

Preface

I originally became interested in Internet domain names when I first learned of their existence in the mid-1990s. I had recently embarked on an academic career and was looking for a direction for my scholarly agenda. It seemed to me that domain names made for an extremely interesting subject of study. They were unlike any other form of intangible ‘property’ (for want of a more appropriate term). Like digital copyright works, domain names were valuable virtual assets. However, unlike copyrights, domain names were rivalrous. Only one person could own a given domain name at any given time. This led to a new set of questions about online property. While nonrivalrous digital copyright works raised issues of how to prevent uncontrolled online copying, domain names potentially raised the opposite problem – scarcity.

Even as the number of available generic Top Level Domains (gTLDs) and country code Top Level Domains (ccTLDs) has increased over the years (and will continue to increase)¹ only one person can hold any given iteration of a domain name at any one time. While Anna holds ‘domain.com’, Bill cannot own it, even though he might own ‘domain.net’ or ‘domain.co.uk’. Domain names also differ from other digital assets in that they are simultaneously technological addresses and intuitive labels for the online presence of a person or organization. Courts have struggled to find an appropriate classification scheme for domain names. The names have been likened both to an intangible property right² and to a mere technological addressing system.³ Domain names are also creatures of contractual license between a registrar and a registrant.⁴

The most immediate problem with domain names in the 1990s was the fact that domain names are very much like trademarks. They can indicate the source of products or services by incorporating a trademark: for

¹ ICANN, new gTLD Program, available at www.icann.org/en/topics/new-gtld-program.htm, last accessed October 19, 2009 (program to increase available generic Top Level Domains).

² *Kremen v Cohen*, 337 F.3d 1024 (9th Cir. 2003) (finding domain name to be property for the purposes of the Californian statutory tort of conversion).

³ *Lockheed Martin v Network Solutions*, 194 F.3d 980 (9th Cir. 1999).

⁴ *Network Solutions v Umbro International*, 529 S.E.2d 80 Va. (2000).

example, 'nike.com'. This opened the possibility for all kinds of trademark abuses, starting in the early days of the system with good, old-fashioned cybersquatting. Cybersquatting refers to the practice of registering domain names corresponding with other people's trademarks in an attempt to extort money from trademark holders for transfer of the names.⁵ Because trademark holders were the most powerful lobby group impacted by these domain name practices, much of the discussion of domain name regulation from the 1990s onwards has focused on the protection of trademarks in the domain space.

This book is the first comprehensive discussion of issues that can arise in the domain space outside of traditional cybersquatting. It has now been ten years since the Internet Corporation for Assigned Names and Numbers (ICANN)⁶ adopted the Uniform Domain Name Dispute Resolution Policy (UDRP)⁷ to address global concerns about cybersquatting. This book raises questions about what we have learned in the ensuing years about domain name regulation. It addresses the limitations of existing regulatory regimes when confronted with competitions between multiple legitimate trademark holders; free speech issues; the desire to protect individual names and identities in the domain space; the need to facilitate democratic discourse; and the need to protect cultural and geographic indicators online.

This book has been a long time coming, and I have a number of people to thank for their help and support in its preparation. Much of the material in the following pages is developed from my earlier work on domain name regulation. I would like to acknowledge and thank the editors of the following publications for all their help, support and editorial expertise in preparing the articles that preceded this book: Lipton, *Bad Faith in Cyberspace: Grounding Domain Name Theory in Trademark, Property, and Restitution*, HARVARD JOURNAL OF LAW AND TECHNOLOGY (forthcoming, 2010); Lipton, *From Domain Names to Video Games: The Rise of the Internet in Presidential Politics*, 86 DENVER UNIVERSITY LAW REVIEW 693 (2009); Lipton, *Celebrity in Cyberspace: A Personality Rights*

⁵ Jonathan Nilsen, *Mixing Oil with Water: Resolving the Differences Between Domain Names and Trademark Law*, 1 J. HIGH TECH. L. 47, 51 (2002) ('Cybersquatting has been defined several ways. The most general definition of a cybersquatter is a person who registers a domain name that matches a well-known company for the purpose of ransoming it to that company.')

⁶ ICANN is the body that administers the technical (and some of the policy) aspects of the domain name system. See www.icann.org for more information.

⁷ See www.icann.org/en/udrp/udrp-policy-24oct99.htm, last accessed October 19, 2009 (full text of the UDRP).

Paradigm for a New Personal Domain Name Dispute Resolution Policy, 65 WASHINGTON AND LEE LAW REVIEW 1445 (2008); Lipton, *A Winning Solution for YouTube and Utube? Corresponding Trademarks and Domain Name Sharing*, 21 HARVARD JOURNAL OF LAW AND TECHNOLOGY 509 (2008); Lipton, *Who Owns 'hillary.com'? Political Speech and the First Amendment in Cyberspace*, 49 BOSTON COLLEGE LAW REVIEW 55 (2008); Lipton, *Commerce versus Commentary: Gripe Sites, Parody and the First Amendment in Cyberspace*, 84 WASHINGTON UNIVERSITY LAW REVIEW 1327 (2006); and, Lipton, *Beyond Cybersquatting: Taking Domain Name Disputes Past Trademark Policy*, 40 WAKE FOREST LAW REVIEW 1361 (2005).

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