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S. 3804

To combat online infringement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2010

Mr. LEAHY (for himself, Mr. HATCH, Ms. KLOBUCHAR, Mr. WHITEHOUSE, Mr. SCHUMER, Mr. KOHL, Mr. SPECTER, Mr. DURBIN, Mr. BAYH, Mr. VOINOVICH, Mrs. FEINSTEIN, Mr. COBURN, Mr. CARDIN, Mr. GRAHAM, Mr. GRASSLEY, Mr. ALEXANDER, Mrs. GILLIBRAND, Mr. MENENDEZ, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 18, 2010

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To combat online infringement, 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 “Combating Online In-
5 fringement and Counterfeits Act”.

1 **SEC. 2. INTERNET SITES DEDICATED TO INFRINGING AC-**
 2 **TIVITIES.**

3 Chapter 113 of title 18, United States Code, is
 4 amended by adding at the end the following:

5 **“§ 2324. Internet sites dedicated to infringing activi-**
 6 **ties**

7 “(a) DEFINITION.—For purposes of this section, an
 8 Internet site is ‘dedicated to infringing activities’ if such
 9 site—

10 “(1) is otherwise subject to civil forfeiture to
 11 the United States Government under section 2323;
 12 or

13 “(2) is—

14 “(A) primarily designed, has no demon-
 15 strable, commercially significant purpose or use
 16 other than, or is marketed by its operator, or
 17 by a person acting in concert with the operator,
 18 to offer—

19 “(i) goods or services in violation of
 20 title 17, United States Code, or enable or
 21 facilitate a violation of title 17, United
 22 States Code, including by offering or pro-
 23 viding access to, without the authorization
 24 of the copyright owner or otherwise by op-
 25 eration of law, copies of, or public perform-
 26 ance or display of, works protected by title

1 17, in complete or substantially complete
2 form, by any means, including by means of
3 download, transmission, or otherwise, in-
4 cluding the provision of a link or aggre-
5 gated links to other sites or Internet re-
6 sources for obtaining such copies for ac-
7 cessing such performance or displays; or

8 “(ii) to sell or distribute goods, serv-
9 ices, or materials bearing a counterfeit
10 mark, as that term is defined in section
11 34(d) of the Act entitled ‘An Act to pro-
12 vide for the registration and protection of
13 trademarks used in commerce, to carry out
14 the provisions of certain international con-
15 ventions, and for other purposes’, approved
16 July 5, 1946 (commonly referred to as the
17 ‘Trademark Act of 1946’ or the ‘Lanham
18 Act’; 15 U.S.C. 1116(d)); and

19 “(B) engaged in the activities described in
20 subparagraph (A), and when taken together,
21 such activities are central to the activity of the
22 Internet site or sites accessed through a specific
23 domain name.

24 “(b) INJUNCTIVE RELIEF.—On application of the At-
25 torney General following the commencement of an action

1 pursuant to subsection (e), the court may issue a tem-
2 porary restraining order, a preliminary injunction, or an
3 injunction against the domain name used by an Internet
4 site dedicated to infringing activities to cease and desist
5 from undertaking any infringing activity in violation of
6 this section, in accordance with rule 65 of the Federal
7 Rules of Civil Procedure. A party described in subsection
8 (e) receiving an order issued pursuant to this section shall
9 take the appropriate actions described in subsection (e).

10 “(e) IN REM ACTION.—

11 “(1) IN GENERAL.—The Attorney General may
12 commence an in rem action against any domain
13 name used by an Internet site in the judicial district
14 in which the domain name registrar or domain name
15 registry is located, or, if pursuant to subsection
16 (d)(2), in the District of Columbia, if—

17 “(A) the domain name is dedicated to in-
18 fringing activities; and

19 “(B) the Attorney General simulta-
20 neously—

21 “(i) sends a notice of the alleged vio-
22 lation and intent to proceed under this
23 subsection to the registrant of the domain
24 name at the postal and e-mail address pro-

1 vided by the registrant to the registrar, if
2 available; and

3 “~~(ii)~~ publishes notice of the action as
4 the court may direct promptly after filing
5 the action.

6 “~~(2)~~ SERVICE OF PROCESS.—For purposes of
7 this section, the actions described under paragraph
8 ~~(1)(B)~~ shall constitute service of process.

9 “~~(d)~~ SITUS.—

10 “~~(1)~~ DOMAINS FOR WHICH THE REGISTRY OR
11 REGISTRAR IS LOCATED DOMESTICALLY.—In an in
12 rem action commenced under subsection ~~(c)~~, a do-
13 main name shall be deemed to have its situs in the
14 judicial district in which—

15 “~~(A)~~ the domain name registrar or registry
16 is located, provided that for a registry that is
17 located in more than 1 judicial district, venue
18 shall be appropriate at the principal place
19 where the registry operations are performed; or

20 “~~(B)~~ documents sufficient to establish con-
21 trol and authority regarding the disposition of
22 the registration and use of the domain name
23 are deposited with the court.

24 “~~(2)~~ DOMAINS FOR WHICH THE REGISTRY OR
25 REGISTRAR IS NOT LOCATED DOMESTICALLY.—

1 “(A) ACTION BROUGHT IN DISTRICT OF
2 COLUMBIA.—If the provisions of paragraph (1)
3 do not apply to a particular domain name, the
4 in rem action may be brought in the District of
5 Columbia to prevent the importation into the
6 United States of goods and services offered by
7 an Internet site dedicated to infringing activi-
8 ties if—

9 “(i) the domain name is used to ac-
10 cess such Internet site in the United
11 States; and

12 “(ii) the Internet site—

13 “(I) conducts business directed to
14 residents of the United States; and

15 “(II) harms intellectual property
16 rights holders that are residents of
17 the United States.

18 “(B) DETERMINATION BY THE COURT.—

19 For purposes of determining whether an Inter-
20 net site conducts business directed to residents
21 of the United States under subparagraph
22 (A)(ii)(I), a court shall consider, among other
23 indicia whether—

1 “(i) the Internet site is actually pro-
 2 viding goods or services to subscribers lo-
 3 cated in the United States;

4 “(ii) the Internet site states that it is
 5 not intended, and has measures to prevent,
 6 infringing material from being accessed in
 7 or delivered to the United States;

8 “(iii) the Internet site offers services
 9 accessible in the United States; and

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

13 “(e) SERVICE OF COURT ORDER.—

14 “(1) DOMESTIC DOMAINS.—In an in rem action
 15 to which subsection (d)(1) applies, the Attorney
 16 General shall serve any court order issued pursuant
 17 to this section on the domain name registrar or, if
 18 the domain name registrar is not located within the
 19 United States, upon the registry. Upon receipt of
 20 such order, the domain name registrar or domain
 21 name registry shall suspend operation of, and lock,
 22 the domain name.

23 “(2) NONDOMESTIC DOMAINS.—

24 “(A) ENTITY TO BE SERVED.—In an in
 25 rem action to which subsection (d)(2) applies,

1 the Attorney General may serve any court order
2 issued pursuant to this section on any entity
3 listed in clauses (i) through (iii) of subpara-
4 graph (B).

5 “(B) REQUIRED ACTIONS.—Upon receipt
6 of a court order issued pursuant to this sec-
7 tion—

8 “(i) a service provider, as that term is
9 defined in section 512(k)(1) of title 17,
10 United States Code, or other operator of a
11 domain name system server shall take rea-
12 sonable steps that will prevent a domain
13 name from resolving to that domain
14 name’s Internet protocol address;

15 “(ii) a financial transaction provider,
16 as that term is defined in section 5362(4)
17 of title 31, United States Code, shall take
18 reasonable measures, as expeditiously as
19 practical, to prevent—

20 “(I) its service from processing
21 transactions for customers located
22 within the United States based on
23 purchases associated with the domain
24 name; and

1 “(H) its trademarks from being
2 authorized for use on Internet sites
3 associated with such domain name;
4 and

5 “(iii) a service that serves contextual
6 or display advertisements to Internet sites
7 shall take reasonable measures, as expedi-
8 tiously as practical, to prevent its network
9 from serving advertisements to an Internet
10 site accessed through such domain name.

11 “(3) IMMUNITY.—No cause of action shall lie in
12 any Federal or State court or administrative agency
13 against any entity receiving a court order issued
14 under this section, or against any director, officer,
15 employee, or agent thereof, for any action reasonably
16 calculated to comply with this section or arising
17 from such order.

18 “(f) PUBLICATION OF ORDERS.—The Attorney Gen-
19 eral shall inform the Intellectual Property Enforcement
20 Coordinator of all court orders issued under this section
21 directed to specific domain names associated with Internet
22 sites dedicated to infringing activities. The Intellectual
23 Property Enforcement Coordinator shall post such domain
24 names on a publicly available Internet site, together with
25 other relevant information, in order to inform the public.

1 “(g) ENFORCEMENT OF ORDERS.—In order to com-
 2 pel compliance with this section, the Attorney General may
 3 bring an action against any party receiving a court order
 4 issued pursuant to this section that willfully or persistently
 5 fails to comply with such order. A showing by the defend-
 6 ing party in such action that it does not have the technical
 7 means to comply with this section shall serve as a complete
 8 defense to such action.

9 “(h) MODIFICATION OR VACATION OF ORDERS; DIS-
 10 MISSAL.—

11 “(1) MODIFICATION OR VACATION OF ORDER.—

12 At any time after the issuance of a court order con-
 13 stituting injunctive relief under this section—

14 “(A) the Attorney General may apply for a
 15 modification of the order—

16 “(i) to expand the order to apply to a
 17 domain name that is reconstituted using a
 18 different domain name subsequent to the
 19 original order; and

20 “(ii) to include additional domain
 21 names that are used in substantially the
 22 same manner as the Internet site against
 23 which the action was brought,

24 by providing the court with clear indicia of joint
 25 control, ownership, or operation of the Internet

1 site associated with the domain name subject to
2 the order and the Internet site associated with
3 the requested modification; and

4 “(B) a defendant or owner or operator of
5 a domain name subject to the order, or any
6 party required to take action based on the
7 order, may petition the court to modify, sus-
8 pend, or vacate the order, based on evidence
9 that—

10 “(i) the Internet site associated with
11 the domain name subject to the order is no
12 longer dedicated to infringing activities; or

13 “(ii) the interests of justice require
14 that the order be modified, suspended, or
15 vacated.

16 “(2) DISMISSAL OF ORDER.—A court order
17 constituting injunctive relief under this section
18 issued against a domain name used by an Internet
19 site dedicated to infringing activities shall automati-
20 cally cease to have any force or effect upon expira-
21 tion of the registration of the domain name. It shall
22 be the responsibility of the domain name registrar to
23 notify the court of such expiration.

24 “(i) SAVINGS CLAUSE.—Nothing in this section shall
25 be construed to limit civil or criminal remedies available

1 to any person (including the United States) for infringing
2 activities on the Internet pursuant to any other Federal
3 or State law.

4 “(j) INTERNET SITES ALLEGED BY THE DEPART-
5 MENT OF JUSTICE TO BE DEDICATED TO INFRINGING
6 ACTIVITIES.—

7 “(1) IN GENERAL.—The Attorney General shall
8 maintain a public listing of domain names that,
9 upon information and reasonable belief, the Depart-
10 ment of Justice determines are dedicated to infring-
11 ing activities but for which the Attorney General has
12 not filed an action under this section.

13 “(2) PROTECTION FOR UNDERTAKING CORREC-
14 TIVE MEASURES.—If an entity described under sub-
15 section (c) takes any action specified in such sub-
16 section with respect to a domain name that appears
17 on the list established under paragraph (1), then
18 such entity shall receive the immunity protections
19 described under subsection (c)(3).

20 “(3) REMOVAL FROM LIST.—The Attorney Gen-
21 eral shall establish and publish procedures for the
22 owner or operator of a domain name appearing on
23 the list established under paragraph (1) to petition
24 the Attorney General to remove such domain name

1 from the list based on any of the factors described
2 under subsection (h)(1)(B).

3 “(4) JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—After the Attorney
5 General makes a final determination on a peti-
6 tion to remove a domain name appearing on the
7 list established under paragraph (1) filed by an
8 individual pursuant to the procedures referred
9 to in paragraph (3), the individual may obtain
10 judicial review of such determination in a civil
11 action commenced not later than 90 days after
12 notice of such decision, or such further time as
13 the Attorney General may allow.

14 “(B) JURISDICTION.—A civil action for
15 such judicial review shall be brought in the dis-
16 trict court of the United States for the judicial
17 district in which the plaintiff resides, or has a
18 principal place of business, or, if the plaintiff
19 does not reside or have a principal place of
20 business within any such judicial district, in the
21 District Court of the United States for the Dis-
22 trict of Columbia.

23 “(C) ANSWER.—As part of the Attorney
24 General’s answer to a complaint for such judi-
25 cial review, the Attorney General shall file a

1 certified copy of the administrative record com-
 2 piled pursuant to the petition to remove, includ-
 3 ing the evidence upon which the findings and
 4 decision complained of are based.

5 “(D) JUDGMENT.—The court shall have
 6 power to enter, upon the pleadings and tran-
 7 script of the record, a judgment affirming or re-
 8 versing the result of the Attorney General’s de-
 9 termination on the petition to remove, with or
 10 without remanding the cause for a rehearing.”.

11 **SEC. 3. REQUIRED ACTIONS BY THE ATTORNEY GENERAL.**

12 The Attorney General shall—

13 (1) publish procedures to receive information
 14 from the public about Internet sites that are dedi-
 15 cated to infringing activities, as that term is defined
 16 under section 2324 of title 18, United States Code;

17 (2) provide guidance to intellectual property
 18 rights holders about what information such rights
 19 holders should provide the Department of Justice to
 20 initiate an investigation pursuant to such section
 21 2324;

22 (3) provide guidance to intellectual property
 23 rights holders about how to supplement an ongoing
 24 investigation initiated pursuant to such section
 25 2324;

1 (4) establish standards for prioritization of ac-
2 tions brought under such section 2324; and

3 (5) provide appropriate resources and proce-
4 dures for case management and development to af-
5 fect timely disposition of actions brought under such
6 section 2324.

7 **SECTION 1. SHORT TITLE.**

8 *This Act may be cited as the “Combating Online In-*
9 *fringement and Counterfeits Act”.*

10 **SEC. 2. INTERNET SITES DEDICATED TO INFRINGING AC-**
11 **TIVITIES.**

12 (a) *DEFINITIONS.—For purposes of this Act—*

13 (1) *an Internet site is “dedicated to infringing*
14 *activities” if such site—*

15 (A) *is otherwise subject to civil forfeiture to*
16 *the United States Government under section*
17 *2323 of title 18, United States Code; or*

18 (B) *is—*

19 (i) *primarily designed, or has no de-*
20 *monstrable commercially significant pur-*
21 *pose or use other than, or is marketed by its*
22 *operator, or by a person acting in concert*
23 *with the operator—*

24 (I) *to offer goods or services in*
25 *violation of title 17, United States*

1 *Code, or that enable or facilitate a vio-*
2 *lation of title 17, United States Code,*
3 *including but not limited to offering or*
4 *providing access in a manner not au-*
5 *thorized by the copyright owner or oth-*
6 *erwise by operation of law, copies or*
7 *phonorecords of, or public perform-*
8 *ances or displays of works protected by*
9 *title 17, in complete or substantially*
10 *complete form, by any means, includ-*
11 *ing by means of download, streaming,*
12 *or other transmission, provision of a*
13 *link or aggregated links to other sites*
14 *or Internet resources for obtaining ac-*
15 *cess to such copies, phonorecords, per-*
16 *formances, displays, goods, or services;*
17 *or*

18 *(II) to sell or offer to sell or dis-*
19 *tribute or otherwise promote goods,*
20 *services, or materials bearing a coun-*
21 *terfeit mark, as that term is defined in*
22 *section 34(d) of the Lanham Act (15*
23 *U.S.C. 1116(d)); and*

24 *(ii) engaged in the activities described*
25 *in subparagraph (A), and when taken to-*

1 *gether, such activities are the central activi-*
2 *ties of the Internet site or sites accessed*
3 *through a specific domain name;*

4 (2) *the term “domain name” has the same mean-*
5 *ing as in section 45 of the Lanham Act (15 U.S.C.*
6 *1127); and*

7 (3) *the term “Lanham Act” means the Act enti-*
8 *tled “An Act to provide for the registration and pro-*
9 *tection of trademarks used in commerce, to carry out*
10 *the provisions of certain international conventions,*
11 *and for other purposes”, approved July 5, 1946 (com-*
12 *monly referred to as the “Trademark Act of 1946” or*
13 *the “Lanham Act”).*

14 (b) *INJUNCTIVE RELIEF.—On application of the Attor-*
15 *ney General following the commencement of an action pur-*
16 *suant to subsection (c), the court may issue a temporary*
17 *restraining order, a preliminary injunction, or an injunc-*
18 *tion against the domain name used by an Internet site dedi-*
19 *cated to infringing activities to cease and desist from under-*
20 *taking any further activity in violation of this section, in*
21 *accordance with rule 65 of the Federal Rules of Civil Proce-*
22 *dure. A party described in subsection (e) receiving an order*
23 *issued pursuant to this section shall take the appropriate*
24 *actions described in subsection (e).*

25 (c) *IN REM ACTION.—*

1 (1) *IN GENERAL.*—*The Attorney General may*
2 *commence an in rem action against any domain*
3 *name or names used by an Internet site in the judi-*
4 *cial district in which the domain name registrar or*
5 *domain name registry for at least 1 such domain*
6 *name is located or doing business, or, if pursuant to*
7 *subsection (d)(2), in the District of Columbia, if—*

8 (A) *the domain name is used by an Internet*
9 *site dedicated to infringing activities; and*

10 (B) *the Attorney General simultaneously—*

11 (i) *sends a notice of the alleged viola-*
12 *tion and intent to proceed under this sub-*
13 *section to the registrant of the domain name*
14 *at the postal and e-mail address provided*
15 *by the registrant to the registrar, if avail-*
16 *able; and*

17 (ii) *publishes notice of the action as the*
18 *court may direct promptly after filing the*
19 *action.*

20 (2) *SERVICE OF PROCESS.*—*For purposes of this*
21 *section, the actions described under paragraph (1)(B)*
22 *shall constitute service of process.*

23 (d) *SITUS.*—

24 (1) *DOMAINS FOR WHICH THE REGISTRY OR*
25 *REGISTRAR IS LOCATED DOMESTICALLY.*—*In an in*

1 *rem action commenced under subsection (c), a do-*
2 *main name shall be deemed to have its situs in the*
3 *judicial district in which—*

4 (A) *the domain name registrar or registry*
5 *is located, provided that for a registry that is lo-*
6 *cated or doing business in more than 1 judicial*
7 *district, venue shall be appropriate at the prin-*
8 *cipal place where the registry operations are per-*
9 *formed; or*

10 (B) *documents sufficient to establish control*
11 *and authority regarding the disposition of the*
12 *registration and use of the domain name are de-*
13 *posited with the court.*

14 (2) *DOMAINS FOR WHICH THE REGISTRY OR*
15 *REGISTRAR IS NOT LOCATED DOMESTICALLY.—*

16 (A) *ACTION BROUGHT IN DISTRICT OF CO-*
17 *LUMBIA.—If the provisions of paragraph (1) do*
18 *not apply to a particular domain name, the in*
19 *rem action may be brought in the District of Co-*
20 *lumbia to prevent and restrain the importation*
21 *into the United States of goods and services of-*
22 *fered by an Internet site dedicated to infringing*
23 *activities if—*

1 (i) the domain name is used by users
2 within the United States to access such
3 Internet site; and

4 (ii) the Internet site—

5 (I) conducts business directed to
6 residents of the United States; and

7 (II) harms holders of United
8 States intellectual property rights.

9 (B) DETERMINATION BY THE COURT.—For
10 purposes of determining whether an Internet site
11 conducts business directed to residents of the
12 United States under subparagraph (A)(ii)(I), a
13 court shall consider, among other indicia wheth-
14 er—

15 (i) the Internet site is providing goods
16 or services described under subsection (a)(2)
17 to users located in the United States;

18 (ii) there is evidence that the Internet
19 site is not intended to provide—

20 (I) such goods and services to
21 users located in the United States;

22 (II) access to such goods and serv-
23 ices to users located in the United
24 States; and

1 (III) *delivery of such goods and*
2 *services to users located in the United*
3 *States;*

4 (iii) *the Internet site has reasonable*
5 *measures to prevent such goods and services*
6 *from being obtained in or delivered to the*
7 *United States;*

8 (iv) *the Internet site offers services ob-*
9 *tained in the United States; and*

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

13 (e) *SERVICE OF COURT ORDER.—*

14 (1) *DOMESTIC DOMAINS.—In connection with an*
15 *order obtained in an action to which subsection (d)(1)*
16 *applies, the Federal law enforcement officer shall*
17 *serve any court order issued pursuant to this section*
18 *on the domain name registrar or, if the domain name*
19 *registrar is not located within the United States,*
20 *upon the registry. Upon receipt of such order, the do-*
21 *main name registrar or domain name registry shall*
22 *suspend operation of, and may lock, the domain*
23 *name.*

24 (2) *NONDOMESTIC DOMAINS.—*

1 (A) *ENTITY TO BE SERVED.*—*In connection*
2 *with an order obtained in an action to which*
3 *subsection (d)(2) applies, a Federal law enforce-*
4 *ment officer may serve any court order issued*
5 *pursuant to this section on entities described in*
6 *clauses (i) through (iii) of subparagraph (B).*

7 (B) *REQUIRED ACTIONS.*—*After being*
8 *served with an order issued pursuant to this sec-*
9 *tion—*

10 (i) *a service provider, as that term is*
11 *defined in section 512(k)(1) of title 17,*
12 *United States Code, or any other operator*
13 *of a nonauthoritative domain name system*
14 *server shall, as expeditiously as reasonable,*
15 *take technically feasible and reasonable*
16 *steps designed to prevent a domain name*
17 *from resolving to that domain name’s Inter-*
18 *net protocol address, except that—*

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

21 (aa) *to modify its network or*
22 *other facilities to comply with*
23 *such order;*

24 (bb) *to take any steps with*
25 *respect to domain name lookups*

1 *not performed by its own domain*
2 *name system server; or*

3 *(cc) to continue to prevent*
4 *access to a domain name to which*
5 *access has been effectively disabled*
6 *by other means; and*

7 *(II) nothing in this subparagraph*
8 *shall affect the limitation on an enti-*
9 *ty's liability under section 512 of title*
10 *17, United States Code;*

11 *(ii) a financial transaction provider,*
12 *as that term is defined in section 5362(4) of*
13 *title 31, United States Code—*

14 *(I) shall take reasonable measures,*
15 *as expeditiously as reasonable, de-*
16 *signed to prevent or prohibit its service*
17 *from completing payment transactions*
18 *between its customers located within*
19 *the United States and the Internet site*
20 *using the domain name set forth in the*
21 *order; and*

22 *(II) shall cause notice to be pro-*
23 *vided to the Internet site using the do-*
24 *main name set forth in the order that*
25 *the site is not authorized to use the*

1 *trademark of the financial transaction*
2 *provider; and*

3 *(iii) a service that provides advertise-*
4 *ments to Internet sites shall take reasonable*
5 *measures, as expeditiously as reasonable, to*
6 *prevent its network from providing adver-*
7 *tisements to an Internet site associated with*
8 *such domain name.*

9 (3) *COMMUNICATION WITH USERS.—An entity*
10 *taking an action described in this subsection shall de-*
11 *termine how to communicate such action to the enti-*
12 *ty’s users or customers.*

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

21 (5) *IMMUNITY.—*

22 (A) *ACTIONS PURSUANT TO COURT*
23 *ORDER.—No cause of action shall lie in any*
24 *Federal or State court or administrative agency*
25 *against any entity receiving a court order issued*

1 under this subsection, or against any director,
2 officer, employee, or agent thereof, for any act
3 reasonably designed to comply with this sub-
4 section or reasonably arising from such order,
5 other than in an action pursuant to subsection
6 (g). Any entity receiving an order under this
7 subsection, and any director, officer, employee, or
8 agent thereof, shall not be liable to any party for
9 any acts reasonably designed to comply with this
10 subsection or reasonably arising from such order,
11 other than in an action pursuant to subsection
12 (g), and any actions taken by customers of such
13 entity to circumvent any restriction on access to
14 the Internet domain instituted pursuant to this
15 subsection or any act, failure, or inability to re-
16 strict access to an Internet domain that is the
17 subject of a court order issued pursuant to this
18 subsection despite good faith efforts to do so by
19 such entity shall not be used by any person in
20 any claim or cause of action against such entity,
21 other than in an action pursuant to subsection
22 (g).

23 (B) VOLUNTARY ACTIONS.—No domain
24 name registry, domain name registrar, financial
25 transaction provider, or service that provides ad-

1 *vertisements to Internet sites shall be liable to*
2 *any person on account of any action described in*
3 *this subsection voluntarily taken if the entity*
4 *reasonably believes the Internet site is dedicated*
5 *to infringing activities or to prevent the impor-*
6 *tation into the United States of goods or services*
7 *described under subsection (a)(2) offered by such*
8 *an Internet site.*

9 *(f) PUBLICATION OF ORDERS.—The Attorney General*
10 *shall inform the Intellectual Property Enforcement Coordi-*
11 *nator and other law enforcement agencies of all court orders*
12 *issued under this section directed to specific domain names*
13 *associated with Internet sites dedicated to infringing activi-*
14 *ties. The Intellectual Property Enforcement Coordinator*
15 *shall, and any entity described in subsection (e) may, post*
16 *such domain names on a publicly available Internet site,*
17 *together with other relevant information, in order to inform*
18 *the public. Upon the expiration or vacation of a court order*
19 *issued under this subsection, the Attorney General shall in-*
20 *form the Intellectual Property Enforcement Coordinator of*
21 *such expiration or vacation, and the Intellectual Property*
22 *Enforcement Coordinator shall promptly remove the af-*
23 *ected domain name or names from such publicly available*
24 *Internet site.*

25 *(g) ENFORCEMENT OF ORDERS.—*

1 (1) *IN GENERAL.*—*In order to compel compliance*
2 *with this section, the Attorney General may bring an*
3 *action for injunctive relief against any party receiv-*
4 *ing a court order issued pursuant to this section that*
5 *knowingly and willfully fails to comply with such*
6 *order. A showing by the defending party in such ac-*
7 *tion that it does not have the technical means to com-*
8 *ply with this section, or that the order is inconsistent*
9 *with this section, shall serve as a defense to such ac-*
10 *tion to the extent of the inability to comply or such*
11 *inconsistency.*

12 (2) *RULE OF CONSTRUCTION.*—*The authority*
13 *granted the Attorney General under paragraph (1)*
14 *shall be the sole legal remedy for enforcing the obliga-*
15 *tions under this section of any entity described in*
16 *subsection (e).*

17 (h) *MODIFICATION OR VACATION OF ORDERS.*—*At any*
18 *time after the issuance of a court order under this section—*

19 (1) *the Attorney General may apply for a modi-*
20 *fication of the order—*

21 (A) *to expand the order to apply to an*
22 *Internet site that is reconstituted using a dif-*
23 *ferent domain name subsequent to the original*
24 *order, and*

1 (B) to include additional domain names
2 that are used in substantially the same manner
3 as the Internet site against which the action was
4 brought,

5 by providing the court with evidence that the Internet
6 site associated with the requested modification (i) is
7 dedicated to infringing activities in substantially the
8 same manner as, and (ii) is under joint control, own-
9 ership, or operation of, or other affiliation with, the
10 domain name subject to the order;

11 (2) a defendant or owner or operator of a do-
12 main name subject to the order, or any party re-
13 quired to take action based on the order, may petition
14 the court to modify, suspend, or vacate the order,
15 based on evidence that—

16 (A) the Internet site associated with the do-
17 main name subject to the order is no longer, or
18 never was, dedicated to infringing activities; or

19 (B) the interests of justice require that the
20 order be modified, suspended, or vacated; and

21 (3) a registrar or owner, licensee, or operator of
22 a domain name subject to the order may petition the
23 court to vacate the order based on evidence that the
24 registration of the domain name has expired and the

1 *domain name has been re-registered by a different*
2 *party.*

3 *(i) SAVINGS CLAUSE.—*

4 *(1) IN GENERAL.—Nothing in this section shall*
5 *be construed to limit or expand civil or criminal rem-*
6 *edies available to any person (including the United*
7 *States) for infringing activities on the Internet pursu-*
8 *ant to any other Federal or State law.*

9 *(2) VICARIOUS OR CONTRIBUTORY LIABILITY.—*

10 *Nothing in this section shall be construed to enlarge*
11 *or diminish vicarious or contributory liability for*
12 *any cause of action available under title 17, United*
13 *States Code, including any limitations on liability*
14 *under section 512 of such title 17.*

15 **SEC. 3. REQUIRED ACTIONS BY THE ATTORNEY GENERAL.**

16 *The Attorney General shall—*

17 *(1) publish procedures developed in consultation*
18 *with other relevant law enforcement agencies, includ-*
19 *ing Immigration and Customs Enforcement, to re-*
20 *ceive information from the public about Internet sites*
21 *that are dedicated to infringing activities;*

22 *(2) provide guidance to intellectual property*
23 *rights holders about what information such rights*
24 *holders should provide the Department of Justice to*
25 *initiate an investigation pursuant to this Act;*

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

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

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

9 (6) *develop a deconfliction process in consulta-*
10 *tion with other law enforcement agencies, including*
11 *Immigration and Customs Enforcement, to coordinate*
12 *enforcement activities brought under this Act.*

13 **SEC. 4. REPORT.**

14 *Not later than 1 year after the date of enactment of*
15 *this Act, the Secretary of Commerce shall study and report*
16 *to the Committee on the Judiciary of the Senate and the*
17 *Committee on the Judiciary of the House of Representatives*
18 *on the impact of the steps described in section 2(e) on an*
19 *entity's ability to deploy effectively and use Domain Name*
20 *System Security Extensions.*

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11TH CONGRESS
2^D SESSION

S. 3804

A BILL

To combat online infringement, and for other purposes.

NOVEMBER 18, 2010

Reported with an amendment