



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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MAR 13 2000

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon *JAP*  
Staff Director

FROM: Lawrence M. Noble *LN*  
General Counsel

N. Bradley Litchfield *NBL/RCS*  
Associate General Counsel

Rosemary C. Smith *RCS*  
Assistant General Counsel

Paul Sanford *PS*  
Attorney

SUBJECT: Department of Commerce Study On Internet Domain Name Registration;  
Draft Response to Letter From DoC General Counsel

On March 2, 2000, the Office of General Counsel received a letter from Andrew J. Pincus, General Counsel of the Department of Commerce ("DoC"), regarding DoC's study on Internet Domain Name Registration. The Office of General Counsel circulated this letter to the Regulations Committee on March 6, 2000.

At the direction of the Regulations Committee, we have prepared a draft response to Mr. Pincus' letter. We are circulating the draft response to the Commission for its review.

**RECOMMENDATION**

The Office of General Counsel recommends that the Commission approve the attached draft letter, and direct the Office of General Counsel to send the letter to the Department of Commerce.

attachment

**AGENDA ITEM**

For Meeting of: 3-23-00



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

The Honorable Andrew J. Pincus  
General Counsel  
United States Department of Commerce  
Washington, D.C. 20230

Dear Mr. Pincus:

This responds to your letter of March 2, 2000 regarding the Anticybersquatting Consumer Protection Act, Pub. L. No. 106-113, and the precursor bill approved by the United States House of Representatives, the Trademark Cyberpiracy Prevention Act, H.R. 3028.

Your letter notes that Public Law No. 106-113 directs the Secretary of Commerce, in consultation with the Patent and Trademark Office and the Federal Election Commission, to conduct a study and report to Congress on the use of domain names that include the personal names of government officials, official candidates, and potential official candidates in a manner that disrupts the electoral process or the public's ability to access accurate and reliable information regarding such individuals. *Id.*, section 3006. You indicate that your letter is intended to assist the Department of Commerce in the preparation of this report.

You also explain that H.R. 3028, if it had been enacted, would have mandated the establishment of a second-level domain name under the ".us" top level domain name for the sole purpose of registering candidates for political office. Your letter states that you would like to examine the merits of establishing a domain name system akin to that outlined in H.R. 3028, and that you would also appreciate the FEC's guidance as to alternative methods of protecting the public consistent with the First Amendment.

The relevant provisions of H.R. 3028 are as follows. Section 9(a) of H.R. 3028 would have directed the Secretary of Commerce to "require the registry administrator for the .us top level domain to establish a 2nd level domain name for the purpose of registering only domain names of the President, Members of Congress, United States Senators, and other current holders of, and official candidates and potential official candidates for, Federal, State, or local political office in the United States." Section 9(b) would have directed the Secretary of Commerce, in consultation with the Federal Election Commission, to "establish guidelines and procedures under which individuals may register a domain name in the 2nd level domain

If I can be of any further assistance as you prepare your Report to Congress, please do not hesitate to contact me at 694-1650. You may also contact Paul Sanford of my staff, at 694-1578. We would be happy to provide whatever assistance we can as you formulate recommendations on these difficult issues.

Sincerely,

Lawrence M. Noble  
General Counsel

name established pursuant to subsection (a).” The bill also would have required the Federal Election Commission to “establish and maintain a list of individuals eligible, under the guidelines established pursuant to subsection (b), to register a domain name in the 2nd level domain name established pursuant to subsection (a).” Section 9(c).

Your letter raises the possibility of the FEC serving as the registry administrator, and having in place a viable domain name registration system by December 31, 2000. However, our review of H.R. 3028 indicates that even if that bill had been enacted into law, the FEC would play a more limited role. We were unable to identify any provision in H.R. 3028 that specifies that the FEC would serve as the .us registry administrator. Although the bill would have required the FEC to maintain a list of eligible individuals, section 9(a) states that “the Secretary of Commerce shall require the registry administrator for the .us top level domain to establish a 2nd level domain name for the purpose of registering” candidates and officeholders. Thus, this provision appears to place the responsibility for administering the second level domain name on the registry administrator for the .us domain.<sup>1</sup> Therefore, even if H.R. 3028 had been enacted, the Commission would not have had the statutory authority to assume the responsibility of serving as the registry administrator.

With regard to the list of eligible individuals, given the large number of Federal, state and local candidates and officeholders, compiling and maintaining a complete list of all persons who are eligible would likely be a sizable undertaking. H.R. 3028 did not become law, and no similar requirement exists in Public Law No. 106-113. The Commission does not have the resources to assume responsibility for a task of this magnitude.

Your letter seeks guidance on alternative ways of protecting the public consistent with the First Amendment. The Commission would be willing to take certain actions with respect to Federal candidates that would further the interests of consumer protection. For example, the Commission could revise its reporting and disclosure forms for federal candidates and federal political committees to enable candidates and committees to provide the Internet addresses of their official web sites. The Commission would also be willing to maintain a list of the official web sites of all current federal candidates and all active federal political committees, and would make that list available on the FEC web site. Given sufficient lead time, the Commission could begin using the revised forms at the start of the 2002 election cycle. This would, we believe, increase the public’s ability to access accurate and reliable information regarding Federal candidates and officeholders. See Public Law No. 106-113, section 3006(a)(4).

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<sup>1</sup> Currently, the U.S. Domain Registry is administered by the Information Sciences Institute of the University of Southern California (USC-ISI). <<http://www.nic.us>>.