

performed by the Internet Assigned Numbers Authority (IANA).

It remains to be seen which of the WIPO recommendations will be adopted by ICANN, although ICANN has demonstrated a willingness to adopt the recommendations in its interim Statement of Registrar Accreditation Policy.⁸ It also remains to be seen which of the recommendations will be flowed down to the ccTLD organisations, and in particular which recommendations will be adopted by .au Domain Administration (AUDA). AUDA is a newly formed organisation which will be responsible for administering the .au domain name space.

One issue which ICANN (and each ccTLD organisation, including AUDA) will have to consider carefully is how to enforce the recommendations against existing domain name holders. The WIPO Report envisages enforcing the recommendations against new domain name holders by making them conditions of their domain name registration agreement. It is difficult to see how ICANN and other ccTLD organisations will be able to make unilateral variations to the agreements which bind existing domain name holders. It is probably only at the time of re-registration that the WIPO recommendations could be imposed against existing domain name

holders, with the result that it could take several years for all domain name holders to be bound by the new arrangements.

¹ A copy of the report is available at <http://wipo2.wipo.int>.

² A copy of the White Paper is available from http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm.

³ Final report of the WIPO Internet Domain Name Process, supra n1 at paragraph 108.

⁴ Supra n3 at paragraph 261.

⁵ Supra n3 at paragraph 132.

⁶ See www.netnames.com.

⁷ Supra n3 at paragraph 342.

⁸ Available at http://www.icann.org/policy_statement.html.

Domain Name Update

Stephen Lance, Gilbert & Tobin

The Internet Corporation for Assigned Names and Numbers (ICANN) took one small step towards adopting the domain names dispute resolution policy promulgated by the World Intellectual Property Organisation (WIPO) in Berlin May 25-27. This could be one giant leap towards international cyberspace harmony and a uniform dispute resolution policy.

In answer to the increasing cyberspace conflict between domain names and trade marks, WIPO released its blueprint for curbing "cybersquatting" by consolidating domain name registration and administrative dispute resolutions in its Final Report issued April 30 1999. The Report recommends that ICANN should adopt a dispute-resolution policy under which an administrative dispute-resolution procedure is made available for domain name disputes in all generic top level domains (gTLDs) - although the scope of the administrative procedure should be limited to cases of bad faith and abusive registration

of domain names that violate trademark rights. This is a narrowing of the ADR procedure outlined in the 3rd Interim Report. Domain name holders would thus be required to submit to the administrative procedure only in respect of allegations that they are involved in cybersquatting - the abusive registration of domain names. The Report also includes a controversial provision which gives famous trademarks special protection as domain names. It recommends that a mechanism should be introduced whereby the owner of a famous or well-known mark can obtain an exclusion in some or all gTLDs for the name of the mark where the mark is famous or well-known on a widespread geographical basis and across different classes of goods or services. This provision has been criticised because it weighs the dispute resolution process too heavily in favour of big corporations. In particular, the Domain Name Rights Coalition argues that the proposed changes fundamentally modify

trademark law and create a system which favours large companies at the expense of individuals, not-for-profit organisations, small businesses and entrepreneurs. However, WIPO is confident that the system will increase consumer confidence in the Internet as a safe place to do business.

The potential adoption of the Report depends greatly upon ICANN's domain name supporting organisation (DNSO), which represents different constituents who are stakeholders in the Net addressing system. The DNSO advises the ICANN Board with respect to policy issues relating to the Domain Name System. These constituents form part of a Names Council consisting of six self-organised subdivisions which represent a wide range of commercial and non-commercial interests, including naming authorities which register gTLDs, such as Internet Names Australia. The DSNO will include the following Initial Constituency Groups:

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- ccTLD registries
- Commercial and business entities
- gTLDs registries
- ISPs and connectivity providers
- Non-commercial domain name holders
- Registrars
- Trademark, intellectual property, anti-counterfeiting

In Berlin, the Board failed to recognise a non-commercial Constituency because it resolved that the non-commercial domain name holder's submission for participation in the Constituency was inappropriate for recognition. According to ICANN, the non-commercial Constituency proposals were not mature enough to accept. Commentators have argued

that this sought of move rails against the spirit of the white paper which advocated a bottom up consensus and a firm commitment to 'initiate a balanced and transparent process'. The Board has recognised that non-commercial involvement should be involved as early as possible in the DNSO organisation process. At present, the other Constituency groups are debating parts of the WIPO plan. Although ICANN did not accept the WIPO plan, they have directed the DSNO to consider the following issues:

- Famous Trademarks
- New Top-Level Domains
- Dispute Settlement Mechanisms
- Best Practices

The ICANN Board has requested that by July 31 1999 the DNSOs submit recommendations concerning a uniform dispute resolution policy for

registrars in the .com, .net, and .org TLDs.

The deadline for a non-commercial Constituency consensus application is June 21, so that representatives of this Constituency can join the provisional DSNO Council. In my opinion, WIPO proposals will only work through mutual agreement between system operators and Internet users. Self-regulation essentially exists through the voluntary compliance with regulations that are developed by the community of interest. If concerns of bias towards big business are to be countered, involvement of non-commercial net users will be vital to the process of Internet regulation.

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Digital Killed the Recording Star?

Sean Simmons, Phillips Fox

This article examines whether two recent developments in digital technology signal an exciting new haven for music lovers, or threaten to unleash a wave of copyright home invasion which may swamp the careers of many musicians and the recording and publishing companies they rely on for survival. Whatever the outcome, the music industry's business model is being changed forever.

SIDE A: DUAL DECK CD RECORDERS

The Recordable/Rewritable Dual Deck Audio CD Player¹ made a low-key arrival into Australian hi-fi stores earlier this year. This is the technology that many music lovers have been waiting for since they heard their first CD back in 1982. CD burning (or

duplicating) is no longer the domain of computer buffs with access to slick office hardware. With the same ease of its twin tape-deck counterpart, consumers can now copy their favourite CDs at perfect digital sound quality in the comfort of their own lounge rooms for the cost of a \$3 blank CD.

CD burners have been around for some time in the computer world, principally to make copies of CD-ROMs and back-up copies of computer files. Burners also allow private users and organised music pirates to dub copies of audio CDs without ever having to visit a record store or invest in recording artists. Dual Deck CD recorders are a user-friendly, purpose-built packaging of this technology.

Burnin' and Lootin'

Burning copies of CDs without the copyright owner's authorisation violates copyright laws. Music copyright exists as a means to encourage and protect the economic interests of songwriters and performers and the publishing and recording companies who invest in their talents. The *Copyright Act 1968* (Cth) provides for distinct and separate copyright in original songs and sound recordings of those songs. By virtue of sections 31 and 84 of the Act, the copyright owners of original songs (musicians and publishers) and sound recordings (usually the record companies who finance the recordings)² have the exclusive right to reproduce the works in a material form, eg on a CD or other