



More Than Anti-Piracy, This Bill Is Internet Censorship

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Last month, Democratic Senator Patrick Leahy of Vermont introduced U.S. Senate Bill S. 3804, also known as the “Combating Online Infringement and Counterfeits Act.” While the bill has a bipartisan roster of co-sponsors and is supported by many in the entertainment industry as a major step in combating online piracy, in our view and in that of many others its passage would seriously threaten Internet freedom at home and abroad.

The bill had been on a fast track for a few weeks but has now been delayed until after the November elections. We consider that a small victory for free speech and fair use online.

The Leahy bill would give the Justice Department new powers to seek a U.S. District Court injunction against any Internet domain name that it regards as “dedicated to infringing activities.” If the injunction is granted, it would compel the registrar of the domain name to suspend operation of, and lock, the domain name. Similar actions could be taken against foreign websites.

The bill would also encourage service providers to go after sites that the Justice Department puts on a public blacklist. This blacklist would consist of two publicly available lists of domain names. The first list would contain domain names against which the Justice Department has obtained injunctions, and the second list would contain a list of domains alleged by the department to be infringing, but against which no action has been taken.



Opponents of this bill, consisting of Internet companies and free speech advocates, call it “outright censorship.” The legislation could potentially affect several prominent file-sharing and file-storing websites, including Dropbox, MediaFire, and RapidShare. Had this bill been passed five or ten years ago, such popular entertainment sites as YouTube might not be in existence today. Although a site like YouTube would probably survive this legislation, the bill could potentially threaten new companies whenever copyrighted materials appear on their sites. The bill marks a drastic departure from current law by permitting the government not only to strip the copyrighted materials from an infringing website, but to lock down the offending domain name altogether.

And there is always the additional risk that the department’s new powers will be expanded well beyond online piracy. This bill could be the stepping stone to future legislation that permits the department to try to shut down any website that may be offensive not just from a copyright infringement standpoint, but from any standpoint that the Justice Department deems reasonable.

In a somewhat analogous case, the Commonwealth of Kentucky, acting under legislation permitting the seizure of “gambling devices,” has already sought the seizure of the domain names of 141 Internet poker and gaming websites, with claims that these sites compete with the state lottery and horse racing industry.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrah and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!