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ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

### H.R. 3261 Manager's Amendment Summary

The Manager's Amendment offered by Chairman Lamar Smith incorporates numerous suggestions offered by Members of the Committee, stakeholders and members of the public. The amended language ensures that the fundamental provisions of the bill that are needed for effective action are maintained but adds safeguards to protect against unintended consequences and to further strengthen protections involving the First Amendment, due process, and the integrity of the Internet.

#### Domain Name System Protections

The manager's amendment ensures no harm can come to DNSSEC by eliminating any suggestion that there is a requirement to direct or redirect users (see 102(c)(2)(A)(iii)(V)) to another site. It protects the security and integrity of the DNS by establishing a "kill switch" that allows a provider to not carry out an order on a finding that it would "impair the security or integrity of the system" (see 102(d)(2)(B) and Section 2(a)(5)). The amendment ensures that the bill cannot be construed to require any order that would harm the DNS, and requires a study to ensure no DNS harm.

#### Application to Foreign Sites Only

The manager's amendment clarifies that any action against rogue sites pertains to *foreign sites*, *i.e.*, those that are located overseas, or that are unreachable domestically and whose owner or operator is located overseas. (See 101(a)(23) and 103(a)(1)(A)(ii).) Thus, the reach of the bill does not cover any U.S. sites, including Facebook, Twitter, eBay, YouTube, and many other popular domestic destinations. It focuses only on sites that are beyond the reach of U.S. law.

#### Savings Clauses

The manager's amendment offers several new savings clauses to clarify the protections of certain parties. Section 2(a)(3), provides that there is no duty to monitor illegal activity on a provider's network or service. Section 2(a)(4) provides that the bill cannot be construed to impose a technology mandate on any party. Section 2(a)(2) provides that all DMCA safe harbors will remain intact for intermediaries

### Marketplace Solutions

The statutory notification system in the introduced bill has been removed in favor of encouraging parties to engage in voluntary, completely market-based solutions. Parties that take reasonable action under the legislation are provided narrow and limited protection from liability when they decide on their own to take action to voluntarily prevent illegal activity, but only for the specific actions described in sections 102(c)(2) and 103(c)(2). (See Section 105.)

### Rogue Site Definitions

Action by the Attorney General is limited to only those foreign sites that would otherwise be subject to prosecution under U.S. criminal law if they were located in the U.S. (See 102(a).)

Action by rights owners focuses on foreign rogue sites, defined as those primarily designed or operated for the purpose of, having only limited purpose or use other than, or marketed primarily for use in illegal activity; or being operated with the object of “inducing” such violations. The amendment removes the *Global Tech* willful blindness standard as well as the “enables or facilitates” language. (See 103(a)(1)(C).)

### Intermediary Definitions

The amendment provides that search must be the *primary function* of a service to fall within the search engine definition, and excludes sites that retain third party search services (see 101(a)(15)); depository institutions and credit unions are not included in the payment provider definition (See 101(a)(20)); and Internet advertisers no longer include those that “facilitate” placement of ads (see 101(a)(11)).

### Subdomains and Portions of Sites

The manager’s amendment ensures that when a foreign site is engaging in criminal activity, the court may focus its order on only those subdomains or portions of the site engaging in the crime, and still allow search engines to provide links to any legitimate subdomains or portions of the site. To address technical concerns, the manager’s amendment also provides that ISPs cannot be ordered to block a subdomain. (See 101(a)(16), 102(c)(2)(A)(iii)(IV), 102(c)(2)(B), and Section 104(a).)

### Service Provider Action

Under the amendment, ISPs are only required to take measures they determine to be the “least burdensome, technically feasible, and reasonable.” (See 102(c)(2)(A).)