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.

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

(b) TABLE OF CONTENTS.—The table of contents of 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.

(a) SAVINGS CLAUSES.—
(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.

(2) **TITLE 17 LIABILITY.**—Nothing in title I shall be construed to enlarge or diminish liability, including vicarious or contributory liability, for any cause of action available under the Lanham Act or title 17, United States Code, including any limitations on liability under such title, nor shall awareness of, receipt of, or response to any notice provided under section 102 (b) or 103 (b), or any order issued or served under section 102 or 103, serve as a basis for determining eligibility for a limitation on liability under section 512 of title 17, United States Code.

(3) **NO DUTY TO MONITOR.**—Nothing in title I shall be construed to impose a duty to monitor activity on the network or service of an entity described in section 102(e) or 103(e).

(4) **NO TECHNOLOGY MANDATES.**—Nothing in title I shall be construed to impose a duty on an entity described in section 102(e) or 103(e) to design its network, technology, or service to forestall or prevent acts that would actually or potentially create a
cause of action under such title, or to utilize any
particular type of technology to comply with the re-
quirements of such title.

(5) No Impact on Security or Integrity.—

Nothing in title I shall be construed to authorize a
court to require compliance with an obligation under
section 102(e) in a manner that would impair the se-
curity or integrity of the domain name system or of
the system or network operated by or on behalf of
the party subject to the obligation.

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

e) Definitions.—The terms used in this section
have the meanings given those terms in section 101.

TITLE I—COMBATING ONLINE
PIRACY

SEC. 101. DEFINITIONS.

In this title:

(1) Domain Name.—The term “domain name”

has the meaning given that term in section 45 of the

(2) **Domain Name System Server.**—The term “domain name system server” means a server or other mechanism used to provide the Internet protocol address associated with a domain name.

(3) **Domestic Domain Name.**—The term “domestic domain name” means a domain name that is registered or assigned by a domain name registrar, domain name registry, or other domain name registration authority, that is located within a judicial district of the United States.

(4) **Domestic Internet Protocol Address.**—The term “domestic Internet Protocol address” means an Internet Protocol address for which the corresponding Internet Protocol allocation entity and the entity using the Internet Protocol address are located within a judicial district of the United States.

(5) **Domestic Internet Site.**—The term “domestic Internet site” means an Internet site for which the corresponding domain name or, if there is no domain name, the corresponding Internet Protocol address, is a domestic domain name or domestic Internet Protocol address.
(6) FOREIGN DOMAIN NAME.—The term “foreign domain name” means a domain name that is not a domestic domain name.

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

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


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

(11) INTERNET ADVERTISING SERVICE.—The term “Internet advertising service” means a service that for compensation sells, purchases, brokers, serves, inserts, verifies, or clears the placement of an advertisement, including a paid or sponsored search
result, link, or placement, that is rendered in viewable form for any period of time on an Internet site.

   (12) INTERNET PROTOCOL.—The term “Internet Protocol” means a protocol used for communicating data across a packet-switched internetwork using the Transmission Control Protocol/Internet Protocol, and includes any predecessor or successor protocol to such protocol.

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

   (14) INTERNET PROTOCOL ALLOCATION ENTITY.—The term “Internet Protocol allocation entity” means the American Registry of Internet Numbers (ARIN), its successor (if any), or any Internet Protocol Internet registry that is formally recognized by the United States Government, from which an Internet Protocol address is allocated or where it is registered.

   (15) INTERNET SEARCH ENGINE.—The term “Internet search engine”—
(A) means a service made available via the Internet whose primary function is gathering and reporting, in response to a user query, indexed information or Web sites available elsewhere on the Internet; and

(B) does not include a service that retains a third party that is subject to service of process in the United States to gather, index, or report information available elsewhere on the Internet.

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

(17) LANHAM ACT.—The term “Lanham Act” means the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”,
approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946” or the “Lanham Act”).

(18) NONAUTHORITATIVE DOMAIN NAME SERVER.—The term “nonauthoritative domain name server” means a server that does not contain complete copies of domains but uses a cache file that is comprised of previous domain name server lookups, for which the server has received an authoritative response in the past.

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

(20) PAYMENT NETWORK PROVIDER.—

(A) IN GENERAL.—The term “payment network provider” means an entity that directly or indirectly provides the proprietary services, infrastructure, and software to effect or facilitate a debit, credit, or other payment transaction.

(B) RULE OF CONSTRUCTION.—For purposes of this paragraph, a depository institution (as such term is defined under section 3 of the Federal Deposit Insurance Act) or credit union that acquires, authorizes, initiates, or receives a
debit, credit, or other payment transaction shall not be construed to be a payment network provider based solely on the offering of services described in this subparagraph.

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

(A) means an operator of a nonauthoritative domain name server; and

(B) does not include an operator of a non-authoritative domain name server that offers domain name resolution services solely to businesses for domain, subdomain, domain name system record, or Internet Protocol address management.

(22) **STATE.**—The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(23) **U.S. DIRECTED SITE.**—The term “U.S.-directed site” means a foreign Internet site that is used to conduct business directed to residents of the United States, or that otherwise demonstrates the existence of minimum contacts sufficient for the exercise of personal jurisdiction over the owner or operator of the Internet site consistent with the Con-
stitution of the United States, based on relevant evi-
dence that may include whether—

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

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

(i) such goods and services,

(ii) access to such goods and services,
or

(iii) delivery of such goods and serv-
ices,
to users located in the United States; and

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

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

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

(a) DEFINITION.—For purposes of this section, a for-
gain Internet site is a “foreign infringing site” if—
the Internet site is a U.S.-directed site and is used by users in the United States; and

(2) the Internet site is being operated in a manner that would, if it were a domestic Internet site, subject it (or its associated domain name) to—

(A) seizure or forfeiture in the United States in an action brought by the Attorney General, by reason of an act prohibited by section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of title 18, United States Code; or

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

(b) ACTION BY THE ATTORNEY GENERAL.—

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

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

(B) an owner or operator of a foreign infringing site.

(2) IN REM.—If through due diligence the Attorney General is unable to find any person described in subparagraph (A) or (B) of paragraph (1) with respect to a foreign infringing site or no such
person found has an address within a judicial dis-

1 tict of the United States, the Attorney General may
2 commence an in rem action against that foreign in-
3 fringing site or the foreign domain name used by
4 such site.

(3) NOTICE.—Upon commencing an action
5 under this subsection, the Attorney General shall
6 send a notice of the alleged activity described in sub-
7 paragraph (A) or (B) of subsection (a)(2) and intent
8 to proceed under this section—
9
   (A)(i) to all registrants (if any) of the do-
10 main name of the Internet site—
11
      (I) at the postal and electronic
12 mail addresses of each such registrant
13 appearing in the applicable publicly
14 accessible database of registrations, if
15 any, and to the extent such addresses
16 are reasonably available; and
17
      (II) via the postal and electronic
18 mail addresses of the registrar, reg-
19 istry, or other domain name registra-
20 tion authority that registered or as-
21 signed the domain name of the Inter-
22 net site, to the extent such addresses
23 are reasonably available; and
(ii) to all owners and operators (if any) of
the Internet site known to the Attorney General
at the time the action is commenced—

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

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

(B) in any other such form as the court
may provide, including as may be required by
rule 4(f) of the Federal Rules of Civil Proce-
dure.
(4) Service of Process.—For purposes of this section, the actions described in this subsection shall constitute service of process.

(5) Relief.—On application of the Attorney General following the commencement of an action under this section, the court may issue a temporary restraining order, a preliminary injunction, or an injunction, in accordance with rule 65 of the Federal Rules of Civil Procedure, against a registrant of a domain name used by the foreign infringing site or an owner or operator of the foreign infringing site or, in an action brought in rem under paragraph (2), against the foreign infringing site or the domain name used by such site, to cease and desist from undertaking any further activity as a foreign infringing site.

(c) Actions Based on Court Orders.—

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

(2) Reasonable Measures.—After being served with a copy of an order under paragraph (1),
the following shall apply, subject to sections 2 and 104 of this Act:

(A) **SERVICE PROVIDERS.**—

   (i) **IN GENERAL.**—A service provider shall take such measures as it determines to be the least burdensome, technically feasible, and reasonable means designed to prevent access by its subscribers located within the United States to the foreign infringing site that is subject to the order. Such actions shall be taken as expeditiously as possible.

   (ii) **SAFE HARBOR.**—The measures determined by a service provider to be the least burdensome, technically feasible, and reasonable means designed to prevent a nonauthoritative domain name system server under the direct control of the service provider from resolving the domain name of the foreign infringing site to that domain name’s Internet Protocol address shall fully satisfy such service provider’s obligation described in clause (i). An order issued under this section may not impose
any additional obligations on, or require
additional actions by, a service provider.

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

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

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

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

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

(V) to direct or redirect users via
domain name resolution to an Inter-
net site other than the foreign infringing site requested by the user.

(iv) CONSTRUCTION.—Nothing in this subparagraph shall affect the limitation on the liability of a service provider under section 512 of title 17, United States Code.

(B) INTERNET SEARCH ENGINES.—A provider of an Internet search engine shall take technically feasible and commercially reasonable measures, as expeditiously as possible, designed to prevent the serving, in response to a query, of a direct hypertext link to the foreign infringing site that is subject to the order, or the portion of such site specified in the order. The court order under this subsection that applies to an Internet search engine should be narrowly tailored by the court, consistent with the First Amendment to the Constitution, to be the least restrictive means to effectively achieve the goals of this title.

(C) PAYMENT NETWORK PROVIDERS.—

(i) PREVENTING AFFILIATION.—A payment network provider shall take technically feasible and commercially reasonable measures, as expeditiously as possible,
designed to prevent, prohibit, or suspend
its service from completing payment trans-
actions involving customers located within
the United States or accounts originating
in the United States and the payment ac-
count—

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

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

(ii) APPLICATION.—A payment net-
work provider shall be considered to be in
compliance with clause (i) if it takes action
described in that clause with respect to the
payment account that is used by the for-
ereign infringing site subject to the order as
of the date on which a copy of the order
is served under paragraph (1), or as of the
date on which a copy of the order as modi-
ified under subsection (d) or as amended
under subsection (e) is served under sub-
section (f), whichever dates apply.

(D) INTERNET ADVERTISING SERVICES.—
(i) REQUIRED ACTIONS.—An Internet advertising service that contracts to provide advertising to or for the foreign infringing site that is subject to the order, or that knowingly serves advertising to or for such site, shall take technically feasible and commercially reasonable measures, as expeditiously as possible, designed to—

(I) prevent its service from providing advertisements to or relating to the foreign infringing site that is specified in the order;

(II) cease making available advertisements for the foreign infringing site or paid or sponsored search results, links, or other placements that provide access to the foreign infringing site; and

(III) cease providing or receiving any compensation for advertising or related services to, from, or in connection with the foreign infringing site.

(ii) APPLICATION.—An Internet advertising service shall be considered to be in compliance with clause (i) if it takes ac-
tion described in that clause with respect to advertising provided to or for the foreign infringing site as of the date on which a copy of the order is served under paragraph (1), or as of the date on which a copy of the order as modified under subsection (d) or as amended under subsection (e) is served under subsection (f), whichever dates apply.

(3) ENFORCEMENT OF ORDERS.—

(A) In general.—To ensure compliance with orders issued under this section, the Attorney General may bring an action for injunctive relief—

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

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

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

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

(C) DEFENSE.—A defendant in an action
under subparagraph (A)(i) may establish an af-
firmative defense by showing that the defendant
does not have the technical means to comply
with this subsection without incurring an un-
reasonable economic burden, or that the court
order issued under subsection (b) is not author-
ized by this section. Such showing shall not be
presumed to be a complete defense but shall
serve as a defense only for those measures for
which a technical limitation on compliance is
demonstrated or for such portions of the order
as are demonstrated to be unauthorized by this
section.
(D) DEFINITION.—For purposes of this subparagraph (A)(ii), a product or service designed or marketed for the circumvention or bypassing of measures described in paragraph (2) and taken in response to a court order issued under subsection (b) includes a product or service that is designed or marketed for the purpose of enabling a domain name described in such an order—

(i) to resolve to that domain name’s Internet protocol address notwithstanding the measures taken by a service provider under paragraph (2) to prevent such resolution; or

(ii) to resolve to a different domain name or Internet Protocol address that the provider of the product or service knows, reasonably should know, or reasonably believes is used by an Internet site offering substantially similar infringing activities as those with which the foreign infringing site that is subject to the court order was associated.

(d) MODIFICATION OR VACATION OF ORDERS.—
(1) IN GENERAL.—At any time after the issuance of an order under subsection (b), a motion to modify, suspend, or vacate the order may be filed by—

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

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

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

(D) any entity that has been served with a copy of an order under subsection (c) that requires such entity to take action prescribed in that subsection; or

(E) the Attorney General.

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

(A) the foreign Internet site subject to the order was improvidently adjudicated or is no longer a foreign infringing site;
(B) compliance with the order, unless modified, would impair the security or integrity of the domain name system, or of the system or network operated by or on behalf of the party subject to subsection (c)(2); or

(C) the interests of justice otherwise require that the order be modified, suspended, or vacated.

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

(4) INTERVENTION.—An entity required to take action under subsection (c) if an order issues under subsection (b) may intervene at any time in any action commenced under subsection (b) that may result in such order, or in any action to modify, suspend, or vacate such order under this subsection.

(e) AMENDED ORDERS.—The Attorney General, if alleging that a foreign Internet site previously adjudicated in an action under this section to be a foreign infringing site is accessible or has been reconstituted at a different
domain name or Internet Protocol address, may petition
the court to amend the order issued under this section
accordingly.

(f) Service of and Action Based on Modified, Suspended, Vacated, or Amended Orders.—

(1) Service requirement.—The Attorney General shall serve any entity that has been served with a copy of an order under subsection (c) with a copy of any modification, suspension, or vacation of, or amendment to, that order under subsection (d) or (e).

(2) Action subsequent to service.—An entity that is served with a copy of a modified, suspended, or amended order under paragraph (1) shall take actions consistent with subsection (c)(2) in accordace with the modification, suspension, or amendment. An entity that is served with a copy of a vacated order under paragraph (1) may restore any services that were provided before being served with a copy of the order under subsection (e).

(g) Law Enforcement Coordination.—

(1) In general.—The Attorney General shall inform the Intellectual Property Enforcement Coordinator and the heads of appropriate law enforcement agencies of all court orders issued under sub-
section (b), and all amended orders issued under
subsection (e), regarding foreign infringing sites.

(2) ALTERATIONS.—The Attorney General
shall, and the defendant may, inform the Intellectual
Property Enforcement Coordinator of the modific-
ation, suspension, expiration, or vacation under sub-
section (d) of a court order issued under subsection (b).

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

(a) DEFINITIONS.—In this section:

(1) DEDICATED TO THEFT OF U.S. PRO-
PERTY.—An Internet site is an “Internet site dedi-
cated to theft of U.S. property” if—

(A) it is—

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

(ii) an Internet site for which the reg-

istrant of the domain name used by the

Internet site, and the owner or operator of

the Internet site, are not located and can-

not be found within the United States;

(B) the site is used by users within the

United States; and

(C) either—

(i) the site is primarily designed or operated for the purpose of, has only limited purpose or use other than, or is marketed by its operator or another acting in concert with that operator primarily for use in, offering goods or services in violation of—

(I) section 501 of title 17, United States Code, for purposes of commercial advantage or private financial gain, and with respect to infringement of complete or substantially complete works;

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

(III) provisions of the Lanham Act that prohibit the sale, distribution, or promotion of goods, services, or materials bearing a counterfeit mark, as that term is defined in section 34(d) of the Lanham Act (15 U.S.C. 1116(d)) or section 2320 of title 18, United States Code; or

(ii) the operator of the site operates the site with the object of promoting, or
has promoted, its use to carry out acts that constitute a violation of section 501 or 1201 of title 17, United States Code, as shown by clear expression or other affirmative steps taken to foster such violation.

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

(b) LIMITED INJUNCTIVE RELIEF.—

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

(A) a registrant of a domain name used by an Internet site dedicated to theft of U.S. property; or

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

(2) IN REM.—If through due diligence a qualifying plaintiff who is authorized to bring an in personam action under paragraph (1) with respect to an Internet site dedicated to theft of U.S. property is unable to find a person described in subparagraphs (A) or (B) of paragraph (1), or no such person found has an address within a judicial district of the United States, the qualifying plaintiff may
commence an in rem action against that Internet
site or the domain name used by that Internet site.

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

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

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

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

(ii) to all owners and operators of the
Internet site known to the qualifying plaintiff at
the time the action is commenced, if any—
(I) at the primary postal and electronic mail addresses (if any) for each such owner and operator that are provided on the Internet site, and to the extent such addresses are reasonably available; or

(II) if there is no domain name of the Internet site, via the postal and electronic mail addresses (if any) of the service provider responsible for allocating the Internet Protocol address to the Internet site, as found in the applicable publicly accessible database of allocations and assignments of Internet Protocol addresses to service providers, to the extent such postal and electronic mail addresses are reasonably available; or

(B) in any other such form as the court may prescribe, including as may be required by rule 4(f) of the Federal Rules of Civil Procedure.

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

(5) RELIEF.—On application of a qualifying plaintiff following the commencement of an action
under this section with respect to an Internet site
dedicated to theft of U.S. property, the court may
issue a temporary restraining order, a preliminary
injunction, or an injunction, in accordance with rule
65 of the Federal Rules of Civil Procedure, against
a registrant of a domain name used by the Internet
site, or against an owner or operator of the Internet
site, or, in an action brought in rem under para-
graph (2), against the Internet site, or against the
domain name used by the Internet site, to cease and
desist from undertaking any further activity as an
Internet site dedicated to theft of U.S. property.

(c) ACTIONS BASED ON COURT ORDERS.—

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

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

(A) PAYMENT NETWORK PROVIDERS.—
(i) PREVENTING AFFILIATION.—A payment network provider shall take technically feasible and commercially reasonable measures, as expeditiously as possible, that are designed to prevent, prohibit, or suspend its service from completing payment transactions involving customers located within the United States or accounts originating in the United States and the payment account—

(I) that is used by the Internet site dedicated to theft of U.S. property that is subject to the order; and

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

(ii) APPLICATION.—A payment network provider shall be considered to be in compliance with clause (i) if it takes action described in that clause with respect to the payment account that is used by the Internet site dedicated to the theft of U.S. property that is subject to the order as of the date on which a copy of the order is served under paragraph (1), or as of the
date on which a copy of the order as modified under subsection (e) or as amended under subsection (f) is served under subsection (g), whichever dates apply.

(B) INTERNET ADVERTISING SERVICES.—

   (i) REQUIRED ACTIONS.—An Internet advertising service that contracts with the Internet site dedicated to theft of U.S. property that is subject to the order to provide advertising to or for such Internet site, or that knowingly serves advertising to or for such Internet site, shall take technically feasible and commercially reasonable measures, as expeditiously as possible, that are designed to—

      (I) prevent its service from providing advertisements to or relating to the Internet site;

      (II) cease making available advertisements for the Internet site, or paid or sponsored search results, links, or other placements that provide access to the Internet site; and

      (III) cease providing or receiving any compensation for advertising or
related services to, from, or in connection with the Internet site.

(ii) APPLICATION.—An Internet advertising service shall be considered to be in compliance with clause (i) if it takes action described in that clause with respect to advertising provided to or for the Internet site dedicate to theft of U.S. property as of the date on which a copy of the order is served under paragraph (1), or as of the date on which a copy of the order as modified under subsection (d) or as amended under subsection (c) is served under subsection (f), whichever dates apply.

(3) ENFORCEMENT OF ORDERS.—

(A) RULE OF CONSTRUCTION.—The procedures and relief provided under this subsection shall be the sole legal remedy to enforce the obligations of any entity under this subsection.

(B) PROCEDURES AND RELIEF.—

(i) PROCEDURE.—Upon the filing of a claim and a showing by the qualifying plaintiff that an entity served with a copy of a court order issued under subsection (c) has not made good faith efforts to com-
ply with its obligations under this subsection by reason of such court order, the court shall require the entity to show cause why an order should not issue to require compliance with the obligations of this subsection. The claim and showing under this clause shall be filed with the court that issued the court order or, if that court lacks jurisdiction over the entity, with any court that has jurisdiction over that entity.

(ii) Service of Process.—The qualifying plaintiff shall serve on the entity process of filing the claim and the order to show cause. Such process and order may be served in any judicial district where the entity resides or may be found.

(iii) Authority of Court.—Upon consideration of the evidence presented by all parties in connection with the order to show cause, the court is authorized, in addition to an order to require compliance with this obligations of this subsection, to impose a remedy, consistent with the court’s exercise of its equitable authority, to enforce compliance with its lawful or-
ders, if the entity has knowingly and will-
fully failed to so comply.

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

(d) MODIFICATION OR VACATION OF ORDERS.—

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

(A) any person, or owner or operator of
property, that is subject to the order;
(B) any registrant of the domain name, or
the owner or operator, of such Internet site;

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

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

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

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

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

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

(4) INTERVENTION.—An entity required to take action under subsection (d) if an order issues under subsection (c) may intervene at any time in any action commenced under subsection (c) that may result in such order, or in any action to modify, suspend, or vacate such order under this subsection.

(e) AMENDED ORDERS.—The qualifying plaintiff, if alleging that an Internet site previously adjudicated in an action under this section to be an Internet site dedicated to theft of U.S. property is accessible or has been reconstituted at a different domain name or Internet Protocol address, may petition the court to amend the order issued under this section accordingly.

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

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

(2) ACTION SUBSEQUENT TO SERVICE.—An entity that is served with a copy of a modified, sus-
pended, or amended order under paragraph (1) shall
take actions consistent with subsection (e)(2) in ac-
cordance with the modification, suspension, or
amendment. An entity that is served with a copy of
a vacated order under paragraph (1) may restore
any services that were provided before being served
with a copy of the order under subsection (c).
(f) REPORTING OF ORDERS.—

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

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

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

(a) RELIEF LIMITED TO SCOPE OF VIOLATION.—In
any case in which only a specifically identified portion of
an Internet site is identified by the court as a foreign in-
fringing site or as an Internet site dedicated to theft of
U.S. property, and made subject to an order under section
102(b)(5) or 103(b)(5), the relief granted under such sub-
section, 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. Nothing in the order shall be inter-
preted to impose obligations on any entity served with a
copy of the order with respect to any other portion of an
Internet site not specified in the order.

(b) LIMITATIONS RELATING TO COURT ORDERS.—

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

(2) LIMIT ON LIABILITY OF ENTITIES.—Subject
to paragraph (1), any entity served with a copy of
an order under sections 102(c) or 103(c), any entity
described in section 101(20)(B), and any director,
officer, employee, or agent of any such entity, shall
not be liable for any acts reasonably designed to
comply with such order or reasonably arising from
such order, and no cause of action shall lie in any
Federal or State court or administrative agency against such an entity, or director, office, employee or agent thereof, for such an act.

(3) Acts of circumvention by customers.—Subject to paragraph (1), any entity served with a copy of an order under sections 102(c) or 103(c), any entity described in section 101(20)(B), and any director, officer, employee, or agent of any such entity, shall not be liable for any actions taken by customers of any such entity to circumvent any measure implemented in good faith by the entity in order to comply with that order.

SEC. 105. ACTIONS TAKEN CONSISTENT WITH THE PURPOSES OF THIS TITLE.

(a) In general.—No cause of action shall lie in any Federal or State court or administrative agency against, no person may rely in any claim or cause of action against, and no liability for damages to any person shall be granted against, a service provider, payment network provider, Internet advertising service, advertiser, Internet search engine, domain name registry, domain name registrar, entity described in section 101(20)(B), or Internet Protocol Allocation entity, including any director, officers, employees, or agents of any such entity, only for taking the actions described in section 102(c)(2) or section 103(c)(2)
with respect to an Internet site, acting in good faith and based on credible evidence, that—

(1) the Internet site is a foreign infringing site, is an Internet site dedicated to theft of U.S. property, or is an Internet site that endangers the public health; and

(2) the action is narrowly tailored and consistent with the entity’s terms of service or other contractual rights, and with the purposes of this title.

(c) DEFINITIONS.—In this section:

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

(2) INTERNET SITE THAT ENDANGERS THE PUBLIC HEALTH.—The term “Internet site that endangers the public health” means an Internet site that is primarily designed or operated for the purpose of, has only limited purpose or use other than, or is marketed by its operator or another acting in concert with that operator primarily for use in—

(A) offering, selling, dispensing, or distributing any prescription medication, and does so regularly without a valid prescription; or
(B) offering, selling, dispensing, or distributing any prescription medication that is adulterated or misbranded.

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

(4) PRESCRIPTION MEDICATION.—

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

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

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

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

(a) GUIDELINES.—The Attorney General shall—

(1) provide appropriate resources and procedures for case management and development to ef-
fect timely disposition of actions brought under this title;

(2) develop a deconfliction process in consultation with appropriate law enforcement agencies, including U.S. Immigration and Customs Enforcement, to coordinate enforcement activities under this title;

(3) publish procedures developed in consultation with appropriate law enforcement agencies, including U.S. Immigration and Customs Enforcement, to receive information from the public relevant to the enforcement of this title;

(4) provide guidance to intellectual property rights holders about what information such rights holders should provide to assist in initiating an investigation or to supplement an ongoing investigation under this title; and

(5) develop and make available, to entities served with a copy of an order under section 102(c) or 103(c) and such others as the Attorney General determines is appropriate, a form of notice that includes information regarding the reasons for and impact on users of orders issued under sections 102 and 103, for use by and at the sole discretion of entities receiving it.
(b) Study.—

(1) By the Register of Copyrights.—

(A) Nature of study.—The Register of Copyrights, in consultation with appropriate departments and agencies of the United States and other stakeholders, shall conduct a study on the enforcement and effectiveness of this title and on any need to amend the provisions of this title to adapt to emerging technologies.

(B) Reports to Congress.—Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report containing the results of the study conducted under this subsection and any recommendations that the Register may have as a result of the study.

(2) Report on effectiveness of certain measures.—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce, in coordination with the Attorney General, the Secretary of Homeland Security, the Register of Copyrights, and the Intellectual Property Enforcement Coordinator, shall conduct a study and report to the
Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Rep-resentatives on the following:

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

(B) An assessment of the effects, if any, of the implementation of section 102(c)(2)(A) on the deployment, security, and reliability of the domain name system and associated Internet processes, including Domain Name System Security Extensions.

(C) Recommendations, if any, for modifying or amending this title to increase effectiveness or ameliorate any unintended effects of section 102(c)(2)(A).

TITLE II—ADDITIONAL EN-HANCEMENTS TO COMBAT IN-TELLECTUAL PROPERTY THEFT

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

(a) Title 17 amendments.—Section 506(a) of title 17, United States Code, is amended to read as follows:
“(a) CRIMINAL INFRINGEMENT.—

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

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

“(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, or by the public performance by means of digital transmission, during any 180-day period, of 1 or more copyrighted works, when the total retail value of the copies or phonorecords, or of the public performances, is more than $1,000; or

“(C) by the distribution or public performance of a work being prepared for commercial dissemination, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial dissemination.

“(2) EVIDENCE.—For purposes of this subsection, evidence of reproduction, distribution, or
public performance of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

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

“(A) a computer program, a musical work, a motion picture or other audiovisual work, a literary work, or a sound recording, if, at the time of unauthorized distribution or public performance—

“(i)(I) the copyright owner has a reasonable expectation of commercial distribution; and

“(II) the copies or phonorecords of the work have not been commercially distributed in the United States by or with the authorization of the copyright owner; or

“(ii)(I) the copyright owner does not intend to offer copies of the work for commercial distribution but has a reasonable expectation of other forms of commercial dissemination of the work; and
“(II) the work has not been commercially disseminated to the public in the United States by or with the authorization of the copyright owner;

“(B) a motion picture, if, at the time of unauthorized distribution or public performance, the motion picture—

“(i)(I) has been made available for viewing in a motion picture exhibition facility; and

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

“(ii) had not been commercially disseminated to the public in the United States by or with the authorization of the copyright owner more than 24 hours before the unauthorized distribution or public performance.”.

(b) TITLE 18 AMENDMENTS.—Section 2319 of title 18, United States Code, is amended—
(1) in subsection (a), by striking “Any person who” and inserting “Whoever”;

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

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

“(1) shall be fined under this title, imprisoned not more than 5 years, or both, if the offense consists of the reproduction or distribution, including by electronic means, of at least 10 copies or phonorecords, or of at least 10 public performances by means of digital transmission, of 1 or more copyrighted works, during any 180-day period, which have a total retail value of more than $2,500;

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

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

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

“(1) shall be fined under this title, imprisoned not more than 3 years, or both, if the offense consists of the reproduction or distribution including by
electronic means, of at least 10 copies or phonorecords, or of at least 10 public performances by means of digital transmission, of 1 or more copyrighted works, during any 180-day period, which have a total retail value of more than $2,500;

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

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

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

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

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

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

“(4) shall be fined under this title, imprisoned not more than 10 years, or both, if the offense is a
felony and is a second or subsequent offense committed for purposes of commercial advantage or private financial gain under subsection (a).”;

(3) in subsection (f)—

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

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

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

(C) by striking paragraph (4); and

(4) by adding at the end the following new subsection:

“(g) Evidence of Total Retail Value.—For purposes of this section and section 506(a) of title 17, total retail value may be shown by evidence of—

“(1) the total retail price that persons receiving the reproductions, distributions, or public performances constituting the offense would have paid to receive such reproductions, distributions, or public performances lawfully;
“(2) the total economic value of the reproductions, distributions, or public performances to the infringer or to the copyright owner, as shown by evidence of fee, advertising, or other revenue that was received by the person who commits the offense, or that the copyright owner would have been entitled to receive had such reproductions, distributions, or public performances been offered lawfully; or

“(3) the total fair market value of licenses to offer the type of reproductions, distributions, or public performances constituting the offense.”.

(c) RULE OF CONSTRUCTION.—Any person acting with a good faith reasonable basis in law to believe that the person’s conduct is lawful shall not be considered to have acted willfully for purposes of the amendments made by this section. Such person includes, but is not limited to, a person engaged in conduct forming the basis of a bona fide commercial dispute over the scope of existence of a contract or license governing such conduct where such person has a reasonable basis in law to believe that such conduct is noninfringing. Nothing in this subsection shall affect the application or interpretation of the willfulness requirement in any other provision of civil or criminal law.
SEC. 202. TRAFFICKING IN INHERENTLY DANGEROUS GOODS OR SERVICES.

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

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

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

“(a) OFFENSES.—Whoever intentionally—

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

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

“(3) traffics in goods or services knowing that such good or service is a counterfeit military good or service the use, malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a
combat operation, a member of the Armed Forces,
or national security, or

“(4) imports, exports, or traffics in counterfeit drugs,
or attempts or conspires to violate any of paragraphs (1) through (3) shall be punished as provided in subsection (b).

“(b) Penalties.—

“(1) in general.—Whoever commits an offense under subsection (a)—

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

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

“(2) Serious bodily injury or death.—

“(A) Serious bodily injury.—Whoever knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in vio-
lation of subsection (a), if an individual, shall
be fined not more than $5,000,000, imprisoned
for not more than 20 years, or both, and, if
other than an individual, shall be fined not
more than $15,000,000.

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

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

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

“(B) for a second or subsequent offense, if
an individual, shall be fined not more than
$15,000,000, imprisoned not more than 30
years, or both, and, if other than an individual,
shall be fined not more than $30,000,000.’’;

(3) in subsection (d), by striking ‘‘(d)’’ and in-
serting ‘‘(d) DEFENSES.—’’;

(4) in subsection (e), by striking ‘‘(e)’’ and in-
serting ‘‘(e) PRESENTENCE REPORT.—’’

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

‘‘(f) DEFINITIONS.—For the purposes of this sec-
tion—

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

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

“(A) a spurious mark—

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

“(ii) that is identical with, or substan-
tially indistinguishable from, a mark reg-
istered on the principal register in the
United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

“(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and

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

“(B) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the Lanham Act are made available by reason of section 220506 of title 36;
but such term does not include any mark or designation used in connection with goods or services, or a mark or designation applied to labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature used in connection with such goods or services, of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

“(3) the term ‘counterfeit military good or service’ means a good or service that uses a counterfeit mark on or in connection with such good or service and that—

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

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

“(4) the term ‘financial gain’ includes the receipt, or expected receipt, of anything of value;

“(5) the term ‘Lanham Act’ means the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry
out the provisions of certain international conventions, and for other purposes’, approved July 5, 1946 (15 U.S.C. 1051 et seq.);

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

(6) in subsection (g), by striking “(g)” and inserting “(g) Limitation on Cause of Action.—”

(7) in subsection (g), by striking “(h)” and insert “(h) Report to Congress.—”;

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

(a) For Offenses Committed by Individuals.—
Section 1831(a) of title 18, United States Code, is amended, in the matter after paragraph (5)—

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

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

(b) For Offenses Committed by Organizations.—Section 1831(b) of such title is amended by strik-
ing “$10,000,000” and inserting “not more than the
greater of $10,000,000 or 3 times the value of the stolen
trade secret to the organization (including expenses for re-
search and design or other costs of reproducing the trade
secret that the organization has thereby avoided)”.

SEC. 204. DENYING U.S. CAPITAL TO NOTORIOUS FOREIGN
INFRINGERS.

(a) IDENTIFICATION AND RECOMMENDATIONS REGARDING NOTORIOUS FOREIGN INFRINGERS.—

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

(2) PUBLIC INPUT.—In carrying out paragraph
(1), the Intellectual Property Enforcement Coordi-
nator shall solicit and give consideration to the views
and recommendations of members of the public, in-
cluding holders of intellectual property rights in the
United States.

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

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

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

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

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

(5) A discussion of specific policy recommenda-
tions to deter the activities of notorious foreign in-
fringers and encourage foreign businesses to adopt industry norms that promote the protection of intellectual property globally, including addressing—

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

(B) whether the United States Government should initiate a process to identify and designate foreign entities from a list of notorious foreign infringers that would be prohibited from raising capital in the United States.

SEC. 205. DEFENDING INTELLECTUAL PROPERTY RIGHTS ABROAD.

(a) RESOURCES TO PROTECT INTELLECTUAL PROPERTY RIGHTS.—

(1) POLICY.—The Secretary of State and the Secretary of Commerce, in consultation with the Register of Copyrights, shall ensure that the protection in foreign countries of the intellectual property rights of United States persons is a significant component of United States foreign and commercial pol-
icy in general, and in relations with individual countries in particular.

(2) Dedication of Resources.—The Secretary of State and the Secretary of Commerce, in consultation with the Register of Copyrights, and the heads of other appropriate departments and agencies, shall ensure that adequate resources are available at the United States embassy or diplomatic mission (as the case may be) in any country that is identified under section 182(a)(1) of the Trade Act of 1974 (19 U.S.C. 2242(a)(1)) to ensure—

(A) aggressive support for enforcement action against violations of the intellectual property rights of United States persons in such country;

(B) cooperation with and support for the host government's efforts to conform its applicable laws, regulations, practices, and processes to enable the host government to honor its international and bilateral obligations with respect to the protection of intellectual property rights;

(C) consistency with the policy and country-specific priorities set forth in the most re-
cent report of USTR under such section
182(a)(1); and

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

(b) NEW APPOINTMENTS.—

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

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

(A) Africa.
(B) Europe and Eurasia.

(C) East Asia and the Pacific.

(D) The Near East.

(E) South and Central Asia and the Pacific.

(F) The Western Hemisphere.

(3) DUTIES.—The intellectual property attachés appointed under this subsection shall focus primarily on intellectual property matters, including the development, protection, and enforcement of applicable law. Each intellectual property attaché shall work, in accordance with guidance from the Director, and in coordination with appropriate staff at the Departments of Commerce and State and the Copyright Office, to advance the policy goals and priorities of the United States Government. Those policy goals and priorities shall be consistent with USTR’s reports under section 182(a)(1) of the Trade Act of 1974. The intellectual property attachés shall work with United States holders of intellectual property rights and industry to address intellectual property rights violations in the countries where the attachés are assigned.

(c) PRIORITY ASSIGNMENTS.—
(1) IN GENERAL.—Subject to paragraph (2), in designating the United States embassies or diplomatic missions where attachés will be assigned under subsection (b), the Secretary of State and the Secretary of Commerce shall give priority to countries where the activities of an attaché are likely to achieve the greatest potential benefit in reducing intellectual property infringement in the United States market, to advance the intellectual property rights of United States persons and their licensees, and to advance the interests of United States persons who may otherwise be harmed by violations of intellectual property rights in those countries.

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

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

(B) to countries of critical economic importance to the advancement of United States intellectual property rights and interests.

(d) TRAINING.—The Secretary of State and the Secretary of Commerce shall ensure that each intellectual
property attaché appointed under subsection (b) is fully trained for the responsibilities of the position before assuming duties at the United States embassy or diplomatic mission to which the attaché is assigned.

(e) COORDINATION.—The activities of intellectual property attachés under this section shall be determined in consultation with the Intellectual Property Enforcement Coordinator. The Director shall assist in coordinating the policy priorities and activities of the intellectual property attachés and oversee administrative and personnel matters.

(f) TRAINING AND TECHNICAL ASSISTANCE.—

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

(2) ROLE OF IPEC.—Such training and technical assistance programs shall be carried out in consultation with the Intellectual Property Enforcement Coordinator. The Director shall assist in co-
ordinating the training and technical assistance pro-
grams conducted by intellectual property attachés.

(g) Activities in Other Countries.—In the case
of countries that are not identified under section
182(a)(1) of the Trade Act of 1974, the activities of Fed-
eral departments and agencies with respect to intellectual
property rights in those countries, intellectual property
programs and outreach of the United States Government
in those countries, and training and technical assistance
programs of the United States Government relating to in-
tellectual property in those countries may be conducted
to the extent they are consistent with compelling commer-
cial or foreign policy interests of the United States.

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

(i) Definitions.—In this section:
(1) DIRECTOR.—The terms “Director of the Patent and Trademark Office” and “Director” mean the Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office.

(2) INTELLECTUAL PROPERTY ENFORCEMENT.—The term “intellectual property enforcement” has the meaning given that term in section 302 of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (15 U.S.C. 8112).


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

(5) USTR.—The term “USTR” means the United States Trade Representative.
(6) UNITED STATES PERSON.—The term “United States person” means—

(A) any United States resident or national;

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

(C) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any corporation, partnership, business entity, or organization described in subparagraph (B), that is controlled in fact by such corporation, partnership, business entity, or organization.

(j) AUTHORIZATION OF APPROPRIATIONS.—The Secretary of State and the Secretary of Commerce shall provide for the training and support of the intellectual property attachés appointed under subsection (b) using existing resources.