

H.R. 3261 – THE STOP ONLINE PIRACY ACT

TITLE I—COMBATING ONLINE PIRACY

Sec. 101. Definitions.

- Noteworthy definitions include “payment network provider” and “Internet Search Engine,” both of which are narrower than the corresponding provisions in the PROTECT IP Act (S.968). “Domain name” is defined to include subdomains, thus allowing more precise action against counterfeiting and piracy.

Sec. 102. Action by Attorney General to protect U.S. customers and prevent U.S. support of foreign infringing sites.

- Defines “foreign infringing site” for this section as a website that that engages in trademark counterfeiting, copyright infringement, or theft of trade secrets and would be subject to seizure if it were a domestic Internet site. A website qualifies under this section **only if** it is committing or facilitating criminal activities and would be subject to seizure if it were a domestic Internet site.
- This section empowers the Attorney General (AG) to pursue a court order for injunctive relief against a registrant or owner of a domain name used by a foreign infringing site or, if those persons are unable to be found, against the domain name itself. This section will give the AG a means to help protect victims from foreign rogue websites.
 - Due process is provided by incorporating lengthy, detailed notice provisions and explicit citation to the Federal Rules of Civil Procedure, including Rule 65, which integrates the same procedural protections found in all U.S. federal civil litigation.
 - ISPs, search engines, payment network providers, and advertising services would only be required to take “technically feasible and reasonable measures” to cut off rogue sites in their respective fields after being served with a court order.
 - Immunity is provided for acts to comply with the court order.
 - The court order may be modified if the site removes the illegal activity, etc.

Sec. 103. Market-based system to protect U.S. customers and prevent U.S. funding of sites dedicated to theft of U.S. property.

- This section applies to sites “dedicated to theft of U.S. (intellectual) property,” which is defined as a U.S.-directed site that is either 1) primarily designed or operated for the purpose of, has only limited purpose or use other than, or is marked for use for piracy, counterfeiting, or circumvention of copyright protection systems or 2) is taking actions to avoid confirming a high probability of the use of the site, or is inducing, copyright infringement or circumvention of copyright protection systems.
- Based loosely on the model of the DMCA, this section provides for a “notification” of the existence of a particular rogue site. Upon receipt of a qualifying notification as detailed in this section, payment network providers and Internet advertising services are instructed to take “technically feasible and reasonable measures” to prevent U.S.-directed foreign rogue sites from using their respective services and to notify the rogue site that of their actions. This provides a framework to take away the financial incentive for rogue sites to operate, without the need for government intervention.
 - If the site that was the subject of a notification provides a counter-notification that it has a good-faith belief that it does not meet the criteria of an Internet site dedicated to the theft of U.S. property, it consents to the jurisdiction of U.S. courts, and agrees to accept service of process, then the instruction to a payment network provider or Internet advertising service to suspend services to the site is lifted.
 - If there is a counter-notification or if a payment network provider or Internet advertising service fails to act on the notification, a victim of the rogue site can pursue a court order for injunctive relief against the rogue site domain name registrant or owner, or if no registrant or owner are found, the domain name itself for an injunction.
 - If, after notice and proper procedures, the evidence demonstrates to the court that the site is “dedicated to theft of U.S. property,” it may issue injunction that when served on payment network providers and Internet advertising services, requires

them to take “technically feasible and reasonable measures” to suspend services to the rogue site.

- Immunity is provided for acts to comply with the court order.
- The court order may be modified if the site removes the illegal activity, etc.
- To prevent against abuses of this system, this section contains penalties for making knowingly-material misrepresentations in either a notification or counter-notification.

Sec. 104. Immunity for taking voluntary action against sites dedicated to theft of U.S. property.

- Service providers, payment network providers, Internet advertising services, search engines, and domain name registries are immune from suit for blocking access or ending financial affiliations with a site they reasonably believe is “dedicated to theft of U.S. property.”

Sec. 105. Immunity for taking voluntary action against sites that endanger public health.

- Service providers, payment network providers, Internet advertising services, search engines, and domain name registries are immune from suit for suspending services to a site that endangers the public health by offering prescription medications to those without a prescription or adulterated or misbranded medication.

Sec. 106. Guidelines and study.

- The AG, Immigrations and Customs Enforcement (ICE), and Register of Copyrights, will work with rights holders to study the enforcement and effectiveness of this Act and report their findings to Congress.

Sec. 107. Denying U.S. capital to notorious foreign infringers.

- The Intellectual Property Enforcement Coordinator, with consultation with various administrative agencies will identify and analyze notorious foreign infringers and report findings to Congress.

TITLE II—ADDITIONAL ENHANCEMENTS TO COMBAT INTELLECTUAL PROPERTY THEFT

Sec. 201. Streaming of copyrighted works in violation of criminal law.

- This section provides for increased penalties for willfully copyright infringement by means of streaming (aka public performance). Reasonable commercial disputes are excluded.

Sec. 202. Trafficking in inherently dangerous goods or services.

- This section provides for increased penalties for counterfeiting goods or services for the military, law enforcement, or critical infrastructure applications, or goods that cause serious bodily harm or death.

Sec. 203. Protecting U.S. businesses from foreign and economic espionage.

- This section provides for increased penalties for foreign and economic espionage.

Sec. 204. Amendments to sentencing guidelines.

- This section provides for a review of sentencing guidelines of intellectual property offences, counterfeiting, and economic espionage.

Sec. 205. Defending intellectual property rights abroad.

- This section directs the Secretaries of State and Commerce in consultation with the Register of Copyrights to ensure that foreign protection of U.S. IP rights are a priority. This section also includes expansion of the U.S. IP attaché program.