

## LAW vision

# Internet domain name disputes

WIPO

A domain name is the address of a web site that is intended to be easily identifiable and easy to remember, such as yahoo.com, or wipo.int. These user-friendly addresses for websites help connect computers - and people - on the Internet. Because they are easy to remember and use, domain names have become business identifiers and, increasingly, even trademarks themselves, such as amazon.com. By using existing trademarks for domain names - sony.com, for example - businesses attract potential customers to their websites.

### What is the nature of the disputes?

Domain name disputes arise largely from the practice of cybersquatting, which involves the pre-emptive registration of trademarks by third parties as domain names. Cybersquatters exploit the first-come, first-served nature of the domain name registration system to register names of trademarks, famous people or businesses with which they have no connection. Since registration of domain names is relatively simple and inexpensive - less than US\$100 in most cases - cybersquatters often register hundreds of such names as domain names.

As the holders of these registrations, cybersquatters often then put the domain names up for auction, or offer them for sale directly to the company or person involved, at prices far beyond the cost of registration. Alternatively, they often keep the registration and use the good name of the person or business associated with that domain name to attract business for their own sites.

### Why so many disputes?

There is no agreement within the Internet community that would allow organizations that register domain names to pre-screen the filing of potentially problematic names. The reasons vary, ranging from allowing easy registrations to stimulate business, to the practical difficulties involved in determining who holds the rights to a name, to the principle of freedom of expression. Furthermore, the increasing business value of domain names on the Internet has led to more cybersquatting, which results in more disputes and litigation between the cybersquatters and the businesses or individuals whose names have been registered in bad faith.

### How did WIPO get involved in the resolution of disputes?

The Internet grew rapidly over the last decade as a place to do business, although no international legal standards existed to resolve domain name disputes. The Internet Corporation for Assigned Names and Numbers (ICANN), the organization responsible for, among other things, management of the generic top level domains such as .com, .net and .org, was in urgent need of a solution to the dispute resolution problem. The process of negotiating a new international treaty was considered too slow, and new national laws would most likely be too diverse. What was needed were internationally uniform and mandatory procedures to deal with what are frequently cross-border disputes.

With the support of its member States, WIPO - which is mandated to promote the protection of intellectual property worldwide - conducted extensive consultations with members of the Internet community around the world, after which it prepared and published a report containing recommendations dealing with domain name issues. Based on the report's recommendations, ICANN adopted the Uniform Domain Name Dispute Resolution Policy (UDRP). The UDRP went into effect on December 1, 1999, for all ICANN-accredited registrars of Internet domain names.

Under the UDRP, WIPO is the leading ICANN-accredited domain name dispute resolution service providers. As of the end of 2000, some 65 percent (about 1,850) of all the cases filed under the UDRP were filed with WIPO. Additionally, a growing number of registrars of country code top-level

domains have designated WIPO as a dispute resolution service provider.

### How does the UDRP work?

The UDRP permits complainants to file a case with a resolution service provider, specifying:

- the domain name in question,
- the respondent or holder of the domain name,
- the registrar with whom the domain name was registered,
- the grounds for the complaint.

Such grounds include, as their central criteria, the way in which the domain name is identical or similar to a trademark to which the complainant has rights; why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint; and why the domain name should be considered as having been registered and used in bad faith.



### Who makes the decisions and how does WIPO ensure that there is no conflict of interest?

Taking into account the specific circumstances of each dispute, such as the nationality of the parties, WIPO appoints an expert "neutral" or panelist (from a roster of some 200 independent individuals qualified for deciding such cases) to review the dispute and issue a decision. Either party to the dispute may opt to have one or three panelists assigned to the case.

Panelists must confirm to WIPO the absence of any potential conflict of interest before taking a case, as well as disclose in a written statement any and all facts that should be considered prior to appointment. In the event that one of the parties involved in a case raises a specific objection to a panelist, WIPO will consider offering a replacement.

### What factors guide the panelists' decisions?

Whether the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

Whether the respondent has any rights or legitimate interests in the domain name (for example, the legitimate offering of goods and services under the same name).

Whether the domain name was registered and is being used in bad faith. What accounts for WIPO's popularity as a resolution service provider?

WIPO's resolution service offers highly qualified neutral panelists, thorough and expeditious administrative procedures, and overall impartiality and credibility.

Dispute resolution at WIPO is much faster than normal litigation in the

courts. A domain name case filed with WIPO is normally concluded within two months, using on-line procedures, whereas litigation can take much longer.

Fees are also much lower than normal litigation. There are no in-person hearings, except in extraordinary cases. Minimal filing requirements also help reduce costs. For resolution of a case involving one to five domain names, with a single panelist, the cost is US\$ 1,500; for three panelists, the total cost is US\$ 3,000. For six to ten domain names, the cost is US\$ 2,000 for a single panelist and US\$ 4,000 for three panelists.

### What are the resolutions offered by WIPO, and are they binding?

A domain name is either cancelled, transferred, or sustained (i.e., the complaint is denied and the respondent keeps the domain name). Some examples of cases that received significant media attention include juliaroberts.com and jimhendrix.com, which were transferred to the individuals or their families. A complaint involving sting.com, filed by the singer known as Sting, was denied for a variety of reasons, principally that the domain name registrant was also known by the same nickname, as well as the fact that the name is a common word in the English language and is not necessarily an exclusive trademark.

There are no monetary damages applied in UDRP domain name disputes, and no injunctive relief is available. The accredited domain name registrars - which have agreed to abide by the UDRP - implement a decision after a period of ten days, unless the decision is appealed in that time.

The resolutions offered by WIPO are mandatory in the sense that accredited registrars are bound to take the necessary steps to enforce a decision, such as transferring the name concerned. However, under the UDRP, either party retains the option to take the dispute to a court of competent jurisdiction for independent resolution.

### Will UDRP dispute resolution stifle the Internet?

On the contrary, domain name registration procedures remain flexible and open to everyone. In fact, the number of disputes - just under 2,000 cases were filed with WIPO by year-end 2000 - represent a mere fraction of the more than 33 million domain names in use on the Internet today. With the success and reputation of WIPO's dispute resolution services, awareness is increasing among Internet users that abusive practices regarding domain names will no longer go uncontested, and that a quick and simple recourse exists. This helps assure a general reliability of domain names on the Internet.

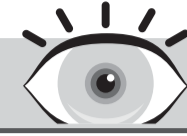
### What is WIPO doing to further improve the reliability of domain names?

The UDRP was originally designed for settling disputes in generic top-level domains such as .com, .net, and .org. However, some country code domain name registrars also have started to adopt the UDRP or similar policies, and WIPO has begun providing dispute resolution services for country code top-level domains - for example, .VE for Venezuela and .TV for Tuvalu - further increasing reliability among domain names on the Internet.

WIPO is now addressing the question of protection for identifiers other than trademarks, such as geographical indications - for wine-producing regions, for example - personal names (considering protection other than as a recognized trademark, for which they may already qualify under the UDRP), trade names, and names or acronyms of international intergovernmental organizations.

Developments in the field of domain names and related dispute resolution are extremely dynamic. Continuously updated information on this subject is available on the Internet at <http://arbitrator.wipo.int/domains>, as well as at <http://ecommerce.wipo.int/domains>.

Source: World Intellectual Property Organisation



## LAW announcement



### Introducing new sections

Law Desk is pleased to introduce the following new sections. Readers are invited to participate in the following areas.

**Law campaign:** Want to campaign for any pro-people change or reform in law, human rights or practice? Please send your thoughts and ideas to us. We will campaign on behalf of you!

**Law network:** Do you have any network of organisations or individuals in the area of governance, human rights or law? Please keep in touch with us. We will inform our readers around the world about it.

**Law newsuam:** We are particularly interested to publish pertinent news or critical information about any event, movement, legislation, which has a potential impact on policy change or practice.

**Law advocacy:** Law Desk is interested to encourage pro-poor advocacy initiatives in the realm of governance, law and human rights. Law Desk has already teamed up with LAW WATCH, a centre for studies on human rights law <[lawwatch2001@yahoo.com](mailto:lawwatch2001@yahoo.com)>. If you are doing something, let's stay in touch.

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## RIGHTS corner



# Towards a social movement against dowry

MAHFUZUR RAHMAN

MUJIBUL Haq, a retired government official, had to take a harsh decision when the marriage of his fourth daughter was settled. He sold off his house to meet the groom's dowry demand.

"I ran deep into debt in marrying off my three other daughters. I needed more money when my youngest daughter was married. But I had none who could help me at that time, as I already exhausted all my sources of help borrowing repeatedly," said Mujibul, who later bought a piece of cheap land at a growing hillside village in Mirsarai Upazila of Chittagong district to construct a new house.

"I would not have to sell off my house had I not lost my job in a false corruption case," said Mujibul, a former administrative official at Land and Survey Department.

For poor fathers like Mujibul meeting the demand of dowry

Shahida has a so-called drawback. She is not pretty enough to impress the family of an eligible man because she is not fair in complexion, a trademark of beauty in Bangladesh society. Now the new bride hunters demand dowry.

"Personally, I don't feel uneasy for not marrying. But the problem arises when some of my relatives speak of it and tease me in many ways," Shahida said. "What is wrong with you, why don't you marry, do you have any physical problem? These are the questions I face everyday," she said.

Instances of girls losing mental balance are not hard to come by. A high school teacher in Dhaka has become abnormal after a man refused to marry her as he found her poor family unable to give dowry. She is now being treated at Pabna Mental Hospital.

Dowry demand from greedy men comes in many forms in Bangladesh. Poor families have to meet dowry demands in cash or kinds before the marriage is solemnised. In well-off

combat the menace, dowry-related violence has been increasing. "Violence against women such as acid attack, trafficking and torture for dowry in South Asian countries, particularly in Bangladesh, is on the rise," according to a report published by UNICEF.

Statistics released by Women Affairs Directorate under Women and Children Affairs Ministry showed that some 2,026 women fell victim to dowry in eight years from 1990 to 1997. Of them, 82 women were victimised in 1990 while 79 in 1991, 101 in 1992, 134 in 1993, 122 in 1994, 267 in 1995, 594 in 1996 and 747 in 1997.

The Documentation Unit of Bangladesh National Women Lawyers Association in a report said a total of 203 women were killed while 24 tortured by their in-laws family members for dowry in 2000. At least seven women were killed for dowry in February 2000, according to statistics provided by the Institute of Democratic Rights (IDR), an NGO.

In the wake of increasing violence against women for dowry, the government enacted Dowry Prevention Act in 1980 to help and protect the dowry victims. Like many other laws of the country, this law too has failed to achieve its purpose.

In 1986, the government set up Women Repression Prevention Cell where battered women can seek help. It launched a programme, "Women Assistance Programme", for rehabilitating the violence affected women. But it has no programme exclusively for dowry victims.

It usually provides legal aid in solving family feuds, patching up broken relations realising maintenance for the divorced women. It helps the petitioners solve their problems as per their desires.

The cell received a total of 1,451 complaints relating to dowry in three years from 1995 to 1997. However, it settled 1,324 cases and took 47 cases to courts of which 30 were settled and 17 others were under trial.

The Women Repression Prevention Cell is an organisation, which has, in fact, no legal power. It has nothing to do when a defender does not appear before the cell. Nazma Hamid, Project Director of the Cell, said, "the cell could have played a better role had it been given quasi-judicial power."

Like the government organisations, leading NGOs working on women issues, such as, the Bangladesh National Women Lawyers Association (BNWLA) and Ain-o-Salish Kendra, have no special programmes for dowry victims.

BNWLA Executive Director Advocate Salma Ali said 50 percent cases of violence against women they receive are dowry-related.

In a bid to ensure speedy trial of cases against women and children, Jatiya Sangsad (Parliament) on January 30, 2000 passed a tough law, "Women and Children Repression Prevention Act 2000", providing capital punishment and life imprisonment for woman and child bashing. This act replaced the Women and Children Repression (special provision) Act 1995.

But Dr Sirajul Islam Chowdhury of Dhaka University said, "dowry menace cannot be eliminated by merely enacting laws. What a law can do when one family gives dowry and another takes it by common consent? "What we need to fight the menace is to wage a social movement," he said.

News Network



is the main problem in marrying off their daughters. Thousands of parents in the country cannot marry off their young daughters, no matter they are educated or illiterate. In some cases, education is rather a problem for poor families in marrying off their daughters.

In Bangladesh society, dowry has become a culture. No marriage takes place without giving a dowry to the bridegroom. According to press reports, some 50,000 marriageable girls, mostly from poor families, in Sathkhira district cannot wed due to dowry while 2,500 marriages ended in divorce in Dinajpur district in 1999 following dowry-related conflicts.

Shahida, a smart and intelligent girl, obtained Master's degree in Political Science from Chittagong University three years ago. She has decided to remain single after a man seeing her first finally chose her younger sister, prettier than her.

families, the demands are hardly spelled out, but rather understood by the bride's father that he should provide all necessary household appliances. The smart young men demand nothing immediately. They rather keep eyes on their wealthy fathers-in-law's property to be inherited by their wives.

According to Muslim Family Law, a girl inherits her ancestral property, though 50 percent less than her brother. But in Hindu families a daughter cannot be a successor of her father's property. So, no marriage takes place in Hindu families without huge dowry.

Although India and Nepal have updated their laws relating to the rights of Hindu women to their ancestral property, Bangladesh is still reeling under the obsolete Hindu laws depriving women of their basic rights.

As the government has failed to forge effective ways to

## LAW watch



# 55% oppose sacrificing civil liberties for security

THE ASSOCIATED PRESS

DESPITE the fear of future terrorist attacks, a majority of Americans are unwilling to give up civil liberties in exchange for national security, according to a Michigan State University study.

Nearly 55% of 1,488 people surveyed nationwide said they don't want to give up constitutional rights in the government's fight against terrorism. Eighty-four percent said they were still at least "somewhat concerned" about future terrorist attacks on the United States.

"We have to understand that 45 percent is still a substantial number of people who are willing to give up some of their current civil liberties," said Michigan State political science professor Brian Silver, who co-authored the study released recently. The telephone survey, sponsored by the National Science Foundation, was conducted from Nov. 14 through Jan. 15 and has a margin of error of plus or minus 2.7 percentage points.

Ninety-two percent of survey participants said they opposed government investigation of nonviolent protesters, 82% opposed government use of racial profiling, 77% opposed warrantless searches of suspected terrorists and 66% opposed government monitoring of telephone and e-mail conversations.

"What is really surprising is that trust in local law enforcement and federal government has an overwhelming effect on what people are willing to give up in order to combat terrorism," said study co-author Darren Davis, also a Michigan State political science professor.

Davis and Silver both said lacking trust in local authorities is likely the reason that race played a role in respondents' willingness to relinquish civil liberties. The survey found that blacks were the most unwilling to trade civil liberties for increased securities, followed by Hispanics and Caucasians.

"Racial groups that have had a history of negative experiences with local police are less willing to give up the rights for which they've been fighting to those often perceived as denying those rights," Silver said.

Davis said trust in the government may have little to do with the war on terrorism and more to do with an economic downturn or a perceived injustice. American Civil Liberties Union of Michigan spokeswoman Wendy Wagenheim said whatever the reasoning, Americans should guard their rights.

"If all of our civil liberties would have been wiped out on September 10th, the horrible events of September 11th would have happened anyway," Wagenheim said. "I think people have had a chance to sit back and realize 'I can be safe and have freedom. I don't have to give up one for the other.'" Survey participants did indicate a willingness to expand government power on some issues: 71% said it should be a crime to belong to a terrorist organization and 54% said they supported the idea of a national identification card. Wagenheim expressed concern about the fact that 60% of those surveyed said school teachers shouldn't be allowed to criticize U.S. anti-terrorism policies in class. "There's some huge censorship issues there," Wagenheim said. "The fact that it's OK for us to speak out against the government is what free speech is all about. It keeps things in check. Without it, we wouldn't have democracy. "It sounds kind of trite, but it's the truth." Davis said respondents who said they'd curb teachers' speech were probably thinking less about liberties and more about the patriotism that followed the terrorist attacks. "When there's an outpouring of patriotism, there's less willingness to support dissent in any form," Davis said.

## LAW news



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