

## COICA: Yank Domains, Chill Speech

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Advocated as a measure to increase consumer protection and safeguard American intellectual property, a bill entitled Combating Online Infringement and Counterfeit Act has been introduced in Congress on September 10, 2010. Now known as S. 3804, the bill would become new 18 U.S.C. §2324.

Principally, COICA would authorize the federal justice department in Washington, DC to sue, on an *in-rem* jurisdictional basis, certain domains in Washington, DC courts or in the American forum where the domain registrar or registry for the domain is located in the United States. Similar to the federal Anti-cybersquatting Consumer Protection Act, the objective of an *in-rem* action would be wrestle control over a domain from its owner without having to seek personal jurisdiction over the owner. Personal jurisdiction requires compliance with constitutional standards that can impose burdens not imposed on in-rem jurisdiction.

The proposed statute targets offensive uses of domains within and without the United States. It enables direct action against domains where the registry or registrar is located in the United States. The resulting court order would require the suspension of the domain.

Domains held with foreign registries or registrars can become the subject of a Department of Justice action only in the Washington, DC courts. Such an action is directed against the importation of counterfeit goods and services into the United States. Jurisdictionally, it requires a commercial effect in the United States. The federal court may order suitable technical instructions for parties operating within the internet infrastructure to block access to infringing domains.

Ultimately, the addressees of a COICA blocking order could include financial services providers, ISPs, advertising networks and parties doing business with the offending foreign site. A special provision would isolate compliant parties from liability.

A black list of offending sites "dedicated to infringing activities" would be transmitted to the recently-established Washington, DC-based office of the federal internet czar. The Attorney General of the United States would publish the list.

The bill encounters strong opposition: It would enable censorship by chilling free speech, impact the DNS routing system, impede innovation and would have made successes such as YouTube impossible, see <https://www.eff.org/issues/coica-internet-censorship-and-copyright-bill>. Despite the opposition and procedural roadblocks thrown up in Congress, its advocates are said to be planning to promote it vigorously after the November mid-term elections.

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