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To: SABRINA MCLAUGHLIN, **From:** Joe Sandler
ESQ.

Fax: 202 482 0512 **Pages** 4 INCL COVER

Phone: **Date:** 4/21/2000

Re: **CC:**

 Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

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April 21, 2000

Via E-Mail and Facsimile

Department of Commerce
Room 5876
14th & Constitution Aves., N.W.
Washington, D.C. 20230

Attention: Sabrina McLaughlin, Esq.

Re: Notice and Request for Public Comments: Abusive Domain Name Registrations Involving Personal Names; Request for Public Comments on Dispute Resolution Issues Relating to Section 3002(b) of the Anticybersquatting Consumer Protection Act

Dear Ms. McLaughlin:

We are pleased to submit these comments on behalf of our client, the Democratic National Committee ("DNC"), in response to the Department's Notice and Request for Public Comments, 65 Fed. Reg. 10763 (Feb. 29, 2000).

The DNC's interest in this request is prompted by the Congressional mandate in the Anticybersquatting Consumer Protection Act, P.L. 106-113, section 3006, that the Department consider and recommend guidelines and procedures for:

protecting the public from registration of domain names that include the personal names of government officials, official candidates, and potential official candidates for Federal, State or local political office in the United States, and the use of such domain names in a manner that disrupts the electoral process or the public's ability to access accurate and reliable information regarding such individuals; . . .

Currently, candidates for public office, as well as party committees, face two central problems relating to the registration of domain names. First, candidates who want to establish an official web site for their campaigns may find that other persons and organizations have already registered domain names using various forms of the candidate's name, and that some of such persons and/or organizations have indeed registered those domain names with the intent to profit by selling the domain name to the candidate for financial gain. A number of domain names including the names of political

party committees have also been registered with the intent to profit by selling the domain name for financial gain.

Paying cybersquatters for domain names should not become a routine cost for candidates or party committees wishing to disseminate information through web sites that are identified by a domain name logically associated with the candidate or the party. Neither the Lanham Act nor common law theories of unfair competition can be used to protect a candidate or party committee in these circumstances. While the ICANN dispute resolution procedure may yet prove to be a valuable tool for candidates and party committees in these circumstances, the short time periods involved in political campaigns may limit the usefulness of this procedure. Rather, the DNC believes that the Anticybersquatting Consumer Protection Act should be amended to clarify that it does apply to the registration of domain names including the names of political candidates, who have qualified for the ballot in any state, where such registration has been undertaken with the intent to profit by selling the name to the candidate.

A second problem faced by candidates is voter confusion arising from a multiplicity of sites with domain names including the candidate's name, where such sites are created by individuals and organizations in order to parody or criticize the candidate, rather than for profit. Where a group of such individuals or such an organization is treated as a federal political committee under the Federal Election Campaign Act of 1971 as amended, 2 U.S.C. § 431(4), the FECA would prohibit use of the candidate's name in the name of the other group, unless the other group was an independent expenditure committee officially organized to oppose the candidate. 2 U.S.C. §432(e)(4); 11 C.F.R. §102.14(a). Further, such a group or organization, if treated as a federal political committee under FECA, would be required to register and file reports with the Federal Election Commission ("FEC"), and would be required to abide by limits on fundraising. Similar restrictions could apply under state laws.

The federal campaign finance regime, however, is not designed as a mechanism to prevent deception and confusion of voters through unofficial web sites, and it is ill-suited to that purpose. Moreover, any effort to impose regulatory burdens on the creation of unofficial web sites designed to criticize or parody a candidate must be weighed against the First Amendment interest in protecting such communications. *See, e.g.,* Center for Democracy and Technology, "Square Pegs & Round Holes: Applying Campaign Finance Law to the Internet; Risks to Free Expression and Democratic Values", pp. 18-19 (1999).

For this reason, the DNC supports steps that would easily enable voters to locate and identify the official web sites of candidates and party committees, and to distinguish those sites from unofficial sites. These steps should include:

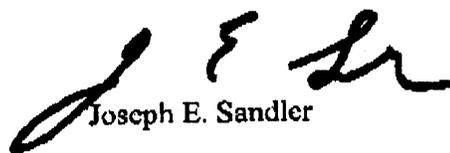
- (1) Development by the FEC and state election authorities of an official list of web sites of the authorized committees of candidates and of recognized party committees. Inclusion on such a list should be triggered, in the case of candidates, by filing a statement of candidacy with the FEC and/or

qualifying for the ballot in a state; and, in the case of party committees, by filing as a statutory party committee under federal or state law (in the case of a national party committee, registration with the FEC or, in the case of a state or local party committee, with the relevant state election authorities). Such a list should be maintained on the official web sites of the FEC and of each state election authority, with links to the official sites of the candidates and party committees included on the list.

- (2) Development by the FEC and by the state election authorities, collectively, through an organization such as the National Association of Secretaries of State or COGEL, of a seal or symbol that could lawfully be placed only on official candidate and party committee sites.
- (3) Creation of a new subdomain of the ".us" top-level domain, which would be reserved by federal law or regulation for the official sites of candidates and party committees as included on the FEC and state government lists. One possibility that has been suggested would be to create a short subdomain name such as ".pol.us" or ".elect.us."
- (4) A systematic effort to publicize such a new subdomain name to the public and to encourage all firms hosting and operating search engine and portal pages to list or link to the official sites of candidates and party committees and/or the official lists maintained by the FEC and state election authorities.

The DNC appreciates the opportunity to submit these brief comments and strongly supports the effort by the Department to develop and, as necessary, recommend to the Congress new steps and procedures to address these important issues.

Respectfully submitted,



Joseph E. Sandler

To: Domain Name@Leg@OGC
From: S=sandler/C=US/A=INTERNET/DDA=ID/sandler(a)sandlerreiff.com
Cc:
Subject: DOC Request for Comments re Abusive Domain Name Registrations
Attachment: dnc doc cybersquat comments.doc,MIME.MSG
Date: 4/21/00 10:49 AM

Attached on behalf of our client, the Democratic National Committee, are comments in response to the Department's Request for Comments: Abusive Domain Name Registrations Involving Personal Names.

The attachment is in Word format.

We are also sending a copy by fax.

Thank you for your time and attentio to this matter.

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