

To: Domain Name@Leg@OGC  
From: S=KathrynKL/C=US/A=INTERNET/DDA=ID/KathrynKL(a)aol.com  
Cc:  
Subject: Formal Comments of ACM's Internet Governance Project  
Attachment: MESSAGE1.TXT, SMTP.HDR  
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A long message has been sent as an enclosure...

To: Ms. Sabrina McLaughlin, Office of General Counsel,  
U.S. Department of Commerce  
From: Association for Computing Machinery's Internet Governance Project  
(ACM-IGP)  
Re: Public Comments from ACM-IGP on Procedures for Resolving Disputes

Involving Personal Names, under Section 3002(b) of the  
Anticybersquatting  
Act

Date: April 21, 2000

Email Submission Address: DomainName@doc.gov

Dear Ms. McLaughlin and the Office of General Counsel:

Pursuant to the Federal Register published by the Department of Commerce regarding Section 3002(b) of the Anticybersquatting Consumer Protection Act, the Association for Computing Machinery's Internet Governance Project urges the Secretary of Commerce and the Office of General Counsel to preclude the unprecedented expansion of trademark law to cover personal names in cyberspace. Placing further restrictions on the use of domain names will impede the flow of information on the Internet and undermine core principles of free speech.

## I. Introduction

The Association for Computing Machinery is the oldest scientific, educational, and professional association of computer professionals and practitioners in the United States. ACM's Internet Governance Project was launched in May 1999 to ensure that regulation of the Internet sustains the Web's capacity as a vehicle for democracy and debate. The ACM's 80,000 members (60,000 in the US) represent a critical mass of computer scientists in education, industry, and government.

## II. Extending the Protection of Trademark Law to Cover Personal Names is Unwarranted and Unnecessary.

Extending the protection of trademark law to cover personal names is unwarranted and unnecessary. Personal names are not a distinctive category of speech that merit exclusive rights. The Lanham Act expressly prohibits protection of surnames unless they acquire secondary meaning over time. For example, McDonald's merits protection because of its notoriety through success and advertising, but "McDouglas" is not similarly protected. First names and nicknames are considered to be very weak marks and do not receive elevated protection unless they acquire noteworthy secondary meaning. Since names are not inherently distinctive, federal and state laws generally allow

their concurrent use in association with various products, such as Tom's Pizza Parlor and Tom's Barbecue. State laws address matters regarding personal names in cases of libel, consumer confusion, and appropriation, but the federal government has rightfully avoided jurisdiction of such issues.

### III. Government Should Not Impede Internet Development.

The government's regulation of the use of personal names as domain names would impede the Internet's development as a medium that facilitates unfettered communication. The Supreme Court recognized in *Reno v. ACLU* (1997) that the government should not hinder speech on the growing network: "The record demonstrates that the growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it." Preventing individuals from naming their site after another person runs counter to free speech and "fair use" principles, which allow people to engage in parody, comment, and criticism. An effective means of communicating such messages in cyberspace is through Web sites with attractive domain names, including personal names.

### IV. Regulations on the Use of Personal Names Would be Difficult to Implement.

Regulations on the use of personal names would be difficult to implement as a practical matter. Many individuals have the same names; moreover, many individuals have nicknames that may be another's legal name. People's names change after marriage and divorce. Domain name holders might choose to adopt a pseudonym for their expression in cyberspace. These individuals should not be required to legally change their names in order to identify their Web sites as such. Movies and books might also have personal names in the title, such as "Jerry Maguire" or "Emma." Prior restraint on the use of personal names in cyberspace could frustrate the process of obtaining domain names for various purposes and limit individual expression on the Web.

A broad opening of the rights to civil action for all individuals who find their personal names registered on the Internet would create a flood of litigation. If the Department of Commerce believes it is absolutely necessary to provide some form of protection for the "bad-faith" registration of personal names, it should limit the protection to very high-profile individuals with distinctive names not commonly used by others who engage in commercial use of those names. The expansion of trademark law beyond such a degree raises serious First Amendment concerns.

### V. ICANN's Uniform Dispute Resolution Policy Adequately Addresses Pertinent Issues.

The Internet Corporation for Assigned Names and Numbers (ICANN) established a Uniform Dispute Resolution Policy (UDRP) with clear protections for free speech in recognition of the global nature of the medium. ICANN has addressed both the substantive and procedural issues regarding conflicts over domain name registrations. On the substantive side, the UDRP would clearly cover a situation where a high-profile individual's commercial use of his or her name rose to the level of common law trademark and would allow a bad-faith registration to be removed in such circumstances. However, the UDRP specifically protects legitimate uses of names.

On the procedural side, ICANN has created a process whose significance lies in its global application and resolution of conflicts through an international regulatory framework. A unilateral restriction on Web expression by the United States would counter the efforts of ICANN, which was commissioned by the U.S. government to manage the Domain Name System with respect to vast international constituencies.

#### VI. Alternative Methods can be Employed to Distinguish Web Site Content.

Alternative methods can be employed to distinguish Web site content. ICANN is discussing the implementation of new gTLDs - such as .biz, .firm, and .web. New gTLDs could be created to help individuals identify themselves in various fields, such as .act for actors or .mus for musicians. The registries and/or the UDRP process could help ensure that only a designated class of individuals used names under a specific gTLD. In addition, under the current structure, the U.S. could enable the creation of Second Level Domains, such as .act or .mus, under the country-code Top Level Domain .us and allow these new Second Level Domains to be coordinated in conjunction with the actors' and musicians' guilds and unions.

On the particularly controversial issue of political candidates and Web sites both condoning and condemning them, an official gTLD could be established for political campaigns, such as .pol or .elect. Also, a Second Level Domain could be created for official candidates under the .us country-code Top Level Domain. Further, the candidate information services of the Federal Election Commission could provide a list of candidates' official Web sites. Any number of steps may be taken to assure the validity of particular Web sites through the process of creating "more speech." However, imposing an absolute restriction on the registration of such a broad class of names is a draconian measure and will be used to constrain negative political commentary - a protected right under the US Constitution.

#### VII. SUMMARY

ACM-IGP strongly suggests that the Department of Commerce and Office of

General Counsel urge Congress not to establish guidelines that will stifle expression on the Web. Individuals should be free to use personal names to identify Web sites, even if the names are not legally their own. Congress must uphold the principles of free speech and fair use, and the Internet should continue to serve as a legitimate venue for comment, parody, and criticism. Existing trademark law does not cover the scope of personal names, and the United States should not unilaterally impose such unprecedented constraints on the entire Internet. We ask you to carefully consider legislation that will have far-ranging implications for the development of the Internet.

Respectfully submitted,  
ASSOCIATION FOR COMPUTING MACHINERY'S INTERNET GOVERNANCE PROJECT

/s/ Kathryn A. Kleiman  
Kathryn Kleiman, Director

/s/ Dori Kornfeld  
Dori Kornfeld, Policy Analyst