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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R. _____

To amend the Tariff Act of 1930 to address unfair trade practices relating to infringement of copyrights and trademarks by certain Internet sites, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ISSA introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Tariff Act of 1930 to address unfair trade practices relating to infringement of copyrights and trademarks by certain Internet sites, 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 “Online Protection and
5 Enforcement of Digital Trade Act” or the “OPEN Act”.

1 **SEC. 2. UNFAIR TRADE PRACTICES RELATING TO IN-**
2 **FRINGEMENT OF COPYRIGHTS AND TRADE-**
3 **MARKS BY CERTAIN INTERNET SITES.**

4 (a) IN GENERAL.—Title III of the Tariff Act of 1930
5 (19 U.S.C. 1304 et seq.) is amended by inserting after
6 section 337 the following:

7 **“SEC. 337A. UNFAIR TRADE PRACTICES RELATING TO IN-**
8 **FRINGEMENT OF COPYRIGHTS AND TRADE-**
9 **MARKS BY CERTAIN INTERNET SITES.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) COMPLAINANT.—The term ‘complainant’
12 means a person who files a complaint with the Com-
13 mission under subsection (d).

14 “(2) DOMAIN NAME.—The term ‘domain name’
15 has the meaning given that term in section 45 of the
16 Lanham Act (15 U.S.C. 1127).

17 “(3) FINANCIAL TRANSACTION PROVIDER.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), the term ‘financial trans-
20 action provider’ has the meaning given that
21 term in section 5362(4) of title 31, United
22 States Code.

23 “(B) EXCEPTION.—The term ‘financial
24 transaction provider’ does not include an Inter-
25 net service platform or an affiliate of an Inter-
26 net service platform.

1 “(4) INFRINGING ACTIVITY.—The term ‘infring-
2 ing activity’ means an activity that—

3 “(A) infringes a copyright in a manner
4 punishable under section 506 of title 17, United
5 States Code;

6 “(B) violates section 1201 of title 17,
7 United States Code; or

8 “(C) uses counterfeit marks in a manner
9 punishable under section 34(d) of the Lanham
10 Act (15 U.S.C. 1116(d)).

11 “(5) INTERNET ADVERTISING SERVICE.—The
12 term ‘Internet advertising service’ means a service
13 that serves an online advertisement in viewable form
14 for any period of time on an Internet site that is not
15 owned or controlled by the Internet advertising serv-
16 ice.

17 “(6) INTERNET SERVICE PLATFORM.—The
18 term ‘Internet service platform’ means an interactive
19 digital service the provider of which—

20 “(A) does not act merely as a payment
21 intermediary between a user and a supplier of
22 goods or services; and

23 “(B) provides additional services to facili-
24 tate interaction between users unrelated to pur-
25 chases from suppliers of goods and services.

1 “(7) INTERNET SITE.—The term ‘Internet site’
2 means the collection of digital assets, including links,
3 indexes, or pointers to digital assets, accessible
4 through the Internet that are addressed relative to
5 a common domain name.

6 “(8) INTERNET SITE DEDICATED TO INFRING-
7 ING ACTIVITY.—

8 “(A) IN GENERAL.—The term ‘Internet
9 site dedicated to infringing activity’ means an
10 Internet site that—

11 “(i) is accessed through a non-
12 domestic domain name;

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

15 “(iii) has only limited purpose or use
16 other than engaging in infringing activity
17 and whose owner or operator primarily
18 uses the site—

19 “(I) to willfully—

20 “(aa) infringe a copyright in
21 a manner punishable under sec-
22 tion 506 of title 17, United
23 States Code; or

24 “(bb) violate section 1201 of
25 title 17, United States Code; or

1 “(II) to use counterfeit marks in
2 a manner punishable under section
3 34(d) of the Lanham Act (15 U.S.C.
4 1116(d)).

5 “(B) BUSINESS DIRECTED TO RESIDENTS
6 OF THE UNITED STATES.—For purposes of de-
7 termining whether an Internet site conducts
8 business directed to residents of the United
9 States under subparagraph (A)(ii), the Commis-
10 sion may consider, among other indicators,
11 whether—

12 “(i) the Internet site is providing
13 goods or services to users located in the
14 United States;

15 “(ii) there is evidence that the Inter-
16 net site is not intended to provide goods
17 and services to such users or access to or
18 delivery of goods and services to such
19 users;

20 “(iii) the Internet site has reasonable
21 measures in place to prevent goods and
22 services provided by the Internet site from
23 being accessed from or delivered to the
24 United States;

1 “(iv) the Internet site offers services
2 obtained in the United States; and

3 “(v) any prices for goods and services
4 provided by the Internet site are indicated
5 in the currency of the United States.

6 “(C) EXCLUSIONS.—An Internet site is
7 not an Internet site dedicated to infringing ac-
8 tivity—

9 “(i) if the Internet site has a practice
10 of expeditiously removing, or disabling ac-
11 cess to, material that is claimed to be in-
12 fringing or to be the subject of infringing
13 activity after notification by the owner of
14 the copyright or trademark alleged to be
15 infringed or its authorized representative;

16 “(ii) because the Internet site engages
17 in an activity that would not make the op-
18 erator liable for monetary relief for infring-
19 ing a copyright under section 512 of title
20 17, United States Code; or

21 “(iii) because of the distribution by
22 the Internet site of copies that were made
23 without infringing a copyright or trade-
24 mark.

1 “(9) LANHAM ACT.—The term ‘Lanham Act’
2 means the Act entitled ‘An Act to provide for the
3 registration and protection of trademarks used in
4 commerce, to carry out the provisions of certain
5 international conventions, and for other purposes’,
6 approved July 5, 1946 (15 U.S.C. 1051 et seq.)
7 (commonly referred to as the ‘Trademark Act of
8 1946’ or the ‘Lanham Act’).

9 “(10) NONDOMESTIC DOMAIN NAME.—The
10 term ‘nondomestic domain name’ means a domain
11 name for which the domain name registry that
12 issued the domain name and operates the relevant
13 top level domain, the domain name registrar for the
14 domain name, and the owner and the operator of the
15 Internet site associated with the domain name, are
16 not located in the United States.

17 “(11) OPERATOR.—The term ‘operator’, when
18 used in connection with an Internet site, includes
19 any person with authority to operate the Internet
20 site.

21 “(12) OWNER.—The term ‘owner’, when used
22 in connection with an Internet site, includes any
23 owner of a majority interest in the Internet site.

1 “(13) TRADEMARK.—The term ‘trademark’ has
2 the meaning given that term in section 45 of the
3 Lanham Act (15 U.S.C. 1127).

4 “(b) APPLICABILITY OF SECTION.—It shall be a vio-
5 lation of this section to operate or maintain an Internet
6 site dedicated to infringing activity. If the Commission de-
7 termines that there has been a violation of this subsection,
8 that violation shall be dealt with as provided in this sec-
9 tion.

10 “(c) INVESTIGATION OF VIOLATIONS BY COMMIS-
11 SION.—

12 “(1) IN GENERAL.—The Commission—

13 “(A) may investigate an alleged violation
14 of subsection (b) on its own initiative; and

15 “(B) shall investigate any alleged violation
16 of subsection (b) upon receiving a complaint
17 filed under subsection (d).

18 “(2) PROCEDURES.—An investigation initiated
19 under paragraph (1) shall be subject to the require-
20 ments of section 337(b)(1) with respect to notice of
21 investigations and timing of determinations.

22 “(3) CONSULTATIONS.—In conducting an inves-
23 tigation initiated under paragraph (1), the Commis-
24 sion may consult with, and seek advice and informa-
25 tion from, the Attorney General, the Secretary of

1 State, the Secretary of Homeland Security, the Sec-
2 retary of Commerce, the Intellectual Property En-
3 forcement Coordinator, the United States Trade
4 Representative, and such other officials as the Com-
5 mission considers appropriate.

6 “(4) TERMINATION OF INVESTIGATIONS; RE-
7 FERRAL.—If the Commission has reason to believe,
8 based on information before the Commission, that
9 the domain name associated with an Internet site
10 that is the subject of a complaint filed under sub-
11 section (d) is not a nondomestic domain name, the
12 Commission shall terminate, or not initiate, an in-
13 vestigation with respect to the complaint, and shall
14 refer the matter, including any evidentiary record
15 that the Commission has developed, to the Attorney
16 General for such further proceedings as the Attorney
17 General determines appropriate.

18 “(5) LIMITATION ON INVESTIGATIONS OF DO-
19 MAIN NAMES; CONSENT TO JURISDICTION.—Not-
20 withstanding any other provision of this section, the
21 Commission shall terminate, or not initiate, an in-
22 vestigation under paragraph (1) with respect to a
23 domain name—

24 “(A) if the operator of the Internet site as-
25 sociated with the domain name provides in a

1 legal notice on the site accurate information
2 consisting of—

3 “(i) the name of an individual author-
4 ized to receive process on behalf of the site;

5 “(ii) an address at which process may
6 be served;

7 “(iii) a telephone number at which the
8 individual described in clause (i) may be
9 contacted; and

10 “(iv) a statement that the operator of
11 the site—

12 “(I) consents to the jurisdiction
13 and venue of the United States dis-
14 trict courts with respect to a violation
15 punishable under section 506 of title
16 17, United States Code, a criminal of-
17 fense under section 1204 of title 17,
18 United States Code, for a violation of
19 section 1201 of such title, or a viola-
20 tion of section 2320 of title 18 of such
21 Code; and

22 “(II) will accept service of proc-
23 ess from the Attorney General with
24 respect to those violations and the of-
25 fense set forth in subclause (I); and

1 “(B) provided that, in the event of the fil-
2 ing of any civil action in the appropriate United
3 States district court—

4 “(i) for infringement of copyright
5 under section 501 of title 17, United
6 States Code,

7 “(ii) under section 1203 of title 17,
8 United States Code, for a violation of sec-
9 tion 1201 of such title, or

10 “(iii) under section 32(1) of the
11 Lanham Act,

12 accepts service and waives, in a timely manner,
13 any objections to jurisdiction as set forth in the
14 statement described in subparagraph (A)(iv).

15 “(d) COMPLAINTS.—

16 “(1) IN GENERAL.—A complaint alleging, under
17 oath, that an Internet site dedicated to infringing
18 activity is being operated or maintained in violation
19 of subsection (b) may be filed with the Commission
20 by the owner of a copyright or trademark that is the
21 subject of the infringing activity alleged in the com-
22 plaint.

23 “(2) NOTICE TO OWNER OR REGISTRANT OF
24 DOMAIN NAME OF INTERNET SITE ALLEGED TO BE
25 VIOLATING THIS SECTION.—

1 “(A) IN GENERAL.—Upon filing a com-
2 plaint under paragraph (1), the complainant
3 shall send a notice of the violation alleged in
4 the complaint to the owner or registrant of the
5 domain name of the Internet site alleged to be
6 operated or maintained in violation of sub-
7 section (b)—

8 “(i) at the postal and e-mail addresses
9 appearing in the applicable publicly acces-
10 sible database of registrations, if any, to
11 the extent such addresses are reasonably
12 available;

13 “(ii) via the postal and e-mail ad-
14 dresses of the registrar, registry, or other
15 domain name registration authority that
16 registered or assigned the domain name, to
17 the extent such addresses are reasonably
18 available; and

19 “(iii) in any other such form as the
20 Commission finds necessary.

21 “(B) RULE OF CONSTRUCTION.—For pur-
22 poses of this subsection, the actions described
23 in this paragraph shall constitute service of
24 process.

1 “(3) IDENTIFICATION OF, AND NOTICE TO, EN-
2 TITIES THAT MAY BE REQUIRED TO TAKE ACTION
3 PURSUANT TO THIS SECTION.—

4 “(A) IDENTIFICATION.—A complaint filed
5 under paragraph (1) shall identify any financial
6 transaction provider or Internet advertising
7 service that may be required to take measures
8 described in subsection (g)(2) if the Commis-
9 sion issues an order under subsection (f) with
10 respect to the complaint and the order is served
11 on the provider or service pursuant to sub-
12 section (g)(1).

13 “(B) NOTICE.—Upon filing a complaint
14 under paragraph (1), the complainant shall pro-
15 vide notice to any financial transaction provider
16 or Internet advertising service identified in the
17 complaint pursuant to subparagraph (A) or any
18 amendments to the complaint.

19 “(C) INTERVENTION.—

20 “(i) IN GENERAL.—A financial trans-
21 action provider or Internet advertising
22 service identified in a complaint pursuant
23 to subparagraph (A) may intervene upon
24 timely request filed with the Commission
25 in—

1 “(I) an investigation initiated
2 under subsection (c) pursuant to the
3 complaint; or

4 “(II) pursuant to subsection
5 (f)(3), an action to modify, suspend,
6 or vacate an order issued pursuant to
7 the complaint.

8 “(ii) RULE OF CONSTRUCTION.—Fail-
9 ure to intervene under clause (i) in an in-
10 vestigation under subsection (c) does not
11 preclude a financial transaction provider or
12 Internet advertising service notified of the
13 investigation from subsequently seeking an
14 order to modify, suspend, or terminate an
15 order issued by the Commission under sub-
16 section (f).

17 “(e) DETERMINATIONS.—

18 “(1) IN GENERAL.—The Commission shall de-
19 termine, with respect to each investigation initiated
20 under subsection (c) alleging that an Internet site
21 dedicated to infringing activity is operated or main-
22 tained in violation of subsection (b), whether or not
23 the Internet site is operated or maintained in viola-
24 tion of subsection (b).

1 “(2) EXCEPTIONS AND PROCEDURES RELATING
2 TO DETERMINATIONS.—Except as specifically pro-
3 vided in this subsection, the provisions of the first,
4 second, third, and eighth sentences of subsection (c)
5 of section 337 providing for exceptions and proce-
6 dures relating to determinations of the Commission
7 under that section shall apply with respect to a de-
8 termination under paragraph (1) to the same extent
9 and in the same manner as those provisions apply
10 to determinations under section 337.

11 “(3) EFFECTIVE DATE.—A determination made
12 under paragraph (1) shall take effect on the date on
13 which the Commission publishes the determination
14 in the Federal Register.

15 “(4) REFERRALS TO PRESIDENT; TERMINATION
16 FOR DISAPPROVAL.—

17 “(A) IN GENERAL.—If the Commission de-
18 termines under paragraph (1) that an Internet
19 site dedicated to infringing activity is operated
20 or maintained in violation of subsection (b), the
21 Commission shall promptly submit to the Presi-
22 dent or a copy of the determination, the record
23 upon which the determination is based, and any
24 order issued under subsection (f) pursuant to
25 the determination.

1 “(B) TERMINATION OF DETERMINATION
2 BASED ON DISAPPROVAL OF PRESIDENT.—If
3 the President disapproves of a determination of
4 the Commission for policy reasons and notifies
5 the Commission of that disapproval, the deter-
6 mination and any order issued pursuant to the
7 determination shall cease to have force or effect
8 on the date on which the President notifies the
9 Commission of that disapproval.

10 “(5) ELECTRONIC SUBMISSION OF INFORMA-
11 TION AND PROCEEDINGS.—The Commission may, in
12 making any determination under this section—

13 “(A) allow the submission of information
14 electronically; and

15 “(B) hold hearings electronically or obtain
16 testimony or other information electronically or
17 by such means as the Commission determines
18 allows participation in proceedings under this
19 section at as low a cost as possible to partici-
20 pants in the proceedings.

21 “(6) ADDITIONAL PROCEDURES RELATING TO
22 REVIEW OF CERTAIN DETERMINATIONS.—Notwith-
23 standing the provisions of this subsection or any
24 provision of section 337(e), a determination of the
25 Commission under this section with respect to the

1 appropriate remedy provided by the Commission, a
2 determination under subsection (f)(2) with respect
3 to the forfeiture of a bond, and a determination
4 under subsection (i) with respect to the imposition
5 of sanctions for abuse of discovery or abuse of proce-
6 ss, shall be reviewable in accordance with section
7 706 of title 5, United States Code.

8 “(f) CEASE AND DESIST ORDERS.—

9 “(1) IN GENERAL.—If the Commission deter-
10 mines under subsection (e) that an Internet site
11 dedicated to infringing activity is operated or main-
12 tained in violation of subsection (b), the Commission
13 may—

14 “(A) issue an order to cease and desist the
15 infringing activity of the Internet site against
16 the Internet site and to the owner and the oper-
17 ator of the Internet site; and

18 “(B) cause the order to be served on the
19 owner and the operator.

20 “(2) TEMPORARY AND PRELIMINARY CEASE
21 AND DESIST ORDERS.—

22 “(A) PETITION BY COMPLAINANT.—A
23 complainant may file with the chairperson of
24 the Commission (or the designee of the chair-
25 person) a petition, in accordance with this para-

1 graph, for the issuance of a temporary or pre-
2 liminary order against the Internet site and to
3 the owner and the operator of the Internet site
4 to cease and desist the infringing activity al-
5 leged in the complaint filed under subsection
6 (d).

7 “(B) ISSUANCE OF ORDER.—If, upon re-
8 ceiving a petition under subparagraph (A) and
9 after providing an opportunity to be heard
10 under subparagraph (C), the chairperson of the
11 Commission (or the designee of the chair-
12 person) determines that there is reason to be-
13 lieve that an Internet site dedicated to infring-
14 ing activity is operated or maintained in viola-
15 tion of subsection (b), the chairperson of the
16 Commission (or the designee of the chair-
17 person) may issue a temporary or preliminary
18 cease and desist order against, and cause the
19 order to be served on, the Internet site and the
20 owner and the operator of the Internet site.

21 “(C) OPPORTUNITY TO BE HEARD.—

22 “(i) IN GENERAL.—Before issuing a
23 temporary or preliminary cease and desist
24 order under this paragraph, the chair-
25 person of the Commission (or the designee

1 of the chairperson) shall provide to the
2 owner and the operator of the Internet site
3 alleged to be operated or maintained in
4 violation of subsection (b) an opportunity
5 to be heard and to submit relevant infor-
6 mation to the chairperson of the Commis-
7 sion (or the designee of the chairperson).

8 “(ii) ELECTRONIC SUBMISSION OF IN-
9 FORMATION AND PROCEEDINGS.—The
10 chairperson of the Commission (or the des-
11 ignee of the chairperson) may provide an
12 opportunity to be heard and to submit in-
13 formation under clause (i) electronically or
14 in such other manner as the chairperson of
15 the Commission (or the designee of the
16 chairperson) determines appropriate.

17 “(D) STANDARD FOR RELIEF.—If the
18 chairperson of the Commission (or the designee
19 of the chairperson) issues a temporary or pre-
20 liminary cease and desist order under this para-
21 graph, the order shall be issued in a manner
22 consistent with the provisions of rule 65 of the
23 Federal Rules of Civil Procedure, or any suc-
24 cessor thereto, relating to preliminary injunc-
25 tions and temporary restraining orders.

1 “(E) PROCEDURES FOR TEMPORARY
2 CEASE AND DESIST ORDER.—

3 “(i) EXPEDITED CONSIDERATION.—
4 Upon a showing of extraordinary cir-
5 cumstances by the complainant filing a pe-
6 tition for a temporary cease and desist
7 order under subparagraph (A), the chair-
8 person of the Commission (or the designee
9 of the chairperson) may make a determina-
10 tion with respect to the petition on an ex-
11 pedited basis.

12 “(ii) EXPIRATION OF ORDER.—

13 “(I) IN GENERAL.—Except as
14 provided in subclause (II), a tem-
15 porary cease and desist order issued
16 under this paragraph shall expire at a
17 time determined by the chairperson of
18 the Commission (or the designee of
19 the chairperson) that is not later than
20 14 days after the issuance of the
21 order.

22 “(II) EXTENSION OF ORDER.—
23 The chairperson of the Commission
24 (or the designee of the chairperson)
25 may extend a temporary cease and de-

1 sist order issued under this paragraph
2 for additional periods of not more
3 than 14 days for good cause or with
4 the consent of the entity against
5 which the order is issued.

6 “(F) PROCEDURES FOR PRELIMINARY
7 CEASE AND DESIST ORDER.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in clause (ii), the chairperson of the
10 Commission (or the designee of the chair-
11 person) shall make a determination with
12 respect to a petition for a preliminary
13 cease and desist order not later than 30
14 days after the Commission publishes notice
15 of the initiation of an investigation under
16 subsection (c) in the Federal Register.

17 “(ii) EXTENSIONS OF TIME FOR DE-
18 TERMINATION.—The chairperson of the
19 Commission (or the designee of the chair-
20 person) may extend the date by which the
21 chairperson of the Commission (or the des-
22 ignee of the chairperson) is required to
23 make a determination under clause (i) with
24 respect to a petition for a preliminary
25 cease and desist order for an additional 30

1 days if the chairperson of the Commission
2 (or the designee of the chairperson)—

3 “(I) determines that the petition
4 presents a more complicated case; and

5 “(II) publishes in the Federal
6 Register an explanation of why the
7 chairperson of the Commission (or the
8 designee of the chairperson) deter-
9 mined that the case is more com-
10 plicated under subclause (I).

11 “(G) BONDING REQUIREMENT.—

12 “(i) IN GENERAL.—The chairperson
13 of the Commission (or the designee of the
14 chairperson) may require a complainant
15 that files a petition for the issuance of a
16 temporary or preliminary cease and desist
17 order under subparagraph (A) to post a
18 bond before issuing the order.

19 “(ii) FORFEITURE OF BOND.—If,
20 after issuing a temporary or preliminary
21 cease and desist order under this para-
22 graph, the Commission determines that the
23 Internet site against which the order was
24 issued was not an Internet site dedicated
25 to infringing activity operated in violation

1 of subsection (b), the Commission may,
2 pursuant to such terms and conditions as
3 the Commission prescribes, require the for-
4 feiture of the bond posted by the complain-
5 ant under clause (i) and the provision of
6 the bond to the owner or the operator of
7 the Internet site.

8 “(H) APPLICABILITY OF ADMINISTRATIVE
9 PROCEDURE ACT.—The provisions of section
10 554 of title 5, United States Code, shall not
11 apply with respect to the issuance of prelimi-
12 nary or temporary cease and desist orders
13 under this paragraph.

14 “(3) MODIFICATION OR REVOCATION OF OR-
15 DERS.—

16 “(A) IN GENERAL.—At any time after the
17 issuance of an order under this subsection, a
18 motion to modify, suspend, or vacate the order
19 may be filed by—

20 “(i) any entity, or owner or operator
21 of property, bound by the order;

22 “(ii) the owner or operator of the
23 Internet site subject to the order;

24 “(iii) any domain name registrar or
25 registry that has registered or assigned the

1 domain name of the Internet site subject
2 to the order; or

3 “(iv) a financial transaction provider
4 or Internet advertising service on which a
5 copy of an order has been served pursuant
6 to paragraph (1) of subsection (g) requir-
7 ing the provider or service to take action
8 described in paragraph (2) of that sub-
9 section.

10 “(B) RELIEF.—The Commission shall
11 modify, suspend, or vacate an order, as appro-
12 priate, if the Commission determines that—

13 “(i) the Internet site subject to the
14 order is no longer, or never was, an Inter-
15 net site dedicated to infringing activity; or

16 “(ii) the interests of justice require
17 that the order be modified, suspended, or
18 vacated.

19 “(C) CONSIDERATION.—In making a de-
20 termination under subparagraph (B), the Com-
21 mission may consider whether the domain name
22 of the Internet site subject to the order has ex-
23 pired or has been re-registered by a different
24 entity.

1 “(4) AMENDMENT OF ORDERS.—A complainant
2 may petition the Commission to amend an order
3 issued under this subsection if an Internet site de-
4 termined under subsection (e) to be an Internet site
5 dedicated to infringing activity is accessible or has
6 been reconstituted at a different domain name.

7 “(5) OPPORTUNITY TO BE HEARD FOR CERTAIN
8 ENTITIES.—Before the Commission issues an order
9 under this subsection or modifies, suspends, or va-
10 cates, or amends such an order under paragraph (3)
11 or (4), a financial transaction provider or Internet
12 advertising service that intervened pursuant to sub-
13 section (d)(3) in an investigation or action relating
14 to the order shall have an opportunity to be heard
15 before the Commission with respect to whether the
16 Commission should issue the order and the scope of
17 relief available under the order or whether the Com-
18 mission should modify, suspend, vacate, or amend
19 the order, as the case may be.

20 “(6) EXPIRATION OF ORDERS WITH RESPECT
21 TO INTERNET SITE.—An order issued under this
22 subsection against an Internet site shall cease to
23 have any force or effect upon expiration of the reg-
24 istration of the domain name of the Internet site.

1 “(g) REQUIRED ACTIONS BASED ON COMMISSION
2 ORDERS.—

3 “(1) IN GENERAL.—If the Commission reason-
4 ably believes that a financial transaction provider or
5 an Internet advertising service identified in a com-
6 plaint pursuant to subsection (d)(3), or any amend-
7 ment to the complaint, supplies services to the Inter-
8 net site that is subject to the order issued under
9 subsection (f) with respect to the complaint—

10 “(A) the Commission may give permission
11 to the complainant to serve a copy of the order
12 on the financial transaction provider or Internet
13 advertising service, as the case may be;

14 “(B) if the Commission gives permission to
15 the complainant under subparagraph (A), the
16 complainant shall file proof of service with the
17 Commission; and

18 “(C) upon receiving a copy of the order
19 pursuant to subparagraph (A), the financial
20 transaction provider or Internet advertising
21 service, as the case may be, shall implement the
22 measures described in paragraph (2).

23 “(2) MEASURES DESCRIBED.—The measures
24 described in this paragraph are the following:

1 “(A) MEASURES TO BE IMPLEMENTED BY
2 FINANCIAL TRANSACTION PROVIDERS.—

3 “(i) IN GENERAL.—Subject to clause
4 (ii), a financial transaction provider shall
5 expeditiously take reasonable measures de-
6 signed to prevent or prohibit the comple-
7 tion of payment transactions by the pro-
8 vider that involve customers located in the
9 United States and the Internet site subject
10 to the order issued under subsection (f).

11 “(ii) LIMITATIONS ON MEASURES.—A
12 financial transaction provider may not be
13 required pursuant to clause (i)—

14 “(I) to implement measures that
15 are not commercially reasonable;

16 “(II) to modify services or facili-
17 ties of the provider to comply with the
18 order issued under subsection (f); or

19 “(III) to prevent or prohibit the
20 completion of a payment transaction
21 if the provider could not reasonably
22 determine in advance whether the en-
23 tity was using the Internet site sub-
24 ject to the order.

25 “(B) INTERNET ADVERTISING SERVICES.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), an Internet advertising service shall
3 expeditiously take technically feasible
4 measures intended to cease serving adver-
5 tisements to the Internet site subject to
6 the order issued under subsection (f) in
7 situations in which the service would di-
8 rectly share revenues generated by the ad-
9 vertisements with the operator of the
10 Internet site.

11 “(ii) LIMITATIONS ON MEASURES.—
12 An Internet advertising service may not be
13 required pursuant to clause (i)—

14 “(I) to implement measures that
15 are not commercially reasonable;

16 “(II) to modify the services or fa-
17 cilities of the service to comply with
18 the order issued under subsection (f);
19 or

20 “(III) to cease serving an adver-
21 tisement to an Internet site if the
22 service could not reasonably determine
23 before serving the advertisement that
24 the advertisement was being served to
25 the Internet site subject to the order.

1 “(3) COMMUNICATION WITH USERS.—A finan-
2 cial transaction provider or an Internet advertising
3 service required to implement measures described in
4 paragraph (2) shall determine how to communicate
5 with the users or customers of the provider or serv-
6 ice, as the case may be, with respect to those meas-
7 ures.

8 “(4) RULES OF CONSTRUCTION.—

9 “(A) LIMITATION ON OBLIGATIONS.—A fi-
10 nancial transaction provider or an Internet ad-
11 vertising service required to implement meas-
12 ures described in paragraph (2) shall not be re-
13 quired to take measures or actions in addition
14 to the measures described in paragraph (2) pur-
15 suant to this section or an order issued under
16 this section.

17 “(B) MANNER OF COMPLIANCE.—A finan-
18 cial transaction provider or an Internet adver-
19 tising service required to implement measures
20 described in paragraph (2) shall be in compli-
21 ance with this subsection if the provider or
22 service, as the case may be, implements the
23 measures described in that paragraph with re-
24 spect to accounts of the provider or service, as
25 the case may be, on or after the date on which

1 a copy of an order is served under paragraph
2 (1) or, if applicable, the date on which the
3 order is modified or amended under paragraph
4 (3) or (4) of subsection (f).

5 “(5) ACTIONS PURSUANT TO COMMISSION
6 ORDER.—

7 “(A) IMMUNITY FROM CIVIL ACTIONS.—No
8 cause of action shall lie in any court against a
9 financial transaction provider or an Internet ad-
10 vertising service on which a copy of an order is
11 served under paragraph (1), or against any di-
12 rector, officer, employee, or agent thereof, other
13 than in an action pursuant to subsection (h),
14 for—

15 “(i) any act reasonably designed to
16 comply with this subsection or reasonably
17 arising from the order; or

18 “(ii) any act, failure, or inability to
19 meet the obligations under this subsection
20 of the provider or service if the provider or
21 service, as the case may be, makes a good
22 faith effort to comply with such obliga-
23 tions.

24 “(B) IMMUNITY FROM LIABILITY.—A fi-
25 nancial transaction provider or an Internet ad-

1 vertising service on which a copy of an order is
2 served under paragraph (1), and any director,
3 officer, employee, or agent thereof, shall not be
4 liable to any person for any acts reasonably de-
5 signed to comply with this subsection or reason-
6 ably arising from the order, other than in an
7 action pursuant to subsection (h).

8 “(C) IMMUNITY FROM ACTIONS OF THIRD
9 PARTIES.—An action taken by a third party to
10 circumvent any measures implemented pursuant
11 to an order served on a financial transaction
12 provider or Internet advertising service under
13 paragraph (1) may not be used by any person
14 in any claim or cause of action against the pro-
15 vider or service, as the case may be, other than
16 in an action pursuant to subsection (h).

17 “(h) ENFORCEMENT OF ORDERS.—

18 “(1) IN GENERAL.—In order to compel compli-
19 ance with this section, the Attorney General may
20 bring an action for injunctive relief against any per-
21 son subject to an order issued under subsection (f)
22 or on which such an order is served under subsection
23 (g) that knowingly and willfully fails to comply with
24 the order.

1 “(2) RULE OF CONSTRUCTION.—The authority
2 granted to the Attorney General under paragraph
3 (1) shall be the sole legal remedy for enforcing the
4 obligations under subsection (g) of a financial trans-
5 action provider or Internet advertising service on
6 which an order is served under paragraph (1) of
7 that subsection.

8 “(3) AFFIRMATIVE DEFENSES.—A defendant in
9 an action commenced under paragraph (1) may es-
10 tablish an affirmative defense by showing that the
11 defendant does not have the technical means to com-
12 ply with this section without incurring an unreason-
13 able economic burden or that the order is incon-
14 sistent with this section. That showing shall serve as
15 a defense only to the extent of the inability of the
16 defendant to comply or to the extent of the incon-
17 sistency.

18 “(i) SANCTIONS FOR ABUSE OF PROCESS AND DIS-
19 COVERY.—The Commission may, by rule, prescribe sanc-
20 tions for abuse of process in a manner consistent with the
21 provisions of rule 11 and rule 37 of the Federal Rules
22 of Civil Procedure.

23 “(j) IMMUNITY FOR ENFORCEMENT OF ORDERS.—
24 No cause of action shall lie in any court, no person may
25 rely on any claim or cause of action, and no liability for

1 damages to any person shall be granted, against a finan-
2 cial transaction provider or Internet advertising service for
3 taking any action pursuant to subsection (g)(2) with re-
4 spect to an Internet site, or otherwise declining to serve
5 or terminating transactions with an Internet site, in the
6 reasonable belief based on credible evidence that—

7 “(1) the Internet site is an Internet site dedi-
8 cated to infringing activity; and

9 “(2) the action is consistent with the terms of
10 service and other contractual obligations of the pro-
11 vider or service, as the case may be.

12 “(k) IMMUNITY FOR TAKING VOLUNTARY ACTION
13 AGAINST SITES THAT ENDANGER PUBLIC HEALTH.—

14 “(1) REFUSAL OF SERVICE.—A financial trans-
15 action provider or Internet advertising service, act-
16 ing in good faith and based on credible evidence,
17 may cease providing or refuse to provide services to
18 an Internet site the provider or service determines to
19 be an Internet site that endangers the public health.

20 “(2) IMMUNITY FROM LIABILITY.—A financial
21 transaction provider or Internet advertising service
22 described in paragraph (1), including its directors,
23 officers, employees, or agents, that ceases or refuses
24 to provide services under that paragraph shall not be

1 liable to any person under any Federal or State law
2 for ceasing or refusing to provide such services.

3 “(3) DEFINITIONS.—In this subsection:

4 “(A) DRUG.—The term ‘drug’ has the
5 meaning given that term in section 201(g)(1) of
6 the Federal Food, Drug, and Cosmetic Act (21
7 U.S.C. 321(g)(1)).

8 “(B) INTERNET SITE THAT ENDANGERS
9 THE PUBLIC HEALTH.—The term ‘Internet site
10 that endangers the public health’ means an
11 Internet site that is primarily designed or oper-
12 ated for the purpose of, has only limited pur-
13 pose or use other than, or is marketed by its
14 operator or another person acting in concert
15 with that operator for use in offering, selling,
16 dispensing, or distributing any prescription
17 medication, and does so regularly without a
18 valid prescription.

19 “(C) PRESCRIPTION MEDICATION.—The
20 term ‘prescription medication’ means a drug
21 that is subject to section 503(b) of the Federal
22 Food, Drug, and Cosmetic Act (21 U.S.C.
23 353(b)).

24 “(D) VALID PRESCRIPTION.—The term
25 ‘valid prescription’ has the meaning given that

1 term in section 309(e)(2)(A) of the Controlled
2 Substances Act (21 U.S.C. 829(e)(2)(A)).

3 “(1) SAVINGS CLAUSES.—

4 “(1) IN GENERAL.—Nothing in this section
5 shall be construed to limit or expand civil or criminal
6 remedies available to any person (including the
7 United States) for activities that infringe intellectual
8 property rights on the Internet pursuant to any
9 other Federal or State law.

10 “(2) RULE OF CONSTRUCTION RELATING TO VI-
11 CARIOUS OR CONTRIBUTORY LIABILITY.—Nothing in
12 this section shall be construed—

13 “(A) to enlarge or diminish vicarious or
14 contributory liability for any cause of action
15 available under title 17, United States Code, or
16 the Lanham Act, including any limitations on
17 liability under section 512 of such title 17; or

18 “(B) to create an obligation to take action
19 pursuant to subsection (k).

20 “(3) RULE OF CONSTRUCTION RELATING TO
21 LIMITATIONS, EXCEPTIONS, AND DEFENSES.—Noth-
22 ing in this section shall be construed to affect, limit,
23 or deny application of any limitation, exception, or
24 defense to copyright or trademark causes of action,
25 including fair use and other exceptions, limitations,

1 or defenses available to any person pursuant to any
2 other Federal or State law.

3 “(4) RULE OF CONSTRUCTION RELATING TO
4 CIVIL ACTIONS.—The issuance of an order and ac-
5 tions taken or not taken pursuant to this section
6 shall be inadmissible as evidence in any civil action
7 (other than an action under this section to enforce
8 compliance with subsection (b)) to establish that a
9 party who has received, or is otherwise made aware
10 of, such an order has knowledge regarding any in-
11 fringing activities relating to the Internet site sub-
12 ject to the order, including under section 512 of title
13 17, United States Code, in determining whether any
14 service provider had actual knowledge or should have
15 known of the infringing activity.”.

16 (b) DISCLOSURE OF CONFIDENTIAL INFORMA-
17 TION.—Section 337(n) of the Tariff Act of 1930 (19
18 U.S.C. 1337(n)) is amended—

19 (1) in paragraph (1), by inserting “or section
20 337A” after “this section”; and

21 (2) in paragraph (2)—

22 (A) in subparagraph (A)—

23 (i) in clause (ii), by striking “(j)” and
24 inserting “(j) of this section”;

1 (ii) in clause (iii), by striking “(g), a
2 cease and desist order issued pursuant to
3 subsection (f), or a consent order issued
4 pursuant to subsection (c)” and inserting
5 “(g) of this section, a cease and desist
6 order issued pursuant to subsection (f) of
7 this section or subsection (f) of section
8 337A, or a consent order issued pursuant
9 to subsection (c) of this section or sub-
10 section (d) of section 337A”; and

11 (iii) in clause (iv), by striking “(i), or
12 a consent order issued under this section”
13 and inserting “(i) of this section or sub-
14 section (f) of section 337A, or a consent
15 order issued under this section or sub-
16 section (d) of section 337A”;

17 (B) in subparagraph (B), by striking “(j)”
18 and inserting “(j) of this section or subsection
19 (e)(5) of section 337A”; and

20 (C) in subparagraph (C), by striking “(g)”
21 and inserting “(g) of this section”.

1 **SEC. 3. APPOINTMENT OF HEARING OFFICERS FOR PRO-**
2 **CEEDINGS UNDER SECTIONS 337 AND 337A OF**
3 **THE TARIFF ACT OF 1930.**

4 Title III of the Tariff Act of 1930 (19 U.S.C. 1304
5 et seq.), as amended by section 2, is further amended by
6 inserting after section 337A the following:

7 **“SEC. 337B. SECTION 337 JUDGES.**

8 “(a) IN GENERAL.—Notwithstanding section 556(b)
9 of title 5, United States Code, the Commission may ap-
10 point hearing officers, other than administrative law
11 judges appointed under section 3105 of title 5, United
12 States Code, to preside at the taking of evidence at hear-
13 ings required by sections 337 and 337A and to make ini-
14 tial and recommended decisions in accordance with sec-
15 tions 554, 556, and 557 of such title in investigations
16 under sections 337 and 337A. The hearing officers ap-
17 pointed under this subsection shall be known as ‘section
18 337 judges’.

19 “(b) QUALIFICATIONS.—An individual appointed as
20 a section 337 judge under paragraph (1) shall possess a
21 minimum of 7 years of legal experience and be licensed
22 to practice law under the laws of a State, the District of
23 Columbia, the Commonwealth of Puerto Rico, or any terri-
24 torial court established under the Constitution of the
25 United States. The Commission may promulgate such
26 other regulations as the Commission considers necessary

1 with respect to the qualifications of section 337 judges,
2 including technical expertise and experience in patent,
3 trademark, copyright, and unfair competition law.

4 “(c) ROTATION.—Section 337 judges shall be as-
5 signed to cases in rotation to the extent practicable or as
6 otherwise provided for in the rules of the Commission.

7 “(d) OTHER DUTIES.—A section 337 judge may not
8 perform duties inconsistent with the duties and respon-
9 sibilities of a section 337 judge.

10 “(e) REMOVAL.—A section 337 judge may be re-
11 moved only for good cause shown upon a hearing con-
12 ducted on the record by the Merit Systems Protection
13 Board. The failure of the Commission to adopt the initial
14 or recommended decision of a section 337 judge shall not
15 constitute good cause.

16 “(f) COMPETITIVE SERVICE.—Except as otherwise
17 provided, the laws, rules, and regulations applicable to po-
18 sitions in the competitive service apply to section 337
19 judges. Upon appointment, a section 337 judge shall be
20 paid in accordance with the pay rates provided for in sec-
21 tion 5372 of title 5, United States Code, commensurate
22 with the pay rate of an administrative law judge with simi-
23 lar time in service. Section 337 judges shall not be Senior
24 Executive Service positions (as defined in section 3132(a)
25 of title 5, United States Code).

1 “(g) PERFORMANCE EVALUATIONS.—Section 337
2 judges shall not receive performance evaluations and shall
3 not be compensated based on performance.”.

4 **SEC. 4. INFORMATION SHARING WITH RESPECT TO THE IM-**
5 **PORTATION OF INFRINGING MERCHANDISE.**

6 (a) MERCHANDISE THAT INFRINGES TRADE-
7 MARKS.—

8 (1) IN GENERAL.—Notwithstanding section
9 1905 of title 18, United States Code, if the Commis-
10 sioner responsible for U.S. Customs and Border
11 Protection suspects that merchandise is being im-
12 ported into the United States in violation of section
13 42 of the Lanham Act, and subject to any applicable
14 bonding requirements, the Secretary of Homeland
15 Security may, for purposes of determining whether
16 the merchandise is being imported in violation of
17 that section, share with the holder of the trademark
18 suspected of being infringed—

19 (A) information about the merchandise or
20 packaging or labels of the merchandise; or

21 (B) unredacted samples, or photographs
22 of, the merchandise or packaging or labels of
23 the merchandise.

24 (2) LANHAM ACT DEFINED.—In this subsection,
25 the term “Lanham Act” means the Act entitled “An

1 Act to provide for the registration and protection of
2 trademarks used in commerce, to carry out the pro-
3 visions of certain international conventions, and for
4 other purposes”, approved July 5, 1946 (commonly
5 referred to as the “Trademark Act of 1946” or the
6 “Lanham Act”).

7 (b) MERCHANDISE THAT CIRCUMVENTS COPY-
8 RIGHTS.—

9 (1) IN GENERAL.—Notwithstanding section
10 1905 of title 18, United States Code, if the Commis-
11 sioner seizes merchandise that the Commissioner
12 suspects of being imported into the United States in
13 violation of subsection (a)(2) or (b) of section 1201
14 of title 17, United States Code, the Secretary of
15 Homeland Security may notify a copyright owner de-
16 scribed in paragraph (2) of the seizure of the mer-
17 chandise.

18 (2) COPYRIGHT OWNER DESCRIBED.—A copy-
19 right owner described in this paragraph is the owner
20 of a copyright under title 17, United States Code, if
21 merchandise seized on the suspicion of being im-
22 ported in violation of subsection (a)(2) or (b) of sec-
23 tion 1201 of title 17, United States Code—

24 (A) is primarily designed or produced for
25 the purpose of circumventing, has only limited

1 commercially significant purpose or use other
2 than to circumvent, or is marketed for use in
3 circumventing, a technological measure that ef-
4 fectively controls access to a work protected by
5 that copyright; or

6 (B) is primarily designed or produced for
7 the purpose of circumventing, has only limited
8 commercially significant purpose or use other
9 than to circumvent, or is marketed for use in
10 circumventing, protection afforded by a techno-
11 logical measure that effectively protects the
12 rights of the copyright owner in a work or a
13 portion of a work.

14 **SEC. 5. REGULATIONS.**

15 Not later than 270 days after the date of the enact-
16 ment of this Act, the United States International Trade
17 Commission shall prescribe regulations—

18 (1) to provide for procedures for receiving infor-
19 mation from the public about Internet sites dedi-
20 cated to infringing activity (as defined in section
21 337A(a) of the Tariff Act of 1930 (as added by sec-
22 tion 2 of this Act));

23 (2) to provide guidance to intellectual property
24 rights holders about—

1 (A) what information those rights holders
2 should provide to initiate an investigation pur-
3 suant to section 337A(e) of the Tariff Act of
4 1930 (as added by section 2 of this Act); and

5 (B) how to supplement an ongoing inves-
6 tigation initiated pursuant to that section;

7 (3) to establish standards for the prioritization
8 of investigations initiated under that section; and

9 (4) to provide appropriate resources and proce-
10 dures for case management and development to af-
11 fect timely disposition of investigations initiated
12 under that section.

13 **SEC. 6. STUDY AND REPORTS BY REGISTER OF COPY-**
14 **RIGHTS.**

15 The Register of Copyrights shall—

16 (1) in consultation with appropriate Federal
17 agencies and other stakeholders, conduct a study
18 on—

19 (A) the enforcement and effectiveness of
20 section 337A of the Tariff Act of 1930 (as
21 added by section 2 of this Act); and

22 (B) any modifications to the authorities
23 provided in that section necessary to address
24 emerging technologies; and

1 (2) not later than 2 years after the date of en-
2 actment of this Act, submit to the Committee on Fi-
3 nance and the Committee on the Judiciary of the
4 Senate, and to the Committee on the Ways and
5 Means and the Committee on the Judiciary of the
6 House of Representatives, a report containing the
7 results of the study conducted under paragraph (1)
8 and any recommendations that the Register may
9 have as a result of the study.