

119TH CONGRESS
2D SESSION

S. _____

To amend title 17, United States Code, to permit the owner or exclusive licensee of an exclusive right under that title to file a petition to designate a foreign online location as a foreign digital piracy site, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. TILLIS (for himself, Mr. COONS, Mrs. BLACKBURN, and Mr. SCHIFF) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 17, United States Code, to permit the owner or exclusive licensee of an exclusive right under that title to file a petition to designate a foreign online location as a foreign digital piracy site, 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 “Deterring
5 Extraterritorial Foreign Exploitation of Networks Dam-
6 aging Intellectual Property Act” or the “DEFEND IP
7 Act”.

1 **SEC. 2. ORDERS TO DESIGNATE AND DIRECT AGAINST FOR-**
2 **EIGN DIGITAL PIRACY SITES.**

3 (a) IN GENERAL.—Chapter 5 of title 17, United
4 States Code, is amended by inserting after section 502 the
5 following:

6 **“§ 502A. Orders to designate and direct against for-**
7 **eign digital piracy sites**

8 “(a) DEFINITIONS.—In this section:

9 “(1) BROADBAND PROVIDER.—The term
10 ‘broadband provider’ means a provider of broadband
11 internet access service, as defined in section 8.1(b)
12 of title 47, Code of Federal Regulations (or any suc-
13 cessor regulation), that provides such service to not
14 fewer than 50,000 subscribers.

15 “(2) FOREIGN DIGITAL PIRACY SITE.—The
16 term ‘foreign digital piracy site’ means a foreign on-
17 line location that has been designated as a foreign
18 digital piracy site by an order of a district court of
19 the United States issued under this section.

20 “(3) FOREIGN ONLINE LOCATION.—The term
21 ‘foreign online location’ means a website or uniquely
22 identifiable online location that is—

23 “(A) accessible to the public;

24 “(B) operated by an individual or entity lo-
25 cated outside the United States (or the location

1 of which cannot be determined to be within the
2 United States); and

3 “(C) identifiable by 1 or more Internet
4 Protocol addresses, fully qualified domains, or
5 other similar online identifiers.

6 “(4) LIVE EVENT.—The term ‘live event’ means
7 an event that is performed publicly (such as a con-
8 cert, sporting event, or award show).

9 “(5) PUBLIC DOMAIN NAME RESOLUTION SERV-
10 ICES.—The term ‘public domain name resolution
11 services’ means domain name resolution services
12 that are accessible to the general public.

13 “(6) SERVICE PROVIDER.—The term ‘service
14 provider’—

15 “(A) means—

16 “(i) a broadband provider; or

17 “(ii) a provider of public domain
18 name resolution services that has an an-
19 nual revenue of more than \$100,000,000;
20 and

21 “(B) does not include—

22 “(i) an entity that provides domain
23 name system resolution functions or serv-
24 ices exclusively through encrypted DNS
25 protocols;

1 “(ii) an entity that exclusively pro-
2 vides virtual private network services or
3 similar services that encrypt and route
4 user traffic through intermediary servers;
5 or

6 “(iii) a premises operator, such as a
7 coffee shop, bookstore, airline, library, uni-
8 versity, or other business, that acquires
9 broadband internet access service from an
10 internet service provider to enable patrons
11 to access the internet from the establish-
12 ment of the operator.

13 “(7) TRANSMISSION OF A LIVE EVENT.—

14 “(A) IN GENERAL.—The term ‘trans-
15 mission of a live event’ means the digital trans-
16 mission of a live event—

17 “(i) simultaneously or nearly simulta-
18 neously with the live occurrence or public
19 performance of the event; and

20 “(ii) for a commercial purpose.

21 “(B) DIGITAL TRANSMISSION.—For pur-
22 poses of subparagraph (A), the term ‘digital
23 transmission’ includes transmission by satellite
24 broadcasting.

1 “(8) VIRTUAL PRIVATE NETWORK.—The term
2 ‘virtual private network’ means a service that estab-
3 lishes an encrypted connection between a device and
4 a remote server that—

5 “(A) routes the internet traffic of the user
6 of that device through the remote server; and

7 “(B) masks the internet protocol address
8 of the user described in subparagraph (A).

9 “(b) JUDICIAL DESIGNATIONS OF FOREIGN DIGITAL
10 PIRACY SITES.—

11 “(1) IN GENERAL.—The owner or exclusive li-
12 censee of an exclusive right described in section 106
13 that is being or will be injured by material or activ-
14 ity that violates a right or protection afforded under
15 this title may, subject to the requirements under
16 paragraph (2), bring an action in an appropriate
17 district court of the United States to petition the
18 court to issue an order to designate a foreign online
19 location as a foreign digital piracy site.

20 “(2) REQUIREMENTS.—Subject to paragraph
21 (5), a court shall issue an order requested under
22 paragraph (1)—

23 “(A) upon the determination by the court
24 that—

1 “(i) the petitioner is the owner or ex-
2 clusive licensee of an exclusive right de-
3 scribed in section 106;

4 “(ii)(I) with respect to material or ac-
5 tivity at the foreign online location that is
6 the subject of the petition—

7 “(aa) such material or activity
8 likely violates an exclusive right or
9 protection afforded under this title to
10 the petitioner; and

11 “(bb) the petitioner is likely to
12 suffer irreparable harm as a result of
13 that material or activity; or

14 “(II) with respect to the transmission
15 of a live event at the foreign online loca-
16 tion that is the subject of the petition—

17 “(aa) the transmission of a live
18 event will likely violate an exclusive
19 right or protection afforded under this
20 title to the petitioner; and

21 “(bb) the petitioner will likely
22 suffer irreparable harm as a result of
23 that transmission of a live event;

24 “(iii) the petitioner has made a rea-
25 sonable effort to provide the operator of

1 the foreign online location described in this
2 subparagraph with notice of the action
3 brought by the petitioner; and

4 “(iv) the petitioner has certified that
5 the petitioner cannot, after a reasonable
6 investigation based on publicly available in-
7 formation, determine the operator of the
8 foreign online location described in this
9 subparagraph to be within the United
10 States; and

11 “(B) upon a showing by the petitioner that
12 the foreign online location described in subpara-
13 graph (A)—

14 “(i) is primarily designed or primarily
15 provided for the purpose of violating an ex-
16 clusive right or protection afforded under
17 this title;

18 “(ii) has no commercially significant
19 purpose or use other than committing a
20 violation described in clause (i); or

21 “(iii) is intentionally marketed by or
22 at the direction of the operator of the for-
23 eign online location to promote the use of
24 the foreign online location in committing a
25 violation described in clause (i).

1 “(3) OPPORTUNITY TO CONTEST.—The oper-
2 ator of the foreign online location that is the subject
3 of a petition under paragraph (1) may, not later
4 than 20 days after the date on which that petition
5 is filed, appear before the court in which the petition
6 is pending to contest the issuance of the order to
7 designate the foreign online location as a foreign
8 digital piracy site, except that the court may issue
9 an order under this subsection on an ex parte basis
10 at any time after the court determines that the re-
11 quirements under paragraph (2) are satisfied, sub-
12 ject to the limitation under paragraph (5).

13 “(4) JUDICIAL DISCRETION.—If the operator of
14 a foreign online location that is the subject of a peti-
15 tion under paragraph (1) does not appear before the
16 court pursuant to paragraph (3), the court may, in
17 the discretion of the court, appoint a master pursu-
18 ant to rule 53 of the Federal Rules of Civil Proce-
19 dure to assist in the determination of the court as
20 to whether the requirements of this subsection have
21 been satisfied.

22 “(5) LIMITATION.—A court may not issue an
23 order to designate, and may rescind an order desig-
24 nating, a foreign online location as a foreign digital

1 piracy site under this subsection if the operator of
2 the foreign online location—

3 “(A) appears before the court pursuant to
4 paragraph (3);

5 “(B) submits to the jurisdiction of the
6 court for all claims arising from or related to
7 alleged violative activity at the foreign online lo-
8 cation;

9 “(C) posts a bond sufficient to ensure com-
10 pliance with any judgment of the court related
11 to alleged violative activity at the foreign online
12 location; and

13 “(D) complies with any other order of the
14 court to cease the violative activity.

15 “(6) DESIGNATION ORDER DURATION.—Unless
16 rescinded under paragraph (5), an order to des-
17 ignate a foreign online location as a foreign digital
18 piracy site under this subsection shall expire—

19 “(A) on the date that is 360 days after the
20 date on which the court issues the order, if no
21 subsequent order is sought under subsection (c)
22 with respect to that foreign online location; or

23 “(B) upon the expiration of all orders
24 issued under subsection (c) with respect to that
25 foreign online location.

1 “(c) JUDICIAL ORDERS AGAINST FOREIGN DIGITAL
2 PIRACY SITES.—

3 “(1) IN GENERAL.—If a district court of the
4 United States issues an order to designate a foreign
5 online location as a foreign digital piracy site under
6 subsection (b), the petitioner that sought the order
7 may petition the same court to issue a subsequent
8 order to direct service providers to take reasonable
9 measures to prevent users in the United States from
10 using the system or network of those service pro-
11 viders to access the foreign digital piracy site.

12 “(2) REQUIREMENTS FOR PETITION.—A court
13 in which a petition is filed under paragraph (1) shall
14 accept the petition, and consider whether to issue
15 the order requested in the petition in accordance
16 with the factors described in paragraph (3)—

17 “(A) if the petition identifies all service
18 providers to be subject to the order; and

19 “(B) upon certification by the petitioner
20 that the petitioner has provided each service
21 provider identified in the petition with—

22 “(i) a copy of the order issued under
23 subsection (b);

24 “(ii) a copy of the petition filed under
25 this subsection; and

1 “(iii) notice informing each such serv-
2 ice provider of the right of the service pro-
3 vider to contest the inclusion of the service
4 provider in the petition filed under this
5 subsection, as provided in paragraph (4).

6 “(3) CONSIDERATIONS.—In determining wheth-
7 er to issue an order under this subsection, a court
8 shall consider—

9 “(A) whether such an order, either alone
10 or in combination with other such orders obli-
11 gating action by the same service provider,
12 would significantly burden either the service
13 provider or the operation of the system or net-
14 work of the service provider;

15 “(B) the magnitude of the harm likely to
16 be suffered by the petitioner if steps are not
17 taken to prevent or restrain access to the appli-
18 cable foreign digital piracy site;

19 “(C) whether implementation of the
20 order—

21 “(i) would be technically feasible and
22 effective;

23 “(ii) would not interfere with access
24 to material at other online locations that

1 does not violate an exclusive right or pro-
2 tection afforded under this title; and

3 “(iii) would disserve the public inter-
4 est; and

5 “(D) whether less burdensome and com-
6 parably effective means are available to prevent
7 or restrain access to the applicable foreign dig-
8 ital piracy site.

9 “(4) OPPORTUNITY TO CONTEST.—Not later
10 than 20 days after the date on which a service pro-
11 vider receives the notice required under paragraph
12 (2)(B) with respect to a petition filed under this
13 subsection, the service provider may appear before
14 the court in which the petition was filed and contest
15 the inclusion of the service provider in that petition.

16 “(5) ORDER INSTRUCTIONS.—An order issued
17 under this subsection shall—

18 “(A) specify that the applicable service
19 provider shall begin implementing that order as
20 soon as practicable for that service provider
21 after receipt of the notice described in para-
22 graph (6);

23 “(B) provide that such order will expire 1
24 year after the date specified under subpara-

1 graph (A), subject to any extension granted
2 under paragraph (9);

3 “(C) expressly require the applicable peti-
4 tioner to—

5 “(i) use reasonable, good-faith efforts
6 to verify on an ongoing basis the accuracy
7 of information provided in the petition re-
8 garding the foreign digital piracy site that
9 is the subject of the order, including, as
10 applicable, the domain names and Internet
11 Protocol addresses at which the foreign
12 digital piracy site that is the subject of the
13 order is operating; and

14 “(ii) if the information underlying the
15 petition has materially changed, provide
16 the court that issued the order and each
17 service provider identified in the order with
18 the information described in clause (i);

19 “(D) expressly provide that a service pro-
20 vider identified in the order may rely on infor-
21 mation provided in the order and any updated
22 information provided by the petitioner with re-
23 spect to the order under subparagraph (C); and

24 “(E) expressly provide that a service pro-
25 vider identified in the order has no independent

1 obligation, at the time the order is adopted or
2 at any time thereafter, to investigate or other-
3 wise verify or confirm the accuracy of informa-
4 tion provided under subparagraph (C) or (D).

5 “(6) NOTICE OF ORDER.—The court shall pro-
6 vide notice to the petitioner and each service pro-
7 vider subject to an order issued under this sub-
8 section, which shall include—

9 “(A) the instructions described in para-
10 graph (5);

11 “(B) the limitation described in paragraph
12 (7);

13 “(C) the obligations of the service provider
14 under subsection (d); and

15 “(D) the immunities of the service provider
16 under subsection (e).

17 “(7) LIMITATION.—An order issued under this
18 subsection may not prescribe, or be construed to
19 prescribe, any specific technical measures to be used
20 or other actions to be taken by a service provider to
21 comply with that order.

22 “(8) ADDITIONAL IDENTIFICATION.—

23 “(A) IN GENERAL.—At any time after the
24 issuance of an order under this subsection, the
25 petitioner that sought the order may move to

1 amend the order by identifying 1 or more addi-
2 tional service providers to which the order
3 should apply.

4 “(B) REQUIREMENTS.—The court shall
5 grant a motion made under subparagraph (A)
6 if the petitioner has demonstrated that the peti-
7 tioner has provided each service provider identi-
8 fied in that motion with—

9 “(i) a copy of the order issued under
10 subsection (b);

11 “(ii) a copy of the order issued under
12 this subsection;

13 “(iii) a copy of the motion filed under
14 this paragraph; and

15 “(iv) notice informing the service pro-
16 vider of the right of the service provider to
17 contest the inclusion of the service provider
18 in the motion filed under this paragraph,
19 as provided in subparagraph (C).

20 “(C) OPPORTUNITY TO CONTEST.—Not
21 later than 20 days after the date on which a
22 service provider receives notice under subpara-
23 graph (B) with respect to a motion made under
24 this paragraph, the service provider may appear

1 and contest the inclusion of the service provider
2 in that motion.

3 “(9) EXTENSION OF ORDER DURATION.—

4 “(A) IN GENERAL.—At any time before
5 the expiration of an order issued under this
6 subsection, as provided under paragraph
7 (5)(B), the petitioner that sought the order
8 may move to extend the order.

9 “(B) REQUIREMENTS.—The court shall
10 grant a motion made under subparagraph (A),
11 subject to the requirements under paragraph
12 (2).

13 “(C) LENGTH OF EXTENSION.—An exten-
14 sion granted under this paragraph shall be for
15 not longer than 1 year beyond the expiration of
16 the order that is in effect, as of the date on
17 which the extension is granted.

18 “(10) COST.—

19 “(A) IN GENERAL.—Upon motion by a
20 service provider subject to an order issued
21 under this subsection, the court may order the
22 petitioner that sought the order to pay reason-
23 able costs directly incurred by the service pro-
24 vider to comply with the order.

1 “(B) CONTENTS.—A motion made under
2 subparagraph (A)—

3 “(i) shall include a detailed list of
4 each cost described in that subparagraph;

5 “(ii) may not include costs for capital
6 expenditures, infrastructure, overhead, or
7 attorneys’ fees; and

8 “(iii) shall be filed not later than 60
9 days after the date on which the costs
10 sought to be recovered were incurred.

11 “(d) SERVICE PROVIDER OBLIGATIONS AND COMPLI-
12 ANCE.—

13 “(1) IN GENERAL.—A service provider that re-
14 ceives notice under subsection (c)(6) shall take rea-
15 sonable measures to prevent users in the United
16 States from using the system or network of that
17 service provider to access the foreign digital piracy
18 site that is the subject of the applicable order.

19 “(2) NOTICE TO SUBSCRIBERS.—A service pro-
20 vider subject to an order issued under subsection (c)
21 may elect to inform the subscribers of the service
22 provider attempting to access the foreign digital pi-
23 racy site that is the subject of the order that access
24 by the subscribers to the foreign digital piracy site

1 has been denied pursuant to a judicial order to di-
2 rect that denial of access.

3 “(3) ALLOWANCES.—A service provider subject
4 to an order issued under subsection (c) shall not be
5 deemed to be in violation of that order if the service
6 provider temporarily suspends compliance by the
7 service provider with that order when reasonably
8 necessary—

9 “(A) to correct or investigate potential in-
10 terference with access to material at other on-
11 line locations that does not violate an exclusive
12 right or protection afforded under this title;

13 “(B) to maintain the integrity or quality of
14 the network or operations of the service pro-
15 vider;

16 “(C) to upgrade or maintain the operations
17 or network of the service provider, including
18 any mechanism used to implement that order;
19 or

20 “(D) to prevent or respond to an actual or
21 potential security threat to the operations or
22 network of the service provider.

23 “(e) SERVICE PROVIDER IMMUNITIES.—

24 “(1) IMMUNITY FROM LIABILITY FOR GOOD
25 FAITH ACTIONS AND FOR RELIANCE.—

1 “(A) IN GENERAL.—A service provider
2 subject to an order issued under subsection (c)
3 shall be immune from liability for any injury al-
4 leged by an entity described in subparagraph
5 (B) to have occurred as a result of a measure
6 or other action taken in good faith (or in good
7 faith not taken) by the service provider—

8 “(i) to implement the order; or

9 “(ii) based on information provided to
10 the service provider under subsection (c).

11 “(B) ENTITIES.—With respect to a service
12 provider described in subparagraph (A), an en-
13 tity described in this subparagraph means—

14 “(i) a user of the system or network
15 of the service provider;

16 “(ii) the petitioner that sought the
17 order issued under subsection (c) that
18 identifies the service provider;

19 “(iii) the operator, or a user, of the
20 foreign digital piracy site that is the sub-
21 ject of the applicable order; or

22 “(iv) any other third party or govern-
23 mental authority.

24 “(2) IMMUNITY FROM LIABILITY FOR INJURY
25 ALLEGED BY A FOREIGN DIGITAL PIRACY SITE.—A

1 service provider subject to an order issued under
2 subsection (c) shall be immune from liability for any
3 injury alleged by a foreign digital piracy site that is
4 the subject of the order, notwithstanding any subse-
5 quent determination that the foreign digital piracy
6 site was inaccurately identified in the order or does
7 not meet the requirements under subsection (b).

8 “(3) RULE OF CONSTRUCTION.—Nothing in
9 this subsection may be construed to limit the author-
10 ity of a court issuing an order under subsection (c)
11 to compel compliance with the order.

12 “(f) JUDICIAL REVIEW OF COMPLIANCE.—

13 “(1) IN GENERAL.—A measure taken or not
14 taken by a service provider subject to an order
15 issued under subsection (c) shall be subject to review
16 by the court that issued the order.

17 “(2) CONSIDERATIONS.—A court that issues an
18 order under subsection (c) with respect to a service
19 provider may not determine that the service provider
20 has failed to satisfy the obligations of the service
21 provider under that order based on the failure of the
22 service provider to conduct an affirmative investiga-
23 tion regarding the accuracy of information regarding
24 the foreign digital piracy site that is the subject of
25 the order, including, as applicable, the domain

1 names and Internet Protocol addresses of that for-
2 eign digital piracy site and any updated information
3 provided under subsection (c)(5)(C).

4 “(3) MOVE TO MODIFY.—If a service provider
5 subject to an order issued under subsection (c),
6 when implementing the order, prevents a user from
7 accessing an online location other than the foreign
8 digital piracy site that is the subject of the order,
9 the operator of that other online location may move
10 to modify or rescind that order so as to enable ac-
11 cess to the other online location.

12 “(g) JUDICIAL AMENDMENT OF ORDERS.—A court,
13 upon motion by the petitioner for an order under sub-
14 section (b) or (c), and after a determination by the court
15 that such petitioner has demonstrated that a foreign on-
16 line location previously designated in an action brought
17 under this section to be a foreign digital piracy site is ac-
18 cessible or has been reconstituted at a different domain
19 name or Internet Protocol address, or has engaged in cir-
20 cumvention techniques that render the initial order ineffec-
21 tive, may—

22 “(1) amend the order issued under subsection
23 (b) or (c) accordingly; and

1 “(2) provide notice of the amended order under
2 paragraph (1) in accordance with the requirements
3 under subsection (c)(6).

4 “(h) PUBLIC AVAILABILITY AND ACCESSIBILITY OF
5 ORDERS.—

6 “(1) IN GENERAL.—A court shall notify the
7 Register of Copyrights regarding any order that the
8 court issues, amends, or rescinds under subsection
9 (b) or (c).

10 “(2) AVAILABILITY ON WEBSITE.—The Reg-
11 ister of Copyrights shall make each notification pro-
12 vided under paragraph (1) publicly available on the
13 website of the Copyright Office.

14 “(i) RULES OF CONSTRUCTION.—Nothing in this sec-
15 tion may be construed to affect—

16 “(1) the applicability or interpretation of any
17 other provision of law or principle of equity, includ-
18 ing—

19 “(A) the requirements of section 512 or
20 any other provision of this title;

21 “(B) principles of secondary liability; or

22 “(C) section 1651 of title 28; or

23 “(2) the limitation on the liability of a service
24 provider under section 512.

1 “(j) EFFECTIVE DATE.—This section shall take ef-
2 fect on the date that is 180 days after the date of enact-
3 ment of the Deterring Extraterritorial Foreign Exploi-
4 tation of Networks Damaging Intellectual Property Act.”.

5 (b) CONFORMING AMENDMENTS.—Section 502 of
6 title 17, United States Code, is amended—

7 (1) in the section heading, by inserting “**and**
8 **orders**” after “**Injunctions**”;

9 (2) in subsection (a)—

10 (A) by striking “may, subject to” and in-
11 serting the following: “may—

12 “(1) subject to”;

13 (B) in paragraph (1), as so designated, by
14 striking the period at the end and inserting “;
15 and”; and

16 (C) by adding at the end the following:

17 “(2) subject to the provisions of section 502A,
18 issue an order directing a service provider, as de-
19 fined in that section, to take reasonable measures to
20 prevent a foreign digital piracy site, as defined in
21 that section, from using the system or network of
22 that service provider to make that foreign digital pi-
23 racy site available to users in the United States.”;
24 and

25 (3) in subsection (b)—

1 (A) in the first sentence—

2 (i) by inserting “or order” after “such
3 injunction”; and

4 (ii) by inserting “or subject to the
5 order” before the semicolon; and

6 (B) in the second sentence—

7 (i) by inserting “or issuing the order”
8 after “granting the injunction”; and

9 (ii) by inserting “or order” after “of
10 the injunction”.

11 (c) TECHNICAL AMENDMENTS.—The table of sec-
12 tions for chapter 5 of title 17, United States Code, is
13 amended—

14 (1) by striking the item relating to section 502
15 and inserting the following:

“502. Remedies for infringement: Injunctions and orders.”; and

16 (2) by inserting after the item relating to sec-
17 tion 502, as amended by paragraph (1) of this sub-
18 section, the following:

“502A. Orders to designate and direct against foreign digital piracy sites.”.