

A Survey of the Prominent Effects of Cybersquatting in India

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Abstract- With the growth of commercial activity on the internet, a domain name can be said to be used as a business identifier image. A trademark, a design, a logo or an easily remembered picture is a studiously crafted personality profile of an individual, institution, corporation, product or service. Domain name conflicts arise most frequently as a consequence of the practice of cybersquatting[11]. Cybersquatters deliberately exploit the first-come-first-served nature of the domain name registration system and then the squatters either offer to sell the domain to the person or company who owns a trade mark contained within the name at an inflated price. In India, there is no statute law which explicitly refers to dispute resolution in connection with cyber squatting or other domain name disputes. The Trade Marks Act, 1999 used for protecting use of trademarks in domain names is not extra-territorial, therefore, it does not allow for adequate protection of domain names. This paper projects the overview of cybersquatting & its prominent effects in India. With the current legal framework have been highlighted out and formulated a three pronged approach which would go a long way to eradicate these squatters.

1. INTRODUCTION

It was well said by Daniel J. Boorstin that an image is not simply a trademark, a design, a slogan or an easily remembered picture. It is a studiously crafted personality profile of an individual, institution, corporation, product or service. I would like to extend it to write that “A trademark, a design, a slogan or an easily remembered picture is a studiously crafted personality profile of an individual, institution, corporation, product or service.” Internet domain names have a immense market of their own. The world seeing a new change in the field of communications has created endless new opportunities for the citizens of cyberspace. The growing importance on the internet has fermented it into a powerful tool for businesses to promote, advertise, and sell products and services. Unfortunately, cybersquatting which is the outcome of dishonest and unlawful conduct has also increased.

Cybersquatting(also known as domain squatting), according to the United States federal law known as the Anticybersquatting Consumer Protection Act, is registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else. The cybersquatter then offers to sell the domain to the person or company who owns a trademark contained within the name at an inflated price. The term is derived from "squatting", which is the act of occupying an abandoned or unoccupied space or building that the squatter does not own, rent, or otherwise have

permission to use. Cybersquatting, however, is a bit different in that the domain names that are being "squatted" are (sometimes but not always) is being paid for through the registration process by the cybersquatters. Cybersquatters usually ask for prices far greater than that at which they purchased it. Some cybersquatters put up derogatory remarks about the person or company the domain is meant to represent in an effort to encourage the subject to buy the domain from them. Others post paid links via advertising networks to the actual site that the user likely wanted, thus monetizing their squatting.

2. DOMAIN NAME BASICS

It is essential to understand the technical background against which the issues in the paper have arisen. Each website on the Internet has an IP address behind the name. Every web server requires a Domain Name Server (DNS) system to translate domain name in to IP address [1]. IP address is string of numbers such as 192.168.20.254.The domain name is made up of characters that are easier to be remembered. An example of Domain name is illustrated in Fig. 1

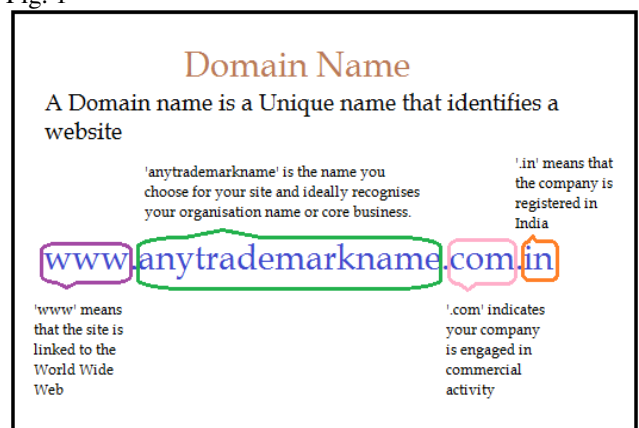


Fig. 1: An example of Domain name

- 'WWW' means the site is linked to the world wide web;
- 'anytrademarkname' is the name you choose to your site, and ideally is readily identifiable with your organization name or core business.
- '.com' indicates that your organization name or core business
- '.in' means company is registered in india

Distributed databases contain the list of domain names and their corresponding address and perform the function of mapping the domain names to their IP numeric addresses for the purpose of directing requests to connect

computers on the Internet. The DNS is structured in a hierarchical manner which allows for the decentralized administration of name-to-address mapping. The DNS 1st cum 1st served policy is a breeding ground for opportunists with neither trademark registration, nor any inherent rights to “pirate” or “squat” over domain names. Domain name today serves as an on-line trademark, source identifier, indicates quality and a repository of goodwill. Since numbers are more difficult to remember, alphabetical domain names were developed to make the addresses easier for humans to remember and use when communicating on the Internet. Such names are often catchy words or well-known names of individuals or companies, for example, “nokia.com” or “samsung.com”. Thus, a domain name is a popular substitute for the all-numeric IP address of a particular server.

3. CATEGORIES OF CYBER SQUATTING

Cyber squatting can be of various categories, most commonly seen is typo squatting, when a cyber squatter registers domain names containing variant of popular trademarks. Typo squatters rely on the fact that Internet users will make typographical errors when entering domain names into their web browsers. Some common examples of typo squatting include:

- The omission of the “dot” in the domain name: www.example.com;
- A common misspelling of the intended site: exmple.com
- A differently phrased domain name: examples.com
- A different top level domain: example.org

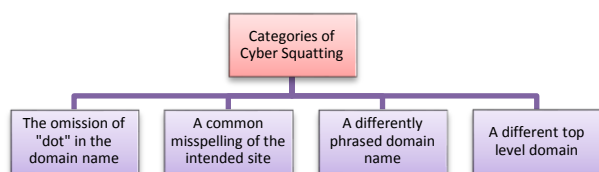


Fig. 2: Categories of Cyber Squatting

It is pertinent to note that the domain name system is administered by the Internet Corporation for Assigned Names and Numbers (“ICANN”). ICANN is a private organization that manages and coordinates the domain name system by overseeing the distribution of unique IP addresses and domain names. However, actual domain name registration is handled by numerous domain name registries situated in various countries around the world. Amongst the various domain name disputes that have come up for consideration of courts around the world, Cyber squatting, Competitor Disputes, Parody Disputes have been predominantly the underlying issue. In this paper the researcher shall be focusing chiefly on the menace of cyber squatting. With the domain prices falling and more top level domains (.biz, .cn, .mob and lately .in) getting accredited, cyber squatters are making a lot of illegitimate profits[2].

The problem arises because; the trademark owner cannot register his own trademark as a domain name as

long as a cyber squatter owns the domain name. Thereby, a cyber squatter breaches the right of the trademark owner to utilize his own trademark. In this sense, the cyber squatter breaches the fundamental rights of the trademark owner to use its trademark. However, it is important to note that there is nothing wrong with the practice of reserving a domain name. The problem spawned by cyber squatting is augmented as entrepreneurs try to take advantage of the reputation of others by registering domain names which attract members of the public. Of particular concern is the growing practice of registering the names of celebrities, particularly where domain name is used for a pornography site. Popular brand names are deliberately misspelled for the sole purpose of website traffic diversion through initial interest confusion. Rival companies indulge in unfair competition thereby providing gaping holes in the system for Cyber squatters to blackmail and harass trademark owners into buying back what is rightfully their own. The nuisance of cyber squatting is also evident from the fact that cyber squatting disputes filed with the World Intellectual Property Organization (WIPO) in 2006 increased by 25% as compared to 2005.

4. (UDRP) APPROACH

ICANN implemented the Uniform Domain Name Dispute Resolution Policy (UDRP) in 1999, which has been used to resolve more than 20,000 disputes over the rights to domain names. The UDRP is designed to be efficient and cost effective. In 2010 alone around 2696 cyber squatting cases were filed with the WIPO Arbitration and Mediation Centre under this Policy involving 4370 domain names across 57 countries, according to WIPO’s official website.⁴⁰ The UDRP is designed to solve disputes which usually arise when registrant has registered a domain name identical or confusingly similar to the trademark with no rights or legitimate interests in the name and has registered and used the domain name in bad faith Conflicts between two trademark holders or between a trademark holder and a registrant with rights or legitimate interests are not the concern for UDRP. Particularly, the UDRP does not apply if the registrant has been known by the name, has used it in connection with a bona fide offering of goods or services, or has used it for a legitimate noncommercial purpose

The UDRP proceedings are conducted by the ICANN approved service providers. There are presently four approved dispute resolution service providers that are accepting Complaints as mentioned in fig3. Each provider follows the UDRP as well as its own supplemental rules.



Fig. 3: Four approved dispute resolution service providers

These are World Intellectual Property Organization (WIPO), National Arbitration Forum (NAF), Asian Domain Name Dispute Resolution Centre (ADNCR) and Czech Arbitration Court (CAC). Under this procedure, neutral persons selected from panels established for that purpose would decide the dispute. The procedure takes approximately 45 days, costing about \$1000 in fees to be paid to the entities providing the neutral persons and is handled mostly online.

4.1 Cyber Squatting Test

Rule 4(a) as devised by the UDRP mentions applicable disputes in the events wherein:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
2. There are no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

Rule 4(b) explains the evidence of registration and Bad Faith use.

This is also known as the 'cyber squatting test'. Although the policy requires proof of all these three elements, in practice, the complainant will establish trademark or common law rights in the domain name, and generally, that the registrant operated in bad faith

5. SOME CASE STUDIES ON CYBERSQUATTING

First Cyber squatting Case (Word Wrestling Federation case)

This was the first case decided under the UDRP by WIPO. The proceedings were initiated on Dec 9, 1999. The US based World Wrestling Federation (WWF) brought a suit against a California resident who registered the domain name "worldwrestlingfederation.com" and offered to sell it to WWF at a huge dividend a few days later. The WWF alleged that the domain name in question was registered in bad faith by the registrant in violation of WWF's trademark. It was held that the domain name registered by the respondent was identical or confusingly similar to the trademark of WWF and the respondent had no legitimate rights or interests in the domain name. Therefore the respondent was ordered to transfer the registration of the domain name to the complainant, WWF. Overall, the UDRP, as operated by WIPO and other Approved Providers, is very popular. The procedure is quicker and cheaper than normal litigation. The jurisdiction is international in Nature.

In software company Google Inc. v. Herit Shah (Shah) 2009

The Internet software company Google Inc. won a cyber squatting case against an Indian teenager who had registered a domain name gooblog.com. The domain name, Google contended, was confusingly similar to its trademark. On May 15, 2009, the World Intellectual Property Organization (WIPO) ordered an Indian teenager, Herit Shah (Shah), who had been using the domain name 'gooblog.com', to transfer the rights of the domain to

Google Inc. (Google). Industry observers viewed this as a case of cyber squatting, and said that Google had been able to successfully defend its intellectual property rights (IPR). According to WIPO, there had been a rise in allegations of cyber squatting by trademark holders in 2008

In Maruti Udyog v. Maruti Infotech

In Maruti Udyog v. Maruti Infotech, a complaint was filed with WIPO over a dispute relating to the domain name "maruti.org." Maruti Udyog, a well known car manufacturer, proved that the trade mark "Maruti" was associated with its products and that a person of average intelligence and imperfect recollection would be led to believe that the domain name was associated with them. Moreover, the respondent sought to sell the domain name to the complainant for valuable consideration. The WIPO panelists, therefore, held that there was a clear intent on the part of the respondent to make unmerited profit from the registration of the domain name and transferred the name to Maruti Udyog..

In Tata Sons v. The Advanced Information Technology Association ("AITA")

Tata Sons filed a complaint against AITA with WIPO for the illegal registration of the domain name "tata.org.". The WIPO panelists held that "Tata" was a well known name, linked to high quality products. The name "Tata" was a family name and had no dictionary meaning. Further, both AITA and Tata were based in the same city and AITA was bound to know of Tata's reputation. Further, AITA had not activated the disputed domain name which indicated that AITA was merely hoarding the domain name. In this case the WIPO panelists held that even if the web-site were activated, the facts would lead them to believe that the registration was in bad faith. The domain name was, therefore, transferred by ICANN to Tata Sons based on the award granted by WIPO in favour of Tata Sons.

In Hero Honda Motors v. Rao Tella

Another dispute where passive holding of a domain name indicated that its registration was in bad faith occurred in the case of Hero Honda Motors v. Rao Tella, in relation to the domain name "herohonda.com." The complaint was filed with the WIPO by Hero Honda Motors, Honda's joint venture company in India against Rao Tella, a person based in the United States of America, who had registered the domain name for a website dedicated to fans of Honda. However, Mr. Tella had not activated the website. The WIPO panelists held that the domain name was identical to the trade mark of the complainant, and the domain name was transferred to Hero Honda Motors.

6. EFFECT OF CYBER SQUATTING IN INDIA

In India, there is no legislation which explicitly refers to dispute resolution in connection with cyber squatting or other domain name disputes. The Trade Marks Act, 1999 used for protecting use of trademarks in domain names is not extra-territorial, therefore, it does not allow for adequate protection of domain names. The Supreme Court

has taken the view that domain names are to be legally protected to the extent possible under the laws relating passing off. In India, this law was evolved by judges and all the High Courts were of unanimous opinion, which has been picked out and approved by the Supreme Court.

Indian Laws: Ground for Action The Satyam Infoway Ltd v. Sifynet Solutions (P) Ltd case nailed the Indian domain name scenario way back in 2004 stating that- “As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extraterritorial and may not allow for adequate protection of domain names, this does not mean that domain names are not protected within India”[5].

In absence of the proper cyber laws the remedy that prevails is an action for passing off and the infringement of trademarks. Even then the Indian Courts have very active in providing relief in the case of Cyber squatting. Although it is another fact that the due to the increasing number of cases people have started resorting to alternate methods of dispute resolution in this field specially Uniform Domain Name Dispute Resolution Process (UDNDRP) devised by the International Corporation for Assigned Number and Names (ICANN) and World Intellectual Property Organization (WIPO) Arbitration and Mediation Council, instead of relying on the formal legal procedure.

It must be noted that the Trade and Merchandise Marks Act, 1958 (the “TM Act”) and the Information Technology Act, 2000 of India do not deal with domain name disputes. Indian Courts, therefore, apply the rules of “passing off” with respect to such disputes. The action against passing off is based on the principle enunciated in *N. R. Dongre v. Whirlpool* wherein the courts said that “a man may not sell his own goods under the pretence that they are the goods of another man.” Passing off is a species of unfair trade competition by which one person seeks to profit from the reputation of another in a particular trade or business. A passing off action is a direct subject matter of the law of tort or common law of right, i.e. case law. The Act does not define passing off, but only provides the rules of procedure and the remedies available. However the Trademark Act is devoid of any provision within purview of which the offence of Cyber squatting could be brought. Therefore in the absence of any such provision the Indian Courts have been following the principle of passing off and the guidelines and the policies of the WIPO and the UDRP.

The Indian Courts have relied on the definition given by the Delhi High Court in *Manish Vij v. Indra Chugh* wherein Cyber squatting has been defined as “an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium”.

6.1 Significant Case Studies

➤ The first case in India with regard to cyber squatting was *Yahoo Inc. v. Aakash Arora & Anr.* In this case the defendant launched a website nearly identical to the plaintiff renowned website and also provided similar

services. Here the court ruled in favor of trademark rights of U.S. based Yahoo. Inc (the Plaintiff) and against the defendant, that had registered itself as *YahooIndia.com*. The Court observed that it was an effort to trade on the fame of yahoo’s trademark. The court further added that a domain name registrant does not obtain any legal right to use that particular domain name simply because he has registered the domain name, he could still be liable for trademark infringement.

➤ The Bombay High Court in *Rediff Communication v. Cyberbooth & Anr* held that a domain name is like a corporate asset of a company. In this case the defendant had registered a domain name *radiff.com* which was similar to *rediff.com*. The court gave a decision in favor of the plaintiff.

➤ In *Tata Sons Ltd v. Monu Kasuri & others*, the defendant registered a number of domain names bearing the name Tata. It was held by the court that domain names are not only addresses but trademarks of companies and that they are equally important.

➤ The arbitration panel of the WIPO in *Bennett Coleman & Co Ltd. v. Steven S Lalwani and Bennett Coleman & Co Ltd. v. Long Distance Telephone Company* gave a decision in favor of the plaintiff. In this to the respondent had registered domain names *www.theeconomicstimes.com* and the *www.timesofindia.com* with network solutions of the United States. These two names are similar to the names of the Plaintiff’s websites *www.economicstimes.com* and *www.timesoftimes.com*. Another important fact was that the respondent’s websites using the domain names in contention redirect the users to a different website *www.indiaheadlines.com* which provided India related news.

➤ In *Satyam Infoway Ltd. v Sifynet Solutions*, the decision was again in favour of the plaintiff, wherein the Respondent had registered domain names *www.siffynet.com* and *www.siffynet.net* which were similar to the Plaintiff’s domain name *www.sifynet.com*. Satyam (Plaintiff) had an image in the market and had registered the name Sifynet and various other names with ICANN and WIPO. The word Sify was first coined by the plaintiff using elements from its corporate name Satyam Infoway and had a very wide reputation and goodwill in the market. The Supreme Court held that the domain names were business identifiers, serving to identify and distinguish the business itself or its goods and services and to specify its corresponding online location. The court also remarked that domain name had all the characteristics of a trademark and an action of Passing off can be found where domain names are involved.

➤ In *Aqua Minerals Ltd. v. Cyberworld*, the Delhi High Court passed a verdict in favour of the Aqua Minerals Ltd which owned the trade mark “Bisleri” and restrained Cyberworld from using the domain name, “bisleri.com”.

In India, due to the absence of relevant cyber laws, cases are decided within the ambit of trademark laws by interpreting the principle of Passing off with regard to domain names.

7. INDIAN DOMAIN NAME DISPUTE RESOLUTION POLICY

“.in” is India’s Top Level Domain (TLD) on internet. The IN Registry has published the IN Dispute Resolution Policy (INDRP) which is a mandatory dispute resolution procedure. India does not subscribe to UDRP. However, INDRP has been formulated in lines of UDRP, internationally accepted guidelines, and with the relevant provisions of the Indian IT Act 2000. INDRP sets out the mechanism to resolve a dispute between the Registrant and the Complainant, arising out of the registration and use of the .in Internet Domain Name. Para 4, INDRP is strikingly similar to Para 4 (a) of the UDRP and constitutes the same essential premises for filing a complaint. INDRP makes it obligatory on the Registrant to submit to arbitration proceeding in an event a complaint is brought against the same with ‘.IN’ Registry. Upon receipt of complaint the .IN Registry shall appoint an Arbitrator out of the list of arbitrators maintained by the Registry. Within 3 days from the receipt of the complaint the Arbitrator shall issue a notice to the Respondent. The Arbitrator shall then conduct the Arbitration Proceedings in accordance with the Arbitration & Conciliation Act 1996 and also in accordance with this Policy and rules provided there under. Once the arbitrator is appointed the .IN Registry shall notify the parties of the Arbitrator appointed. The Arbitrator shall pass a reasoned award and shall put forward a copy of it immediately to the Complainant, Respondent and the .IN Registry. The award shall be passed within 60 days from the date of commencement of arbitration proceeding. In exceptional circumstances this period may be extended by the Arbitrator maximum for 30 days. However, the Arbitrator shall give the reasons in writing for such extension. Evidence of registration and use of domain name in Bad Faith has to be ascertained by the Arbitrator taking in to consideration Para 6, INDRP; but without any limitation. These considerations are analogous to those provided under Para 4(b), UDRP. The Arbitrator shall ensure that copies of all documents, replies, rejoinders, applications, orders passed from time to time be forwarded to .IN Registry immediately for its records and for maintaining the transparency in the proceedings .

The policy provides that no in-person hearing is to take place (including hearings by teleconference, videoconference, and web conference), unless the Arbitrator determines, in his sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the Complaint. The remedies available to a Complainant pursuant to any proceeding before an Arbitrator is

limited to cancellation of the Registrant's domain name or the transfer of the Registrant's domain name registration to the Complainant. Costs may also be awarded by the Arbitrator. The INDRP prohibits a Registrant from transferring a disputed domain name registration to another holder in case an Arbitration proceeding is initiated pursuant to this policy, for a period of 15 working days ("working day" means any day other than a Saturday,

Sunday or public holiday) after such proceeding is concluded, or, while the dispute is pending, unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator.

7.1 Significant Case

➤ Bloomberg Finance L.P., (BF) vs. Mr. Kanhan Vijay.

The most important case of the INDRP Arbitration Panel is that of the 2009 case of Bloomberg Finance L.P., (BF) vs. Mr. Kanhan Vijay. In this case, the domain name in question was www.bloomberg.net.in which was registered by Bloomberg Finance L.P. which was also the registered proprietor of the services mark BLOOMBERG in India and abroad, with rights from 1986 as a trade mark, trade name and corporate identity establishing widespread reputation and goodwill. The complainant had registered various domain names incorporating "Bloomberg" as the name and therefore was the prior adopter, user and registrant, although it had no reason to adopt or register www.bloomberg.net.in as domain name. The respondent's bad faith intent was established by the Panel stating that there was a lack of due diligence or evidence on the part of the respondent towards their claims and that the domain was to be transferred to the complainant accordingly.

8. FIR IN CYBERSQUATTING

Misinterpretation Of It Act

In the recent past, a FIR (First Investigation Report) has been lodged by the Economic Offences Wing of the Delhi Police on the complaint of the President Secretariat citing a copy of an article published in the Economic Times, dated November 29, 2009, which allegedly pertained to the fake use of the names of politically powerful personalities as a domain name on websites. It was further alleged in the said complaint that a website exists with the domain name www.pratibhapatil.com having no connection with the Hon'ble President, which allegedly hawks financial advisory, DVD rentals, education insurance, lingerie and much more. The police made some preliminary enquiry and it was found that the website was got registered by one Joy Antony, Kala parambath, Pathadam House, Kunnappi Hissey Puliyanan, P.O. Angamaly via Kochi, Kerala. The website was found to be hosted from Germany. The website has been got removed from the internet. There was no content on the website. Only some links of the other websites were given on the website. However, when the prosecution opinion was sought on the matter, the Ld. Chief Prosecutor opined that prima facie offence u/s 66/66A IT Act and Section 469 Indian Penal Code is made out. The FIR u/s 66/66A IT Act and Section 469 Indian Penal Code was registered by the EOW promptly acting on the aforesaid complaint and the opinion of the Public Prosecutor. The opinion simply was that a domain name containing the name of the President of India was registered having no content in it except some links of the other websites. There is no offence made out and Sections imputed under the Information Technology Act and Indian Penal Code is

gross abuse of law and wastage of time by the investigating agencies that should devote its productive time to curb crimes and do some meaningful investigations into the genuine complaint registered as FIR. The Sections imputed in the aforesaid FIR has no connection with the allegations as mentioned in the FIR.

Let's see the applicability of the Sections:

Section 66 IT Act: Section 66 Information Technology Act is applicable when a person dishonestly or fraudulently, does any act referred to in section 43 which contains mainly ten acts which mainly comprises of downloading, copying from computer without permission, introducing virus or contaminant, hacking etc. Now, if one looks into the ten instances of the cyber contraventions as mentioned in the Section 43 Act which if done dishonestly or fraudulently attracts Section 66 IT Act, it is very difficult to fathom how registering the domain name containing the name of the President of India attracts Section 66 IT Act.

Section 66A IT Act: This is a penal provision newly inserted under Chapter XI of the IT Act vide IT Amendment Act which makes punishment for sending offensive messages through communication service etc. The hosting of website containing the name of the President does not attract the Section 66A IT Act either.

Section 469 IPC: This section of the Indian Penal Code is attracted when electronic record forged is used or intended to be used to harm the reputation of other. As per the own inquiry made by the police, the alleged website with the domain name containing the he President istered the name of the President do not attract the Section 66A IT Act either. Allegations as mention name of the President, is without any content.

The aforesaid allegation in the complaint simply discloses the abusive registration of the domain name using the name of the President which is a case of cyber squatting. The word “cyber squatting” is not defined under the Indian Laws. However, Cyber squatting (also known as domain squatting), according to the United States federal law known as the Anti cyber squatting Consumer Protection Act, is registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else. The cyber squatter then offers to sell the domain to the person or company who owns a trademark contained within the name at an inflated price.

The aforesaid case of cyber squatting or domain name squatting is not first of its kind in India. There have been instances where the domain names in the name of the famous personalities have been registered. One such domain name www.arunjaitley.com containing the name of Senior Counsel and BJP Leader Mr. Arun Jaitley was registered by the cyber squatter. Mr Jaitley filed the suit in the Hon'ble Delhi High Court, stating that his name was being used by some other person who had made a website using his name. Justice S Murlidhar granted an injunction to use the website and directed Network Solutions & Portfolio Brains Ltd not to sell or transfer the domain in his name until the proceedings of the court were completed.

The Hon'ble Delhi High Court observed that: “The present suit raises very significant questions in the realm of intellectual property law concerning the protection that a person is entitled to, particularly when the persons name had acquired distinctiveness, goodwill and reputation. It also raises an important question whether the right to ones own name is part of the bundle of personal rights enshrined in the right to life under the Article 21 of the Constitution of India, and Article 17 of the International Covenant on Civil and Political Rights. Is a person entitled to protection of such a right and all other rights incidental to and stemming from that right viz., the rights to publicity and to privacy. It appears to this Court that the Plaintiff has more than a stateable prima facie case.”

The Hon'ble High Court further observed that: “The Plaintiff has prima facie demonstrated, with the help of all several documents, that Defendant No.3 is squatting on his name with the intention of exploiting it for profit. If not injuncted, the domain name www.arunjaitley.com could well be purchased by any person. Such person could then use it for any purpose detrimental to the goodwill and reputation of the Plaintiff. The balance of convenience in restraining the Defendants from transferring, alienating or offering for sale the domain name “arunjaitley.com” to any third party and from creating any third party interest in the said domain name “arunjaitley.com” appears to be in favour of the Plaintiff at this stage.”

9. AN APPROACH FOR ERADICATING THESE SQUATTERS

A three pronged approach has been devised which would go a long way in squatting away these squatters

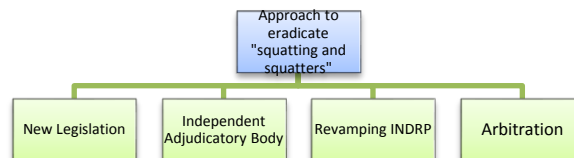


Fig. 4: Approach in eradicating away these Squatters

9.1 New legislation

There is an urgent need to draft a new legislation in India which would expressly deal with domain names. The courts have already pushed the envelope by giving a wide interpretation to the provisions under Trademark law to account for domain name disputes. There is no adequate protection provided against cyber squatters, this is clear from the wide ranging prevalence of this menace still. The miscreants devise new methods to dupe and extort money from the big corporations. The lack of a direct law furthers their cause as they can easily find loopholes in the law which would exonerate them from any trial. The trademarks law and the IT Act which are relied upon by the courts both have their shortcomings and fall short in affording protection. The Trademarks law has not been able to deal with the range of disputes constantly emerging in the cyberspace. Furthermore, resorting to this archaic law would mean a lot of time being wasted in the trial courts and in the virtual world where time is of utmost

essence, this is very harmful leading to the extinguishment of the right claimed. The Information Technology Act regulates mostly cyber crimes and electronic signatures and it does not say much about Intellectual Property Rights, specifically in respect of internet related activities. The act is also silent about cyber squatting which is growing in prevalence by the day as has been *Cyber Squatting: Modern Day Extortion*. In many situations the Indian courts have to seek guidance from English and American laws and decision. It is thus imperative for India to legislate a law like ACPA of US and which is in sync with the standards laid down in the UDRP.

9.2 Independent Adjudicatory Body

The US national arbitration forum and the Czech arbitration court should be taken as examples and a parallel body needs to be set up in India. This body shall only decide cases relating to domain name disputes especially cyber squatting within the domains of India. Such an institution shall prove less time consuming more expedient and more effective as the parties will not have to wait to get onto a docket, and then keep on waiting for the final decree and other paraphernalia associated with due process of law to take place.

9.3 Revamping INDRP

The INDRP needs to be given the effect of law, rather than just being a guiding policy. The problem with it being a policy is that it is not mandatory to follow, hence the regime is lax. The INDRP which is drafted on the lines of the UDRP, still has many dissimilarities which impede its application and effectiveness. Thus the inconsistencies viz., arbitration procedure under INDRP is fraught with unnecessary procedural norms; they both differ on the domain names in many places. Thus the need of the hour is to make it more compliant with UDRP and give it the shape of law.

9.4 Arbitration

The researcher would also like to suggest that all arbitration decisions of the WIPO Arbitration and Mediation Centre should be made binding in India under the Arbitration and Conciliation Act 1996. An amendment can be made in the Information Technology Act 2000 stating that WIPO decisions can go to appeal before the High Court just like other arbitration decision considered as decrees under the Arbitration Act and execution petitions can be filed to enforce them accordingly. This way ICAAN and WIPO decisions will ease the overburdened Indian court system.

The courts in India have decided many cases related to cyber squatting. Cyber squatting has opened the eyes of governments across the world and has prompted them to look into this phenomenon in a serious manner. The United States by enacting the ACPA, has taken a monumental step in protecting domain names in its cyberspace. It is the imperative for the parliament to enact a law which would deal with this menace moving along from the current position where there is no law which prohibits cyber squatting like that of the United States.

Finally, in the light of still ever-increasing rate of cyber squatting in India and other countries, it is important to make a concerted effort by registrars to address and curb it

at the registration level itself by looking into the claim of the person and doing some back ground checking on it rather than just blindly allocating domain names. This should go a long way in controlling cyber squatting.

10. CONCLUSION

Cyber squatters have robbed businesses of their fortune. Thus looking at the current situation prevailing in the world, it can be safely assumed that cyber squatting is a menace, a menace which has no boundaries. On account of the problems highlighted and the various jurisdictions looked into there is an urgent need to draft a new legislation in India which would expressly deal with domain names. This paper has devised a three pronged approach which would go a long way in completely eradicating these squatters.

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