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MARKUP OF H.R. 3261,  
STOP ONLINE PIRACY ACT  
Friday, December 16, 2011  
House of Representatives,  
Committee on the Judiciary,  
Washington, D.C.

The committee met, pursuant to call, at 10:11 a.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

Present: Representatives Smith, Sensenbrenner, Gallegly, Goodlatte, Lungren, Chabot, Issa, Forbes, King, Franks, Jordan, Poe, Chaffetz, Griffin, Marino, Ross, Amodei, Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Johnson, Quigley, Deutch, and Sanchez and Polis.

Staff Present: Sean McLaughlin, Staff Director; Vishal Amin, Counsel; Travis Norton, Parliamentarian; Sarah Kish, Clerk; Perry

Apelbaum, Minority Staff Director; and Jason Everett, Minority Counsel.

Chairman Smith. The Judiciary Committee will come to order, and the clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. Present.

The Clerk. Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. Present

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. Here.

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. Here.

The Clerk. Mr. Franks?

Mr. Franks. Here.

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Reed?

Mr. Reed. Present.

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. Present.

The Clerk. Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Mrs. Adams.

[No response.]

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Present.

The Clerk. Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Present.

The Clerk. Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Present.

The Clerk. Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

Mr. Polis. Present.

Chairman Smith. The gentleman from North Carolina, Mr. Watt?

Mr. Watt. Present.

Chairman Smith. The gentlewoman from California?

Ms. Waters. Present.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 13 members responded present.

Chairman Smith. We have a working quorum, so we will resume our markup and consider amendments. Before I recognize the gentleman from Virginia, Mr. Goodlatte, for an amendment, I want to alert members to these changes. The revised text for amendments 28, 39, 42, 54, 55, 58, and 59 were emailed to committee members' offices this morning. Without objection, those revised amendments will be considered in the place of the original filed amendments as we proceed through the roster today.

The gentleman from Virginia, Mr. Goodlatte, is recognized.

Mr. Goodlatte. Thank you, Mr. Chairman. Mr. Chairman, I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Mr. Goodlatte.

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman is recognized to explain his amendment.

[The information follows:]

\*\*\*\*\* INSERT 1-1 \*\*\*\*\*

Mr. Goodlatte. Thank you, Mr. Chairman. Mr. Chairman, this is a technical amendment to clarify the intent of the manager's amendment that the safe harbor contained in Section 104 of the bill does not trump protections elsewhere in the bill that make clear that Internet service providers are not required to block subdomains. This is a technical amendment that corrects an ambiguity in the manager's amendment, and I urge the members of the committee to support this amendment.

Chairman Smith. Okay. Will the gentleman yield?

Mr. Goodlatte. Yes.

Chairman Smith. I agree with the gentleman, I support the amendment as well. I urge my colleagues to support it. Are there other members who wish to be heard on this amendment? If not --

Ms. Lofgren. Mr. Chairman, I would move to strike the last word.

Chairman Smith. The gentlewoman from California, Ms. Lofgren.

Ms. Lofgren. I oppose this amendment, and I don't believe it is simply a technical amendment. This amendment would protect Internet service providers who are too cheap to block only a portion of a site and instead who would choose to block a whole site using DNS blocking even when a court order only specifies a portion as infringing.

To endorse this activity on the part of DNS blocking of entire sites, even where there is a more specific order that relates only to the infringing sites would have, could have the impact of adversely impacting legitimate speech. It sometimes, and we have seen this in the past, the misdeeds are just on one subdomain or even one page and if you block the entire site, you will be -- have the effect, quite



likely, of blocking noninfringing speech. This amendment, I think, is a further endorsement of the DNS blocking scheme which has been criticized as harming cyber security.

We had a substantial discussion of that yesterday and likely will have additional discussions as well. The existing 104(a) in the manager's amendment states that intermediaries are not required to punish a whole site if a court order only specifies that a portion is infringing, and this further amendment to eliminate the only-punish-the-bad-person concept is really not the right way to go.

In fact, I had been looking and may yet provide a proposal that whereas it is permissive not to block an entire site, we would be required not to block an entire site. This goes in the completely wrong direction.

The safe harbor states that the DNS blocking fully discharges the obligation when you prevent access to subscribers to the limited site, and to do as Mr. Goodlatte suggests would trump the section, it would bless overblocking by ISPs. I don't know whether a court would block it as violative of the First Amendment. I have not had the opportunity, and hope maybe I will today, to review the advice that Mr. Sensenbrenner referenced yesterday from Professor Tribe, I would love to do that, but I think this is certainly wrong, perhaps unconstitutional, and we should vigorously oppose it, and with that, I would yield to Mr. Polis.

Chairman Smith. Thank you, Ms. Lofgren.

Mr. Polis. Thank you, and I just want to be clear, and I will be taking up my own time on this as well, but I don't -- and I will

engage Mr. Goodlatte for this if the gentleman from Virginia has a moment. I mean, this appears to be, I think this was presented as a technical amendment. Would the gentleman agree that this is an amendment that does change the implications of the bill and should be debated on its merits rather than as a technical question?

Mr. Goodlatte. Well, the gentleman and the gentlewoman may not like the underlying principle in the bill, but it is a technical amendment in that it conforms the manager's amendment to other language elsewhere in the bill, and for that reason, you are welcome to debate that principle elsewhere in the bill or offer an amendment to the underlying principle, which you have already done, but the fact of the matter is, this makes the amendment conform to other language already in the bill, and as the gentlewoman noted, nothing can be done here without a court order, so if a court is going to require somebody to overblock, then all of these issues will come up in that, in that --

Ms. Lofgren. Reclaiming my time, I think the gentleman is incorrect. The amendment, by having Section 102(c)(2)(a) override Section 104(a), you would require ISPs to receive a court order for a foreign infringing site to prevent access by its subscribers to the site. The safe harbor is actually being changed. This is not just a technical amendment. This is something that provides a substantive change that is violative, probably, of the First Amendment, and I am sure that the gentleman offers it in good faith as a technical amendment. It is not merely a technical amendment, and it should be opposed, and in fact, we should be going in the exact other direction.

If members are sincere that they are concerned about infringement, then -- and we want to narrowly tailor our actions toward infringing material, the last thing you want to do is to overblock so that you are shutting down entire sites instead of just infringing material.

Chairman Smith. The gentlewoman's time --

Ms. Lofgren. That is what this amendment would do, and it should be opposed.

Chairman Smith. The gentlewoman's time has expired. Are there other members who seek recognition?

Ms. Waters. Mr. Chairman.

Chairman Smith. The gentlewoman from California, Ms. Waters, is recognized.

Ms. Waters. Thank you very much, Mr. Chairman. I am paying special attention to this because this is one of the areas of concern that was brought to my attention during the period of time we were attempting to do our research. We had Internet users who talked about the fact that if a portion of an Internet site was infringing that the bill, the underlying bill was attempting to block the entire site, but this seems to straighten that out, and I want to know from those who oppose it if this is not a way to correct any action that would block out an entire site rather than just that portion which is infringing, and isn't this a technical improvement? That is what it -- the wording says.

In any case in which only a specifically identified portion of an Internet site is identified by the court as an infringing site or

as an Internet site dedicated to theft of U.S. property and made subject to an order under paragraph, and then it goes into the sections 102(b), 103(b), the relief granted under such paragraphs and the obligations of any entity served with a copy of an order under Section 102(c) or 103(c) shall be confined to that specified portion so identified and made subject to the order. What is wrong with this?

I think that this specificity clarifies any ambiguities that may be in the underlying bill, and I just think this is an improvement, and I just don't understand the opposition.

Ms. Lofgren. Would the gentlelady yield?

Ms. Waters. Yes, I will lead to the gentlelady.

Ms. Lofgren. Here is I think what it does. If you look at the second page of the amendment, line 6, section -- subparagraph (a) of Section 102(c)(2) essentially says do what you want to block, and going on further to line 9, 102(c)(2), you are going to be deemed to comply with any court order and entitled to all defenses and limitations on liability regardless of whether the order identifies or specifies only a portion.

So the effect of this amendment is actually to do what you don't want, which is to say if you overblock, even though a court has identified a small portion, you are entitled to immunity, and it will basically give a free ride to service providers who are too cheap to actually go down the --

Ms. Waters. Reclaiming my time.

Ms. Lofgren. Yes, I thank the gentlelady for allowing me to

explain.

Ms. Waters. Reclaiming my time. There is nothing in the language that you have described that would override the first page of this amendment, shall be deemed to comply with such court order and entitled to the defenses and limitations the court order specifies, the blocking or the taking down or what have you specifies. So how do you spread this to deem that they would be in compliance if they did anything other than relate its actions to the specified point of the Internet?

Mr. Goodlatte. Will the gentlelady yield?

Ms. Waters. The gentlelady will yield to Mr. Goodlatte.

Mr. Goodlatte. And she is quite right. But I would like to add to those who are criticizing this provision, the underlying bill is very clear when it says in Section 2, savings and severability clauses, number 1, First Amendment, Nothing in this Act shall be construed to impose a prior restraint on free speech or the press protected under the First Amendment to the Constitution, and this amendment leaves it to a court to decide whether or not blocking should be ordered, and I think it makes it consistent with other language in the underlying text of the bill. It is a clarification that makes the bill consistent. You can say you don't like the bill, but you can't say this isn't a technical amendment that corrects the bill.

Chairman Smith. The gentlewoman's time has expired. Are there others who seek recognition? The gentleman from Colorado, Mr. Polis.

Mr. Polis. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Polis. You know, again, just in brief response to the gentleman from Virginia, I mean, he cited that this has to comply with the Constitution, any bill does, but that is not an excuse to pass statutes that are bad policy, and I believe this is bad policy. Whether it is invalidated by a court later on or not is not for us to say.

In response to the gentlelady from California as well, I wanted to point to the areas of this amendment that we are talking about here. It is the preservation of limitation language that is at issue here, lines 6 through 14, where effectively it says that there is a safe harbor that is not affected if, regardless of whether the order identifies or specifies only a portion of an Internet site to be taken down, and in fact, the Web site is deemed to comply with a court order and entitled to these limitations on liabilities that are provided here, again, regardless of whether such order identifies or specifies only a portion of an Internet site, and --

Ms. Waters. Would the gentleman yield?

Mr. Polis. I will be happy to yield to the gentlelady from California.

Ms. Lofgren. If I could, I think it might help to think about this conceptually in this way. It doesn't require an ISP to overblock, but if an ISP overblocks, the lines just quoted by my colleague from Colorado give you a complete defense of liability, and so the problem is that if somebody overblocks and it is cheaper to do it, just take the whole thing down, this is a complete immunity for doing so. This

is going to lead to problems, and I thank the gentleman for yielding on that.

Mr. Polis. It will lead to the path of least resistance, which is rather than take down the offending content, take down the entire site, and most large sites have user-generated content as most of the site, whether you are talking about something akin to a YouTube or a Reddit or whatever it is, most of the information on there is user, and when you have millions upon millions of pieces of user-generated content, it is always possible that and likely that some might be infringing. The way the DMCA works domestically is the infringing content is taken down.

When somebody posts themselves singing a copyrighted song to YouTube, YouTube doesn't go down, the ISP doesn't take YouTube down. Their DNS is not disabled, they are given a notice, and the song is taken down and, yes, there is remedies if they refuse to comply with that, as there should be.

Here we have a very, very different approach for foreign Web sites than we have for domestic Web sites, and in a global economy that is a very bad precedent. Effectively you are saying here, you know what, you get the same protection and safe harbor if you take down the whole site and disable it or you just take down the offending content that is in violation of a copyright, and as the gentlelady from California pointed out, the easier thing for an ISP to do is simply to disable the whole site. Now, that leads to, again, the censorship of the Internet, the bifurcation of the Internet, the Balkanization of the

Internet because you might have sites with tens of millions of pieces of user-generated content, most of which is entirely legal and noninfringing, but because of the actions of some, and again those actions are, if there is infringing content, it needs to be taken down, but that is a different question as to whether the entire site should be disabled.

Mr. Goodlatte. Would the gentleman yield?

Mr. Polis. So any type of safe harbor, this area has to be narrowly tailored with regard to the offending content and not applied to the Web site at large as it is expanded to do under the preservation of limitation section of this amendment, and I will yield to the gentleman from Virginia.

Mr. Goodlatte. I thank the gentleman for yielding. First of all, the bill makes it clear that a court can only order the take-down of a full site.

Mr. Polis. Reclaiming my time. We are not talking about what the court is ordering. Yes, the court can take down the offending content --

Mr. Goodlatte. Well, that is what -- well, if you will allow me to finish my point.

Mr. Polis. Mr. Chair, we need to be in -- I request order. Look, we are not talking about what the court orders. The court orders they take down a specific component, you then tell the ISP, look, you get the same safe harbor if you take down everything versus --

Ms. Lofgren. It is a remedies question.



Mr. Polis. It is a remedies question, it is not a question of what the court order entails, and it is technically easier for them just to say the whole site is off rather than say this posting by user XYZ and this posting by user Y.

Mr. Goodlatte. If the gentleman will yield.

Mr. Polis. I will yield to the gentleman from Virginia.

Mr. Goodlatte. The court can only order the take-down of a full site. So the court is not, because of the provision in the bill that says that you cannot infringe on one's free speech rights, they are going to rely on the other remedies in the bill, they are not going to rely on this remedy under those circumstances.

Mr. Polis. Requesting my time, we are not talking about the courts, we are talking about giving the incentive for private actors, ISPs, to censor in the name of reducing their liabilities.

Mr. Goodlatte. Would the gentleman yield?

Mr. Polis. And that is exactly what you are doing here.

Mr. Goodlatte. Would the gentleman yield? Would the gentleman yield?

Mr. Polis. I would be happy to yield.

Mr. Goodlatte. The private actor cannot act unless the court orders them to do so.

Mr. Polis. Yeah, only the court order about a specific piece of content, the court order does not have --

Chairman Smith. The gentleman's time has expired.

Ms. Lofgren. Could I ask unanimous consent for an additional 30

seconds that I might be yielded?

Chairman Smith. Without objection.

Mr. Polis. I would be happy to yield to the gentlelady.

Chairman Smith. The gentleman from Colorado is recognized for an additional 30 seconds.

Ms. Lofgren. Here is the scenario. You have eBay Germany, and there is one eBay vendor that is selling bogus purses. The order should come to the portion of the site, but if you take down all of eBay Germany, the ISP is going to have complete immunity under this amendment. I thank the gentleman for yielding. That is the problem.

Mr. Berman. Would the gentlelady yield?

Ms. Lofgren. I don't have the time.

Mr. Polis. I believe my time has expired.

Chairman Smith. The gentleman's time has expired. The question is on the amendment, all in favor -- of the Goodlatte amendment. All in favor say aye. Aye. Opposed no. No. In the opinion of the chair, the noes have it.

Ms. Lofgren. I would ask for a recorded vote.

Chairman Smith. A recorded vote has been requested. The clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. Aye.

The Clerk. Mr. Smith, aye.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner, aye.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly, aye.

Mr. Goodlatte?

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte, aye.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. Aye.

The Clerk. Mr. Chabot, aye.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. Aye.

The Clerk. Mr. Forbes, aye.

Mr. King?

Mr. King. Aye.

The Clerk. Mr. King, aye.

Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks, aye.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz, aye.

Mr. Griffin?

Mr. Griffin. Aye.

The Clerk. Mr. Griffin, aye.

Mr. Marino?

Mr. Marino. Aye.

The Clerk. Mr. Marino, aye.

Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

Mr. Ross. Aye.

The Clerk. Mr. Ross, aye.

Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

Mr. Amodei. Yes.

The Clerk. Mr. Amodei, yes.

The Clerk. Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. No.

The Clerk. Ms. Lofgren, no.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson, no.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Mr. Polis?

Mr. Polis. No.

The Clerk. Mr. Polis votes no.

Chairman Smith. The gentleman from Ohio, Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan, yes.

Chairman Smith. The gentleman from New York.

Mr. Nadler. No.

The Clerk. Mr. Nadler, no.

Chairman Smith. Are there other members who wish to be recorded on the vote? The clerk will report.

The Clerk. Mr. Chairman, 22 members voted aye and 5 members voted nay.

Chairman Smith. A majority having voted in favor of the amendment, the amendment is agreed to. We will now return to an amendment that was postponed yesterday, and the gentleman from Wisconsin, Mr. Sensenbrenner, is recognized to offer that amendment.

Mr. Sensenbrenner. Mr. Chairman, I have an amendment at the desk, which is number 18 on the roster, Sensenbrenner 042.

[The information follows:]

\*\*\*\*\* INSERT 1-2 \*\*\*\*\*

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Mr. Sensenbrenner of Wisconsin, strike Section 103.

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman from Wisconsin is recognized to explain his amendment.

Mr. Sensenbrenner. Mr. Chairman, this amendment is quite straightforward. It strikes the private right of action from this legislation altogether, and I would hope that we would consider the private right of action issue differently than we would consider this entire bill. I have made no bones since yesterday that I don't think this bill is the right way to go, but I think the private right of action, whether the bill passes or fails, should be stricken from the legislation, and here is why: The private right of action will simply give the trial bar in this Nation the right to go after everybody who is covered by this bill, you know, alleging that they are not doing what the bill calls for, and in effect, because the Justice Department is also given the right of a private right of action, it delegates law enforcement functions to individuals, and the Supreme Court has been very wary, absent an explicit private right of action, to imply a private right of action in other legislation, and after USA Inc. versus Santa Clara County, California, Justice Ginsburg for the Court reversed the Ninth Circuit in holding that the Public Health Service Act nor the pharmaceutical pricing agreement signed by Medicaid participants



empowered health care facilities to sue drug companies for alleged overcharging. Only the HHS Secretary possesses law enforcement powers in such situations.

Now here what we are doing is we are giving a rights holder a private right of action to do what the Justice Department, read law enforcement, ought to be doing on their own, and this is a very, very dangerous precedent to set in this legislation because if it is approved in this legislation, there will be requests to include private rights of action in practically every other bill relative to remedies that this committee will consider. If the rights holders are convinced that entities aren't meeting their obligations, they shouldn't be allowed to haul the entities into court in a law enforcement capacity, and this amendment stops that from happening.

A private right of action allows trial lawyers to enforce the laws in lieu of the State. It is used on the State level in the midwest to enforce clean air and clean water statutes. So what happens? The suits go after every deep pocket defendant, oil companies, fisheries, polluters to enforce things that the States should do. The problem is that the incentives are different. The State wants clean air or clean water, but the plaintiffs in the private right of action and their counsel want fees and/or damages. The State would just sue to get the mess cleaned up, and the Chaffetz amendment on loser pays, which was rejected yesterday, is an attempt to get at the problem by setting some pretty high barriers to entry. Because it failed, there are no speed bumps except those provided under the Federal private right of -- or

the FRCP, which we know have never enforced the stop reams of litigation. I think that we ought to think about this very carefully. I would urge support of the amendment. I don't think we should set up a specific private right of action in this area where there are no specific private rights of action in other areas.

Finally, I would point out that while the U.S. Chamber of Commerce supports this legislation, they have been very strong about opposing private rights of action, so I would urge that this amendment be adopted. If we want to go this route, we ought to look at separate legislation, and I yield back the balance of my time.

Mr. Goodlatte. Mr. Chairman.

Chairman Smith. The gentleman yields back his time. Recognize myself in opposition to the amendment. I do oppose the amendment, and I will yield to the gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. Thank you, Mr. Chairman. This is a key provision of this bill. It is not correct that a private party can go into court and get a site taken down. This only applies to the follow-the-money approach which we are hearing from those who don't like other aspects of the bill saying follow the money. This is what disallows private actors to do, and if you are just going to rely upon the Justice Department to do this, to say that only when the Justice Department goes into court can a court order, a credit card company or an advertiser to not advertise on a foreign rogue Web site that is committing crimes, that is stealing individuals' property, if you are not going to allow this kind of civil relief, you are considerably damaging this bill.

The gentleman's amendment eliminates the private right of action in the bill. This is an essential provision in the Act, and it is a necessary tool for rights holders against foreign rogue Web sites. You want to talk about saving the government money, let people take their own actions to court if they think there is copyright infringement.

Mr. Berman. Will the gentleman yield?

Mr. Goodlatte. I will in a moment. The private injunctive relief in this Act is simply a follow-the-money approach. It promotes self-help by private parties, preserves government resources, and promotes due process safeguards for those accused of wrongdoing. Given the level of infringement online, eliminating private remedies would severely undercut enforcement actions. The bill includes several limitations on private relief. A site must first be deemed a rogue Web site by a court in order for a remedy to apply. This is a very high standard. The proceeding is against the rogue Web site, not against the payment processors or ad services who would incur no litigation expense and are provided with immunity from any suit or any liability arising from such court orders.

The private right of action in H.R. 3261 has been carefully written to address the needs of right holders and technology companies. This bill represents a delicate balance. Making such a core change to the bill could turn the program into a paper tiger, and for those on both sides who agree that the follow-the-money approach is a good tool to use against foreign rogue Web sites, this would effectively dramatically nullify. You could only rely upon when the Attorney

General wanted to go into court to require credit card companies or others to not do business with these foreign rogue Web sites to get that kind of injunction. We have got to let private rights holders engage in that activity. Otherwise we are not going to effectively address this problem, and someone asked me to yield.

Mr. Berman. I did, and I withdraw my request.

Mr. Goodlatte. I thank the gentleman.

Mr. Berman. Your explanation was so good.

Chairman Smith. Actually I have got the time, and I will yield back my time. Are there other members who wish to be heard on this amendment?

The gentleman from California, Mr. Issa.

Mr. Issa. Thank you, Mr. Chairman, and I thank you for continually trying your best to go Republican-Democrat, Republican-Democrat. I might suggest that you might as well go for and against. That will save a lot of your for people the time, wasted time because you run out of the against pretty quickly.

Mr. Chairman, it is very clear, we are going to lose here today. No, let me rephrase that, we are going to lose eventually, and we are going to lose in the worst possible way. We are going to lose without all the facts, we are going to lose without the process being open in the way that I would hope it will be in the new year.

As to the specifics of this amendment, as you know, I am not one of the attorneys here on the dais, so maybe I don't get it. Since we know you can't effectively sue a foreign entity that is outside the

reach of our government and since Mr. Goodlatte just said, and hopefully he is still hearing this, that, well, it is not about anybody but the foreign Web site, the foreign property pirate, I am going, okay, so this is about a private right of action in which we claim we are not going after the people with deep pockets here in the United States to get money damages, but, in fact, it is going to be about going after people, as far as I can tell, with deep pockets here in the U.S. to get money damages because there is no pockets you can get to outside the U.S. You won't even get a successful service on somebody in Timbuktu. So I am a little befuddled.

I am going to vote with Mr. Sensenbrenner because if you can't explain -- I will yield when I am done. If you can't explain the obvious, and Mr. Nadler, I know that you have got time, and you will explain it to me, and I look forward to hearing it, but, Mr. Chairman, I would like to take advantage of this moment to ask unanimous consent that a letter from virtually everybody who helped create the Internet be placed in the record. This includes the CEO of and president of InterWorking Labs, the CEO of Apache Software, Glenn Ricart at Internet Interconnection Point, et cetera, et cetera, and I will read a short part of it if it is accepted.

Chairman Smith. Without objection.

[The information follows:]

\*\*\*\*\* INSERT 1-3 \*\*\*\*\*

Mr. Issa. Okay. And the lead person is Vint Cerf, who everyone by now has figured out he wrote IPv4 and participated in IPv6 and is probably the most knowledgeable person as to what will or won't work.

Mr. Griffin. Will the gentleman yield?

Mr. Issa. I would yield briefly.

Mr. Griffin. Is Al Gore on that list?

Mr. Issa. He is conspicuous in his answer -- his absence.

Reclaiming my time, the letter starts off, and I know it is in the record, but we the undersigned, have played various parts in building the network called the Internet. We wrote and debugged the software, we defined the standards -- Mr. Chairman, we are not in order.

Chairman Smith. The gentleman is correct, the committee will be in order, and the gentleman continues to be recognized.

Mr. Issa. I thank the chairman. We wrote and debugged the software. We defined the standards and protocols that talk over the network. Many of us invented parts of it. We are just as proud of the social and economic benefits of our project, the Internet, has brought to all of us. Last year many of us wrote to you -- I am assuming this is the chairman -- and your colleagues to warn about proposed COICA copyright and censorship legislation. Today we are writing again to reiterate our concerns about SOPA and PIPA, derivatives of last year's bill that are under consideration in the House and Senate. In many respects, these proposals are worse than the ones we were alarmed to read just a year ago. If enacted, either of these bills will create an environment of tremendous fear and uncertainty for technological

innovation and seriously harm the credibility of the United States in its role as a steward of key Internet infrastructure.

Regardless of recent amendments to SOPA, both bills will risk fragmenting the Internet global domain name system, the DNS, and have other technical consequences. In exchange for this, such legislation would engender censorship that would simultaneously be circumvented by deliberate infringers while harming innocent parties and their right and ability to communicate and express themselves online, and it goes on for quite a while about censorship, and I know my time is limited.

Mr. Chairman, these people, more than we could put on four panels, five panels in this room, have serious concerns about both sides, the technical ability to do this, and the ability for it to be circumvented we have talked about in the small minority for a number of days, and most importantly, Mr. Chairman, in closing, this is about a group that says find another way, these are the very scientists that can help us find effective ways to do it on the committee if we will only hear them in the first part of the year, and I yield back.

Chairman Smith. The gentleman's time has expired. Thank you, Mr. Issa. The question is on the amendment of Mr. Sensenbrenner. All in favor say aye.

Ms. Lofgren. Mr. Chairman.

Mr. Chaffetz. Mr. Chairman.

Chairman Smith. The gentlewoman from California, for what purpose does she seek recognition?

Ms. Lofgren. I would move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Mr. Chairman, I have great respect for the gentleman from Wisconsin, a former chairman of the committee. I do not share his overall animosity towards private rights of action in law, but I do share his support for this amendment, and I would like to say why. We had a spirited discussion last night about the lack of due process that is present in Section 103 that he seeks to strike. We made efforts to remedy that, and if this amendment is not adopted, I am confident that will be additional efforts to remedy that, but absent the opportunity to, as the gentleman said, put some road bumps in, have some kind of due process, I think I would be inclined to support his amendment.

You know, to say that this is merely a payment remedy misses the point that if you are a small start-up and without any due process all of your revenue is eliminated, you are dead, you are done. It is the death sentence. And if you are a foreign infringing site, fine, we want the death sentence for you. But the problem is, there is no due process in this provision that makes sure that is how it is limited. That has been further aggravated by the adoption of Mr. Goodlatte's amendment that allows for take-downs of entire sites instead of portions thereof, so although, as I say, I am not -- I do not share the gentleman's hostility in every case to private causes of action, I do think the remedy that he has recommended in this case is a necessary one. I commend the gentleman for offering his amendment, and I would intend to vote aye with him, and with that, I would yield back my time.



Mr. Chaffetz. Mr. Chairman. Mr. Chairman.

Chairman Smith. Thank you, Ms. Lofgren. The gentleman from Utah, Mr. Chaffetz.

Mr. Chaffetz. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Chaffetz. I stand in support of this amendment. I point to yesterday where I offered an amendment that would be essentially a loser pays provision. If there is a small victory for those of us that are concerned about this piece of legislation, the majority of the Republicans who voted on that voted in favor of that amendment. This is, as Mr. Sensenbrenner more eloquently and technically can explain, there needs to be a way to go through the due process without creating this flood of litigation that will certainly pour in by untold thousands and put some of our job innovators or job creators, some of the best thing that is happening in this country job wise, on the defensive, having to spend untold millions of dollars trying to protect themselves, and I will be happy to yield to the gentleman from Wisconsin, who can further expand upon that.

Mr. Sensenbrenner. I thank the gentleman for yielding. This sets a precedent, and it is a precedent that will be expanded to other areas where we are talking about enforcement. Enforcement should be a law enforcement function in this area, and that is why the Justice Department should be given the right, and it does in this bill, to enforce the law. You know, we don't give people very many opportunities to sue everybody in the world because law enforcement

doesn't do what they want them to do. We should not set this precedent here. I yield back.

Mr. Berman. Would the gentleman yield?

Ms. Lofgren. Would --

Mr. Chaffetz. I would be happy to yield to the gentleman from California.

Mr. Berman. I appreciate the gentleman yielding. Just two points. One, it wasn't a loser pays. It was only if those folks lose do they pay amendment, not if the other folks lose do they pay, all the issues that Mr. Johnson so eloquently brought out yesterday.

And, secondly, we have a copyright law that has been in the law for a long time. It has the Attorney General allowed to bring criminal actions for criminal infringement, it has the Attorneys General allowed to bring civil remedies, and it allows private rights of action for civil remedies. It allows injunctive relief in certain situations. The notion that it is unprecedented to have private rights of action hand in hand with the law enforcement having the authority to engage in both criminal and civil things -- civil actions is, I don't know where that comes from --

Mr. Chaffetz. Reclaiming my time.

Mr. Berman. The antitrust law, same kinds of thing, lots of areas.

Mr. Chaffetz. Reclaiming my time, Mr. Chairman.

Mr. Berman. I yield.

Mr. Chaffetz. Thank you. My time was -- I would like to yield

to the gentlewoman from California.

Ms. Lofgren. Thank you. I just wanted to note something that in support of Mr. Sensenbrenner's concern about seeking damages. There is a provision in the section where if there is an allegation that good faith efforts have not been made, there is an opportunity for an order to show cause, and the court has given opportunity to exercise its equitable authority, which would include not just specific performance but also monetary awards.

So I think that the point that Mr. Sensenbrenner has made is a valid one, and it is a little bit hidden in the section, but I did want to note that and that his concerns is not entirely unfounded, and I would thank the gentleman from Utah for --

Ms. Waters. Mr. Chairman.

Ms. Lofgren. -- yielding.

Mr. Chaffetz. Reclaiming my time. I will yield back, Mr. Chairman.

Chairman Smith. Thank you, Mr. Chaffetz. The gentleman from New York, Mr. Nadler, is recognized.

Mr. Nadler. Thank you. Mr. Chairman, the many parts -- some parts of this legislation trouble me, but not this part, and I therefore will oppose the amendment. The whole point of the legislation is to stop foreign Web sites from infringing, from stealing private property, from stealing content. If this were -- and I don't have any problem with private rights of action.

I normally support private rights of action in the law, even where

they don't exist. I wish there were more private rights of action, but here if this were a domestic Web site, you, in effect, have a private right of action, it is called the normal infringement lawsuit. If your property is infringed, if you think that a domestic Web site is infringing your property, you sue them for, in a normal copyright infringement lawsuit. Because you are dealing with a foreign Web site here, you can't do that because you don't have jurisdiction. So if we pass this amendment, the only enforcement against foreign Web sites will be the Justice Department, and we know how that works. The Justice Department doesn't have enough manpower, they will be swamped, as they are in many areas, by thousands, millions of infringements which they can't go after, and if you don't allow a private right of action, there will be very little enforcement.

Now, you can argue about what types of enforcement there ought to be, but to say that only the Justice Department should enforce against foreign Web sites is to say that 90 percent of foreign infringing Web sites should be immune from enforcement as a practical matter, and that is just wrong, so I think that we ought to have a private right of action against foreign infringing Web sites, as you do in practice, if not in name, against domestic Web sites, and therefore I oppose the amendment.

Ms. Waters. Mr. Chairman.

Chairman Smith. I thank the gentleman from New York. The gentlewoman from California, Ms. Waters, is recognized.

Ms. Waters. Mr. Chairman, I think it is important that we pay

attention to what Mr. Sensenbrenner has said about striking private right of action. I am a big defender of private right of action, and I am a big defender because it has served us so very well as we have dealt with the environmental concerns that Mr. Sensenbrenner alluded to, the disabled and civil rights concerns, dealing with discrimination.

Now, we have a philosophical difference here, and Mr. Sensenbrenner talked about the trial lawyers and people just wanting to get money. I don't think that we should allow our philosophical differences to enter into this debate about whether or not there should be a private right of action for those whose properties have been stolen or who have been infringed on, and so while I have great respect for Mr. Sensenbrenner and his public policy capabilities, I think what he has allowed to creep into this is his basic philosophical difference about private right of action for citizens in areas that he disagrees with them on, such as the environment and perhaps the disabled and others, and so I would ask my colleagues not to allow that to influence your decision in this matter. I yield back the balance of my time.

Chairman Smith. Thank you, Ms. Waters. I would like to vote on this amendment, then we will recess until 1:00, and I will explain that in a minute. The question is on the Sensenbrenner amendment. All in favor say aye. Aye. All opposed no. No. In the opinion of the chair the noes have it.

Mr. Sensenbrenner. Roll call.

Chairman Smith. Roll call vote has been requested. The clerk

will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner, aye.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren.

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa, aye.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. Yes.

The Clerk. Mr. Jordan, yes.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz, aye.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Aodei?

Mr. Aodei. No.

The Clerk. Mr. Aodei, no.

The Clerk. Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers, no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman, no.

Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott, no.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?



Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters.

Ms. Waters. No.

The Clerk. Ms. Waters, no.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson, no.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. No.

The Clerk. Mr. Quigley, no.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Chairman Smith. The gentleman from New York, Mr. Nadler.

Mr. Nadler. I vote no.

Chairman Smith. The gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Chairman Smith. The gentleman from Texas, Mr. Poe.

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Chairman Smith. Are there other members who wish to be recorded?

If not, The clerk will report.

The Clerk. Mr. Chairman, eight members voted aye, 20 members voted nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to.

We have a series of votes ongoing that will last until about noon. From noon until 1:00, there is a Democratic Caucus, so we are going to recess until 1:00. Promptly we will continue the markup at that point. We stand in recess.

[Recess.]

RPTS CALHOUN

DCMN BURRELL

[1:02 p.m.]

Chairman Smith. The Judiciary Committee will reconvene.

The Clerk will call the roll. Maybe that will expedite attendance.

The Clerk. Mr. Chairman.

Chairman Smith. Present.

The Clerk. Mr. Smith, present.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Reed?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Present.

The Clerk. Mr. Scott, present.

Mr. Watt?

Mr. Watt. Present.

The Clerk. Mr. Watt, present.

Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Present.

The Clerk. Mr. Johnson, present.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

Mr. Polis. Present.

The Clerk. Mr. Polis, present.

Chairman Smith. The gentleman from South Carolina.

Mr. Gowdy. Present.

The Clerk. Mr. Gowdy, present.

Chairman Smith. The gentleman from Virginia.

Mr. Forbes. Here.

The Clerk. Mr. Forbes, present.

Chairman Smith. The gentleman from Texas, Mr. Poe.

Mr. Poe. Present.

The Clerk. Mr. Poe, present.

Chairman Smith. The gentleman from Utah.

Mr. Chaffetz. Present.

The Clerk. Mr. Chaffetz, present.

Chairman Smith. The gentleman from Pennsylvania, Mr. Marino.

Mr. Marino. Present.

The Clerk. Mr. Marino, present.

Chairman Smith. The gentleman from Wisconsin.

Mr. Sensenbrenner. Present and ready for action.

The Clerk. Mr. Sensenbrenner, present.

Chairman Smith. The gentleman from Arizona.

Mr. Franks. Here.

The Clerk. Mr. Franks, present.

Chairman Smith. The gentleman from Arizona, Mr. Quayle.

Mr. Quayle. Here.

The Clerk. Mr. Quayle, present.

Chairman Smith. The Clerk will report.

The Clerk. Mr. Chairman, 14 members responded present.

Chairman Smith. Thank you. We have a working quorum.

We will resume our consideration of amendments and now go to the amendment by the gentleman from Utah, Mr. Chaffetz, which is I believe number 35 on the roster, and more specifically identified as 184. The gentleman from Utah is recognized.

Mr. Chaffetz. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman Smith. The Clerk will report the amendment.

The Clerk. Amendment to the Smith amendment offered by Mr.

Chaffetz of Utah.

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman is recognized to explain the amendment.

[The information follows:]

\*\*\*\*\* INSERT 2-1 \*\*\*\*\*



Mr. Chaffetz. Thank you, Mr. Chairman. At the heart of my concern is that there are some deep-seated cybersecurity concerns that have been expressed by a number of experts, people who are deeply involved in the technology and the development of the Internet. I would encourage members on both sides of the aisle to look strongly at this amendment and what we are encouraging here because there are concerns, particularly -- the Internet is such an amazing tool. It has done more things for our economy and for our ability to communicate globally. I am confident that every one of these members, as we talk to them, the last thing you want to do is create a hole or do some surgery to the Internet that would hamper our ability to maintain the cybersecurity pipes, if you will, that are in place.

I would point to a white paper here that was done by a number of people citing concerns with the DNS and the DNS SEC, and I would point here to this Vint Cerf. Let me read something he said. As one of the fathers of the Internet and as a computer scientist, I care deeply about issues relating to the Internet's infrastructure.

By the way, this is dated September 14.

In this spirit, I wish to join the Internet and cybersecurity experts who have already expressed concern about the original version of SOPA's DNS provisions. It goes on later to say, Unfortunately, the amendments to SOPA do not resolve the fundamental flaws in this legislation. The bill will still undermine cybersecurity, including the robust implementation of DNS security extensions known more commonly as DNS SEC.

I would also point, Mr. Chairman, to Stuart Baker, whose credentials are impeccable on this issue. He wrote December 14, "Unfortunately, the new version would still do great damage to Internet security, mainly to putting obstacles in the way of DNS SEC."

It goes on from there.

I would also point to a letter highlighting some of the biggest brand names that we know, from AOL to eBay, Facebook, Google, LinkedIn, Mozilla, Twitter, Yahoo, and it goes on. In their letter dated November 15, "New uncertainty liabilities, private rights of action, and technology mandates that would require monitoring of Web sites. We are also concerned that these measures pose a serious risk to our industry's continued track record of innovation and job creation as well as our Nation's cybersecurity."

And probably the most telling, most compelling to me, given the independence that this person has, is this letter from Leonard Napolitano, Jr. -- Dr. Leonard Napolitano, Jr. -- Sandia National Labs, which is operated for the U.S. Department of Energy by the Sandia Corporation. He is the Director of the Center for Computer Sciences and Information Technologies. He wrote on November 16, My staff and I have reviewed H.R. 3261 and Senate Bill 968 and believe the Domain Name Service, DNS, filtering redirection mandates in the bill, one, are unlikely to be effective; two, would negatively impacts U.S. and global cybersecurity and functionality.

And he goes on from there.

I hope, Mr. Chairman, that at the very least we have deep concerns

about what this will do to cybersecurity in general.

I think the gentleman from California, Mr. Lungren, yesterday made some compelling arguments before this committee that as the chairman in Homeland Security dealing with cybersecurity, that he, too, has heard from some of the experts.

So I have introduced this amendment here to say that the Comptroller General shall, in consultation with the Secretaries of Defense, Commerce, Homeland Security, and State publish on their Web site an analysis. But, Mr. Chairman, I would also suggest perhaps there is another way. And I am willing to withdraw this amendment with the encouragement and the hope that the chairman would consider having what I believe should probably be two hearings: One, a classified briefing from those national security experts, everywhere from the NSA to the Department of Defense to Homeland Security, and perhaps a public hearing that we could also have and invite Dr. Napolitano and other experts so that we can clarify this for members.

I think it is a dangerous precedent. I think it would be dangerous for members on this committee to vote on final passage of this bill without having at least one hearing and some clarification as to how this effect would be.

So, Mr. Chairman, my encouragement would be it would not slow down the process whatsoever. We can do it on literally the next legislative day. And I know there is probably going to be some time before we come back in mid-January. But I would, again, consider withdrawing this amendment and would encourage and hope the chairman would take into

consideration having the hearings as I outlined.

Chairman Smith. If the gentleman will yield.

Mr. Chaffetz. Yes.

Chairman Smith. I certainly will take that under consideration and in fact go further and say it may well be a good idea particularly to have a hearing with the experts the gentleman has suggested. And I will just assume that the gentleman's motives here are good and this is not being suggested as a way to delay the markup of this particular piece of legislation. Knowing that and assuming that is the case, I would be happy to give it serious consideration.

Mr. Chaffetz. Thank you, Mr. Chairman. I would think that it would not delay the process whatsoever. And I am doing it sincerely and I do it as an encouragement to other members that this would help them come to a conclusion.

Chairman Smith. I thank the gentleman, and I thank the gentleman for withdrawing his amendment.

Mr. Chaffetz. Mr. Chairman, before I formally withdraw the amendment, I think there are other members who would like to speak to this issue.

Chairman Smith. The gentleman's time has expired.

Mr. Chaffetz. I am yielding back my time but I am saying I am not withdrawing the amendment yet until other members have had a chance to speak.

Ms. Lofgren. May I move to strike the last word?

Chairman Smith. The gentlewoman from California, Ms. Lofgren,

is recognized.

Ms. Lofgren. I would like to weigh in on the suggestion made by the gentleman from Utah. I say this because it is clear I have other objections to the bill. And that is not a hidden point of view. But the issue on the cybersecurity issue is a serious one. And I would draw the committee's attention to the December 9 letter from the Internet engineers that indicate as experts and implementers of the code running 80 percent of the world's DNS infrastructure and the coauthors of the core protocols for DNS and DNS SEC. They are informing us there are no protocol signals a resolver can send to a user to address the scenarios in this bill and that indeed some existing responses would potentially cause some programs to stop all DNS lookups, not just those infringing content.

That is not what anybody intends in the bill, I am confident of that. But it seems to me that a classified briefing, if necessary, and a public airing of these issues is the least we should do.

There is a phrase that ignorance is bliss. And I don't think that is correct. I think we should fully inform ourselves of this issue. And the only way to do it is to do as the gentleman suggests, which is to actually hear from disinterested expert parties first in a classified setting and then, if necessary, in a public session, so we can actually reach the bottom of this issue.

The Internet experts in the letter, which I would ask unanimous consent to make a part of the record, further suggest that --

Chairman Smith. Without objection.

[The information follows:]

\*\*\*\*\* INSERT 2-2 \*\*\*\*\*

Ms. Lofgren. Some have suggested that perhaps the ISPs could simply not answer the DNS queries for infringing content. They say that this ignores the fact that a secure application expecting a secure DNS answer will not give up after a timeout. It might retry the lookup. It might try a backup DNS server. It might even start the lookup through a proxy server. Since there is no way for a secure application to know whether a timeout is due to a national anti-piracy law, we will have to assume the worst, which is that it is under attack. That is not what we want because in some cases that will result in a generally known as what is a downgrade attack, which will cause the host to shed their security in favor of convenience.

This is something that we need to get to the bottom of. We have a number of amendments yet pending, many important ones, but if we could suspend and do this, I think we would be doing a service to our country and to each other.

With that, I --

Mr. Issa. Would the gentlelady yield?

Ms. Lofgren. I would yield to my colleague from California?

Mr. Issa. Mr. Chairman, as a point of inquiry here, we have been called for four votes. We will be on the floor until 2:30 to 3:00. Does the chairman intend to reconvene? And if so, should we all just cancel our flights?

Chairman Smith. I was ready to make an announcement to that effect.

Ms. Lofgren. I would yield back.

Mr. Watt. Mr. Chairman.

Chairman Smith. The gentleman from California has the time.

Ms. Lofgren. I just yielded back.

Mr. Watt. I just want to ask unanimous consent to offer a statement on this issue from one of the experts that has been cited by Ms. Lofgren, who seems to suggest that this can be effectively done, but not in opposition to having a briefing because there is a lot of dispute about this and I think there is dispute even among the experts that the other side is using. So it would be great to know more about whether this is really a security breach or not -- I mean, a security issue or not a security issue. It obviously is a security issue. The question is whether the way we resolved it in the manager's amendment. So this is from Paul Vixie's blog, dated March 17, 2011. So I want to ask unanimous consent.

Chairman Smith. Without objection.

[The information follows:]

\*\*\*\*\* INSERT 2-3 \*\*\*\*\*



Chairman Smith. Would the gentleman from North Carolina yield to the gentleman from New York?

Mr. Watt. I would be happy to yield.

Chairman Smith. The gentleman does not want to be yielded to. The gentleman from California yields back his time.

The gentleman from New York is recognized.

Mr. Nadler. Thank you. Mr. Chairman, I just wanted to ask you a question. I have just been informed that the current series of votes on the floor are the last of the day. I wanted to ask if you would make known your intention as to what happens after that.

Chairman Smith. I believe that was the same question Mr. Issa just asked me.

Mr. Nadler. I didn't hear that.

Chairman Smith. You didn't hear an answer because I haven't given an answer yet. The answer is that we will adjourn after this series of votes. I do not expect to resume markup today. I do expect to resume markup at the next earliest practicable day that Congress is in session. But this will conclude our markup for the day.

The gentlewoman from Texas, and then we will conclude.

Ms. Jackson Lee. First of all, let me add truly my appreciation for the demeanor of members passionate about these issues but not yet recognizing our particular perspective.

Mr. Chairman, a point was made about a classified hearing or opportunity. Would you consider that please, Mr. Chairman, as we go forward?

Chairman Smith. I would like to say I have already spoken on that. I would like for the members to get this vote. I would like the gentleman to be able to withdraw his amendment so we can conclude that.

Ms. Jackson Lee. I yield back.

Mr. Chaffetz. Mr. Chairman, at this time I move that I withdraw my amendment. I appreciate the consideration.

Chairman Smith. I thank the gentleman from Utah. We stand adjourned until members are notified that the markup will resume. Thank you all for your hard work over the last day and a half.

[Whereupon, at 1:30 p.m., the committee was adjourned.]