

Santa Clara University

Domain Name & Keyword Regulation

Prof. Eric Goldman

Director, High Tech Law Institute

<http://www.ericgoldman.org> • <http://hightechlaw.scu.edu>
egoldman@gmail.com

A Puzzle

- Domain names are heavily regulated. Search keywords aren't. Why?
- Commonalities
 - Both systems match database entries
 - Navigational aids for searchers
 - Prime location creates substantial value
 - Omnibox
 - Wildcarding
 - Administration by private organizations

Domain Name-Specific Regulations (US)

- **Federal Laws**

- Anti-Cybersquatting Consumer Protection Act
 - Trademark protection (15 USC § 1125(d)(1))
 - In rem jurisdiction (15 USC § 1125(d)(2))
 - Personal name protection (15 USC § 8131)
 - Domain name registrar/registry immunization (15 USC § 1114(2)(D))
- Fraudulent Online Identity Sanctions Act
 - Enhanced IP remedies (15 USC § 1117(e); 17 USC § 504(c)(3); 18 USC § 3559)
- Truth in Domain Names Act (18 USC § 2252B)
 - Misleading domain names leading to obscenity/porn
- Dot Kids Implementation and Efficiency Act of 2002
- Proposed: Combating Online Infringement and Counterfeits Act (COICA)

- **State Laws (selected)**

- State anti-cybersquatting laws (including CA, HI, LA, NY, UT)
- State anti-political cyberfraud law (CA Elec. Code §18320-23)
- State anti-spam/anti-phishing laws
- Sex offender registrations (tied to violations of 18 USC § 2252B) (including IA, MD)
- Proposed: NY S953 restricting domain name sales to terrorists

- **Private regulations**

- Ex ante: allocation controlled by centralized bodies with complex governance structures
- Ex post: UDRP

Keyword-Specific Regulations (US)

- **State law**
 - Alaska 45.45.792 to 798
- **Search engine private ordering**
 - Yahoo and MSN allow TM owners to block competitive keyword buys
 - Google allows TM owners to block TM references in ad copy

Contemplating the Dichotomy

- **Distinguishing attributes**
 - Domain names also are part of email addresses
 - Domain names are “property”
 - Domain names aren’t easily shared
 - Domain names allocated on first-come/first-served basis for fixed price
- **Legislation codifies time-limited assumptions about technology**
- **Possible regulatory implications**
 - Option #1: Regulate search keywords like domain names?
 - Option #2: Deregulate domain names?