



- · Browsing Host Sends
- Caching Downloading
- US Copyright Law Amendments
 Digital Millennium Copyright Act

Digital Millennium Copyright Act

 Illegal to Circumvent Digital Copying Protection Measures

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- Illegal to Create or Distribute Circumvention Tools
- Limits liability of ISP's

Copyright

- Implied License
 - To view, copy for personal use, print
 - But not to retransmit, modify, store
- Implied License Can Be Restricted
 on Notice
- · Content clearance

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Domain names

- an address on the Internet
- .com most popular; all common English words are taken
- estimated over 10,000 current conflicts over domain names
- As eCommerce proliferates problems will grow

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Acquiring Domain Names

- No trade-mark screening
- Applicant statement that domain name doesn't infringe third party rights is taken on its word
- Nominal registration fee

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ICANN Dispute Resolution Policy

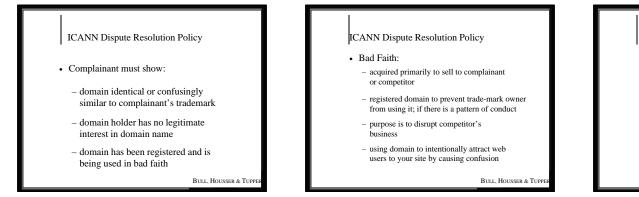
- Applicants must adhere to policy to obtain a domain name
- Mandatory arbitration with approved arbitrators; but can go to Court
- · Conducted by e-mail
- Complainant chooses the arbitration panel
- Quick and relatively inexpensive

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ICANN Dispute Resolution Policy

- Service of Complaint by e-mail
- 20 days from service to respond
- If no response proceedings are conducted *ex parte*
- Court action by squatter must be filed within 10 days of adverse decision
- Sole remedy is cancellation or transfer of domain name
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and contract



US Anti-Cybersquatting Legislation

- Court proceeding with remedies:
 - Injunction
 - General Damages
 - Attorney's fees and costs
 - Statutory Damages (\$1000 \$10,000 per domain)
- Damages only if activity after enactment

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US Anti-Cybersquatting Legislation

- · Based on trade-mark right of complainant
- *in rem* action permitted
- .com domain name registry is domiciled in the US
- Canadians will effectively be "governed" by the Act and can take its benefit

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- US Anti-Cybersquatting Legislation
- Decisions:
 - Tennis Australia preliminary injunction
 - Bell Atlantic Corporation in rem action
- Threat of Court appearance may "encourage" squatter to capitulate

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Domain Disputes

- · US Anti-Dilution Statutes
 - Requires "commercial use"
 - Mark must be "famous"
 - Requires jurisdiction
- Unfair competition / Passing Off
 - One In a Million Case (U.K.)

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- · Goliath wins
 - Umbro vs. 3263851 Canada, Inc.
 - Panavision vs. panavision.com
 - TOYS "R" US vs. toysareus.com
- "Initial Interest Confusion"

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- David wins
- TOYS "R" US vs. gunsareus.com
- Porsche "in Rem" Action
- Avery/Dennison vs. avery.com/dennison.com

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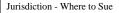
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- Hasbro vs. clue.com
- veronica.com; pokey.net; eToys.com

Jurisdiction - Where to Sue

- No Commercial Activity
 - Passive Web site
 - Posting on Bulletin Board
 - Braintec Inc. v. Kostiuk

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- Commercial Activity
 - Taking Orders
 - Targeting a Jurisdiction Commercially

Patenting E-Commerce Business Plans

- State Street Bank US Decision
- · Priceline.com vs. Microsoft
- Amazon.com "1 click"
- Situation in Canada

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Links of Interest

- http://www.perkinscoie.com/resource/ ecomm/netcase/index.htm
- http://www.icann.org/udrp/proceedingslist-name.htm
- http://cyber.law.harvard.edu/icann/search /udrp.asp
- http://www.networksolutions.com/cgibin/whois/whois

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