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Public Law 106–113
106th Congress

An Act

Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.

Nov. 29, 1999
[H.R. 3194]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the serveral departments, agencies, corporations and other organizational units of the Government for the fiscal year 2000, and for other purposes, namely:

DIVISION A

DISTRICT OF COLUMBIA APPROPRIATIONS

TITLE I—FISCAL YEAR 2000 APPROPRIATIONS

District of Columbia Appropriations Act, 1999.

FEDERAL FUNDS

FEDERAL PAYMENT FOR RESIDENT TUITION SUPPORT

For a Federal payment to the District of Columbia for a program to be administered by the Mayor for District of Columbia resident tuition support, subject to the enactment of authorizing legislation for such program by Congress, $17,000,000, to remain available until expended: *Provided,* That such funds may be used on behalf of eligible District of Columbia residents to pay an amount based upon the difference between in-State and out-of-State tuition at public institutions of higher education, usable at both public and private institutions of higher education: *Provided further,* That the awarding of such funds may be prioritized on the basis of a resident's academic merit and such other factors as may be authorized: *Provided further,* That if the authorized program is a nationwide program, the Mayor may expend up to $17,000,000: *Provided further,* That if the authorized program is for a limited number of States, the Mayor may expend up to $11,000,000: *Provided further,* That the District of Columbia may expend funds other than the funds provided under this heading, including local tax revenues and contributions, to support such program.

FEDERAL PAYMENT FOR INCENTIVES FOR ADOPTION OF CHILDREN

For a Federal payment to the District of Columbia to create incentives to promote the adoption of children in the District of Columbia foster care system, $5,000,000: *Provided,* That such funds shall remain available until September 30, 2001 and shall be used

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(a) to engage in partnerships, joint ventures, and similar operating arrangements for the purpose of carrying out subsection (a).

(2) HARMFUL INTERFERENCE.—The Commission shall ensure that no facility licensed or authorized under subsection (a) causes harmful interference to the primary users of that spectrum or to public safety spectrum use.

(3) LIMITATION ON COMMISSION.—Except as provided in paragraphs (1) and (2), the Commission may not restrict any entity granted a license or other authorization under subsection (a) from using any reasonable compression, reformatting, or other technology.

(c) REPORT.—Not later than January 1, 2001, the Commission shall report to the Agriculture, Appropriations, and the Judiciary Committees of the Senate and the House of Representatives, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Commerce, on the extent to which licenses and other authorizations under subsection (a) have facilitated the delivery of local signals to satellite television subscribers in unserved and underserved local television markets. The report shall include—

(1) an analysis of the extent to which local signals are being provided by direct-to-home satellite television providers and by other multichannel video program distributors;

(2) an enumeration of the technical, economic, and other impediments each type of multichannel video programming distributor has encountered; and

(3) recommendations for specific measures to facilitate the provision of local signals to subscribers in unserved and underserved markets by direct-to-home satellite television providers and by other distributors of multichannel video programming service.

TITLE III—TRADEMARK CYBERPIRACY PREVENTION

SEC. 3001. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This title may be cited as the "Anticybersquatting Consumer Protection Act".

(b) REFERENCES TO THE TRADEMARK ACT OF 1946.—Any reference in this title to the Trademark Act of 1946 shall be a reference to 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.).

SEC. 3002. CYBERPIRACY PREVENTION.

(a) IN GENERAL.—Section 43 of the Trademark Act of 1946 (15 U.S.C. 1125) is amended by inserting at the end the following:

"(d)(1)(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person—

"(i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and

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"(ii) registers, traffics in, or uses a domain name that—

"(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;

"(II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or

"(III) is a trademark, word, or name protected by reason of section 706 of title 18, United States Code, or section 220506 of title 36, United States Code.

"(B)(i) In determining whether a person has a bad faith intent described under subparagraph (A), a court may consider factors such as, but not limited to—

"(I) the trademark or other intellectual property rights of the person, if any, in the domain name;

"(II) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

"(III) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

"(IV) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

"(V) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

"(VI) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

"(VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

"(VIII) the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and

"(IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c)(1) of section 43.

"(ii) Bad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

"(C) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order

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the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

"(D) A person shall be liable for using a domain name under subparagraph (A) only if that person is the domain name registrant or that registrant's authorized licensee.

"(E) As used in this paragraph, the term 'traffics in' refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

"(2)(A) The owner of a mark may file an in rem civil action against a domain name in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located if—

"(i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c); and

"(ii) the court finds that the owner—

"(I) is not able to obtain in personam jurisdiction over a person who would have been a defendant in a civil action under paragraph (1); or

"(II) through due diligence was not able to find a person who would have been a defendant in a civil action under paragraph (1) by—

"(aa) sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and

"(bb) publishing notice of the action as the court may direct promptly after filing the action.

"(B) The actions under subparagraph (A)(ii) shall constitute service of process.

"(C) In an in rem action under this paragraph, a domain name shall be deemed to have its situs in the judicial district in which—

"(i) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located; or

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

"(D)(i) The remedies in an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark. Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in a United States district court under this paragraph, the domain name registrar, domain name registry, or other domain name authority shall—

"(I) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and

"(II) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.

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"(ii) The domain name registrar or registry or other domain name authority shall not be liable for injunctive or monetary relief under this paragraph except in the case of bad faith or reckless disregard, which includes a willful failure to comply with any such court order.

"(3) The civil action established under paragraph (1) and the in rem action established under paragraph (2), and any remedy available under either such action, shall be in addition to any other civil action or remedy otherwise applicable.

"(4) The in rem jurisdiction established under paragraph (2) shall be in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.".

(b) CYBERPIRACY PROTECTIONS FOR INDIVIDUALS.—

(1) IN GENERAL.—

(A) CIVIL LIABILITY.—Any person who registers a domain name that consists of the name of another living person, or a name substantially and confusingly similar thereto, without that person's consent, with the specific intent to profit from such name by selling the domain name for financial gain to that person or any third party, shall be liable in a civil action by such person.

(B) EXCEPTION.—A person who in good faith registers a domain name consisting of the name of another living person, or a name substantially and confusingly similar thereto, shall not be liable under this paragraph if such name is used in, affiliated with, or related to a work of authorship protected under title 17, United States Code, including a work made for hire as defined in section 101 of title 17, United States Code, and if the person registering the domain name is the copyright owner or licensee of the work, the person intends to sell the domain name in conjunction with the lawful exploitation of the work, and such registration is not prohibited by a contract between the registrant and the named person. The exception under this subparagraph shall apply only to a civil action brought under paragraph (1) and shall in no manner limit the protections afforded under the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) or other provision of Federal or State law.

(2) REMEDIES.—In any civil action brought under paragraph (1), a court may award injunctive relief, including the forfeiture or cancellation of the domain name or the transfer of the domain name to the plaintiff. The court may also, in its discretion, award costs and attorneys fees to the prevailing party.

(3) DEFINITION.—In this subsection, the term "domain name" has the meaning given that term in section 45 of the Trademark Act of 1946 (15 U.S.C. 1127).

(4) EFFECTIVE DATE.—This subsection shall apply to domain names registered on or after the date of the enactment of this Act.

SEC. 3003. DAMAGES AND REMEDIES.

(a) REMEDIES IN CASES OF DOMAIN NAME PIRACY.—

(1) INJUNCTIONS.—Section 34(a) of the Trademark Act of 1946 (15 U.S.C. 1116(a)) is amended in the first sentence by striking "(a) or (c)" and inserting "(a), (c), or (d)".

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(2) DAMAGES.—Section 35(a) of the Trademark Act of 1946 (15 U.S.C. 1117(a)) is amended in the first sentence by inserting ", (c), or (d)" after "section 43(a)".

(b) STATUTORY DAMAGES.—Section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) is amended by adding at the end the following:

"(d) In a case involving a violation of section 43(d)(1), the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just.

SEC. 3004. LIMITATION ON LIABILITY.

Section 32(2) of the Trademark Act of 1946 (15 U.S.C. 1114) is amended—

(1) in the matter preceding subparagraph (A) by striking "under section 43(a)" and inserting "under section 43 (a) or (d)"; and

(2) by redesignating subparagraph (D) as subparagraph (E) and inserting after subparagraph (C) the following:

"(D)(i)(I) A domain name registrar, a domain name registry, or other domain name registration authority that takes any action described under clause (ii) affecting a domain name shall not be liable for monetary relief or, except as provided in subclause (II), for injunctive relief, to any person for such action, regardless of whether the domain name is finally determined to infringe or dilute the mark.

"(II) A domain name registrar, domain name registry, or other domain name registration authority described in subclause (I) may be subject to injunctive relief only if such registrar, registry, or other registration authority has—

"(aa) not expeditiously deposited with a court, in which an action has been filed regarding the disposition of the domain name, documents sufficient for the court to establish the court's control and authority regarding the disposition of the registration and use of the domain name;

"(bb) transferred, suspended, or otherwise modified the domain name during the pendency of the action, except upon order of the court; or

"(cc) willfully failed to comply with any such court order.

"(ii) An action referred to under clause (i)(I) is any action of refusing to register, removing from registration, transferring, temporarily disabling, or permanently canceling a domain name—

"(I) in compliance with a court order under section 43(d); or

"(II) in the implementation of a reasonable policy by such registrar, registry, or authority prohibiting the registration of a domain name that is identical to, confusingly similar to, or dilutive of another's mark.

"(iii) A domain name registrar, a domain name registry, or other domain name registration authority shall not be liable for damages under this section for the registration or maintenance of a domain name for another absent a showing of

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bad faith intent to profit from such registration or maintenance of the domain name.

"(iv) If a registrar, registry, or other registration authority takes an action described under clause (ii) based on a knowing and material misrepresentation by any other person that a domain name is identical to, confusingly similar to, or dilutive of a mark, the person making the knowing and material misrepresentation shall be liable for any damages, including costs and attorney's fees, incurred by the domain name registrant as a result of such action. The court may also grant injunctive relief to the domain name registrant, including the reactivation of the domain name or the transfer of the domain name to the domain name registrant.

"(v) A domain name registrant whose domain name has been suspended, disabled, or transferred under a policy described under clause (ii)(II) may, upon notice to the mark owner, file a civil action to establish that the registration or use of the domain name by such registrant is not unlawful under this Act. The court may grant injunctive relief to the domain name registrant, including the reactivation of the domain name or transfer of the domain name to the domain name registrant.".

SEC. 3005. DEFINITIONS.

Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by inserting after the undesignated paragraph defining the term "counterfeit" the following:

"The term 'domain name' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

"The term 'Internet' has the meaning given that term in section 230(f)(1) of the Communications Act of 1934 (47 U.S.C. 230(f)(1)).".

SEC. 3006. STUDY ON ABUSIVE DOMAIN NAME REGISTRATIONS INVOLVING PERSONAL NAMES.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the Patent and Trademark Office and the Federal Election Commission, shall conduct a study and report to Congress with recommendations on guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto, including consideration of and recommendations for—

(1) protecting personal names from registration by another person as a second level domain name for purposes of selling or otherwise transferring such domain name to such other person or any third party for financial gain;

(2) protecting individuals from bad faith uses of their personal names as second level domain names by others with malicious intent to harm the reputation of the individual or the goodwill associated with that individual's name;

(3) protecting consumers from the registration and use of domain names that include personal names in the second level domain in manners which are intended or are likely to confuse or deceive the public as to the affiliation, connection, or association of the domain name registrant, or a site accessible

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under the domain name, with such other person, or as to the origin, sponsorship, or approval of the goods, services, or commercial activities of the domain name registrant;

(4) protecting the public from registration of domain names that include the personal names of government officials, official candidates, and potential official candidates for Federal, State, or local political office in the United States, and the use of such domain names in a manner that disrupts the electoral process or the public's ability to access accurate and reliable information regarding such individuals;

(5) existing remedies, whether under State law or otherwise, and the extent to which such remedies are sufficient to address the considerations described in paragraphs (1) through (4); and

(6) the guidelines, procedures, and policies of the Internet Corporation for Assigned Names and Numbers and the extent to which they address the considerations described in paragraphs (1) through (4).

(b) GUIDELINES AND PROCEDURES.—The Secretary of Commerce shall, under its Memorandum of Understanding with the Internet Corporation for Assigned Names and Numbers, collaborate to develop guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto.

SEC. 3007. HISTORIC PRESERVATION.

Section 101(a)(1)(A) of the National Historic Preservation Act (16 U.S.C. 470a(a)(1)(A)) is amended by adding at the end the following: "Notwithstanding section 43(c) 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 known as the 'Trademark Act of 1946' (15 U.S.C. 1125(c))), buildings and structures on or eligible for inclusion on the National Register of Historic Places (either individually or as part of a historic district), or designated as an individual landmark or as a contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.".

SEC. 3008. SAVINGS CLAUSE.

Nothing in this title shall affect any defense available to a defendant under the Trademark Act of 1946 (including any defense under section 43(c)(4) of such Act or relating to fair use) or a person's right of free speech or expression under the first amendment of the United States Constitution.

SEC. 3009. TECHNICAL AND CONFORMING AMENDMENTS.

Chapter 85 of title 28, United States Code, is amended as follows:

(1) Section 1338 of title 28, United States Code, is amended—

(A) in the section heading by striking "**trade-marks**" and inserting "**trademarks**";

(B) in subsection (a) by striking "trade-marks" and inserting "trademarks"; and

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(C) in subsection (b) by striking "trade-mark" and inserting "trademark".

(2) The item relating to section 1338 in the table of sections for chapter 85 of title 28, United States Code, is amended by striking "trade-marks" and inserting "trademarks".

SEC. 3010. EFFECTIVE DATE.

Sections 3002(a), 3003, 3004, 3005, and 3008 of this title shall apply to all domain names registered before, on, or after the date of the enactment of this Act, except that damages under subsection (a) or (d) of section 35 of the Trademark Act of 1946 (15 U.S.C. 1117), as amended by section 3003 of this title, shall not be available with respect to the registration, trafficking, or use of a domain name that occurs before the date of the enactment of this Act.

TITLE IV—INVENTOR PROTECTION

SEC. 4001. SHORT TITLE.

This title may be cited as the "American Inventors Protection Act of 1999".

Subtitle A—Inventors' Rights

SEC. 4101. SHORT TITLE.

This subtitle may be cited as the 'Inventors' Rights Act of 1999".

SEC. 4102. INTEGRITY IN INVENTION PROMOTION SERVICES.

(a) IN GENERAL.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following new section:

"§ 297. Improper and deceptive invention promotion

"(a) IN GENERAL.—An invention promoter shall have a duty to disclose the following information to a customer in writing, prior to entering into a contract for invention promotion services—

"(1) the total number of inventions evaluated by the invention promoter for commercial potential in the past 5 years, as well as the number of those inventions that received positive evaluations, and the number of those inventions that received negative evaluations;

"(2) the total number of customers who have contracted with the invention promoter in the past 5 years, not including customers who have purchased trade show services, research, advertising, or other nonmarketing services from the invention promoter, or who have defaulted in their payment to the invention promoter;

"(3) the total number of customers known by the invention promoter to have received a net financial profit as a direct result of the invention promotion services provided by such invention promoter;

"(4) the total number of customers known by the invention promoter to have received license agreements for their inventions as a direct result of the invention promotion services provided by such invention promoter; and

"(5) the names and addresses of all previous invention promotion companies with which the invention promoter or

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