

## The Combating Online Infringement and Counterfeits Act (COICA)

**By: Cheri Michel, Paralegal**

In November 2010, the Department of Justice (DOJ) seized 82 domain names that the Office of the Attorney General claimed were engaged in trademark and copyright infringing activities. The DOJ seized the domain names under Senate Bill S.3804, the Combating Online Infringement and Counterfeits Act (COICA). This bill proposes amendments to Chapter 113 of Title 18 of the United States Code that would grant the Attorney General the power to seize domain names through the use of an *in rem* action.

An *in rem* action allows a court to exercise power over property in situations in which it would not normally have that authority. But since COICA has been passed only by the Senate Judiciary Committee – and not the full Senate or the House of Representatives – it is not yet a law, bringing the legality of these domain name seizures into question.

Due to the controversial nature of the action taken by the Attorney General's Office, it has been equally lauded and condemned by parties on both sides of the issue. While the bill has been supported by the publishing and entertainment industry along with various artists' rights groups, some consumer groups oppose the legislation.

The current method for handling infringement issues is through the Digital Millennium Copyright Act (DMCA), which provides for the removal of infringing material from a website; COICA would provide for the suspended operation and lockdown of the *entire website* if it is found to contain infringing material. Before it can be enacted into law, however, there are several issues with the proposed legislation that will need to be addressed.

In its current state, COICA would create two lists of "offending" domain names: The first list would contain domain names added by the courts, while the second one would contain domain names added by the Attorney General. The second list is problematic as it lacks the due process of law in being created without the involvement of the courts. The November 2010 seizure of domain names was completed in this manner, i.e., without the involvement of the courts, which is why it remains a controversial act.

COICA fails to quantitatively define "infringement," nor does it address or detail several important law issues relating to its processes, including a process to determine which domains are added to the list, a domain name owner's ability to defend itself, and how a determination of guilt or innocence is made, among others.

The bill may also have unintended consequences, such as preventing new, innovative domains from coming to fruition, or affecting a variety of existing laws that address infringement along with freedom of speech, or Internet architecture, for example.

As COICA did not pass in the Senate during 2010, it must be re-introduced to the current one. The bill has a long way to go before it is enacted into law, if it is enacted into law. This bill is something to watch for intellectual property owners and domain owners alike.

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