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management, and scientific research that benefits the long-term conservation of coral reefs and coral reef ecosystems.

(b) FINANCIAL ASSISTANCE.—The Secretary may enter into joint projects with any Federal, State, territorial, or local authority, or provide financial assistance to any person for projects consistent with subsection (a), including projects that—

(1) support, promote, and coordinate the assessment of, scientific research on, monitoring of, or restoration of coral reefs and coral reef ecosystems of the United States;

(2) cooperate with global programs that conserve, manage, protect, and study coral reefs and coral reef ecosystems; or

(3) enhance public awareness, understanding, and appreciation of coral reefs and coral reef ecosystems.

SEC. 8. DOCUMENTATION OF CERTAIN VESSELS.

Section 12102 of title 46, United States Code, is amended by adding at the end thereof the following:

"(c) A vessel otherwise eligible to be documented under this section may not be documented as a vessel of the United States if—

"(1) the owner of the vessel has abandoned any vessel on a coral reef located in waters subject to the jurisdiction of the United States; and

"(2) the abandoned vessel remains on the coral reef or was removed from the coral reef under section 5 or 6 of the Coral Reef Protection Act of 1999 (or any other provision of law in pari materia enacted after 1998),

unless the owner of the vessel has reimbursed the United States for environmental damage caused by the vessel and the funds expended to remove it.".

SEC. 9. CERTAIN GROUNDED VESSELS.

(a) IN GENERAL.—The vessels described in subsection (b), and the reefs upon which such vessels may be found, are hereby designated for purposes of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) as a site at which there is a substantial threat of release of a hazardous substance into the environment. For purposes of that Act, the site shall not be considered to have resulted from an act of God.

(b) DESCRIPTION OF SITE.—The vessels to which subsection (a) applies are 9 fishing vessels driven by Typhoon Val in 1991 onto coral reefs inside Pago Pago harbor near the villages of Leloaloa and Aua.

SEC. 10. REGULATIONS; CORAL REEF CONSERVATION FUND.

(a) REGULATIONS.—Within 90 days after the date of enactment of this Act, the Secretary shall promulgate necessary regulations for implementing this section. In developing those regulations, the Secretary shall consult with regional and local entities, including States and territories, involved in setting priorities for conservation of coral reefs.

(b) FUND.—The Secretary may enter into an agreement with a foundation authorizing the foundation to receive, hold, and administer funds received by the foundation pursuant to this section. The foundation shall invest, reinvest, and otherwise administer the funds and maintain such funds and any interest or revenues earned in a separate interest bearing account, hereafter referred to as the Fund, established by the foundation solely to support partnerships between the public and private sectors that further the purposes of this Act.

(c) AUTHORIZATION TO SOLICIT DONATIONS.—Consistent with section 3703 of title 16, United States Code, and pursuant to the agreement entered into under subsection (b) of this section, a foundation may accept, receive, solicit, hold, administer, and use any gift or donation to further the purposes of this Act. Such funds shall be deposited and maintained in the Fund established by a foundation under subsection (b) of this section.

(d) REVIEW OF PERFORMANCE.—The Secretary shall conduct a continuing review of the grant program administered by a foundation under this section. Each review shall include a written assessment concerning the extent to which that foundation has implemented the goals and requirements of this section.

(e) ADMINISTRATION.—Under the agreement entered into pursuant to subsection (b) of this section, the Secretary may transfer funds appropriated under section 11(b)(1) to a foundation. Amounts received by a foundation under this subsection may be used for matching, in whole or in part, contributions (whether in currency, services, or property) made to the foundation by private persons and State and local government agencies.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 2000, 2001, 2002, 2003, and 2004 to carry out this Act, which may remain available until expended.

(b) USE OF AMOUNTS APPROPRIATED.—

(1) RESTORATION AND CONSERVATION PROJECTS.—Not more than $15,000,000 of the amounts appropriated under subsection (a) shall be used by the Secretary to support coral reef restoration and conservation projects under section 6(a), of which not more than 20 percent shall be used for technical assistance provided by the Secretary.

(2) NATIONAL PROGRAM.—Not more than $5,000,000 of the amounts appropriated under subsection (a) shall be used by the Secretary to support coral reef conservation projects under section 7.

(3) ADMINISTRATION.—Not more than 1 percent of the amounts appropriated under paragraph 1 may be used by the Secretary for administration of this Act.

By Mr. ABRAHAM (for himself, Mr. TORRICELLI, Mr. HATCH, and Mr. MCCAIN):

S. 1255. A bill to protect consumers and promote electronic commerce by amending certain trademark infringement, dilution, and counterfeiting laws, and for other purposes; to the Committee on the Judiciary.

ANTICYBERSQUATTING CONSUMER PROTECTION ACT

Mr. ABRAHAM. Mr. President, I rise today to introduce the Anticybersquatting Consumer Protection Act on behalf of myself, Senator TORRICELLI, Senator HATCH, and Senator MCCAIN. This legislation will combat a new form of high-tech fraud that is causing confusion and inconvenience for consumers, increasing costs for people doing business on the internet, and posing an enormous threat to a century of pre-Internet American business efforts. The fraud is commonly called "cybersquatting," a practice whereby individuals reserve internet domain names or other identifiers of online locations that are similar or identical to trademarked names. The easiest prey for cybersquatters has turned out to be computer-unsavvy trademark-owners in the non-internet world. Once a "brick and mortar" trademark is registered as an on-line identifier or domain name, the "cybersquatter" can engage in a variety of nefarious activities—from the relatively-benign parody of a business or individual, to the obscene prank of redirecting an unsuspecting consumer to pornographic content, to the destructive worldwide slander of a centuries-old brand name. For the enterprising cybersquatter, holding out a domain name for extortionate compensation is a tried-and-true business practice, and the net effect of this behavior is to undermine consumer confidence, discourage consumer use of the internet, and destroy the value of brand-names and trademarks of this nation's businesses.

Many companies simply pay extortionate prices to cybersquatters in order to rid themselves of a headache with no certain outcome. For example, Gateway recently paid $100,000 to a cybersquatter who had placed pornographic images to the website "www.gateway2000". Rather than simply give up, several companies already have instead sought protection from cybersquatters through the legal system. For example, the investment firm Paine Webber was forced to sue an internet Web site, wwwpainewebber.com" and its creator. The domain name at issue took advantage of a typographical error—the missing "." (dot) between "www" and "painewebber"—in order to direct consumers desiring to do business with Paine Webber to a website containing pornographic images. As with much of the pre-internet law that is applied to this post-internet world, precedent is still developing, and at this point, one cannot predict with certainty which party to a dispute will win, and on what grounds, in the future.

Mr. President, some Americans continue to do a thriving, if unethical, business collecting and selling internet addresses containing trademarked names. Whether perpetrated to defraud the public or to extort the trademark owner, squatting on internet addresses using trademarked names is wrong. It must be stopped for the sake of consumers, for the sake of trademark owners and for the sake of the vast, growing electronic commerce that is doing so much to spur economic growth and innovation in this country.

Mr. President, the Anticybersquatting Consumer Protection Act will help to establish uniform rules for dealing with this attack on interstate commerce. This legislation would establish penalties for criminal use of a counterfeit trademark as a domain name. Using a company's trademark or its variant as the address of an internet site would constitute criminal use of a counterfeit trademark if the defendant registered the address either knowingly and fraudulently or in bad faith. Among the evidence establishing bad faith would be registry of a domain name with (1) intent to cause confusion or mistake or deception, to dilute the distinctive quality of a famous trademark, or intent to divert consumers from the trademark owner's domain to

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one's own; and (2) providing false information on the application to register the identifier, or offering to transfer the registration to a rightful owner for consideration for any thing of value. Bad faith could not be shown where the identifier is the defendant's legal first name or surname or where the defendant used the identifier in legitimate commerce before the earlier of either the first use of the registered trademark or the effective date of its registration. Violation of this prohibition would constitute a Class B misdemeanor for the first offense; subsequent offenses would be classified as Class E felonies.

In addition, Mr. President, the Anticybersquatting Consumer Protection Act provides for statutory civil damages in trademark cases of at least $1,000, but not more than $100,000 ($300,000 if the registration or use of the trademark was willful) per trademark per identifier. The plaintiff may elect these damages in lieu of actual damages or profits at any time before final judgment.

These provisions will discourage anyone from "squatting" on addresses in cyberspace to which they are not entitled. In the process it will protect consumers from fraud, protect the value of countless trademarks, and encourage continued growth in our electronic commerce industry.

Mr President, the growth of the Internet has provided businesses and individuals with unprecedented access to a worldwide source of information, commerce, and community. Unfortunately, those bad actors seeking to cause harm to businesses and individuals have seen their opportunities increase as well. In my opinion, on-line extortion in this form is unacceptable and outrageous. Whether it's people extorting companies by registering company names, misdirecting Internet users to inappropriate sites, or otherwise attempting to damage a trademark that a business has spent decades building into a recognizable brand, persons engaging in cybersquatting activity should be held accountable for their actions.

I urge my colleagues to support this important legislation, and I ask unanimous consent that the full text of the bill, a section by section analysis and additional materials be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 1255

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anticybersquatting Consumer Protection Act".

SEC. 2. FINDINGS.

Congress finds that the unauthorized registration or use of trademarks as Internet domain names or other identifiers of online locations (commonly known as "cybersquatting")—

(1) results in consumer fraud and public confusion as to the true source or sponsorship of products and services;

(2) impairs electronic commerce, which is important to the economy of the United States; and

(3) deprives owners of trademarks of substantial revenues and consumer goodwill.

SEC. 3. TRADEMARK REMEDIES.

(a) RECOVERY FOR VIOLATION OF RIGHTS.—Section 35 of the Act entitled "An Act to provide for the registration and protection of trade-marks 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:

"(d)(1) In this subsection, 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)).

"(2)(A) In a case involving the registration or use of an identifier described in subparagraph (B), the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a)—

"(i) an award of statutory damages in the amount of—

"(I) not less than $1,000 or more than $100,000 per trademark per identifier, as the court considers just; or

"(II) if the court finds that the registration or use of the registered trademark as an identifier was willful, not less than $3,000 or more than $300,000 per trademark per identifier, as the court considers just; and

"(ii) full costs and reasonable attorney's fees.

"(B) An identifier referred to in subparagraph (A) is an Internet domain name or other identifier of an online location that is—

"(i) the trademark of a person or entity other than the person or entity registering or using the identifier; or

"(ii) sufficiently similar to a trademark of a person or entity other than the person or entity registering or using the identifier as to be likely to—

"(I) cause confusion or mistake;

"(II) deceive; or

"(III) cause dilution of the distinctive quality of a famous trademark.".

(b) REMEDIES FOR DILUTION OF FAMOUS MARKS.—Section 43(c)(2) of the Act entitled "An Act to provide for the registration and protection of trade-marks 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. 1125(c)(2)) is amended by striking "35(a)" and inserting "35 (a) and (d)".

SEC. 4. CRIMINAL USE OF COUNTERFEIT TRADEMARK.

(a) IN GENERAL.—Section 2320(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" after "(a)";

(2) by striking "section that occurs" and inserting "paragraph that occurs"; and

(3) by adding at the end the following:

"(2)(A) In this paragraph, 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)).

"(B)(i) Except as provided in clause (ii), whoever knowingly and fraudulently or in bad faith registers or uses an identifier described in subparagraph (C) shall be guilty of a Class B misdemeanor.

"(ii) in the case of an offense by a person under this paragraph that occurs after that person is convicted of another offense under this section, that person shall be guilty of a Class E felony.

"(C) An identifier referred to in subparagraph (B) is an Internet domain name or other identifier of an online location that is—

"(i) the trademark of a person or entity other than the person or entity registering or using the identifier; or

"(ii) sufficiently similar to a trademark of a person or entity other than the person or entity registering or using the identifier as to be likely to—

"(I) cause confusion or mistake;

"(II) deceive; or

"(III) cause dilution of the distinctive quality of a famous trademark.

"(D)(i) For the purposes of a prosecution under this paragraph, if all of the conditions described in clause (ii) apply to the registration or use of an identifier described in subparagraph (C) by a defendant, those conditions shall constitute prima facie evidence that the registration or use was fraudulent or in bad faith.

"(ii) The conditions referred to in clause (i) are as follows:

"(I) The defendant registered or used an identifier described in subparagraph (C)—

"(aa) with intent to cause confusion or mistake, deceive, or cause dilution of the distinctive quality of a famous trademark; or

"(bb) with the intention of diverting consumers from the domain or other online location of the person or entity who is the owner of a trademark described in subparagraph (C) to the domain or other online location of the defendant.

"(II) The defendant—

"(aa) provided false information in the defendant's application to register the identifier; or

"(bb) offered to transfer the registration of the identifier to the trademark owner or another person or entity in consideration for any thing of value.

"(III) The identifier is not—

"(aa) the defendant's legal first name or surname; or

"(bb) a trademark of the defendant used in legitimate commerce before the earlier of the first use of the registered trademark referred to in subparagraph (C) or the effective date of the registration of that trademark.

"(iii) The application of this subparagraph shall not be exclusive. Nothing in this subparagraph may be construed to limit the applicability of subparagraph (B).".

(b) SENTENCING GUIDELINES.—

(1) IN GENERAL.—Pursuant to the authority granted to the United States Sentencing Commission under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(A) review the Federal sentencing guidelines for crimes against intellectual property (including offenses under section 2320 of title 18, United States Code); and

(B) promulgate such amendments to the Federal Sentencing Guidelines as are necessary to ensure that the applicable sentence for a defendant convicted of a crime against intellectual property is sufficiently stringent to deter such a crime.

(2) FACTORS FOR CONSIDERATION.—In carrying out this subsection, the United States Sentencing Commission shall—

(A) take into account the findings under section 2; and

(B) ensure that the amendments promulgated under paragraph (1)(B) adequately provide for sentencing for crimes described in paragraph (2) of section 2320(a) of title 18, United States Code, as added by subsection (a).

SEC. 5. LIMITATION OF LIABILITY.

Section 39 of the Act entitled "An Act to provide for the registration and protection of

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trade-marks 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. 1121) is amended by adding at the end the following:

"(c)(1) In this subsection, 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)).

"(2)(A) An Internet service provider, domain name registrar, or registry described in subparagraph (B) shall not be liable for monetary relief to any person for a removal or transfer described in that subparagraph, without regard to whether the domain name or other identifier is ultimately determined to be infringing or dilutive.

"(B) An Internet service provider, domain name registrar, or registry referred to in subparagraph (A) is a provider, registrar, or registry that, upon receipt of a written notice from the owner of a trademark registered in the Patent and Trademark Office, removes from domain name service (DNS) service or registration, or transfers to the trademark owner, an Internet domain name or other identifier of an online location alleged to be infringing or dilutive, in compliance with—

"(i) a court order; or

"(ii) the reasonable implementation of a policy prohibiting the unauthorized registration or use of another's registered trademark as an Internet domain name or other identifier of an online location.".

THE ANTICYBERSQUATTING CONSUMER PROTECTION ACT—SECTION-BY-SECTION ANALYSIS

A bill to protect consumers and promote electronic commerce by amending certain trademark infringement, dilution, and counterfeiting laws, and for other purposes.

SECTION 1: SHORT TITLE

This Act may be cited as the "Anticybersquatting Consumer Protection Act."

SECTION 2: FINDINGS

This section sets out Congressional findings concerning the effect of "unauthorized registration or use of trademarks as Internet domain names or other identifiers of online locations" ("cybersquatting"). Cyber- squatting (1) results in consumer fraud, (2) impairs electronic interstate commerce, and (3) deprives trademark owners of revenue and consumer goodwill.

SECTION 3: TRADEMARK REMEDIES

(a) Recovery for violation of rights

The Trademark Act of 1946 (15 U.S.C. 1117) shall incorporate the definition of "Internet" used in the Communications Act of 1934 (47 U.S.C. 230 (f) (1)).

An "identifier" refers to an Internet domain name or another identifier of an online location that is (i) the plaintiff's trademark, or (ii) so sufficiently similar to the plaintiff's trademark as to be likely to "cause confusion or mistake," "deceive," or "cause dilution of the distinctive quality of a famous trademark."

This section expands civil penalties for cybersquatting by providing that before final judgment in a case involving the registration or use of an identifier, a plaintiff may—instead of seeking actual damages or profits—elect to recover statutory damages of at least $1,000, but not more than $100,000 (at least $3,000, but not more than $300,000 if court finds that the registration or use of the trademark was willful) per trademark per identifier, as the court considers just. Furthermore, the plaintiff may recover full costs and reasonable attorney's fees.

(b) Remedies for dilution of famous marks

This section amends the Trademark Act of 1946 (15 U.S.C. 1125 (c) (2)) by making the remedies set forth in section 3 (a) also available for the willful dilution of famous marks or trade on the owner's reputation.

SECTION 4: CRIMINAL USE OF COUNTERFEIT TRADEMARK

(a) In general

This section amends 18 U.S.C. 2320 (a) ("Trafficking in Counterfeit Goods or Services") by adding criminal penalties for the use of a counterfeit trademark on the Internet. Like section 3 (a), this section incorporates the definition of Internet used in the Communications Act of 1934 (47 U.S.C. 230 (f) (1)). It also incorporates the same definition of "identifier" found in section 3 (a).

Under this section, whoever knowingly and fraudulently or in bad faith registers or uses the trademark of another would be guilty of a Class B misdemeanor. Repeat offenders would be guilty of Class E felony.

Prima facie evidence that a registration or use was fraudulent or in bad faith would require satisfaction of the following elements: (1) the defendant registered or used an identifier with intent to (a) cause confusion or mistake, deceive, or cause dilution of the distinctive quality of a famous trademark, or (b) with intention of diverting consumers from the trademark owner to the defendant; and

(2) the defendant provided false information in its application to register the identifier or offered to transfer the identifier's registration to the trademark owner or other person or entity for something of value; and

(3) the identifier is not the defendant's legal first name or surname or the defendant had not used the identifier in legitimate commerce before the earlier of either the first use of the registered trademark or the effective date of its registration.

(b) Sentencing guidelines

(1) In general

The United States Sentencing Commission shall provide for penalties for the criminal use of counterfeit trademarks by amending the sentencing guidelines in accordance with the guidelines for crimes against intellectual property (18 U.S.C. 2320).

(2) Factors for consideration

The United States Sentencing Commission shall take into account the Findings promulgated in Section 2 and ensure that the amendments to the sentencing guidelines adequately provide penalties for the crimes described in this Act.

SECTION 5: LIMITATION OF LIABILITY

An Internet service provider (ISP) or domain name registrar shall not be liable for monetary damages to any person if it removes an infringing identifier from domain name server (DNS) service or from registration, or transfers it to the trademark owner: (1) upon written notice from the trademark owner and (2) in compliance with either a court order or the reasonable implementation of a policy prohibiting the unauthorized registration or use of another's registered trademark.

This limitation shall apply without regard to whether the domain name or other identifier is ultimately determined to be infringing or dilutive.

INFORMATION TECHNOLOGY INDUSTRY COUNCIL,
Washington, DC, June 21, 1999.

Hon. SPENCER ABRAHAM,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of ITI's member companies, I am writing to thank you, Senator Hatch and Senator Torricelli for your leadership in introducing the Anti-Cybersquatting Consumer Protection Act today.

ITI is the association of leading U.S. providers of information technology products and services. It advocates growing the economy through innovation and supports free-market policies. ITI members had worldwide revenue of more than $440 billion in 1998 and employ more than 1.2 million people in the United States.

Over the past several years, trademark holders have found it difficult and expensive to prevent infringement and dilution of their marks online, especially as "cybersquatters" have made a cottage industry out of intentionally registering others' trademarks as domain names and seeking to sell the domain name back to the rightful owners. Such activity damages electronic commerce by sowing confusion among consumers and other internet users.

While some ITI members have concerns about the bill's criminal provisions, we believe the importance of federal legislation to stop cybersquatting should not be underestimated and we look forward to working with you as this legislation is considered by the Senate.

Best regards,

PHILLIP BOND,
Senior Vice President, Government Relations.

ADDITIONAL COSPONSORS

S. 25

At the request of Ms. LANDRIEU, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 25, a bill to provide Coastal Impact Assistance to State and local governments, to amend the Outer Continental Shelf Lands Act Amendments of 1978, the Land and Water Conservation Fund Act of 1965, the Urban Park and Recreation Recovery Act, and the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act) to establish a fund to meet the outdoor conservation and recreation needs of the American people, and for other purposes.

S. 37

At the request of Mr. GRASSLEY, the names of the Senator from Minnesota (Mr. GRAMS) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 37, a bill to amend title XVIII of the Social Security Act to repeal the restriction on payment for certain hospital discharges to post-acute care imposed by section 4407 of the Balanced Budget Act of 1997.

S. 57

At the request of Ms. MIKULSKI, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 57, a bill to amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees and annuitants, and for other purposes.

S. 61

At the request of Mr. DEWINE, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 61, a bill to amend the Tariff Act of 1930 to eliminate disincentives to fair trade conditions.

S. 71

At the request of Ms. SNOWE, the name of the Senator from Arkansas

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