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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To promote prosperity, creativity, entrepreneurship, and in-
novation 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 PARASITES

Sec. 101. Short title.

Sec. 102. Definitions.

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

Sec. 104. Market-based system to protect U.S. customers and prevent U.S. funding of sites dedicated to theft of U.S. property.

Sec. 105. Immunity for taking voluntary action against sites dedicated to theft of U.S. property.

Sec. 106. Immunity for taking voluntary action against sites that endanger public health.

Sec. 107. Guidelines and study.

Sec. 108. Denying U.S. capital to notorious foreign infringers.

TITLE II—ADDITIONAL ENHANCEMENTS TO COMBAT INTELLECTUAL PROPERTY THEFT

Sec. 201. Streaming of copyrighted works in violation of criminal law.

Sec. 202. Trafficking in inherently dangerous goods or services.

Sec. 203. Protecting U.S. businesses from foreign and economic espionage.

Sec. 204. Amendments to sentencing guidelines.

Sec. 205. Defending intellectual property rights abroad.

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

2 (a) SAVINGS CLAUSES.—

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

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

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

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

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

6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the “Enforcing and Pro-
8 tecting American Rights Against Sites Intent on Theft
9 and Exploitation Act of 2011” or the “E-PARASITE
10 Act”.

11 **SEC. 102. DEFINITIONS.**

12 In this title:

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

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

23 (3) DOMESTIC DOMAIN NAME.—The term “do-
24 mestic domain name” means a domain name that is
25 registered or assigned by a domain name registrar,

1 domain name registry, or other domain name reg-
2 istration authority, that is located within a judicial
3 district of the United States.

4 (4) DOMESTIC INTERNET PROTOCOL AD-
5 DRESS.—The term “domestic Internet Protocol ad-
6 dress” means an Internet Protocol address for which
7 the corresponding Internet Protocol allocation entity
8 is located within a judicial district of the United
9 States.

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

16 (6) FOREIGN DOMAIN NAME.—The term “for-
17 eign domain name” means a domain name that is
18 not a domestic domain name.

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

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

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

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

10 (11) INTERNET.—The term “Internet” has the
11 meaning given that term in section 5362(5) of title
12 31, United States Code.

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

21 (13) INTERNET PROTOCOL.—The term “Inter-
22 net Protocol” means a protocol used for commu-
23 nicating data across a packet-switched internetwork
24 using the Transmission Control Protocol/Internet

1 Protocol, and includes any predecessor or successor
2 protocol to such protocol.

3 (14) INTERNET PROTOCOL ADDRESS.—The
4 term “Internet Protocol address” means a numerical
5 label that is assigned to each device that participates
6 in a computer network that uses the Internet Pro-
7 tocol for communication.

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

19 (16) INTERNET SEARCH ENGINE.—The term
20 “Internet search engine” means a service made
21 available via the Internet that searches, crawls, cat-
22 egorizes, or indexes information or Web sites avail-
23 able elsewhere on the Internet and on the basis of
24 a user query or selection that consists of terms, con-
25 cepts, categories, questions, or other data returns to

1 the user a means, such as a hyperlinked list of Uni-
2 form Resource Locators, of locating, viewing, or
3 downloading such information or data available on
4 the Internet relating to such query or selection.

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

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

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

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

6 (21) PAYMENT NETWORK PROVIDER.—

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

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

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

1 (23) U.S.-DIRECTED SITE.—The term “U.S.-di-
2 rected site” means an Internet site or portion there-
3 of that is used to conduct business directed to resi-
4 dents of the United States, or that otherwise dem-
5 onstrates the existence of minimum contacts suffi-
6 cient for the exercise of personal jurisdiction over
7 the owner or operator of the Internet site consistent
8 with the Constitution of the United States, based on
9 relevant evidence that may include whether—

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

13 (B) there is evidence that the Internet site
14 or portion thereof is intended to offer or pro-
15 vide—

16 (i) such goods and services,

17 (ii) access to such goods and services,

18 or

19 (iii) delivery of such goods and serv-
20 ices,

21 to users located in the United States;

22 (C) the Internet site or portion thereof
23 does not contain reasonable measures to pre-
24 vent such goods and services from being ob-
25 tained in or delivered to the United States; and

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

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

7 **SEC. 103. ACTION BY ATTORNEY GENERAL TO PROTECT**
8 **U.S. CUSTOMERS AND PREVENT U.S. SUP-**
9 **PORT OF FOREIGN INFRINGING SITES.**

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

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

16 (2) the owner or operator of such Internet site
17 is committing or facilitating the commission of
18 criminal violations punishable under section 2318,
19 2319, 2319A, 2319B, or 2320, or chapter 90, of
20 title 18, United States Code; and

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

1 (b) ACTION BY THE ATTORNEY GENERAL.—

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

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

6 (B) an owner or operator of a foreign in-
7 fringing site.

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

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

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

22 (i) at the postal and electronic mail
23 addresses appearing in the applicable pub-
24 licly accessible database of registrations, if

1 any, and to the extent such addresses are
2 reasonably available; and

3 (ii) via the postal and electronic mail
4 addresses of the registrar, registry, or
5 other domain name registration authority
6 that registered or assigned the domain
7 name of the Internet site, to the extent
8 such addresses are reasonably available; or
9 (B) to the owner or operator of the Inter-
10 net site—

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

16 (ii) if there is no domain name of the
17 Internet site, via the postal and electronic
18 mail addresses of the Internet Protocol al-
19 location entity appearing in the applicable
20 publicly accessible database of allocations
21 and assignments, if any, and to the extent
22 such addresses are reasonably available; or
23 (C) in any other such form as the court
24 may provide, including as may be required by

1 rule 4(f) of the Federal Rules of Civil Proce-
2 dure.

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

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

19 (c) ACTIONS BASED ON COURT ORDERS.—

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

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

4 (A) SERVICE PROVIDERS.—

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

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

22 (I) other than as directed under
23 this subparagraph, to modify its net-
24 work, software, systems, or facilities;

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

5 (III) to continue to prevent ac-
6 cess to a domain name to which ac-
7 cess has been effectively disabled by
8 other means.

9 (iii) CONSTRUCTION.—Nothing in this
10 subparagraph shall affect the limitation on
11 the liability of a service provider under sec-
12 tion 512 of title 17, United States Code.

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

21 (B) INTERNET SEARCH ENGINES.—A pro-
22 vider of an Internet search engine shall take
23 technically feasible and reasonable measures, as
24 expeditiously as possible, but in any case within
25 5 days after being served with a copy of the

1 order, or within such time as the court may
2 order, designed to prevent the foreign infringing
3 site that is subject to the order, or a portion of
4 such site specified in the order, from being
5 served as a direct hypertext link.

6 (C) PAYMENT NETWORK PROVIDERS.—

7 (i) PREVENTING AFFILIATION.—A
8 payment network provider 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, designed to prevent,
14 prohibit, or suspend its service from com-
15 pleting payment transactions involving cus-
16 tomers located within the United States or
17 subject to the jurisdiction of the United
18 States and the payment account—

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

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

1 (ii) NO DUTY TO MONITOR.—A pay-
2 ment network provider shall be considered
3 to be in compliance with clause (i) if it
4 takes action described in that clause with
5 respect to accounts it has as of the date on
6 which a copy of the order is served, or as
7 of the date on which the order is amended
8 under subsection (e).

9 (D) INTERNET ADVERTISING SERVICES.—

10 (i) REQUIRED ACTIONS.—An Internet
11 advertising service that contracts to pro-
12 vide advertising to or for the foreign in-
13 fringing site, or portion thereof, that is
14 subject to the order, or that knowingly
15 serves advertising to or for such site or
16 such portion thereof, shall take technically
17 feasible and reasonable measures, as expe-
18 ditiously as possible, but in any case within
19 5 days after being served with a copy of
20 the order, or within such time as the court
21 may order, designed to—

22 (I) prevent its service from pro-
23 viding advertisements to or relating to
24 the foreign infringing site that is sub-

1 ject to the order or a portion of such
2 site specified in the order;

3 (II) cease making available ad-
4 vertisements for the foreign infringing
5 site or such portion thereof, or paid or
6 sponsored search results, links, or
7 other placements that provide access
8 to such foreign infringing site or such
9 portion thereof; and

10 (III) cease providing or receiving
11 any compensation for advertising or
12 related services to, from, or in connec-
13 tion with such foreign infringing site
14 or such portion thereof.

15 (ii) NO DUTY TO MONITOR.—An inter-
16 net advertising service 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 (3) COMMUNICATION WITH USERS.—Except as
24 provided under paragraph (2)(A)(iv), an entity tak-
25 ing an action described in this subsection shall de-

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

3 (4) ENFORCEMENT OF ORDERS.—

4 (A) IN GENERAL.—To ensure compliance
5 with orders issued pursuant to this section, the
6 Attorney General may bring an action for in-
7 junctive relief—

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

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

23 (B) RULE OF CONSTRUCTION.—The au-
24 thority granted the Attorney General under
25 subparagraph (A)(i) shall be the sole legal rem-

1 edy to enforce the obligations under this section
2 of any entity described in paragraph (2).

3 (C) DEFENSE.—A defendant in an action
4 under subparagraph (A)(i) may establish an af-
5 firmative defense by showing that the defendant
6 does not have the technical means to comply
7 with this subsection without incurring an un-
8 reasonable economic burden, or that the order
9 is not authorized by this subsection. Such show-
10 ing shall not be presumed to be a complete de-
11 fense but shall serve as a defense only for those
12 measures for which a technical limitation on
13 compliance is demonstrated or for such portions
14 of the order as are demonstrated to be unau-
15 thorized by this subsection.

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

24 (i) to resolve to that domain name's
25 Internet protocol address notwithstanding

1 the measures taken by a service provider
2 under paragraph (2) to prevent such reso-
3 lution; or

4 (ii) to resolve to a different domain
5 name or Internet Protocol address that the
6 provider of the product or service knows,
7 reasonably should know, or reasonably be-
8 lieves is used by an Internet site offering
9 substantially similar infringing activities as
10 those with which the infringing foreign
11 site, or portion thereof, subject to a court
12 order under this section was associated.

13 (5) IMMUNITY.—

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

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

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

7 (ii) any—

8 (I) actions taken by customers of
9 such entity to circumvent any restric-
10 tion on access to the foreign infring-
11 ing site, or portion thereof, that is
12 subject to such order, that is insti-
13 tuted pursuant to this subsection, or

14 (II) act, failure, or inability to re-
15 strict access to a foreign infringing
16 site, or portion thereof, that is subject
17 to such order, in spite of good faith
18 efforts to comply with such order by
19 such entity,

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

23 (d) MODIFICATION OR VACATION OF ORDERS.—

24 (1) IN GENERAL.—At any time after the
25 issuance of an order under subsection (b), a motion

1 to modify, suspend, or vacate the order may be filed
2 by—

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

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

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

13 (D) any entity that has been served with
14 a copy of an order pursuant to subsection (c)
15 that requires such entity to take action pre-
16 scribed in that subsection.

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

19 (A) the foreign Internet site subject to the
20 order is no longer, or never was, a foreign in-
21 fringing site; or

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

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

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

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

21 (f) LAW ENFORCEMENT COORDINATION.—

22 (1) IN GENERAL.—The Attorney General shall
23 inform the Intellectual Property Enforcement Coor-
24 dinator and the heads of appropriate law enforce-
25 ment agencies of all court orders issued under sub-

1 section (b), and all amended orders issued under
2 subsection (e), regarding foreign infringing sites.

3 (2) ALTERATIONS.—The Attorney General
4 shall, and the defendant may, inform the Intellectual
5 Property Enforcement Coordinator of the modifica-
6 tion, suspension, expiration, or vacation of a court
7 order issued under subsection (b) or an amended
8 order issued under subsection (e).

9 **SEC. 104. MARKET-BASED SYSTEM TO PROTECT U.S. CUS-**
10 **TOMERS AND PREVENT U.S. FUNDING OF**
11 **SITES DEDICATED TO THEFT OF U.S. PROP-**
12 **ERTY.**

13 (a) DEFINITIONS.—In this section:

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

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

20 (B) either—

21 (i) the U.S.-directed site is primarily
22 designed or operated for the purpose of,
23 has only limited purpose or use other than,
24 or is marketed by its operator or another
25 acting in concert with that operator for use

1 in, offering goods or services in a manner
2 that engages in, enables, or facilitates—

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

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

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

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

15 (I) is taking, or has taken, delib-
16 erate actions to avoid confirming a
17 high probability of the use of the
18 U.S.-directed site to carry out acts
19 that constitute a violation of section
20 501 or 1201 of title 17, United States
21 Code; or

22 (II) operates the U.S.-directed
23 site with the object of promoting, or
24 has promoted, its use to carry out
25 acts that constitute a violation of sec-

1 tion 501 or 1201 of title 17, United
2 States Code, as shown by clear ex-
3 pression or other affirmative steps
4 taken to foster infringement.

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

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

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

1 (2) INTERNET ADVERTISING SERVICES.—Ex-
2 cept in the case of an effective counter notification
3 pursuant to paragraph (5), an Internet advertising
4 service that contracts with the operator of an Inter-
5 net site, or portion thereof, that is specified in a no-
6 tification delivered under paragraph (4), to provide
7 advertising to or for such site or portion thereof, or
8 that knowingly serves advertising to or for such site
9 or portion thereof, shall take technically feasible and
10 reasonable measures, as expeditiously as possible,
11 but in any case within 5 days after delivery the noti-
12 fication under paragraph (4), that are designed to—

13 (A) prevent its service from providing ad-
14 vertisements to or relating to the Internet site,
15 or portion thereof, that is specified in the notifi-
16 cation;

17 (B) cease making available advertisements
18 for such Internet site, or portion thereof, that
19 is specified in the notification, or paid or spon-
20 sored search results, links, or other placements
21 that provide access to such Internet site, or
22 portion thereof, that is specified in the notifica-
23 tion; and

24 (C) cease providing or receiving any com-
25 pensation for advertising or related services to,

1 from, or in connection with such Internet site,
2 or portion thereof, that is specified in the notifi-
3 cation.

4 (3) DESIGNATED AGENT.—

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

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

15 (ii) Other contact information that the
16 Register of Copyrights considers appro-
17 priate.

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

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

1 (A) REQUIREMENTS.—Subject to subpara-
2 graph (B), a notification under this paragraph
3 is effective only if it is a written communication
4 that is provided to the designated agent of a
5 payment network provider or an Internet adver-
6 tising service and includes substantially the fol-
7 lowing:

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

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

18 (iii) Identification of the specific facts
19 to support the claim that the Internet site,
20 or portion thereof, is dedicated to theft of
21 U.S. property and to clearly show that im-
22 mediate and irreparable injury, loss, or
23 damage will result to the holder of the in-
24 tellectual property right harmed by the ac-
25 tivities described in subsection (a)(1) in

1 the absence of timely action by the pay-
2 ment network provider or Internet adver-
3 tising service.

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

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

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

21 (vii) A statement that the information
22 in the notification is accurate, and, under
23 penalty of perjury, that the signatory is
24 authorized to act on behalf of the holder of
25 the intellectual property right harmed by

1 the activities described in subsection
2 (a)(1).

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

6 (B) SERVICE IF NO AGENT DESIGNATED.—

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

13 (C) NOTICE TO INTERNET SITE IDENTI-

14 FIED IN NOTIFICATION.—Upon receipt of an ef-

15 fective notification under this paragraph, a pay-

16 ment network provider or Internet advertising

17 service shall take appropriate steps to ensure

18 timely delivery of the notification to the Inter-

19 net site identified in the notification.

20 (5) COUNTER NOTIFICATION.—

21 (A) REQUIREMENTS.—Subject to subpara-

22 graph (B), a counter notification is effective

23 under this paragraph only if it is a written com-

24 munication that is provided to the designated

25 agent of a payment network provider or an

1 Internet advertising service and includes sub-
2 stantially the following:

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

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

24 (iii) A statement under penalty of per-
25 jury that the owner or operator, or reg-

1 istrant, has a good faith belief that it does
2 not meet the criteria of an Internet site
3 dedicated to theft of U.S. property as set
4 forth under this section.

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

8 (B) SERVICE IF NO AGENT DESIGNATED.—

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

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

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

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

23 shall be liable for damages, including costs and at-
24 torneys' fees, incurred by the person injured by such

1 misrepresentation as a result of the misrepresenta-
2 tion.

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

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

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

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

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

1 of the United States, the qualifying plaintiff may
2 commence an in rem action against that Internet
3 site or the domain name used by such site.

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

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

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

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

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

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

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

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

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

24 (5) RELIEF.—On application of a qualifying
25 plaintiff following the commencement of an action

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

13 (d) ACTIONS BASED ON COURT ORDERS.—

14 (1) SERVICE AND RESPONSE.—

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

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

1 has complied or will comply with the obligations
2 imposed under paragraph (2), or explaining
3 why the entity will not so comply.

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

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

10 (A) PAYMENT NETWORK PROVIDERS.—

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

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

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

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

16 (B) INTERNET ADVERTISING SERVICES.—

17 (i) REQUIRED ACTIONS.—An Internet
18 advertising service that contracts with the
19 Internet site dedicated to theft of U.S.
20 property that is subject to the order to
21 provide advertising to or for such Internet
22 site, or that knowingly serves advertising
23 to or for such internet site, 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, that are designed
4 to—

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

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

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

17 (ii) NO DUTY TO MONITOR.—An inter-
18 net advertising service 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 on which a copy of the
22 order is served, or as of the date of any
23 subsequent notice that its service is being
24 used for activities described in clause (i).

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

5 (4) ENFORCEMENT OF ORDERS.—

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

10 (B) PROCEDURES AND RELIEF.—

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

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

22 (II) to impose an appropriate
23 monetary sanction, consistent with the
24 court’s exercise of its equitable au-

1 thority, to enforce compliance with its
2 lawful orders, if the entity—

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

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

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

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

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

1 showing shall not be presumed to be a complete
2 defense but shall serve as a defense only for
3 those measures for which a technical limitation
4 on compliance is demonstrated or for such por-
5 tions of the order as are demonstrated to be un-
6 authorized by this subsection.

7 (5) IMMUNITY.—

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

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

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

25 (ii) any—

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

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

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

16 (e) MODIFICATION OR VACATION OF ORDERS.—

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

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

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

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

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

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

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

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

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

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

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

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

16 (g) REPORTING OF ORDERS.—

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

21 (2) ALTERATIONS.—Upon the modification,
22 suspension, expiration, or vacation of a court order
23 issued under subsection (c) or an amended order
24 issued under subsection (f) , the qualifying plaintiff

1 shall, and the defendant may, so inform the Intellec-
2 tual Property Enforcement Coordinator.

3 **SEC. 105. IMMUNITY FOR TAKING VOLUNTARY ACTION**
4 **AGAINST SITES DEDICATED TO THEFT OF U.S.**
5 **PROPERTY.**

6 No cause of action shall lie in any Federal or State
7 court or administrative agency against, no person may rely
8 in any claim or cause of action against, and no liability
9 for damages to any person shall be granted against, a
10 service provider, payment network provider, Internet ad-
11 vertising service, advertiser, Internet search engine, do-
12 main name registry, or domain name registrar for taking
13 any action described in section 103(c)(2), section
14 104(d)(2), or section 104(b) with respect to an Internet
15 site, or otherwise voluntarily blocking access to or ending
16 financial affiliation with an Internet site, in the reasonable
17 belief that—

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

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

1 **SEC. 106. IMMUNITY FOR TAKING VOLUNTARY ACTION**
2 **AGAINST SITES THAT ENDANGER PUBLIC**
3 **HEALTH.**

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

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

16 (c) DEFINITIONS.—In this section:

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

21 (2) INTERNET SITE THAT ENDANGERS THE
22 PUBLIC HEALTH.—The term “Internet site that en-
23 dangers the public health” means an Internet site
24 that is primarily designed or operated for the pur-
25 pose of, has only limited purpose or use other than,

1 or is marketed by its operator or another acting in
2 concert with that operator for use in—

3 (A) offering, selling, dispensing, or distrib-
4 uting any prescription medication, and does so
5 regularly without a valid prescription; or

6 (B) offering, selling, dispensing, or distrib-
7 uting any prescription medication that is adul-
8 terated or misbranded.

9 (3) MISBRANDED.—the term “misbranded” has
10 the meaning given that term in section 502 of the
11 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
12 352).

13 (4) PRESCRIPTION MEDICATION.—

14 (A) PRESCRIPTION MEDICATION.—The
15 term “prescription medication” means a drug
16 that is subject to section 503(b) of the Federal
17 Food, Drug, and Cosmetic Act (21 U.S.C.
18 353(b)).

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

23 (5) VALID PRESCRIPTION.—The term “valid
24 prescription” has the meaning given that term in

1 section 309(e)(2)(A) of the Controlled Substances
2 Act (21 U.S.C. 829(e)(2)(A)).

3 **SEC. 107. GUIDELINES AND STUDY.**

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

5 (1) provide appropriate resources and proce-
6 dures for case management and development to ef-
7 fect timely disposition of actions brought under this
8 title;

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

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

19 (4) provide guidance to intellectual property
20 rights holders about what information such rights
21 holders should provide to assist in initiating an in-
22 vestigation or to supplement an ongoing investiga-
23 tion pursuant to this title.

24 (b) STUDY.—

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

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

16 **SEC. 108. DENYING U.S. CAPITAL TO NOTORIOUS FOREIGN**
17 **INFRINGERS.**

18 (a) IDENTIFICATION AND RECOMMENDATIONS RE-
19 GARDING NOTORIOUS FOREIGN INFRINGERS.—

20 (1) IN GENERAL.—Using existing resources, the
21 Intellectual Property Enforcement Coordinator, in
22 consultation with the Secretaries of Treasury and
23 Commerce, the United States Trade Representative,
24 the Chairman of the Securities and Exchange Com-
25 mission, and the heads of other departments and ap-

1 appropriate agencies, shall identify and conduct an
2 analysis of notorious foreign infringers whose activi-
3 ties cause significant harm to holders of intellectual
4 property rights in the United States.

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

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

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

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

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

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

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

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

19 (B) whether the United States Government
20 should initiate a process to identify and des-
21 ignate foreign entities from a list of notorious
22 foreign infringers that would be prohibited from
23 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 INDI-
21 VIDUAL.—A person other than an indi-
22 vidual that commits an offense described in
23 subparagraph (A) shall be fined not more
24 than \$15,000,000.

25 “(C) SUBSEQUENT OFFENSES.—

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.
9 379g(4));

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

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

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

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

1 “(i) combat operations; or

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

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

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

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

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

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

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

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

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

1 greater of \$10,000,000 or 3 times the value of the stolen
2 trade secret to the organization (including expenses for re-
3 search and design or other costs of reproducing the trade
4 secret that the organization has thereby avoided)’’.

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

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

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

13 (A) intellectual property offenses;

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

16 (C) an offense under section 1831 of title
17 18, United States Code;

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

21 (A) apply an appropriate offense level en-
22 hancement for intellectual property offenses
23 committed in connection with an organized
24 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 **ERTY 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.