

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3754  
OFFERED BY MR. SMITH OF TEXAS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fraudulent Online  
3 Identity Sanctions Act”.

**4 SEC. 2. AMENDMENT TO TRADEMARK ACT OF 1946.**

5 Section 35 of the Act entitled “An Act to provide for  
6 the registration and protection of trademarks used in com-  
7 merce, to carry out the provisions of certain international  
8 conventions, and for other purposes”, approved July 5,  
9 1946 (commonly referred to as the “Trademark Act of  
10 1946”; 15 U.S.C. 1117), is amended by adding at the end  
11 the following new subsection:

12 “(e) In the case of a violation referred to in this sec-  
13 tion, it shall be a rebuttable presumption that the violation  
14 is willful for purposes of determining relief if the violator,  
15 or a person acting in concert with the violator, knowingly  
16 provided or knowingly caused to be provided materially  
17 false contact information to a domain name registrar, do-  
18 main name registry, or other domain name registration



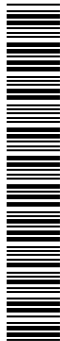
1 authority in registering, maintaining, or renewing a do-  
2 main name used in connection with the violation. Nothing  
3 in this subsection limits what may be considered a willful  
4 violation under this section. Nothing in this subsection  
5 shall impose any new liability on a domain name registrar  
6 unless the domain name registrar knowingly provides ma-  
7 terially false contact information to a domain name reg-  
8 istry or other domain name registration authority.”.

9 **SEC. 3. AMENDMENT TO TITLE 17, UNITED STATES CODE.**

10 Section 504(e) of title 17, United States Code, is  
11 amended by adding at the end the following new para-  
12 graph:

13 “(3)(A) In a case of infringement, it shall be a  
14 rebuttable presumption that the infringement was  
15 committed willfully for purposes of determining re-  
16 lief if the violator, or a person acting in concert with  
17 the violator, knowingly provided or knowingly caused  
18 to be provided materially false contact information  
19 to a domain name registrar, domain name registry,  
20 or other domain name registration authority in reg-  
21 istering, maintaining, or renewing a domain name  
22 used in connection with the infringement.

23 “(B) Nothing in this paragraph limits what  
24 may be considered willful infringement under this  
25 subsection. Nothing in this paragraph shall impose



1 any new liability on a domain name registrar unless  
2 the domain name registrar knowingly provides mate-  
3 rially false contact information to a domain name  
4 registry or other domain name registration author-  
5 ity.

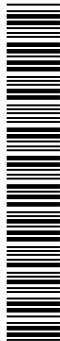
6 “(C) For purposes of this paragraph, the term  
7 ‘domain name’ has the meaning given that term in  
8 section 45 of the Act entitled ‘An Act to provide for  
9 the registration and protection of trademarks used  
10 in commerce, to carry out the provisions of certain  
11 international conventions, and for other purposes’  
12 approved July 5, 1946 (commonly referred to as the  
13 ‘Trademark Act of 1946’; 15 U.S.C. 1127).”.

14 **SEC. 4. AMENDMENT TO TITLE 18, UNITED STATES CODE.**

15 (a) SENTENCING ENHANCEMENT.—Section 3559 of  
16 title 18, United States Code, is amended by adding at the  
17 end the following:

18 “(f)(1) If a defendant being prosecuted for a felony  
19 offense (other than offense of which an element is the false  
20 registration of a domain name) knowingly falsely registers  
21 a domain name and knowingly uses that domain name in  
22 the course of that offense, the maximum imprisonment  
23 otherwise provided by law for that offense shall be doubled  
24 or increased by 7 years, whichever is less.

25 “(2) As used in this section—



1           “(A) the term ‘falsely registers’ means reg-  
2           isters in a manner that prevents the effective  
3           identification of or contact with the person who  
4           registers; and

5           “(B) the term ‘domain name’ has the  
6           meaning given that term is section 45 of the  
7           Act entitled ‘An Act to provide for the registra-  
8           tion and protection of trademarks used in com-  
9           merce, to carry out the provisions of certain  
10          international conventions, and for other pur-  
11          poses’ approved July 5, 1946 (commonly re-  
12          ferred to as the ‘Trademark Act of 1946’) (15  
13          U.S.C. 1127).”.

14          (b) UNITED STATES SENTENCING COMMISSION.—

15           (1) DIRECTIVE.—Pursuant to its authority  
16          under section 994(p) of title 28, United States Code,  
17          and in accordance with this section, the United  
18          States Sentencing Commission shall review and  
19          amend the sentencing guidelines and policy state-  
20          ments to ensure that the applicable guideline range  
21          for a defendant convicted of any felony offense car-  
22          ried out online that may be facilitated through the  
23          use of a domain name registered with materially  
24          false contact information is sufficiently stringent to  
25          deter commission of such acts.



1           (2) REQUIREMENTS.—In carrying out this sub-  
2           section, the Sentencing Commission shall provide  
3           sentencing enhancements for anyone convicted of  
4           any felony offense furthered through knowingly pro-  
5           viding or knowingly causing to be provided materi-  
6           ally false contact information to a domain name reg-  
7           istrar, domain name registry, or other domain name  
8           registration authority in registering, maintaining, or  
9           renewing a domain name used in connection with the  
10          violation.

11          (3) DEFINITION.—For purposes of this sub-  
12          section, the term “domain name” has the meaning  
13          given that term in section 45 of the Act entitled “An  
14          Act to provide for the registration and protection of  
15          trademarks used in commerce, to carry out the pro-  
16          visions of certain international conventions, and for  
17          other purposes”, approved July 5, 1946 (commonly  
18          referred to as the “Trademark Act of 1946”; 15  
19          U.S.C. 1127).

