

# Cybersquatting

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**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) 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.<sup>[*citation needed*]</sup> Others post paid links via Google, Yahoo!, Ask.com and other paid advertising networks to the actual site that the user likely wanted, thus monetizing their squatting.

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## Technical strategies for cybersquatters

Cybersquatters sometimes register variants of popular trademarked names, a practice known as typosquatting.

Another strategy is as follows: Internet domain name registrations are for a fixed period of time. If the owner of a domain name doesn't re-register the name with an internet registrar prior to the domain's expiration date, then the domain name can be purchased by anybody else after it expires.<sup>[1]</sup> At this point the registration is considered *lapsed*. A cybersquatter may use automated software tools to register the lapsed name the instant it is lapsed. This strategy is also known as *renewal snatching*, *extension exaggeration*, and *alert angling*.

## Legal resolution

Domain name disputes involving alleged bad-faith registration are typically resolved using the Uniform Domain Name Resolution Policy (UDRP) process developed by the Internet Corporation for Assigned Names and

Numbers (ICANN). Critics claim that the UDRP process favors large corporations and that their decisions often go beyond the rules and intent of the dispute resolution policy. A UDRP complaint may be initiated at UDRP proceeding with an approved dispute resolution service provider. A victim of cybersquatting may also file an InterNIC Registrar Problem Report regarding a cybersquatter posing as a registrar.

Court systems can also be used to sort out claims of cybersquatting, but jurisdiction is often a problem, as different courts have ruled that the proper location for a trial is that of the plaintiff, the defendant, or the location of the server through which the name is registered. Countries such as China and Russia do not view cybersquatting in the same way or degree that US law does. People often choose the UDRP (Uniform Dispute Resolution Process) created by ICANN because it is usually quicker and cheaper (\$2,000 to \$3,000 in costs and fees vs. \$10,000 or more) than going to court, but courts can and often do overrule UDRP decisions. In *Virtual Works, Inc. v. Volkswagen of America, Inc.* (a dispute over the domain vw.net), the Fourth Circuit Court of Appeals created a common law requirement that the cybersquatter must exhibit a bad faith intent in order to confer liability. This means that domain names bearing close resemblance to trademarked names are not *per se* impermissible. Rather, the domain name must have been registered with the bad faith intent to later sell it to the trademark holder. This "bad faith" concept is reiterated in 15 U.S.C. § 1125 and U.S.C. § 1129.

Some countries have specific laws against cybersquatting beyond the normal rules of trademark law. The United States, for example, has the U.S. Anticybersquatting Consumer Protection Act (ACPA) of 1999. This expansion of the Lanham (Trademark) Act (15 U.S.C.) is intended to provide protection against cybersquatting for individuals as well as owners of distinctive trademarked names. However, even notable personalities, including rock star Bruce Springsteen and actor Kevin Spacey, failed to obtain control of their names on the internet, which indicates the lack of protection afforded to the average businessman or individual.<sup>[*citation needed*]</sup>

Jurisdiction is an issue, as shown in the case involving actor Kevin Spacey, in which Judge Gary A. Feess, of the United States District Court of the Central District of California, ruled that Spacey would have to file a complaint in a Canadian court, where the current owner of kevinpacey.com resided. Spacey later won the domain through the National Arbitration Forum.

Under UDRP policy, successful complainants can have the names deleted or transferred to their ownership (which means paying regular renewal fees on all the names or risk their being registered by someone else). Under the ACPA (Anticybersquatting Consumer Protection Act) a cybersquatter can be held liable for actual damages or statutory damages in the amount of a maximum of \$100,000 for each name found to be in violation, although application of this act in the form of actual fines assessed are few in number. In one of the first applications of the ACPA, the plaintiff, Brian Salle, sought relief under 15 U.S.C. § 1125 and U.S.C. § 1129 from defendant Garner W. Meadows. The court rejected the plaintiff's argument that "all personal names" are protected under the act and established that personal names must be "protected as a mark" for 15 U.S.C. § 1125(d) to apply. The court did award summary judgement under 15 U.S.C. § 1129(1)(A), with the award being the transfer of the domain briansalle.com to his control and judgment for attorney's fees against Garner W. Meadows of approximately \$30,000.00. Monetary awards under the ACPA are infrequent at best, and the cost of filing a case is prohibitive for the average individual.<sup>[*citation needed*]</sup>

There have been several instances of companies, individuals or governments trying to take generic domain names away from their owners by making false claims of trademark violation. Sometimes they are successful. This practice is called "reverse domain hijacking". For example, little known Heathrow Land Development in Florida attempted to use their narrow one-class trademark and the UDRP process to acquire heathrow.com.

**Australia** is another example — auDA requires anyone registering a .com.au second-level domain to have a valid entitlement for that domain — i.e. a registered business name with an Australian Business Number (ABN) issued by the Australian Taxation Office. However, this has failed to protect Australia from such cybersquatting

acts. Any Australian citizen over the age of 16 can obtain an ABN (which is free) and use it to register as few or as many domain names as they like but they need to have a "close and substantial" connection to the name or it needs to be an "exact match, abbreviation or acronym" of their name. Check auDA for further details.

**Canada** — through its own internet regulating body, the Canadian Internet Registration Authority (CIRA) — has taken a similar approach to Australia. Registrations for a .ca country code top-level domain must meet "Canadian Presence" requirements. The list is extensive and includes individual citizens and residents of Canada and in addition, Canadian businesses, Aboriginal Peoples and Indian Bands, Canadian trademark holders (whether Canadian or Foreign), Her Majesty the Queen and, Foreign Businesses with a physical Canadian presence. However, as with Australia, even this has failed to protect Canada from cybersquatting acts.

In an unusual departure from trying to *avoid* the practice of cybersquatting, the CIRA themselves seem to *encourage* the practice by publishing — on their website — a very extensive *Domains To Be Released List* ([http://ro.cira.ca/tbrlist\\_p](http://ro.cira.ca/tbrlist_p)) . This list is directly promoted on the site home page (<http://www.cira.ca/home-en/>) . The practice gives the impression of being intentionally designed to *promote* cybersquatting by allowing Canadian (or other) cybersquatters to literally *go shopping* for domains to register. Domains that can then be offered back to the previous registrant — or a business or corporation with an affiliated name — at an inflated price. CIRA policy regarding domain disputes does have a clause to protect against this, (section 3.5 Registration in Bad Faith, subsection a) ), however this does require making a complaint, and going through the resolution process.

**Internationally**, the United Nations copyright agency WIPO (World Intellectual Property Organization) has, since 1999, provided an arbitration system wherein a trademark holder can attempt to claim a squatted site. In 2006, there were 1823 complaints filed with WIPO, which was a 25% increase over the 2005 rate.<sup>[2]</sup> In 2007 it was stated that 84% of claims made since 1999 were decided in the complaining party's favor.<sup>[2]</sup>

## Notable cases

### With litigation

- Jethro Tull vs. Denny Hammerton,<sup>[3]</sup> 2000 (WIPO Case)
- Madonna vs. Parisi,<sup>[4]</sup> 2000 (WIPO Case)
- Primedia Magazine Finance Inc. (Tiger Beat) vs Next Level Productions (Benny Doro).<sup>[5]</sup>
- People for the Ethical Treatment of Animals v. Doughney, 2001
- Lamparello v. Falwell, 2005
- Lufthansa v. Future Media Architects, 2008<sup>[6]</sup>

### Without litigation

- The White House against Whitehouse.com and Whitehouse.org

## Social Media

With the rising of social media websites such as Facebook and Twitter, a new form of cybersquatting involves registering trademark-protected brands or names of public figures on popular social media websites.

On June 5, 2009, Tony La Russa, the manager of the St. Louis Cardinals, filed a complaint against Twitter, accusing Twitter of cybersquatting.<sup>[7]</sup> The dispute centered on a Twitter profile that used La Russa's name, had

a picture of La Russa, and had a headline that said “Hey there! Tony La Russa is now using Twitter.” The profile encouraged users to “join today to start receiving Tony La Russa’s updates.” According to La Russa, the status updates were vulgar and derogatory. La Russa argued that the author of the profile intended, in bad faith, to divert Internet traffic away from La Russa’s website and make a profit from the injury to La Russa’s mark.<sup>[7]</sup> On June 26, 2009, La Russa filed a notice of voluntary dismissal after the parties settled the case.<sup>[8]</sup>

## Efforts to curtail cybersquatting in social media

Social networking websites have attempted to curb cybersquatting, making cybersquatting a violation of their terms of service.

### Twitter

Twitter’s “Name Squatting” policy forbids the cybersquatting as seen in many domain name disputes, like "username for sale" accounts: “Attempts to sell or extort other forms of payment in exchange for usernames will result in account suspension.<sup>[9]</sup>” Additionally, Twitter has an “Impersonation Policy” that forbids non-parody impersonation. An account may be guilty of impersonation if it confuses or misleads others; "accounts with the clear intent to confuse or mislead may be permanently suspended.” Twitter’s standard for defining parody is whether a reasonable person would be aware that the fake profile is a joke.<sup>[10]</sup> Lastly, soon after the La Russa suit was filed, Twitter took another step to prevent “identity confusion” caused by squatting by unveiling “Verified Accounts.<sup>[11]</sup>” Usernames stamped with the “verified account” insignia indicate that the accounts are real and authentic.

### Facebook

Facebook reserves the right to reclaim usernames on the website if they infringe on a trademark.<sup>[12]</sup> Trademark owners are responsible for reporting any trademark infringement on a username infringement form Facebook provides. Furthermore, Facebook usernames require “mobile phone authentication.<sup>[12]</sup>” In order to obtain a username, the individual needs to verify the account by phone.

## See also

- Anticybersquatting Consumer Protection Act
- Brandjacking
- Patent troll
- Domain Name System
- Michael Urvan
- John Zuccarini, convicted of violating the Truth in Domain Names Act
- Microsoft vs. MikeRoweSoft
- Nissan Computer
- Planned Parenthood Fed'n of Am., Inc. v. Bucci
- Taubman Sucks, an intellectual property lawsuit
- Top-level domain
- Uniform Domain-Name Dispute-Resolution Policy
- Uniform Resource Locator (URL)
- Domain tasting
- Domain name front running
- Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.

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- ↑ <sup>*a b*</sup> "U.N: Cybersquatting complaints rise". Yahoo! News. March 12, 2007. Archive copy ([http://web.archive.org/\\*http://web.archive.org/web/20070321115246/http://news.yahoo.com/s/ap/20070312/ap\\_on\\_hi\\_te/un\\_cybersquatting\\_2](http://web.archive.org/*http://web.archive.org/web/20070321115246/http://news.yahoo.com/s/ap/20070312/ap_on_hi_te/un_cybersquatting_2)) at the Wayback Machine
- ↑ **The Independent** July 30, 2000: A hit for Jethro Tull in domain name dispute (<http://www.independent.co.uk/news/business/analysis-and-features/a-hit-for-jethro-tull-in-domain-name-dispute-709779.html>)
- ↑ **Internet Business News** October 17, 2000: Madonna wins cybersquatting case (<http://www.allbusiness.com/technology/technology-services/651746-1.html>)
- ↑ WIPO Arbitration and Mediation Center ADMINISTRATIVE PANEL DECISION Primedia Magazine Finance Inc. v. Next Level Productions (<http://www.wipo.int/amc/en/domains/decisions/html/2001/d2001-0616.html>)
- ↑ "Deutsche Lufthansa AG v. Future Media Architects, Inc. National Arbitration Forum Decision" (<http://www.adrforum.com/domains/decisions/1153492.htm>) . <http://www.adrforum.com/domains/decisions/1153492.htm>.
- ↑ <sup>*a b*</sup> *see*La Russa Complaint, La Russa v. Twitter, Inc., No. CGC-09-488101, 2009 WL 1569936 (<http://www.citmedialaw.org/threats/la-russa-v-twitter-inc>),
- ↑ *see*La Russa Notice of Voluntary Dismissal, La Russa v. Twitter, Inc., No. CGC-09-488101, 2009 WL 1569936 (<http://www.citmedialaw.org/threats/la-russa-v-twitter-inc>),
- ↑ Twitter Support: Name Squatting Policy (<http://help.twitter.com/forums/26257/entries/18370>),
- ↑ Twitter Support: Impersonation Policy (<http://help.twitter.com/forums/26257/entries/18366>),
- ↑ Twitter Help: Verified Account (<http://twitter.com/help/verified>),
- ↑ <sup>*a b*</sup> Help Center, FACEBOOK (<http://www.facebook.com/help/usernames>),

## External links

- Disputed Domain Names ([http://www.dmoz.org/Computers/Internet/Domain\\_Names/Disputed\\_Domain\\_Names/](http://www.dmoz.org/Computers/Internet/Domain_Names/Disputed_Domain_Names/)) at the Open Directory Project

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Categories: Domain name system | Internet advertising | Trademark law | Cyberattacks  
| Culture jamming techniques | Internet ethics

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