



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 22, 1999

H.R. 3028 **Trademark Cyberpiracy Prevention Act**

As ordered reported by the House Committee on the Judiciary on October 13, 1999

Cyberpiracy (or cybersquatting) consists of registering, trafficking in, or using domain names (Internet addresses) that are identical or confusingly similar to trademarks with the bad-faith intent to profit from the goodwill of the trademarks. H.R. 3028 would allow trademark owners to sue anyone who engages in such conduct, and allow the courts to order the forfeiture, cancellation, or transfer of domain names in such instances. CBO estimates that implementing these provisions would not have a significant effect on the federal budget.

In addition, the bill would reduce the amounts the Patent and Trademark Office (PTO) charges inventors to file patents and would authorize the PTO to adjust the amounts it charges to file trademarks. In reviewing the cost of each activity the PTO performs, the agency determined that applicants for trademarks paid less than the cost to process trade applications, and applicants for patents paid more than the cost to process patent applications. Based on that information, CBO expects that the agency would increase trademark fees by more than enough to offset the lower patent fees that the bill would require. Under current law, PTO adjusts charges to patent and trademark owners to reflect fluctuations in the Consumer Price Index.

All fees collected by the PTO are credited to its appropriation as an offset to discretionary spending. Thus, CBO estimates that implementing H.R. 3028 would reduce net appropriated spending by the PTO by an average of about \$10 million a year over the 2000-2004 period, assuming appropriation of the necessary amounts. Because H.R. 3028 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

H.R. 3028 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and could benefit state, local, or tribal governments if they sue to recover damages from infringement or dilution of trademarks based on the provisions of the bill. Any such benefits are expected to be minimal. The changes in patent and trademark fees authorized in the bill also are expected to have only minimal effects on the budgets of state, local, and tribal governments.

H.R. 3028 would create a new private-sector mandate for trademark holders by granting the PTO the discretion to increase trademark fees. Trademark fee increases are private-sector mandates because the federal government controls the trademark system and no reasonable alternatives to the system exist. CBO estimates that the PTO would collect roughly \$40 million a year, on average, in fee increase over the next five years. The costs of the mandate thus fall below the threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation).

The bill would benefit patent holders and applicants by reducing several patent fees, including filing, reissuance, and certain maintenance fees. CBO estimates that the fee reductions would save patent holders and applicants roughly \$30 million a year, on average, over the next five years. Although some firms and individuals may hold both trademarks and patents, the patent fee reductions would not offset the trademark fee increases. Trademarks and patents serve separate and distinct purposes, and many trademark holders hold no patents.

On August 5, 1999, CBO transmitted an estimate of S. 1255, the Anticybersquatting Consumer Protection Act, as reported by the Senate Committee on the Judiciary on July 29, 1999. Because S.1255 would not affect the fees collected by the PTO, CBO estimated that it would not have a significant budgetary impact.

The CBO staff contacts are Mark Hadley (for federal costs), Shelley Finlayson (for the state and local impact), and John Harris (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.