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War.com: Why the Battles over Domain Names Will Never Cease

Deborah Howitt

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War.com: Why the Battles Over Domain Names Will Never Cease

by
DEBORAH HOWITT*

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Introduction

As increasing numbers of companies set up shop on the Internet, disputes over domain names have become a common occurrence. Because of the global nature of the Internet, United States trademark law is inadequate to address these conflicts or to prevent them from arising. Current domain name technology allows for only one of each unique domain name to exist throughout the world. This differs dramatically from trademark law, which allows the same name to be used for different classes of goods or services, or in different geographical locations. Despite revisions to the United States trademark law passed in January 1996, which were designed to protect against dilution, and the potential addition of new categories of domain names, the fundamental conflict of taking a local trademark into a global environment will never be resolved. This Note explores conflicts regarding trademarks and domain names on the Internet, provides an overview of relevant trademark law and its inadequacy to address these conflicts, reviews the recent proposal by the International Ad Hoc Coalition for promulgating additional top-level domains, and suggests that although there is no way to prevent domain name disputes from arising, the IAHC's proposal is likely the best possible solution.

I

Internet Description and Overview

The Internet is a worldwide network connecting thousands of independent computer networks containing millions of computers. Any computer on the network can exchange information with any other computer. Many people consider the Internet the fastest

1. Domain names are addresses for individual computers located on the Internet. These names are used to direct e-mail, locate files, and access other information on the Internet. Each computer has a unique "Internet Protocol" (IP) address consisting of a series of numbers, such as 205.149.165.64. When an Internet user enters the domain name (such as "apple.com"), it is automatically translated into the unique IP address. The primary benefit of domain names is that they are easier to remember than the long numerical strings of IP addresses. See David P. Krivoshik, Special Report: Intellectual Property By Any Other Name, LEGAL TIMES, Dec. 11, 1995, at 13.

growing form of communication today, from both a commercial and social perspective. At present there are approximately forty to fifty million people worldwide using the Internet, with approximately twenty-two million people in North America alone. The number of users worldwide is projected to reach 200 million by the year 2000.

A. Creation of the Internet

The United States Defense Department created the Internet in 1969 as an experiment designed to link the nation's university and military research computers in a way that would survive a nuclear attack. The goal was to create a network without a central computer in order to prevent destruction of the entire network and its valuable data. During its early days, the Internet was used for communication solely among the military, scientific, and academic communities, all of which received free access to the network. It was primarily funded and managed by the National Science Foundation (NSF), which at first prohibited use of the network for commercial purposes.

Over time, as the NSF has contracted out oversight duties to private organizations, its own role in the Internet has diminished and, as a result, commercial use of the Internet has grown tremendously. The main Internet backbone, funded by NSF, is still used for research and academic information exchange and its managers continue to prohibit commercial use. However, a private cooperative venture called the Commercial Internet Exchange (CIX) has set up a parallel backbone, and has no commercial restrictions. Most private Internet access providers offer services through the CIX, allowing business to use the Internet for advertising, sales, and other commercial

5. Id.
7. Id.
9. Resnick & Taylor, supra note 6, at xxiv.
11. Resnick & Taylor, supra note 6, at xxiv.
12. Id.
purposes. Today, the Internet is widely used for commercial purposes, and "businesses are swarming onto the Net like it's the next gold rush, moving through the researchers and college kids like wolves among sheep."

B. Management of the Internet

There is no single authority in charge of the Internet, but different groups manage various portions of the vast network. The Internet Assigned Numbers Authority (IANA) is responsible for creating policies regarding coordination and management of the Internet naming system. The IANA position was created back when the Internet was smaller and noncommercial. "IANA derives its authority from the Internet Society, a nonprofit organization created in 1992, [which] is supervised by the Internet Architecture Board, one of the Society's offspring." IANA received this authority by a draft charter which has never been fully adopted.

The Internet's standards are defined and developed by "a loose affiliation of groups known as the Internet Engineering Task Force." These standards, "the protocols, understandings, and conventions that allow these computers to talk to one another," are believed by many to be the most important aspect of the Internet, because without these, the global network would cease to function.

The lack of a single authoritative body often makes companies doing business on the Internet uneasy. As Don Mitchell of the National Science Foundation has said, "[t]here is no authority on the Internet." The command structure is left over from the days when the Internet was a fraction of its current size. "[T]he lunatics are running the asylum—remarkably well in most cases . . . ." For example, observe the following chain of command:

Members of the Internet Architecture Board, which is the Internet Society's oversight body for the Internet, are nominated by an IETF
nominating committee, which is selected at random from a pool of
volunteers. The members of IAB, in turn, appoint the Internet
Engineering Steering Group from candidates suggested by the
nominating committee.22

A new group recently convened to propose solutions to the
growing number of domain name disputes. This International Ad Hoc
Committee was formed in 1996, comprised of volunteers who, like the
other Internet policy-making organizations, lack any governmental
authority.

C. The World Wide Web

The Internet has proven to be a low cost method of reaching
millions of people (and potential customers) across the globe, and has
rapidly grown as more companies realize the potential for publicity
and profit. For purposes of commercial activity on the Internet, the
most important area is known as the World Wide Web (commonly
called the “Web”). The Web is a multimedia portion of the Internet,23
and is made up of individual “sites”24 each of which may contain text,
graphics, and even audio and video clips.25 A company with a presence
on the Internet frequently has its own Web page, listing information
on the company itself, its products, and ordering information. From
1993 to 1995, the Web grew from one hundred sites to 100,000 sites,
containing more than a million home pages.26 Companies advertise
and sell their products and services, provide general information, and
communicate with customers and potential customers through Web
sites and e-mail. A company gets value from its Web site only if
potential customers can locate it. This is done via the site’s domain
name.

D. Domain Names

1. The Current Status of Domains

In order to access a Web site, an Internet user must know the
site’s domain name, which the user types into a field in her Web
browser in order to access the site. Thus, to make its site easier to

22. Id.
23. RESNICK & TAYLOR, supra note 6, at 39.
24. Each Web site may consist of any number of individual “pages,” each containing
information on, for example, a different product or division of a company.
25. RESNICK & TAYLOR, supra note 6, at 39.
locate, a company will most often use its own name as the first portion of the address. An example of this is Apple Computer's domain name, "apple.com," which indicates the company that registered the domain name (Apple) and the "top level" domain of ".com" which indicates that the site is used for commercial purposes. A complete Internet address might be "joeshmoe@bigcompany.com," in which the first part of the address is the user's individual name, and the portion following the @ symbol indicates the domain name (often the name of a particular company), followed by a period and the suffix indicating the particular type of domain.

There can only be one of each unique domain name in the world, because each is linked to a corresponding Internet Protocol (IP) address. Unlike the domain name, the IP address consists of a long string of numbers, not generally associated with the company which owns or operates the Web site. Each domain name, when typed into a Web browser, is automatically linked to the corresponding IP address by a network function called the Domain Name Service (DNS).

There are several different types of domains, as indicated by the name's suffix: ".com" means the entity using the domain name is a for-profit commercial enterprise, ".org" indicates non-profit and other private organizations, ".net" identifies computer networks, ".edu" indicates educational sites, ".gov" is used by governmental entities, and ".mil" identifies military facilities. Of these top-level domains (also referred to as "TLDs"), .com, .org, and .net are used internationally, whereas .edu, .gov, and .mil have historically been used only by the United States. The domains .com, .edu, .gov, .net, and .org are registered by the Internet Network Information Center (referred to as "InterNIC").

27. See Krivoshik, supra note 1, at 13.
30. Resnick & Taylor, supra note 6, at 220.
31. International Ad Hoc Committee, Final Report of the International Ad Hoc Committee: Recommendations for Administration and Management of gTLDs 8 (visited Feb. 4, 1997)<http://www.iahc.org/draft-iahc-recommend-00.html>[hereinafter "IAHC Final Report"]. TLDs, with the exception of the .int international domain, may be referred to as generic TLDs or gTLDs.
created InterNIC for the purpose of registering these domain names. This is accomplished via the InterNIC Registration Services (the "Registry") which is operated by Network Solutions, Inc. (NSI), a private company in Virginia.

In addition to the top level domains discussed above, every country that has an Internet connection has a two letter top level domain name registry, such as ".us" for United States and ".mx" for Mexico. These are not used together with the other top-level domains listed above, but may be used as an alternative. The Internet Assigned Numbers Authority, a voluntary organization, has designated certain organizations in various countries to be domain name registries. Most of the two letter (country specific) top level domain names are administered by universities or other nonprofit entities in those countries, and the system is primarily voluntary and informal. These country-specific domain names allow the same prefix (often the company name) to be used with different country suffixes, by the same or different companies. For example, the prefix "sony" could be used in the domain names of both "sony.mx" and "sony.us" because each would be linked to unique IP addresses in their respective countries through the Domain Name Service. Although these addresses normally indicate the country in which the addressee's host computer is located, no technical requirement forces a computer with a country specific domain be located in that particular country. The administrative body for domain names in each country would designate whether its policy so required. Regardless of the country where the host computer is located, the address can be accessed from a computer anywhere in the world.

There is also one exclusively international top level domain, which is dedicated exclusively to "entities which have a truly international character." This is the ".int" domain, which is used by international intergovernmental organizations.

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34. Id.
35. Id.
36. Id.
37. IAHC Final Report, supra note 31, at 8.
2. New Top Level Domains Proposed

Most domain name conflicts occur over the "com" Top Level Domains (TLDs), because the majority of companies on the Internet are there for commercial reasons. The .com domain is by far the most popular of the TLDs. Because of increasing battles for .com domain names, the International Ad Hoc Committee (IAHC) was formed in November 1996 with the mission of considering proposals for solving the domain name problem. The committee's agenda included proposals for establishing additional global domain name registries and new TLDs. Organizations naming members to the committee include: the Internet Society (ISOC), Internet Assigned Numbers Authority (IANA), Internet Architecture Board (IAB), Federal Networking Council (FNC), International Telecommunication Union (ITU), International Trademark Association (INTA), and the World Intellectual Property Organization (WIPO). The committee solicited input and recommendations from the Internet community at large through an Internet mailing list and Web site.

The IAHC prepared its Final Report in early February. The Committee recommended the creation of seven new generic TLDs as follows:

- .firm—for business or firms;
- .store—for businesses offering goods to purchase;
- .web—for entities emphasizing activities related to the Web;
- .arts—for entities emphasizing cultural and entertainment activities;
- .rec—for entities emphasizing recreation/entertainment activities;
- .info—for entities providing information services; and
- .nom—for those wishing individual or personal nomenclature.

These new TLDs would be used in addition to the current TLDs already in use (such as .com). The IAHC indicated that it may consider the addition of yet more TLDs, but that it would not do so prior to April 1998. It may be likely that the IAHC will implement

40. IAHC Final Report, supra note 31, at 1.
41. Id. at 3.
even further changes in the Domain Name Service (DNS) structure, as it indicated that these initial changes are "of a relatively modest scale, with later evaluation and modification as appropriate."  

In addition, the IAHC's Final Report provides for up to twenty-eight new registrars to be granted authority to register second-level domain names under the new TLDs, which will be selected by lottery from applicants meeting criteria specified by the IAHC. 2 This would end NSI's monopoly, which up until now has been the sole registrar of the .com, .net, and .org domain names. Upon implementation of the new registrars, registration of these original TLDs would be shared as well. The new registrars would be divided up into seven global regions, with each region containing four registrars. The registrars would form an association called the Council of Registrars (CORE), which would create and enforce the rules for operating a domain name registration entity. These rules will be agreed upon by all registrars, and will be set forth in a separate, binding legal instrument. A Policy Oversight Committee (POC) will oversee the registrars, and will consult with the registrars and another advisory body in determining the need for additional registrars, TLDs, fees, and other necessary changes.

A particularly interesting proposal by the IAHC involves the suggestion of country specific, as well as international, trademark-related domains. In a bow to trademark owners, the IAHC suggested a domain containing only registered trademarks. 4 The country-specific domains would be administered by each country’s trademark registration authority (such as the Patent and Trademark Office in the United States), and might be in the form of a sub-domain within the country specific top domain, such as “companyname.tm.us.” This system is already being used in France, which has the domain “.tm.fr” to indicate French registered trademarks. 5 The international trademark domain could be “.tm.int” and would be administered by an international trademark organization such as WIPO. 6 The Final

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42. Id. at 10.
43. Id. at 11. In March 1997 an antitrust suit was filed in Manhattan federal court against NSI by PGP Media, Inc., an Internet company that wants to compete with NSI in the domain name registration business. If PGP Media prevails, this case could potentially erode the strength of the IAHC, IANA, and other groups governing the Internet. However, if the IAHC’s proposal to increase the number of registrars is adopted prior to the resolution of this suit, the case would likely become moot. For discussion of PGP Media, Inc. v. Network Solution, Inc., No. 97-1946, see Antitrust Suit Could Shake Up Net Governance, RECORDER, Mar. 24, 1997, at 1.
44. IAHC Final Report, supra note 31, at 22.
45. Id.
46. Id. at 23.
Report suggests the establishment of a user-friendly on-line directory for the trademark specific domains, possibly including the company's logo, to easily allow a user to enter a trademark and thereby locate a company's Web page.47

To better understand the trademark difficulties raised by the fact that only one of each domain name can exist globally, it is necessary to have an understanding of the basics of trademark law. This will also explain why even the addition of new TLDs will fail to prevent disputes over domain names.

II
Overview of Trademark Law

Trademarks are names and symbols used to market products. The Lanham Act48 defines a trademark as "any word, name, symbol, device, or any combination thereof" that identifies and distinguishes goods provided by one party from those of another.49 A service mark is a name or symbol used to market a service, and either a trademark or service mark may be referred to as a "mark."50 A trade name is the formal name of a business.51 Trademarks, service marks, and trade names are all protectable against infringement under section 43 of the Lanham Act. The goals of trademark law are to prevent businesses from stealing goodwill that others have generated by distinguishing their company, goods, or services from that of another company, and to prevent customers from being misled by the use of confusingly similar names.52 The Lanham Act provides a federal registry (and extra protection) for marks that are used in interstate commerce and meet other criteria, including that of being "distinctive."53

In addition to the federal trademark statute and registry, individual states have their own trademark registrations. These are most frequently used by small businesses that do not anticipate doing business outside of the states in which they are located. Registration within a particular state does not provide as much protection as

47. Id.
50. Id.
51. Id.
federal registration (states vary as to what rights are granted) and this is usually only a viable course of action if a mark does not qualify for federal registration. Federal registration generally benefits businesses which may or actually do sell products across state lines.

International trademark registration is more complex, as each country imposes different registration requirements. Despite treaties which make international registration easier in member countries, international registration remains a complicated process to register internationally.

A. Trademark Infringement, Dilution, and the Federal Trademark Dilution Act of 1995

Until 1996, in order to protect a mark from unlawful infringement, a plaintiff had to prove that the infringing use was likely to cause confusion among consumers.54 Under section 43(a) of the Lanham Act, any person who uses “any false designation of origin, false or misleading description of fact, or false or misleading representation” on goods or services in commerce, in a way that is likely to confuse or deceive, is liable to another business that suffers damages as a result.55 Because section 43(a) of the Act requires a plaintiff to prove that use of another mark is likely to cause confusion, two marks only come into legal conflict if they are used in the same market or marketing territory, because this is the only way that confusion among consumers would arise.56 However, a recent amendment to section 43 of the Lanham Act removes this difficulty, and provides for a new federal cause of action for trademark dilution, regardless of whether any confusion is likely to occur.

In January of 1996, the Lanham Act was amended by passage of the Federal Trademark Dilution Act of 1995.57 This amendment provides that owners of famous marks are entitled to a nationwide injunction against “another person’s commercial use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark.”58 Dilution is defined as “the lessening of the capacity of a famous mark

56. For example, consumers would not be confused among totally different products, such as a line of jewelry and a line of dog food, even if the two products had the same name.
57. This adds a new subsection (c) to section 43 of the Lanham Act, 15 U.S.C. § 1125.
to identify and distinguish goods or services" regardless of whether the owner and other party are in competition with each other or there is any likelihood of "confusion, mistake, or deception." If the infringing user of the mark "willfully intended to trade on the owner's reputation or to cause dilution of the famous mark," the owner of the mark is entitled to additional remedies including lost profits, costs, attorneys fees, and treble damages.

The statute sets forth factors a court may consider in determining whether a mark is "famous," including: (1) the degree of distinctiveness; (2) the duration and extent of use of the mark for particular goods or services; (3) the duration and extent of advertising and publicity; (4) the geographical extent of use of the mark; (5) the channels of trade with which the mark is used; (6) the degree of recognition of the mark in trading areas used by the person against whom the injunction is sought; (7) the nature and extent of use of the same or similar marks by other parties; and (8) whether the mark was registered.

The amendment provides several exemptions from suit for dilution. A trademark owner may not sue for dilution if use of the mark is "fair use," including use "in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark," "noncommercial use," or "all forms of news reporting and news commentary."

Although the trademark lobby had been trying for years to get a federal trademark dilution law passed, it finally came about because of the Internet. The Federal Trademark Dilution Act of 1995 was created in part to alleviate problems with domain name "poachers" or "cybersquatters" registering famous company names as domain names, and hoping to collect a "ransom" from the rightful trademark owner. As Senator Patrick Leahy, one of the bill's proponents, said, "It is my hope that this antidilution statute can help stem the use of

59. This definition is an addition to the Definitions section of the Lanham Act § 47, 15 U.S.C. § 1127.
60. 15 U.S.C.A. § 1125(c) (emphasis added).
deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others.”

B. Registration of Domain Names as Trademarks

The United States Patent and Trademark Office (PTO) will register domain names as trademarks if the applicant meets all the usual requirements for trademark registration. The domain name “must be used as a trademark or service mark in a conspicuous manner that identifies the source, origin, sponsorship, or affiliation of a particular set of goods or services.” A domain name used merely as an Internet address without connection or reference to specific goods or services will therefore not be registrable. The PTO will register the portions of the domain name that are unique, but the computer and domain related terms (such as “www” or “com”) will be disclaimed, and will have no effect on the registrability of the mark as a whole.

The PTO’s position that domain names can be federally registrable trademarks is derived from cases in which courts have held that certain telephone number mnemonics and radio station call letters are registrable. In Holiday Inns, Inc. v. 800 Reservation, Inc., the court found unfair competition and trademark infringement in two similar telephone numbers. Holiday Inns used the telephone number “1-800-HOLIDAY.” The defendant, knowing that people often mistakenly dial a zero instead of the letter “o” in such mnemonic telephone numbers, obtained the same number with a zero in place of the “o” in HOLIDAY in order to receive calls meant for Holiday Inns. Even though the defendant was using a telephone number rather than the name of a product or service, the court found the defendant’s use infringing. It therefore seems logical to conclude that domain names could infringe one another in the same manner.

64. Id.
66. Id. at 5 n.10 (citing INTERNATIONAL TRADEMARK ASSOCIATION, SPECIAL BULLETIN: REGISTRATION OF INTERNET DOMAIN NAMES IN THE USPTO (1995)).
68. Hamilton, supra note 65, at 5.
70. Id. at 1250.
71. Id. at 1255.
III
Trademark Infringement on the Internet: A New Frontier

Case law has established that trademark law applies in cyberspace in the same manner and extent as in other forms of media. In *Playboy Enterprises v. Frena* the court assumed that trademark law applied to a computer bulletin board service. Frena's unauthorized bulletin board distributed illegal copies of Playboy's copyrighted photographs, bearing the Playboy and Playmate trademarks. The court found that Frena's unauthorized use infringed Playboy's registered trademarks, and emphasized two factors which led to the defendant's liability. First, the defendant used marks the identical to those belonging to Playboy, not merely similar marks. Second, the services defendant provided were nearly identical to those of Playboy (displaying nude photographs). Because of these factors, the court found that consumers could easily be confused into believing that Playboy was the source of the pictures.

The Internet's broad reach has created a breeding ground for new trademark problems. Unlike the Internet, trademark law is merely national in scope—thus one company may own a trademark in the United States, and another may own the rights to it in another country. The Internet, however, is global in scope, allowing access by users in every country where they can obtain a connection (if not already, this will soon be literally every country in the world). This difference in scope leads to difficulties. For example, an Internet user in the United States who wants to register her United States trademark as a domain name on the Internet may be unable to do so because the domain name was already taken by a foreign company with the same name.

Because of the global nature of the Internet, companies which previously could legally coexist using the same trademark in different markets have found that they are unable to use their company names

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73. 839 F. Supp. 1552 (M.D. Fla. 1993).
74. A computer bulletin board service (often referred to as a “BBS”) is a host computer that is accessible to others who use their modems to dial up and connect to the host. Once connected, users can browse through directories of information, and upload or download files. *Id.* at 1560.
75. *Id.* at 1561.
76. *Id.*
77. *Id.*
as domain names. For example, American Broadcasting Companies was previously precluded from using the domain name "abc.com" because it had already been registered and used by ABC Design of Seattle.78 This would not pose a problem under trademark law because no likelihood of consumer confusion would exist: because the two ABC companies are in different fields, consumers would not be confused as to the source of goods or services offered by either of the companies. However, there can only be one commercial domain name of "abc.com." This could be particularly harmful to a media company such as ABC because of the convergence of different types of media, and the rapidity with which cable and other broadcasting companies are merging onto the Internet. Although there are many abbreviations of a longer name that ABC could use,79 the Internet user seeking information on ABC may be unable to locate the company's Web page because of a nonobvious domain name (it was previously using "abctv.com" which would not be readily apparent to someone searching for the company). No all-encompassing directory of e-mail addresses or Web pages currently exists,80 and users searching for a company's Web page often begin by merely typing in what to them is the most obvious domain name: the company's name, followed by ".com."

By obtaining a Website, a business may dramatically expand its marketing territory, and open up for business in a global marketplace.81 Thus, a mark that formerly could be used by two companies in different states or even different cities without conflict, may now clash because both businesses want to operate in the inherently global territory of cyberspace. Because there can only be one of a specific domain name, companies in different industries whose trade names did not formerly conflict now have to fight over a single domain name.

78. Krivosih, supra note 1, at 13. The parties eventually reached an agreement, whereby the broadcasting company was permitted to use the domain name abc.com.

79. Domain names are limited to 24 characters in length. Tiki Dare, What's In a (Domain) Name? (visited May 27, 1997)<http://www.webcom.com/~lewrose/article/domain.html>. Therefore, ABC is also precluded from using its full name, American Broadcasting Companies, but it could use some abbreviation thereof.

80. Although there is not all-encompassing directory of Internet addresses, there are some excellent on-line directories such as "Yahoo," which provides an indexed list and search engine for locating material on the Web. Yahoo is located at http://www.yahoo.com. See Jeff Ubois, One Thing Leads to Another, INTERNET WORLD, Jan. 1996, at 60.

81. Similar changes have occurred with cable television and national newspapers.
Furthermore, domain names do not recognize the same categorical distinctions as trademark law. Whereas the law distinguishes between trademarks and service marks (the same mark may be used by different companies in each), domain names do not. Most importantly, trademark law distinguishes between categories, so that the same mark may be used in different categories of goods where there is no likelihood of confusion to the consumer. There are forty-two groups in the International Schedule of Classes of Goods and Services. Thus, under United States trademark law it is permissible to use the name “Thrifty” for a car rental company, a chain of drug stores, and a gasoline station, all at the same time, because the three businesses are so different that consumers are not likely to be confused by the same name. However, because there may only be one of each unique domain name, only one of these companies may obtain the domain name “thrifty.com,” which the car rental company presently uses.

A domain name can infringe a trademark just as any other use of the name could infringe, as long as the mark is used in commerce, and presents a likelihood of consumer confusion. Under trademark law, two marks come into legal conflict only if used in the same market or marketing territory so as to create such a likelihood of confusion. So presumably, if the domain name were used for a company selling a different type of product, and the consumer would not be confused as to the source of the goods or services, there would be no action for infringement, even if the company’s name were used as the domain name. However, there may be an action for dilution under the Federal Trademark Dilution Act of 1995 if the first mark is famous, and the use of the Mark as a domain name by another company could cause dilution of the mark.

In *ActMedia, Inc. v. Active Media International*, a United States district court held that the mere registration of a domain was an infringement, even though the domain name was not being used by the registrant. ActMedia had a federally registered trademark for its company name, but it discovered that the domain name had been registered by Active Media. The court held that the registration

constituted unauthorized use and misappropriation, false designation of origin, and was likely to confuse consumers into believing that there was an affiliation between the parties. The court required that Active Media relinquish the domain name.

Another problem that arises in trademark disputes because of the global nature of the Internet is the choice of law regarding conflicts. Determination of which country's law should be applied to trademark use on the Internet is unsettled. The proper law could be the country in which the user is located, where the server storing that user's home page is located, or where the home page is accessed by another user.

The creation of the Internet has also led to new methods of trademark infringement. In addition to serving as legitimate addresses for companies doing business on the Internet, Web sites are sometimes being used to pirate of software and other goods. The United States is more strict in enforcement of intellectual property rights than many other countries. However, because the Internet is global, makers of counterfeit products are selling their "authentic" items via the Internet to unsuspecting consumers in the United States and other countries. For example, one Singapore Web page presents itself as an "authorized dealer" of Rolex watches. Internet users wishing to purchase these products have no real way of guaranteeing that they are genuine and that the use of "Rolex" or other trademarks is authorized.

A. Trademark Protection Applies to Domain Names

Case law has established that trademark protection does in fact apply to domain names. Domain names can be infringing or infringed upon, diluting or diluted, just as any other mark.

One of the early domain name cases was MTV Networks v. Curry, in which Adam Curry, an MTV video-jockey, registered the domain name "mtv.com." He claimed it would not confuse consumers

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86. Id. at *4.
87. Id.
88. Scott, supra note 72.
90. Id.
91. Id.
92. Id.
because it contained information about MTV, and the Web site was
developed with the knowledge and approval of MTV. When his
employment with MTV terminated, the company demanded that he
cease use of the domain name and Web site. The court said that
trademark laws apply to domain names, and compared them to
telephone number mnemonics, because established trademark law
provides that mnemonic alphanumeric telephone numbers may
become trademarks if used in a certain manner. 94

In Princeton Review v. Kaplan, Princeton Review registered the
domain name “kaplan.com” with the purpose of irritating the Stanley
Kaplan Educational Centers (known as “Kaplan”), its main
competitor in the business of preparing students for standardized
aptitude tests. 95 Princeton Review also registered “princeton.com,”
and established a legitimate Web site to promote its business and
provide information to students. Princeton Review created a Web
page under the address kaplan.com which contained phony
comparison charts of the Princeton and Kaplan review courses. An
arbitral panel decided that Princeton Review had to relinquish
kaplan.com. 96 The panel said the domain name was obtained in bad
faith, with the objective of confusing consumers and creating a
likelihood of damaging Kaplan’s goodwill. 97

Another dispute involved a suit by the Council of Better Business
Bureaus, Inc. (BBB) against Mark Sloo, an individual who had
registered “bbb.com” and “bbb.org” with the intent to use them for an
on-line consumer complaint service. 98 This would likely lead to
confusion because of the similarity to the services offered by the BBB.
Prior to Sloo’s use of the domain names, BBB had federally registered
service marks incorporating the letter sequence “BBB” for its
consumer complaint services, and it has common law rights in the
mark “BBB” as well. 99 BBB claimed federal and state service mark
infringement, dilution, and unfair competition against both Sloo and

94. Id. at 203 n.2. See also supra Part II.B.
95. Robert Raskopf, Trademarks and the Internet, PRACTISING LAW INSTITUTE, 416 PLI/PAT
Kaplan Educational Center, Ltd. v. The Princeton Review Management Corp.).
96. Id.
97. Burk, supra note 10 (citing Chris Gulker, Firm Must Alter Name on Internet, S.F.
EXAMINER, Oct. 6, 1994, at E1). Princeton Review’s chief executive officer admitted that his
company registered kaplan.com solely to mock and annoy its main competitor.
98. Hamilton, supra note 65, at 5.
99. Dare, supra note 79.
his Internet access provider, Tyrell Corporation. Sloo had no trademark registration or any prior use of or rights to the name, so this case was fairly straightforward: Sloo agreed to relinquish the names, and the case was settled before it was heard in federal court.100

B. Effect of the Trademark Dilution Act

Although the Trademark Dilution Act of 1995 would not resolve all of the above disputes, it has clearly had an effect in other situations. In a dispute over the domain name “candyland.com,” an adult entertainment company called Internet Entertainment had registered the name for a Web site displaying pictures of nude women.101 Candy Land is a well known children’s game, for which Hasbro owns the trademark. Use of the domain name could create a vastly different picture of the words “candy land” in the minds of those viewing the Web site, and could lead to dilution of the clearly “famous” trademark. Hasbro received an injunction from a District Court judge forbidding Internet Entertainment from using the Candy Land name.102 The court’s ruling was based on Hasbro’s likelihood of proving that the defendant was diluting Hasbro’s Candy Land mark and causing irreparable harm to Hasbro by its use of the domain name.103

Toys ‘R Us successfully brought suit against a company doing business on the Internet under the domain name “adultsrus.com.”104 The defendant’s Web site sold sexual devices and other adults-only paraphernalia. Similar to the Hasbro case, the court in Toys ‘R Us granted a preliminary injunction against the defendants because they were diluting the famous trademark of Toys ‘R Us, and prohibited them from using any domain name ending in “rus” in connection with their adult-oriented business.105

In Intermatic, Inc. v. Toeppen,106 the owner of the trademark “Itermatic” (used for electronic products) obtained an injunction preventing Dennis Toeppen from using the domain name

100. Id.
102. Id. The defendant changed its domain name to “adultplayground.com,” seemingly much more appropriate to the content located at the site.
103. Id.
105. Id.
"intermatic.com." This case was novel in that the defendant was not using the domain name commercially, as required by the Dilution Act. Even so, the court found dilution, and that the commercial requirement was satisfied by defendant's admitted intent to "arbitrage" the domain name for resale to Intermatic. The court ordered that the domain name be transferred to Intermatic, a remedy which was extraordinary, and possibly unprecedented, in trademark infringement cases.

Another trademark issue involving domain names is the use of an individual's own surname. A person might register her surname as a domain name for various reasons such as broadcasting her personal address over the Internet, or making it easier for others to locate her. Under United States trademark law, a surname is not always registrable as a trademark. The PTO will apply the test of the name's "primary significance to the purchasing public." If the public would primarily consider the name to be a surname, rather than a name designating the source of goods or services, it is not registrable and others may use the mark in commerce. Courts have prohibited a person from using her name in conjunction with her own business "when the natural result of such use is likely to lead to confusion or deception of the public."

An example of the above dilemma arose in Giacalone v. Network Solutions, Inc. In this case, the plaintiff named his domain name "ty.com" after his son Ty. A toy manufacturer Ty, Inc., registered a complaint with NSI (under the policy described below) to obtain the domain name for its registered trademark "Ty." Although Ty, Inc. possesses a registered trademark and would thus have prevailed under NSI policy, Giacalone prevailed in federal court. Ty, Inc. was enjoined from petitioning NSI to suspend the use of Giacalone's domain

107. Id. Toeppen had allegedly registered approximately 240 domain names without permission of the trademark owners, and was clearly out to make a profit from sale of the names to the rightful trademark owners.
110. Id.
111. MARGARETH BARRETT, INTELLECTUAL PROPERTY CASES AND MATERIALS 677 n.11 (1995).
name. Eventually, Ty, Inc. settled the case by purchasing the domain from Giacalone for an undisclosed sum.

IV
The Current and Proposed Solutions to Domain Name Disputes

The inability of United States trademark law to adequately account for the Internet’s global nature (even after the Trademark Dilution Act), along with the fact that only one of each domain name may be registered, leads to the conclusion that no realistic measures are presently available to prevent domain name disputes. Admirably, prominent Internet organizations have attempted to preempt potential disputes and to resolve those that already have arisen. Unfortunately, none of these solutions is likely to provide a cure-all for domain name disputes.

A. New Top Level Domains Unlikely to Solve Problems

While the creation of new TLDs will remedy the shortage of available .com domain names, it will not prevent disputes over domain names generally. Instead, these new TLDs may result in trademark holders or “pirates” registering for domain names in every domain for which they qualify. Rather than decreasing the number of domain name disputes, creation of additional TLDs could exacerbate the current problem.

Trademark dilution litigation will certainly continue, and perhaps even increase with the addition of these new TLDs. Whereas a company is currently happy if it obtains a registration for its trademark followed by .com, thereby preventing another company from owning the domain name, other identically named companies could potentially register in seven new TLDs. A company may thus be seven times more likely to have its trademark diluted on the Internet by another company’s use, and will have to take action accordingly. As in the Giacalone case discussed above, the company with the deepest pockets is likely to prevail, either through litigation or buying name rights from the smaller domain name holder. Although the increased number of TLDs may make registration in any specific TLD less desirable, large companies are still likely to sue under a trademark dilution if another company uses its trademark with a different TLD.

113. Id.
To illustrate, would Hasbro, in the case discussed above, have been any less infuriated if the adult Web site were called "candyland.rec?"

Another drawback of the new TLDs is the loss of convenience to Internet users. The main function of a domain name is to provide easy access to a Web site. Rather than remembering the long sequence of numbers comprising the IP address, a user who doesn’t know a company’s domain name will frequently type the company’s name followed by .com, and this is often correct. However, with seven new possible domains from which to choose, users will be less likely to guess correctly. How is someone supposed to remember whether a business is .com, .firm, .info, or another domain? Rather than simplifying the Web, these new top level domains may only serve to diminish the current ease of access to a particular Web site. Because .com is by far the most widely used domain, some Web browsers (such as Netscape) will automatically assume a user intends a .com domain if none is specified. For example, a user can merely type “apple” into Netscape and the browser will go to www.apple.com.

This brings to mind the convenience of 800 telephone numbers. Many companies use a catchy phrase or the company’s name as their 800 phone number, providing an easy way for customers to remember the number. With the recent addition of 888 toll free telephone numbers, customers may find themselves forgetting whether the prefix for their favorite hotel is an 800 or 888 number. Companies are likely to register numbers in both prefixes, to prevent their competitors or other “poachers” from stealing potential customers. The seven new TLDs face similar challenges.

The categories of the new TLDs are confusing, even when listed alongside the IAHCs descriptions, and will likely confuse Internet users searching for the Web page of a particular company. One company, Disney for example, could easily register a Web site in most, if not all, of the new TLDs: .firm because it is a business, .store because it advertises merchandise to customers at The Disney Store via the Web, .web because it offers online games and activities, .arts for Disney’s movie and television divisions, .rec for its well-known theme parks, and .info for Disney’s family.com Web site (which provides articles and information on a variety of topics). Of course, the site is already located in the .com domain, at http://www.disney.com, where it also qualifies because Disney is a commercial enterprise.
Presently, Internet surfers looking for Disney are likely to try "Disney.com" first, which will land them at the desired site. As these new TLDs become widespread, who would know where to begin? This potential probably only emphasizes the need for a complete, global, centralized directory. But this brings us back to the problems caused by the global Internet, which allows multiple companies with the same name in different countries, all fighting for the "choice" domain name of their company name followed by .com.

B. NSI Policy on Domain Name Registration and Disputes

As discussed above, the InterNIC Registration Service is the authority on domain names, and is currently operated by Network Solutions Inc. (NSI). NSI has created a policy regarding domain name registration and dispute resolution, setting forth procedures to be followed when two individuals want to register the same domain name. NSI does not determine whether a domain name potentially conflicts with another's trademark. Instead, NSI merely requires domain name applicants to represent that the name "to the best of Registrant's knowledge, does not interfere with or infringe upon the rights of any third party." Domain names are registered on a first-come, first-served basis. No statute or regulation expressly prohibits someone from registering a domain name comprised of a famous trademark owned by someone else. However, if the use would create a likelihood of consumer confusion regarding the source of goods or services proffered via the domain name, the use would be prohibited under federal and state trademark and unfair competition statutes. Under the Federal Trademark Dilution Act of 1995, use of the mark as a domain name which would cause dilution of the mark for the registered user may be enjoined by a federal court.

The NSI policy provides a procedure for third parties to challenge a registrant's use of the domain name. If the trademark holder

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116. NSI Domain Name Dispute Policy Statement, supra note 32.
117. Id.
118. Id.
119. Dare, supra note 79. Dare's article was written before passage of the Trademark Dilution Act of 1995, which, although not preventing registration of a famous mark, does provide for a cause of action to prevent dilution of such a mark.
120. Id.
122. NSI Domain Name Dispute Policy, supra note 32, at § 5.
provides NSI with evidence that an already assigned domain name is identical to its federally registered United States or foreign trademark, the domain name registrant has thirty days to prove to NSI that it also holds such a trademark. Otherwise, the domain name will be placed on hold pending a court order or other resolution of the dispute.\footnote{123}

For a trademark owner to successfully challenge the domain name user, the challenger’s registered trademark must have a “date of first use” (or an “effective date” of registration) prior to the date the domain name was first used.\footnote{124} The InterNIC rules do not clarify what will constitute the “date of first use.” It is likely to be the first use date listed in the trademark registration, but might also need to be proven in an evidentiary proceeding.\footnote{125} This definition of “first use” protects domain name owners from people who see a domain name they want and quickly register it as a trademark in an attempt to steal the domain name away.\footnote{126}

The policy also gives preference to owners of federally registered marks over domain name holders. Thus, “if one business files an intent-to-use trademark application having a description for goods or services delivered through the Internet and a second business files only a domain name registration application, the second business could be prevented from using its newly registered domain name.”\footnote{127}

In other disputes, for example a situation where companies each hold common-law or state trademarks, parties must work out their disagreements in arbitration or in court.\footnote{128} The name may be suspended until the dispute is resolved.\footnote{129} This seems unfair to the small business owner who has never done business out of her home state and has registered her trademark in the state’s registry. When she later seeks to obtain a domain name to inform her customers about her business (and possibly to sell her products via the Internet to her in-state customers), she will be unable to obtain the domain name under the NSI policy if someone else has registered the mark.

\footnote{123}{Id.}
\footnote{124}{Id. \S 6(b).}
\footnote{125}{Legal commentators have assumed it is the former. Carl Oppedahl, Changes in Domain-Name Rules Could Result in Ownership Loss, N.Y.L.J., Nov. 28, 1995, at 5.}
\footnote{126}{Id.}
\footnote{127}{Krivoshik, supra note 1, at 13.}
\footnote{129}{Id.}
first. The policy specifically mandates that in a dispute, evidence that a
domain name violates the rights of a third party includes federally
registered or foreign trademarks, but “registrations from individual
states are not sufficient.”

This policy may lead companies who are already using a domain
name, but lack a United States federally registered trademark, to
obtain registration in the fastest manner possible from a foreign
country. This is because the InterNIC gives the same weight to foreign
registered trademarks as those federally registered in the United
States. Determining which foreign countries provide the fastest
registration is already a topic of discussion on the Internet, since
domain name holders hope to obtain a foreign trademark registration
and provide proof of such to InterNIC within the policy’s thirty day
challenge period.

The policy is unclear whether a trademark consisting of a design
and letters, or stylistic letters such as all capitals, would be considered
identical to a domain name consisting of the same letters without the
stylization. Domain names are lower case letters only, with no
opportunity for any stylization.

Who can be held liable for problems and expenses incurred
because of trademark and domain name disputes? Under the current
NSI policy, Network Solutions, Inc., the National Science Foundation,
the Internet Assigned Numbers Authority, the Internet Architecture
Board, and the Internet Society are all indemnified against trademark
disputes as a condition of registering a domain name. Thus, any
entity remotely involved with the assignment of domain names cannot
be held liable.

Some companies that have been the victims of trademark
infringement have joined their Internet access provider as a defendant
in the suit. The Council of Better Business Bureaus did so in its lawsuit
against Mark Sloo, as discussed above, but the case was settled

130. *NSI Domain Name Dispute Policy*, supra note 32, at § 5 (a).
131. The NSI Policy allows a domain name registrant 30 days in which to produce evidence
of a federal or foreign trademark registration or evidence or prior use of the mark, to counter the
challenge by another person who wants to revoke the domain name. It is common knowledge
among trademark lawyers that Tunisia can provide the necessary registration in only 24 hours.
132. Dare, *supra* note 79.
133. *NSI Domain Name Dispute Policy*, supra note 32, at § 3.
134. National Science Foundation funds the cooperative agreement under which Network
Solutions operates, while the Internet Society and architecture board convey naming policy to
the naming authority.
without determining the provider's liability. Similarly, Sandals, a Caribbean resort, joined the Internet access provider as a defendant in a suit against a travel agency that used the name "sandals.com" for collection of files on the Internet containing information about the resort.

David Maher, co-chairman of the International Trademark Association's task force looking at the domain name issues, says that NSI's policy "is a 'cop-out' which sacrifices trademark clarity so that the company is shielded from liability." Maher said, "They are conditioning access to the most important communications device since the telephone on an illegality. ... In order to get access you have to give up your rights." InterNIC defends the policy by saying that it "allows us to be neutral." The policy has been criticized for giving more recognition to owners of federally registered marks than state registered, or unregistered marks such as trade names, which have been used for years and would provide rights in other contexts such as the unfair competition cause of action under section 43 of the Lanham Act.

The number of domain names is constantly increasing, which leads to greater opportunity for conflicts. The entrance of commercial organizations onto the Internet has been exponential—from 300 domain requests per month in 1993 to 600 requests per day in July 1995. Most of these businesses want to use the .com suffix for their domain names because it is used worldwide to indicate that the site is used for commercial purposes. With the increasing number of .com and other domain names being registered, the potential for disputes may skyrocket. It is therefore important to consider possible methods of preventing the disputes from arising in the first place.

C. International Ad Hoc Coalition's New Proposal

The IAHC seems to realize that adding new TLDs will not stop the current tide of domain name disputes, and that the current NSI
policy is inadequate to resolve disputes. To that end, the IAHC takes measures to facilitate resolution of the inevitable domain name disputes. Under the new proposal, domain name applicants must now include the following in their application: appointment of an agent for service of process, agreement to jurisdiction in the event of trademark litigation, sufficient contact and intended use information, and an agreement to resolve disputes through on-line mediation and arbitration. The IAHC intends to "promote accountability, discourage extortion and minimize obsolete entries" through a requirement for annual renewal of all domain names.

To prevent disputes from arising in the first place, the IAHC is establishing "Administrative Domain Name Challenge Panels" comprised of international experts in the fields of Internet domain names and intellectual property. These panels will administer the policy that domain names "which are identical or closely similar to names which are, for the purposes of the Internet, internationally known, and for which demonstrable intellectual property rights exist, should only be held by, or with the authorization of, the owners of such demonstrable intellectual property rights." The World Intellectual Property Organization Arbitration and Mediation Center will govern the creation of panels and procedures for bringing challenges, and challenges initiated within sixty days of the domain name registration would be placed on a "fast track" for resolution within thirty days. Results of all challenges will be made available on the Internet, and interested parties can submit comments before a final decision is made. However, no decision of a panel will affect the power of courts to hear cases regarding intellectual property rights. Thus, unhappy parties who have been ousted from their domain will likely still turn to litigation.

Yet another measure to prevent disputes is the imposition of a voluntary sixty day pre-registration waiting period, which the IAHC believes will "encourage early pre-litigation resolution of potential disputes, [and] provide a domain name holder a stronger defense

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142. IAHC Final Report, supra note 31, at 17.
143. Id.
144. Id. at 18.
145. Id.
146. Id.
147. Id. at 18-19.
148. Id. at 19.
against a subsequent challenge by a trademark owner. Each registrar may choose whether to implement the waiting period for its applicants, and applicants could waive the waiting period if they want to begin using the domain name immediately. Upon completion of the application, the domain name and its applicant will be listed on a publicly accessible Web site, allowing trademark holders to monitor registration for potentially infringing domain names.

Internet custom and practice will dictate the end result. However, the .com domain has already become established as the domain of choice for companies on the Internet, and these companies are not likely to be as pleased with a domain name ending in .firm or another of the proposed TLDs. The battles over domain names and trademarks on the Internet is thus likely to continue.

V Recommendations on Preventing Disputes

The proposals of the IAHC discussed above are a significant advance in the quest to end domain name disputes. However, with millions of domain names yet to be registered, and the addition of seven new top level domains (and possibly more in the future), the number of disputes will likely increase. To that end, I evaluate and propose some further policy options.

One possible way to alleviate domain name disputes is to revise the registration procedures beyond the IAHC recommendations. The procedure could require all domain name applicants to first conduct a federal trademark search and register the domain name as a trademark with the PTO. However, this proposal has drawbacks. The trademark search itself can be done in a few days through professional trademark searching services such as Thomson & Thomson, but it may be more costly than small companies or individuals who wish to register a domain name can afford. These searches can be completed for far less money through various online services, such as searching the Federal Trademark Registry on Westlaw. However, such searches will likely be less extensive, and not everybody has access to such

149. Id. at 20.
150. Because trademark law clearly applies on the Internet, and because of the Internet's importance to commerce, Thomson & Thomson, the oldest trademark research company in the United States, has expanded its trademark search reports to include registered domain names. The company also offers a domain name “watch” or monitoring service, which will alert subscribers to new domain names that may infringe their trademarks. Trademarks Monitored on Internet, MASS. LAWYERS WEEKLY, Dec. 25, 1995, at C1.
services. The major drawback of requiring prior trademark registration would be the delay while the applicant registers the name with the PTO. Furthermore, most people would not have access to (or want to pay fees for) an attorney to file the trademark application, and will not likely take the time to educate themselves on how to correctly complete the filing process on their own.

A comprehensive on-line directory of domain names, which does not yet exist, could solve some of the problems regarding disputes, but not all of them. Telephone directories have existed for years, and there are still cases regarding disputes over confusingly similar telephone numbers.\footnote{151}

The best approach to preventing disputes is for companies without domain names to quickly register the names they want with the PTO as federal trademarks (if not done already), and with InterNIC as domain names. Any companies that have already obtained domain names but have not yet registered the names as federal trademarks should obtain a federal trademark registration (or foreign registration) as soon as possible, because of the strong emphasis the NSI Dispute Policy places on such registrations. If another company contests the use of the domain name, rights to the name will depend on who was first to register the mark and use it (under the NSI policy). As discussed above, when federally registering a domain name as a trademark with the PTO, the domain name must meet all the usual criteria for trademark registration, and the “dots” and “www” terms will be disclaimed as generic.\footnote{152} The PTO does not require proof of InterNIC registration to register a domain name, so federal registration may be obtained even before the domain name is actually used as such.\footnote{153}

Even if the mark has not yet been used in interstate commerce, use of a mark on the Internet, without more, may create rights to the mark under the Lanham Act’s intent to use provision.\footnote{154} The PTO may accept use of the domain name (without more) as use of a mark in interstate commerce, but using the mark elsewhere in the business is preferable. A stronger application for registration will result if the mark is used prominently on the home page rather than just in the

\footnote{151. For example, see the discussion of the Holiday Inn case, supra Part III.B.}
\footnote{152. Anti-Counterfeiting Group’s Fall Meeting Explores Infringement on the Internet, supra note 89.}
\footnote{153. Dare, supra note 79, at 12.}
\footnote{154. Section 1051(b) of the Lanham Act, 15 U.S.C. § 1051(b) (1994), allows registration of a mark if the registrant has “a bona fide intention . . . to use a trademark in commerce.”}
address. However, other countries regard such use on the Internet as only "local" in scope, so these rights are established only in the United States, even if a foreign consumer were to purchase a product from a company's U.S.-based Web page. The Madrid Protocol would provide protection abroad even though a trademark was only registered in the United States, but "the U.S. has refused to join [this treaty] because of a voting rights dispute with the European Union. Until we can resolve that issue, the PTO is trying to come up with bilateral and regional systems that will allow for limited international protection on U.S. registration of marks."

A company may also want to take preventative measures such as registering a domain name in other top-level domains in addition to .com. There is dispute over whether or not a company should take the precaution of registering its domain name, in addition to the .com domain, in country specific domains such as .us, .mx, and so forth. Although the company can operate its Web page globally with only the .com domain name, it may want to take precautionary measures in registering the others to prevent someone else from registering it first and then ransoming it to the company. However, if the company owns trademarks in the country where the country-specific domain is located (i.e. the trademark is registered in Mexico if the name is in the .mx domain) and the company that registered in Mexico has no trademark rights to it, the rightful owner will be able to get the Mexican company to give it up subject to the NSI policy. The Federal Trademark Dilution Act of 1995 will not solve problems caused by registration of domain names in other countries if those countries do not observe United States trademark law.

Some companies are taking preventative measures to an extreme, and registering all domain names with any relation to their company or products. Procter & Gamble Co. has registered approximately 200 domain names, including the company's products, as well as body parts and ailments the products are intended to treat. Kraft General Foods has registered at least 150 domain names. However, this mass-registration tactic may no longer work because InterNIC has an

155. See discussion supra part III.B.
156. Anti-Counterfeiting Group's Fall Meeting Explores Infringement on the Internet, supra note 89.
157. Id. (quoting Carlisle Walters, an attorney-advisor with the PTO).
158. Krivoshik, supra note 1, at 13. Some of Procter & Gamble's prized possessions include badbreath.com, dandruff.com, diarrhea.com, and underarm.com. Id.
159. Id.
“unwritten policy to encourage limiting the number of domain names an entity can register” and has stated that an administrative error led to the large number of Procter & Gamble registrations, which are subject to revocation.\footnote{Id.} Furthermore, companies may be wasting money by registering domain names they may not actually need, as InterNIC charges a $100 application fee for .com domain names, and a $50 annual maintenance fee which must be paid to continue using the domain name after the first two years.\footnote{Id.}

\section*{VI

\textbf{Conclusion}}

As with any new technology, it will take some time before federal, state, and international statutes and policies catch up with new, unanticipated legal issues the Internet has raised. The evolution of federal statutes is beginning already, as evidenced by the recent addition to the Lanham Act, the Trademark Dilution Act of 1995. As judges wrestle with new trademark issues and slowly shape the common law, it seems that companies have mostly been able to work out these disputes on their own. While the addition of new top level domains as proposed by the IAHC may alleviate some domain name disputes, it may lead to even more litigation, as the number of domain name categories, and therefore the number of domain names, increases.

The fact remains that only one of a specific domain name can exist throughout the world, and unless the format of domain names is altered to better reflect trademark law, current United States trademark law is inadequate to address issues raised by multiple claimants to the rights of a domain name, or to prevent such disputes, which will continue to arise with increasing frequency as the number of domain names and importance of the Internet increases.

\footnote{Id.}