



John F. Sturm
President and CEO

November 17, 2010

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on Judiciary
United States Senate
Washington, DC 20510

Re: S. 3804, the Combating Online Infringement and Counterfeits Act

Dear Chairman Leahy and Ranking Member Sessions:

I write on behalf of the Newspaper Association of America (NAA) in support of S. 3804, the Combating Online Infringement and Counterfeits Act (COICA). NAA represents the interests of more than 2,000 newspapers in the United States and Canada, accounting for nearly 90 percent of daily U.S. newspaper circulation. We see COICA as an essential step in the right direction in the effort to combat online intellectual property infringement, and we look forward to working with you on the legislation as it moves forward.

Protection of the intellectual property that our members create is crucial to newspapers' ability to serve the American public. Newspapers, now operating on multiple digital platforms, remain the primary source for original journalism in the United States. A study released in January 2010 by the Pew Research Center's Project for Excellence in Journalism demonstrates that, while new methods to access news continue to proliferate, most of what the public learns "is still overwhelmingly driven by traditional media — particularly newspapers."¹ Freedom of the press is not free. The significant costs associated with global, national, regional and local newsgathering cannot be sustained if our industry cannot protect the integrity of our publishing process. A study released last week found that in one five-month period, 400,000 full copies of news articles were republished without consent across 44,906 websites.² The scope of this massive level of copyright infringement presents a clear threat to our industry's ability to continue to gather the news on which the health of our democracy relies. Newspapers' concern in this area is not the personal use of newspaper-generated content, but rather its use for someone else's commercial benefit, which undermines the investments that newspapers make in journalism.

Protecting intellectual property is far from incompatible with protecting freedom of expression; in fact, these two freedoms are inextricably linked under our constitution and our economy. As the Supreme Court has noted, copyright is an "engine of free expression" because it "supplies the economic incentive to create and disseminate ideas."³

We believe that COICA's narrowly tailored provisions support free discourse online. COICA can result in a site being blocked *only* if the site already is subject to civil forfeiture or "is primarily designed, has no demonstrable, commercially significant purpose or use other than, or is marketed by its operator" to offer infringing material. Such a site cannot be said to contribute to online discourse. Instead, such a site undercuts free discourse by undermining copyright's incentive for the creation of original works of expression.

¹ Pew Research Center Publications, *How News Happens — Still: A Study of the News Ecosystem of Baltimore* (Jan. 11, 2010), available at http://www.journalism.org/analysis_report/how_news_happens.

² See Report Says More Than 400,000 Articles Republished Illegally Online, *Editor & Publisher*, November 1, 2010, available at <http://www.editorandpublisher.com/Headlines/report-says-more-than-400000-articles-republished-illegally-online-63242-.aspx>.

³ *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985).

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COICA's injunctive remedies, moreover, are entirely consistent with traditional domestic copyright enforcement tools and international norms that have coexisted with free expression for decades. The Copyright Act of 1976 authorizes courts to "grant temporary and final injunctions on such terms as [they] may deem reasonable to prevent or restrain infringement of a copyright."⁴ In the online context, takedown of infringing websites for copyright violations predates COICA. For instance, earlier this year, the U.S. Immigration and Customs Enforcement and the Department of Justice seized the domain names of nine sites which streamed pirated movies, resulting in the sites redirecting visitors to a special page informing them that the sites were no longer online.⁵

Because COICA is consistent with traditional copyright approaches, its impact on foreign consumers of information is not novel. An injunction issued against a domestic publisher of infringing books under the Copyright Act may have the effect of diminishing access to the infringing material abroad, but courts' ability to issue such injunctions has never been questioned for that reason. Similarly, it is established that nations have the right to prevent infringing print materials from entering their borders.⁶ COICA merely applies these long-established principles online.

NAA's member newspapers have led the world in establishing rights of free expression in the United States and abroad, and we take enormous risks to gather the news in war zones and other areas where repressive regimes threaten a free press. Our voices are routinely among those sought to be silenced by regimes that wrongfully censor the Internet. We stand second to no organization in our opposition to Internet censorship. However, the notion that repressive governments will apply COICA's methods to restrain speech is unpersuasive.

When authorities in Iran, Sudan or China decide to stop their own citizens from accessing journalistic sources on the Internet, do they eagerly await the precedent established by the United States Congress to help guide their actions? When repressive regimes shut down opposition websites, do they ensure that these sites provide "no demonstrable, commercially significant purpose or use" that is permissible before silencing them? When these regimes silence their own citizens, do they provide full rights of access to independent courts with life-tenured judges, subject to two layers of judicial review, to ensure that no site is wrongly taken down? In all these cases, the answer is clearly and self-evidently "no." COICA includes all of these protections to ensure that any overzealous or mistaken actions can be swiftly corrected. We commend the bill's authors for including these protections. If these procedures were mimicked by regimes that censor the Internet, free expression would be furthered, not undermined.

In sum, we believe COICA to be a step in the correct direction. The bill's new protection against sites which exploit copyrighted and trademarked works sends a proper signal to the international community regarding the United States' commitment to protecting intellectual property while fully protecting and honoring free expression. We look forward to further discussion as the process moves forward.

Respectfully submitted,



John F. Sturm
President and CEO

cc: Members, Committee on Judiciary

⁴ 17 U.S.C. § 502(a).

⁵ See more at <http://www.ice.gov/news/releases/1006/100630losangeles.htm>.

⁶ See, e.g., 17 U.S.C. § 602. See also TRIPS Art 44, 46, 50.