

Gonzales Goes For Copyright Pirates' Jugulars

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E-Commerce Times
05/15/07 11:12 AM PT



Attorney General Alberto Gonzales wants to crack down on pirates with his proposed Intellectual Property Protection Act of 2007, which includes penalties for attempts to infringe on copyrights. "IP theft is not a technicality, and its victims are not just faceless corporations -- it is stealing, and it affects us all," Gonzales said.

Attorney General Alberto Gonzales unveiled on Monday a comprehensive legislative proposal entitled the "Intellectual Property Protection Act of 2007" that would toughen copyright protections, including penalties for the attempt to infringe on a copyright.

Speaking before members of the U.S. Chamber of Commerce Coalition Against Counterfeiting and Piracy, Gonzales urged members of the coalition to support the act, which would also increase penalties for repeat offenders, ensure the ability to forfeit property derived from intellectual property (IP) offenses, strengthen restitution provisions, ensure that the exportation and transshipment of copyright-infringing goods is a crime, and increase penalties for counterfeiting offenses that result in bodily harm.

"IP theft is not a technicality, and its victims are not just faceless corporations -- it is stealing, and it affects us all," Gonzales said. "Those who seek to undermine this cornerstone of U.S. economic competitiveness believe that they are making easy money; that they are beyond the law. It is our responsibility and commitment to show them that they are wrong."

'A Necessary Step'

Strengthening penalties is indeed a necessary step, Sean Kane, an attorney with Drakeford & Kane, told TechNewsWorld.

"Piracy is a huge problem for many companies-- it's rampant, and frankly quite easy," he said. "Given today's market, where a company's intellectual property may be its major asset or even its only asset, adding levels of protection that really have some bite will potentially go a long way toward helping these companies compete."

As a result, the proposal is expected to receive a warm welcome from many industries whose revenues depend on the protection of copyrights.

"Attorney General Gonzales' proposal to provide further protections of intellectual property are music to the ears to the software, music, movie and other industries," technology attorney Raymond Van Dyke told TechNewsWorld.

"Intellectual property is the lifeblood of United States trade, and IP theft domestically and abroad constitutes losses of billions of dollars and countless jobs," Van Dyke added. "Americans should be aware of the importance of intellectual property in our lives and our economy, and recognize the need for laws that better protect our IP from counterfeiters and pirates."

Criminalization of Attempt

The addition of "attempt" to punishable offenses is to address situations like when a Justice Department investigation finds "a big warehouse of DVDs, but we can't prove necessarily that they were actually distributed or sold," a senior Justice Department official told reporters in a Monday conference call.

Yet it puzzled some observers.

"I'm flabbergasted by the notion of an attempt to violate a copyright," Jim Burger, partner and copyright attorney at law firm Dow Lohnes, told TechNewsWorld.

"Criminal law requires intent, but there's no intent in copyright. It's not that kind of a crime. You have to do the act," he explained.

Not a Traditional Crime

To illustrate, Burger gave the following example: If someone distributes copies of the U.S. Constitution and believes that they are violating a copyright, then they could be considered to be attempting to infringe upon a copyright, even though they are not because of fair use and other provisions. "Normally, they'd be laughed at and called an idiot," Burger said, "but now would they be punishable?"

"Copyright is not a traditional crime -- it's much more complex and subtle," Burger explained. "It doesn't matter what you think you're doing -- it just matters what you actually do. I'm baffled."

Widespread Support

Otherwise, though, the proposed legislation appeared to garner widespread support.

"The point is to close some loopholes and strengthen enforcement capabilities when it comes to IP law, and those are important things," Chris Merida, a director of congressional public affairs and IP lobbyist at the U.S. Chamber of Commerce, told TechNewsWorld.

"I can't say yet that we'll definitely support the bill, but we like where they're going with it. The baseline premise is something we'd normally support, and we're looking forward to working with the Department of Justice to move things forward," Merida added.

"Intellectual property law is an area that a lot of judges and prosecutors still don't really understand, because it's ever-changing and can be highly technical," Drakeford & Kane's Kane concluded. "Anything that enhances the court's knowledge is a benefit."

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