

To: Domain Name@Leg@OGC
From: "Mark Leventhal" <mleventhal@Ablondifoster.com>
Cc:
Subject: Comments to Federal Register Notice on Domain Name Registration
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I, Mark Leventhal, Esquire, hereby submit the following comments in response to the Federal Register Notice on Domain Name Registrations:

(1) Until the fall of 1999, there was nothing illegal, or even close to illegal, about registering someone's else's name as a domain name. Since a person's name is not a trademark (or even a common law trademark), registering a person's name could under no circumstances fall within the purview of the Lanham Act. Accordingly, people bought other people's name as a domain name for \$70 each from Network Solutions (or from one of those new competing registrars). The act of selling the name to other people who were not clairvoyant to get their own name as a domain name was perfectly legal and could be said to represent true entrepreneurship. Some people have expended large sums of money developing such sites.

(2) Any attempt now by the Government to take away the domain names from those who paid for the name to those whose name was taken could be said to be an Unconstitutional Taking under the 5th Amendment of the Constitution. Domain names are property (as evidenced by the fact that the Anticybersquatting Act provides for in rem actions), and if the Government decides to adopt a policy in which such names could possibly be transferred to their "rightful" owner, the Government must compensate the people who originally registered such names and who must now give such names up. I think its flatly wrong for the Government to spend money on this.

(3) Accordingly, I don't think the Government should adopt any policy in regard to domain names registered thus far. If a person wants to get their own name "back", then the Government should let market forces run their course. The Government should not assist those who were not clairvoyant enough to register their name in the first place. In addition, those whose names are used in "bad faith" with the "malicious intent to harm the reputation of the individual or the goodwill associated with that individual's name" already have recourse - they could bring actions for libel, slander, defamation, etc. Any attempt by the Government to take away a person's domain name to the "rightful" owner without compensation will be vigorously challenged in court as being an Unconstitutional Taking Under the 5th Amendment to the Constitution.

(4) In addition, the Government should not be in the business of deciding who should get a domain name. For example, the ownership of the domain name "kennyrogers.com", I believe, is currently in dispute. There are many Kenny Rogers. There is Kenny Rogers the singer. There is Kenny Rogers the baseball pitcher. There is Kenny Rogers the accountant in New York City, etc. The Government should not be in the business of regulating or even attempting to regulate who can own "kennyrogers.com". Market forces should. If the owner of "kennyrogers.com" puts defamatory statements about (one of the) Kenny Rogers on the internet site, then Kenny Rogers can sue for defamation. No more laws are needed in this area.

(5) In terms of personal names of candidates and potential official candidates, I also suggest that the Government not get involved. It would not be fair if a special top level domain was set up for current government officials and official candidates and not for "potential" candidates. Such Government policy would only be favoring incumbency. On the other hand if the Government gave the special top level domain to "potential" candidates, many many people would file a Declaration of Candidacy just to get the special top level name. Such a system would be filled with fraud and just as importantly, is unnecessary. Current government officials, official candidates, and "potential" candidates can easily communicate their domain names to the public so that the public will know where to go on the Internet. At most, I suggest having a site under the .gov or .us top level domain name where the web sites of all government officials and official candidates who choose to be listed, are, in fact, listed.

If you have any questions or comments in regard to the above comments, please let me know.

Regards,

Mark Leventhal

202-530-1322

mleventhal@ablondifoster.com