112TH CONGRESS 1ST SESSION S.968

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

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

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) the term "domain name" has the same
 meaning as in section 45 of the Lanham Act (15
 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 do7 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;

(4) the term "information location tool" has the
same meaning as described in subsection (d) of section 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;

(6) the term "Internet site" means the collection of digital assets, including links, indexes, or
pointers to digital assets, accessible through the
Internet that are addressed relative to a common domain name;

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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	(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-
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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

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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 expeditionally 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. (D) INFORMATION LOCATION TOOLS.—An 12 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.

(4) RULE OF CONSTRUCTION.—For purposes of
an action commenced under this section, the obliga-
tions of an entity described in this subsection shall
be limited to the actions set out in each paragraph
or subparagraph applicable to such entity, and no
order issued pursuant to this section shall impose
any additional obligations on, or require additional
actions by, such entity.
(5) Actions pursuant to court order.—
(A) IMMUNITY FROM SUIT.—No cause of
action shall lie in any Federal or State court or
administrative agency against any entity receiv-
ing a court order issued under this subsection,
or against any director, officer, employee, or
agent thereof, for any act reasonably designed
to comply with this subsection or reasonably
arising from such order, other than in an action
pursuant to subsection (e).
(B) IMMUNITY FROM LIABILITY.—Any en-
tity receiving an order under this subsection,
and any director, officer, employee, or agent
thereof, shall not be liable to any party for any
acts reasonably designed to comply with this
subsection or reasonably arising from such
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.—

(1) IN GENERAL.—In order to compel compliance with this section, the Attorney General may
bring an action for injunctive relief against any
party receiving a court order issued pursuant to this
section that knowingly and willfully fails to comply
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 obli22 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	01
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;

(B) via the postal and e-mail address of
the registrar, registry, or other domain name
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 associated with the domain name set forth in the 3 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 expeditionally 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 obligations of an entity described in this subsection shall
be limited to the actions set out in each paragraph
or subparagraph applicable to such entity, and no
order issued pursuant to this section shall impose
any additional obligations on, or require additional
actions by, such entity.

(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

access to the Internet domain instituted pursu-1 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 against such entity, other than in an action 8 9 pursuant to subsection (e).

10 (e) ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—In order to compel compliance with this section, the qualifying plaintiff may
bring an action for injunctive relief against any
party receiving a court order issued pursuant to this
section that knowingly and willfully fails to comply
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 obli20 gations under this section of any entity described in
21 subsection (d).

(3) DEFENSE.—A defendant in an action commenced under paragraph (1) may establish an affirmative defense by showing that the defendant 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
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or Internet advertising service shall be liable for damages
to any person for voluntarily taking any action described
in section 3(d) or 4(d) with regard to an Internet site if
the entity acting in good faith and based on credible evi-

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

3 (b) INTERNET SITES ENGAGED IN INFRINGING AC4 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.

(2) IMMUNITY FROM LIABILITY.—An entity described in paragraph (1), including its directors, officers, employees, or agents, that ceases or refused to
provide services under paragraph (1) shall not be
liable to any party under any Federal or State law
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— (I) offering, selling, dispensing, 12 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-

controlled

prescription

that is adulterated or misbranded;

(C) the term "misbranded" has the same

meaning as in section 502 of the Federal Food,

Drug, and Cosmetic Act (21 U.S.C. 352); and

and does so regularly for medication

medication,

19

20

21

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23

(D) the term "valid prescription" has the
 same meaning as in section 309(e)(2)(A) of the
 Controlled Substances Act (21 U.S.C.
 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 shall be construed to enlarge or diminish vicarious or con-14 15 tributory liability for any cause of action available under title 17, United States Code, including any limitations on 16 17 liability under section 512 of such title 17, or to create an obligation to take action pursuant to section 5 of this 18 19 Act.

(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, includ5 ing the United States Immigration and Customs En6 forcement, to receive information from the public
7 about Internet sites dedicated to infringing activi8 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;

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

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

(5) provide appropriate resources and procedures for case management and development to affect timely disposition of actions brought under this
Act; and

(6) develop a deconfliction process in consultation with other law enforcement agencies, including
the United States Immigration and Customs Enforcement, to coordinate enforcement activities
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.
17	(ii) any recommendations that

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