

Has Technology created a new form of Intellectual Property? Establishing Internet Domain Names Ownership

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Abstract

With all these recent phenomenal technology developments, a question remains uncertain; Are Internet Domain Names capable of establishing a new form of Intellectual Property? The paper will highlight whether the allocation contract between the domain name applicant and the domain name allocation agency "third party" (misleadingly known "registry")² provides any ownership property right(s) over the name.

It will consider how disputes over domain name ownership arise and are resolved. For instance, the ownership rights of trademark arise through commercial use of the mark. The ownership interest in the mark remains in effect as long as the mark remains in commercial use.³ The owner of a trademark mark has the exclusive right to use the mark and it can prevent other parties from using marks that are confusingly similar to its mark. Do the same rules apply to domain names?

It will also examine whether and to what extent, if at all, technology has created a new form of intellectual property. Mark Radcliffe poses relatively a similar query; "the legal status of domain names is uncertain: are they like trademarks, a source of origin or identify and, thus, capable of being protected by trademark law, and owned; or are they more like street addresses and, thus, generally not capable of being protected by trademark law or owned".

Such analysis will clarify the matter of domain name's ownership and therefore it will consolidate the legal protection over domain names.

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² The so-called "domain name registration" is a misleading concept and sounds erratic, the paper, in order to avoid an overlap with the domain name registration as a trademark and for better use of English language, it will not use the terms (registry, registration, register) to describe the reservation of a domain name at any ICANN's accredited agency but rather it will substitute them with a more perfect and less confusing concepts such as; (reserve, reservation, allocation agency).this has also been pointed out by Spyros Maniatis: "use of the term "registration" for domain names often leads to confusion with the concept of registration, as in "trade mark registration", which does confer exclusive rights to use the protected sign as a trade mark" See; Spyros, M. Maniatis, "Trade Mark Law and Domain Names: Back to Basics": (E.I.P.R. 2002, 24(8), 397-408) (at, FN 46).

³ Phillips, Jeremy, Intellectual property law handbook 2003. Butterworths, p 5-69.