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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 108–536

FRAUDULENT ONLINE IDENTITY SANCTIONS ACT

JUNE 9, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 3754]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3754) to provide additional civil and criminal remedies for domain name fraud, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fraudulent Online Identity Sanctions Act".

29–006

SEC. 2. AMENDMENT TO TRADEMARK ACT OF 1946.

Section 35 of 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"; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

"(e) In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.".

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

Section 504(c) of title 17, United States Code, is amended by adding at the end the following new paragraph:

"(3)(A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

"(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

"(C) For purposes of this paragraph, the term 'domain name' has the meaning given that term in section 45 of 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'; 15 U.S.C. 1127).".

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

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

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

"(2) As used in this section—

"(A) the term 'falsely registers' means registers in a manner that prevents the effective identification of or contact with the person who registers; and

"(B) the term 'domain name' has the meaning given that term is section 45 of 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') (15 U.S.C. 1127).".

(b) UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend the sentencing guidelines and policy statements to ensure that the applicable guideline range for a defendant convicted of any felony offense carried out online that may be facilitated through the use of a domain name registered with materially false contact information is sufficiently stringent to deter commission of such acts.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall provide sentencing enhancements for anyone convicted of any felony offense furthered through knowingly providing or knowingly causing to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation.

(3) DEFINITION.—For purposes of this subsection, the term "domain name" has the meaning given that term in section 45 of 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"; 15 U.S.C. 1127).

PURPOSE AND SUMMARY

H.R. 3754, the "Fraudulent Online Identity Sanctions Act," would create penalties for those who submit materially false contact information in connection with a domain name used to commit a crime or engage in online infringement.

BACKGROUND AND NEED FOR THE LEGISLATION

Use of the Internet continues to increase significantly. Businesses that exist only on the Internet such as Amazon and eBay are now an established part of the American economy. The vast majority of "brick and mortar" businesses have an Internet presence to conduct business—not just to advertise their existence. Consumers are engaging in Internet commerce in growing numbers. Recent studies predict that by the end of 2004, $144 billion in online sales will occur.

However, the ease of creating an Internet presence has led to a growing number of online fraud cases. Unlike a "brick and mortar" location that requires some effort to establish, including local, state, and Federal registration requirements, an online business only requires a computer with Internet access. Defrauded consumers cannot easily search distant governing body records to research ownership or licensing records, if such records exist. Local, state, and Federal law enforcement must prioritize the online fraud cases brought to their attention due to limited resources, resulting in little recourse when most consumers are defrauded online. "John Doe" civil suits, in which the other party cannot be located, often result in uncollectible default judgements.

In addition to its use by online criminals for traditional crimes, materially false contact information is increasingly used by those who infringe on the copyrights and trademarks of others to hide their identity and avoid civil suits. To illustrate, the Committee has reviewed a number of "sham" submissions that include domain name records featuring random strings of characters: locations such as "nowhere," "none such place," "disneyworld," and "the martian embassy;" as well as bogus famous names (U.S. Presidents and cartoon characters). The Committee believes that such activity is a sign of willful infringement and should deserve, in most cases, the additional civil penalties that result from willful infringement. The existence of a rebuttable presumption allows cases in which a judge determines that such activity does not rise to the level of willfulness to be subject to the lower non-willful penalties.

On the Internet, the only contact information for the operator of a website is the contact information associated with a domain name registration. Longstanding Internet policies require domain name registrants to provide such information to domain name registrars. Although the Committee is not concerned with efforts to disguise the owner of a website when legitimate free speech concerns exist (protest websites, whistleblower websites, dissident websites, etc.) the Committee maintains that consumers should be able to check the ownership of a particular domain name. If penalties are not created to penalize the provision of materially false contact information in connection with a violation of existing law, there will be no incentive for domain name registrants to provide accurate information in the first place. Via a virtually unknown re-

porting system,[1] ICANN was made aware of 25,000 reports of false contact information in the WHOIS database of domain name contact information from September 2002 until February 2004. This would indicate that the existence of false contact information in the domain name system is actually much higher.

Congress has held several hearings and enacted legislation to address other unique online fraud issues. For example, Congress enacted legislation to prohibit "typo-squatting" in which a domain name is registered that is very similar to another popular domain name for the purpose of diverting potential customers to another website without the knowledge of the owner of the popular site. The Anticybersquatting Consumer Protection Act[2] created new penalties for those who used the Internet for fraudulent and criminal activity. The first criminal conviction under this Act[3] was based upon the actions of a defendant who used misspellings of popular domain names to lure children to pornographic websites. He was eventually convicted of 49 counts and sentenced to 30 months in prison.

The Internet's current coordinating body, ICANN, continues to require the existence of a publicly accessible Whois database that contains the registrant-supplied contact information of domain name owners. This legislation does not reference the Whois database since the Committee intends that it will extend beyond Whois database issues and cover all contact information supplied by domain name owners to domain name registrars, registries, or other authorities. Thus, the legislation would still govern even if the Whois system in existence on the date of enactment changed, was eliminated in the future, or if the recipient of contact information changed in the future (perhaps a central contact information tool run by ICANN or its successor(s)).

The Committee believes that the existence of an accurate and publicly accessible tool for searching contact information associated with a domain name, like the Whois database, is essential for the continued growth of the Internet which will depend upon Internet users trusting those with whom they interact.

HEARINGS

The Committee's Subcommittee on Courts, the Internet, and Intellectual Property held a hearing on H.R. 3754 on February 4, 2004. Testimony was received from four witnesses representing four organizations, with additional material submitted by four individuals and organizations.

COMMITTEE CONSIDERATION

On March 31, 2004, the Subcommittee on Courts, the Internet, and Intellectual Property met in open session and ordered favorably reported the bill H.R. 3754, as amended, by a voice vote, a quorum being present. On May 12, 2004, the Committee met in open session and ordered favorably reported the bill H.R. 3754 with an amendment by voice vote, a quorum being present.

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[1] Community Experiences with the InterNIC Whois Data Problem Reports System, ICANN, March 2004.

[2] Pub. L. No. 106–113.

[3] *United States of America* v. *John Zuccarini,* S.D.N.Y. 2004.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee's consideration of H.R. 3754.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3754, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 20, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3754, the "Fraudulent Online Identity Sanctions Act."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker and Melissa E. Zimmerman, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3754—Fraudulent Online Identity Sanctions Act

H.R. 3754 would increase the maximum prison sentence for persons committing crimes using a domain name (Internet address) that is registered using false identification. According to the United States Sentencing Commission, prosecutions for using a domain name in the course of committing a crime are rare. The bill also would amend the law pertaining to the prosecution of copyright and trademark violations. CBO estimates that implementing

H.R. 3754 would not have a significant effect on spending, subject to appropriation, and would not affect direct spending or revenues.

H.R. 3754 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contacts for this estimate are Lanette J. Walker and Melissa E. Zimmerman, who may be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3754 is designed to increase the reporting of accurate contact information for domain names by penalizing the submission of false information. The legislation also creates a rebuttable presumption of willfulness for certain copyright and trademark infringements.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. The Act may be cited as the "Fraudulent Online Identity Sanctions Act."

Section 2. Amendments to Trademark Act of 1946. This section adds a new subsection (e) to 15 U.S.C. §1117 as described below. New subsection (e) creates a rebuttable presumption that a trademark violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with a violation. This provision creates a five-part test to determine whether a violation was willful:

1. The domain name registration must be materially false.
2. The information must have been knowingly provided or knowingly caused to be provided.
3. The recipient of the information must be a domain name registrar, registry, or other domain name registration authority (such as ICANN or its successor).
4. The information must be provided for the purpose of registering, maintaining, or renewing a domain name.
5. The domain name must have been used in connection with a violation.

This five-step test ensures that only those who attempt to mask their identity in connection with another violation of the Trademark Act will be liable under H.R. 3754. Even if all five conditions are present, the accused still has the ability to rebut the presump-

tion by offering evidence to the contrary. The test also ensures that the mere act of providing materially false contact information is not a violation of any law.

Several groups expressed concern that the Act might be read to imply or require that domain name contact information must be accurate. Although the Committee believes that all domain name contact information should be accurate, this legislation does not require it. The Committee notes the availability and growing use of anonymous but legitimate domain name registrations in which the registrar substitutes their contact information instead of the actual registrant. Such services are operated under the policies established by ICANN. The Committee also notes the ability of any group to establish a free speech top level or second level domain in which registrants could remain anonymous for legal activities.

Section 3. Amendment to Title 17, United States Code. Subsection 3(a) replicates the language of Section 2, but applies it to copyright infringement actions instead. Thus, the report language for Section 2 applies to subsection 3(a) in all other respects.

Subsection 3(b) ensures that the paragraph does not limit what could be considered willful infringement under this subsection. The Committee does not intend to limit the situations in which infringement may be considered willful.

Subsection 3(c) provides for a definition of "domain name" in Title 17 that currently does not exist. The definition used is the existing definition in the Trademark Act of 1946.

Section 4. Amendment to Title 18, United States Code. Subsection 4(a) creates a sentencing enhancement that increases the maximum imprisonment otherwise provided by law for an offense by the lesser of either doubling the existing sentence or 7 years. The Committee believes that those who use false domain name contact information as part of a crime deserve an additional penalty, the length of which will be left to the court within the parameters set forth.

Subsection 4(b) directs the U.S. Sentencing Commission to review and amend the sentencing guidelines and policy statements to reflect legislative intent as set forth in H.R. 3754 and this report.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 35 OF THE ACT OF JULY 5, 1946

(Commonly referred to as the "Trademark Act of 1946")

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.

SEC. 35. (a) * * *

* * * * * * *

(e) In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.

SECTION 504 OF TITLE 17, UNITED STATES CODE

§ 504. Remedies for infringement: Damages and profits

(a) * * *

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(c) STATUTORY DAMAGES.—

(1) * * *

* * * * * * *

(3)(A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term "domain name" has the meaning given that term in section 45 of 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"; 15 U.S.C. 1127).

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SECTION 3559 OF TITLE 18, UNITED STATES CODE

§ 3559. Sentencing classification of offenses

(a) * * *

* * * * * * *

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

(2) As used in this section—

(A) the term "falsely registers" means registers in a manner that prevents the effective identification of or contact with the person who registers; and

(B) the term "domain name" has the meaning given that term is section 45 of 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") (15 U.S.C. 1127).

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MAY 12, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A quorum is present.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is H.R. 3754, the "Fraudulent Online Identity Sanctions Act." The Chair recognizes the gentleman from Texas, Mr. Smith, the Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property.

Mr. SMITH. Thank you, Mr. Chairman.

The WHOIS database is a compilation of Internet domain names such as "com" or "org." The database records contain pertinent ownership information about domain names including the identity of——

Chairman SENSENBRENNER. Can the gentleman make the motion and then I'll recognize you for 5 minutes?

Mr. SMITH. The Subcommittee on Courts, the Internet, and Intellectual Property reports favorably the bill H.R. 3754 with a single amendment in the nature of a substitute, and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection the bill will be considered as read and open for amendment at any point, and the Subcommittee amendment in the nature of a substitute, which the

Members have before them, will be considered as read, considered as the original text for purposes of amendment and open for amendment at any point. And now the Chair recognizes the gentleman from Texas, Mr. Smith, for 5 minutes.

[The Amendment in the Nature of a Substitute follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3754, AS REPORTED BY THE SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fraudulent Online Identity Sanctions Act''.

SEC. 2. AMENDMENT TO TRADEMARK ACT OF 1946.

Section 35 of 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''; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

''(e) In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, do-

main name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section. Nothing in this subsection shall impose any new liability on a domain name registrar unless the domain name registrar knowingly provides materially false contact information to a domain name registry or other domain name registration authority.''.

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

Section 504(c) of title 17, United States Code, is amended by adding at the end the following new paragraph:

''(3)(A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

''(B) Nothing in this paragraph limits what may be considered willful infringement under this

subsection. Nothing in this paragraph shall impose any new liability on a domain name registrar unless the domain name registrar knowingly provides materially false contact information to a domain name registry or other domain name registration authority.

"(C) For purposes of this paragraph, the term 'domain name' has the meaning given that term in section 45 of 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'; 15 U.S.C. 1127).".

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

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

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

"(2) As used in this section—

"(A) the term 'falsely registers' means registers in a manner that prevents the effective identification of or contact with the person who registers; and

"(B) the term 'domain name' has the meaning given that term is section 45 of 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') (15 U.S.C. 1127).".

(b) UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend the sentencing guidelines and policy statements to ensure that the applicable guideline range for a defendant convicted of any felony offense carried out online that may be facilitated through the use of a domain name registered with materially

false contact information is sufficiently stringent to deter commission of such acts.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall provide sentencing enhancements for anyone convicted of any felony offense furthered through knowingly providing or knowingly causing to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation.

(3) DEFINITION.—For purposes of this subsection, the term ''domain name'' has the meaning given that term in section 45 of 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''; 15 U.S.C. 1127).

Mr. SMITH. Thank you, Mr. Chairman.

The WHOIS database is a compilation of Internet domain names such as "com" or "org." The database records contain pertinent ownership information about the domain names including the identify of and contact information for the domain name's owner.

Several problems can arise if access to this database is unavailable, restricted, limited or if the information is incomplete. A consumer might be unable to verify the source of a good sold through a website. The FTC would face an additional hurdle in tracking down the scam artist. The Department of Justice would have a harder time locating spammers, and the enforcement of intellectual property rights would be frustrated.

To penalize those who abuse the WHOIS database by submitting false information, H.R. 3754 clarifies that willful misconduct, the intentional false submission of information to a domain name authority, will subject the transgressor to additional civil or criminal penalties.

And I might reassure my colleagues, Mr. Scott and Mr. Watt that there are no mandatory minimums in this bill.

The bill does not impact anonymous free speech since the additional penalties it imposes only apply if a crime or infringement has already occurred. The bill does not impose any additional penalty when someone simply enters false WHOIS information for any reason including online activists, whistleblowers and others interested in anonymous online speech.

Mr. Chairman, H.R. 3754 has evolved in a bipartisan manner and I thank the gentleman from California, Mr. Berman, for his help.

And I will offer a clarifying amendment at the appropriate time and urge Members to support both it and the underlying bill.

And I will yield the balance of my time to the Ranking Member of the Subcommittee, Mr. Berman.

Chairman SENSENBRENNER. The gentleman from California is recognized for 5 minutes.

Mr. BERMAN. Thank you very much, Mr. Chairman, for scheduling H.R. 3754 for a markup today.

This is part of a 5-year study by the Committee to improve the accuracy and completeness of the WHOIS databases. This WHOIS database contains the names, street and e-mail addresses and other contact information of domain name registrants. While all domain name registrants are required to submit information for the WHOIS database, there are no processes to ensure that this information is either accurate or complete.

This bill attempts to improve the accuracy and completeness of WHOIS databases by creating some accountability for those who, in furtherance of a crime or infringement, only for those people, for those who in furtherance of a crime or infringement of a copyright or a trademark knowingly provide materially false domain name registration information.

Inaccurate WHOIS data hampers law enforcement investigations, facilitates consumer fraud, impairs copyright and trademark protection, imperils computer security, enables identity theft and weakens privacy protection efforts.

If this bill accomplishes its goal and results in more accurate WHOIS data, it will aid law enforcement in tracking down crimi-

nals, deter those trademark and copyright infringers who provide false information to avoid detection.

H.R. 3754 advances these goals through narrow amendments to current law. It provides that a civil trademark or a copyright infringement shall presume to be willful if, in connection with the infringement, the infringer registers the domain name with materially false contact information. Additionally, the bill increases by the lesser of twice the term or 7 years, the maximum possible imprisonment for a Federal felony offense when the offender knowingly provided materially false domain name contact information in connection with the offense.

While I believe we do have a long road ahead of us in terms of ensuring the accuracy of the WHOIS database, I believe we have made some meaningful inroads with this legislation and I ask my colleagues to support the bill.

Chairman SENSENBRENNER. Gentleman yield back?

Mr. BERMAN. Yes.

Chairman SENSENBRENNER. The gentleman yields back the balance of his time. Without objection all Members may include opening statements in the record at this point.

Are there amendments?

Mr. SMITH. Mr. Chairman?

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas, Mr. Smith, for purposes of offering a manager's amendment.

Mr. SMITH. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 3754 offered by Mr. Smith of Texas.

After Section 4, insert the following:

Section 5, Savings Clauses. (a) Nothing in this Act shall enlarge or diminish any rights of free speech——

Mr. SMITH. Mr. Chairman, I——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, I think that that is the wrong amendment that was read.

Chairman SENSENBRENNER. That is the wrong amendment. Without objection, the amendment is withdrawn and the clerk will report the right amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 3754 offered by Mr. Smith of Texas.

Page 2, line 4, strike "Nothing" and all that follows through "authority" on line 9.

Page 3, line 1, strike "Nothing" and all that follows through the period on line 6.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

[The amendment follows:]

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

Page 2, line 5, strike ''Nothing'' and all that follows through ''authority.'' on line 9.

Page 3, line 1, strike ''Nothing'' and all that follows through the period on line 6.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, the reported version of H.R. 3754 contained a liability exemption for domain name registrars. This amendment, which removes this exemption, is fully supported by domain name registrars, including Network Solutions, Bulk Register, Register.com, Go Daddy and ENOM. They believe that the wording of the original exemption may have implied some liability in other situations and so prefer the status quo. I urge the Members to adopt this amendment.

Mr. Chairman, I would like to yield the balance of my time to the gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Smith, for yielding me the time.

With some reservations I support the amendment. The language that the registrars are asking us to take out is the language the registrars asked us to put in. And I liked when they asked us to put it in because it demonstrated certain situations where they would be accountable for failing to improve the accuracy and completeness of the WHOIS database, but in the face of their good faith overtures by several of the top registrars, Network Solutions, Bulk Registrar, Register, Register.com and Go Daddy software, those overtures and agreements to cooperate with a GAO study on aspects of the WHOIS database, I think we should go along with their wishes, and I support the gentleman's amendment.

I yield back.

Chairman SENSENBRENNER. The question——

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Yes. Confessing that I may have not been able to hear some of what Mr. Smith was saying before because there was some——

Chairman SENSENBRENNER. Does the gentleman wish 5 minutes to confess? [Laughter.]

Mr. NADLER. No, just about 30 seconds of my 5 minutes.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you.

The language that was striking says "Nothing shall impose additional penalties on these registrars." I don't understand why we want to take out that language. Maybe Mr. Smith could explain that.

Mr. SMITH. If the gentleman will yield.

Mr. NADLER. Yes.

Mr. SMITH. We will actually have to ask the domain name registrars themselves. I thought that the language wasn't problematic myself, but at their request we want to try to accede to their wishes.

And I'll yield to the gentleman from California.

Mr. BERMAN. The registrars want to, as most everybody in the world does, immunize themselves for any liability in the context of the accuracy of the domain names and contact information which they register. So they put in language that purported to do that except in certain situations. They then concluded that they may have now given themselves liability in those situations that they didn't

immunize themselves from, and decided on balance that they were better off if they had never asked for any.

Mr. NADLER. I thank the gentleman, and I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Texas, Mr. Smith. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments?

If there are no further amendments, a reporting quorum is present. Without objection the Subcommittee amendment in the nature of a substitute laid down as the base text as amended is adopted.

The question now occurs on the motion to report the bill, H.R. 3754, favorably as amended. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to. Without objection the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make an technical and conforming changes, and all Members will be given 2 days as provided by the House Rules in which to submit additional dissenting supplemental or minority views.

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