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S. 968

To prevent online threats to economic creativity and theft of intellectual property, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

Mr. LEAHY (for himself, Mr. HATCH, Mr. GRASSLEY, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. WHITEHOUSE, Mr. GRAHAM, Mr. KOHL, Mr. COONS, Mr. BLUMENTHAL, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. BLUNT, Mr. ALEXANDER, Mrs. GILLIBRAND, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 26, 2011

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To prevent online threats to economic creativity and theft of intellectual property, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~Preventing Real Online~~
5 ~~Threats to Economic Creativity and Theft of Intellectual~~”

1 Property Act of 2011” or the “PROTECT IP Act of
2 2011”.

3 **SEC. 2. DEFINITIONS.**

4 For purposes of this Act—

5 (1) the term “domain name” has the same
6 meaning as in section 45 of the Lanham Act (15
7 U.S.C. 1127);

8 (2) the term “domain name system server”
9 means a server or other mechanism used to provide
10 the Internet protocol address associated with a do-
11 main name;

12 (3) the term “financial transaction provider”
13 has the same meaning as in section 5362(4) of title
14 31, United States Code;

15 (4) the term “information location tool” has the
16 same meaning as described in subsection (d) of sec-
17 tion 512 of title 17, United States Code;

18 (5) the term “Internet advertising service”
19 means a service that for compensation sells, pur-
20 chases, brokers, serves, inserts, verifies, or clears the
21 placement of an advertisement, including a paid or
22 sponsored search result, link, or placement that is
23 rendered in viewable form for any period of time on
24 an Internet site;

1 (6) the term “Internet site” means the collec-
2 tion of digital assets, including links, indexes, or
3 pointers to digital assets, accessible through the
4 Internet that are addressed relative to a common do-
5 main name;

6 (7) the term “Internet site dedicated to infring-
7 ing activities” means an Internet site that—

8 (A) has no significant use other than en-
9 gaging in, enabling, or facilitating the—

10 (i) reproduction, distribution, or pub-
11 lic performance of copyrighted works, in
12 complete or substantially complete form, in
13 a manner that constitutes copyright in-
14 fringement under section 501 of title 17,
15 United States Code;

16 (ii) violation of section 1201 of title
17 17, United States Code; or

18 (iii) sale, distribution, or promotion of
19 goods, services, or materials bearing a
20 counterfeit mark, as that term is defined
21 in section 34(d) of the Lanham Act; or

22 (B) is designed, operated, or marketed by
23 its operator or persons operating in concert
24 with the operator, and facts or circumstances
25 suggest is used, primarily as a means for en-

1 gaging in, enabling, or facilitating the activities
2 described under clauses (i), (ii), or (iii) of sub-
3 paragraph (A);

4 (8) the term “Lanham Act” means the Act en-
5 titled “An Act to provide for the registration and
6 protection of trademarks used in commerce, to carry
7 out the provisions of certain international conven-
8 tions, and for other purposes”, approved July 5,
9 1946 (commonly referred to as the “Trademark Act
10 of 1946” or the “Lanham Act”);

11 (9) the term “nondomestic domain name”
12 means a domain name for which the domain name
13 registry that issued the domain name and operates
14 the relevant top level domain, and the domain name
15 registrar for the domain name, are not located in the
16 United States;

17 (10) the term “owner” or “operator” when
18 used in connection with an Internet site shall in-
19 clude, respectively, any owner of a majority interest
20 in, or any person with authority to operate, such
21 Internet site; and

22 (11) the term “qualifying plaintiff” means—

23 (A) the Attorney General of the United
24 States; or

1 (~~B~~) an owner of an intellectual property
 2 right, or one authorized to enforce such right,
 3 harmd by the activities of an Internet site
 4 dedicated to infringing activities occurring on
 5 that Internet site.

6 **SEC. 3. ENHANCING ENFORCEMENT AGAINST ROGUE**
 7 **WEBSITES OPERATED AND REGISTERED**
 8 **OVERSEAS.**

9 (a) COMMENCEMENT OF AN ACTION.—

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

12 (A) a registrant of a nondomestic domain
 13 name used by an Internet site dedicated to in-
 14 fringing activities; or

15 (~~B~~) an owner or operator of an Internet
 16 site dedicated to infringing activities accessed
 17 through a nondomestic domain name.

18 (2) ~~IN REM~~.—If through due diligence the At-
 19 torney General is unable to find a person described
 20 in subparagraphs (A) or (B) of paragraph (1), or no
 21 such person found has an address within a judicial
 22 district of the United States, the Attorney General
 23 may commence an in rem action against a non-
 24 domestic domain name used by an Internet site dedi-
 25 cated to infringing activities.

1 (b) ORDERS OF THE COURT.—

2 (1) IN GENERAL.—On application of the Attor-
3 ney General following the commencement of an ac-
4 tion under this section, the court may issue a tem-
5 porary restraining order, a preliminary injunction, or
6 an injunction, in accordance with rule 65 of the Fed-
7 eral Rules of Civil Procedure, against the non-
8 domestic domain name used by an Internet site dedi-
9 cated to infringing activities, or against a registrant
10 of such domain name, or the owner or operator of
11 such Internet site dedicated to infringing activities,
12 to cease and desist from undertaking any further ac-
13 tivity as an Internet site dedicated to infringing ac-
14 tivities, if—

15 (A) the domain name is used within the
16 United States to access such Internet site; and

17 (B) the Internet site—

18 (i) conducts business directed to resi-
19 dents of the United States; and

20 (ii) harms holders of United States in-
21 tellectual property rights.

22 (2) DETERMINATION BY THE COURT.—For pur-
23 poses of determining whether an Internet site con-
24 ducts business directed to residents of the United

1 States under paragraph (1)(B)(i), a court may con-
 2 sider, among other indicia, whether—

3 (A) the Internet site is providing goods or
 4 services described in section 2(7) to users lo-
 5 cated in the United States;

6 (B) there is evidence that the Internet site
 7 is not intended to provide—

8 (i) such goods and services to users
 9 located in the United States;

10 (ii) access to such goods and services
 11 to users located in the United States; and

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

14 (C) the Internet site has reasonable meas-
 15 ures in place to prevent such goods and services
 16 from being accessed from or delivered to the
 17 United States;

18 (D) the Internet site offers services ob-
 19 tained in the United States; and

20 (E) any prices for goods and services are
 21 indicated in the currency of the United States.

22 (c) NOTICE AND SERVICE OF PROCESS.—

23 (1) IN GENERAL.—Upon commencing an action
 24 under this section, the Attorney General shall send
 25 a notice of the alleged violation and intent to pro-

1 eeced under this Act to the registrant of the domain
2 name of the Internet site—

3 (A) at the postal and e-mail address ap-
4 pearing in the applicable publicly accessible
5 database of registrations, if any and to the ex-
6 tent such addresses are reasonably available;

7 (B) via the postal and e-mail address of
8 the registrar, registry, or other domain name
9 registration authority that registered or as-
10 signed the domain name, to the extent such ad-
11 dresses are reasonably available; and

12 (C) in any other such form as the court
13 finds necessary, including as may be required
14 by Rule 4(f) of the Federal Rules of Civil Pro-
15 cedure.

16 (2) RULE OF CONSTRUCTION.—For purposes of
17 this section, the actions described in this subsection
18 shall constitute service of process.

19 (d) REQUIRED ACTIONS BASED ON COURT OR-
20 DERS.—

21 (1) SERVICE.—A Federal law enforcement offi-
22 cer, with the prior approval of the court, may serve
23 a copy of a court order issued pursuant to this sec-
24 tion on similarly situated entities within each class

1 described in paragraph (2). Proof of service shall be
2 filed with the court.

3 (2) REASONABLE MEASURES.—After being
4 served with a copy of an order pursuant to this sub-
5 section:

6 (A) OPERATORS.—

7 (i) IN GENERAL.—An operator of a
8 nonauthoritative domain name system
9 server shall take the least burdensome
10 technically feasible and reasonable meas-
11 ures designed to prevent the domain name
12 described in the order from resolving to
13 that domain name's Internet protocol ad-
14 dress, except that—

15 (I) such operator shall not be re-
16 quired—

17 (aa) other than as directed
18 under this subparagraph, to mod-
19 ify its network, software, sys-
20 tems, or facilities;

21 (bb) to take any measures
22 with respect to domain name
23 lookups not performed by its own
24 domain name server or domain

1 name system servers located out-
2 side the United States; or

3 (cc) to continue to prevent
4 access to a domain name to
5 which access has been effectively
6 disable by other means; and

7 (H) nothing in this subparagraph
8 shall affect the limitation on the liabil-
9 ity of such an operator under section
10 512 of title 17, United States Code.

11 (ii) TEXT OF NOTICE.—The Attorney
12 General shall prescribe the text of the no-
13 tice displayed to users or customers of an
14 operator taking an action pursuant to this
15 subparagraph. Such text shall specify that
16 the action is being taken pursuant to a
17 court order obtained by the Attorney Gen-
18 eral.

19 (B) FINANCIAL TRANSACTION PRO-
20 VIDERS.—A financial transaction provider shall
21 take reasonable measures, as expeditiously as
22 reasonable, designed to prevent, prohibit, or
23 suspend its service from completing payment
24 transactions involving customers located within
25 the United States and the Internet site associ-

1 ated with the domain name set forth in the
2 order.

3 (C) INTERNET ADVERTISING SERVICES.—

4 An Internet advertising service that contracts
5 with the Internet site associated with the do-
6 main name set forth in the order to provide ad-
7 vertising to or for that site, or which knowingly
8 serves advertising to or for such site, shall take
9 technically feasible and reasonable measures, as
10 expeditiously as reasonable, designed to—

11 (i) prevent its service from providing
12 advertisements to the Internet site associ-
13 ated with such domain name; or

14 (ii) cease making available advertise-
15 ments for that site; or paid or sponsored
16 search results, links or other placements
17 that provide access to the domain name.

18 (D) INFORMATION LOCATION TOOLS.—An

19 information location tool shall take technically
20 feasible and reasonable measures, as expedi-
21 tiously as possible, to—

22 (i) remove or disable access to the
23 Internet site associated with the domain
24 name set forth in the order; or

1 (ii) not serve a hypertext link to such
2 Internet site.

3 ~~(3) COMMUNICATION WITH USERS.—~~Except as
4 provided under paragraph ~~(2)(A)(ii)~~, an entity tak-
5 ing an action described in this subsection shall de-
6 termine whether and how to communicate such ac-
7 tion to the entity's users or customers.

8 ~~(4) RULE OF CONSTRUCTION.—~~For purposes of
9 an action commenced under this section, the obliga-
10 tions of an entity described in this subsection shall
11 be limited to the actions set out in each paragraph
12 or subparagraph applicable to such entity, and no
13 order issued pursuant to this section shall impose
14 any additional obligations on, or require additional
15 actions by, such entity.

16 ~~(5) ACTIONS PURSUANT TO COURT ORDER.—~~

17 ~~(A) IMMUNITY FROM SUIT.—~~No cause of
18 action shall lie in any Federal or State court or
19 administrative agency against any entity receiv-
20 ing a court order issued under this subsection,
21 or against any director, officer, employee, or
22 agent thereof, for any act reasonably designed
23 to comply with this subsection or reasonably
24 arising from such order, other than in an action
25 pursuant to subsection ~~(c)~~.

1 (B) IMMUNITY FROM LIABILITY.—Any en-
2 tity receiving an order under this subsection,
3 and any director, officer, employee, or agent
4 thereof, shall not be liable to any party for any
5 acts reasonably designed to comply with this
6 subsection or reasonably arising from such
7 order, other than in an action pursuant to sub-
8 section (e), and any actions taken by customers
9 of such entity to circumvent any restriction on
10 access to the Internet domain instituted pursu-
11 ant to this subsection or any act, failure, or in-
12 ability to restrict access to an Internet domain
13 that is the subject of a court order issued pur-
14 suant to this subsection despite good faith ef-
15 forts to do so by such entity shall not be used
16 by any person in any claim or cause of action
17 against such entity, other than in an action
18 pursuant to subsection (e).

19 (e) ENFORCEMENT OF ORDERS.—

20 (1) IN GENERAL.—In order to compel compli-
21 ance with this section, the Attorney General may
22 bring an action for injunctive relief against any
23 party receiving a court order issued pursuant to this
24 section that knowingly and willfully fails to comply
25 with such order.

1 (2) **RULE OF CONSTRUCTION.**—The authority
2 granted the Attorney General under paragraph (1)
3 shall be the sole legal remedy for enforcing the obli-
4 gations under this section of any entity described in
5 subsection (d).

6 (3) **DEFENSE.**—A defendant in an action under
7 paragraph (1) may establish an affirmative defense
8 by showing that the defendant does not have the
9 technical means to comply with the subsection with-
10 out incurring an unreasonable economic burden, or
11 that the order is inconsistent with this Act. This
12 showing shall serve as a defense only to the extent
13 of such inability to comply or to the extent of such
14 inconsistency.

15 (f) **MODIFICATION OR VACATION OF ORDERS.**—

16 (1) **IN GENERAL.**—At any time after the
17 issuance of an order under subsection (b), a motion
18 to modify, suspend, or vacate the order may be filed
19 by—

20 (A) any person, or owner or operator of
21 property, bound by the order;

22 (B) any registrant of the domain name, or
23 the owner or operator of the Internet site sub-
24 ject to the order;

1 (C) any domain name registrar or registry
2 that has registered or assigned the domain
3 name of the Internet site subject to the order;
4 or

5 (D) any entity that has received a copy of
6 an order pursuant to subsection (d) requiring
7 such entity to take action prescribed in that
8 subsection.

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

11 (A) the Internet site associated with the
12 domain name subject to the order is no longer,
13 or never was, an Internet site dedicated to in-
14 fringing activities; or

15 (B) the interests of justice require that the
16 order be modified, suspended, or vacated.

17 (3) CONSIDERATION.—In making a relief deter-
18 mination under paragraph (2), a court may consider
19 whether the domain name has expired or has been
20 re-registered by a different party.

21 (g) RELATED ACTIONS.—The Attorney General, if al-
22 leging that an Internet site previously adjudicated to be
23 an Internet site dedicated to infringing activities is acces-
24 sible or has been reconstituted at a different domain
25 name, may commence a related action under this section

1 against the additional domain name in the same judicial
2 district as the previous action.

3 **SEC. 4. ELIMINATING THE FINANCIAL INCENTIVE TO STEAL**
4 **INTELLECTUAL PROPERTY ONLINE.**

5 (a) COMMENCEMENT OF AN ACTION.—

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

8 (A) a registrant of a domain name used by
9 an Internet site dedicated to infringing activi-
10 ties; or

11 (B) an owner or operator of an Internet
12 site dedicated to infringing activities accessed
13 through a domain name.

14 (2) IN REM.—If through due diligence a quali-
15 fying plaintiff is unable to find a person described
16 in subparagraphs (A) or (B) of paragraph (1), or no
17 such person found has an address within a judicial
18 district of the United States, the Attorney General
19 may commence an in rem action against a domain
20 name used by an Internet site dedicated to infring-
21 ing activities.

22 (b) ORDERS OF THE COURT.—

23 (1) IN GENERAL.—On application of a quali-
24 fying plaintiff following the commencement of an ac-
25 tion under this section, the court may issue a tem-

1 porary restraining order, a preliminary injunction, or
2 an injunction, in accordance with rule 65 of the Fed-
3 eral Rules of Civil Procedure, against the domain
4 name used by an Internet site dedicated to infring-
5 ing activities, or against a registrant of such domain
6 name, or the owner or operator of such Internet site
7 dedicated to infringing activities, to cease and desist
8 from undertaking any further activity as an Internet
9 site dedicated to infringing activities, if—

10 (A) the domain name is registered or as-
11 signed by a domain name registrar or domain
12 name registry that located or doing business in
13 the United States; or

14 (B)(i) the domain name is used within the
15 United States to access such Internet site; and

16 (ii) the Internet site—

17 (I) conducts business directed to resi-
18 dents of the United States; and

19 (II) harms holders of United States
20 intellectual property rights.

21 (2) DETERMINATION BY THE COURT.—For pur-
22 poses of determining whether an Internet site con-
23 ducts business directed to residents of the United
24 States under paragraph (1)(B)(ii)(I), a court may
25 consider, among other indicia, whether—

1 (A) the Internet site is providing goods or
2 services described in section 2(7) to users lo-
3 cated in the United States;

4 (B) there is evidence that the Internet site
5 is not intended to provide—

6 (i) such goods and services to users
7 located in the United States;

8 (ii) access to such goods and services
9 to users located in the United States; and

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

12 (C) the Internet site has reasonable meas-
13 ures in place to prevent such goods and services
14 from being accessed from or delivered to the
15 United States;

16 (D) the Internet site offers services ob-
17 tained in the United States; and

18 (E) any prices for goods and services are
19 indicated in the currency of the United States.

20 (e) NOTICE AND SERVICE OF PROCESS.—

21 (1) IN GENERAL.—Upon commencing an action
22 under this section, the qualifying plaintiff shall send
23 a notice of the alleged violation and intent to pro-
24 ceed under this Act to the registrant of the domain
25 name of the Internet site—

1 (A) at the postal and e-mail address ap-
2 pearing in the applicable publicly accessible
3 database of registrations, if any and to the ex-
4 tent such addresses are reasonably available;

5 (B) via the postal and e-mail address of
6 the registrar, registry, or other domain name
7 registration authority that registered or as-
8 signed the domain name, to the extent such ad-
9 dresses are reasonably available; and

10 (C) in any other such form as the court
11 finds necessary, including as may be required
12 by Rule 4(f) of the Federal Rules of Civil Pro-
13 cedure.

14 (2) RULE OF CONSTRUCTION.—For purposes of
15 this section, the actions described in this subsection
16 shall constitute service of process.

17 (d) REQUIRED ACTIONS BASED ON COURT OR-
18 DERS.—

19 (1) SERVICE.—A qualifying plaintiff, with the
20 prior approval of the court, may, serve a copy of a
21 court order issued pursuant to this section on simi-
22 larly situated entities within each class described in
23 paragraph (2). Proof of service shall be filed with
24 the court.

1 (2) REASONABLE MEASURES.—After being
2 served with a copy of an order pursuant to this sub-
3 section:

4 (A) FINANCIAL TRANSACTION PRO-
5 VIDERS.—A financial transaction provider shall
6 take reasonable measures, as expeditiously as
7 reasonable, designed to prevent, prohibit, or
8 suspend its service from completing payment
9 transactions involving customers located within
10 the United States and the Internet site associ-
11 ated with the domain name set forth in the
12 order.

13 (B) INTERNET ADVERTISING SERVICES.—
14 An Internet advertising service that contracts
15 with the Internet site associated with the do-
16 main name set forth in the order to provide ad-
17 vertising to or for that site, or which knowingly
18 serves advertising to or for such site, shall take
19 technically feasible and reasonable measures, as
20 expeditiously as reasonable, designed to—

21 (i) prevent its service from providing
22 advertisements to the Internet site associ-
23 ated with such domain name; or

24 (ii) cease making available advertise-
25 ments for that site, or paid or sponsored

1 search results, links, or placements that
2 provide access to the domain name.

3 ~~(3) COMMUNICATION WITH USERS.—~~An entity
4 taking an action described in this subsection shall
5 determine how to communicate such action to the
6 entity's users or customers.

7 ~~(4) RULE OF CONSTRUCTION.—~~For purposes of
8 an action commenced under this section, the obliga-
9 tions of an entity described in this subsection shall
10 be limited to the actions set out in each paragraph
11 or subparagraph applicable to such entity, and no
12 order issued pursuant to this section shall impose
13 any additional obligations on, or require additional
14 actions by, such entity.

15 ~~(5) ACTIONS PURSUANT TO COURT ORDER.—~~

16 ~~(A) IMMUNITY FROM SUIT.—~~No cause of
17 action shall lie in any Federal or State court or
18 administrative agency against any entity receiv-
19 ing a court order issued under this subsection,
20 or against any director, officer, employee, or
21 agent thereof, for any act reasonably designed
22 to comply with this subsection or reasonably
23 arising from such order, other than in an action
24 pursuant to subsection (e).

1 (B) IMMUNITY FROM LIABILITY.—Any en-
2 tity receiving an order under this subsection,
3 and any director, officer, employee, or agent
4 thereof, shall not be liable to any party for any
5 acts reasonably designed to comply with this
6 subsection or reasonably arising from such
7 order, other than in an action pursuant to sub-
8 section (e), and any actions taken by customers
9 of such entity to circumvent any restriction on
10 access to the Internet domain instituted pursu-
11 ant to this subsection or any act, failure, or in-
12 ability to restrict access to an Internet domain
13 that is the subject of a court order issued pur-
14 suant to this subsection despite good faith ef-
15 forts to do so by such entity shall not be used
16 by any person in any claim or cause of action
17 against such entity, other than in an action
18 pursuant to subsection (e).

19 (e) ENFORCEMENT OF ORDERS.—

20 (1) IN GENERAL.—In order to compel compli-
21 ance with this section, the qualifying plaintiff may
22 bring an action for injunctive relief against any
23 party receiving a court order issued pursuant to this
24 section that knowingly and willfully fails to comply
25 with such order.

1 (2) RULE OF CONSTRUCTION.—The authority
2 granted a qualifying plaintiff under paragraph (1)
3 shall be the sole legal remedy for enforcing the obli-
4 gations under this section of any entity described in
5 subsection (d).

6 (3) DEFENSE.—A defendant in an action com-
7 menced under paragraph (1) may establish an af-
8 firmative defense by showing that the defendant
9 does not have the technical means to comply with
10 the subsection without incurring an unreasonable
11 economic burden, or that the order is inconsistent
12 with this Act. This showing shall serve as a defense
13 only to the extent of such inability to comply or to
14 the extent of such inconsistency.

15 (f) MODIFICATION OR VACATION OF ORDERS.—

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

20 (A) any person, or owner or operator of
21 property, bound by the order;

22 (B) any registrant of the domain name, or
23 the owner or operator of the Internet site sub-
24 ject to the order;

1 (C) any domain name registrar or registry
2 that has registered or assigned the domain
3 name of the Internet site subject to the order;
4 or

5 (D) any entity that has received a copy of
6 an order pursuant to subsection (d) requiring
7 such entity to take action prescribed in that
8 subsection.

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

11 (A) the Internet site associated with the
12 domain name subject to the order is no longer,
13 or never was, dedicated to infringing activities
14 as defined in this Act; or

15 (B) the interests of justice require that the
16 order be modified, suspended, or vacated.

17 (3) CONSIDERATION.—In making a relief deter-
18 mination under paragraph (2), a court may consider
19 whether the domain name has expired or has been
20 re-registered by a different party.

21 (g) RELATED ACTIONS.—A qualifying plaintiff, if al-
22 leging that an Internet site previously adjudicated to be
23 an Internet site dedicated to infringing activities is acces-
24 sible or has been reconstituted at a different domain
25 name, may commence a related action under this section

1 against the additional domain name in the same judicial
 2 district as the previous action.

3 **SEC. 5. VOLUNTARY ACTION AGAINST WEBSITES STEALING**
 4 **AMERICAN INTELLECTUAL PROPERTY.**

5 (a) IN GENERAL.—No financial transaction provider
 6 or Internet advertising service shall be liable for damages
 7 to any person for voluntarily taking any action described
 8 in section 3(d) or 4(d) with regard to an Internet site if
 9 the entity acting in good faith and based on credible evi-
 10 dence has a reasonable belief that the Internet site is an
 11 Internet site dedicated to infringing activities.

12 (b) INTERNET SITES ENGAGED IN INFRINGING AC-
 13 TIVITIES THAT ENDANGER THE PUBLIC HEALTH.—

14 (1) REFUSAL OF SERVICE.—A domain name
 15 registry, domain name registrar, financial trans-
 16 action provider, information location tool, or Inter-
 17 net advertising service, acting in good faith and
 18 based on credible evidence, may stop providing or
 19 refuse to provide services to an infringing Internet
 20 site that endangers the public health.

21 (2) IMMUNITY FROM LIABILITY.—An entity de-
 22 scribed in paragraph (1), including its directors, offi-
 23 cers, employees, or agents, that ceases or refused to
 24 provide services under paragraph (1) shall not be

1 liable to any party under any Federal or State law
2 for such action.

3 ~~(3)~~ DEFINITIONS.—For purposes of this sub-
4 section—

5 (A) the term “adulterated” has the same
6 meaning as in section 501 of the Federal Food,
7 Drug, and Cosmetic Act (21 U.S.C. 351);

8 (B) an “infringing Internet site that en-
9 dangers the public health” means—

10 (i) an Internet site dedicated to in-
11 fringing activities for which the counterfeit
12 products that it offers, sells, dispenses, or
13 distributes are controlled or non-controlled
14 prescription medication; or

15 (ii) an Internet site that has no sig-
16 nificant use other than, or is designed, op-
17 erated, or marketed by its operator or per-
18 sons operating in concert with the oper-
19 ator, and facts or circumstances suggest is
20 used, primarily as a means for—

21 (I) offering, selling, dispensing,
22 or distributing any controlled or non-
23 controlled prescription medication,
24 and does so regularly without a valid
25 prescription; or

1 (H) offering, selling, dispensing,
2 or distributing any controlled or non-
3 controlled prescription medication,
4 and does so regularly for medication
5 that is adulterated or misbranded;

6 (C) the term “misbranded” has the same
7 meaning as in section 502 of the Federal Food,
8 Drug, and Cosmetic Act (21 U.S.C. 352); and

9 (D) the term “valid prescription” has the
10 same meaning as in section 309(e)(2)(A) of the
11 Controlled Substances Act (21 U.S.C.
12 829(e)(2)(A)).

13 **SEC. 6. SAVINGS CLAUSES.**

14 (a) **RULE OF CONSTRUCTION RELATING TO CIVIL**
15 **AND CRIMINAL REMEDIES.**—Nothing in this Act shall be
16 construed to limit or expand civil or criminal remedies
17 available to any person (including the United States) for
18 infringing activities on the Internet pursuant to any other
19 Federal or State law.

20 (b) **RULE OF CONSTRUCTION RELATING TO VICARI-**
21 **OUS OR CONTRIBUTORY LIABILITY.**—Nothing in this Act
22 shall be construed to enlarge or diminish vicarious or con-
23 tributory liability for any cause of action available under
24 title 17, United States Code, including any limitations on
25 liability under section 512 of such title 17, or to create

1 an obligation to take action pursuant to section 5 of this
2 Act.

3 (c) ~~RELATIONSHIP WITH SECTION 512 OF TITLE~~
4 17.—Nothing in this Act, and no order issued or served
5 pursuant to sections 3 or 4 of this Act, shall serve as a
6 basis for determining the application of section 512 of title
7 17, United States Code.

8 **SEC. 7. GUIDELINES AND STUDIES.**

9 (a) ~~GUIDELINES.~~—The Attorney General shall—

10 (1) publish procedures developed in consultation
11 with other relevant law enforcement agencies, includ-
12 ing the United States Immigration and Customs En-
13 forcement, to receive information from the public
14 about Internet sites dedicated to infringing activi-
15 ties;

16 (2) provide guidance to intellectual property
17 rights holders about what information such rights
18 holders should provide law enforcement agencies to
19 initiate an investigation pursuant to this Act;

20 (3) provide guidance to intellectual property
21 rights holders about how to supplement an ongoing
22 investigation initiated pursuant to this Act;

23 (4) establish standards for prioritization of ac-
24 tions brought under this Act;

1 (5) provide appropriate resources and proce-
2 dures for case management and development to af-
3 fect timely disposition of actions brought under this
4 Act; and

5 (6) develop a deconfliction process in consulta-
6 tion with other law enforcement agencies, including
7 the United States Immigration and Customs En-
8 forcement, to coordinate enforcement activities
9 brought under this Act.

10 (b) REPORTS.—

11 (1) REPORT ON EFFECTIVENESS OF CERTAIN
12 MEASURES.—Not later than 1 year after the date of
13 enactment of this Act, the Secretary of Commerce,
14 in coordination with the Attorney General, the Sec-
15 retary of Homeland Security, and the Intellectual
16 Property Enforcement Coordinator, shall conduct a
17 study and report to the Committee on the Judiciary
18 of the Senate and the Committee on the Judiciary
19 of the House of Representatives on the following:

20 (A) An assessment of the effects, if any, of
21 the implementation of section 3(d)(2)(A) on the
22 accessibility of Internet sites dedicated to in-
23 fringing activity.

24 (B) An assessment of the effects, if any, of
25 the implementation of section 3(d)(2)(A) on the

1 deployment, security, and reliability of the do-
 2 main name system and associated Internet
 3 processes, including Domain Name System Se-
 4 curity Extensions.

5 (C) Recommendations, if any, for modi-
 6 fying or amending this Act to increase effective-
 7 ness or ameliorate any unintended effects of
 8 section 3(d)(2)(A).

9 ~~(2) REPORT ON OVERALL EFFECTIVENESS.—~~

10 The Register of Copyrights shall, in consultation
 11 with the appropriate departments and agencies of
 12 the United States and other stakeholders—

13 (A) conduct a study on—

14 (i) the enforcement and effectiveness
 15 of this Act; and

16 (ii) the need to modify or amend this
 17 Act to apply to emerging technologies; and

18 ~~(B) not later than 2 years after the date~~
 19 ~~of enactment of this Act, submit a report to the~~
 20 ~~Committee on the Judiciary of the Senate and~~
 21 ~~the Committee on the Judiciary of the House of~~
 22 ~~Representatives on—~~

23 (i) the results of the study conducted
 24 under subparagraph (A); and

1 (ii) any recommendations that the
2 Register may have as a result of the study.

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Preventing Real Online*
5 *Threats to Economic Creativity and Theft of Intellectual*
6 *Property Act of 2011” or the “PROTECT IP Act of 2011”.*

7 **SEC. 2. DEFINITIONS.**

8 *For purposes of this Act—*

9 (1) *the term “domain name” has the same mean-*
10 *ing as in section 45 of the Lanham Act (15 U.S.C.*
11 *1127);*

12 (2) *the term “domain name system server”*
13 *means a server or other mechanism used to provide*
14 *the Internet protocol address associated with a do-*
15 *main name;*

16 (3) *the term “financial transaction provider”*
17 *has the same meaning as in section 5362(4) of title*
18 *31, United States Code;*

19 (4) *the term “information location tool” has the*
20 *same meaning as described in subsection (d) of sec-*
21 *tion 512 of title 17, United States Code;*

22 (5) *the term “Internet advertising service”*
23 *means a service that for compensation sells, pur-*
24 *chases, brokers, serves, inserts, verifies, or clears the*
25 *placement of an advertisement, including a paid or*

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

4 (6) the term “Internet site” means the collection
5 of digital assets, including links, indexes, or pointers
6 to digital assets, accessible through the Internet that
7 are addressed relative to a common domain name;

8 (7) the term “Internet site dedicated to infring-
9 ing activities” means an Internet site that—

10 (A) has no significant use other than engag-
11 ing in, enabling, or facilitating the—

12 (i) reproduction, distribution, or public
13 performance of copyrighted works, in com-
14 plete or substantially complete form, in a
15 manner that constitutes copyright infringe-
16 ment under section 501 of title 17, United
17 States Code;

18 (ii) violation of section 1201 of title
19 17, United States Code; or

20 (iii) sale, distribution, or promotion of
21 goods, services, or materials bearing a coun-
22 terfeit mark, as that term is defined in sec-
23 tion 34(d) of the Lanham Act; or

24 (B) is designed, operated, or marketed by its
25 operator or persons operating in concert with the

1 operator, and facts or circumstances suggest is
2 used, primarily as a means for engaging in, ena-
3 bling, or facilitating the activities described
4 under clauses (i), (ii), or (iii) of subparagraph
5 (A);

6 (8) the term “Lanham Act” means the Act enti-
7 tled “An Act to provide for the registration and pro-
8 tection of trademarks used in commerce, to carry out
9 the provisions of certain international conventions,
10 and for other purposes”, approved July 5, 1946 (com-
11 monly referred to as the “Trademark Act of 1946” or
12 the “Lanham Act”);

13 (9) the term “nondomestic domain name” means
14 a domain name for which the domain name registry
15 that issued the domain name and operates the rel-
16 evant top level domain, and the domain name reg-
17 istrar for the domain name, are not located in the
18 United States;

19 (10) the term “owner” or “operator” when used
20 in connection with an Internet site shall include, re-
21 spectively, any owner of a majority interest in, or
22 any person with authority to operate, such Internet
23 site; and

24 (11) the term “qualifying plaintiff” means—

1 (A) *the Attorney General of the United*
2 *States; or*

3 (B) *an owner of an intellectual property*
4 *right, or one authorized to enforce such right,*
5 *harmed by the activities of an Internet site dedi-*
6 *cated to infringing activities occurring on that*
7 *Internet site.*

8 **SEC. 3. ENHANCING ENFORCEMENT AGAINST ROGUE**
9 **WEBSITES OPERATED AND REGISTERED**
10 **OVERSEAS.**

11 (a) *COMMENCEMENT OF AN ACTION.—*

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

14 (A) *a registrant of a nondomestic domain*
15 *name used by an Internet site dedicated to in-*
16 *fringing activities; or*

17 (B) *an owner or operator of an Internet site*
18 *dedicated to infringing activities accessed*
19 *through a nondomestic domain name.*

20 (2) *IN REM.—If through due diligence the Attor-*
21 *ney General is unable to find a person described in*
22 *subparagraphs (A) or (B) of paragraph (1), or no*
23 *such person found has an address within a judicial*
24 *district of the United States, the Attorney General*
25 *may commence an in rem action against a non-*

1 *domestic domain name used by an Internet site dedi-*
2 *cated to infringing activities.*

3 (3) *IDENTIFICATION OF ENTITIES.*—*Any action*
4 *commenced by the Attorney General under this sec-*
5 *tion shall identify the entities which may be required*
6 *to take actions pursuant to subsection (d) if an order*
7 *issues pursuant to subsection (b).*

8 (b) *ORDERS OF THE COURT.*—

9 (1) *IN GENERAL.*—*On application of the Attor-*
10 *ney General following the commencement of an action*
11 *under this section, the court may issue a temporary*
12 *restraining order, a preliminary injunction, or an in-*
13 *junction, in accordance with rule 65 of the Federal*
14 *Rules of Civil Procedure, against the nondomestic do-*
15 *main name used by an Internet site dedicated to in-*
16 *fringing activities, or against a registrant of such do-*
17 *main name, or the owner or operator of such Internet*
18 *site dedicated to infringing activities, to cease and de-*
19 *sist from undertaking any further activity as an*
20 *Internet site dedicated to infringing activities, if—*

21 (A) *the domain name is used within the*
22 *United States to access such Internet site; and*

23 (B) *the Internet site—*

24 (i) *conducts business directed to resi-*
25 *dents of the United States; and*

1 (ii) harms holders of United States in-
2 tellectual property rights.

3 (2) *DETERMINATION BY THE COURT.*—For pur-
4 poses of determining whether an Internet site con-
5 ducts business directed to residents of the United
6 States under paragraph (1)(B)(i), a court may con-
7 sider, among other indicia, whether—

8 (A) the Internet site is providing goods or
9 services described in section 2(7) to users located
10 in the United States;

11 (B) there is evidence that the Internet site
12 is not intended to provide—

13 (i) such goods and services to users lo-
14 cated in the United States;

15 (ii) access to such goods and services to
16 users located in the United States; and

17 (iii) delivery of such goods and services
18 to users located in the United States;

19 (C) the Internet site has reasonable meas-
20 ures in place to prevent such goods and services
21 from being accessed from or delivered to the
22 United States;

23 (D) the Internet site offers services obtained
24 in the United States; and

1 (E) any prices for goods and services are
2 indicated in the currency of the United States.

3 (c) NOTICE AND SERVICE OF PROCESS.—

4 (1) IN GENERAL.—Upon commencing an action
5 under this section, the Attorney General shall send a
6 notice of the alleged violation and intent to proceed
7 under this Act to the registrant of the domain name
8 of the Internet site—

9 (A) at the postal and e-mail address ap-
10 pearing in the applicable publicly accessible
11 database of registrations, if any and to the ex-
12 tent such addresses are reasonably available;

13 (B) via the postal and e-mail address of the
14 registrar, registry, or other domain name reg-
15 istration authority that registered or assigned
16 the domain name, to the extent such addresses
17 are reasonably available; and

18 (C) in any other such form as the court
19 finds necessary, including as may be required by
20 Rule 4(f) of the Federal Rules of Civil Procedure.

21 (2) RULE OF CONSTRUCTION.—For purposes of
22 this section, the actions described in this subsection
23 shall constitute service of process.

24 (3) OTHER NOTICE.—Upon commencing an ac-
25 tion under this section, the Attorney General shall

1 *also provide notice to entities identified in the com-*
 2 *plaint, or any amendments thereto, which may be re-*
 3 *quired to take action pursuant to subsection (d).*

4 *(d) REQUIRED ACTIONS BASED ON COURT ORDERS.—*

5 *(1) SERVICE.—A Federal law enforcement offi-*
 6 *cer, with the prior approval of the court, may serve*
 7 *a copy of a court order issued pursuant to this section*
 8 *on similarly situated entities within each class de-*
 9 *scribed in paragraph (2), which have been identified*
 10 *in the complaint, or any amendments thereto, pursu-*
 11 *ant to subsection (a). Proof of service shall be filed*
 12 *with the court.*

13 *(2) REASONABLE MEASURES.—After being served*
 14 *with a copy of an order pursuant to this subsection:*

15 *(A) OPERATORS.—*

16 *(i) IN GENERAL.—An operator of a*
 17 *nonauthoritative domain name system serv-*
 18 *er shall take the least burdensome tech-*
 19 *nically feasible and reasonable measures de-*
 20 *signed to prevent the domain name de-*
 21 *scribed in the order from resolving to that*
 22 *domain name's Internet protocol address,*
 23 *except that—*

24 *(I) such operator shall not be re-*
 25 *quired—*

1 (aa) other than as directed
2 under this subparagraph, to mod-
3 ify its network, software, systems,
4 or facilities;

5 (bb) to take any measures
6 with respect to domain name
7 lookups not performed by its own
8 domain name server or domain
9 name system servers located out-
10 side the United States; or

11 (cc) to continue to prevent
12 access to a domain name to which
13 access has been effectively disable
14 by other means; and

15 (II) nothing in this subparagraph
16 shall affect the limitation on the liabil-
17 ity of such an operator under section
18 512 of title 17, United States Code.

19 (ii) *TEXT OF NOTICE.*—The Attorney
20 General shall prescribe the text of the notice
21 displayed to users or customers of an oper-
22 ator taking an action pursuant to this sub-
23 paragraph. Such text shall specify that the
24 action is being taken pursuant to a court
25 order obtained by the Attorney General.

1 (B) *FINANCIAL TRANSACTION PROVIDERS.*—

2 *A financial transaction provider shall take rea-*
3 *sonable measures, as expeditiously as reasonable,*
4 *designed to prevent, prohibit, or suspend its serv-*
5 *ice from completing payment transactions in-*
6 *volving customers located within the United*
7 *States and the Internet site associated with the*
8 *domain name set forth in the order.*

9 (C) *INTERNET ADVERTISING SERVICES.*—*An*
10 *Internet advertising service that contracts with*
11 *the Internet site associated with the domain*
12 *name set forth in the order to provide adver-*
13 *tising to or for that site, or which knowingly*
14 *serves advertising to or for such site, shall take*
15 *technically feasible and reasonable measures, as*
16 *expeditiously as reasonable, designed to—*

17 (i) *prevent its service from providing*
18 *advertisements to the Internet site associ-*
19 *ated with such domain name; or*

20 (ii) *cease making available advertise-*
21 *ments for that site, or paid or sponsored*
22 *search results, links or other placements*
23 *that provide access to the domain name.*

24 (D) *INFORMATION LOCATION TOOLS.*—*An*
25 *service provider of an information location tool*

1 *shall take technically feasible and reasonable*
2 *measures, as expeditiously as possible, to—*

3 (i) *remove or disable access to the*
4 *Internet site associated with the domain*
5 *name set forth in the order; or*

6 (ii) *not serve a hypertext link to such*
7 *Internet site.*

8 (3) *COMMUNICATION WITH USERS.—Except as*
9 *provided under paragraph (2)(A)(i), an entity tak-*
10 *ing an action described in this subsection shall deter-*
11 *mine whether and how to communicate such action to*
12 *the entity's users or customers.*

13 (4) *RULE OF CONSTRUCTION.—For purposes of*
14 *an action commenced under this section, the obliga-*
15 *tions of an entity described in this subsection shall be*
16 *limited to the actions set out in each paragraph or*
17 *subparagraph applicable to such entity, and no order*
18 *issued pursuant to this section shall impose any addi-*
19 *tional obligations on, or require additional actions*
20 *by, such entity.*

21 (5) *ACTIONS PURSUANT TO COURT ORDER.—*

22 (A) *IMMUNITY FROM SUIT.—No cause of ac-*
23 *tion shall lie in any Federal or State court or*
24 *administrative agency against any entity receiv-*
25 *ing a court order issued under this subsection, or*

1 *against any director, officer, employee, or agent*
2 *thereof, for any act reasonably designed to com-*
3 *ply with this subsection or reasonably arising*
4 *from such order, other than in an action pursu-*
5 *ant to subsection (e).*

6 *(B) IMMUNITY FROM LIABILITY.—Any enti-*
7 *ty receiving an order under this subsection, and*
8 *any director, officer, employee, or agent thereof,*
9 *shall not be liable to any party for any acts rea-*
10 *sonably designed to comply with this subsection*
11 *or reasonably arising from such order, other*
12 *than in an action pursuant to subsection (e),*
13 *and any actions taken by customers of such enti-*
14 *ty to circumvent any restriction on access to the*
15 *Internet domain instituted pursuant to this sub-*
16 *section or any act, failure, or inability to restrict*
17 *access to an Internet domain that is the subject*
18 *of a court order issued pursuant to this sub-*
19 *section despite good faith efforts to do so by such*
20 *entity shall not be used by any person in any*
21 *claim or cause of action against such entity,*
22 *other than in an action pursuant to subsection*
23 *(e).*

24 *(e) ENFORCEMENT OF ORDERS.—*

1 (1) *IN GENERAL.*—*In order to compel compliance*
2 *with this section, the Attorney General may bring an*
3 *action for injunctive relief against any party receiv-*
4 *ing a court order issued pursuant to this section that*
5 *knowingly and willfully fails to comply with such*
6 *order.*

7 (2) *RULE OF CONSTRUCTION.*—*The authority*
8 *granted the Attorney General under paragraph (1)*
9 *shall be the sole legal remedy for enforcing the obliga-*
10 *tions under this section of any entity described in*
11 *subsection (d).*

12 (3) *DEFENSE.*—*A defendant in an action under*
13 *paragraph (1) may establish an affirmative defense*
14 *by showing that the defendant does not have the tech-*
15 *nical means to comply with the subsection without in-*
16 *curring an unreasonable economic burden, or that the*
17 *order is inconsistent with this Act. This showing shall*
18 *serve as a defense only to the extent of such inability*
19 *to comply or to the extent of such inconsistency.*

20 (f) *MODIFICATION OR VACATION OF ORDERS.*—

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

24 (A) *any person, or owner or operator of*
25 *property, bound by the order;*

1 (B) any registrant of the domain name, or
2 the owner or operator of the Internet site subject
3 to the order;

4 (C) any domain name registrar or registry
5 that has registered or assigned the domain name
6 of the Internet site subject to the order; or

7 (D) any entity that has received a copy of
8 an order pursuant to subsection (d) requiring
9 such entity to take action prescribed in that sub-
10 section.

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

13 (A) the Internet site associated with the do-
14 main name subject to the order is no longer, or
15 never was, an Internet site dedicated to infring-
16 ing activities; or

17 (B) the interests of justice require that the
18 order be modified, suspended, or vacated.

19 (3) *CONSIDERATION.*—In making a relief deter-
20 mination under paragraph (2), a court may consider
21 whether the domain name has expired or has been re-
22 registered by a different party.

23 (4) *INTERVENTION.*—An entity identified pursu-
24 ant to subsection (a) as an entity which may be re-
25 quired to take action pursuant to subsection (d) if an

1 *order issues pursuant to subsection (b) may intervene*
 2 *at any time in any action commenced under sub-*
 3 *section (a), or in any action to modify, suspend, or*
 4 *vacate an order pursuant to this subsection. Failure*
 5 *to intervene in an action does not prohibit an entity*
 6 *notified of the action from subsequently seeking an*
 7 *order to modify, suspend, or terminate an order*
 8 *issued by the court under this Act.*

9 *(g) RELATED ACTIONS.—The Attorney General, if al-*
 10 *leging that an Internet site previously adjudicated to be an*
 11 *Internet site dedicated to infringing activities is accessible*
 12 *or has been reconstituted at a different domain name, may*
 13 *commence a related action under this section against the*
 14 *additional domain name in the same judicial district as*
 15 *the previous action.*

16 **SEC. 4. ELIMINATING THE FINANCIAL INCENTIVE TO STEAL**
 17 **INTELLECTUAL PROPERTY ONLINE.**

18 *(a) COMMENCEMENT OF AN ACTION.—*

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

21 *(A) a registrant of a domain name used by*
 22 *an Internet site dedicated to infringing activi-*
 23 *ties; or*

1 (B) an owner or operator of an Internet site
2 dedicated to infringing activities accessed
3 through a domain name.

4 (2) *IN REM.*—If through due diligence a quali-
5 fying plaintiff is unable to find a person described in
6 subparagraphs (A) or (B) of paragraph (1), or no
7 such person found has an address within a judicial
8 district of the United States, the qualifying plaintiff
9 may commence an *in rem* action against a domain
10 name used by an Internet site dedicated to infringing
11 activities.

12 (3) *IDENTIFICATION OF ENTITIES.*—Any action
13 commenced by a qualifying plaintiff under this sec-
14 tion shall identify the entities which may be required
15 to take actions pursuant to subsection (d) if an order
16 issues pursuant to subsection (b).

17 (b) *ORDERS OF THE COURT.*—

18 (1) *IN GENERAL.*—On application of a quali-
19 fying plaintiff following the commencement of an ac-
20 tion under this section, the court may issue a tem-
21 porary restraining order, a preliminary injunction,
22 or an injunction, in accordance with rule 65 of the
23 Federal Rules of Civil Procedure, against the domain
24 name used by an Internet site dedicated to infringing
25 activities, or against a registrant of such domain

1 *name, or the owner or operator of such Internet site*
2 *dedicated to infringing activities, to cease and desist*
3 *from undertaking any further activity as an Internet*
4 *site dedicated to infringing activities, if—*

5 *(A) the domain name is registered or as-*
6 *signed by a domain name registrar or domain*
7 *name registry that located or doing business in*
8 *the United States; or*

9 *(B)(i) the domain name is used within the*
10 *United States to access such Internet site; and*

11 *(ii) the Internet site—*

12 *(I) conducts business directed to resi-*
13 *dents of the United States; and*

14 *(II) harms holders of United States in-*
15 *tellectual property rights.*

16 *(2) DETERMINATION BY THE COURT.—For pur-*
17 *poses of determining whether an Internet site con-*
18 *ducts business directed to residents of the United*
19 *States under paragraph (1)(B)(ii)(I), a court may*
20 *consider, among other indicia, whether—*

21 *(A) the Internet site is providing goods or*
22 *services described in section 2(7) to users located*
23 *in the United States;*

24 *(B) there is evidence that the Internet site*
25 *is not intended to provide—*

1 (i) *such goods and services to users lo-*
2 *cated in the United States;*

3 (ii) *access to such goods and services to*
4 *users located in the United States; and*

5 (iii) *delivery of such goods and services*
6 *to users located in the United States;*

7 (C) *the Internet site has reasonable meas-*
8 *ures in place to prevent such goods and services*
9 *from being accessed from or delivered to the*
10 *United States;*

11 (D) *the Internet site offers services obtained*
12 *in the United States; and*

13 (E) *any prices for goods and services are*
14 *indicated in the currency of the United States.*

15 (c) *NOTICE AND SERVICE OF PROCESS.—*

16 (1) *IN GENERAL.—Upon commencing an action*
17 *under this section, the qualifying plaintiff shall send*
18 *a notice of the alleged violation and intent to proceed*
19 *under this Act to the registrant of the domain name*
20 *of the Internet site—*

21 (A) *at the postal and e-mail address ap-*
22 *pearing in the applicable publicly accessible*
23 *database of registrations, if any and to the ex-*
24 *tent such addresses are reasonably available;*

1 (B) *via the postal and e-mail address of the*
2 *registrar, registry, or other domain name reg-*
3 *istration authority that registered or assigned*
4 *the domain name, to the extent such addresses*
5 *are reasonably available; and*

6 (C) *in any other such form as the court*
7 *finds necessary, including as may be required by*
8 *Rule 4(f) of the Federal Rules of Civil Procedure.*

9 (2) *RULE OF CONSTRUCTION.—For purposes of*
10 *this section, the actions described in this subsection*
11 *shall constitute service of process.*

12 (3) *OTHER NOTICE.—Upon commencing an ac-*
13 *tion under this section, the qualifying plaintiff shall*
14 *also provide notice to entities identified in the com-*
15 *plaint, or any amendments thereto, which may be re-*
16 *quired to take action pursuant to subsection (d).*

17 (d) *REQUIRED ACTIONS BASED ON COURT ORDERS.—*

18 (1) *SERVICE.—A qualifying plaintiff, with the*
19 *prior approval of the court, may, serve a copy of a*
20 *court order issued pursuant to this section on simi-*
21 *larly situated entities within each class described in*
22 *paragraph (2), which have been identified in the com-*
23 *plaint, or any amendments thereto, pursuant to sub-*
24 *section (a). Proof of service shall be filed with the*
25 *court.*

1 (2) *REASONABLE MEASURES.*—*After being served*
2 *with a copy of an order pursuant to this subsection:*

3 (A) *FINANCIAL TRANSACTION PROVIDERS.*—

4 *A financial transaction provider shall take rea-*
5 *sonable measures, as expeditiously as reasonable,*
6 *designed to prevent, prohibit, or suspend its serv-*
7 *ice from completing payment transactions in-*
8 *volving customers located within the United*
9 *States and the Internet site associated with the*
10 *domain name set forth in the order.*

11 (B) *INTERNET ADVERTISING SERVICES.*—*An*

12 *Internet advertising service that contracts with*
13 *the Internet site associated with the domain*
14 *name set forth in the order to provide adver-*
15 *tising to or for that site, or which knowingly*
16 *serves advertising to or for such site, shall take*
17 *technically feasible and reasonable measures, as*
18 *expeditiously as reasonable, designed to—*

19 (i) *prevent its service from providing*
20 *advertisements to the Internet site associ-*
21 *ated with such domain name; or*

22 (ii) *cease making available advertise-*
23 *ments for that site, or paid or sponsored*
24 *search results, links, or placements that pro-*
25 *vide access to the domain name.*

1 (3) *COMMUNICATION WITH USERS.*—*An entity*
2 *taking an action described in this subsection shall de-*
3 *termine how to communicate such action to the enti-*
4 *ty’s users or customers.*

5 (4) *RULE OF CONSTRUCTION.*—*For purposes of*
6 *an action commenced under this section, the obliga-*
7 *tions of an entity described in this subsection shall be*
8 *limited to the actions set out in each paragraph or*
9 *subparagraph applicable to such entity, and no order*
10 *issued pursuant to this section shall impose any addi-*
11 *tional obligations on, or require additional actions*
12 *by, such entity.*

13 (5) *ACTIONS PURSUANT TO COURT ORDER.*—

14 (A) *IMMUNITY FROM SUIT.*—*No cause of ac-*
15 *tion shall lie in any Federal or State court or*
16 *administrative agency against any entity receiv-*
17 *ing a court order issued under this subsection, or*
18 *against any director, officer, employee, or agent*
19 *thereof, for any act reasonably designed to com-*
20 *ply with this subsection or reasonably arising*
21 *from such order, other than in an action pursu-*
22 *ant to subsection (e).*

23 (B) *IMMUNITY FROM LIABILITY.*—*Any enti-*
24 *ty receiving an order under this subsection, and*
25 *any director, officer, employee, or agent thereof,*

1 *shall not be liable to any party for any acts rea-*
2 *sonably designed to comply with this subsection*
3 *or reasonably arising from such order, other*
4 *than in an action pursuant to subsection (e),*
5 *and any actions taken by customers of such enti-*
6 *ty to circumvent any restriction on access to the*
7 *Internet domain instituted pursuant to this sub-*
8 *section or any act, failure, or inability to restrict*
9 *access to an Internet domain that is the subject*
10 *of a court order issued pursuant to this sub-*
11 *section despite good faith efforts to do so by such*
12 *entity shall not be used by any person in any*
13 *claim or cause of action against such entity,*
14 *other than in an action pursuant to subsection*
15 *(e).*

16 *(e) ENFORCEMENT OF ORDERS.—*

17 *(1) IN GENERAL.—In order to compel compliance*
18 *with this section, the qualifying plaintiff may bring*
19 *an action for injunctive relief against any party re-*
20 *ceiving a court order issued pursuant to this section*
21 *that knowingly and willfully fails to comply with*
22 *such order.*

23 *(2) RULE OF CONSTRUCTION.—The authority*
24 *granted a qualifying plaintiff under paragraph (1)*
25 *shall be the sole legal remedy for enforcing the obliga-*

1 *tions under this section of any entity described in*
2 *subsection (d).*

3 (3) *DEFENSE.*—*A defendant in an action com-*
4 *menced under paragraph (1) may establish an af-*
5 *firmative defense by showing that the defendant does*
6 *not have the technical means to comply with the sub-*
7 *section without incurring an unreasonable economic*
8 *burden, or that the order is inconsistent with this Act.*
9 *This showing shall serve as a defense only to the ex-*
10 *tent of such inability to comply or to the extent of*
11 *such inconsistency.*

12 (f) *MODIFICATION OR VACATION OF ORDERS.*—

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

16 (A) *any person, or owner or operator of*
17 *property, bound by the order;*

18 (B) *any registrant of the domain name, or*
19 *the owner or operator of the Internet site subject*
20 *to the order;*

21 (C) *any domain name registrar or registry*
22 *that has registered or assigned the domain name*
23 *of the Internet site subject to the order; or*

24 (D) *any entity that has received a copy of*
25 *an order pursuant to subsection (d) requiring*

1 *such entity to take action prescribed in that sub-*
2 *section.*

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

5 (A) *the Internet site associated with the do-*
6 *main name subject to the order is no longer, or*
7 *never was, dedicated to infringing activities as*
8 *defined in this Act; or*

9 (B) *the interests of justice require that the*
10 *order be modified, suspended, or vacated.*

11 (3) *CONSIDERATION.*—*In making a relief deter-*
12 *mination under paragraph (2), a court may consider*
13 *whether the domain name has expired or has been re-*
14 *registered by a different party.*

15 (4) *INTERVENTION.*—*An entity identified pursu-*
16 *ant to subsection (a) as an entity which may be re-*
17 *quired to take action pursuant to subsection (d) if an*
18 *order issues pursuant to subsection (b) may intervene*
19 *at any time in any action commenced under sub-*
20 *section (a), or in any action to modify, suspend, or*
21 *vacate an order pursuant to this subsection. Failure*
22 *to intervene in an action does not prohibit an entity*
23 *notified of the action from subsequently seeking an*
24 *order to modify, suspend, or terminate an order*
25 *issued by the court under this Act.*

1 (g) *RELATED ACTIONS.*—A qualifying plaintiff, if al-
 2 leging that an Internet site previously adjudicated to be an
 3 Internet site dedicated to infringing activities is accessible
 4 or has been reconstituted at a different domain name, may
 5 commence a related action under this section against the
 6 additional domain name in the same judicial district as
 7 the previous action.

8 **SEC. 5. VOLUNTARY ACTION AGAINST WEBSITES STEALING**
 9 **AMERICAN INTELLECTUAL PROPERTY.**

10 (a) *IN GENERAL.*—No financial transaction provider
 11 or Internet advertising service shall be liable for damages
 12 to any person for voluntarily taking any action described
 13 in section 3(d) or 4(d) with regard to an Internet site if
 14 the entity acting in good faith and based on credible evi-
 15 dence has a reasonable belief that the Internet site is an
 16 Internet site dedicated to infringing activities.

17 (b) *INTERNET SITES ENGAGED IN INFRINGING ACTIVI-*
 18 *TIES THAT ENDANGER THE PUBLIC HEALTH.*—

19 (1) *REFUSAL OF SERVICE.*—A domain name reg-
 20 istry, domain name registrar, financial transaction
 21 provider, information location tool, or Internet adver-
 22 tising service, acting in good faith and based on cred-
 23 ible evidence, may stop providing or refuse to provide
 24 services to an infringing Internet site that endangers
 25 the public health.

1 (2) *IMMUNITY FROM LIABILITY.*—An entity de-
2 scribed in paragraph (1), including its directors, offi-
3 cers, employees, or agents, that ceases or refused to
4 provide services under paragraph (1) shall not be lia-
5 ble to any party under any Federal or State law for
6 such action.

7 (3) *DEFINITIONS.*—For purposes of this sub-
8 section—

9 (A) the term “adulterated” has the same
10 meaning as in section 501 of the Federal Food,
11 Drug, and Cosmetic Act (21 U.S.C. 351);

12 (B) an “infringing Internet site that endan-
13 gers the public health” means—

14 (i) an Internet site dedicated to in-
15 fringing activities for which the counterfeit
16 products that it offers, sells, dispenses, or
17 distributes are controlled or non-controlled
18 prescription medication; or

19 (ii) an Internet site that has no sig-
20 nificant use other than, or is designed, oper-
21 ated, or marketed by its operator or persons
22 operating in concert with the operator, and
23 facts or circumstances suggest is used, pri-
24 marily as a means for—

1 (I) offering, selling, dispensing, or
2 distributing any controlled or non-con-
3 trolled prescription medication, and
4 does so regularly without a valid pre-
5 scription; or

6 (II) offering, selling, dispensing,
7 or distributing any controlled or non-
8 controlled prescription medication, and
9 does so regularly for medication that is
10 adulterated or misbranded;

11 (C) the term “misbranded” has the same
12 meaning as in section 502 of the Federal Food,
13 Drug, and Cosmetic Act (21 U.S.C. 352); and

14 (D) the term “valid prescription” has the
15 same meaning as in section 309(e)(2)(A) of the
16 Controlled Substances Act (21 U.S.C.
17 829(e)(2)(A)).

18 **SEC. 6. SAVINGS CLAUSES.**

19 (a) *RULE OF CONSTRUCTION RELATING TO CIVIL AND*
20 *CRIMINAL REMEDIES.*—Nothing in this Act shall be con-
21 *strued to limit or expand civil or criminal remedies avail-*
22 *able to any person (including the United States) for in-*
23 *fringing activities on the Internet pursuant to any other*
24 *Federal or State law.*

1 **(b) RULE OF CONSTRUCTION RELATING TO VICARIOUS**
2 **OR CONTRIBUTORY LIABILITY.**—*Nothing in this Act shall*
3 *be construed to enlarge or diminish vicarious or contribu-*
4 *tory liability for any cause of action available under the*
5 *Lanham Act or title 17, United States Code, including any*
6 *limitations on liability under section 512 of such title 17,*
7 *or to create an obligation to take action pursuant to section*
8 *5 of this Act.*

9 **(c) RELATIONSHIP WITH SECTION 512 OF TITLE 17.**—
10 *Nothing in this Act, no identification of entities in section*
11 *3(a) or 4(a), no notice provided pursuant to section 3(c)*
12 *or 4(c), no order issued pursuant to sections 3(b) or 4(b),*
13 *and no order issued or served pursuant to sections 3(d) or*
14 *4(d), shall serve as a basis for determining the application*
15 *of section 512 of title 17, United States Code.*

16 **SEC. 7. GUIDELINES AND STUDIES.**

17 **(a) GUIDELINES.**—*The Attorney General shall—*

18 **(1)** *publish procedures developed in consultation*
19 *with other relevant law enforcement agencies, includ-*
20 *ing the United States Immigration and Customs En-*
21 *forcement, to receive information from the public*
22 *about Internet sites dedicated to infringing activities;*
23 *and*

24 **(2)** *develop a deconfliction process in consulta-*
25 *tion with other law enforcement agencies, including*

1 *the United States Immigration and Customs Enforce-*
2 *ment, to coordinate enforcement activities brought*
3 *under this Act.*

4 *(b) REPORTS.—*

5 *(1) REPORT ON EFFECTIVENESS OF CERTAIN*
6 *MEASURES.—Not later than 1 year after the date of*
7 *enactment of this Act, the Secretary of Commerce, in*
8 *coordination with the Attorney General, the Secretary*
9 *of Homeland Security, and the Intellectual Property*
10 *Enforcement Coordinator, shall conduct a study and*
11 *report to the Committee on the Judiciary of the Sen-*
12 *ate and the Committee on the Judiciary of the House*
13 *of Representatives on the following:*

14 *(A) An assessment of the effects, if any, of*
15 *the implementation of section 3(d)(2)(A) on the*
16 *accessibility of Internet sites dedicated to in-*
17 *fringing activity.*

18 *(B) An assessment of the effects, if any, of*
19 *the implementation of section 3(d)(2)(A) on the*
20 *deployment, security, and reliability of the do-*
21 *main name system and associated Internet proc-*
22 *esses, including Domain Name System Security*
23 *Extensions.*

24 *(C) Recommendations, if any, for modifying*
25 *or amending this Act to increase effectiveness or*

1 *ameliorate any unintended effects of section*
2 *3(d)(2)(A).*

3 (2) *REPORT ON OVERALL EFFECTIVENESS.—The*
4 *Register of Copyrights shall, in consultation with the*
5 *appropriate departments and agencies of the United*
6 *States and other stakeholders—*

7 *(A) conduct a study on—*

8 *(i) the enforcement and effectiveness of*
9 *this Act;*

10 *(ii) the burden of carrying out the re-*
11 *quirements of this Act, if any, on inter-*
12 *mediaries;*

13 *(iii) the need for cost reimbursement*
14 *for intermediaries for carrying out the re-*
15 *quirements of this Act; and*

16 *(iv) the need to modify or amend this*
17 *Act to apply to emerging technologies; and*

18 *(B) not later than 2 years after the date of*
19 *enactment of this Act, submit a report to the*
20 *Committee on the Judiciary of the Senate and*
21 *the Committee on the Judiciary of the House of*
22 *Representatives on—*

23 *(i) the results of the study conducted*
24 *under subparagraph (A); and*

1 (ii) any recommendations that the
2 Register may have as a result of the study.

3 (3) ANNUAL OVERSIGHT REPORT.—Not later
4 than 1 year after the date of enactment of this Act,
5 and each year thereafter, the Attorney General shall
6 report to the Committee on the Judiciary of the Sen-
7 ate and the Committee on the Judiciary of the House
8 of Representatives the following information with re-
9 spect to the preceding year:

10 (A) Each instance in which an action was
11 commenced under section 3(a)(1) or 3(a)(2), and
12 each instance in which an action was com-
13 menced by the Attorney General under section
14 4(a)(1) or 4(a)(2), including the name of any
15 party against whom the action was brought.

16 (B) Each instance in which a temporary re-
17 straining order, preliminary injunction or in-
18 junction was issued pursuant to section 3(b)(1),
19 and each instance in which a temporary re-
20 straining order, preliminary injunction or in-
21 junction was issued pursuant to section 4(b)(1)
22 in an action commenced by the Attorney Gen-
23 eral, including the name of any party against
24 whom the order or injunction was issued.

1 (C) *Each instance in which an action com-*
2 *menced under section 3(a)(1) or 3(a)(2), or an*
3 *action commenced by the Attorney General under*
4 *section 4(a)(1) or 4(a)(2), was concluded without*
5 *the issuance of a temporary restraining order,*
6 *preliminary injunction or injunction, including*
7 *the reason for the conclusion of the action.*

8 (D) *Each proof of service filed with the*
9 *court pursuant to section 3(d)(1), or filed pursu-*
10 *ant to section 4(d)(1) in an action commenced*
11 *by the Attorney General.*

12 (E) *Each action for injunctive relief*
13 *brought pursuant to section 3(e), or brought pur-*
14 *suant to section 4(e) in an action commenced by*
15 *the Attorney General, including the name of any*
16 *party against whom the action for relief was*
17 *brought.*

18 (F) *Each motion granted by a court to*
19 *modify, suspend or vacate an order that was*
20 *filed under section 3(f)(1), or filed under section*
21 *4(f)(1) in an action commenced by the Attorney*
22 *General, including the relief obtained.*

23 (G) *Each related action commenced pursu-*
24 *ant to section 3(g), or commenced by the Attor-*
25 *ney General pursuant to section 4(g), including*

1 *the name of any party against whom an action*
2 *was commenced.*

3 (4) *GAO REPORT ON PRIVATE ACTIONS.—Not*
4 *later than 1 year after the date of enactment of this*
5 *Act, and each year thereafter, the Comptroller General*
6 *shall report to the Committee on the Judiciary of the*
7 *Senate and the Committee on the Judiciary of the*
8 *House of Representative each instance in the previous*
9 *year in which an action was commenced under sec-*
10 *tions 4(a)(1) or 4(a)(2) by a qualifying plaintiff that*
11 *is not the Attorney General, including the names of*
12 *any parties to each such action.*

13 **SEC. 8. PREVENTING THE IMPORTATION OF COUNTERFEIT**
14 **PRODUCTS AND INFRINGING DEVICES.**

15 *Notwithstanding section 1905 of title 18, United States*
16 *Code—*

17 (1) *if United States Customs and Border Protec-*
18 *tion suspects a product of being imported or exported*
19 *in violation of section 42 of the Lanham Act, and*
20 *subject to any applicable bonding requirements, the*
21 *Secretary of Homeland Security is authorized to*
22 *share information on, and unredacted samples of,*
23 *products and their packaging and labels, or photos of*
24 *such products, packaging and labels, with the*
25 *rightholders of the trademark suspected of being cop-*

1 *ied or simulated, for purposes of determining whether*
2 *the products are prohibited from importation pursu-*
3 *ant to such section; and*

4 *(2) upon seizure of material by United States*
5 *Customs and Border Protection imported in violation*
6 *of subsection (a)(2) or subsection (b) of section 1201*
7 *of title 17, United States Code, the Secretary of*
8 *Homeland Security is authorized to share informa-*
9 *tion about, and provide samples to affected parties,*
10 *subject to any applicable bonding requirements, as to*
11 *the seizure of material designed to circumvent techno-*
12 *logical measures or protection afforded by a techno-*
13 *logical measure that controls access to or protects the*
14 *owner's work protected by copyright under such title.*

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A BILL

To prevent online threats to economic creativity and theft of intellectual property, and for other purposes.

MAY 26, 2011

Reported with an amendment