

a) Personal Names.

Personal names should be protected against bad faith, abusive, misleading and unfair registration and use as domain names. It should be recognized that persons have a right of publicity, and the right to personally exploit their own names for commercial gain.

Determining what is a personal name worthy of protection should involve a test of intent, in light of the totality of the circumstances. The test should be developed under the ICANN Uniform Dispute Resolution Policy, using a *stare decisis* method whereby previous decisions create precedent for future decisions. Free speech should also be a consideration. What would constitute free speech in the "real world" should also be protected as such in cyberspace.

The names of famous or well-known people and public persons should be protected, when registered and used improperly. Which people are famous or well-known should be determined on the basis of evidence, and in light of the intent of the domain name registrant in registering the domain name. Any type of name, including first and last names, surnames, nicknames, fictitious characters, and combinations of these should be protected. The same is true of public persons and deceased persons. Public domain, however, should be a consideration, and a name in the public domain should be considered available for use by anyone, as for example SHAKESPEARE, assuming there is no preexisting usage in the same field which would lead to confusion.

The use of a personal name which has been "trademarked" in the domain name registrant's home country should be strong evidence that the domain name was registered improperly, and the domain name registrant should be imputed with constructive knowledge of the registration, adding to the bad faith argument.

Use of a web site associated with the domain name which defames the famous or well-known person should be subject to not only the laws of the jurisdiction with which there are minimum contacts, including the residence of the person, but should also be a basis for cancellation of the domain name.

However, a person should be allowed to use their own name on the Internet provided the use of the name will not conflict with trademark or publicity rights. Non-commercial use of a person's own name should be acceptable, particularly in the new .NAME domain. In order to avoid confusion, although not particularly desirable, disclaimers could be used indicating that the domain name is in no way associated with the famous or well-known person.

Further, the ICANN Dispute Resolution Policy should be broadened to allow Panels to provide remedies other than merely requiring the transfer of the domain name, such as requiring a legitimate registrant to place a disclaimer on his or her Web site

in order to avoid confusion, or requiring a link from the Web site to the famous or well-known person's Web site.

b) International Nonproprietary Names (INNs) for Pharmaceutical Substances.

INNs should be protected against the registration and use by one other than those persons or companies for whom they were created. The use of domains by manufactures under the structure "[INN][name of manufacturer]" will help to prevent confusion. If a person registers an INN in good faith, either not knowing that the word was an INN, or not attempting to make improper use of the INN, that person should still not be allowed to keep the registration, under the current system.

If, however, a better system is developed, it would be possible for the same domain names to coexist in different "classes" without confusion. The applications recently selected by ICANN for new domains is a decent starting point for classifying domain names according to function and purpose. For example, .AERO holds the potential to be a well-defined domain which will prevent confusion, and provide an easily accessible locale for information concerning airlines, airports etc.

The author has previously proposed in magazine articles and speeches in multinational venues, an even more comprehensive system, corresponding to the Nice International Classification System used for so long with success in respect of trademarks. Under the authors proposed system, there would be two categories of gTLDs, commercial and non-commercial. The non-commercial (.NONCOM) category would be reserved for solely non-commercial uses such as chat rooms or message boards. Commercial use of one of these domain names would lead to the cancellation of the registration, with the right to apply for a commercial domain.

The commercial category would be broken up into classes corresponding to the Nice System. A company named APPLE, for example, wishing to do business in the chemical industry would register APPLE.1, corresponding to International Class 1 in the Nice System relating to chemicals used for industry. If this same company was in the business of packaging for the sale of food products, they would register in Class 39, or APPLE.39. This system would allow this company to peacefully coexist with the APPLE computer company which would register its domain name in International Class 9.

The system would make the Internet much more organized and would allow computer users to find what they are looking for by "dialing up" the class in which the information would fall. Computer users in time would most likely have as good an understanding of the Nice System as trademark lawyers. When first introduced, however, a general summary of the Nice classes could be displayed on the side of the computer screen.

The proposed system would also encourage domain name registrants to first obtain a trademark registration for the domain, and a person with a trademark registration

for the domain would have priority over those without such a registration. Encouraging people to first obtain a trademark could help to prevent "warehousing" whereby a person registers many domain names in the hope of later reselling them, as the costs and time associated with obtaining domain names would remove the incentive to warehouse.

c) Names of International Intergovernmental Organizations.

The names of International Intergovernmental Organizations, such as WIPO, should be protected in accordance with the rules outlined above, namely they could not be registered and used in bad faith, which would be determined by the knowledge and intent of the registrant and the overall circumstances surrounding the registration. Further, the use of the name of the Intergovernmental Organization should be halted, even if originally registered in good faith, if it would lead the public to believe that the registrant was somehow associated with the Intergovernmental Organization. The ICANN Dispute Resolution Policy would be used to determine likelihood of confusion.

d) Geographical Indications, Indications of Source or Geographical Terms.

Whether the use of geographical indications would be allowed should be determined under the tenants of trademark law, such as the Paris Convention, the Madrid Agreement, the Lisbon Agreement and TRIPS, as interpreted by the ICANN Dispute Resolution panels.

Stringent rules should also be implemented in respect of those who register domains such as BR.COM, and then later resell the third-level domain, such as WIPO.BR.COM, advertising the domains as denoting a particular country, such as in this example, Brazil. As .COM is a gTLD, registration and use of .BR.COM will cause confusion and has the potential to tarnish the reputations of countries who may be associated with the material displayed on Web sites under these domains.

Country Code Top-Level Domains (ccTLDs) should be protected in accordance with the standards propounded by the government of the country in which the ccTLD emanates. Countries should be persuaded, however, to agree to be bound by the ICANN Dispute Resolution Policy, as some countries already have, in order to achieve harmonization in respect of the Domain Name System (DNS).

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