

To: Domain Name@Leg@OGC
From: S=lchua/C=US/A=INTERNET/DDA=ID/lchua(a)cdt.org
Cc: CommOSECMTA@OSECServer16@Servers[S=deirdre/C=US/A=INTERNET/DDA=ID/deirdre(a)cdt.org], CommOSECMTA@OSECServer16@Servers[S=lkessler/C=US/A=INTERNET/DDA=ID/lkessler(a)cdt.org], CommOSECMTA@OSECServer16@Servers[S=corn/C=US/A=INTERNET/DDA=ID/corn(a)gwu.edu], CommOSECMTA@OSECServer16@Servers[S=froomkin/C=US/A=INTERNET/DDA=ID/froomkin(a)law.miami.edu], CommOSECMTA@OSECServer16@Servers[S=andyo/C=US/A=INTERNET/DDA=ID/andyo(a)oreilly.com], CommOSECMTA@OSECServer16@Servers[S=weinberg/C=US/A=INTERNET/DDA=ID/weinberg(a)mail.msen.com]
Subject: Comments on Dispute Resolution Issues Relating to Section 3002(
Attachment: MESSAGE1.TXT, SMTP.HDR
Date: 4/20/00 4:53 PM

Complete Subject: Comments on Dispute Resolution Issues Relating to Section 3002(b)

----- [X.400 Text Follows] -----
A long message has been sent as an enclosure...

Sabrina McLaughlin
Office of General Counsel
Department of Commerce
Room 5876
14th & Constitution Avenues, NW
Washington, DC 20230

Dear Ms McLaughlin,

We are writing to comment on section 10745 of the Federal Register Notice, "Dispute Resolution Issues Relating to Section 3002(b) of the Anticybersquatting Consumer Protection Act." The undersigned groups include a wide range of public interest organizations with expertise in domain name issues, election law, free expression, privacy, and consumer protection. All of us share the following concerns:

1) Defamation issues are already covered by existing state law. Creating a new federal law giving individuals a cause of action for defamatory use of an individual's personal name as a domain name is not desirable. Individual personal names should be treated the same way offline as they are online, by existing state laws.

We urge the Department of Commerce to oppose creating new federal regulations or laws in this area.

2) Consumer confusion issues are already covered by both existing state law and the federal Lanham Act. These laws apply to personal names as well as other areas of consumer confusion. There is no reason why consumer confusion should be treated differently when the issue is one combining a personal name and a domain name than when there is an offline consumer confusion issue, or a consumer confusion issue involving a domain name that is not also a personal name.

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3) Other issues involving famous personal names, such as in the case of cybersquatting and political speech, remain unresolved. One important value, the rights of individuals engaging in critical political speech, satire, and other legitimate uses of famous personal names are and should be strongly protected by the First Amendment online as well as offline. While it is true that some satire is subtle and may be misread by members of the public who are unfamiliar with that kind of work, this is not a sufficient reason to restrain satirical speech.

Some of these issues are addressed by state laws, and to the extent that is the case, those states should not have those protections altered or federalized. This is particularly true for cases in which the state law governing offline use of famous personal names could end up conflicting with a federal law governing online use of the same famous personal name.

Federal laws to regulate famous personal names would raise numerous constitutional concerns and are not advisable. We urge the Department of Commerce to oppose creating new federal regulations or laws in this area.

4) The overall tone of section 10745 of the Federal Register Notice suggested that the basic premise of trademark law should be extended to include personal names. Personal names are a very different form of speech than what is ordinarily subject to trademark law. Trademarks, by nature, are commercial speech. Personal names may be a commercial form of speech, but more typically are found in news, opinion, politics, art, or an infinite number of forms of speech. As such, personal names should be protected under existing laws governing personal privacy, libel, slander, defamation, or the other narrow limitations ordinarily applied to speech. This is a better approach than creating new laws or expanding the scope of existing trademark laws. We urge the Department of Commerce to oppose the extension of trademark law into this space.

5) The ICANN Uniform Dispute Resolution Policy does not -- and should not -- address the issue of personal names. ICANN is an inappropriate forum for addressing this issue. The UDRP developed by ICANN was not intended to address personal names and did not debate or discuss such issues during the process wherein its policies and procedures were developed.

We urge the Department of Commerce to oppose attempts to use the ICANN dispute resolution forum for these issues.

6) On the narrow issue of political web sites, the Department of Commerce should recommend that existing FEC candidate information services should include a place for a candidate to list his/her official web site. This would be a simpler alternative to creating a new Secondary Level Domain (SLD) for official candidate websites to separate official candidate web sites from political parody sites. This information could easily be linked to or used by political, news, and local government portal sites.

There are already a number of non-profit and for-profit Internet based efforts to collect and organize political web sites in ways that will be useful to consumers and the public. The FEC and state election commissions could bolster such sites by providing official candidate web site information to other Internet resources.

A few existing examples include:

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Center for Democracy and Technology

Andy Oram
Computer Professionals for Social Responsibility

Michael Cornfield
George Washington University Graduate School of Political Management

Michael Froomkin
University of Miami School of Law

Jonathan Weinberg
Wayne State University School of Law

FAX TRANSMISSION

TO: Sabrina McLaughlin

FAX #: 202 482 - 0512

FROM: Luson Chua

DATE: April 20, 2000

NUMBER OF PAGES (INCLUDING COVER): 4

MESSAGE: Please confirm receipt by calling
202 637-9800. Thank you.

If you experience any errors with this transmission, please call (202) 637-9800

April 20, 2000

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FAX #: 202 482 0512

FROM: Lusan Chua

DATE: _____

NUMBER OF PAGES (INCLUDING COVER): 4

MESSAGE: Ms. McLaughlin, Since I did not
receive confirmation from you last week, I am
resending CDT's submission to be sure that
you received a copy. Please confirm receipt of
our submission at your earliest possible
convenience. Thanks, Lusan Chua

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