

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess.

S. 968

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. LEAHY (for himself, Mr. HATCH,
and Mr. GRASSLEY)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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 infring-
2 ing 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 (3) IDENTIFICATION OF ENTITIES.—Any action
22 commenced by the Attorney General under this sec-
23 tion shall identify the entities which may be required
24 to take actions pursuant to subsection (d) if an
25 order issues pursuant to subsection (b).

26 (b) ORDERS OF THE COURT.—

1 (1) IN GENERAL.—On application of the Attor-
2 ney General following the commencement of an ac-
3 tion under this section, the court may issue a tem-
4 porary restraining order, a preliminary injunction, or
5 an injunction, in accordance with rule 65 of the Fed-
6 eral Rules of Civil Procedure, against the non-
7 domestic domain name used by an Internet site dedi-
8 cated to infringing activities, or against a registrant
9 of such domain name, or the owner or operator of
10 such Internet site dedicated to infringing activities,
11 to cease and desist from undertaking any further ac-
12 tivity as an Internet site dedicated to infringing ac-
13 tivities, if—

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

16 (B) the Internet site—

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

19 (ii) harms holders of United States in-
20 tellectual property rights.

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

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

4 (B) there is evidence that the Internet site
5 is not intended to provide—

6 (i) such goods and services to users
7 located in the United States;

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

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

12 (C) the Internet site has reasonable meas-
13 ures in place to prevent such goods and services
14 from being accessed from or delivered to the
15 United States;

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

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

20 (c) NOTICE AND SERVICE OF PROCESS.—

21 (1) IN GENERAL.—Upon commencing an action
22 under this section, the Attorney General shall send
23 a notice of the alleged violation and intent to pro-
24 ceed under this Act to the registrant of the domain
25 name of the Internet site—

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

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

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

14 (2) RULE OF CONSTRUCTION.—For purposes of
15 this section, the actions described in this subsection
16 shall constitute service of process.

17 (3) OTHER NOTICE.—Upon commencing an ac-
18 tion under this section, the Attorney General shall
19 also provide notice to entities identified in the com-
20 plaint, or any amendments thereto, which may be re-
21 quired to take action pursuant to subsection (d).

22 (d) REQUIRED ACTIONS BASED ON COURT OR-
23 DERS.—

24 (1) SERVICE.—A Federal law enforcement offi-
25 cer, with the prior approval of the court, may serve

1 a copy of a court order issued pursuant to this sec-
2 tion on similarly situated entities within each class
3 described in paragraph (2), which have been identi-
4 fied in the complaint, or any amendments thereto,
5 pursuant to subsection (a). Proof of service shall be
6 filed with the court.

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

10 (A) OPERATORS.—

11 (i) IN GENERAL.—An operator of a
12 nonauthoritative domain name system
13 server shall take the least burdensome
14 technically feasible and reasonable meas-
15 ures designed to prevent the domain name
16 described in the order from resolving to
17 that domain name’s Internet protocol ad-
18 dress, except that—

19 (I) such operator shall not be re-
20 quired—

21 (aa) other than as directed
22 under this subparagraph, to mod-
23 ify its network, software, sys-
24 tems, or facilities;

1 (bb) to take any measures
2 with respect to domain name
3 lookups not performed by its own
4 domain name server or domain
5 name system servers located out-
6 side the United States; or

7 (cc) to continue to prevent
8 access to a domain name to
9 which access has been effectively
10 disable by other means; and

11 (II) nothing in this subparagraph
12 shall affect the limitation on the liabil-
13 ity of such an operator under section
14 512 of title 17, United States Code.

15 (ii) TEXT OF NOTICE.—The Attorney
16 General shall prescribe the text of the no-
17 tice displayed to users or customers of an
18 operator taking an action pursuant to this
19 subparagraph. Such text shall specify that
20 the action is being taken pursuant to a
21 court order obtained by the Attorney Gen-
22 eral.

23 (B) FINANCIAL TRANSACTION PRO-
24 VIDERS.—A financial transaction provider shall
25 take reasonable measures, as expeditiously as

1 reasonable, designed to prevent, prohibit, or
2 suspend its service from completing payment
3 transactions involving customers located within
4 the United States and the Internet site associ-
5 ated with the domain name set forth in the
6 order.

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

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

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

22 (D) INFORMATION LOCATION TOOLS.—An
23 service provider of an information location tool
24 shall take technically feasible and reasonable
25 measures, as expeditiously as possible, to—

1 (i) remove or disable access to the
2 Internet site associated with the domain
3 name set forth in the order; or

4 (ii) not serve a hypertext link to such
5 Internet site.

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

11 (4) RULE OF CONSTRUCTION.—For purposes of
12 an action commenced under this section, the obliga-
13 tions of an entity described in this subsection shall
14 be limited to the actions set out in each paragraph
15 or subparagraph applicable to such entity, and no
16 order issued pursuant to this section shall impose
17 any additional obligations on, or require additional
18 actions by, such entity.

19 (5) ACTIONS PURSUANT TO COURT ORDER.—

20 (A) IMMUNITY FROM SUIT.—No cause of
21 action shall lie in any Federal or State court or
22 administrative agency against any entity receiv-
23 ing a court order issued under this subsection,
24 or against any director, officer, employee, or
25 agent thereof, for any act reasonably designed

1 to comply with this subsection or reasonably
2 arising from such order, other than in an action
3 pursuant to subsection (e).

4 (B) IMMUNITY FROM LIABILITY.—Any en-
5 tity receiving an order under this subsection,
6 and any director, officer, employee, or agent
7 thereof, shall not be liable to any party for any
8 acts reasonably designed to comply with this
9 subsection or reasonably arising from such
10 order, other than in an action pursuant to sub-
11 section (e), and any actions taken by customers
12 of such entity to circumvent any restriction on
13 access to the Internet domain instituted pursu-
14 ant to this subsection or any act, failure, or in-
15 ability to restrict access to an Internet domain
16 that is the subject of a court order issued pur-
17 suant to this subsection despite good faith ef-
18 forts to do so by such entity shall not be used
19 by any person in any claim or cause of action
20 against such entity, other than in an action
21 pursuant to subsection (e).

22 (e) ENFORCEMENT OF ORDERS.—

23 (1) IN GENERAL.—In order to compel compli-
24 ance with this section, the Attorney General may
25 bring an action for injunctive relief against any

1 party receiving a court order issued pursuant to this
2 section that knowingly and willfully fails to comply
3 with such order.

4 (2) RULE OF CONSTRUCTION.—The authority
5 granted the Attorney General under paragraph (1)
6 shall be the sole legal remedy for enforcing the obli-
7 gations under this section of any entity described in
8 subsection (d).

9 (3) DEFENSE.—A defendant in an action under
10 paragraph (1) may establish an affirmative defense
11 by showing that the defendant does not have the
12 technical means to comply with the subsection with-
13 out incurring an unreasonable economic burden, or
14 that the order is inconsistent with this Act. This
15 showing shall serve as a defense only to the extent
16 of such inability to comply or to the extent of such
17 inconsistency.

18 (f) MODIFICATION OR VACATION OF ORDERS.—

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

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

1 (B) any registrant of the domain name, or
2 the owner or operator of the Internet site sub-
3 ject to the order;

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

8 (D) any entity that has received a copy of
9 an order pursuant to subsection (d) requiring
10 such entity to take action prescribed in that
11 subsection.

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

14 (A) the Internet site associated with the
15 domain name subject to the order is no longer,
16 or never was, an Internet site dedicated to in-
17 fringing activities; or

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

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

24 (4) INTERVENTION.—An entity identified pur-
25 suant to subsection (a) as an entity which may be

1 required to take action pursuant to subsection (d) if
2 an order issues pursuant to subsection (b) may in-
3 tervene at any time in any action commenced under
4 subsection (a), or in any action to modify, suspend,
5 or vacate an order pursuant to this subsection. Fail-
6 ure to intervene in an action does not prohibit an
7 entity notified of the action from subsequently seek-
8 ing an order to modify, suspend, or terminate an
9 order issued by the court under this Act.

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

17 **SEC. 4. ELIMINATING THE FINANCIAL INCENTIVE TO STEAL**
18 **INTELLECTUAL PROPERTY ONLINE.**

19 (a) COMMENCEMENT OF AN ACTION.—

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

22 (A) a registrant of a domain name used by
23 an Internet site dedicated to infringing activi-
24 ties; or

1 (B) an owner or operator of an Internet
2 site dedicated to infringing activities accessed
3 through a domain name.

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

12 (3) IDENTIFICATION OF ENTITIES.—Any action
13 commenced by a qualifying plaintiff under this sec-
14 tion shall identify the entities which may be required
15 to take actions pursuant to subsection (d) if an
16 order issues pursuant to subsection (b).

17 (b) ORDERS OF THE COURT.—

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

1 name, or the owner or operator of such Internet site
2 dedicated to infringing activities, to cease and desist
3 from undertaking any further activity as an Internet
4 site dedicated to infringing activities, if—

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

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

11 (ii) the Internet site—

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

14 (II) harms holders of United States
15 intellectual 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)(ii)(I), a court may
20 consider, 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 qualifying plaintiff 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 (3) OTHER NOTICE.—Upon commencing an ac-
14 tion under this section, the qualifying plaintiff shall
15 also provide notice to entities identified in the com-
16 plaint, or any amendments thereto, which may be re-
17 quired to take action pursuant to subsection (d).

18 (d) REQUIRED ACTIONS BASED ON COURT OR-
19 DERS.—

20 (1) SERVICE.—A qualifying plaintiff, with the
21 prior approval of the court, may, serve a copy of a
22 court order issued pursuant to this section on simi-
23 larly situated entities within each class described in
24 paragraph (2), which have been identified in the
25 complaint, or any amendments thereto, pursuant to

1 subsection (a). Proof of service shall be filed with
2 the court.

3 (2) REASONABLE MEASURES.—After being
4 served with a copy of an order pursuant to this sub-
5 section:

6 (A) FINANCIAL TRANSACTION PRO-
7 VIDERS.—A financial transaction provider shall
8 take reasonable measures, as expeditiously as
9 reasonable, designed to prevent, prohibit, or
10 suspend its service from completing payment
11 transactions involving customers located within
12 the United States and the Internet site associ-
13 ated with the domain name set forth in the
14 order.

15 (B) INTERNET ADVERTISING SERVICES.—
16 An Internet advertising service that contracts
17 with the Internet site associated with the do-
18 main name set forth in the order to provide ad-
19 vertising to or for that site, or which knowingly
20 serves advertising to or for such site, shall take
21 technically feasible and reasonable measures, as
22 expeditiously as reasonable, designed to—

23 (i) prevent its service from providing
24 advertisements to the Internet site associ-
25 ated with such domain name; or

1 (ii) cease making available advertise-
2 ments for that site, or paid or sponsored
3 search results, links, or placements that
4 provide access to the domain name.

5 (3) COMMUNICATION WITH USERS.—An entity
6 taking an action described in this subsection shall
7 determine how to communicate such action to the
8 entity’s users or customers.

9 (4) RULE OF CONSTRUCTION.—For purposes of
10 an action commenced under this section, the obliga-
11 tions of an entity described in this subsection shall
12 be limited to the actions set out in each paragraph
13 or subparagraph applicable to such entity, and no
14 order issued pursuant to this section shall impose
15 any additional obligations on, or require additional
16 actions by, such entity.

17 (5) ACTIONS PURSUANT TO COURT ORDER.—

18 (A) IMMUNITY FROM SUIT.—No cause of
19 action shall lie in any Federal or State court or
20 administrative agency against any entity receiv-
21 ing a court order issued under this subsection,
22 or against any director, officer, employee, or
23 agent thereof, for any act reasonably designed
24 to comply with this subsection or reasonably

1 arising from such order, other than in an action
2 pursuant to subsection (e).

3 (B) IMMUNITY FROM LIABILITY.—Any en-
4 tity receiving an order under this subsection,
5 and any director, officer, employee, or agent
6 thereof, shall not be liable to any party for any
7 acts reasonably designed to comply with this
8 subsection or reasonably arising from such
9 order, other than in an action pursuant to sub-
10 section (e), and any actions taken by customers
11 of such entity to circumvent any restriction on
12 access to the Internet domain instituted pursu-
13 ant to this subsection or any act, failure, or in-
14 ability to restrict access to an Internet domain
15 that is the subject of a court order issued pur-
16 suant to this subsection despite good faith ef-
17 forts to do so by such entity shall not be used
18 by any person in any claim or cause of action
19 against such entity, other than in an action
20 pursuant to subsection (e).

21 (e) ENFORCEMENT OF ORDERS.—

22 (1) IN GENERAL.—In order to compel compli-
23 ance with this section, the qualifying plaintiff may
24 bring an action for injunctive relief against any
25 party receiving a court order issued pursuant to this

1 section that knowingly and willfully fails to comply
2 with such order.

3 (2) RULE OF CONSTRUCTION.—The authority
4 granted a qualifying plaintiff under paragraph (1)
5 shall be the sole legal remedy for enforcing the obli-
6 gations under this section of any entity described in
7 subsection (d).

8 (3) DEFENSE.—A defendant in an action com-
9 menced under paragraph (1) may establish an af-
10 firmative defense by showing that the defendant
11 does not have the technical means to comply with
12 the subsection without incurring an unreasonable
13 economic burden, or that the order is inconsistent
14 with this Act. This showing shall serve as a defense
15 only to the extent of such inability to comply or to
16 the extent of such inconsistency.

17 (f) MODIFICATION OR VACATION OF ORDERS.—

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

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

1 (B) any registrant of the domain name, or
2 the owner or operator of the Internet site sub-
3 ject to the order;

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

8 (D) any entity that has received a copy of
9 an order pursuant to subsection (d) requiring
10 such entity to take action prescribed in that
11 subsection.

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

14 (A) the Internet site associated with the
15 domain name subject to the order is no longer,
16 or never was, dedicated to infringing activities
17 as defined in this Act; or

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

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

24 (4) INTERVENTION.—An entity identified pur-
25 suant to subsection (a) as an entity which may be

1 required to take action pursuant to subsection (d) if
2 an order issues pursuant to subsection (b) may in-
3 tervene at any time in any action commenced under
4 subsection (a), or in any action to modify, suspend,
5 or vacate an order pursuant to this subsection. Fail-
6 ure to intervene in an action does not prohibit an
7 entity notified of the action from subsequently seek-
8 ing an order to modify, suspend, or terminate an
9 order issued by the court under this Act.

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

17 **SEC. 5. VOLUNTARY ACTION AGAINST WEBSITES STEALING**
18 **AMERICAN INTELLECTUAL PROPERTY.**

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

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

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

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

16 (3) DEFINITIONS.—For purposes of this sub-
17 section—

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

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

23 (i) an Internet site dedicated to in-
24 fringing activities for which the counterfeit
25 products that it offers, sells, dispenses, or

1 distributes are controlled or non-controlled
2 prescription medication; or

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

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

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

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

22 (D) the term “valid prescription” has the
23 same meaning as in section 309(e)(2)(A) of the
24 Controlled Substances Act (21 U.S.C.
25 829(e)(2)(A)).

1 **SEC. 6. SAVINGS CLAUSES.**

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

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

16 (c) **RELATIONSHIP WITH SECTION 512 OF TITLE**
17 **17.**—Nothing in this Act, no identification of entities in
18 section 3(a) or 4(a), no notice provided pursuant to sec-
19 tion 3(c) or 4(c), no order issued pursuant to sections 3(b)
20 or 4(b), and no order issued or served pursuant to sections
21 3(d) or 4(d), shall serve as a basis for determining the
22 application of section 512 of title 17, United States Code.

23 **SEC. 7. GUIDELINES AND STUDIES.**

24 (a) **GUIDELINES.**—The Attorney General shall—
25 (1) publish procedures developed in consultation
26 with other relevant law enforcement agencies, includ-

1 ing the United States Immigration and Customs En-
2 forcement, to receive information from the public
3 about Internet sites dedicated to infringing activi-
4 ties; and

5 (2) develop a deconfliction process in consulta-
6 tion with other law enforcement agencies, including
7 the United States Immigration and Customs En-
8 forcement, to coordinate enforcement activities
9 brought under this Act.

10 (b) REPORTS.—

11 (1) REPORT ON EFFECTIVENESS OF CERTAIN
12 MEASURES.—Not later than 1 year after the date of
13 enactment of this Act, the Secretary of Commerce,
14 in coordination with the Attorney General, the Sec-
15 retary of Homeland Security, and the Intellectual
16 Property Enforcement Coordinator, shall conduct a
17 study and report to the Committee on the Judiciary
18 of the Senate and the Committee on the Judiciary
19 of the House of Representatives on the following:

20 (A) An assessment of the effects, if any, of
21 the implementation of section 3(d)(2)(A) on the
22 accessibility of Internet sites dedicated to in-
23 fringing activity.

24 (B) An assessment of the effects, if any, of
25 the implementation of section 3(d)(2)(A) on the

1 deployment, security, and reliability of the do-
2 main name system and associated Internet
3 processes, including Domain Name System Se-
4 curity Extensions.

5 (C) Recommendations, if any, for modi-
6 fying or amending this Act to increase effective-
7 ness or ameliorate any unintended effects of
8 section 3(d)(2)(A).

9 (2) REPORT ON OVERALL EFFECTIVENESS.—
10 The Register of Copyrights shall, in consultation
11 with the appropriate departments and agencies of
12 the United States and other stakeholders—

13 (A) conduct a study on—

14 (i) the enforcement and effectiveness
15 of this Act;

16 (ii) the burden of carrying out the re-
17 quirements of this Act, if any, on inter-
18 mediaries;

19 (iii) the need for cost reimbursement
20 for intermediaries for carrying out the re-
21 quirements of this Act; and

22 (iv) the need to modify or amend this
23 Act to apply to emerging technologies; and

24 (B) not later than 2 years after the date
25 of enactment of this Act, submit a report to the

1 Committee on the Judiciary of the Senate and
2 the Committee on the Judiciary of the House of
3 Representatives on—

4 (i) the results of the study conducted
5 under subparagraph (A); and

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

8 (3) ANNUAL OVERSIGHT REPORT.—Not later
9 than 1 year after the date of enactment of this Act,
10 and each year thereafter, the Attorney General shall
11 report to the Committee on the Judiciary of the
12 Senate and the Committee on the Judiciary of the
13 House of Representatives the following information
14 with respect to the preceding year:

15 (A) Each instance in which an action was
16 commenced under section 3(a)(1) or 3(a)(2),
17 and each instance in which an action was com-
18 menced by the Attorney General under section
19 4(a)(1) or 4(a)(2), including the name of any
20 party against whom the action was brought.

21 (B) Each instance in which a temporary
22 restraining order, preliminary injunction or in-
23 junction was issued pursuant to section 3(b)(1),
24 and each instance in which a temporary re-
25 straining order, preliminary injunction or in-

1 junction was issued pursuant to section 4(b)(1)
2 in an action commenced by the Attorney Gen-
3 eral, including the name of any party against
4 whom the order or injunction was issued.

5 (C) Each instance in which an action com-
6 menced under section 3(a)(1) or 3(a)(2), or an
7 action commenced by the Attorney General
8 under section 4(a)(1) or 4(a)(2), was concluded
9 without the issuance of a temporary restraining
10 order, preliminary injunction or injunction, in-
11 cluding the reason for the conclusion of the ac-
12 tion.

13 (D) Each proof of service filed with the
14 court pursuant to section 3(d)(1), or filed pur-
15 suant to section 4(d)(1) in an action com-
16 menced by the Attorney General.

17 (E) Each action for injunctive relief
18 brought pursuant to section 3(e), or brought
19 pursuant to section 4(e) in an action com-
20 menced by the Attorney General, including the
21 name of any party against whom the action for
22 relief was brought.

23 (F) Each motion granted by a court to
24 modify, suspend or vacate an order that was
25 filed under section 3(f)(1), or filed under sec-

1 tion 4(f)(1) in an action commenced by the At-
2 torney General, including the relief obtained.

3 (G) Each related action commenced pursu-
4 ant to section 3(g), or commenced by the Attor-
5 ney General pursuant to section 4(g), including
6 the name of any party against whom an action
7 was commenced.

8 (4) GAO REPORT ON PRIVATE ACTIONS.—Not
9 later than 1 year after the date of enactment of this
10 Act, and each year thereafter, the Comptroller Gen-
11 eral shall report to the Committee on the Judiciary
12 of the Senate and the Committee on the Judiciary
13 of the House of Representative each instance in the
14 previous year in which an action was commenced
15 under sections 4(a)(1) or 4(a)(2) by a qualifying
16 plaintiff that is not the Attorney General, including
17 the names of any parties to each such action.