

Comments to the Working Group on "Protecting the rights of others"

It's hard for a non-lawyer to write a text on a topic which is dominated by lawyers. There's a pretty well balanced summary on the Intellectual Property Rights (IPR) discussion on Wikipedia, but that's too unfocused (http://en.wikipedia.org/wiki/Intellectual_property) as input to the working group. So I'm trying to give comments on behalf of the community I'm belonging to.

70% of Company Names are generic

The first I did was a short survey on the Fortune Top 100 US companies in 2006. Interestingly, but not surprisingly, 70% of the Top 100 company names derive from generic sources in a broader sense, which include abbreviations, geographic names, surnames and general generic terms. The survey results should not much differ within other countries. The complete data are attached below.

Abbreviations:	IBM, UPS, CVS
Geographic names:	Washington, Hartford, New York
Surnames:	Johnson, Lynch, Ford
General generic terms:	Target, Sprint, Caterpillar

This means, that there are for each company name at least dozens of others (individuals, companies and other organisations) which potentially also have their own IPR in a term. Only about 30% of company names seem to be unique, especially Internet companies seem to prefer unique identifiers like Skype or Ebay.

For that reason I think that no company, organisation or individual should have the exclusive right on a generic term.

Domain Names are to Internet Companies, what Patents are for Brick & Mortar Companies

Companies of the old economy are often built on patents and classic trademarks. Their main IP activities often belong to fight against counterfeit physical products with the brand of the company.

Within the new economy software, business models and domain names seem to be additional valuable assets which have to be protected. Fighting cyber-squatting and phishing are IP protection issues which rose with the Internet.

The discussion about the cost of the protection of IPR seems to be a critical issue in the introduction of new TLDs. But protecting IPR has been an important issue for companies since they exist and the bigger a company is the more it invests in filing and protecting IP. Domain names are a kind of company IP like patents or trademarks and therefore rather slightly anticipated existing protection mechanisms should be established than extra protection rules and procedures for domain names.

Example SUN

Everybody with the Internet business does know SUN Microsystems and we would wonder if we cannot find SUN Microsystems at www.sun.com. SUN is a generic word and in our Internet focused world connected with the IT products. But in other business sectors and among individuals in a certain community, SUN can mean something completely different. It could be a much better known solar cell producer in India (.in), a famous hairdresser chain in Wales (.cym) or the biggest solarium in Berlin (.berlin). In all cases SUN is associated for the individuals in the respective communities with different products and services.

I would say that none of these companies has the worldwide exclusive right to get their SUN brand protected in all new TLDs, even if the company is within the Fortune Global Top 100. Giving many entities the chance to get a name like SUN in new TLDs offers choice and avoids name monopolies and namespace monoculture.

Example METRO

The German METRO group is the fifth biggest company in terms of sales in Germany. METRO has established a very questionable way of protecting the METRO brand. One thing is to file METRO as a trademark in all (!) trademark classes in as many countries as possible. The other thing is how the METRO group is defending its trademark.

Some years ago the METRO group even sued the Paris METRO tube to change their name, also the public transport authorities in Berlin, Munich and Hamburg and other cities have been sued for naming their transport vehicles for instance Metronom, Metrobus or Metroexpress. METRO lost most cases, but it clearly shows how aggressive and money driven law enforcement can be even for a very generic term.

Giving METRO exclusively to the METRO group would mean that we have to be prepared to erase this word in all our conversation, texts and even the dictionaries. No one wants this!

The “No Cost Rights-Protection model” will not work

Reserving thousands of company names pre-emptive on a no-cost basis within new TLDs would not only damage the Internet business, especially that one of registries and registrars. It is also counterproductive in building choice, diversity and competition by new TLDs and would prevent manifold the number of businesses and individuals to get their own identity.

Solutions

An international organisation which is in charge of protecting IP of companies was proposed. How should such a company IP register be built? If companies would found such an organization for protecting their IP in new TLDs, the same issues would come up like in the TLDs Sunrise. Like: who should decide which SUN brand from which company has priority? Which organizations should be eligible to protect a brand, from with countries, etc.?

When at the end of the day “first come – first served” decides, no advantage over a classic Sunrise period would be the result. If money decides, may be in form of an auction, companies in less developed countries or poor communities would have no chance. Especially when generic terms like apple, orange, target, windows, delphi, shell, magic, fox, blue, marathon, cairo, york, boss, pinnacle (by the way, the list is endless), are subject to an auction. Even the artificially appearing name Yahoo derives from Gulliver’s Travels, where a Yahoo is an inhabitant of a country called Houyhnhnm.

But in any case the key principles of the Internet choice, diversity and competition would be lost.

For me the initial solution is still a Sunrise phase based on a “first come - first served” principle and with robust policies and guidelines. We’ve seen, within the last TLD launches (.travel, .jobs, .eu, .cat and in the near future .asia), more or less efficient ways to deal with IPR. But in the future, with many new TLDs coming up, we additionally will need more advanced procedures for notice and take down of IPR infringement than we had in the past. Especially regional sponsored TLDs might develop a best practice how to handle this efficiently based on local legislation. dotBERLIN is already working with legal experts on this topic.

By Dirk Krischenowski, Founder and CEO dotBERLIN GmbH & Co. KG
Marina del Rey, 23 February, 2007

Fortune 100 (2006)

Analysis of origins of company names

No.	Company name (abbreviation)	Generic	Surname	Geographic	Abbreviation	Artificial
1	Exxon Mobil (XOM)					x
2	Wal-Mart Stores (WMT)					x
3	General Motors (GM)	x				
4	Chevron (CVX)					x
5	Ford Motor (F)		x			
6	ConocoPhillips (COP)		x			x
7	General Electric (GE)	x				
8	Citigroup (C)	x				x
9	American Intl. Group (AIG)			x		
10	Intl. Business Machines (IBM)	x			x	
11	Hewlett-Packard (HPQ)		x			
12	Bank of America Corp. (BAC)			x		
13	Berkshire Hathaway (BRKA)		x	x		
14	Home Depot (HD)	x				
15	Valero Energy (VLO)					x
16	McKesson (MCK)		x			
17	J.P. Morgan Chase & Co. (JPM)		x			
18	Verizon Communications (VZ)					x
19	Cardinal Health (CAH)	x				
20	Altria Group (MO)					x
21	Kroger (KR)	x				
22	State Farm Insurance Cos		x			
23	Marathon Oil (MRO)	x				
24	Procter & Gamble (PG)		x			
25	Dell (DELL)		x			
26	Boeing (BA)		x	x		
27	AmerisourceBergen (ABC)					x
28	Costco Wholesale (COST)					x
29	Target (TGT)	x				
30	Morgan Stanley (MS)		x			
31	Pfizer (PFE)		x			
32	Johnson & Johnson (JNJ)		x			
33	Sears Holdings (SHLD)		x			x
34	Merrill Lynch (MER)		x			
35	MetLife (MET)					x
36	Dow Chemical (DOW)				x	x
37	UnitedHealth Group (UNH)	x				
38	Wellpoint (WLP)	x				
39	AT&T (T)					x
40	Time Warner (TWX)	x	x			
41	Goldman Sachs Group (GS)		x			
42	Lowe's (LOW)		x			
43	United Technologies (UTX)	x				
44	United Parcel Service (UPS)	x			x	
45	Walgreen (WAG)		x			
46	Wells Fargo (WFC)		x			
47	Albertson's (ABS)		x			
48	Microsoft (MSFT)	x				

Comments



49	Intel (INTC)					x
50	Safeway (SWY)	x				
51	Medco Health Solutions (MHS)					x
52	Lockheed Martin (LMT)		x			x
53	CVS (CVS)				x	
54	Motorola (MOT)					x
55	Caterpillar (CAT)	x				
56	Archer Daniels Midland (ADM)		x			
57	Wachovia Corp. (WB)		x			
58	Allstate (ALL)	x				
59	Sprint Nextel (S)	x				
60	Caremark Rx (CMX)	x				
61	PepsiCo (PEP)					x
62	Lehman Brothers (LEH)		x			
63	Walt Disney (DIS)		x			
64	Prudential Financial (PRU)	x				
65	Plains All Amer. Pipeline (PAA)	x		x		
66	Sunoco (SUN)					x
67	Northrop Grumman (NOC)		x			
68	Sysco (SYI)					x
69	American Express (AXP)	x				
70	FedEx (FDX)					x
71	Honeywell Intl. (HON)		x			
72	Ingram Micro (IM)					x
73	DuPont (DD)					x
74	New York Life Insurance			x		
75	Johnson Controls (JCI)		x			
76	Best Buy (BBY)	x				
77	Delphi (DPHIQ)	x				
78	Hartford Financial Services (HIG)			x		
79	Alcoa (AA)					x
80	Tyson Foods (TSN)		x			
81	TIAA-CREF					x
82	International Paper (IP)	x				
83	Cisco Systems (CSCO)					x
84	HCA (HCA)				x	
85	St. Paul Travelers Cos. (STA)			x		
86	News Corp. (NWS)	x				
87	Federated Dept. Stores (FD)	x				
88	Amerada Hess (AHC)		x			
89	Coca-Cola (KO)					x
90	Weyerhaeuser (WY)		x			
91	Aetna (AET)					x
92	Mass. Mutual Life Ins.			x		
93	Abbott Laboratories (ABT)		x			
94	Comcast (CMCSK)					x
95	Merck (MRK)		x			
96	Deere (DE)		x			
97	Raytheon (RTN)					x
98	Nationwide	x				
99	Washington Mutual (WM)			x		
100	General Dynamics (GD)	x				
		30	35	10	5	31
		Generic	Surname	Geographic	Abbreviation	Artificial