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FOREWORD

THE CYBERSPACE SCRAMBLE: DOMAIN NAMES

As the Global Information Infrastructure continues to grow, so too does the Internet governance void. One of the primary flaws is the lack of a coherent structure for handling the assignment of domain names and the associated legal difficulties. The ongoing tension between trademark owners and domain name owners shows no sign of subsiding, nor are there any real cases of precedential value to lend guidance. Will creation of the International Ad Hoc Committee provide answers and begin the process of eliminating the myriad problems associated with the domain name registry/assignment? Or will litigation surrounding the committee's authority and the assignment of new top-level domain franchises further complicate these problems. The growing questions associated with domain name law have not yet been successfully integrated or resolved with traditional trademark law. This Domain Name Symposium is dedicated to presenting the quagmire of questions that domain names present and hopefully providing some insight and answers. The symposium contains four superb articles from practitioners in the field, two student comments, and the winning briefs from the John Marshall National Moot Court Competition in Information Technology and Privacy Law.

The first article is written by Alexander Gigante, a prominent New York law practitioner, who presents with clarity for the first time an extensive overview of the groups which administer and govern aspects of the Internet. He proposes a number of recommendations which will facilitate more efficient Internet governance and fill the ever growing legal void. Carl Oppedahl, a renowned author and patent attorney who represented the domain name owner in one of the first domain name lawsuits, identifies domain name disputes that have arisen and are likely to arise in the future. He designs a rule of law for domain name remedies. David Loundy, a prominent author and Chicago practitioner, delves into the trademark issues surrounding Internet addresses and presents a number of solutions. Mark Gould, a lecturer at the University of Bristol, discusses many international implications which impact the domain name field. Chiefly discussed is Nominet, a private U.K. company that

administers top level U.K. domains, and the laws/judicial review which affect Nominet.

David Nash's comment examines the problems concurrent trademark users have in obtaining a commercially favorable domain name. The article critiques several approaches to expanding the number of international top-level domains ("iTLDs"). Nash concludes that all present approaches are inadequate because the new iTLDs need to be created in an orderly manner. He proposes that the Federal Communications Commission is the most logical choice for an organization to impose order on this chaos. Steven McAuley's comment addresses Fifth Amendment procedural due process rights associated with Internet domain names. The article centers around Network Solutions, Inc., a subsidiary of Science Applications International Corporation. The article analyzes NSI as a federal actor and states that NSI's Domain Name Dispute Policy - Revision 02 usurps a domain name owner of its Fifth Amendment Procedural Due Process.

Finally, The 1996 John Marshall Privacy Competition Bench presents two pertinent issues: whether a domain name registry is contractually prohibited from suspending a domain name based upon violations of "netiquette"; and whether registration of domain names in the .com domain constitutes governmental action for purposes of the due process clause. The Petitioner and Respondent briefs that address these issues were awarded national competition championships.

As Internet use continues to expand, so too will domain name disputes. Through proper planning and with logical insight the tensions that exist will resolve themselves. The questions raised in this symposium, coupled with the logical insight provided by the authors, provide a preview of changes that will occur in this field of information technology law.

Stephen E. Marshall
Editor-in-Chief