

insights

TYPES NOT MAPPED YET July 21, 2014 | TTR not mapped yet | Mark Sableman

Who owns your domain names?

Asking who owns your domain name is not as silly a question as you might think. And it is one that needs more attention from many businesses. Many small businesses, in particular, treat ownership of their Internet domain names with far less care than they give to less valuable personal property.

Domain names are, of course, the primary identifiers and addresses of business (and personal) websites. Most business websites are known by a simple domain name, often [Company Name].com, or [Trademark].com. These textual domain names, which correspond to numeric Internet Protocol addresses within the worldwide domain name system, act like Internet street addresses, and as front doors for visitors to your website.

They are important items of property – but unusual ones. You don't physically possess a domain name, as you possess tangible personal property, like artworks and collectibles. You don't get a government title, as with a vehicle, or record your rights in a government office, as with real estate. There are no fancy certificates for your safe deposit box, as there are (or at least used to be) with traditional intangible personal property like stocks and bonds.

You "own" a domain name by having purchased ("registered") it from a domain name registrar – a company like Network Solutions, Go Daddy, or Register.com. No certificate or title comes with it; registration is more like the book entry system in which your stock ownership is recorded on your broker's books. The ownership registry for domain names is known as the WHOIS database, and is maintained in a database shared among all of the many domain name registrars. So far, so good – domains are an unusual kind of property, but there is a system for recording ownership.

The problem, however, is that many businesses fail to ensure that their ownership is properly recorded in their names. In many cases, companies ask their IT consultants to register their domains and manage their websites – and those consultants often register the domains in their own name, for ease of operations. Or a small business may allow one of its tech-savvy young employees to take care of its domain name registrations, and he, too, may do so using his own name and personal account.

Problems can – and do – develop when the company and its IT consultant, or its employee, come to disagreements or part company. We've seen situations where consultants, or former employees, use their personal control of a company's domain names as leverage in their disputes with the company – financial or otherwise. In these situations, the [company has various remedies](#), such as claims under the Anti-Cybersquatting Consumer Protection Act, or under the Uniform Dispute Resolution Procedure to which all domain name contracts are subject. But these disputes, and the costs and uncertainties they entail, can be avoided in the first place by following prudent business practices.

Ideally, companies should own domain names in their own name, not through intermediaries. Even if a consultant registers the names as part of a website construction project, that name should be promptly transferred to the company. The company should centralize control of domain names under a responsible officer, such as the CIO or CFO. A knowledgeable employee should actively maintain the company's domain names, and be responsible for attending to renewals and new registrations.

Alternatively, if a business really prefers to have an outside consultant handle its domains, it should have a clear written contract with that consultant, acknowledging that the domains belong to the company, not the consultant, and that they must be returned to the company's explicit ownership on demand. Such a contract should contain a provision explicitly authorizing domain name registrars to follow the company's directions with respect to its domains in the case of a conflict with the consultant.

Careful steps like these should be basic operating procedure for any business with a website. After all, ownership of important property like domain names shouldn't carry a question mark.



Update: Interestingly, the issue of ownership of disputed domain names has been the subject of a court ruling in Canada, with the Ontario Superior Court ruling that domain names are personal property, and that ownership may be different than the registration.

[Mark Sableman](#) is a partner in Thompson Coburn's Intellectual Property group. He is the editorial director of [Internet Law Twists & Turns](#). You can find Mark on [Twitter](#), and reach him at (314) 552-6103 or msableman@thompsoncoburn.com.

authorsTest

mark

Mark Sableman