

# A Critical Study on Menace of Cyber squatting and the Regulatory Mechanism

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## *Abstract*

Like many other products and services, the Information Technology products and services are likely to seek the protection of trademark law. The products and services names are trademarked. For example: Apple and DHL. Both are registered trademarks with symbols. In these situations, the application of trademark law raises no novel issues. But with the emergence and increasing commercialisation of internet, many businesses have sought to establish their presence in cyberspace which will seek to register a domain name which incorporates their real-life identity in cyberspace. Since internet has no specific boundaries, trademark disputes arise. Most of the disputes which have reached the courts have concerned the question whether use or possession of domain name including a trademark constitutes infringement. This research paper makes an attempt to discuss the trademark protection on the internet, landmark cases on cyber squatting and the Indian trademark law and legal remedies. Further this paper addresses the critical issues of administration Domain Names and the regulatory mechanism which would sort out most of the legal complications in cyberspace and thereby ensuring smooth and faultless transaction in cyberspace. Role of ICANN along with WIPO in settling Domain Name Disputes and their effective role as regulators would be discussed<sup>1</sup>.

Keywords: Cyber squatting, Information Technology, Cyberspace, Trademark, Domain Names, ICANN, WIPO.

## **Introduction:**

Modern day businesses do like to have their presence in the cyberspace. It is marketed through internet and business entities provide online services or information online to the customers. With the growth of science and technology there is a need for these organisations to establish their presence in the cyberspace which could be done through launching a websites. Websites can be launched after registering the name of the website known as

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domain name, which will be generally the name of the company or the business<sup>2</sup>. A domain name generally comprises of the trademark of an organisation or business. A domain name has two essential elements, the top level domain (tld) such as .com, second level domain (such as .co) and third level domain which may comprise of a trademark<sup>3</sup>. In India, trademark has assumed several forms including a domain name, which means a name of a website used to denote an internet protocol address and is an easy way to remember a complex numerical value. Domain names are easily remembered and often coined to reflect the trademark of an organisation.

### **Significance of Domain Names:**

The importance of domain names have sky-rocketed with the growing use of internet. There is a tendency in the domain names field to register the names of the well-known or reputed business or commercial undertakings as domain names. Since the business or commercial undertakings prefer to register their names as the domain names to have their presence in the internet they have purchase the same in their names. This tendency of registering the names of the well known commercial undertakings by the persons other than the owners of such commercial undertakings is known as cyber squatting<sup>4</sup>.

Legal definition of domain name:

The meaning of domain name has been expanded and affirmed by the court practice. Thus it can be defined as:

- I. A common address depends on the location, while the web-address is selected by an applicant provided that it is not identified to any other address name.
- II. A web-address may be often guessed, since in order to enter a site of a firm, its name should be typed. Therefore a domain name is not a common address; it is rather a sign, which, like a poster in a shop indicates the “place” of goods and services for sale. A domain acquires features, which characterize industrial property.

Cyber Squatting is a term which has come to be associated with the registration of domain names without the intention of using them, in the names of popular brands or personalities

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<sup>2</sup> Dr. Sreenivasulu N.S., Intellectual Property Rights, Regal Publications, New Delhi, Second Revised and Enlarged Edition, 2011 page no.152

<sup>3</sup> Karnika Seth, Computers, Internet and New Technology Laws, Lexis Nexis Butterworths Wadhwa, Nagpur, First Editon, 2012 Page no.258

<sup>4</sup> Supra note 1

solely for the purpose of making money. The essence is that “name” belongs more appropriately to another entity. Secondly registrant is intending to trade the name.

Domain name registration system<sup>5</sup> started on the basis of the “First come First serve” basis. The registrant authority which was initially the “Internic” did not take the responsibility for checking the ownership of the name. Later when the internet became popular, large popular companies wanted to enter the internet with their own websites and often found that the domain name they were seeking had already been booked. So companies which wanted the same domain name had to pay a price, which were sometimes unimaginable.

This increasing cost of buying back of domains resulted in ‘Meta society’ trade mark owners coming together and claiming that their intellectual property rights on a registered trade mark should be extended to “domain name”. This has resulted in considering “Registration of Domain Names without the intention of using them” as cyber squatting.

In order to prevent cyber squatting, some countries have imposed rather arbitrary limitations on domain names use such as restrictions on the choice of domain name to match the registrant company’s name or to contain no generic terms. Some countries have imposed limits on the number of domains that a registrant may own, making it difficult for companies to register multiple brands. This may present a problem for many US conglomerates that own hundreds of brand names. United States of America has “Anti-Cyber Piracy Act” to define the rights on domain names.

In the absence of any law, disputes regarding domain names are resolved through the uniform Disputes Resolution Mechanism that the registrants have agreed to practice. The WIPO has been supporting the Dispute Resolution based on “Trade Mark Rights”. Disputes are mainly resolved through an “Arbitration Process”.

In India certain cases have decided such as *Yahoo Inc V/s Akash Arora*<sup>6</sup>. In this case plaintiff, who is the registered owner of the domain name “Yahoo. Com” succeeded in obtaining an interim order restraining the defendants and agents from dealing in service or goods on the

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<sup>5</sup> <http://www.internic.net/faqs/domain-names.html> visited on 22/11/1014. The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a "mnemonic" device that makes addresses easier to remember.

<sup>6</sup>1999 (2)AD (Del)229

internet or otherwise under the domain name "Yahooindia.com" or any other trademark/domain names which is deceptively similar to the plaintiff's trademark "Yahoo".

In *Rediff Communication Limited V/s Cyberbooth*<sup>7</sup>. The Bombay High Court has held that the internet domain names are of importance and are a valuable corporate asset. A domain name is more than an internet address and is entitled for protection as a trademark. The advancement and progress in technology and the service has rendered internet site also come to be recognize and accepted and are being give protection so as to protect such provider from passing off the services rendered by others as his service.

Some of the important cases which came up for the scrutiny of courts in India are between ICICI and LIC on [www.jeevanbhima.com](http://www.jeevanbhima.com), *Reddy's (Dr) Laboratories Ltd V/s Manu Kosuri*<sup>8</sup>, *Tata Sons Ltd V/s Manu Kosuri*<sup>9</sup>, *Acqua Minerals Ltd V/s Pramod Borse*<sup>10</sup>, *Info Edge (India) (p) Ltd V/s Shailesh Gupta*<sup>11</sup>, registrant of [www.indiainfospace.com](http://www.indiainfospace.com) was decided in favour of infospace.com through an uncontested arbitration in WIPO.

The significance of the domain name has increased dramatically and the concept of a domain name is changing from mere address to a sort of security key to access information<sup>12</sup>. A domain name acquires the features of a trademark, trade name or band and de facto, it is a means of individualization of a certain business entity, its goods and services. The value for the trademark of companies already existing outside the internet is transposed and extended on to internet in most cases. Sometimes the value of trademark is built on the internet right from Scratch. The recent survey in United States of America and Europe shows that there has been rapid increase in domain name infringement and are of reason of online abuse.

### **Cyber squatting:**

Cyber squatting has been defined as "an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium". The court in *Manish Vij v. Indra Chugh*<sup>13</sup> and *The Satyam Infoway Ltd v. Sifynet Solutions (P) Ltd*<sup>14</sup> case nailed the Indian domain name scenario way back in 2004 stating that-"As far as India is concerned,

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<sup>7</sup> AIR 2000 Bombay 27

<sup>8</sup>(2001) PTC 859 (Del),

<sup>9</sup>(2001) PTC 432 (Del)

<sup>10</sup>(2001) PTC 619 (Del)

<sup>11</sup> (2002) 24 PTC 355 (Del)

<sup>12</sup> Edited by Torsten Bettinger- Domain Name Law and Practice- An International Handbook, Oxford, pages No. 3 to 54 and 409 to 447

<sup>13</sup> AIR 2002 Del 243

<sup>14</sup> AIR 2004 SC 3540

there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extra territorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off. The recent trend is Reverse Domain Name Hijacking where an attempt is made by a trademark owner /holder to acquire a domain name from a legitimate user by making false cyber squatting allegations against him<sup>15</sup>.

The Information Technology Act, 2000 of India along with 2008 The Information Technology (Amendment) Act addresses numerous cybercrimes and has set up a special cyber crimes cell. However the Act oddly ignores the problem of domain name disputes and cyber squatting. In case of cyber squatting domain names may be considered as trademarks based on use and brand reputation and so fall under the Trade Marks Act, 1999. However not all domain names are trademarks.

Other than the above mentioned civil remedies, according to Section 135 of the Indian Trade Marks Act, 1999 legal remedies for suits for infringement of registered trade mark or passing off includes injunction, damages or account of profits or delivery up of infringing goods or destruction of infringing goods. Section 103 imposes penalty for applying false trademarks or trade descriptions and Section 104 imposes penalty for selling goods or services bearing a false trademark or description, (in both the cases) which is punishable with imprisonment for a term not less than six months and may extend to three years along with fine not less than Rs. 50,000 which may extend to Rs. 2 Lakhs. The Copyright Act, 1957 is invoked at times and raids conducted, however domain name offences are still struggling for legislative clarity.

The common law remedy of passing off is available to the owner of the trade mark but in case his mark is registered, he can file an action for infringement of trade mark<sup>16</sup>. Numerous cases including that of Yahoo<sup>17</sup>, Rediff<sup>18</sup> and Satyam have laid down the following guidelines<sup>19</sup>

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<sup>15</sup> Anirudh Rastogi, Cyber Law-Law of Information Technology and Internet, LexisNexis, First Edition, 2014, Page no.325

<sup>16</sup> Section 27 of the Trade Marks Act, 1999

<sup>17</sup> Yahoo!, Inc. vs Akash Arora & Anr. on 19 February, 1999

<sup>18</sup> Rediff Communication Limited vs Cyberbooth & Another on 22 April, 1999

<sup>19</sup> [http://www.vaishlaw.com/article/information\\_technology\\_laws/the\\_domain\\_name\\_chaos.pdf?articleid=100324](http://www.vaishlaw.com/article/information_technology_laws/the_domain_name_chaos.pdf?articleid=100324) visited on 24/11/2014

1. The defendant should have sold/ offered its goods/ services in a manner that deceives the public into thinking that the goods/ services of the defendant are in fact the plaintiff's.
2. Misrepresentation by the defendant to the public should be established.
3. Loss/ likelihood of it should be established.

In the above mentioned Satyam case the appellant registered several domain names like www.sifynet, www.sifymall.com etc. in June 1999 through ICANN and WIPO, based on the word "Sify", coined using elements of its corporate name, Satyam Infoway, which earned a wide reputation. The respondent registered www.siffynet.net and www.siffynet.com with ICANN in 2001 and 2002 respectively as it carried on business of internet marketing. On the respondent's demand to the appellant towards transfer of the domain name failing, the City Civil Court granted a temporary injunction against the respondent on the ground that the appellant was the prior user of the trade name "Sify" which had built up solid goodwill overtime in relation to the internet and computer services.

On appeal the High Court held that the balance of convenience between both the parties should be considered and the respondent had invested huge sums of money in the business. It held that customers would not be misled or confused between the two parties as the two businesses were different altogether.

On further appeal the Supreme Court found that both the lower courts agreed on the principles of passing off actions in connection with trademarks being applicable to domain names. The Supreme Court held that in order to claim passing off and restrain the defendant from passing off its goods/ services to the public as that of the plaintiff's, the test of deceiving the public with respect to the identity of the manufacturer/ service provider, misrepresentation and loss or likelihood of it should be applied and established.

The appellant's claim to being one of the largest internet service providers in India was not challenged and the words "Sify" and "Siffy" are both visually as well as phonetically similar to quite an extent, with or without the addition of "net" to "siffy". The Supreme Court did not accept the respondent's explanation of the word "Siffynet" being derived from a combination of the first letter of the five promoters of the Respondent. The Court held that there was an overlap of identical or similar services by both parties and confusion was likely, unlike claimed by the defendant. As for the balance of convenience issue, the Court was convinced of the appellant's evidence of being the prior user and having a reputation with the public

with regard to “Sify”. The respondent would not suffer much loss and could carry on its business under a different name. The Supreme Court ignored the High Court’s finding that no prejudice would be caused to the appellant as it had another domain name, since this would be important only if the case was one where the right to use was co-equal to both parties. The respondent’s adoption of the appellant’s trade name was dishonest and so the High Court’s decision was set aside while that of the City Civil Court was affirmed.

### **Administration of Domain Names and the Regulatory Mechanism- ICANN Domain Name Dispute Resolution Policy, OECD, WIPO**

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<sup>20</sup>.

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 these 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 these registrars assign

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<sup>20</sup> Edited by S.K.Verma & Raman Mittal, Legal Dimensions of Cyberspace, Indian Law Institute, New Delhi, 2004

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. A trademark is a visual symbol in the form of a word, a device, or a label applied to articles of commerce with a view to indicate to the purchasing public that they are the goods manufactured or otherwise dealt persons. The object of trademark law is to deal with the precise nature of rights which a person can acquire in respect of trademarks: the mode of acquisition of such rights, the method of transfer of those rights to others, the nature of infringement of such rights, the procedure of enforcement of those rights and remedies available in respect of thereof. The Intellectual Property Law has undergone changes from time to time in tune with changing patterns of business methods and practice. The trademark in order to be within the statutory definition has to satisfy the following essential requirements:- (a) It must be a mark, that is, a device, brand, heading, label, ticket, name or an abbreviation of name, signature, word, letter of numeral shape of a goods, packaging, or combination of colours or any combination thereof.

(b) It must be capable of being represented graphically.

(c) It must be capable of distinguishing the goods or services of one person from those of others.

(d) It must be used or propose to be used in relation to the goods or services.

(e) The use must be printed or other visual representation of the mark.

(f) Such use in relation to goods must be upon, or in any physical or in any other relation whatsoever to goods and in relation to services must be use of the mark as or as part of any statement about availability, provision or performance such services.

(g) Use must be for the purpose of indicating or so as to indicate the connection in the course of a trade between the goods or services, and some persons having the right to use the mark either as a proprietor or by way of permitted user as the case may be.

The function of a trademark is to give an indication to the purchaser as to the manufacture or quality of the goods to give an indication to his eye of the trade source from which the goods come, or the trade hands through which they pass on their way to the market. The important functions are to identify the product and its origin, to give guarantee as to its unchanged

quality, and to provide advertisement for the product. It is also a symbol representing the goodwill of business.

On the other hand, compared to the trademarks, domain name provides for the address of information in the internet. But now, as the internet has developed from a mere means of communication to a mode of carrying on commercial activity, the domain names are also being used as business identifier. The domain name therefore not only serves as an address for internet communication but also identifies the specific internet site. As a domain name owner provides information/ service which are associated with such domain name, a domain name may pertain to provisions of service within the meaning of section 2 (1) (Z) of the Trade Marks Act 1999.

In India the courts have made attempts to apply the principles of trademark and in particular those relating to passing off to settle domain name disputes. In *Satyam Infoway Ltd V/s Sifynet Solutions Pvt. Ltd.*<sup>21</sup> The Supreme Court has held the domain name could be said to be word or name which was capable of distinguishing the subject of trade or service made available to the potential users of the internet. On the question of whether the principles of trademark law and in particular those relating to passing off apply to domain name, the court held that “it is apparent that domain name may have all the characteristics of a trademark and could find an action for passing off. The court also observed that in India there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Mark Act,1999 itself is extraterritorial and may not allow for adequate protection of domain names, this does not mean that domain names are not legally protected to the extent possible under the laws relating to passing off.

The distinction between trademark and domain names lies in the manner in which the two operate<sup>22</sup>. A trademark is protected by the laws of a country where such trademark may be registered. A trade mark therefore may have multiple registrations in many countries throughout the world. On the other hand, since the internet allows for access without any geographical limitation, a domain name is potentially accessible irrespective of geographical location of the consumers. The outcome of this potential for universal connectivity is not only that a domain name would require worldwide exclusivity, but also that national laws might be

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<sup>21</sup> ,(2004)6 SCC 145, p 151

<sup>22</sup> Edited by Chris Reed and John Angel, Computer Law, The Law and Regulation of IT, 6<sup>th</sup> Edition, Oxford University Press.

inadequate to effectively protect a domain name. The lacuna necessitated international regulation of the domain name system which was affected through world Intellectual Property Organization (WIPO) and the Internet Corporation for Assigned Names and Numbers (ICANN).

Jurisdictional issues in order to settle the domain name disputes have a great cause of concern. Since there is no adequate law to govern the dispute there is confusion whether the common law remedy of “passing off” has to be applied to redress the domain name dispute or whether can be application of Uniform Dispute Resolution Policy (UDRP) which is given by the ICANN. On the other hand World Intellectual Property Organizations (WIPO) and the Organisation for Economic Co-operation and Development (OECD) have given certain guidelines. This being the situation there are certain case laws which have been settled by applying the above said mechanisms. This has created a great confusion as to which law/mechanism has to be followed.

International Arbitration has a vital role in settlement of domain name disputes. Since the law relating to domain name dispute are still in adolescent stage the role of International Arbitration is significant in settling domain name disputes.

In order to give competitive advantage, protection of trade secrets is a must in any business which also included secret formulas of business. The owner of the trade secrets who makes his level bet to protect his trade secrets can enforce his rights in case of infringement of his rights through misuse of his trade secrets. In the welfare society it has become the need of the day to provide a good service to the consumers so serving the society in turn consumers is very important feature of modern governments’.

In November 1999, United States of America passed a specific law regarding domain names called “Anti-cyber Piracy Act” to define the rights on domain names. The Act establishes that a registrant of domain name may be liable to the owner of the trademark or others that may be affected by the “bad faith” of the domain name registrant<sup>23</sup>.

The Act provided protection not only for register trademarks, but also for any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact which is likely to cause confusion or to cause mistake, or to

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<sup>23</sup> Edited by Ranbir Singh & Ghanshyam Singh, Nalsar University, Hyderabad, First Publication, 2004.

device as to affiliation, connection or association of such person with another person, or as to the origin, sponsorship or, commercial advertising or promotion, misrepresents the nature, characteristics, qualities of goods or services.

The Act further provides that the owner of the domain name “shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.”

The Act defines bad faith to include: “the person’s offer to transfer, sell or otherwise assign the domain name to the owner of the mark for financial gain without having used or (having) the intent to use the domain name in a bona fide offering of any goods or services, or the person’s prior conduct indicating the pattern of such conduct”. The applies to domain names registered both before and after the Act’s effective date (November 29, 1999). However the owner of the mark may not be able to recover the lost profits from the owner of the domain name register prior to the effective date of the Act. Also Network Solutions or the other registrants would not liable under the Act. Until the Anti-cyber Piracy Act was passed, the domain name disputes were treated as Trade Mark Disputes. This would to continue to apply to countries where special Acts have not been passed on domain name rights.

The object of common law of passing off is to protect some form of property- usually the goodwill of the plaintiff in his business or goods or his services or in the work which he produce or something of that kind. The goodwill of the business is ordinarily represented by a mark, name, get up or other badge. Passing off is form of tort. The substantive law of passing off is almost entirely based on common law. The statue deals only with the rules of procedure and the remedy is available. “The test of passing off involves a misrepresentation made by a trader to his prospective customers calculated to injure, as a reasonably foreseeable consequence, the business or goodwill of another which actually or probably causes damages to the business or goodwill of other trader”. The concept of passing which is a form of tort has undergone changes in the course of time. At first it was restricted to the representation of one person’s goods as those of another. Later it was extended to business and service subsequently it was extended to professions and non-trading activities. Today it is applied to many forms of unfair trading and unfair competition where the activities of one person cause them damage or injury to the goodwill associated with the activities of another person or group of persons. Domain name dispute which would arise by the reason of unfair trading and unfair competition can be brought within the common law of passing off.

Uniform Dispute Resolution Policy created by the ICANN<sup>24</sup> is used by all accredited registrars. Under this new policy, a trade mark owner can initiate a relatively in expensive administrative procedure to challenge the existing domain name. In order to challenge the trade mark owner must show, firstly, that the trade mark owner owns a trademark (either registered or unregistered) that is same or confusingly similar to the registered second level domain name. Secondly, that the party that register the domain name has no legitimate right or interest in the domain name and thirdly, that the domain name was registered. Some of the important disputes settled under UDRP are as follows:

*In Bennett Coleman and Co. Ltd V/s Steven S. Lalwani*<sup>25</sup> and *Bennett Coleman and Co. Ltd V/s Long distance Telephone Company*<sup>26</sup> the respondent registered the domain names 'theeconomictimes.com' and 'thetimesofindia.com' respectively which were identical to the plaintiff domain names 'economictimes.com' and 'timesofindia.com' used by him for electronic publication of their leading newspaper 'The Economic Times and' The Times of India' respectively. The domain names in contention redirected internet users to the respondent's web-site 'indiaheadlines.com' which provided Indian related news. The WIPO panel confirmed satisfaction of all elements contained in para 4(a) of UDRP and ordered transfer of impugned domain names to complainant<sup>27</sup>.

*In Microsoft Corporation V/s Amit Mehrotra*<sup>28</sup> The WIPO panel found that the domain name 'microsoft.org' registered by the respondent was identical and confusing similar to the trademark 'MICROSOFT' (in which the complainant had rights and respondent had no legitimate interest) and that the respondent's domain name had been registered and was being used in bad faith.

The Organization for economic co-operation and development is a group of thirty member countries committed to fostering of good governance and market economy and consists of European Countries, United States of America, Canada, Australia, Japan, Korea etc as its members. India has co-operation programme with OECD as a developing nation and is not a member. On 23 September 1980, OECD adopted set of guidelines governing the protection of privacy and trans border flows of personal data. The guidelines recommended are:

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<sup>24</sup> Dr. Jyoti Rattan, Cyber Laws & Information Technology, Bharat Law House Pvt. Ltd., New Delhi, 2011

<sup>25</sup> Case No. D2000-0014, Adm. Pannel Decision, WIPO Arb. And Med. Centre

<sup>26</sup> Case No. D2000-0015, Adm. Pannel Decision, WIPO Arb. And Med. Centre

<sup>27</sup> Paul Goldstein, **International IP Law Cases and Materials**, University Casebook series, Foundation Press 2001.

<sup>28</sup> Case No. D2000-0053, Adm. Pannel Decision, WIPO Arb. And Med. Centre.

1. That member country takes into account their domestic legislation the principles concerning the protection of privacy and individual liberties.
2. The member countries endeavour to remove or avoid creating, in the name of privacy protection, unjustified obstacles to trans border flows or personal data.
3. That member countries co-operate in the implementation of the Guidelines set forth
4. That member country agrees as soon as possible on specific procedures of consultation and co-operation for the application of these guidelines.

In the context of the internet, where parties located in different corners of the world can contract with each other at a click of a mouse, litigation of online litigation is often inconvenient, impractical, time-consuming and prohibitive. Providing an alternative approach to resolve online disputes might assist in redressing grievances and gaining consumer confidence in e-commerce. Alternative Dispute Resolution (ADR) has a vital role to play here.

The WIPO established the online domain name dispute resolution policy system for domain resolution system for domain name disputes commonly referred to as ICANN Policy<sup>29</sup>. This process is not only quicker but more cost effective<sup>30</sup>. The Uniform Domain Name Dispute Resolution Policy was adopted by ICANN on 24<sup>th</sup> October, 1999. This policy provides for effective administration process to resolve disputes concerning abusive and badfaith registration of domain names. The Registrar may cancel, suspend or transfer a domain name. The plaintiff is required to file a complainant with an Approved Dispute Resolution Service Provider as on date.

Judicial case laws have acknowledged the domain name problem and have tried to address it with injunctions, domain name transfers and damages under the laws of passing off; however legislature regarding the same has gaping holes which need to be filled in with specific amendments to The Information Technology Act, 2000.

Harassment, blackmail, misuse of domain space, illegal gain, riding on goodwill and initial interest confusion are part and parcel of most domain name and cyber squatting disputes and require attention and action of the legislature, administrative bodies as well as the judiciary.

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<sup>29</sup> [www.icann.org](http://www.icann.org) visited on 23/11/2014

<sup>30</sup> Supra note. 2 page no.263

Countries the world over are analyzing inevitable problems faced through the cyber world by changing and adapting their laws accordingly<sup>31</sup>.

The Anti Cybersquatting Consumer Protection Act<sup>32</sup> of the United States is a prime example which is cyberspace-specific, although it is still based on traditional legal principles of trademark law, and importantly, refers to jurisdictional parameters of domestic law, which are defined by real territorial boundaries. This act fails to account for the global reach of cyberspace, and act reads as if internet were confined to the U.S. The Anti Cybersquatting Consumer Protection Act In the Satyam case in India, it was observed that-“...since the internet allows for access without any geographical limitation, a domain name is potentially accessible irrespective of the geographical location of the consumers. National laws may be inadequate to effectively protect a domain name. The lacuna necessitated international regulation of the domain name system (DNS). This international regulation was effected through the World Intellectual Property Organization<sup>33</sup> (WIPO) and the Internet Corporation for Assigned Names and Numbers<sup>34</sup> (ICANN)”. If Indian law cannot prioritize the issue domestically, India ratified international law and procedure should be given its due.

Conclusion:

There is 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. The other mechanisms that can be considered to register the domain names is to give powers to registrars of domain names to scrutinize the objects with which domain names are registered,

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<sup>31</sup> Supra note 17

<sup>32</sup> <http://www.uspto.gov/web/offices/dcom/olia/tmcybpiracy/repcongress.pdf> visited on 24/11/2014

<sup>33</sup> The World Intellectual Property Organization (WIPO) is one of the 17 specialized agencies of the United Nations. WIPO was created in 1967 "to encourage creative activity, to promote the protection of intellectual property throughout the world.

<sup>34</sup> ICANN is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers. Through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet. <https://www.icann.org/get-started> visited on 22/11/2014

and to administer/regulate their use through periodical checks. 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. The domain name dispute between the parties within the country can effectively be addressed by the local courts if the domestic laws are amended suitably to resolve Domain Name Dispute.

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