

Law of domain names II

The domain name



Content of the lecture

- Technical description of the system of domain names
- Basic terminology
- Abusive domain name registrations
- Relevant legal norms
- Introduction to alternative dispute resolution

Objective of the lecture

Give you the general idea of the problems that will be discussed in the lectures

IP address and a domain name

IP Address

- Is a code which is used to identify a server in the network.
- format xxx.xxx.xxx.xxx
- Numbers from 0 to 255

Domain name

- String of characters
- Saved in DNS
- Formatxxx.xxx.xx.
- One string (label) has at most 63 characters
- A domain name has at most 256 characters



How the system works?

- The user enters a domain name into the browser
- The browser sends an inquiry to the “name server”
- Name server searches the “domain sentence” in the DNS database and “translates” the domain name into the IP address
- The browser connects to the server



Structure of a domain name

- Root domain .
- Top level domain (TLD)
 - Generic- .com .gov .org .biz .edu
 - National- .cz .uk .de .sk .ru
- Subdomain
 - muni.cz seznam.cz google.com
- Subdomains of lower levels
 - law.muni.cz pocasi.seznam.cz mail.google.com

DNS

- The Domain Name System
- Helps users to find their way around the Internet
- the DNS makes using the Internet easier by allowing a familiar string of letters to be used instead of the IP address

Functions of a domain name

- Technical
- Identification
 - Not necessarily – e.g. goodwill.as
- Search
- Promotion
- Competitive



How domain names are assigned

- Assignment is based on registration
- The database of domain names is maintained by Administrators/Sponsors
 - Each top level domain has its administrator
ICANN, EURid, CZ nic
 - The main task of administrator is to run DNS
- The registration of domain names to individual users is performed by REGISTRARS
 - Registrars are entrepreneurs and compete

Main principles of registration

- Singularity principle (uniqueness)
 - The domain name can be registered only for one user
 - One user can have more domain names
- Priority principle
 - First come first served

ICANN - top authority

- Internet corporation for assigned names and numbers
- responsible for managing and coordinating the Domain Name System (DNS)
- ICANN is also responsible for accrediting the domain name registrars

Domain speculations

And abusive registrations



The ultimate consequence of priority and singularity principles

- Competition for privileged domain names
- Fastest user wins the race
- Creates space for abusive domain name registrations
 - Cybersquatting
 - Typosquatting
 - Domain Kiting
 - Domain Hijacking



Domain name transfers

- Sex.com for \$13 million in October 2010
- FB.com for \$8.5 million in November 2010
- Business.com for \$7.5 million in December 1999
- AsSeenOnTv.com \$5.1 million in January 2000
- Toys.com: Toys 'R' Us by auction for \$5.1 million in 2009^[11]
- Altavista.com for \$3.3 million in August 1998
- Wine.com for \$2.9 million in September 1999
- CreditCards.com for \$2.75 million in July 2004
- Autos.com for \$2.2 million in December 1999

Cybersquatting

- Registration of a domain name in a bad faith
- Intent to
 - Block from competition
 - Divert consumers for own profit
 - „Blackmail” the other competitors or trademark holders



Typosquatting

- Typo
- yoynam.sk, wikipedia.org, whitehouse.com, google.com
- Intent to take an advantage from the popularity of a website to increase own “traffic”



Domain kiting, domain tasting, domain front-running

- Blocking of attractive domain names
- Abuse of 5-day trial period
- “Kitters” block all potential domain names
- Offer “blocked” domain names for sale



Domain Hijacking

- The domain names are registered for limited time period
- If the holder forgets to prolong the time period his domain name can be “hijacked”

Questions

- Does abusive registration constitute danger to the society?
- Is it worth regulating?
- Can we combat it with existing legal tools, or do we need new ones?



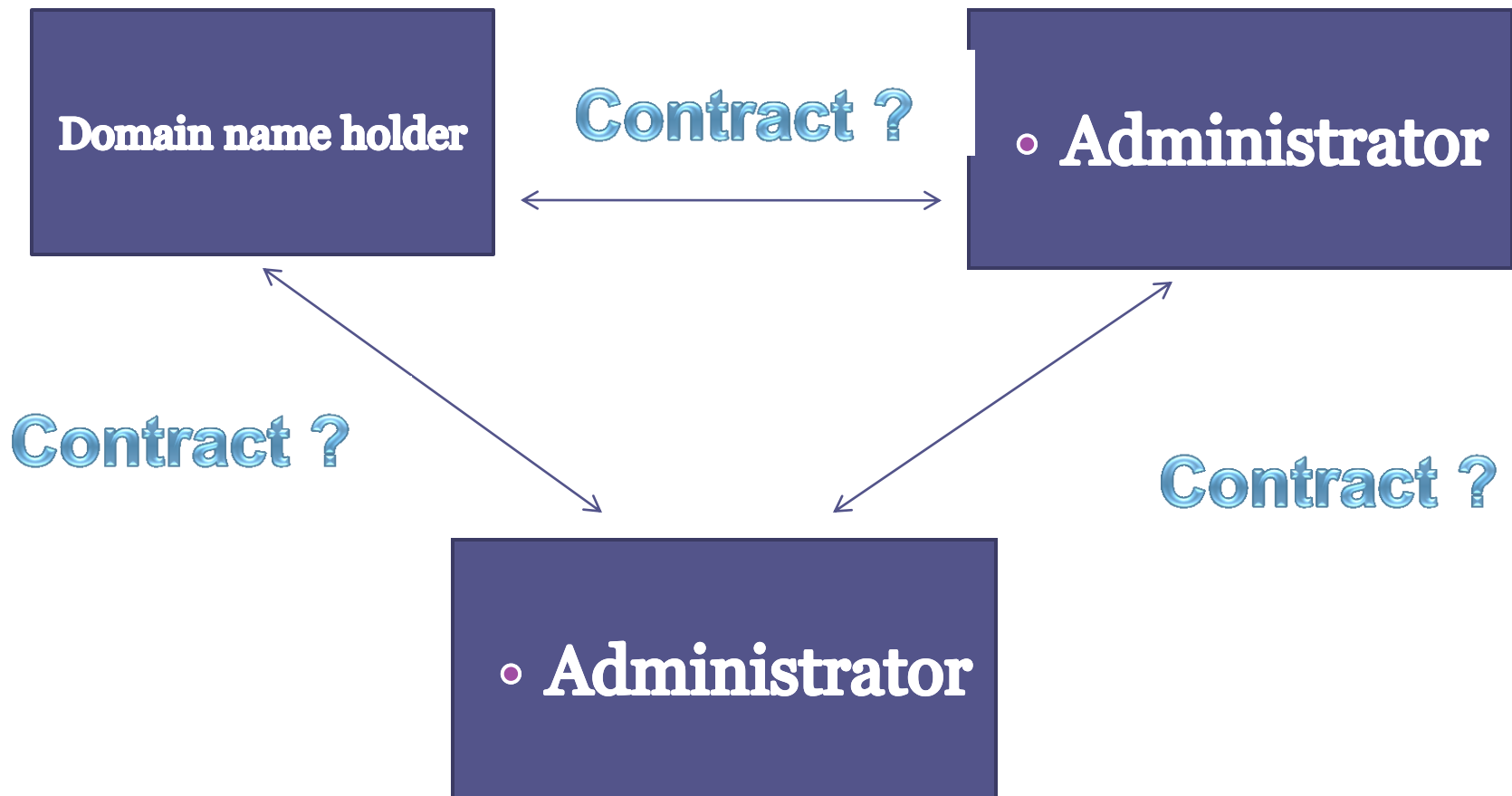
Legal concept of a domain name



Legal definition of a domain name

- Property (?)
- Contract (?)
- Legal institute sui generis (?)
- **Practical meaning**
- Can you sell a domain name?
- Can we apply the fundamental right of property?
- Is there any “absolute right” for a domain name?
- Can you inherit a domain name?

Domain name as a contractual relationship?



The legal relationship between the Administrator and the Registrar

- Administrator
 - Independent and non-profit institution
 - Concludes contracts with registrars
- Registrar
 - Entrepreneur
 - Mediates the assignment of „ domain names “
 - Concludes contracts with users himself (not an agency)
 - He has a right to conclude contract with a user, but not an obligation
 - Under the Czech law, this contract is most similar to a mandate

The legal relationship between the User and the Registrar

- Usually a service interconnected with a web-hosting
- The duty of Registrar is to register a domain name at Administrator
- User has the right to change a Registrar
- Cancelling the contract with registrar, does not mean the cancellation of a domain name

The legal relationship between the User and the Administrator

- Administrator has a duty to keep the domain name in his DNS database
- Innominate contract
- Contract for a limited time period
- User has a duty to follow the terms and conditions of the domain



Cease of the right to the domain name

- Expiration of time of registration
- Transfer based on the contract
- Transfer based on the decision
 - Of the court
 - Of the arbitrator
 - Eligibility condition



Domain disputes



How to be legally protected from squatters?

- Competition law
- Trademark law
- Geographical indications
- Commercial name (firma)
- Right for privacy



UNFAIR COMPETITION

- §44 (1) "Unfair competition" means conduct in economic competition which conflicts with the accepted practices of competition and which may be detrimental to other competitors or customers. Unfair competition is prohibited.



UNFAIR COMPETITION

- misleading marking of goods and services
 - svycarskehodinky.cz, google.com, wikipedia.org
- parasitic use of the reputation of another competitor's enterprise, products or services

Domain names and right for privacy and personality rights

- UDHR Article 12
 - No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- Charter of human rights – Article 10(1)
 - Everyone has the right to demand that his human dignity, personal honor, and good reputation be respected, and that his name be protected.

Possible violations of personal rights

- Paroubeknamars.cz
- bushsucks.com
- Ihategates.com (inactive)

- Juliaroberts.com
- Britneyspears.com

Protection of company names - § 12 Commercial code

- (1) Anybody whose rights have been affected by unauthorized use of his commercial name may demand that the unauthorized user desist from further use of his commercial name and eliminate such practice. He may also demand the surrender of unjust enrichment and the granting of appropriate satisfaction, which may be provided in money.
- (2) If damage has been caused by unauthorized use of a commercial name, compensation for such damage may be claimed under this Code.
- (3) In its judgment the (competent) court may award the plaintiff the right to have the court's judgment published at the defendant's expense, and, depending on the circumstances, the court may also determine the extent, form and manner of publishing such judgment.

Trademark

- Exclusive right to use the trademark in connection with goods and services

Example

- Squatter registers a domain sony.cz and offers it for sale
 - Can these companies rely on the protection on the company name claims?
 - **Sony Music Entertainment Czech Republic s.r.o.**
 - **Sony Music Entertainment Czech Republic s.r.o.**
 - **SONY Czech, spol. s r.o.**
 - **Sony Ericsson Mobile Communications International AB Branch Office Czech Republic,**

Example



- Squatter registers the domain lego.cz
- He does not use this domain and offers it for sale for 200 000 Kč
- Can the trademark owner claim violation of his rights?
- Can the trademark owner claim transfer of the domain name?
- What if the owner is based in denmark, administrator is Czech and squatter Russian?

Alternative dispute resolution



Reasons

- Increased volumes of squatting cases
- Problems with international element
- Insufficient national regulation
- Low experience of judges with cybersquatting and IP law in general

Alternative resolution - principle

- Arbitration clause in the terms and conditions of registrations
- Third parties have the right (not duty) to file a complaint at a selected arbitration institution
- Arbitration clauses are contained in the majority of domain names

Domain .eu

- Not an arbitration clause
- Competence of arbitration courts enacted by regulation 874/2004/EC

Quotation of picture

- <http://pegasusservicesgroup.com/images/domain-name.jpg>



Thank you

