I

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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Savings and severability clauses.

TITLE I—COMBATING ONLINE PIRACY

Sec. 101. Definitions.
Sec. 102. Action by Attorney General to protect U.S. customers and prevent U.S. support of foreign infringing sites.
Sec. 103. 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.

SEC. 2. SAVINGS AND SEVERABILITY CLAUSES.

(a) SAVINGS CLAUSES.—

(1) FIRST AMENDMENT.—Nothing in this Act shall be construed to impose a prior restraint on free speech or the press protected under the 1st Amendment to the Constitution.

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

(b) SEVERABILITY.—If any provision of this Act, or the application of the provision to any person or circumstance, is held to be unconstitutional, the other provi-

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

TITLE I—COMBATING ONLINE PIRACY

SEC. 101. DEFINITIONS.

In this title:

(1) DOMAIN NAME.—The term ''domain name'' has the meaning given that term in section 45 of the Lanham Act (15 U.S.C. 1127) and includes any subdomain designation using such domain name as part of an electronic address on the Internet to identify a unique online location.

(2) DOMAIN NAME SYSTEM SERVER.—The term ''domain name system server'' means a server or other mechanism used to provide the Internet protocol address associated with a domain name.

(3) DOMESTIC DOMAIN NAME.—The term ''domestic domain name'' means a domain name that is registered or assigned by a domain name registrar, domain name registry, or other domain name registration authority, that is located within a judicial district of the United States.

(4) DOMESTIC INTERNET PROTOCOL ADDRESS.—The term ''domestic Internet Protocol address'' means an Internet Protocol address for which

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

(5) DOMESTIC INTERNET SITE.—The term ''domestic Internet site'' means an Internet site for which the corresponding domain name or, if there is no domain name, the corresponding Internet Protocol address, is a domestic domain name or domestic Internet Protocol address.

(6) FOREIGN DOMAIN NAME.—The term ''foreign domain name'' means a domain name that is not a domestic domain name.

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

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

(9) INCLUDING.—The term ''including'' means including, but not limited to.

(10) INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR.—The term ''Intellectual Property Enforcement Coordinator'' means the Intellectual Property Enforcement Coordinator appointed under

section 301 of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (15 U.S.C. 8111).

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

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

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

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

(15) INTERNET PROTOCOL ALLOCATION ENTITY.—The term ''Internet Protocol allocation entity'' means, with respect to a particular Internet Protocol address, the entity, local internet registry, or regional internet registry to which the smallest applicable block of Internet Protocol addresses containing that address is allocated or assigned by a local internet registry, regional internet registry, or other Internet Protocol address allocation authority, according to the applicable publicly available database of allocations and assignments, if any.

(16) INTERNET SEARCH ENGINE.—The term ''Internet search engine'' means a service made available via the Internet that searches, crawls, categorizes, or indexes information or Web sites available elsewhere on the Internet and on the basis of a user query or selection that consists of terms, concepts, categories, questions, or other data returns to the user a means, such as a hyperlinked list of Uniform Resource Locators, of locating, viewing, or downloading such information or data available on the Internet relating to such query or selection.

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

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

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

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

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

(21) PAYMENT NETWORK PROVIDER.—

(A) IN GENERAL.—The term ''payment network provider'' means an entity that directly

or indirectly provides the proprietary services, infrastructure, and software to effect or facilitate a debit, credit, or other payment transaction.

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

(22) SERVICE PROVIDER.—The term ''service provider'' means a service provider as defined in section 512(k)(1) of title 17, United States Code, that operates a nonauthoritative domain name system server.

(23) U.S.-DIRECTED SITE.—The term ''U.S.-directed site'' means an Internet site or portion thereof that is used to conduct business directed to residents of the United States, or that otherwise demonstrates the existence of minimum contacts sufficient for the exercise of personal jurisdiction over the owner or operator of the Internet site consistent

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

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

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

(i) such goods and services,

(ii) access to such goods and services, or

(iii) delivery of such goods and services,

to users located in the United States;

(C) the Internet site or portion thereof does not contain reasonable measures to prevent such goods and services from being obtained in or delivered to the United States; and

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

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

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

(a) DEFINITION.—For purposes of this section, a foreign Internet site or portion thereof is a ''foreign infringing site'' if—

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

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

(3) the Internet site would, by reason of acts described in paragraph (1), be subject to seizure in the United States in an action brought by the Attorney General if such site were a domestic Internet site.

(b) ACTION BY THE ATTORNEY GENERAL.—

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

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

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

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

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

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

(i) at the postal and electronic mail addresses appearing in the applicable publicly accessible database of registrations, if any, and to the extent such addresses are reasonably available; and

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

(B) to the owner or operator of the Internet site—

(i) at the primary postal and electronic mail addresses for such owner or operator that is provided on the Internet site, if any, and to the extent such addresses are reasonably available; or

(ii) if there is no domain name of the Internet site, via the postal and electronic mail addresses of the Internet Protocol allocation entity appearing in the applicable publicly accessible database of allocations and assignments, if any, and to the extent such addresses are reasonably available; or

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

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

(5) RELIEF.—On application of the Attorney General following the commencement of an action under this section, the court may issue a temporary restraining order, a preliminary injunction, or an in-

junction, in accordance with rule 65 of the Federal Rules of Civil Procedure, against a registrant of a domain name used by the foreign infringing site or an owner or operator of the foreign infringing site or, in an action brought in rem under paragraph (2), against the foreign infringing site or a portion of such site, or the domain name used by such site, to cease and desist from undertaking any further activity as a foreign infringing site.

(c) ACTIONS BASED ON COURT ORDERS.—

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

(2) REASONABLE MEASURES.—After being served with a copy of an order pursuant to this subsection, the following shall apply:

(A) SERVICE PROVIDERS.—

(i) IN GENERAL.—A service provider shall take technically feasible and reasonable measures designed to prevent access by its subscribers located within the United States to the foreign infringing site

(or portion thereof) that is subject to the order, including measures designed to prevent the domain name of the foreign infringing site (or portion thereof) from resolving to that domain name's Internet Protocol address. Such actions shall be taken as expeditiously as possible, but in any case within 5 days after being served with a copy of the order, or within such time as the court may order.

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

(I) other than as directed under this subparagraph, to modify its network, software, systems, or facilities;

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

(III) to continue to prevent access to a domain name to which access has been effectively disabled by other means.

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

the liability of a service provider under section 512 of title 17, United States Code.

(iv) TEXT OF NOTICE.—The Attorney General shall prescribe the text of any notice displayed to users or customers of a service provider taking actions pursuant to this subparagraph. Such text shall state that an action is being taken pursuant to a court order obtained by the Attorney General.

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

(C) PAYMENT NETWORK PROVIDERS.—

(i) PREVENTING AFFILIATION.—A payment network provider shall take technically feasible and reasonable measures, as expeditiously as possible, but in any

case within 5 days after being served with a copy of the order, or within such time as the court may order, designed to prevent, prohibit, or suspend its service from completing payment transactions involving customers located within the United States or subject to the jurisdiction of the United States and the payment account—

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

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

(ii) NO DUTY TO MONITOR.—A payment network provider shall be considered to be in compliance with clause (i) if it takes action described in that clause with respect to accounts it has as of the date on which a copy of the order is served, or as of the date on which the order is amended under subsection (e).

(D) INTERNET ADVERTISING SERVICES.—

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

vide advertising to or for the foreign infringing site, or portion thereof, that is subject to the order, or that knowingly serves advertising to or for such site or such portion thereof, shall take technically feasible and reasonable measures, as expeditiously as possible, but in any case within 5 days after being served with a copy of the order, or within such time as the court may order, designed to—

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

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

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

tion with such foreign infringing site or such portion thereof.

(ii) NO DUTY TO MONITOR.—An internet advertising service shall be considered to be in compliance with clause (i) if it takes action described in that clause with respect to accounts it has as of the date on which a copy of the order is served, or as of the date on which the order is amended under subsection (e).

(3) COMMUNICATION WITH USERS.—Except as provided under paragraph (2)(A)(iv), an entity taking an action described in this subsection shall determine the means to communicate such action to the entity's users or customers.

(4) ENFORCEMENT OF ORDERS.—

(A) IN GENERAL.—To ensure compliance with orders issued pursuant to this section, the Attorney General may bring an action for injunctive relief—

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

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

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

(C) DEFENSE.—A defendant in an action under subparagraph (A)(i) may establish an affirmative defense by showing that the defendant does not have the technical means to comply with this subsection without incurring an unreasonable economic burden, or that the order is not authorized by this subsection. Such showing shall not be presumed to be a complete defense but shall serve as a defense only for those measures for which a technical limitation on

compliance is demonstrated or for such portions of the order as are demonstrated to be unauthorized by this subsection.

(D) DEFINITION.—For purposes of this paragraph, a product or service designed or marketed for the circumvention or bypassing of measures described in paragraph (2) and taken in response to a court order issued pursuant to this subsection includes a product or service that is designed or marketed to enable a domain name described in such an order—

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

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

(5) IMMUNITY.—

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

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

(i) any entity served with a copy of an order under this subsection, and any director, officer, employee, or agent thereof, shall not be liable for any act reasonably designed to comply with this subsection or reasonably arising from such order; and

(ii) any—

(I) actions taken by customers of such entity to circumvent any restriction on access to the foreign infringing site, or portion thereof, that is subject to such order, that is instituted pursuant to this subsection, or

(II) act, failure, or inability to restrict access to a foreign infringing site, or portion thereof, that is subject to such order, in spite of good faith efforts to comply with such order by such entity,

shall not be used by any person in any claim or cause of action against such entity.

(d) MODIFICATION OR VACATION OF ORDERS.—

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

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

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

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

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

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

(A) the foreign Internet site subject to the order is no longer, or never was, a foreign infringing site; or

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

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

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

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

(f) LAW ENFORCEMENT COORDINATION.—

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

(2) ALTERATIONS.—The Attorney General shall, and the defendant may, inform the Intellectual Property Enforcement Coordinator of the modification, suspension, expiration, or vacation of a court order issued under subsection (b) or an amended order issued under subsection (e).

SEC. 103. MARKET-BASED SYSTEM TO PROTECT U.S. CUSTOMERS AND PREVENT U.S. FUNDING OF SITES DEDICATED TO THEFT OF U.S. PROPERTY.

(a) DEFINITIONS.—In this section:

(1) DEDICATED TO THEFT OF U.S. PROPERTY.—An ''Internet site is dedicated to theft of U.S. property'' if—

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

(B) either—

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

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

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

(III) the sale, distribution, or promotion of goods, services, or materials bearing a counterfeit mark, as that term is defined in section 34(d) of the Lanham Act or section 2320 of 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) PAYMENT NETWORK PROVIDERS.—Except in the case of an effective counter notification pursuant to paragraph (5), a payment network provider shall take technically feasible and reasonable measures, as expeditiously as possible, but in any case within 5 days after delivery of a notification under paragraph (4), that are designed to prevent, prohibit, or suspend its service from completing payment transactions involving customers located within the United States and the Internet site, or portion thereof, that is specified in the notification under paragraph (4).

(2) INTERNET ADVERTISING SERVICES.—Except in the case of an effective counter notification pursuant to paragraph (5), an Internet advertising service that contracts with the operator of an Internet site, or portion thereof, that is specified in a notification delivered under paragraph (4), to provide advertising to or for such site or portion thereof, or that knowingly serves advertising to or for such site or portion thereof, shall take technically feasible and reasonable measures, as expeditiously as possible, but in any case within 5 days after delivery the notification under paragraph (4), that are designed to—

(A) prevent its service from providing advertisements to or relating to the Internet site, or portion thereof, that is specified in the notification;

(B) cease making available advertisements for such Internet site, or portion thereof, that is specified in the notification, or paid or sponsored search results, links, or other placements that provide access to such Internet site, or portion thereof, that is specified in the notification; and

(C) cease providing or receiving any compensation for advertising or related services to, from, or in connection with such Internet site, or portion thereof, that is specified in the notification.

(3) DESIGNATED AGENT.—

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

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

(ii) Other contact information that the Register of Copyrights considers appropriate.

(B) DIRECTORY OF AGENTS.—The Register of Copyrights shall maintain and make available to the public for inspection, including through the Internet, in electronic format, a current directory of agents designated under subparagraph (A).

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

(A) REQUIREMENTS.—Subject to subparagraph (B), a notification under this paragraph is effective only if it is a written communication that is provided to the designated agent of a payment network provider or an Internet advertising service and includes substantially the following:

(i) A physical or electronic signature of a person authorized to act on behalf of the holder of an intellectual property right harmed by the activities described in subsection (a)(1).

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

(iii) Identification of the specific facts to support the claim that the Internet site, or portion thereof, is dedicated to theft of U.S. property and to clearly show that immediate and irreparable injury, loss, or damage will result to the holder of the intellectual property right harmed by the activities described in subsection (a)(1) in the absence of timely action by the payment network provider or Internet advertising service.

(iv) Information reasonably sufficient to establish that the payment network provider or Internet advertising service is providing payment processing or Internet advertising services for such site.

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

harmed by the activities described in subsection (a)(1).

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

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

(viii) Identification of the evidence indicating that the site (or portion thereof) is a U.S.-directed site.

(B) SERVICE IF NO AGENT DESIGNATED.—If a payment network provider or Internet advertising service has not designated an agent under paragraph (3), the notification under subparagraph (A) may be provided to any officer or legal representative of such provider or service.

(C) NOTICE TO INTERNET SITE IDENTIFIED IN NOTIFICATION.—Upon receipt of an effective notification under this paragraph, a payment network provider or Internet advertising service shall take appropriate steps to ensure timely delivery of the notification to the Internet site identified in the notification.

(5) COUNTER NOTIFICATION.—

(A) REQUIREMENTS.—Subject to subparagraph (B), a counter notification is effective under this paragraph only if it is a written communication that is provided to the designated agent of a payment network provider or an Internet advertising service and includes substantially the following:

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

(ii) In the case of an Internet site specified in the notification under paragraph (4) that is a foreign Internet site, a statement that the owner or operator, or registrant, consents to the jurisdiction of the courts of the United States, and will accept service of process from the person who provided notification under paragraph (4), or an agent of such person, for purposes of adjudicating whether the site is an Internet site dedicated to theft of U.S. property under this section.

(iii) A statement under penalty of perjury that the owner or operator, or registrant, has a good faith belief that it does not meet the criteria of an Internet site dedicated to theft of U.S. property as set forth under this section.

(iv) The name, address, email address, and telephone number of the owner, operator, or registrant.

(B) SERVICE IF NO AGENT DESIGNATED.—If a payment network provider or Internet advertising service has not designated an agent under paragraph (3), the counter notification

under subparagraph (A) may be provided to any officer or legal representative of such provider or service.

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

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

(B) that such site does not meet the criteria of an Internet site dedicated to the theft of U.S. property,

shall be liable for damages, including costs and attorneys' fees, incurred by the person injured by such misrepresentation as a result of the misrepresentation.

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

(1) IN PERSONAM.—If an effective counter notification is made under subsection (b)(5), or if a payment network provider fails to comply with subsection (b)(1), or an Internet advertising service fails to comply with subsection (b)(2), pursuant to a notification under subsection (b)(4) in the absence of such a counter notification, a qualifying plaintiff may commence an in personam action against—

(A) a registrant of a domain name used by the Internet site, or portion thereof, that is subject to the notification under subsection (b)(4); or

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

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

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

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

(i) at the postal and electronic mail addresses appearing in the applicable publicly accessible database of registrations, if any, and to the extent such addresses are reasonably available; and

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

(B) to the owner or operator of the Internet site, or portion thereof—

(i) at the primary postal and electronic mail addresses for such owner or operator that are provided on the Internet site, or portion thereof, if any, and to the extent such addresses are reasonably available; or

(ii) if there is no domain name of the Internet site or portion thereof, via the postal and electronic mail addresses of the Internet Protocol allocation entity appearing in the applicable publicly accessible

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

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

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

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

(d) ACTIONS BASED ON COURT ORDERS.—

(1) SERVICE AND RESPONSE.—

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

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

(C) VENUE FOR SERVICE.—A copy of the court order may be served in any judicial district where an entity resides or may be found.

(2) REASONABLE MEASURES.—After being served with a copy of an order pursuant to this subsection, the following shall apply:

(A) PAYMENT NETWORK PROVIDERS.—

(i) PREVENTING AFFILIATION.—A payment network provider shall take technically feasible and reasonable measures,

as expeditiously as possible, but in any case within 5 days after being served with a copy of the court order, or within such time as the court may order, that are designed to prevent, prohibit, or suspend its service from completing payment transactions involving customers located within the United States or subject to the jurisdiction of the United States and any account—

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

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

(ii) NO DUTY TO MONITOR.—A payment network provider is in compliance with clause (i) if it takes action described in that clause with respect to accounts it has as of the date of service of the order, or as of the date of any subsequent notice that its service is being used to complete payment transactions described in clause (i).

(B) INTERNET ADVERTISING SERVICES.—

(i) REQUIRED ACTIONS.—An Internet advertising service that contracts with the Internet site dedicated to theft of U.S. property that is subject to the order to provide advertising to or for such Internet site, or that knowingly serves advertising to or for such internet site, shall take technically feasible and reasonable measures, as expeditiously as possible, but in any case within 5 days after being served with a copy of the order, or within such time as the court may order, that are designed to—

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

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

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

related services to, from, or in connection with the Internet site.

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

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

(4) ENFORCEMENT OF ORDERS.—

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

(B) PROCEDURES AND RELIEF.—

(i) SHOW CAUSE ORDER.—On a showing by the qualifying plaintiff of probable cause to believe that an entity served with a copy of a court order issued under subsection (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

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

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

(5) IMMUNITY.—

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

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

(i) any entity served with a copy of an order under this subsection, and any director, officer, employee, or agent thereof, shall not be liable for any acts reasonably designed to comply with this subsection or reasonably arising from such order; and

(ii) any—

(I) actions taken by customers of such entity to circumvent any restriction on access to the Internet site, or portion thereof that is subject to such order, that is instituted pursuant to this subsection, or

(II) act, failure, or inability to restrict access to an Internet site or portion thereof that is subject to such order, despite good faith efforts to comply with such order by such entity,

shall not be used by any person in any claim or cause of action against such entity.

(e) MODIFICATION OR VACATION OF ORDERS.—

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

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

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

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

(D) any entity that has been served with a copy of an order under subsection (d), or an amended order under subsection (f), that requires such entity to take action prescribed in that subsection.

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

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

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

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

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

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

(g) REPORTING OF ORDERS.—

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

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

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

No cause of action shall lie in any Federal or State court or administrative agency against, no person may rely in any claim or cause of action against, and no liability for damages to any person shall be granted against, a service provider, payment network provider, Internet advertising service, advertiser, Internet search engine, domain name registry, or domain name registrar for taking any action described in section 102(c)(2), section 103(d)(2), or section 103(b) with respect to an Internet site, or otherwise voluntarily blocking access to or ending financial affiliation with an Internet site, in the reasonable belief that—

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

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

SEC. 105. IMMUNITY FOR TAKING VOLUNTARY ACTION AGAINST SITES THAT ENDANGER PUBLIC HEALTH.

(a) REFUSAL OF SERVICE.—A service provider, payment network provider, Internet advertising service, advertiser, Internet search engine, domain name registry, or domain name registrar, acting in good faith and based on credible evidence, may stop providing or refuse to provide services to an Internet site that endangers the public health.

(b) IMMUNITY FROM LIABILITY.—An entity described in subsection (a), including its directors, officers, employees, or agents, that ceases or refuses to provide services under subsection (a) shall not be liable to any person under any Federal or State law for such action.

(c) DEFINITIONS.—In this section:

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

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

(A) offering, selling, dispensing, or distributing any prescription medication, and does so regularly without a valid prescription; or

(B) offering, selling, dispensing, or distributing any prescription medication that is adulterated or misbranded.

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

(4) PRESCRIPTION MEDICATION.—

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

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

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

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

SEC. 106. GUIDELINES AND STUDY.

(a) GUIDELINES.—The Attorney General shall—

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

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

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

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

vestigation or to supplement an ongoing investigation pursuant to this title.

(b) STUDY.—

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

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

SEC. 107. DENYING U.S. CAPITAL TO NOTORIOUS FOREIGN INFRINGERS.

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

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

Commerce, the United States Trade Representative, the Chairman of the Securities and Exchange Commission, and the heads of other departments and appropriate agencies, shall identify and conduct an analysis of notorious foreign infringers whose activities cause significant harm to holders of intellectual property rights in the United States.

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

(b) REPORT TO CONGRESS.—The Intellectual Property Enforcement Coordinator shall, not later than 6 months after the date of the enactment of this Act, submit to the Committees on the Judiciary of the House of Representatives and the Senate a report that includes the following:

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

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

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

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

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

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

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

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

TITLE II—ADDITIONAL ENHANCEMENTS TO COMBAT INTELLECTUAL PROPERTY THEFT

SEC. 201. STREAMING OF COPYRIGHTED WORKS IN VIOLATION OF CRIMINAL LAW.

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

''(a) CRIMINAL INFRINGEMENT.—

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

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

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

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

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

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

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

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

''(II) the copies or phonorecords of the work have not been commercially distributed in the United States by or with

the authorization of the copyright owner; or

''(ii)(I) the copyright owner does not intend to offer copies of the work for commercial distribution but has a reasonable expectation of other forms of commercial dissemination of the work; and

''(II) the work has not been commercially disseminated to the public in the United States by or with the authorization of the copyright owner;

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

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

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

''(ii) had not been commercially disseminated to the public in the United

States by or with the authorization of the copyright owner more than 24 hours before the unauthorized distribution or public performance.''.

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

(1) in subsection (b)(1), by striking ''during any 180-day period'' and all that follows and insert ''of at least 10 copies or phonorecords, or of at least 10 public performances by means of digital transmission, of 1 or more copyrighted works, during any 180-day period, which have a total retail value of more than $2,500;'';

(2) in subsection (c)—

(A) in paragraph (1), by striking ''of 10 or more copies or phonorecords'' and all that follows and inserting ''including by electronic means, of at least 10 copies or phonorecords, or of at least 10 public performances by means of digital transmission, of 1 or more copyrighted works, during any 180-day period, which have a total retail value of more than $2,500;''; and

(B) in paragraph (3), by striking ''if the offense'' and all that follows and inserting ''in any other case;'';

(3) in subsection (d)(4), by striking ''under paragraph (2)'' and inserting ''committed for purposes of commercial advantage or private financial gain under subsection (a)'';

(4) in subsection (f)—

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

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

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

(C) by striking paragraph (4); and

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

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

''(1) the total retail price that persons receiving the reproductions, distributions, or public performances constituting the offense would have paid to re-

ceive such reproductions, distributions, or public performances lawfully;

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

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

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

SEC. 202. TRAFFICKING IN INHERENTLY DANGEROUS GOODS OR SERVICES.

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

(1) Subsection (a) is amended to read as follows:

''(1) IN GENERAL.—

''(A) OFFENSES.—Whoever—

''(i) intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services,

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

''(iii) intentionally imports, exports, or traffics in counterfeit drugs or intentionally participates in or knowingly aids drug counterfeiting,

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

''(B) SUBSEQUENT OFFENSES.—In the case of an offense by a person under this paragraph that occurs after that person is convicted of another offense under this paragraph, the person convicted, if an individual, shall be fined not more than $5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than $15,000,000.

''(2) SERIOUS BODILY HARM OR DEATH.—

''(A) SERIOUS BODILY HARM.—If the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of paragraph (1), the penalty shall be, for an individual, a fine of not more than $5,000,000 or imprisonment for any term of years or for life, or both, and for other than an individual, a fine of not more than $15,000,000.

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

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

''(3) MILITARY GOODS OR SERVICES.—

''(A) IN GENERAL.—A person who commits an offense under paragraph (1) shall be punished in accordance with subparagraph (B) if—

''(i) the offense involved a good or service described in paragraph (1) that if it malfunctioned, failed, or was compromised, could reasonably be foreseen to cause—

''(I) serious bodily injury or death;

''(II) disclosure of classified information;

''(III) impairment of combat operations; or

''(IV) other significant harm—

''(aa) to a member—

"(AA) of the Armed Forces; or

"(BB) of a Federal, State, or local law enforcement agency; or

"(bb) to national security or critical infrastructure; and

"(ii) the person had knowledge that the good or service is falsely identified as meeting military standards or is intended for use in a military or national security application, or a law enforcement or critical infrastructure application.

"(B) PENALTIES.—

"(i) INDIVIDUAL.—An individual who commits an offense described in subparagraph (A) shall be fined not more than $5,000,000, imprisoned for not more than 20 years, or both.

"(ii) PERSON OTHER THAN AN INDIVIDUAL.—A person other than an individual that commits an offense described in subparagraph (A) shall be fined not more than $15,000,000.

"(C) SUBSEQUENT OFFENSES.—

''(i) INDIVIDUAL.—An individual who commits an offense described in subparagraph (A) after the individual is convicted of an offense under subparagraph (A) shall be fined not more than $15,000,000, imprisoned not more than 30 years, or both.

''(ii) PERSON OTHER THAN AN INDIVIDUAL.—A person other than an individual that commits an offense described in subparagraph (A) after the person is convicted of an offense under subparagraph (A) shall be fined not more than $30,000,000.''.

(2) Subsection (e) is amended—

(A) in paragraph (1), by striking the period at the end and inserting a semicolon;

(B) in paragraph (3), by striking ''and'' at the end;

(C) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

''(5) the term 'counterfeit drug' has the meaning given that term in section 201(g)(2) of the Federal Food Drug, and Cosmetic Act (21 U.S.C. 321(g)(2));

''(6) the term 'critical infrastructure' has the meaning given that term in section 2339D(c);

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

''(8) the term 'final dosage form' has the meaning given that term in section 735(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g(4));

''(9) the term 'falsely identified as meeting military standards' relating to a good or service means there is a material misrepresentation that the good or service meets a standard, requirement, or specification issued by the Department of Defense, an Armed Force, or a reserve component;

''(10) the term 'use in a military or national security application' means the use of a good or service, independently, in conjunction with, or as a component of another good or service—

''(A) during the performance of the official duties of the Armed Forces of the United States or the reserve components of the Armed Forces; or

''(B) by the United States to perform or directly support—

''(i) combat operations; or

''(ii) critical national defense or national security functions; and

''(11) the term 'use in a law enforcement or critical infrastructure application' means the use of a good or service, independently, in conjunction with, or as a component of, another good or service by a person who is directly engaged in—

''(A) Federal, State, or local law enforcement; or

''(B) an official function pertaining to critical infrastructure.''.

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

(a) FOR OFFENSES COMMITTED BY INDIVIDUALS.—Section 1831(a) of title 18, United States Code, is amended, in the matter after paragraph (5)—

(1) by striking ''15 years'' and inserting ''20 years''; and

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

(b) FOR OFFENSES COMMITTED BY ORGANIZATIONS.—Section 1831(b) of such title is amended by striking ''$10,000,000'' and inserting ''not more than the greater of $10,000,000 or 3 times the value of the stolen

trade secret to the organization (including expenses for research and design or other costs of reproducing the trade secret that the organization has thereby avoided)''.

SEC. 204. AMENDMENTS TO SENTENCING GUIDELINES.

Not later than 180 days after the date of the enactment of this Act, pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review, and if appropriate, amend Federal Sentencing Guidelines and policy statements applicable to persons convicted of—

(A) intellectual property offenses;

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

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

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

(A) apply an appropriate offense level enhancement for intellectual property offenses committed in connection with an organized criminal enterprise;

(B) apply an appropriate offense level enhancement to the simple misappropriation of a trade secret;

(C) apply an additional appropriate offense level enhancement if the defendant transmits or attempts to transmit the stolen trade secret outside of the United States and an additional appropriate enhancement if the defendant instead commits economic espionage;

(D) provide that when a defendant transmits trade secrets outside of the United States or commits economic espionage, that the defendant should face a minimum offense level;

(E) provide for an offense level enhancement for Guidelines relating to the theft of trade secrets and economic espionage, including trade secrets transferred or attempted to be transferred outside of the United States;

(F) apply an appropriate offense level enhancement and minimum offense level for offenses under section 2320(a) of title 18, United States Code, that involve a product intended for use in a military or national security application, or a law enforcement or critical infrastructure application;

(G) ensure that the Guidelines and policy statements (including section 2B5.3 of the Federal Sentencing Guidelines (and any successor thereto)) reflect—

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

(ii) the need for an effective deterrent and appropriate punishment to prevent offenses under section 2320(a) of title 18, United States Code; and

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

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

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

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

(5) promulgate the Guidelines, policy statements, or amendments provided for in this section as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired.

SEC. 205. DEFENDING INTELLECTUAL PROPERTY RIGHTS ABROAD.

(a) RESOURCES TO PROTECT INTELLECTUAL PROPERTY RIGHTS.—

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

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

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

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

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

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

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

(b) NEW APPOINTMENTS.—

(1) APPOINTMENTS AND ADMINISTRATION.—The Secretary of State and the Secretary of Commerce, in consultation with the Register of Copy-

rights, shall appoint at least one intellectual property attaché to be assigned to the United States embassy or diplomatic mission (as the case may be) in a country in each geographic region covered by a regional bureau of the Department of State. The Director of the Patent and Trademark Office shall maintain authority over hiring, personnel ratings, and objectives for the attachés, in consultation with the Secretary of State. Depending on experience and expertise, intellectual property attachés shall be designated as the diplomatic rank in-mission of First Secretary or Counselor.

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

(A) Africa.

(B) Europe and Eurasia.

(C) East Asia and the Pacific.

(D) The Near East.

(E) South and Central Asia and the Pacific.

(F) The Western Hemisphere.

(3) DUTIES.—The intellectual property attachés appointed under this subsection shall focus primarily on intellectual property matters, including the development, protection, and enforcement of applicable

law. Each intellectual property attaché shall work, in accordance with guidance from the Director, and in coordination with appropriate staff at the Departments of Commerce and State and the Copyright Office, to advance the policy goals and priorities of the United States Government. Those policy goals and priorities shall be consistent with USTR's reports under section 182(a)(1) of the Trade Act of 1974. The intellectual property attachés shall work with United States holders of intellectual property rights and industry to address intellectual property rights violations in the countries where the attachés are assigned.

(c) PRIORITY ASSIGNMENTS.—

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

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

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

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

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

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

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

(f) TRAINING AND TECHNICAL ASSISTANCE.—

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

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

(g) ACTIVITIES IN OTHER COUNTRIES.—In the case of countries that are not identified under section 182(a)(1) of the Trade Act of 1974, the activities of Federal departments and agencies with respect to intellectual property rights in those countries, intellectual property programs and outreach of the United States Government in those countries, and training and technical assistance programs of the United States Government relating to intellectual property in those countries may be conducted

to the extent they are consistent with compelling commercial or foreign policy interests of the United States.

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

(i) DEFINITIONS.—In this section:

(1) DIRECTOR.—The terms ''Director of the Patent and Trademark Office'' and ''Director'' mean the Under Secretary for Intellectual Property and Director of the Untied States Patent and Trademark Office.

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

(3) INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR.—The term ''Intellectual Property Enforcement Coordinator'' means the Intellectual Property Enforcement Coordinator appointed under section 301 of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (15 U.S.C. 8111).

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

(5) USTR.—The term ''USTR'' means the United States Trade Representative.

(6) UNITED STATES PERSON.—The term ''United States person'' means—

(A) any United States resident or national;

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

(C) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any corporation, partnership, business entity, or organization described in subparagraph (B),

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

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

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