

S.3804 - Combating Online Infringement and Counterfeits Act
(Introduced/Reported in Senate - ISRS)

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Combating Online Infringement and Counterfeits Act'.

SEC. 2. INTERNET SITES DEDICATED TO INFRINGING ACTIVITIES.

~~Chapter 113 of title 18, United States Code, is amended by adding at the end the following:~~

~~'Sec. 2324. Internet sites dedicated to infringing activities~~

~~'(a) Definition/Definitions-~~ For purposes of this ~~section/Act--~~

~~(1)~~ an Internet site is 'dedicated to infringing activities' if such site--

~~(1A)~~ is otherwise subject to civil forfeiture to the United States Government under section 2323 ~~of title 18, United States Code~~ [\[link\]](#); or

~~(2B)~~ is--

~~(A)~~ primarily designed, ~~or~~ has no demonstrable, commercially significant purpose or use other than, or is marketed by its operator, or by a person acting in concert with the operator,--

~~(1)~~ to offer ~~(i)~~ goods or services in violation of title 17, United States Code [\[link\]](#), or ~~that~~ enable or facilitate a violation of title 17, United States Code, including ~~by~~ but not limited to offering or providing access ~~to, without the authorization of in a manner not authorized by~~ the copyright owner or otherwise by operation of law, copies ~~or phonorecords~~ of, or public ~~performance/performances~~ or ~~display/displays~~ of, works protected by title 17, in complete or substantially complete form, by any means, including by means of download, streaming, or other transmission, ~~or otherwise, including the~~ provision of a link or aggregated links to other sites or Internet resources for obtaining access to such copies ~~for accessing such performance or, phonorecords, performances, displays, goods, or services;~~ or

~~(ii)~~ to sell or offer to sell or distribute or otherwise promote 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)) [\[link\]](#); and

(ii) engaged in the activities described in subparagraph (A), and when taken together, such activities are the central activities of the Internet site or sites accessed through a specific domain name;

(2) the term 'domain name' has the same meaning as in section 45 of the Lanham Act (15 U.S.C. 1127); and

(3) 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'; ~~15 U.S.C. 1116(d)); and~~

~~(B) engaged in the activities described in subparagraph (A), and when taken together, such activities are central to the activity of the Internet site or sites accessed through a specific domain name.~~

~~(b)~~ Injunctive Relief- On application of the Attorney General following the commencement of an action pursuant to subsection (c), the court may issue a temporary restraining order, a preliminary injunction, or an injunction against the domain name used

by an Internet site dedicated to infringing activities to cease and desist from undertaking any ~~infringing~~further activity in violation of this section, in accordance with rule 65 of the Federal Rules of Civil Procedure. A party described in subsection (e) receiving an order issued pursuant to this section shall take the appropriate actions described in subsection (e).

⌚(c) In Rem Action-

⌚(1) IN GENERAL- The Attorney General may commence an in rem action against any domain name or names used by an Internet site in the judicial district in which the domain name registrar or domain name registry for at least 1 such domain name is located or doing business, or, if pursuant to subsection (d)(2), in the District of Columbia, if--

⌚(A) the domain name is used by an Internet site dedicated to infringing activities; and

⌚(B) the Attorney General simultaneously--

⌚(i) sends a notice of the alleged violation and intent to proceed under this subsection to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar, if available; and

⌚(ii) publishes notice of the action as the court may direct promptly after filing the action.

⌚(2) SERVICE OF PROCESS- For purposes of this section, the actions described under paragraph (1)(B) shall constitute service of process.

⌚(d) Situs-

⌚(1) DOMAINS FOR WHICH THE REGISTRY OR REGISTRAR IS LOCATED DOMESTICALLY- In an in rem action commenced under subsection (c), a domain name shall be deemed to have its situs in the judicial district in which--

⌚(A) the domain name registrar or registry is located, provided that for a registry that is located or doing business in more than 1 judicial district, venue shall be appropriate at the principal place where the registry operations are performed; or

⌚(B) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

⌚(2) DOMAINS FOR WHICH THE REGISTRY OR REGISTRAR IS NOT LOCATED DOMESTICALLY-

⌚(A) ACTION BROUGHT IN DISTRICT OF COLUMBIA- If the provisions of paragraph (1) do not apply to a particular domain name, the in rem action may be brought in the District of Columbia to prevent and restrain the importation into the United States of goods and services offered by an Internet site dedicated to infringing activities if--

⌚(i) the domain name is used by users within the United States to access such Internet site ~~in the United States~~; and

⌚(ii) the Internet site--

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

⌚(II) harms holders of United States intellectual property rights ~~holders that are residents of the United States~~.

⌚(B) DETERMINATION BY THE COURT- For purposes of determining whether an Internet site conducts business directed to residents of the United States under subparagraph (A)(ii)(I), a court shall consider, among other indicia whether--

⌚(i) the Internet site is ~~actually~~ providing goods or services ~~to subscribers~~ described under subsection (a)(2) to users located in the United States;

~~“(ii) there is evidence that the Internet site ~~states that it is not intended, and is not intended to provide--~~~~

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

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

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

(iii) the Internet site has reasonable measures to prevent, ~~infringing material~~ such goods and services from being ~~accessed~~obtained in or delivered to the United States;

~~“(iiiiv) the Internet site offers services accessibleobtained in the United States; and~~

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

~~“(e) Service of Court Order-~~

~~“(1) DOMESTIC DOMAINS- In an in remconnection with an order obtained in an action to which subsection (d)(1) applies, the ~~Attorney General~~Federal law enforcement officer shall serve any court order issued pursuant to this section on the domain name registrar or, if the domain name registrar is not located within the United States, upon the registry. Upon receipt of such order, the domain name registrar or domain name registry shall suspend operation of, and may lock, the domain name.~~

~~“(2) NONDOMESTIC DOMAINS-~~

~~“(A) ENTITY TO BE SERVED- In an in remconnection with an order obtained in an action to which subsection (d)(2) applies, ~~the Attorney General~~a Federal law enforcement officer may serve any court order issued pursuant to this section on ~~any entity listed~~entities described in clauses (i) through (iii) of subparagraph (B).~~

~~“(B) REQUIRED ACTIONS- ~~Upon receipt of a court~~After being served with an order issued pursuant to this section--~~

~~“(i) a service provider, as that term is defined in section 512(k)(1) of title 17, United States Code [link], or any other operator of a nonauthoritative domain name system server shall, as expeditiously as reasonable, take technically feasible and reasonable steps ~~that will~~designed to prevent a domain name from resolving to that domain name's Internet protocol address, except that--~~

~~(I) such entity shall not be required--~~

~~(aa) to modify its network or other facilities to comply with such order;~~

~~(bb) to take any steps with respect to domain name lookups not performed by its own domain name system server; or~~

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

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

~~“(ii) a financial transaction provider, as that term is defined in section 5362(4) of title 31, United States Code [link], ~~shall take reasonable measures, as expeditiously as practical, to prevent--~~~~

~~“(I) shall take reasonable measures, as expeditiously as reasonable, designed to prevent or prohibit its service from processingcompleting payment transactions ~~for~~between its customers located within the United States ~~based on purchases associated with~~and the Internet site using the domain name set forth in the order; and~~

~~“(II) ~~its trademarks from being authorized for use on Internet sites associated with such domain name~~~~

(II) shall cause notice to be provided to the Internet site using the domain name set forth in the order that the site is not authorized to use the trademark of the financial transaction provider; and

-(iii) a service that ~~serves contextual or display~~ provides advertisements to Internet sites shall take reasonable measures, as expeditiously as ~~practical~~ reasonable, to prevent its network from ~~serving~~ providing advertisements to an Internet site ~~accessed through~~ associated with such domain name.

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

(4) RULE OF CONSTRUCTION- For purposes of an action filed under this section, the obligations of an entity described in this subsection shall be limited to the actions set out in each paragraph or subparagraph applicable to such entity, and no order issued pursuant to this section shall impose any additional obligations on, or require additional actions by, such entity.

(5) IMMUNITY-

(A) ACTIONS PURSUANT TO COURT ORDER- No cause of action shall lie in any Federal or State court or administrative agency against any entity receiving a court order issued under this ~~section~~ subsection, or against any director, officer, employee, or agent thereof, for any ~~action~~ act reasonably ~~calculated to comply with this section or arising from such order~~ designed to comply with this subsection or reasonably arising from such order, other than in an action pursuant to subsection (g). Any entity receiving an order under this subsection, and any director, officer, employee, or agent thereof, shall not be liable to any party for any acts reasonably designed to comply with this subsection or reasonably arising from such order, other than in an action pursuant to subsection (g), and any actions taken by customers of such entity to circumvent any restriction on access to the Internet domain instituted pursuant to this subsection or any act, failure, or inability to restrict access to an Internet domain that is the subject of a court order issued pursuant to this subsection despite good faith efforts to do so by such entity shall not be used by any person in any claim or cause of action against such entity, other than in an action pursuant to subsection (g).

(B) VOLUNTARY ACTIONS- No domain name registry, domain name registrar, financial transaction provider, or service that provides advertisements to Internet sites shall be liable to any person on account of any action described in this subsection voluntarily taken if the entity reasonably believes the Internet site is dedicated to infringing activities or to prevent the importation into the United States of goods or services described under subsection (a)(2) offered by such an Internet site.

-(f) Publication of Orders- The Attorney General shall inform the Intellectual Property Enforcement Coordinator and other law enforcement agencies of all court orders issued under this section directed to specific domain names associated with Internet sites dedicated to infringing activities. The Intellectual Property Enforcement Coordinator shall, and any entity described in subsection (e) may, post such domain names on a publicly available Internet site, together with other relevant information, in order to inform the public. Upon the expiration or vacation of a court order issued under this subsection, the Attorney General shall inform the Intellectual Property Enforcement Coordinator of such expiration or vacation, and the Intellectual Property Enforcement

Coordinator shall promptly remove the affected domain name or names from such publicly available Internet site.

“(g) Enforcement of Orders-

(1) IN GENERAL- In order to compel compliance with this section, the Attorney General may bring an action for injunctive relief against any party receiving a court order issued pursuant to this section that knowingly and willfully ~~or persistently~~ fails to comply with such order. A showing by the defending party in such action that it does not have the technical means to comply with this section, or that the order is inconsistent with this section, shall serve as a ~~complete~~ defense to such action to the extent of the inability to comply or such inconsistency.

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

~~“(h) Modification or Vacation of Orders; Dismissal~~ “(1) MODIFICATION OR VACATION OF ORDER- At any time after the issuance of a court order ~~constituting injunctive relief~~ under this section--

~~“(A1)~~ the Attorney General may apply for a modification of the order--

~~“(iA)~~ to expand the order to apply to ~~a domain name~~ an Internet site that is reconstituted using a different domain name subsequent to the original order, and

~~“(iiB)~~ to include additional domain names that are used in substantially the same manner as the Internet site against which the action was brought,

by providing the court with ~~clear indicia of~~ evidence that the Internet site associated with the requested modification (i) is dedicated to infringing activities in substantially the same manner as, and (ii) is under joint control, ownership, or operation of ~~the Internet site associated with, or other affiliation with,~~ the domain name subject to the order ~~and the Internet site associated with the requested modification; and;~~

~~“(B2)~~ a defendant or owner or operator of a domain name subject to the order, or any party required to take action based on the order, may petition the court to modify, suspend, or vacate the order, based on evidence that--

~~“(iA)~~ the Internet site associated with the domain name subject to the order is no longer, or never was, dedicated to infringing activities; or

~~“(iiB)~~ the interests of justice require that the order be modified, suspended, or vacated; and

~~“(2) DISMISSAL OF ORDER—A court order constituting injunctive relief under this section issued against a domain name used by an Internet site dedicated to infringing activities shall automatically cease to have any force or effect upon expiration of the registration of the domain name. It shall be the responsibility of the domain name registrar to notify the court of such expiration.~~ (3) a registrar or owner, licensee, or operator of a domain name subject to the order may petition the court to vacate the order based on evidence that the registration of the domain name has expired and the domain name has been re-registered by a different party.

“(i) Savings Clause-

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

~~“(j) Internet Sites Alleged by the Department of Justice To Be Dedicated to Infringing Activities-~~

~~“(1) IN GENERAL—The Attorney General shall maintain a public listing of domain names that, upon information and reasonable belief, the Department of Justice determines are dedicated to infringing activities but for which the Attorney General has not filed an action under this section.~~

~~“(2) PROTECTION FOR UNDERTAKING CORRECTIVE MEASURES—If an entity described under subsection (e) takes any action specified in such subsection with respect to a domain name that appears on the list established under paragraph (1), then such entity shall receive the immunity protections described under subsection (e)(3).~~

~~“(3) REMOVAL FROM LIST—The Attorney General shall establish and publish procedures for the owner **or operator of a domain name** appearing on the list established under paragraph (1) to petition the Attorney General to remove such domain name from the list based on any of the factors described under subsection (h)(1)(B).~~

~~“(4) JUDICIAL REVIEW-~~

~~“(A) IN GENERAL—After the Attorney General makes a final determination on a petition to remove a domain name appearing on the list established under paragraph (1) filed by an individual pursuant to the procedures referred to in paragraph (3), the individual may obtain judicial review of such determination in a civil action commenced not later than 90 days after notice of such decision, or such further time as the Attorney General may allow.~~

~~“(B) JURISDICTION—A civil action for such judicial review shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has a principal place of business, or, if the plaintiff does not reside or have a principal place of business within any such judicial district, in the District Court of the United States for the District of Columbia.~~

~~“(C) ANSWER—As part of the Attorney General's answer to a complaint for such judicial review, the Attorney General shall file a certified copy of the administrative record compiled pursuant to the petition to remove, including the evidence upon which the findings and decision complained of are based.~~

~~“(D) JUDGMENT—The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming or reversing the result of the Attorney General's determination on the petition to remove, with or without remanding the cause for a rehearing.”~~

(2) VICARIOUS OR CONTRIBUTORY LIABILITY- Nothing in this section shall be construed to enlarge or diminish vicarious or contributory liability for any cause of action available under title 17, United States Code, including any limitations on liability under section 512 of such title 17.

SEC. 3. REQUIRED ACTIONS BY THE ATTORNEY GENERAL.

The Attorney General shall--

(1) publish procedures developed in consultation with other relevant law enforcement agencies, including Immigration and Customs Enforcement, to receive information from the public about Internet sites that are dedicated to infringing activities; ~~as that term is defined under section 2324 of title 18, United States Code;~~

- (2) provide guidance to intellectual property rights holders about what information such rights holders should provide the Department of Justice to initiate an investigation pursuant to ~~such section 2324~~[this Act](#);
- (3) provide guidance to intellectual property holders about how to supplement an ongoing investigation initiated pursuant to ~~such section 2324~~[this Act](#);
- (4) establish standards for prioritization of actions brought under ~~such section 2324~~[and this Act](#);
- (5) provide appropriate resources and procedures for case management and development to affect timely disposition of actions brought under ~~such section 2324~~[this Act](#); and
- (6) [develop a deconfliction process in consultation with other law enforcement agencies, including Immigration and Customs Enforcement, to coordinate enforcement activities brought under this Act.](#)

SEC. 4. REPORT.

[Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce shall 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 impact of the steps described in section 2\(e\) on an entity's ability to deploy effectively and use Domain Name System Security Extensions.](#)

[November 18, 2010](#)

[Reported with an amendment](#)