Universal), John Rogovin (Warner Bros.), Gary Roberts (Fox), and Alan Braverman (Disney): **"My goal is to use our February meeting to present and discuss a detailed US Goliath strategy."**

February 24–26, 2014: The National Association of Attorneys General **meet in Washington, DC.** In attendance: Mississippi AG (and NAAG President-Elect) Jim Hood. Emails reveal a concerted effort during the event to rally support for Project Goliath.

February 27, 2014: In an email titled "Goliath - PRIVILEGED &

BLOCKING IS A MEANS TO AN END. "

The emails reveal a multi-pronged approach to defeating Goliath. One tactic is legal, convincing state prosecutors to take up the fight against Goliath. After a series of meetings at the National Association of Attorneys General in February, MPAA counsel Fabrizio writes, "Goliath has told the AGs to pound sand...they pretty clearly told the AGs that they aren't going to do anything and essentially threatened the AGs with the possibility of attacking them as they attacked folks in DC during SOPA. The AGs did not like that." As a result, the counsels report a growing coalition of attorneys general willing to take action against Goliath, and the group budgeted \$500,000 a year towards providing legal support. Much of that budget went towards retaining the prestigious law firm Jenner & Block, specifically Jenner partner and former US Associate Attorney General Thomas J. Perrelli, who has billed the group for as much as \$40,000 a month.

In other emails, Google comes up as a specific target. After a dispute over Google's most recent anti-piracy measures in October, Fabrizio suggested further action may be yet to come. "We believe Google is overreacting — and dramatically so. Their reaction seems tactical (or childish)," the email reads. "Following the issuance of the CID [civil investigative demand] by [Mississippi attorney general Jim] Hood (which may create yet

CONFIDENTIAL," Fabrizio tells the group of six that "we are going to spend the March 12th GC [General Counsel] meeting talking through (and seeking approval for) an expanded Goliath strategy."

Outside counsel Tom Perrelli (a former AG now at [Jenner & Block](#)) provides input from the NAAG meeting: "[Goliath] pretty clearly told the AGs that they aren't going to do anything **and essentially threatened the AGs with the possibility of attacking them as they attacked folks in DC during SOPA.**" Perrelli suggests "some subset of AGs (3-5, but Hood alone if necessary) should move toward issuing CIDs before mid-May."

March 12, 2014: Leah Weil and Aimee Wolfson (both from Sony) attend a General Counsel meeting. In a March 6th email in advance of the meeting, Fabrizio includes the original six, Wolfson, and presumed +1s, Jeremy Williams (WB), Elizabeth Valentina (Fox),

another uproar by Google), we may be in a position for more serious discussions with Google." A report from the previous February suggests that the Goliath group drafted civil investigative demands (similar to a subpoena) to be issued by the attorneys general. "Some subset of AGs (3-5, but Hood alone if necessary) should move toward issuing CIDs before mid-May," the email says. (Hood issued a CID against Google in July concerning pharmaceutical counterfeiting, but he does not appear to have issued any actions against the company since Fabrizio's letter in October.)

"WE BELIEVE GOOGLE IS OVERREACTING — AND DRAMATICALLY SO."

The fight against Goliath also has an investigative side. Other emails describe a proposed project called Keystone — budgeted at \$70,000 — devoted to gathering enough evidence against Goliath to provoke further action by the state attorneys general. "There is only so far we can get with the AG's unless we develop better evidence and intelligence against Goliath," an email reads, "and that is the budget for Keystone." The planning for the Goliath Project is laid out in dozens of emails after the initial January meeting, although the emails peter out after May for reasons that are still unclear. Still, budget projections suggest that the group was prepared for a long battle. "To take this through and have a reasonable chance of success, we probably would need to

Steve Kang (NBC Universal).

March 21, 2014: Fabrizio sends out an approval request for the Goliath strategy. "In short, this is a strategy based on supporting and strengthening the ongoing State AG effort... [which] is a subset of the larger Goliath strategy."

April 29, 2014: Aimee Wolfson sends Leah Weil a blurb from an April GC report: "Search. As of March, MPAA referred 45 search results pointing to infringing content on Google..." Wolfson adds, "FYI re: Goliath end-game — this is from the GC report. Are we looking for more?"

April 29, 2014: Maren Christensen (NBC Universal) forwards an email entitled "Goliath data summary." Attached is a PDF, "Search Engine Piracy Discussion (MPAA distribution).pdf"

May 8, 2014: Fabrizio to group. "We've had success to date in motivating the AGs; however as they approach the CID phase,

continue through year two," one email reads.

In another instance, the group seemed to look to articles on political corruption not as a cautionary tale but as an instruction manual. In one email, the MPAA's Senior VP of State Government Affairs circulated an investigative *New York Times* series on lobbyists wielding increasing influence over state attorneys general. The series details many tactics involved in Project Goliath, including hiring former attorneys general as counsel and targeting officials at the state level where lobbying dollars may stretch farther. The MPAA official offered only the caption "FYI, first in a series of articles." The email was sent to 62 people, including executives at Paramount, Warner Bros., Fox, Comcast, and the RIAA.

"THERE IS ONLY SO FAR WE CAN GET WITH THE AG'S UNLESS WE DEVELOP BETTER EVIDENCE AND INTELLIGENCE AGAINST GOLIATH."

Still, the emails reveal a remarkable hostility towards Goliath, and a persistent desire to stop copyright infringing traffic as it moves across the web, a position that puts it in stark conflict with many of the guiding principles of the web. That, in turn, has created a serious conflict with many of the companies that have grown

the AGs will need greater levels of legal support." He outlines two options, ranging from \$585,000 to \$1.175 million, which includes legal support for AGs (through Jenner) and optional investigation and analysis of ("ammunition / evidence against") Goliath. Both options include at least \$85,000 for communication (e.g. "Respond to / rebut Goliath's public advocacy, amplify negative Goliath news, [and] seed media stories based on investigation and AG actions.").

October 20, 2014:

Fabrizio emails the team of six with the subject line "Google - Antipiracy Initiatives - Google Reaction to MPAA Statement" (For **context**: Google was unhappy with the MPAA's reaction to its **latest antipiracy report**). Fabrizio sees it as an opportunity. "We believe Google is overreacting — and dramatically so. Their reaction seems tactical (or childish). Our sense is that this will blow over and that, following the issuance of the CID by

powerful on the web, a fight that, without an ambitious action like Project Goliath, the industry seems primed to lose. As one counsel noted in March, "There is much to commend an expanded Goliath strategy — the status quo has not exactly been favorable for us and, absent our doing something, it doesn't promise to get better anytime soon."

AG Hood (which may create yet another uproar by Google), we may be in a position for more serious discussions with Google."

As of press time, neither the MPAA nor Sony has responded to a request for comment. Google declined to comment.

Additional reporting from Ross Miller and Bryan Bishop. Illustration by Dylan Lathrop.

This is the January 25th email from MPAA Global General Counsel Steven Fabrizio, laying out the group's Goliath strategy:

Site Blocking/ISP Measures - INPUT REQUESTED - PRIVILEGED

We did not get to have a full discussion of site blocking during our January meeting. However, I believe I have spoken with enough of you individually to have a good read of the room as to our authority to proceed with the necessary analysis. In this email, I outline the planned scope of analysis. Because the analysis will involve some expense for technical experts, consultants and lawyers (likely totalling in the \$200-300k range), I want to make sure we are on the same page. If anyone disagrees with the plan, as described below, please let me know. Otherwise, we will proceed, with the goal of having something to present to you at our March meeting. (My goal is to use our February meeting to present and discuss a detailed US

Goliath strategy.)

SCOPE We have traditionally thought of site blocking in the US as a DMCA 512(j) issue. In some ways, that is too narrow and we plan to expand our scope of inquiry on two levels. First, DMCA 512(j), by its terms, necessarily creates an adversarial relationship with the target ISP (and more generally with the ISP community). We have been exploring theories under the All Writs Acts, which, unlike DMCA 512(j), would allow us to obtain court orders requiring site blocking without first having to sue and prove the target ISPs are liable for copyright infringement. This may open up avenues for cooperative arrangements with ISPs. Second, we start from the premise that site blocking is a means to an end (the end being effective measures by ISPs to prevent infringement through notorious pirate sites). There may be other equally effective measures ISPs can take, and that they might be more willing to take voluntarily. Our intention is to work with our own retained experts and Comcast (and MPAA's Technology group) to identify and study these other possibilities, as well as US site blocking technical issues.

ANALYSIS The analyses that remain to be done fall into three general categories:

Legal Analyses. The legal analyses that remain to be completed are the smallest part of the project. We need to finalize the All Writs Act research and confirm that developments in the law since the time of previous 512(j) analyses do not materially affect the existing analyses. In the event we recommend or present litigation options, we will also consider tactical issues, including issues related to venue and the interplay of the All Writs Act and 512(j).

Technical Analyses. Very little systematic work has been completed to understand the technical issues related to site blocking in the US and/or alternative measures ISPs might adopt. We will identify and retain a consulting technical expert to work with us to study these issues. In this context, we will explore which options might lead ISPs to cooperate with us.

Political Analyses. Here, we mean political in the broadest sense. There are important Hill issues to consider (e.g., how a strategy might impact the copyright review process). We also need to consider ISP relations issues (e.g., whether a strategy might impact the Copyright Alert program, or any progress we have been making to secure voluntary ISP assistance). Finally, in the post-SOPA world, we need to consider the extent to which a strategy presents a risk of a public relations backlash (e.g., whether a strategy might invigorate and galvanize the anti-copyright forces we saw in the SOPA debates, and what ultimate impact that might have). Each of these issues are like to have considerations that cut in many directions. To get a comprehensive assessment and weigh them in context, we will work closely with the MPAA Policy and Communications teams (and, with them, will solicit input from the appropriate studio policy and communications people).

Hopefully, at the conclusion of this set of analyses, we will be in a position to make a decision that is informed by all considerations of consequence.

If you have any questions, or want to talk through any of this, don't hesitate to call. Best,
SBF

THERE ARE **214** COMMENTS. **READ THEM** SHOW SPEED READING AND SKIMMING ↓