

RPTS BLAZEJEWSKI

DCMN ROSEN

MARKUP OF H.R. 3261,
STOP ONLINE PIRACY ACT
Thursday, December 15, 2011
House of Representatives,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to call, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

Present: Representatives Smith, Sensenbrenner, Gallegly, Goodlatte, Lungren, Chabot, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Griffin, Marino, Gowdy, Ross, Adams, Quayle, Amodei, Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson, Quigley, Chu, Deutch, Sanchez and Polis.

Staff Present: Sean McLaughlin, Chief of Staff; David Whitney, Counsel; Travis Norton, Parliamentarian; Sarah Kish, Clerk; Perry

Apelbaum, Minority Staff Director; and Jason Everett, Minority Counsel.

Chairman Smith. The Judiciary Committee will come to order. Without objection the chair is authorized to declare recesses of the committee at any time and the clerk will --

Mr. Issa. I object.

Chairman Smith. The clerk will call the roll to establish a quorum.

The Clerk. Mr. Smith.

Chairman Smith. Present.

The Clerk. Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. Present

The Clerk. Mr. Lungren?

Mr. Lungren. Here.

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. Here.

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. Here.

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

Mr. Griffin. Here.

The Clerk. Mr. Marino?

Mr. Marino. Present.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

Mrs. Adams. Here.

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Present.

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

[No response.]

The Clerk. Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Here.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis.

Mr. Polis. Here.

Chairman Smith. The gentleman from North Carolina.

Mr. Watt. Present.

Chairman Smith. The gentleman from California.

Mr. Gallegly. Present.

Chairman Smith. The gentleman from California, Mr. Issa.

Mr. Issa. Present.

Mr. Chabot. Mr. Chabot is present.

Chairman Smith. The gentleman from Ohio. The gentleman from Ohio.

Mr. Chabot. Present.

Chairman Smith. Okay. The gentleman from Florida.

Mr. Ross. Present.

Chairman Smith. The gentleman from California, Mr. Berman.

Mr. Berman. Present.

Chairman Smith. The gentleman from Virginia.

Mr. Scott. Present.

Chairman Smith. And the gentleman from Georgia.

Mr. Johnson of Georgia. Present.

Chairman Smith. And the gentleman from Florida, Mr. Deutch.

Mr. Deutch. Present.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 20 members responded present.

Chairman Smith. A working quorum is present, and we will proceed. I do have a couple of announcements first for members of the committee. The first is that if you are not aware of it, we have a --

Voice. Mr. Chairman, we can't hear you well down on this end.

Chairman Smith. Okay. We will look for an upgrade in the sound system. A couple of announcements for the benefit of members of the committee and perhaps the audience as well. Our friend and colleague, Howard Coble, has been admitted to the George Washington Hospital with a respiratory illness. We expect him to be out in a few days. I talked to him yesterday, and he sounds very hale and hearty. We will miss Howard today, and actually many of us will miss his votes as well.

As far as this markup goes, it is not likely to be one of our shortest markups, and so I encourage members to bring their lunch and a flashlight. We will probably go late tonight and go tomorrow as well.

I know there are strong feelings about the legislation we are going to be considering today. There is obviously bipartisan support as well as bipartisan opposition, but I hope we will all remember we

are among Judiciary friends.

Also before we go on, I would like to single out three staff members who have been working night and day on this legislation, literally for most of this week, Sean McLaughlin, our chief counsel, David Whitney, who is to my right, and Vishal Amin as well, and appreciate their work.

Pursuant to notice, I now call up H.R. 3261 for purposes of markup, and the clerk will report the bill.

[The information follows:]

***** INSERT 1-1 *****

The Clerk. H.R. 3261, To promote prosperity, creativity, entrepreneurship, and innovation by combating the theft of U.S. property and --

Chairman Smith. Without objection, the bill is considered as read. I now recognize myself to offer an amendment in the nature of a substitute, and the clerk will report that amendment.

The Clerk. Amendment in the nature of a substitute to H.R. 3261 offered by Mr. Smith of Texas.

[The information follows:]

***** INSERT 1-2 *****

Chairman Smith. Without objection, the amendment --

Ms. Lofgren. I will object.

Chairman Smith. An objection is heard, and the clerk will read the substitute amendment. If you will proceed.

The Clerk. 112th CONGRESS, 1st Session
Amendment in the Nature of a Substitute to H.R. 3261
Offered by Mr. Smith of Texas.

Strike all after the enacting clause and insert the following:
SEC. 1. Short title; table of contents.

(a) Short title. This Act may be cited as the "Stop Online Piracy Act".

(b) Table of contents. The table of contents of this Act is as follows:

SEC. 2. Savings and severability clauses.

(A) Savings clauses.

(1) FIRST AMENDMENT. Nothing in this Act shall be construed to impose a prior restraint on free speech or the press protected under the First Amendment to the Constitution.

(2) TITLE 17 LIABILITY. Nothing in title I shall be construed to enlarge or diminish liability, including vicarious or contributory liability, for any cause of action available under the Lanham Act or title 17, United States Code, including any limitations on liability under such title, nor shall awareness of, receipt of, or response to any notice provided under section 102 (b) or 103 (b), or any order issued or served under section 102 or 103, serve as a basis for determining eligibility for a limitation on liability under section 512 of title 17, United States Code.

(3) NO DUTY TO MONITOR. Nothing in title I shall be construed to impose a duty to monitor activity on the network or service of an entity described in section 102(c) or 103(c).

Mr. Goodlatte. Mr. Chairman.

Chairman Smith. The gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. Mr. Chairman, I ask unanimous consent that the reading of the manager's amendment --

Ms. Lofgren. I object.

Mr. Conyers. Why?

Ms. Lofgren. Reserving the right to object if I may.

Mr. Conyers. I said why.

Chairman Smith. Does the gentlewoman from California wish to be recognized?

Ms. Lofgren. I would reserve the right to object, and I will explain why I, in fact, do object. In the past, members of this committee on both sides of the aisle have required the reading of bills and amendments because they were unhappy or mad, and that is not the case in this instance. I am mindful, however, that this amendment was distributed for the very first time Monday night. In fact, my staff pulled an all nighter in order to put together amendments by the 10 a.m. deadline. The public doesn't even know, in many cases, what is in this amendment.

We had a hearing a month ago. We haven't even received the answers to the questions that we were permitted to submit. We have had one hearing, and at that hearing there was only one witness

permitted to testify in opposition to the measure. We have had no subcommittee markups, and I think just in the interests of transparency for the public, we ought to have an airing of what is in this manager's amendment. I understand that it is not a pleasure since we have read it, I have read it, but I think for the public's sake it is necessary. I am mindful in the 1990s, when I was a member of this committee when we formatted the DMCA, we spent years. I mean, hundreds of hours working on this measure. This is being jammed through in 2 months' time. So I do object to waiving the reading of the amendment.

Mr. Conyers. Would the gentlelady yield?

Ms. Lofgren. I would be happy to yield.

Mr. Conyers. Thank you. Well, we are happy to learn that you are not mad or unhappy, that is a relief because we could have --

Ms. Lofgren. I remember Phil Burton's advice, be happy in your work.

Mr. Conyers. All right. Now that we got that much out of the way, is the gentlelady suggesting because there were no subcommittee markup that there ought to be a postponement of this hearing today and that we come back and look at it later?

Ms. Lofgren. I think that would be a preferable approach, frankly, but as I am not the chair of the committee, that is not -- it is not my opportunity to set the schedule. All I can do is object to waiving the reading of the --

Mr. Issa. Would the gentlelady yield?

Ms. Lofgren. I would be happy to yield to my colleague from

California.

Mr. Issa. I thank the gentlelady, and I join with her in expressing that the manager's amendment is, in fact, so substantially different, and I applaud the chairman for making some of the changes that I think in such a short period of time became recognized, but only an hour ago keepthewebopen.com published SOPA for the first time so that the public could begin looking at it in an interactive way. There are 60 or more amendments that will be offered here over the next 2-plus days. Those amendments should go on the Web, they should be understood, and we should have a hearing on the basis of the now new-proposed legislation and many of the amendments that would substantially improve the bill.

If we did that, if we allowed, if you will, the Christmas season to allow for this kind of airing, held a hearing with technical experts, including, for example, Secretary Napolitano's own brother from Sandia Lab who made it clear that the current bill would not, does not have technology that would effectively provide DNS blocking and, oh, by the way, the new bill only safe haven is still that same DNS blocking. That is just one of many examples.

So I join with the gentlelady that I believe we need to slow down and give the not just the public, but the technology public, the vast technology public that will be impacted by this an opportunity. I, for one, would make sure that every one of my amendments and every amendment I have any control over were made equally public at keepthewebopen.com so that we could begin evaluating how to get to the

right solution to protect against piracy, which is the one thing on both sides of the, in both rows of the dais we agree on.

Chairman Smith. I thank the gentleman. Does the gentlewoman from California yield back her time?

Ms. Lofgren. Yes, and I object to the waiving of the reading.

Chairman Smith. Okay. The gentlewoman from California continues to object. Let me just mention to members who -- that the manager's amendment was actually posted online Monday night many hours before we were required to post it Tuesday morning. Also, this committee this year has adopted the practice of asking for amendments ahead of time from members, and as a result, the public does have more time than they often are used to getting with other committees to review the amendments. Lastly, while I wish that we were not reading the manager's amendment, a case can be made to read the manager's amendment since on the basis of the statements of some of those in opposition, and I am not referring to any Judiciary Committee member, it is clear that they have not read the manager's amendment and don't appreciate what is in the manager's amendment, so maybe they will be so enlightened.

That said, let me say to members that we anticipate that the reading of the manager's amendment will take 45 minutes to an hour, and if the objection is continued, we will not be moving on to the opening statements until after that period of time, and the clerk will continue to read the manager's amendment.

(4) NO TECHNOLOGY MANDATES. Nothing in title I shall be construed to

impose a duty on an entity described in section 102(c) or 103(c) to design its network, technology, or service to forestall or prevent acts that would actually or potentially create a cause of action under such title, or to utilize any particular type of technology to comply with the requirements of such title.

(5) NO IMPACT ON SECURITY OR INTEGRITY. Nothing in title I shall be construed to authorize a court to require compliance with an obligation under section 102(c) in a manner that would impair the security or integrity of the domain name system or of the system or network operated by or on behalf of the party subject to the obligation.

(b) Severability. If any provision of this Act, or the application of the provision to any person or circumstance, is held to be unconstitutional, the other provisions or the application of the provision to other persons or circumstances shall not be affected thereby.

(c) Definitions. The terms used in this section have the meanings given those terms in section 101.

SEC. 101. Definitions.

In this title:

(1) DOMAIN NAME. The term “domain name” has the meaning given that term in section 45 of the Lanham Act (15 U.S.C. 1127).

(2) DOMAIN NAME SYSTEM SERVER. The term “domain name system server” means a server or other mechanism used to provide the Internet protocol address associated with a domain name.

(3) DOMESTIC DOMAIN NAME. The term “domestic domain name” means a domain

name that is registered or assigned by a domain name registrar, domain name registry, or other domain name registration authority, that is located within a judicial district of the United States.

(4) DOMESTIC INTERNET PROTOCOL ADDRESS. The term “domestic Internet Protocol address” means an Internet Protocol address for which the corresponding Internet Protocol allocation entity and the entity using the Internet Protocol address are located within a judicial district of the United States.

(5) DOMESTIC INTERNET SITE. The term “domestic Internet site” means an Internet site for which the corresponding domain name or, if there is no domain name, the corresponding Internet Protocol address, is a domestic domain name or domestic Internet Protocol address.

(6) FOREIGN DOMAIN NAME. The term “foreign domain name” means a domain name that is not a domestic domain name.

(7) FOREIGN INTERNET PROTOCOL ADDRESS. The term “foreign Internet Protocol address” means an Internet Protocol address that is not a domestic Internet protocol address.

(8) FOREIGN INTERNET SITE. The term “foreign Internet site” means an Internet site that is not a domestic Internet site.

(9) INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR. The term “Intellectual Property Enforcement Coordinator” means the Intellectual Property Enforcement Coordinator appointed under section 301 of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (15 U.S.C. 8111).

(10) INTERNET. The term “Internet” has the meaning given that term in

section 5362(5) --

Mr. Berman. Point of parliamentary inquiry, Mr. Chairman.

Chairman Smith. The gentleman from California will state his parliamentary inquiry.

Mr. Berman. I have concluded that notwithstanding the chairman's hope of people being enlightened, that those who have not been enlightened by the manager's amendment already have a form of internal blocking and redirection going on, and so I am wondering if a motion to dispense with the reading is in order.

Chairman Smith. I am told that such a motion is regrettably not in order.

Mr. Berman. Okay, thank you.

Chairman Smith. The clerk will proceed.

The Clerk. -- 5362(5) of title 31, United States Code.

(11) INTERNET ADVERTISING SERVICE. The term "Internet advertising service" means a service that for compensation sells, purchases, brokers, serves, inserts, verifies, or clears the placement of an advertisement, including a paid or sponsored search result, link, or placement, that is rendered in viewable form for any period of time on an Internet site.

(12) INTERNET PROTOCOL. The term "Internet Protocol" means a protocol used for communicating data across a packet-switched internetwork using the Transmission Control Protocol/Internet Protocol, and includes any predecessor or successor protocol to such protocol.

(13) INTERNET PROTOCOL ADDRESS. The term "Internet Protocol address"

means a numerical or hexadecimal label that is assigned to each device that participates in a computer network that uses the Internet Protocol for communication.

(14) INTERNET PROTOCOL ALLOCATION ENTITY. The term “Internet Protocol allocation entity” means the American Registry of Internet Numbers (ARIN), its successor (if any), or any Internet Protocol Internet registry that is formally recognized by the United States Government, from which an Internet Protocol address is allocated or where it is registered.

(15) INTERNET SEARCH ENGINE. The term “Internet search engine”

(A) means a service made available via the Internet whose primary function is gathering and reporting, in response to a user query, indexed information or Web sites available elsewhere on the Internet; and

(B) does not include a service that retains a third party that is subject to service of process in the United States to gather, index, or report information available elsewhere on the Internet.

(16) INTERNET SITE. The term “Internet site” means the collection of digital assets, including links, indexes, or pointers to digital assets, accessible through the Internet that are addressed relative to a common domain name or, if there is no domain name, a common Internet Protocol address. Except where otherwise provided in this title, the term “Internet site” may include a specifically identified portion of such site.

(17) LANHAM ACT. 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”).

(18) NONAUTHORITATIVE DOMAIN NAME SERVER. The term “nonauthoritative domain name server” means a server that does not contain complete copies of domains but uses a cache file that is comprised of previous domain name server lookups, for which the server has received an authoritative response in the past.

(19) OPERATOR. The term “operator”, when used in connection with an Internet site, includes any person with authority to operate such Internet site.

(20) PAYMENT NETWORK PROVIDER.

(A) IN GENERAL. The term “payment network provider” means an entity that directly or indirectly provides the proprietary services, infrastructure, and software to effect or facilitate a debit, credit, or other payment transaction.

(B) RULE OF CONSTRUCTION. For purposes of this paragraph, a depository institution (as such term is defined under section 3 of the Federal Deposit Insurance Act) or credit union that acquires, authorizes, initiates, or receives a debit, credit, or other payment transaction shall not be construed to be a payment network provider based solely on the offering of services described in this subparagraph.

(21) SERVICE PROVIDER. The term “service provider”

(A) means an operator of a nonauthoritative domain name server; and

(B) does not include an operator of a nonauthoritative domain name server that offers domain name resolution services solely to businesses for domain, subdomain, domain name system record, or Internet Protocol address management.

(22) STATE. The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(23) U.S. DIRECTED SITE. The term “U.S.-directed site” means a foreign Internet site that is used to conduct business directed to residents of the United States, or that otherwise demonstrates the existence of minimum contacts sufficient for the exercise of personal jurisdiction over the owner or operator of the Internet site consistent with the Constitution of the United States, based on relevant evidence that may include whether

(A) the Internet site is used to provide goods or services to users located in the United States;

(B) there is evidence that the Internet site is intended to offer or provide

(i) such goods and services,

(ii) access to such goods and services, or

(iii) delivery of such goods and services,

to users located in the United States; and

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

(24) UNITED STATES. The term “United States” includes any commonwealth, possession, or territory of the United States.

SEC. 102. Action by Attorney General to protect U.S. customers and prevent U.S. support of foreign infringing sites.

(A) Definition. For purposes of this section, a foreign Internet site is a “foreign infringing site” if

(1) the Internet site is a U.S.-directed site and is used by users in the United States; and

(2) the Internet site is being operated in a manner that would, if it were a domestic Internet site, subject it (or its associated domain name) to

(A) seizure or forfeiture in the United States in an action brought by the Attorney General, by reason of an act prohibited by section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of title 18, United States Code; or

(B) prosecution by the Attorney General under section 1204 of title 17, United States Code, by reason of a violation of section 1201 of such title.

(b) Action by the attorney general.

(1) IN PERSONAM. The Attorney General may commence an in personam action against

(A) a registrant of a domain name used by a foreign infringing site; or

(B) an owner or operator of a foreign infringing site.

(2) IN REM. If through due diligence the Attorney General is unable to find any person described in subparagraph (A) or (B) of paragraph (1) with respect to a foreign infringing site or no such person found

has an address within a judicial district of the United States, the Attorney General may commence an in rem action against that foreign infringing site or the foreign domain name used by such site.

(3) NOTICE. Upon commencing an action under this subsection, the Attorney General shall send a notice of the alleged activity described in subparagraph (A) or (B) of subsection (a)(2) and intent to proceed under this section

(A)(i) to all registrants (if any) of the domain name of the Internet site

(I) at the postal and electronic mail addresses of each such registrant appearing in the applicable publicly accessible database of registrations, if any, and to the extent such addresses are reasonably available; and

(II) via the postal and electronic mail addresses of the registrar, registry, or other domain name registration authority that registered or assigned the domain name of the Internet site, to the extent such addresses are reasonably available; and

(ii) to all owners and operators (if any) of the Internet site known to the Attorney General at the time the action is commenced

(I) at the primary postal and electronic mail addresses (if any) for each such owner or operator that are provided on the Internet site, to the extent such addresses are reasonably available; or

(II) if there is no domain name of the Internet site, via the postal and electronic mail addresses (if any) of the service provider responsible for allocating the Internet Protocol address to the

Internet site, as found in the applicable publicly accessible database of allocations and assignments of Internet Protocol addresses to service providers, to the extent such postal and electronic mail addresses are reasonably available; or

(B) in any other such form as the court may provide, including as may be required by rule 4(f) of the Federal Rules of Civil Procedure.

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

(5) RELIEF. On application of the Attorney General following the commencement of an action under this section, 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 a registrant of a domain name used by the foreign infringing site or an owner or operator of the foreign infringing site or, in an action brought in rem under paragraph (2), against the foreign infringing site or the domain name used by such site, to cease and desist from undertaking any further activity as a foreign infringing site.

(c) Actions based on court orders.

(1) SERVICE. A process server on behalf of the Attorney General, with prior approval of the court, may serve a copy of a court order issued under subsection (b) on similarly situated entities within each class described in paragraph (2). Proof of service shall be filed with the court.

(2) REASONABLE MEASURES. After being served with a copy of an order under paragraph (1), the following shall apply, subject to sections

2 and 104 of this Act:

(A) SERVICE PROVIDERS.

(i) IN GENERAL. A service provider shall take such measures as it determines to be the least burdensome, technically feasible, and reasonable means designed to prevent access by its subscribers located within the United States to the foreign infringing site that is subject to the order. Such actions shall be taken as expeditiously as possible.

(ii) SAFE HARBOR. The measures determined by a service provider to be the least burdensome, technically feasible, and reasonable means designed to prevent a nonauthoritative domain name system server under the direct control of the service provider from resolving the domain name of the foreign infringing site to that domain name's Internet Protocol address shall fully satisfy such service provider's obligation described in clause (i). An order issued under this section may not impose any additional obligations on, or require additional actions by, a service provider.

(iii) LIMITATIONS. A service provider shall not be required under this subsection

(I) except as necessary to comply with this subparagraph, to modify its network, software, systems, or facilities;

(II) to take any measures with respect to domain name resolutions not performed by its own domain name server;

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

(IV) to prevent access to a subdomain, or to any portion of an Internet

site, other than as the result of an order to prevent access to the domain name, or to the entire Internet site, of which it is a part; or

(V) to direct or redirect users via domain name resolution to an Internet site other than the foreign infringing site requested by the user.

(iv) CONSTRUCTION. Nothing in this subparagraph shall affect the limitation on the liability of a service provider under section 512 of title 17, United States Code.

(B) INTERNET SEARCH ENGINES. A provider of an Internet search engine shall take technically feasible and commercially reasonable measures, as expeditiously as possible, designed to prevent the serving, in response to a query, of a direct hypertext link to the foreign infringing site that is subject to the order, or the portion of such site specified in the order. The court order under this subsection that applies to an Internet search engine should be narrowly tailored by the court, consistent with the First Amendment to the Constitution, to be the least restrictive means to effectively achieve the goals of this title.

(C) PAYMENT NETWORK PROVIDERS.

(i) PREVENTING AFFILIATION. A payment network provider shall take technically feasible and commercially reasonable measures, as expeditiously as possible, designed to prevent, prohibit, or suspend its service from completing payment transactions involving customers located within the United States or accounts originating in the United

States and the payment account

(I) that is used by the foreign infringing site that is subject to the order; and

(II) through which payment transactions processed by the payment network provider would be completed.

(ii) APPLICATION. A payment network provider shall be considered to be in compliance with clause (i) if it takes action described in that clause with respect to the payment account that is used by the foreign infringing site subject to the order as of the date on which a copy of the order is served under paragraph (1), or as of the date on which a copy of the order as modified under subsection (d) or as amended under subsection (e) is served under subsection (f), whichever dates apply.

(D) INTERNET ADVERTISING SERVICES.

(i) REQUIRED ACTIONS. An Internet advertising service that contracts to provide advertising to or for the foreign infringing site that is subject to the order, or that knowingly serves advertising to or for such site, shall take technically feasible and commercially reasonable measures, as expeditiously as possible, designed to

(I) prevent its service from providing advertisements to or relating to the foreign infringing site that is specified in the order;

(II) cease making available advertisements for the foreign infringing site or paid or sponsored search results, links, or other placements that provide access to the foreign infringing site; and

(III) cease providing or receiving any compensation for advertising or related services to, from, or in connection with the foreign

infringing site.

(ii) APPLICATION. An Internet advertising service shall be considered to be in compliance with clause (i) if it takes action described in that clause with respect to advertising provided to or for the foreign infringing site as of the date on which a copy of the order is served under paragraph (1), or as of the date on which a copy of the order as modified under subsection (d) or as amended under subsection (e) is served under subsection (f), whichever dates apply.

(3) ENFORCEMENT OF ORDERS.

(A) IN GENERAL. To ensure compliance with orders issued under this section, the Attorney General may bring an action for injunctive relief (i) against any entity served under paragraph (1) that knowingly and willfully fails to comply with the requirements of this subsection to compel such entity to comply with such requirements; or

(ii) against any entity that knowingly and willfully provides or offers to provide a product or service designed or marketed by such entity or by another in concert with such entity for the circumvention or bypassing of measures described in paragraph (2) and taken in response to a court order issued under this subsection, to enjoin such entity from interfering with the order by continuing to provide or offer to provide such product or service.

(B) RULE OF CONSTRUCTION. The authority granted the Attorney General under subparagraph (A)(i) shall be the sole legal remedy to enforce the obligations under this section of any entity described in paragraph (2).

(C) DEFENSE. A defendant in an action under subparagraph (A)(i) may establish an affirmative defense by showing that the defendant does not have the technical means to comply with this subsection without incurring an unreasonable economic burden, or that the court order issued under subsection (b) is not authorized by this section. Such showing shall not be presumed to be a complete defense but shall serve as a defense only for those measures for which a technical limitation on compliance is demonstrated or for such portions of the order as are demonstrated to be unauthorized by this section.

(D) DEFINITION. For purposes of this subparagraph (A)(ii), a product or service designed or marketed for the circumvention or bypassing of measures described in paragraph (2) and taken in response to a court order issued under subsection (b) includes a product or service that is designed or marketed for the purpose of enabling a domain name described in such an order

(i) to resolve to that domain name's Internet protocol address notwithstanding the measures taken by a service provider under paragraph (2) to prevent such resolution; or

(ii) to resolve to a different domain name or Internet Protocol address that the provider of the product or service knows, reasonably should know, or reasonably believes is used by an Internet site offering substantially similar infringing activities as those with which the foreign infringing site that is subject to the court order was associated.

(D) Modification or vacation of orders.

(1) IN GENERAL. 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, that is subject to the order;

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

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

(D) any entity that has been served with a copy of an order under subsection (c) that requires such entity to take action prescribed in that subsection; or

(E) the Attorney General.

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

(A) the foreign Internet site subject to the order was improvidently adjudicated or is no longer a foreign infringing site;

(B) compliance with the order, unless modified, would impair the security or integrity of the domain name system, or of the system or network operated by or on behalf of the party subject to subsection (c)(2); or

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

(3) CONSIDERATION. In making a relief determination under paragraph

(2), a court may consider whether the domain name of the foreign Internet site has expired or has been re-registered by an entity other than the entity that is subject to the order with respect to which the motion under paragraph (1) is brought.

(4) INTERVENTION. An entity required to take action under subsection (c) if an order issues under subsection (b) may intervene at any time in any action commenced under subsection (b) that may result in such order, or in any action to modify, suspend, or vacate such order under this subsection.

(E) Amended orders. The Attorney General, if alleging that a foreign Internet site previously adjudicated in an action under this section to be a foreign infringing site is accessible or has been reconstituted at a different domain name or Internet Protocol address, may petition the court to amend the order issued under this section accordingly.

(f) Service of and action based on modified, suspended, vacated, or amended orders.

(1) SERVICE REQUIREMENT. The Attorney General shall serve any entity that has been served with a copy of an order under subsection (c) with a copy of any modification, suspension, or vacation of, or amendment to, that order under subsection (d) or (e).

(2) ACTION SUBSEQUENT TO SERVICE. An entity that is served with a copy of a modified, suspended, or amended order under paragraph (1) shall take actions consistent with subsection (c)(2) in accordance with the modification, suspension, or amendment. An entity that is served with

a copy of a vacated order under paragraph (1) may restore any services that were provided before being served with a copy of the order under subsection (c).

(G) Law enforcement coordination.

(1) IN GENERAL. The Attorney General shall inform the Intellectual Property Enforcement Coordinator and the heads of appropriate law enforcement agencies of all court orders issued under subsection (b), and all amended orders issued under subsection (e), regarding foreign infringing sites.

(2) ALTERATIONS. The Attorney General shall, and the defendant may, inform the Intellectual Property Enforcement Coordinator of the modification, suspension, expiration, or vacation under subsection (d) of a court order issued under subsection (b).

SEC. 103. Protection of U.S. customers and prevention of U.S. funding of sites dedicated to theft of U.S. property.

(A) Definitions. In this section:

(1) DEDICATED TO THEFT OF U.S. PROPERTY. An Internet site is an “Internet site dedicated to theft of U.S. property” if

(A) it is

(i) a U.S.-directed site; or

(ii) an Internet site for which the registrant of the domain name used by the Internet site, and the owner or operator of the Internet site, are not located and cannot be found within the United States;

(B) the site is used by users within the United States; and

(C) either

(i) the site is primarily designed or operated for the purpose of, has only limited purpose or use other than, or is marketed by its operator or another acting in concert with that operator primarily for use in, offering goods or services in violation of

(I) section 501 of title 17, United States Code, for purposes of commercial advantage or private financial gain, and with respect to infringement of complete or substantially complete works;

(II) section 1201 of title 17, United States Code; or

(III) provisions of the Lanham Act that prohibit 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 (15 U.S.C. 1116(d)) or section 2320 of title 18, United States Code; or

(ii) the operator of the site operates the site with the object of promoting, or has promoted, its use to carry out acts that constitute a violation of section 501 or 1201 of title 17, United States Code, as shown by clear expression or other affirmative steps taken to foster such violation.

(2) QUALIFYING PLAINTIFF. The term “qualifying plaintiff” means, with respect to a particular Internet site, a person with standing to bring a civil action for a violation described in paragraph (1)(C).

(B) Limited injunctive relief.

(1) IN PERSONAM. A qualifying plaintiff may commence an in personam action against

(A) a registrant of a domain name used by an Internet site dedicated

to theft of U.S. property; or

(B) an owner or operator of that Internet site.

(2) IN REM. If through due diligence a qualifying plaintiff who is authorized to bring an in personam action under paragraph (1) with respect to an Internet site dedicated to theft of U.S. property is unable to find a person described in subparagraphs (A) or (B) of paragraph (1), or no such person found has an address within a judicial district of the United States, the qualifying plaintiff may commence an in rem action against that Internet site or the domain name used by that Internet site.

(3) NOTICE. Upon commencing an action under this subsection, the qualifying plaintiff shall send a notice of the alleged activity described in subsection (a)(1)(C) and intent to proceed under this subsection

(A)(i) to all registrants (if any) of the domain name of the Internet site

(I) at the postal and electronic mail addresses (if any) of each such registrant appearing in the applicable publicly accessible database of registrations, if any, and to the extent such addresses are reasonably available; and

(II) via the postal and electronic mail addresses of the registrar, registry, or other domain name registration authority that registered or assigned the domain name of the Internet site, or portion thereof, to the extent such addresses are reasonably available; and

(ii) to all owners and operators of the Internet site known to the

qualifying plaintiff at the time the action is commenced, if any

(I) at the primary postal and electronic mail addresses (if any) for each such owner and operator that are provided on the Internet site, and to the extent such addresses are reasonably available; or

(II) if there is no domain name of the Internet site, via the postal and electronic mail addresses (if any) of the service provider responsible for allocating the Internet Protocol address to the Internet site, as found in the applicable publicly accessible database of allocations and assignments of Internet Protocol addresses to service providers, to the extent such postal and electronic mail addresses are reasonably available; or

(B) in any other such form as the court may prescribe, including as may be required by rule 4(f) of the Federal Rules of Civil Procedure.

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

(5) RELIEF. On application of a qualifying plaintiff following the commencement of an action under this section with respect to an Internet site dedicated to theft of U.S. property, 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 a registrant of a domain name used by the Internet site, or against an owner or operator of the Internet site, or, in an action brought in rem under paragraph (2), against the Internet site, or against the domain name used by the Internet site, to cease and desist from undertaking any further activity as an Internet site dedicated

to theft of U.S. property.

(C) Actions based on court orders.

(1) SERVICE BY QUALIFYING PLAINTIFF. A qualifying plaintiff, with the prior approval of the court, may serve a copy of a court order issued under subsection (c) on similarly situated entities described in paragraph (2). Proof of service shall be filed with the court.

(2) REASONABLE MEASURES. After being served with a copy of an order under this subsection, the following shall apply, subject to sections 2 and 104 of this Act:

(A) PAYMENT NETWORK PROVIDERS.

(i) PREVENTING AFFILIATION. A payment network provider shall take technically feasible and commercially reasonable measures, as expeditiously as possible, that are designed to prevent, prohibit, or suspend its service from completing payment transactions involving customers located within the United States or accounts originating in the United States and the payment account

(I) that is used by the Internet site dedicated to theft of U.S. property that is subject to the order; and

(II) through which payment transactions processed by the payment network provider would be completed.

(ii) APPLICATION. A payment network provider shall be considered to be in compliance with clause (i) if it takes action described in that clause with respect to the payment account that is used by the Internet site dedicated to the theft of U.S. property that is subject to the order as of the date on which a copy of the order is served under

paragraph (1), or as of the date on which a copy of the order as modified under subsection (e) or as amended under subsection (f) is served under subsection (g), whichever dates apply.

(B) INTERNET ADVERTISING SERVICES.

(i) REQUIRED ACTIONS. An Internet advertising service that contracts with the Internet site dedicated to theft of U.S. property that is subject to the order to provide advertising to or for such Internet site, or that knowingly serves advertising to or for such Internet site, shall take technically feasible and commercially reasonable measures, as expeditiously as possible, that are designed to

(I) prevent its service from providing advertisements to or relating to the Internet site;

(II) cease making available advertisements for the Internet site, or paid or sponsored search results, links, or other placements that provide access to the Internet site; and

(III) cease providing or receiving any compensation for advertising or related services to, from, or in connection with the Internet site.

(ii) APPLICATION. An Internet advertising service shall be considered to be in compliance with clause (i) if it takes action described in that clause with respect to advertising provided to or for the Internet site dedicate to theft of U.S. property as of the date on which a copy of the order is served under paragraph (1), or as of the date on which a copy of the order as modified under subsection (d) or as amended under subsection (e) is served under subsection (f), whichever dates apply.

(3) ENFORCEMENT OF ORDERS.

(A) RULE OF CONSTRUCTION. The procedures and relief provided under this subsection shall be the sole legal remedy to enforce the obligations of any entity under this subsection.

(B) PROCEDURES AND RELIEF.

(i) PROCEDURE. Upon the filing of a claim and a showing by the qualifying plaintiff that an entity served with a copy of a court order issued under subsection (c) has not made good faith efforts to comply with its obligations under this subsection by reason of such court order, the court shall require the entity to show cause why an order should not issue to require compliance with the obligations of this subsection. The claim and showing under this clause shall be filed with the court that issued the court order or, if that court lacks jurisdiction over the entity, with any court that has jurisdiction over that entity.

(ii) SERVICE OF PROCESS. The qualifying plaintiff shall serve on the entity process of filing the claim and the order to show cause. Such process and order may be served in any judicial district where the entity resides or may be found.

(iii) AUTHORITY OF COURT. Upon consideration of the evidence presented by all parties in connection with the order to show cause, the court is authorized, in addition to an order to require compliance with this obligations of this subsection, to impose a remedy, consistent with the court's exercise of its equitable authority, to enforce compliance with its lawful orders, if the entity has knowingly and willfully failed to so comply.

(C) DEFENSE. An entity against whom relief is sought under subparagraph (B) may establish an affirmative defense by showing that the entity does not have the technical means to comply with this subsection without incurring an unreasonable economic burden, or that the order is not authorized by this subsection. Such showing shall not be presumed to be a complete defense but shall serve as a defense only for those measures for which a technical limitation on compliance is demonstrated or for such parts of the order as are demonstrated to be unauthorized by this subsection.

(D) Modification or vacation of orders.

(1) IN GENERAL. At any time after the issuance of an order under subsection (c), or an amended order issued under subsection (e), with respect to an Internet site dedicated to theft of U.S. property, a motion to modify, suspend, or vacate the order may be filed by

(A) any person, or owner or operator of property, that is subject to the order;

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

(C) any domain name registrar, registry, or other domain name registration authority, that has registered or assigned the domain name of such Internet site; or

(D) any entity that has been served with a copy of an order under subsection (c), or an amended order under subsection (e), that requires such entity to take action prescribed in that subsection.

(2) RELIEF. Relief under this subsection shall be proper if the court

finds that

(A) the Internet site subject to the order was improvidently adjudicated or is no longer an Internet site dedicated to theft of U.S. property; or

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

(3) CONSIDERATION. In making a relief determination under paragraph (2), a court may consider whether the domain name of the Internet site has expired or has been re-registered by an entity other than the entity that is subject to the order with respect to which the motion under paragraph (1) is brought.

(4) INTERVENTION. An entity required to take action under subsection (d) if an order issues under subsection (c) may intervene at any time in any action commenced under subsection (c) that may result in such order, or in any action to modify, suspend, or vacate such order under this subsection.

(E) Amended orders. The qualifying plaintiff, if alleging that an Internet site previously adjudicated in an action under this section to be an Internet site dedicated to theft of U.S. property is accessible or has been reconstituted at a different domain name or Internet Protocol address, may petition the court to amend the order issued under this section accordingly.

(f) Service of and action based on modified, suspended, vacated, or amended orders.

(1) SERVICE REQUIREMENT. The qualifying plaintiff shall serve any

entity that has been served with a copy of an order under subsection (c) with a copy of any modification, suspension, or vacation of, or amendment to, that order under subsection (d) or (e).

(2) ACTION SUBSEQUENT TO SERVICE. An entity that is served with a copy of a modified, suspended, or amended order under paragraph (1) shall take actions consistent with subsection (c)(2) in accordance with the modification, suspension, or amendment. An entity that is served with a copy of a vacated order under paragraph (1) may restore any services that were provided before being served with a copy of the order under subsection (c).

(F) Reporting of orders.

(1) IN GENERAL. The qualifying plaintiff shall inform the Intellectual Property Enforcement Coordinator of any court order issued under subsection (c) or amended order issued under subsection (e).

(2) ALTERATIONS. Upon the modification, suspension, expiration, or vacation under subsection (d) of a court order issued under subsection (c), the qualifying plaintiff shall, and the defendant may, so inform the Intellectual Property Enforcement Coordinator.

SEC. 104. Effect of orders served on third-party entities.

(A) Relief limited to scope of violation. In any case in which only a specifically identified portion of an Internet site is identified by the court as a foreign infringing site or as an Internet site dedicated to theft of U.S. property, and made subject to an order under section 102(b)(5) or 103(b)(5), the relief granted under such subsection, and the obligations of any entity served with a copy of

an order under section 102(c) or 103(c), shall be confined to that specified portion so identified and made subject to the order. Nothing in the order shall be interpreted to impose obligations on any entity served with a copy of the order with respect to any other portion of an Internet site not specified in the order.

(b) Limitations relating to court orders.

(1) APPLICABILITY. This subsection applies to liability or evidence in any claim or cause of action under Federal or State law, other than in an enforcement action under section 102(c)(3) or 103(c)(3), against an entity served with a copy of an order under sections 102(c) or 103(c), any entity described in section 101(20)(B), or any director, officer, employee or agent of any such entity.

(2) LIMIT ON LIABILITY OF ENTITIES. Subject to paragraph (1), any entity served with a copy of an order under sections 102(c) or 103(c), any entity described in section 101(20)(B), and any director, officer, employee, or agent of any such entity, shall not be liable for any acts reasonably designed to comply with such order or reasonably arising from such order, and no cause of action shall lie in any Federal or State court or administrative agency against such an entity, or director, office, employee or agent thereof, for such an act.

(3) ACTS OF CIRCUMVENTION BY CUSTOMERS. Subject to paragraph (1), any entity served with a copy of an order under sections 102(c) or 103(c), any entity described in section 101(20)(B), and any director, officer, employee, or agent of any such entity, shall not be liable for any actions taken by customers of any such entity to circumvent any measure

implemented in good faith by the entity in order to comply with that order.

SEC. 105. Actions taken consistent with the purposes of this title.

(A) In general. No cause of action shall lie in any Federal or State court or administrative agency against, no person may rely in any claim or cause of action against, and no liability for damages to any person shall be granted against, a service provider, payment network provider, Internet advertising service, advertiser, Internet search engine, domain name registry, domain name registrar, entity described in section 101(20)(B), or Internet Protocol Allocation entity, including any director, officers, employees, or agents of any such entity, only for taking the actions described in section 102(c)(2) or section 103(c)(2) with respect to an Internet site, acting in good faith and based on credible evidence, that

(1) the Internet site is a foreign infringing site, is an Internet site dedicated to theft of U.S. property, or is an Internet site that endangers the public health; and

(2) the action is narrowly tailored and consistent with the entity's terms of service or other contractual rights, and with the purposes of this title.

(C) Definitions. In this section:

(1) ADULTERATED. The term "adulterated" has the meaning given that term in section 501 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351).

(2) INTERNET SITE THAT ENDANGERS THE PUBLIC HEALTH. The term “Internet site that endangers the public health” means an Internet site that is primarily designed or operated for the purpose of, has only limited purpose or use other than, or is marketed by its operator or another acting in concert with that operator primarily for use in

(A) offering, selling, dispensing, or distributing any prescription medication, and does so regularly without a valid prescription; or

(B) offering, selling, dispensing, or distributing any prescription medication that is adulterated or misbranded.

(3) MISBRANDED. The term “misbranded” has the meaning given that term in section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352).

(4) PRESCRIPTION MEDICATION.

(A) PRESCRIPTION MEDICATION. The term “prescription medication” means a drug that is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(B) DRUG. The term “drug” has the meaning given that term in section 201(g)(1) of the Federal Food Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)).

(5) VALID PRESCRIPTION. The term “valid prescription” has the meaning given that term in section 309(e)(2)(A) of the Controlled Substances Act (21 U.S.C. 829(e)(2)(A)).

SEC. 106. Guidelines and study.

(A) Guidelines. The Attorney General shall

(1) provide appropriate resources and procedures for case management

and development to effect timely disposition of actions brought under this title;

(2) develop a deconfliction process in consultation with appropriate law enforcement agencies, including U.S. Immigration and Customs Enforcement, to coordinate enforcement activities under this title;

(3) publish procedures developed in consultation with appropriate law enforcement agencies, including U.S. Immigration and Customs Enforcement, to receive information from the public relevant to the enforcement of this title;

(4) provide guidance to intellectual property rights holders about what information such rights holders should provide to assist in initiating an investigation or to supplement an ongoing investigation under this title; and

(5) develop and make available, to entities served with a copy of an order under section 102(c) or 103(c) and such others as the Attorney General determines is appropriate, a form of notice that includes information regarding the reasons for and impact on users of orders issued under sections 102 and 103, for use by and at the sole discretion of entities receiving it.

(B) Study.

(1) BY THE REGISTER OF COPYRIGHTS.

(A) NATURE OF STUDY. The Register of Copyrights, in consultation with appropriate departments and agencies of the United States and other stakeholders, shall conduct a study on the enforcement and effectiveness of this title and on any need to amend the provisions

of this title to adapt to emerging technologies.

(B) REPORTS TO CONGRESS. Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report containing the results of the study conducted under this subsection and any recommendations that the Register may have as a result of the study.

(2) REPORT ON EFFECTIVENESS OF CERTAIN MEASURES. Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce, in coordination with the Attorney General, the Secretary of Homeland Security, the Register of Copyrights, and the Intellectual Property Enforcement Coordinator, shall conduct a study and report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the following:

(A) An assessment of the effects, if any, of the implementation of section 102(c)(2)(A) on the accessibility of Internet sites dedicated to infringing activity.

(B) An assessment of the effects, if any, of the implementation of section 102(c)(2)(A) on the deployment, security, and reliability of the domain name system and associated Internet processes, including Domain Name System Security Extensions.

(C) Recommendations, if any, for modifying or amending this title to increase effectiveness or ameliorate any unintended effects of section 102(c)(2)(A).

SEC. 201. Streaming of copyrighted works in violation of criminal law.

(A) Title 17 amendments. Section 506(a) of title 17, United States Code, is amended to read as follows:

“(a) Criminal infringement.

“(1) IN GENERAL. Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed

“(A) for purposes of commercial advantage or private financial gain;

“(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, or by the public performance by means of digital transmission, during any 180-day period, of 1 or more copyrighted works, when the total retail value of the copies or phonorecords, or of the public performances, is more than \$1,000; or

“(C) by the distribution or public performance of a work being prepared for commercial dissemination, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial dissemination.

“(2) EVIDENCE. For purposes of this subsection, evidence of reproduction, distribution, or public performance of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

“(3) DEFINITION. In this subsection, the term 'work being prepared for commercial dissemination' means

“(A) a computer program, a musical work, a motion picture or other

audiovisual work, a literary work, or a sound recording, if, at the time of unauthorized distribution or public performance

“(i)(I) the copyright owner has a reasonable expectation of commercial distribution; and

“(II) the copies or phonorecords of the work have not been commercially distributed in the United States by or with the authorization of the copyright owner; or

“(ii)(I) the copyright owner does not intend to offer copies of the work for commercial distribution but has a reasonable expectation of other forms of commercial dissemination of the work; and

“(II) the work has not been commercially disseminated to the public in the United States by or with the authorization of the copyright owner;

“(B) a motion picture, if, at the time of unauthorized distribution or public performance, the motion picture

“(i)(I) has been made available for viewing in a motion picture exhibition facility; and

“(II) has not been made available in copies for sale to the general public in the United States by or with the authorization of the copyright owner in a format intended to permit viewing outside a motion picture exhibition facility; or

“(ii) had not been commercially disseminated to the public in the United States by or with the authorization of the copyright owner more than 24 hours before the unauthorized distribution or public performance.”.

(B) Title 18 amendments. Section 2319 of title 18, United States

Code, is amended

(1) in subsection (a), by striking “Any person who” and inserting “Whoever”;

(2) by amending subsections (b), (c), and (d) to read as follows:

“(b) Whoever commits an offense under section 506(a)(1)(A) of title 17

“(1) shall be fined under this title, imprisoned not more than 5 years, or both, if the offense consists of the reproduction or distribution, including by electronic means, of at least 10 copies or phonorecords, or of at least 10 public performances by means of digital transmission, of 1 or more copyrighted works, during any 180-day period, which have a total retail value of more than \$2,500;

“(2) shall be fined under this title, imprisoned not more than 10 years, or both, if the offense is a felony and is a second or subsequent offense under subsection (a); or

“(3) shall be fined under this title, imprisoned not more than 1 year, or both, in any other case.

“(c) Whoever commits an offense under section 506(a)(1)(B) of title 17

“(1) shall be fined under this title, imprisoned not more than 3 years, or both, if the offense consists of the reproduction or distribution including by electronic means, of at least 10 copies or phonorecords, or of at least 10 public performances by means of digital transmission, of 1 or more copyrighted works, during any 180-day period, which have a total retail value of more than \$2,500;

“(2) shall be fined under this title, imprisoned not more than 6 years, or both, if the offense is a felony and is a second or subsequent offense under subsection (a); and

“(3) shall be fined under this title, imprisoned not more than 1 year, or both, in any other case.

“(d) Whoever commits an offense under section 506(a)(1)(C) of title 17

“(1) shall be fined under this title, imprisoned not more than 3 years, or both;

“(2) shall be fined under this title, imprisoned not more than 5 years, or both, if the offense was committed for purposes of commercial advantage or private financial gain;

“(3) shall be fined under this title, imprisoned not more than 6 years, or both, if the offense is a felony and is a second or subsequent offense under subsection (a); and

“(4) shall be fined under this title, imprisoned not more than 10 years, or both, if the offense is a felony and is a second or subsequent offense committed for purposes of commercial advantage or private financial gain under subsection (a).”;

(3) in subsection (f)

(A) by amending paragraph (2) to read as follows:

“(2) the terms 'reproduction', 'distribution', and 'public performance' refer to the exclusive rights of a copyright owner under paragraphs (1), (3), (4), and (6), respectively, of section 106 (relating to exclusive rights in copyrighted works), as limited by

sections 107 through 122, of title 17; and”;

(B) in paragraph (3), by striking “; and” and inserting a period; and

(C) by striking paragraph (4); and

(4) by adding at the end the following new subsection:

“(g) Evidence of total retail value. For purposes of this section and section 506(a) of title 17, total retail value may be shown by evidence of

“(1) the total retail price that persons receiving the reproductions, distributions, or public performances constituting the offense would have paid to receive such reproductions, distributions, or public performances lawfully;

“(2) the total economic value of the reproductions, distributions, or public performances to the infringer or to the copyright owner, as shown by evidence of fee, advertising, or other revenue that was received by the person who commits the offense, or that the copyright owner would have been entitled to receive had such reproductions, distributions, or public performances been offered lawfully; or

“(3) the total fair market value of licenses to offer the type of reproductions, distributions, or public performances constituting the offense.”.

(C) Rule of construction. Any person acting with a good faith reasonable basis in law to believe that the person's conduct is lawful shall not be considered to have acted willfully for purposes of the amendments made by this section. Such person includes, but is not limited to, a person engaged in conduct forming the basis of a bona

vide commercial dispute over the scope of existence of a contract or license governing such conduct where such person has a reasonable basis in law to believe that such conduct is noninfringing. Nothing in this subsection shall affect the application or interpretation of the willfulness requirement in any other provision of civil or criminal law.

SEC. 202. Trafficking in inherently dangerous goods or services. Section 2320 of title 18, United States Code, is amended

- (1) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively;
- (2) by striking subsection (a) and inserting the following:

“(a) Offenses. Whoever intentionally

 - “(1) traffics in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services,
 - “(2) traffics in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,
 - “(3) traffics in goods or services knowing that such good or service is a counterfeit military good or service the use, malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a combat operation, a member of the Armed Forces, or national security, or

“(4) imports, exports, or traffics in counterfeit drugs, .

Or attempts or conspires to violate any of paragraphs (1) through (3) shall be punished as provided in subsection (b).

“(b) Penalties.

“(1) IN GENERAL. Whoever commits an offense under subsection (a)

“(A) if an individual, shall be fined not more than \$2,000,000, imprisoned not more than 10 years, or both, and, if other than an individual, shall be fined not more than \$5,000,000; and

“(B) for a second or subsequent offense under subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 20 years, or both, and, if other than an individual, shall be fined not more than \$15,000,000.

“(2) SERIOUS BODILY INJURY OR DEATH.

“(A) SERIOUS BODILY INJURY. Whoever knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000, imprisoned for not more than 20 years, or both, and, if other than an individual, shall be fined not more than \$15,000,000.

“(B) DEATH. Whoever knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000, imprisoned for any term of years or for life, or both, and, if other than an individual, shall be fined not more than \$15,000,000.

“(3) COUNTERFEIT MILITARY GOODS OR SERVICES. Whoever commits an offense under subsection (a) involving a counterfeit military good or service

“(A) if an individual, shall be fined not more than \$5,000,000, imprisoned not more than 20 years, or both, and, if other than an individual, be fined not more than \$15,000,000; and

“(B) for a second or subsequent offense, if an individual, shall be fined not more than \$15,000,000, imprisoned not more than 30 years, or both, and, if other than an individual, shall be fined not more than \$30,000,000.”;

(3) in subsection (d), by striking “(d)” and inserting “(d) Defenses.”;

(4) in subsection (e), by striking “(e)” and inserting “(e) Presentence report.”

(5) by amending subsection (f), as redesignated, to read as follows:

“(f) Definitions. For the purposes of this section

“(1) the term 'counterfeit drug' has the meaning given that term in section 201(g)(2) of the Federal Food Drug, and Cosmetic Act (21 U.S.C. 321(g)(2));

“(2) the term 'counterfeit mark' means

“(A) a spurious mark

“(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

“(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

“(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and

“(iv) the use of which is likely to cause confusion, to cause mistake, or to deceive; or

“(B) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the Lanham Act are made available by reason of section 220506 of title 36; but such term does not include any mark or designation used in connection with goods or services, or a mark or designation applied to labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature used in connection with such goods or services, of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

“(3) the term 'counterfeit military good or service' means a good or service that uses a counterfeit mark on or in connection with such good or service and that

“(A) is falsely identified or labeled as meeting military specifications, or

“(B) is intended for use in a military or national security application; and

“(4) the term 'financial gain' includes the receipt, or expected receipt, of anything of value;

“(5) 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 (15 U.S.C. 1051 et seq.);

“(6) the term 'traffic' means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of.”;

(6) in subsection (g), by striking “(g)” and inserting “(g) Limitation on cause of action.”

(7) in subsection (g), by striking “(h)” and insert “(h) Report to Congress.”;.

SEC. 203. Protecting U.S. businesses from foreign and economic espionage.

(A) For offenses committed by individuals. Section 1831(a) of title 18, United States Code, is amended, in the matter after paragraph (5)

(1) by striking “15 years” and inserting “20 years”; and

(2) by striking “not more than \$500,000” and inserting “not less than

\$1,000,000 and not more than \$5,000,000”.

(B) For offenses committed by organizations. Section 1831(b) of such title is amended by striking “\$10,000,000” and inserting “not more than the greater of \$10,000,000 or 3 times the value of the stolen trade secret to the organization (including expenses for research and design or other costs of reproducing the trade secret that the organization has thereby avoided)”.

SEC. 204. Denying U.S. capital to notorious foreign infringers.

(A) Identification and recommendations regarding notorious foreign infringers.

(1) IN GENERAL. Using existing resources, the Intellectual Property Enforcement Coordinator, in consultation with the Secretaries of Treasury and Commerce, the United States Trade Representative, the Chairman of the Securities and Exchange Commission, the Register of Copyrights, and the heads of other departments and appropriate agencies, shall identify and conduct an analysis of notorious foreign infringers whose activities cause significant harm to holders of intellectual property rights in the United States.

(2) PUBLIC INPUT. In carrying out paragraph (1), the Intellectual Property Enforcement Coordinator shall solicit and give consideration to the views and recommendations of members of the public, including holders of intellectual property rights in the United States.

(B) Report to congress. The Intellectual Property Enforcement Coordinator shall, not later than 6 months after the date of the enactment of this Act, submit to the Committees on the Judiciary of

the House of Representatives and the Senate a report that includes the following:

(1) An analysis of notorious foreign infringers and a discussion of how these infringers violate industry norms regarding the protection of intellectual property.

(2) An analysis of the significant harm inflicted by notorious foreign infringers on consumers, businesses, and intellectual property industries in the United States and abroad.

(3) An examination of whether notorious foreign infringers have attempted to or succeeded in accessing capital markets in the United States for funding or public offerings.

(4) An analysis of the adequacy of relying upon foreign governments to pursue legal action against notorious foreign infringers.

(5) A discussion of specific policy recommendations to deter the activities of notorious foreign infringers and encourage foreign businesses to adopt industry norms that promote the protection of intellectual property globally, including addressing

(A) whether notorious foreign infringers that engage in significant infringing activity should be prohibited by the laws of the United States from seeking to raise capital in the United States, including offering stock for sale to the public; and

(B) whether the United States Government should initiate a process to identify and designate foreign entities from a list of notorious foreign infringers that would be prohibited from raising capital in the United States.

SEC. 205. Defending intellectual property rights abroad,

(A) Resources to protect intellectual property rights.

(1) POLICY. The Secretary of State and the Secretary of Commerce, in consultation with the Register of Copyrights, shall ensure that the protection in foreign countries of the intellectual property rights of United States persons is a significant component of United States foreign and commercial policy in general, and in relations with individual countries in particular.

(2) DEDICATION OF RESOURCES. The Secretary of State and the Secretary of Commerce, in consultation with the Register of Copyrights, and the heads of other appropriate departments and agencies, shall ensure that adequate resources are available at the United States embassy or diplomatic mission (as the case may be) in any country that is identified under section 182(a)(1) of the Trade Act of 1974 (19 U.S.C. 2242(a)(1)) to ensure

(A) aggressive support for enforcement action against violations of the intellectual property rights of United States persons in such country;

(B) cooperation with and support for the host government's efforts to conform its applicable laws, regulations, practices, and processes to enable the host government to honor its international and bilateral obligations with respect to the protection of intellectual property rights;

(C) consistency with the policy and country-specific priorities set forth in the most recent report of USTR under such section 182(a)(1);

and

(D) support for holders of United States intellectual property rights and industries whose access to foreign markets is improperly restricted by intellectual property related issues.

(B) New appointments.

(1) APPOINTMENTS AND ADMINISTRATION. The Secretary of State and the Secretary of Commerce, in consultation with the Register of Copyrights, shall appoint at least one intellectual property attaché to be assigned to the United States embassy or diplomatic mission (as the case may be) in a country in each geographic region covered by a regional bureau of the Department of State. The Director of the Patent and Trademark Office shall maintain authority over hiring, personnel ratings, and objectives for the attachés, in consultation with the Secretary of State. Depending on experience and expertise, intellectual property attachés shall be designated as the diplomatic rank in-mission of First Secretary or Counselor.

(2) REGIONS DEFINED. The geographic regions referred to in paragraph (1) are the following:

(A) Africa.

(B) Europe and Eurasia.

(C) East Asia and the Pacific.

(D) The Near East.

(E) South and Central Asia and the Pacific.

(F) The Western Hemisphere.

(3) DUTIES. The intellectual property attachés appointed under this

subsection shall focus primarily on intellectual property matters, including the development, protection, and enforcement of applicable law. Each intellectual property attaché shall work, in accordance with guidance from the Director, and in coordination with appropriate staff at the Departments of Commerce and State and the Copyright Office, to advance the policy goals and priorities of the United States Government. Those policy goals and priorities shall be consistent with USTR's reports under section 182(a)(1) of the Trade Act of 1974. The intellectual property attachés shall work with United States holders of intellectual property rights and industry to address intellectual property rights violations in the countries where the attachés are assigned.

(C) Priority assignments.

(1) IN GENERAL. Subject to paragraph (2), in designating the United States embassies or diplomatic missions where attachés will be assigned under subsection (b), the Secretary of State and the Secretary of Commerce shall give priority to countries where the activities of an attaché are likely to achieve the greatest potential benefit in reducing intellectual property infringement in the United States market, to advance the intellectual property rights of United States persons and their licensees, and to advance the interests of United States persons who may otherwise be harmed by violations of intellectual property rights in those countries.

(2) ASSIGNMENTS TO PRIORITY COUNTRIES. In carrying out paragraph (1), the Secretary of State and the Secretary of Commerce shall consider

assigning intellectual property attachés

(A) to the countries that have been identified under section 182(a)(1) of the Trade Act of 1974 (19 U.S.C. 2242(a)(1)); and

(b) to countries of critical economic importance to the advancement of united states intellectual property rights and interests.

(D) Training. The Secretary of State and the Secretary of Commerce shall ensure that each intellectual property attaché appointed under subsection (b) is fully trained for the responsibilities of the position before assuming duties at the United States embassy or diplomatic mission to which the attaché is assigned.

(e) Coordination. The activities of intellectual property attachés under this section shall be determined in consultation with the Intellectual Property Enforcement Coordinator. The Director shall assist in coordinating the policy priorities and activities of the intellectual property attachés and oversee administrative and personnel matters.

(f) Training and technical assistance.

(1) CONSISTENCY. Using existing resources, all training and technical assistance provided by intellectual property attachés appointed under subsection (b), or under other authority, relating to intellectual property enforcement and protection abroad shall be designed to be consistent with the policy and country-specific priorities set forth in the most recent report of USTR under section 182(a) of the Trade Act of 1974.

(2) ROLE OF IPEC. Such training and technical assistance programs shall

be carried out in consultation with the Intellectual Property Enforcement Coordinator. The Director shall assist in coordinating the training and technical assistance programs conducted by intellectual property attachés.

(G) Activities in Other Countries. In the Case of Countries That Are Not Identified Under Section 182(a)(1) of the Trade Act of 1974, the Activities of Federal Departments and Agencies With Respect to Intellectual Property Rights in Those Countries, Intellectual Property Programs and Outreach of the United States Government in Those Countries, and Training and Technical Assistance Programs of the United States Government Relating to Intellectual Property in Those Countries May Be Conducted to the Extent They Are Consistent With Compelling Commercial Or Foreign Policy Interests of the United States.

(H) REPORTS TO CONGRESS. THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR SHALL INCLUDE IN THE ANNUAL REPORT SUBMITTED UNDER SECTION 314 OF THE PRIORITIZING RESOURCES AND ORGANIZATION FOR INTELLECTUAL PROPERTY ACT OF 2008 (15 U.S.C. 8114) ON THE ACTIVITIES OF THE ADVISORY COMMITTEE ESTABLISHED UNDER SECTION 301 OF THAT ACT (15 U.S.C. 8111) INFORMATION ON THE APPOINTMENT, DESIGNATION FOR ASSIGNMENT, AND ACTIVITIES OF ALL INTELLECTUAL PROPERTY ATTACHÉS OF ANY FEDERAL DEPARTMENT OR AGENCY WHO ARE SERVING ABROAD.

(I) DEFINITIONS. IN THIS SECTION:

(1) DIRECTOR. THE TERMS “DIRECTOR OF THE PATENT AND TRADEMARK OFFICE” AND “DIRECTOR” MEAN THE UNDER SECRETARY FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

(2) INTELLECTUAL PROPERTY ENFORCEMENT. The term “intellectual property enforcement” has the meaning given that term in section 302 of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (15 U.S.C. 8112).

(3) INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR. The term “Intellectual Property Enforcement Coordinator” means the Intellectual Property Enforcement Coordinator appointed under section 301 of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (15 U.S.C. 8111).

(4) INTELLECTUAL PROPERTY RIGHTS. The term “intellectual property rights” means the rights of holders of copyrights, patents, trademarks, other forms of intellectual property, and trade secrets.

(5) USTR. The term “USTR” means the United States Trade Representative.

(6) UNITED STATES PERSON. The term “United States person” means

(A) any United States resident or national;

(B) any corporation, partnership, other business entity, or other organization, that is organized under the laws of the United States; and

(C) Any Foreign Subsidiary Or Affiliate (Including Any Permanent Foreign Establishment) of Any Corporation, Partnership, Business Entity, Or Organization Described in Subparagraph (B), That is Controlled in Fact By Such Corporation, Partnership, Business Entity, Or Organization.

(j) authorization of appropriations. The secretary of state and the secretary of commerce shall provide for the training and support of

the intellectual property attachés appointed under subsection (b) using existing resources.

RPTS COCHRAN

DCMN ROSEN

Mr. Quigley. Mr. Chairman, can you ask her to read that middle section again.

Ms. Lofgren. Mr. Chairman, I would like to recommend that the Clerk be given a raise for doing a very good job.

Chairman Smith. And certainly a cold glass of water.

Mr. Watt. Reserving the right to object.

Chairman Smith. Thank you for that reading.

I will recognize myself for an opening statement and then the ranking member.

"The bill in Congress now, critics say, goes much too far. The Internet's potential could be crippled. The bill could turn out to be the executioner of the Internet's real promise."

With all the strident and unfounded claims that have been made about H.R. 3261, the Stop Online Piracy Act, one can be forgiven for thinking those words were written about this bill. But those words were published 15 years ago and the bill that critics targeted for defeat was the measure that was eventually signed into law as the Digital Millennium Copyright Act, or the DMCA. A dozen years later, Wired Magazine called it "the law that saved the Web" and wrote "Blogs, search engines, e-commerce sites, video and social networking portals are thriving today thanks in large part to the notice and takedown regime ushered in by the much-maligned copyright overhaul."

In hindsight, what so many had attacked and feared helped promote and advance their interests. It is my view that providing new effective tools to combat the theft of intellectual property online will similarly promote the interests of all stakeholders.

While the DMCA helps, it only applies in limited circumstances. It provides no effective relief when a rogue Web site is foreign-based and foreign operated like Pirate Bay, the 89th most visited site in the U.S. It doesn't protect trademark owners and consumers from counterfeit and unsafe products like fake prescription medications available on legitimate appearing but unlicensed online pharmacist. It doesn't assist copyright owners when foreign rogue sites are devoted to the theft of intellectual property on a massive scale. Finally, it does nothing to address the use of intermediaries such as payment processors and Internet advertising services that are employed by criminals to fund illegal activities. That is why the Stop Online Piracy Act is needed.

This bill will make it more difficult for those who engage in criminal behavior to reach directly into the U.S. market to inflict harm on American consumers. Laws equip U.S. authorities and rights holders to take action against criminals who operate within our borders, but there is no parallel authority that permits effective action against criminals who operate from abroad.

The situation has deteriorated to the point where the Registrar of Copyrights testified before this committee last month, "It is my view that if Congress does not continue to provide serious responses

to online piracy, the U.S. copyright system will ultimately fail."

As of this morning, typing "download movies for free" into Google will take you to sites like Pirate Bay that offer free copies of infringing films and TV shows. While the Internet should be free, it should not be lawless.

The problem of rogue Web sites is real, immediate and increasing. It harms companies across the spectrum. And its scope is staggering. One recent survey found that nearly one quarter of global Internet traffic is infringing. The resultant economic losses runs into the hundreds of billions of dollars every year.

Since the U.S. produces more intellectual property than any other country, our citizens have the most to lose if we fail to engage in and implement meaningful solutions. I believe the manager's amendment addresses the legitimate concerns that have been expressed, including protection of the First Amendment, due process and the integrity and security of the Internet.

The manager's amendment also includes provisions that ensure the protection of the Internet and its underlying system. It makes clear that no harm can come to domain name system security extensions, DNSSEC, by eliminating any requirement total director redirect users to another site. It protects the security and integrity of the DNS by establishing a kill switch that will allow a provider to not carry out an order upon a finding that it would impair the security or integrity of the system. The amendment ensures that the bill cannot be construed to require any order that would harm the DNS and requires a study to

ensure no DNS harm.

This is a good bill that is the product an extensive process that has involved Members on both sides of the aisle. The manager's amendment improves the legislation, increases industry support and ensures the promotion of American innovation and the protection of U.S. jobs. I encourage members of the committee to support the amendment and look forward to working with all who are committed to enacting an effective and comprehensive measure.

While that concludes my opening statement, I recognize myself for a unanimous consent request.

The Stop Online Piracy Act has broad support across the aisle here in the House, across the street in the Senate and across the country. There are about 150 organized supporters of H.R. 3261, and here are some of the groups that support the bill: ABC, the AFL-CIO, American Society of Composers, Authors and Publishers, Americans For Tax Reform, Alliance For Safe Online Pharmacies, Comcast, NBC Universal, Copyright Alliance, Council of Better Business Bureaus, Council of State Governments, ESPN, Major League Baseball and the NFL, Major County Sheriffs, Motion Picture Association of America, National Association of Manufacturers, National Cable and Telecommunications Association, National Center For Victims of Crime, National District Attorneys Association, National Governors Association, National League of Cities, News Corp,, Pfizer, United States Conference of Mayors, United States Chamber of Commerce, Visa and MasterCard.

Without objection, a list of organizations in support of bill will

be made part of the record.

The gentleman from Michigan, the ranking member of the Judiciary Committee, Mr. Conyers, is recognized for his opening statement.

Mr. Conyers. Thank you, Chairman Smith.

We have an incredibly large number of organizations, labor unions, businesses, individuals, scholars that have joined us in the bill, and I think that you have done a service to this piracy problem by offering a manager's amendment first. Now, I know nobody was unhappy or mad, and I am sure that everybody feels better now that -- how many pages was that -- no, how many pages -- 71 -- I lost track somewhere around the 22nd or 23rd page. But I am sure it benefited a lot of people that didn't know what the manager's amendment was. Now you heard it, and we will have a small test after we determine how much you remembered about it.

But all we are trying to do here is stop online piracy. Now, since when did the opposition get so fierce against this? What could be behind the motives of people or organizations that don't think stopping online piracy is something that we need to deal with that can only be handled by the Judiciary Committee? And this manager's amendment clarifies the provisions so that the bill applies only to foreign rogue Web sites. It removes language that would have required redirection when users try to access an unlawful site. It makes clear that an action by the Attorney General, service providers will not be required to block sub domain.

The manager's amendment narrows definitions in one, two, three,

four particulars. And then it even goes as far as removing the voluntary notice section for rights holders, which means they are no longer required to provide notice to payment processors.

So victims of intellectual property theft will continue to use current voluntary market-based systems to address counterfeiting and piracy, but it maintains immunity for financial institutions and online service providers. What more do you want? I mean, what is the operative motive behind us taking steps that have cost us hundreds of thousands of jobs that is good for our business and commercial interests?

So I appeal to every member of this committee, whatever purpose, philosophy or motive that they may have, to seriously realize that this is a bill that has the support of the other body, of leaders in all walks of life, and the time has come for us to put our shoulder to the wheel here. And if you want 65 amendments to be debated and voted up and down, fine. I plan to be here no longer than the House is in session, which mercifully will come sooner rather than later.

So I am ready to go next year, next month, and any time that it takes. If somebody thinks that a bill of this magnitude is going to be stalled because we get tired, they got the wrong thing coming.

I yield back my time.

Chairman Smith. Thank you, Mr. Conyers.

The gentleman from Virginia, the chairman of the Intellectual Property Subcommittee, Mr. Goodlatte, is recognized.

Mr. Goodlatte. Mr. Chairman, thank you for holding this markup

today of the Stop Online Piracy Act. I want to also thank the ranking member of the full committee, Mr. Conyers, and the ranking member of the Intellectual Property Competition in the Internet Subcommittee, Mr. Watt, for the hard work that they have also put in to this legislation.

The Internet and technology sectors in America are economy-changing industries. They continue to usher in new products and services, new ways of communicating and doing business, and jobs. Content owners are also economic drivers and employ millions to supply new and creative ideas and products which fuel the demand for the devices and technologies that deliver those products.

The fact of the matter is that these two job creating industries, and many others that do business on the Internet, all need each other, and a successful fight against intellectual property theft must include these industries working together in addition to legislation to solve the problem.

However, we are here today to address a gaping loophole in the ability of content owners to enforce their intellectual property rights, their patented goods, their copyrighted works, their trademarks, to enforce them overseas. It affects the very decision of whether they will continue to create new products and services.

U.S. innovators have strong tools at their disposal to enforce their property rights against thieves here at home, but they are severely limited when the theft occurs overseas. While it continues to be a tremendous transformational medium, the Internet has also made

it easier than ever in the history of the world to steal others' ideas and works. This unfortunate reality hits American entrepreneurs particularly hard, because they continue to be the world leaders in innovation.

America's entrepreneurs are increasingly being left with no option other than to sit and watch as their products and ideas are stolen by overseas thieves, copied and distributed throughout the world with the click of a mouse. To add insult to injury, these unauthorized products and services almost always make their way back to consumers within the United States. Not only does this illegal activity destroy the incentives for American entrepreneurs to create new products and services and jobs, it is also very dangerous. When counterfeit medicine with dangerous ingredients, fake automobile brakes made of sawdust, or phony military equipment are sold to U.S. buyers, the consequences can be disastrous.

The Stop Online Piracy Act preserves the vital incentives that are necessary for entrepreneurs and authors to continue investing in new inventions, writings and products. It gives American inventors and innovators tools to limit the damaging repercussions of foreign theft and thereby protect the value of their investments.

The bill allows Federal law enforcement to go to court to seek an injunction against a foreign Web site that is dedicated to the theft of U.S. property. If the court agrees that the foreign site is dedicated to the theft of U.S. property, it can ask payment processors to block financial transactions to those illegal sites, advertising

networks to stop selling ads to those illegal adds, search engines to stop returning results to those illegal sites, and ISPs to disable U.S. access to those illegal sites.

The bill also grants authority to innovators themselves to petition a court to declare a foreign Web site as dedicated to the theft of U.S. property. This private sector remedy is very limited, however. First, a content owner is not allowed to seek the remedies of blocking a foreign Web site or blocking hyperlinks to a foreign Web site. Those remedies are reserved only for the cases brought by Federal law enforcement.

In addition, a content owner is not allowed to sue any intermediary such as credit card companies or advertising networks. The content owner is simply allowed to seek a declaration that a foreign Web site is breaking U.S. law. If a court agrees, the court, in its discretion, can order payment processors or advertising networks to block transactions to that illegal offshore Web site.

This legislation was not perfect when it was introduced, and I have worked hard with Chairman Smith and others to ensure that this manager's amendment incorporates many of the recommendations of the technology community, First Amendment rights advocates and others. I still do not believe this legislation is perfect, and I look forward to continuing to work with all affected parties to further hone the bill as it moves forward. However, the bill is a good one and I look forward to reporting it out of the committee.

The Stop Online Piracy Act will strengthen the ability of American

inventors and creators to enforce their property rights overseas, which will make the protections our Framers envisioned over 200 years ago relevant in the digital and global marketplace. This will, in turn, encourage more innovation in the U.S., more investment in that innovation, and more American jobs.

Mr. Chairman, I yield back.

Chairman Smith. Thank you, Mr. Goodlatte.

Mr. Goodlatte, I join you in thanking Mr. Conyers and Mr. Watt for their partnership in this effort. I also want to express my appreciation for all your hard work on this legislation as well.

The gentleman from North Carolina, Mr. Watt, the ranking member of the Intellectual Subcommittee is recognized.

Mr. Watt. Thank you, Mr. Chairman.

Mr. Chairman, I am a pretty old-fashioned guy who still hasn't figured out how, or even whether I want to use all the fancy technological advances that are out there. But as I have evaluated the issue of online piracy over the last several months, it has been both informative and increasingly alarming to me the extent to which these criminal enterprises can flourish unabated over the Internet. Music and movies, handbags and air bags, perfumes and pharmaceuticals, toothpaste and tool kits, you name it, it has been or will be the target of pirates intent on turning a quick buck without any regard for the grandmother whose health is put at risk, the first responder whose equipment is inadequate, the artist whose work is misappropriated, the worker whose job is eliminated, and perhaps as disturbingly, the young

person who is socialized to think getting other people's stuff free or cheap is perfectly acceptable behavior.

This issue is not only about protecting the health and safety, intellectual property, competitiveness and economic growth of our Nation, it is also about preserving who we are as a Nation. I believe that at our best, we are a nation of checks and balances. In this context, an open and free Internet is not unduly compromised by measured efforts to halt the documented proliferation of counterfeit and piracy online.

I believe the manager's amendment that will be the base text for the markup today constitutes such an effort. So I want to thank the chairman for working with us, particularly on title II related to the sentencing provisions and for being receptive to making key changes in title I and elsewhere in the bill in response to legitimate concerns on the First Amendment and due process issues raised about the introduced bill.

Before and after the Stop Online Piracy Act was introduced, we heard a number of legitimate concerns from various stakeholders and advocacy groups about some of the provisions in the core part of the bill. We were urged to limit the bill to authorize only follow-the-money actions by the Attorney General, with the exclusive responsibility for enforcement on payment processes and ad agencies. Despite those pressures, I am pleased that while making significant revisions to the definition of the targeted site, shoring up due process and First Amendment protections and providing sufficient time for

intermediaries to act, the manager's amendment still retains a two-track enforcement structure which is more likely to lead to more effective outcomes.

Entrusting both the Department of Justice and private rights holders with authorities to engage multiple intermediaries against foreign infringing sites will afford enhanced opportunities to prevent the exploitation of U.S. citizens and the infiltration of our markets with inferior stolen and dangerous products.

Now, Mr. Chairman, I am aware that there are some people out there who think that the Internet is like Las Vegas, whatever goes on on the Internet stays on the Internet, and regardless of whether it is criminal activity or sinister activity, we don't want to tax it, we don't want to interfere with it. But we have some laws in this country that deal with brick and mortar things that don't apply to the Internet, and we need to be just as aggressive on the Internet when it comes to criminal activity as we are with brick and mortar stores.

We don't let pawn shops operate freely without -- I mean, we don't ask them to monitor what they get in the pawn shop, but we do have the authority to go into that pawn shop and figure out where criminal activity is taking place. And I think this bill really does exactly that. It allows us to get into the Internet and say, look, you can't engage in these kind of things just because you are operating on the Internet. You can't engage in them in the real world. Why would you think that you would be able to get away with engaging in them in the virtual world?

So, from my perspective, just as an old country boy, and, you know, this is the only way I can understand this complex stuff, we need parallels in the virtual world to what we have in the real world. And I think this bill draws the appropriate balance to get us into space. And while I am happy to continue to work on it, I think the manager's amendment has gone a long way in some respects, even further than I might have been willing to go. But I think we have got a good balance. We will continue to work on it, and I think we will have a good bill at the end of the day.

I thank the Chairman, and I yield back.

Chairman Smith. Thank you, Mr. Watt.

The chair intends to recognize members to offer amendments to the manager's amendment in the order that they appear on the amendment roster. Ranking Member Conyers agrees with this arrangement. The amendments have been grouped based on the section of the manager's amendment that they amend. Within each group we will alternate between Republicans and Democrats in order of seniority, giving preference to those amendments that were prefiled. Amendments filed late yesterday or today will be considered later in the markup, regardless of the section they amend.

Are there any amendments to the amendment?

The gentleman from Iowa is recognized.

Mr. King. Thank you, Mr. Chairman.

Chairman Smith. The gentleman will suspend.

For what purpose does the gentlewoman from California seek

recognition.

Ms. Lofgren. I had hoped to move to strike the last word to comment on the manager's amendment.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. I wanted to talk about the amendment in its entirety, because I think it is important to have an overview of the manager's amendment itself. We will discuss various elements through the amendment process. But I think from cybersecurity to technical experts, the bill's impact on the security of the Internet and the integrity of the basic infrastructure of the Internet is very much at risk.

We have heard from civil libertarians about the bill's inconsistencies with the constitutional rights to free speech and due process, and we are mindful that today is the birthday of the First Amendment. We have heard from entrepreneurs and venture capitalists about how the bill could stymie online innovation, from human rights and religious freedom advocates about how the bill could make it impossible for the United States to stem the tide of Internet censorship around the world and I think it is important to think and contemplate what is at stake here and what we are doing here, because I do think it is historic.

Some have said that the Internet is lawless. The Internet is not lawless. Conduct on the Internet can break the law and can be punished, just as in the physical world. But, up to this point, our government has always gone after the criminality on the Internet at each end of

the network. It has shut down the illegal conduct at its source. It has punished Internet users for what they use the Internet for. But it has never tried to use the communication network itself to make illegal conduct impossible. If this bill passes with the mandate for domain name and other Internet filtering intact, I think it will be historic, and not in a good way. I don't think they will be going back. I think once the government has a taste of this power, the temptation to exert an ever-greater amount of control over the Internet through filtering technology will be irresistible.

The U.S. Government has never tried to monitor mail sent through the Post Office to prevent some category of illegal content from ever being sent. We have never tried to filter the telephone networks to block illegal content on the telephone network. And yet that is precisely what this legislation would do relative to the Internet.

There is nothing wrong with shutting down illegal conduct at its source or investigating and punishing illegal conduct when it happens online, but I think there is something fundamentally wrong with installing checkpoints in communications networks in an attempt to prevent illegal communications from ever being transmitted in the first place.

Right now, there is a struggle going on worldwide for what the future of the Internet is going to be. Foreign governments like China and Iran already are using some of the same technology that this bill encourages to censor the Internet. These same governments are striving to gain control of the Internet's basic infrastructure through

authority asserted by the United Nations and the international telecommunications union. If this bill passes, I believe it will aid this push for more direct government control, and I think it is going to be even harder for the United States to resist it.

As Secretary of State Hillary Clinton put it just last month, "Fragmenting the global Internet by erecting barriers around national Internets would change the landscape of cyberspace. In this scenario, the Internet would contain people in a series of digital bubbles rather than connecting them in a global network." But that is precisely the approach embraced by this bill.

I think we will get caught up in the details of the bill. That is entirely appropriate. That is what markups are for. But as we consider this legislation, I hope that we will step back and contemplate the larger ramifications for what we are doing here today.

I would also note that we have seen editorials in most of the major newspapers of the United States, including the Wall Street Journal, The New York Times and the L.A. Times, in opposition to this bill. Yesterday, a major union of creative professionals, the Writer's Guild of America West expressed serious concerns about this bill. The Washington Post published an online article noting opposition to SOPA from many journalists. And just yesterday, the American Newspapers Editors Association sent a letter to the committee opposing the bill and the manager's amendment. Universities have come out in opposition to the manager's amendment.

And I am sure we will have a debate about the major cybersecurity

concerns, but I would like to submit to the record the column written by Stewart Baker, the former Assistant Secretary For Policy at DHS and the former General Counsel at the NSA opposing the manager's amendment and indicating that it would still do great damage to Internet security by putting obstacles in the way of DNSSEC, the protocol being designed to limit Internet crime.

So, bottom line, we do need copyright enforcement, but there is a better way to do it, without the collateral damage to cybersecurity, innovation, commerce and the First Amendment that the manager's amendment poses. I thank the Chairman for recognizing me, and yield back.

Chairman Smith. Without objection, those documents will be made part of the record.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Smith. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. Sensenbrenner. Mr. Chairman, I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Sensenbrenner. Mr. Chairman, as this bill and the manager's amendment have been introduced, I have kept my ears open, my eyes open and my mouth shut listening to what is in both the bill and the amendment and what its consequences will be for the Internet, as well its effectiveness. Now is the time for me to open my mouth.

I don't think that this bill will be effective. There are constitutional and national security issues involved, and unless the bill is fixed up, I will vote against it on final passage, and here is why:

First of all, the national security issues have already been brought up. I am concerned that when we had the hearing on this bill as far as the DNSSEC provisions were concerned, none of the six witnesses were able to address this issue. And I think that simply for that reason alone, this bill is not ready for prime time, because I don't think that we should be doing anything here that can potentially infringe upon national security because international terrorists and crooks have now used the Internet as their primary means of communication.

Now, I think the real problem is that the block and track issues, or block and redirect issues that are contained in the manager's amendment is exactly what crooks are doing to bank customers, and if

the bill with the amendment becomes law, the security system will not be able to tell the difference between sites that have been blocked by law and those that have been sabotaged by hackers. Indeed, it is hard to imagine crooks redirecting users to say "you are directed here because the site you asked for has violated copyright." And at the same time, that action has the opportunity to plant malware into the user's computer. I can just see what people would think about us not doing this right if the malware ends up showing in the computer and somebody has got to spend a lot of money or buy a new computer to fix the problem up.

I am also concerned about the First Amendment impact on this. The key provision of this bill gives copyright owners the power to stop online advertisers and credit card processors from doing business with a Web site merely by filing a unilateral notice that the site is dedicated to the theft of U.S. property, even though there has been no judicial determination of that fact. And the immunity provisions in this bill create an overwhelming incentive for advertisers and payment processors to comply with such a request immediately upon receipt.

The courts have always treated such cutoffs from revenue from speech as a suppression of that speech, and the silencing of expression in the absence of a judicial review is classic prior restraint prohibited by the First Amendment. I have to give some credit to the law professor whom I rarely agree with, Lawrence Tribe, for making that observation, but I believe that Mr. Tribe has got it right now.

Now, finally I am concerned about the effectiveness of this piece of legislation. This is similar the debates that we have had in the committee over the past decade in attempting to stop Indian Tribes from shipping untaxed cigarettes around the country in order to evade State and Federal taxes that are due and owing by the end user of these products, as well as attempting to deal with other issues. By attempting to use judicial process rather than going exclusively toward following the money until maybe it is too late, I think we may very well have passed an ineffective bill that really doesn't deal with the issue.

The gentlewoman from California, Ms. Lungren, has said we don't go after the Postal Service or UPS --

Mr. Lungren. Lofgren.

Mr. Sensenbrenner. Lofgren, I am sorry. You might hear something about the same from the gentleman from California, Mr. Lungren. But we don't go after the Postal Service or UPS when something is illegally shipped through that means of transportation. I don't think we should treat the Internet differently.

I hope that the Chair would reflect on these observations and maybe realize that a further fix-up is necessary.

I yield back.

Chairman Smith. Thank you, Mr. Sensenbrenner.

The gentleman from California, Mr. Berman, who has been a real leader in writing this bill is recognized.

Mr. Berman. Without any ownership rights implicated. I move to

strike the last word, Mr. Chairman. Thank you for recognizing me.

I just want to respond to a few points I have heard primarily from my friend and colleague from California, Ms. Lofgren.

Nowhere in her comments analogizing the ability to go after illegal activity on the Internet the same way we do in the world that the ranking member of the subcommittee, Mr. Watt talked about in the brick and mortar world did she even pay fleeting reference to the absence of our jurisdiction to go after foreign-based rogue Web sites at the source. She talked about going at the source, but she never acknowledged the jurisdictional limitations of going at the source. That is not true in the brick-and-mortar world that Mr. Watt referred to.

But the thing that most bothers me about this comment is the equating of life in the United States after a bill like this were to pass with what China or Iran or other countries are doing with respect to suppression of Internet communication in their countries. That is nonsense. The focus here -- there is a reason. We are not concerned about what China or Iran is doing because their efforts are designed to protect the consumers of their countries against counterfeit pharmaceuticals. They are not going after the people of their country because they are utilizing stolen property. They are going after what those governments are doing because they want to suppress speech, dissent, political activities which aren't simply embedded in our First Amendment rights, but are recognized as universal human rights through all kinds of treaties that those countries are signatories to.

There is a big difference between regulating commercial activity designed to deceive the consumer or violate the ownership rights of a particular piece of property and seeking to suppress political conduct, political speech, dissent.

The Secretary of State specifically said in a letter to me, which has been distributed, that there is no inconsistency whatsoever in aggressively pursuing a foreign policy agenda that seeks to get those governments to stop their conduct which violates the universal rights that we all recognize and that all countries have signed on to, or nearly all countries, and particularly countries like China and Iran, and what they are doing in practice, and an effective and aggressive effort to stop digital theft.

To lump those together is so funny, particularly coming from a side of the aisle that has always believed that consumer protection and efforts to stop fraud and counterfeit activities is a legitimate regulatory goal of the government and does not trample on First Amendment rights and never has and courts do not and have not concluded that it has. This is just transferring that logic of sensible regulation and remedies against efforts to deceive consumers or steal property to the Internet world. And I don't think people should buy on to the argument that by our moving ahead with this legislation, we are in any fashion whatsoever removing our standing to aggressively pursue efforts to stop governments from suppressing fundamental human rights in their countries.

Ms. Lofgren. Would the gentleman yield?

Mr. Berman. I am happy to yield. Yes.

Ms. Lofgren. We will have a longer debate on this. I appreciate the gentleman yielding.

The point I was trying to make in my comments is that this is the beginning of the balkanization of the Internet. We have one Internet today that has standards that are internationally accepted. If we engage in this divergence scheme, which is exactly the same --

Chairman Smith. The gentleman's time has expired.

Ms. Lofgren. I would ask an additional 20 seconds.

Mr. Berman. Could we make it a minute so I could respond?

Chairman Smith. Without objection, the gentleman from California is recognized for an additional minute.

Ms. Lofgren. The technology is the same, and it is going to lead to a balkanization of the Internet that will facilitate, I am not going to suggest that enforcement of a civil action is the same as oppression by China. It is not. But the technological road this is leading us down is a serious one, and I also think that -- I just wanted to clarify my point. I thank the gentleman.

Mr. Berman. Reclaiming my time, may I ask for 20 additional seconds.

In one sense we have gone down that road. What do we do about sites that are dominated by child pornography, by efforts to stop spam, efforts to stop malware? The notion that this is some totally new concept put forth in this bill just isn't true in terms of what has already gone on and which we have by consensus supported in this body.

I yield back, Mr. Chairman.

Chairman Smith. The gentleman's time has expired. Thank you, Mr. Berman.

The gentleman from Utah, Mr. Chaffetz, is recognized.

Mr. Chaffetz. Thank you, Mr. Chairman. I have the greatest respect for you and for Ranking Member Conyers. I do appreciate the manager's amendment. I do think it is certainly better.

There is clearly a problem. I understand that there is a problem, but I worry that this is the wrong remedy. I was trying to think of a way to try to describe my concerns with this bill, but basically we are going to do surgery on the Internet, and we haven't had a doctor in the room tell us how we going to change these organs. We are basically going to reconfigure the Internet and how it is going to work without bringing in the nerds, without bringing in the doctors.

Again, I worry that we did not take the time to have a hearing to truly understand what it is we are doing. And to my colleagues, I would say if you don't know what DNSSEC is, you don't know what you are doing. So my concern is that there is a problem, but this is not necessarily the right remedy.

Now, when we have, for instance, Sandia National Labs say that "Would negatively impact U.S. and global cybersecurity and Internet functionality," I would hope that would give everybody pause to say maybe we ought to ask some nerds what this thing really does. Because I doubt that there is anybody in the room, exempt maybe Jared Polis and Ms. Lofgren and certainly Darrell Issa that can tell you how this

is going to work -- or not. Exactly. Or not.

So, I think we are going exceptionally fast. There is a problem. Let's take our time. Let's do it right. There is a problem. But let's bring the nerds in and get this right. There is a reason why time after time, Mr. Chairman, Sandia National Labs and other experts -- I will read one other quote from a paper here by some real experts.

It says "As experts in DNS, implementers of the code running 80 percent of the world's DNS infrastructure, and as the coauthors of many of the core protocols for DNS and DNSSEC, we must inform that there are no protocol signals a resolver can send to a user to address the scenarios and of SOPA and PIPA."

So, how can you vote or support a bill that is going to radically change how this thing works, that has such dramatic impact on the Internet?

I appreciate the discussion today. I look forward to a vigorous debate on the amendment. Again, I have the greatest respect for the chairman and ranking member, but this is moving way too fast. This is not the right bill and the right format.

Mr. Issa. Would the gentleman yield?

Mr. Chaffetz. Yes.

Mr. Issa. I thank the gentleman. You give me more credit than I deserve, but "nerd" is something I am proud to be. It just means I couldn't dance and wasn't terribly good looking. But --

Mr. Chaffetz. I agree. Let's concur. Let's submit that for

the record.

Mr. Issa. It is in the record now. As that wonderful reading, and I thank the reader of the manager's amendment went on, one of the things that popped out is I suddenly went, okay, I have been around since Vint Cerf was a young man and created IPv4. I hadn't even noticed that this bill seeks to provide specific coverage of things which were precursors to IPv4. In other words, some standard of Internet protocol that predated it. Now, there is a standard, it was a military standard.

I have absolutely no idea why someone would write a piece of legislation that would talk -- I can understand why you would have successors to current Internet protocol, but I am going to be adding an amendment, just because if no one on the dais right now, including the brilliant staff, can define for me or for Mr. Chaffetz, and since it is his time, why you have to regulate things that came before current Internet protocol, I would love to hear it, because I am just not enough of a nerd to know why a standard that is no longer in use and cannot communicate would have to be regulated under this bill. Yet as people quickly wrote this thing to cover all things all the way all the time, they wrote that into the bill.

On behalf of Mr. Chaffetz, can anybody help?

RPTS BLAZEJEWSKI

DCMN HERZFELD

[12 p.m.]

Ms. Lofgren. Would the gentleman yield.

Mr. Chaffetz. Reclaiming my time, yield to the gentlewoman from California.

Ms. Lofgren. One possibility is the suggestion made by the Internet engineers that the SOPA-induced time-outs could cause some applications to retry older insecure DNS technologies, which, of course, could be exploited in a downgrade attack, and it would shed the security that currently exists, not to mention the move towards DNSSEC. I am not positive that is the case, I think it is one possibility. I thank the gentleman for yielding.

Mr. Chaffetz. Thank you.

Reclaiming my time, I yield back, Mr. Chairman. Thank you.

Ms. Waters. Mr. Chairman.

Chairman Smith. Thank you, Mr. Chaffetz.

For what purpose does the gentlewoman from California --

Ms. Waters. Move to strike the last word.

Chairman Smith. The gentlewoman from California is recognized for 5 minutes.

Ms. Waters. Thank you, Mr. Chairman.

I would like first to commend you, Ranking Member Conyers, Congressmen Goodlatte, Watts, and Berman, for undertaking this

extraordinary task to craft legislation that creates a more effective legal framework for combating on-line privacy.

Like Mr. Sensenbrenner, I have spent an inordinate amount of time making sure I understand what was being attempted here. My staff has spent countless hours engaging proponents from each of the sides on this particular operation, this legislation, and I have come to a different conclusion than Mr. Sensenbrenner.

I support the manager's amendment as a step in the right direction, superior to the bill that was originally introduced. While there are lingering concerns with respect to DNS blocking that I anticipate will be addressed today, I do acknowledge that efforts were made in the manager's amendment to resolve the scope of the bill so that it doesn't broadly impact domestic sites.

The original version of the bill granted virtually unfettered voluntary blocking authority and legal immunity to Internet service providers, search engines, and DNS registers, and payment processes that stopped access to Web sites they believe are infringing. There was no requirement of credible evidence or other provisions to clarify when such actions are appropriate, and under the bill's previous definitions, it was possible for a domestic site to be voluntarily blocked. This immediately raised net neutrality and open Internet concerns.

The new version of the bill doesn't completely mitigate open Internet concerns, but it certainly clarifies that in order to take voluntary action, the Internet site must be a foreign infringing site

that is dedicated to the theft of U.S. property or a site that endangers the public health. The bill further requires the action to be narrowly tailored and consistent with the introduced terms of service.

While this indeed is an improvement from the original bill, I think there are legitimate concerns that this committee should take into consideration. For example, while these limitations attempt to narrow the provision, an effective Web site or user who is injured by actions pursuant to this section would be unable to ascertain whether the immunized party's actions were, in fact, narrowly tailored and taken in good faith. There is no judicial oversight, and the targeted Web site is not required to be notified about the allegations and the reasons why his or her site was blocked. I submit to the chair that if a site is blocked, there should be at least a notice requirement.

To be very clear, I am opposed to on-line piracy. I firmly believe that if you write the next great hit song or produce the next award-winning film or television series, your work should be protected from infringement and piracy. Public policy should follow the money and ensure that on-line payment processors and advertisers are not facilitating on-line infringement. We should also have adequate law enforcement tools in place to go after the worst of the worst Web sites, and to some extent the entire on-line ecosystem must be a part of the solution, and these solutions must strike a balance sufficiently protecting and enforcing intellectual property rights, while also maintaining the Internet as alternative and open venue for free expression, innovation, and media diversity.

The Internet has created an alternative distribution platform from which independent producers, screenwriters, songwriters, and programmers have been able to share their work with the public. With its low bar as to entry, the Internet has provided a venue for entrepreneurs of diverse backgrounds to compete against larger companies in a variety of industries. Independent filmmakers, producers, writers, bloggers, and e-business owners have all been able to launch lucrative and successful Internet careers and compete against larger corporations at relatively low start-up costs. The Internet and emergence of social networking and user-generated content Web sites has served a vital social utility. Here in the United States and around the world, these sites allow for free and open expression, innovation, entrepreneurship, and community mobility. Web sites like Facebook, Twitter, and YouTube have also created an alternative platform for Members of Congress to communicate with their constituents.

So, Mr. Chairman, I do hope that as this bill proceeds through committee and to the House floor, we can continue to work in a bipartisan manner taking the input from also stakeholders who ensure we have a strong, effective, and balanced bill. But make no mistake about it, based on all of the information that is available to us, based on the chairman's very, very commendable work and the way that he has addressed many of the concerns, I certainly support this bill today, I think that we have to be very, very aggressive about policy, I think we must be concerned about jobs, and in the final analysis we must be concerned about protecting the intellectual properties that we have all committed

to protecting in the past from this committee.

I yield back the balance of my time.

Chairman Smith. Thank you, Ms. Waters.

The gentleman from California Mr. Lungren.

Mr. Lungren. Thank you very much, Mr. Chairman.

First of all, I want to thank you for working on this subject and working diligently over this past several weeks to try and resolve some issues that a number of us have. Unfortunately, I find some major defects remaining with this bill.

I am not a technical expert. I seek assistance from technical experts. One of my problems with this bill is we have not had the benefit of technical experts to appear and testify before us, and certainly on the same platform. So for the last 3 weeks I have and my staff has been meeting with just about all the interested parties, and we -- one of the challenging things about that is that it is tough enough to be able to make decisions when there is an agreement on the facts. There is dispute on the facts. There are those who suggest that the technical fix that is contained in this bill in terms of site blocking and originally redirection won't work. There are others that say it will work.

All I know is that of those as far as I can find to be disinterested parties that have a technical understanding of cybersecurity, they tell me that this bill causes real troubles with what we have been trying to do for the last -- depending on who you talk to -- 7 to 10 years to set up an effective DNSSEC, and that because of that this will

actually have an adverse impact on our ability to protect the Internet from the kinds of cybersecurity attacks that have taken place and continue to take place.

Now, again, I don't have the technical knowledge to be able to articulate that here, nor am I going to read something that would suggest that I have such technical knowledge. I would just ask, though, why is there this rush to judgment? While I understood during the time I was not here in the aftermath of 9/11 why we had to act with dispatch with respect to the PATRIOT Act, and I happen to be one of those who defends it, one of those who has participated in this committee in terms of some amendments we have had to that, and the continued effort on our part to ensure that there are greater protections for civil liberties, but making sure that the guts of that bill remains, I don't see a like reason for us to rush to judgment here, and for the life of me, I can't understand it. And, again, Mr. Chairman, with all respect, because your staff has worked with my staff over the last couple weeks to try and resolve the concerns I have, but the problem is I have rarely been part of a committee operation in which we have not had at least one hearing with respect to the technical experts to deal with major concerns that have arisen in both unclassified and classified settings.

The conclusion I can come to is that this would be destructive of the effort that we have attempted to create in terms of cybersecurity protection. Now, maybe that is wrong, maybe the experts that I have talked with don't fully understand this bill, yet we have asked them

to look at the language that has been presented to us. But the fact of the matter is I don't feel comfortable supporting the legislation unless those questions are answered. And so it is not my effort to try and stop a legitimate legislative attempt to protect intellectual property. I think we all would agree on that; that is one of the few things we can agree on in this place. But when technical experts tell me this has a major concern, and it undermines something that we have been dedicated to doing for the last 7 to 10 years, I have to say why can't we slow down and at least have an opportunity to look at that? I don't know what the answer is to that.

And I understand that we are going to now work through the day and maybe work through the night, and have people forget about Christmas parties, and not have an opportunity to hear from experts, but I frankly don't understand it. And so while I have attempted to work with the chairman, and he has made good-faith efforts, and his staff, to work with us, and we have had conversations over the last couple weeks, and I have met with folks, I just feel very uncomfortable about proceeding with something when there are so many question marks on it and when the implications of us proceeding go to the essence of the protection of cybersecurity and the Internet.

Again, maybe the experts I have consulted with are wrong, and I have difficulty at times even understanding the language they are speaking, but to the extent they have been able to explain it to me, there are concerns that remain at least. When we had that hearing --

Chairman Smith. The gentleman's time has expired.

Mr. Lungren. Well, I will ask for an additional minute, Mr. Chairman.

Chairman Smith. Without objection, the gentleman is recognized for an additional 4 minutes.

Mr. Lungren. When we had that last hearing, there wasn't a single person who could answer the technical questions, and they all admitted that, even though a couple of them still opined.

But that is very unsatisfactory to me, and it ought to be very unsatisfactory to this committee, and it certainly ought to be very unsatisfactory to this institution. This is an extremely important issue. We better do it right, and I would just hope that we would take the time to do that.

And I know that there is no problem with respect to motivation here in any way, and I am not suggesting that at all. It is just I am frustrated with this process because so many large question marks remain in a crucial area of our intellectual enterprises in this country, and we better take the time to get it right, and I am afraid we don't have the time to get it right before we leave Washington at the end of this month.

So I would be happy to yield back the balance of my time.

Chairman Smith. Thank you, Mr. Lungren.

Let me recognize the gentleman from Georgia Mr. Johnson.

Mr. Johnson. Thank you, Mr. Chairman.

Brilliant minds in this room, not all of us being nerds or technical folks, but still some brilliant minds. However, certain

technical issues we cannot ignore. The objections raised by Mr. Sensenbrenner, the block and redirect issues, will it actually work? Have we had the benefit of expert testimony which allows us non-nerds and nontechnical people to at least try to come to grips with the common sense and try to make a decision based on a full plate of knowledge? I think we are lacking that here.

Haste makes waste, and that was the argument that came to my mind when it came down to considering the \$700 billion Wall Street bailout. I voted against it because I thought that we had not taken adequate time to work out the kinks in it, and I also realized that we did not have the benefit of all suggestions coming from experts. And so that same situation holds true today. With all of these brilliant minds around here, if nobody can respond to the concerns of Mr. Sensenbrenner on both the block and redirect issues, and also with respect to the First Amendment issues, if there is no one in this room who can respond to that in a compelling and persuasive way, then I am kind of not feeling good about this bill.

Now, I am going to listen. I understand how we got to this point. The Senate took some action. Now the House feels like it is time to get something done before we enter into an election season next year, and let us try to get something done now. I believe that that is a legitimate political concern, and I am trying to get past my feeling about haste makes waste by realizing that perhaps now is the only time when we can solve this issue of intellectual property protection.

And so I realize that a lot of people are losing a lot of money,

and I think that there is something that we can do, but I am troubled that we are put in this position to make a decision without having adequate data that satisfies us that we are doing the right thing. The only time I have had this occur was with that Wall Street bailout, and I am happy that I voted against it, and I would not want to not enjoy that same satisfaction when it comes to something as important as this bill.

It is a clash of the titans, Internet freedom versus intellectual property protection. We would have it advertised as a movie in advance, far in advance of when the movie were to make its debut, and we might see various portions of it as teasers -- we have not had that process here -- and then, boom, the movie would make its debut, and we would all enjoy the movie, but we would have had input into the final process.

We have had input into this final process, and I appreciate the good faith that the chairman has exercised in being responsive to our concerns, and I still may vote for this bill. I just haven't made my decision yet, and I do want to hear some responses to the questions raised by my fellow colleagues.

Chairman Smith. Thank you, Mr. Johnson.

The gentleman from California Mr. Issa is recognized.

Mr. Issa. Thank you, Mr. Chairman.

And I want to echo Mr. Johnson's statements. We do appreciate the work that has been done, but I also want to echo some of the earlier statements that I think are equally appropriate; first of all, that

we haven't heard from the scientists, we haven't heard from Sandia Lab except through a letter, we haven't done our due diligence on something that has been brewing, quite frankly, since -- everyone on the first dais wasn't here when the Internet began having piracy of intellectual property at least as to, you know, sound recordings. This is not a new problem. This is not some urgent event like the TARP bailout, like the need for the discussion on the PATRIOT Act that occurred earlier. This isn't some sort of an event that if you don't do it now, you won't get it at all.

Mr. Chairman, Mr. Ranking Member, this is exactly like patent reform, and I think when Mr. Johnson brought it up, he hit it right on the head. Intellectual property reform, did we do it in one Congress? No. Did we do it on a bipartisan basis? Yes. Did this body pass an awful, awful patent bill because we were told, hurry up? And Mr. Berman is looking at me because we all remember too well we passed an awful bill where on the floor we said this isn't what we want, but we are going to get it over to the Senate because they will take care of it, and we will do it there. And, of course, it didn't even become law that Congress.

Getting it right before it leaves this committee -- yes, Howard, I would yield to the gentleman from California.

Mr. Berman. I want to make it clear, only one of us said it was an awful bill, and it wasn't me.

Mr. Issa. Yeah, well, honesty is one of my strong traits. Perhaps it is Tourette's, but it is still one of my strong traits.

Mr. Berman. It is not accurate.

Mr. Issa. The first time we threw the bill over to the Senate, it bore no resemblance to what finally under Chairman Leahy and Chairman Smith became law. We did do patent reform, and I am very proud that this committee is quite unified on the reforms that we did, not everyone agreeing on every piece of it, but we passed a good bill. It took a long time, and we learned in the process the effects and unintended consequences of earlier legislation, and we made compromise.

In this case we have multi -- and the term "clash of the titans" is half right -- we have multibillion-dollar industries who are competing for each of our ears as to what to do or not to do. That is true. But we are not going to actually resolve that here today.

We are going to take time to resolve their issues, but let us talk about the little guy. Let us talk about the Internet entrepreneur who, if the Department of Justice whacks his site and then keeps it for a year, they are going to be gone. They are out of money. They are destroyed. And the Department of Justice did that relatively recently and did it in a way in which, if this committee doesn't investigate, the committee next door will.

We have a Department of Justice that, quite frankly, is hard to trust after last week's, you know, meeting with the Attorney General in which we still don't have answers as to who is going to be held accountable for Fast and Furious for thousands of weapons going, and we are certainly not going to get answers on abuses that occur within discretion of the Department of Justice.

So this bill, for example, has that real question of where are the safeguards for the little person that gets trampled on? Since we are emboldening, to a great extent, plaintiffs' trial lawyers with their ability to act, are we willing to have the Federal Government pay out of a judgment fund if, in fact, the Department of Justice is wrong and destroys a business? Is that being discussed? You.

Know, we have got these billionaire companies in the audience on both sides. Okay. I like both of them. I love the fact that they are major exporters and major technology producers. But are we going to have specific protection for the little guy that can't afford the lawyers and can't afford to be shut off, and as a result goes out of business and at the end of the day was innocent?

So I have got to tell you, slow down is not stop. I believe this bill should become law in some form every bit as much as anybody else who is currently for it, but we are a long way from knowing how to do it. Later today or tomorrow or after Christmas. I will be offering an amendment that talks about our open-system alternative that takes major portions of this and puts it in the hands of commerce and administrative law judges.

And, Mr. Chairman, my time has expired. I would only say that after the first hearing, first and only hearing, we had a discussion that centered on whether we should have a specialty court. Mr. Chairman, please throughout this markup consider the question of since there isn't a specialty court, since it is depending heavily on Department of Justice and the Attorney General's office, maybe we

should take time to answer that question as to whether or not there is a way to do this in this bill.

Yield back.

Mr. Goodlatte. Would the gentleman yield?

Mr. Issa. I would yield any time I have remaining.

Chairman Smith. The gentleman's time has expired.

Without objection, the gentleman is recognized for another 30 seconds.

Mr. Issa. I yield my 30 seconds.

Mr. Goodlatte. I would ask to give him a minute because I would want him to answer my question, which will take 30 seconds.

First of all, there is nothing in this bill that allows the Justice Department to do anything without going to court and getting a court order to do it. But my question to you is with your other legislation, which I think is well intentioned and is attempting to address it, but from, in my opinion, a much more limited and not adequate both in terms of process and remedy, but do you have a hold harmless clause for an on-line business that is cut off from their credit card usage if they get it wrong? Do you have a hold harmless clause if you have a provision in there --

Mr. Issa. It is an excellent question --

Mr. Goodlatte. Because --

Mr. Issa. -- and I would be glad to answer it.

Mr. Goodlatte. Here is my point, though. The same decisions about who is -- have to be done carefully no matter what remedy you

look at here, and the enormity of this problem requires a remedy, but that remedy has to be carefully applied.

Mr. Issa. And to answer your question --

Mr. Goodlatte. In this bill it requires a court order to do it.

Mr. Issa. And to answer your question briefly, and, first of all, the ITC has a court, too, but at keepthewebopen.com, we are right now asking people to look at this bill and to add and to edit and to do it in a transparent way for that reason. But candidly, the alternative that we are doing through the ITC, which is much more narrow than this bill, is intended to affect only offshore entities, and an offshore entity goes through entire due process under our bill, and is adjudicated, and has a right to appeal before anything gets cut off. So in this case where the ITC would hold if you have a respondent --

Chairman Smith. The gentleman's time has expired.

Mr. Issa. -- would hold a whole trial before that would happen.

Chairman Smith. Thank you, Mr. Issa.

Mr. Issa. And I guess you accept that now? Your staff is shaking their head yes.

Chairman Smith. Before I recognize the gentleman from Colorado, I just want to remind him that the individual whose place he took, Debbie Wasserman Schultz, is a strong supporter of this legislation, and I also just want to remind him that she has only taken a leave of absence.

So the gentleman from Colorado is recognized.

Mr. Polis. I thank the chair, and, yes, I am now sitting in this seat, Mr. Chairman, and I am doing so in representing the people of

Colorado.

I bring some personal background and expertise to this issue. I have configured, named servers myself. I ran an Internet access provider in the 1990s. I have been involved on the creative and content side around a large electronic greeting card company, I have run a chain of movie theaters as well. So I have been involved on all sides. I have, of course, had our content ripped off, taken in India and other countries, unable to do anything about it.

I can see it from the Internet access and provider side, and I think what is needed and what overwhelmingly people have brought to our attention is a balanced approach, and I will talk generally now. This is, of course, about the manager's amendment. We will have plenty of opportunity to get into specifics later.

When there is a new technology, it has many positives and some negatives. Every technology does. We have automobiles. They are wonderful, but people die in automobile accidents. There are ways to try to mitigate and reduce the negative impacts of technology while making sure that they can continue to contribute.

Example: With the automobile we try to have speed limit laws. Now, could we reduce the number of automobile deaths by having a 20-mile-per-hour speed limit on the highways? We could. We could do that. I don't think it would be very popular. I think it is because we in this body and the people of the country in general recognize the value in getting to and from places quicker along the highway.

This bill is analogous to not ending automobiles, but to having

a slower speed limit on the Internet. And, yes, it is analogous to a Balkanization of the Internet, which we already see to the extent that there is a different Internet available in China and Iran. And, more directly to the point of this, intellectual property itself has been used as an excuse to censor the Internet in Russia, and we would be giving our own Attorney General in this country vast powers. And when I had the opportunity to question him last week, I said, would you use those selectively, and he conceded that they would have to be used selectively because there are hundreds of millions of potential infringers under this bill.

And we have experience with this when, in fact, Russia cracked down, alleging, rightfully so no doubt, that many NGOs happen to have pirated versions of Microsoft Windows. Now, that is fairly rampant in Russia. You can go into most companies, you can go into most offices, and they will not have licenses, at least licenses commensurate with the number of computers that it is installed on, and the problem is likely in the millions or tens of millions of unlicensed copies. However, when given the ability to selectively enforce, where did they go? Well, they happened to go to NGOs that supported free speech, open dialogue, perhaps opposed some of the government's policies, and they raided and seized computers from dozens of outspoken advocacy groups.

It is very dangerous to give the government, and the Attorney General in this case, a power which can, in fact, only be used selectively, because the scope of the issue and the scope of the powers

is so broad that it would take an unfathomable enforcement authority to enforce every case.

Look, when VCRs were created, it created potential piracy of movies, copying of movies illicitly. The answer is not to ban VCRs. Congress at that point took steps to try to mitigate that as well, and likewise Congress should act, and act boldly and thoughtfully, with regard to reducing on- line piracy.

I am impressed that the chairman began by reading a few of the groups that support this effort. Mr. Chairman, I would like to submit to the record a group of some of the hundreds of opponents of this bill, without objection.

Mr. Goodlatte. [Presiding.] Without objection, it will be made a part of the record.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Polis. Including major American companies like American Express, AOL, eBay, PayPal, Twitter, Yahoo!, many of the founders of the Internet itself, many of those who were responsible for the technical architecture of the Internet. I have not seen a single member of that group support this bill. Civil liberty and public interest groups like ACLU, the law libraries, the librarians, Educause representing institutions of higher education have all opposed this bill and taken that position as well. Many industry associations, including the Computer and Communications Industry Association, TechAmerica, the NetCoalition, thousands and thousands of Web sites, and, yes, constituents and consumers have taken it upon themselves to contact our offices because they care deeply about this bill. In fact, several organizations, including TechFreedom, the Competitive Enterprise Institute, and Americans for Job Security and Americans for Limited Government, not only join the concerns about this bill, but have actually sent a letter suggesting that we delay the markup so we have the opportunity to get this bill right.

Chairman Smith. The gentleman's time has expired.

Mr. Polis. Sure.

We look forward to exploring many of the particulars of this bill over the course of the discussion of the amendments, and I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Polis.

The gentleman from Iowa has been patient. He is recognized for the purpose of offering an amendment to the amendment.

Mr. King. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261.

Mr. King. Mr. Chairman, I ask unanimous consent the amendment be considered as read.

Chairman Smith. Without objection, the amendment will be considered as read.

[The information follows:]

***** INSERT 3-1 *****

Chairman Smith. And the gentleman is recognized to explain his amendment.

Mr. King. Thank you, Mr. Chairman. I wasn't sure there wouldn't be an objection to that.

We read through this bill and looked for something that we could find some universal agreement upon, and did settle upon the exemption for domestic Internet sites as being something that I think we have broad agreement from Democrats and Republicans and proponents and opponents of the bill.

In fact, the intent of the manager's amendment, if I am interpreting the intent correctly, is that we do exempt domestic Internet sites from the jurisdiction of this bill because there is an existing jurisdiction, some of it primarily under 18 U.S.C. 2323.

And so when I looked at the language that defines "domestic Internet sites," it says that it be a domestic domain name or a domestic IP address. And those are good components of the definition, but it did not include domestic U.S. Internet sites that also operate in foreign countries and simply, well, to happen to change the domain name to indicate the country, such as a .uk for United Kingdom, or .de for Germany, or a .nl for the Netherlands, for example.

And so I have offered an amendment that adds to that definition language, and it says "an Internet site operated by an entity that is located within a judicial district of the United States," which means that the intent is to protect these Internet companies that operate from the United States that are already subject to the jurisdiction

of our U.S. courts. And that is the intent of this language, and I understand we will have a little discussion regarding it, so I would be happy to yield.

Mr. Nadler. Would the gentleman yield?

Chairman Smith. Would the gentleman yield to me first?

Mr. King. I would yield to the chairman.

Chairman Smith. I thank Mr. King for yielding.

I just want to say to the gentleman, I think he has a legitimate point. I want to make sure that there are no unanticipated consequences of the language, and so I would expect to be able to reach an agreement with him between now and the House floor on acceptable language covering the point that he just described.

Mr. Goodlatte. Would the gentleman yield?

Mr. King. I would be happy to reclaim and yield to the gentleman from Virginia.

Mr. Goodlatte. Well, thank you.

The gentleman and I have spoken. I think the gentleman has a good idea, and I am sympathetic to the issue that he raises. In fact, it addresses part of the concern raised by the gentleman from California Mr. Issa just a little while ago.

The manager's amendment excludes domestic sites like Facebook, Twitter, and eBay. The question is simply whether foreign-registered Web sites owned or operated by U.S. companies, such as amazon.co.uk, might still be covered. I don't think they would be covered since the bill also excludes sites that are not operated as U.S.-directed sites.

The reason companies set up a separate U.K. site is to attract and serve a non-U.S. market. They are not a U.S.-directed site that would be subject to the bill. Even if that weren't the case, such sites would not meet the new tightened criteria for a site dedicated to the theft of U.S. property unless that site was itself a site primarily operated for the purpose of infringement.

Having said that, I appreciate the amendment and agree with the principle behind it, and would also commit to working with him to ensure that it does not cover domestic entities. What I want to make sure, however, is that there is not some kind of a giant loophole created where a foreign site adopts the minimal context of the United States to establish that legal jurisdiction, but have no presence in the United States, no assets in the United States.

We have exempted all U.S. companies on the premise that they can be reached under existing copyright law. I agree with an extension of a U.S. company that has a foreign domain name, but I want to make sure that that is the limitation to what we are trying to accomplish and not create a loophole for foreign sites. So I would ask the gentleman, if he would, to withdraw the amendment and work with us to accomplish that goal.

Mr. King. Reclaiming my time, and I appreciate the points made by both Chairman Smith and the subcommittee Chairman Goodlatte on this. We are working to get the same thing accomplished, and neither do I want to see a loophole that might be inadvertently slipped into this language. And especially the gentleman, Mr. Goodlatte, has made a

point that it causes me to be concerned that we don't have this language refined tightly enough, and I am happy to go forward and work on this with members of this committee, and I would ask unanimous consent, then, to withdraw this amendment.

Chairman Smith. Without objection --

Mr. Chaffetz. Will the gentleman yield?

Ms. Jackson Lee. Reserving the right to object.

Chairman Smith. Thank you, Mr. King.

Ms. Lofgren. Reserving the right to object.

Chairman Smith. Who reserves the right to object? The gentlewoman from Texas Ms. Jackson Lee.

Ms. Jackson Lee. Thank you very much, Mr. Chairman.

Let me raise the question of Mr. King's amendment and possibly pose a question to the gentleman, but as I do that, let me make several points on the underlying bill.

I think all of us are opposed to on-line piracy. It is an unacceptable practice that must be addressed, and I believe that any Web site that systematically engages in violating the intellectual property rights of others should be shut down.

My vote today will reflect on how we have answered the question fairly. I am certainly opposed to copyright infringement, and for those of you who remember the late Chairman Henry Hyde, we began to work on those issues even then.

The question is, of course, how this legislation will impact the enhancement of jobs or the denial of jobs, and certainly I am concerned

about all of those who are tied to the industries of intellectual genius, such as the media and movie industry, and clearly we do not want to enhance the loss of jobs. But at the same time, I have heard -- or you may have heard me use this philosopher before, can we all get along, stated by Rodney King, and right now it does not look like we are all getting along.

Under the DMCA, an Internet company that serves as a conduit for third-party communications receives a safe harbor from liability if it creates a process to respond to a copyright owner's notice about infringing content on the Internet company's platform. That is to protect. But there are sufficient loopholes here that would allow innocent sites to be shut down, thereby a loss of jobs.

Have we answered the question dealing with national security? And as well are we recognizing the value of the First Amendment?

So there are several amendments that will be offered, some that I have offered, that track, I believe, the underlying premise of Mr. King's amendment in a different approach. But I do believe that in this time of promoting genius, attempting to encourage the survival of small businesses who are job creators, and the importance of our national security, and, of course, the important component of the Bill of Rights that allows us freedom of access, freedom of association, freedom of religion, freedom of religion, freedom of assembly, the question is how much does the underlying bill interfere with those basic premises that Americans hold dear?

And I cannot fathom why we are moving so quickly on a bill that

may, in fact, save billions of dollars or, in fact, cause us to lose billions of dollars, and why we do not find a way to protect the intellectual genius, but not stifle the creativity of many.

And so I am concerned that there may be an inadvertent restriction by this underlying bill. There is a possibility that law enforcement officials could target all sites that contain infringing content regardless of how insignificant that content may be.

I strongly support the protections of the legitimate copyright interests of on-line content producers; however, it appears that the burden of this legislation in its current form could, in fact, impact innocent producers. For all of those who are interested in this, find a way to encourage Members to not take my way or the highway and find a way that we could, as we did on the patent bill, over a period of almost a decade -- obviously it was not that long, 6 years comes to mind. Maybe I am thinking of starts and stops that we had, but it took a period of thoughtfulness. I don't want young people who are excited about the Internet, who have on their mind, I am in a start-up, I am creating a part of America's economy, I am excited about the potential, to then be denied, equally to those who have created great entertainment that we cherish to be denied as well.

Mr. Chaffetz. Will the gentlewoman yield?

Ms. Jackson Lee. I will be happy to yield to the gentleman.

Mr. Chaffetz. I just want to quickly, Mr. Chairman, make a point that, with all due respect, if we can't get the definition of domestic Internet site right, this bill probably isn't ready for prime time.

So we had an original one, we had a manager's amendment, now we have an amendment offered by Mr. King. I understand he is withdrawing. I think the spirit in doing that is right, but --

Chairman Smith. The gentlewoman's time has expired.

Mr. Chaffetz. If you get domestic --

Ms. Jackson Lee. Can I have an additional 30 seconds for the gentleman to conclude?

Chairman Smith. Without objection, the gentlewoman is recognized for an additional 30 seconds.

Ms. Jackson Lee. The gentleman concluded, but let me reclaim my time and just thank you, Mr. Chairman, and just indicate let us not quash the genius of all aspects of those that are --

Chairman Smith. Does the gentlewoman from Texas continue to insist on her objection to the unanimous consent request by the gentleman from Iowa?

Ms. Jackson Lee. No. I am getting ready to put that sentence in, Mr. Chairman.

Let us all find a way to have a common ground, and at this point I withdraw my objection at this time.

Ms. Lofgren. Mr. Chairman.

Chairman Smith. The gentleman from Iowa withdraws his amendment.

Ms. Lofgren. Mr. Chairman, I had reserved the right to object as well.

Chairman Smith. I am told that a unanimous consent is not

required to withdraw an amendment, and therefore there cannot be an objection to that unanimous consent request.

Are there other amendments to the amendment?

Mr. Polis. Mr. Chair, I would like to offer the King amendment as my own amendment so that I can have time on it, and if anybody else would like to strike the last word, as the Polis amendment, same language.

Chairman Smith. Okay. The King --

Mr. Goodlatte. Mr. Chairman, that requires unanimous consent, and I object.

Mr. Polis. I don't believe it requires unanimous consent.

Chairman Smith. I don't think it requires unanimous consent.

Let me say to the gentleman from Colorado that if he is going to offer a new amendment, that will go to the back of the line per our agreements, and so the next amendment up, if he still wants to offer it, would go to Mr. Johnson of Georgia.

Mr. Polis. Thank you.

Mr. Johnson. Mr. Chairman.

Chairman Smith. The gentleman from Georgia.

Mr. Johnson. I am withdrawing my amendment numbered 2 on our sheet here, but it is actually 095.

Chairman Smith. Okay. Thank you, Mr. Johnson.

The gentleman from Colorado Mr. Polis is recognized.

Mr. Polis. Thank you. Thank you, Mr. Chair. This is, I assume, for amendment 81, not the reconfigured amendment; is that correct?

Chairman Smith. The gentleman is correct.

Mr. Polis. Okay. One moment. So this amendment clarifies the definition of "nonauthoritative domain servers" to ensure the bill is aimed at --

Chairman Smith. Let me back up for a minute. Does the gentleman have an amendment at the desk?

Mr. Polis. I have an amendment at the desk. Sorry.

Chairman Smith. The clerk will read the amendment.

The Clerk. Amendment to the Smith amendment offered by Mr. Polis of Colorado. Page 8 --

Chairman Smith. Without objection, the amendment is considered as read.

[The information follows:]

***** INSERT 3-2 *****

Chairman Smith. The gentleman from Colorado is recognized to explain his amendment.

Mr. Polis. Thank you, Mr. Chairman.

My amendment is very simple, hopefully something that we can agree to. I believe it addresses something that was mistakenly admitted.

Is this microphone on? Yes.

It clarifies the definition of nonauthoritative domain name servers to ensure the bill is aimed at for-profit and commercial activities and not the internal DNS servers of universities, research institutions, and local governments, which would cause significant additional burden for these entities.

Under the current bill, a service provider must take steps to ensure that nonauthoritative domain name servers don't enable access to rogue sites. However, the definition of "service provider" is so broad that it covers every nonauthoritative domain name server.

The bill doesn't currently make any distinctions among different nonauthoritative domain name servers, even those that are used strictly for local traffic within a particular institution. The university could be, under this definition, a service provider, and therefore be required by a court under section 102 to block access to a foreign infringing site regardless of whether any students at the university have ever even used that site, and would have to incur significant technical compliance costs as well as potential legal liability with regard to those efforts. In fact, if an attorney -- if the Attorney General thinks the university isn't meeting its obligations as a

service provider, it could be subject to an enforcement order under 102(c)(3). So while the bill does make an exception for business on page 9, line 5(B) in the definition of "service provider," it would currently impose a burden on other types of organizations like universities.

So my amendment would simply clarify the definition to help make sure that the costs at universities of technical compliance and legal fees do not go up. We are not talking about the internal DNS servers of universities, research institutions, and local governments.

It is critical to make sure that we don't impose excessive red tape and compliance costs on already cash-strapped nonprofits and institutions devoted to research and education, including many of them in my district and my State, like the University of Colorado, Colorado State University, NREL, NOAA, and NCAR and UCAR Federal labs, and collaborative labs between the universities.

So, again, I think this is consistent with the intent of the bill and would provide some of the same protections for universities as nonprofits that are provided definitionally on page 9, line 5(B) for for-profit service providers. And I will yield back the balance of my time.

Chairman Smith. Thank you, Mr. Polis.

The gentleman from Virginia Mr. Goodlatte is recognized.

Mr. Goodlatte. Thank you, Mr. Chairman.

The gentleman's amendment carves out nonprofits and universities from the DNS filtering provisions of the bill. Though I recognize the

need to be sensitive to concerns of universities and government entities, I oppose the amendment. The terms of the amendment are not precisely defined and could create a loophole that could undermine the provisions of the bill. The exclusion for not-for-profit research institutions could be applied too broadly. Potential exists for a not-for-profit ISP to be set up wholly devoted to infringing activity, and in such an instance law enforcement would be prevented from taking appropriate action.

We do recognize the concerns raised by this amendment and look forward to addressing these, but I must oppose the amendment. I yield back.

Chairman Smith. Thank you, Mr. Goodlatte.

The question is on --

Ms. Lofgren. Mr. Chairman, I would move to strike the last word.

Chairman Smith. The gentlewoman from California Ms. Lofgren is recognized.

Ms. Lofgren. As I look at Mr. Polis' amendment, I think it is incorrect to say that it is imprecise. In fact, I think it is quite precise on what it would exempt, and I guess I would yield to Mr. Polis for a question.

As currently drafted, the manager's amendment is exceedingly broad, and here is the question: The House of Representatives runs an entity. Wouldn't we be covered? Wouldn't the Attorney General, absent your amendment, be permitted to come in and make enforcement efforts against the House of Representatives?

Mr. Polis. I thank the gentlelady for the time, and, yes, that is correct. We are a government entity, are not exempt under this, and currently we would be effectively giving the Attorney General's office the ability to give Congress an enforcement order under 102(c)(3). And, again, giving any Attorney General of any party the effectively selective ability to do this sort of thing is bad precedence, and I understand there are those on this committee that are not fans of the current Attorney General and those that are. I think it is fair institutionally to say that regardless of who the Attorney General is, that is not the type of power that we would want to give to an Attorney General, nor should we over universities, the bastion of academic freedom and thought. In fact, absent this amendment, this manager's amendment could ironically be counterproductive in the sense that it could stifle research done at universities into how to stop piracy, which is the exact opposite of its intention.

So I hope that we can, again, ensure that government entities, not-for-profits, research institutions, and institutions of higher learning are, in fact, clarified that they are not included as nonauthoritative domain name servers subject to court orders to block access. Also very onerous from a cost perspective for small nonprofits.

Mr. Berman. Would the gentlelady yield?

Mr. Polis. I yield back, Mr. Chairman.

Ms. Lofgren. Let me finish, and then if I have time left over,

I will.

This goes to the point that has been made by several Members on both sides of the aisle, which is this measure, I don't think, is ready for prime time. Mr. Sensenbrenner and I have often discussed the speech and debate clause issues that often come before us in odd ways. I am part of the committee that gives advice on speech or debate questions.

A sleeper issue in this bill that I think Mr. Polis' amendment has now brought forth is the ability to allow under the manager's amendment the Attorney General to enforce orders about -- against the House of Representatives when the speech or debate clause would seem to indicate that he lacks that authority.

I think Mr. Polis' amendment, which covers far beyond the House of Representatives, is the appropriate amendment, but I would note if this is not adopted, the speech or debate issue that has been raised by it certainly does need to be addressed, and I think it would be a serious mistake to simply dismiss this in a headlong rush to try and get a bill that is not ready to be adopted done somehow before we adjourn for the Christmas recess.

And, yes, Mr. Berman, I do, I think, have time. I would be happy to yield.

Mr. Berman. Well, I mean, the gentleman from Colorado raises an interesting issue of selective discretion. This is not a new concept for Attorney Generals or law enforcement figures. Every case creates an opportunity for selective judgments on who to pursue. But until

I hear the answer to the hypothetical that Mr. Goodlatte raised, I would argue that in order to protect the House of Representatives or the Justice Department, we are going to include some operation that wants to develop a Web site primarily dedicated to infringing material and organized as a not-for-profit research institute --

Ms. Lofgren. Reclaiming my time.

Mr. Berman. -- I have to oppose.

Ms. Lofgren. Reclaiming my time. The problem is that there are really no procedural protections when you look at the safe harbors in this measure, and so you have the opportunity for suppression of thought. And, you know, we don't want to say that the current Attorney General would do that, but our job is not to rely on whoever is holding that position. Our job is to set up a structure that cannot be abused, and I support the gentleman's amendment. If it is not adopted, I will at some later date address the issue of the Congress and the speech or debate issue that has been addressed here. We have gone all the way to the Supreme Court to make clear that the --

Chairman Smith. The gentlewoman's time has expired.

Ms. Lofgren. -- executive is not permitted to interfere with our speech.

I yield back.

Chairman Smith. Thank you.

Mr. Watt. Mr. Chairman --

Chairman Smith. The gentleman from Florida Mr. Deutch is recognized.

Mr. Deutch. And I thank the chairman.

This is an interesting amendment. It raises concerns about academic freedoms being threatened, and now the speech and debate clause of the Constitution is brought into play, and thought may be stifled on the Internet. Unfortunately, that is not what would happen under this bill. There is nothing in this legislation, in any interpretation of this legislation, that would permit the stifling of academic thought.

The fact is there is no reason that a nonprofit that doesn't take money from advertisers or a university that doesn't take money from advertisers or for its services shouldn't be included in the bill. If you meet the high standard, the high standard in this bill of ceiling, then it doesn't matter whether you pay taxes on those proceeds or not. There is no liability under this bill for these entities. There is just a requirement that they behave like other domain resolution services and prevent access to these offshore rogue sites. That is what is happening here, and I oppose the amendment.

Chairman Smith. Thank you, Mr. Deutch.

Other Members wish to be heard on the amendment?

The gentleman from North Carolina Mr. Watt.

Mr. Watt. I think we have kind of gone beyond the scope here. I want to reemphasize what Mr. Deutch just said, but none of this action can take place without the -- just by the Attorney General's waving a magic wand. You have got to go to court and get an order that allows it. He goes to court. If we have speech and debate issues, somebody

is going to show up and raise those issues in the court. If there are other kinds of issues to be raised, somebody is going to show up and raise those issues in the court. The judge is not stupid.

I mean, I appreciate what the gentleman is saying. I am against selective prosecution, selective enforcement of stuff, but that is why some stops have been put in the manager's amendment, and for us to just kind of go overboard and say, you know, this is going to allow abuse of universities and people on university campuses, and it is going to allow the Attorney General to say that we are not -- you know, that our speech-and-debate provisions are not protected, I mean, that is just so far outside of what we ought to be trying to represent to people out here. It is just not the case.

Mr. Polis. Will the gentleman yield?

Mr. Watt. I am happy to yield to the gentleman.

Mr. Polis. I thank the gentleman. And, again, what we are talking about here on page 15, a service provider is required to take such measures as are reasonable, et cetera, to prevent access by its subscribers located within the United States to the foreign infringing sites. And, again, this is effectively an unfunded mandate when it happens to the universities.

Mr. Watt. After a judge says that, not based on the Attorney General calling up the service provider and saying, take this down. Give me a break.

Mr. Polis. Will the gentleman yield for one moment?

Mr. Watt. Yes, sir.

Mr. Polis. Again, the universities and nonprofit research institutions are not making any commercial gains from these transactions. They should be bastions of academic freedom.

Mr. Watt. But whether they are making commercial gains or not, if they are stealing my property and allowing their students on their property, if we are doing it in the House computers, we ought not be allowing it.

Wait a minute, now. Hey, hey. Let us get real here. I couldn't go out and steal somebody's stuff and bring it into my office here in the House and then claim I have some speech and debate protection against that. The police could come into my office and take it.

Mr. Polis. Right.

Mr. Watt. I can't put something up on a computer that I have stolen and then say to the Attorney General, you can't go to court and even file a cause of action against me. Come on, give me a break here.

Mr. Polis. Will the gentleman yield for one additional moment? All the examples that you cited are already against the law. It is already against the law to download illegal material, and that is the right law.

Mr. Watt. I am going to quote my good friend Barney Frank: Redundancy, you know, in the law, you know, if we are just doing this, something that is already in the law, that doesn't bother me. I mean, your objection even bothers me more if it is already against the law, because we are just enforcing a law that already exists, right? So I am not persuaded by that.

I think we have gone overboard here to try to make a point. Now, I appreciate the point you are trying to make, but to try to make it sound like there is some legitimacy to it, and that the Attorney General can just walk in to a university and take down stuff just by making a phone call is just inaccurate under this bill.

Who has read the bill?

RPTS COCHRAN

DCMN BURRELL

[1:00 p.m.]

Chairman Smith. Where is Louie?

Mr. Watt. I will yield to the gentleman. Go ahead.

Mr. Johnson. If this bill applies only to foreign-based rogue websites, then how would it apply to --

Mr. Watt. Well, you just ask Mr. Polis that. Any university that has got a foreign-based website.

Chairman Smith. The gentleman from North Carolina's time has expired.

Mr. Issa. Mr. Chairman.

Chairman Smith. The gentleman from California, Mr. Issa, is recognized.

Mr. Issa. Thank you. And I will be yielding to continue this dialogue.

But, Mr. Chairman, I think a point was just made and made rather illustratively. This is not a foreign stopping bill. The fact is that any case brought up against somebody in Timbuktu or other countries often mentioned will be a default judgment, whether it is in the ITC or whether it is in fact using our court system. That is a given.

Mr. Johnson. Ex parte you mean.

Mr. Issa. Well, not ex parte. We will attempt to serve in that foreign country and they will in fact not answer. It is unlikely they

are going to invest in lawyers and go through the whole process. So it is not ex parte. The fact is that no matter where the case is brought that initially is against a foreign entity, the whole idea is the foreign entity doesn't have assets here and is not going to respond. If they do respond, they almost stop being a foreign entity and that in the case of some companies will occur. But for the ones we are always mentioning that we have to stop and we have to have this law, these are going to be default judgments.

And then once a default judgment is done, we are doing something we don't normally do in a civil case and we are certainly doing something that I don't think it is a good idea and it is not in the current law in this way, where we basically say to the Department of Justice, you go get a gazillion indictments or a gazillion estoppels of some sort, and you do it like you get a baloney sandwich indictment, because ultimately these are going to be glorified John Does, and they are going to be slammed through by the thousands, hundreds of thousands, and they are going to include universities and they are going to include everywhere. This is part of the problem.

Ms. Lofgren. Would the gentleman yield?

Mr. Issa. I would yield to the gentlelady.

Ms. Lofgren. I think the point you are making is a good one, but I wanted to address the constitutional issue, because I think it is an important one, and it is not always well understood by the public at large. I am sure the members understand.

Article I, Section 6, says that the Members -- for speech or

debate in either House, the Members shall not be questioned in any other place, and by extension that includes activities that we do not only on the House floor, but what we do in terms of speech, our websites and the like. And it is true that I could go to the floor of the House and I could infringe content. I could read something that is copyright protected and I would not be held to answer in any other place. And it is simply not the case that in the process of legislating that we are held to an infringing standard. That would be equally true for our website.

Now, the gentleman from North Carolina is correct. There is a judicial process here, I am not disagreeing. But we have fought all the way to the Supreme Court on multiple occasions to keep the Attorney General from imposing his and in a prior instance her actions on our legislative activity.

This, in my belief, is not a frivolous issue at all. It is an issue that is serious, and that if it is not addressed in this amendment, I will offer to address at a later time. I just wanted to clarify that, and I thank the gentleman for yielding.

Chairman Smith. The gentleman from California has the time.

Mr. Issa. You are exactly right. This is an example where this bill is not ready for prime time, where these issues need to be asked and answered. As we speak right now, at keeptheweb.com, people are hearing what we are saying and they are going there and they are trying to figure out how they could see this bill changed to be more narrow and more appropriately.

But ultimately, I will go back to the earlier point I was on, this bill is a domestic bill. It is a domestic bill lock, stock and barrel, and it says essentially forget about the existing criminalization. We have got this whole new band of criminalization that we are going to have, and we are going to use the Department of Justice to do it.

Ladies and gentlemen, when I offered an alternative bill to take care of, if you will, foreign entities and then follow the money using the ITC, one of the things that came up that the press kept saying, but unknown people are saying this would not work because it would be expensive.

I want to make it clear, under the current language of the bill, you have an incredibly burdensome expensive system. You have a system where you are expecting the Department of Justice to prefer doing this fairly over going after terrorism and all kinds of other crimes. What you are going to get is anecdotal enforcement, selective enforcement, maybe even politically motivated enforcement or ideologically enforcement, and you are going to get all of that in the least efficient way.

Chairman Smith. The gentleman's time has expired.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. Jackson Lee. Thank you very much. To restate my comment about how we find a common path, but I want to pose a question to Mr. Polis even separate from speech and debate and see if I am getting at part of the heart of his amendment, which I think is thoughtful. When you think of universities, nonprofits and governmental entities, they

are huge. Many have access, and out of that access comes that large, if you will, element in the room of someone using it inappropriately.

The question is that universities and nonprofits and others have an ultimately good purpose, and there is a potential for the negative impact overall, and I pose this question to you, for the actions of the minute.

I think I am correct when I associate Facebook's origins with a university. Whether that was appropriate at the time we will have to ask Harvard. But seeing that as a potential, I truly believe that the murkiness we are seeing in this legislation would in fact put everybody in the soup.

Mr. Polis, my question is, as part of your focus in this amendment to bring a clarity that in fact protects the innocent institution from what can be a massive shutdown -- and someone argues there is not advertisement. In this new climate of raising money, there is all kinds of advertisement, but governmental entities, nonprofits are advertising, and I would imagine the universities.

Let me yield to the gentleman for my question.

Mr. Polis. Yes. The best possible implementation of this would result in unfunded mandates for universities to comply with these orders. They would need to add technical personnel to do so. At its worst, it could very well stifle academic freedom and discourse.

Again, as Mr. Issa said, this is an America-facing bill. We are talking about actions that American universities, American businesses are forced to take in response to this --

Mr. Watt. Will the gentleman yield?

Mr. Polis. It is not my time. I am just answering the lady's questions. And I want to make sure I answered your question. Did I answer the gentlelady's answer?

Ms. Jackson Lee. I would be happy to yield in just a moment. I think the concern that I have again is whether we could narrow this to what we are against, and that is online piracy and the protection of intellectual property. I see your amendment as protecting entities that are going to be exposed because they have so many users for specific reasons. Whether it is the First Amendment, whether it is research, whether it is students, they are all using it.

Mr. Polis. And that is correct. And if there is illegal activity, that needs to be prosecuted. That needs to be prosecuted. There is no tolerance for piracy. There is no tolerance for illegal activity. But you don't want to engender additional costs, legally ability, have the potential for selective Attorney General action for an entire nonprofit or university.

Ms. Jackson Lee. I yield to the gentleman from North Carolina and then the gentleman from Florida.

Mr. Watt. This bill is about foreign sites. I don't know of any university that is operating a foreign site. I think this is a red herring, one of many that I suppose will be raised today.

But I just want to be clear, when you are looking for clarity, look at the bill and look at the definitions of what the bill does. There is no university that is operating a foreign site. They don't

exist.

Mr. Polis. Will the gentlelady yield?

Ms. Jackson Lee. Let me reclaim my time. I appreciate the gentleman. He is absolutely right. What happens in murkiness and leakage is the possibility for the impact on these entities.

Let me yield to the gentleman from Florida.

Mr. Deutch. I thank the gentlelady for yielding. I would very much like the amendment sponsor to tell us in some detail how it is that legislative debate and academic freedom will be stifled by this bill?

Ms. Jackson Lee. I will be happy to yield to the gentleman, Mr. Polis, for his response to the gentleman from Florida.

Mr. Polis. Thank you, again. And again in response to the gentleman, Mr. Watt, and Mr. Deutch, we are not talking about what we are doing for foreign sites. We are talking about the affirmative burden on American universities and nonprofits to block foreign sites that are covered under this bill. The affirmative burden again that requires additional technical compliance at the universities that under a separate section of the bill we already block operators of non-authoritative domain servers that offer their services to businesses.

Ms. Jackson Lee. Reclaiming my time, and then I will give an additional 30 seconds, we are talking about--

Chairman Smith. The gentlelady's time has expired. Without objection, she will be recognized for an additional 30 seconds.

Ms. Jackson Lee. Mr. Chairman, thank you for your kindness, and I will yield to the gentleman from Florida.

I think the overall message of Mr. Polis' amendment and my premise of how we come to a common point is the overreach and the over-breadth and the potential of the impact of a domestic site such as those involving vast Internet servers like you find in government and universities. And I might just conclude by saying who knows who is reaching out from a university site which draws then the premise of the oversight of this particular bill, and there they go.

The gentleman from Florida.

Chairman Smith. The gentleman has 15 seconds.

Mr. Deutch. I thank the gentlelady, and I thank the chairman.

I understand Mr. Polis' objections to this bill and I understand that he doesn't support it. But the charge that has been made is that this legislation would threaten academic freedom and the legislative debate that takes place in this body. That is a dramatic charge. Simply saying this isn't ready for prime time and making the argument that we are going to stifle debate is a significant claim, and I have not heard an answer that tells me in any way how that claim could be justified.

Chairman Smith. The gentleman's time has expired.

The question is on the amendment to the amendment. All in favor say aye --

Mr. Johnson. Mr. Chairman, I asked for time also.

Chairman Smith. We will hold the vote. The gentleman from

Georgia is recognized.

Mr. Johnson. Thank you. I didn't get quite a good answer for my question. Mr. Deutch did narrow it a bit. From what I understand, Mr. Polis, this amendment would enable universities and would also enable the congressional servers, of course, subject to the speech and debate clause, to offer counterfeit materials on their websites. Is that what this does? This carves out an exception for universities to be able to offer foreign-based stolen content?

Mr. Polis. No. My amendment does not offer immunity to anybody.

Mr. Johnson. But isn't that the effect of it?

Mr. Polis. No. It would simply clarify the definition in a way that I thought was consistent with the intent of the bill, and Mr. Goodlatte insinuated that it was consistent with the intent of the bill and offered to work on it.

Again, I think it simply clarifies the definition of non-authoritative domain name servers to ensure that the bill is aimed at for-profit activity not the internal DNS servers of universities and research institutions. It does not let anybody off the hook for violating copyright whatsoever.

Mr. Johnson. What would be the impact of your amendment on a, let's say, private for-profit university that finds itself accused of offering pirated content on their web servers that came from overseas?

Mr. Polis. If they were offering content that was pirated on their web servers they would be in violation of the law, and I believe the body of law is sufficient to force them to take it down and they

would act expeditiously or face significant civil and criminal penalties under existing law.

Mr. Johnson. So how does this legislation which deals with foreign rogue websites impact university freedom? How does it actually do that?

Mr. Polis. Again, you know, the primary argument I made is unfunded mandate. At its worst, it infringes upon freedom. Again, when we are talking about this balkanization of the Internet, these different Internets that exist, effectively this would empower the Attorney General to say, university, you need to create a different Internet that no longer has this or this or that as part of the Internet that you have.

Mr. Johnson. What should the Internet -- why should a university be treated differently than -- and, by the way, you have got nonprofit and for-profit, private and public universities. Why should any sub-class be treated differently?

Mr. Polis. They should not be included under the definition of service provider because we actually already omit many businesses. In fact, we omit under the definition of service provider on page 9 businesses that offer domain name resolution services solely to businesses for domain, sub-domain, domain name systems or Internet protocol address management. So that would be a company like GoDaddy, would already be exempted. So I mean if companies like GoDaddy are exempted, why are noncommercial domain name servers, and, again, many universities or DNS servers have their own internal DNS, why would we

not exempt the non-commercial ones, if we are exempting the commercial ones?

Mr. Johnson. Thank you. I will yield back.

Chairman Smith. Thank you, Mr. Johnson.

The gentleman from Tennessee, Mr. Cohen, is recognized.

Mr. Cohen. Thank you.

Let me ask Mr. Watt a question. Do you know about this exception for businesses? Can you explain to me why that is in the bill? Or Mr. Smith. Whoever can answer the question.

Mr. Watt. If you will invite me to the section you are talking about.

Mr. Cohen. Apparently page 9, lines 8 through 13. Mr. Smith or anybody can answer it. It is an open question.

Chairman Smith. If the gentleman will yield, it is my understanding what we were trying to do was get to the major ISPs and make sure that other individuals would not be considered an ISP, and therefore give them some degree of protection.

Mr. Watt. And, further, I am not sure this would be the section under which universities' servers would be covered anyway.

Mr. Cohen. As I understand the amendment, and I may be wrong and maybe it doesn't relate to businesses, would this basically say if there is copyright infringement and you are trying to enforce your rules, that universities would then be immune from that and that college students or people on the college server could watch whatever they wanted? Would that be accurate?

Mr. Watt. I think what it says, what I believe Mr. Polis' amendment says, is they wouldn't have to make any efforts to take it down. They wouldn't have to go out of their way. But there is a provision in the bill that says nobody is required to do anything that they can't technologically do anyway. I mean, I just --

Mr. Cohen. Let me ask Jared.

Mr. Polis. I don't think that this amendment does what some of the people here have argued against. It simply changes the definition of service provider under this bill. We already make many exemptions to who service providers are. As the chairman pointed out, we want to capture the major ISPs as service providers. That is consistent at least with the goals of the bill. And I agree with the current exemption.

I think it is good that we are exempting domain name servers that offer domain name resolution services to businesses. Again, an example would be GoDaddy. An additional and similar one consistent with the intent of this bill would be universities that are not in any way, shape or form commercial service providers and should have the similar requirements under this bill as anybody else. This does not provide any immunity. My amendment provides no immunity for any violations of the law. That is not what it does. It simply defines service provider in a way that I think is consistent with the intent of this proposal.

Mr. Cohen. I yield the balance of my time.

Chairman Smith. The gentleman yields back his time. The

question is on the amendment to the amendment. All in favor say aye; opposed, no.

In the opinion of the chair, the noes have it and the amendment is not agreed to.

Mr. Polis. Mr. Chair, on that I request a vote.

Chairman Smith. A recorded vote has been requested. The Clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. Aye.

The Clerk. Mr. Jordan votes aye.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The gentleman from Wisconsin?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Chairman Smith. The gentleman from Arkansas.

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Chairman Smith. The gentleman from Virginia.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. The other gentleman from Virginia.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The gentleman from California.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Chairman Smith. The gentleman from California.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Chairman Smith. The gentleman from Arizona.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Chairman Smith. The gentleman from Iowa.

Mr. King. No.

The Clerk. Mr. King votes aye.

Chairman Smith. The gentleman from Ohio.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Chairman Smith. Are there other members who wish to be recorded on this amendment?

The Clerk will report.

The Clerk. Mr. Chairman, 9 members voted aye, 23 members voted nay.

Chairman Smith. A majority having voted against the amendment, the amendment is not agreed to.

Are there other amendments?

The gentleman from Colorado is recognized.

Mr. Polis. I have amendment at the desk.

Chairman Smith. The Clerk will report the amendment.

The Clerk. Amendment to the Smith amendment offered by Mr. Polis of Colorado. Page 7, beginning on line 15, strike for if there is no domain name--

Chairman Smith. Without objection, the amendment will be

considered as read. The gentleman is recognized to explain his amendment.

[The information follows:]

***** INSERT 4-1 *****

Mr. Polis. Thank you, Mr. Chairman.

Domains are popularized and used by their domain, that is a dot-com, a dot-net, a dot-bis. It is the word that everybody has associated with the product or brand. However, there is also an IP address that is associated with each domain name. The IP address is a string of numbers that generally does not have consumer awareness. It might look like 128.24.44.5599, or something like that.

In fact, a single IP address can be associated with more than one server or device. For example, multiple computers that access the Internet through a shared router might have or appear as they have a single IP address. Likewise, within a single computer, it can have several IP addresses and host a number of them. Many networks use dynamic IP allocation to assign IP addresses to servicers and devices on the network. So today's valid IP address might be tomorrow's invalid IP address.

And this isn't just a theoretical problem. There have been many examples of rights holders bringing copyright infringement actions against innocent individuals based on subpoenaed IP addresses that are no longer or were only dynamically associated with an individual for a brief point in time.

I believe that what we are dealing with in this bill -- hold on -- in this bill we should be dealing about the domain names, and it is simply pulling in a whole other area if you are pulling in every device that has access to the Internet with an IP address.

The manager's amendment is currently ambiguous as to whether a

network device such as an iPad, for instance, or someone's home personal computer or a refrigerator or a toaster can constitute an Internet site because it is a "collection of digital assets accessible through the Internet." It has no domain name, but it does have an IP address.

So, again if your toaster has an IP address and you are remotely controlling it, I would argue that it is not in fact a website. If it is toaster.com and people can go there and access it, then it looks and feels a lot more like a website. My amendment would simply make that distinction.

I would like to submit to the record a recent New York Times article that describes a study from the University of Washington, Mr. Chairman.

Chairman Smith. Without objection.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Polis. Thank you. This study found that because enforcement agencies are looking too often only at IP addresses, they are often improperly accusing people of infringement because it is simply the wrong people because the IP addresses are reallocated, versus a domain which has to be registered to an official person. Now, is that person hard to find sometimes? Yes, they can be hard to find. There is no doubt about that. We need to find ways to track them down. An IP address can dynamically go to a different person every hour or every day. It is simply not consistent again with the intent of the bill to protect IP.

This bill is supposed to go after the worst of the worst, sites like Pirate Bay and others. This bill has provisions that allow orders or are modified to go after websites, and even when websites change their name. But it is critical to ensure that we strike "IP address" from the form or definition of an Internet website because they are two different things. We need to go after the one that is connected to the infringer, not the one that could be dynamically generated and have different people at any point in time and it could be used internally to control your own climate in your house or how well your toast is done.

I urge a yes vote.

Ms. Lofgren. Will the gentleman yield?

Mr. Polis. I yield to the gentlelady from California.

Ms. Lofgren. I would just like to commend the gentleman for the amendment. This is actually something that we ought to adopt on a

bipartisan basis.

I don't know if every member of the committee -- I am not a nerd. I aspire to be a nerd. But through dynamic assignments of IP addresses you can end up with a multiplicity of potential devices or entities. And in fact because mistakes have been made in the past, we have had lawsuits filed against a printer because the IP address was dynamic.

And this is about the integrity of the infrastructure. Even though we disagree about many other elements of the bill, this should not be a source of disagreement. This is cleaning it up so that even though I disagree with many other elements of the bill, to fail to adopt this would actually defeat the intentions of the drafters of the manager's amendment.

I just wanted to make that point and thank the gentleman from Colorado for yielding. I yield back to him.

Mr. Polis. I thank the gentlelady. Again, as the chair knows, I have some differences on the underlying bill, and one of them, of course, is the broad body of violators and the selective enforcement that would be necessary. This at least cuts down on that potential body of violators. It would prevent on some pretense going after almost anybody with IP addresses in their home. They could at some point in time have been dynamically assigned to a website with a name that is registered with somebody but at that time was used for illegal activity, but has been reassigned on a dynamic basis.

So the website again, something.com, something.net, registered to a person, there is ownership. We need to find those people. The

IP address is not the right vehicle. It is dynamically reassigned, sometimes in real time, sometimes instantaneously. You can go through IP randomizers on the Internet and have a random IP address assigned to you. And, again, it is simply a mechanism for routing packets. It is not the name that is associated with a real world person or entity that should be held legally responsible for piracy. I yield an additional 30 seconds.

Ms. Lofgren. If the gentleman will yield further, I think it is important to note, and I thank the gentleman for yielding, it wouldn't necessarily have to be skullduggery on the part of someone seeking to enforce. In fact, I think in most cases where enforcement actions have been taken against a toaster, it was a mistake for the reasons that you have well outlined.

And I appreciate your technical expertise in bringing this amendment. I thank the gentleman for yielding.

Mr. Polis. I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Polis.

The gentleman from Virginia, Mr. Goodlatte, is recognized.

Mr. Goodlatte. Mr. Chairman, the gentleman's amendment strikes Internet protocol or IP address from the definition of an Internet website. This is an important provision in the definition section of the bill. At times websites operate using a fixed IP address and not a domain name. This carefully crafted definition ensures that these types of situations are covered as well.

The amendment would create a loophole that criminal foreign rogue

websites that are the target of this legislation could be using this to exploit and evading the kind of efforts we are making here to cut down on the theft of American property and the defrauding of U.S. citizens. For that reason, I strongly oppose the amendment.

Chairman Smith. Thank you, Mr. Goodlatte.

The question is on the amendment. All in favor say aye; opposed, no. In the opinion of the chair, the noes have it.

Mr. Polis. Mr. Chairman, I request a roll call.

Chairman Smith. A roll call vote has been requested the Clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. No.

The Clerk. Mr. Quigley votes no.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

The Clerk. Mr. Polis?

Mr. Polis. Yes.

The Clerk. Mr. Polis votes yes.

Chairman Smith. Are there other members who wish to be recorded on the amendment? The gentlewoman from Texas.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Chairman Smith. The gentleman from Ohio.

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Chairman Smith. The gentleman from Arkansas.

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Chairman Smith. The gentleman from California.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Chairman Smith. The gentleman from New York.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Chairman Smith. The gentleman from California.

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Chairman Smith. The Clerk will report.

The Clerk will suspend. The gentleman from Michigan.

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Chairman Smith. The Clerk will report.

The gentleman from Pennsylvania.

The Clerk. Mr. Marino is recorded as no.

Chairman Smith. The Clerk will report.

The Clerk. Mr. Chairman, 4 members voted aye, 29 members voted nay.

Chairman Smith. The majority voting against the amendment, the amendment is not agreed to.

The gentleman from Ohio, Mr. Chabot, is recognized.

Mr. Chabot. I have an amendment at the desk.

Chairman Smith. The Clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Mr. Chabot of Ohio. Page 18, line

4.

Mr. Chabot. Mr. Chairman, I ask unanimous consent the amendment be considered.

Chairman Smith. Without objection, the amendment will be considered as read.

The gentleman is recognized to explain his amendment.

[The information follows:]

***** INSERT 4-2 *****

Mr. Chabot. Mr. Chairman, this amendment addresses a technical issue which is unique to obligations the bill would impose on payment network providers. The amendment would strike language in the manager's amendment that would require payment network providers such as MasterCard and Visa to take action in connection with individuals who have been issued a credit or debit card by a U.S. bank but who for one reason or another reside outside the U.S. This change would clarify that the individual to whom the credit processor must take action must have a U.S.-issued account and must also currently reside in the U.S.

The kind of situation we are talking about here is, for example, a U.S. diplomat on detail at one of our embassies or a soldier or a college student studying abroad for a semester. This is a small number relative to the total number of cardholders in the U.S., but still worth addressing.

The procedures and systems the payment networks have in place to prevent card holders located in the U.S. from purchasing infringing goods are not designed to address the purchase of infringing goods by persons who reside outside of the U.S. An entirely new system would be required to address these circumstances, which would take additional time, substantial resources, and could ultimately detract from our end goal.

Requiring these companies to develop new systems would be extremely onerous and would be insignificant to our overall objective of stemming the tide of infringement. Surely the burdens would

outweigh the benefits.

By removing this language, we are not diminishing the effectiveness in any way of the bill in preventing U.S.-directed sites from providing infringing goods or services to users located in the U.S.

In short, the amendment allows payment network providers to protect the interests of U.S. rights holders through the systems they have in place today and will ensure that payment networks can fulfill their obligations under the bill without the need to develop, build and maintain new systems or technologies in order to comply with this legislation.

I yield back.

Chairman Smith. Would the gentleman yield to me before he yields back.

Mr. Chabot. I would be happy to yield, yes.

Chairman Smith. I thank the gentleman from Ohio.

The gentleman's amendment conforms the obligations of payment network providers with the definition of a U.S. directed site to target Internet sites providing goods or services to users located in the United States and that also have accounts originating in the United States. I believe this is a reasonable amendment, and I urge my colleagues to support it.

Mr. Chabot. Now I yield back.

Ms. Lofgren. Mr. Chairman?

Chairman Smith. The gentleman from California, Ms. Lofgren.

Ms. Lofgren. I move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. I am trying to understand the impact of the amendment. I am wondering if I could pose a couple of questions to the author.

Okay, I live in San Jose. I have credit cards. If I go on a trip to Canada and I use my credit card in a way that would infringe, would I have a free pass under your amendment?

Mr. Chabot. Will the gentlewoman yield?

Ms. Lofgren. I will.

Mr. Chabot. I don't think this affects that at all. This talks about residing. It wouldn't affect somebody who was just a tourist. You would have to talk to the chair about the rest of the bill, but this amendment would not apply to that.

Ms. Lofgren. So what would the definition be between residing and a temporary brief visit? Is that anywhere else in statute?

Mr. Chabot. Well, the definition of reside, the legal definition of reside.

Mr. Quigley. Will the gentlewoman yield?

Ms. Lofgren. I would. I mean, I am not necessarily opposed to the amendment. I am just trying to figure out how it would work.

I would yield.

Mr. Quigley. Are we talking about Rahm Emanuel in Washington, D.C. residing, or more permanent?

Mr. Chabot. I will let the gentleman come to his own conclusion

about that.

Ms. Lofgren. Reclaiming my time, I am trying to figure out also how this would work on -- we are used to having, you know, we have a credit card, it is in our wallet, but there are, for example, PayPal is a very large payment system that I believe is covered by the manager's amendment. How would your amendment interact with the PayPal system where the ascertainment of locale may be less certain than in the Visa-MasterCard world, if you could address that?

Mr. Chabot. Yes, if the gentlelady will yield, the fundamental purpose of the bill is to deal with people in the U.S. market, not elsewhere. My amendment only deals with people who reside outside the U.S. That is why I mentioned specifically a U.S. diplomat who is overseas.

Ms. Lofgren. I understand the intention. The question is what does the actual language mean.

Mr. Chabot. The language means reside outside, not if you are just visiting or anything like that.

Ms. Lofgren. For example, in immigration law, a brief visit abroad doesn't interrupt residence, but that has to be a very brief period of time. Would that be the standard that you are thinking here or would it be the track standard?

Mr. Chabot. If the gentlewoman would yield, I have whatever the existing law would consider the terminology for reside. That is why in my statement I specifically mentioned, for example, a soldier, a college student.

Ms. Lofgren. Recalling my time, I understand what the intention is. But I am trying to get to what the standard -- what a court would do. Because there are different standards in law. I mean, for tax purposes there is one standard for reside. For immigration purposes there is a different standard for reside. We recently adopted the bill having to do with taxation of income for employees between States. I don't know that that would necessarily apply. So I am trying to get some insight into -- I am not saying this is a bad idea. I am just trying to get some insight on what in existing law would be used as a benchmark for determining residence.

Mr. Chabot. If the gentlelady would yield.

Ms. Lofgren. I would be happy to yield.

Mr. Chabot. Thank you. I appreciate that. The "reside" that I am referring to would be the common legal parlance used relative to that term. One can never in my view predict what a court is ultimately going to do with that, and I would have to perhaps defer to the chair to see if there is a definition in the bill itself or in the manager's amendment that specifically -- is there a definitional term?

Ms. Lofgren. Recalling my time, there is no definition in the manager's amendment nor in SOFA.

Mr. Chabot. Then one would use the same procedure as they would in any other legal case when using a term. If it is not defined, then it would be defined as it is generally considered in the law in general.

Ms. Lofgren. Recalling my time, the problem I have with that is not the intention, because I think it is a reasonable intention. It

is that there is no real common law determination in the Federal law. We have a multiplicity of different rules depending on the situation. I mean, there is one period for taxes, there is one period for immigration, there are other standards. And I think it would be helpful if we have something in mind to actually reference that in the amendment so that it is not anybody's guess, people know where they stand.

I mean, I am not in opposition to what you are trying to do. I am just thinking this is somewhat uncertain and we don't want to leave it to whatever a District Court decides, it seems to me.

First of all, I would like to yield to the gentleman from Ohio.

Mr. Chabot. If the gentleman will yield, I would be happy to work with the gentlelady in a definitional portion of this included either later on or at an appropriate time so we specifically put the parameter of what "resides" means. I would be happy to do that. I have no objection to that. But I really don't want to get this out of order.

Chairman Smith. The gentlewoman's time has expired. I would like to vote on this amendment very quickly, if we could. Then we are going to recess.

Mr. Polis. Mr. Chairman, if I can move to strike the last word.

Chairman Smith. The gentleman from Colorado is recognized.

Mr. Polis. I don't think I will need the full 5 minutes. I just want to further engage with Mr. Chabot.

In trying to understand this amendment here, you are replacing an "or" condition because you are then eliminating the word "or" and

you are qualifying customers located within the United States. So originally we prevented the affiliation of payment networks to also accounts originated in the United States. Presumably some of those might be held by foreign nationals. I believe you are then changing customers located within the United States, again replacing the "or" condition and then saying customers within the United States who have accounts originating in the United States.

Mr. Chabot. Correct.

Mr. Polis. Okay. I just wanted to clarify that. I am happy to yield back the balance of my time.

Chairman Smith. Thank you, Mr. Polis. All in favor of the amendment say aye; opposed, no.

The amendment is agreed to.

Without objection, the chair is authorized to declare recesses of the committee at any time, and I will now say we will recess until immediately after this series of votes. There are four votes. It will probably be about 45 minutes. If members will return very quickly after the last vote. We will recess until then.

[Recess.]

RPTS MERCHANT

DCMN BURRELL

[1:52 p.m.]

Chairman Smith. The Judiciary Committee will come to order. We are going to wait just a minute for a working quorum and then we will continue considering amendments. A working quorum is present. We will go to the next amendment, which would have been the gentlewoman from California's. She has asked us to skip over that one and go to Mr. Issa's amendments No. 7 and 72. If the gentleman is ready we will recognize the gentleman from California to offer his amendment.

Mr. Issa. I thank the chairman. I call up Issa 72.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 by Mr. Issa of California and Ms. Lofgren of California.

Chairman Smith. Without objection the amendment will be considered as read, and the gentleman from California is recognized to explain his amendment.

[The information follows:]

***** INSERT 5-1 *****

Mr. Issa. Thank you, Mr. Chairman. I would now ask unanimous consent that a copy of the letter from truly the founder of IPv4 and one of the founders of the Internet sent on December 14th to the chairman by Vince Cerf be placed in the record.

Chairman Smith. Without objection, that will be made a part of the record.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Issa. I thank the chairman. As his letter indicates and as I will indicate, my provision, which would eliminate, if you will, one of the most onerous and ineffective parts of the bill, would in fact say that a search engine would not be forced to effectively block the link or deny that the link exists or to derail a link to an accused offending site. And there are many reasons for it. I will be brief.

One of them is that it is very clear that you can have hundreds of thousands of these links in a number of hours, they can come and they can go. So this would not be something that would be part of a deliberative process, it would not be something that somebody at Justice would look at and say here is a storefront where they are laundering money. This in fact could be as simple as a search of documents that might contain the hyperlink to an infringing site.

Now, very often, as we all know, and this will continue happening under the First Amendment even after our legislation, if the L.A. Times runs an article in their on-line paper and they are talking about a site that promotes piracy or promotes other things but happens to also include piracy, we would have to look and say, well, Google is going to have to cut off the link to the L.A. Times page because that link has a link.

The nature of the legislation is such that once you say you are going to cut off links, in other words once you become very China-esque, what you end up doing is you end up starting a snowball effect from which there is no elimination and there is no end.

My amendment is very simple. It is intended to say this does not

follow the money, it does not follow the principles that have worked in the past and it is in fact part of the entire DNS blocking scheme that is not going to work. I spent more than 20 years, I guess by the time I ended 30 years, in the security business looking at how to confound people who stole cars. The one thing I know about thieves, and pirates are thieves, is that they will begin working the very next day around what you have.

On top of that when we have considered major legislation in Congress such as V-chip, something that I worked with when I was in the private sector, we ordinarily said, well, you know, we are going to empower people to turn something off, we are going to empower them to make a decision. That is fine. There would be nothing wrong if this legislation simply said, if you will, that software had to allow people to not know about sites or that once recognized that there would be tagging. Those are not in the bill. This is a bill about denial in this particular case.

Mr. Chairman, if we eliminate and strike that provision this becomes a bill that is a fraction as controversial. It is a major change. Yes, some will say they need this. But Mr. Chairman, do we really need something that can be circumvented quickly, that the foremost authorities in the industry are weighing in one after another to tell us is ineffective but will hurt the Internet even while not stopping the pirates.

So I thank the gentlelady from California, Ms. Lofgren, for yielding because her next two amendments will probably not be offered

if in fact this simple straightforward amendment can be understood and accepted, and we can look then at the rest of the bill in a much more positive way. Without that I suspect strongly that everyone who is against the bill today will be against the bill until their dying day. And with this change you begin to make changes in how we view how the rest of the bill could be fixed.

And with that, I thank the chairman for allowing us this opportunity and yield back.

Chairman Smith. Thank you, Mr. Issa. I will recognize myself in opposition to the amendment. This amendment eliminates DNS and search engine blocking, but it is essential that these provisions be maintained in the bill. DNS filtering provides an effective solution to combat foreign rogue sites that are already among the most popular websites on the Internet. For example, sites that are well-known and established as the Pirate Bay. These sites are so notorious that they do not need to rely on search engines to direct users to their pages. Tomorrow's notorious rogue sites could also become popular and gain huge followings through blogs, social media and word of mouth, not relying on search engines. Without a requirement that U.S.-based service providers participate in blocking assets to these sites these overseas criminal enterprises will continue to thrive as they steal U.S. intellectual property, sell it back to U.S. consumers, and endanger U.S. consumers with phoney and dangerous pharmaceuticals and other goods.

Search engines are the vehicle through which offshore websites

reach American consumers, driving large amounts of traffic. To exclude them would deny the fact that they drive a tremendous amount of traffic to foreign rogue websites.

We need to maintain these two provisions in the bill, and for these reasons I must oppose the amendment. I yield back the balance of my time.

Are there other members who wish to be heard on the amendment?

Ms. Lofgren. Mr. Chairman.

Chairman Smith. The gentlewoman from California, Ms. Lofgren.

Ms. Lofgren. First let me thank you for taking Mr. Issa's amendment out of order, because, as he has referenced, should this amendment be adopted my amendments 6 and 8 would not be necessary. I don't have Vince Cerf's letter, and I would love to see it. I know it has been put in the record. But I do have the letter from Dr. Len Napolitano, who is the director of the cyber unit at Sandia National Labs, who points out that these provisions not only would impair cybersecurity, they also won't work. I think that Mr. Issa is correct, that if we were -- I prefer the alternative bill that Mr. Issa has taken the lead to craft. I think that is a much better approach. But if we were to clean up the barring of search engines, the criminalization of hyper text links and the DNS scheme that is doomed to failure and also will make the web actually more prone to piracy, we would actually have a capacity to potentially come together. I am probably not going to be a fan even with that, but I think there would be the potential to move together on this measure. And that is why I think Mr. Issa's

amendment is so important to consider. I hope that it will be adopted.

And with that, I would yield any additional time to Mr. Polis, who is our Internet expert.

Mr. Polis. Thank you. And I will move to strike the last word as well. I don't know if the Baker letter has been sent to the record yet. This is from yesterday, the December 14th letter. I would like to submit the letter from Stuart Baker dated yesterday to the record, without objection.

Chairman Smith. Without objection, sir.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Polis. Thank you. This letter goes into again the manager's amendment, because we were dealing of course with a different bill that had previous commentary. And again, I do wish we would delay this a little bit because everybody's reacting in realtime to a bill they just saw 3 days ago. So Stuart Baker rates several provisions. Again, I do believe that the Issa amendment will largely address his concerns with regard to security where he says, quote, unfortunately the new version would still do great damage to Internet security mainly by putting obstacles in the way of DNS EC, a protocol designed to limit certain kinds of Internet crime.

Again, the sections that are deleted under this would allow search engines to maintain their integrity. Their integrity is currently compromised under the language on page 17(b). In effect one would have a different search engine if they used it in our country versus Canada versus England, et cetera. Again, on the Internet these things can have workarounds. You can certainly -- if people know that a web search is superior in another country they can simply use that version of it as well. They can also use anonymizers in a different area of the bill.

But this area of the bill is the most problematic. Again, the conditions that are put upon service providers are that to take down for Americans the foreign infringement sites that are subject to the order would essentially -- is the operative element that would divide the Internet into a different Internet, balkanizing the Internet, creating a separate Internet that American users would experience from the Internet, that other users would experience. It is simply the

wrong solution to a very real problem.

I strongly support Mr. Issa's open act. Again, I believe that this particular bill is a lot less damaging to value creation and to job growth if we can eliminate this provision. This is the most onerous provision in the bill, and I hope that we can eliminate it in its entirety. And I yield back.

Chairman Smith. Does the gentlewoman --

Ms. Lofgren. I would thank the gentleman for yielding back. And I would just note that having seen now this letter from Vince Cerf, who is the father of the Internet, he points out that the search engine remedy suffers from the fact that it will not be effective in preventing users access to illegal offshore websites. And for those of us, and I think this probably includes all of us, who utilize the Internet, it is child play -- it is child play to actually use a different search that is beyond the reach. I mean, this is not going to work. It will help fragment the Internet.

And I would note that the MPAA submitted a list to the IP enforcement coordinator of notorious infringing foreign websites that it had identified. We took a look at each one of those websites and every single one of them would be vulnerable to a "follow the money" approach because they either display ads or accept user payments. If we were to utilize that method we would cut them off at their knees, but using this method it won't work, it will do major collateral damage to the Internet and it is unnecessary.

So with that I would yield back.

Chairman Smith. The gentlewoman's time has expired. The gentleman from Utah, Mr. Chaffetz.

Mr. Chaffetz. Thank you, Mr. Chairman. I stand in support of this amendment. I worry that we are doing things that will have a lot of unintended consequences. And I am sure getting the government involved will solve all of our problems.

So I would like to yield my time to the gentleman from California who offered the amendment, Mr. Issa.

Mr. Issa. I thank the gentleman. Mr. Chairman, Mr. Polis is probably better at educating people as to the nuances of domain resolution and so on. But let me just give you some food for thought of why as it is currently drawn it won't work, and if not redrawn through a markup at a time when we can get to it you will have a bill that will be not worthy of being considered on the floor.

If you want to block hyperlinks -- remember a hyperlink is just a set of words. The fact is that anyone can type in the hyperlink if you block it. And you can't stop the printed word. We have no constitutional basis to stop the printed word. More importantly, I can go to ZoneEdit, or any number of other companies, and I can move in a matter of seconds where something resolves to.

So when you start looking and saying, well, okay, so there is two legs of what you are trying to stop not working, the third one of course, which I think Ms. Lofgren did a good job of explaining, is if you simply assume that instead of using Google where we have tremendous cooperation, we have assistance and a whole team that tries to help

in anti-piracy, or Yahoo or Bing or whoever, you simply go to, you know, I guess to be politically correct we would say Macaca.com search engine, and over there it is in some foreign country, we can't block it because it is just a search engine, it is not in -- you guys finally remembered Macaca. Okay. You go to that search engine which is just a search engine, but it is outside our reach, it is in a country that would scream bloody murder if we tried to block it, and it searches all kinds of other things, but of course it also doesn't respect this law. Guess what? We have just moved the most popular site in the world, Google, and its number twos and threes and fours, all of whom are American, we just moved it offshore in favor of a site that will become popular with Americans and the rest of the world.

The world searches on Google, the world searches on Bing and Yahoo, the world does not search on, you know, Macaca.com, and it won't if we continue to leave the Internet reasonably free to do this.

Lastly, again, I mentioned that we dealt with the V-chip when I was in business. Well, can you imagine the Motion Picture Association, who so much wants this piece of legislation as it is currently drafted, if we had done the same thing to their movies which were PG, X, R rated and the like, and simply said you have got to ban them, they have got to be stopped from being on the cable. There would be a human cry. And yet this form of censorship is every bit as bad because it is not going to be based on one event based on deliberation of a jury or a judge, it is going to be a default against some foreign entity and then hundreds of thousands of cease and desist suborders issued under it.

The fact is there are unintended consequences. I think people who know this industry far better than I do keep pointing them out and these letters keep coming in. The hundred thousand petitions not to go forward with this says a great deal because it is the tip of the iceberg.

Mr. Chairman, I will once again respectfully ask from a person who I have worked with on bill after bill after bill, treat this more like patent reform and we will get a better bill. Patent reform, although it took longer than anyone wanted, had a hearing or two or three, and Mr. Sensenbrenner is sitting here so he knows this very well, at subcommittee and full committee every single Congress, even though we had already worked on similar legislation, we have always on this committee tended to err on the side of more information, more hearings. Who are a hard working committee. This is one in which one company was summoned to be told that they were a problem on a panel where they were the only, if you will, other side. We need to have more than that. And I know that time is limited to the full committee, but I will tell you at the subcommittee I am sure we can get a very, very good section of witnesses so we can do this work.

Mr. Watt. Will the gentleman yield?

Mr. Issa. The time belongs to the gentleman from Utah.

Mr. Chaffetz. Reclaiming my time, I have just but a few seconds. Let me say again, Mr. Chairman, there are those of us that do truly want to solve this problem. There is a problem, I want to solve it. I just happen to think that this is the wrong way to do it. We have

not exhausted the discussion and public discourse on something that is so imperative such as the Internet. If we cede our Nation's innovative abilities on the Internet because we are overly abusive and too quick on the draw to try to draw some conclusions and do some things that the nerds of the world think will actually harm the Internet, then I think we are creating problems for our economic future. I think it will hurt jobs and the economy. I think we will see things go overseas. I just think we ought to be taking our time. There is no magical date that says this has to happen by the end of the month or something like that. I don't think we have exhausted those possible remedies.

I yield back.

Chairman Smith. The gentleman's time has expired. Thank you, Mr. Chaffetz. Thank you, Mr. Issa. The gentleman from North Carolina, Mr. Watt, is recognized.

Mr. Watt. Thank you, Mr. Chairman. Mr. Chairman, as one who acknowledged in his opening statement that he was not a nerd and doesn't understand a lot of the technological stuff, I am not the person to argue about the technology part of this. But I do want to address two of these arguments which have been advanced. First of all, that we should follow the money. We are following the money. The bill does that. But that has never been the only way that we go after criminal activity, not the only way.

Second, I want to address the argument that it won't work. Well, the last time I checked you can put as many locks on a door as you want to. Somebody knows how to use a hairpin to pick them, somebody knows

how to get a locksmith to get in.

Mr. Chaffetz. Will the gentleman yield?

Mr. Watt. That is not an argument for --

Mr. Chaffetz. Will the gentleman yield?

Mr. Watt. Let me finish. I will be happy to yield. That has never been an argument. We will never stop all the criminality here. We will never have a solution that will be completely effective. But we have never had a solution in any area of criminal law, as far as I can tell, that is completely effective. Somebody will find a way. I agree with Mr. Issa. They will find a way to go around the system. They will do whatever is necessary. And for that reason I am hoping that we will continue to monitor this regardless of whether this bill passes or not. I mean, you know, 15 years ago when these same issues were being raised about the DMCA nobody anticipated we would be back here today doing this. But it did not effectively address the problem. This won't effectively address the problem in terms of eradicating the problem. But that is not an excuse not to do something. And this is something for the people. It will be effective, I guess, it will be effective. There will always be people against whom it will not be effective.

I yield to Mr. Chaffetz.

Mr. Chaffetz. Thank you. I think I agree actually with part of your concept here on point number two. What I am trying to say, what I am trying to convey is you have some real technical experts out there who say, using the analogy of the lock, you are not having a lock and

then there is another way to pick it, you are taking off the lock. That is part of the problem. When you talk about DNS that is part of the problem.

Mr. Watt. Reclaiming my time. I started out -- you know, I am not one of these people who is trying to argue about whether I am a nerd or not. I am not a nerd. Hey, I may look like one, I may act like one sometimes, but you know, hey, I am not trying to operate my congressional office without paper, you know. I personally don't think that is a good idea. But for those of you who have the capability of doing that you are welcome to do it. But what I do know is that if you don't put some prudential regulation around the Internet and you allow folks to do on the Internet what they can't do at a pawn shop or in my neighborhood, you know, they will just go to the Internet, which is exactly what you are saying. They are going around the system now, right.

Mr. Chaffetz. Will the gentleman --

Mr. Watt. I am not arguing with you about the technology here.

Mr. Chaffetz. But I am worried about cyber -- will the gentleman yield for just a few seconds?

Mr. Watt. I am happy to yield.

Mr. Chaffetz. We have a number of papers from some very qualified people who say that this hurts cybersecurity.

Mr. Watt. Well, I don't believe --

Mr. Chaffetz. And other than saying, well, we have got to do something, I agree with you.

Mr. Watt. I do not believe that.

Mr. Chaffetz. But with all due respect, how -- to just say, well, I don't believe that, these guys are experts. I am looking for somebody to come before this body and testify in a hearing and say this is why they are wrong, because to date we haven't had anybody do that.

Mr. Watt. Let me reclaim my time and ask for unanimous consent for one additional minute and yield to Mr. Berman.

Chairman Smith. Without objection, the gentleman will be recognized for an additional minute.

Mr. Berman. First, on the issue of security, the manager's amendment crafts a proposal which gives -- accepts the potentials that may exist out here and makes that part of what a judge considers in fashioning a remedy. This bill and this amendment are not insensitive to that issue. Secondly, I feel much better about passionate concerns regarding the unanticipated consequences of all this if the people who were making those arguments had been coming forth saying there is a terrible problem here with the theft of intellectual property and with the counterfeit goods being sold digitally with foreign rogue websites, let's find an effective, meaningful way to deal with this. And I tell you that hasn't happened.

Mr. Chaffetz. Will the gentleman yield?

Mr. Berman. This has been going on for several years. And it is not my time.

Mr. Watt. Well, my time has expired.

Mr. Sensenbrenner. I ask unanimous consent the gentleman be

given an additional minute.

Chairman Smith. Without objection I recognize the gentleman for an additional minute.

Mr. Watt. I yield to Mr. Sensenbrenner.

Mr. Sensenbrenner. I appreciate what the gentleman from California, Mr. Berman, has said, but nobody saw this bill but the drafters until it was introduced.

Mr. Watt. Well, now, I will reclaim my time.

Mr. Sensenbrenner. And nobody saw the manager's amendment until it was introduced, so we didn't have a chance to analyze it.

Mr. Berman. And no one knew there was a problem with intellectual property theft until just a couple of moments ago.

Mr. Sensenbrenner. Well, come on now --

Chairman Smith. The gentleman from North Carolina has the time.

Mr. Watt. We have been working on this bill for a long time.

Mr. Chaffetz. Will the gentleman yield?

Mr. Watt. This process did not start when the manager's amendment was dropped. So for anybody to come in here and say that they haven't an opportunity to give input into this process I just think that is wrong.

Mr. Chaffetz. Well, will the gentleman yield? You are making a pretty serious allegation. Will you please yield?

Chairman Smith. The gentleman from North Carolina has the time.

Mr. Watt. You know, I am not going to get involved in the technology and whether it is effective or all that stuff, you all have

to debate that. But it seems to me that plenty of time has been given for a discussion of this issue. And if people didn't take advantage of it until 3 days ago when the manager's amendment was dropped I think that is unfortunate.

Chairman Smith. The gentleman's time has expired.

Mr. Sensenbrenner. Mr. Chairman.

Chairman Smith. The gentleman from Wisconsin is recognized.

Mr. Sensenbrenner. Mr. Chairman, I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Sensenbrenner. Mr. Chairman, I will put my credentials on complaining about intellectual property theft against anybody in this committee or maybe anybody in this room. I have been to China with the Speaker talking to the President of China, I have been to Taiwan. You know I made the point you know from the time that we had the debate over whether the WTO ascension in China would stop intellectual property theft. I have talked to the Trade Representative on bilateral trade negotiations. I consider myself a hawk on IPR and theft. On the other hand, my staff kept on asking for a copy of the original bill and we never got one until it was dropped. And we never got the manager's amendment until it was dropped to be able to look at it 3 days ago.

Now, I have definitely a different outlook on how to approach this problem. And I don't think the approach to this problem is exclusively what is in this bill from the experience that I have had in dealing with Indians trying to sell untaxed cigarettes around the country and

other people using other types of means of transportation. Now, granted, those were transportation organizations of things that were not electronic in nature but were goods. But you know the fact of the matter remains is that there are some similarities on this. And I don't think the authors of the bill really wanted to reach out to those of us who are saying, hey, there might be another approach that is a better way to do it. And that is the complaint that I have.

So you know for somebody like the gentleman from California, you know, to call me a Johnny-come-lately on intellectual property piracy, you know, I don't like that because my record is pretty clear and I was pretty strong on that during my 6 years as chairman. Let's quit the name calling. Let's get down to the fact that this bill might not be the best drafted bill, it might not be the most effective way of solving this problem and it might require some improvements so that we can get to the issue of stamping out intellectual property piracy.

And I yield back.

Mr. Issa. Will the gentleman yield?

Mr. Chaffetz. Will the gentleman yield?

Chairman Smith. Does the gentleman yield back his time?

Mr. Sensenbrenner. I take my time back and yield to the gentleman from Utah.

Chairman Smith. The gentleman from Utah is recognized for the balance of the time. Two minutes.

Mr. Chaffetz. Thank you. Look, I think the accusations that I just heard about my sincerity --

Mr. Berman. What accusations did you hear about your seniority?

Mr. Chaffetz. Well, I don't have any seniority, that is part of my problem. That's part of my problem, yeah.

Mr. Sensenbrenner. A point of order. It is my time and the gentleman from Utah has it.

Mr. Chaffetz. I hope you notice where I sit on this dais here. Look, I am very sincere. The accusation is they are not sincere wanting to solve the problem. There is a problem. I have said repeatedly there is a problem. I have also said repeatedly we got some experts that are way above everybody's pay grade in here that have said clearly there might be a problem with cybersecurity in doing this. So I totally agree that there is a problem. I am worried that the solution is not necessarily the right solution. Please don't attack the integrity or the intentions of what we are doing because I just got here. I didn't create this mess, but I am here to help clean it up, and I will continue to work on this issue.

Ms. Lofgren. Will the gentleman yield?

Chairman Smith. The gentleman from Wisconsin has the time.

Mr. Sensenbrenner. I yield the balance of my time to the gentlewoman from California, Ms. Lofgren.

Ms. Lofgren. Thank you, Mr. Sensenbrenner. You know, we all have different roles to play, and Stuart Baker had a specific role, which has to do with cybersecurity at both the NSA and with Homeland Security. He didn't have an IP role, he just had a cybersecurity job. And here is what he said in his letter today. He said that what should

a browser do if a website says it doesn't have a sign credential. The site might be telling the truth or it might be a fake site backed by a DNS server that has been tampered with. To find out the browser needs to ask a second DNS server. If that server doesn't give an answer, a third and fourth, until it gets an answer. That is the only way. Unfortunately, he goes on to say, the things a browser does to bypass a criminal site will also defeat SOPA's scheme for blocking pirate sites. And he goes on to say, faced with silence in the server the browser will go into fraud prevention mode casting about to find another DNS server that can give it the address, eventually will find the server, he says, say in Canada free from the AG's jurisdiction, the server will provide a signed address for piracy dot-com and the browser will take its user to that authenticated site. But if the browser --

Chairman Smith. The gentlewoman's time has expired.

Ms. Lofgren. I would ask unanimous consent to just read the next two sentences.

Chairman Smith. Without objection.

Ms. Lofgren. What the browser should do if it is dealing with a hijacked DNS server, if the browser can't tell the Attorney General from a hijacker, and Mr. Baker says it will not, we are going to end up promoting piracy, which is the exact opposite of what the intention here is in the bill. And that is why this amendment should be approved, and frankly we should have hearings on this whole complex subject that no one with the exception of Mr. Polis is probably an expert on.

Chairman Smith. The gentlewoman's time has expired. The

gentleman from California, Mr. Berman, is recognized.

Mr. Berman. Thank you, Mr. Chairman. I believe sincerely but quite mistakenly several members of this committee thought my comments were directed to them. I would be the last person having been on this subcommittee -- on the Subcommittee on Intellectual Property since I got here to suggest that Mr. Sensenbrenner or Mr. Issa or any members of this committee didn't care about the theft of intellectual property. My reference was to people not sitting up here, but maybe a few people sitting out there and some other people who are very directly involved, including some of the people who spent some money taking out full page ads and some of the companies that the gentleman from Colorado read in opposition to say for 3 years I have been trying to have a real discussion with some of them about things that we could be doing and they could be doing to affirmatively help us deal with the problem of digital theft. And very little has happened. There has been very little response. So let me --

Mr. Chaffetz. Will the gentleman yield for a quick question?

Mr. Berman. I will. And I will be done in just a moment, but I will yield then. So that was my point. Everybody comes in now with a lot of arguments, and maybe some good ones, on this particular bill. But a lot of the folks who are raising those issues outside have not been interested at all, and to some extent I have to say, and I understand it, are profiting by the current situation, and in our effort to establish a non-legislative dialogue about what could be done about this have come essentially to no avail, because the digital millennium

copyright isn't, clearly in and of itself is not the answer, something more has to be done.

And then with respect to notice I got to say, let's not talk about the date the manager's amendment was filed, how long ago did we have a hearing about what ICE was doing about domain names? How long ago did the Senate introduce a bill? I believe it wasn't the beginning of this year. I think they had a bill in the last Congress on this subject and of course a bill this year. This is not, oh, all of a sudden we woke up on Monday or when this bill was introduced 5 weeks ago and hear about this stuff. This has been discussed, written about, talked about for years. So let's put all this notion of the last minute and all that into a context that is real.

Mr. Chaffetz. Will the gentleman yield?

Mr. Berman. And I yield.

Mr. Chaffetz. Thank you. I appreciate the clarification about the sincerity about the members that serve on both sides of this aisle, and given your concern and need to determine a remedy, is it unreasonable and would you stand with us in putting a hold on this bill so that we can have such a hearing? That is all I am asking for at this point, is let's have a hearing, bring in the nerds and get some real answers to what questions this body can't answer. Is that unreasonable?

Mr. Berman. By the way, are they questions about what is wrong with this bill or are they questions about what can our U.S. companies and, if need be, the Congress do about effectively dealing with this

problem? Because I have been trying for years to get them engaged in this and they haven't. And so that is the context in which I most regrettably object.

Mr. Chaffetz. Will the gentleman yield?

Chairman Smith. The gentleman from California has the time.

Mr. Berman. I will yield.

Mr. Chaffetz. My guess is you got most of their attention and so --

Mr. Berman. I didn't. That was the problem.

Mr. Chaffetz. I think you have their attention now. Would you concur that it would be prudent to have a hearing dealing with the cybersecurity issues and the ramifications of this manager's amendment? Isn't that a reasonable stance?

Mr. Berman. I think the reasonable thing is to show the seriousness of our intent by moving this bill forward.

Mr. Issa. Will the gentleman yield? Mr. Berman, would the gentleman yield?

Mr. Berman. Yes.

Mr. Issa. You know, I generally agree with you on a great many things, but you know when redemption is found or at least alleged you usually look for to follow it up. But in this case it is even more than that. If there is any chance that the bill is not good, if you believe some of us nerds that the bill in its current form is not good why wouldn't you want to know, because even if people will never be with you, and maybe these search engines will never be with you,

wouldn't it be right to do this research to find out so that at least we do no harm, harm that could hurt our economy in dramatic ways?

Mr. Berman. And my view is because of that problem the chairman put together a manager's amendment which massively changed this and addressed the issues that you are talking about now. Not to your satisfaction, but --

Mr. Issa. But not to the public having access to a forum in which we could hear it before a committee, which is much more the tradition.

Mr. Quigley. Mr. Chairman?

Mr. Issa. I yield back.

Chairman Smith. The gentleman from California yields back. Does anyone on this side wish to be recognized. The gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. Thank you, Mr. Chairman. A number of points I want to make about this in opposition to this amendment which doesn't come with an alternative. And I think the point I want to make is that all year long I and others who have been working on this have said to those who come to say, oh, we don't like this DNS, blocking DNS filtering, I have said, well, what alternative can you give us, and it is always follow the money. Well, follow the money imposes a burden on the financial services industry, following the advertising places a burden on the advertising industry. But no one has been willing to come forward and say here is a way that those involved can help.

Now, having said that the National Cable Television Association has provided a letter in support of this bill. Why would the ISPs who

rely on the safety and security of the Internet support a bill that jeopardizes their ability to save their customers? And we have letters from some of their customers as well.

So in terms of the nerds the gentleman from Utah has referred to I don't know that they want to be characterized this way, but here is a piece that is 6 months old in response to this same debate that has been going on all year because the Senate has the same issue in their legislation called DNS filtering is essential, DNS filtering is essential to the Internet. The charge that DNS filtering would devalue and fragment the official DNS system of the Internet is inconsistent with reality. Two of the main pirate DNS alternatives that have sprung up to combat government seizure of pirate and counterfeit websites opted not to replace the official DNS system because that would have been very costly for the pirates and problematic for their users.

Ms. Lofgren. Will the gentleman identify the source?

Mr. Goodlatte. I will not yield. I have got a lot of stuff I want to cover and not much time.

There is no evidence of DNS fragmentation, he says. That is a professional, a network engineer who built and designed wired network, wireless network, Internet storage, security and server infrastructure for various Fortune 100 companies. He has also certified information systems security professionally. He was technical director and editor at large at ZDnet.com and wrote one of their most popular blogs, Real World IT.

Then we have another piece -- Mr. Chairman, I will ask these be

put in the record -- from the Information Technology and Innovation Foundation by Daniel Castro, TIPA and SOPA responding to critics and finding a path forward. He rebuts the charge that DNS filtering impedes DNS sect deployment.

Chairman Smith. Without objection.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Goodlatte. He rebuts the charge that DNS filtering is too broad of a tool. He rebuts the charge that DNS filtering poses security risks to users. He rebuts the charge that DNS filtering will fragment the global DNS name space. He rebuts the charge that DNS filtering leads or will lead to alternative DNS systems.

Then and probably most interesting of all we have a blog, the innovation policy blog. I ask this be made part of the record as well. DNS filtering is an American innovation. And it is designed to address the letter that the gentleman from Utah raised earlier in particular, signed by one of the DNS experts Paul Vixie, who complained bitterly about what is proposed in this legislation.

But Mr. Bennett goes on to say, it is interesting to contrast the view in this new blog post with a post Mr. Vixie published last February announcing the addition of a domain blacklisting feature to the Internet's most popular DNS server software. Bind, B-I-N-D, a product maintained by his firm, Internet Systems Consortium, the post titled Taking Back the DNS highlights the fact that most new domains are malicious and describes a feature newly added to Bind -- that is his term, most new domain names are malicious -- that enables ISPs to make such domains effectively disappear from the Internet. His rationale was very straightforward. This is Mr. Vixie saying this.

Society's bottom feeders have always found ways to use public infrastructure to their own advantage, and the Internet has done what it always does, which is to accelerate such misuse and enable it to scale in ways no one could have imagined just a few years ago. Like

when we wrote the DMCA a dozen years ago. Just as organized crime has always required access to the world's money supply and banking system, so it is that organized e-crime now requires access to the Internet's resource allocation systems. They are using our own tools against us while we are all competing to see which one of us can make our tools most useful.

This -- and this is Mr. Bennett speaking now. This all seems quite sensible so Congress has followed Vixie's lead in including domain blacklisting in Protect IP and in SOPA. Despite the objections raised by the DNS experts to these bills domain blacklisting remains a supported feature in Bind, that is Mr. Vixie's product, and was recently upgraded from version one to version two. The feature's formal name is Response Policy Zones, or RPZ. One likely effect of the passage of TIPA and SOPA --

Chairman Smith. Without objections, the gentleman is recognized for an additional minute.

Mr. Goodlatte. Thank you. -- would be for vendors of competing DNS systems to adopt the RPZ feature and make it a de facto standard.

We will rely upon the Internet nerds to solve this problem and make it work the way it needs to work going forward. We don't have the technical ability in this committee to do that, we never will, we never will. But because we want to be absolutely sure we put the provision in that Mr. Berman referred to earlier, no impact on security or integrity, nothing in title I shall be construed to authorize a court to require compliance with an obligation under section 102(c) in a

manner that would impair the security or integrity of the domain name system or of the system or network operated by or on behalf of the party subject to the obligation.

Now, having said all of that, this is not a new issue. This is not novel to the Congress, it is not novel to our government and it is not novel to the technical engineers on the Internet, because we use it right now for child pornography. We use it right now to stop malware from infecting people's computers. We use it right now to stop spam from reaching people on the Internet. And we use it right now to combat spyware on the Internet. It is not inappropriate to use it in this circumstance, and we have had protections and measures, and we have listened to the technical engineers, and I continue to talk to and continue to listen to the technical engineers about making changes to this.

But I will also say this, that if they have a better idea, I am looking for the amendment in this stack of 70 amendments that has the better idea that can do something different, but I haven't seen it, and so my assumption is they don't want to give us a better idea, they want to kill the bill. I urge you to oppose this amendment.

Chairman Smith. Thank you, Mr. Goodlatte. The gentleman from Illinois, Mr. Quigley.

Mr. Quigley. Thank you, Mr. Chairman. I do cringe a little bit in that -- to the entire world a side point here. We are referring to people that we are talking about being so important, the technical experts as nerds. So at least we should give some thought to respecting

those people that we are claiming to be so important.

RPTS BLAZEJEWSKI

DCMN ROSEN

[3:45 p.m.]

Mr. Quigley. I want to stress a couple points. First, Mr. Berman was absolutely correct in stating not the majority, but certainly a significant number of those people who are contacting our offices have a vision of the Internet that is unacceptable. It is that it is the wild west, it is this utopia of freedoms that encroach upon other people's property rights for one thing, and they care little for that. I mean, they like the idea that at one point in time it was very, very easy. It is still illegal and impossible to download music without paying the people who wrote it or created it or composed it or anything at all. They just didn't care, and they still don't.

So I think we need to appreciate that those who want this bill to stop because their version of the Internet is a world without any boundaries or borders or decency or respect for people's --

Mr. Chaffetz. Will the gentleman yield? Will the gentleman yield?

Mr. Quigley. Not questioning your sincerity.

Mr. Chaffetz. Thank you. I would just encourage and hope that you and the other members, the gentleman from California and others would look at the bill that I introduced with Senator Ron Wyden which had to do with personal privacy on the Internet, and it talks about geolocation and privacy.

Mr. Quigley. Yielding --

Mr. Chaffetz. So I want -- we need to be careful on how we do this.

Mr. Quigley. Reclaiming my time. I appreciate that. But I just think we need to understand where everybody is at on this. And, finally, there are those that think that we should hold off and perhaps not continue the markup. Let me tell you, I have only been here a short period of time like you have, sir, and the fact of the matter is people get serious about an issue when there is a markup. If there is an occasional hearing about something, we dutifully sit and listen to them and ask questions, and then it goes away for another day to be considered. The brilliant folks out there who are advising us on both sides, and that is particularly helpful, are doing so at a fevered pitch because there is a markup. If this was another hearing, it would be a much more laid back occasion. What I am suggesting here is the only reason this thing is ever going to move forward is if the chairman schedules a markup. Now, we may not finish today, and if there is 70 more amendments, I am sure we won't, but it is moving the issue forward.

We have agreed now with all -- everybody's sincere and that we want to move forward. The only difference is, I am suggesting if you don't have a markup scheduled, nothing happens in this town.

Mr. Chaffetz. Will the gentleman yield?

Mr. Quigley. Certainly.

Mr. Chaffetz. I would concur, it gets everybody's attention to have a markup, but I would also suggest that the comments from Mr.,

from the gentleman from Virginia were also very sincere and kind of helped drive home my point. There is controversy about this from the technical side of it, and we, and correct me if I am wrong, but my short time here, we have not had a hearing specific to the technical aspects of this bill, and that is my point. Yield back.

Ms. Lofgren. Would the gentleman yield?

Mr. Quigley. I will go in order, so I will yield to the gentlelady behind me.

Ms. Lofgren. I thank the gentleman for yielding. Our colleague from Virginia, the chairman of the subcommittee, has identified, I think, three individuals who I think are funded by the movie industry to object. The vast -- we got a letter today from 83 Internet engineers, the people who designed the Internet, warning us that this is a catastrophe. We have a letter from Sandia Labs -- I mean, that isn't a party to this, they don't have a policy fight in this, they are neutral -- saying that this is a catastrophe. We have a letter today from Stewart Baker who he isn't a partisan on the issue of Internet piracy, he is a guy who knows about the Internet, he was general counsel of the NSA for years in the Bush administration, who cautions us not to do this because of the Internet architecture.

To say that three people who were funded by an interested party is the equivalent of the entire Internet world in terms of engineers and scientists is preposterous. Yes, there is a controversy, but the controversy is why we would listen to people who have been paid to say something that is wrong in the face of the entire Internet science world

saying this is a catastrophe. That is the controversy and the mystery, and I thank the gentleman for yielding.

Mr. Issa. Would the gentleman yield?

Mr. Quigley. Mr. Issa.

Mr. Issa. I thank the gentleman. You know, Mr. Quigley, you and I serve just next door, and I know that you haven't been the proponent of saying it, but if I ever moved a bill in which I had had such a limited kind of hearing, a structural bill that required people to do something, it would be incredible next door. Wouldn't you agree that I have never moved a major piece of legislation without substantive, you know, hearings on what it involves?

Mr. Quigley. So you are implying that something -- I may be misreading you, but you would sort of be implying something about the chairman of this committee.

Mr. Issa. Well, for example, postal reform --

Chairman Smith. The gentleman's time --

Mr. Issa. No, postal reform, we have had, I think --

Chairman Smith. The gentleman's time has expired.

Mr. Issa. Mr. Chairman, I --

Chairman Smith. Just in time.

Ms. Jackson Lee. Mr. Chairman.

Chairman Smith. And is there someone else who seeks recognition over here?

Ms. Jackson Lee. Mr. Chairman.

Chairman Smith. The gentleman from California, Mr. Lungren.

Mr. Lungren. Mr. Chairman, my good friend who sits directly to my left just articulated a point of view from several people which I think proves my point, there is controversy of a technical nature, and Mr. Quigley may think that hearings don't have much of an impact on members. I would care to differ with him. I came to the last and only hearing that we had on this with the expectation I would have some answers as a result of having technical people here. I have always found in hearings that it is best to have people of differing points of view who are experts in the same area so that we can, in fact, test them one against the other, much as we do in a courtroom with cross-examination. Now that may be limited because that is my experience, but I have found that it is one way to get to the facts. One of the problems I find in this debate is we can't even agree on the facts, and if you can't agree on the facts, it makes it difficult to implement your policy.

I know this: As the chairman of the Cyber Security Subcommittee on the Homeland Security Committee, my inquiries into those who are considered to be experts in the area of cyber security is that the approach we take in this bill is at least troublesome. I am not sure I would use the language the gentlelady from California has used as catastrophic, but it is somewhere between catastrophic and troublesome.

If that happens to be the case, I do not know why we cannot have the time to consider this, to have those experts, and this, with all due respect, this red herring of you don't have the amendment that gives

us the answer when I am telling you I am not sure we know what all the questions are is nothing more than a red herring. We are being asked to pass fundamentally important and changing legislation with respect to the operation of important parts of the Internet without the information base I think that we need, and I would agree with my friend, the gentleman from Virginia, that we won't become the technological whizzes by having experts here, but it will give us a better base upon which to make a judgment.

In a courtroom, when you have a jury, you don't have all experts in the jury box. You have jurors who are supposed to apply their common sense based on the evidence presented to them, and one of the best things to do with an expert is an expert who can convert their knowledge into language that other people can understand so they can make a considered judgment. That is all I am asking for us to be able to do here. And I know we have two or three people saying that the DNS blocking is not going to affect our ability in protecting cyber security, the operation of the Internet, but we have got a whole slew of people on the other side, and I just know from my perch in the cyber security arena, they are warning me that we ought not to take this step.

Now, maybe we ought to go forward and then listen to them later on, or maybe it makes more sense to try and bring them into the argument and make the decision. At least it seems to me that is the best way for us to do it. And so I don't question anybody's motivation here or anybody's commitment to protecting intellectual property. What I question is our judgment here, and our judgment is to be questioned

if we are rushing to something when it appears that there are remaining huge issues of controversy not with respect to the policy, but with respect to the underlying facts, and if you want to get a bad jury verdict, all you have to do is make sure that there is no understanding of the facts, and frankly, I think the debate here has shown that we do not understand the facts underlying the decisions that we are making.

Mr. Sensenbrenner. Will the gentleman yield?

Mr. Lungren. I will be happy to yield.

Chairman Smith. The gentleman from California still has the time.

Mr. Sensenbrenner. Mr. Chairman, I think the gentleman from California has made a good point. There are 60 amendments on the roster, there are probably a dozen or so more that are not on the roster. We are not going to get done with this today, we are not going to get done with this tomorrow, and we are not going to get done with this, you know, before we adjourn for Christmas. What -- how is your side of the argument prejudiced if we have this hearing and then resume the markup, and we will be able to have more of the facts and perhaps less of the debate, more of an agreement. I yield back to the gentleman from California.

Mr. Lungren. Maybe we can get a unanimous consent that no one will ask that the bill be read again so that we can take --

Mr. Issa. Would the gentleman yield?

Mr. Lungren. I would be happy to yield to my friend from California.

Mr. Issa. I for one certainly would feel that --

Chairman Smith. The gentleman's time has expired. Without objection -- the gentleman is recognized for an additional 30 seconds.

Mr. Lungren. I will be happy to yield to the gentleman.

Mr. Issa. I thank the gentleman. I, for one, second that, that we would be more harmonious and more typical of the way we have been if we are allowed to bring in experts for and experts against, whether they are one panel of both together or two, it would fit within the history of how we have done these things, and I think when we look at the background, we have had that.

Also, Mr. Chairman, I would ask unanimous consent at this time that the letter from NetCoalition.com and the red line of this bill be placed in the record. This was sent to the chairman on December 6th. Obviously they were not prepared to see the manager's amendment, but I believe that their red line, which was asked for, and they responded to, certainly would make for a good base of information for all members to have.

Chairman Smith. Without objection, the gentleman's time has expired.

Mr. Nadler. Mr. Chairman.

Chairman Smith. The gentleman from New York, Mr. Nadler, is recognized.

Mr. Nadler. Thank you. This has been a most interesting discussion, which I plan to continue listening to with specifically the gentleman from North Carolina, to whom I now yield.

Mr. Watt. I thank the gentleman for yielding, and I just want to make a couple of points. First of all, I want to go back to what my friend, Ms. Lofgren's comments she made and discourage any of us from talking about who has been bought off or even experts. There has been a lot of money floating around in a lot of different places on this issue, and I just don't think it is worthy of us to be talking about who got bought off and who got hired by whom, especially when we start identifying the people.

Mr. Polis. Will the gentleman yield for a moment?

Mr. Watt. Let me just finish.

Ms. Lofgren. Would the gentleman yield because I don't think I used the word "bought off," and I would like to take exception to that.

Mr. Watt. But I am -- and this is not a negative comment about what you said, I am just trying to get us to be who we ought to be always in this committee and stop questioning, I mean, because if we start that, we could go way off into the deep. I just, it is just not a good practice.

For a second, I am reminded of Yogi Berra's comment, It is déjà vu all over again for me in this way. For all of the last term of Congress, I sat in the Financial Services Committee, and a lot of these arguments that I am hearing today are the same arguments that I heard about derivatives. Well, I didn't know a damn thing about derivatives. I am still not sure I do. But what I did know was that -- and the experts on one side were telling us that derivatives were the salvation for the economy, and experts on the other side were telling us that

derivatives and CDOs and all this stuff that apparently appeared to have driven the economy into the abyss were the worst things that could possibly happen.

You know, I just -- I don't think we are going to be able to resolve this with a bunch of experts coming in because, with fairness to everybody, the people involved in this issue have enough money, otherwise influence, to get experts on both sides of this issue to come in here and tell us.

I think we have addressed in the manager's amendment, set up a framework that allows a judge, that allows the Attorney General, that allows the people who ought to be making these technical decisions, whether we are invading the Internet or exposing our security to make the decisions about this. I agree with Mr. Lungren, I practiced law for a long time. The people who make these decisions are not experts. We are not experts, but we have set up a careful framework where nothing can happen without a judicial intervention, and we can have as many experts as we want come in here, I guarantee you if we had 15 more hearings, as we did in Financial Services on derivatives and all these complex financial things, and still after we passed the bill, without a single hearing, people cut off the money to enforce what we did. They didn't have no hearings about it, right?

Mr. Lungren. Would the gentleman yield?

Mr. Watt. Be honest now. Hey, I am being real here.

Mr. Lungren. All right. Would the gentleman yield?

Mr. Watt. It is not my time, but I will be happy to have Mr. Nadler

yield to you if you are going to admit to what I am saying.

Mr. Lungren. I will admit there was no hearing before that vote, but could I ask this question?

Mr. Watt. All right, let me give you another example.

Mr. Lungren. Would there be -- would there be an objection --

Mr. Watt. I mean, we had hearing after hearing after hearing --

Ms. Jackson Lee. Mr. Chairman.

Chairman Smith. The gentleman's --

Mr. Watt. -- when Mr. Sensenbrenner was chairman. I ask unanimous consent for the gentleman to have 1 more minute and ask him to yield.

Chairman Smith. The gentleman is recognized without objection for 1 more minute.

Mr. Nadler. And I will yield.

Chairman Smith. And the gentleman from New York has the time.

Mr. Nadler. I yield.

Mr. Watt. When Mr. Sensenbrenner was chairman, we had megahearings about the PATRIOT Act, right? So we draw the bill and we go to the Rules Committee, and they rewrite the bill without a single hearing.

Mr. Lungren. I can only hope.

Mr. Watt. Right? Okay, well. Hey, you know, I am a hearings guy, you know. I think we need to make informed decisions, but I think you all are overblowing the importance of a hearing here, and I don't think we are going to get through with the markup. I mean, as a

practical matter, this is going into next year anyway, but I don't think it ought to be going into next year for hearings, we ought to be proceeding with the markup and trying to get through with this. That is the same thing I said to Ms. Lofgren before the bill was dropped. I said, I don't think anybody is really going to get serious about this until we do have a bill.

Chairman Smith. The gentleman's time has expired. I believe that the gentlewoman from California, Ms. Waters, has a short --

Ms. Waters. I move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Waters. Mr. Chairman, I would like to have a colloquy with you for the length of time that I have.

Chairman Smith. Yes.

Ms. Waters. Mr. Chairman, are you committed to moving forward with this bill today?

Chairman Smith. Yes, I am.

Ms. Waters. Are you committed to the proposition that you have spent a generous amount of time on putting together a manager's amendment that has addressed many of the concerns that were identified?

Chairman Smith. Absolutely convinced.

Ms. Waters. Mr. Chairman, I think there are some members on this committee who don't know that you are convinced, and they think that they can hold up moving forward with this markup today if they keep talking. Would you please let them know that you are going to go forward with this bill today so they can stop trying to influence you

so that they -- and they won't --

Chairman Smith. If the gentlewoman will yield, yes, I have every intention of going forward today, tomorrow, and however long it takes.

Ms. Waters. However long it takes; is that right?

Chairman Smith. That is correct.

Ms. Waters. Mr. Chairman, do you think all of the members heard what you just said?

Chairman Smith. I am sure they did.

Ms. Waters. Well, in that case, Mr. Chairman, would you use the gavel and your influence as the chairman to help move this along and stop your colleagues from wasting all of our time?

Chairman Smith. And we will do our best to expedite.

Ms. Waters. The gentlelady only yields to the chairman so that he can repeat himself ad nauseam.

Chairman Smith. Does the gentlewoman from California wish to yield back her time or does she wish to --

Ms. Waters. The gentlelady from California yields to the chairman. Are you convinced that your colleagues heard you, Mr. Chairman?

Mr. Lungren. I object, leading.

Chairman Smith. Am I convinced that my colleagues have heard me? Yes.

Ms. Waters. Yes.

Chairman Smith. I am.

Ms. Waters. Do you need any -- how much more time do I have?

Chairman Smith. They may have heard me, they may not heed me.

Ms. Waters. Well, I think you can encourage them to move forward once they understand that no matter how long they obstruct that you are going to proceed, you are going to move forward.

Chairman Smith. With you at my side, I will go forward, yes, that is correct.

Ms. Waters. All right. Thank you, Mr. Chairman.

Chairman Smith. Thank you, Ms. Waters. Is there anyone else who wishes to be recognized on this amendment?

Mr. Jordan. Mr. Chairman.

Chairman Smith. The gentleman from Ohio, Mr. Jordan, is recognized.

Mr. Jordan. Thank you, Mr. Chairman, before yielding to my colleague, let me just say that it is not always a bad idea to take a little more time. In fact, I know there are members probably on both sides of the aisle who wish that yesterday we would have taken a little more time on the Defense Authorization Act where there was a real concern about detainees, American citizens. So it is not always a bad idea to do that, and we want to get a remedy here, we want to get to a solution, but it is not always bad to, particularly when you are making the law that is going to apply to this great country, it is not always bad to take a little extra time, and with that I would yield the remainder of my time to the gentleman --

Mr. Issa. Would the gentleman yield to me for just a second to make the chairman aware of something?

Mr. Jordan. Yield, first to the gentleman from California.

Mr. Issa. I thank you. Mr. Chairman, I would note that there is a conference going on now, and I realize it is a Republican conference, but that conference is about how we come together to get out of here for Christmas and that the members who are here on our side of the aisle are here because we think this is important, but I might strongly suggest that after this particular round, as soon as possible, we be allowed to have a short recess so we can participate in that conference and hopefully bring to a close the first session of Congress. I yield back. Thank you.

Mr. Polis. Will the gentleman yield for a moment?

Mr. Jordan. Yield first to the gentleman from California, and then I would be happy to yield.

Mr. Lungren. I would just put on the table the possibility that we might ask for a classified briefing from those at DHS and NSA with respect to the DNSSEC program and whether or not, in fact, there is a basis of concern that this particular remedy contained in this bill does demonstrable damage to that program to protect the Internet upon which so much work has been done by DHS over the last 8 years.

Mr. Jordan. Yield to the gentleman from Colorado.

Mr. Polis. Thank you. Again, I just want to briefly respond to the gentlelady from California, Ms. Waters, and to the chair as well. I don't sense that anybody here is being dilatory for the sake of being dilatory. I think there are real issues that have been raised. There is a real desire to hear from engineers and professionals. I think

that there are real concerns about a bill, and there is hesitancy to support a bill from people that otherwise might support it. I think this bill can and should have a strong bipartisan majority for it, but all the questions that I have heard from my colleagues on both sides of the aisle that need to be answered have not been raised in the dilatory sense, they have been raised in a very sincere sense, and I hope the chair appreciates that, and I will yield back to my friend from Ohio.

Ms. Waters. Will the gentleman yield?

Mr. Jordan. Let me yield first to the gentleman from Utah, and if I have time, then I will yield.

Mr. Chaffetz. I appreciate those comments. I concur with the gentleman from California who suggests a classified briefing would also be in order. The reality of the calendar, Mr. Chairman, is that -- and as the gentleman from California indicated, this problem has been going on for years. If we were to simply, as a body, take 7 legislative days to become more informed, because I am not going to plead that perpetuation of ignorance is a good thing, and we ought to move the bill forward anyway. I don't think that is a good strategy. I think it is a bad precedent. Certainly 7 legislative days would be a reasonable time to get through some of these core questions.

I may still ultimately vote no, but I might vote yes, but even if I were to vote no, I think it would be the smart, prudent thing to do. It is the right thing to do for this body. We cannot get this wrong, and there is nothing magic, there is nothing that is going to

expire at the end of the year, there is nothing that, you know, magical has to happen before Christmas. Let's make sure we make the right move because even today, even today the manager's amendment, the very first amendment was an amendment to the amendment because we didn't get the definition of Internet service provider right.

I think that was the one that was Mr. King's, Mr. King's amendment. Domestic Internet site. We have to get this right. I want to get it right, and I think 7 legislative days, a classified briefing would be a prudent move, and I can't imagine an argument against that.

Ms. Waters. Will the gentleman yield?

Mr. Jordan. Yes, I will yield.

Ms. Waters. Thank you very much. It is the ordinary course of business to amend a manager's amendment. It is nothing unusual about that. As a matter of fact, it is the ordinary course of business, and usually even with the manager's amendment we could have scores of amendments.

Mr. Jordan. Let me just reclaim the time. The gentleman from Utah.

Mr. Chaffetz. Responding to that, what was agreed to was not the amendment. The agreement was we need to clean it up later. That was the agreement on the definition of domestic Internet site. It was not that we accepted the amendment. It was, all right, we don't know what the answer to that is, and we will fix it later. That is the highlight of a major bill, and a very basic definition, we haven't even got that part right.

Ms. Jackson Lee. Mr. Chairman.

Mr. Issa. Would the gentleman yield?

Chairman Smith. The gentleman from Ohio still has the time.

Mr. Jordan. Yield to the gentleman from California.

Mr. Issa. I don't want to be derisive, but whenever we don't understand basic things that are in the bill, then what we are saying is let's pass the bill and then find out what is in it. Now, on both sides of the aisle we don't ever want to hear that word said about anything we do again. So, please, please, let's find out what is in this with facts before we move forward. Thank you.

Ms. Waters. Will the gentleman yield?

Ms. Jackson Lee. Mr. Chairman.

Chairman Smith. The gentleman's time has expired.

Ms. Jackson Lee. Mr. Chairman.

Chairman Smith. The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. Jackson Lee. Thank you very much, Mr. Chairman. I have waited patiently for several points that I would like to make. First of all, let me join with, I think the gentleman, Mr. Jordan, who indicated that it is appropriate that we have a thoughtful discussion, and I thank him for that, and to the gentleman from California, both of us sit on the Homeland Security Committee, and maybe one or two others, I am looking, and I have raised the point that you have raised, Mr. Lungren, but I would also raise the point, I will use the layman's term about the architect of the Internet is fast changing.

And so my concern is with the legislation and not taking the time whether or not the bill fits to the uniqueness of what we are regulating, and I am as willing to write legislation that interjects the Attorney General and courts as anyone else. As a lawyer, I pride in the judicial system, but the architect of what we are dealing with, the creativity of the Internet, may, in fact, be, if you will, diminished severely by the structure of this. On one hand, the security of the Nation, on the other hand, being able to complement the architect of what we are regulating with how we have done so.

And then, Mr. Chairman, if I might have a moment of personal privilege and just cite for my colleagues, because I do think that we should be respectful of each other, I am reading a tweet that has gone out from "GOP Rep King, Bored by the dialogue of Representative Jackson Lee." I have no reason to think that anybody cares about my words, but I would offer to say that Mr. King owes the committee an apology, said that we are debating the Stop Online Piracy Act and that he is killing time by surfing the Internet. I have never known Mr. King to have a multi-task capacity, but if that is his ability, I do think it is inappropriate while we are talking about serious issues, to have a member of the Judiciary Committee be so offensive. So I am putting on the record, he is not here -- I --

Mr. Sensenbrenner. Chairman, I demand the gentlewoman's words be taken down.

Ms. Jackson Lee. Well, I am not taking them down, so you can break this hearing because I am not. I would ask Mr. --

Chairman Smith. The gentleman will --

Mr. Sensenbrenner. Mr. Chairman, I demand the regular order.

Chairman Smith. The gentleman will --

Ms. Jackson Lee. I would ask -- excuse me, I am in the middle of my dialogue, and I will continue.

Chairman Smith. No, the gentlewoman will suspend.

Ms. Jackson Lee. I have a personal privilege at this point.

Chairman Smith. The gentleman from Wisconsin will state the words he wishes to be taken down?

Mr. Sensenbrenner. I wish to have the words taken down where the gentlewoman said that Mr. King of Iowa was being offensive.

Chairman Smith. Let me ask the clerk or the stenographer to read that part of the transcript if she is prepared to do so that included that word.

Let me ask the stenographer, is she going to be able to find those words or --

Okay. While she is checking, let me ask the gentlewoman from Texas, Ms. Jackson Lee, if she would consider whatever words might be discovered that deal with the word "offensive" might ask that those words be withdrawn from her statement.

Ms. Jackson Lee. Mr. Chairman, let me thank you for your courtesies. You have been enormously patient. And, frankly, if my colleagues heard me, I asked that Mr. King give the committee an apology for reflecting badly on the committee, as we are debating a very important --

Mr. Sensenbrenner. Mr. Chairman, I demand the regular order.

Ms. Jackson Lee. And so --

Chairman Smith. Will the gentlewoman from Texas respond to my request, would she be willing to ask that those words that deal with the word "offensive" be removed from her statement?

Ms. Jackson Lee. I am not aware of why Mr. Sensenbrenner is making this request, but I will not.

Chairman Smith. You will insist on those words?

Ms. Jackson Lee. And until the -- if you will allow me to speak, I believe that Mr. King, who is not here, should apologize to the committee.

Mr. Sensenbrenner. Mr. Chairman --

Chairman Smith. Well, that is beside the point. We will wait for the stenographer and give everyone a chance to think about it for a minute.

There if you could read the words, that would be great.

The Reporter. Okay.

[The reporter read the record as requested.]

Chairman Smith. Okay, I thank you. I'll bet you haven't had to do that in a while, have you?

The Reporter. No.

Chairman Smith. You did a good job. Thank you.

May I ask the gentlewoman from Texas, my colleague and friend, if she might consider just asking that the record not include the word "offensive," and then we can move on. We won't, in doing so, we won't

prejudice her one way or the other as far as her remarks go, and we can certainly discuss with the gentleman from Iowa and I will, at a later time, some of the suggestions that the gentlewoman has made.

Ms. Jackson Lee. Mr. Chairman, if I might inquire, if I am to be cooperative, then I would expect --

Mr. Sensenbrenner. Mr. Chairman, I demand the regular order again.

Chairman Smith. The gentleman from Wisconsin knows the rules of the committee very well, and so may I repeat my question to the gentlewoman from Texas, would she consider removing the word "offensive" from the record, and then she and I can continue to discuss the subject, and I will continue to discuss the subject with the gentleman from Iowa as well?

Ms. Jackson Lee. Mr. Chairman, if I could probe you just a little bit more, because at this time I am not inclined to do so. I am trying to determine what response will I draw through this committee --

Chairman Smith. Let me say to the gentlewoman, because we need to move on and get an answer, that the word that was used might well be taken to have impugned the integrity of a member of this committee, and therefore, I am trying to avoid having to make an official ruling to that effect, and I would appreciate it personally if the gentlewoman would consider just having that one word stricken from the record.

Ms. Jackson Lee. Mr. Chairman, is it possible for me to consult with the parliamentarian?

Chairman Smith. Of course.

Ms. Jackson Lee. And I would appreciate doing so, please.

Chairman Smith. Okay.

Ms. Jackson Lee. Is there one here available or can we call the one from the House?

Chairman Smith. There is one standing behind me who will make his way down to your chair.

Ms. Jackson Lee. Is he posing to be objective or he is inclined to be --

Chairman Smith. Now, don't -- wait a minute.

Ms. Jackson Lee. I only asked a simple question.

Chairman Smith. She is not questioning the parliamentarian's --

Ms. Jackson Lee. Is he making his way down? Is it a gentleman or a lady?

Chairman Smith. The gentleman is making his way down.

[Discussion held off the record.]

Chairman Smith. We will resume regular order. The gentlewoman from Texas, Ms. Jackson Lee, continues to be recognized.

Ms. Jackson Lee. Thank the chairman for the consultation. I think I have made my point, and I ask unanimous consent to revise my comments, Mr. Chairman, such that I would strike the word "offensive" and indicate impolitic and unkind and hope that we will move forward in a collegial manner.

Chairman Smith. With that objection, thank you, Ms. Jackson Lee, appreciate that. We will now conclude our debate on the Issa amendment.

Mr. Polis. Mr. Chairman. Mr. Chairman.

Chairman Smith. The gentleman from Colorado, Mr. Polis, is recognized.

Mr. Polis. Thank you. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Polis. Thank you. You know, there has been a few -- in the debate of this particular amendment which I support, there has just been a few mischaracterizations that I do want to address.

First of all, online piracy is damaging to all of us. We have all suffered from it, we all suffer from it in terms of the additional cost that we have to pay for our own entertainment. I have suffered from it professionally, having run a chain of movie theaters, having a Web site that was ripped off and had content copied across the Internet with very few ways to drop it.

So there have been some questions about, you know, motivations and who is committed to that. I think everybody on this committee is committed to addressing Internet piracy. I think that many of the opponents of this bill are strongly committed to reducing Internet piracy. It is just a question of including everybody in the discussion. There has been some discussion about whether the Internet is somehow a lawless place. It is not. The same laws apply to crimes committed on the Internet as via any other mechanism. If you sell drugs via the Internet, you sell illegal drugs over the telephone, if you sell them on the street corner, you are going to jail.

The Internet is never an excuse for anybody to violate criminal

law, copyright law, any type of law. It is a communications technology. It is a way that people talk and exchange data, you know. Does this coordinating over the telephone make it easier for someone in New York to commit a crime with somebody in California? Yes, it probably does. Does communications over the Internet make it easier to commit certain crimes? It probably does. Does it also allow detection mechanisms and give additional abilities to investigators that they didn't have absent the Internet? Yes, it does as well.

There has been some discussion of, in the personal context, of the word "offensive." I would apply the adjective offensive to these particular provisions of this bill that this amendment is eliminating, primarily blocking DNS. To explain this as a metaphor, it is akin to there being a crack house in a neighborhood where crimes are being committed. Now, the correct solution is you go in and you bust the crack house, arrest it, condemn it. That is a direct response. What, instead, we are trying to get at here is basically changing the street signs and the whole neighborhood in the hopes that people have a more difficult time finding the crack house, leaving it there, but also making it more difficult to get to all the nearby houses and the nearby streets, screwing up everybody's GPS system, resulting in a lot of lost and frustrated people, many of whom had no intention nor desire to ever commit an illegal act nor have they committed an illegal act.

I think that we, as a committee, can create an excellent work product in this area, and I think Mr. Issa has an excellent idea with the OPEN Act, but there are others that are complementary to that. That

is not a mutually exclusive approach where that has to be the end-all. I think there are excellent ways that we can make progress on this issue, but it is critical to hear from the experts, and I think Ms. Lofgren rightfully pointed out that overwhelmingly, Internet engineers that are disinterested in the sense that they are not on a particular payroll to create a particular opinion, disinterested experts overwhelmingly, I mean, I would almost say universally, universally by the hundreds, by the thousands believe that this is the wrong mechanism for enforcement.

Is it possible to find three that might have another opinion? It probably is, especially if they are under retainer to have that opinion. The resumé of the one gentleman that had the contrary opinion sounded more like the resumé of kind of an IT professional of an intranet than it did somebody who necessarily is fully versed in the architecture of the Internet, but, again, I think it is critical for this committee to resolve some of these unresolved issues, to get at what we all want to get at, which is protecting against piracy and counterfeit goods in a way that doesn't, first of all, isn't counterproductive and doesn't enable counterfeiters and pirates as some provisions of this bill do by further, driving further underground those who would violate, leading to the potential of distributed DNS becoming a mainstay rather than alternative decentralized DNS, and likewise doesn't have a lot of collateral damage among those who are law abiding, have law abiding goals, and are job creators as well.

So I hope that this committee does take the time to work through

this, and certainly we are doing that in the process of the markup. I don't believe any other remarks I have heard have been dilatory, they have all been very constructive, but additional information that needs to be provided to members, both formally through hearings as well as informally from experts, I think would help move this process forward and result in a work product that if it doesn't have universal support, will have stronger bipartisan support in this committee and also is, A, more likely to become law and, B, will be a better law for the country, both in terms of reducing privacy -- reducing piracy and in terms of reducing the potential collateral damage to other areas of the Internet.

Ms. Lofgren. Would the gentleman yield for just --

Mr. Polis. If I could have 30 seconds more, with unanimous consent, I will yield to the gentlelady from California.

Ms. Lofgren. A quick point. The point that you have made is an essential one --

Mr. Goodlatte. [Presiding] Without objection, the gentleman is recognized for 1 additional minute.

Mr. Polis. Thank you. I yield to the gentlelady.

Ms. Lofgren. -- for everyone to understand. Mr. Issa's amendment is a proper one. Getting back -- we have had a lot of discussion, but the fact that we would try and disappear a site on a search engine doesn't make the site go away. The site is there on the Internet, and you can try and, you know, disappear it from Bing, but you are going to find it some other way, you can type in the IP address,

you can go to a search engine that is not within our jurisdiction, the site is still there, which is why this amendment is prudent and why the manager's amendment is a mistake and will have collateral damage, but it also will not work, and I thank the gentleman for yielding.

Ms. Jackson Lee. Would the gentleman yield?

Mr. Goodlatte. Would the gentleman yield to the chair?

Mr. Polis. I do. I yield to the gentlelady from Texas and then who else requested?

Mr. Goodlatte. The chair.

Mr. Polis. Okay. Well, I will be happy to yield to the chair first then.

Mr. Goodlatte. I thank the gentleman for yielding. And then I will issue him additional time. First of all, if you permit me, I just want to put two letters in the record, one from the National Cable Telecommunications Association and one from Comcast in support of the legislation, but the point I wanted to make is that the argument that this won't always work is certainly true.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Goodlatte. It is also true of the follow-the-money approach. There are financial institutions outside the United States and customers outside the United States who will do business with a foreign site that is selling U.S. copyrighted works of U.S. authors or other products that we can't reach.

So, yes, we need to have as many tools as possible to combat this, and I also want to say that in reaching out to the tech community, we have gotten red lined, we have gotten proposals, we have made changes in the manager's amendment, and we welcome more. We are going to accept some of the amendments that are being offered today. I am going to support them. I don't know if the whole committee will.

Mr. Issa. This would be a good start.

Mr. Goodlatte. This one will not be one, but I will say to the gentleman from California that if there is an alternative out there that the tech community or individuals within it or companies within it wants to offer, that would be a better way for them to make a contribution about how to fight this crime on the Internet and not put all the burden on the financial services industry and the advertising industry, I have been looking for that all year.

Mr. Issa. The OPEN Act.

Mr. Goodlatte. I yield back.

Mr. Polis. Yeah, I thank the gentleman. I think if I --

Mr. Goodlatte. No, that is --

Mr. Polis. Perhaps 45 seconds, I will respond briefly and then yield to the gentelady from Texas. I believe that we can do better.

I believe that these mechanisms produce more collateral damage than they do correct protection. There are sins of commission and sins of omission equally as valid.

Mr. Goodlatte. Without objection, the gentleman is recognized for an additional 30 seconds.

Mr. Polis. I thank the chair, and it is critical to do it in a way that is more effective with less collateral damage, we can get there. Clearly if people weren't at the table before, they are at the table now, they are aware of this markup. I am convinced that everybody will be at the table to come up with a better solution. I yield to the gentlelady from Texas my remaining time.

Ms. Jackson Lee. I totally agree to the gentleman, and I would also thank the chair for acknowledging that some of our amendments may be considered, which speaks to the fact that we can get to a common ground. I just had a dialogue on the question of the word "offensive." I want to make it very clear that one of the issues I raised about this legislation is whether or not there is a First Amendment protection. I do not deny the First Amendment of Mr. King, by the way, it is impolitic and unkind, but First Amendment issues are extremely important. I hope that they are addressed. I have a First Amendment amendment and just simply say, can we have that kind of dialogue -- I say that to the chair because he is a strong sponsor of it -- that would get us to the point in this legislation that we could answer the concerns that have been expressed by many of us, one dealing with national security, First Amendment, and the infrastructure of the Internet as to whether it fits

under the scheme of this legislation. With that, I yield back to the gentleman.

Mr. Polis. I believe my time has expired. I yield back.

Mr. Goodlatte. The question occurs on the amendment offered by the gentleman from California, Mr. Issa. All those in favor respond by saying aye. Aye. Those opposed no. No. In the opinion of the chair the noes have it.

Mr. Issa. Mr. Chair, on that I request a recorded vote.

Mr. Goodlatte. The gentleman requests a recorded vote. The clerk will call the roll.

The Clerk. Mr. Smith?

[No response.]

The Clerk. Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Mr. Lungren?

Mr. Lungren. Aye.

The Clerk. Mr. Lungren, aye.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa, aye.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks, aye.

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz, aye.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei, no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman, no.

Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott, no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt, no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters, no.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch, no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez, no.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. And how am I recorded?

The Clerk. Not recorded, sir.

Chairman Smith. I will vote no.

The Clerk. Mr. Smith, no.

Chairman Smith. Are there other members who wish to be recorded?

Mr. Gallegly. Mr. Chairman.

Chairman Smith. The gentleman from California, Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Chairman Smith. The gentleman from Wisconsin.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner, aye.

Chairman Smith. The gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Chairman Smith. The gentleman from Ohio.

Mr. Jordan. Aye.

The Clerk. Mr. Jordan, aye.

Chairman Smith. The gentleman from Tennessee.

Mr. Cohen. How did the chair vote?

Chairman Smith. I voted no.

Mr. Cohen. I vote no.

The Clerk. Mr. Cohen, no.

Chairman Smith. You know, that is a smart thing to do. Are there other members -- the gentleman from Georgia, Mr. Johnson.

Mr. Johnson. I would like to change my vote to yes.

The Clerk. Mr. Johnson, yes.

Chairman Smith. The gentlewoman from California.

Ms. Chu. How am I recorded?

The Clerk. Not recorded, ma'am.

Ms. Chu. No.

The Clerk. Ms. Chu, no.

Chairman Smith. Other members who wish to be recorded? If not, the clerk will report.

Ms. Waters. One more.

Chairman Smith. The clerk will suspend. Oh, the gentlewoman from California.

Ms. Waters. No.

The Clerk. Ms. Waters, no.

Chairman Smith. Oh, the gentleman from Michigan.

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 12 members voted aye, 22 members voted nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to. Are there other amendments?

Ms. Lofgren. Mr. Chairman, I have an amendment at the desk.

Chairman Smith. The gentlewoman from California, Ms. Lofgren, is recognized to offer an amendment.

Ms. Lofgren. It is Lofgren 51, it is number 6 on the roster.

[The information follows:]

***** INSERT 6-1 *****

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Ms. Zoe Lofgren of California, page 16, line 23, strike "or", page 17 --

Chairman Smith. Without objection, the amendment will be considered as read. The gentlewoman is recognized to explain her amendment.

Ms. Lofgren. Mr. Chairman, the amendment makes clear that operators of domain name servers do not have an obligation to block a foreign Web site if it would impair the security integrity of the domain name system or their systems or networks. It makes network and DNS security and integrity an explicit defense for a service provider against legal action by the Attorney General to enforce any obligation. I think this is entirely consistent with the existing savings clause in your manager's amendment for network and DNS security and integrity. It simply ensures that the issue is fully considered by the courts at all stages of the new legal proceedings created by the bill.

The amendment also prevents a court from assuming that there must be some way for a service provider to block a foreign Web site based upon the requirement in Section 102(c)(1)(a). If there is no way for the service provider to block a Web site without impairing network security and integrity, then it should have no obligation to do so, and I think the amendment makes that very clear.

Now, the amendment makes explicit, as I said, the savings clause, and without the amendment I think a court is likely to read this bill

and assume that Congress must have intended that there must be some way for a service provider to block a foreign Web site. I do not believe that this is a safe assumption. We have had a lot of discussion here this afternoon, and I suspect we are going to have a lot more discussion about the technical issues that face us. While it is true that we have had no hearings and no testimony on the technical issues, we are not without some access to information on the subject. As I mentioned, and I would like to ask unanimous consent that we place into the record my letter to Dr. Leonard Napolitano and his response to me on the issue of cyber security.

Chairman Smith. Without objection.

[The information follows:]

***** COMMITTEE INSERT *****

Ms. Lofgren. I simply asked -- I mean, Dr. Napolitano is chair of the lab that does both classified and unclassified research in cyber. Clearly, he doesn't want to insert himself into the policy discussion nor did I ask him to do that. I merely asked that he provide his technical and expert advice to me and to the rest of the committee on how this, whether this would work, number one, and whether it would impair cyber security, and as you will see by the letter, he indicates, first, that it will not work and, second, that it would impair national security and cyber security. We have also received information, as I have referenced before, from Mr. Stewart Baker, the former assistant secretary of the Department of Homeland Security and the former general counsel of the National Security Agency, who has said that domain name servers might have no ability to block a Web site without impairing key Internet security measures, and I would like to ask unanimous consent to place in the record the article by Mr. Baker as well as his article that was published subsequent to the manager's amendment pointing out that the manager's amendment continues to endanger national security.

Chairman Smith. Without objection.

[The information follows:]

***** COMMITTEE INSERT *****

Ms. Lofgren. If that is the case, if these experts are correct, a service provider should not be held to any obligation under Section 102. I believe that the manager's amendment recognizes this fact by placing it in the savings clause, but the amendment that I am offering ensures that the commitment to protecting network and DNS security is given proper consideration by the courts, who will be applying the new law.

Now, I had suggested -- and I appreciate that the chairman had allowed Mr. Issa to offer his amendment. Had his amendment been adopted by the committee, this amendment would not be necessary. I would say further that the -- it really isn't an optimal situation to have dozens of district courts deciding what the cyber security policy of the United States is based on individual litigation. That is actually something that should be established by the executive branch with ample input from the legislative branch, most specifically committees that have not been consulted on this legislation, namely the Intelligence Committee, the Armed Services Committee, and the Homeland Security Committee, but given that Mr. Issa's amendment failed, I do think it is important for those who have discerned that the remedy envisioned in the bill puts their network or system at risk, that they have an opportunity to offer that as an affirmative defense.

And I would also ask unanimous consent that we put into the record the December 9th letter from Dr. Steve Crocker, Dr. David Dagon, Dan Kaminsky, Danny McPherson, and Dr. Paul Vixie objecting to the analysis provided by Mr. Castro, who was referenced by my friend from Virginia

earlier in the proceedings, and pointing out why his allegations are, as a technical matter, incorrect, and why they will undercut cyber security.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Smith. With that objection, and the gentlewoman's time has expired. Are there other -- the gentleman from California, Mr. Issa, is recognized.

Mr. Issa. Thank you, Mr. Chairman, and I rise in support of amendment number 6. I think it clarifies what we have all been talking about. The Lofgren amendment makes very, very, very clear that if, in fact, this is going to hurt something we don't know, we debated it for an hour on the last amendment, but if we don't know, we certainly should have a clause to say we agree to do no harm, and, Mr. Chairman, I know that you had said that you were prepared to accept some amendments. Are you prepared to accept this one, Mr. Chairman?

Mr. Chairman, you said you were prepared to accept some amendments. My question would be, since this one only takes effect if, in fact, we would harm the Internet by enacting that portion, are you prepared to accept this amendment?

Chairman Smith. I am not prepared to accept the amendment.

Mr. Issa. Then what amendment could you possibly be prepared to accept?

Chairman Smith. Well, actually --

Mr. Berman. Would the gentleman yield?

Mr. Issa. Not yet.

Chairman Smith. Actually, we are getting to a few shortly.
Well --

Mr. Issa. Okay. Well, I will try to --

Chairman Smith. I hope we get there shortly.

Mr. Issa. Well, I doubt it, but I will tell you that I find it hard to believe that any of us, not just the 12 who voted for the last amendment, but any of us --

Chairman Smith. Would the gentleman yield one minute?

Mr. Berman. Would the gentleman yield?

Mr. Issa. I would yield to the chairman.

Chairman Smith. The gentleman from Utah has an amendment coming up shortly that I intend to accept, and so, therefore, the gentleman --

Mr. Issa. Well, I suspect he will tweet a happy thought on that one. But reclaiming my time, I would appeal, and I will yield in a moment, but I would appeal to everyone if we cannot put provisions in this law that say, please, bear in mind, if it will do harm, don't do it, then when can we, what can we put in the way of protection? That is all Ms. Lofgren's amendment does. It is so narrow and so noncontroversial that I believe the gentleman from California, Mr. Berman, would like to support it. Is that what you are seeking time for? I would yield to the gentleman. Don't disappoint me.

Mr. Berman. Well, it depends on what your expectations are.

Mr. Issa. A yes would be good.

Mr. Berman. But is it an expectation or a hope?

Mr. Issa. Hope and change is all I am asking for.

Mr. Berman. Thank you for yielding. But this is an interesting illustration of all the discussion, and I think sincere discussion about dangers, security dangers. The manager's amendment said perhaps one could have read this as saying the Attorney General or a party in

a private right of action could require something that would harm the security of the Internet, and the manager's amendment shifts this to a court, but here is an amendment that --

Mr. Issa. Well, reclaiming my time, you know, if you are a plaintiff's trial lawyer and you are looking for money damages, you say, look, the law was very specific, it required this to be done.

Mr. Berman. But my point is, this is written so the defendant, not the hundred people at some national laboratory or -- the defendant claims the magic words that if I took an action that would impair the security or integrity of the domain system.

Mr. Issa. Right.

Mr. Berman. And this doesn't sound like it gives it to the court to determine whether that is a legitimate simple assertion.

RPTS COCHRAN

DCMN HERZFELD

[5:45 p.m.]

Mr. Issa. Reclaiming my time, I --

Chairman Smith. The gentleman from California Mr. Issa has the time.

Mr. Issa. I would yield to the gentlelady from California.

Ms. Lofgren. I would note that although sincerely offered, that is not a correct statement of the amendment, because this goes to the system operator, not to the infringer that has an opportunity to offer this defense. And I strongly preferred Mr. Issa's amendment, because I thought it actually puts the onus for network security where it would belong, which is not dozens of district courts, but the United States Government that has responsibility for cybersecurity. That amendment having failed, I do think that the system operator should have the opportunity to provide this affirmative defense, and it is not the infringers.

I thank the gentleman for yielding.

Mr. Issa. Reclaiming my time, I understand that many people want to consider potentially Google, Yahoo!, Bing and a host of other companies, Facebook, as infringers. But I don't think it is helpful to say that just because an entity is asserting a claim of danger to the Internet, of failure that denial of service can and has caused Internet operators for years, that somehow this is the old expression

"the pot calling the kettle black."

The fact is this is about a legitimate right to defend; to say, I would do this, but in this particular case, here is a harm offset, please tell me what I can do in the alternative. And I would only say in closing that that is the nature of a demand we are making on an entity that is not, in fact, an infringer. The entity we are coming to is somebody who we say is in some way facilitating an infringer, and they should be treated much more balanced, much more like the witness to a crime than, in fact, a criminal. And I think that is one of the key points is we are asking for cooperation and help with people who are not the criminals, but are, in fact, witnesses to the crime.

Chairman Smith. The gentleman's time has expired.

I inadvertently recognized the gentleman from California out of order a minute ago. I would like to go back and recognize the gentleman from Virginia Mr. Goodlatte.

Mr. Goodlatte. Thank you, Mr. Chairman.

The gentlewoman's amendment creates an overly broad requirement for a service provider to consider first the effect on a foreign network or site operated by the foreign rogue Web site, provisions designed to tie the hands of service providers and diminish the effectiveness of this provision in the bill.

The manager's amendment, as was noted by the gentleman from California Mr. Berman, includes a strong provision to ensure that courts are not granted -- court orders are not granted if they would affect the integrity of the domain system or would require service

providers to modify their networks, software or facilities. This amendment diminishes the overall effect of the provision, and therefore I oppose the amendment.

Chairman Smith. The gentleman yields back the balance of his time.

The gentleman from Colorado Mr. Polis is recognized.

Mr. Polis. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Polis. Thank you.

Again, I think this amendment is an excellent compromise. Again, I, too, preferred Mr. Issa's approach to strike the relevant section. But I would hope that this clarity would have stronger bipartisan support, because there has been a lot of discussion here on this committee during this markup about whether, or whether or not, and to what degree there is a threat that would impair the security or the integrity of the domain system from the enforcement provisions of this bill, and that is one that many of us would like to gather additional information on.

But it seems to me very reasonable and very safe to simply include language in the bill that provides an affirmative defense where we don't require that any entity take an action that would impair the security or integrity of the domain network or the system network. In effect, we are punting, but we are doing it in a way where at least it provides a hook in the legislation where that can be worked out by later authorities.

I would hope that we would, again, through statute, not impair the security or integrity of the domain system, but at the very least -- well, not without an affirmative defense. By providing an affirmative defense --

Mr. Berman. This is not an affirmative defense.

Mr. Polis. It is. It says the defendant in an action may establish an affirmative defense, and then this is one of the categories, if I am not mistaken, of affirmative defenses. Is that correct?

Mr. Berman. It looks to me like it says -- would you yield just for a second?

Mr. Polis. I would be happy to yield. As one of the nonattorneys on this committee, I would be happy to yield.

Mr. Berman. On page 16, iii, Limitations, a service provider shall not be required; and then it adds this condition. It doesn't look to me like that is an affirmative defense. It looks like that says if the service provider concludes -- and who knows what that process is; he may conclude that something that is in his interest would impair the security -- it is not something, an affirmative defense that goes to a court.

Mr. Polis. I thought we were referring to court orders here. I will yield to the gentlelady from California.

Ms. Lofgren. If you take a look page 16 and 17 of the manager's amendment, this is a remedy provided to the service provider, it is not the infringer, and it basically would provide that the savings

clause -- it says the same thing -- would be permitted to be offered to bar this activity. So if the savings clause is serious, then we should have an opportunity to have it be meaningful, and that is what this amendment does. And I thank the gentleman.

Mr. Polis. If I could ask an additional question of the lady from California. The second part of this amendment, if I am not mistaken, refers to page 21, line 16. That is the section that establishes affirmative defenses, and I believe it does add a category of affirmative defense that the defendant does not have the ability to comply without impairing security integrity of the domain name system.

Ms. Lofgren. That is correct, and we will give you an honorary law degree.

Mr. Polis. I thank the lady.

So, again, with response to the gentleman from California, again, it would allow an argument to be made, I would like to do this, but this would have severe damaging repercussions on the security of the Internet, and therefore that is something that the court should take into account.

I think very reasonably, again, if this section is going to be in there -- again, I don't want to impugn everybody's motives. I think everybody on the committee believes that we do not want to impair the security or integrity of the domain system. I mean, I don't think that is anybody's intention to do that.

I think there is a greater comfort with that if it appears in both areas of law. We mentioned page 17, and then page 21, which provides

an affirmative defense.

I yield to the gentleman from California.

Mr. Berman. I see the part of the amendment dealing with page 21, line 16, off the top of my head looks like it may create that defense, but the previous provision is limitations. A service provider concludes that it does this, and they then don't have to do what the court has ordered and what is being sought. So a little time, perhaps putting off this amendment, maybe -- I mean, we have got to be real careful here what we are doing.

Ms. Lofgren. Would the gentleman yield?

Mr. Polis. I would be happy to further yield to the gentlelady.

Ms. Lofgren. I think that is incorrect. This is what the court will be deciding, it is not what the provider will be deciding.

Mr. Berman. Read the section.

Ms. Lofgren. I did read the section, and I wrote the amendment.

Mr. Berman. The section talks about limitations. A service provider shall not be required under this section, and then you add number 6, to take any action under this section that would impair -- does he have to prove that? Does he have the burden of proving that under the first part of this section?

Mr. Polis. Reclaiming my time, I mean, it seems to me this is all subject to a court. I think that is the point of the limitation. It would be my understanding, if they were all self-interpreted, then this whole bill would be meaningless, because they could all argue --

Chairman Smith. The gentleman's time has expired. Are there

other Members who wish to be heard on the amendment? If not, the question is on the Lofgren amendment. All in favor, aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Ms. Lofgren. I would like a recorded vote, please.

Chairman Smith. A recorded vote has been requested, and the clerk will call the roll.

The Clerk. Mr. Smith?

Mr. Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. Yes.

The Clerk. Mr. Issa votes yes.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Mr. Jordan?

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

[No response.]

The Clerk. Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

Mr. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. And the gentleman from California Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Chairman Smith. The gentleman from Utah Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Chairman Smith. The gentleman from Ohio?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Chairman Smith. The gentleman from Virginia Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Chairman Smith. The gentleman from New York Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Chairman Smith. The gentleman from Illinois Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Chairman Smith. And the gentlewoman from California Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Chairman Smith. The gentleman from Wisconsin?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 11 Members voted aye, 21 Members voted nay.

Chairman Smith. A majority having voted against the amendment, the amendment is not agreed to.

Are there other amendments?

Ms. Lofgren. I have an amendment.

Chairman Smith. The gentlewoman from California Ms. Lofgren is recognized.

The Clerk. It is amendment 52 on the roster, number 8.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Mrs. Zoe Lofgren of California.

Page 15, beginning on line 16 --

Chairman Smith. Without objection, the amendment is considered read, and the gentlewoman is recognized to explain her amendment.

[The information follows:]

***** INSERT 7-1 *****

Ms. Lofgren. The existing language of the manager's amendment gives a confusing set of instructions for the mandate on operators of domain name servers to block foreign infringing Web sites. Subparagraph 1 of the service provider's mandate in section 102(c)(2)(A) initially gives them the power to determine for themselves "the least burdensome, technically feasible and reasonable means" to block a foreign infringing Web site. However, subparagraph ii says they must specifically take action to prevent the resolution of the foreign Web site's domain name; otherwise, the service provider will not qualify for the safe harbor in that subparagraph and could face further legal action by the Attorney General to enforce the order.

I think this has several problems. It will strongly encourage service providers to take actions that are inconsistent with the core Internet security technologies, such as the domain name security extensions, DNSSEC. As we have noted before, five leading experts have written that domain blocking as a specific technical means of blocking a foreign Web site is fundamentally incompatible with security measures for DNS technology. As has been mentioned prior, Stewart Baker, the former Assistant Secretary for Policy at DHS and former NSA general counsel, has written that domain blocking would "kill our best hopes for actually securing the Internet."

The Department of Homeland Security under both President Bush and President Obama has hailed DNSSEC as the crucial way to improve the overall integrity and authenticity of information processed over the Internet. The general savings clause in the bill for networks and DNS

security will be worthless here if it won't stop service providers from being forced to take action that could disable the DNSSEC in order to qualify for the safe harbor.

Overall, the safe harbor should stay consistent with the basic obligations on service providers. If we are going to force them to block foreign Web sites, we should give operators of domain name servers latitude to determine how to comply as consistent with their expertise and knowledge of their systems.

Now, a lot has been said today. Sometimes all of us who are passionate on the issue engage in animated rhetoric. But to indicate or suggest that major Internet players are doing nothing to combat Internet piracy is simply not correct.

I actually asked Google, who I think Mr. Issa described as being a pinata at our hearing, how many times they took down sites under the existing DMCA obligation. I was advised that this year they responded 5 million times, and that in 75 percent of those cases the action was taken within 6 hours of the notification. So to say that a 5 million response within 6 hours is negligent or uninterested is, I just think, misguided. It is not correct, and it doesn't understand the effort that is being undertaken.

Does that mean that more should be done? Possibly so. And I think more will be done. But certainly to make this language that is in the manager's amendment of allowing the Internet world to take those steps that are most viable, most technically feasible, will be undercut by the safe harbor provisions that essentially say you got to do the

domain name system blocking. That is a problem. We have been told by the Internet experts it will make the Internet less secure. It will, ironically enough, lead to additional piracy when the Internet becomes less secure.

So I strongly urge my colleagues to adopt this amendment, and I would be happy to yield to my colleague from Texas.

Ms. Jackson Lee. First of all, let me indicate a refrain that I have been -- I thank the gentlelady for yielding -- that I have been using constantly is that there is no opposition. In fact, I am going to inquire of the lady, do you have opposition to the prevention of piracy for the intellectual property of this country or many of those who are advocating for this legislation?

Ms. Lofgren. No. In fact, I do think that protection of intellectual property is important. Although we have talked often about the movie industry and the recording industry, and certainly they are wonderfully successful economic engines in our community, they are not the only content providers that suffer from piracy. In my own district where we have companies that provide software, they are also subject to piracy. This is something that is not unique to the entertainment industry. This is something that plagues the software industry as well.

The point is we need to use the right tools to cope with this piracy. It is not going to be successful or satisfactory to our country if we make the Internet less secure and end up promoting piracy.

Ms. Jackson Lee. If I could reclaim my time --

Chairman Smith. The gentlewoman's time has expired. I recognize myself in opposition to the amendment.

The gentlewoman's amendment seeks to strike language in the bill that is important to service providers who will abide by this statute. The manager's amendment does not require service providers to adopt any particular technique to comply with the court order, but provides flexibility for them to determine the most appropriate mechanism.

This amendment seeks to frustrate a judge's determination that a site is a foreign rogue Web site and should be filtered to protect U.S. consumers. The amendment grants a safe harbor to ISPs that choose to do nothing in response to a court's determination. In other words, it gives a safe harbor to those ISPs, whether they have complied with the court order or not. So this amendment is designed to undermine the bill. I urge my colleagues to oppose it.

I yield back the balance of my time.

Do other Members wish to be heard? Anyone on this side?

The gentleman from Colorado.

Mr. Polis. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Polis. So to further discuss this with the gentlelady from California as well, your amendment would deal with where the subscribers are located to the site, right, specifically saying that the subscribers would have to be located within the United States. Is that what you are saying? Subscribers would have to be accessed by its subscribers located within the United States?

Let me just further ask on that one, what is the goal with regard to the location of the subscribers to the service provider?

Ms. Lofgren. I am sorry, it is getting late. Could you --

Mr. Polis. Sure. So, again, I believe the language you are adding -- I know we are talking about the language you are striking -- access by subscribers located within the United States to the foreign infringing site that is the subject of the order. So I believe that you are basically saying for a service provider, they would have to -- for domestic subscribers have to maintain a different set of DNS resolution or nonauthoritative name system than for their foreign subscribers. Is that --

Ms. Lofgren. It actually deals with the safe harbor incentive. We are saying in the bill that we are not requiring DNS blocking, but, in fact, we are because of the safe harbor that has been created. And I think that is inappropriate, especially given the alarms that we have been provided for by those who are knowledgeable and who have not picked a side in the bill about the damage that this will do. This would try to remove that incentive. I think it would effectively, and would allow the technical means that the experts use to be so used.

And I thank the gentleman.

Mr. Polis. I would also point out that I think this particular language that you are amending is in many ways shortsighted with regards to reducing piracy. By creating a safe harbor and designating certain behavior, it is, in fact, saying that such behavior is, in fact, completely acceptable and letting them off the hook, when it could be

that there could be other forms and mechanisms of enforcing intellectual property that service providers should in the future or now be responsible for.

However, this one clearly is one that can, I think, cause more problems than it solves. I think that the amendment further, again, highlights the issue of the bifurcation and the stratification of the Internet that this would entail, as many service providers would, in fact, have to maintain across different jurisdictions various forums of resolving domain names.

So I think it is a good amendment. Again, I think that the safe harbor provision can be improved through this amendment. I think that this amendment can actually help reduce Internet piracy by providing more of an incentive for innovative techniques to take down offending Web sites, and I strongly support it.

I yield back the balance of my time.

Chairman Smith. The gentleman yields back the balance of his time.

The gentleman from California Mr. Issa.

Mr. Issa. Thank you, Mr. Chairman.

I support the gentlelady's amendment, and I think that the characterization of its not working belies the question of isn't it potentially necessary? In other words, once again hasn't the gentlelady recognized a real problem, even if you object to some penmanship, if you will, on the solution?

I would yield to the chairman if he wanted to comment on that.

I heard you say you didn't think it was a good amendment, but do you think there is no problem? Do you think it is just perfect the way it is written?

Chairman Smith. Let me refer to the manager's amendment. I think this goes back to the debate a minute ago, too.

Yes, I am very happy and comfortable with the manager's amendment. But let me reemphasize that the measures taken are not going to be determined by the court, and I think there was perhaps a misconception about the underlying manager's amendment a minute ago. It is the service provider that determines what is the least burdensome, technically feasible, most reasonable means designed to prevent access by subscribers. They are the ones making that determination. And furthermore --

Mr. Issa. But don't you limit safe harbor to only a portion of that? And that is why I am asking, Mr. Chairman. I get it that you are saying you are giving them flexibility, and I think that was half of the loaf in the manager's amendment. But why wouldn't you give them safe harbor for anything which in good faith could reduce or eliminate that so that they would be able to choose the one that was the most effective?

This is where I think the gentlelady from California was trying to make the point both in the first and now the second amendment that if you can't give flexibility and safe harbor for that flexibility, then what you are really doing is saying, this is what we want you to do, and you will be sued if you don't do it effectively.

Chairman Smith. The gentleman's time has expired. Let me recognize him for another 10 seconds so I can respond.

Mr. Issa. I would ask for an additional minute Mr. Chairman.

Chairman Smith. Without objection, the gentleman is recognized for an additional minute.

Mr. Issa. I yield.

Chairman Smith. On so much of this individuals have concerns about the underlying manager's amendment. I feel like saying, show me the language. Show me the language that causes the problems the individuals are worried about, because I just don't see it.

And the same thing is true here on page 15 under "Service Providers." I just read a sentence under (A)(i). Under (A)(ii), Safe Harbor, The measures determined by the service provider to be least burdensome, technically feasible, reasonable means designed to prevent, and so forth.

That answers the gentleman's question. The answer to the question is if I can improve it, I would agree to improve it. But I am very comfortable with leaving it the way it is.

Mr. Issa. I understand you are comfortable. Can't you see we would be uncomfortable with the fact the safe harbor is limited? The options are extensive, but the safe harbor is limited.

Ms. Lofgren. If the gentleman would yield, it is very clear, if you look at page 15, the one thing that gives you safe harbor is the DNS take-down. I mean, that is the problem, which means that in a backdoor way, that is what we are going to require, because it is the

only thing that is safe to do.

Chairman Smith. The gentleman's time has expired.

Are there other Members who wish to speak on this amendment? If not, we will vote on the amendment.

The question is on the amendment. All in favor, say aye.

Opposed, nay.

In the opinion of the chair, the noes have it.

Ms. Lofgren. I would like a recorded vote, Mr. Chairman

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith?

Mr. Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

[No response.]

The Clerk. Ms. Adams?

Ms. Adams. No.

The Clerk. Ms. Adams votes no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

Mr. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The gentleman from Virginia Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. The gentleman from California?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Chairman Smith. The gentleman from Ohio?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Chairman Smith. Are there other Members who wish to record their vote?

If not, the clerk will report.

The Clerk. Mr. Chairman, 10 Members voted aye, 24 Members voted nay.

Chairman Smith. A majority having voted against the amendment, the amendment is not agreed to.

We will now go to the next amendment. The gentleman from California --

Mr. Issa. I am back.

Chairman Smith. -- is recognized. The clerk will report number 9, Issa 74.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Mr. Issa of California.

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman is recognized to explain the amendment.

[The information follows:]

***** INSERT 7-2 *****

Mr. Issa. Thank you, Mr. Chairman. This one is not on the substance of how we do it, but is on the fairness and on the ultimate effectiveness of a unilateral law.

Mr. Chairman, I think for all of us who have worked in international trade, all of us who understand how you get cooperation on intellectual property protection, by precluding the Attorney General from bringing action on behalf of a non-U.S. person, what we say in effect, since I have been very clearly told, nowhere in the world is there a law similar to SOPA.

As a result, if you take non-U.S. persons out of this, they all have some other country in which they can enforce their laws, or at least insist that something that protects our intellectual property or their intellectual property in their country, then the State Department has a real opportunity to bring a reciprocal agreement. So until a country were to do the same thing for us that we are doing for Americans, there is really no reason to give them a benefit to come to America and sue or gain some benefit when, in fact, their own country doesn't do it or they should do it in their own country.

Just to be -- I don't want to say over the top, under the current law, a Russian infringer could come here to protect themselves against someone infringing against them, while we would have no capability of reaching out to his site in Russia. And it is exactly that. You know, you are looking at bad actors around the world who would not be reachable on behalf of what they would do, but, in fact, would come here for monies on behalf of what they could.

So it is very narrow. It only affects the question of this is clearly about domestic collection. It should be for domestic copyright.

I understand the Supreme Court has very clearly ruled that a corporation is a person, so I am not kidding myself. If there is a U.S. corporation that owns the copyright, this would not lock them out. It would only be literally a foreign -- a non-U.S. citizen or a non-U.S. corporation that has the copyright.

I will close with this. If somebody is a non-U.S. person, and they want to have their royalties go to the Cayman Islands, why should we spend a whole lot of time trying to collect for them until and unless there is some sort of reciprocal agreement with one or more of these countries that these individuals might be in?

So, although my light never came on, I would reluctantly yield --

Mr. King. Will the gentleman yield?

Chairman Smith. The gentleman is once again revealing his honesty. You are right, the light did not go on; however, the gentleman's time is close to expiring.

Mr. Issa. I would yield to the gentleman over here, the gentleman who tweets so seldom.

Mr. King. I thank the gentleman from California for yielding.

I just pose this question, and I think maybe you have addressed it, but I wanted some clarity for my own purposes and, I think, for the committee. And that is as we look at foreign countries who some of them seem to be in the business of stealing U.S. intellectual

property, and we are pressing them to bring civil charges and criminal charges against those perpetrators, and you said a reciprocal agreement, which perhaps is your answer, but does this amendment, if it goes on, does it weaken our ability to press for that kind of relief in foreign countries?

Mr. Issa. I think that is a very good point. As long as the copyright is held by a U.S. corporation, they would qualify. If it is a foreign corporation, essentially saying, please collect the money so I can ship it outside the country to a non-U.S. person, no.

But what I was trying to say is that although it would not stay within the limitations of this committee if I had made it a State Department carve-out, I didn't want to go into another committee like the trade committee over at Ways and Means. So within the jurisdiction of this committee, we are only saying don't pay. Very clearly there could be a bill offered or a treaty offered that would create those entitlements.

So it really is an inducement to say if you do it, then we will modify our law so that you get the benefit in our country as long as you come from a country that is in the compact. But today there are no countries that would reciprocate, so there is really only a reason to say non-U.S. I would say non-U.S. except Israel and Japan if they had similar laws. They don't.

Mr. King. If the gentleman would continue to yield, and I thank the gentleman, then I just ask this: Is it the gentleman's position, as it is my position, that we need to do all we can to honor all

intellectual property rights so as to encourage other countries to reciprocate in kind as a matter of policy, law and philosophy?

Mr. Issa. Well, reclaiming my time, which is soon expiring, in principle I do. But remember, the Attorney General, U.S. resources used to collect on behalf of a non-U.S. entity, it does not seem at all reasonable to have us expend those under this particular statute. And remember, all something has to do to qualify would be to put their copyright in the U.S., in a U.S. corporation, and then the benefit of their royalties would flow at least in small part to the taxpayers who pay for the Department of Justice.

So we are not asking for a lot, other than we should not be enforcing on behalf of foreign entities and foreign copyrights, because it is not really a U.S. copyright if, in fact, it is held completely outside.

Chairman Smith. The gentleman's time has expired.

The gentleman from Virginia Mr. Goodlatte is recognized.

Mr. Goodlatte. Thank you, Mr. Chairman.

Mr. Chairman, I think the gentleman from Iowa Mr. King has touched on what I think is the flaw in this amendment, and it is a serious flaw. It creates a terrible international precedent. For example, the Chinese and Russians could use this amendment as a template for a law to discriminate against foreign companies and decree that they will no longer enforce IP laws on behalf of foreign companies, meaning U.S. companies doing business in their countries.

Yes, we are in there asking them to help enforce our laws in a

variety of ways, and we are asking them to do that so that we can ship money out of Russia and China that our companies have sold there back to the United States to help create jobs in this country.

So I think the gentleman's intent of wanting to force greater international cooperation is a good one. I don't think this amendment accomplishes that. In fact, I think it could have just the opposite effect.

Further, the Attorney General does not bring actions on behalf of U.S. persons or non-U.S. persons. The Attorney General brings actions on behalf the United States. The Attorney General only brings a case to enforce U.S. law. This amendment would dramatically alter the role of the Attorney General and law enforcement in enforcing the laws of the United States. This could be an unprecedented legislative effort to limit the actions that law enforcement officials can take to curb intellectual property theft by foreign Web sites.

Remember, the primary remedy in this legislation is an injunction, is blocking. It is not actually getting funding. But we have other tools that we use in the United States and other tools in other countries we attempt to use to enforce those laws. I don't want to set a precedent by saying we are going to have a law in the United States that only protects U.S. persons or U.S. corporations, and then find that China or Russia uses that same template --

Mr. Issa. Would the gentleman yield for a question?

Mr. Goodlatte. -- in those countries where we are facing these enormous, serious problems with enforcement of intellectual property

rights.

Mr. Issa. A question as to your statement on the Department of Justice. Then would you say that the Attorney General basically can go and bring a case where the copyright is not objected to, the copyright comes from another country and is held by another entity in another country, sua sponte?

What you are saying is you don't need a plaintiff, you don't need an injured party. But, in fact, we do have an injured party who is going to come to the Department of Justice and say, hey, I am the copyright holder, and I understand that one of our complaints was that the original bill didn't say you had to prove you had the rights to the copyright, but somebody is going to start off by saying, this is my motion picture, please enforce on behalf of me.

Mr. Goodlatte. Undoubtedly. But the United States is obligated to make a decision based upon what is in the interests of the United States. You can't go to the Justice Department and say, I want you to make a decision to bring this action. They have to make the decision independent of those requests about whether it is in the best interests of the United States to do that.

Mr. Issa. All we are saying is your best interest is on behalf of American corporations and American persons.

Mr. Goodlatte. I think the objective is a good one, but the consequences if that same principle were applied in the countries where we are facing very serious infringement -- and in some of those countries, your only recourse is to go to the government and say, you

need to enforce your intellectual property laws against these companies because they are harming our companies conducting business there. And if they say, well, we only do that for Chinese owners of copyrighted Chinese materials, we are going to set a bad precedent here that is going to make this problem worse rather than better.

Mr. Issa. But the whole basis for this law is that you have these countries in large amount are doing just that. They are refusing to do anything for you. Look, China will protect Chinese companies. China does not protect American companies. China will allow a military operation to steal your intellectual property and sell it on the Internet.

Mr. Goodlatte. I am not expecting the Attorney General of the United States to devote most of their time to what you are trying to prevent them from doing altogether. I am just trying to prevent a bad precedent from being used by the Chinese or the Russians to say, well, your law says you won't enforce our intellectual property rights under this particular provision; therefore, we are not going to exercise our laws to protect U.S. copyrights in China.

Mr. Issa. If the gentleman will further yield, I am only limiting that that copyright has to belong to a U.S. entity. It is a very narrow requirement. And, in fact, a copyright in China would only be enforced on a Chinese copyright. They wouldn't enforce a U.S. copyright in China anyway. So if you had a Chinese copyright, and they said you have got to have a Chinese corporation in order to have standing to do that, it has to belong to a Chinese person or a Chinese corporation,

that wouldn't be an unreasonable request.

I have done business in China, and that part is not unreasonable. In fact, that is our whole point is we know that is going to be expensive and--

Mr. Goodlatte. Reclaiming my time, I don't think we want to establish the precedent that in the United States, in order to get the protection, a U.S. citizen owns it, because we do have U.S. citizens who own intellectual property rights in China and in hundreds of other countries around the world.

Chairman Smith. The gentleman's time has expired.

Ms. Lofgren. Mr. Chairman.

Chairman Smith. The gentlewoman from California is recognized.

Ms. Lofgren. I move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. I think on balance Mr. Issa's amendment should be supported, and let me share my thinking on this.

It is true that our courts are open to any plaintiffs who want to file, and it is also true, as Mr. Goodlatte points out, that the Attorney General operates on behalf of the people, the American people, not an individual plaintiff. But it is also true that you could not have a problem unless there is a copyright that is infringed. That is the basis of this entire action.

We need to put this amendment in context. There is not another nation on Earth that is considering doing what we are doing to the Internet. None. In fact, it is worth noting that Europe is now moving

exactly in the opposite direction. The week before Thanksgiving they intervened and said you cannot do this because it interferes with the privacy rights of Internet users.

So essentially, unless we adopt Mr. Issa's amendment, what we are saying is that we are going to adopt the most extraordinarily draconian enforcement mechanism in the world that will make sure that American citizens, as much as possible -- there are lots of ways to get around it, but the intent is to preclude Americans from having the ability to utilize the Internet to access sites, and that we are going to use that extraordinary remedy for the whole world, because no other country is willing to adopt this scheme.

I think that is troublesome to me, and I think it is something that we should not do and that Mr. Issa's amendment would prevent.

I would note also that in the manager's amendment it points out that there is no additional appropriations to the Department of Justice for this could be enormous new mandate. So what we are essentially saying, unless we adopt Mr. Issa's amendment, is we are going to defer to the Department of Justice for going after other criminals of all sorts to benefit copyright holders in other countries who cannot get a remedy similar to ours in their own country. I just think that would be extraordinary for us to do, especially at a time in falling budgets. And absent Mr. Issa's amendment or something very like it, I don't see away around it.

I don't know if Mr. Issa would like additional time. I would be happy to yield.

Mr. Issa. Again, I think the gentlelady hit the nail on the head. There is no money for this. This is an expensive expansion of the Department of Justice and use of the Federal courts. And, in fact, earlier in the day we were talking about the fact that there would be selective enforcement. And we are simply saying if you, for example, make a movie and then put it in a Cayman Islands corporation, well, fine, great, but you are not going to be first in line or second in line. As a matter of fact, until the Cayman Islands enters into some kind of agreement, you are not going to be in line.

Now, as the gentlelady said and I tried to say in my opening remarks, you can transfer this back so there is a real asset here and an ability for those funds, if collected from yours, to flow into the U.S. and thus pay corporate taxes or some taxes. But if you are going to circumvent a U.S. entity, which is -- a great many of these movies and records, they have done that, they really have. There is a lot of intellectual property that is deliberately held outside the U.S. -- then you shouldn't be in line for the Department of Justice's expansive program to do this.

We are not asking a lot. We are simply saying this should not be a priority, and this was the cleanest, simplest way to do it.

Mr. Chairman, I certainly would have picked other language if there had been an opportunity to work with staff directly on picking other language. But we did, we gave you the chance to pick on our amendments. We never had the opportunity to have our amendments critiqued and improved so they would be acceptable to the chair. That

is something that my staff has always sought to do in the past, and it is regrettable that we didn't really get to do that this time.

Ms. Lofgren. Reclaiming my time, I would just note that this amendment really is a companion measure to the measure offered by Mr. Chabot earlier in the day with the same rationale, and to not adopt them both, I think, would be inexplicable. I thank the gentleman for drafting this measure.

Chairman Smith. The gentlewoman yields back her time.

The gentleman from Colorado is recognized.

Mr. Polis. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Polis. So I appreciate the discussion between Mr. Goodlatte and Mr. Issa. You know, I, too, share a fundamentally globalist approach. Real progress on this issue needs to be multilateral. There is no doubt about that. Mr. Issa's OPEN Act, I think, moves us in that direction. And on its own, this particular amendment would, as Mr. Goodlatte pointed out, seem to be inconsistent with that.

But I think if you look at the broader context, what is inconsistent to the principle of global cooperation is the underlying bill, the manager's amendment, if other countries were to follow the precedents of the United States and have separate Internets under the pretense of intellectual property protection.

Now, again, justly wielded in many cases, particularly by our own government, even our own government makes a few errors. Our Attorney General, as Mr. Issa has pointed out, is not infallible, and I believe

even more so in other countries, with regard to the potential for abuse, the potential for selective enforcement of intellectual property, for a whole host of reasons, all of which are invalid, political, ideological, economic, et cetera.

So to the extent that this narrows the scope of the discretion, the prosecutorial discretion, that the Attorney General will have, I think it is a good amendment. I questioned the Attorney General when he was here last week on how he would use his discretion in this area, and he responded that it is obviously impossible to prosecute everybody.

I will be offering an amendment in a similar vein with regards to pornography. But this one, I think, makes a lot of sense. Again, it amends an underlying bill which is offensive to the concept of international cooperation on intellectual property issues. So to the extent the bill is already offensive in that area, it does not in and of its own raise any protectionist red flags or anything else that would impede our ability to work on these issues with other countries. And on the net positive side, it provides less discretion and more guidance to the Attorney General for how he would use the vast new powers that would be given to him under this bill.

I will be happy to yield back the balance of my time.

Chairman Smith. Thank you, Mr. Polis.

The question is on the amendment. All in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it. The amendment is

not agreed to.

Mr. Issa. Mr. Chairman, on that I ask for a recorded vote.

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith?

Mr. Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. Aye.

The Clerk. Mr. Chabot votes aye.

Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes aye.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Ms. Adams?

[No response.]

The Clerk. Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The gentleman from Texas?

Mr. Poe. No.

Chairman Smith. The gentleman from California Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Chairman Smith. The gentleman from Arizona?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Chairman Smith. The gentleman from Nevada Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Chairman Smith. The gentleman from Texas Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe has voted no.

Chairman Smith. The gentleman from Texas Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 6 Members voted aye, 24 Members voted

nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to.

I am prepared to recognize the gentlewoman from California, but I was going to ask her if this amendment that is on the schedule is not very similar to the amendment two amendments ago, Lofgren Number 52 --

Ms. Lofgren. Actually this is broader, but it does not -- I would like to offer the amendment.

Chairman Smith. Okay. The gentlewoman is recognized to offer an amendment, and the clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261, offered by Ms. Zoe Lofgren of California. Page 15, strike line 3 and all that follows --

Chairman Smith. Without objection, the amendment be will be considered as read, and the gentlewoman is recognized to explain the amendment.

[The information follows:]

***** COMMITTEE INSERT *****

Ms. Lofgren. Mr. Chairman, this amendment would strike the authority that the bill gives to the Attorney General to order Internet service providers to block foreign infringing Web sites, although it would preserve the obligation upon search engines, payment networks, ad networks and the like to block foreign infringing Web sites.

Now, why offer this? I suppose hope springs eternal that the facts of the DNS blockings will ultimately prevail in one of these amendments.

As has been said before, the filtering mandate is not going to reduce in any significant way on-line piracy. The domain blocking is, as I pointed out in the safe harbor amendment I offered earlier, really the only clear way for service providers to safely carry out the obligation in the bill. But it is incredibly easy to circumvent, even for people with absolutely no expertise. Even the members of this committee could circumvent this.

As I mentioned when we discussed the search engine issue, when the domain name is blocked, the site that is blocked doesn't go away. It is still there. And how do you get there? You could simply type in the IP address, such as 00.000.123.123; type that into your browser instead of the domain name, and it is just as easy as punching in a telephone number. It will take you directly to the Web site.

Alternatively, you could use your computer -- and, again, this is not hard to do, even a 10-year-old could do it -- to use a different domain name server, such as a foreign server located outside the United States. It is not technologically daunting. I was talking to one of

the members across the aisle last week who said, in fact, his 10-year-old did this. To say it is so easy a 10-year-old could do it is not an exaggeration. Further, a quick software download could actually automate the process. I will have an amendment later about the software.

But the point is anyone who wants to reach a blocked site in the United States is going to be able to do that, even if the bill passes with the mandate to filter Internet tracking.

And in response to domain blocking, we can be absolutely certain that criminal Web sites will register themselves under hundreds and thousands of new and shifting domain names, and the Attorney General is going to be playing an endless game of whack-a-mole, and he will be never be able to keep up.

Now, that is the downside of why we should not do this, why this makes no sense to do. But as I have mentioned discussing the other amendments, there is collateral damage. In addition to this not being an effective tool to combat Internet piracy, it will also promote Internet piracy by making the DNSSEC less secure, and it will make Internet stability and security more difficult.

We had five leading DNS engineers and Internet security experts from VeriSign, from Georgia Tech and elsewhere earlier this year that wrote that the domain name filtering system in SOPA raises serious technical and security concerns.

The manager's amendment does the same. As Mr. Sensenbrenner mentioned in his opening remarks, there is an additional problem with

the domain name scheme envisioned in the manager's amendment, and that is First Amendment concerns. Leading scholars, as well as the American Civil Liberties Union, say that this legislation will not survive constitutional scrutiny as introduced, and the provisions targeting DNS servers and search results will have an overbroad impact on protected speech. We have seen that already in actions that were taken by ICE earlier this year, and we will see more of it if this bill is adopted without deletion of this section.

Further -- and I want to make sure that I am clear with my friend from California Mr. Berman -- I am not suggesting that copyright enforcement is the equivalent of actions taken by China and Iran. It is not. But the technology being used is precisely the same. And if we go down this road, we are going to have a much more difficult time having the high road, insisting on an open Internet as our State Department has done so effectively.

So I do think this amendment is an important one. It will go a long ways to curing problems in the bill, and I am hopeful that we can adopt it.

I see, Mr. Chairman, my time has expired.

RPTS MERCHANT

DCMN BURRELL

[5:45 p.m.]

Chairman Smith. The chairwoman yields back her time. The gentleman from Virginia, Mr. Goodlatte, is recognized.

Mr. Goodlatte. Thank you, Mr. Chairman. Mr. Chairman, the gentlewoman's amendment strikes the DNS blocking provision in the bill similar to the amendment offered by the gentleman from California that we debated very extensively earlier.

I read from parts of statements from three experts on Internet security about the appropriateness of it; in fact in some instances the need for DNS blocking. But the only difference between this bill -- this amendment and Mr. Issa's is that his also took out the provisions related to search engines. We didn't discuss that as extensively, but since hers doesn't affect that I don't think we need to discuss it here.

The DNS provisions in the bill are limited actions taken by the Attorney General in Federal Court. The manager's amendment has addressed a number of concerns and ensured that service providers would only be asked to take these steps in ways that are technically feasible and reasonable and which don't jeopardize cybersecurity or First Amendment concerns.

And so for all of those reasons I oppose this amendment as I did the other, and I yield back.

Chairman Smith. The gentleman yields back the balance of his time. The gentleman from Colorado, Mr. Polis, is recognized.

Mr. Polis. Thank you. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Polis. Again, you know, when looking at kind of notorious infringers and violators in criminal sites we use the Pirate Bay example. Another one that has come to the attention of some in Congress as well is Silk Road. Now, to even view Silk Road you need to use the TOR network. Its domain is dot-onion with a long domain. This is a site where you can buy and sell illegal drugs, illegal content, far worse than a Pirate Bay quite frankly. It has a wide variety of illegal activities that are on there. And fundamentally this enforcement language would have zero impact on it. Its addresses are not actual DNS names. The dot-onion TLD is not in the Internet DNS root and in fact requires local appropriate proxy software to be installed, which is very simple. Anybody can download this browser and install it. Very simple, and in fact would be completely outside of the enforcement mechanism of this bill.

What would again likely happen with regard to this bill is other sites that aspire to be outside of the reach of this bill would convert to dot-onion or the many other mechanisms that function akin to distributed DNS, either using TOR to achieve a degree of anonymity or elsewhere. And I don't see how that advances the fight against copyright infringers. The further that the bad actors that are out there, that we all agree are out there, are driven underground, the

further they are driven from the reach of the law. And we do fundamentally in fighting piracy have the law on our side.

There are many more viable enforcement mechanisms that we can establish without the collateral damage that this committee has learned and has discussed and there is some question about, and many on this committee have expressed an additional desire to learn about as well. But when you have something that won't achieve its desired goal, and again that is already clear because there are already many violators who even though there is not yet a reason to already don't use the DNS system, and you are basically saying to many sites if this became law that are infringing, none of them would use the DNS system. You would also have many sites that are afraid of incidental infringement that choose to use alternative DNS systems, whether it is dot-onion or another form of reconciling Internet names.

So again, many negatives. I think this committee should take the time to learn about the exact threat to security potential increases of piracy that can arise under this bill and doesn't accomplish the desired and stated goal of actually disabling access to the infringing sites. And again I don't think anybody has argued it disables access. As Ms. Lofgren said earlier, somebody can simply type in the IP address. As I used the example of the crack house in a bad neighborhood, instead of going after the crack house you are just taking down street signs in the area and hope people can't find it.

But I want to point out that even as an alternative to IP addresses that might be hard to remember alternative naming structures already

exist, already exist. That is not a question of if they arrive, they already exist, that are not even covered in this law.

So I support the amendment, urge my colleagues to vote yes, and yield back the balance of my time.

Chairman Smith. I thank the gentleman for yielding back his time. The question is on the amendment. All in favor say aye. Opposed no. In the opinion of the chair the noes have it. The amendment is not agreed to.

We will now go to the next amendment to be offered by the gentleman from Utah, Mr. Chaffetz.

Mr. Chaffetz. Mr. Chairman, I have an amendment at the desk designated as number 186.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the Smith amendment offered by Mr. Chaffetz of Utah. Page 14 insert --

Chairman Smith. Without objection the amendment will be considered as read. The gentleman is recognized to explain his amendment.

[The information follows:]

***** INSERT 8-1 *****

Mr. Chaffetz. Thank you. My concern, Mr. Chairman, is that if this bill were to become law that there would be perhaps low level people within the administration there at the Department of Justice who would not necessarily have the unchecked balance, if you will, to relegate what is essentially a death penalty for a site. By taking down a site you are essentially putting them out of business. All we are trying to do in the spirit of this is try to say that it needs to be at a very senior level that we make these types of decisions. There have been mistakes made clearly within the Department of Justice and within ICE and other organizations. We have to limit the chances that these types of mistakes will be made.

And so I am offering this amendment. I appreciate working with you, Mr. Chairman, and others. I know that Mr. Watt has a particular concern about these as well. What I would like to do at this time, in order to make sure we get this right there have been some concerns that perhaps there are other names or titles within the Department of Justice that should be added to this, and so at this time what I would like to do is work with you, Mr. Chairman, if the bill were to move forward in reconstituting this amendment in order to make this necessary change.

Chairman Smith. Will the gentleman yield before he withdraws the amendment?

Mr. Chaffetz. Yes.

Chairman Smith. I just want to say to the gentleman from Utah, all his amendments are well motivated, but I particularly agree with

this one, and we will work together to refine the language, but we will get to the result that he and I want, which is to sort of elevate the decision making and make sure that the individuals making the decisions are qualified and the right people to do so. So I appreciate the gentleman's --

Mr. Chaffetz. Thank you.

Mr. Watt. Will the gentleman yield?

Mr. Chaffetz. Reclaiming my time. I would like to yield to -- yes.

Mr. Watt. I appreciate the gentleman yielding. And I think he has raised a concern that I would also raise in the next amendment that is to be considered. The problem is I think his amendment is substantially broader than mine. I was trying to get only to DNS blocking as a higher level decision by the Attorney General, which is -- and I was trying to get there because that was the area in which all of the national security concerns had been raised. I think your amendment actually is too broad, and I am glad you are about to withdraw it. And I won't offer mine either because I think we can all work together to reach the objective that we are trying to reach.

My objective is to have the highest level decisions made when you are talking about national security only. And my amendment was a lot more limited, I believe, than yours, although we were actually in the back trying to figure that out when your amendment came up.

Mr. Chaffetz. Reclaiming my time.

Mr. Polis. Will the gentleman yield?

Mr. Chaffetz. I will yield to the gentleman from Colorado.

Mr. Polis. I strongly support the amendment. Again, I think the more -- the fewer people have these vast powers that we are giving the better. But in response to Mr. Watt as well, I think that it doesn't solve this issue of a threat to national security. That is not something that Justice Department prosecutors at a junior or senior level are equipped to nor should they be experts in, which is why many of us have concerns on the underlying bill.

However, given those other elements of the bill, I think to the degree that we can have, you know, the authority centralized with a few people rather than every State's Attorney General or every, sorry, regional Attorney General running around using it I think that is a very good development. I will support the new iteration of the amendment as well. But it does not address the issue that Mr. Watt raised about national security concerns.

Mr. Chaffetz. And reclaiming my time, Mr. Chairman. I don't know that I would necessarily totally agree that it should be confined to just national security. What I am concerned about is you have people with First Amendment rights, these are their businesses, their livelihood, and therefore I want to make sure that it is relegated to the highest levels or these decisions are made at the highest level, because you are essentially taking away their livelihood, their ability to communicate, and that is why I think it needs to be at such a substantial level.

Mr. Watt. Will the gentleman yield?

Mr. Chaffetz. Yes.

Mr. Watt. Just to be clear, the problem with that is that it takes so long in that process. But I think we all are concerned that we get the right level of decision making here. And I think the appropriate course for both me and you on your amendment now and my amendment, which is the next in the sequence, is for both of us to continue to work together to make sure that we reach the proper approach and not make a mistake. So I think we get -- we all are in agreement on that.

Mr. Polis. Will the gentleman further yield for just one additional suggestion?

Mr. Chaffetz. Yes.

Mr. Polis. I would also interject to Mr. Watt and Mr. Chaffetz that this consultation also involve a senior official at DHS or somebody on the security side. Because truly, no matter where you go in the AG's office that is not within their charge or ability. So I would hope that there would be consultation as well at DHS.

Mr. Watt. That might be appropriate.

Mr. Chaffetz. Point well taken.

Chairman Smith. Thank you, Mr. Chaffetz, and the amendment is withdrawn. Are there other amendments? The gentlewoman from California, Ms. Lofgren.

Ms. Lofgren. I have, it is 13 on the roster, Lofgren 55.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Ms. Lofgren of California.

Chairman Smith. Without objection, the amendment is considered as read and the gentlewoman is recognized to explain her amendment.

[The information follows:]

***** INSERT 8-2 *****

Ms. Lofgren. The bill on page 22 provides that a product of service designed or marketed for the circumvention or bypassing of measures described in paragraph 2, et cetera, is proscribed. What this amendment does is states that a product or service that allows Internet users to circumvent domain blocking and other Internet filtering techniques will not be restricted under this bill if those technologies were designed to circumvent blocking or filtering carried out by foreign governments.

Now, why would this matter? All over the world repressive governments like China and Iran are censoring the Internet using various technological methods to block certain websites from reaching their citizens. Some of these methods are the same as what a court would impose under this bill. What has the United States done in response? Well, various computer software and other tools allow Internet users in repressive countries to evade the censorship imposed by their government. And it turns out our government, the United States Government, has funded the development of some of these tools so that the people of China and Iran and other repressive regimes can have access to the global free flow of information and freedom of speech. In fact, some of those tools were utilized in Arab Spring so that individuals could actually have access to information on the Internet. Those very same tools that we have worked to devise, that we have funded to develop in some cases, are the same tools that could also be used by Internet users in the United States to circumvent the blocking of a foreign infringing site under the bill. If we ban them,

we would also deprive Internet users in other countries the means to fight back against censorship by their repressive governments.

I think it is important that the language in Mr. Smith's manager's amendment be clarified to ensure that this does not happen. And my amendment would do that in a rather simple way.

Chairman Smith. Would the gentlewoman yield?

Ms. Lofgren. I would be happy to.

Chairman Smith. I put this amendment in the category of the amendment we just considered by Mr. Chaffetz. I do think that you and I and others involved could write language that would address your concerns, and I am happy to do so if you would consider withdrawing the amendment.

Ms. Lofgren. Well, I am mindful that -- with all due respect, Mr. Chairman, the last time I did that on the patent bill there was in fact no opportunity and there was no follow through to actually do that, so I am a little bit nervous about --

Chairman Smith. Don't let that be a precedent. That would be an exception to the rule.

Ms. Lofgren. -- you know, Charlie Brown and the football, you do it once but you don't do it again.

Chairman Smith. Well, I will make you a deal if we don't get it right this time then you have a legitimate point.

Ms. Lofgren. Okay. Mr. Chairman, I think clearly we are not going to finish this bill tonight, so I will withdraw and maybe our staff can talk and reserve the right to offer it again at the end of

the ledger.

Chairman Smith. Fair enough. We can look at it tonight and try to get it tomorrow. I appreciate the gentlewoman withdrawing her amendment. She continues to be recognized for the purposes of offering an amendment.

Ms. Lofgren. Mr. Chairman, I have 14 on the ledger. It is Lofgren 59. But I actually would prefer to offer number 41, Lofgren 56 in its stead.

Chairman Smith. The clerk will report Lofgren number 63.

Ms. Lofgren. 41.

Chairman Smith. Oh, 41, pardon me. And that is in lieu of Lofgren 63.

Ms. Lofgren. Oh, wait a minute, wait a minute. To be clear it is on the roster at 41, but it is Lofgren 56.

Chairman Smith. The clerk will report Lofgren Number 63, is that correct? No, 41.

Ms. Lofgren. 56.

Chairman Smith. 66 -- 56.

Ms. Lofgren. It is 56. It is 41 on the roster.

Chairman Smith. 41?

Ms. Lofgren. Yes.

Chairman Smith. Lofgren Number 41. And is this a substitute for another amendment or not?

Ms. Lofgren. I am sorry?

Chairman Smith. Is this a substitute for another amendment?

Ms. Lofgren. Instead of 14. I think we might have actually worked something out.

Chairman Smith. In any case, the clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261.

Chairman Smith. Without objection, the amendment will be considered as read and the gentlewoman is recognized to explain the amendment.

[The information follows:]

***** INSERT 8-3 *****

Ms. Lofgren. The point of this is to eliminate facilitation as a basis for domain seizures under 18 U.S. Code 2323. The definition of a foreign infringing site under section 102 is based on the existing authority that the Attorney General claims to seize domestic domain names under existing law. This is how it works under section 102. If a domestic website could be seized under existing law, then its foreign equivalent could be subject to being blocked under the new remedies in section 102.

The problem is that the underlying authority to seize domain names in 18 U.S. Code 2323 is itself contested and I believe flawed. In the past two years ICE and the Department of Justice have used this authority in unprecedented ways to shut down websites with no effective due process. They have seized merely upon obtaining a warrant signed by a magistrate based on probable cause. There is no notice, no opportunity to contest, it is entirely an ex parte procedure.

Pending litigation in the Second Circuit is challenging these seizures on First Amendment and due process grounds. In that case the government seized the domain name, domestic domain name of a Spanish website that had never been sued or prosecuted for any violation of copyright law. And we don't know whether that site is in fact guilty of an offense, but that is the point, there should be due process to make that determination before a website which constitutes on-line speech should be shut down.

Other domain seizures by the government have been even worse, and I am sure the members will recall when the Attorney General was here

a short while ago we raised the issue of a hip-hop blog that was seized and there was never a contested proceeding. It was ex parte on the part of the Department of Justice. In fact the proceedings were under seal and the Department refused to even provide the order to the owner of the website. They did that for an entire year before saying sorry and giving the website back to the owner one year later.

So I think that is another reason why this rush markup is unfortunate. It doesn't allow us to get to the bottom of abusive seizures that are the model for the new authority in this bill. One major problem is that the existing language allows the seizures of domains based on the facilitation of copyright offenses by other persons.

I think the meaning of this is ambiguous, it is open to abuse and in fact has been abused. The government has seized search engines and other websites based on the legal theory that merely linking to an infringing file elsewhere on the Internet can be the basis for a Federal criminal offense, and it is not clear what level of criminal intent is required from the owners of the seized domain name. It is not entirely clear from the definition of 102 whether the facilitation of offenses by others can be used to designate a website as a foreign infringing site.

However, it is my understanding that this is the intent of the authors of the bill. We shouldn't extend the mistake Congress has already made in creating this problematic language as the basis for seizures, and instead my amendment would fix the problem at its source,

limit the extraordinary remedy of domain seizure without due process of law to websites that are actually violating the relevant criminal statutes with specificity. I think that this is an important clarification.

I would be happy to yield to my colleague from Texas.

Ms. Jackson Lee. I would like to narrowly focus on what the gentlelady -- thank you for yielding to the gentlelady. I would like to narrowly focus on language that I really hope would create an opportunity to acceptance by the chair. As I read this, one of the concerns that many of us had is that the house of cards collapse when you remove one piece the way the legislation is written with all good intention. And I do want to refer to my earlier remarks. I abhor piracy and in fact I see a distinguished former staff member of Chairman Hyde in the room, and we have worked on these issues. And so I think it is important to recognize that none of us are against getting away or taking away the bad guys and preserving that wonderful intellectual property.

But I think what the gentlelady is offering is that only the property used to actually commit the relevant offenses may be seized or subject to forfeiture. I think that is a thoughtful approach, it goes right to the target, it protects all of those who are using the intellectual property, and I frankly believe this is an amendment we can draw upon. And Mr. Chairman, I will say this.

Chairman Smith. The gentlewoman's time has expired.

Ms. Jackson Lee. I yield back.

Ms. Lofgren. May I have an additional 30 seconds, Mr. Chairman.

Chairman Smith. Without objection, the gentlewoman from California will be recognized for an additional 30 seconds.

Ms. Lofgren. I would just like to -- I am so glad that Congresswoman Jackson Lee has recognized the former staffer of our former chairman Congressman Henry Hyde. And I remember the tremendous work that Congressman Hyde did, Chairman Hyde did, to actually put more due process into the seizure situations. And I wish that he were here with us today.

The problem was that the Internet wasn't foremost in our mind at that time. And it wasn't anyone's fault. Technology has moved since that time. So I just wanted to thank the gentleman for being here and remember the work of our former chairman. I think if he were here he would be joining in this amendment.

I yield back.

Chairman Smith. I was just going to take his name in vain as well. Not in vain but to say that I am sure he would support the underlying bill. But in any case we do appreciate the chairman's former staff member being here today.

I am going to recognize myself in opposition to the amendment. This amendment -- oh, the gentleman from Virginia is recognized.

Mr. Goodlatte. Thank you, Mr. Chairman. I will speak in opposition of the amendment. This amendment does not change a provision of the bill, it changes underlying law. The amendment strikes a key part of the civil forfeiture provision contained in

section 2323 of Title 18. Currently U.S. law permits the government to pursue the seizure of any property used to commit or facilitate the commission of any counterfeiting crime in sections 23, 18, 19 and 20 of Title 18. The amendment eliminates the term, quote, to facilitate the commission of, end quote, counterfeiting crime from the statute. This amendment would allow criminals to keep the tools they use to steal intellectual property.

For example, if a ring of counterfeit labelers with extensive computer software and printers were arrested and prosecuted, the government might not be able to seize all the devices used to facilitate the creation of the counterfeit goods. A court could easily determine that the computer that designed the false labels simply facilitated the crime and shield it from forfeiture. This will leave criminals with their infrastructure intact, which allows them to continue their criminal business or sell the infrastructure to the highest bidder.

The criminal forfeiture provisions are based upon the civil forfeiture statute. This amendment also therefore prevents criminal forfeiture of property used to facilitate a counterfeiting crime. The civil forfeiture provision in section 2323 already provides extensive due process for anyone who is the owner of property used to commit or facilitate the commission of a crime. Federal law protects owners from improper seizures and creates appropriate procedures to shield confidential or private information. This amendment weakens civil forfeiture laws and weakens our ability to pursue criminals who commit fraud and steal intellectual property.

And for all those reasons I oppose this amendment and urge my colleagues to join me in doing so. And I yield back.

Chairman Smith. The gentleman yields back his time.

Mr. Watt. Mr. Chairman.

Chairman Smith. The gentleman from North Carolina, Mr. Watt, is recognized.

Mr. Watt. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Watt. I thank the gentleman. I don't think there is anybody on this committee who would say that historically I have been a big fan of forfeiture. I want to join in welcoming former Chairman Hyde's staff person here. I probably was fighting forfeiture laws as aggressively as anybody because of the due process concerns I had. But I agree with the chair and the ranking member in this case that this is not the forum to start amending the forfeiture law. If we are going to do that, we really ought to have some hearings, which is what my colleagues have been saying all along about every other aspect of this bill. We ought not just back into it as a means of undermining this legislation.

I just -- I don't think even if I agreed with this, which I might in a different context if we were dealing with forfeiture law, I don't think this is the place to do it, and so I rise in opposition to the amendment also.

Chairman Smith. Thank you, Mr. Watt. The gentleman yields back his time. The question is on the amendment. All in favor say aye.

Opposed no. In the opinion of the chair the noes have it. The amendment is not agreed to.

We will now go if the gentleman from Colorado who wishes to be recognized for an amendment that he intends to offer.

Mr. Polis. I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment. I believe this is Polis Number 80.

Mr. Polis. That is what I show.

The Clerk. Amendment to the Smith amendment offered by Mr. Polis of Colorado. Page 26, insert after line 8 the following.

Chairman Smith. Without objection, the amendment will be considered as read. The gentleman is recognized to explain the amendment.

[The information follows:]

***** INSERT 8-4 *****

Mr. Polis. Thank you, Mr. Chair. As any of my colleagues on the committee might have perhaps seen Avenue Q, an excellent production on Broadway, one of the signature songs from that is The Internet is for Porn. And without objection, Mr. Chair, I would like to submit the lyrics of The Internet is for Porn for the record.

Chairman Smith. Is it printable?

Mr. Polis. It is printable, and I am told we are immune from copyright law so we can put whatever we like in the record, is that correct? I am more scared of copyright laws than anti-pornography laws.

Chairman Smith. It is under advisement.

Mr. Polis. It has no obscenities in it.

Chairman Smith. Without objection.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Polis. Thank you, Mr. Chair. And indeed a high percentage of Internet traffic is porn, a high percentage of piracy is porn. And when we are talking about this bill in its current form it is truly a pornographer's wet dream. Yes, Mr. Chairman, this bill in its current form would unleash the Attorney General's Office to defend pornographers first and foremost. Indeed, about 10 percent of Internet searches are for porn, an even higher percentage of traffic is related to porn, and, yes, commerce and piracy related to porn.

Now, where it confines with the law, I am not making the argument that somehow this is an invalid form of commerce, there are of course local and State and national laws with regard to consent and exploitation that must be followed. But I would certainly argue that consistent with this bill and the fact that the Attorney General have selective ability to use their limited resources to go after perpetrators, that in fact pornography and prurient interest should not be the focus of the Attorney General's protection. In fact the Attorney General should make sure to protect legitimate businesses before any resources are used to protect pornographers.

Under the current language the Attorney General would use scarce resources to defend the pornography industry. My amendment would simply ensure that American tax dollars are not used to protect the intellectual property rights of pornographic or obscene websites. I have not heard a desire from the advocates of the bill to protect pornographic or obscene websites, and yet that is exactly what the bill would do absent this amendment.

Let me be clear, my amendment does not restrict the rights of those who produce that content at all. Under this bill the Justice Department would clearly be strained. As I questioned the Attorney General last week, with the vast powers that he is given he would need hundreds of billions of dollars to fully implement this bill. So he will have to be very selective in how to use his resources, and I think guidance from this committee that he should protect pornographers last would be very helpful to the Attorney General in implementing this bill. I think we need to make it clear to the Department of Justice that they should not use their limited resources to defend pornographers, which otherwise would be the consequence of this bill. There is enormous commerce and enormous piracy and copyright infringement with regard to pornography. And frankly absent this amendment the Attorney General could certainly have a field day using taxpayer resources to protect pornographers, but I don't think that that was the intent of the committee. And my amendment would clarify that while the Internet may be for porn the Attorney General's Office is not there to use taxpayer resources to defend for porn.

I urge a yes vote on my amendment.

Ms. Lofgren. Will the gentleman yield?

Mr. Polis. I yield to the gentlelady from California.

Ms. Lofgren. I have a question, and I am not sure that your amendment deals with this issue. But I read an article recently about the enforcement efforts of the pornography industry. And the representation in the news article was that it is the most common

enforcement action is being taken by the pornography industry, and here is how it would work. They would bring an action against an individual. And actually apparently this has been farmed out to law firms, who will then say you can either pay us \$1,000 or we are going to file against you and it is going to become public knowledge that we are accusing you of accessing pornography. And that most or many of those who are faced with that conundrum, whether or not they have actually accessed pornography, pay up because of the humiliation and embarrassment that would occur by having that become a public allegation.

Would your amendment do anything to correct that?

Chairman Smith. The gentleman's time has expired. I recognize myself in opposition to the amendment. The gentleman's amendment, intentional or not, would carve out an exemption that makes certain types of content even more widely available on-line. The absence of effective enforcement encourages more illegal activity, not less. Notwithstanding my personal opposition to the content, we need to respect the discretion of Federal law enforcement officials to bring cases they think are appropriate.

For that reason I hope my colleagues will oppose the amendment. I yield back the balance of my time.

Are there others who wish to be heard? The gentlewoman from California, Ms. Lofgren.

Ms. Lofgren. I move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Going back to the scenario that I had reported just

prior to the chairman's statement, and I guess this is a question, and I will yield to Mr. Polis. The enforcement efforts under way are basically a shakedown of individuals, they have to pay up or there is going to be a public allegation that they have -- would this do anything to remedy that?

Mr. Polis. I don't believe it would through private actions. However, absent this it is possible that an Attorney General could shake people down for political, ideological or economic reasons over pornography, much of which is incidentally in violation of the terms of copyright. Much pornography is. We don't have exact statistics. But it is quite likely that the majority of the pornography on the Internet is in violation of a copyright. And this would give the Attorney General and our Federal Government, which should be scary to many of us, the power to then enforce that against who they choose. But I don't believe it would remedy the private piece.

Ms. Lofgren. Now, is the reason why pornography is so ubiquitous on the Internet in terms of infringement -- I mean, people have a legal right to create pornographic movies. But I would guess, and I don't know if you know or not, I will yield if you do, that if you are Mr. Smith, you know, and you have got your credit card, you don't necessarily want that on your credit card that your wife is opening up and so that you might be led to infringing. Is that the phenomena?

Mr. Polis. It is extremely difficult to get good statistics on the pornography industry. And I have read widely different accounts of the size of the industry both in terms of dollar volume, in terms

of the level of copyright infringement. But you are absolutely right, there is because of the social stigma associated with pornography additional efforts that many people undertake to be anonymous in that sense, and that in fact contributes to the copyright infringement issue with regard to pornography.

Ms. Lofgren. Well, I think actually this -- it is important that you clarified that the amendment would not limit or censor pornography, which is protected by the First Amendment. It would simply mean we are not going to use the taxpayer's money to go after that as a priority in the Department of Justice. I think that makes a lot of sense. I think not to support this amendment, folks, it is going to be kind of hard to explain back home. And I would yield.

Mr. Polis. I would go so far as to say that absent this amendment it is quite possible that the bulk, the bulk of the Attorney General and Justice's effort would be to protect pornographers from this bill because that is a large dimension of the copyright issue. And so again it is not just a question of a few incidental violators. A substantial amount of the enforcement effort absent this amendment would likely be to protect creators of pornography, again, a legal forum, but with limited resources probably not where we want to focus our efforts on enforcing.

Ms. Lofgren. Reclaiming my time, I would ask unanimous consent to put in the record Pink Visual President Allison Vivas to conduct a special anti-piracy session at XBIZLA that outlines the wide effort being made, informed by copyright experts, to make pornography the top

level effort on copyright enforcement.

Chairman Smith. Without objection.

[The information follows:]

***** COMMITTEE INSERT *****

Ms. Lofgren. And I would yield to the gentlelady from Texas.

Ms. Jackson Lee. I am glad you made that point, and I want to say to Mr. Polis he is doing very well for an individual securing his law degree from the Judiciary Committee. So let me thank you.

As someone who was here when we did many of the legislative initiatives dealing with obscenity and children on the Internet, I want to be very clear that what you are suggesting is let us not use our Federal tax dollars to enhance and cover and protect those who are dealing with questions of pornography and obscenity, which again the Supreme Court says I know it when I see it. And though the aspects of that dealing with children remain illegal, some things sneak through. Is that the point? Let us not cover them with all of our resources while they are engaged in pornography and obscenity?

Mr. Polis. That is correct. It does not affect their ability to create legal content. You mentioned some pornography is illegal. There is other pornography that is fully legal. However, we don't want to make the Attorney General's Office an extension of the General Counsel's Office at a large pornography company, which this bill would do absent this amendment.

Ms. Jackson Lee. And I feel very comfortable -- if the gentlelady will continue to yield. I feel very comfortable that you are making no negative statement on the fact of their lack of being covered by the First Amendment, which in many instances we may debate vigorously and abhor. But the point is that their expression is there, but we don't have to use our taxpayer dollars to protect it.

Chairman Smith. And the gentlewoman's time has expired.

Ms. Jackson Lee. I thank the gentlelady for yielding.

Chairman Smith. The question is on the amendment. All in favor say aye. Opposed no. In the opinion of the chair the noes have it.

Ms. Lofgren. I would ask for a recorded vote, Mr. Chairman.

Chairman Smith. A recorded vote has been requested and the clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa?

Mr. Issa. Yes.

The Clerk. Mr. Issa votes yes.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Yes.

The Clerk. Mr. Quigley votes yes.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

[No response.]

The Clerk. Ms. Sanchez votes no.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye

Chairman Smith. The gentleman from Pennsylvania.

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Chairman Smith. The gentleman from Virginia.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. The gentleman from Virginia.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The gentleman from New York, Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Chairman Smith. The gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. Yes.

The Clerk. Mr. Gohmert votes yes.

Chairman Smith. The gentleman from Ohio.

Mr. Jordan. Are we doing Polis 16?

Chairman Smith. That is correct. It is number 16 on the roster, it is Polis Number 80. The gentlewoman from California, Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Chairman Smith. The gentleman from Ohio.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Chairman Smith. Are there other members who wish to be recorded?

The gentleman from Iowa.

Mr. King. No.

The Clerk. Mr. King votes no.

Chairman Smith. The clerk will report. Oh, the clerk will suspend. The gentleman from Arkansas.

Mr. Griffin. Yes.

The Clerk. Mr. Griffin votes yes.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 9 members voted aye, 18 members voted nay.

Chairman Smith. Majority having voted against the amendment, the amendment is not agreed to. Are there other amendments?

Mr. Polis. The gentleman from Colorado is recognized.

Mr. Polis. Again, I have an amendment at the desk.

Chairman Smith. The clerk will report Polis Number 202.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Jared Polis of Colorado. Page 20 --

Chairman Smith. Without objection, the amendment will be considered as read and the gentleman is recognized.

[The information follows:]

***** INSERT 8-5 *****

Mr. Polis. Thank you, Mr. Chair. This deals with the sections relating to the enforcement of orders on page 20 replacing lines 14 through 19. Again, to ensure compliance with orders issued under this section the Attorney General may bring inaction for injunctive relief under the language that is replaced as against any entity served under paragraph 4 that knowingly and willfully fails to comply with requirements to compel such an entity to comply with such requirements. We say relief against any entity that knowingly and willfully fails to comply with the requirements of this section to compel them to do it.

Again, I think it is language that improves the overall bill, it is consistent with the goal. We also impact on page 22 the -- we eliminate the language from line 1 through 23 regarding the product or services marketed for this circumvention or bypassing of a measure. This again applies to anonymizers, TOR, other things that can be used to access sites beyond government censors, the type of product that Ms. Lofgren has mentioned and made possible, the Arab Spring that are critical to maintain free speech here and across the world. And preventing the product from being -- that is designed or marketed that can be used, even if incidentally, as a tool for infringement of property is not a productive direction.

Any technology can be used in good or bad ways. Again, talking about a telephone, you can have a nice conversation with somebody, you can also plot a crime with somebody over a telephone. TOR, a web anonymizer, can be used to learn the true story of Tiananmen Square

if you happen to live in China and the government otherwise doesn't allow you to access that story and in fact only shows happy smiling people. When you look up the term Tiananmen Square it allows you to get the real story. And yes, of course they have other uses as well which are less honorable. But what this would do is make it clear that we are not going to be seeking to eliminate products or services designed or marketed that can be used to prevent access to these services.

These are again typically products that can avoid government censors that enable the Internet to remain a bastion of free speech. When they are used wrongly, again the correct answer is to go after the offenders criminally where possible, civilly where possible, working with other jurisdictions where possible, and working together on a domestic solution that makes sense, unlike the underlying one in the bill, again, I think with the importance of many of these enabling technologies to free speech, and that is why this bill is opposed not only by ACLU but by a whole host of human rights organizations that see the danger of actually preventing the incentive and eliminating technologies that allow individuals here and abroad from getting around government or corporate censors.

And that is why I offer this amendment, and I hope that the committee will choose to include this in the final bill to ensure that unintended consequence, because I don't think that was the desire of anybody on this panel to further potentially restrict speech in those areas that have onerous restrictions, but I think this provides an

opportunity to ensure that in fact that is not the case with this bill.

And I will yield back the balance of my time.

Chairman Smith. Thank you, Mr. Polis. And I recognize myself in opposition to the amendment. The gentleman's amendment strikes the inclusion of anti-circumvention devices from the bill. It would allow devices to be developed and distributed in the United States that would circumvent judicial orders to block access to foreign infringing websites. The manager's amendment significantly narrows the scope of this provision. It ensures that only entities that design or market such a product or service for the purpose of circumventing a law can be enjoined.

This is an important part of the bill. We work to address technical concerns but also ensure that we retain strong anti-piracy provisions to protect American jobs and we want to deter foreign criminals who steal American intellectual property.

For these reasons I oppose the amendment and yield back the balance of my time. The vote is on the amendment.

Ms. Lofgren. Mr. Chairman, I move to strike the last word.

Chairman Smith. The gentlewoman from California is recognized.

Ms. Lofgren. I would like to -- it is very easy, and I think the members are getting tired and a lot of members have left, just to say no. But I do think that the amendment offered by Mr. Polis is not just an elimination, it is refining the section of the bill. I think that even though it is late and everybody I am sure is tired, we need to have an answer to the human rights question that I raised with my

amendment and that by implication Mr. Polis is raising again with his. In fact, whether or not we have this in the bill likely there will be people -- people create code. I mean we can't outlaw the creation of code even if we might want to do so. But to narrow the provision of the bill as Mr. Polis has suggested I think strikes a balance that should be supported by all of us. In fact, I don't think we can tell the rest of the world the individuals who are living in repressive regimes that we are going to outlaw the tools that they need to be free people. And if you want to take a look at where is the innovation happening in the world in terms of Internet coding, it is still the U.S.

I am not sure that will continue to be the truth if this bill passes. But absent something like Mr. Polis' amendment we will, and I am sure it is not the intent, I am not suggesting it is the intent, but the result will be further oppression of individuals in repressive regimes. That is just a foregone conclusion.

So I would urge the chairman to rethink his opposition to this narrowly drawn amendment for the sake of these who are living in regimes that care so little about human rights. And with that, I would yield to the gentlelady from Texas.

Ms. Jackson Lee. I would like to add to that comment, and specifically -- I thank the gentlelady for yielding. I hold in my hand a letter dated from the Secretary of State to the chairman of -- the ranking member of the Foreign Affairs Committee dated October 25th that specifically speaks to the Arab Spring and indicated that the State Department in particular was committed to advancing both Internet

freedom and the protection and enforcement of intellectual property. We must hold governments accountable to the international commitments and obligations they have taken with respect to freedom of expression which apply equally to on-line activity. Given the volume of communication over the Internet today, we have focused our efforts on ensuring that the Internet is a medium to which people can safely and effectively express their opinions.

In this letter, as we have been saying throughout the debate, there should be no exclusivity on the protection against piracy and the freedom of expression in the First Amendment, which I think the gentleman's amendment goes to. The letter goes on to say, the Arab Spring shows that the promise of the Internet as a medium by which peaceful demonstrators can mobilize citizens in the face of government oppression is valuable.

The Internet also offers tremendous opportunity for creators and inventors, but that promise will not be met unless the rules of copyright and trademark are protected and enforced, which we are all saying they go hand in hand. The rule of law is essential to both Internet freedom and protection of intellectual property rights.

I think that is what the gentleman's amendment captures, and this is a letter that I ask unanimous consent to submit into the record from the Secretary of State that understands what we are saying, Internet freedom and protection of intellectual property. I yield back.

Chairman Smith. Without objection, the letter will be made part of the record.

[The information follows:]

***** COMMITTEE INSERT *****

Ms. Lofgren. I would yield the balance of my time to Mr. Polis.

Mr. Polis. Thank you. And in determining whether we need a vote on this one I believe the chairman specified that he would work with Ms. Lofgren on this related issue. So I am not wedded to my language. And again I just wanted to reiterate I believe the chairman expressed that he would be working with Ms. Lofgren on this issue of making sure that there is global free speech.

Is that correct, Mr. Chairman.

Chairman Smith. I am sorry, would the gentleman repeat the last?

Mr. Polis. Okay. I believe in a previous discussion with Ms. Lofgren you expressed a desire to work towards resolving this. I am not wedded to this particular language. I again just wanted to reiterate that that was a discussion.

Chairman Smith. If the gentleman is interested in knowing whether we will work with him, of course we will. I just can't make any guarantees.

Mr. Polis. Right. Again, I think Ms. Lofgren mentioned there might potentially be later an amendment if we can't figure this out. But we would like to work with you and I am happy to withdraw the amendment.

Chairman Smith. Okay. I appreciate the gentleman withdrawing it. We will work on it between now and tomorrow. And the gentleman will be recognized to offer the amendment again if we don't work it out.

We will now -- the gentleman from Wisconsin is not present right

now, so we will go to the gentlewoman from California if she wants to offer --

Mr. Quigley. Mr. Chairman, could I ask a question, please, procedurally?

Chairman Smith. Yes.

Mr. Quigley. You mentioned tomorrow, and we have some dim hope that it will be here. Could we just ask in terms of planning our night what was your intention?

Chairman Smith. I have been asked two frequent questions, how late we are going tonight and whether dinner is going to be provided. The answer is late and yes. And I welcome the gentleman to come over to the offices on the majority side. He is welcome to partake of three different kinds of pizza. Oh, we provided pizza for your side I understand as well, but you are still welcome to come over.

Mr. Quigley. I appreciate that.

Mr. Watt. Thank you, Mr. Chairman.

Mr. Nadler. Mr. Chairman.

Chairman Smith. The gentleman from New York.

Mr. Nadler. Are you providing three types of pizza for the minority, too?

Chairman Smith. The answer is yes.

Mr. Nadler. I appreciate the chairman's evenhandedness.

Mr. Watt. Mr. Chairman, there are actually four types.

Chairman Smith. We are in trouble. Mr. Watt reports four different kinds. We may have made a mistake there. Does the

gentlewoman from California wish to offer an amendment?

Ms. Lofgren. Yes, I do, Mr. Chairman. The amendment is at the desk. It is 19 on the roster, Lofgren 58.

Chairman Smith. And the clerk will report Lofgren Number 58.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Ms. Zoe Lofgren of California. Page 25, strike line 13 and all that follows through page 28 line 5 and insert the following. One, Internet site dedicated to the theft of U.S. property. A, In general. An Internet site is an "Internet site dedicated to theft task of U.S. property" if it is a U.S.-directed site that has only limited purpose or use other than, and whose owner or operator uses the site willfully and primarily to, (i), infringe copyright under section 501 of Title 17, United States Code; (ii) violate section 1201 of Title 17, United States Code; or (iii) use counterfeit marks in a manner that violates section 34(d) of the Lanham Act, 15 U.S. Code 1116(d). (B) Exclusions --

Chairman Smith. Without objection, the amendment is considered as read and the gentlewoman from California is recognized to explain the amendment.

[The information follows:]

***** INSERT 8-6 *****

Ms. Lofgren. Here is what the amendment does. It replaces the existing definition which would allow lawsuits under the new private right of action created in this legislation. Under this amendment a website could be sued and cut off from payment and advertising networks if it is operated primarily and willfully to engage in acts that violate copyright and trademark laws.

Now, if a website is consistently taking down infringing content in response to complaints by right holders, it should not be condemned as dedicated to the theft of U.S. property. As a basic principle this bill is about remedies. It should not expand the existing boundaries of liability for copyright or trademark infringement. But this could be the result of the definition in the manager's amendment dedicated to the theft of U.S. property. Specifically a foreign website could be sued by a private party under section 103 for taking anywhere on its site affirmative steps to foster a violation of copyright or trademark law by other persons.

Now, instead of limiting private lawsuits only to infringement and violations of law actually committed by the websites, the manager's amendment leaves the door open to aggressive theories of secondary liability. For example, a court might find that a website, quote, took affirmative steps to foster, unquote, infringement and therefore be subject to mandatory termination by payment in advertising networks even if there was no copyright or trademark violation, even if there was no infringement.

Designating an entire foreign website is dedicated to theft of

U.S. property and terminating all commercial links to the United States is a very aggressive remedy. It should be limited to criminal websites whose violations of the law are unambiguous. This definition will capture all the major rogue foreign websites that the authors say that they are after. The amendment will make clear that innocent actions will not be the subject of this draconian enforcement scheme. You know, the DMCA, although it has been sometimes criticized, has worked oftentimes. The existing language would sweep IP sites into its scope, websites where people are living up to all their obligations under the DMCA, including registering a copyright agent, doing notice and takedown and terminating infringers.

RPTS BLAZEJEWSKI

DCMN ROSEN

[6:45 p.m.]

Ms. Lofgren. This is what really we should be encouraging for foreign sites, not discouraging. The reasons that sites comply with the DMCA that might still be swept up is that the safe harbors are limitations on liability, not affirmative defenses, and as a result, you can be completely compliant with the DMCA and yet a qualifying plaintiff could argue that you are nevertheless still technically violating Section 501 of the Copyright Act, even though everything you are doing is perfectly legitimate.

You know, I think that the amendment also removes the redundant recapitulation of the inducement standard that is in the manager's amendment, and including that in this definition of site dedicated to theft is redundant and will possibly confuse the courts, leading them to ask what more Congress must have meant than the inducement already included in subsection 1(a)(i).

I think the amendment is particularly important, because Section 103 includes a private right of action, and getting the definition narrowly and correctly drawn is crucial to defer trial lawyers from seeking, and I am not opposed to trial lawyers, I am a member of the Trial Lawyers Association, but we do know that gotcha lawsuits are not about stopping piracy, but about harassing legitimate sites, and we have seen that, as I mentioned earlier in the discussion with Mr. Polis,

the shakedown that occurs in some enforcement actions, and to think that the shakedown will not occur simply because the remedy is payment cutoff is to misunderstand the nature of the remedy.

I think that, you know, it is one thing to say we are going to trust the Attorney General to always bring the right matters, but we are opening this up to anybody who wants to bring an action, and if we don't have a narrowly defined definition in the Act, we are going to see abuse, as we have sometimes seen under existing law.

So I think this amendment not only should be supported, I think it is essential, and I see that my time has expired, so I yield back, Mr. Chairman.

Mr. Goodlatte. [Presiding.] I thank the gentlewoman.

Mr. Issa. Mr. Chairman.

Mr. Goodlatte. If the gentleman will suspend, I am going to recognize myself.

Mr. Issa. Well, certainly, Mr. Chairman, you are in the seat.

Mr. Goodlatte. Thank you, Mr. Chairman. The gentlewoman's amendment seeks to significantly narrow the definition of an Internet site dedicated to theft of U.S. property and makes the bill less effective. Most in Congress want to seek meaningful solutions to stem the economic harm created by foreign rogue Web sites. As we developed the manager's amendment and drafted the bill, we heard from individuals, small businesses, and various stakeholders representing different industry sectors. We worked to address technical concerns but also to ensure that we retained strong antipiracy provisions to

protect American jobs and go after foreign criminals who steal American intellectual property.

By requiring proof that an operator willfully intended to violate an intellectual property right, the amendment would require an intellectual property owner to prove the state of mind of a defendant who they likely cannot reach because they are in China or Russia or some other foreign location. In addition, the exclusions in the amendment protect pirate sites that adopt a notice and take-down policy despite the fact that the site is still engaged in intellectual property theft, so for these reasons I oppose the amendment.

Mr. Polis. Mr. Chairman.

Mr. Goodlatte. I recognize the gentleman from Colorado.

Mr. Polis. Move to strike the last word.

Mr. Goodlatte. The gentleman is recognized.

Mr. Polis. Thank you. You know, when we are talking about the site violating copyright and infringing and taking down the site, 99 percent of the time what we are going to be talking about here is user-generated content. You know, it could be 95 percent of the time, 99.5, whatever, the vast majority of the time. There is a difference when it is an offending site, in which case the proprietors of the site are engaged in a willful act of copyright infringement versus creators of an enabling technology or implementers of an enabling technology as simple as an electronic bulletin board, which beyond their own control might incidentally be used by some of its users for illegal purposes.

Again, all of these platforms that I have seen that have been created have legitimate functions, have legal uses. There is no doubt that, like any technology, like the telephone and indeed like an automobile, which you can illegally drive into a building if you so choose, or illegally run over a pedestrian if you so choose, so, too, these technologies can be used for illegal purposes.

This amendment is important because what it essentially does is make sure that we are not going after sites that might only be, have user-generated content that infringes upon the theft of U.S. property. This is a very severe, this is a very Draconian solution that in the arsenal for the Attorney General should only have very specific incidences under which it can be used. I think Ms. Lofgren spells those out effectively.

In addition to the danger of wrongfully disabling sites that have user-generated content that may be infringing, the precedents that this site sets among global nation states and others is a very negative one. Again, by stating this ourselves with regard to foreign-operated sites, we are effectively encouraging a country-by-country regime and treatment of foreign sites to them, which are domestic sites to us, which would harm the growth of legitimate companies and legitimate technologies, no doubt all of which have uses or most of which have uses which are illegal. Something as simple as email, something as simple as Facebook, something as simple as a video platform like YouTube, these can all be used in ways that are contrary to the law, and the individuals responsible for that should be held fully

accountable under the law.

The answer, however, should not be to disable those sites. And just as we are seeking to do this with foreign sites, there is nothing to stop this precedents going forward to have other countries disabling our own sites, sites like YouTube and Facebook that employ tens of thousands of Americans and many others because we, the shining light of freedom of speech and of intellectual property enforcement, have gone down this path and set this precedent. A very dangerous, dangerous precedent for us to set and one that will ultimately be counterproductive, and I think it is critical, again, to realize that user-generated content from which most of these infringements are derived, while they might be enabled by a technology that also enables legitimate commerce and communications, are not the fault of the technological enabler that creates it no more than Ford should be held liable for somebody who drives into a building or kills a pedestrian and no more than a gun company should be liable for a gun that is used in a murder. I would be happy to yield.

Mr. Issa. Would the gentleman yield?

Mr. Polis. I will be happy to yield.

Mr. Issa. Please hold that thought about the gun company not being held liable. I think the gentleman has hit on an extremely important point, and I would just like to comment on the gentleman from Virginia, the chair, I think he has somewhat misunderstood the likely practical ramifications. This bill will face one of two types of foreign entities. The type that doesn't answer the claim and gets a

default judgment, in which case it is really just a prove-up, a prove-up without a defense. The other is a foreign entity who is willing to come in and fight in court, and if you are willing to come in and fight in court, why shouldn't you have all reasonable defenses including that one?

So I know that the gentleman meant well when he said, well, this wouldn't work, but the practical reality is the sites we are talking about are not going to, for the most part, they are not going to defend, there are going to be default judgments, and the few who come forward, why wouldn't we have them say, look, I have all these legitimate items and so on? Additionally -- well, I think I made my point. I will seek other time. I yield back to the gentleman.

Mr. Polis. And I will be seeking some additional time as well. Hopefully somebody will call some.

Mr. Issa. Does the chair have a question, I guess?

Mr. Goodlatte. The question occurs on the amendment offered by the gentleman from --

Mr. Issa. Mr. Chairman, I object. I had sought time on my own.

Mr. Goodlatte. Okay, fine. The chair recognizes the gentleman from California for 5 minutes.

Mr. Polis. Will the gentleman yield?

Mr. Issa. I certainly will yield to the gentleman.

Mr. Polis. Thank you. I thank the gentleman. Again, if I am getting this correctly, the Digital Millennium Copyright Act, unlike this bill that is kind of going through quickly with only some of the

stakeholders at the table, was a result of a long process, and it has worked, it has relatively worked. This applies that same concept of you are responsible for a take-down to the foreign infringers. It sounds like a reasonable, very reasonable standard to hold foreign infringers to, we hold domestic infringers to, let's equate the two standards. It fundamentally works for the Internet, it works for rights holders. I am happy to yield back to the gentleman from California.

Mr. Issa. I thank the gentleman. Hopefully, the chair would have some reasonable response to why this level of common sense prove-up makes some -- doesn't make sense. It appears as though the idea that a materially noninfringing use is somehow not a good defense and should not be included explicitly in the bill begs, you know, me to say, please, Mr. Chair, can you tell me why that shouldn't be a defense? I would be glad to yield to the chair.

Mr. Goodlatte. I would simply say to the gentleman that under criminal law, criminal copyright law, willful, willfully is a very high standard to prove, and I don't see the need to provide that standard here with regard to foreign infringers of copyright.

Mr. Issa. Well, let me understand this for a moment. You don't want to give rights to foreign infringers, but you don't want to --

Mr. Goodlatte. They have rights to come in and defend themselves in the case. The question is how high a threshold does the U.S. prosecutor have to reach in order to make their case?

Mr. Issa. I think if I am correct, this is a private right. This

is, in fact, the plaintiff's trial bar, a group that at least on this side of the aisle we tend to say, wait a second, we don't want to give them, you know, the easy road to collect moneys and to do their actions, so I am trying to understand why you would have a low standard for that. Additionally --

Mr. Goodlatte. It is not a low standard, it is just not a very high standard. It is a pretty low threshold.

Ms. Lofgren. Would the gentleman yield?

Mr. Issa. I would yield to the gentlelady from California.

Ms. Lofgren. The question is, and if I am hearing the chairman correctly, that nonwillful infringement should be the cause of action here. Is that your intention?

Mr. Issa. I think that is what I heard.

Mr. Goodlatte. So the standard under the copyright law --

Mr. Issa. Yielding.

Mr. Goodlatte. -- would be preponderance of the evidence, not willfully. I mean, why would we make it harder for U.S. entities trying to protect intellectual property rights?

Mr. Issa. Well, reclaiming my time, Mr. Chairman, and not to be offensive, but you already voted down the idea that we would limit this to U.S. entities. This ain't U.S. entities. It is anybody who wants to come play in our playground. I would lead to the gentlelady from California.

Ms. Lofgren. I think the chairman is confusing intent with the evidentiary standard. They are different. And what I am hearing him

say is that we could have -- this action would lie even when there wasn't a willful infringement. I think that is a problem. And as I have mentioned, you could end up with a private party taking action based on the affirmative steps to foster when all was said and done there was no violation, no infringement, as the statute is currently crafted. That can't be what our intention is, and I thank the gentleman from California for yielding.

Mr. Issa. I thank the gentlelady.

Mr. Goodlatte. Would the gentleman yield?

Mr. Issa. I would be glad to yield again to the gentleman.

Mr. Goodlatte. So the gentleman now is complaining that we have taken domestic sites out of the legislation because -- we took them out because there are other copyright laws and standards for enforcement of those laws which have a lower standard for proving copyright violations than is called for in this amendment for foreign sites. That is why I opposed the amendment. You are asking for too high a standard.

Mr. Issa. Reclaiming my time.

Mr. Goodlatte. I don't understand why we would have a higher standard to prove copyright infringement for foreign sites than with U.S. sites.

Mr. Issa. Well, I appreciate that, but this is a rush on the court question as much as anything. Having a high standard for domestic people to bring this in the courts to seek a remedy against a foreign entity, understanding, again, I repeat, as a practical matter, as

somebody who has defended intellectual property, my own, repeatedly around the world, the fact is the bad guys aren't going to come up at all. You are going to generally get a default judgment, and there your prove-up even at this high standard is just to show a pattern.

But, Mr. Chairman, if you can't take this one, then once again what we are seeing, and this is a pattern, is there was no interest in compromise. This has been a take-it-or-leave-it sort of approach, and I am frustrated because that is not the history of this committee. This is a committee that generally comes in and takes good amendments and even offers secondary amendments if they weren't crafted well enough. Haven't seen that today. I yield back.

Mr. Goodlatte. The question occurs on the amendment offered by the gentlewoman from California. All those in favor respond by saying aye. Aye. Those opposed no. No. In the opinion of the chair, the noes have it.

Ms. Lofgren. I would ask for a recorded vote, Mr. Chairman.

Mr. Goodlatte. Recorded vote is requested. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. Yes.

The Clerk. Mr. Issa, yes.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz, aye.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei, no.

The Clerk. Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers, no.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler, no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott, no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt, no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters, no.

Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen, no.

Mr. Johnson?

Mr. Johnson. Yes.

The Clerk. Mr. Johnson, yes.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Yes.

The Clerk. Mr. Quigley, yes.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu, no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch, no.

Ms. Sanchez?

Ms. Sanchez. Yes.

The Clerk. Ms. Sanchez, yes.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. [Presiding.] The gentleman from Virginia, Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Chairman Smith. The gentleman from Ohio.

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Chairman Smith. The gentleman from California, Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren, no.

Chairman Smith. The gentleman from Ohio.

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Chairman Smith. The gentleman from Arizona.

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Chairman Smith. Are there other members who wish to be recorded on this amendment? The gentleman from California, Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman, no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, seven members voted aye, 24 members voted nay.

Chairman Smith. A majority having voted against the amendment, the amendment is not agreed to.

Are there other amendments? The gentleman from Ohio, Mr. Chabot, is he prepared to offer an amendment?

Mr. Chabot. I have an amendment at the desk, Mr. Chairman.

Chairman Smith. The clerk will report amendment number --

Mr. Chabot. 22. 22.

Chairman Smith. 22 or 13, whichever number it is.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Mr. Chabot of Ohio, page 35, line 16.

[The information follows:]

***** INSERT 9-1 *****

Mr. Chabot. Mr. Chairman, I ask unanimous consent --

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman is recognized to explain the amendment.

Mr. Chabot. Thank you, Mr. Chairman. I will be brief. This amendment simply provides that service will be proper when it is served on an agent designated by a corporation to receive service of process. The purpose of the amendment is to ensure that one of the ways in which noninfringing third parties may receive copies of court orders is through well-established legal channels for serving corporations. This amendment will ensure that a copy of the court order, which is what triggers the requirement for an entity to act, gets into the hands of the right people at the entities that are going to be required to take actions to shut down an infringing site. This makes it clearer to the parties involved than stating that service is permissible in any place where an entity or representative of that entity may be found.

For example, this eliminates the situation where a copy of an order is handed to a company representative who is delivering a speech at a conference, for example. And I yield back.

Chairman Smith. Will the gentleman yield, the gentleman from Ohio yield?

Mr. Chabot. I would be happy to yield.

Chairman Smith. I thank the gentleman for offering this amendment, which I think improves the underlying legislation, and I support it, and I will yield -- the gentleman from Ohio, if you will

yield to the gentleman from Virginia.

Mr. Goodlatte. If the gentleman would yield, I, too, support his amendment. He is 2 for 2.

Mr. Chabot. Thank you.

Mr. Goodlatte. A higher percentage than anyone else.

Mr. Chabot. I better shut it down there.

Chairman Smith. Are there other members who would like to be heard on the amendment?

Ms. Jackson Lee. Will the gentleman yield?

Chairman Smith. The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. Jackson Lee. Mr. Chabot, let me just inquire, your explanation again is to avoid false service or service to, if you will, secondary representatives. Can you just -- you gave the example of a speech and someone being given --

Mr. Chabot. Yeah, reclaiming my time. In other words, if they have a corporation, they usually have a certain place they have to be served, they have an agent. It is just making it clear, you serve the agent where the corporation is designated for service.

Ms. Jackson Lee. Thank the gentleman for yielding. I return back whatever time I have.

Mr. Chabot. Okay. If no one else requests time, I will yield back.

Chairman Smith. The question is on the amendment. All in favor say aye. Aye. Opposed nay. The amendment is agreed to. Are there

other amendments?

Mr. Issa. Mr. Chairman, I am not sure if I am going to be up next, my 103 amendment.

Chairman Smith. I am looking to see if there are other members who were listed as having amendments before you.

Mr. Issa. From what I can tell, I am next in order, but it would be Sensenbrenner.

Chairman Smith. Oh, I am sorry, is this Issa number 76?

Mr. Issa. Yes, sir.

Chairman Smith. Yes, the gentleman is recognized for the purpose of offering an amendment.

Mr. Issa. Thank you. The clerk will designate.

[The information follows:]

***** INSERT 9-2 *****

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261 offered by Mr. Issa.

Chairman Smith. Without objection, the amendment will be considered as read. The gentleman from California is recognized to explain his amendment.

Mr. Issa. Thank you, Mr. Chairman. This is somewhat similar to the last amendment that fared well but not well enough. The difference here is that we are in the business of protecting U.S. copyrights. It is pretty much that simple. So it requires that the person must be both a U.S. copyright or trademark holder and a U.S. person in 103. Now, again, I beg everyone here to understand. This is the private cause of action, so if I can emphasize enough, you are gonna sue in U.S. courts, you are going after U.S. persons, you are making a claim. All we are saying, similar to my OPEN Act, is why in the world wouldn't you be expected to be a U.S. entity with U.S., with a U.S. copyright? If you are not, then what you are doing is you are suing one direction. You are coming into this process potentially with absolutely no downside. You make a frivolous claim, you make maybe a million frivolous claims, you maybe collect some money.

Mr. Nadler. Would the gentleman yield?

Mr. Issa. I will in just a second. Practically an Internet scam, and you are not vulnerable to anything because you have got no assets here. So, again, it is not unreasonable, it is expected. Mr. Nadler, I would yield.

Mr. Nadler. I really don't understand your amendment. You are saying that in order to bring the suit, you have to be a U.S. citizen and the copyright holder?

Mr. Issa. No, a U.S. person, which would include a U.S. corporation as the copyright.

Mr. Nadler. In order to bring the suit against an alleged infringer?

Mr. Issa. That is correct, you would have to have a U.S. presence in order to come into the U.S. and have --

Mr. Nadler. U.S. presence meaning someone who is present in the U.S.?

Mr. Issa. Well, no, no. We use the term specifically, a U.S. corporation would comply, so if you happen to be a U.S. --

Mr. Nadler. Let me ask you this: What are you trying to prevent?

Mr. Issa. I am trying to prevent a false claim by entities having -- you know, you can be a Nigerian-based sham entity, and if we don't have some protection as to who has a right of action --

Mr. Nadler. In a U.S. court?

Mr. Issa. Yeah, in a U.S. court. And, also, all we are doing is saying well, why not -- why in the world when you are going to spend U.S. taxpayers' money to enforce copyrights that you say, look, it is going to be a U.S. copyright and a U.S. entity.

Mr. Nadler. So you are saying that a Nigerian --

Mr. Issa. I use Nigerian because they are famous for a certain kind of spam.

Mr. Nadler. I understand. Whatever. A Nigerian plaintiff who is alleging a copyright infringement in the United States --

Mr. Issa. Yes.

Mr. Nadler. -- should not be able to come into a U.S. court?

Mr. Issa. With a non-U.S. copyright and without an entity here that holds it, that is correct.

Mr. Nadler. If we did that, wouldn't that --

Mr. Issa. And going after a foreign site, think about this --

Mr. Nadler. But wait a minute. If we did that, wouldn't that lead to foreign nonenforcement of our copyrights?

Mr. Issa. No, understand, the way this thing -- if you leave this out, you open yourself up to, for example, a foreign entity coming into our courts to enforce against another foreign entity, and then having our U.S. companies act on behalf, all of which is done at our expense.

Mr. Nadler. Against another U.S. -- against a foreign -- not against a U.S. entity?

Mr. Issa. Right. This is about foreign entity primarily is the claim of this bill. So what --

Mr. Nadler. And therefore, in other words, none of this touches the United States, and therefore it does not open us up to retaliation against enforcement of our copyrights abroad?

Mr. Issa. Yes, that is correct. And that is all we are really looking at is that we have said all along that if this is to become law, let's at least make sure that what we are doing is going after the bad guys on behalf of U.S. entities and U.S. copyrights. It seems

so simple that you wonder why it is necessary. If someone wants to show me where it is in still and explicit and taken care of, I wouldn't be making this, but we asked and we could not get it, and so we said, well, wait a second here, this is U.S. taxpayer dollars in support of an action mandating -- that is likely to mandate with the Justice Department's assistance, all kinds of enforcement, and we are looking and saying, before we spend the money, either in the 102 or the 103 portion, this is the 103, let's just make sure that we have got a U.S. presence.

That is all we are trying to do with this, and that is the reason that we are bringing it up, and now we are bringing it up in the private cause of action because we think it has an even better chance of being accepted by the chair.

Mr. Nadler. Yield back.

Mr. Issa. And I yield back.

Mr. Goodlatte. Mr. Chairman.

The Chairman. The gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. Mr. Chairman, this is not at all dissimilar to the amendment the gentleman offered earlier. If you want to think about it, the United States is by far the world leader in intellectual property. We sell it in virtually every country in the world, copyrighted materials, goods that are trademarked with U.S. trademarks and so on. So the precedent here that you would be worried about setting would be that if you went to some other country in the world and said, if they have a law that attempts to enforce their copyright

owner's protections in other countries, and you say, well, our goods are being sold in your country, too, we want you to protect our goods against foreign sites that are getting into that country's consumers and selling stolen goods, we set the precedent here by saying, well, the United States isn't going to allow that in our country, so why would they allow it in some other country around the world? It is also counter to commitments that the United States has made under existing trade agreements, so it creates a terrible international precedent, and I would strongly oppose this.

Mr. Issa. Would the gentleman yield?

Mr. Goodlatte. I would yield.

Mr. Issa. I appreciate that. I have spent years on the Foreign Affairs Committee, and I am trying to -- although not the Ways and Means. I am trying to understand what country would allow a foreigner, let's just say an American, to come into their country and expect them to spend their money against another foreign country, another foreign country's company at their expense without that entity being in some way domestic? If you turn it around, they would laugh at us if we said that they would retaliate. No country is going to enforce against another country's company and then secondary against their own people without a presence and a right.

Mr. Goodlatte. Well, sure they would. If you have got a foreign entity selling goods into a country that are counterfeit, fraudulent, maybe harmful to the citizens of that country, and they are manufactured by a company in that country, they are going to take the same position

the United States takes on that, why wouldn't they be concerned about those goods coming into that country if they are goods that belonged to somebody else?

Mr. Issa. If the gentleman would --

Mr. Goodlatte. And then says that they want to have that protection in that country.

Mr. Issa. If the gentleman would yield?

Mr. Goodlatte. Sure.

Mr. Issa. I see your point, except in this case, this is the private action, private right of action in Section 103, so what we are really saying is I get to come in and I get to sue another foreign entity, but my real purpose is not to sue the foreign entity, and foreign from that country. My real reason is, in fact, to get enforcement and perhaps -- not perhaps, but definitely money damages against entities downstream.

So I can actually come in and make an allegation against an eBay delivery from the United States into China, and then turn around and get the Chinese government to, in fact, go after U.S. entities that are operating in China. I mean, it is --

Mr. Goodlatte. Reclaiming my time. The gentleman just noted that this is unlike the gentleman's first amendment, which involved the governmental action, this is the private right of action that the gentleman is talking about now, and U.S. entities go into other countries' courts all the time seeking protection of their intellectual property rights, and they want to avail themselves of whatever remedies

are available in those countries. Different countries have different remedies available to them. So I don't understand why the United States, which certainly invites people to do business here from all over the world, why we would deny access to our courts to them when we expect to have access to their courts in their countries?

Mr. Issa. Well, if you would yield one more time.

Mr. Goodlatte. Certainly.

Mr. Issa. Because it is a reasonable level of standing in order to operate in this case. Again, as I said before, you set up a U.S. corporation, you put your U.S. trademark in it, and you have met the requirement. We are not looking at an onerous standard. But we are saying whether it is a private right of action or the Department of Justice spending your taxpayer dollars, we think that those priorities should go to the entities, and it is not even a difficult standard to reach that we are trying to put into the bill.

Mr. Goodlatte. It may not be a difficult standard, but it is an unwise one, and, therefore, I oppose the amendment and yield back.

Chairman Smith. The gentleman's time has expired.

Mr. Watt. Mr. Chairman?

Chairman Smith. The gentleman from North Carolina, Mr. Watt, is recognized.

Mr. Watt. Mr. Chairman, I rise in opposition to the amendment.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Watt. This is another one of those amendments that I think is just counterproductive and beyond the pale.

Mr. Issa. Would the gentleman yield? What would beyond the pale mean? Are you saying that somehow I am disingenuous in my statement here?

Mr. Watt. If I thought you were disingenuous, Mr. Issa, I would say that. I said it is beyond the pale of my understanding, the rationale for it, you know, then you would try to take down my words. But, you know.

Mr. Issa. No, I want to take down your meaning. What is it you meant by "beyond the pale"? I am trying to understand. We just had colloquy on this.

Mr. Watt. Well, it is --

Ms. Waters. It is unnecessary.

Mr. Watt. Right. Okay. All right. Let me -- if you let me get more than a half a sentence out, maybe you would understand. You obviously are not accustomed to listening very much. You like to talk. You don't like to listen. And the difference here, the first amendment was you were talking about U.S. Government money attorneys, Attorney General. This is private rights of action, and we have individuals throughout the world who have property rights, intellectual property rights, and you are saying, you are inviting other people throughout other countries throughout the world not to allow those individuals to exercise their property rights in those countries, and additionally the way this is written, because you would require them to hold a person who, a United States person who holds a copyright registered under Section 408 of Title 17 of the United States Code, you are also excluding

a bunch of people who -- you are making them have to cater to U.S. law.

So, I mean, this is -- I mean, I understand your desire to draw this out, but I just don't understand why you, of all people, doing business around the world, having done business around the world, would be trying to cut off the rights of individual citizens in the United States to enforce their copyrights in other countries.

Mr. Issa. Would the gentleman yield?

Mr. Watt. And that is exactly where this will lead us to. Yeah, I will yield to the gentleman.

Mr. Issa. You just said I wanted to cut off the rights of U.S. citizens. This is actually defining no limitation on U.S. persons or U.S. corporations.

Mr. Watt. But you are inviting retaliation by doing this. That is the point that I think everybody in here is trying to get you to understand. You are inviting other countries to apply this standard, which is an unfair standard that we would apply, you are inviting other countries to apply it in their country.

Ms. Lofgren. Would the gentleman yield?

Mr. Issa. It is his time.

Mr. Watt. I am happy to yield to the gentlelady.

Ms. Lofgren. Here is why I think --

Mr. Watt. Maybe she can explain why --

Ms. Lofgren. Here is why I think the point you are making is mistaken. It assumes that this remedy is available anywhere else in the world, and it isn't.

Mr. Watt. Well --

Ms. Lofgren. It is not available in China, it is not available in Europe.

Mr. Watt. Reclaiming my time, there are a number of remedies that are available in the United States that we are trying to get other countries to harmonize their intellectual property. I mean, there are a bunch of things that go on in the rest of the world, so the implication here is we should be rushing to the bottom rather than setting a high standard ourselves, and encouraging other countries to rise to that standard, and I don't accept that. I will yield back to the gentlewoman.

Ms. Lofgren. Well, I think we are rushing to the bottom with this scheme.

Mr. Watt. Well, now --

Ms. Lofgren. To take down domain names, but --

Mr. Watt. We are discussing this amendment now, so I am yielding to you for that purpose.

Ms. Lofgren. And I will get my own time to go further, but the point is, this is an extraordinary remedy that we are giving to individual plaintiffs to do something that no other country in the world permits.

Mr. Watt. Reclaiming my time. We would like for other countries, I would like for other countries to rise to this standard. Perhaps we would have intellectual property protected around the world, as we are trying to protect it in our country. I am not arguing that

any other country has it, but if we do this and we set the standard, you can be absolutely assured that no other country will ever have it, and that is -- so I will yield back.

Chairman Smith. The gentleman's time has expired.

Ms. Lofgren. Mr. Chairman?

Chairman Smith. The gentlewoman from California, Ms. Lofgren, is recognized.

Ms. Lofgren. I would like to move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Obviously we have a disagreement here, but I would like to explain why I think this is a good amendment and why it would be a mistake not to adopt it. This is far from a frivolous amendment. In fact, I was very concerned about the negotiations over ACTA that were done in secret by the administration as a treaty matter that was never going to be brought to a treaty to the point where I actually asked and required the U.S. trade representative to come in and brief me.

They did it, I can't talk about it because it was a classified briefing, although I can say I have no idea why it was classified, but I will just cut to the chase and say this, specifically we did not ask other countries to go into an Internet monitoring system. We specifically did not ask them to go into a domain name take-down system, and I think if we were to do that, we would end up with the kind of Balkanized Internet that I discussed at the very beginning of this markup. It is not, not only not going to help copyright owners, it

is going to do significant damage to one of the most innovative sections of the economy and also a facilitator of creativity and free speech. That is what I believe will happen if this scheme were to be adopted throughout the United States.

But getting back to Mr. Issa's amendment, we are going to have -- I would suspect, if this ever becomes law, there will be a substantial number of, I don't want to say frivolous because that is pejorative, but there will be a multiplicity of private causes of action that occur even within our own U.S. persons. To open up to the world the ability to come in and basically abuse our system and shake down our people is not something that I think we ought to countenance, and --

Mr. Johnson. Would the gentlewoman yield?

Ms. Lofgren. Just in one second. I think that although Mr. Issa's amendment, at first blush, would seem to invite the kind of concerns that have been expressed, in fact it will do the opposite, and it will -- hopefully this bill will not become law as crafted, but I think Mr. Issa's amendment is an important one. I would be happy to yield to Mr. Johnson.

Mr. Johnson. Thank you. This amendment would require that a person be both a U.S. copyright or trademark holder and a U.S. person to file under Section 103. So that does appear to have kind of like an exclusive qualification. You have got to be American or have a --

Mr. Issa. Would the gentlelady yield?

Mr. Johnson. So what I am arguing is this, Mr. Issa, yours and Ms. Lofgren's legislation would purport to recognize the global nature

of this problem and set up a mechanism to deal with it and anticipating multilateral discussions about that, and I think that is a step in the right direction, but that seems inconsistent with this amendment.

Mr. Issa. If the gentlelady would yield.

Ms. Lofgren. Let me recall my time, and then I will certainly yield. The -- well, let me yield to Mr. Issa to describe it.

Mr. Issa. First of all, the amendment would allow anyone to take their copyright, put it inside a U.S. corporation, and be fully qualified, so it is not about a U.S. citizen or green card holder. It is not nearly that narrow. But let me just be illustrative of one thing simple. The OPEN Act is different, that is true, but the OPEN Act goes to the ITC. To have standing in the International Trade Commission, you have to be an American entity because it exists under the trade laws to protect American entities, and it is well proven, and it has been around a long time. So when you really look at the problem with this bill that I have been trying to get through people's heads all day including with amendments is, we have tested trade bills, laws that work very well. The ITC deals constantly with patent infringement, with things coming in where foreign entities are doing something and hurting an American manufacturer, and they exist for that reason and have existed for a very long time.

Ms. Lofgren. Reclaiming --

Mr. Issa. And they do require American entity.

Ms. Lofgren. Reclaiming my time, I would just close by saying that not only is the world not moving in this direction, but you

specifically took a step to preclude this as a remedy, and I think it is to strategically establish themselves as more competitive than the U.S. in anticipation of this bill.

Chairman Smith. The gentlewoman's time has expired. The question is on the amendment. All in favor say aye. Aye. Opposed no. The noes have it, and the amendment is not agreed to.

Mr. Issa. Mr. Chairman.

Chairman Smith. The gentleman from California.

Mr. Issa. At this time I would move to adjourn until time certain tomorrow or to recess until time certain tomorrow.

Chairman Smith. That is a privileged motion not debatable, so we will vote immediately on whether or not to recess until a time certain.

Mr. Issa. Mr. Chairman, do I have to name the time if that is the case?

Chairman Smith. The question is on the motion to adjourn. All in favor say aye. Aye. Opposed no. No. The noes have it. The motion is not agreed to.

Mr. Issa. Mr. Chairman, I do not ask for a recorded vote on that.

Chairman Smith. I thank the gentleman. We will continue with our amendments, and before I recognize the gentleman from Arizona, Mr. Quayle, does the gentleman from Utah want to be recognized?

Mr. Chaffetz. I think we are going to go to Mr. Quayle first.

Chairman Smith. Is the gentleman agreeable to going to the amendment offered by Mr. Quayle?

Mr. Chaffetz. Mr. Chairman, what I would love to do, yes, go to Mr. Quayle's first.

Chairman Smith. The gentleman from Arizona, Mr. Quayle, is recognized.

Mr. Quayle. I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 3261.

Chairman Smith. Without objection, the amendment will be considered as read. The gentleman is recognized to explain the amendment.

[The information follows:]

***** INSERT 9-3 *****

Mr. Quayle. Thank you, Mr. Chairman. And, Mr. Chairman, I actually have an amendment down the roster that I am withdrawing. Even though I believe it is good policy, I do not think this is the proper vehicle for that discussion, and so I will be withdrawing that amendment, but I believe that this amendment is something that is necessary, something that will improve the substitute amendment, which I support, and the amendment merely states that any qualifying plaintiff -- if the court determines that any qualifying plaintiff knowingly misrepresented that an Internet site is an Internet site dedicated to the theft of U.S. property, then the court shall order that the qualifying plaintiff has to pay reasonable attorney fees and court costs to the defendant.

Mr. Chairman, I believe this is a necessary amendment because one of the concerns people have is that small start-up foreign Internet sites might become targets for larger content providers. The intent of the underlying bill and the intent of the bill is to go after sites that are dedicated towards piracy and distribution of copyrighted material, and I believe that this actual amendment will make it so that some of those fears will be alleviated, and I also do believe that it will reduce the number, the amount of litigation that could come out of this because both the plaintiff -- well, the plaintiff will have to make sure that they are making the right determination that the site that they are going to bring to court and bring a court action against is actually a site that is dedicated to the theft of U.S. property.

I understand that what we do in Congress has a lot of unintended

consequences, and I do not want this bill to be improperly used as a blunt instrument to go after sites that really don't fall under the sites that are dedicated to stealing U.S. property, so I think that this would be a proper amendment to put in so that if a court finds that the plaintiff knowingly misrepresented that the Internet site that they brought to court was not an Internet site that is dedicated to stolen U.S. property, then they will be liable for court fees and reasonable attorney fees, so I believe that this is a good amendment, it is something that should be passed, and I urge my colleagues to --

Chairman Smith. Would the gentleman yield?

Mr. Quayle. I will be happy to yield to the chairman.

Chairman Smith. Thank the gentleman for offering the amendment. I agree with what he said about the amendment and urge my colleagues to support it as well, and the gentleman yields back his time. Are there other members who wish to be heard? The gentleman from Colorado, Mr. Polis.

Mr. Polis. Thank you, Mr. Chairman. I agree this is a good amendment. It has a very, very narrow and difficult standard for the attorney fees to actually be paid. It has to be knowingly misrepresented. Seldom invoked. A good amendment, but hardly one that repairs a damaged bill, and I am happy to support the amendment, and I yield to the gentlelady from California.

Ms. Lofgren. I would note that, as discussed earlier in the other amendments offered, you can be -- run afoul of the bill if you don't infringe, if you don't willfully take an action to infringe, and

yet this standard is a willful one. So I support it, but I think that what is good for the goose should be good for the gander. I mean, if you can inadvertently run afoul of this and end up being at the bottom of a lawsuit, you ought to have the same standard for getting someone involved in the system. So while I will support this, you know, I guess Mr. Chaffetz has an amendment that would probably go a long ways in that direction, but it is certainly insufficient, and I would yield back to Mr. Polis. Thanks for yielding.

Mr. Polis. Yeah, I agree with the sentiments expressed by the gentlelady from California. I support the amendment, but very little practical impact that this amendment has, and I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Polis. The question is on the amendment. All in favor say aye. Aye. Opposed no. The ayes have it, the amendment is agreed to.

The gentleman from --

Mr. Chaffetz. Mr. Chairman, I think I am going to go ahead and introduce amendment number 185, which is number 25 on the list.

Chairman Smith. The clerk will report Chaffetz number 185.

[The information follows:]

***** INSERT 9-4 *****

The Clerk. Amendment to the Smith amendment offered by Mr. Chaffetz of Utah.

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman is recognized.

Mr. Chaffetz. Thank you, Mr. Chairman. This is a good follow-up. I am very supportive of what we just did with Mr. Quayle's amendment. I think that is the right spirit in which to move forward, but I am compelled by what the gentlewoman from California said, too, which should be that what is good for the goose should also be good for the gander. We need to try to avoid situations where an order, an injunction is issued simply primarily because the case would be too costly to defend. There are many issues why I think in principle this is right. We want to thwart the ability or the opportunity or not necessarily the ability but the motivation, if you will, for somebody to try to take advantage of this for something other than the purest of intentions and somebody who is trying to get true relief.

And so I offer this amendment in the spirit of making sure that we are offering an incentive on both sides to inhibit somebody who wants to offer such -- go into the courts, tie up the courts, the expense of the courts, the expense to defend, and to litigate this, and therefore I offer this amendment.

Chairman Smith. The gentleman yields back his time. The gentleman from Virginia, Mr. Goodlatte, is recognized.

Mr. Goodlatte. Thank you, Mr. Chairman. Mr. Chairman, in this case, there is a very big difference between the goose and the gander.

The goose that just got cooked is a plaintiff that knowingly misrepresents that an Internet site is dedicated to the theft of U.S. property. This one says that anyone who thinks they have a valid claim, including many people who act in good faith, are in a loser pay, and by the way, one sided, loser pays situation.

The amendment will discourage people from using the Section 103 remedy. If, for whatever reason, a judge remains unconvinced, then one would be on the hook to pay everybody's fees. It is an extreme version of loser pays. It is not limited to cases that should never have been brought or subject to other remedies. Such remedies already exist for fee awards and other sanctions in truly frivolous and abusive cases, e.g. Rule 11 of the Federal Rules of Civil Procedure and in the amendment that was just adopted offered by Mr. Quayle for those who act knowingly and willfully.

This amendment should be rejected because it is, in my opinion, designed to discourage people from using something that we are trying to make available as a remedy to go after these foreign sites that are infringing, and sometimes somebody will get it wrong. If they do, the court has other measures they can exercise. I don't think we should have an across-the-board requirement that if you don't prevail, you automatically are faced with all these fees.

Mr. Chaffetz. Will the gentleman yield?

Mr. Goodlatte. I yield.

Mr. Chaffetz. I think in part you made my point that you have to be more than certain and confident if you are going to take the

financial risk of moving forward with this, that is the point. So the idea that it would slow down what could be an unbelievable array of suits and things that are brought forward into the courts, that is the point, and I thought at least sitting over on this side we liked loser pays. So --

Mr. Goodlatte. Reclaiming my time. Let me just say that I appreciate the gentleman's honesty, but that is not the standard that we apply to people bringing lawsuits in various courts for various types of actions across our country, and while I have been a proponent of certain types of loser pays, this one that is one sided that only says that the plaintiff loses, he has to pay everything, is completely one sided, number one, but number two, people attempting to avail themselves of access to the courts and on a reasonable basis should not be required to do this. People who act willfully to misrepresent the facts, absolutely they should be required to do so. We just addressed that with Mr. Quayle's amendment. So I oppose this amendment. I think it is very extreme.

Mr. Watt. Mr. Chairman?

Chairman Smith. The gentleman yields back his time. The gentleman from North Carolina, Mr. Watt.

Mr. Watt. Mr. Chairman, I endorse all of the arguments that the chairman of the subcommittee has advanced, but I also want to just briefly advance one other argument because the way this is drafted, even if there is a settlement of the dispute before you, if you don't ever end up with a court order or an injunction, then you still could

be potentially on the line is the way this is drafted. So even if I supported it, it would need substantial work in the drafting. So I would just point that out in addition to the arguments that Mr. Goodlatte has made. If there is going to be any equity in this, then it ought to work both ways, the winner ought to get fees, the loser ought to have to pay, and it ought to work both ways, but I don't think it ought to work either way in this case. It should just be left alone, and I yield to the gentleman from Virginia.

Mr. Scott. Thank you, Mr. Chairman. I would like to support the gentleman from North Carolina and my colleague from Virginia. If you are going to make a good faith complaint, you ought not have to bet your house, which is essentially what this amendment would make you do. No person of any modest means could ever make a good faith complaint under this bill if this amendment is adopted, so I would hope it would be defeated, and yield back.

Mr. Watt. And I would just point out that one of the most egregious cases that I have heard is the woman who won the National Book Award who has never made a dime from any of her stuff because it has all been put up on the Web, and, I mean, there are cases like that of people of modest means, and under this amendment, even if they went in and filed a lawsuit and it got resolved, they could potentially end up owing a bunch of money. So I just think this is a bad idea, and I yield back.

Ms. Lofgren. Mr. Chairman?

Chairman Smith. The gentleman yields back. The gentlewoman

from California, Ms. Lofgren, is recognized.

Ms. Lofgren. Move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Here is why I think we need to consider Mr. Chaffetz's amendment. I want to use the example that we gave to the Attorney General when he was here a short while ago. In that situation, you had the Recording Industry Association, there was an employee who complained to the Attorney General of infringement on the site of this hip-hop site. As it turned out, the RIAA didn't have, they didn't own the copyright, they didn't actually have any information about the infringement, and as it turned out, if the news article is correct, and I haven't seen that it isn't, the site wasn't infringing. In fact, although it was seized for an entire year by the Department of Justice, no action actually was taken. They never actually moved forward because it wasn't infringing. The material that was being released had been provided to the Web site by the artist themselves to be distributed as kind of a teaser on the Internet. There wasn't any infringement. That situation, where you have an allegation that, if there is no ownership of a copyright, there is no actual information of infringement, there is no, in fact, no infringement would not violate the willful standard that was adopted by Mr. Quayle's amendment. There needs to be some deterrent for that type of activity, and I think that if you have -- you know --

Mr. Watt. Would the gentlelady yield? I am sorry, I didn't mean to interrupt you in mid sentence. Whenever you get a chance.

Ms. Lofgren. Thank you.

Mr. Watt. Sorry.

Ms. Lofgren. You need to have a basis -- I mean, this is -- what you are seeking is Internet death. I mean, take down the site, disappear you, and there needs to be some strong belief and evidence that that death penalty should be pursued, and because it is going to take money to defend, it is an extreme remedy, and the willful standard that was adopted by Mr. Quayle's amendment is not going to get to it. I haven't -- you know, I am hearing the criticism of Mr. Chaffetz's amendment, but I haven't seen a better amendment proposed that would put some kind of minder on the kind of abuse that we will, in fact, I am sure, see.

Mr. Watt. Will the gentlelady yield?

Ms. Lofgren. In a minute. That I am sure we will see if this manager's amendment is adopted without some changes. Now I would be happy to yield to my colleague from North Carolina.

Mr. Watt. I just want to direct the gentlelady's attention to page 28, the definition of qualifying plaintiff I think addresses the concern that she has raised, and if we need to make it clearer perhaps we could make it clearer, but I don't think that RIAA would have standing to litigate this case anymore under the standard that is in the manager's amendment because I just don't think they would qualify, so maybe I am wrong, and if I am wrong, then we ought to work on that, but we shouldn't go at it in the way that Mr. Chaffetz amendment --

Ms. Lofgren. Well, reclaiming my time, I was using the hip-hop

site as an example which is not covered by the willfulness standard.

RPTS COCHRAN

DCMN HERZFELD

[7:45 p.m.]

Ms. Lofgren. In fact, putting aside the ownership issue, go to the question of infringement. There was an allegation of infringement, and there was no infringement. Action was taken to the detriment of the site for a year in secret. I realize there is a different process in mind in this bill.

I am using that as an example for the kind of mischief that can, in fact, occur without some kind of counterweight to the ability to proceed. I don't know that Mr. Chaffetz's amendment is perfect, but I haven't seen anything else that provides any kind of deterrent to improper proceedings under the act, and therefore I would be inclined to support it.

I don't know if Mr. Chaffetz wishes to address the issue, but I think it is at least an opportunity to put the brakes on misbehavior. I haven't seen any other amendments that would accomplish that in the same way.

With that, unless Mr. Chaffetz wants additional time, I would yield to Mr. Polis.

Mr. Polis. I think I will just get my own time.

Ms. Lofgren. Then I yield back.

Chairman Smith. The gentlewoman's time has expired.

Are there other persons who wish to be recognized?

The gentleman from Colorado Mr. Polis.

Mr. Polis. Mr. Chairman, I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Polis. Mr. Chairman, I am somebody who is generally cautious about these loser bears all cost fees. They have their role. You don't want to use them everywhere. But there is something that is at stake in this particular debate generally with our legal system, and that is the ability of the big to bully the small through legal fees, without regard to the justice of the matter, without regard to the finding of a court. For a small entity to afford to see something through a trial, hundreds of thousands of dollars, it could even be millions of dollars, very, very difficult. We have a lot of large actors that are active on this bill.

Now, clearly his amendment has implications for large actors as well, implications that I support. But in particular it is necessary for the tens of thousands of garage startups that, again, if they are confident they can defeat an action, would have the ability to recover court costs from their bullier, as the case may be. It is an unfortunate reality that our legal system can and is used to bully not just in the name of intellectual property, but a wide variety of areas of law where this has become a problem. And this bill, absent this amendment, could very well lead to more of that, again without regard to the merits upon which the cases are decided.

So I think it is very appropriate in this case both for the large companies and the battles of the titans which need to wind their way

through the courts, but even more importantly for the smaller operators, and the startups, and those for whom the legal fees themselves are substantial and difficult.

This is a much stronger version again, and really the language that was adopted already by this committee was seldom and very minor ever to have any impact on this bill. Willful use. The standard in Mr. Chaffetz' amendment in terms of the loser pays if, in fact, no order of injunction is issued is much more reasonable and will lead to at least a calibration, an equation within those who would seek to enforce their intellectual property rights about whether they have the chance to succeed or not. And they will not move forward if, in fact, they know that they are likely not to succeed and are only seeking to use the necessary legal fees that the defendant would otherwise incur as a bullying tactic to get them to conform to their desires.

So I think this is a very appropriate component of this bill, and I am happy to lend my support to that.

Mr. Chaffetz. Will the gentleman yield?

Mr. Polis. I will be happy to yield.

Mr. Chaffetz. I appreciate the support and the position of this. I think in principle this is right. In principle we ought to be standing for loser pays. There is a remedy in the court. It should be a high standard and a high bar. We are talking about dramatic action in taking down a Web site. And somebody may ultimately prevail, but if there isn't that barrier to entry to get in and start filing these by the thousands, I think we are going to see something that none of

us intend.

I think in principle this is right, Mr. Chairman, and that is why I would encourage my colleagues to take a serious look at this and look at supporting the loser pays provision that I offer in this amendment.

I yield back.

Mr. Polis. Thank you.

You know, again, in terms of a small operating company, a Web site, they might employ 10 people, 15 people. For them to muster the legal fees and make the case could very well be putting their entire company on the line, using all of their revenues, all of their investment that has been made in the company to be able to make the defense. And it is very reasonable, given that the process of making the defense itself could jeopardize their existence of the business even if they succeed, that they would be able to recover those expenses.

Again, it will cause those who would seek to enforce long-shot suits -- again, short of willful, you willfully wielding this weapon, but a long shot, you know, the willful window is very narrow. Even if there is a 5 or 10 percent chance of winning, this could be used very broadly in cases where 9 out of 10 times the defendant prevails, but is nevertheless put out of business by the legal fees that are incurred in the process of rightfully defending their claim that eventually gets adjudicated.

So I think it is an excellent amendment, and I do support it.

I yield back.

Chairman Smith. Thank you, Mr. Polis.

The gentleman from California Mr. Berman is recognized.

Mr. Berman. I understand the notion of the large company that owns copyrights against the poor, small, foreign rogue Web site, but you can turn it around the other way, too. What about that small, independent production company that puts together its first movie, and it is on the Internet on these sites on day one, and the costs they have of bringing an action? What about the self-published book that --

Mr. Chaffetz. Will the gentleman yield?

Mr. Berman. I will after I finish -- finishes publishing their book and finds it distributed and disseminated to millions of people? What about the song writer and the recording artist who put together a song on a small, independent label.

Small versus large works both ways. Sometimes the parties that are interested -- I know about the small search engines as well.

Mr. Chaffetz. Will the gentleman yield?

Mr. Berman. It works both ways.

I would yield.

Mr. Chaffetz. I appreciate your yielding.

If they are right, and they win, they are not going to be liable for the costs. Both examples that you gave me, you are right.

Mr. Berman. All I know is you do this, and people who are right and are concerned about any litigation and the probabilities of what happens will be deterred from exercising their rights. You are right.

The surest way to shut down these cases is to adopt a provision

like this and disincentivize a well-meaning, good-faith, small copyright owner with perhaps their first movie, or their first song, or their first book from exercising their rights.

I urge a no vote.

Chairman Smith. The gentleman yields back his time?

Mr. Johnson. Will the gentleman yield?

Mr. Berman. Sure.

Mr. Johnson. Thank you.

This amendment would go far beyond the award of reasonable attorneys' fees. It would provide for the reasonable attorneys' fees of all parties to the litigation and of all witnesses, including experts, whether or not compelled by process or not. So this is an open invitation for the defense in such an action to overload the plaintiff with possible costs, which would be a great deterrent for the plaintiff to actually even bring the case. So it is just unlimited opportunity within the scope of this amendment to prevent parties from being able to take their matter to court. I think that this is too broad.

Mr. Berman. I am with you.

I yield back.

Chairman Smith. The question is on the amendment. All in favor, say aye.

Opposed, no.

In the opinion of the chairs, the noes have it.

Mr. Chaffetz. Mr. Chairman, I ask for a recorded vote.

Chairman Smith. A recorded vote has been requested. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. Yes.

The Clerk. Mr. Issa votes yes.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King?

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. Aye.

The Clerk. Mr. Jordan votes aye.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino?

Mr. Marino. Aye.

The Clerk. Mr. Marino votes aye.

Mr. Gowdy?

Mr. Gowdy. Yes.

The Clerk. Mr. Gowdy votes aye.

Mr. Ross?

[No response.]

The Clerk. Ms. Adams?

Ms. Adams. No.

The Clerk. Ms. Adams votes no.

Mr. Quayle?

Mr. Quayle. Aye.

The Clerk. Mr. Quayle votes aye.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. No.

The Clerk. Mr. Quigley votes no.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The gentleman from Ohio Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Chairman Smith. The gentlewoman from Florida Ms. Adams? You already voted no.

The gentleman from California Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Chairman Smith. Are there other Members who wish to be recorded?

The gentleman from Texas Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Chairman Smith. The gentleman from Michigan Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Ms. Adams. How am I recorded?

The Clerk. Ms. Adams is recorded as no.

Ms. Adams. Yes.

The Clerk. Ms. Adams votes yes.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 11 Members voted aye, 22 Members voted nay.

Chairman Smith. A majority having voted against the amendment, the amendment is not agreed to.

We will now go to the gentleman from Virginia -- oh, sorry. The gentleman from Arizona has another amendment.

Mr. Quayle. Mr. Chairman, I withdraw that amendment.

Chairman Smith. I thank the gentleman from Arizona.

We will now go to the gentleman from Virginia.

We will now go to the gentleman from California, excuse me, Issa Number 73.

Mr. Issa. Okay. If the clerk will read, I would love to be recognized.

Chairman Smith. The clerk will report Issa amendment number 73.

The Clerk. Amendment to the amendment in the nature of a substitute --

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman is recognized.

[The information follows:]

***** INSERT 10-1 *****

Mr. Issa. Thank you, Mr. Chairman.

I want to explain this very carefully. Normally you would be in favor of immunity. You would say, wow, this is really good. Well, let us be practical. Without due process, granting immunity for everything tells companies essentially don't fight it, just do it and don't worry about due process, you have immunity.

Our amendment leaves narrowly exemptions for, obviously, health and safety, but the fact is that an accused site should not find itself arbitrarily removed with no recourse. And there is nobody here, I think, that is going to claim that I haven't been good for intellectual property, that I haven't worked on it. As a matter of fact, if I could ever get the chairman to move the Performance Act, we could move a long way toward providing compensation for what I consider an unlawful taking with Congress' help by terrestrial broadcasters.

But having said that, the fact is this, if not enacted, I predict, if not enacted, will simply cause the ISPs to go ahead and just cave in contract negotiations right off the bat before they ever start with all the intellectual property holders. It will be, oh, yeah, we will do that because we have immunity, and we will do it because you are not going to even give us the right to do lawful stuff unless we do this.

I see it. It is a practical business matter. This immunity should be limited to health and safety, and, in fact, due process should be available. Otherwise, again, this is something where it is not necessarily exactly what you would normally do, but in this case an

overly wide immunity serves no real purpose when, in fact, due process is likely.

And I will say for probably the 35th time, the vast majority of the infringers are off shore, in this case 100 percent. Those infringers are not going to come in and claim anything. They are going to have default judgments. So it is not a situation in which they need to proactively be doing this. The fact is I believe that this portion of the bill serves only to create an environment in which it is impossible to not say, sure, I will go ahead, I have got immunity. I think it is to the discrimination of fair due process for those who say they are not infringing.

I yield to the gentlelady.

Ms. Lofgren. I thank the gentleman for yielding.

I think this amendment is not only important, but essential. If you take a look the underlying manager's amendment, as you have pointed out, there is complete immunity on the part of anyone who acts in good faith based on credible evidence.

Here is the problem in the manager's amendment: There is no process for actually testing that. It is to be narrowly tailored, but there is no process for testing that. There is no notice, there is no recourse, and there is no due process. So having complete immunity, if I were the payment processor, I have got a world of hurt if I don't agree, or I have complete immunity if I do agree. And the fact that someone says that it is a foreign infringing site doesn't mean that it is a foreign infringing site, and if there is no due process, it

could be any site. So this is a huge hole in the bill.

I would note that the bill that you have authored actually has some due process tests so that you cut off the money, but at least you know that there is an opportunity to be heard even on an expedited basis. You could act in a day, but at least there is going to be an opportunity to get to the bottom of it, which is not present here.

Absent your amendment or something like it, we are going to have terrible abuses in this system. I thank the gentleman for offering his amendment.

Mr. Issa. I thank the gentlelady.

Reclaiming my time, I might also note with the demise of the previous two amendments, you could have an entity in the Cayman Islands with no assets in the U.S. essentially making the claim. So you have a non-U.S. entity making the claim and a U.S. entity going, well, I am not going to bother because I have got this immunity. You could end up with an external entity creating an abuse in which it may not even really have the rights to the copyright, and yet all kinds of other foreign entities are shut down. Mr. Chairman, that would clearly create a trade problem with our trading partners if we started doing that as a practical matter, and it very much could happen.

I yield back.

Chairman Smith. Thank you for yielding back.

The gentleman from Virginia Mr. Goodlatte is recognized.

Mr. Goodlatte. Thank you, Mr. Chairman.

Mr. Chairman, I am truly looking forward to finding the Issa

amendment that I can support. Looking down the list, there may be hope. But this is definitely not it. He is heading in the wrong direction. This is a very bad idea.

The gentleman's amendment limits the immunity provisions also for voluntary action to those rogue Web sites that endanger consumer health or safety. This provision would ensure that no intermediary would take voluntary action against any rogue Web site outside the public health arena.

Well, there are hundreds of thousands of jobs in the publishing industry, the music industry, recording artists, motion picture industry, and they are -- nearly every brand-holding corporation that sells any kind of product on the Internet, unless it is related to consumer health or safety, it leaves all of those entities without any recourse to seek private-sector solutions with intermediaries, and that is a bad idea.

If we are trying to have this worked out without going to court, I think this is a very good safeguard that we need to give these folks who are being asked to intercede, and I would strongly oppose this amendment.

Mr. Issa. Would the gentleman yield?

Mr. Goodlatte. I would yield.

Mr. Issa. Maybe this will clear it up a little more and make it possible for you to see this in a narrower way. First of all, if a provider -- my brain has gone dead -- if, in fact, you have a term of service already in your hosting arrangement, you can take them down

based on that. So that would have immunity anyway, and under the DMCA, Digital Millennium Copyright Act, you also have those provisions.

So one of the reasons that this is not as necessary as you might believe is, in fact, those two other carve-outs already exist. This is not as big a deal as you think. I understand that you are concerned that you wouldn't do it. But most of this is already covered by other areas, and when it is not, the real question is why is it necessary to deny due process to a supposed rogue?

If we read the things said about us from the left or the right, depending upon your party, we are all rogue operators, according to somebody. The question is is there going to be due process in this case?

Mr. Goodlatte. Well, reclaiming my time, the fact of the matter is that a rogue Web site in a foreign country has recourse against the complaining party. The issue here is what can be done by all of those who are asked to intercede on their behalf in between? And they need to have liability limitation in order to be able to provide that kind of help to combat this kind of crime on the Internet. That is why I oppose your amendment.

I certainly respect the fact that you are saying that if it involves consumer health or safety, that deserves some protection. But all of these jobs, all of these businesses, all of these people attempting to sell legitimate products on the Internet are deserving of being able to go to these intermediaries and get the same kind of help, regardless of whether it involves health or safety, or whether

it involves hundreds of thousands of jobs in other sectors of our economy that are being lost and billions of dollars in business that are being lost because of rogue Web sites. And if you don't have the protection, you are not going to get it. So what you are going to do is you are going to protect that rare entity that may be -- and it is a foreign entity that may be sued improperly and still has a cause of action against the people who improperly sought the action, and you are going to deny all of the legitimate businesses from availing themselves of the remedies of this law because of the fact that you have denied the people who could give them those remedies some limitations of liability.

Mr. Issa. Will the gentleman yield?

Mr. Goodlatte. I will yield.

Mr. Issa. There but for the earlier amendment I would agree with you. You understand you have this Cayman Islands business with no U.S. assets that makes the claim, and they may or may not truly hold the actual copyright. So a very frivolous external act --

Mr. Goodlatte. Reclaiming my time, to go after the Cayman Island entity, you are going to deny all the legitimate U.S.-based companies with millions of U.S. employees losing billions of dollars on the Internet their protection under the law in order to get that one entity, or a few entities, or however many entities may operate through the Cayman Islands.

And we have already talked about the merits of this situation because the committee rejected your idea that we should somehow have

a different protection for U.S. entities than other entities here and give up the hope that in other countries we will get help in those countries in enforcing your intellectual property rights from those countries. I think that was a bad argument. You are compounding it with this argument, not helping it.

Mr. Issa. The gentleman, I appreciate your constantly yielding. I tried to protect U.S. entities and those jobs. That is not the definition in this bill. That is one of the problems.

The second problem is that, in fact, this is working around the due process. There can be huge amounts of jobs on both sides. This is allowing an exception to due process. And we are not talking, as you know, about the foreign site. We are talking about the domestic jobs that will be attacked by their exclusion.

Chairman Smith. The gentleman's time has expired.

The gentleman from Virginia Mr. Scott is recognized.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, there are actually jobs on both sides of this equation, and I rise in support of the amendment. Immunity counts when, oops, it shouldn't have come down to begin with. That is when you need to rely on immunity. So you have actually taken down a site that should not have been taken down.

If you have taken down a Web site, you are not only putting people out of business, you could be putting a business out of business. And we would hope that before you voluntarily put somebody out of business and take somebody's Web site down, that you do some modicum of due

diligence. You should not be able to hide behind something that is spatially apparently credible and just take somebody's Web site down based on that. You ought to do some due diligence.

And it is not impossible to have a situation where you are actually talking about a competitor who looks and sees that he can take down his competitor's Web site and make some more money, and then hide behind the immunity of something spatially credible. The liability requires you to do due diligence to protect yourself from negligence.

The gentleman from California's amendment preserves the public health emergency, so if there is a public health situation, you can go ahead and forget about due diligence.

Mr. Goodlatte. Would the gentleman yield?

Mr. Scott. I yield.

Chairman Smith. The gentleman's time has expired.

Mr. Goodlatte. Mr. Chairman, I ask unanimous consent that the gentleman be given an additional 30 seconds.

Chairman Smith. The gentleman is recognized for an additional 30 seconds.

Mr. Goodlatte. I just want to point out to the gentleman that the private rights of action in this bill do not include taking down anybody's Web site.

Mr. Scott. I can't hear you.

Mr. Goodlatte. I said the private rights of action in this bill, including these provisions, do not include taking down anybody's Web site.

Mr. Scott. Well, reclaiming my time --

Mr. Goodlatte. That can only be done through the Justice Department.

Mr. Goodlatte. Civil liability is what is at stake here.

Mr. Scott. Well, the immunity actually means that you crimp somebody's style, you have been able to hurt their Web site. Whatever you have done to them, you should not get immunity without any modicum of due diligence on your side. This immunity provides that if you have done no due diligence, you take something that is spatially credible and not look behind it, and you have inflicted pain and suffering on somebody else's Web site. We should not give immunity to that, particularly in light of the fact that it could be a competitor and you have a financial interest in the transaction.

I yield to the gentleman.

Mr. Goodlatte. I thank the gentleman.

Yesterday I met with a gentleman from --

Chairman Smith. The gentleman's time has expired.

Mr. Scott. Mr. Chairman, I ask for an additional minute to finish.

Chairman Smith. The gentleman is recognized for an additional 30 seconds.

Mr. Goodlatte. Thank you.

Yesterday I met with a gentleman from the chairman's district who hosts a server farm that hosts all kinds of sites, and he would be an exact example of somebody who under the current language would have

every reason to say, you know what? I am just going to cut off all these guys. If there is any complaint, I am fine because I get immunity, and if I don't, I have a problem. So it will be denial of service the way it works for that particular individual who has to decide between just turning them all off and having immunity or dealing with the other outcome. He is going to probably make that choice. And it is one of the reasons he opposes this act.

Chairman Smith. The gentleman's time has again expired.

The gentleman from North Carolina Mr. Watt.

Mr. Watt. Thank you, Mr. Chairman.

You don't often see me and Mr. Scott at odds with each other, but I am at odds with him on this one, and I think for good reasons. I think he is misunderstanding what is happening here.

First of all, the immunity, I am not a big advocate of immunity, and the members of this committee know that I am not a big advocate of immunity. I have talked against it on a number of occasions. But the immunity that is being provided here is being provided to people who are acting pursuant to a court order. This is not willy-nilly --

Mr. Polis. Will the gentleman yield, just because I don't think that is correct actually in the language is my understanding. This is not a court order. I am proposing an amendment to do that that I hope you support, but currently it is not. It is a standard of good faith and credibility.

Mr. Watt. Well, but understand it is not the people who are filing the lawsuit that are getting the immunity here, right? The list

of people who are getting immunity is on page 41 starting at line 19. It is the service provider, it is the payment network provider, it is the Internet advertising service, it is the advertiser, it is the Internet search engine, it is the domain name registry, it is the domain name registrar and people associated with them. It is not people who are bringing the lawsuit that we are giving any immunity to.

In fact, I have been pretty aggressive in my belief that if somebody who brings the lawsuit really is out to lunch, they certainly ought not have immunity. But if the network is acting based on somebody else having initiated something, we ought not be asking them at the same time that we are asking them to cooperate and take down sites, saying, you are going to be liable for doing what you have reasonably been asked to do.

I yield to my friend from Virginia.

Mr. Scott. Well, the problem is if you take action based on something that kind of looks credible, and you inflict significant pain on somebody's Web site, you ought to do some modicum of due diligence without which you would be negligent, and this gives you immunity so you can go inflict all the pain on them you want and not worry about it.

Mr. Watt. No, but then you are arguing against yourself, because now you are saying that these people ought to be told to monitor the whole system, which is opposite of what we have been telling them and what I thought my opponents to this bill were concerned about, at least initially. We have not asked these service providers or payment

network providers to go and monitor anything. The person who ought to be diligent and not willy-nilly is the person who initiates the process in the first place. These are not the initiators of the process that we are giving immunity to. So I want to make that argument.

Second, I think we have got a reasonable and good balance here that if we take this immunity provision out is going to upset the whole balance of the bill.

So for those two reasons, I have to rise in opposition to the amendment, even though I am not a big supporter of giving immunity to anybody generally.

I yield back.

Chairman Smith. Thank you, Mr. Watt.

The gentlewoman from California Ms. Lofgren.

Ms. Lofgren. I move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Here is the problem and why the amendment should be approved. Mr. Watt is correct that the immunity is provided to a service provider, a payment network provider, Internet advertising servicer, advertiser, Internet search engine, domain name registry, domain name registrar and the like. But it is voluntary action that is being requested of these entities, and if they take action to disappear a site, to cut off all the funds, they don't have any liability.

Well, there is no arbiter of the standards. On page 42, line 1 and 2, it talks about acting in good faith and based on credible

evidence, but there is no court process to determine that that, in fact, is the case. Actually those words are meaningless, because we all know that a right without a remedy is not a right.

This will allow for dramatic draconian action to be taken, suppressing competitors, suppressing free speech, without any real obligation, without any court test and without any liability. This is really a problem. I know that Mr. Polis has an amendment, and Mr. Scott had one, too. I don't know which one is going to offer it, but without some capacity to test these tests in the act, we will have abuse.

Recently I was asking one of the large Internet companies about the nature of the DMCA take-downs that they are being asked to do, and the report I got, they act very quickly, but probably, they said, 20 percent of the DMCA notices they get are from competitors trying to destroy somebody on the Internet. I mean, this is not like a made-up problem, this is a real problem, and if there isn't a due process here, we are going to have tremendous mischief here.

So the liability reduction with the exception of health and safety, I think, is a rational approach. This is not a lawsuit that is being brought by people who say they are aggrieved, whether they are aggrieved or not. This provides for all of these entities to take action on a voluntary basis.

I had this described to me as the vigilante section of the bill, and I think actually that is a good way to think about it, because there is really is no plaintiff, there is no court. It is just the ability to disappear things. And to think that cutting off money is a benign

activity is completely false. It takes a lot of money to keep the bandwidth up for these Web sites. You can't do it if there is no source -- if there is no source of revenue, you have effectively inflicted the death penalty on a Web site, on a small business, without ever having any access not only to due process, they don't even have to be notified under this action. It is just the next thing they know, there is no money.

I mean, we would think that that would be a reasonable approach to infringement. It is just stunning. We cannot allow this to be part of the bill. I am absolutely certain that if this is not altered, it will be abused, and the members of this committee will regret it very much, because there will be many jobs lost, many rights lost if this is not remedied.

With that, I would yield to the gentlelady from --

Chairman Smith. The gentleman from California Mr. Berman is recognized.

Mr. Berman. I move to strike the last word, Mr. Chairman.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Berman. Memories are so short. In the Digital Millennium Copyright Act, the ISPs and all the other groups that came in said, we will not support this unless we get immunity. And the deal was many people -- and Mr. Goodlatte was directly involved in this at the time and a number of us on the committee -- was to give what the ISPs requested so that notice and take-down would work because they had immunity.

The Communications Decency Act, which we all supported, provides

immunity to intermediaries and protections so that they will do what we wanted them to do to deal with indecent materials.

The requirement of good faith based on credible evidence is not a standard for a lawsuit, but it is a standard to decide whether the party can be sued in a lawsuit. The provision Ms. Lofgren read and cited, no action may be brought if, for these things, if it is operated based on good faith and credible evidence. The party who has been granted immunity can assert the immunity against a lawsuit against them, but only if they can establish they had credible evidence and their action was based on good faith.

Let me talk about a personal story. There was a Russian Web site, allofmymp3.com, filled with tens of thousands of illegal sound recordings, perfect copies of copyrighted works, American works, on their Web site, and you could buy them for 10 cents, each one for 10 cents. And Visa allowed their credit card to be used to purchase these. They weren't paying royalties to anybody. They didn't have the rights.

I met with them several times and said, why are you facilitating the use of this rogue Web site, then the sort of functional equivalent of Pirates Bay? We had a second meeting, a third meeting. They finally took it down. A Russian bank then sued them because they were the banker for these transactions with this rogue Web site.

You have the protections by the way this is written. Let me tell you, if this amendment passes, it massively upsets the whole balance in this legislation. And for the people who are now arguing don't grant immunity, who, what was it, 10, 12 years ago came in and said, we will

only operate if we have immunity, the ISPs and all those folks, to twist this around now to try and unbalance and defeat this bill, I think, should be pointed out.

Mr. Issa. Will the gentleman yield?

Mr. Berman. Sure.

Mr. Issa. Well, normally balance is between two sides. I am trying to figure out if having this bill leave the Digital Millennium Copy Act and all those other things intact, we are not taking that away, if limiting it to that, I just want to know -- I am trying to figure out who you balance with, because as far as I can tell, this is all one side.

Mr. Berman. This is not. The question is will the credit card company, when presented with information that allows them -- that they find to be credible and in good faith, decides to quit facilitating payments to a foreign Web site -- a foreign, not a U.S., a foreign Web site -- and that Web site will sue them, the question is should they have immunity if they are doing it based on good faith, belief and credible evidence? And if they don't, if they don't have that, they will never stop facilitating it no matter what information they are given.

And the gentlelady from California says, but this won't be tested by a court. But the answer is it will be, because when they are -- if the Web site was really a legitimate one and sues them, and they can't establish that they had credible evidence and a good-faith belief, they don't get the immunity. So this will ultimately be litigated if it

was a frivolous automatic yanking of the credit card with no justification whatsoever.

So I urge a no vote on the amendment.

Mr. Scott. Will the gentleman yield?

Mr. Berman. Yes.

Mr. Scott. If you have operated in good faith, and done due diligence, and made a credible decision in those cases, what liability is there to get immunity from?

Chairman Smith. The gentleman is recognized for an additional 30 seconds.

Mr. Berman. To answer that, they won't sit there and say, oh, I know I will win that lawsuit at the end of the day, and I am willing to spend all the money to hire the lawyers to make that case. I will win that. They just won't pull the credit card from that foreign rogue Web site.

So without the immunity, this process doesn't work. And everybody knows it, because that was the key that made the Digital Millennium Copyright Act pass. If Mr. Goodlatte wanted to weigh in on this, because he was so involved in negotiating that; am I wrong?

Mr. Goodlatte. The gentleman is absolutely right, and that immunity exists today. It is good immunity. It has been what has assured a lot of the companies involved in helping to enforce copyright law today that they take the actions they take under the limited laws that exist today. It needs to be in this new law as well. If it is not, the gentleman is correct, it won't work.

Chairman Smith. The gentleman's time has expired.

The gentlewoman from Texas Ms. Jackson Lee.

Ms. Jackson Lee. Thank you very much, Mr. Chairman.

I almost wonder if we are expressing a concern about the legislation, do we have an opportunity to pass any amendment?

And I also wanted to make sure that while Mr. King was in the room I shared my voice with him again so that he could be as excited as he was in the past. I look forward to talking with Mr. King about your Twitter account.

But let me just say that I associate with Mr. Scott's comments. My general comments are that you are looking at, in the instance of the example of Mr. Berman, that is a big entity. I can't imagine that they would be so frightened in doing the right thing. They have the ability to withstand any onslaught.

I think the gentleman from California's amendment gives me comfort because it eliminates the ability of being judge and jury; that you are able to, in essence, knock entities off and have no incrimination at all. So I think that it has value from that perspective, and I think there is sufficient -- when you have all of these elements being listed, I think that you have great concern when you list service providers, payment net providers, all these people are getting immunity, and the little guys they might knock off, they will never get back on again. They will be the judge, the jury, and they will be pounding their chest and they will be saying, I have immunity and I can do this. The little guy is never heard from again,

and by mistake. I have an amendment that talks about certification, but you never hear from them again.

So I would suggest that Visa should be reprimanded, and let me just not use their terminology, but a company of that size should be reprimanded for not doing the right thing. I, frankly, think they should be doing the right thing. But this structure that you have gives too much power to one entity.

I would be happy to yield to the gentleman from California.

Mr. Issa. I thank the gentlelady, and I appreciate her support of this thoughtful amendment. Well, at least I thought it was a good amendment.

The question that keeps coming to my mind that hopefully we can all ask in order to vote for this is if no service provider, no search engine, none of these people are saying they want this, and we haven't had a hearing to hold them to task for what they can and are already doing under existing laws, what more they could do, then don't we get back to that same question that we haven't heard enough?

At least at the subcommittee, Mr. Chairman, we should be able to have more of these witnesses come in. We should be able to ask them. The gentleman who is such a large employer in the chairman's district, with his cloud computing sites, we could have him here to say what is the practical reality of this? How would you do it? What would you do?

We haven't had that. And that is one of the limitations of the legislation we are considering here is an absence of any kind of both

classified and unclassified research. I know that the Chairman has worked diligently, but he has worked in a comparative vacuum. And some of the amendments in the manager's amendment speak to that; that one hearing made that great a change, just imagine what two or three more hearings might do to both acceptance of some of our amendments and amending of some of our amendments.

I thank the gentlelady from Texas for yielding the time, because this is an important amendment. It certainly would go a long way to having people be more comfortable that we are doing no harm.

Ms. Jackson Lee. Reclaiming my time, and I would be happy to yield to the gentleman from Virginia in just a moment, but I want to follow up on the inquiry that the gentleman from California made and just inquire of my chairman, my fellow alumnus, if I might. Mr. Chairman, the Senate bill, as I understand it, is slightly different from ours. So if this bill possibly goes to the floor, there is typically an opportunity for a manager's amendment.

What I have asked is that those of us who have expressed concerns not be held to a standard of not getting any of our thoughts included. Do you intend to or would you welcome the opportunity for dialogue on a manager's amendment as it goes to the floor if we get to that point that takes into consideration some of the many thoughts that have been offered here that may not have prevailed at this point?

Chairman Smith. If the gentlewoman will yield, of course I will be happy to continue the dialogue and deal with some of these issues in a good faith manner. Again, I can't make any promises, and I don't

want to judge them on the number of amendments that have been offered, but on their merits or demerits. But I will be happy to discuss any issue with the gentlewoman between now and the House floor, when that time comes.

Ms. Jackson Lee. I thank the gentleman. I will take that as a positive step for a manager's amendment going to the floor.

I yield to the gentleman from Virginia for a moment.

Mr. Scott. Thank you.

I would like to respond to the gentleman from California who brought up the point that we have done this before; therefore we should do it again. It might have been a bad idea before. We ought to debate it individually, and if it is a bad idea to have this immunity --

Chairman Smith. The gentlewoman's time has expired.

Mr. Scott. Could she have an additional 15 seconds?

Chairman Smith. The gentlewoman is recognized for an additional 30 seconds.

Ms. Jackson Lee. I thank the gentleman. I yield 15 seconds to the gentleman.

Mr. Scott. Also I think I interpreted the comments if you have done a good job based on good faith and credible evidence, there is no liability.

Ms. Jackson Lee. Thank you very much, Mr. Chairman. I will end on the happy note that I started. I have lost Mr. King again, but I am looking forward to us getting together on making sure that he stays happy in these hearings.

I yield back.

Mr. Issa. If the gentlelady would yield, I have been informed by the gentleman that he will come back out any time you call his name.

Chairman Smith. The gentlewoman's time has expired. The question is on the amendment --

Mr. Polis. Mr. Chairman, I move to strike the last word.

Chairman Smith. The gentleman from Colorado is recognized.

Mr. Polis. A couple of points in hearing this debate. First of all, in the Digital Millennium Copyright Act, Congress carefully put in a counternotice process that specifically protected due process. I really want to draw my colleagues' attention on this committee to section 105, because in a bill that many of us on this committee don't agree with, I would argue that this is the worst, the worst single provision, and one that needs to be fixed. There is a couple different amendments to do it. I support them all. We will be talking about one of mine soon that will require a court order. Ms. Lofgren has one. Mr. Issa's is very simple.

But here is what is fundamentally wrong. This is a completely one-sided, one-sided take-down. Anybody could construct a letter that looks like it is nice on good faith and based on credible evidence. I am not even an attorney and I could play corporate counsel and write something that a Web hosting company would look at, and it would look reasonable. I would attach a few pages of data, and what do they know about this? They host tens of thousands of sites. They get this letter on the one side of the equation, take it down, no liability.

The other side of the equation, they don't take it down, they don't know. And they don't want to devote the resources to it, because I am paying them 100 bucks a month. What is it worth to them; 1,000 bucks a month, what is it worth to them; 10,000 a month, what is it worth to them?

So this rules out any calculus that even they make. This doesn't require a court order. There is no ability to respond like there is in the Digital Millennium Copyright Act. This is a provision that is simply completely one-sided and unfair and can absolutely, as my colleague Mr. Scott pointed out, be used in an anticompetitive way.

Mr. Watt. Will the gentleman yield?

Mr. Polis. I yield for a moment, Mr. Watt, yes.

Mr. Watt. I am still not convinced that a court order is not required.

Mr. Polis. Well, it is a factual matter that it is not required.

Reclaiming my time, maybe the gentleman can support my amendment, which will then clearly specify that a court order is required. But I don't see any language in here that says a court order is required.

Mr. Watt. Will the gentleman yield?

Mr. Polis. Yes. I will further yield to the gentleman.

Chairman Smith. The gentleman from Colorado has the time.

Mr. Watt. In the original bill there was private action that could be taken without a court order. There was action that could be taken. But all that stuff got dropped.

Mr. Polis. Reclaiming my time, I am not referring to the original

bill. We are talking about the manager's amendment, and we are talking about how a Web hosting company can get complete immunity, and they can do it very simply by responding to just a nice, thoughtful letter that looks on credible evidence without any recourse. So they get a letter, "By the way you are infringing on this copyright I have." They then have a choice. They can either take it down, in which case they are completely immune regardless of the merits, or they can say, no, we are going to keep it up, even though we are not immune if we keep it up.

So, I mean, there is no balance. There is no requirement for a court order. All it takes is a halfway competent corporate counsel to take down almost any Web site that there is.

I will be happy to yield to my friend from Florida.

Mr. Deutch. I thank the gentleman.

Just for clarification purposes, we have been talking about lots of different sections. We are talking about section 105?

Mr. Polis. Yes.

Mr. Deutch. And subsection (a)?

Mr. Polis. Yes.

Mr. Deutch. I would just like to walk through this so that I understand this the same way that you do.

Section 105, this is "Actions Taken Consistent with the Purposes of this Title"; is that right?

Mr. Polis. That is correct.

Mr. Deutch. No cause of action shall lie in any Federal or State

court or administrative agency, and then it walks through who this applies to.

Then it says, including directors, officers, employees or agents of any such entity only for taking the actions described in section 102(c)(2) or section 103(c)(2). Section 103(c)(2) talks about reasonable measures after being served with a copy of an order under this subsection, and the earlier section has the same language. We are not speaking of a court order?

Mr. Polis. No. And if the gentleman agrees to include -- again, my amendment will be up shortly. This amendment fixes it. The gentleman is welcome to support my amendment, which simply requires a court order for this section.

Mr. Issa. Will the gentleman yield for just 1 second?

Mr. Polis. I will be happy to yield to the gentleman from California.

Mr. Issa. If it helps in this debate, I certainly would be glad to suspend this amendment until Mr. Polis' amendment is heard next out of order so that we could establish that it would be a court order, and it might make mine less onerous to everybody. But we can't be arguing something in a bill in a vacuum, vote mine down, and then turn around and vote his down, which is what I fear will happen.

Mr. Polis. Reclaiming my time, I think this speaks to the rushed fashion that this bill has been brought forward. Again, there is no mention of any requirement for a court order. There is clear immunity for one course of action and not for the other course of action. Again,

a sin of omission being just as bad as a sin of commission, just as we want to take down any illegal content as quickly as possible, so, too, we don't want to encourage taking down legal content that doesn't violate any copyright.

Chairman Smith. The gentleman's time has expired.

Mr. Polis. So if the gentleman from Florida will support my amendment --

Chairman Smith. The gentleman from Florida is recognized.

Mr. Deutch. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Deutch. I this provision that we are talking about, section 105, refers back to the earlier section 102(c)(2). Section 102(c)(1) refers to a copy of a court order. Section 102(c)(2) has language saying after being served with a copy of an order, under paragraph one that is a court order.

Mr. Polis. Will the gentleman yield?

Mr. Deutch. Let me finish. And even in the absence of any of that language, we are failing to fully read what is in this section and when this immunity would apply.

If you look at the further defining language, at first it talks about those two provisions and the orders required thereunder. Then it talks about the requirement of acting in good faith based on credible evidence. Then it goes on to say that, number one, the Internet site is a foreign infringing site, is an Internet site dedicated to theft, which is what you would like to strike; and subsection (2), the action

is narrowly tailored and consistent with the entity's terms of service or other contractual rights and with the purposes of this title.

We seem to be missing the fact that any action that is taken here would have to be taken under the terms of service, the terms of service presumably being very clear that in any of these companies, as I understand from speaking with them -- because though they are not here this evening, as everyone seems to suggest they would like, in speaking with them it is clear that the terms of service in virtually every one of these contracts would prohibit exactly the kind of theft and intellectual property theft that we are getting at. They have to be consistent with that as well.

We need to read this in full. We can't pick and choose. We need to look at all of the language, and it is in looking at all of the language that I oppose this amendment.

Mr. Polis. Will the gentleman yield?

Mr. Deutch. I will.

Mr. Polis. Okay. Again, the language was cited only for taking the actions described in section 102. Again, the actions of those operative sections of the bill, not the prerequisites of the operative sections of the bill. It refers to the actions described in that section of the bill.

Mr. Deutch. The actions taken under that language pursuant to the order that causes the action to be taken.

Mr. Polis. Well, if the gentleman agrees that is the intent of the bill, it is at best ambiguous, but we can clarify it with my

amendment, which would very clearly apply a court order language to this part of the bill. If that is the intent, there shouldn't be any problem.

Mr. Deutch. Reclaiming my time, one, I don't think it is unclear. Two, I think that you continue to ignore the second subsection which talks about the additional requirements that would be contained in the terms of service agreement which would forbid the very action that we are trying to get at. We are simply requiring that they take action consistent with their own terms of service and granting immunity if they take that narrow action based on what is required.

I yield back.

Chairman Smith. The gentleman yields back his time.

The question is on the amendment. All in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. Issa. Mr. Chairman, on that I ask for a recorded vote.

Chairman Smith. A recorded vote has been requested. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. Yes.

The Clerk. Mr. Issa votes yes.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Mr. Jordan?

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

[No response.]

The Clerk. Ms. Adams?

Ms. Adams. No.

The Clerk. Ms. Adams votes no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

RPTS MERCHANT

DCMN BURRELL

[8:45 p.m.]

Chairman Smith. The gentleman from Arkansas.

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Chairman Smith. The gentleman from Ohio.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Chairman Smith. The gentleman from California.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Chairman Smith. The gentleman from California, Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Chairman Smith. Are there other members who wish to be recorded?

The clerk will report.

The Clerk. Mr. Chairman, 10 members voted aye, 24 members voted nay.

Chairman Smith. The majority has voted against the amendment.

The amendment is not agreed to.

Mr. Chaffetz. Mr. Chairman.

Chairman Smith. Yes. For what purpose does the gentleman from Utah seek to be recognized?

Mr. Chaffetz. I was seeking asking for an adjournment vote, but I thought maybe I would get some advice on that before I actually called for that vote.

Chairman Smith. Thank you for asking for advice. I request that you hold off for a little bit longer.

Mr. Chaffetz. Mr. Chairman, can we define a little bit longer?

Chairman Smith. How about 10 amendments.

Mr. Nadler. Mr. Chairman, did you say 10 amendments or 10 minutes.

Chairman Smith. Very good. I will take the gentleman's suggestion under consideration. Let's proceed for a little bit longer.

The gentlewoman from California has an amendment.

Ms. Lofgren. Mr. Chairman, if I may, I would suggest that we go to Mr. Polis' amendment because if that were adopted it might obviate the need for me to offer these next two amendments.

Mr. Polis. Mr. Chairman, I have an amendment at the desk, amendment number 85.

Chairman Smith. The gentleman has not yet been recognized.

Mr. Scott. Mr. Chairman, I have an amendment that is listed next. And I think Mr. Polis' amendment would clear up the issue.

Chairman Smith. The gentlewoman from California's two amendments then will come at the end of the session.

Ms. Lofgren. Well, I would offer them only if Mr. Polis' amendment is not adopted.

Chairman Smith. We will go to his amendment. I am just saying the result of your forfeiting offering your amendments right now will take you to the end of the session. I don't think that is going to be an impediment.

Ms. Lofgren. Well, I have several others at the end.

Chairman Smith. It is not to your disadvantage.

Ms. Lofgren. No, that is fine.

Chairman Smith. The gentleman from Colorado is authorized to offer an amendment.

Mr. Polis. Thank you, Mr. Chair. Along with Mr. Scott I have an amendment at the desk.

Chairman Smith. We are going to take up your amendment. I don't think we can take up both at the same time.

Mr. Scott. I am a co-sponsor of his amendment.

Chairman Smith. I am sorry, okay. The clerk will report Polis Number 85 co-sponsored by the gentleman from Virginia.

The Clerk. Amendment to the Smith amendment offered by Mr. Polis of Colorado and Mr. Scott. Page 41 line 25 insert after --

Chairman Smith. Without objection, the amendment will be considered as read. The gentleman is recognized.

[The information follows:]

***** INSERT 11-1 *****

Mr. Polis. Thank you. This amendment I think, again with due respect to my colleague Mr. Issa from California, I think this is a more appropriate and less ideological fix than eliminating the section. Again I did support that.

What this would do is simply add a control pursuant to a court order. Now, my colleague Mr. Deutch from Florida argued that that was already the case. I don't believe it is because it only refers to the actions of a previous session, not a court order. If it is there shouldn't be any problem at all including this amendment.

But I think we -- again, there are great legal scholars and if they disagree I encourage them to speak up on this committee. But it is my reading that there is currently no court order that is required. It is effectively immunity if there is credibility and good faith in the view of the person who receives the notice.

Again, as we have argued in the course of the last amendment that is in no way, shape or form a sufficient standard. Any halfway competent corporate counsel can wield this as an anticompetitive weapon under the current language and simply put a few statistics on a piece of paper, put some nice words, and it will look reasonably credible and in good faith. Because the recipient of the notice which may be a hosting service or an ISP isn't in the business of assessing the merits of copyright. I mean what do they know. They get a notice. They have a legal compliance department, they get this notice, it looks like its written by a lawyer, it looks halfway decent, and if this law were operative absent my amendment, if they take down the infringing at the

site that could be infringing or might not be infringing there is zero legal liability. If they don't take it down then they could be subject if in fact it is an infringing site to the reach of the law.

So they should have to turn to a court order issued according to section 102(b)(5) or section 103(b)(5), that some court somewhere in the country through a TRO, through a preliminary injunction, through a permanent injunction has found this claim of infringement to have some merit. Absent some check on whether there is any merit at all with regards to the claim, it is simply an enormous competitive advantage for those among the companies who are the most well lawyered.

Again, this does not work to the detriment of the Internet service providers or the web posting companies. They might lose a customer here or there but they gain immunity. This does work to the detriment of those whose websites are wrongfully taken down.

And again, there are different types of public policy failures. An analogy that this committee is all too familiar with is voting rights. It is wrong, as those on the other side of the aisle like to point out, for people who are ineligible to vote to cast a ballot. That is wrong. It is also wrong, as those on my side of the aisle like to point out, to deny the franchise to those who are eligible. Those are both true. Neither one takes precedence. It is just as wrong to deny the franchise of someone who has the right to vote as it is to allow someone to vote.

Ms. Lofgren. Mr. Chairman, the committee is not in order. I think the gentleman has a right to be heard.

Mr. Polis. Thank you.

Chairman Smith. The gentlewoman is correct. The gentleman will proceed.

Mr. Polis. Thank you. And again, this is without a doubt the most important and most onerous piece of this bill because it has no legal checks whatsoever. My amendment would apply a commonsense legal check, which Mr. Deutch has said is arguably part of it already, although in my reading it is not, and make it clear that in fact there has to be some court order, TRO, preliminary injunction, permanent injunction, that would then afford the immunity for the takedown. So it has gone through some court that has had to find some merit and then it would be taken down and the immunity would be invoked.

I do agree that immunity in that case if there is a court order can be appropriate. We do have that under the Digital Millennium Copyright Act, although we do have a right of response under this. And likewise, if we made it pursuant to a court order there would also be a built in a right of response because the court order has a right of response to be reacted to.

This change that I propose would really comfort to a great degree many of those who have expressed vociferous concerns about this section of the bill because it provides some control on what is otherwise a completely one-sided provision that puts immense power in the hands of any halfway competent corporate counsel to a rights holder to a complete detriment of websites who would be wrongfully affected, many of whom might be enabling websites of user generated content. Again,

most of the potential violators we are talking about here is user generated content. The website provider would simply be an enabling technology that might incidentally be used for an infringing purpose or even not incidentally used for an infringing purpose. But as long as the letter looks nice and has a bunch of pages of nice statistics, the clear course of action that any counsel to the hosting service will indicate would be take it down.

Chairman Smith. The gentleman's time has expired. The gentleman yields back. I will recognize myself in opposition to the amendment.

The gentleman's amendment would exclude the publishing industry from seeking relief under this bill. This would create a huge loophole in the bill that would allow sites that are clearly dedicated to infringement to simply place a handful of works that are in the public domain on their site and thus would delay the effective remedies provided under the bill. This provision also removes voluntary immunity for intermediaries that take action against a rogue website. Without this provision intermediaries even when the evidence is clear would be unlikely to take action against any rogue website. Under the manager's amendment there is already a very strong First Amendment savings clause that ensures that no order would be issued that violates the First Amendment.

For these three reasons I oppose the amendment. I yield back.

Are there other members who wish to be heard on the amendment?

The gentleman from California, Mr. Berman, is recognized.

Mr. Berman. Mr. Chairman, I oppose the amendment and I want to go back. I happen to agree with the gentleman from Colorado's interpretation of this language with respect to court orders or not. But the two things I disagree with him about are, one, that pursuant to a court order you need immunity. That is the last place you need immunity. If you are ordered to do something you don't have to be -- you are not going to be subject to suit because you did something the court ordered you to do. So you don't need an immunity in that situation, number one.

And number two, Mr. Polis' summary dismissal of the Digital Millennium Copyright provisions, a company sends a -- a copyright owner sends a letter to an ISP that asks them to take down this particular infringing thing from a website that ISP links to. Some ISPs may go to the website, others don't. But the immunity is whether you go or don't go. And there was the ISPs that insisted on it for obvious reasons because they don't want to face a barrage of lawsuits about all of this stuff. And I don't know what you were talking about with respect to counter notices or anything else. All I know is, as I understand the Digital Millennium Copyright Act, you don't have to give notice to the website of whether that was an infringing piece or not. The ISP can take it down when they get the notice. And they are given immunity for doing that. And I consider this to be quite analogous to that situation. And I know that we will never get people who are facilitating the purchase of infringing material from only foreign websites if we don't provide that immunity. So this provision is

fundamental to the structure of the bill.

Now, I have heard this is the most odious part of the whole bill. I haven't heard that argument used since we were dealing with the issue of the security in the Internet, which was the most odious part of this bill. But I just think this is fundamental to the fabric of dealing with the problem of getting infringing material off of websites, getting rogue websites as defined in this bill that are dedicated to the dissemination of and the distribution of infringing material and getting people who facilitate through advertising or through utilizing credit cards payment by consumers for illegally distributed material. And to me this is the analogous next step to what we did in the Digital Millennium Copyright Act, and I don't understand the gentleman's distinction between the two.

Chairman Smith. Thank you, Mr. Berman. The gentleman yields back. Any other member wish to be recognized on the amendment? The gentleman from Virginia, Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman. Mr. Chairman, it is interesting that all the arguments against the Issa amendment concluded that the bill should be interpreted as if this amendment were actually --

Mr. Berman. Not my argument.

Mr. Scott. Well, most of the people that debated it argued that the bill should be interpreted as if this amendment were adopted. Now, if there is a court order you really should not do a whole lot of original thinking, you ought to follow the court order. But the court order,

as I understand, is not an individualized court order telling each person what they ought to do. It is just a court order that the website is a bad website and then everybody does what they think is right. If you go more than necessary you got immunity because you were kind of following a court order.

Now, one of the things about a court order and getting immunity with a court order is that a court order suggests that everybody has kind of had an opportunity to be heard. Both sides -- the person -- both sides have been heard and before you inflict pain on somebody they had an opportunity to present their case. This is voluntary before any due process has taken place and you are inflicting pain on people that may not have had an opportunity to be heard.

Now, with this amendment those who do not have this immunity or the voluntary action will just have to do some reasonable due diligence before they take action and then they will be okay, under the bill they will be okay. But without this amendment they can do anything they want to anybody and fall within the amendment, as long as there is credible evidence and they claim good faith. You know, they ought not get immunity in a case where the original, where the victim of all of this really never had an opportunity to be heard. And I think fairness dictates that we require these people to have due diligence before they have immunity.

And I yield back.

Chairman Smith. The gentleman yields back his time. Are there other members who wish to be heard? The gentlewoman from California,

Ms. Lofgren.

Ms. Lofgren. I move the strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. I think the amendment should be approved. And one of the things about the DMCA is that there is a process for a counternotice. As we discussed earlier in the discussion of Mr. Issa's amendment, this voluntary section, the vigilante section, there is no notice, there is no opportunity to be heard, and if there is anything that looks credible there is complete immunity.

Now, the opportunity for mischief is quite high. We think of the ISPs as separate from the content world, but that is not always the case. Say for example, I don't want to pick on them, but I have cable TV, I have Comcast, and they also provide my ISP service. So there is a content provider but they also have a service. I am not saying they would use this. But certainly under the manager's amendment they would have every opportunity to take action to disappear competitors if there was any credible representation made that they could rely on.

The amendment being offered would preclude that opportunity because there would be, there would be notice and there would be an opportunity to be heard.

As was mentioned by Mr. Scott, the argument, not certainly by Mr. Berman but by many, about Mr. Issa's amendment, was that it wasn't necessary, that the bill already provides for what Mr. Polis' amendment provides. If that is the case, if that is what, I don't think it does, but if that is the belief I hope that everyone who said that will vote

for Mr. Polis' amendment, because if that is what we thought we needed to do this actually does that.

I think that the opportunity to disappear competitors, to engage in anti-competitive activity, is far greater than is being discussed here tonight. I think it is worth going back to say that we -- you know infringing is not right. There is a need for remedies. But this provision is so much broader than is necessary to actually actively and successfully fight Internet piracy that we really should take a look at Mr. Polis' amendment. And I know we are all getting tired but this is important stuff. I mean, the Internet and the communication that it has facilitated is important. It is important to the freedom of Americans and it is important to the opportunity not just for the Internet world but for the creative world to actually create and distribute.

That is why the Writers Guild came out against this bill. I mean I am sure they got a lot of grief in Hollywood for doing that. But there is a reason why a free ability to distribute material is important, not just to the Internet but to the creative community. Mr. Polis' amendment will preserve that, and I hope that we don't just reflexively say no.

Mr. Polis. Would the gentlewoman yield?

Ms. Lofgren. I would be happy to yield to the gentleman.

Mr. Polis. I am offering a number of amendments, but I do believe that this is the most important one to include in the bill to preserve any semblance of balance with regard to these laws. I am very open

to the concept of an immunity provision. There just has to be, as I believe there is under the Digital Millennium Copyright Act, there needs to be some check and balance under any valid court order. And then yes, if they are complying with that and some court has found that it is an infringing site, by all means take them down. And they shouldn't be able to sue you for taking them down if the court has said it is an infringing site.

The question here is if no court has ever said it is an infringing site and just some corporate counsel just writes something that even I could write that looks credible and the only thing you are going to do is just take down the site because you are completely immune if you do. And there is an unknown liability if you don't because you don't want to adjudicate it, you got a business to run.

So I mean this is an extremely, extremely important part. This could very well be the most disruptive part of this bill. I know there is a couple other potential fixes that if my amendment fails, and I truly hope it doesn't, then Ms. Lofgren would offer it. But I really call upon members of both sides to look very carefully at this. We have to fix this provision or it would be extremely detrimental to companies everywhere.

And I yield back the balance of my time.

Chairman Smith. The gentleman yields back the balance of his time.

Are there other members who wish to be heard on the amendment?

Mr. Chaffetz. Mr. Chairman.

Chairman Smith. The gentleman from Utah, Mr. Chaffetz, is recognized.

Mr. Chaffetz. Thank you. And I do appreciate this amendment. I think this is a critical component. We have to be responsible in making sure that there is a check and that there is a balance. Again, I recognize that there is a problem, but there should be a safeguard in which you must, and in this case, and help me if I am not reading it right, but to go get a court, to get the court involved. It provides an extra step in the process but it can be done swiftly. I think there are some people are concerned that this will drag on for a year and a half or 2 years. I think this can be set up to be done swiftly, but would provide that extra safeguard.

And I struggle to understand the argument against it. I think it is a reasonable measure. I think it would create that safeguard. We have to understand these are -- when we are talking about somebody's website we are talking about their livelihood, we are talking about their First Amendment rights, we are talking about so many things that are core. And I also look at it through the lens and the purview of jobs in the economy.

Now certainly the content industry they are developing music and movies and all. They get harmed if somebody comes and rips off their content. But also if you have a malicious player there should be a way to make that case swiftly. And I think this amendment would go a long, long ways to protecting jobs, the economy. We have -- if you look at the United States of America, one of the few competitive

advantages that we have in the marketplace right now is the technology industry. And it scares me to death that we are going to add this massive bureaucracy and allow the swiftness that can be done on a single sheet of paper and we are going to give all this liability and this real dramatic incentive to the credit card companies and others to swiftly take something down.

We as a body, we as the American people, our constitution and other things, we should be going out of our way to make sure that we protect people's rights, that we don't just have some bureaucrat at the Department of Justice who just signs off on something and it just goes. And that is the spirit in which this is done. If somebody is breaking the law, if somebody is stealing, if somebody is -- of course we want to take care of it. But what Mr. Polis offers is a very reasonable step to make sure that there is a court involvement here. We are the Judiciary Committee. It is hard to believe we would argue that we don't want courts involved.

So unless I have got something wrong, I am in strong support of Mr. Polis' amendment. I yield back.

Chairman Smith. The gentleman yields back. The gentleman from Virginia, Mr. Goodlatte, is recognized.

Mr. Goodlatte. Thank you, Mr. Chairman. And I speak in opposition to the amendment and associate myself to the remarks of the gentleman from California, Mr. Berman. He is exactly right, this is how the Digital Millennium Copyright Act works. And if every time any copyright holder or other business, I mean I have a company in my

district that, you have all heard of it, Rosetta Stone, they make language things, they find sites every day, hundreds of them, that are illegally selling their product or counterfeit knockoffs of their product. And if every time they have to go to a credit card company and say take down your credit card off of that site, you have to go get a court order, that absolutely won't work. It certainly wouldn't work under the Digital Millennium Copyright Act. And that is why you don't have to get a court order under the DMCA.

This is a totally unworkable provision designed again to reduce the effectiveness of combating illegal rogue websites. And they are not U.S. citizens, they are not U.S. entities, they are not under the First Amendment of the United States Constitution. They are in other countries and they are in those other countries because they are trying to avoid, they are trying to avoid this reach of the law. And so we have got to make the tools available for U.S. companies to go after them workable. And that is what --

Ms. Lofgren. Would the gentleman yield?

Mr. Goodlatte. That is what the bill does and that is what this amendment would seriously erode.

I yield to the gentlewoman from California.

Ms. Lofgren. I am wondering since you are drawing an analogy between the DMCA and this provision whether you would support the counternotice provisions that exist in the DMCA for this?

Mr. Goodlatte. Actually, in the original bill there was a counternotice. And if a counternotice amendment is offered I would

be happy to look at it. But that is a very, very different remedy than requiring a court order and all of the costs and actions that are entailed in having to go to get a court order every time one of these sites pops up. And for some of these companies you are talking about happening thousands and thousands of times a year. That is why this provision exists, to try to get the various parties to this working together cooperatively. The companies that we are asking to do this, like credit card companies, they have every reason in the world to want to be able to have their credit cards used by their customers to purchase legitimate goods.

Mr. Polis. Will the gentleman yield?

Mr. Goodlatte. I will in just a moment. They have a legitimate reason to want to make sure that they are going to take something down unnecessarily. So if they rely upon the representations of a copyright holder or another business that says their patent or their copyright or their trademark has been infringed and therefore they need to get a use of their credit card on a website taken down they need to have some reasonable flexibility in doing that. Now, there is a counternotice in the DMCA, and if that is offered I certainly would be willing to take a look at it, depending on how it operated and what effect it had. But a court order and all that that entails and the cost that it entails goes way too far, given the enormity of this problem for the companies that are attempting to do business on the Internet.

And I would be happy to yield to the gentleman.

Mr. Polis. Thank you. And again, if this -- I hope this

amendment passes. If it fails we will work with the gentleman to try to prepare an amendment for tomorrow that reflects the counternotice provisions of the Digital Millennium Copyright Act. So I would further point out that having different provisions for foreign infringers and domestic infringers is very much an anti-trade activity that other countries could retaliate on. Have one set of standards for our own and one set for abroad.

Mr. Goodlatte. Reclaiming my time, I don't know that there is a different standard because under the Digital Millennium Copyright Act, which is what they are going to rely upon when dealing with U.S. companies because U.S. businesses, U.S. websites that may be infringing are not covered under this legislation, there are those protections in that, as there would be in this, unless you raised the bar and make it harder to deal with foreign rogue websites than it is to deal with domestic sites, which will be the effect of your amendment and why I oppose it.

And I am happy to yield to the gentleman from North Carolina.

Mr. Watt. I just want to say that I think the counternotice process is a fair compromise, to be honest with you. I actually thought we were where the gentleman's amendment -- and the way we got here is we started -- the original bill had a bunch of no court procedures to it, and there was so much opposition to it that all of those things got taken out, right, and I thought we were left just with court proceedings.

So I am going to vote against your amendment but I want to work -- I

will be happy to work with you, because I think we really do need some balance similar to what we have in DMCA to make sure that the process is not abused. And so I just -- I am sending that message to my friends across the aisle here. I just think -- I think we need a countermeasure to make sure that people don't do things that are abusive.

Chairman Smith. The gentleman's time has expired. Are there other members who wish to be heard on the amendment?

Ms. Lofgren. Let me ask unanimous consent for Mr. Goodlatte to have an additional 30 seconds that he might yield.

Mr. Watt. I will ask for 5 minutes and I will yield to the gentlelady.

Chairman Smith. The gentleman from North Carolina is recognized for 5 minutes.

Mr. Watt. I move to strike the last work, and I yield to --

Ms. Lofgren. I just wanted to make a brief comment, because the suggestion that we are being tougher on foreign infringing sites than U.S.-based sites I think is not correct. If you are -- if you have a server in the United States and you are committing infringement, I mean you can send in the sheriff, you can be arrested, your servers can be seized, you can be prosecuted and sent to jail. I mean I don't think that is nothing. And to think that -- I mean that is why -- I mean --

Mr. Goodlatte. Would the gentlewoman yield?

Ms. Lofgren. It is not my time, but I am sure Mr. Watt would be happy to yield.

Mr. Watt. Let her finish and then I will yield to you.

Ms. Lofgren. I just think that it is legitimate and there is a problem with reaching to sites that are beyond our jurisdiction. I mean, there is no quarrel with that. The question is how to do that. And how to do it without creating a situation where there will be certainly certain to be abuse. I think that, although when I asked the Department of Justice how often they had actually proceeded to use the extraordinary remedies that they have, I was disappointed that while there has been seizure of sites there has been hardly any arrests and almost no prosecution.

So I think we may have a problem here in enforcement, not with the tools, but the tools aren't being used in some cases. But as to the foreign sites I think that the procedures outlined by Mr. Issa in his proposal certainly provides for an opportunity for an orderly march to a resolution that involves --

Mr. Watt. Reclaiming my time.

Ms. Lofgren. -- a complete elimination of funding. And I thank the gentleman for yielding.

Mr. Watt. Reclaiming my time, I will yield to Mr. Goodlatte.

Mr. Goodlatte. I thank the gentleman. I just want to say to the gentlewoman that I agree with her point about all the other remedies that are available to aggrieved parties when the infringing party is in the United States. And that is the point of this legislation. This legislation is trying to find some tools to reach the criminals who have left the United States or never were in the United States but see

a great economic opportunity through thievery to set up these operations in places where we have very limited means of reaching them. And that is why this agreement, this legislation that provides a framework for companies to be able to work with intermediaries, to protect them under circumstances, needs to have protection.

The counterbalance -- the counternotification provision is a counterbalance that I am certainly willing to consider, as is the gentleman from North Carolina, but a court order would render this provision very ineffective. And the smaller the aggrieved party, the smaller the music company, the musician, the small manufacturer, the more likely they will not be able to avail themselves of this because of the added cost of this court burden that the gentleman's amendment calls for. So I oppose the amendment.

Mr. Watt. Reclaiming my time, I am wondering if the gentleman from Colorado might consider withdrawing the amendment and increasing his leverage for the discussion tomorrow, because you probably are going to lose the amendment I think. But --

Mr. Polis. I was confident I would win.

Mr. Watt. But if that -- if you still have the prospect of bringing it back tomorrow and the prospect that some of us might support it if we can't work out something.

Mr. Polis. I just want a point of procedural inquiry, Mr. Chairman. If I withdraw the amendment I retain the right to introduce the amendment later in the markup, is that correct?

Chairman Smith. That is correct, Mr. Polis.

Mr. Polis. Okay. Then I will withdraw the amendment.

Mr. Watt. And I would be happy to -- you got to initiate it. I don't want to draw it. But I think we need a balance here to keep the process from being abused. But it can't be just pursuant to a court order, I think, because that way I mean everybody will end up in court. I agree with Mr. Berman on that.

So I yield back.

Chairman Smith. The gentleman yields back his time. It is my intent so that members may plan accordingly to recess after we consider one more amendment. And so I don't know in regard to -- it has to be a substantive amendment. I don't know what Mr. Scott, Ms. Lofgren want to do about their amendments because I know they were waiting to see what happened on the Polis amendment.

Ms. Lofgren. Mr. Chairman, I had intended to offer 57 and 62 if Mr. Polis' amendment was not adopted. Since Mr. Polis has temporarily withdrawn I think I should withhold and see what happens to that amendment. If it is not adopted in some measure that is satisfactory, I would offer those two at that time. But if it is satisfactory then we would save the time of those two amendments. So I will hold those two off.

Chairman Smith. I thank the gentlewoman. And then what about Mr. Scott?

Mr. Scott. Mr. Chairman, it is my understanding that my amendment is identical to Mr. Polis', so I just withdraw mine. I do have another amendment further down, number 40. We haven't gotten

there yet.

Chairman Smith. We will probably get there tomorrow though. I thank the gentleman for withdrawing his amendment at least for the time being. That takes us to perhaps Mr. Chaffetz.

Mr. Chaffetz. The amendment I would like to offer is an adjournment.

Mr. Goodlatte. Is that your last amendment?

Mr. Chaffetz. That is not my last amendment though. With all due respect, I truly would like to go tomorrow if I could, Mr. Chairman.

Chairman Smith. Okay. Mr. Polis, would you want to offer an amendment number 36 and number 82?

Mr. Polis. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to the Smith amendment offered by Mr. Polis of Colorado.

Chairman Smith. This is Polis 82?

The Clerk. Pardon?

Chairman Smith. Polis 82?

The Clerk. Yes, sir. Page 46, after line 17 insert the following --

Chairman Smith. Without objection, the amendment will be considered as read. The gentleman is recognized to explain his amendment.

[The information follows:]

***** INSERT 11-2 *****

Mr. Polis. Thank you, Mr. Chairman. This amendment would require the State Department to issue a report on DNS blocking, search filtering and blocking payment processors and advertising networks. Again, when we are dealing with -- and I have a couple of different amendments that we will be discussing I guess tomorrow, and they deal with some of the reporting requirements under the bill in an attempt to make them more balanced. And currently many of the reporting requirements, the studies that will be reported to Congress, put in place criteria that are very one-sided. What mine, what this amendment would simply do on page 46 after line 17 is add to the Department of State report that after 2 years after enactment the Secretary of State shall publish a report on the use of tools in other nations to block Internet access, including domain name blocking, redirection, search filtering, et cetera.

There have been universal concerns addressed in this committee, and it is not an intended consequence of this bill, that we would be preventing people in countries like Iran and China and elsewhere from accessing unfettered information. One of our most treasured national values is the right to freedom of speech and expression. Secretary Clinton recently said we all support a single Internet where all of humanity has equal access to knowledge and ideas.

Unfortunately, this bill's inclusion of DNS blocking and search filtering has the potential to be a disaster for Internet freedom. While we were unable to succeed yet in passing an amendment that modifies the bill, and I personally hope that the bill does not become

law, I think it is very reasonable for both proponents and opponents of the bill to have the voracity of some of these claims assessed through a report from the Department of State.

My amendment would require that 2 years after the passage of the bill the State Department, which already closely monitors these kinds of developments such as Internet censorship, would publish a report for the benefit of Congress and the public on the potential consequences of this legislation with regard to their goals.

We should not as a Nation stand for taking down, isolating or censoring Internet sites. And we need to point to legislation that supports free speech and allows for objective information to be provided to this Congress with regard to the ramifications of the legislation.

Again, if anybody is even potentially scared of what is in this report, they should not support the underlying legislation. And for those who do support the underlying legislation, then we should have no problem with having a reasonable and fair report conducted by the Secretary of State for the benefit of Congress.

I think that this would improve the bill. It is consistent with a couple other amendments I have in other areas that would simply make the reporting requirements more neutral, and it would give to the future Congress the benefit of information about the impact of DNS blocking on global free speech and the access to free information in authoritarian regimes, including Cuba, Iran and China, to encourage the people of those countries to assert themselves in their freedom

of speech and freedom of discussion and political discourse.

Mr. Scott. Will the gentleman yield?

Mr. Polis. I will be happy to yield to the gentleman from Virginia.

Mr. Scott. Mr. Chairman, I think this is a very important amendment and I support it. My question to the gentleman would be if in the private action, voluntary action, how would the State Department know, how would the State Department know that a website had been taken down if there is no public court order? How would they find out?

Mr. Polis. With regard to their techniques I believe, again, they already work on human rights issues, on accessing information abroad. I believe they are generally in consultation with advocacy groups and NGOs in these countries who would generally be aware of what is and isn't available on the Internet in those countries. They certainly don't have any superior or unique access, but they are on the ground in these countries. And they should be able to get a sense from their connections on the ground with regard to how the Internet is or isn't being censored.

Ms. Lofgren. Would the gentleman yield?

Mr. Polis. I yield to the gentlelady from California.

Ms. Lofgren. I think this is a good amendment as well. I am wondering whether this report might actually also encompass information in the other direction. For example, I mentioned earlier that the EU is actually moving in the other direction. I think it is interesting that they moved away from any kind of deep packet inspection

or DNS takedown just as we were beginning to review this legislation. And many think that they are positioning themselves to be the recipients of our Internet industries if this bill becomes law. I think that would also be a piece of useful information to have in terms of our economic competitiveness. Perhaps that is covered in your next amendment.

Mr. Polis. I deal with that in another amendment. I also would agree that it is not inconsistent with this amendment. And I believe the Department of State would be able to, and perhaps with a letter supporting that of guidance if this passes would be able to include that.

Chairman Smith. The gentleman's time has expired. The gentleman yields back. I recognize myself in support of the amendment. As I read it, and I know the gentleman described it a minute ago, but the Secretary of State shall publish a report on the use of tools in other Nations that block Internet access, including domain name blocking and so forth. My concern with the amendment is that it would impose obviously a reporting requirement on the Secretary of State, and no one has consulted with the Secretary of State to see what they think about it.

Ms. Jackson Lee. Will the gentleman yield?

Chairman Smith. Who seeks recognition?

Ms. Jackson Lee. Right here.

Chairman Smith. The gentlewoman from Texas.

Ms. Jackson Lee. Mr. Chairman, I am glad to hear you say that you would consider it and support it. I introduced a letter from the

Secretary of State that was actually sent to Mr. Berman. And I think you could glean from the remarks here that the Secretary of State views the issue of protecting or preventing piracy as important as Internet freedom.

Chairman Smith. Would the gentlewoman read the relevant excerpt from the letter?

Ms. Jackson Lee. I would be happy to do so. There is no contradiction between intellectual property rights protection, enforcing an enforcement and ensuring freedom of expression on the Internet. And it goes on to talk about the Arab Spring and the useful tool that the Internet is.

Chairman Smith. I am not --

Ms. Jackson Lee. Well, let me just say this. You won't have a sentence in the letter that says I want to do the study. But what it does say is that they feel that the responsibilities of piracy and freedom are ones that they consider important. And I believe that you could assume that they would welcome the study that Mr. Polis is calling for.

Chairman Smith. Before I yield to the gentleman from California, I am not sure that anyone can draw from that letter any indication how the Secretary of State feels about this amendment.

The gentleman from California, Mr. Berman.

Mr. Berman. I don't really have an objection to the amendment. I have a very strong objection to the fundamental premise that a particular technology used for an appropriate purpose is equivalent

to that technology being used for a clearly shameful purpose. And that assertion that has been made off and on during this conversation and in letters to us, enriching uranium for the purposes of peaceful nuclear energy is not the same thing as enriching uranium for the purposes of producing a nuclear weapon. And the notion that the technology is what is evil, particularly since at least as I understand it a technology that we now use to deal with pornography sites and malware and spam, that that is the evil rather than the purposes for what it was used.

But notwithstanding all that, let's have the report and let's -- maybe the Secretary will lay that out. So I am fine with it.

Chairman Smith. Are there other members who wish to speak on the amendment? If not, I will recommend that we accept it. And we will go and vote on it. All in favor of the amendment say aye. Opposed no. The amendment is agreed to.

I thank all members for their diligence today for staying until 9:30 at night. We basically have been at it for 10 to 11 hours. And look forward to seeing everyone at 10:00 a.m. in the morning. And we will continue our markup at that point.

Mr. Berman. Until finished.

Chairman Smith. I am sorry?

Mr. Berman. Until finished.

Chairman Smith. It is going to be a long hard day tomorrow. Once again, 10:00 a.m. tomorrow morning. And we will recess until then.

[Whereupon, at 9:30 p.m., the committee was adjourned.]

