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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R.

To promote prosperity, creativity, entrepreneurship, and innovation by combating the theft of U.S. property, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

A BILL

To promote prosperity, creativity, entrepreneurship, and innovation by combating the theft of U.S. 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; TABLE OF CONTENTS.**

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

6 (b) TABLE OF CONTENTS.—The table of contents of
7 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. Market-based system to protect U.S. customers and prevent U.S. funding of sites dedicated to theft of U.S. property.
- Sec. 104. Immunity for taking voluntary action against sites dedicated to theft of U.S. property.
- Sec. 105. Immunity for taking voluntary action against sites that endanger public health.
- Sec. 106. Guidelines and study.
- Sec. 107. Denying U.S. capital to notorious foreign infringers.

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. Amendments to sentencing guidelines.
- Sec. 205. Defending intellectual property rights abroad.

1 **SEC. 2. SAVINGS AND SEVERABILITY CLAUSES.**

2 (a) SAVINGS CLAUSES.—

3 (1) FIRST AMENDMENT.—Nothing in this Act
4 shall be construed to impose a prior restraint on free
5 speech or the press protected under the 1st amend-
6 ment to the Constitution.

7 (2) TITLE 17 LIABILITY.—Nothing in title I
8 shall be construed to enlarge or diminish liability, in-
9 cluding vicarious or contributory liability, for any
10 cause of action available under title 17, United
11 States Code, including any limitations on liability
12 under such title.

13 (b) SEVERABILITY.—If any provision of this Act, or
14 the application of the provision to any person or cir-

1 cumstance, is held to be unconstitutional, the other provi-
2 sions or the application of the provision to other persons
3 or circumstances shall not be affected thereby.

4 **TITLE I—COMBATING ONLINE** 5 **PIRACY**

6 **SEC. 101. DEFINITIONS.**

7 In this title:

8 (1) DOMAIN NAME.—The term “domain name”
9 has the meaning given that term in section 45 of the
10 Lanham Act (15 U.S.C. 1127) and includes any
11 subdomain designation using such domain name as
12 part of an electronic address on the Internet to iden-
13 tify a unique online location.

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

18 (3) DOMESTIC DOMAIN NAME.—The term “do-
19 mestic domain name” means a domain name that is
20 registered or assigned by a domain name registrar,
21 domain name registry, or other domain name reg-
22 istration authority, that is located within a judicial
23 district of the United States.

24 (4) DOMESTIC INTERNET PROTOCOL AD-
25 DRESS.—The term “domestic Internet Protocol ad-

1 dress” means an Internet Protocol address for which
2 the corresponding Internet Protocol allocation entity
3 is located within a judicial district of the United
4 States.

5 (5) DOMESTIC INTERNET SITE.—The term “do-
6 mestic Internet site” means an Internet site for
7 which the corresponding domain name or, if there is
8 no domain name, the corresponding Internet Pro-
9 tocol address, is a domestic domain name or domes-
10 tic Internet Protocol address.

11 (6) FOREIGN DOMAIN NAME.—The term “for-
12 eign domain name” means a domain name that is
13 not a domestic domain name.

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

18 (8) FOREIGN INTERNET SITE.—The term “for-
19 eign Internet site” means an Internet site that is
20 not a domestic Internet site.

21 (9) INCLUDING.—The term “including” means
22 including, but not limited to.

23 (10) INTELLECTUAL PROPERTY ENFORCEMENT
24 COORDINATOR.—The term “Intellectual Property
25 Enforcement Coordinator” means the Intellectual

1 Property Enforcement Coordinator appointed under
2 section 301 of the Prioritizing Resources and Orga-
3 nization for Intellectual Property Act of 2008 (15
4 U.S.C. 8111).

5 (11) INTERNET.—The term “Internet” has the
6 meaning given that term in section 5362(5) of title
7 31, United States Code.

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

16 (13) INTERNET PROTOCOL.—The term “Inter-
17 net Protocol” means a protocol used for commu-
18 nicating data across a packet-switched internetwork
19 using the Transmission Control Protocol/Internet
20 Protocol, and includes any predecessor or successor
21 protocol to such protocol.

22 (14) INTERNET PROTOCOL ADDRESS.—The
23 term “Internet Protocol address” means a numerical
24 label that is assigned to each device that participates

1 in a computer network that uses the Internet Pro-
2 tocol for communication.

3 (15) INTERNET PROTOCOL ALLOCATION ENTI-
4 TY.—The term “Internet Protocol allocation entity”
5 means, with respect to a particular Internet Protocol
6 address, the entity, local internet registry, or re-
7 gional internet registry to which the smallest appli-
8 cable block of Internet Protocol addresses containing
9 that address is allocated or assigned by a local inter-
10 net registry, regional internet registry, or other
11 Internet Protocol address allocation authority, ac-
12 cording to the applicable publicly available database
13 of allocations and assignments, if any.

14 (16) INTERNET SEARCH ENGINE.—The term
15 “Internet search engine” means a service made
16 available via the Internet that searches, crawls, cat-
17 egorizes, or indexes information or Web sites avail-
18 able elsewhere on the Internet and on the basis of
19 a user query or selection that consists of terms, con-
20 cepts, categories, questions, or other data returns to
21 the user a means, such as a hyperlinked list of Uni-
22 form Resource Locators, of locating, viewing, or
23 downloading such information or data available on
24 the Internet relating to such query or selection.

1 (17) INTERNET SITE.—The term “Internet
2 site” means the collection of digital assets, including
3 links, indexes, or pointers to digital assets, accessible
4 through the Internet that are addressed relative to
5 a common domain name or, if there is no domain
6 name, a common Internet Protocol address.

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

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

21 (20) OWNER; OPERATOR.—The terms “owner”
22 or “operator”, when used in connection with an
23 Internet site, includes, respectively, any owner of a
24 majority interest in, or any person with authority to
25 operate, such Internet site.

1 (21) PAYMENT NETWORK PROVIDER.—

2 (A) IN GENERAL.—The term “payment
3 network provider” means an entity that directly
4 or indirectly provides the proprietary services,
5 infrastructure, and software to effect or facili-
6 tate a debit, credit, or other payment trans-
7 action.

8 (B) RULE OF CONSTRUCTION.—For pur-
9 poses of this paragraph, a depository institution
10 (as such term is defined under section 3 of the
11 Federal Deposit Insurance Act) or credit union
12 that initiates a payment transaction shall not
13 be construed to be a payment network provider
14 based solely on the offering or provision of such
15 service.

16 (22) SERVICE PROVIDER.—The term “service
17 provider” means a service provider as defined in sec-
18 tion 512(k)(1) of title 17, United States Code, that
19 operates a nonauthoritative domain name system
20 server.

21 (23) U.S.-DIRECTED SITE.—The term “U.S.-di-
22 rected site” means an Internet site or portion there-
23 of that is used to conduct business directed to resi-
24 dents of the United States, or that otherwise dem-
25 onstrates the existence of minimum contacts suffi-

1 cient for the exercise of personal jurisdiction over
2 the owner or operator of the Internet site consistent
3 with the Constitution of the United States, based on
4 relevant evidence that may include whether—

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

8 (B) there is evidence that the Internet site
9 or portion thereof is intended to offer or pro-
10 vide—

11 (i) such goods and services,

12 (ii) access to such goods and services,

13 or

14 (iii) delivery of such goods and serv-
15 ices,

16 to users located in the United States;

17 (C) the Internet site or portion thereof
18 does not contain reasonable measures to pre-
19 vent such goods and services from being ob-
20 tained in or delivered to the United States; and

21 (D) any prices for goods and services are
22 indicated or billed in the currency of the United
23 States.

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

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

7 (a) DEFINITION.—For purposes of this section, a for-
8 eign Internet site or portion thereof is a “foreign infring-
9 ing site” if—

10 (1) the Internet site or portion thereof is a
11 U.S.-directed site and is used by users in the United
12 States;

13 (2) the owner or operator of such Internet site
14 is committing or facilitating the commission of
15 criminal violations punishable under section 2318,
16 2319, 2319A, 2319B, or 2320, or chapter 90, of
17 title 18, United States Code; and

18 (3) the Internet site would, by reason of acts
19 described in paragraph (1), be subject to seizure in
20 the United States in an action brought by the Attor-
21 ney General if such site were a domestic Internet
22 site.

23 (b) ACTION BY THE ATTORNEY GENERAL.—

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

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

3 (B) an owner or operator of a foreign in-
4 fringing site.

5 (2) IN REM.—If through due diligence the At-
6 torney General is unable to find a person described
7 in subparagraph (A) or (B) of paragraph (1), or no
8 such person found has an address within a judicial
9 district of the United States, the Attorney General
10 may commence an in rem action against a foreign
11 infringing site or the foreign domain name used by
12 such site.

13 (3) NOTICE.—Upon commencing an action
14 under this subsection, the Attorney General shall
15 send a notice of the alleged violation and intent to
16 proceed under this section—

17 (A) to the registrant of the domain name
18 of the Internet site—

19 (i) at the postal and electronic mail
20 addresses appearing in the applicable pub-
21 licly accessible database of registrations, if
22 any, and to the extent such addresses are
23 reasonably available; and

24 (ii) via the postal and electronic mail
25 addresses of the registrar, registry, or

1 other domain name registration authority
2 that registered or assigned the domain
3 name of the Internet site, to the extent
4 such addresses are reasonably available; or
5 (B) to the owner or operator of the Inter-
6 net site—

7 (i) at the primary postal and elec-
8 tronic mail addresses for such owner or op-
9 erator that is provided on the Internet site,
10 if any, and to the extent such addresses
11 are reasonably available; or

12 (ii) if there is no domain name of the
13 Internet site, via the postal and electronic
14 mail addresses of the Internet Protocol al-
15 location entity appearing in the applicable
16 publicly accessible database of allocations
17 and assignments, if any, and to the extent
18 such addresses are reasonably available; or

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

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

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

14 (c) ACTIONS BASED ON COURT ORDERS.—

15 (1) SERVICE.—A process server on behalf of
16 the Attorney General, with prior approval of the
17 court, may serve a copy of a court order issued pur-
18 suant to this section on similarly situated entities
19 within each class described in paragraph (2). Proof
20 of service shall be filed with the court.

21 (2) REASONABLE MEASURES.—After being
22 served with a copy of an order pursuant to this sub-
23 section, the following shall apply:

24 (A) SERVICE PROVIDERS.—

1 (i) IN GENERAL.—A service provider
2 shall take technically feasible and reason-
3 able measures designed to prevent access
4 by its subscribers located within the
5 United States to the foreign infringing site
6 (or portion thereof) that is subject to the
7 order, including measures designed to pre-
8 vent the domain name of the foreign in-
9 fringing site (or portion thereof) from re-
10 solving to that domain name’s Internet
11 Protocol address. Such actions shall be
12 taken as expeditiously as possible, but in
13 any case within 5 days after being served
14 with a copy of the order, or within such
15 time as the court may order.

16 (ii) LIMITATIONS.—A service provider
17 shall not be required—

18 (I) other than as directed under
19 this subparagraph, to modify its net-
20 work, software, systems, or facilities;

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

1 (III) to continue to prevent ac-
2 cess to a domain name to which ac-
3 cess has been effectively disabled by
4 other means.

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

9 (iv) TEXT OF NOTICE.—The Attorney
10 General shall prescribe the text of any no-
11 tice displayed to users or customers of a
12 service provider taking actions pursuant to
13 this subparagraph. Such text shall state
14 that an action is being taken pursuant to
15 a court order obtained by the Attorney
16 General.

17 (B) INTERNET SEARCH ENGINES.—A pro-
18 vider of an Internet search engine shall take
19 technically feasible and reasonable measures, as
20 expeditiously as possible, but in any case within
21 5 days after being served with a copy of the
22 order, or within such time as the court may
23 order, designed to prevent the foreign infringing
24 site that is subject to the order, or a portion of

1 such site specified in the order, from being
2 served as a direct hypertext link.

3 (C) PAYMENT NETWORK PROVIDERS.—

4 (i) PREVENTING AFFILIATION.—A
5 payment network provider shall take tech-
6 nically feasible and reasonable measures,
7 as expeditiously as possible, but in any
8 case within 5 days after being served with
9 a copy of the order, or within such time as
10 the court may order, designed to prevent,
11 prohibit, or suspend its service from com-
12 pleting payment transactions involving cus-
13 tomers located within the United States or
14 subject to the jurisdiction of the United
15 States and the payment account—

16 (I) which is used by the foreign
17 infringing site, or portion thereof, that
18 is subject to the order; and

19 (II) through which the payment
20 network provider would complete such
21 payment transactions.

22 (ii) NO DUTY TO MONITOR.—A pay-
23 ment network provider shall be considered
24 to be in compliance with clause (i) if it
25 takes action described in that clause with

1 respect to accounts it has as of the date on
2 which a copy of the order is served, or as
3 of the date on which the order is amended
4 under subsection (e).

5 (D) INTERNET ADVERTISING SERVICES.—

6 (i) REQUIRED ACTIONS.—An Internet
7 advertising service that contracts to pro-
8 vide advertising to or for the foreign in-
9 fringing site, or portion thereof, that is
10 subject to the order, or that knowingly
11 serves advertising to or for such site or
12 such portion thereof, shall take technically
13 feasible and reasonable measures, as expe-
14 ditiously as possible, but in any case within
15 5 days after being served with a copy of
16 the order, or within such time as the court
17 may order, designed to—

18 (I) prevent its service from pro-
19 viding advertisements to or relating to
20 the foreign infringing site that is sub-
21 ject to the order or a portion of such
22 site specified in the order;

23 (II) cease making available ad-
24 vertisements for the foreign infringing
25 site or such portion thereof, or paid or

1 sponsored search results, links, or
2 other placements that provide access
3 to such foreign infringing site or such
4 portion thereof; and

5 (III) cease providing or receiving
6 any compensation for advertising or
7 related services to, from, or in connec-
8 tion with such foreign infringing site
9 or such portion thereof.

10 (ii) NO DUTY TO MONITOR.—An inter-
11 net advertising service shall be considered
12 to be in compliance with clause (i) if it
13 takes action described in that clause with
14 respect to accounts it has as of the date on
15 which a copy of the order is served, or as
16 of the date on which the order is amended
17 under subsection (e).

18 (3) COMMUNICATION WITH USERS.—Except as
19 provided under paragraph (2)(A)(iv), an entity tak-
20 ing an action described in this subsection shall de-
21 termine the means to communicate such action to
22 the entity's users or customers.

23 (4) ENFORCEMENT OF ORDERS.—

24 (A) IN GENERAL.—To ensure compliance
25 with orders issued pursuant to this section, the

1 Attorney General may bring an action for in-
2 junctive relief—

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

8 (ii) against any entity that knowingly
9 and willfully provides or offers to provide
10 a product or service designed or marketed
11 for the circumvention or bypassing of
12 measures described in paragraph (2) and
13 taken in response to a court order issued
14 pursuant to this subsection, to enjoin such
15 entity from interfering with the order by
16 continuing to provide or offer to provide
17 such product or service.

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

23 (C) DEFENSE.—A defendant in an action
24 under subparagraph (A)(i) may establish an af-
25 firmative defense by showing that the defendant

1 does not have the technical means to comply
2 with this subsection without incurring an un-
3 reasonable economic burden, or that the order
4 is not authorized by this subsection. Such show-
5 ing shall not be presumed to be a complete de-
6 fense but shall serve as a defense only for those
7 measures for which a technical limitation on
8 compliance is demonstrated or for such portions
9 of the order as are demonstrated to be unau-
10 thorized by this subsection.

11 (D) DEFINITION.—For purposes of this
12 paragraph, a product or service designed or
13 marketed for the circumvention or bypassing of
14 measures described in paragraph (2) and taken
15 in response to a court order issued pursuant to
16 this subsection includes a product or service
17 that is designed or marketed to enable a do-
18 main name described in such an order—

19 (i) to resolve to that domain name's
20 Internet protocol address notwithstanding
21 the measures taken by a service provider
22 under paragraph (2) to prevent such reso-
23 lution; or

24 (ii) to resolve to a different domain
25 name or Internet Protocol address that the

1 provider of the product or service knows,
2 reasonably should know, or reasonably be-
3 lieves is used by an Internet site offering
4 substantially similar infringing activities as
5 those with which the infringing foreign
6 site, or portion thereof, subject to a court
7 order under this section was associated.

8 (5) IMMUNITY.—

9 (A) IMMUNITY FROM SUIT.—Other than in
10 an action pursuant to paragraph (4), no cause
11 of action shall lie in any Federal or State court
12 or administrative agency against any entity
13 served with a copy of a court order issued
14 under this subsection, or against any director,
15 officer, employee, or agent thereof, for any act
16 reasonably designed to comply with this sub-
17 section or reasonably arising from such order.

18 (B) IMMUNITY FROM LIABILITY.—Other
19 than in an action pursuant to paragraph (4)—

20 (i) any entity served with a copy of an
21 order under this subsection, and any direc-
22 tor, officer, employee, or agent thereof,
23 shall not be liable for any act reasonably
24 designed to comply with this subsection or
25 reasonably arising from such order; and

1 (ii) any—

2 (I) actions taken by customers of
3 such entity to circumvent any restric-
4 tion on access to the foreign infring-
5 ing site, or portion thereof, that is
6 subject to such order, that is insti-
7 tuted pursuant to this subsection, or

8 (II) act, failure, or inability to re-
9 strict access to a foreign infringing
10 site, or portion thereof, that is subject
11 to such order, in spite of good faith
12 efforts to comply with such order by
13 such entity,

14 shall not be used by any person in any
15 claim or cause of action against such enti-
16 ty.

17 (d) MODIFICATION OR VACATION OF ORDERS.—

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

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

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

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

9 (D) any entity that has been served with
10 a copy of an order pursuant to subsection (c)
11 that requires such entity to take action pre-
12 scribed in that subsection.

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

15 (A) the foreign Internet site subject to the
16 order is no longer, or never was, a foreign in-
17 fringing site; or

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

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

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

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

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

16 (f) LAW ENFORCEMENT COORDINATION.—

17 (1) IN GENERAL.—The Attorney General shall
18 inform the Intellectual Property Enforcement Coord-
19 inator and the heads of appropriate law enforce-
20 ment agencies of all court orders issued under sub-
21 section (b), and all amended orders issued under
22 subsection (e), regarding foreign infringing sites.

23 (2) ALTERATIONS.—The Attorney General
24 shall, and the defendant may, inform the Intellectual
25 Property Enforcement Coordinator of the modifica-

1 tion, suspension, expiration, or vacation of a court
2 order issued under subsection (b) or an amended
3 order issued under subsection (e).

4 **SEC. 103. MARKET-BASED SYSTEM TO PROTECT U.S. CUS-**
5 **TOMERS AND PREVENT U.S. FUNDING OF**
6 **SITES DEDICATED TO THEFT OF U.S. PROP-**
7 **ERTY.**

8 (a) DEFINITIONS.—In this section:

9 (1) DEDICATED TO THEFT OF U.S. PROP-
10 ERTY.—An “Internet site is dedicated to theft of
11 U.S. property” if—

12 (A) it is an Internet site, or a portion
13 thereof, that is a U.S.-directed site and is used
14 by users within the United States; and

15 (B) either—

16 (i) the U.S.-directed site is primarily
17 designed or operated for the purpose of,
18 has only limited purpose or use other than,
19 or is marketed by its operator or another
20 acting in concert with that operator for use
21 in, offering goods or services in a manner
22 that engages in, enables, or facilitates—

23 (I) a violation of section 501 of
24 title 17, United States Code;

1 (II) a violation of section 1201 of
2 title 17, United States Code; or

3 (III) the sale, distribution, or
4 promotion of goods, services, or mate-
5 rials bearing a counterfeit mark, as
6 that term is defined in section 34(d)
7 of the Lanham Act or section 2320 of
8 title 18, United States Code; or

9 (ii) the operator of the U.S.-directed
10 site—

11 (I) is taking, or has taken, delib-
12 erate actions to avoid confirming a
13 high probability of the use of the
14 U.S.-directed site to carry out acts
15 that constitute a violation of section
16 501 or 1201 of title 17, United States
17 Code; or

18 (II) operates the U.S.-directed
19 site with the object of promoting, or
20 has promoted, its use to carry out
21 acts that constitute a violation of sec-
22 tion 501 or 1201 of title 17, United
23 States Code, as shown by clear ex-
24 pression or other affirmative steps
25 taken to foster infringement.

1 (2) QUALIFYING PLAINTIFF.—The term “quali-
2 fying plaintiff” means, with respect to a particular
3 Internet site or portion thereof, a holder of an intel-
4 lectual property right harmed by the activities de-
5 scribed in paragraph (1) occurring on that Internet
6 site or portion thereof.

7 (b) DENYING U.S. FINANCIAL SUPPORT OF SITES
8 DEDICATED TO THEFT OF U.S. PROPERTY.—

9 (1) PAYMENT NETWORK PROVIDERS.—Except
10 in the case of an effective counter notification pursu-
11 ant to paragraph (5), a payment network provider
12 shall take technically feasible and reasonable meas-
13 ures, as expeditiously as possible, but in any case
14 within 5 days after delivery of a notification under
15 paragraph (4), that are designed to prevent, pro-
16 hibit, or suspend its service from completing pay-
17 ment transactions involving customers located within
18 the United States and the Internet site, or portion
19 thereof, that is specified in the notification under
20 paragraph (4).

21 (2) INTERNET ADVERTISING SERVICES.—Ex-
22 cept in the case of an effective counter notification
23 pursuant to paragraph (5), an Internet advertising
24 service that contracts with the operator of an Inter-
25 net site, or portion thereof, that is specified in a no-

1 tification delivered under paragraph (4), to provide
2 advertising to or for such site or portion thereof, or
3 that knowingly serves advertising to or for such site
4 or portion thereof, shall take technically feasible and
5 reasonable measures, as expeditiously as possible,
6 but in any case within 5 days after delivery the noti-
7 fication under paragraph (4), that are designed to—

8 (A) prevent its service from providing ad-
9 vertisements to or relating to the Internet site,
10 or portion thereof, that is specified in the notifi-
11 cation;

12 (B) cease making available advertisements
13 for such Internet site, or portion thereof, that
14 is specified in the notification, or paid or spon-
15 sored search results, links, or other placements
16 that provide access to such Internet site, or
17 portion thereof, that is specified in the notifica-
18 tion; and

19 (C) cease providing or receiving any com-
20 pensation for advertising or related services to,
21 from, or in connection with such Internet site,
22 or portion thereof, that is specified in the notifi-
23 cation.

24 (3) DESIGNATED AGENT.—

1 (A) IN GENERAL.—Each payment network
2 provider and each Internet advertising service
3 shall designate an agent to receive notifications
4 described in paragraph (4), by making available
5 through its service, including on its Web site in
6 a location accessible to the public, and by pro-
7 viding to the Copyright Office, substantially the
8 following:

9 (i) The name, address, phone number,
10 and electronic mail address of the agent.

11 (ii) Other contact information that the
12 Register of Copyrights considers appro-
13 priate.

14 (B) DIRECTORY OF AGENTS.—The Reg-
15 ister of Copyrights shall maintain and make
16 available to the public for inspection, including
17 through the Internet, in electronic format, a
18 current directory of agents designated under
19 subparagraph (A).

20 (4) NOTIFICATION REGARDING INTERNET SITES
21 DEDICATED TO THEFT OF U.S. PROPERTY.—

22 (A) REQUIREMENTS.—Subject to subpara-
23 graph (B), a notification under this paragraph
24 is effective only if it is a written communication
25 that is provided to the designated agent of a

1 payment network provider or an Internet adver-
2 tising service and includes substantially the fol-
3 lowing:

4 (i) A physical or electronic signature
5 of a person authorized to act on behalf of
6 the holder of an intellectual property right
7 harmed by the activities described in sub-
8 section (a)(1).

9 (ii) Identification of the Internet site,
10 or portion thereof, dedicated to theft of
11 U.S. property, including either the domain
12 name or Internet Protocol address of such
13 site, or both.

14 (iii) Identification of the specific facts
15 to support the claim that the Internet site,
16 or portion thereof, is dedicated to theft of
17 U.S. property and to clearly show that im-
18 mediate and irreparable injury, loss, or
19 damage will result to the holder of the in-
20 tellectual property right harmed by the ac-
21 tivities described in subsection (a)(1) in
22 the absence of timely action by the pay-
23 ment network provider or Internet adver-
24 tising service.

1 (iv) Information reasonably sufficient
2 to establish that the payment network pro-
3 vider or Internet advertising service is pro-
4 viding payment processing or Internet ad-
5 vertising services for such site.

6 (v) Information reasonably sufficient
7 to permit the payment network provider or
8 Internet advertising service to contact the
9 holder of the intellectual property right
10 harmed by the activities described in sub-
11 section (a)(1).

12 (vi) A statement that the holder of the
13 intellectual property right has a good faith
14 belief that the use of the owner's works or
15 goods in which the right exists, in the
16 manner described in the notification, is not
17 authorized by the holder, its agent, or law.

18 (vii) A statement that the information
19 in the notification is accurate, and, under
20 penalty of perjury, that the signatory is
21 authorized to act on behalf of the holder of
22 the intellectual property right harmed by
23 the activities described in subsection
24 (a)(1).

1 (viii) Identification of the evidence in-
2 dicating that the site (or portion thereof)
3 is a U.S.-directed site.

4 (B) SERVICE IF NO AGENT DESIGNATED.—
5 If a payment network provider or Internet ad-
6 vertising service has not designated an agent
7 under paragraph (3), the notification under
8 subparagraph (A) may be provided to any offi-
9 cer or legal representative of such provider or
10 service.

11 (C) NOTICE TO INTERNET SITE IDENTI-
12 FIED IN NOTIFICATION.—Upon receipt of an ef-
13 fective notification under this paragraph, a pay-
14 ment network provider or Internet advertising
15 service shall take appropriate steps to ensure
16 timely delivery of the notification to the Inter-
17 net site identified in the notification.

18 (5) COUNTER NOTIFICATION.—

19 (A) REQUIREMENTS.—Subject to subpara-
20 graph (B), a counter notification is effective
21 under this paragraph only if it is a written com-
22 munication that is provided to the designated
23 agent of a payment network provider or an
24 Internet advertising service and includes sub-
25 stantially the following:

1 (i) A physical or electronic signature
2 of the owner or operator of the Internet
3 site, or portion thereof, specified in a noti-
4 fication under paragraph (4) subject to
5 which action is to be taken by the payment
6 network provider or Internet advertising
7 service under paragraph (1) or (2), or of
8 the registrant of the domain name used by
9 such site or portion thereof.

10 (ii) In the case of an Internet site
11 specified in the notification under para-
12 graph (4) that is a foreign Internet site, a
13 statement that the owner or operator, or
14 registrant, consents to the jurisdiction of
15 the courts of the United States, and will
16 accept service of process from the person
17 who provided notification under paragraph
18 (4), or an agent of such person, for pur-
19 poses of adjudicating whether the site is an
20 Internet site dedicated to theft of U.S.
21 property under this section.

22 (iii) A statement under penalty of per-
23 jury that the owner or operator, or reg-
24 istrant, has a good faith belief that it does
25 not meet the criteria of an Internet site

1 dedicated to theft of U.S. property as set
2 forth under this section.

3 (iv) The name, address, email ad-
4 dress, and telephone number of the owner,
5 operator, or registrant.

6 (B) SERVICE IF NO AGENT DESIGNATED.—

7 If a payment network provider or Internet ad-
8 vertising service has not designated an agent
9 under paragraph (3), the counter notification
10 under subparagraph (A) may be provided to
11 any officer or legal representative of such pro-
12 vider or service.

13 (6) MISREPRESENTATIONS.—Any provider of a
14 notification or counter notification who knowingly
15 materially misrepresents under this section—

16 (A) that a site is an Internet site dedicated
17 to the theft of U.S. property, or

18 (B) that such site does not meet the cri-
19 teria of an Internet site dedicated to the theft
20 of U.S. property,

21 shall be liable for damages, including costs and at-
22 torneys' fees, incurred by the person injured by such
23 misrepresentation as a result of the misrepresenta-
24 tion.

1 (c) LIMITED INJUNCTIVE RELIEF IN CASES OF
2 COUNTER NOTIFICATION.—

3 (1) IN PERSONAM.—If an effective counter noti-
4 fication is made under subsection (b)(5), or if a pay-
5 ment network provider fails to comply with sub-
6 section (b)(1), or an Internet advertising service fails
7 to comply with subsection (b)(2), pursuant to a noti-
8 fication under subsection (b)(4) in the absence of
9 such a counter notification, a qualifying plaintiff
10 may commence an in personam action against—

11 (A) a registrant of a domain name used by
12 the Internet site, or portion thereof, that is sub-
13 ject to the notification under subsection (b)(4);
14 or

15 (B) an owner or operator of the Internet
16 site or portion thereof.

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

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

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

8 (A) to the registrant of the domain name
9 of the Internet site, or portion thereof, that is
10 the subject to the notification under subsection
11 (b)(4)—

12 (i) at the postal and electronic mail
13 addresses appearing in the applicable pub-
14 licly accessible database of registrations, if
15 any, and to the extent such addresses are
16 reasonably available; and

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

24 (B) to the owner or operator of the Inter-
25 net site, or portion thereof—

1 (i) at the primary postal and elec-
2 tronic mail addresses for such owner or op-
3 erator that are provided on the Internet
4 site, or portion thereof, if any, and to the
5 extent such addresses are reasonably avail-
6 able; or

7 (ii) if there is no domain name of the
8 Internet site or portion thereof, via the
9 postal and electronic mail addresses of the
10 Internet Protocol allocation entity appear-
11 ing in the applicable publicly accessible
12 database of allocations and assignments, if
13 any, and to the extent such addresses are
14 reasonably available; or

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

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

22 (5) RELIEF.—On application of a qualifying
23 plaintiff following the commencement of an action
24 under this section with respect to an Internet site
25 dedicated to theft of U.S. property, the court may

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

11 (d) ACTIONS BASED ON COURT ORDERS.—

12 (1) SERVICE AND RESPONSE.—

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

19 (B) RESPONSE.—An entity served under
20 subparagraph (A) shall, not later than 7 days
21 after the date of such service, file with the
22 court a certification acknowledging receipt of a
23 copy of the order and stating that such entity
24 has complied or will comply with the obligations

1 imposed under paragraph (2), or explaining
2 why the entity will not so comply.

3 (C) VENUE FOR SERVICE.—A copy of the
4 court order may be served in any judicial dis-
5 trict where an entity resides or may be found.

6 (2) REASONABLE MEASURES.—After being
7 served with a copy of an order pursuant to this sub-
8 section, the following shall apply:

9 (A) PAYMENT NETWORK PROVIDERS.—

10 (i) PREVENTING AFFILIATION.—A
11 payment network provider shall take tech-
12 nically feasible and reasonable measures,
13 as expeditiously as possible, but in any
14 case within 5 days after being served with
15 a copy of the court order, or within such
16 time as the court may order, that are de-
17 signed to prevent, prohibit, or suspend its
18 service from completing payment trans-
19 actions involving customers located within
20 the United States or subject to the juris-
21 diction of the United States and any ac-
22 count—

23 (I) which is used by the Internet
24 site dedicated to theft of U.S. prop-
25 erty that is subject to the order; and

1 (II) through which the payment
2 network provider would complete such
3 payment transactions.

4 (ii) NO DUTY TO MONITOR.—A pay-
5 ment network provider is in compliance
6 with clause (i) if it takes action described
7 in that clause with respect to accounts it
8 has as of the date of service of the order,
9 or as of the date of any subsequent notice
10 that its service is being used to complete
11 payment transactions described in clause
12 (i).

13 (B) INTERNET ADVERTISING SERVICES.—

14 (i) REQUIRED ACTIONS.—An Internet
15 advertising service that contracts with the
16 Internet site dedicated to theft of U.S.
17 property that is subject to the order to
18 provide advertising to or for such Internet
19 site, or that knowingly serves advertising
20 to or for such internet site, shall take tech-
21 nically feasible and reasonable measures,
22 as expeditiously as possible, but in any
23 case within 5 days after being served with
24 a copy of the order, or within such time as

1 the court may order, that are designed
2 to—

3 (I) prevent its service from pro-
4 viding advertisements to or relating to
5 the Internet site;

6 (II) cease making available ad-
7 vertisements for the Internet site, or
8 paid or sponsored search results,
9 links, or other placements that pro-
10 vide access to the Internet site; and

11 (III) cease providing or receiving
12 any compensation for advertising or
13 related services to, from, or in connec-
14 tion with the Internet site.

15 (ii) NO DUTY TO MONITOR.—An inter-
16 net advertising service is in compliance
17 with clause (i) if it takes action described
18 in that clause with respect to accounts it
19 has as of the date on which a copy of the
20 order is served, or as of the date of any
21 subsequent notice that its service is being
22 used for activities described in clause (i).

23 (3) COMMUNICATION WITH USERS.—An entity
24 taking an action described in this subsection shall

1 determine the means to communicate such action to
2 the entity's users or customers.

3 (4) ENFORCEMENT OF ORDERS.—

4 (A) RULE OF CONSTRUCTION.—The au-
5 thority under this subsection shall be the sole
6 legal remedy to enforce the obligations of any
7 entity under this subsection.

8 (B) PROCEDURES AND RELIEF.—

9 (i) SHOW CAUSE ORDER.—On a show-
10 ing by the qualifying plaintiff of probable
11 cause to believe that an entity served with
12 a copy of a court order issued under sub-
13 section (c) has not complied with its obli-
14 gations under this subsection by reason of
15 such court order, the court shall require
16 the entity to show cause why an order
17 should not issue—

18 (I) to require compliance with the
19 obligations of this subsection; and

20 (II) to impose an appropriate
21 monetary sanction, consistent with the
22 court's exercise of its equitable au-
23 thority, to enforce compliance with its
24 lawful orders, if the entity—

1 (aa) has knowingly and will-
2 fully failed to file a certification
3 required by paragraph (1)(B);

4 (bb) has filed such a certifi-
5 cation agreeing to comply but
6 has knowingly and willfully failed
7 to do so; or

8 (cc) has knowingly and will-
9 fully certified falsely that compli-
10 ance with the requirements of
11 paragraph (2) is not required by
12 law.

13 (ii) SERVICE OF PROCESS.—The order
14 to show cause, and any other process, may
15 be served in any judicial district where the
16 entity resides or may be found.

17 (C) DEFENSE.—An entity against whom
18 relief is sought under subparagraph (B) may
19 establish an affirmative defense by showing that
20 the entity does not have the technical means to
21 comply with this subsection without incurring
22 an unreasonable economic burden, or that the
23 order is not authorized by this subsection. Such
24 showing shall not be presumed to be a complete
25 defense but shall serve as a defense only for

1 those measures for which a technical limitation
2 on compliance is demonstrated or for such por-
3 tions of the order as are demonstrated to be un-
4 authorized by this subsection.

5 (5) IMMUNITY.—

6 (A) IMMUNITY FROM SUIT.—Other than in
7 an action pursuant to paragraph (4), no cause
8 of action shall lie in any Federal or State court
9 or administrative agency against any entity
10 served with a copy of a court order issued
11 under subsection (c), or against any director,
12 officer, employee, or agent thereof, for any act
13 reasonably designed to comply with this sub-
14 section or reasonably arising from such order.

15 (B) IMMUNITY FROM LIABILITY.—Other
16 than in an action pursuant to paragraph (4)—

17 (i) any entity served with a copy of an
18 order under this subsection, and any direc-
19 tor, officer, employee, or agent thereof,
20 shall not be liable for any acts reasonably
21 designed to comply with this subsection or
22 reasonably arising from such order; and

23 (ii) any—

24 (I) actions taken by customers of
25 such entity to circumvent any restric-

1 tion on access to the Internet site, or
2 portion thereof that is subject to such
3 order, that is instituted pursuant to
4 this subsection, or

5 (II) act, failure, or inability to re-
6 strict access to an Internet site or
7 portion thereof that is subject to such
8 order, despite good faith efforts to
9 comply with such order by such enti-
10 ty,

11 shall not be used by any person in any
12 claim or cause of action against such enti-
13 ty.

14 (e) MODIFICATION OR VACATION OF ORDERS.—

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

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

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

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

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

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

12 (A) the Internet site subject to the order
13 is no longer, or never was, an Internet site
14 dedicated to theft of U.S. property; or

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

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

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

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

14 (g) REPORTING OF ORDERS.—

15 (1) IN GENERAL.—The qualifying plaintiff shall
16 inform the Intellectual Property Enforcement Coordi-
17 nator of any court order issued under subsection
18 (c) or amended order issued under subsection (f).

19 (2) ALTERATIONS.—Upon the modification,
20 suspension, expiration, or vacation of a court order
21 issued under subsection (c) or an amended order
22 issued under subsection (f) , the qualifying plaintiff
23 shall, and the defendant may, so inform the Intellec-
24 tual Property Enforcement Coordinator.

1 **SEC. 104. IMMUNITY FOR TAKING VOLUNTARY ACTION**
2 **AGAINST SITES DEDICATED TO THEFT OF U.S.**
3 **PROPERTY.**

4 No cause of action shall lie in any Federal or State
5 court or administrative agency against, no person may rely
6 in any claim or cause of action against, and no liability
7 for damages to any person shall be granted against, a
8 service provider, payment network provider, Internet ad-
9 vertising service, advertiser, Internet search engine, do-
10 main name registry, or domain name registrar for taking
11 any action described in section 102(c)(2), section
12 103(d)(2), or section 103(b) with respect to an Internet
13 site, or otherwise voluntarily blocking access to or ending
14 financial affiliation with an Internet site, in the reasonable
15 belief that—

16 (1) the Internet site is a foreign infringing site
17 or is an Internet site dedicated to theft of U.S. prop-
18 erty; and

19 (2) the action is consistent with the entity's
20 terms of service or other contractual rights.

21 **SEC. 105. IMMUNITY FOR TAKING VOLUNTARY ACTION**
22 **AGAINST SITES THAT ENDANGER PUBLIC**
23 **HEALTH.**

24 (a) REFUSAL OF SERVICE.—A service provider, pay-
25 ment network provider, Internet advertising service, ad-
26 vertiser, Internet search engine, domain name registry, or

1 domain name registrar, acting in good faith and based on
2 credible evidence, may stop providing or refuse to provide
3 services to an Internet site that endangers the public
4 health.

5 (b) IMMUNITY FROM LIABILITY.—An entity de-
6 scribed in subsection (a), including its directors, officers,
7 employees, or agents, that ceases or refuses to provide
8 services under subsection (a) shall not be liable to any per-
9 son under any Federal or State law for such action.

10 (c) DEFINITIONS.—In this section:

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

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

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

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

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

8 (4) PRESCRIPTION MEDICATION.—

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

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

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

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

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

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

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

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

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

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

18 (b) STUDY.—

19 (1) NATURE OF STUDY.—The Register of Copy-
20 rights, in consultation with appropriate departments
21 and agencies of the United States and other stake-
22 holders, shall conduct a study on the enforcement
23 and effectiveness of this title and on any need to
24 amend the provisions of this title to adapt to emerg-
25 ing technologies.

1 (2) REPORTS TO CONGRESS.—Not later than 2
2 years after the date of the enactment of this Act, the
3 Register of Copyrights shall submit to the Commit-
4 tees on the Judiciary of the House of Representa-
5 tives and the Senate a report containing the results
6 of the study conducted under this subsection and
7 any recommendations that the Register may have as
8 a result of the study.

9 **SEC. 107. DENYING U.S. CAPITAL TO NOTORIOUS FOREIGN**
10 **INFRINGERS.**

11 (a) IDENTIFICATION AND RECOMMENDATIONS RE-
12 GARDING NOTORIOUS FOREIGN INFRINGERS.—

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

23 (2) PUBLIC INPUT.—In carrying out paragraph
24 (1), the Intellectual Property Enforcement Coordi-
25 nator shall solicit and give consideration to the views

1 and recommendations of members of the public, in-
2 cluding holders of intellectual property rights in the
3 United States.

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

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

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

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

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

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

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

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

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

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

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

25 “(a) CRIMINAL INFRINGEMENT.—

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

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

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

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

23 “(2) EVIDENCE.—For purposes of this sub-
24 section, evidence of reproduction, distribution, or
25 public performance of a copyrighted work, by itself,

1 shall not be sufficient to establish willful infringe-
2 ment of a copyright.

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

6 “(A) a computer program, a musical work,
7 a motion picture or other audiovisual work, or
8 a sound recording, if, at the time of unauthor-
9 ized distribution or public performance—

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

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

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

23 “(II) the work has not been commer-
24 cially disseminated to the public in the

1 United States by or with the authorization
2 of the copyright owner;

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

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

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

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

21 (b) TITLE 18 AMENDMENTS.—Section 2319 of title
22 18, United States Code, is amended—

23 (1) in subsection (b)(1), by striking “during
24 any 180-day period” and all that follows and insert
25 “of at least 10 copies or phonorecords, or of at least

1 10 public performances by means of digital trans-
2 mission, of 1 or more copyrighted works, during any
3 180-day period, which have a total retail value of
4 more than \$2,500;”

5 (2) in subsection (c)—

6 (A) in paragraph (1), by striking “of 10 or
7 more copies or phonorecords” and all that fol-
8 lows and inserting “including by electronic
9 means, of at least 10 copies or phonorecords, or
10 of at least 10 public performances by means of
11 digital transmission, of 1 or more copyrighted
12 works, during any 180-day period, which have
13 a total retail value of more than \$2,500;” and

14 (B) in paragraph (3), by striking “if the
15 offense” and all that follows and inserting “in
16 any other case;”;

17 (3) in subsection (d)(4), by striking “under
18 paragraph (2)” and inserting “committed for pur-
19 poses of commercial advantage or private financial
20 gain under subsection (a)”;

21 (4) in subsection (f)—

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

24 “(2) the terms ‘reproduction’, ‘distribution’,
25 and ‘public performance’ refer to the exclusive rights

1 of a copyright owner under paragraphs (1), (3), (4),
2 and (6), respectively, of section 106 (relating to ex-
3 clusive rights in copyrighted works), as limited by
4 sections 107 through 122, of title 17; and”.

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

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

8 (5) by adding at the end the following new sub-
9 section:.

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

13 “(1) the total retail price that persons receiving
14 the reproductions, distributions, or public perform-
15 ances constituting the offense would have paid to re-
16 ceive such reproductions, distributions, or public per-
17 formances lawfully;

18 “(2) the total economic value of the reproduc-
19 tions, distributions, or public performances to the in-
20 fringer or to the copyright owner, as shown by evi-
21 dence of fee, advertising, or other revenue that was
22 received by the person who commits the offense, or
23 that the copyright owner would have been entitled to
24 receive had such reproductions, distributions, or
25 public performances been offered lawfully; or

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

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

16 **SEC. 202. TRAFFICKING IN INHERENTLY DANGEROUS**
17 **GOODS OR SERVICES.**

18 Section 2320 of title 18, United States Code, is
19 amended as follows:

20 (1) Subsection (a) is amended to read as fol-
21 lows:

22 “(1) **IN GENERAL.**—

23 “(A) **OFFENSES.**—Whoever—

24 “(i) intentionally traffics or attempts
25 to traffic in goods or services and know-

1 ingly uses a counterfeit mark on or in con-
2 nection with such goods or services,

3 “(ii) intentionally traffics or attempts
4 to traffic in labels, patches, stickers, wrap-
5 pers, badges, emblems, medallions, charms,
6 boxes, containers, cans, cases, hangtags,
7 documentation, or packaging of any type
8 or nature, knowing that a counterfeit mark
9 has been applied thereto, the use of which
10 is likely to cause confusion, to cause mis-
11 take, or to deceive, or

12 “(iii) intentionally imports, exports, or
13 traffics in counterfeit drugs or inten-
14 tionally participates in or knowingly aids
15 drug counterfeiting,

16 shall, if an individual, be fined not more than
17 \$2,000,000 or imprisoned not more than 10
18 years, or both, and, if a person other than an
19 individual, be fined not more than \$5,000,000.

20 “(B) SUBSEQUENT OFFENSES.—In the
21 case of an offense by a person under this para-
22 graph that occurs after that person is convicted
23 of another offense under this paragraph, the
24 person convicted, if an individual, shall be fined
25 not more than \$5,000,000 or imprisoned not

1 more than 20 years, or both, and if other than
2 an individual, shall be fined not more than
3 \$15,000,000.

4 “(2) SERIOUS BODILY HARM OR DEATH.—

5 “(A) SERIOUS BODILY HARM.—If the of-
6 fender knowingly or recklessly causes or at-
7 tempts to cause serious bodily injury from con-
8 duct in violation of paragraph (1), the penalty
9 shall be, for an individual, a fine of not more
10 than \$5,000,000 or imprisonment for any term
11 of years or for life, or both, and for other than
12 an individual, a fine of not more than
13 \$15,000,000.

14 “(B) DEATH.—If the offender knowingly
15 or recklessly causes or attempts to cause death
16 from conduct in violation of paragraph (1), the
17 penalty shall be, for an individual, a fine of not
18 more than \$5,000,000 or imprisonment for any
19 term of years or for life, or both, and for other
20 than an individual, a fine of not more than
21 \$15,000,000.

22 “(3) MILITARY GOODS OR SERVICES.—

23 “(A) IN GENERAL.—A person who com-
24 mits an offense under paragraph (1) shall be

1 punished in accordance with subparagraph (B)

2 if—

3 “(i) the offense involved a good or
4 service described in paragraph (1) that if
5 it malfunctioned, failed, or was com-
6 promised, could reasonably be foreseen to
7 cause—

8 “(I) serious bodily injury or
9 death;

10 “(II) disclosure of classified in-
11 formation;

12 “(III) impairment of combat op-
13 erations; or

14 “(IV) other significant harm—

15 “(aa) to a member—

16 “(AA) of the Armed
17 Forces; or

18 “(BB) of a Federal,
19 State, or local law enforce-
20 ment agency; or

21 “(bb) to national security or
22 critical infrastructure; and

23 “(ii) the person had knowledge that
24 the good or service is falsely identified as
25 meeting military standards or is intended

1 for use in a military or national security
2 application, or a law enforcement or crit-
3 ical infrastructure application.

4 “(B) PENALTIES.—

5 “(i) INDIVIDUAL.—An individual who
6 commits an offense described in subpara-
7 graph (A) shall be fined not more than
8 \$5,000,000, imprisoned for not more than
9 20 years, or both.

10 “(ii) PERSON OTHER THAN AN INDI-
11 VIDUAL.—A person other than an indi-
12 vidual that commits an offense described in
13 subparagraph (A) shall be fined not more
14 than \$15,000,000.

15 “(C) SUBSEQUENT OFFENSES.—

16 “(i) INDIVIDUAL.—An individual who
17 commits an offense described in subpara-
18 graph (A) after the individual is convicted
19 of an offense under subparagraph (A) shall
20 be fined not more than \$15,000,000, im-
21 prisoned not more than 30 years, or both.

22 “(ii) PERSON OTHER THAN AN INDI-
23 VIDUAL.—A person other than an indi-
24 vidual that commits an offense described in
25 subparagraph (A) after the person is con-

1 victed of an offense under subparagraph
2 (A) shall be fined not more than
3 \$30,000,000.”.

4 (2) Subsection (e) is amended—

5 (A) in paragraph (1), by striking the pe-
6 riod at the end and inserting a semicolon;

7 (B) in paragraph (3), by striking “and” at
8 the end;

9 (C) in paragraph (4), by striking the pe-
10 riod at the end and inserting a semicolon; and

11 (D) by adding at the end the following:

12 “(5) the term ‘counterfeit drug’ has the mean-
13 ing given that term in section 201(g)(2) of the Fed-
14 eral Food Drug, and Cosmetic Act (21 U.S.C.
15 321(g)(2));

16 “(6) the term ‘critical infrastructure’ has the
17 meaning given that term in section 2339D(c);

18 “(7) the term ‘drug counterfeiting’ means any
19 act prohibited by section 301(i) of the Federal Food
20 Drug, and Cosmetic Act (21 U.S.C. 331(i));

21 “(8) the term ‘final dosage form’ has the mean-
22 ing given that term in section 735(4) of the Federal
23 Food , Drug, and Cosmetic Act (21 U.S.C.
24 379g(4));

1 “(9) the term ‘falsely identified as meeting mili-
2 tary standards’ relating to a good or service means
3 there is a material misrepresentation that the good
4 or service meets a standard, requirement, or speci-
5 fication issued by the Department of Defense, an
6 Armed Force, or a reserve component;

7 “(10) the term ‘use in a military or national se-
8 curity application’ means the use of a good or serv-
9 ice, independently, in conjunction with, or as a com-
10 ponent of another good or service—

11 “(A) during the performance of the official
12 duties of the Armed Forces of the United
13 States or the reserve components of the Armed
14 Forces; or

15 “(B) by the United States to perform or
16 directly support—

17 “(i) combat operations; or

18 “(ii) critical national defense or na-
19 tional security functions; and

20 “(11) the term ‘use in a law enforcement or
21 critical infrastructure application’ means the use of
22 a good or service, independently, in conjunction
23 with, or as a component of, another good or service
24 by a person who is directly engaged in—

1 “(A) Federal, State, or local law enforce-
2 ment; or

3 “(B) an official function pertaining to crit-
4 ical infrastructure.”.

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

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

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

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

15 (b) FOR OFFENSES COMMITTED BY ORGANIZA-
16 TIONS.—Section 1831(b) of such title is amended by strik-
17 ing “\$10,000,000” and inserting “not more than the
18 greater of \$10,000,000 or 3 times the value of the stolen
19 trade secret to the organization (including expenses for re-
20 search and design or other costs of reproducing the trade
21 secret that the organization has thereby avoided)”.

22 **SEC. 204. AMENDMENTS TO SENTENCING GUIDELINES.**

23 Not later than 180 days after the date of the enact-
24 ment of this Act, pursuant to its authority under section

1 994(p) of title 28, United States Code, the United States
2 Sentencing Commission shall—

3 (1) review, and if appropriate, amend Federal
4 Sentencing Guidelines and policy statements applica-
5 ble to persons convicted of—

6 (A) intellectual property offenses;

7 (B) an offense under section 2320(a) of
8 title 18, United States Code; or

9 (C) an offense under section 1831 of title
10 18, United States Code;

11 (2) in carrying out such review, consider
12 amending such Guidelines and policy statements
13 to—

14 (A) apply an appropriate offense level en-
15 hancement for intellectual property offenses
16 committed in connection with an organized
17 criminal enterprise;

18 (B) apply an appropriate offense level en-
19 hancement to the simple misappropriation of a
20 trade secret;

21 (C) apply an additional appropriate offense
22 level enhancement if the defendant transmits or
23 attempts to transmit the stolen trade secret
24 outside of the United States and an additional

1 appropriate enhancement if the defendant in-
2 stead commits economic espionage;

3 (D) provide that when a defendant trans-
4 mits trade secrets outside of the United States
5 or commits economic espionage, that the de-
6 fendant should face a minimum offense level;

7 (E) provide for an offense level enhance-
8 ment for Guidelines relating to the theft of
9 trade secrets and economic espionage, including
10 trade secrets transferred or attempted to be
11 transferred outside of the United States;

12 (F) apply an appropriate offense level en-
13 hancement and minimum offense level for of-
14 fenses under section 2320(a) of title 18, United
15 States Code, that involve a product intended for
16 use in a military or national security applica-
17 tion, or a law enforcement or critical infrastruc-
18 ture application;

19 (G) ensure that the Guidelines and policy
20 statements (including section 2B5.3 of the Fed-
21 eral Sentencing Guidelines (and any successor
22 thereto)) reflect—

23 (i) the serious nature of the offenses
24 described in section 2320(a) of title 18,
25 United States Code;

1 (ii) the need for an effective deterrent
2 and appropriate punishment to prevent of-
3 fenses under section 2320(a) of title 18,
4 United States Code; and

5 (iii) the effectiveness of incarceration
6 in furthering the objectives described in
7 clauses (i) and (ii); and

8 (H) ensure reasonable consistency with
9 other relevant directives and Guidelines and
10 Federal statutes;

11 (3) submit to Congress a report detailing the
12 Commission's actions with respect to each potential
13 amendment described in paragraph (2);

14 (4) make such conforming amendments to the
15 Federal Sentencing Guidelines as the Commission
16 determines necessary to achieve consistency with
17 other Guideline provisions and applicable law; and

18 (5) promulgate the Guidelines, policy state-
19 ments, or amendments provided for in this section
20 as soon as practicable in accordance with the proce-
21 dure set forth in section 21(a) of the Sentencing Act
22 of 1987 (28 U.S.C. 994 note), as though the author-
23 ity under that Act had not expired.

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

2 **ABROAD.**

3 (a) RESOURCES TO PROTECT INTELLECTUAL PROP-
4 erty Rights.—

5 (1) POLICY.—The Secretary of State and the
6 Secretary of Commerce, in consultation with the
7 Register of Copyrights, shall ensure that the protec-
8 tion in foreign countries of the intellectual property
9 rights of United States persons is a significant com-
10 ponent of United States foreign and commercial pol-
11 icy in general, and in relations with individual coun-
12 tries in particular.

13 (2) DEDICATION OF RESOURCES.—The Sec-
14 retary of State and the Secretary of Commerce, in
15 consultation with the Register of Copyrights, and
16 the heads of other appropriate departments and
17 agencies, shall ensure that adequate resources are
18 available at the United States embassy or diplomatic
19 mission (as the case may be) in any country that is
20 identified under section 182(a)(1) of the Trade Act
21 of 1974 (19 U.S.C. 2242(a)(1)) to ensure—

22 (A) aggressive support for enforcement ac-
23 tion against violations of the intellectual prop-
24 erty rights of United States persons in such
25 country;

1 (B) cooperation with and support for the
2 host government's efforts to conform its appli-
3 cable laws, regulations, practices, and processes
4 to enable the host government to honor its
5 international and bilateral obligations with re-
6 spect to the protection of intellectual property
7 rights;

8 (C) consistency with the policy and coun-
9 try-specific priorities set forth in the most re-
10 cent report of USTR under such section
11 182(a)(1); and

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

16 (b) NEW APPOINTMENTS.—

17 (1) APPOINTMENTS AND ADMINISTRATION.—

18 The Secretary of State and the Secretary of Com-
19 merce, in consultation with the Register of Copy-
20 rights, shall appoint at least one intellectual prop-
21 erty attaché to be assigned to the United States em-
22 bassy or diplomatic mission (as the case may be) in
23 a country in each geographic region covered by a re-
24 gional bureau of the Department of State. The Di-
25 rector of the Patent and Trademark Office shall

1 maintain authority over hiring, personnel ratings,
2 and objectives for the attachés, in consultation with
3 the Secretary of State. Depending on experience and
4 expertise, intellectual property attachés shall be des-
5 ignated as the diplomatic rank in-mission of First
6 Secretary or Counselor.

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

9 (A) Africa.

10 (B) Europe and Eurasia.

11 (C) East Asia and the Pacific.

12 (D) The Near East.

13 (E) South and Central Asia and the Pa-
14 cific.

15 (F) The Western Hemisphere.

16 (3) DUTIES.—The intellectual property attachés
17 appointed under this subsection shall focus primarily
18 on intellectual property matters, including the devel-
19 opment, protection, and enforcement of applicable
20 law. Each intellectual property attaché shall work, in
21 accordance with guidance from the Director, and in
22 coordination with appropriate staff at the Depart-
23 ments of Commerce and State and the Copyright
24 Office, to advance the policy goals and priorities of
25 the United States Government. Those policy goals

1 and priorities shall be consistent with USTR's re-
2 ports under section 182(a)(1) of the Trade Act of
3 1974. The intellectual property attachés shall work
4 with United States holders of intellectual property
5 rights and industry to address intellectual property
6 rights violations in the countries where the attachés
7 are assigned.

8 (c) PRIORITY ASSIGNMENTS.—

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

22 (2) ASSIGNMENTS TO PRIORITY COUNTRIES.—

23 In carrying out paragraph (1), the Secretary of
24 State and the Secretary of Commerce shall consider
25 assigning intellectual property attachés—

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

4 (B) to countries of critical economic impor-
5 tance to the advancement of United States in-
6 tellectual property rights and interests.

7 (d) TRAINING.—The Secretary of State and the Sec-
8 retary of Commerce shall ensure that each intellectual
9 property attaché appointed under subsection (b) is fully
10 trained for the responsibilities of the position before as-
11 suming duties at the United States embassy or diplomatic
12 mission to which the attaché is assigned.

13 (e) COORDINATION.—The activities of intellectual
14 property attachés under this section shall be determined
15 in consultation with the Intellectual Property Enforcement
16 Coordinator. The Director shall assist in coordinating the
17 policy priorities and activities of the intellectual property
18 attachés and oversee administrative and personnel mat-
19 ters.

20 (f) TRAINING AND TECHNICAL ASSISTANCE.—

21 (1) CONSISTENCY.—Using existing resources,
22 all training and technical assistance provided by in-
23 tellectual property attachés appointed under sub-
24 section (b), or under other authority, relating to in-
25 tellectual property enforcement and protection

1 abroad shall be designed to be consistent with the
2 policy and country-specific priorities set forth in the
3 most recent report of USTR under section 182(a) of
4 the Trade Act of 1974.

5 (2) ROLE OF IPEC.—Such training and tech-
6 nical assistance programs shall be carried out in
7 consultation with the Intellectual Property Enforce-
8 ment Coordinator. The Director shall assist in co-
9 ordinating the training and technical assistance pro-
10 grams conducted by intellectual property attachés.

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

22 (h) REPORTS TO CONGRESS.—The Intellectual Prop-
23 erty Enforcement Coordinator shall include in the annual
24 report submitted under section 314 of the Prioritizing Re-
25 sources and Organization for Intellectual Property Act of

1 2008 (15 U.S.C. 8114) on the activities of the advisory
2 committee established under section 301 of that Act (15
3 U.S.C. 8111) information on the appointment, designation
4 for assignment, and activities of all intellectual property
5 attachés of any Federal department or agency who are
6 serving abroad.

7 (i) DEFINITIONS.—In this section:

8 (1) DIRECTOR.—The terms “Director of the
9 Patent and Trademark Office” and “Director” mean
10 the Under Secretary for Intellectual Property and
11 Director of the United States Patent and Trade-
12 mark Office.

13 (2) INTELLECTUAL PROPERTY ENFORCE-
14 MENT.—The term “intellectual property enforce-
15 ment” has the meaning given that term in section
16 302 of the Prioritizing Resources and Organization
17 for Intellectual Property Act of 2008 (15 U.S.C.
18 8112).

19 (3) INTELLECTUAL PROPERTY ENFORCEMENT
20 COORDINATOR.—The term “Intellectual Property
21 Enforcement Coordinator” means the Intellectual
22 Property Enforcement Coordinator appointed under
23 section 301 of the Prioritizing Resources and Orga-
24 nization for Intellectual Property Act of 2008 (15
25 U.S.C. 8111).

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

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

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

9 (A) any United States resident or national;

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

14 (C) any foreign subsidiary or affiliate (in-
15 cluding any permanent foreign establishment)
16 of any corporation, partnership, business entity,
17 or organization described in subparagraph (B),
18 that is controlled in fact by such corporation,
19 partnership, business entity, or organization.

20 (j) AUTHORIZATION OF APPROPRIATIONS.—The Sec-
21 retary of State and the Secretary of Commerce shall pro-
22 vide for the training and support of the intellectual prop-
23 erty attachés appointed under subsection (b) using exist-
24 ing resources.