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INTELLECTUAL PROPERTY, THE INTERNET AND ELECTRONIC COMMERCE

VIRTUAL IDENTIFIERS:
DOMAIN NAMES, TRADEMARKS, BRANDING ON THE INTERNET,
AND DISPUTE RESOLUTION

Document prepared by the International Bureau

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INTRODUCTION

The world of intellectual property is occasionally shaken by new events. The Internet is a relatively recent technological and business phenomenon that has powerfully affected intellectual property in ways that can be appreciated by intellectual property lawyers and businesspersons alike.

The law of patents has been significantly affected by the burgeoning number of patents on new Internet-related technologies that were not familiar or even known 10 years ago (e.g. digital signal processing, microprocessor, networking, and wireless technologies) and the very definition of patentable subject matter has been challenged by the Internet, as business methods patents have appeared on the scene.

The law of copyright has also been affected, as digitally facilitated copying of works of authorship has become so simple that piracy is an almost irresistible temptation to many citizens for whom the idea of infringement was previously a remote legal term with no application to their lives. At the same time, the positive aspects of digital technology have made the distribution and enjoyment of art, music and literature more broadly available than ever before, at least in countries where computers are common.

In the area of trademark significant changes have been wrought by the Internet. The Internet is based on a functional addressing system that is effectively a system of branding. In the domain name system (the "DNS") the address or location of a particular computer in a network is signaled to the computer as a numeric code or Internet Protocol Number ("IP Number"), but this IP Number is identified for human purposes by words, the domain name. The domain name is selected by the user of the system for fanciful or business related reasons, but always to give his system a unique identification. Thus, the domain name is a form of branding and the characteristics of a domain name are much like those of a trademark.

In the 15 years or so of the Internet age, domain names, although they originated as a functional tool to find a location in the complex web of the Internet, have developed independent value similar to that of a trademark. There are those who claim that domain names have become a special new type of intellectual property and, in a sense, they are correct because domain names are certainly intangibles with commercial value. The value of domain names is so great in fact, that markets have developed in the legitimate and illegitimate sale and licensing of domain names. Today domain names are assets that figure in the valuation of a company in acquisition and merger negotiations. Domain names in some cases have been so valuable that the company-owner is actually named after the domain name rather than vice versa¹.

Domain names have become an important feature of business branding strategy. At the same time, domain names have raised three significant legal issues. The first of these is how domain names will be used and owned, and what rights trademark owners have to block the use of trademarks as domain names. The second is what law will be applied to determine rights to domain names since the law of trademark is primarily defined by national laws. Finally, issues arise as to how rules relating to selection and use of domain names--whatever their source--

¹ (e.g. Walmart.com is the corporate name of the Walmart E-Commerce company).

will be enforced since the reach of the Internet is international rather than national and jurisdiction; enforcement cannot be dealt with as they would be in a trademark case.²

The answers to these questions are in a state of evolution. It is generally true that domain names are being treated as if they infringe trademark rights. The evolving situation with respect to the second and third questions is that a kind of international law of domain names is forming based on contract, trademark, international agreements, theories of privacy and public policy, and precedents created in private dispute resolution.

This paper will 1.) define domain name terms, 2.) present a short history of domain names as they relate to intellectual property, 3.) describe WIPO's role in this history, 4.) discuss recent developments with regard to domain names and intellectual property, and 5.) identify issues that are likely to be presented by the DNS as it intersects with the international intellectual property system in the next few years.

I. Domain Name Terminology

Top Level Domains

The Domain Name System ("DNS") is based on the idea of a hierarchy of names. The top level domain or "TLD" is the name furthest to the right.

In the address: **www.wipo.int** the int is the TLD.

There are two types of TLD's, generic TLDs ("gTLDs") and country code TLDs ("ccTLDs"). The gTLDs are called generic because they are not linked to any particular country, although this is sort of a misnomer because to some extent the gTLDs were designed for use by specific groups. So, .gov is for governmental entities, .int is for international organizations, and .edu is for educational institutions.

The gTLDs are divided into the original set of gTLDs approved in the late 1990s (the "old gTLDs") and the new set of gTLDs approved early this year to meet the growing demand for domain names.

The old gTLDs are: .com, .net, .org, .int, .mil, .gov, and .edu. The first three of these are open to all registrants, and the other are restricted.

The new gTLDs are: .aero (for aviation industry), .biz (for businesses), .name (for personal names), .coop (for cooperative organizations), .info (general), .pro, (for professionals), and .museum (for museums).

In addition to the gTLDs, there are country specific TLDs or country code TLDs ("ccTLDs"). Each country was assigned a code that corresponds to the Standard 3166 of the International Organization for Standardization (ISO 3166). There are more than 240 ccTLDs. Domain names in the ccTLDs are administered by private and governmental registries.

² For an discussion of the Internet and the changes it has wrought on IP, see "The Management of Internet Names and Addresses: Intellectual Property Issues, Report of the WIPO Internet Domain Name Process", <http://wipo2.wipo.int>, April 30, 1999 (hereinafter the "First Process Report").

Examples of ccTLDs are: .bg (Bulgaria), .ca (Canada), .ch (Switzerland), .fr (France), .tv (Tuvalu Islands).

The Second Level Domain

To the left of the TLD is the second level domain. This is generally the identifier with the greatest value as an identifier or branding tool.

In www.wipo.int, wipo is the second level domain.

II. SHORT HISTORY OF DOMAIN NAMES AND IP

The Internet was created in the late 1970s by a group of scientists funded by the National Science Foundation and was based in various universities and research centers. The scientists developed the networking protocols that make the Internet work and implemented them in a web of powerful computer systems. It was decided to create an hierarchical system of domain names, the DNS, to serve the purpose of addressing computers in the network.

The White Paper and the Creation of ICANN

In 1998, a task force formed to address management of the DNS published the “Statement of Policy on the Privatization of Internet Domain Name System” a document referred to generally as the “White Paper.” This document called for the formation of a non-profit corporation to handle DNS functions. The new corporation was called the Internet Corporation for Assigned Names and Numbers (“ICANN”)³. ICANN’s mandate included the creation of a system of registrars who would receive and process applications for domain names. The White Paper also addressed the growing problem of cybersquatting and abuse of trademark rights on the Internet. It asked the World Intellectual Property Organization to study the issue of trademark protection and domain names and make recommendations for a “uniform approach to resolving trademark/domain name disputes.”

In response to this request, and the request of its Member States, in 1998-1999 WIPO undertook a study of trademark issues, domain names and possible methods for resolving disputes related arising in the confluence of these two areas. One particular issue of concern was the growing practice of improper use by registrants of trademarks owned by another as domain names, or “cybersquatting.” Cybersquatting refers to the practice of registering a domain name in a trademark owned by another with no legitimate business purpose for using the domain name, generally accompanied by efforts to extract money from the legitimate owner for the rights to the domain name.

The First WIPO Domain Name Process

This WIPO study was quite elaborate and involved three separate requests for comments, 17 international consultation sessions in various locations throughout the world, and draft and interim reports. A final report was published on April 30, 1999.⁴ The document, including its

³ See ICANN web site for further information, www.icann.org.

⁴ The First Process Report, note 2.

annexes, is 189 pages and discusses fully the problem of cybersquatting and the issues related to domain names and trademarks.

The report makes many recommendations, but the chief recommendations were certain “best practices” for registration authorities:

- Requiring that applicants for domain names provide contact information so as to avoid the problem of anonymous infringement of rights;
- Providing for exclusion from registration of famous and well-known marks;
- Requiring that applicants for a domain names agree to submit domain name disputes to jurisdiction and alternative dispute resolution procedures;
- Requiring acceptance of a Uniform Dispute Resolution Policy (the “UDRP”) governing the procedures for resolving disputes over domain names.

The recommendations were for the gTLDs and did not apply to the ccTLDs.

The UDRP

The UDRP sets forth a process for claims where a trademark owner alleges “bad faith, abusive registration of a domain name in violation of trademark rights.” In such cases, an administrative panel receives the claim and response, and decides the matter in a brief, efficient on-line procedure requiring less than 50 days for resolution. The parties are obliged to participate in the administrative procedure by contract: when a party applies for a domain name, it must agree, as a condition to grant of the registration, to submit to the process. If the claim of bad faith registration is supported, the domain name is transferred to the claimant. The parties are not, however, precluded from seeking redress from a court after the administrative process is complete.

III. THE UDRP AND WIPO’S ADMINISTRATIVE DISPUTE RESOLUTION PROGRAM

Today the UDRP is the generally accepted means for resolving disputes related to domain name registration in the gTLDs. ICANN recognizes three dispute resolution service providers including the WIPO Arbitration and Mediation Center.⁵ The work of the WIPO Center in this area has burgeoned since it started in 1999. As of the end of the year 2000, more than 1,800 cases had been filed, involving over 3,200 domain names, and more than 1,200 had been resolved. WIPO’s caseload represents approximately 65% of all ICANN cases. The filing rate has risen steadily. The geographic scope of the matters has been broad, with cases involving parties from over 75 countries, conducted in 10 languages, and with 187 panelists from 37 countries.

WIPO’s Procedure

The WIPO procedure for handling domain name disputes is efficient and fast. Once a complaint is filed, the challenged registrant has 20 days to respond. Upon receipt of a response or default, the Center appoints a panel from its published list of international experts. The panel (generally a one person panel) submits a decision to the Center, which then transmits it to the parties, the registrar, and ICANN. The registrar implements the decision by leaving the

⁵ See <http://arbiter.wipo.int/center/index.html>.

domain name with the challenged registrant, or transferring the domain name to the claimant. However, if a losing registrant commences court proceedings within ten days, the process stops, no transfer occurs, and the court or parties resolve the matter. The entire process within the WIPO Center is completed in less than two months, involves no live testimony or appearances, and is conducted primarily on-line. All records are public and all decisions are posted on the WIPO Arbitration and Mediation Center web site.

The net effect of the UDRP process as administered by WIPO and the other accredited providers is to provide a prompt, relatively inexpensive, and effective way to deal with cybersquatting of domain names.

The Country Code TLDs and WIPO Best Practices

As noted above, the UDRP does not apply to the ccTLDs. The ccTLDs vary considerably in their approaches to domain name registration. Some have licensed or sold rights to the ccTLD name to businesses (e.g. the TLD .tv was licensed by the Tuvalu Islands to a domain name business that focuses on television). Some ccTLDs have significant IP and other requirements for issuance of a domain name, and others are virtually unrestricted. Some ccTLDs have adopted the UDRP and some have modified it to meet their own policy requirements.

In August, 2000, WIPO launched the WIPO ccTLD Program. The objective of the ccTLD Program is to provide assistance to the administrators of ccTLDs in the design of domain name registration practices to avoid conflicts between domain names and intellectual property rights; dispute resolution procedures for resolving domain name disputes expeditiously and the provision of dispute resolution services through the WIPO Arbitration and Mediation Center to any ccTLD administrator who wishes to retain it for that purpose.

WIPO has published a document entitled “WIPO ccTLD Best Practices for the Prevention and Resolution of Intellectual Property Disputes.” This document outlines recommended procedures for ccTLD domain name registration and has been published in all six of the official United Nations languages and posted on the WIPO web site.⁶

Since the launch of this program, administrators of 40 ccTLDs have relied on WIPO’s advice for the purpose of managing intellectual property in their domains and 19 ccTLDs have retained WIPO as a dispute resolution services provider.

IV. RECENT DEVELOPMENTS WITH REGARD TO DOMAIN NAMES

In 2000, WIPO commenced a new study on intellectual property issues related to domain names, the Second WIPO Internet Domain Name Process. This study, which is ongoing as of the time of publication of this paper, was intended to deal with some of the issues that were not addressed or resolved by the First WIPO Domain Name Process. Substantively, the Second Process deals with the registration as domain names of:

- Personal names;
- Geographical Indications, Indications of Source, and Geographical Terms;

⁶ <http://ecommerce.wipo.int/domains/cctlds/index.html>.

- The names of international organizations (e.g. WIPO, WHO, United Nations);
- Non-proprietary pharmaceutical names of drugs (“INNs”); and
- Tradenames.

The premise of the Second Process was that abuse of intellectual property may extend beyond abuse of trademarks and that other “naming systems” may warrant protection. As the report stated:

As the DNS has evolved, and as demand for domain name registrations has increased, a greater awareness has arisen of the profundity of the tension between domain names, as the identifiers in the virtual world, on the one hand, and naming systems used in the physical world, on the other hand. Trademarks are but one example of the latter class of naming systems.... There are many other real-world identifiers...that play vital roles in the areas of government...health...science... and almost any other sphere of human endeavor or activity. Wherever one looks in the physical world, there is a naming system to assist the regard, whether it be on a banal but important level, such as street names, or on a metaphysical level, such as the names in the pantheon of gods.⁷

While the Interim Report refers to a broad scope of naming systems, it addresses only the five categories specified in the mandate addressed to WIPO by those of its Member States making the request, Australia, which submitted the letter of request, and Argentina, Canada, Denmark, France, and the United States.

As with the First WIPO Domain Name Process, the procedure for analysis of the issues and for obtaining public comment has been extensive. The study involved consultations in Argentina, Australia, Belgium, Brazil, Ghana, Jordan, Poland, Spain, Thailand, and the United States. These consultations are documented in the WIPO web site, with the proceedings of some of the meetings videotaped and soon to be webcast. An Initial Report was published in April, and at various times three separate Requests for Comments were published soliciting public reactions to the issues and the Interim Report. The final day for comments to be submitted in response to the third Request for Comments is June 8, 2001. The final report with recommendations is due to be published in August of this year.

The recommendations in the Final Report will be able to be implemented by ICANN, in much the same way as the First Process recommendations were implemented: by contracts between domain name registrants and accredited registrars. Or, theoretically, recommendations for protection of these quasi-IP rights could be accomplished by treaty. As the Interim Report points out, however, the latter course of adoption is long. The Interim Report also points out that the trade offs exist between using a technical infrastructure (the “automaticity” of the UDRP transfer procedure as implemented by registrars) as the enforcement mechanism for traditional accepted legal norms like trademark, and using a more established legislative process to define new international legal norms.⁸

⁷ “The Recognition of Rights and the Use of Names in the Internet Domain Name System”, paragraph 8, p. 3 (hereinafter, “Interim Report”).

⁸ Ibid. , paragraphs 26-27.

What follows is a brief summary of the issues, but the entire Interim Report is available on the WIPO web site.⁹

Personal Names

The question raised by the Request for Comments was whether the abusive registration as a domain name of a personal name should be protected against. There is some law that personal names are an extension of individual personality and that, when they have a commercial value, they deserve protection. Especially in mass media, where movie stars names and other names of well known individuals are financial assets, there is an argument for protection. In some cases, personal names may be trademarks and thus entitled to protection as such. A parallel theory is that there is a right to privacy that is an extension of non-intellectual property concepts relating to human rights and individual liberties.¹⁰ There is evolving law on this subject in many countries, but the laws are by no means harmonized.

The Interim Report exhaustively addresses the varying law and authority on the protection of personal names as trademarks and under other theories and laws.¹¹ It also discusses cases arising under the UDRP in only the last two years involving registration of personal names, usually celebrity names functioning as trademarks. It points out that “the jurisprudence under the UDRP indicates that it can and should be applied to protect personal names against bad faith domain name registrations, provided that the criteria of the Policy are carefully and properly applied.”¹²

The Interim Report also addresses the relationship of the personal name issue to the existence of a new gTLD specifically intended to serve as a host for personal names, .NAME.

In summary, the issue raised by personal names is whether they should have some form of protection even when there is no trademark and no commercial exploitation of the name.

Rather than making a recommendation, the Interim Report sets out three options and seeks comments.

- That no changes should be made to the UDRP and thus no special treatment proposed with respect to personal names. This would have the effect of continuing the treatment of personal names as generally protectable only in cases where there is effectively a trademark in the name, or an applicable national law.
- That an amendment of the UDRP be made to recognize a personality right if the name is “distinctive” in the eyes of the public, if the registrant is commercially exploiting the name, and if there is bad faith use by the registrant to take advantage of good will in the name and other conduct such as use of the registration to extract money.

⁹ <http://wipo2.wipo.int/process2/>

¹⁰ Interim Report, paragraph 148.

¹¹ See, e.g. paragraphs 156 et seq. addressing the United States Anticybersquatting Consumer Protection Act (ACPA), enacted in 1999 which recognizes protection for personal names in certain cases, and paragraph 165 addressing the European Commission approach to this issue.

¹² Ibid, paragraph 157.

- That there should be a modification of the UDRP only in its application to the new TLD, .name, so that in this domain a claim would be permitted based on a personality right theory without a showing of a trademark.

Geographical Indications, Indications of Source, and Geographical Terms

Geographical Indications are names of locations associated with products with commercial value, such as “Roquefort” for cheese, or “Champagne” for wine. Indications of Source are terms such as “Made in China”. Geographical terms include country, city, provincial and other names of places, as well as names of peoples or tribes.

Thus, the issue raised is whether a domain name might be challenged when it uses a

- geographical indication e.g. champagne
- designation of origin e.g. madeinfrance
- geographical term e.g. bulgaria or Aleutianpeoples

These issues have given rise to controversy under the UDRP because of the commercial value of these names and also because of the perception that use of geographical terms as domain names by unrelated parties (e.g. non-citizens) is an affront to national values and sovereignty.

The Interim Report analyses each category separately, addressing the relationship of each category to intellectual property and national laws.¹³

As the Interim Report points out, geographical indications and indications of source have a “long pedigree in the intellectual property system” having been treated with in the Paris Convention, the Madrid Agreement, the Lisbon Agreement, the Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPs”) and other regional laws. For that reason the Interim Report recommends that “measures be adopted to protect geographical indications and indications of source in the open gTLDs.”¹⁴

The Report then addresses “Geographical Designations Beyond Intellectual Property” particularly geographical terms such as the names of countries and ethnic names. It points out that often registrants who have registered a country name do not reside in the country and are often private individuals using the name for commercial purposes.

This area has been a subject of considerable interest. The Government of South Africa has objected to its name being used by an unrelated entity in the domain name southafrica.com. In Berlin, Germany, a court found that the domain name deutschland.de infringed the governments “right in its name.”¹⁵ Several cases have addressed the issue in the UDRP jurisprudence, most notably the case involving the registered domain names barcelona.com and stmoritz.com. The panelists in these cases reached contrary results, with Barcelona winning its claim, and St. Moritz’ claim being denied. Some ccTLD administrators, as a matter of practice, exclude country names from registration, based on official lists of place names. These ccTLDs include Algeria, Australia, Canada, France, Spain, Switzerland, and Sweden.

¹³ See Interim Report, paragraphs 193 et seq.

¹⁴ Ibid, paragraph 214.

¹⁵ Docket number 16 O 101/00 Computerrecht (CR), p. 700-701, cited in Interim Report, paragraph 243.

There is some legal support for protection of country names in the history of the Paris Convention, but this precedent is inconclusive.¹⁶ The Interim Report concludes that protection offered in the DNS to geographical terms may “amount to the creation of new law...” and would be a departure from the basic premise of the First Process to avoid creation of new IP rights where the cyberspace law is out of harmony with the law of the real world.

The Interim Report goes on, however, to discuss policy questions on this point. Ultimately, the Interim Report does not make a recommendation as to whether country names should be protected, but sets forth options for consideration. Option 1 is the status quo, in other words, no adoption of rules for protection of country names. Option 2 is protection for country names in a context where abuse of the names can be shown. The report seeks comment on a new UDRP cause of action for abuse of a country name as a domain name.¹⁷

Names of International Organizations

The Interim Report addresses whether the names of International Organizations may be protected from use as domain names. Citing the authority of the Paris Convention which prohibits the use of such names as trademarks¹⁸ and the Trademark Law Treaty of 1994¹⁹, the Interim Report concludes, after some discussion, that such names should be protected from registration as domain names.²⁰

International Nonproprietary Names for Pharmaceutical Substances

The World Health Organization creates and updates a list of names of pharmaceutical substances called International Nonproprietary Names (“INNs”). The current list consists of approximately 8,000 names. Some examples are amoxicillin, ibuprofen, and phenobarbital. New names are proposed to be added to the list by national authorities or pharmaceutical companies. The concept behind this list is that the names will be forwarded to national authorities with the request that no intellectual property rights be created in the name. The rationales for this special treatment for INNs are that these are generic names, that there is a public health interest in the promotion of accurate health information concerning them, and that dilution or distortion of the names by private use as a brand would create confusion.

There is no formal law or legal protection for INNs; the prohibition on acquisition of proprietary rights in INNs is “adopted as a policy by consensus of the public and private sectors concerned with health.”²¹

The Interim Report raises the question whether, as a matter of principle, INNs should be protected against registration as domain names. The recommendation is made that such protection should be conferred, but further public comment is encouraged on this issue as well as the issue of how such protection should be effectuated.²²

¹⁶ See discussion at paragraphs 256 to 266 of the Interim Report.

¹⁷ See Interim Report, paragraph 285.

¹⁸ Paris Convention, Article 6ter, paragraph (1) (b).

¹⁹ Trademark Law Treaty, Article 16.

²⁰ Interim Report, paragraph 115.

²¹ Interim Report, paragraph 41.

²² Interim Report, paragraphs 47 et seq.

Trade Names

Trade Names are the names of a business. For example, Apple Computer, Inc. is a trade name. Apple used to describe a product, or Macintosh, is a trademark.

Trade Names have solid credentials as protectible intellectual property, as they are addressed in the Paris Convention²³ and in varying national laws. Like Trademarks, Trade Names must be distinctive and may gain that quality in the context of their use. Whether they are protected may also depend on the scope of their use, so that the words “United Airlines” may be protected as a trade name, but does not necessarily preclude the use of “United” in all business names.

The Interim Report points out that registration authorities in both gTLDs and ccTLDs have had inconsistent positions with respect to the use of trade names as domain names: “It is evident that there exists no uniform or robust protection for trade names in the DNS.”²⁴ Because of this and because of the large variations in national law and registration practice, the Interim Report raises the issues, and invites further comment on this issue.

Conclusion: Second DNS Process Issues

The common thread in all of these issues is that they stretch the boundaries of traditional intellectual property law and yet present compelling arguments for protection. WIPO seeks robust public comment on all of these issues in the hope of achieving some measure of consensus. As noted above, the WIPO Second Process is currently in process, with the closing date for submissions on all of the above matters due by June 8, 2001. The Final Report is currently scheduled to be submitted by WIPO in the late summer of this year.

V. NEW ISSUES FACING THE DNS SYSTEM

Technical Measures to Prevent Domain Name Collision with Intellectual Property

One issue of great currency is the use of technical measures to prevent conflicts between the DNS and intellectual property rights. These measures are addressed in great detail in the Interim Report as WIPO has been called upon to analyze them.²⁵

One such technical measure is the use of “WHOIS” search data bases to check on the identity and provide information on the identity and where abouts of domain name registrants. Like the UDRP, these measures work contractually, because domain name registrants are required to agree to and actually to provide contact information as a precondition to issuance of the domain name. Such information is put into a database by registrars. This is important for the effective protection of IP because without the ability to contact a domain name registrant it is difficult to obtain a remedy for abuse, beyond the “take down” and transfer remedies afforded by the UDRP.

²³ Paris Convention for the Protection of Industrial Property, Articles 8, 9, 10bis.

²⁴ Interim Report, paragraph 305.

²⁵ Interim Report, paragraphs 331 et seq.

WHOIS systems are currently in use, but the new issues relate to whether they should be extended to any new open gTLDs, and whether searches made more powerful and extensive. Another issue is what information should be collected as a requirement of domain name registration and whether the WHOIS database should be publicly available or, rather, restricted. The argument against public, powerful and extensive WHOIS searches is the public policy in favor of privacy. The WIPO Interim Report requests further submissions on these issues. These issues will surely continue to be of interest in the DNS.

Technical Measures for Co-Existence of Names

Another issue is whether the DNS should be changed so that more than one person can use a name concurrently. This would be accomplished by a directory so that, when a user keys in a name that is owned by more than one user in the same TLD, a directory will refer the person to the different domain names and the user may choose. This would be especially useful where a common business name of a generic nature is desired for use as a domain name by several entities.

There are also initiatives to permit addressing on the Internet by keywords rather than domain names.²⁶ Such keyword systems, if they became prevalent, could transform the DNS. The future of such systems will depend on many factors, one of which is the extent to which they effectively handle the same intellectual property concerns raised by the DNS.

Non Roman Character Domain Names

Sometimes called by the misnomers “multi-lingual” or “foreign character” domain names, this development refers to the increasing use of non-Roman characters for domain names, for example domain names in Cyrillic, Chinese, Arabic and Hebrew. The current DNS was based on Roman characters being paired with numbers in the Internet Protocol. The creation of non-Roman character domain names is technically possible by means of various technological approaches. There has also been an effort by the Internet Engineering Task Force to create a standard technical approach for handling non-Roman characters. Currently there are a few private initiatives based on different technologies and standards²⁷. Verisign has been accepting registrations on a “test bed” for multilingual domain names since late last year and recently announced that it has completed work on a technology based on a protocol named Unicode. Another private company, i-dns, has developed a business and technical model for non-Roman domain names. The success of these various efforts will revolve around what technical approaches will be adopted, whether they can achieve interoperability, and how these systems assure intellectual property protection.

Dispute resolution will also be affected as the need for processes conducted in multiple languages and with panelists familiar with multiple languages and cultures will be important. WIPO has the requisite expertise in this area and has achieved considerable success in providing IP dispute resolution in multiple languages.

²⁶ See e.g. <http://www.releases.com>, or <http://www.commonname.com>.

²⁷ See, e.g. <http://www.i-dns.net> or http://corporate.verisign.com/news/2001/pr_20010321.html.

New Roots and Paths

Eternally creative, the Internet may be sending off new roots and shoots. Another very recent but significant challenge to intellectual property protection in the DNS may be the development of alternative roots, or parallel networks to the existing Internet. Such networks have been the subjects of considerable discussion, as it is claimed that they would by-pass the current system administered by ICANN.²⁸ At this time, however, the technical and commercial viability of such networks has yet to be proven. If they succeed, it will be important to make sure that intellectual property protection is protected in such networks.

CONCLUSION

The Internet and its relationship to intellectual property law raise myriad questions, some of which are briefly addressed in this paper. WIPO is committed to providing services to enhance understanding of intellectual property values and constructive solutions for new challenges to the protection of intellectual property on the Internet. Dispute resolution services based on legal excellence, diversity of panelists, and flexible and efficient processes will be increasingly important as the Internet expands and changes.

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²⁸ See for example the web site of one such company, Newnet, <http://www.newnet.net/>