



Comparing Solutions to Repugnant Domain Tasting

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Abstract

We group current proposals into *before* and *after* registration solutions. Taking revenue and risk into consideration, our view is that registrants and registrars prefer the former.

Introduction

IP-related domain tasting¹ is a repugnant² act that also generates a negative externality. It is beyond distasteful and inappropriate. The labeling is not a matter of semantics, but has important implications for designing desirable solutions.³

Why is the use of brands in domain name repugnant, while infringing on IP has been ongoing in the patent world without any public revulsion? In fact, under certain circumstances, it is in the patent owner's interest to allow infringement.⁴

One possibility is that people don't know about the legal structures that encourage patent infringements. Or people may see patent infringements as a business matter and therefore subject to recognized laws.

Those outraged by domain name infringement may be feeling the pain of reduced bottom lines. Maybe it looks like the violations are spreading everywhere, or that we're headed on a slippery slope toward large-scale infringements of personal names.

¹ See Alex Tajirian, "[Every Domainer Is Subsidizing Tasting... Abolish Registration Grace Period](#)," CircleID.

² For an economic discussion, see Alvin E. Roth, "Repugnance as a Constraint on Markets," *Journal of Economic Perspectives*, Vol. 21, 4 (Summer 2007): 37–58.

³ An externality, like pollution, can be managed rather than eliminated. For example, we have markets to buy and sell pollution rights. Another remedy is to impose a tax on the resulting harmful byproduct.

⁴ See Mark Schankerman and Suzanne Scotchmer, "Damages and Inductions in Protecting Intellectual Property," *Rand Journal of Economics*, Vol. 32, 1 (Spring 2001): 199–220.

Analysis of Current Solutions

To determine preferences of domainers and registrars for the currently proposed solutions, we group them based on whether the solution's full cost/revenue is known before or after a domain registration is approved. For each group, we examine two proposed solutions.

Before Registration Solutions:

1. A clearinghouse.⁵
2. Selling registration refund insurance.⁶

Each approach has its strengths. The clearinghouse solution attacks repugnancy directly, resolves potential infringements before a registration request is approved, and also has benefits to IP-conscious registrants. The insurance refund helps dampen tasting in general. But for either to work, we must eliminate the registration grace period and provide cancellation insurance. That in turn would (a) eliminate the subsidy domainers give tasters, (b) avoid an uproar by registrants over their inability to get refunds for unintended registration errors, and (c) create a revenue incentive for ICANN to abolish the currently lucrative grace period.

After Registration Solutions:

1. Making the ICANN transaction fee (currently \$0.20 per year) nonrefundable to names deleted during the registration grace period.⁷
2. Charging a fee for excessive deletions.⁸

The non-refundable fee solution is simple but not desirable, as the fee cannot be calibrated to deter repugnancy and puts a burden on the registrars to discourage tasting even when that tasting is outside their direct control.

Insurance pricing (a before solution) and fees for excessive deletions (an after solution) might be worked into a domain registration cost structure that deters repugnant tasting and promotes registrar revenue. But then transaction cost uncertainty enters the picture. Per unit of risk, a before regime yields a higher expected return on a domain name registration. Thus, the average registrant will take that, the reduced uncertainty, and willingly pay a bit more in registration fee. This suits registrars too, and of course they don't mind getting their money up front. ■

⁵ See Alex Tajirian, "[Alternative Mechanisms for IP-Related Domain Name Registrations](#)," DomainMart.

⁶ *Supra* "Every Domainer Is Subsidizing Tasting"

⁷ GoDaddy, available at <http://forum.icann.org/lists/rfi-domaintasting/msg00016.html>.

⁸ .org PIR registry, available at http://www.pir.org/PDFs/PIR_2006-annual.pdf and *ibid.*, p. 4.