

WE'RE GOING TO START A WAR TO PROTECT A NEGLIGENT CORPORATION'S PROPERTY?

Over at Salon, I've got a piece pushing back against claims that threats made by hackers attributed to – with little concrete evidence – North Korea is an attack on our First Amendment rights. It's not. It's an attack on Sony's property (or, to put it another way, Sony's right to make a profit off its speech). And as Rayne has pointed out, Sony was unbelievably negligent in protecting its own property.

The decision to pull the film has been criticized as an attack on free speech, most notably by Aaron Sorkin, but also by other commentators. "Today the U.S. succumbed to an unprecedented attack on our most cherished, bedrock principle of free speech," Sorkin said. And free speech is one of the things – the last thing – Sony addressed in its statement on the decision. "We stand by our filmmakers and their right to free expression and are extremely disappointed by this outcome."

But the threat against the film, which the Department of Homeland Security says is not credible, was only directed at one means of distributing the film: via theater release. A number of people suggested Sony should respond to the threat via other means. Mitt Romney suggested Sony release the film online, for free. Democratic congressman Steve Israel suggested Sony release it directly to DVD. BoingBoing's Xeni Jardin suggested a global torrent party.

The point is, there are many ways to release the film, most of which would not expose theatergoers and theaters – in the wake of an **altered liability landscape** after the 2012 mass killing in an Aurora, Colorado, movie theater – to any danger, no matter how remote. Most of those ways would result in far more people watching the film. Some of them might even result in a few North Koreans viewing it.

If the issue is airing the views in the film – and defying the threats of the hackers – such a release would accomplish the goal.

But there's another issue that seems far more central to this hack than speech: property.

Even before Sony mentioned its filmmakers' free speech rights, for example, it mentioned the assault on its property rights. "Those who attacked us stole our intellectual property, private emails, and sensitive and proprietary material." And while free release of its movie would assert its right to free speech, it would result in further financial losses, on top of the other movies (such as "Annie" and "Fury") released on piracy sites after the hack.

[snip]

The attack on Sony's property, even more than speech, raises real questions about another detail that has gotten far too little attention during coverage of this hack. **Sony Corp. gets hacked a lot**, more than 50 breaches in 15 years, and more than some of its rivals, including some fairly significant attacks in recent years that bear no resemblance to this attack. Maybe that's because **it did things like** store all its passwords in a file called "password."

The Administration is already twisting itself in knots trying to retroactively include "multinational movie studio" into its prior definition of critical infrastructure (which normally would include things like electric grid and utilities) so it can make this a state issue. Assuming, all the while, that its certainty North Korea was behind the hack are more certain than that Iraq was behind 9/11.

We'd do well to think a bit about how central to national interests negligently-protected movie company property really is to national interests before this thing spirals out of control.