Fraudulent Online Identity Sanctions Act: Empowering Law Enforcement or Limiting Privacy?

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A new bill introduced in the US House of Representatives proposes increased prison time for those who provide false contact information to a domain name registrar and then use that online location in committing a trademark or copyright infringement felony.

"The government must play a greater role in punishing those who conceal their identities online, particularly when they do so in furtherance of a serious criminal offense or in violation of a federally protected intellectual property right," said Republican Representative Lamar Smith in his opening remarks at a committee hearing on the issue. "These individuals pose real, substantial costs on users of the Internet. There is a growing recognition that both registrants who provide false WHOIS data as well as those who enable them to remain anonymous must be held into account."

The Internet Corporation for Assigned Names and Numbers requires businesses and individuals registering a domain name to publish personal information such as addresses, phone numbers, and e-mail addresses in the public WHOIS online database. But not all
registrants provide accurate information, which can make it difficult for law enforcement to investigate illegal activities on the Internet or for the intellectual property rights holder to contact individuals believed to be infringing on those rights.

Rather than make it illegal to provide false information to domain registrars, the Fraudulent Online Identity Sanctions Act (H.R. 3754, http://thomas.loc.gov/cgi-bin/query/z?c108:h.r.3754:), cosponsored by Smith and Democratic Representative Howard Berman, would extend prison terms for those who do so in the process of committing a felony. The bill, backed by such groups as the Recording Industry Association of American and the Motion Picture Association of America, seeks to add seven years to sentences prescribed for copyright and trademark infringements.

By enforcing truthfulness in domain registration through stiffer penalties, legislators hope to make it easier for law enforcement officials to pursue violators, such as those illegally offering copyrighted works for download. But opponents of the proposed law, including the American Civil Liberties Union, say it could have a chilling effect on anonymous speech and would limit users' right to privacy.

"When Hamilton, Madison, and Jay wrote the Federalist Papers, they didn't have to register anywhere before using the pseudonym 'Publius,' and their defense of the to-be-ratified Constitution was stronger for the freedom that anonymity gave them," says Wendy Seltzer, a staff attorney for the Electronic Frontier Foundation, an Internet civil liberties advocacy group. "We should welcome new technologies that allow more citizens to publish—with names or anonymously—rather than trying to silence them. If the bill passes, it will likely make some people more reluctant to speak online, for example those parodying copyrighted works or criticizing trademark holders. Even though those activities are noninfringing, speech close to the murky boundaries is often chilled by harsh penalties for infringement."

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