



Carlton and Kende's Narrow Understanding of Corporate Domain Registrations

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June 30, 2009

Professor Denis Carlton was asked by the Internet Corporation of Assigned Names and Numbers ([ICANN](#)) to submit a [report](#) on (or justify!) the impact of new top-level domains (TLDs) on industry competition. After he did so, Dr. Michael Kende posted an elaborate comment on the report on behalf of AT&T, to which Professor Carlton published a [rebuttal](#). This essay outlines some of the errors in Professor Carlton's rebuttal and Dr. Kende's comments. It outlines the difference between offensive and defensive domain name registrations, and it questions ICANN's decision to select only one comment for rebuttal.

Professor Carlton and Dr. Kende missed the broader role of branded corporate domain name registrations. Professor Carlton correctly points out that corporate use of a domain name as a traffic door to a company's main site creates value for the owner. However, they both ignore the fact that the value, in addition to the benefit of "preventing cybersquatting," is driven by [TLD signaling](#), reduction in counterfeiting and phishing. In addition, they both fail to distinguish between defensive and offensive registrations. The distinction is important as it has implications for shareholder value creation.

Defensive Registrations

A registration is defensive when both of two circumstances apply:

1. ICANN fails to adopt an effective mechanism (see, for example, [Toward A Three-Regime Domain Registration: Generic, Idea, IP](#)) to disallow domain name registrations that include third-party brand names; i.e., a mechanism that prevents an entity from illegally siphoning revenue away from the rightful owner.
2. A trademark owner fails to convince a registrant to participate in a cooperative [brand network of domain names](#).

Defensive registrations protect brand names against losses to brand owners from lost sales, potential damage to the brand, and legal costs to enforce the

right or acquisition price above registration cost. (For details on the sources, see [Value-Loss Sources Mitigated by Defensive Registrations.](#))

Thus, the motivation behind a defensive registration is to stop transferring value, with no shareholder value creation, from legitimate owners to illegal users of branded domain names.

Offensive Registrations

A registration is offensive when it is brand enhancing and traffic generating, and therefore creates shareholder value. There are three ways of creating value: by using brand networks, enhancing Internet users' experiences, and signaling with TLDs.

To create value, trademark owners should either register branded domain names to lease them to selected third parties or form a cooperative brand network using already registered domain names. Thus, although defensive domains have value, they fail to enhance brand value. Nevertheless, corporate acquisition can destroy shareholder value when not used in an offensive capacity.

To enhance online user experience, brand owners must decrease irritation of users by making them less likely to land on a site that poses as one belonging to the brand owner, especially on a sterile parking page. This can be achieved by registering typo domains. Thus, unlike defensive registrations, typo registrations add value.

Signaling with TLDs is a third way to create value, in that the TLD provides useful information that would help the customer. New TLDs can play such a role if companies need to signal, say, presence in a city.

Beyond Redirect

Dr. Kende lacks a full understanding of the sources of corporate domain name value. He says defensive registrations have no value because they are "not being unique, in that they redirect traffic back to a core registration, or do not contain unique content."

As noted earlier, Professor Carlton has already pointed out the value in traffic domain names. However, they both overlook other sources of value. Although Dr. Kende is correct that generic traffic doorways are not individually unique, he overlooks the fact that they are substitutes for

directing key word–related traffic. But substitutes have value; otherwise their market price would be driven to zero. Nevertheless, not having unique content does not imply an absence of value. The market value (benefits) of each Web site is equal to the expected additional income that the benefits generate to the best target site (owner) over their useful life. When such domain names are put into best use, value of benefits and market value converge.

Questionable ICANN Intentions

ICANN's decision to ask for a rebuttal of only one of the [numerous comments](#) submitted directly to the ICANN site, not to mention blogs, adds more fuel to the argument that the group wanted to support their own views irrespective of the truth.

Professor Carlton tells us, “Alternative mechanisms exist, and others are actively being studied by ICANN, to protect trademark holders while preserving the procompetitive benefits of entry.” This is cheap talk! He fails to give any details of what such a mechanism might be. Thus, it is impossible to determine the impact of a new TLD trademark regime on costs to trademark holders.

Concluding Remarks

1. A branded domain name that directs traffic to a core site can be defensive or offensive and has a market value irrespective of whether it has unique content. It is defensive when all traffic is forwarded to a core site. Such action has suboptimal shareholder value. On the other hand, traffic generated through a cooperative brand network regime and by the registering of typo domain names is value adding, and, thus, offensive.
2. Defensive registrations and acquisitions can be turned into offensive registrations, and new registrations can be offensive.
3. Non-uniqueness of traffic domain names and lack of Web site content do not imply lack of value. ■