
REGISTRATION OF DOMAIN NAMES AND ITS ADMINISTRATION

Jagadish A.T

Assistant Professor of Law, JSS Law College, Autonomous,
New Kantharaje UrsRoad, Kuvempunagar, Mysuru, Karnataka, India.

Pavni Randeo

Student, JSS Law College, Autonomous,
New Kantharaje UrsRoad, Kuvempunagar, Mysuru-570023 Karnataka, India.

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Abstract: The information available on the internet with no title under which the information on the particular area is stored would put the information accesser in trouble. So, one has to spend a lot of time looking through each paper to get information. The existence of Domain Names or Uniform Resource Locator's (URL's) has made it convenient for the information accesser. Domain names are one of the most important types of the cyber properties. Consequently, they are objects of many high-profile legal battles in the field of Cyber Law as well as under Intellectual Property Law.

Every computer on the public Internet has a unique numeric address—similar to the uniqueness of a telephone number—which is a string of numbers that is difficult for most people to remember. This string is called the 'IP addresses. IP stands for 'Internet Protocol.' To make it easier to find a given location on the Internet, the Domain Name System, or DNS, was invented. The DNS translates IP addresses into unique alphanumeric addresses called domain names that are easier to remember. If, for example, you would like to visit the ICANN website, would you rather remember the IP address 192.0.34.163, or type "www.icann.org" By associating a familiar string of letters—the domain name—with an IP address, the DNS makes it much easier for internet users to remember websites and email addresses. In the example above, the "icann.org" part of the address is called the domain name. Domain names can also be used to send email. Whether you are sending business or personal communications, you want to be certain that your message is directed to the intended addressee.

Keywords: Domain Name, Internet Protocol Address, Internet Corporation of Assigned Names and Numbers (ICANN), Trademark Law.

Introduction: Domain names are used as an alternative of IP address and it has become one of the cornerstones of the Internet¹. It is important to note that IP Address² is generally long and it is not easy to remember and also it is not eye and ear catching. It is easy to remember a person by his name rather than his number. Instead of using a number to represent a person it is always preferred to use user friendly name which is eye and ear catching. Since IP address do not have this quality there came a concept of Domain Name. It is the alpha-numeric string granted by Domain Name Registrar or any competent authority as an electronic address on internet. However it does not correspond to original IP address on internet but it is substitute of IP address or it is a proxy name of IP address. The Domain Name and IP address, relationship is one way i.e., there can be several domain names pointing to one IP address but vice versa is not possible. In the last 25 years, domain name has become a kind of e-commerce mark in the digital medium.

Domain Name Management:

A domain name is simply a number string, which corresponds to the numerical internet protocol address of the computer on the internet, while DNS is established to translate a domain name into an IP address. So instead of typing 152.78.128.78, one can type www.soton .ac.uk. There are two types of domains: one is ccTLDs, such as .uk, .us, .in, and .cn and the other is gTLDs, such as .com, .edu and .net. The ICANN is primarily responsible for ensuring that the IP addresses correspond to the correct domain

name and for gTLD and ccTLD domain names management. Since 2000, the ICANN has also worked with managers of ccTLDs to document their relationship with the ICANN³.

Registration of Domain names under ICANN: The Internet Corporation of Assigned Names and Numbers (ICANN) is responsible for the management of the internet domain name system⁴. The ICANN approved the Uniform Domain Name Dispute Resolution Policy (UDRP) on October 24, 1999 which lays down the mandatory procedure for dispute resolution. The UDRP provides a mechanism for trademark owners to obtain domain names that have been fraudulently registered by cyber squatters. All registered owners of .com, .net and .org domain names (the 'Registrant') are subject to the UDRP by virtue of: (i) the registration agreements agreed with their registrars at the time of acquiring their domain names, or (ii) applying to ICANN to maintain or renew a domain name registration.

The UDRP sets forth the type of disputes for which one is required to submit to a mandatory administrative proceeding. In the event that a third party (a 'complainant') asserts and proves each of the following-

- a) That the domain name sought to be registered is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- b) That the person seeking to register the domain name has no rights or legitimate interests in respect of the domain name; and
- c) That the domain name has been registered and is being used in bad faith. The Administrative Panel will either cancel the domain name of the applicant or transfer the domain name to the complainant. The UDRP stipulates that the administrative panel decision is limited to cancellation of domain name of the applicant or for transfer of the said domain name to the complainant. No other relief can be granted by the administrative panel.

For the purpose of providing bad faith, the Panel will look for one of the following elements-

- I) Circumstances indicating that the registrant has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name; or
- II) The registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or
- III) The registrant has registered the domain name primarily for the purpose of disputing the business of a competitor; or
- IV) By using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to their web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of their web site or location or of a product or service on your web site or location.

The registrant must prove either of the following circumstances to quash the complaint filed against it-

- I) Before any notice of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- II) The Registrant has been commonly known by the domain name, even if the Registrant has not acquired any trademark or service mark rights; or
- III) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark t issue.

The submission of a dispute before the Administrative Panel does not prevent the parties from seeking other remedies. Either party has the liberty of submitting the dispute to a court of competent jurisdiction for independent resolution before the mandatory administrative proceeding is commenced or after such proceeding is concluded.

In the event of multiple disputes between the registrant and the complainant, either the registrant or the complainant may file a petition to consolidate the disputes before a single Administrative Panel. The petition should be made to the first Administrative Panel appointed to hear a pending dispute between the parties concerned. It is the sole discretion of the Administrative Panel to consolidate all such disputes.

Role of ICANN in Administration of Domain Names: ICANN is a non-profit organization that was created under the direction of the United States Department of Commerce. The goal of the organization is to facilitate privatisation of the technical management of Internet names and address, the domain name system. As part of this privatisation effort ICANN announced on April, 21, 1999, the selection of five companies to participate in a two-month test of a newly shared registration system. During and after the two-month test period, apart from network solutions Inc (NSI), America online, CORE (Internet Council of Registrars), France Telecom/oleane, Melbourne IT and register.com joined as registrars for GTLD names (General Top Level Domain Names) .com, .net, .org, .mil, .gov, .edu, .int.⁵ Prior to December 1999, a company called Network Solutions Inc ("NSI") was almost solely responsible for the registration of second level domain names for the most popular top-level domain. Since the vast majority of domain names are under one of their top-level domains (the most common being .com domain names), Network Solutions had a great deal of control over how domain names were registered, and how disputes would be resolved. To avoid having to be the arbitrator between two parties who both desire the same domain name, NSI decided to simply adopt a first come, first serve arrangement with respect to domain names. Under this scheme NSI would not question an applicant's right to have a particular domain name. If the domain name was available, the applicant was given the name. As of December 1999, the ability to register .com, .net, and .org domain names was spread out among many registrars. ICANN and NSI continues to assign domain names, but now they are just one of many domain name registrars, following NSI's precedence, all of their registrars assign names on a first-come, first serve basis, and do not do any checking before assigning a new domain name. Today on the net domain names have to be registered through one of these organizations.

Domain Name Registration Process under ICANN⁶: In order to reserve a domain, a registrant must register it with one of almost a thousand ICANN-accredited registrars. The registrar will check if the domain is available and create a WHOIS record with the registrant's information. It is also possible to register domains through a registrar's resellers.

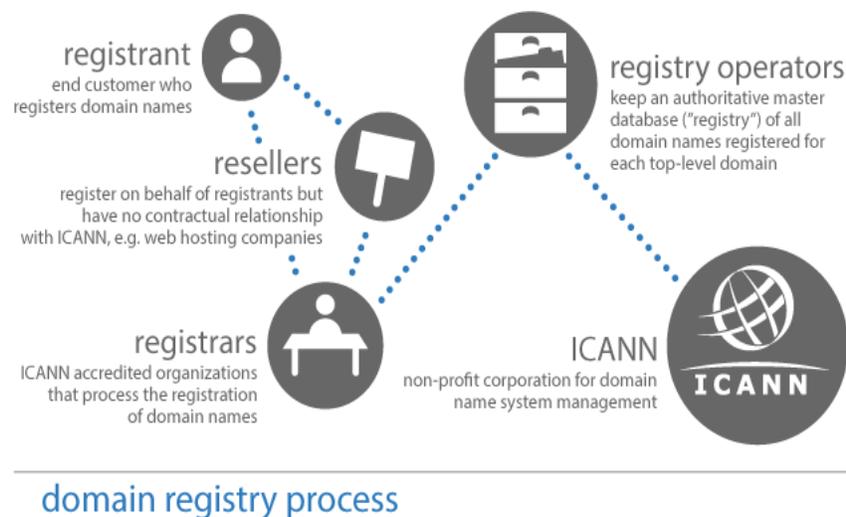


Diagram below illustrates the main functions of the parties that are usually involved in the process. A **registrant** is the person or organization who has registered the domain name. In order to do so, the registrant will usually apply online to a domain registrar or one of their resellers. The registrant is bound by the terms and conditions of the registrar with which it registers its domain name, for instance adhering to a certain code of conduct or indemnifying the registrar and registry against any legal or civil action taken as a result of use of the domain name. Registrants have certain responsibilities that are incorporated into these terms and conditions like payment of registration fees and submission and timely update of accurate data. In addition to registering the name, registrants also need to have their domains listed on name servers in order to have that domain reachable on the Internet. A registrant is responsible for procuring or hosting his or her own name server if the registrar does not offer this service or he or she has opted out of the registrar's service.

Registrars are organizations accredited by ICANN and certified by the registry operators to sell domains. They are bound by the Registrar Accreditation Agreement (RAA) with ICANN - and by their agreements with the registry operators. The RAA sets out responsibilities for the registrar including maintenance of WHOIS data, submission of data to domain registries, facilitating public WHOIS queries, ensuring registrants details are escrowed, and complying with RAA conditions relating to the conclusion of the registration period. While registrars are contracted to conduct the day-to-day business of selling domain name registrations, **registry operators** are responsible for maintaining the registry for each TLD. The responsibilities of the registry operator include accepting registration requests (whether from registrars or directly from registrants), maintaining a database of the necessary registration data and providing name servers to publish the zone file data (i.e. information about the location of a domain) throughout the Internet. The Internet Corporation for Assigned Names and Numbers (ICANN) is the international non-profit corporation that oversees the assignment of both IP addresses and domain names⁷. It has responsibility for managing root server and TLD name system management and has contractual agreements with both registries and registrars that provide the foundation for the WHOIS system.

Conclusion: Domain names are elite property of cyber world which needs adequate protection. There is a need for important role to be played by the Trade Mark Law in India to give uniform protection to domain names as that of the trade mark. Though the detection of infringement of Intellectual Property Rights in cyberspace is easy, but the effective law enforcement poses a challenge. There is a need to increase the awareness on Intellectual Property Rights through different activities such seminars, conferences, workshops etc. There shall be Intellectual Property Facilitation Centre at every district level. Industry Associations such as ASSOCHAM, CII, and NASSCOM could play important role on spreading awareness on benefits of adopting a robust IP protection strategy for all e-businesses. With regard to the domain name dispute resolution by the UDRP areas such as freedom of speech, choice of law, impartiality of panellists, incompetence of the panellists and vague definitions are expected to create problems in the smooth functioning of what would otherwise have been a comprehensive mechanism for the settlement of domain name disputes. The other problems include whether the process is fair and effective as it should be, and the answer is elusive. UDRP is considered to be better solution compared to any other solution. If the domain name dispute is within the country, then that can very effectively addressed by the local courts if the domestic laws are amended suitably to resolve Domain Name Dispute.

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