Chapter 18
An Indian Legal Perspective to Protection of Domain Name: An Analysis

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ABSTRACT

Domain names are no longer treated as only providing an address for computers on the Internet but are treated as trademarks in relation to commercial activity of a particular company or business. With the expansion of telecommunication, it has become essential for business houses to protect their trade name from cyber squatters or cyber pirates. Some of the countries like US have developed a specific legislation for the protection of domain names, but in India the Information Technology Act, 2000, is limited to e-commerce only and fails to acknowledge this sensitive issue. The present chapter is an attempt to highlight the problem of domain names, the legislation laid down in US, specifically to deal with the problem of cyber squatters or cyber pirates, and dispute resolution mechanisms laid down by ICANN. The chapter further suggests the need for specific legislation in India along with other alternatives.

INTRODUCTION

“What is in name?”\(^1\) A famous quote proves redundant in the era of Internet. Whether it is Julia Roberts or Rattan J D Tata or Arcelor Mittal or Punjabi pop singer Daler Mehndi or Miss Universe Sushmita Sen, everyone is protecting his or her name in the domain world not be used for trade purposes through the Internet. In today’s competitive world domain name is not only an address for computers on the Internet but a corporate asset. A domain name is the Internet equivalent of a telephone number or a geographical address. The communications format used on the Internet is known as the Internet Protocol (IP)\(^2\). As part of the IP, Internet addresses are comprised of a string of digits delimited by periods (commonly called “dots”). The delimited field indicates the network, sub-network and the local address, read from left to right.
A typical Internet address might appear as ‘11.23.55’ where ‘11’ denotes the network, ‘23’ denotes the sub-network and ‘55’ denotes the computer itself. This all-numeric form is known as the IP address. As with IP addresses, domain names are also delimited with periods (dots), which are read from right to left. Thus, the domain name ‘microworld.com’ indicates ‘.com’ as the network and ‘microworld’ as the sub-network. The domain name at the extreme right is called the ‘Top Level Domain’ (TLD) and any domain to the left of the TLD and separated by a ‘.’ (dot) is the Second Level Domain (SLD). A domain to the left of the SLD is known as the Sub-domain (SD). The Sub-domain, Second Level Domain and the Top-Level Domain put together comprise a ‘Domain Name’. Thus, in the domain name ‘law.microworld.com’, ‘.com’ is the TLD, ‘microworld’ is the SLD and ‘law’ is the SD. There are two types of Top Level Domain Names, Generic and Geographic:

Generic Top Level Domain Names are: - .com (commercial use), .edu (educational institutions), .org (non-profit organizations), .net (Networking providers), .gov (Government organizations), .int (International treaty organizations), .mil (Defence). Network Solutions Inc (NSI) as part of the InterNIC issues generic domain names. Generic domain names are unique to the entire world. To register a domain name with NSI, one needs to visit the InterNIC Website and fill in the forms and comply with the other stipulated formalities. Generally, NSI assigns domain names on a first come, first served basis. NSI will not exercise veto power over a requested name, so long as that name is not identical to one already assigned within the TLD.

**GEOGRAPHICAL TOP LEVEL DOMAIN NAMES**

Geographical TLDs end with a two-letter code, which is assigned to each country. For example, ‘.in’ (India), ‘.fr’ (France), ‘.aus’ (Australia), ‘.uk’ (United Kingdom) and so on. Each country has an agency that handles registration of geographical domain names. These agencies are also known as Network Information Centres (NIC). Each country has its own registration policy and domain names ending with a geographical TLD are issued only to persons operating within the said country. Domain Names are unique as no two Domain Names are same and the method of allocation of Domain Name is by registration on ‘first come first served basis’. Contrary to general belief a Domain Name is not just an address, a significant purpose of a Domain Name is to identify the entity that owns the Website.

**Acquiring a Domain Name**

An individual or an entity can employ a Domain Name only after they have registered the Domain Name for their use. The organization responsible for overall coordination and management of the DNS is the ‘Internet Assigned Number Authority’ (IANA). In the U.S today the major part of the assignment of the Domain Name is done by the registry called as the ‘Network Solutions Inc’ (NSI). The world over the assignment and registration of Domain Names are carried out by registries called as ‘Network Information Center’ (NIC). However, the most significant development in the world of Internet has been the establishment of the non-profit organization called the ‘Internet Corporation For Assigned Names and Numbers’ (ICANN). It is a global organization created in October 1998 by a broad coalition of the Internet’s business, technical, academic and user communities. ICANN is assuming responsibility for a set of technical function previously performed under the U.S Government contracted by IANA and other groups. The ICANN today is responsible for managing and coordinating the DNS to ensure ‘Universal Resolvability’. ICANN main function is to develop and manage Internet policy and logistics related to (1) Internet Protocol, (2) IP address, and (3) Domain Names.