

112TH CONGRESS
1ST SESSION

H. R. 3261

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2011

Mr. SMITH of Texas (for himself and Mr. CONYERS, Mr. GOODLATTE, Mr. BERMAN, Mr. GRIFFIN of Arkansas, Mr. GALLEGLY, Mr. DEUTCH, Mr. CHABOT, Mr. ROSS of Florida, Mrs. BLACKBURN, Mrs. BONO MACK, Mr. TERRY, and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on the Judiciary

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-
15 cumstance, is held to be unconstitutional, the other provi-

1 sions or the application of the provision to other persons
2 or circumstances shall not be affected thereby.

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

5 **SEC. 101. DEFINITIONS.**

6 In this title:

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

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

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

23 (4) DOMESTIC INTERNET PROTOCOL AD-
24 DRESS.—The term “domestic Internet Protocol ad-
25 dress” means an Internet Protocol address for which

1 the corresponding Internet Protocol allocation entity
2 is located within a judicial district of the United
3 States.

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

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

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

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

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

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

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

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

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

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

21 (14) INTERNET PROTOCOL ADDRESS.—The
22 term “Internet Protocol address” means a numerical
23 label that is assigned to each device that participates
24 in a computer network that uses the Internet Pro-
25 tocol for communication.

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

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

23 (17) INTERNET SITE.—The term “Internet
24 site” means the collection of digital assets, including
25 links, indexes, or pointers to digital assets, accessible

1 through the Internet that are addressed relative to
2 a common domain name or, if there is no domain
3 name, a common Internet Protocol address.

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

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

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

23 (21) PAYMENT NETWORK PROVIDER.—

24 (A) IN GENERAL.—The term “payment
25 network provider” means an entity that directly

1 or indirectly provides the proprietary services,
2 infrastructure, and software to effect or facili-
3 tate a debit, credit, or other payment trans-
4 action.

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

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

18 (23) U.S.-DIRECTED SITE.—The term “U.S.-di-
19 rected site” means an Internet site or portion there-
20 of that is used to conduct business directed to resi-
21 dents of the United States, or that otherwise dem-
22 onstrates the existence of minimum contacts suffi-
23 cient for the exercise of personal jurisdiction over
24 the owner or operator of the Internet site consistent

1 with the Constitution of the United States, based on
2 relevant evidence that may include whether—

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

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

9 (i) such goods and services,

10 (ii) access to such goods and services,

11 or

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

14 to users located in the United States;

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

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

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

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

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

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

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

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

20 (b) ACTION BY THE ATTORNEY GENERAL.—

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

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

25 (B) an owner or operator of a foreign in-
26 fringing site.

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

9 (3) NOTICE.—Upon commencing an action
10 under this subsection, the Attorney General shall
11 send a notice of the alleged violation and intent to
12 proceed under this section—

13 (A) to the registrant of the domain name
14 of the Internet site—

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

20 (ii) via the postal and electronic mail
21 addresses of the registrar, registry, or
22 other domain name registration authority
23 that registered or assigned the domain
24 name of the Internet site, to the extent
25 such addresses are reasonably available; or

1 (B) to the owner or operator of the Inter-
2 net site—

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

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

15 (C) in any other such form as the court
16 may provide, 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 the Attorney
23 General following the commencement of an action
24 under this section, the court may issue a temporary
25 restraining order, a preliminary injunction, or an in-

1 junction, in accordance with rule 65 of the Federal
2 Rules of Civil Procedure, against a registrant of a
3 domain name used by the foreign infringing site or
4 an owner or operator of the foreign infringing site
5 or, in an action brought in rem under paragraph
6 (2), against the foreign infringing site or a portion
7 of such site, or the domain name used by such site,
8 to cease and desist from undertaking any further ac-
9 tivity as a foreign infringing site.

10 (c) ACTIONS BASED ON COURT ORDERS.—

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

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

20 (A) SERVICE PROVIDERS.—

21 (i) IN GENERAL.—A service provider
22 shall take technically feasible and reason-
23 able measures designed to prevent access
24 by its subscribers located within the
25 United States to the foreign infringing site

1 (or portion thereof) that is subject to the
2 order, including measures designed to pre-
3 vent the domain name of the foreign in-
4 fringing site (or portion thereof) from re-
5 solving to that domain name's Internet
6 Protocol address. Such actions shall be
7 taken as expeditiously as possible, but in
8 any case within 5 days after being served
9 with a copy of the order, or within such
10 time as the court may order.

11 (ii) LIMITATIONS.—A service provider
12 shall not be required—

13 (I) other than as directed under
14 this subparagraph, to modify its net-
15 work, software, systems, or facilities;

16 (II) to take any measures with
17 respect to domain name resolutions
18 not performed by its own domain
19 name server; or

20 (III) to continue to prevent ac-
21 cess to a domain name to which ac-
22 cess has been effectively disabled by
23 other means.

24 (iii) CONSTRUCTION.—Nothing in this
25 subparagraph shall affect the limitation on

1 the liability of a service provider under sec-
2 tion 512 of title 17, United States Code.

3 (iv) TEXT OF NOTICE.—The Attorney
4 General shall prescribe the text of any no-
5 tice displayed to users or customers of a
6 service provider taking actions pursuant to
7 this subparagraph. Such text shall state
8 that an action is being taken pursuant to
9 a court order obtained by the Attorney
10 General.

11 (B) INTERNET SEARCH ENGINES.—A pro-
12 vider of an Internet search engine shall take
13 technically feasible and reasonable measures, as
14 expeditiously as possible, but in any case within
15 5 days after being served with a copy of the
16 order, or within such time as the court may
17 order, designed to prevent the foreign infringing
18 site that is subject to the order, or a portion of
19 such site specified in the order, from being
20 served as a direct hypertext link.

21 (C) PAYMENT NETWORK PROVIDERS.—

22 (i) PREVENTING AFFILIATION.—A
23 payment network provider shall take tech-
24 nically feasible and reasonable measures,
25 as expeditiously as possible, but in any

1 case within 5 days after being served with
2 a copy of the order, or within such time as
3 the court may order, designed to prevent,
4 prohibit, or suspend its service from com-
5 pleting payment transactions involving cus-
6 tomers located within the United States or
7 subject to the jurisdiction of the United
8 States and the payment account—

9 (I) which is used by the foreign
10 infringing site, or portion thereof, that
11 is subject to the order; and

12 (II) through which the payment
13 network provider would complete such
14 payment transactions.

15 (ii) NO DUTY TO MONITOR.—A pay-
16 ment network provider shall be considered
17 to be in compliance with clause (i) if it
18 takes action described in that clause with
19 respect to accounts it has as of the date on
20 which a copy of the order is served, or as
21 of the date on which the order is amended
22 under subsection (e).

23 (D) INTERNET ADVERTISING SERVICES.—

24 (i) REQUIRED ACTIONS.—An Internet
25 advertising service that contracts to pro-

1 vide advertising to or for the foreign in-
2 fringing site, or portion thereof, that is
3 subject to the order, or that knowingly
4 serves advertising to or for such site or
5 such portion thereof, shall take technically
6 feasible and reasonable measures, as expe-
7 ditiously as possible, but in any case within
8 5 days after being served with a copy of
9 the order, or within such time as the court
10 may order, designed to—

11 (I) prevent its service from pro-
12 viding advertisements to or relating to
13 the foreign infringing site that is sub-
14 ject to the order or a portion of such
15 site specified in the order;

16 (II) cease making available ad-
17 vertisements for the foreign infringing
18 site or such portion thereof, or paid or
19 sponsored search results, links, or
20 other placements that provide access
21 to such foreign infringing site or such
22 portion thereof; and

23 (III) cease providing or receiving
24 any compensation for advertising or
25 related services to, from, or in connec-

1 tion with such foreign infringing site
2 or such portion thereof.

3 (ii) NO DUTY TO MONITOR.—An inter-
4 net advertising service shall be considered
5 to be in compliance with clause (i) if it
6 takes action described in that clause with
7 respect to accounts it has as of the date on
8 which a copy of the order is served, or as
9 of the date on which the order is amended
10 under subsection (e).

11 (3) COMMUNICATION WITH USERS.—Except as
12 provided under paragraph (2)(A)(iv), an entity tak-
13 ing an action described in this subsection shall de-
14 termine the means to communicate such action to
15 the entity’s users or customers.

16 (4) ENFORCEMENT OF ORDERS.—

17 (A) IN GENERAL.—To ensure compliance
18 with orders issued pursuant to this section, the
19 Attorney General may bring an action for in-
20 junctive relief—

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

1 (ii) against any entity that knowingly
2 and willfully provides or offers to provide
3 a product or service designed or marketed
4 for the circumvention or bypassing of
5 measures described in paragraph (2) and
6 taken in response to a court order issued
7 pursuant to this subsection, to enjoin such
8 entity from interfering with the order by
9 continuing to provide or offer to provide
10 such product or service.

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

16 (C) DEFENSE.—A defendant in an action
17 under subparagraph (A)(i) may establish an af-
18 firmative defense by showing that the defendant
19 does not have the technical means to comply
20 with this subsection without incurring an un-
21 reasonable economic burden, or that the order
22 is not authorized by this subsection. Such show-
23 ing shall not be presumed to be a complete de-
24 fense but shall serve as a defense only for those
25 measures for which a technical limitation on

1 compliance is demonstrated or for such portions
2 of the order as are demonstrated to be unau-
3 thorized by this subsection.

4 (D) DEFINITION.—For purposes of this
5 paragraph, a product or service designed or
6 marketed for the circumvention or bypassing of
7 measures described in paragraph (2) and taken
8 in response to a court order issued pursuant to
9 this subsection includes a product or service
10 that is designed or marketed to enable a do-
11 main name described in such an order—

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

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

1 (5) IMMUNITY.—

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

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

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

19 (ii) any—

20 (I) actions taken by customers of
21 such entity to circumvent any restric-
22 tion on access to the foreign infring-
23 ing site, or portion thereof, that is
24 subject to such order, that is insti-
25 tuted pursuant to this subsection, or

1 (II) act, failure, or inability to re-
2 strict access to a foreign infringing
3 site, or portion thereof, that is subject
4 to such order, in spite of good faith
5 efforts to comply with such order by
6 such entity,
7 shall not be used by any person in any
8 claim or cause of action against such enti-
9 ty.

10 (d) MODIFICATION OR VACATION OF ORDERS.—

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

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

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

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

1 (D) any entity that has been served with
2 a copy of an order pursuant to subsection (c)
3 that requires such entity to take action pre-
4 scribed in that subsection.

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

7 (A) the foreign Internet site subject to the
8 order is no longer, or never was, a foreign in-
9 fringing site; or

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

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

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

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

8 (f) LAW ENFORCEMENT COORDINATION.—

9 (1) IN GENERAL.—The Attorney General shall
10 inform the Intellectual Property Enforcement Coord-
11 inator and the heads of appropriate law enforce-
12 ment agencies of all court orders issued under sub-
13 section (b), and all amended orders issued under
14 subsection (e), regarding foreign infringing sites.

15 (2) ALTERATIONS.—The Attorney General
16 shall, and the defendant may, inform the Intellectual
17 Property Enforcement Coordinator of the modifica-
18 tion, suspension, expiration, or vacation of a court
19 order issued under subsection (b) or an amended
20 order issued under subsection (e).

21 **SEC. 103. MARKET-BASED SYSTEM TO PROTECT U.S. CUS-**
22 **TOMERS AND PREVENT U.S. FUNDING OF**
23 **SITES DEDICATED TO THEFT OF U.S. PROP-**
24 **ERTY.**

25 (a) DEFINITIONS.—In this section:

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

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

7 (B) either—

8 (i) the U.S.-directed site is primarily
9 designed or operated for the purpose of,
10 has only limited purpose or use other than,
11 or is marketed by its operator or another
12 acting in concert with that operator for use
13 in, offering goods or services in a manner
14 that engages in, enables, or facilitates—

15 (I) a violation of section 501 of
16 title 17, United States Code;

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

19 (III) the sale, distribution, or
20 promotion of goods, services, or mate-
21 rials bearing a counterfeit mark, as
22 that term is defined in section 34(d)
23 of the Lanham Act or section 2320 of
24 title 18, United States Code; or

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

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

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

(2) QUALIFYING PLAINTIFF.—The term “qualifying plaintiff” means, with respect to a particular Internet site or portion thereof, a holder of an intellectual property right harmed by the activities described in paragraph (1) occurring on that Internet site or portion thereof.

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

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

13 (2) INTERNET ADVERTISING SERVICES.—Ex-
14 cept in the case of an effective counter notification
15 pursuant to paragraph (5), an Internet advertising
16 service that contracts with the operator of an Inter-
17 net site, or portion thereof, that is specified in a no-
18 tification delivered under paragraph (4), to provide
19 advertising to or for such site or portion thereof, or
20 that knowingly serves advertising to or for such site
21 or portion thereof, shall take technically feasible and
22 reasonable measures, as expeditiously as possible,
23 but in any case within 5 days after delivery the noti-
24 fication under paragraph (4), that are designed to—

1 (A) prevent its service from providing ad-
2 vertisements to or relating to the Internet site,
3 or portion thereof, that is specified in the notifi-
4 cation;

5 (B) cease making available advertisements
6 for such Internet site, or portion thereof, that
7 is specified in the notification, or paid or spon-
8 sored search results, links, or other placements
9 that provide access to such Internet site, or
10 portion thereof, that is specified in the notifica-
11 tion; and

12 (C) cease providing or receiving any com-
13 pensation for advertising or related services to,
14 from, or in connection with such Internet site,
15 or portion thereof, that is specified in the notifi-
16 cation.

17 (3) DESIGNATED AGENT.—

18 (A) IN GENERAL.—Each payment network
19 provider and each Internet advertising service
20 shall designate an agent to receive notifications
21 described in paragraph (4), by making available
22 through its service, including on its Web site in
23 a location accessible to the public, and by pro-
24 viding to the Copyright Office, substantially the
25 following:

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

3 (ii) Other contact information that the
4 Register of Copyrights considers appro-
5 priate.

6 (B) DIRECTORY OF AGENTS.—The Reg-
7 ister of Copyrights shall maintain and make
8 available to the public for inspection, including
9 through the Internet, in electronic format, a
10 current directory of agents designated under
11 subparagraph (A).

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

14 (A) REQUIREMENTS.—Subject to subpara-
15 graph (B), a notification under this paragraph
16 is effective only if it is a written communication
17 that is provided to the designated agent of a
18 payment network provider or an Internet adver-
19 tising service and includes substantially the fol-
20 lowing:

21 (i) A physical or electronic signature
22 of a person authorized to act on behalf of
23 the holder of an intellectual property right
24 harmed by the activities described in sub-
25 section (a)(1).

1 (ii) Identification of the Internet site,
2 or portion thereof, dedicated to theft of
3 U.S. property, including either the domain
4 name or Internet Protocol address of such
5 site, or both.

6 (iii) Identification of the specific facts
7 to support the claim that the Internet site,
8 or portion thereof, is dedicated to theft of
9 U.S. property and to clearly show that im-
10 mediate and irreparable injury, loss, or
11 damage will result to the holder of the in-
12 tellectual property right harmed by the ac-
13 tivities described in subsection (a)(1) in
14 the absence of timely action by the pay-
15 ment network provider or Internet adver-
16 tising service.

17 (iv) Information reasonably sufficient
18 to establish that the payment network pro-
19 vider or Internet advertising service is pro-
20 viding payment processing or Internet ad-
21 vertising services for such site.

22 (v) Information reasonably sufficient
23 to permit the payment network provider or
24 Internet advertising service to contact the
25 holder of the intellectual property right

1 harmed by the activities described in sub-
2 section (a)(1).

3 (vi) A statement that the holder of the
4 intellectual property right has a good faith
5 belief that the use of the owner's works or
6 goods in which the right exists, in the
7 manner described in the notification, is not
8 authorized by the holder, its agent, or law.

9 (vii) A statement that the information
10 in the notification is accurate, and, under
11 penalty of perjury, that the signatory is
12 authorized to act on behalf of the holder of
13 the intellectual property right harmed by
14 the activities described in subsection
15 (a)(1).

16 (viii) Identification of the evidence in-
17 dicating that the site (or portion thereof)
18 is a U.S.-directed site.

19 (B) SERVICE IF NO AGENT DESIGNATED.—
20 If a payment network provider or Internet ad-
21 vertising service has not designated an agent
22 under paragraph (3), the notification under
23 subparagraph (A) may be provided to any offi-
24 cer or legal representative of such provider or
25 service.

1 (C) NOTICE TO INTERNET SITE IDENTI-
2 FIED IN NOTIFICATION.—Upon receipt of an ef-
3 fective notification under this paragraph, a pay-
4 ment network provider or Internet advertising
5 service shall take appropriate steps to ensure
6 timely delivery of the notification to the Inter-
7 net site identified in the notification.

8 (5) COUNTER NOTIFICATION.—

9 (A) REQUIREMENTS.—Subject to subpara-
10 graph (B), a counter notification is effective
11 under this paragraph only if it is a written com-
12 munication that is provided to the designated
13 agent of a payment network provider or an
14 Internet advertising service and includes sub-
15 stantially the following:

16 (i) A physical or electronic signature
17 of the owner or operator of the Internet
18 site, or portion thereof, specified in a noti-
19 fication under paragraph (4) subject to
20 which action is to be taken by the payment
21 network provider or Internet advertising
22 service under paragraph (1) or (2), or of
23 the registrant of the domain name used by
24 such site or portion thereof.

1 (ii) In the case of an Internet site
2 specified in the notification under para-
3 graph (4) that is a foreign Internet site, a
4 statement that the owner or operator, or
5 registrant, consents to the jurisdiction of
6 the courts of the United States, and will
7 accept service of process from the person
8 who provided notification under paragraph
9 (4), or an agent of such person, for pur-
10 poses of adjudicating whether the site is an
11 Internet site dedicated to theft of U.S.
12 property under this section.

13 (iii) A statement under penalty of per-
14 jury that the owner or operator, or reg-
15 istrant, has a good faith belief that it does
16 not meet the criteria of an Internet site
17 dedicated to theft of U.S. property as set
18 forth under this section.

19 (iv) The name, address, email ad-
20 dress, and telephone number of the owner,
21 operator, or registrant.

22 (B) SERVICE IF NO AGENT DESIGNATED.—

23 If a payment network provider or Internet ad-
24 vertising service has not designated an agent
25 under paragraph (3), the counter notification

1 under subparagraph (A) may be provided to
2 any officer or legal representative of such pro-
3 vider or service.

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

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

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

12 shall be liable for damages, including costs and at-
13 torneys' fees, incurred by the person injured by such
14 misrepresentation as a result of the misrepresenta-
15 tion.

16 (c) LIMITED INJUNCTIVE RELIEF IN CASES OF
17 COUNTER NOTIFICATION.—

18 (1) IN PERSONAM.—If an effective counter noti-
19 fication is made under subsection (b)(5), or if a pay-
20 ment network provider fails to comply with sub-
21 section (b)(1), or an Internet advertising service fails
22 to comply with subsection (b)(2), pursuant to a noti-
23 fication under subsection (b)(4) in the absence of
24 such a counter notification, a qualifying plaintiff
25 may commence an in personam action against—

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

5 (B) an owner or operator of the Internet
6 site or portion thereof.

7 (2) IN REM.—If through due diligence a quali-
8 fying plaintiff who is authorized to bring an in per-
9 sonam action under paragraph (1) with respect to
10 an Internet site dedicated to theft of U.S. property
11 is unable to find a person described in subpara-
12 graphs (A) or (B) of paragraph (1), or no such per-
13 son found has an address within a judicial district
14 of the United States, the qualifying plaintiff may
15 commence an in rem action against that Internet
16 site or the domain name used by such site.

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

22 (A) to the registrant of the domain name
23 of the Internet site, or portion thereof, that is
24 the subject to the notification under subsection
25 (b)(4)—

1 (i) at the postal and electronic mail
2 addresses appearing in the applicable pub-
3 licly accessible database of registrations, if
4 any, and to the extent such addresses are
5 reasonably available; and

6 (ii) via the postal and electronic mail
7 addresses of the registrar, registry, or
8 other domain name registration authority
9 that registered or assigned the domain
10 name of the Internet site, or portion there-
11 of, to the extent such addresses are reason-
12 ably available;

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

15 (i) at the primary postal and elec-
16 tronic mail addresses for such owner or op-
17 erator that are provided on the Internet
18 site, or portion thereof, if any, and to the
19 extent such addresses are reasonably avail-
20 able; or

21 (ii) if there is no domain name of the
22 Internet site or portion thereof, via the
23 postal and electronic mail addresses of the
24 Internet Protocol allocation entity appear-
25 ing in the applicable publicly accessible

1 database of allocations and assignments, if
2 any, and to the extent such addresses are
3 reasonably available; or

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

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

11 (5) RELIEF.—On application of a qualifying
12 plaintiff following the commencement of an action
13 under this section with respect to an Internet site
14 dedicated to theft of U.S. property, the court may
15 issue a temporary restraining order, a preliminary
16 injunction, or an injunction, in accordance with rule
17 65 of the Federal Rules of Civil Procedure, against
18 a registrant of a domain name used by the Internet
19 site, or against an owner or operator of the Internet
20 site, or, in an action brought in rem under para-
21 graph (2), against the Internet site, or against the
22 domain name used by the Internet site, to cease and
23 desist from undertaking any further activity as an
24 Internet site dedicated to theft of U.S. property.

25 (d) ACTIONS BASED ON COURT ORDERS.—

1 (1) SERVICE AND RESPONSE.—

2 (A) SERVICE BY QUALIFYING PLAIN-
3 TIFF.—A qualifying plaintiff, with the prior ap-
4 proval of the court, may serve a copy of a court
5 order issued under subsection (c) on similarly
6 situated entities described in paragraph (2).
7 Proof of service shall be filed with the court.

8 (B) RESPONSE.—An entity served under
9 subparagraph (A) shall, not later than 7 days
10 after the date of such service, file with the
11 court a certification acknowledging receipt of a
12 copy of the order and stating that such entity
13 has complied or will comply with the obligations
14 imposed under paragraph (2), or explaining
15 why the entity will not so comply.

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

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

22 (A) PAYMENT NETWORK PROVIDERS.—

23 (i) PREVENTING AFFILIATION.—A
24 payment network provider shall take tech-
25 nically feasible and reasonable measures,

1 as expeditiously as possible, but in any
2 case within 5 days after being served with
3 a copy of the court order, or within such
4 time as the court may order, that are de-
5 signed to prevent, prohibit, or suspend its
6 service from completing payment trans-
7 actions involving customers located within
8 the United States or subject to the juris-
9 diction of the United States and any ac-
10 count—

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

14 (II) through which the payment
15 network provider would complete such
16 payment transactions.

17 (ii) NO DUTY TO MONITOR.—A pay-
18 ment network provider is in compliance
19 with clause (i) if it takes action described
20 in that clause with respect to accounts it
21 has as of the date of service of the order,
22 or as of the date of any subsequent notice
23 that its service is being used to complete
24 payment transactions described in clause
25 (i).

1 (B) INTERNET ADVERTISING SERVICES.—

2 (i) REQUIRED ACTIONS.—An Internet
3 advertising service that contracts with the
4 Internet site dedicated to theft of U.S.
5 property that is subject to the order to
6 provide advertising to or for such Internet
7 site, or that knowingly serves advertising
8 to or for such internet site, shall take tech-
9 nically feasible and reasonable measures,
10 as expeditiously as possible, but in any
11 case within 5 days after being served with
12 a copy of the order, or within such time as
13 the court may order, that are designed
14 to—

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

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

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

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

3 (ii) NO DUTY TO MONITOR.—An inter-
4 net advertising service is in compliance
5 with clause (i) if it takes action described
6 in that clause with respect to accounts it
7 has as of the date on which a copy of the
8 order is served, or as of the date of any
9 subsequent notice that its service is being
10 used for activities described in clause (i).

11 (3) COMMUNICATION WITH USERS.—An entity
12 taking an action described in this subsection shall
13 determine the means to communicate such action to
14 the entity's users or customers.

15 (4) ENFORCEMENT OF ORDERS.—

16 (A) RULE OF CONSTRUCTION.—The au-
17 thority under this subsection shall be the sole
18 legal remedy to enforce the obligations of any
19 entity under this subsection.

20 (B) PROCEDURES AND RELIEF.—

21 (i) SHOW CAUSE ORDER.—On a show-
22 ing by the qualifying plaintiff of probable
23 cause to believe that an entity served with
24 a copy of a court order issued under sub-
25 section (c) has not complied with its obli-

gations under this subsection by reason of such court order, the court shall require the entity to show cause why an order should not issue—

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

(II) to impose an appropriate monetary sanction, consistent with the court's exercise of its equitable authority, to enforce compliance with its lawful orders, if the entity—

(aa) has knowingly and willfully failed to file a certification required by paragraph (1)(B);

(bb) has filed such a certification agreeing to comply but has knowingly and willfully failed to do so; or

(cc) has knowingly and willfully certified falsely that compliance with the requirements of paragraph (2) is not required by law.

(ii) SERVICE OF PROCESS.—The order to show cause, and any other process, may

1 be served in any judicial district where the
2 entity resides or may be found.

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

16 (5) IMMUNITY.—

17 (A) IMMUNITY FROM SUIT.—Other than in
18 an action pursuant to paragraph (4), no cause
19 of action shall lie in any Federal or State court
20 or administrative agency against any entity
21 served with a copy of a court order issued
22 under subsection (c), or against any director,
23 officer, employee, or agent thereof, for any act
24 reasonably designed to comply with this sub-
25 section or reasonably arising from such order.

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

3 (i) any entity served with a copy of an
4 order under this subsection, and any direc-
5 tor, officer, employee, or agent thereof,
6 shall not be liable for any acts reasonably
7 designed to comply with this subsection or
8 reasonably arising from such order; and

9 (ii) any—

10 (I) actions taken by customers of
11 such entity to circumvent any restric-
12 tion on access to the Internet site, or
13 portion thereof that is subject to such
14 order, that is instituted pursuant to
15 this subsection, or

16 (II) act, failure, or inability to re-
17 strict access to an Internet site or
18 portion thereof that is subject to such
19 order, despite good faith efforts to
20 comply with such order by such enti-
21 ty,

22 shall not be used by any person in any
23 claim or cause of action against such enti-
24 ty.

25 (e) MODIFICATION OR VACATION OF ORDERS.—

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

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

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

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

15 (D) any entity that has been served with
16 a copy of an order under subsection (d), or an
17 amended order under subsection (f), that re-
18 quires such entity to take action prescribed in
19 that subsection.

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

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

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

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

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

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

24 (g) REPORTING OF ORDERS.—

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

5 (2) ALTERATIONS.—Upon the modification,
6 suspension, expiration, or vacation of a court order
7 issued under subsection (c) or an amended order
8 issued under subsection (f), the qualifying plaintiff
9 shall, and the defendant may, so inform the Intellec-
10 tual Property Enforcement Coordinator.

11 **SEC. 104. IMMUNITY FOR TAKING VOLUNTARY ACTION**
12 **AGAINST SITES DEDICATED TO THEFT OF U.S.**
13 **PROPERTY.**

14 No cause of action shall lie in any Federal or State
15 court or administrative agency against, no person may rely
16 in any claim or cause of action against, and no liability
17 for damages to any person shall be granted against, a
18 service provider, payment network provider, Internet ad-
19 vertising service, advertiser, Internet search engine, do-
20 main name registry, or domain name registrar for taking
21 any action described in section 102(c)(2), section
22 103(d)(2), or section 103(b) with respect to an Internet
23 site, or otherwise voluntarily blocking access to or ending
24 financial affiliation with an Internet site, in the reasonable
25 belief that—

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

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

6 **SEC. 105. IMMUNITY FOR TAKING VOLUNTARY ACTION**
7 **AGAINST SITES THAT ENDANGER PUBLIC**
8 **HEALTH.**

9 (a) REFUSAL OF SERVICE.—A service provider, pay-
10 ment network provider, Internet advertising service, ad-
11 vertiser, Internet search engine, domain name registry, or
12 domain name registrar, acting in good faith and based on
13 credible evidence, may stop providing or refuse to provide
14 services to an Internet site that endangers the public
15 health.

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

21 (c) DEFINITIONS.—In this section:

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

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

8 (A) offering, selling, dispensing, or distrib-
9 uting any prescription medication, and does so
10 regularly without a valid prescription; or

11 (B) offering, selling, dispensing, or distrib-
12 uting any prescription medication that is adul-
13 terated or misbranded.

14 (3) MISBRANDED.—the term “misbranded” has
15 the meaning given that term in section 502 of the
16 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
17 352).

18 (4) PRESCRIPTION MEDICATION.—

19 (A) PRESCRIPTION MEDICATION.—The
20 term “prescription medication” means a drug
21 that is subject to section 503(b) of the Federal
22 Food, Drug, and Cosmetic Act (21 U.S.C.
23 353(b)).

24 (B) DRUG.—The term “drug” has the
25 meaning given that term in section 201(g)(1) of

1 the Federal Food Drug, and Cosmetic Act (21
2 U.S.C. 321(g)(1)).

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

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

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

9 (1) provide appropriate resources and proce-
10 dures for case management and development to ef-
11 fect timely disposition of actions brought under this
12 title;

13 (2) develop a deconfliction process in consulta-
14 tion with appropriate law enforcement agencies, in-
15 cluding U.S. Immigration and Customs Enforce-
16 ment, to coordinate enforcement activities under this
17 title;

18 (3) publish procedures developed in consultation
19 with appropriate law enforcement agencies, including
20 U.S. Immigration and Customs Enforcement, to re-
21 ceive information from the public relevant to the en-
22 forcement of this title; and

23 (4) provide guidance to intellectual property
24 rights holders about what information such rights
25 holders should provide to assist in initiating an in-

1 investigation or to supplement an ongoing investiga-
2 tion pursuant to this title.

3 (b) STUDY.—

4 (1) NATURE OF STUDY.—The Register of Copy-
5 rights, in consultation with appropriate departments
6 and agencies of the United States and other stake-
7 holders, shall conduct a study on the enforcement
8 and effectiveness of this title and on any need to
9 amend the provisions of this title to adapt to emerg-
10 ing technologies.

11 (2) REPORTS TO CONGRESS.—Not later than 2
12 years after the date of the enactment of this Act, the
13 Register of Copyrights shall submit to the Commit-
14 tees on the Judiciary of the House of Representa-
15 tives and the Senate a report containing the results
16 of the study conducted under this subsection and
17 any recommendations that the Register may have as
18 a result of the study.

19 **SEC. 107. DENYING U.S. CAPITAL TO NOTORIOUS FOREIGN**
20 **INFRINGERS.**

21 (a) IDENTIFICATION AND RECOMMENDATIONS RE-
22 GARDING NOTORIOUS FOREIGN INFRINGERS.—

23 (1) IN GENERAL.—Using existing resources, the
24 Intellectual Property Enforcement Coordinator, in
25 consultation with the Secretaries of Treasury and

1 Commerce, the United States Trade Representative,
2 the Chairman of the Securities and Exchange Com-
3 mission, and the heads of other departments and ap-
4 propriate agencies, shall identify and conduct an
5 analysis of notorious foreign infringers whose activi-
6 ties cause significant harm to holders of intellectual
7 property rights in the United States.

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

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

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

24 (2) An analysis of the significant harm inflicted
25 by notorious foreign infringers on consumers, busi-

1 nesses, and intellectual property industries in the
2 United States and abroad.

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

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

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

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

21 (B) whether the United States Government
22 should initiate a process to identify and des-
23 ignate foreign entities from a list of notorious
24 foreign infringers that would be prohibited from
25 raising capital in the United States.

1 **TITLE II—ADDITIONAL EN-**
2 **HANCEMENTS TO COMBAT IN-**
3 **TELLECTUAL PROPERTY**
4 **THEFT**

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

7 (a) TITLE 17 AMENDMENTS.—Section 506(a) of title
8 17, United States Code, is amended to read as follows:

9 “(a) CRIMINAL INFRINGEMENT.—

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

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

16 “(B) by the reproduction or distribution,
17 including by electronic means, during any 180-
18 day period, of 1 or more copies or phonorecords
19 of 1 or more copyrighted works, or by the pub-
20 lic performance by means of digital trans-
21 mission, during any 180-day period, of 1 or
22 more copyrighted works, when the total retail
23 value of the copies or phonorecords, or of the
24 public performances, is more than \$1,000; or

1 “(C) by the distribution or public perform-
2 ance of a work being prepared for commercial
3 dissemination, by making it available on a com-
4 puter network accessible to members of the
5 public, if such person knew or should have
6 known that the work was intended for commer-
7 cial dissemination.

8 “(2) EVIDENCE.—For purposes of this sub-
9 section, evidence of reproduction, distribution, or
10 public performance of a copyrighted work, by itself,
11 shall not be sufficient to establish willful infringe-
12 ment of a copyright.

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

16 “(A) a computer program, a musical work,
17 a motion picture or other audiovisual work, or
18 a sound recording, if, at the time of unauthor-
19 ized distribution or public performance—

20 “(i)(I) the copyright owner has a rea-
21 sonable expectation of commercial distribu-
22 tion; and

23 “(II) the copies or phonorecords of
24 the work have not been commercially dis-
25 tributed in the United States by or with

1 the authorization of the copyright owner;
2 or

3 “(ii)(I) the copyright owner does not
4 intend to offer copies of the work for com-
5 mercial distribution but has a reasonable
6 expectation of other forms of commercial
7 dissemination of the work; and

8 “(II) the work has not been commer-
9 cially disseminated to the public in the
10 United States by or with the authorization
11 of the copyright owner;

12 “(B) a motion picture, if, at the time of
13 unauthorized distribution or public perform-
14 ance, the motion picture—

15 “(i)(I) has been made available for
16 viewing in a motion picture exhibition facil-
17 ity; and

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

24 “(ii) had not been commercially dis-
25 seminated to the public in the United

1 States by or with the authorization of the
2 copyright owner more than 24 hours before
3 the unauthorized distribution or public per-
4 formance.”.

5 (b) TITLE 18 AMENDMENTS.—Section 2319 of title
6 18, United States Code, is amended—

7 (1) in subsection (b)(1), by striking “during
8 any 180-day period” and all that follows and insert
9 “of at least 10 copies or phonorecords, or of at least
10 10 public performances by means of digital trans-
11 mission, of 1 or more copyrighted works, during any
12 180-day period, which have a total retail value of
13 more than \$2,500;”;

14 (2) in subsection (c)—

15 (A) in paragraph (1), by striking “of 10 or
16 more copies or phonorecords” and all that fol-
17 lows and inserting “including by electronic
18 means, of at least 10 copies or phonorecords, or
19 of at least 10 public performances by means of
20 digital transmission, of 1 or more copyrighted
21 works, during any 180-day period, which have
22 a total retail value of more than \$2,500;” and

23 (B) in paragraph (3), by striking “if the
24 offense” and all that follows and inserting “in
25 any other case;”;

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

5 (4) in subsection (f)—

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

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

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

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

17 (5) by adding at the end the following new sub-
18 section:

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

22 “(1) the total retail price that persons receiving
23 the reproductions, distributions, or public perform-
24 ances constituting the offense would have paid to re-

1 ceive such reproductions, distributions, or public per-
2 formances lawfully;

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

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

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

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

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

5 (1) Subsection (a) is amended to read as fol-
6 lows:

7 “(1) IN GENERAL.—

8 “(A) OFFENSES.—Whoever—

9 “(i) intentionally traffics or attempts
10 to traffic in goods or services and know-
11 ingly uses a counterfeit mark on or in con-
12 nection with such goods or services,

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

22 “(iii) intentionally imports, exports, or
23 traffics in counterfeit drugs or inten-
24 tionally participates in or knowingly aids
25 drug counterfeiting,

1 shall, if an individual, be fined not more than
2 \$2,000,000 or imprisoned not more than 10
3 years, or both, and, if a person other than an
4 individual, be fined not more than \$5,000,000.

5 “(B) SUBSEQUENT OFFENSES.—In the
6 case of an offense by a person under this para-
7 graph that occurs after that person is convicted
8 of another offense under this paragraph, the
9 person convicted, if an individual, shall be fined
10 not more than \$5,000,000 or imprisoned not
11 more than 20 years, or both, and if other than
12 an individual, shall be fined not more than
13 \$15,000,000.

14 “(2) SERIOUS BODILY HARM OR DEATH.—

15 “(A) SERIOUS BODILY HARM.—If the of-
16 fender knowingly or recklessly causes or at-
17 tempts to cause serious bodily injury from con-
18 duct in violation of paragraph (1), the penalty
19 shall be, for an individual, a fine of not more
20 than \$5,000,000 or imprisonment for any term
21 of years or for life, or both, and for other than
22 an individual, a fine of not more than
23 \$15,000,000.

24 “(B) DEATH.—If the offender knowingly
25 or recklessly causes or attempts to cause death

1 from conduct in violation of paragraph (1), the
2 penalty shall be, for an individual, a fine of not
3 more than \$5,000,000 or imprisonment for any
4 term of years or for life, or both, and for other
5 than an individual, a fine of not more than
6 \$15,000,000.

7 “(3) MILITARY GOODS OR SERVICES.—

8 “(A) IN GENERAL.—A person who com-
9 mits an offense under paragraph (1) shall be
10 punished in accordance with subparagraph (B)
11 if—

12 “(i) the offense involved a good or
13 service described in paragraph (1) that if
14 it malfunctioned, failed, or was com-
15 promised, could reasonably be foreseen to
16 cause—

17 “(I) serious bodily injury or
18 death;

19 “(II) disclosure of classified in-
20 formation;

21 “(III) impairment of combat op-
22 erations; or

23 “(IV) other significant harm—

24 “(aa) to a member—

1 “(AA) of the Armed
2 Forces; or

3 “(BB) of a Federal,
4 State, or local law enforce-
5 ment agency; or

6 “(bb) to national security or
7 critical infrastructure; and

8 “(ii) the person had knowledge that
9 the good or service is falsely identified as
10 meeting military standards or is intended
11 for use in a military or national security
12 application, or a law enforcement or crit-
13 ical infrastructure application.

14 “(B) PENALTIES.—

15 “(i) INDIVIDUAL.—An individual who
16 commits an offense described in subpara-
17 graph (A) shall be fined not more than
18 \$5,000,000, imprisoned for not more than
19 20 years, or both.

20 “(ii) PERSON OTHER THAN AN INDIVIDUAL.—A person other than an indi-
21 vidual that commits an offense described in
22 subparagraph (A) shall be fined not more
23 than \$15,000,000.

24 “(C) SUBSEQUENT OFFENSES.—
25

1 “(i) INDIVIDUAL.—An individual who
 2 commits an offense described in subpara-
 3 graph (A) after the individual is convicted
 4 of an offense under subparagraph (A) shall
 5 be fined not more than \$15,000,000, im-
 6 prisoned not more than 30 years, or both.

7 “(ii) PERSON OTHER THAN AN INDI-
 8 VIDUAL.—A person other than an indi-
 9 vidual that commits an offense described in
 10 subparagraph (A) after the person is con-
 11 victed of an offense under subparagraph
 12 (A) shall be fined not more than
 13 \$30,000,000.”.

14 (2) Subsection (e) is amended—

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

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

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

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

22 “(5) the term ‘counterfeit drug’ has the mean-
 23 ing given that term in section 201(g)(2) of the Fed-
 24 eral Food Drug, and Cosmetic Act (21 U.S.C.
 25 321(g)(2));

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

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

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

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

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

19 “(A) during the performance of the official
20 duties of the Armed Forces of the United
21 States or the reserve components of the Armed
22 Forces; or

23 “(B) by the United States to perform or
24 directly support—

25 “(i) combat operations; or

1 “(ii) critical national defense or na-
 2 tional security functions; and

3 “(11) the term ‘use in a law enforcement or
 4 critical infrastructure application’ means the use of
 5 a good or service, independently, in conjunction
 6 with, or as a component of, another good or service
 7 by a person who is directly engaged in—

8 “(A) Federal, State, or local law enforce-
 9 ment; or

10 “(B) an official function pertaining to crit-
 11 ical infrastructure.”.

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

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

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

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

22 (b) FOR OFFENSES COMMITTED BY ORGANIZA-
 23 TIONS.—Section 1831(b) of such title is amended by strik-
 24 ing “\$10,000,000” and inserting “not more than the
 25 greater of \$10,000,000 or 3 times the value of the stolen

1 trade secret to the organization (including expenses for re-
2 search and design or other costs of reproducing the trade
3 secret that the organization has thereby avoided)’’.

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

5 Not later than 180 days after the date of the enact-
6 ment of this Act, pursuant to its authority under section
7 994(p) of title 28, United States Code, the United States
8 Sentencing Commission shall—

9 (1) review, and if appropriate, amend Federal
10 Sentencing Guidelines and policy statements applica-
11 ble to persons convicted of—

12 (A) intellectual property offenses;

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

15 (C) an offense under section 1831 of title
16 18, United States Code;

17 (2) in carrying out such review, consider
18 amending such Guidelines and policy statements
19 to—

20 (A) apply an appropriate offense level en-
21 hancement for intellectual property offenses
22 committed in connection with an organized
23 criminal enterprise;

1 (B) apply an appropriate offense level en-
2 hancement to the simple misappropriation of a
3 trade secret;

4 (C) apply an additional appropriate offense
5 level enhancement if the defendant transmits or
6 attempts to transmit the stolen trade secret
7 outside of the United States and an additional
8 appropriate enhancement if the defendant in-
9 stead commits economic espionage;

10 (D) provide that when a defendant trans-
11 mits trade secrets outside of the United States
12 or commits economic espionage, that the de-
13 fendant should face a minimum offense level;

14 (E) provide for an offense level enhance-
15 ment for Guidelines relating to the theft of
16 trade secrets and economic espionage, including
17 trade secrets transferred or attempted to be
18 transferred outside of the United States;

19 (F) apply an appropriate offense level en-
20 hancement and minimum offense level for of-
21 fenses under section 2320(a) of title 18, United
22 States Code, that involve a product intended for
23 use in a military or national security applica-
24 tion, or a law enforcement or critical infrastruc-
25 ture application;

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

5 (i) the serious nature of the offenses
6 described in section 2320(a) of title 18,
7 United States Code;

8 (ii) the need for an effective deterrent
9 and appropriate punishment to prevent of-
10 fenses under section 2320(a) of title 18,
11 United States Code; and

12 (iii) the effectiveness of incarceration
13 in furthering the objectives described in
14 clauses (i) and (ii); and

15 (H) ensure reasonable consistency with
16 other relevant directives and Guidelines and
17 Federal statutes;

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

21 (4) make such conforming amendments to the
22 Federal Sentencing Guidelines as the Commission
23 determines necessary to achieve consistency with
24 other Guideline provisions and applicable law; and

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

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

8 **ABROAD.**

9 (a) RESOURCES TO PROTECT INTELLECTUAL PROP-
10 PERTY RIGHTS.—

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

19 (2) DEDICATION OF RESOURCES.—The Sec-
20 retary of State and the Secretary of Commerce, in
21 consultation with the Register of Copyrights, and
22 the heads of other appropriate departments and
23 agencies, shall ensure that adequate resources are
24 available at the United States embassy or diplomatic
25 mission (as the case may be) in any country that is

1 identified under section 182(a)(1) of the Trade Act
2 of 1974 (19 U.S.C. 2242(a)(1)) to ensure—

3 (A) aggressive support for enforcement ac-
4 tion against violations of the intellectual prop-
5 erty rights of United States persons in such
6 country;

7 (B) cooperation with and support for the
8 host government's efforts to conform its appli-
9 cable laws, regulations, practices, and processes
10 to enable the host government to honor its
11 international and bilateral obligations with re-
12 spect to the protection of intellectual property
13 rights;

14 (C) consistency with the policy and coun-
15 try-specific priorities set forth in the most re-
16 cent report of USTR under such section
17 182(a)(1); and

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

22 (b) NEW APPOINTMENTS.—

23 (1) APPOINTMENTS AND ADMINISTRATION.—

24 The Secretary of State and the Secretary of Com-
25 merce, in consultation with the Register of Copy-

1 rights, shall appoint at least one intellectual prop-
2 erty attaché to be assigned to the United States em-
3 bassy or diplomatic mission (as the case may be) in
4 a country in each geographic region covered by a re-
5 gional bureau of the Department of State. The Di-
6 rector of the Patent and Trademark Office shall
7 maintain authority over hiring, personnel ratings,
8 and objectives for the attachés, in consultation with
9 the Secretary of State. Depending on experience and
10 expertise, intellectual property attachés shall be des-
11 ignated as the diplomatic rank in-mission of First
12 Secretary or Counselor.

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

15 (A) Africa.

16 (B) Europe and Eurasia.

17 (C) East Asia and the Pacific.

18 (D) The Near East.

19 (E) South and Central Asia and the Pa-
20 cific.

21 (F) The Western Hemisphere.

22 (3) DUTIES.—The intellectual property attachés
23 appointed under this subsection shall focus primarily
24 on intellectual property matters, including the devel-
25 opment, protection, and enforcement of applicable

1 law. Each intellectual property attaché shall work, in
2 accordance with guidance from the Director, and in
3 coordination with appropriate staff at the Depart-
4 ments of Commerce and State and the Copyright
5 Office, to advance the policy goals and priorities of
6 the United States Government. Those policy goals
7 and priorities shall be consistent with USTR's re-
8 ports under section 182(a)(1) of the Trade Act of
9 1974. The intellectual property attachés shall work
10 with United States holders of intellectual property
11 rights and industry to address intellectual property
12 rights violations in the countries where the attachés
13 are assigned.

14 (c) PRIORITY ASSIGNMENTS.—

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

1 may otherwise be harmed by violations of intellectual
2 property rights in those countries.

3 (2) ASSIGNMENTS TO PRIORITY COUNTRIES.—

4 In carrying out paragraph (1), the Secretary of
5 State and the Secretary of Commerce shall consider
6 assigning intellectual property attachés—

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

10 (B) to countries of critical economic impor-
11 tance to the advancement of United States in-
12 tellectual property rights and interests.

13 (d) TRAINING.—The Secretary of State and the Sec-
14 retary of Commerce shall ensure that each intellectual
15 property attaché appointed under subsection (b) is fully
16 trained for the responsibilities of the position before as-
17 suming duties at the United States embassy or diplomatic
18 mission to which the attaché is assigned.

19 (e) COORDINATION.—The activities of intellectual
20 property attachés under this section shall be determined
21 in consultation with the Intellectual Property Enforcement
22 Coordinator. The Director shall assist in coordinating the
23 policy priorities and activities of the intellectual property
24 attachés and oversee administrative and personnel mat-
25 ters.

1 (f) TRAINING AND TECHNICAL ASSISTANCE.—

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

11 (2) ROLE OF IPEC.—Such training and tech-
12 nical assistance programs shall be carried out in
13 consultation with the Intellectual Property Enforce-
14 ment Coordinator. The Director shall assist in co-
15 ordinating the training and technical assistance pro-
16 grams conducted by intellectual property attachés.

17 (g) ACTIVITIES IN OTHER COUNTRIES.—In the case
18 of countries that are not identified under section
19 182(a)(1) of the Trade Act of 1974, the activities of Fed-
20 eral departments and agencies with respect to intellectual
21 property rights in those countries, intellectual property
22 programs and outreach of the United States Government
23 in those countries, and training and technical assistance
24 programs of the United States Government relating to in-
25 tellectual property in those countries may be conducted

1 to the extent they are consistent with compelling commer-
2 cial or foreign policy interests of the United States.

3 (h) REPORTS TO CONGRESS.—The Intellectual Prop-
4 erty Enforcement Coordinator shall include in the annual
5 report submitted under section 314 of the Prioritizing Re-
6 sources and Organization for Intellectual Property Act of
7 2008 (15 U.S.C. 8114) on the activities of the advisory
8 committee established under section 301 of that Act (15
9 U.S.C. 8111) information on the appointment, designation
10 for assignment, and activities of all intellectual property
11 attachés of any Federal department or agency who are
12 serving abroad.

13 (i) DEFINITIONS.—In this section:

14 (1) DIRECTOR.—The terms “Director of the
15 Patent and Trademark Office” and “Director” mean
16 the Under Secretary for Intellectual Property and
17 Director of the United States Patent and Trade-
18 mark Office.

19 (2) INTELLECTUAL PROPERTY ENFORCE-
20 MENT.—The term “intellectual property enforce-
21 ment” has the meaning given that term in section
22 302 of the Prioritizing Resources and Organization
23 for Intellectual Property Act of 2008 (15 U.S.C.
24 8112).

1 (3) INTELLECTUAL PROPERTY ENFORCEMENT
2 COORDINATOR.—The term “Intellectual Property
3 Enforcement Coordinator” means the Intellectual
4 Property Enforcement Coordinator appointed under
5 section 301 of the Prioritizing Resources and Orga-
6 nization for Intellectual Property Act of 2008 (15
7 U.S.C. 8111).

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

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

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

16 (A) any United States resident or national;

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

21 (C) any foreign subsidiary or affiliate (in-
22 cluding any permanent foreign establishment)
23 of any corporation, partnership, business entity,
24 or organization described in subparagraph (B),

1 that is controlled in fact by such corporation,
2 partnership, business entity, or organization.

3 (j) AUTHORIZATION OF APPROPRIATIONS.—The Sec-
4 retary of State and the Secretary of Commerce shall pro-
5 vide for the training and support of the intellectual prop-
6 erty attachés appointed under subsection (b) using exist-
7 ing resources.

○