

112TH CONGRESS  
1ST SESSION

# S. 968

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

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## IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

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

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Real Online  
5 Threats to Economic Creativity and Theft of Intellectual  
6 Property Act of 2011” or the “PROTECT IP Act of  
7 2011”.

8 **SEC. 2. DEFINITIONS.**

9 For purposes of this Act—

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

4           (2) the term “domain name system server”  
5 means a server or other mechanism used to provide  
6 the Internet protocol address associated with a do-  
7 main name;

8           (3) the term “financial transaction provider”  
9 has the same meaning as in section 5362(4) of title  
10 31, United States Code;

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

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

21           (6) the term “Internet site” means the collec-  
22 tion of digital assets, including links, indexes, or  
23 pointers to digital assets, accessible through the  
24 Internet that are addressed relative to a common do-  
25 main name;

1           (7) the term “Internet site dedicated to infringing  
2           activities” means an Internet site that—

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

5                           (i) reproduction, distribution, or pub-  
6                           lic performance of copyrighted works, in  
7                           complete or substantially complete form, in  
8                           a manner that constitutes copyright in-  
9                           fringement under section 501 of title 17,  
10                          United States Code;

11                           (ii) violation of section 1201 of title  
12                           17, United States Code; or

13                           (iii) sale, distribution, or promotion of  
14                           goods, services, or materials bearing a  
15                           counterfeit mark, as that term is defined  
16                           in section 34(d) of the Lanham Act; or

17                          (B) is designed, operated, or marketed by  
18                          its operator or persons operating in concert  
19                          with the operator, and facts or circumstances  
20                          suggest is used, primarily as a means for en-  
21                          gaging in, enabling, or facilitating the activities  
22                          described under clauses (i), (ii), or (iii) of sub-  
23                          paragraph (A);

24           (8) the term “Lanham Act” means the Act en-  
25           titled “An Act to provide for the registration and

1 protection of trademarks used in commerce, to carry  
2 out the provisions of certain international conven-  
3 tions, and for other purposes”, approved July 5,  
4 1946 (commonly referred to as the “Trademark Act  
5 of 1946” or the “Lanham Act”);

6 (9) the term “nondomestic domain name”  
7 means a domain name for which the domain name  
8 registry that issued the domain name and operates  
9 the relevant top level domain, and the domain name  
10 registrar for the domain name, are not located in the  
11 United States;

12 (10) the term “owner” or “operator” when  
13 used in connection with an Internet site shall in-  
14 clude, respectively, any owner of a majority interest  
15 in, or any person with authority to operate, such  
16 Internet site; and

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

18 (A) the Attorney General of the United  
19 States; or

20 (B) an owner of an intellectual property  
21 right, or one authorized to enforce such right,  
22 harmed by the activities of an Internet site  
23 dedicated to infringing activities occurring on  
24 that Internet site.

1 **SEC. 3. ENHANCING ENFORCEMENT AGAINST ROGUE**  
2 **WEBSITES OPERATED AND REGISTERED**  
3 **OVERSEAS.**

4 (a) COMMENCEMENT OF AN ACTION.—

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

7 (A) a registrant of a nondomestic domain  
8 name used by an Internet site dedicated to in-  
9 fringing activities; or

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

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

21 (b) ORDERS OF THE COURT.—

22 (1) IN GENERAL.—On application of the Attor-  
23 ney General following the commencement of an ac-  
24 tion under this section, the court may issue a tem-  
25 porary restraining order, a preliminary injunction, or  
26 an injunction, in accordance with rule 65 of the Fed-

1 eral Rules of Civil Procedure, against the non-  
2 domestic domain name used by an Internet site dedi-  
3 cated to infringing activities, or against a registrant  
4 of such domain name, or the owner or operator of  
5 such Internet site dedicated to infringing activities,  
6 to cease and desist from undertaking any further ac-  
7 tivity as an Internet site dedicated to infringing ac-  
8 tivities, if—

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

11 (B) the Internet site—

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

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

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

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

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

1 (i) such goods and services to users  
2 located in the United States;

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

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

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

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

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

15 (c) NOTICE AND SERVICE OF PROCESS.—

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

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

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

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

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

13 (d) REQUIRED ACTIONS BASED ON COURT OR-  
14 DERS.—

15 (1) SERVICE.—A Federal law enforcement offi-  
16 cer, with the prior approval of the court, may serve  
17 a copy of a court order issued pursuant to this sec-  
18 tion on similarly situated entities within each class  
19 described in paragraph (2). Proof of service shall be  
20 filed with the court.

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

24 (A) OPERATORS.—



1 (i) IN GENERAL.—An operator of a  
2 nonauthoritative domain name system  
3 server shall take the least burdensome  
4 technically feasible and reasonable meas-  
5 ures designed to prevent the domain name  
6 described in the order from resolving to  
7 that domain name’s Internet protocol ad-  
8 dress, except that—

9 (I) such operator shall not be re-  
10 quired—

11 (aa) other than as directed  
12 under this subparagraph, to mod-  
13 ify its network, software, sys-  
14 tems, or facilities;

15 (bb) to take any measures  
16 with respect to domain name  
17 lookups not performed by its own  
18 domain name server or domain  
19 name system servers located out-  
20 side the United States; or

21 (cc) to continue to prevent  
22 access to a domain name to  
23 which access has been effectively  
24 disable by other means; and

1 (II) nothing in this subparagraph  
2 shall affect the limitation on the liabil-  
3 ity of such an operator under section  
4 512 of title 17, United States Code.

5 (ii) TEXT OF NOTICE.—The Attorney  
6 General shall prescribe the text of the no-  
7 tice displayed to users or customers of an  
8 operator taking an action pursuant to this  
9 subparagraph. Such text shall specify that  
10 the action is being taken pursuant to a  
11 court order obtained by the Attorney Gen-  
12 eral.

13 (B) FINANCIAL TRANSACTION PRO-  
14 VIDERS.—A financial transaction provider shall  
15 take reasonable measures, as expeditiously as  
16 reasonable, designed to prevent, prohibit, or  
17 suspend its service from completing payment  
18 transactions involving customers located within  
19 the United States and the Internet site associ-  
20 ated with the domain name set forth in the  
21 order.

22 (C) INTERNET ADVERTISING SERVICES.—  
23 An Internet advertising service that contracts  
24 with the Internet site associated with the do-  
25 main name set forth in the order to provide ad-

1           vertising to or for that site, or which knowingly  
2           serves advertising to or for such site, shall take  
3           technically feasible and reasonable measures, as  
4           expeditiously as reasonable, designed to—

5                   (i) prevent its service from providing  
6                   advertisements to the Internet site associ-  
7                   ated with such domain name; or

8                   (ii) cease making available advertise-  
9                   ments for that site, or paid or sponsored  
10                  search results, links or other placements  
11                  that provide access to the domain name.

12           (D) INFORMATION LOCATION TOOLS.—An  
13           information location tool shall take technically  
14           feasible and reasonable measures, as expedi-  
15           tiously as possible, to—

16                   (i) remove or disable access to the  
17                   Internet site associated with the domain  
18                   name set forth in the order; or

19                   (ii) not serve a hypertext link to such  
20                   Internet site.

21           (3) COMMUNICATION WITH USERS.—Except as  
22           provided under paragraph (2)(A)(ii), an entity tak-  
23           ing an action described in this subsection shall de-  
24           termine whether and how to communicate such ac-  
25           tion to the entity’s users or customers.

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

9           (5) ACTIONS PURSUANT TO COURT ORDER.—

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

19           (B) IMMUNITY FROM LIABILITY.—Any en-  
20           tity receiving an order under this subsection,  
21           and any director, officer, employee, or agent  
22           thereof, shall not be liable to any party for any  
23           acts reasonably designed to comply with this  
24           subsection or reasonably arising from such  
25           order, other than in an action pursuant to sub-

1 section (e), and any actions taken by customers  
2 of such entity to circumvent any restriction on  
3 access to the Internet domain instituted pursu-  
4 ant to this subsection or any act, failure, or in-  
5 ability to restrict access to an Internet domain  
6 that is the subject of a court order issued pur-  
7 suant to this subsection despite good faith ef-  
8 forts to do so by such entity shall not be used  
9 by any person in any claim or cause of action  
10 against such entity, other than in an action  
11 pursuant to subsection (e).

12 (e) ENFORCEMENT OF ORDERS.—

13 (1) IN GENERAL.—In order to compel compli-  
14 ance with this section, the Attorney General may  
15 bring an action for injunctive relief against any  
16 party receiving a court order issued pursuant to this  
17 section that knowingly and willfully fails to comply  
18 with such order.

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

24 (3) DEFENSE.—A defendant in an action under  
25 paragraph (1) may establish an affirmative defense

1 by showing that the defendant does not have the  
2 technical means to comply with the subsection with-  
3 out incurring an unreasonable economic burden, or  
4 that the order is inconsistent with this Act. This  
5 showing shall serve as a defense only to the extent  
6 of such inability to comply or to the extent of such  
7 inconsistency.

8 (f) MODIFICATION OR VACATION OF ORDERS.—

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

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

15 (B) any registrant of the domain name, or  
16 the owner or operator of the Internet site sub-  
17 ject to the order;

18 (C) any domain name registrar or registry  
19 that has registered or assigned the domain  
20 name of the Internet site subject to the order;  
21 or

22 (D) any entity that has received a copy of  
23 an order pursuant to subsection (d) requiring  
24 such entity to take action prescribed in that  
25 subsection.

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

3                   (A) the Internet site associated with the  
4                   domain name subject to the order is no longer,  
5                   or never was, an Internet site dedicated to in-  
6                   fringing activities; or

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

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

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

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

22           (a) COMMENCEMENT OF AN ACTION.—

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

1           (A) a registrant of a domain name used by  
2           an Internet site dedicated to infringing activi-  
3           ties; or

4           (B) an owner or operator of an Internet  
5           site dedicated to infringing activities accessed  
6           through a domain name.

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

15          (b) ORDERS OF THE COURT.—

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



1 from undertaking any further activity as an Internet  
2 site dedicated to infringing activities, if—

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

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

9 (ii) the Internet site—

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

12 (II) harms holders of United States  
13 intellectual property rights.

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

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

22 (B) there is evidence that the Internet site  
23 is not intended to provide—

24 (i) such goods and services to users  
25 located in the United States;

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

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

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

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

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

13 (c) NOTICE AND SERVICE OF PROCESS.—

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

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

23 (B) via the postal and e-mail address of  
24 the registrar, registry, or other domain name  
25 registration authority that registered or as-

1 signed the domain name, to the extent such ad-  
2 dresses are reasonably available; and

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

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

10 (d) REQUIRED ACTIONS BASED ON COURT OR-  
11 DERS.—

12 (1) SERVICE.—A qualifying plaintiff, with the  
13 prior approval of the court, may, serve a copy of a  
14 court order issued pursuant to this section on simi-  
15 larly situated entities within each class described in  
16 paragraph (2). Proof of service shall be filed with  
17 the court.

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

21 (A) FINANCIAL TRANSACTION PRO-  
22 VIDERS.—A financial transaction provider shall  
23 take reasonable measures, as expeditiously as  
24 reasonable, designed to prevent, prohibit, or  
25 suspend its service from completing payment

1 transactions involving customers located within  
2 the United States and the Internet site associ-  
3 ated with the domain name set forth in the  
4 order.

5 (B) INTERNET ADVERTISING SERVICES.—

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

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

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

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

24 (4) RULE OF CONSTRUCTION.—For purposes of  
25 an action commenced under this section, the obliga-

1 tions of an entity described in this subsection shall  
2 be limited to the actions set out in each paragraph  
3 or subparagraph applicable to such entity, and no  
4 order issued pursuant to this section shall impose  
5 any additional obligations on, or require additional  
6 actions by, such entity.

7 (5) ACTIONS PURSUANT TO COURT ORDER.—

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

17 (B) IMMUNITY FROM LIABILITY.—Any en-  
18 tity receiving an order under this subsection,  
19 and any director, officer, employee, or agent  
20 thereof, shall not be liable to any party for any  
21 acts reasonably designed to comply with this  
22 subsection or reasonably arising from such  
23 order, other than in an action pursuant to sub-  
24 section (e), and any actions taken by customers  
25 of such entity to circumvent any restriction on

1 access to the Internet domain instituted pursu-  
2 ant to this subsection or any act, failure, or in-  
3 ability to restrict access to an Internet domain  
4 that is the subject of a court order issued pur-  
5 suant to this subsection despite good faith ef-  
6 forts to do so by such entity shall not be used  
7 by any person in any claim or cause of action  
8 against such entity, other than in an action  
9 pursuant to subsection (e).

10 (e) ENFORCEMENT OF ORDERS.—

11 (1) IN GENERAL.—In order to compel compli-  
12 ance with this section, the qualifying plaintiff may  
13 bring an action for injunctive relief against any  
14 party receiving a court order issued pursuant to this  
15 section that knowingly and willfully fails to comply  
16 with such order.

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

22 (3) DEFENSE.—A defendant in an action com-  
23 menced under paragraph (1) may establish an af-  
24 firmative defense by showing that the defendant  
25 does not have the technical means to comply with

1 the subsection without incurring an unreasonable  
2 economic burden, or that the order is inconsistent  
3 with this Act. This showing shall serve as a defense  
4 only to the extent of such inability to comply or to  
5 the extent of such inconsistency.

6 (f) MODIFICATION OR VACATION OF ORDERS.—

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

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

13 (B) any registrant of the domain name, or  
14 the owner or operator of the Internet site sub-  
15 ject to the order;

16 (C) any domain name registrar or registry  
17 that has registered or assigned the domain  
18 name of the Internet site subject to the order;  
19 or

20 (D) any entity that has received a copy of  
21 an order pursuant to subsection (d) requiring  
22 such entity to take action prescribed in that  
23 subsection.

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

1 (A) the Internet site associated with the  
2 domain name subject to the order is no longer,  
3 or never was, dedicated to infringing activities  
4 as defined in this Act; or

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

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

11 (g) RELATED ACTIONS.—A qualifying plaintiff, if al-  
12 leging that an Internet site previously adjudicated to be  
13 an Internet site dedicated to infringing activities is acces-  
14 sible or has been reconstituted at a different domain  
15 name, may commence a related action under this section  
16 against the additional domain name in the same judicial  
17 district as the previous action.

18 **SEC. 5. VOLUNTARY ACTION AGAINST WEBSITES STEALING**

19 **AMERICAN INTELLECTUAL PROPERTY.**

20 (a) IN GENERAL.—No financial transaction provider  
21 or Internet advertising service shall be liable for damages  
22 to any person for voluntarily taking any action described  
23 in section 3(d) or 4(d) with regard to an Internet site if  
24 the entity acting in good faith and based on credible evi-



1 dence has a reasonable belief that the Internet site is an  
2 Internet site dedicated to infringing activities.

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

5 (1) REFUSAL OF SERVICE.—A domain name  
6 registry, domain name registrar, financial trans-  
7 action provider, information location tool, or Inter-  
8 net advertising service, acting in good faith and  
9 based on credible evidence, may stop providing or  
10 refuse to provide services to an infringing Internet  
11 site that endangers the public health.

12 (2) IMMUNITY FROM LIABILITY.—An entity de-  
13 scribed in paragraph (1), including its directors, offi-  
14 cers, employees, or agents, that ceases or refused to  
15 provide services under paragraph (1) shall not be  
16 liable to any party under any Federal or State law  
17 for such action.

18 (3) DEFINITIONS.—For purposes of this sub-  
19 section—

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

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

1 (i) an Internet site dedicated to in-  
2 fringing activities for which the counterfeit  
3 products that it offers, sells, dispenses, or  
4 distributes are controlled or non-controlled  
5 prescription medication; or

6 (ii) an Internet site that has no sig-  
7 nificant use other than, or is designed, op-  
8 erated, or marketed by its operator or per-  
9 sons operating in concert with the oper-  
10 ator, and facts or circumstances suggest is  
11 used, primarily as a means for—

12 (I) offering, selling, dispensing,  
13 or distributing any controlled or non-  
14 controlled prescription medication,  
15 and does so regularly without a valid  
16 prescription; or

17 (II) offering, selling, dispensing,  
18 or distributing any controlled or non-  
19 controlled prescription medication,  
20 and does so regularly for medication  
21 that is adulterated or misbranded;

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

1 (D) the term “valid prescription” has the  
2 same meaning as in section 309(e)(2)(A) of the  
3 Controlled Substances Act (21 U.S.C.  
4 829(e)(2)(A)).

5 **SEC. 6. SAVINGS CLAUSES.**

6 (a) RULE OF CONSTRUCTION RELATING TO CIVIL  
7 AND CRIMINAL REMEDIES.—Nothing in this Act shall be  
8 construed to limit or expand civil or criminal remedies  
9 available to any person (including the United States) for  
10 infringing activities on the Internet pursuant to any other  
11 Federal or State law.

12 (b) RULE OF CONSTRUCTION RELATING TO VICARI-  
13 OUS OR CONTRIBUTORY LIABILITY.—Nothing in this Act  
14 shall be construed to enlarge or diminish vicarious or con-  
15 tributory liability for any cause of action available under  
16 title 17, United States Code, including any limitations on  
17 liability under section 512 of such title 17, or to create  
18 an obligation to take action pursuant to section 5 of this  
19 Act.

20 (c) RELATIONSHIP WITH SECTION 512 OF TITLE  
21 17.—Nothing in this Act, and no order issued or served  
22 pursuant to sections 3 or 4 of this Act, shall serve as a  
23 basis for determining the application of section 512 of title  
24 17, United States Code.

1 **SEC. 7. GUIDELINES AND STUDIES.**

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

3 (1) publish procedures developed in consultation  
4 with other relevant law enforcement agencies, includ-  
5 ing the United States Immigration and Customs En-  
6 forcement, to receive information from the public  
7 about Internet sites dedicated to infringing activi-  
8 ties;

9 (2) provide guidance to intellectual property  
10 rights holders about what information such rights  
11 holders should provide law enforcement agencies to  
12 initiate an investigation pursuant to this Act;

13 (3) provide guidance to intellectual property  
14 rights holders about how to supplement an ongoing  
15 investigation initiated pursuant to this Act;

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

18 (5) provide appropriate resources and proce-  
19 dures for case management and development to af-  
20 fect timely disposition of actions brought under this  
21 Act; and

22 (6) develop a deconfliction process in consulta-  
23 tion with other law enforcement agencies, including  
24 the United States Immigration and Customs En-  
25 forcement, to coordinate enforcement activities  
26 brought under this Act.

1 (b) REPORTS.—

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

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

15 (B) An assessment of the effects, if any, of  
16 the implementation of section 3(d)(2)(A) on the  
17 deployment, security, and reliability of the do-  
18 main name system and associated Internet  
19 processes, including Domain Name System Se-  
20 curity Extensions.

21 (C) Recommendations, if any, for modi-  
22 fying or amending this Act to increase effective-  
23 ness or ameliorate any unintended effects of  
24 section 3(d)(2)(A).

1           (2) REPORT ON OVERALL EFFECTIVENESS.—

2           The Register of Copyrights shall, in consultation  
3           with the appropriate departments and agencies of  
4           the United States and other stakeholders—

5                   (A) conduct a study on—

6                           (i) the enforcement and effectiveness  
7                           of this Act; and

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

10                   (B) not later than 2 years after the date  
11                   of enactment of this Act, submit a report to the  
12                   Committee on the Judiciary of the Senate and  
13                   the Committee on the Judiciary of the House of  
14                   Representatives on—

15                           (i) the results of the study conducted  
16                           under subparagraph (A); and

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

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