

E-EVOLUTION OF THE WEB

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Many significant developments in Internet and domain name policy have occurred in recent months, with many more on the way. All are of considerable importance to IP and trademark owners. Here is what you need to know.

New WHOIS policy

The Canadian Internet Registration Authority's (CIRA) new WHOIS policy, effective June 10, 2008, represents a new obstacle for trademark owners seeking to identify cybersquatters, retrieve abusive 'ca' domain name registrations or file complaints under the Canadian Domain Name Dispute Resolution Policy (CDRP).

Until recently, Canada provided free public access to key domain registration data, including registrant name, and the contact details for administrative and technical contacts. However, the personal nature of WHOIS information and the potential for its misuse have historically caused considerable tension between privacy advocates and legitimate WHOIS users globally. Privacy legislation in many jurisdictions, including the PIPEDA in Canada, has compelled registration authorities to set limits on public access to WHOIS data.

CIRA's new policy restricts access to personal information of individual registrants (who do not 'opt in' to full disclosure). WHOIS records no longer disclose individual registrants' names or the administrative and technical contacts. Non-individual registrants' information (i.e. corporations) remains unchanged, although CIRA has the discretion to permit non-individual registrants to keep information private.

New procedures to assist trademark owners to contact undisclosed .ca registrants include the Interested Party Contact Procedure (IPCP), pursuant to which CIRA will forward properly submitted messages to the domain's administrative contact. Parties unable to resolve a good faith dispute with a .ca registrant through the IPCP may request registrant information by submitting to CIRA the requisite form and a notarised copy of the trademark registration(s) relied upon.

CIRA's challenge was to balance individuals' privacy against the trademark and other legal rights of many different stakeholders in a largely, but not exclusively, commercial medium. Nevertheless, trademark owners will now be frequently hindered in their ability to conduct the inquiries necessary for dealing with situations of online infringement and cybersquatting—a relevant consideration in developing an effective international trademark/domain name strategy.

Highlights of ICANN's 32nd International Public Meeting

On the international front, ICANN (Internet Corporation for Assigned Names and Numbers) held its 32nd International Public Meeting in June 2008 in Paris.

ICANN's mandate is to maintain Internet security, stability and interoperability while promoting competition and developing policy. ICANN does not own or control the Internet, but its policies seriously impact Internet evolution. Below are the highlights of the Paris meeting.

Currently, all top-level domains (TLDs) function in the ASCII character set, making English the operational language of the Internet. Acknowledging ASCII's limitations, ICANN is developing policy and technology to offer non-ASCII domain names. ICANN is testing domains in 15 different languages and is fast-tracking internationalized domain name (IDN) availability in ccTLDs for those countries with the greatest demand for foreign character domains. Meanwhile, ICANN is working steadfastly on implementing top-level IDNs, possibly by late 2008/early 2009.

Another issue relates to the Internet's underlying software architecture, Internet Protocol version 4 (IPv4), which has been in service for 20+ years and is nearing exhaustion. Almost all IPv4 addresses are taken. ICANN is developing the next generation of protocols, IPv6, which can support a mind-boggling number of protocol addresses (i.e. 340 trillion, trillion). There is no fear we will run out of protocol addresses any time soon once IPv6 is implemented.

Expansion of TLDs is also a hot topic. Only a handful of gTLDs have been used since the Internet began, but the demand for more is growing steadily.

In Paris, ICANN's approval to implement new gTLDs is heralded as the biggest change to the Internet since its inception 40 years ago. However, much work is still required to develop the application process, the policy, and the technical/stability elements surrounding implementation. ICANN expects the implementation details to be ready by early 2009. Up to 250 new gTLDs are anticipated, however, ICANN believes it can support thousands more.

These developments will affect IP owners. The number of IPv6 addresses, combined with IDNs in 15+ languages, plus 250+ new gTLDs, will open up the field even more to possible infringers and those wanting to pass off or trade on an IP owner's goodwill. IP owners must understand these developments in order to protect their rights online.

Full reports of the Paris meeting and CIRA's new policies are available at: www.ShapiroCohen.com.

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