paragraph (I)(A) or the skilled nursing facility described in paragraph (I)(B); and

(2) The individual resided in such facility for at least one year prior to the date on which the application was submitted and to the date on which services were provided by a skilled nursing facility.

(3) INCONSISTENCY—In this subsection:

(a) CONSIDERATION—In this subsection:

(b) EFFECTIVE DATE—The amendments made by this section shall apply to contracts entered into, or renewed on or after the date of enactment of this Act.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. ABRAHAM, Mr. TORRICELLI, Mr. DEWINE, Mr. KOHL, and Mr. SCHUMBERG). N. 141. A bill to amend the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) to protect consumers and promote electronic commerce by prohibiting the use of Internet domain names that are identical to, confusingly similar to, or dilutive of distinctive trademarks or service marks; to the Committee on the Judiciary.

Domain Name Piracy Prevention Act of 1999

Mr. HATCH. Mr. President, I am proud to rise today, along with my colleagues, the Ranking Member on the Judiciary Committee, Senator LEAHY, and Senator TORRICELLI, to introduce legislation that addresses a growing problem for consumers and American businesses online. At the heart of this Act is a simple fact: a growing problem for consumers and American businesses online. At the heart of this Act is a simple fact: a growing problem for consumers and American businesses online. At the heart of this Act is a simple fact: a growing problem for consumers and American businesses online. At the heart of this Act is a simple fact: a growing problem for consumers and American businesses online. At the heart of this Act is a simple fact: a growing problem for consumers and American businesses online. At the heart of this Act is a simple fact: a growing problem for consumers and American businesses online.
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Consider also the child who in a "hunt-and-peck" manner mistakenly typed in the domain for "donney.com," looking for the rich and family-friendly content of Disney's home page, only to wind up staring at a page of hardcore pornography, because someone snatched up the "donney" domain in an effort to make a quick buck and a name for themselves and have suggested the need to preserve a degree of anonymity on the Internet particularly for the creation of current trademark law with reasonable policies and registries to work with trademark owners to prevent cybersquatting by providing a limited exemption from liability for domain name registrars and registrants that suspend, cancel or transfer domain names pursuant to a court order or in the implementation of a reasonable policy prohibiting the registration of infringing domain names. Our bill goes further, however, in order to protect the rights of domain name registrants against overreaching trademark owners. Under our bill, a trademark owner who knowingly and willfully misappropriates the domain name is infringing is liable to the trademark owner who knowingly and willfully misappropriates the domain name. Our bill also promotes the continued use and efficiency users of the current registration system enjoy by codifying current case law limiting the secondary liability of domain name registrants and registrars for the act of registration of a domain name.

Finally, our bill includes an explicit savings clause making clear that the bill does not affect traditional trademark defenses, such as fair use, or a holder's right to seek a court order or in the implementation of a reasonable policy prohibiting the registration of infringing domain names.

Mr. President, this bill is an important piece of legislation that will promote the growth of online commerce by protecting consumers and providing clarity in the law for trademark owners in cyberspace. It is a balanced bill that protects the rights of Internet users and the interests of all Americans in free speech and protected uses of trademarked names for such things as parody, comment, criticism, commerce and expressive conduct as provided in the first amendment rights, other uses of the Internet particularly for this purpose.

I want to thank Senator LEAHY for his cooperation in drafting this particular measure, and also Senator ABRAHAM for his cooperation in this effort. I expect that the substance of this bill will be offered as a Committee substitute to Senator ABRAHAM's legislation when the Judiciary Committee turns to that bill tomorrow, and I look forward to broad bipartisan support at that time.
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 "Domain Name Piracy Prevention Act of 1999.

SEC. 2. FINDINGS. — Congress finds that there is widespread confusion as to the true owner of a domain name, that there is significant misuse of the domain name registry system by, among others, trademark infringers, and that there is a need for legislation to prevent those abuses.

SEC. 3. EFFECTIVE DATE. — This Act shall take effect on the date of its enactment.

SEC. 4. DISCLAIMER. — Nothing in this Act shall affect any provision of any other Act of Congress.

SEC. 5. IMPLEMENTATION. — This Act shall be implemented in such manner as the President may determine.

SEC. 6. SIMPLEMINT. — This Act is entitled "The Anticybersquatting Consumer Protection Act of 1999."
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P.3d 133 (9th Cir. 1998), a well known cyberquacker had registered a host of domains, including names for Panavision, Delta Airlines, Nikon, almonds, Eddie Bauer, Lufthansa, and more than 168 other marks, and had attempted to sell them to the mark owners for amounts in the range of $10,000 to $10,000 each. His use of the "panavision.com" and "panavision.net" domains is seemingly more innocuous, however, as they displayed pictures of Panavision and the word "Panavision" respectively. This bill would not allow a person to evade the holding of that case—which found that Mr. Toepken had engaged in cybersquatting by registering and using the parties' trademark for purposes of commercial gain or with the intent to harass or disrupt the principal business of the mark's owner. Again, the bill gives courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Fifth, under paragraph (1)(b)(iv), a court may consider whether the defendant's internet site uses or includes an Internet address, and whether the use of an Internet site by the defendant has caused dilution of the defendant's trademark or trade name. The bill does not intend to confer all the powers of a trademark owner on the defendant. It grants the defendant the power to contest the validity of the defendant's trademark or trade name in a case brought for the purpose of removing the defendant's trademark or trade name.

Sixth, under paragraph (1)(b)(v), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Seventh, under paragraph (1)(b)(vi), a court may consider the defendant's role in establishing the defendant's goodwill in the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Eighth, under paragraph (1)(b)(vii), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Ninth, under paragraph (1)(b)(viii), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Tenth, under paragraph (1)(b)(ix), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Eleventh, under paragraph (1)(b)(x), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Twelfth, under paragraph (1)(b)(xi), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Thirteenth, under paragraph (1)(b)(xii), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Fourteenth, under paragraph (1)(b)(xiii), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Fifteenth, under paragraph (1)(b)(xiv), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Sixteenth, under paragraph (1)(b)(xv), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Seventeenth, under paragraph (1)(b)(xvi), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Eighteenth, under paragraph (1)(b)(xvii), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Nineteenth, under paragraph (1)(b)(xviii), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Twentieth, under paragraph (1)(b)(xix), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.

Twenty-first, under paragraph (1)(b)(xx), a court may consider whether the use of the defendant's trademark or trade name is likely to cause dilution of the defendant's trademark or trade name. It provides courts the discretion to weigh appropriate factors in determining whether the name was registered in good faith or not.
that name to the other trademark owner. This bill does not imply that these facts are an indication of bad faith. In nearly present a court with the necessary discretion to recognize the evidence of bad faith when it is substantial. In the present, the offer to sell domain names for exorbitant amounts to the rightful owner itself violates the trademark law. Paragraph (D)(6) limits the relief available in such an exorbitant offer to injunctive ordering the forfeiture, cancelation, or transfer of the domain name.

Seventh, under paragraph (1)(B)(i)(A), a court may, on the basis of substantial evidence, issue a temporary provision of material and misleading false contact information in an application for the domain name registration. Provision of contact information with the intent to revoke a trademark by trademark owners is also a common reason for registration. The bill recognizes that fact, while still recognizing that there are legitimate reasons for which the provision of false information may be due to other factors, such as mistake or error, as some have suggested in the case of political dissidents, for purposes of anonymity. This bill hones those factors by limiting the consideration to the person’s contact information, and then requiring that the provision of false information be material and misleading. As with the other factors, this factor is nonexclusive and a court is called upon to make a determination based on the facts presented. Whether or not the provision of false information does, in fact, indicate bad faith.

Eighth, under paragraph (1)(B)(ii), a court may, in an action to enjoin the transfer of a registered trademark, enjoin the registration of multiple domain names that are identical to, confusingly similar to, or dilutive of others’ marks. This factor recognizes the increasingly common practice of domain names in combination with trademarks. In which a cybersquatter registers many domain names—sometimes hundreds, even thousands—that mirror the trademarks of others by setting up those marks and not making the first move to offer to sell them to the mark owner, those cybersquatters’ policy is to generate potential in evading the law developed under the domain name law. This bill does not suggest that the mere registration of multiple domain names constitutes an indication of bad faith, but allows a court to weigh the fact that a person has registered multiple domain names that, infringe or dilute the trademark owners as part of its consideration of whether bad faith is present. That is, the court.

Paragraph (1)(C) makes clear that in any civil brought under the new section (B)(ii), a court may order the forfeiture, cancellation, or transfer of an infringing domain name by filing an in rem action against the domain name itself, where the mark owner has satisfied the court that it has exercised due diligence in trying to locate the identification and service of process on the mark owner. This bill will likely be a false patent, while extending the notice of fair price and substantial value. In a case where a court seeks an injunction against the infringing property in those cases where, after due discovery, a mark owner is unable to proceed against the domain name registrant because the registrant has provided false contact information and is otherwise not to be found, provided the mark owner can show that the domain name itself constitutes an indication of bad faith, the court may order the cancellation of the domain name registration.

This section applies traditional trademark remedies, including injunctive relief, recovery of defendant’s profits, actual damages, and treble damages, to cybersquatting cases under the Trademark Act. The bill also amends section 35 of the Trademark Act to provide for statutory damages in cybersquatting cases, in an amount of not less than $500,000 and not more than $1,000,000, awarded to the plaintiff. The court is limited to awarding statutory damages in any case where the finder of fact believes that the use of the domain name was a fair or otherwise lawful use.

SECTION 1. LIMITATION ON LIABILITY

This section amends section 35(d) of the Trademark Act to prevent cybersquatting through a limited exemption from liability for domain names registrants and companies that register, suspend, or transfer domain names the court finds good-faith in an action or proceeding in which the registration, suspension, or transfer of the domain name was the rightful owner. The court may order the registration, suspension, or transfer of the domain name to the rightful owner. The court may also order the payment of reasonable attorney fees to the rightful owner, including court costs and disbursements.

This section applies the Trademark Act’s provisions to cybersquatting cases to 43(d) of the Trademark Act and also includes the Trademark Act’s provisions to cybersquatting cases. This section also includes the Trademark Act’s provisions to cybersquatting cases and sections 35(d) and 35(e) of the Trademark Act. This section also applies to any use of a domain name, other than the provision of false information, to prevent cybersquatting through a limited exemption from liability for domain names registrants that register, suspend, or transfer domain names pursuant to court order or in the implementation of a reasonable policy prohibiting cybersquatting.

This section also protects the rights of domain name registrants over cybersquatting trademark owners. Under a new section 35(d) of the Trademark Act, a trademark owner who knows or reasonably should know that a domain name registration or a domain name registrar or registry for the registration of a domain name, absent bad-faith on the part of the registrar and registry, is otherwise rightful. This section applies to cybersquatting cases.

SECTION 1. SAVINGS CLAUSE

This section provides an explicit savings clause making clear that the bill does not affect the traditional trademark defenses, such as fair use, or a person’s first amendment rights.

SECTION 4. SEVERABILITY

This section provides a severability clause making clear Congress’ intent that if any provision of this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of the Act, the amendments made by the Act, and the application of the provisions of such to any person or circumstance shall not be affected by such determination.

SECTION 5. EFFECTIVE DATE

This section provides that new statutory remedies provided for under this bill shall not apply to any registration, trafficking, or use of a domain name that took place prior to the enactment of this Act.

Mr. LEAHY. Mr. President, I am pleased to join Senator HATCH, and others, today in introducing the "Domain Name Piracy Prevention Act of 1999." We have worked hard to craft this legislation in a balanced fashion to protect trademark owners and consumers doing business online, and Internet users who want to participate in the new economy. As the Supreme Court has described, "a unique and wholly new medium of worldwide human communication."
who abuse the rights of trademark holders by purposefully and maliciously registering as a domain, name the trademarked name of another company to divert and confuse customers or to deny the company the ability to establish an easy-to-find online location. A recent report by the World Intellectual Property Organization (WIPO) noted that the Internet domain name process has characterized cybersquatting as "predatory," with a high priority of domain registrants acting in bad faith" to register famous or well-known marks. The problems faced by domain registrants lead to consumer confusion or down-right fraud.

Enforcing trademarks in cyberspace will promote global electronic commerce. Reasonable trademark law in cyberspace can help bring consumer confidence to this new frontier. That is why it has long been recommended that protecting registered trademarks online. Indeed, when the Congress passed the Federal Trademark Dilution Act of 1986, it noted that:

(A)mounts to the use of deceptive Internet addresses taken by others who are choosing marks that are associated with the products and reputations of others.

In addition, last year I authored an amendment that was enacted as part of the Next Generation Internet Research Act of 1994, in order to fund the Council of the National Academy of Sciences to study the effects on trademark holders of new and emerging domain names and requesting recommendations on expensive and expedient procedures for resolving trademark disputes over the assignment of domain names. Both the Internet Corporation for Assigned Names and Numbers (I-CANN) and WIPO are also making recommendations on these procedures. Adoption of a uniform trademark domain name dispute resolution policy will clearly benefit American trademark owners.

The "Domain Name Piracy Prevention Act" is intended to build a consensus global mechanism for resolving online trademark disputes, and the implementation of domain name registration practices that encourage cybersquatting. The legislation we introduce today is intended to build on several years of research and provide constructive guidance to trademark holders, domain name registrars and registrars and Internet users registering domain names alike.

Other Anti-cybersquatting Legislation Is Flawed. This is not the first bill to be introduced this session to address the problem of cybersquatting, and I appreciate the efforts of Senators ARBAM, TORCELLO, HATCH, and MCGR, to focus our attention on this important matter. They introduced S. 1255, the "Anticybersquatting Consumer Protection Act," which proposed making it illegal to register or use any "Internet domain name or identifier of an online location" that could be confused with the trademark of another person or cause dilution of a "famous mark" by imposing liability on operators of websites that could be found to be infringing the trademark.

One concern was that a hearing before the Judiciary Committees last week that S. 1255 would have a number of unintended consequences. For example, it would require the courts to consider whether the domain name in question was "confused" rather than to promote electronic commerce by allowing both civil and criminal penalties.

I raised concerns at a hearing before the Judiciary Committees last week that S. 1255 would have a number of unintended consequences. For example, it would require the courts to consider whether the domain name in question was "confused" rather than to promote electronic commerce by allowing both civil and criminal penalties.

The definition in S. 1255 is broad. S. 1255 covers the use of any "Internet domain name or identifier of an online location" for any "identifier," which could cover not just second level domain names, but also entire addresses that are used in chat rooms, and even files accessible and readable on the Internet. As one witness pointed out, "the definitions will make every fan a criminal." How? A file documents that a fan of "batman" who registered the name of the Internet domain name or identifier of an online location that contained the term "batman" would be in violation of this law.

S. 1255 threatens hypertext linking. The Web operates on a hyperlinked construction so people can easily jump from one URL to another. S. 1255 would make it illegal to link to another domain name, and make linking illegal. S. 1255 would criminalize dissent and protest sites. A number of Web sites have been forced to stop using links to promote products or services, and sue the trademarked names of those companies owning the trademarks. The courts have had to make legal decisions about whether linking to another domain name was fair use.

S. 1255 would stifle legitimate warehousing of domain names. The bill would impose liability on any person who merely registered domain names similar to other trademarked names, whether or not they actually set up a site and use the names. The courts have recognized that companies may have legitimate reason for registering domain names without owning real property or for warehousing domain names in order to prevent trademark violations for mere use.
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deal. S. 1155 would make that company liable for trademark infringement. Further, Professors Litman concluded that this "bill would in many ways be bad for electronic commerce, by making it harder to do business on the Internet without first retaining trademark counsel." Faced with the risk of criminal penalties, she stated that "many start-up businesses may choose to abandon their goodwill and move to another Internet location, or even to fold, rather than risk liability." The Hatch-Leahy Domain Name Piracy Prevention Act is a better solution.

The legislation outlines the following non-exclusive list of eight factors for courts to consider in determining whether such bad-faith intent to profit is proven: (i) the trademark rights of the domain name registrant in the domain name; (ii) whether the domain name is the legal or nickname of the registrant; (iii) the prior use by the registrant of the domain name in connection with the bona fide offering of goods or services; (iv) the registrant's legitimate non-commercial or fair use of the mark at the site under the domain name; (v) the registrant's intent to divert consumers from the mark's owner's online location in a manner that could harm the mark's goodwill, 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 registration of the domain name; (vii) the registration of multiple domain names that are identical or similar to or dilutive of another's trademark; (viii) the registration of multiple domain names that are identical or similar to or dilutive of another's trademark.

The legislation further provides that if a plaintiff is authorized to recover actual damages and profits, or may elect before final judgment to award to the plaintiff statutory damages of not less than $1,000 and not more than $100,000 per domain name, as the court considers just. The court is directed to award statutory damages in any case where the infringer reasonably believed that use of the domain name was a fair use, or that the use had a reasonable non-infringing use.

In rem actions, the bill would also permit an in rem action filed by a trademark owner on the Net to be brought as a class action on behalf of members of the public, if the court finds that the domain name violates the mark's owner's rights in the mark.

LIABILITY LIMITATIONS

The bill would limit the liability for monetary damages of domain name registrants, registrars or other domain name registration authorities for any action they take to refuse to register, remove from registration, transfer, temporarily disable or permanently cancel a domain name pursuant to a court order or in the implementation of reasonable policies prohibiting the registration of domain names that are identical or similar to, or dilutive of, another's trademark.

Prevention of reverse domain name hijacking. Reverse domain name hijacking is an effort by a trademark owner to take a domain name from a legitimate good faith domain name registrant. There have been several well-publicized cases of trademark owners demanding the take down of certain web sites set up by parents who have registered their children's names in the org domain, such as two year old Veronica Sams's "Little Veronica" website and 12 year old Chris "Pokey" V. Allen's web page.

In order to protect the rights of domain name registrants in their domain names, the bill provides that registrants may recover damages, including costs and attorney's fees, incurred as a result of a domain name being misappropriated by a person that a domain name is identical or similar to, or dilutive of, a trademark. In addition, the domain name or the transfer and other domain name registrant.

Cybersquatting is an important issue both for trademark holders and for the future of electronic commerce on the Internet. Any legislative solution to the problem must tread carefully to ensure that any remedies do not impede or stifle the free flow of information on the Internet. In many ways, the United States has been the incubator for cybersquatting, and closely watches whenever we venture into laws, customs or standards that affect the Internet. We must only do so with great care and caution. Fair use principles are just as critical in cyberspace as in any other Intellectual property arena.

I am pleased that Chairman HATCH and I, along with Senators ABRAHAM, TORRICELLI and KROL, have worked together to find a legislative solution that respects these considerations. We also stand ready to make additional revisions to this legislation that prove necessary as this bill moves through the legislative process.

By Mr. JEFFORDS:

S. 1155. A bill to amend the Federal Food, Drug, and Cosmetic Act to permit importation in personal baggage of prescription drugs that are not otherwise required for personal use from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

PERSONAL USE PRESCRIPTION DRUG IMPORTATION ACT OF 1999

Mr. JEFFORDS. Mr. President, today I am introducing legislation that takes another positive step toward the goal of providing access to affordable prescription drugs. This legislation will allow patients in Vermont, and many other patients across the United States. The high cost of prescription drugs is an issue that faces many Americans every single day. As they try to decide how to make ends meet, and whether they can afford to fill the prescription they and their loved ones need. Unfortunately, it is not uncommon to hear of patients who cut pills in half, or skip dosages in order to make prescriptions.
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