



**Before The United States Senate
Committee On The Judiciary**

**Hearing on “Targeting Websites Dedicated
To Stealing American Intellectual Property”**

**Statement of Christine N. Jones,
Executive Vice-President, General Counsel,
& Corporate Secretary
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Introduction

Thank you, Chairman Leahy, and members of the Committee, for the privilege of speaking before you today. We at The Go Daddy Group appreciate the efforts of the Committee and of our federal government to stop the use of the Internet for nefarious purposes such as online infringement and counterfeiting. We are honored by the opportunity to share with you our opinions and recommendations regarding the best methods for combating online infringements and counterfeits.

As the world's largest domain name registrar and website hosting provider, with millions of customers all over the globe, we are very familiar with the ease with which trademarked and copyrighted material may be improperly acquired and utilized through the Internet. Selling counterfeit materials or engaging in trademark infringement is now as easy as copying and pasting an image or downloading files in a peer to peer network. Based on our leading position in the industry, we feel that we are uniquely situated to provide insight on legislative and private industry efforts to curtail the proliferation of online intellectual property infringement.

Go Daddy's Commitment To Intellectual Property Rights

Go Daddy currently has more than 46 million domain names under management, and provides web hosting services for more than 5 million websites. In addition, our company offers over 50 products and services, including SSL certificates, website builders, and online business tools, which help our customers establish a trusted presence on the Internet.

On behalf of our customers and our own business, we understand and are strong supporters of the rights of intellectual property holders to protect their trademarks and copyrights. A vast number of our customers earn their livelihood from the successful businesses they have been able to establish online through the use of our products and services. It is critical to their businesses that they have the ability to protect their online brands, and that the intellectual property they have spent time and money to develop is not stolen by competitors who would unfairly copy their work.

Go Daddy itself holds a vast amount of intellectual property that we vigorously police and protect. We have more than 330 trademarks and copyrights that are registered all over the world. We currently hold 37 issued patents, with more than 197 patent applications pending. Given the importance of intellectual property to our business, and our own challenges in monitoring and defending our trademarks and copyrights, we strongly believe that intellectual property owners need the ability to protect their works. We also support the enactment of federal legislation that will assist intellectual property owners in these efforts.

Current Efforts to Combat Online Infringements and Counterfeits Through Domain Name Redirection and Website Takedowns

A. Go Daddy Routinely Works With Courts and Law Enforcement To Disable Access To Domain Names and Websites Connected To Infringing Content

As a private domain name registrar and hosting provider, Go Daddy should not and does not make legal determinations as to whether particular domain names or websites are being utilized for intellectual property infringement or counterfeiting purposes. In our view, seizures and takedowns of domain names and websites should occur only in the context of a law enforcement investigation or court order. Moreover, our government and courts must always be vigilant to ensure that the vigorous pursuit of online infringers and counterfeiters does not result in the censorship of lawful speech or activity on the Internet. That being said, there is no doubt that Go Daddy and our fellow registrars and hosting providers can and should play a significant role in assisting courts and law enforcement to disable access to domain names and websites that are used for criminal activity, including infringement or counterfeiting.

Our company has led the industry in working with law enforcement to ensure that the Internet is not used for criminal activities involving infringement and counterfeiting. Unlike many other Internet companies of our size, Go Daddy staffs large, 24/7 abuse and trademark infringements departments, whose sole mission it is to identify and help stop unlawful conduct online. Our staff routinely works with courts and law enforcement

from the local to international level to shut down domain names and websites through which infringers and counterfeiters operate. Any time we are notified by a court or a federal or state prosecutor that there is criminally infringing material on our systems, we work rapidly to disable access to that material.

There are numerous cases in which the seizure or disabling of access to domain names or websites has been instrumental in stopping online infringements and counterfeits. Late last year, for example, the U.S. Immigration and Customs Enforcement agency (“ICE”) was able to execute seizure orders against 84 domain names of commercial websites engaged in the illegal sale and distribution of counterfeit goods and copyrighted works. The coordinated federal law enforcement operation targeted online retailers of an array of counterfeit goods including sports equipment, shoes, handbags, athletic apparel, and sunglasses, as well as illegal copies of copyrighted DVD boxed sets, movies and software. Once the goods were confirmed as counterfeit or otherwise illegal, ICE obtained seizure orders for the domain names of the websites that sold the goods. The domain names were redirected pursuant to the court orders, and individuals attempting to access any of the related sites found banners advising them that the site’s domain name had been seized by federal authorities. The same federal initiative has successfully obtained and executed seizure warrants against nine domain names of websites that offer pirated copies of first-run movies.

Go Daddy has been involved in many other government initiatives directed towards taking counterfeit merchandise offline. In March of 2010, we worked with the United Kingdom’s Metropolitan Police Service to shut down or redirect nearly 200 domain names and websites used to sell counterfeit merchandise including clothing, shoes and jewelry. We recently worked with the Federal Bureau of Investigation to disable the domain names of more than two dozen overseas websites that were selling counterfeit Tiffany & Co. jewelry. We are currently involved in an investigation by the Computer Crime Division of Scotland Yard to shut down websites that sell counterfeit tickets to sporting events. To date, we have successfully disabled access to approximately 60 such websites by redirecting their domain names.

Finally, we continue to lead the charge to stop the proliferation of rogue online pharmacies and websites selling counterfeit medications. In 2010 alone we worked with the Federal Drug Administration and the U.S. Drug Enforcement Agency to investigate and take down over 36,000 such websites.

B. Go Daddy Works Directly With Intellectual Property Owners To Help Them Protect Their Rights

In addition to our ongoing work with law enforcement, Go Daddy also works directly with intellectual property owners to protect their creative work. We strongly encourage all businesses, authors and artists to be vigilant in policing their creative efforts, and we have instituted numerous, extremely effective, policies and procedures to help intellectual property holders protect their rights online. This includes a wealth of resources that educate our customers and other interested parties about the best practices for monitoring and protecting their intellectual property.

For example, we have developed and publish thorough trademark and copyright infringement policies, which include information about how IP owners may gain rights to domain names they believe infringe on their trademarks, or effect the removal of websites that contain infringing content. The policies are prominently displayed on our website, and describe the method through which intellectual property owners may submit complaints to us regarding infringing content. Our abuse and infringements teams continuously monitor and respond to complaints submitted through these procedures. Last year, we processed over 13,000 such complaints.

Our copyright infringement policy is compliant with the standards set forth in the Digital Millennium Copyright Act (DMCA). We follow a set of voluntary standards we established in 2002 in the trademark context, as well, based on the DMCA's successful approach. In the case of trademarks, the information we require to open an investigation includes a copy of the trademark or trade name that is claimed to be infringed, the jurisdiction or geographical area to which the mark applies, the goods or services covered

by the mark, the date of first use of the mark, and evidence relating to the content that the complaining party believes to be infringing on the mark. Similarly, with respect to copyright complaints, we ask complaining parties to submit documentation that demonstrates their right to the infringing content. This includes identification of the copyrighted work claimed to have been infringed, identification of the material that is claimed to be infringing, and the complaining party's contact information.

We initiate investigations into intellectual property complaints almost immediately after receiving the background information requested in our infringements policy. In the event that the disputed content appears on one of our corporate websites, for example, our social networking site, Go Daddy Community, or our video sharing site, www.Video.me, we often temporarily remove the challenged material from the site. We may also suspend the posting party's Go Daddy account, or, if the material is solely stored on a Go Daddy server, we may deny the posting party the ability to access the challenged material.

We also notify the poster of the allegedly infringing material of the complaint against his or her content, and provide that party with information regarding how to respond to the complaint. A response from the posting party must include an affidavit that the party has a good faith belief in his or her right to use the material. The response must also include a consent to the jurisdiction of the Federal District Court, and confirm that the poster will accept service of process of a complaint relating to the alleged infringement. In this way, we ensure that the intellectual property owner is able to effectively locate and bring a legal action against the posting party.

Where an intellectual property owner has a complaint not about content on a website, but about infringement contained in a domain name itself, for example, if an individual has infringed on the Verizon trademark by registering www.verizoon.com and causing that domain name to resolve to content that would otherwise violate Verizon's registered trademarks, Go Daddy and other ICANN-accredited registrars are bound by the Uniform Domain Name Dispute Resolution Policy ("UDRP"). The UDRP provides the terms and conditions through which private disputes concerning the registration and use of Internet

domain names, including trademark-related disputes, may be resolved. Go Daddy follows the UDRP when we receive a trademark concern or dispute specifically focused on a domain name.

Under the UDRP, private trademark-based domain name disputes must be resolved by agreement, court action or arbitration before a registrar such as Go Daddy can cancel, suspend or transfer a domain name. However, once Go Daddy receives notice of a filed UDRP dispute, we immediately “lock” the disputed name. Our locking of the domain name offers several protections to the intellectual property holder. Once locked, the registrant cannot transfer the domain name to another registrar, change contact or other details about the domain name in the Whois database, or update the DNS information regarding the name. In this way, the IP owner can be assured that it won’t lose the ability to obtain the domain name through, for example, the registrant’s obfuscation of his or her true identity, or transfer of the name to an overseas registrar. The lock we institute remains in place until we get a final decision from the UDRP arbitration panel making a determination as to which party has rights to the domain name, or the dispute is otherwise resolved through a signed legal agreement or court order.

Finally, it should be noted that our Terms of Service and other legal agreements are carefully crafted to require our customers to confirm that neither their domain name nor their website content infringes upon or otherwise violates the rights of any third party, including intellectual property rights. Our customers must agree that they are not registering a domain name or operating a website for any unlawful purpose, and that they will not knowingly use their domain name or website in violation of any applicable laws or regulation, including the laws that exist to protect the rights of intellectual property owners. Whenever we are notified of a violation of our agreements in this area, we take swift action to either ensure the removal of infringing material, or to disable or redirect the offending website.

Comments Regarding Senate Bill 3804: The “Combating Online Infringements and Counterfeits Act”

Go Daddy is a strong supporter of legislative proposals designed to curtail the proliferation of online infringement and counterfeiting. We applaud the efforts of this Committee in supporting initiatives that will assist the government and private industry to combat illegal activity on the Internet. We have reviewed the most recent draft of Senate Bill 3804, the proposed “Combating Online Infringements and Counterfeits Act,” and are pleased at its focus on clarifying the process through which the government can target and disable domain names that are used for criminal purposes. We also appreciate the Bill’s inclusion of an immunity provision for organizations that act in accordance with its provisions – we are confident that Go Daddy’s ongoing efforts would afford us with statutory immunity under the Bill. However, we do feel that some modifications to the Bill could make it even more effective for its intended purpose.

For instance, the Bill in its previously submitted form focuses primarily on domain names, rather than on websites that display infringing content or merchandise. We would suggest that the Bill’s focus be expanded to address the role of website hosting providers in combating online infringements and counterfeits. The inclusion of hosting providers in the Bill would clarify the role of web hosts in disabling access to criminal websites with domain names over which the U.S. government cannot obtain jurisdiction.

Domain name registries, domain name registrars, and website hosting providers are, for all intents and purposes, three different entities when it comes to legal and administrative issues. In our experience, it is not uncommon for domain name registrants who engage in infringing and counterfeiting activities to register multiple domain names, often under numerous identities. These registrants also regularly engage in the continuous transfer of their domain names and websites between different registrars and hosting providers. Thus, for any particular website that displays infringing or counterfeit content, the registry, the registrar, and the hosting provider may be three different, unaffiliated entities, and may be located in three different jurisdictions domestically or overseas.

This is particularly true of criminal websites that utilize country code top level domain names, or ccTLDs, which are issued by numerous countries around the world. Go Daddy, like many other registrars, offers a wide variety of ccTLDs through various registries, many of which are based overseas. Many of the registries that offer ccTLDs do not provide registrars with the ability to suspend or redirect these domain names. In these instances, to institute a proceeding against the domain name, the government would need to direct its action to the ccTLD registry. These are often located overseas and not subject to jurisdiction by the U.S. government. Based on the difficulty of reaching overseas registries, and the inability of the registrar to take action in these cases, it would be helpful if the Bill provided the government with the ability to direct the (hopefully domestic) hosting provider to shut down the site.

The Bill also potentially affects the doctrine of secondary liability for web hosts. Once a domain name is identified on the list proposed to be maintained by the Justice Department as “dedicated to infringing activities,” it is unclear what obligations the hosting provider has with respect to other sites owned by the same individual. We would like future versions of the Bill to clarify that hosting providers will not be expected to affirmatively monitor their customers’ hosted websites in order to avoid the risk of secondary liability for trademark or copyright infringement.

We would also ask that the final version of the Bill include a notice provision for websites that display user-generated content, such as Go Daddy’s social networking or video sharing websites. Current law specifically recognizes that website operators are not obligated to affirmatively monitor and police the user-generated content displayed on their sites. However, site operators *are* required by the DMCA to promptly respond and take action when notified of infringing content on their sites. The Bill in its current form theoretically raises some conflicts with the DMCA’s notice provision, in that the Attorney General could cause a domain name affiliated with a website containing user-generated content to be disabled, even where the site operator is unaware of the infringing content and would be happy to remove the material if it were notified of the same.

From a procedural standpoint, when an Attorney General action or court order is issued to disable a domain name, we would respectfully request that the order or action be initially directed to the domain name registrar, rather than to the registry. Because it is the registrar that typically has the most contact with the registrant of a domain name, we are very often involved in criminal investigations that are outside the scope of the Bill (for example, child pornography investigations involving registrants). The registry in many instances has no knowledge of these highly confidential and sensitive matters, and we have experienced several occasions in which the sudden disabling of a domain name by a registry disrupted weeks or months of work by law enforcement agencies who were investigating serious criminal activity by the registrant. We would like to see the registrar named as the primary contact for courts and law enforcement regarding all criminal and civil matters relating to domain names. Registrars could then facilitate and coordinate concurrent actions by international, federal and local governments with respect to particular names.

Finally, we would ask the Committee to consider revisiting and clarifying the concept of when and how a website will be determined to be “dedicated” to infringing activities. The definition in the current version of the Bill refers to sites that are “primarily designed” to do one or more of certain activities, and then refers to those activities as “the central activities of the Internet site or sites accessed through a specific domain name.” We question how the determination will be made as to when a site is “primarily designed” to conduct a certain activity and how the “central activities” of a website will be identified. We are concerned that without clear and precise definitions regarding the types of activities that are considered unlawful, the Bill could be attacked as a potential means of suppressing free and open expression and thought online.

Conclusion

Go Daddy is proud of our long history of working to preserve the integrity of the Internet, including our efforts to combat intellectual property infringement and counterfeiting. We have documented proof that our efforts in this area work. In 2010 alone, Go Daddy

suspended almost 7,000 websites which were determined to contain content that infringed the rights of a trademark or copyright owners. We locked over 5,500 domain names that were the subject of trademark disputes or UDRP proceedings, and ultimately transferred more than 3,200 of those names to the rightful registrants. Based on these successes, there is no doubt that domain name registrars and hosting providers, working closely with the courts and law enforcement, have a significant role to play in taking down online bad actors.

Go Daddy will be pleased to support thoughtful federal legislation that streamlines and clarifies the methods through which we and our fellow members of private industry can work with the government to take criminals offline. However, effectively combating online infringements and counterfeits will require all of our online counterparts to join the fight. Each of what we call “The Big Five” major players online -- domain name registrars, hosting service providers, payment card processors, Internet service providers, and online advertising providers – must institute efforts similar to those used by Go Daddy, and work hand-in-hand with courts and law enforcement to keep infringers and counterfeiters off the Internet. In the absence of such concerted efforts, the criminals that Go Daddy works so hard to take offline will soon reappear, almost certainly as customers of one of our more lax competitors.

Thank you.