



## Jeff Geiger Counters

### Thoughts on PROTECT IP Act

By: Jeff Geiger. Friday, November 11th, 2011

As **previously reported**, I had the opportunity last night to moderate a discussion at the William & Mary School of Law on “*P.R.O.T.E.C.T. IP Act: What Is It? Will It Pass? What Would Be Its Impact?*” The seminar was sponsored by the Virginia Bar Association Intellectual Property and Information Technology Section along with a host of law school organizations.

The **proposed legislation** would allow the attorney general and private parties to shut down websites that infringe on intellectual property rights. The legislation would allow purportedly aggrieved parties to go to court and obtain an order that would permit them to compel search engines, advertisers and financial institutions to cease support for (and block access to) a site that is deemed to be “dedicated to infringing activities.” A lively discussion was had with panelists Douglas Smith, Esquire and Professor Trotter Hardy.

On the “pro” side, supporters (including everyone from Ford Motor Company to the Romance Writers Association) argued in a **letter to Congress** dated September 22, 2011, that:

We urge Congress to enact legislation which targets those who abuse the Internet ecosystem and reap illegal profits by stealing the intellectual property (IP) of America’s innovative and creative industries. These rogue sites—those websites dedicated to counterfeiting and piracy—put American jobs, consumers, and innovation at risk.

Using the veil of sophisticated and well-designed websites, many of these online IP thieves pose as legitimate businesses, luring consumers to purchase fraudulent products. Some of these rogue sites even sell dangerously defective goods that needlessly jeopardize the health and safety of American consumers who are deceived into purchasing consumer goods that are poorly constructed or even contaminated with dangerous toxins. Consumers also unwittingly put themselves at risk of identity theft and malicious computer viruses by visiting these sites.

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IP-intensive industries are a cornerstone of the U.S. economy, employing more than 19 million people and accounting for 60 percent of exports. Rampant online counterfeiting and piracy presents a clear and present threat to American jobs and innovation. A study examined approximately 100 rogue sites and found that these sites attracted more than 53 billion visits per year, which average out to approximately nine visits for every man, woman, and child on Earth. Global sales of counterfeit goods via the Internet from illegitimate retailers reached \$135 billion in 2010. The theft of American IP is the theft of American jobs.

On the “con” side, opponents contend (by way of example, in a **letter from 108 law professors**) that the act is wrong because by shutting down websites:

- Freedom of speech would be suppressed without a hearing
- The Internet’s infrastructure would be disrupted
- American leadership in promoting/defending free speech and the free exchange of information on the Internet is undermined

My question is: do we open Pandora’ box so as to enable every other nation to do the same thing? As always, the “devil is in the details” but it is fair to say that a vast majority of the audience was skeptical of the act in terms of both the need for it and the concern over an ever increasing expansion of power by the government. Still, as Professor Hardy noted, given other present concerns (read: economy), this may not be at the top of Congress’ bucket list, which may make passage unlikely this session notwithstanding the bipartisan support of 39 senators. And, of course, **Google** may have a few things to say about it as well....

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