

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3261
OFFERED BY MR. SMITH OF TEXAS**

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Stop Online Piracy Act”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Savings and severability clauses.

TITLE I—COMBATING ONLINE PIRACY

Sec. 101. Definitions.
Sec. 102. Action by Attorney General to protect U.S. customers and prevent U.S. support of foreign infringing sites.
Sec. 103. Protection of U.S. customers and prevention of U.S. funding of sites dedicated to theft of U.S. property.
Sec. 104. Effect of orders served on third-party entities.
Sec. 105. Actions taken consistent with the purposes of this title.
Sec. 106. Guidelines and study.

TITLE II—ADDITIONAL ENHANCEMENTS TO COMBAT
INTELLECTUAL PROPERTY THEFT

Sec. 201. Streaming of copyrighted works in violation of criminal law.
Sec. 202. Trafficking in inherently dangerous goods or services.
Sec. 203. Protecting U.S. businesses from foreign and economic espionage.
Sec. 204. Denying U.S. capital to notorious foreign infringers.
Sec. 205. Defending intellectual property rights abroad.

6 SEC. 2. SAVINGS AND SEVERABILITY CLAUSES.

7 (a) SAVINGS CLAUSES.—

1 (1) FIRST AMENDMENT.—Nothing in this Act
2 shall be construed to impose a prior restraint on free
3 speech or the press protected under the First
4 Amendment to the Constitution.

5 (2) TITLE 17 LIABILITY.—Nothing in title I
6 shall be construed to enlarge or diminish liability, in-
7 cluding vicarious or contributory liability, for any
8 cause of action available under the Lanham Act or
9 title 17, United States Code, including any limita-
10 tions on liability under such title, nor shall aware-
11 ness of, receipt of, or response to any notice pro-
12 vided under section 102 (b) or 103 (b), or any order
13 issued or served under section 102 or 103, serve as
14 a basis for determining eligibility for a limitation on
15 liability under section 512 of title 17, United States
16 Code.

17 (3) NO DUTY TO MONITOR.—Nothing in title I
18 shall be construed to impose a duty to monitor activ-
19 ity on the network or service of an entity described
20 in section 102(c) or 103(c).

21 (4) NO TECHNOLOGY MANDATES.—Nothing in
22 title I shall be construed to impose a duty on an en-
23 tity described in section 102(c) or 103(c) to design
24 its network, technology, or service to forestall or pre-
25 vent acts that would actually or potentially create a

1 cause of action under such title, or to utilize any
2 particular type of technology to comply with the re-
3 quirements of such title.

4 (5) NO IMPACT ON SECURITY OR INTEGRITY.—
5 Nothing in title I shall be construed to authorize a
6 court to require compliance with an obligation under
7 section 102(c) in a manner that would impair the se-
8 curity or integrity of the domain name system or of
9 the system or network operated by or on behalf of
10 the party subject to the obligation.

11 (b) SEVERABILITY.—If any provision of this Act, or
12 the application of the provision to any person or cir-
13 cumstance, is held to be unconstitutional, the other provi-
14 sions or the application of the provision to other persons
15 or circumstances shall not be affected thereby.

16 (c) DEFINITIONS.—The terms used in this section
17 have the meanings given those terms in section 101.

18 **TITLE I—COMBATING ONLINE** 19 **PIRACY**

20 **SEC. 101. DEFINITIONS.**

21 In this title:

22 (1) DOMAIN NAME.—The term “domain name”
23 has the meaning given that term in section 45 of the
24 Lanham Act (15 U.S.C. 1127).

1 (2) DOMAIN NAME SYSTEM SERVER.—The term
2 “domain name system server” means a server or
3 other mechanism used to provide the Internet pro-
4 tocol address associated with a domain name.

5 (3) DOMESTIC DOMAIN NAME.—The term “do-
6 mestic domain name” means a domain name that is
7 registered or assigned by a domain name registrar,
8 domain name registry, or other domain name reg-
9 istration authority, that is located within a judicial
10 district of the United States.

11 (4) DOMESTIC INTERNET PROTOCOL AD-
12 DRESS.—The term “domestic Internet Protocol ad-
13 dress” means an Internet Protocol address for which
14 the corresponding Internet Protocol allocation entity
15 and the entity using the Internet Protocol address
16 are located within a judicial district of the United
17 States.

18 (5) DOMESTIC INTERNET SITE.—The term “do-
19 mestic Internet site” means an Internet site for
20 which the corresponding domain name or, if there is
21 no domain name, the corresponding Internet Pro-
22 tocol address, is a domestic domain name or domes-
23 tic Internet Protocol address.

1 (6) FOREIGN DOMAIN NAME.—The term “for-
2 foreign domain name” means a domain name that is
3 not a domestic domain name.

4 (7) FOREIGN INTERNET PROTOCOL ADDRESS.—
5 The term “foreign Internet Protocol address” means
6 an Internet Protocol address that is not a domestic
7 Internet protocol address.

8 (8) FOREIGN INTERNET SITE.—The term “for-
9 foreign Internet site” means an Internet site that is
10 not a domestic Internet site.

11 (9) INTELLECTUAL PROPERTY ENFORCEMENT
12 COORDINATOR.—The term “Intellectual Property
13 Enforcement Coordinator” means the Intellectual
14 Property Enforcement Coordinator appointed under
15 section 301 of the Prioritizing Resources and Orga-
16 nization for Intellectual Property Act of 2008 (15
17 U.S.C. 8111).

18 (10) INTERNET.—The term “Internet” has the
19 meaning given that term in section 5362(5) of title
20 31, United States Code.

21 (11) INTERNET ADVERTISING SERVICE.—The
22 term “Internet advertising service” means a service
23 that for compensation sells, purchases, brokers,
24 serves, inserts, verifies, or clears the placement of an
25 advertisement, including a paid or sponsored search

1 result, link, or placement, that is rendered in
2 viewable form for any period of time on an Internet
3 site.

4 (12) INTERNET PROTOCOL.—The term “Inter-
5 net Protocol” means a protocol used for commu-
6 nicating data across a packet-switched internetwork
7 using the Transmission Control Protocol/Internet
8 Protocol, and includes any predecessor or successor
9 protocol to such protocol.

10 (13) INTERNET PROTOCOL ADDRESS.—The
11 term “Internet Protocol address” means a numerical
12 or hexadecimal label that is assigned to each device
13 that participates in a computer network that uses
14 the Internet Protocol for communication.

15 (14) INTERNET PROTOCOL ALLOCATION ENTI-
16 TY.—The term “Internet Protocol allocation entity”
17 means the American Registry of Internet Numbers
18 (ARIN), its successor (if any), or any Internet Pro-
19 tocol Internet registry that is formally recognized by
20 the United States Government, from which an Inter-
21 net Protocol address is allocated or where it is reg-
22 istered.

23 (15) INTERNET SEARCH ENGINE.—The term
24 “Internet search engine”—

1 (A) means a service made available via the
2 Internet whose primary function is gathering
3 and reporting, in response to a user query, in-
4 dexed information or Web sites available else-
5 where on the Internet; and

6 (B) does not include a service that retains
7 a third party that is subject to service of proc-
8 ess in the United States to gather, index, or re-
9 port information available elsewhere on the
10 Internet.

11 (16) INTERNET SITE.—The term “Internet
12 site” means the collection of digital assets, including
13 links, indexes, or pointers to digital assets, accessible
14 through the Internet that are addressed relative to
15 a common domain name or, if there is no domain
16 name, a common Internet Protocol address. Except
17 where otherwise provided in this title, the term
18 “Internet site” may include a specifically identified
19 portion of such site.

20 (17) LANHAM ACT.—The term “Lanham Act”
21 means the Act entitled “An Act to provide for the
22 registration and protection of trademarks used in
23 commerce, to carry out the provisions of certain
24 international conventions, and for other purposes”,

1 approved July 5, 1946 (commonly referred to as the
2 “Trademark Act of 1946” or the “Lanham Act”).

3 (18) NONAUTHORITATIVE DOMAIN NAME SERV-
4 ER.—The term “nonauthoritative domain name serv-
5 er” means a server that does not contain complete
6 copies of domains but uses a cache file that is com-
7 prised of previous domain name server lookups, for
8 which the server has received an authoritative re-
9 sponse in the past.

10 (19) OPERATOR.—The term “operator”, when
11 used in connection with an Internet site, includes
12 any person with authority to operate such Internet
13 site.

14 (20) PAYMENT NETWORK PROVIDER.—

15 (A) IN GENERAL.—The term “payment
16 network provider” means an entity that directly
17 or indirectly provides the proprietary services,
18 infrastructure, and software to effect or facili-
19 tate a debit, credit, or other payment trans-
20 action.

21 (B) RULE OF CONSTRUCTION.—For pur-
22 poses of this paragraph, a depository institution
23 (as such term is defined under section 3 of the
24 Federal Deposit Insurance Act) or credit union
25 that acquires, authorizes, initiates, or receives a

1 debit, credit, or other payment transaction shall
2 not be construed to be a payment network pro-
3 vider based solely on the offering of services de-
4 scribed in this subparagraph.

5 (21) SERVICE PROVIDER.—The term “service
6 provider”—

7 (A) means an operator of a nonauthori-
8 tative domain name server; and

9 (B) does not include an operator of a non-
10 authoritative domain name server that offers
11 domain name resolution services solely to busi-
12 nesses for domain, subdomain, domain name
13 system record, or Internet Protocol address
14 management.

15 (22) STATE.—The term “State” includes the
16 District of Columbia and any commonwealth, terri-
17 tory, or possession of the United States.

18 (23) U.S. DIRECTED SITE.—The term “U.S.-di-
19 rected site” means a foreign Internet site that is
20 used to conduct business directed to residents of the
21 United States, or that otherwise demonstrates the
22 existence of minimum contacts sufficient for the ex-
23 ercise of personal jurisdiction over the owner or op-
24 erator of the Internet site consistent with the Con-

1 stitution of the United States, based on relevant evi-
2 dence that may include whether—

3 (A) the Internet site is used to provide
4 goods or services to users located in the United
5 States;

6 (B) there is evidence that the Internet site
7 is intended to offer or provide—

8 (i) such goods and services,

9 (ii) access to such goods and services,

10 or

11 (iii) delivery of such goods and serv-
12 ices,

13 to users located in the United States; and

14 (C) any prices for goods and services are
15 indicated or billed in the currency of the United
16 States.

17 (24) UNITED STATES.—The term “United
18 States” includes any commonwealth, possession, or
19 territory of the United States.

20 **SEC. 102. ACTION BY ATTORNEY GENERAL TO PROTECT**
21 **U.S. CUSTOMERS AND PREVENT U.S. SUP-**
22 **PORT OF FOREIGN INFRINGING SITES.**

23 (a) DEFINITION.—For purposes of this section, a for-
24 eign Internet site is a “foreign infringing site” if—

1 (1) the Internet site is a U.S.-directed site and
2 is used by users in the United States; and

3 (2) the Internet site is being operated in a man-
4 ner that would, if it were a domestic Internet site,
5 subject it (or its associated domain name) to—

6 (A) seizure or forfeiture in the United
7 States in an action brought by the Attorney
8 General, by reason of an act prohibited by sec-
9 tion 2318, 2319, 2319A, 2319B, or 2320, or
10 chapter 90, of title 18, United States Code; or

11 (B) prosecution by the Attorney General
12 under section 1204 of title 17, United States
13 Code, by reason of a violation of section 1201
14 of such title.

15 (b) ACTION BY THE ATTORNEY GENERAL.—

16 (1) IN PERSONAM.—The Attorney General may
17 commence an in personam action against—

18 (A) a registrant of a domain name used by
19 a foreign infringing site; or

20 (B) an owner or operator of a foreign in-
21 fringing site.

22 (2) IN REM.—If through due diligence the At-
23 torney General is unable to find any person de-
24 scribed in subparagraph (A) or (B) of paragraph (1)
25 with respect to a foreign infringing site or no such

1 person found has an address within a judicial dis-
2 trict of the United States, the Attorney General may
3 commence an in rem action against that foreign in-
4 fringing site or the foreign domain name used by
5 such site.

6 (3) NOTICE.—Upon commencing an action
7 under this subsection, the Attorney General shall
8 send a notice of the alleged activity described in sub-
9 paragraph (A) or (B) of subsection (a)(2) and intent
10 to proceed under this section—

11 (A)(i) to all registrants (if any) of the do-
12 main name of the Internet site—

13 (I) at the postal and electronic
14 mail addresses of each such registrant
15 appearing in the applicable publicly
16 accessible database of registrations, if
17 any, and to the extent such addresses
18 are reasonably available; and

19 (II) via the postal and electronic
20 mail addresses of the registrar, reg-
21 istry, or other domain name registra-
22 tion authority that registered or as-
23 signed the domain name of the Inter-
24 net site, to the extent such addresses
25 are reasonably available; and

1 (ii) to all owners and operators (if any) of
2 the Internet site known to the Attorney General
3 at the time the action is commenced—

4 (I) at the primary postal and elec-
5 tronic mail addresses (if any) for each such
6 owner or operator that are provided on the
7 Internet site, to the extent such addresses
8 are reasonably available; or

9 (II) if there is no domain name of the
10 Internet site, via the postal and electronic
11 mail addresses (if any) of the service pro-
12 vider responsible for allocating the Internet
13 Protocol address to the Internet site, as
14 found in the applicable publicly accessible
15 database of allocations and assignments of
16 Internet Protocol addresses to service pro-
17 viders, to the extent such postal and elec-
18 tronic mail addresses are reasonably avail-
19 able; or

20 (B) in any other such form as the court
21 may provide, including as may be required by
22 rule 4(f) of the Federal Rules of Civil Proce-
23 dure.

1 (4) SERVICE OF PROCESS.—For purposes of
2 this section, the actions described in this subsection
3 shall constitute service of process.

4 (5) RELIEF.—On application of the Attorney
5 General following the commencement of an action
6 under this section, the court may issue a temporary
7 restraining order, a preliminary injunction, or an in-
8 junction, in accordance with rule 65 of the Federal
9 Rules of Civil Procedure, against a registrant of a
10 domain name used by the foreign infringing site or
11 an owner or operator of the foreign infringing site
12 or, in an action brought in rem under paragraph
13 (2), against the foreign infringing site or the domain
14 name used by such site, to cease and desist from un-
15 dertaking any further activity as a foreign infringing
16 site.

17 (c) ACTIONS BASED ON COURT ORDERS.—

18 (1) SERVICE.—A process server on behalf of
19 the Attorney General, with prior approval of the
20 court, may serve a copy of a court order issued
21 under subsection (b) on similarly situated entities
22 within each class described in paragraph (2). Proof
23 of service shall be filed with the court.

24 (2) REASONABLE MEASURES.—After being
25 served with a copy of an order under paragraph (1),

1 the following shall apply, subject to sections 2 and
2 104 of this Act:

3 (A) SERVICE PROVIDERS.—

4 (i) IN GENERAL.—A service provider
5 shall take such measures as it determines
6 to be the least burdensome, technically fea-
7 sible, and reasonable means designed to
8 prevent access by its subscribers located
9 within the United States to the foreign in-
10 fringing site that is subject to the order.
11 Such actions shall be taken as expedi-
12 tiously as possible.

13 (ii) SAFE HARBOR.—The measures
14 determined by a service provider to be the
15 least burdensome, technically feasible, and
16 reasonable means designed to prevent a
17 nonauthoritative domain name system
18 server under the direct control of the serv-
19 ice provider from resolving the domain
20 name of the foreign infringing site to that
21 domain name's Internet Protocol address
22 shall fully satisfy such service provider's
23 obligation described in clause (i). An order
24 issued under this section may not impose

1 any additional obligations on, or require
2 additional actions by, a service provider.

3 (iii) LIMITATIONS.—A service provider
4 shall not be required under this sub-
5 section—

6 (I) except as necessary to comply
7 with this subparagraph, to modify its
8 network, software, systems, or facili-
9 ties;

10 (II) to take any measures with
11 respect to domain name resolutions
12 not performed by its own domain
13 name server;

14 (III) to continue to prevent ac-
15 cess to a domain name to which ac-
16 cess has been effectively disabled by
17 other means;

18 (IV) to prevent access to a sub-
19 domain, or to any portion of an Inter-
20 net site, other than as the result of an
21 order to prevent access to the domain
22 name, or to the entire Internet site, of
23 which it is a part; or

24 (V) to direct or redirect users via
25 domain name resolution to an Inter-

1 net site other than the foreign infring-
2 ing site requested by the user.

3 (iv) CONSTRUCTION.—Nothing in this
4 subparagraph shall affect the limitation on
5 the liability of a service provider under sec-
6 tion 512 of title 17, United States Code.

7 (B) INTERNET SEARCH ENGINES.—A pro-
8 vider of an Internet search engine shall take
9 technically feasible and commercially reasonable
10 measures, as expeditiously as possible, designed
11 to prevent the serving, in response to a query,
12 of a direct hypertext link to the foreign infring-
13 ing site that is subject to the order, or the por-
14 tion of such site specified in the order. The
15 court order under this subsection that applies
16 to an Internet search engine should be narrowly
17 tailored by the court, consistent with the First
18 Amendment to the Constitution, to be the least
19 restrictive means to effectively achieve the goals
20 of this title.

21 (C) PAYMENT NETWORK PROVIDERS.—

22 (i) PREVENTING AFFILIATION.—A
23 payment network provider shall take tech-
24 nically feasible and commercially reason-
25 able measures, as expeditiously as possible,

1 designed to prevent, prohibit, or suspend
2 its service from completing payment trans-
3 actions involving customers located within
4 the United States or accounts originating
5 in the United States and the payment ac-
6 count—

7 (I) that is used by the foreign in-
8 fringing site that is subject to the
9 order; and

10 (II) through which payment
11 transactions processed by the payment
12 network provider would be completed.

13 (ii) APPLICATION.—A payment net-
14 work provider shall be considered to be in
15 compliance with clause (i) if it takes action
16 described in that clause with respect to the
17 payment account that is used by the for-
18 eign infringing site subject to the order as
19 of the date on which a copy of the order
20 is served under paragraph (1), or as of the
21 date on which a copy of the order as modi-
22 fied under subsection (d) or as amended
23 under subsection (e) is served under sub-
24 section (f), whichever dates apply.

25 (D) INTERNET ADVERTISING SERVICES.—

1 (i) REQUIRED ACTIONS.—An Internet
2 advertising service that contracts to pro-
3 vide advertising to or for the foreign in-
4 fringing site that is subject to the order, or
5 that knowingly serves advertising to or for
6 such site, shall take technically feasible
7 and commercially reasonable measures, as
8 expeditiously as possible, designed to—

9 (I) prevent its service from pro-
10 viding advertisements to or relating to
11 the foreign infringing site that is spec-
12 ified in the order;

13 (II) cease making available ad-
14 vertisements for the foreign infringing
15 site or paid or sponsored search re-
16 sults, links, or other placements that
17 provide access to the foreign infring-
18 ing site; and

19 (III) cease providing or receiving
20 any compensation for advertising or
21 related services to, from, or in connec-
22 tion with the foreign infringing site.

23 (ii) APPLICATION.—An Internet ad-
24 vertising service shall be considered to be
25 in compliance with clause (i) if it takes ac-

1 tion described in that clause with respect
2 to advertising provided to or for the for-
3 eign infringing site as of the date on which
4 a copy of the order is served under para-
5 graph (1), or as of the date on which a
6 copy of the order as modified under sub-
7 section (d) or as amended under subsection
8 (e) is served under subsection (f), which-
9 ever dates apply.

10 (3) ENFORCEMENT OF ORDERS.—

11 (A) IN GENERAL.—To ensure compliance
12 with orders issued under this section, the Attor-
13 ney General may bring an action for injunctive
14 relief—

15 (i) against any entity served under
16 paragraph (1) that knowingly and willfully
17 fails to comply with the requirements of
18 this subsection to compel such entity to
19 comply with such requirements; or

20 (ii) against any entity that knowingly
21 and willfully provides or offers to provide
22 a product or service designed or marketed
23 by such entity or by another in concert
24 with such entity for the circumvention or
25 bypassing of measures described in para-

1 graph (2) and taken in response to a court
2 order issued under this subsection, to en-
3 join such entity from interfering with the
4 order by continuing to provide or offer to
5 provide such product or service.

6 (B) RULE OF CONSTRUCTION.—The au-
7 thority granted the Attorney General under
8 subparagraph (A)(i) shall be the sole legal rem-
9 edy to enforce the obligations under this section
10 of any entity described in paragraph (2).

11 (C) DEFENSE.—A defendant in an action
12 under subparagraph (A)(i) may establish an af-
13 firmative defense by showing that the defendant
14 does not have the technical means to comply
15 with this subsection without incurring an un-
16 reasonable economic burden, or that the court
17 order issued under subsection (b) is not author-
18 ized by this section. Such showing shall not be
19 presumed to be a complete defense but shall
20 serve as a defense only for those measures for
21 which a technical limitation on compliance is
22 demonstrated or for such portions of the order
23 as are demonstrated to be unauthorized by this
24 section.

1 (D) DEFINITION.—For purposes of this
2 subparagraph (A)(ii), a product or service de-
3 signed or marketed for the circumvention or by-
4 passing of measures described in paragraph (2)
5 and taken in response to a court order issued
6 under subsection (b) includes a product or serv-
7 ice that is designed or marketed for the purpose
8 of enabling a domain name described in such an
9 order—

10 (i) to resolve to that domain name’s
11 Internet protocol address notwithstanding
12 the measures taken by a service provider
13 under paragraph (2) to prevent such reso-
14 lution; or

15 (ii) to resolve to a different domain
16 name or Internet Protocol address that the
17 provider of the product or service knows,
18 reasonably should know, or reasonably be-
19 lieves is used by an Internet site offering
20 substantially similar infringing activities as
21 those with which the foreign infringing site
22 that is subject to the court order was asso-
23 ciated.

24 (d) MODIFICATION OR VACATION OF ORDERS.—

1 (1) IN GENERAL.—At any time after the
2 issuance of an order under subsection (b), a motion
3 to modify, suspend, or vacate the order may be filed
4 by—

5 (A) any person, or owner or operator of
6 property, that is subject to the order;

7 (B) any registrant of the domain name, or
8 the owner or operator, of the Internet site that
9 is subject to the order;

10 (C) any domain name registrar, registry,
11 or other domain name registration authority
12 that has registered or assigned the domain
13 name of the Internet site that is subject to the
14 order;

15 (D) any entity that has been served with
16 a copy of an order under subsection (c) that re-
17 quires such entity to take action prescribed in
18 that subsection; or

19 (E) the Attorney General.

20 (2) RELIEF.—Relief under this subsection shall
21 be proper if the court finds that—

22 (A) the foreign Internet site subject to the
23 order was improvidently adjudicated or is no
24 longer a foreign infringing site;

1 (B) compliance with the order, unless
2 modified, would impair the security or integrity
3 of the domain name system, or of the system or
4 network operated by or on behalf of the party
5 subject to subsection (c)(2); or

6 (C) the interests of justice otherwise re-
7 quire that the order be modified, suspended, or
8 vacated.

9 (3) CONSIDERATION.—In making a relief deter-
10 mination under paragraph (2), a court may consider
11 whether the domain name of the foreign Internet
12 site has expired or has been re-registered by an enti-
13 ty other than the entity that is subject to the order
14 with respect to which the motion under paragraph
15 (1) is brought.

16 (4) INTERVENTION.—An entity required to take
17 action under subsection (c) if an order issues under
18 subsection (b) may intervene at any time in any ac-
19 tion commenced under subsection (b) that may re-
20 sult in such order, or in any action to modify, sus-
21 pend, or vacate such order under this subsection.

22 (e) AMENDED ORDERS.—The Attorney General, if al-
23 leging that a foreign Internet site previously adjudicated
24 in an action under this section to be a foreign infringing
25 site is accessible or has been reconstituted at a different

1 domain name or Internet Protocol address, may petition
2 the court to amend the order issued under this section
3 accordingly.

4 (f) SERVICE OF AND ACTION BASED ON MODIFIED,
5 SUSPENDED, VACATED, OR AMENDED ORDERS.—

6 (1) SERVICE REQUIREMENT.—The Attorney
7 General shall serve any entity that has been served
8 with a copy of an order under subsection (c) with a
9 copy of any modification, suspension, or vacation of,
10 or amendment to, that order under subsection (d) or
11 (e).

12 (2) ACTION SUBSEQUENT TO SERVICE.—An en-
13 tity that is served with a copy of a modified, sus-
14 pended, or amended order under paragraph (1) shall
15 take actions consistent with subsection (c)(2) in ac-
16 cordance with the modification, suspension, or
17 amendment. An entity that is served with a copy of
18 a vacated order under paragraph (1) may restore
19 any services that were provided before being served
20 with a copy of the order under subsection (c).

21 (g) LAW ENFORCEMENT COORDINATION.—

22 (1) IN GENERAL.—The Attorney General shall
23 inform the Intellectual Property Enforcement Coor-
24 dinator and the heads of appropriate law enforce-
25 ment agencies of all court orders issued under sub-

1 section (b), and all amended orders issued under
2 subsection (e), regarding foreign infringing sites.

3 (2) ALTERATIONS.—The Attorney General
4 shall, and the defendant may, inform the Intellectual
5 Property Enforcement Coordinator of the modifica-
6 tion, suspension, expiration, or vacation under sub-
7 section (d) of a court order issued under subsection
8 (b).

9 **SEC. 103. PROTECTION OF U.S. CUSTOMERS AND PREVEN-**
10 **TION OF U.S. FUNDING OF SITES DEDICATED**
11 **TO THEFT OF U.S. PROPERTY.**

12 (a) DEFINITIONS.—In this section:

13 (1) DEDICATED TO THEFT OF U.S. PROP-
14 erty.—An Internet site is an “Internet site dedi-
15 cated to theft of U.S. property” if—

16 (A) it is—

17 (i) a U.S.-directed site; or

18 (ii) an Internet site for which the reg-
19 istrant of the domain name used by the
20 Internet site, and the owner or operator of
21 the Internet site, are not located and can-
22 not be found within the United States;

23 (B) the site is used by users within the
24 United States; and

25 (C) either—

1 (i) the site is primarily designed or
2 operated for the purpose of, has only lim-
3 ited purpose or use other than, or is mar-
4 keted by its operator or another acting in
5 concert with that operator primarily for
6 use in, offering goods or services in viola-
7 tion of—

8 (I) section 501 of title 17, United
9 States Code, for purposes of commer-
10 cial advantage or private financial
11 gain, and with respect to infringement
12 of complete or substantially complete
13 works;

14 (II) section 1201 of title 17,
15 United States Code; or

16 (III) provisions of the Lanham
17 Act that prohibit the sale, distribu-
18 tion, or promotion of goods, services,
19 or materials bearing a counterfeit
20 mark, as that term is defined in sec-
21 tion 34(d) of the Lanham Act (15
22 U.S.C. 1116(d)) or section 2320 of
23 title 18, United States Code; or

24 (ii) the operator of the site operates
25 the site with the object of promoting, or

1 has promoted, its use to carry out acts
2 that constitute a violation of section 501 or
3 1201 of title 17, United States Code, as
4 shown by clear expression or other affirma-
5 tive steps taken to foster such violation.

6 (2) QUALIFYING PLAINTIFF.—The term “quali-
7 fying plaintiff” means, with respect to a particular
8 Internet site, a person with standing to bring a civil
9 action for a violation described in paragraph (1)(C).

10 (b) LIMITED INJUNCTIVE RELIEF.—

11 (1) IN PERSONAM.—A qualifying plaintiff may
12 commence an in personam action against—

13 (A) a registrant of a domain name used by
14 an Internet site dedicated to theft of U.S. prop-
15 erty; or

16 (B) an owner or operator of that Internet
17 site.

18 (2) IN REM.—If through due diligence a quali-
19 fying plaintiff who is authorized to bring an in per-
20 sonam action under paragraph (1) with respect to
21 an Internet site dedicated to theft of U.S. property
22 is unable to find a person described in subpara-
23 graphs (A) or (B) of paragraph (1), or no such per-
24 son found has an address within a judicial district
25 of the United States, the qualifying plaintiff may

1 commence an in rem action against that Internet
2 site or the domain name used by that Internet site.

3 (3) NOTICE.—Upon commencing an action
4 under this subsection, the qualifying plaintiff shall
5 send a notice of the alleged activity described in sub-
6 section (a)(1)(C) and intent to proceed under this
7 subsection—

8 (A)(i) to all registrants (if any) of the do-
9 main name of the Internet site—

10 (I) at the postal and electronic mail
11 addresses (if any) of each such registrant
12 appearing in the applicable publicly acces-
13 sible database of registrations, if any, and
14 to the extent such addresses are reasonably
15 available; and

16 (II) via the postal and electronic mail
17 addresses of the registrar, registry, or
18 other domain name registration authority
19 that registered or assigned the domain
20 name of the Internet site, or portion there-
21 of, to the extent such addresses are reason-
22 ably available; and

23 (ii) to all owners and operators of the
24 Internet site known to the qualifying plaintiff at
25 the time the action is commenced, if any—

1 (I) at the primary postal and elec-
2 tronic mail addresses (if any) for each such
3 owner and operator that are provided on
4 the Internet site, and to the extent such
5 addresses are reasonably available; or

6 (II) if there is no domain name of the
7 Internet site, via the postal and electronic
8 mail addresses (if any) of the service pro-
9 vider responsible for allocating the Internet
10 Protocol address to the Internet site, as
11 found in the applicable publicly accessible
12 database of allocations and assignments of
13 Internet Protocol addresses to service pro-
14 viders, to the extent such postal and elec-
15 tronic mail addresses are reasonably avail-
16 able; or

17 (B) in any other such form as the court
18 may prescribe, including as may be required by
19 rule 4(f) of the Federal Rules of Civil Proce-
20 dure.

21 (4) SERVICE OF PROCESS.—For purposes of
22 this section, the actions described in this subsection
23 shall constitute service of process.

24 (5) RELIEF.—On application of a qualifying
25 plaintiff following the commencement of an action

1 under this section with respect to an Internet site
2 dedicated to theft of U.S. property, the court may
3 issue a temporary restraining order, a preliminary
4 injunction, or an injunction, in accordance with rule
5 65 of the Federal Rules of Civil Procedure, against
6 a registrant of a domain name used by the Internet
7 site, or against an owner or operator of the Internet
8 site, or, in an action brought in rem under para-
9 graph (2), against the Internet site, or against the
10 domain name used by the Internet site, to cease and
11 desist from undertaking any further activity as an
12 Internet site dedicated to theft of U.S. property.

13 (c) ACTIONS BASED ON COURT ORDERS.—

14 (1) SERVICE BY QUALIFYING PLAINTIFF.—A
15 qualifying plaintiff, with the prior approval of the
16 court, may serve a copy of a court order issued
17 under subsection (c) on similarly situated entities
18 described in paragraph (2). Proof of service shall be
19 filed with the court.

20 (2) REASONABLE MEASURES.—After being
21 served with a copy of an order under this subsection,
22 the following shall apply, subject to sections 2 and
23 104 of this Act:

24 (A) PAYMENT NETWORK PROVIDERS.—

1 (i) PREVENTING AFFILIATION.—A
2 payment network provider shall take tech-
3 nically feasible and commercially reason-
4 able measures, as expeditiously as possible,
5 that are designed to prevent, prohibit, or
6 suspend its service from completing pay-
7 ment transactions involving customers lo-
8 cated within the United States or accounts
9 originating in the United States and the
10 payment account—

11 (I) that is used by the Internet
12 site dedicated to theft of U.S. prop-
13 erty that is subject to the order; and

14 (II) through which payment
15 transactions processed by the payment
16 network provider would be completed.

17 (ii) APPLICATION.—A payment net-
18 work provider shall be considered to be in
19 compliance with clause (i) if it takes action
20 described in that clause with respect to the
21 payment account that is used by the Inter-
22 net site dedicated to the theft of U.S.
23 property that is subject to the order as of
24 the date on which a copy of the order is
25 served under paragraph (1), or as of the

1 date on which a copy of the order as modi-
2 fied under subsection (e) or as amended
3 under subsection (f) is served under sub-
4 section (g), whichever dates apply.

5 (B) INTERNET ADVERTISING SERVICES.—

6 (i) REQUIRED ACTIONS.—An Internet
7 advertising service that contracts with the
8 Internet site dedicated to theft of U.S.
9 property that is subject to the order to
10 provide advertising to or for such Internet
11 site, or that knowingly serves advertising
12 to or for such Internet site, shall take tech-
13 nically feasible and commercially reason-
14 able measures, as expeditiously as possible,
15 that are designed to—

16 (I) prevent its service from pro-
17 viding advertisements to or relating to
18 the Internet site;

19 (II) cease making available ad-
20 vertisements for the Internet site, or
21 paid or sponsored search results,
22 links, or other placements that pro-
23 vide access to the Internet site; and

24 (III) cease providing or receiving
25 any compensation for advertising or

1 related services to, from, or in connec-
2 tion with the Internet site.

3 (ii) APPLICATION.—An Internet ad-
4 vertising service shall be considered to be
5 in compliance with clause (i) if it takes ac-
6 tion described in that clause with respect
7 to advertising provided to or for the Inter-
8 net site dedicate to theft of U.S. property
9 as of the date on which a copy of the order
10 is served under paragraph (1), or as of the
11 date on which a copy of the order as modi-
12 fied under subsection (d) or as amended
13 under subsection (e) is served under sub-
14 section (f), whichever dates apply.

15 (3) ENFORCEMENT OF ORDERS.—

16 (A) RULE OF CONSTRUCTION.—The proce-
17 dures and relief provided under this subsection
18 shall be the sole legal remedy to enforce the ob-
19 ligations of any entity under this subsection.

20 (B) PROCEDURES AND RELIEF.—

21 (i) PROCEDURE.—Upon the filing of a
22 claim and a showing by the qualifying
23 plaintiff that an entity served with a copy
24 of a court order issued under subsection
25 (c) has not made good faith efforts to com-

1 ply with its obligations under this sub-
2 section by reason of such court order, the
3 court shall require the entity to show cause
4 why an order should not issue to require
5 compliance with the obligations of this sub-
6 section. The claim and showing under this
7 clause shall be filed with the court that
8 issued the court order or, if that court
9 lacks jurisdiction over the entity, with any
10 court that has jurisdiction over that entity.

11 (ii) SERVICE OF PROCESS.—The
12 qualifying plaintiff shall serve on the entity
13 process of filing the claim and the order to
14 show cause. Such process and order may
15 be served in any judicial district where the
16 entity resides or may be found.

17 (iii) AUTHORITY OF COURT.—Upon
18 consideration of the evidence presented by
19 all parties in connection with the order to
20 show cause, the court is authorized, in ad-
21 dition to an order to require compliance
22 with this obligations of this subsection, to
23 impose a remedy, consistent with the
24 court's exercise of its equitable authority,
25 to enforce compliance with its lawful or-

1 ders, if the entity has knowingly and will-
2 fully failed to so comply.

3 (C) DEFENSE.—An entity against whom
4 relief is sought under subparagraph (B) may
5 establish an affirmative defense by showing that
6 the entity does not have the technical means to
7 comply with this subsection without incurring
8 an unreasonable economic burden, or that the
9 order is not authorized by this subsection. Such
10 showing shall not be presumed to be a complete
11 defense but shall serve as a defense only for
12 those measures for which a technical limitation
13 on compliance is demonstrated or for such parts
14 of the order as are demonstrated to be unau-
15 thorized by this subsection.

16 (d) MODIFICATION OR VACATION OF ORDERS.—

17 (1) IN GENERAL.—At any time after the
18 issuance of an order under subsection (c), or an
19 amended order issued under subsection (e), with re-
20 spect to an Internet site dedicated to theft of U.S.
21 property, a motion to modify, suspend, or vacate the
22 order may be filed by—

23 (A) any person, or owner or operator of
24 property, that is subject to the order;

1 (B) any registrant of the domain name, or
2 the owner or operator, of such Internet site;

3 (C) any domain name registrar, registry,
4 or other domain name registration authority,
5 that has registered or assigned the domain
6 name of such Internet site; or

7 (D) any entity that has been served with
8 a copy of an order under subsection (c), or an
9 amended order under subsection (e), that re-
10 quires such entity to take action prescribed in
11 that subsection.

12 (2) RELIEF.—Relief under this subsection shall
13 be proper if the court finds that—

14 (A) the Internet site subject to the order
15 was improvidently adjudicated or is no longer
16 an Internet site dedicated to theft of U.S. prop-
17 erty; or

18 (B) the interests of justice otherwise re-
19 quire that the order be modified, suspended, or
20 vacated.

21 (3) CONSIDERATION.—In making a relief deter-
22 mination under paragraph (2), a court may consider
23 whether the domain name of the Internet site has
24 expired or has been re-registered by an entity other
25 than the entity that is subject to the order with re-

1 spect to which the motion under paragraph (1) is
2 brought.

3 (4) INTERVENTION.—An entity required to take
4 action under subsection (d) if an order issues under
5 subsection (e) may intervene at any time in any ac-
6 tion commenced under subsection (e) that may re-
7 sult in such order, or in any action to modify, sus-
8 pend, or vacate such order under this subsection.

9 (e) AMENDED ORDERS.—The qualifying plaintiff, if
10 alleging that an Internet site previously adjudicated in an
11 action under this section to be an Internet site dedicated
12 to theft of U.S. property is accessible or has been reconsti-
13 tuted at a different domain name or Internet Protocol ad-
14 dress, may petition the court to amend the order issued
15 under this section accordingly.

16 (f) SERVICE OF AND ACTION BASED ON MODIFIED,
17 SUSPENDED, VACATED, OR AMENDED ORDERS.—

18 (1) SERVICE REQUIREMENT.—The qualifying
19 plaintiff shall serve any entity that has been served
20 with a copy of an order under subsection (e) with a
21 copy of any modification, suspension, or vacation of,
22 or amendment to, that order under subsection (d) or
23 (e).

24 (2) ACTION SUBSEQUENT TO SERVICE.—An en-
25 tity that is served with a copy of a modified, sus-

1 pending, or amended order under paragraph (1) shall
2 take actions consistent with subsection (c)(2) in ac-
3 cordance with the modification, suspension, or
4 amendment. An entity that is served with a copy of
5 a vacated order under paragraph (1) may restore
6 any services that were provided before being served
7 with a copy of the order under subsection (c).

8 (f) REPORTING OF ORDERS.—

9 (1) IN GENERAL.—The qualifying plaintiff shall
10 inform the Intellectual Property Enforcement Coor-
11 dinator of any court order issued under subsection
12 (c) or amended order issued under subsection (e).

13 (2) ALTERATIONS.—Upon the modification,
14 suspension, expiration, or vacation under subsection
15 (d) of a court order issued under subsection (c), the
16 qualifying plaintiff shall, and the defendant may, so
17 inform the Intellectual Property Enforcement Coor-
18 dinator.

19 **SEC. 104. EFFECT OF ORDERS SERVED ON THIRD-PARTY**
20 **ENTITIES.**

21 (a) RELIEF LIMITED TO SCOPE OF VIOLATION.—In
22 any case in which only a specifically identified portion of
23 an Internet site is identified by the court as a foreign in-
24 fringing site or as an Internet site dedicated to theft of
25 U.S. property, and made subject to an order under section

1 102(b)(5) or 103(b)(5), the relief granted under such sub-
2 section, and the obligations of any entity served with a
3 copy of an order under section 102(c) or 103(c), shall be
4 confined to that specified portion so identified and made
5 subject to the order. Nothing in the order shall be inter-
6 preted to impose obligations on any entity served with a
7 copy of the order with respect to any other portion of an
8 Internet site not specified in the order.

9 (b) LIMITATIONS RELATING TO COURT ORDERS.—

10 (1) APPLICABILITY.—This subsection applies to
11 liability or evidence in any claim or cause of action
12 under Federal or State law, other than in an en-
13 forcement action under section 102(c)(3) or
14 103(c)(3), against an entity served with a copy of an
15 order under sections 102(c) or 103(c), any entity de-
16 scribed in section 101(20)(B), or any director, offi-
17 cer, employee or agent of any such entity.

18 (2) LIMIT ON LIABILITY OF ENTITIES.—Subject
19 to paragraph (1), any entity served with a copy of
20 an order under sections 102(c) or 103(c), any entity
21 described in section 101(20)(B), and any director,
22 officer, employee, or agent of any such entity, shall
23 not be liable for any acts reasonably designed to
24 comply with such order or reasonably arising from
25 such order, and no cause of action shall lie in any

1 Federal or State court or administrative agency
2 against such an entity, or director, office, employee
3 or agent thereof, for such an act.

4 (3) ACTS OF CIRCUMVENTION BY CUS-
5 TOMERS.—Subject to paragraph (1), any entity
6 served with a copy of an order under sections 102(c)
7 or 103(c), any entity described in section
8 101(20)(B), and any director, officer, employee, or
9 agent of any such entity, shall not be liable for any
10 actions taken by customers of any such entity to cir-
11 cumvent any measure implemented in good faith by
12 the entity in order to comply with that order.

13 **SEC. 105. ACTIONS TAKEN CONSISTENT WITH THE PUR-**
14 **POSES OF THIS TITLE.**

15 (a) IN GENERAL.—No cause of action shall lie in any
16 Federal or State court or administrative agency against,
17 no person may rely in any claim or cause of action against,
18 and no liability for damages to any person shall be granted
19 against, a service provider, payment network provider,
20 Internet advertising service, advertiser, Internet search
21 engine, domain name registry, domain name registrar, en-
22 tity described in section 101(20)(B), or Internet Protocol
23 Allocation entity, including any director, officers, employ-
24 ees, or agents of any such entity, only for taking the ac-
25 tions described in section 102(c)(2) or section 103(c)(2)

1 with respect to an Internet site, acting in good faith and
2 based on credible evidence, that—

3 (1) the Internet site is a foreign infringing site,
4 is an Internet site dedicated to theft of U.S. prop-
5 erty, or is an Internet site that endangers the public
6 health; and

7 (2) the action is narrowly tailored and con-
8 sistent with the entity's terms of service or other
9 contractual rights, and with the purposes of this
10 title.

11 (c) DEFINITIONS.—In this section:

12 (1) ADULTERATED.—The term “adulterated”
13 has the meaning given that term in section 501 of
14 the Federal Food, Drug, and Cosmetic Act (21
15 U.S.C. 351).

16 (2) INTERNET SITE THAT ENDANGERS THE
17 PUBLIC HEALTH.—The term “Internet site that en-
18 dangers the public health” means an Internet site
19 that is primarily designed or operated for the pur-
20 pose of, has only limited purpose or use other than,
21 or is marketed by its operator or another acting in
22 concert with that operator primarily for use in—

23 (A) offering, selling, dispensing, or distrib-
24 uting any prescription medication, and does so
25 regularly without a valid prescription; or

1 (B) offering, selling, dispensing, or distrib-
2 uting any prescription medication that is adul-
3 terated or misbranded.

4 (3) MISBRANDED.—the term “misbranded” has
5 the meaning given that term in section 502 of the
6 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
7 352).

8 (4) PRESCRIPTION MEDICATION.—

9 (A) PRESCRIPTION MEDICATION.—The
10 term “prescription medication” means a drug
11 that is subject to section 503(b) of the Federal
12 Food, Drug, and Cosmetic Act (21 U.S.C.
13 353(b)).

14 (B) DRUG.—The term “drug” has the
15 meaning given that term in section 201(g)(1) of
16 the Federal Food Drug, and Cosmetic Act (21
17 U.S.C. 321(g)(1)).

18 (5) VALID PRESCRIPTION.—The term “valid
19 prescription” has the meaning given that term in
20 section 309(e)(2)(A) of the Controlled Substances
21 Act (21 U.S.C. 829(e)(2)(A)).

22 **SEC. 106. GUIDELINES AND STUDY.**

23 (a) GUIDELINES.—The Attorney General shall—

24 (1) provide appropriate resources and proce-
25 dures for case management and development to ef-

1 fect timely disposition of actions brought under this
2 title;

3 (2) develop a deconfliction process in consulta-
4 tion with appropriate law enforcement agencies, in-
5 cluding U.S. Immigration and Customs Enforce-
6 ment, to coordinate enforcement activities under this
7 title;

8 (3) publish procedures developed in consultation
9 with appropriate law enforcement agencies, including
10 U.S. Immigration and Customs Enforcement, to re-
11 ceive information from the public relevant to the en-
12 forcement of this title;

13 (4) provide guidance to intellectual property
14 rights holders about what information such rights
15 holders should provide to assist in initiating an in-
16 vestigation or to supplement an ongoing investiga-
17 tion under this title; and

18 (5) develop and make available, to entities
19 served with a copy of an order under section 102(c)
20 or 103(c) and such others as the Attorney General
21 determines is appropriate, a form of notice that in-
22 cludes information regarding the reasons for and im-
23 pact on users of orders issued under sections 102
24 and 103, for use by and at the sole discretion of en-
25 tities receiving it.

1 (b) STUDY.—

2 (1) BY THE REGISTER OF COPYRIGHTS.—

3 (A) NATURE OF STUDY.—The Register of
4 Copyrights, in consultation with appropriate de-
5 partments and agencies of the United States
6 and other stakeholders, shall conduct a study
7 on the enforcement and effectiveness of this
8 title and on any need to amend the provisions
9 of this title to adapt to emerging technologies.

10 (B) REPORTS TO CONGRESS.—Not later
11 than 2 years after the date of the enactment of
12 this Act, the Register of Copyrights shall sub-
13 mit to the Committees on the Judiciary of the
14 House of Representatives and the Senate a re-
15 port containing the results of the study con-
16 ducted under this subsection and any rec-
17 ommendations that the Register may have as a
18 result of the study.

19 (2) REPORT ON EFFECTIVENESS OF CERTAIN
20 MEASURES.—Not later than 1 year after the date of
21 enactment of this Act, the Secretary of Commerce,
22 in coordination with the Attorney General, the Sec-
23 retary of Homeland Security, the Register of Copy-
24 rights, and the Intellectual Property Enforcement
25 Coordinator, shall conduct a study and report to the

1 Committee on the Judiciary of the Senate and the
2 Committee on the Judiciary of the House of Rep-
3 resentatives on the following:

4 (A) An assessment of the effects, if any, of
5 the implementation of section 102(c)(2)(A) on
6 the accessibility of Internet sites dedicated to
7 infringing activity.

8 (B) An assessment of the effects, if any, of
9 the implementation of section 102(c)(2)(A) on
10 the deployment, security, and reliability of the
11 domain name system and associated Internet
12 processes, including Domain Name System Se-
13 curity Extensions.

14 (C) Recommendations, if any, for modi-
15 fying or amending this title to increase effec-
16 tiveness or ameliorate any unintended effects of
17 section 102(c)(2)(A).

18 **TITLE II—ADDITIONAL EN-**
19 **HANCEMENTS TO COMBAT IN-**
20 **TELLECTUAL PROPERTY**
21 **THEFT**

22 **SEC. 201. STREAMING OF COPYRIGHTED WORKS IN VIOLA-**
23 **TION OF CRIMINAL LAW.**

24 (a) TITLE 17 AMENDMENTS.—Section 506(a) of title
25 17, United States Code, is amended to read as follows:

1 “(a) CRIMINAL INFRINGEMENT.—

2 “(1) IN GENERAL.—Any person who willfully
3 infringes a copyright shall be punished as provided
4 under section 2319 of title 18, if the infringement
5 was committed—

6 “(A) for purposes of commercial advantage
7 or private financial gain;

8 “(B) by the reproduction or distribution,
9 including by electronic means, during any 180-
10 day period, of 1 or more copies or phonorecords
11 of 1 or more copyrighted works, or by the pub-
12 lic performance by means of digital trans-
13 mission, during any 180-day period, of 1 or
14 more copyrighted works, when the total retail
15 value of the copies or phonorecords, or of the
16 public performances, is more than \$1,000; or

17 “(C) by the distribution or public perform-
18 ance of a work being prepared for commercial
19 dissemination, by making it available on a com-
20 puter network accessible to members of the
21 public, if such person knew or should have
22 known that the work was intended for commer-
23 cial dissemination.

24 “(2) EVIDENCE.—For purposes of this sub-
25 section, evidence of reproduction, distribution, or

1 public performance of a copyrighted work, by itself,
2 shall not be sufficient to establish willful infringement
3 of a copyright.

4 “(3) DEFINITION.—In this subsection, the term
5 ‘work being prepared for commercial dissemination’
6 means—

7 “(A) a computer program, a musical work,
8 a motion picture or other audiovisual work, a
9 literary work, or a sound recording, if, at the
10 time of unauthorized distribution or public per-
11 formance—

12 “(i)(I) the copyright owner has a rea-
13 sonable expectation of commercial distribu-
14 tion; and

15 “(II) the copies or phonorecords of
16 the work have not been commercially dis-
17 tributed in the United States by or with
18 the authorization of the copyright owner;
19 or

20 “(ii)(I) the copyright owner does not
21 intend to offer copies of the work for com-
22 mercial distribution but has a reasonable
23 expectation of other forms of commercial
24 dissemination of the work; and

1 “(II) the work has not been commer-
2 cially disseminated to the public in the
3 United States by or with the authorization
4 of the copyright owner;

5 “(B) a motion picture, if, at the time of
6 unauthorized distribution or public perform-
7 ance, the motion picture—

8 “(i)(I) has been made available for
9 viewing in a motion picture exhibition facil-
10 ity; and

11 “(II) has not been made available in
12 copies for sale to the general public in the
13 United States by or with the authorization
14 of the copyright owner in a format in-
15 tended to permit viewing outside a motion
16 picture exhibition facility; or

17 “(ii) had not been commercially dis-
18 seminated to the public in the United
19 States by or with the authorization of the
20 copyright owner more than 24 hours before
21 the unauthorized distribution or public per-
22 formance.”.

23 (b) TITLE 18 AMENDMENTS.—Section 2319 of title
24 18, United States Code, is amended—

1 (1) in subsection (a), by striking “Any person
2 who” and inserting “Whoever”;

3 (2) by amending subsections (b), (c), and (d) to
4 read as follows:

5 “(b) Whoever commits an offense under section
6 506(a)(1)(A) of title 17—

7 “(1) shall be fined under this title, imprisoned
8 not more than 5 years, or both, if the offense con-
9 sists of the reproduction or distribution, including by
10 electronic means, of at least 10 copies or
11 phonorecords, or of at least 10 public performances
12 by means of digital transmission, of 1 or more copy-
13 righted works, during any 180-day period, which
14 have a total retail value of more than \$2,500;

15 “(2) shall be fined under this title, imprisoned
16 not more than 10 years, or both, if the offense is a
17 felony and is a second or subsequent offense under
18 subsection (a); or

19 “(3) shall be fined under this title, imprisoned
20 not more than 1 year, or both, in any other case.

21 “(c) Whoever commits an offense under section
22 506(a)(1)(B) of title 17—

23 “(1) shall be fined under this title, imprisoned
24 not more than 3 years, or both, if the offense con-
25 sists of the reproduction or distribution including by

1 electronic means, of at least 10 copies or
2 phonorecords, or of at least 10 public performances
3 by means of digital transmission, of 1 or more copy-
4 righted works, during any 180-day period, which
5 have a total retail value of more than \$2,500;

6 “(2) shall be fined under this title, imprisoned
7 not more than 6 years, or both, if the offense is a
8 felony and is a second or subsequent offense under
9 subsection (a); and

10 “(3) shall be fined under this title, imprisoned
11 not more than 1 year, or both, in any other case.

12 “(d) Whoever commits an offense under section
13 506(a)(1)(C) of title 17—

14 “(1) shall be fined under this title, imprisoned
15 not more than 3 years, or both;

16 “(2) shall be fined under this title, imprisoned
17 not more than 5 years, or both, if the offense was
18 committed for purposes of commercial advantage or
19 private financial gain;

20 “(3) shall be fined under this title, imprisoned
21 not more than 6 years, or both, if the offense is a
22 felony and is a second or subsequent offense under
23 subsection (a); and

24 “(4) shall be fined under this title, imprisoned
25 not more than 10 years, or both, if the offense is a

1 felony and is a second or subsequent offense com-
2 mitted for purposes of commercial advantage or pri-
3 vate financial gain under subsection (a).”;

4 (3) in subsection (f)—

5 (A) by amending paragraph (2) to read as
6 follows:

7 “(2) the terms ‘reproduction’, ‘distribution’,
8 and ‘public performance’ refer to the exclusive rights
9 of a copyright owner under paragraphs (1), (3), (4),
10 and (6), respectively, of section 106 (relating to ex-
11 clusive rights in copyrighted works), as limited by
12 sections 107 through 122, of title 17; and”;

13 (B) in paragraph (3), by striking “; and”
14 and inserting a period; and

15 (C) by striking paragraph (4); and

16 (4) by adding at the end the following new sub-
17 section:

18 “(g) EVIDENCE OF TOTAL RETAIL VALUE.—For
19 purposes of this section and section 506(a) of title 17,
20 total retail value may be shown by evidence of—

21 “(1) the total retail price that persons receiving
22 the reproductions, distributions, or public perform-
23 ances constituting the offense would have paid to re-
24 ceive such reproductions, distributions, or public per-
25 formances lawfully;

1 “(2) the total economic value of the reproduc-
2 tions, distributions, or public performances to the in-
3 fringer or to the copyright owner, as shown by evi-
4 dence of fee, advertising, or other revenue that was
5 received by the person who commits the offense, or
6 that the copyright owner would have been entitled to
7 receive had such reproductions, distributions, or
8 public performances been offered lawfully; or

9 “(3) the total fair market value of licenses to
10 offer the type of reproductions, distributions, or pub-
11 lic performances constituting the offense.”.

12 (c) RULE OF CONSTRUCTION.—Any person acting
13 with a good faith reasonable basis in law to believe that
14 the person’s conduct is lawful shall not be considered to
15 have acted willfully for purposes of the amendments made
16 by this section. Such person includes, but is not limited
17 to, a person engaged in conduct forming the basis of a
18 bona fide commercial dispute over the scope of existence
19 of a contract or license governing such conduct where such
20 person has a reasonable basis in law to believe that such
21 conduct is noninfringing. Nothing in this subsection shall
22 affect the application or interpretation of the willfulness
23 requirement in any other provision of civil or criminal law.

1 **SEC. 202. TRAFFICKING IN INHERENTLY DANGEROUS**
2 **GOODS OR SERVICES.**

3 Section 2320 of title 18, United States Code, is
4 amended—

5 (1) by redesignating subsections (b) through (g)
6 as subsections (c) through (h), respectively;

7 (2) by striking subsection (a) and inserting the
8 following:

9 “(a) OFFENSES.—Whoever intentionally—

10 “(1) traffics in goods or services and knowingly
11 uses a counterfeit mark on or in connection with
12 such goods or services,

13 “(2) traffics in labels, patches, stickers, wrap-
14 pers, badges, emblems, medallions, charms, boxes,
15 containers, cans, cases, hangtags, documentation, or
16 packaging of any type or nature, knowing that a
17 counterfeit mark has been applied thereto, the use of
18 which is likely to cause confusion, to cause mistake,
19 or to deceive,

20 “(3) traffics in goods or services knowing that
21 such good or service is a counterfeit military good or
22 service the use, malfunction, or failure of which is
23 likely to cause serious bodily injury or death, the
24 disclosure of classified information, impairment of
25 combat operations, or other significant harm to a

1 combat operation, a member of the Armed Forces,
2 or national security, or

3 “(4) imports, exports, or traffics in counterfeit
4 drugs,

5 or attempts or conspires to violate any of paragraphs (1)
6 through (3) shall be punished as provided in subsection
7 (b).

8 “(b) PENALTIES.—

9 “(1) IN GENERAL.—Whoever commits an of-
10 fense under subsection (a)—

11 “(A) if an individual, shall be fined not
12 more than \$2,000,000, imprisoned not more
13 than 10 years, or both, and, if other than an
14 individual, shall be fined not more than
15 \$5,000,000; and

16 “(B) for a second or subsequent offense
17 under subsection (a), if an individual, shall be
18 fined not more than \$5,000,000 or imprisoned
19 not more than 20 years, or both, and, if other
20 than an individual, shall be fined not more than
21 \$15,000,000.

22 “(2) SERIOUS BODILY INJURY OR DEATH.—

23 “(A) SERIOUS BODILY INJURY.—Whoever
24 knowingly or recklessly causes or attempts to
25 cause serious bodily injury from conduct in vio-

1 lation of subsection (a), if an individual, shall
2 be fined not more than \$5,000,000, imprisoned
3 for not more than 20 years, or both, and, if
4 other than an individual, shall be fined not
5 more than \$15,000,000.

6 “(B) DEATH.—Whoever knowingly or
7 recklessly causes or attempts to cause death
8 from conduct in violation of subsection (a), if
9 an individual, shall be fined not more than
10 \$5,000,000, imprisoned for any term of years
11 or for life, or both, and, if other than an indi-
12 vidual, shall be fined not more than
13 \$15,000,000.

14 “(3) COUNTERFEIT MILITARY GOODS OR SERV-
15 ICES.—Whoever commits an offense under sub-
16 section (a) involving a counterfeit military good or
17 service—

18 “(A) if an individual, shall be fined not
19 more than \$5,000,000, imprisoned not more
20 than 20 years, or both, and, if other than an
21 individual, be fined not more than \$15,000,000;
22 and

23 “(B) for a second or subsequent offense, if
24 an individual, shall be fined not more than
25 \$15,000,000, imprisoned not more than 30

1 years, or both, and, if other than an individual,
2 shall be fined not more than \$30,000,000.”;

3 (3) in subsection (d), by striking “(d)” and in-
4 serting “(d) DEFENSES.—”;

5 (4) in subsection (e), by striking “(e)” and in-
6 serting “(e) PRESENTENCE REPORT.—”

7 (5) by amending subsection (f), as redesignated,
8 to read as follows:

9 “(f) DEFINITIONS.—For the purposes of this sec-
10 tion—

11 “(1) the term ‘counterfeit drug’ has the mean-
12 ing given that term in section 201(g)(2) of the Fed-
13 eral Food Drug, and Cosmetic Act (21 U.S.C.
14 321(g)(2));

15 “(2) the term ‘counterfeit mark’ means—

16 “(A) a spurious mark—

17 “(i) that is used in connection with
18 trafficking in any goods, services, labels,
19 patches, stickers, wrappers, badges, em-
20 blems, medallions, charms, boxes, con-
21 tainers, cans, cases, hangtags, documenta-
22 tion, or packaging of any type or nature;

23 “(ii) that is identical with, or substan-
24 tially indistinguishable from, a mark reg-
25 istered on the principal register in the

1 United States Patent and Trademark Of-
2 fice and in use, whether or not the defend-
3 ant knew such mark was so registered;

4 “(iii) that is applied to or used in con-
5 nection with the goods or services for
6 which the mark is registered with the
7 United States Patent and Trademark Of-
8 fice, or is applied to or consists of a label,
9 patch, sticker, wrapper, badge, emblem,
10 medallion, charm, box, container, can,
11 case, hangtag, documentation, or pack-
12 aging of any type or nature that is de-
13 signed, marketed, or otherwise intended to
14 be used on or in connection with the goods
15 or services for which the mark is registered
16 in the United States Patent and Trade-
17 mark Office; and

18 “(iv) the use of which is likely to
19 cause confusion, to cause mistake, or to
20 deceive; or

21 “(B) a spurious designation that is iden-
22 tical with, or substantially indistinguishable
23 from, a designation as to which the remedies of
24 the Lanham Act are made available by reason
25 of section 220506 of title 36;

1 but such term does not include any mark or designa-
2 tion used in connection with goods or services, or a
3 mark or designation applied to labels, patches, stick-
4 ers, wrappers, badges, emblems, medallions, charms,
5 boxes, containers, cans, cases, hangtags, documenta-
6 tion, or packaging of any type or nature used in con-
7 nection with such goods or services, of which the
8 manufacturer or producer was, at the time of the
9 manufacture or production in question, authorized to
10 use the mark or designation for the type of goods or
11 services so manufactured or produced, by the holder
12 of the right to use such mark or designation;

13 “(3) the term ‘counterfeit military good or serv-
14 ice’ means a good or service that uses a counterfeit
15 mark on or in connection with such good or service
16 and that—

17 “(A) is falsely identified or labeled as
18 meeting military specifications, or

19 “(B) is intended for use in a military or
20 national security application; and

21 “(4) the term ‘financial gain’ includes the re-
22 ceipt, or expected receipt, of anything of value;

23 “(5) the term ‘Lanham Act’ means the Act en-
24 titled ‘An Act to provide for the registration and
25 protection of trademarks used in commerce, to carry

1 out the provisions of certain international conven-
2 tions, and for other purposes’, approved July 5,
3 1946 (15 U.S.C. 1051 et seq.);

4 “(6) the term ‘traffic’ means to transport,
5 transfer, or otherwise dispose of, to another, for pur-
6 poses of commercial advantage or private financial
7 gain, or to make, import, export, obtain control of,
8 or possess, with intent to so transport, transfer, or
9 otherwise dispose of.”;

10 (6) in subsection (g), by striking “(g)” and in-
11 serting “(g) LIMITATION ON CAUSE OF ACTION.—”

12 (7) in subsection (g), by striking “(h)” and in-
13 sert “(h) REPORT TO CONGRESS.—”;

14 **SEC. 203. PROTECTING U.S. BUSINESSES FROM FOREIGN**
15 **AND ECONOMIC ESPIONAGE.**

16 (a) FOR OFFENSES COMMITTED BY INDIVIDUALS.—
17 Section 1831(a) of title 18, United States Code, is amend-
18 ed, in the matter after paragraph (5)—

19 (1) by striking “15 years” and inserting “20
20 years”; and

21 (2) by striking “not more than \$500,000” and
22 inserting “not less than \$1,000,000 and not more
23 than \$5,000,000”.

24 (b) FOR OFFENSES COMMITTED BY ORGANIZA-
25 TIONS.—Section 1831(b) of such title is amended by strik-

1 ing “\$10,000,000” and inserting “not more than the
2 greater of \$10,000,000 or 3 times the value of the stolen
3 trade secret to the organization (including expenses for re-
4 search and design or other costs of reproducing the trade
5 secret that the organization has thereby avoided)”.

6 **SEC. 204. DENYING U.S. CAPITAL TO NOTORIOUS FOREIGN**
7 **INFRINGERS.**

8 (a) IDENTIFICATION AND RECOMMENDATIONS RE-
9 GARDING NOTORIOUS FOREIGN INFRINGERS.—

10 (1) IN GENERAL.—Using existing resources, the
11 Intellectual Property Enforcement Coordinator, in
12 consultation with the Secretaries of Treasury and
13 Commerce, the United States Trade Representative,
14 the Chairman of the Securities and Exchange Com-
15 mission, the Register of Copyrights, and the heads
16 of other departments and appropriate agencies, shall
17 identify and conduct an analysis of notorious foreign
18 infringers whose activities cause significant harm to
19 holders of intellectual property rights in the United
20 States.

21 (2) PUBLIC INPUT.—In carrying out paragraph
22 (1), the Intellectual Property Enforcement Coordi-
23 nator shall solicit and give consideration to the views
24 and recommendations of members of the public, in-

1 including holders of intellectual property rights in the
2 United States.

3 (b) REPORT TO CONGRESS.—The Intellectual Prop-
4 erty Enforcement Coordinator shall, not later than 6
5 months after the date of the enactment of this Act, submit
6 to the Committees on the Judiciary of the House of Rep-
7 resentatives and the Senate a report that includes the fol-
8 lowing:

9 (1) An analysis of notorious foreign infringers
10 and a discussion of how these infringers violate in-
11 dustry norms regarding the protection of intellectual
12 property.

13 (2) An analysis of the significant harm inflicted
14 by notorious foreign infringers on consumers, busi-
15 nesses, and intellectual property industries in the
16 United States and abroad.

17 (3) An examination of whether notorious for-
18 eign infringers have attempted to or succeeded in ac-
19 cessing capital markets in the United States for
20 funding or public offerings.

21 (4) An analysis of the adequacy of relying upon
22 foreign governments to pursue legal action against
23 notorious foreign infringers.

24 (5) A discussion of specific policy recommenda-
25 tions to deter the activities of notorious foreign in-

1 fringers and encourage foreign businesses to adopt
2 industry norms that promote the protection of intel-
3 lectual property globally, including addressing—

4 (A) whether notorious foreign infringers
5 that engage in significant infringing activity
6 should be prohibited by the laws of the United
7 States from seeking to raise capital in the
8 United States, including offering stock for sale
9 to the public; and

10 (B) whether the United States Government
11 should initiate a process to identify and des-
12 ignate foreign entities from a list of notorious
13 foreign infringers that would be prohibited from
14 raising capital in the United States.

15 **SEC. 205. DEFENDING INTELLECTUAL PROPERTY RIGHTS**

16 **ABROAD.**

17 (a) **RESOURCES TO PROTECT INTELLECTUAL PROP-**
18 **ERTY RIGHTS.—**

19 (1) **POLICY.—**The Secretary of State and the
20 Secretary of Commerce, in consultation with the
21 Register of Copyrights, shall ensure that the protec-
22 tion in foreign countries of the intellectual property
23 rights of United States persons is a significant com-
24 ponent of United States foreign and commercial pol-

1 icy in general, and in relations with individual coun-
2 tries in particular.

3 (2) DEDICATION OF RESOURCES.—The Sec-
4 retary of State and the Secretary of Commerce, in
5 consultation with the Register of Copyrights, and
6 the heads of other appropriate departments and
7 agencies, shall ensure that adequate resources are
8 available at the United States embassy or diplomatic
9 mission (as the case may be) in any country that is
10 identified under section 182(a)(1) of the Trade Act
11 of 1974 (19 U.S.C. 2242(a)(1)) to ensure—

12 (A) aggressive support for enforcement ac-
13 tion against violations of the intellectual prop-
14 erty rights of United States persons in such
15 country;

16 (B) cooperation with and support for the
17 host government's efforts to conform its appli-
18 cable laws, regulations, practices, and processes
19 to enable the host government to honor its
20 international and bilateral obligations with re-
21 spect to the protection of intellectual property
22 rights;

23 (C) consistency with the policy and coun-
24 try-specific priorities set forth in the most re-

1 cent report of USTR under such section
2 182(a)(1); and

3 (D) support for holders of United States
4 intellectual property rights and industries whose
5 access to foreign markets is improperly re-
6 stricted by intellectual property related issues.

7 (b) NEW APPOINTMENTS.—

8 (1) APPOINTMENTS AND ADMINISTRATION.—

9 The Secretary of State and the Secretary of Com-
10 merce, in consultation with the Register of Copy-
11 rights, shall appoint at least one intellectual prop-
12 erty attaché to be assigned to the United States em-
13 bassy or diplomatic mission (as the case may be) in
14 a country in each geographic region covered by a re-
15 gional bureau of the Department of State. The Di-
16 rector of the Patent and Trademark Office shall
17 maintain authority over hiring, personnel ratings,
18 and objectives for the attachés, in consultation with
19 the Secretary of State. Depending on experience and
20 expertise, intellectual property attachés shall be des-
21 ignated as the diplomatic rank in-mission of First
22 Secretary or Counselor.

23 (2) REGIONS DEFINED.—The geographic re-
24 gions referred to in paragraph (1) are the following:

25 (A) Africa.

1 (B) Europe and Eurasia.

2 (C) East Asia and the Pacific.

3 (D) The Near East.

4 (E) South and Central Asia and the Pa-
5 cific.

6 (F) The Western Hemisphere.

7 (3) DUTIES.—The intellectual property attachés
8 appointed under this subsection shall focus primarily
9 on intellectual property matters, including the devel-
10 opment, protection, and enforcement of applicable
11 law. Each intellectual property attaché shall work, in
12 accordance with guidance from the Director, and in
13 coordination with appropriate staff at the Depart-
14 ments of Commerce and State and the Copyright
15 Office, to advance the policy goals and priorities of
16 the United States Government. Those policy goals
17 and priorities shall be consistent with USTR's re-
18 ports under section 182(a)(1) of the Trade Act of
19 1974. The intellectual property attachés shall work
20 with United States holders of intellectual property
21 rights and industry to address intellectual property
22 rights violations in the countries where the attachés
23 are assigned.

24 (c) PRIORITY ASSIGNMENTS.—

1 (1) IN GENERAL.—Subject to paragraph (2), in
2 designating the United States embassies or diplo-
3 matic missions where attachés will be assigned under
4 subsection (b), the Secretary of State and the Sec-
5 retary of Commerce shall give priority to countries
6 where the activities of an attaché are likely to
7 achieve the greatest potential benefit in reducing in-
8 tellectual property infringement in the United States
9 market, to advance the intellectual property rights of
10 United States persons and their licensees, and to ad-
11 vance the interests of United States persons who
12 may otherwise be harmed by violations of intellectual
13 property rights in those countries.

14 (2) ASSIGNMENTS TO PRIORITY COUNTRIES.—
15 In carrying out paragraph (1), the Secretary of
16 State and the Secretary of Commerce shall consider
17 assigning intellectual property attachés—

18 (A) to the countries that have been identi-
19 fied under section 182(a)(1) of the Trade Act
20 of 1974 (19 U.S.C. 2242(a)(1)); and

21 (B) to countries of critical economic impor-
22 tance to the advancement of United States in-
23 tellectual property rights and interests.

24 (d) TRAINING.—The Secretary of State and the Sec-
25 retary of Commerce shall ensure that each intellectual

1 property attaché appointed under subsection (b) is fully
2 trained for the responsibilities of the position before as-
3 suming duties at the United States embassy or diplomatic
4 mission to which the attaché is assigned.

5 (e) COORDINATION.—The activities of intellectual
6 property attachés under this section shall be determined
7 in consultation with the Intellectual Property Enforcement
8 Coordinator. The Director shall assist in coordinating the
9 policy priorities and activities of the intellectual property
10 attachés and oversee administrative and personnel mat-
11 ters.

12 (f) TRAINING AND TECHNICAL ASSISTANCE.—

13 (1) CONSISTENCY.—Using existing resources,
14 all training and technical assistance provided by in-
15 tellectual property attachés appointed under sub-
16 section (b), or under other authority, relating to in-
17 tellectual property enforcement and protection
18 abroad shall be designed to be consistent with the
19 policy and country-specific priorities set forth in the
20 most recent report of USTR under section 182(a) of
21 the Trade Act of 1974.

22 (2) ROLE OF IPEC.—Such training and tech-
23 nical assistance programs shall be carried out in
24 consultation with the Intellectual Property Enforce-
25 ment Coordinator. The Director shall assist in co-

1 ordinating the training and technical assistance pro-
2 grams conducted by intellectual property attachés.

3 (g) ACTIVITIES IN OTHER COUNTRIES.—In the case
4 of countries that are not identified under section
5 182(a)(1) of the Trade Act of 1974, the activities of Fed-
6 eral departments and agencies with respect to intellectual
7 property rights in those countries, intellectual property
8 programs and outreach of the United States Government
9 in those countries, and training and technical assistance
10 programs of the United States Government relating to in-
11 tellectual property in those countries may be conducted
12 to the extent they are consistent with compelling commer-
13 cial or foreign policy interests of the United States.

14 (h) REPORTS TO CONGRESS.—The Intellectual Prop-
15 erty Enforcement Coordinator shall include in the annual
16 report submitted under section 314 of the Prioritizing Re-
17 sources and Organization for Intellectual Property Act of
18 2008 (15 U.S.C. 8114) on the activities of the advisory
19 committee established under section 301 of that Act (15
20 U.S.C. 8111) information on the appointment, designation
21 for assignment, and activities of all intellectual property
22 attachés of any Federal department or agency who are
23 serving abroad.

24 (i) DEFINITIONS.—In this section:

1 (1) DIRECTOR.—The terms “Director of the
2 Patent and Trademark Office” and “Director” mean
3 the Under Secretary for Intellectual Property and
4 Director of the United States Patent and Trade-
5 mark Office.

6 (2) INTELLECTUAL PROPERTY ENFORCE-
7 MENT.—The term “intellectual property enforce-
8 ment” has the meaning given that term in section
9 302 of the Prioritizing Resources and Organization
10 for Intellectual Property Act of 2008 (15 U.S.C.
11 8112).

12 (3) INTELLECTUAL PROPERTY ENFORCEMENT
13 COORDINATOR.—The term “Intellectual Property
14 Enforcement Coordinator” means the Intellectual
15 Property Enforcement Coordinator appointed under
16 section 301 of the Prioritizing Resources and Orga-
17 nization for Intellectual Property Act of 2008 (15
18 U.S.C. 8111).

19 (4) INTELLECTUAL PROPERTY RIGHTS.—The
20 term “intellectual property rights” means the rights
21 of holders of copyrights, patents, trademarks, other
22 forms of intellectual property, and trade secrets.

23 (5) USTR.—The term “USTR” means the
24 United States Trade Representative.

1 (6) UNITED STATES PERSON.—The term
2 “United States person” means—

3 (A) any United States resident or national;

4 (B) any corporation, partnership, other
5 business entity, or other organization, that is
6 organized under the laws of the United States;
7 and

8 (C) any foreign subsidiary or affiliate (in-
9 cluding any permanent foreign establishment)
10 of any corporation, partnership, business entity,
11 or organization described in subparagraph (B),
12 that is controlled in fact by such corporation,
13 partnership, business entity, or organization.

14 (j) AUTHORIZATION OF APPROPRIATIONS.—The Sec-
15 retary of State and the Secretary of Commerce shall pro-
16 vide for the training and support of the intellectual prop-
17 erty attachés appointed under subsection (b) using exist-
18 ing resources.

