



Alternative Mechanisms for IP-Related Domain Name Registrations

Alex Tajirian

December 11, 2007

Abstract

The essay addresses the mechanism-design aspect of plausible solutions to the problem of brand-related domain name registrations. Its aim is to point out some design problems, outline a third-party management regime, and highlight a few important questions that need to be addressed as we tackle our industry's IP protection issues.

Introduction

Before companies can launch or revamp a product, they make sure a need exists and that fulfilling the need is worth the related trouble. Going by general opinion on the phenomenon of repugnant domain tasting, I'd say that the answer to the need question is yes.¹

If we believe that domain names are an important component of the Internet, we need to take the issue more seriously. But we don't have to get bogged down in all-or-nothing solutions. Incremental improvements count.

With the current Internet governance structure, there are no market disciplining forces to guide design improvements. Moreover, as a result of the competing stakeholders, the players can't agree on a performance metric.

We'll sort through many different plans as we tackle the industry's problems. At this stage, I think we should look at our basic design needs, and especially those needs that don't entirely mesh. What key goals must any worthwhile design accomplish? And what might be the tradeoffs involved?

Plausible Solutions

Here are three allocation mechanism options. Using one would not necessarily mean ruling out the others.

¹ See Alex Tajirian, "[Comparing Solutions to Repugnant Domain Tasting](#)," DomainMart.

1. *Allocate to best use*

Auctions are a natural mechanism to achieve this goal, but IP owners will not accept auctions unless they get to control the use of the associated domain name.²

2. *Third party–managed IP regime*³

Problem domains, names that use somebody else’s brand name (whether directly or as a “typo” variant), are increasing at an alarming rate. The brand owner must judge whether these problem names are value destroying and/or infringing, and then, if they are, take appropriate action. In judging and in acting, third-party management of such domains would add value to the owner.

The IP owner, or its agent, can steer problem-name owners into cooperating through a carrot and stick strategy. The carrot is to buy ad space on the problem site. As such, an ad link gives legitimacy to the advertising website, which also increases click rates on other ads, and thus, increases the domain owner’s revenue. The stick is to hint at halting the ads and/or at legal action, with followthrough when necessary. The incentives to cooperate increase when a third-party is entrusted with managing and enforcing the ads.

3. *Clearinghouse*

The idea here is to detect all IP violations (if any) before their registrations are approved. Carrying out the plan would demand multidisciplinary expertise drawing on the law, technology, AI, and economics.

Automation is the key here. Some general abuse patterns can be easily blocked (“typo” names, names with “www” planted at the start). Others are trickier. In some cases a company can build its name around another company’s name and stay within fair use⁴.

What do we do with unautomated names? One possibility might be a third-party regime, outlined above, to handle this one area.

Some likely benefits of a clearinghouse: less money spent on legal action, less likelihood of IP abuse, less confusion and wasted time for visitors, and less repugnant tasting. The mechanism could be easily adopted for ccTLDs and new TLDs.

Some likely costs: the money needed to develop the system and keep it running, the time users spend learning a new registration process, the risk of losing worthwhile features now in place, and the risk of classification glitches in the new system, with innocent names being classified as violations, and vice versa. ■

² See Alex Tajirian, “[Toward A Three-Regime Domain Registration: Generic, Idea, IP,](#)” DomainMart.

³ [IPonFire](#) is implementing this regime.

⁴ Such as “Volkswagen Repair.”