

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011’ or the ‘PROTECT IP Act of 2011’.

Sec. 2. Definitions.

For purposes of this Act—

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

☐ the term “domain name system server” means a server used to provide the Internet protocol address associated with a domain name;

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

☐ the term “interactive computer service” has the same meaning as in section 230(f) of the Communications Act of 1934;

☐ the term “Internet advertising service” means a service that sells, purchases, brokers, serves, inserts or otherwise facilitates the placement of an advertisement that is rendered in viewable form for any period of time on an Internet site.

☐ the term “Internet site” means the collection of digital assets accessible through the Internet that are addressed relative to a common domain name.

☐ the term “Internet site dedicated to infringing activities” means an Internet site accessed through a specific domain name that has no [substantial/significant] use other than, or is designed, operated, or marketed by its operator or persons operating in concert with the operator, [and is in fact used,] primarily as a means for –

(1) enabling or facilitating the reproduction, distribution, or performance of copyright works, in complete or substantially complete form, in a manner that constitutes copyright infringement under section 501 of title 17, or offering goods or services in violation of section 1201 of title 17; or

(2) enabling or facilitating the sale, distribution, or promotion of goods, services, or materials bearing a counterfeit mark, as that term is defined in section 34(d) of the Lanham Act;

[provided that there is no objectively reasonable interpretation of an express license between the owner or operator of such Internet site and the copyright owner or trademark owner or an agent thereof that authorizes the activities;]

☐ the term "Lanham Act" means the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (commonly referred to as the "Trademark Act of 1946" or the "Lanham Act");

☐ the term "qualifying plaintiff" means—

(1) the Attorney General, or

(2) a holder of an intellectual property right harmed by the activities of an Internet site dedicated to infringing activities occurring on that Internet site.

☐ the term "nondomestic domain name" means a domain name for which the domain name registry that issued the domain name and operates the relevant top level domain, and the domain name registrar for the domain name, are not located in the United States.

☐ the term "owner" or "operator" when used in connection with an Internet site shall include, respectively, any owner of a majority interest in, or any person with authority to operate, such Internet site.

☐ the term "sponsored link" means a hypertext link to a domain name returned by a search engine or similar service that pays the search engine or similar service for its placement.

Section 3. Enhancing Enforcement Against Rogue Websites Operated and Registered Overseas

(a) In General.—The Attorney General may commence—

(1) an in personam action against—

(A) a registrant of the domain name of a nondomestic domain name used by an Internet site dedicated to infringing activities; or

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

or, if through due diligence the Attorney General was not able to find a person described in subparagraphs (A) or (B), or no such person found has an address within a judicial district of the United States,

(2) an in rem action against a nondomestic domain name used by an Internet site dedicated to infringing activities.

(b) On application of the Attorney General following the commencement of an action pursuant to subsection (a), the court may issue a temporary restraining order, a preliminary injunction, or an injunction, in accordance with rule 65 of the Federal Rules of Civil Procedure, against the nondomestic domain name used by an Internet site dedicated to infringing activities, or against a registrant of such domain name, or the owner or operator of such Internet site dedicated to infringing activities, to cease and desist from undertaking any further activity as an Internet site dedicated to infringing activities, as defined in this Act, if —

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

(2) the Internet site—

(A) conducts business directed to residents of the United States; and

(B) harms holders of United States intellectual property rights.

(3) Determination by the court.—For purposes of determining whether an Internet site conducts business directed to residents of the United States under paragraph (2), a court shall consider, among other indicia, whether—

(A) the Internet site is providing goods or services described in section 2(f) to users located in the United States;

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

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

(II) access to such goods and services to users located in the United States; and

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

(C) the Internet site has reasonable measures to prevent such goods and services from being accessed from or delivered to the United States;

(D) the Internet site offers services obtained in the United States; and

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

(c) Notice and Service of Process.—Upon commencing an action under this section, the Attorney General shall send a notice of the alleged violation and intent to proceed under this Act to the registrant of the domain name of the Internet site—

(1) at the postal and e-mail address appearing in the applicable publicly accessible database of registrations, if any and to the extent such addresses are reasonably available;

(2) via the postal and e-mail address of the registrar, registry, or other domain name registration authority that registered or assigned the domain name, to the extent such addresses are reasonably available; and

(3) in any other such form as the court finds necessary, including as may be required by Rule 4(f) of the Federal Rules of Civil Procedure.

(4) For purposes of this section, the actions described in this subsection shall constitute service of process.

(d) Required Actions Based on Court Orders.

(1) A Federal law enforcement officer may serve a copy of any court order issued pursuant to this section on entities described in paragraph (2). Proof of service shall be filed with the court.

(2) After being served with a copy of an order pursuant to this subsection—

(A) An operator of a nonauthoritative domain name system server shall take technically feasible and reasonable steps designed to prevent the domain name described in the order from resolving to that domain name's Internet protocol address, except that—

(I) such entity shall not be required—

(aa) to modify its network or other facilities to comply this section;

(bb) to take any steps with respect to domain name lookups not performed by its own domain name server or domain name system servers located outside the United States; or

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

(II) nothing in this subparagraph shall affect the limitation on an entity's liability under section 512 of title 17, United States Code.

(B) A financial transaction provider shall take technically feasible and reasonable measures, as expeditiously as reasonable, designed to prevent or prohibit its service from completing payment transactions involving customers located with the United States and the Internet site associated with the domain name set forth in the order;

(C) An Internet advertising service that contracts with the Internet site associated with the domain name set forth in the order to provide advertising to that site, or which serves advertising to such site, shall take technically feasible and reasonable measures, as expeditiously as reasonable, designed to prevent its service from providing advertisements to the Internet site associated with such domain name; and

(D) An interactive computer service shall take technically feasible and reasonable measures, as expeditiously as possible, to remove or disable access to the Internet site associated with the domain name set forth in the order, or a hypertext link to such Internet site.

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

(4) RULE OF CONSTRUCTION- For purposes of an action filed 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- No cause of action shall lie in any Federal or State court or administrative agency against any entity receiving 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). Any entity 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 subsection (e), and any actions taken by customers of such entity to circumvent any restriction on access to the Internet domain instituted pursuant to this subsection or any act, failure, or inability to restrict access to an Internet domain that is the subject of a court order issued pursuant to this subsection despite good faith efforts to do so by such entity shall not be used by any person in any claim or cause of action against such entity, other than in an action pursuant to subsection (e).

(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.

(2) RULE OF CONSTRUCTION.— The authority granted the Attorney General under paragraph (1) shall be the sole legal remedy for enforcing the obligations under this section of any entity described in subsection (d).

(3) DEFENSE.—A defendant in an action under paragraph (1) may establish an affirmative defense by showing that the defendant does not have the technical means to comply with the subsection without incurring an unreasonable economic burden, or that the order is inconsistent with the Act. This showing shall serve as a defense only to the extent of such inability to comply or inconsistency.

(f) MODIFICATION OR VACATION OF ORDERS.—

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

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

(B) any registrant of the domain name, or the owner or operator of the Internet site subject to the order;

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

(D) any entity that has received a copy of an order pursuant to subsection (d) requiring it to take action prescribed in that subsection.

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

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

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

(3) In making a determination under paragraph (2), a court may consider whether the domain name has expired or has been re-registered by a different party.

(g) RELATED ACTIONS.—

(1) The Attorney General, if alleging that an Internet site previously adjudicated to be an Internet site dedicated to infringing activities is accessible or has been reconstituted at a different domain name, may commence a related action under this section against the additional domain name in the same judicial district as the previous action.

Section 4. Eliminating the Financial Incentive to Steal Intellectual Property Online.

(a) In General.—A qualifying plaintiff may commence—

(1) an in personam action against—

(A) a registrant of the domain name of a domain name used by an Internet site dedicated to infringing activities; or

(B) an owner or operator of an Internet site dedicated to infringing activities accessed through a domain name;

or, if through due diligence the qualifying plaintiff was not able to find a person described in subparagraphs (A) or (B), or no such person found has an address within a judicial district of the United States,

(2) an in rem action against a domain name used by an Internet site dedicated to infringing activities.

(b) On application of the qualifying plaintiff following the commencement of an action pursuant to subsection (a), the court may issue a temporary restraining order, a preliminary injunction, or an injunction, in accordance with rule 65 of the Federal Rules of Civil Procedure, against the domain name used by an Internet site dedicated to infringing activities, or against a registrant of such domain name, or the owner or operator of such Internet site dedicated to infringing activities, to cease and desist from undertaking any further activity as an Internet site dedicated to infringing activities, as defined in this Act, if

(1) the domain name is registered or assigned by a domain name registrar or domain name registry that located or doing business in the United States, or—

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

(B) the Internet site—

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

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

(3) Determination by the court.—For purposes of determining whether an Internet site conducts business directed to residents of the United States under paragraph (2), a court shall consider, among other indicia, whether—

(A) the Internet site is providing goods or services described in section 2(f) to users located in the United States;

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

(I) such goods and services to users located in the United States;
(II) access to such goods and services to users located in the United States; and
(III) delivery of such goods and services to users located in the United States;

(C) the Internet site has reasonable measures to prevent such goods and services from being accessed from or delivered to the United States;

(D) the Internet site offers services obtained in the United States; and

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

(c) Notice and Service of Process.—Upon commencing an action under this section, the qualifying plaintiff shall send a notice of the alleged violation and intent to proceed under this Act to the registrant of the domain name of the Internet site—

(1) at the postal and e-mail address appearing in the applicable publicly accessible database of registrations, if any and to the extent such addresses are reasonably available;

(2) via the postal and e-mail address of the registrar, registry, or other domain name registration authority that registered or assigned the domain name, to the extent such addresses are reasonably available; and

(3) in any other such form as the court finds necessary, including as may be required by Rule 4(f) of the Federal Rules of Civil Procedure.

(4) For purposes of this section, the actions described in this subsection shall constitute service of process.

(d) Required Actions Based on Court Orders.

(1) A Federal law enforcement officer may based on an action filed by the Attorney General, and with the prior approval of the court a qualifying plaintiff based on an action filed by that party may, serve a copy of any court order issued pursuant to this section on entities described in paragraph (2). Proof of service shall be filed with the court.

(2) After being served with a copy of an order pursuant to this subsection—

(A) A financial transaction provider shall take technically feasible and reasonable measures, as expeditiously as reasonable, designed to prevent or prohibit its service

from completing payment transactions involving customers located with the United States and the Internet site associated with the domain name set forth in the order;

(B) An Internet advertising service that contracts with the Internet site associated with the domain name set forth in the order to provide advertising to that site, or which serves advertising to such site, shall take technically feasible and reasonable measures, as expeditiously as reasonable, designed to prevent its service from providing advertisements to the Internet site associated with such domain name; and

(C) A server of sponsored links shall take technically feasible and reasonable measures, as expeditiously as reasonable, to cease making available sponsored links that provide access to the domain name.

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

(4) RULE OF CONSTRUCTION- For purposes of an action filed 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- No cause of action shall lie in any Federal or State court or administrative agency against any entity receiving 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). Any entity 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 subsection (e), and any actions taken by customers of such entity to circumvent any restriction on access to the Internet domain instituted pursuant to this subsection or any act, failure, or inability to restrict access to an Internet domain that is the subject of a court order issued pursuant to this subsection despite good faith efforts to do so by such entity shall not be used by any person in any claim or cause of action against such entity, other than in an action pursuant to subsection (e).

(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.

(2) RULE OF CONSTRUCTION.— The authority granted the Attorney General under paragraph (1) shall be the sole legal remedy for enforcing the obligations under this section of any entity described in subsection (d).

(3) DEFENSE.—A defendant in an action under paragraph (1) may establish an affirmative defense by showing that the defendant does not have the technical means to comply with the subsection without incurring an unreasonable economic burden, or that the order is inconsistent with the Act. This showing shall serve as a defense only to the extent of such inability to comply or inconsistency.

(f) MODIFICATION OR VACATION OF ORDERS.—

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

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

(B) any registrant of the domain name, or the owner or operator of the Internet site subject to the order;

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

(D) any entity that has received a copy of an order pursuant to subsection (d) requiring it to take action prescribed in that subsection.

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

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

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

(3) In making a determination under paragraph (2), a court may consider whether the domain name has expired or has been re-registered by a different party.

(g) RELATED ACTIONS.—

(1) A qualifying plaintiff, if alleging that an Internet site previously adjudicated to be an Internet site dedicated to infringing activities is accessible or has been reconstituted at a different domain name, may commence a related action under this section against the additional domain name in the same judicial district as the previous action.

Section 5. Voluntary action for Taking Action Against Websites Stealing American Intellectual Property.

(a) In General.—No financial transaction provider 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) of this Act with regard to an Internet site if the entity acting in good faith and on credible evidence has a reasonable belief that the Internet site is dedicated to infringing activities as defined in section 2 of this Act.

(b) Internet sites engaged in infringing activities that endanger the public health.

(1) A domain name registry, domain name registrar, financial transaction provider, search engine, or Internet advertising service, acting in good faith based on credible evidence, may stop providing or refuse to provide services to an infringing Internet site that endangers the public health.

(2) An entity described in paragraph (1) , including its directors, officers, employees or agents, that ceases or refused to provide services to an infringing Internet site that endangers the public health under paragraph (1) shall not be liable to any party for such action under any state or federal law for such action.

(3) For purposes of this subsection

(A) an “infringing Internet site that endangers the public health” means—

(I) an Internet site that meets the definition of section 2() of this Act and for which the counterfeit products that it offers, sells, dispenses, or distributes are controlled or non-controlled prescription medication, or

(II) is an Internet site that has no substantial use other than, or is designed, operated, or marketed by its operator or persons operating in concert with the operator, and is in fact used, primarily as a means for—

(aa) offering, selling, dispensing, or distributing any controlled or non-controlled prescription medication, and does so regularly without a valid prescription; or

(bb) offering selling, dispensing, or distributed any controlled or non-controlled prescription medication, and does so regularly for medication that is adulterated or misbranded;

(B) the term “valid prescription” has the same meaning as in section 829(e)(2)(A) of title 21;

(C) the term "adulterated" has the same meaning as in section 351 of title 21; and

(D) the term "misbranded" has the same meaning as in section 352 of title 21.

Section 6. Savings Clauses.

(a) IN GENERAL.—Nothing in this Act shall be construed to limit or expand civil or criminal remedies available to any person (including the United States) for infringing activities on the Internet pursuant to any other Federal or State law.

(b) Nothing in this Act shall be construed to enlarge or diminish vicarious or contributory liability for any cause of action available under title 17, United States Code, including any limitations on liability under section 512 of title 17.

(c) A failure to take voluntary action pursuant to section 5 of this Act shall not constitute liability, including vicarious or contributory liability.

(d) Nothing in this Act, and no order issued or served pursuant to sections 3 or 4 of this Act, shall serve as a basis for determining the application of section 512 of title 17.