

DOMAIN NAMES: CYBERSQUATTER PREVENTION

The success or failure of a company's presence on the Internet may depend on its Domain Name and the goodwill that attaches to it. As more and more companies and individuals embrace the Internet and e-business the registration of Domain Names is increasing at an almost geometric rate.

A classic feature of the Internet is that the laws and regulations that may apply to it lag behind the practical developments. One issue that has become particularly prevalent is the registration of a Domain Name and the conflicts and disputes which may arise from it. The press is continually reporting instances of "cybersquatting" where a person knowingly registers the name or trademark of another to either exploit the goodwill of the name or alternatively attempt to sell it at an inflated price. This booklet offers practical guidance to assist in preventing such "cybersquatting". Specific advice should be obtained on the law and possible remedies should an instance of cybersquatting be encountered.

WHAT IS A DOMAIN NAME?

The numerical electronic address of the computer, which links the website to the Internet, is attached, for ease of use, to the Domain Name. For example, warner-cranston.com is the Domain Name of Warner Cranston.

LEVELS OF DOMAINS

There are two levels of Domain Names: **Top Level** and **Second Level**.

The Top Level Domain Names are currently divided into two schemes. These are the generic Top Level Domains and the country code Top Level Domains.

The generic Top Level Domains are as follows:

- .com for commercial organisations.
- .net for network organisations.
- .org for miscellaneous organisations.

The country code Top Level Domains relate to specific countries. For example, .uk for the United Kingdom and .fr for France. These are then subdivided into second level domains such as .sch, .co and .ltd.

IS THE REGISTRATION REGULATED?

A generic Top Level Domain Name can be registered through any company accredited by the Internet Corporation for Assigned Names and Numbers (ICANN). Whilst the registration organisations require any applicant wishing to register a Domain Name to warrant that the request does not infringe a third party's rights, registration is on a first come, first served basis and no other searches are made (for example of the trademark registry). This essentially gives rise to the possibility of cybersquatting, although ICANN has set up a dispute resolution body to which an applicant can apply to obtain the cancellation or transfer of a Domain Name. This procedure has recently been successfully utilised by the World Wrestling Federation against a Californian, Mr Michael Bosman, who had registered the Domain Name "www.worldwrestlingfederation.com".

The country code Top Level Domains are registered by national organisations, such as Nominet U.K. in the United Kingdom, and these also have a dispute resolution policy in an attempt to prevent cybersquatting. Again registration of these domain names are on a first come, first served basis.

DEVELOPMENTS

One of the primary problems with the Domain Name schemes are that there are not enough names to go round. ICANN are currently considering releasing the following seven generic Top Level Domains:

- .web primarily for any web based business.
- .shop primarily for retail business.
- .firm to accommodate businesses that have been unable to obtain a .com registration.
- .info for information stylised websites.
- .arts as an alternative to .org.
- .rec for business providing recreation and leisure services.
- .nom for personal domain names.

It is anticipated that these will be released in spring of this year. An exact date has not yet been established but at the recent meeting of the ICANN board in Cairo on 10 March 2000 it was resolved that the Names Council submit recommendations on the introduction of these new generic Top Level Domains, particularly taking into account the protection of globally famous trademarks, no later than 20 April 2000. It is anticipated that these domains will be released shortly thereafter. One of the major stumbling blocks has been the political tension that has existed between the United States and the European Union over who will have primary responsibility for the regulation of the Domain Name system.

It was also announced by the European Commission in January that it proposes to apply to ICANN for the registration of a .eu domain to strengthen the infrastructure for e-commerce in Europe. It is likely that approval by ICANN of this domain will take longer than the seven referred to above.

PRACTICAL STEPS

Companies should employ a strategy for the registration of their Domain Names with particular consideration given to the prevention of cybersquatting. This is especially important as the release of the seven generic Top Level Domains will no doubt lead to a flurry of activity by cybersquatters.

In deciding what Domain Names to register, large companies should certainly consider registering all derivatives of their name and trademark to include misspellings and hyphenated alternatives. Indeed, some companies go as far as registering detrimental alternatives such as [companyname]sucks.com. The benefit of this will be twofold. Firstly, it reduces the possibility of cybersquatting and secondly, as all registered alternatives can be routed to the one correct address, which should be the only Domain Name advertised, any customer or client who inadvertently uses one of the derivatives will automatically obtain the correct and official website.

As the Internet has global reach registration of international variants under the country code Top Level Domain should also be considered. Care must be taken here however, as there may be a company in the different country with the same, or a similar name, that is also a national registered trademark. Specific advice should be obtained and inquiries made to prevent any inadvertent cybersquatting arising.

Whilst the Internet remains, to a large extent, unregulated and the case law attempts to catch up, companies should give full consideration to the registration of Domain Names and adopt an appropriate strategy to obtain maximum protection from cybersquatting. As the generic Top Level Domains will shortly be released, such strategy should be considered as soon as possible so that upon such release appropriate steps can be taken.

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