Effective Domain Name Appraisals

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An effective appraisal should be more than a number that estimates market value. It should explain how the estimate adds value to the customer's main objectives, and it should outline the risk factors that the customer faces. The customer who pays for an appraisal is, like any customer, paying for a value proposition.

That being said, customers for domain evaluation services fall into three broad types: those transacting, those seeking a damage estimate, those filing for IRS deductions. Each group has its own objectives, its own idea of what information is value adding, and its own risks, as outlined below.

(A) Transacting
A transacting customer is one who is seeking to buy, sell, or lease domain names.

(1) General Objectives:
   i. Sell (buy) the domain name for the highest (lowest) possible price within *x* months.
   ii. Buy a bundled service of appraisal and sale.
   iii. Determine if an offer is reasonable.
   iv. Obtain a fair market value, so as to calculate lease payments.

(2) Value-Adding Information
   i. For a seller:
      1. The likelihood of a sale in the marketplace, or through the appraiser and at the appraised value, within *x* months.
      2. The average time it takes to sell similar domain names.
      3. Why the appraisal methodology is appropriate to the specific domain name.[1]
      4. Whether playing "hard to get" is a viable strategy,[2] i.e., whether the customer should ignore an offer in the hopes that the offer is increased.
      5. What are effective venues to sell the domain name (e.g., direct contact, auctions, or brokers)?
      6. A list of comparable sales.

[1] For alternatives, see Alex Tajirian, "Valuing Domain Names: Methodology," DomainMart.
[2] See Alex Tajirian, "Chat-up Lines, 'Hard to Get,' & Domain Name Markets," DomainMart.

7. How accurate an estimate is. An appraisal should provide a statistical range of confidence.[3] This provides a guide as to whether, say, a lower offer is in the "ball park" (i.e., statistically equivalent to the appraised value). For appraisals that are not based on statistical models, the customer wants to be assured:
    a. That the estimated price is not too low compared to its intrinsic value.[4] The customer would incur a loss if a sale took place at such appraised value.
    b. That the estimated price is not too high, which would be tantamount to waiting for Godot, as an ask price based on the unjustifiable high estimate would scare off potential buyers.

ii. For a buyer:
1. When buying is based on parking revenue multiples, the buyer wants to know:
    a. The parking company's average revenue for that class of domain names, and the averages for competing providers.
    b. The multiple's sensitivity to CPC rate and traffic volume.
    c. If click fraud is monitored by the current parking service.
    d. The ad feed providers.

2. In just about any case, a buying customer also wants to know:
    a. The likelihood of a purchase at the appraised value in the marketplace.
    b. Which approaches to buying domain names are effective.
    c. Whether "low balling" is effective.[5]
    d. Whether the appraised value is accurate. If the estimate is too high compared to its intrinsic value, the buyer may be scared off from a good thing. This concept, the accuracy confidence range, is also discussed above.

(3) Risk factors that consumers fear are:
i. Price risk due to recession, increase in click fraud, and/or a drop in PPC rates and search volume.

ii. Trademark issues.

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[3] Typically a 95% confidence interval is used.
[4] See Alex Tajirian, "Market Price and Value Can Diverge," DomainMart.
[5] *Supra*, "Chat-up"

(B) Seeking a Damage Estimate

Under the Lanham Act, damages for trademark infringements are available only under two circumstances: when there is actual confusion, or when the infringement is willful.[6] For that reason, UDRP filings and many legal disputes do not result in assessed damages, only the handing over of the domain name in question. Under federal cybersquatting laws, the minimum a court could award the IP owner would be $1,000 per infringed domain name, up to a maximum of $100,000 per domain. Nevertheless, domain name damage settlements have arisen in antitrust-related litigation.[7]

The most important risk factors for this type of customer, are whether the:

(a) Appraiser is qualified to testify as an expert witness.
(b) The estimation methodology is acceptable to the courts.

(C) IRS Deductions

There are no publicly available concrete guidelines as to what valuation methodology is acceptable to the IRS. Due to this uncertainty, some legal and accounting consultants have asked their clients to keep a certain portion of the deductions in a trust account to reduce the impact of unfavorable IRS decisions. (Some evidence suggests that the IRS prefers the discounted cash-flow method. If so, use of a different methodology would make the qualifications of the appraiser especially important.) ■

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[6] Terrene P. Ross, *Intellectual Property Law, Damages and Remedies*, Chapter 4 (Law Journal Press, 2005).

[7] There is an interesting case filed with the U.S. District Court for Southern Florida in October, which argues that "'typosquatting is effectively a counterfeit' of the trademark holder's product." See Brian Crebs, "Dell Takes Cybersquatters to Court," WashingtonPost.com (November 28, 2007), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/28/AR2007112801679.html>.