

Section-by-Section Explanation for the OPEN Act

Section 1. Short Title.

The section names the bill the, “Online Protection and Enforcement of Digital Trade” or “OPEN Act”.

Section 2. Unfair Trade Practices Relating to Infringement of Copyrights and Trademarks by Certain Internet Sites.

- This section amends section 337 of the Tariff Act of 1930 to allow the International Trade Commission (ITC) to investigate and take action against unfair digital imports or unfair imports that are digitally-facilitated by foreign rogue websites. The procedures in this section are similar to those already implemented by the ITC pursuant to investigations into hard-good imports that are alleged to violate U.S. intellectual property rights. Specifically this section establishes that:
 - A foreign website that is primarily and willfully used to infringe intellectual property rights is subject to a Cease and Desist order from the ITC
 - The ITC will launch investigations into these foreign websites on its own volition or in response to a valid petition filed by a rightsholder. These investigations are public and provide for the complainant, respondent, and third-party stakeholders to be heard and present evidence.
 - ITC-issued Cease and Desist orders may be served on financial intermediaries, including financial transaction providers and online advertising service providers causing them to cut off the money to the foreign sites.
 - The President of the United States can overrule the ITC order.
 - Temporary or preliminary Cease and Desist orders may be issued in extraordinary circumstances.
 - The ITC is allowed to impose fees in order to help offset the cost of investigations or to defray filing and administrative costs etc.
 - Legal immunity is provided to financial intermediaries upon their cooperation with implementing the Cease and Desist order or that take voluntary action against sites dedicated to infringing activity.
 - Legal immunity is provided for financial intermediaries that take voluntary action against sites that endanger public health.

Section 3. Appointment of Hearing Officers for Proceedings Under Sections 337 and 337A of the Tariff Act of 1930 Tariff Act.

This section enables the ITC to obtain new administrative law judges to handle any potential increase in case load that this act may cause.

Section 4. Information Sharing with Respect to the Importation of Infringing Merchandise.

This section better enables Commissioner responsible for U.S. Customs and Border Protection to share information with trademark and copyright holders in order to identify counterfeit merchandise at the border and prevent it from entering into the U.S. stream of commerce.

Section 5. Regulations

The ITC will have 270 days to prescribe regulations and guidance for procedures regarding claims filed against accused foreign rogue websites.

Section 6. Study and Reports by Register of Copyrights

This section requires the Register of Copyrights to conduct a study on the enforcement and effectiveness of this law and to submit a report to Congress not later than two years after enactment.