Predicting Domain Name Trademark Infringement

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Legal trademark issues related to domain names will take a long time to resolve. Meanwhile, using a statistical model to determine infringement benefits all parties.

The legal system has not yet established comprehensive and easy to understand rules under which a domain name is considered to infringe on a third party's trademark. The vacuum allows trademark owners and their agents, such as the Coalition Against Domain Name Abuse (CADNA), to sue domain name owners pretty much at will, but doing so is not always in the best interest of trademark holders.

If ICANN decides to go ahead with making new top-level domain names (TLDs) available to the highest bidder, the problem will increase exponentially and create tremendous headaches for trademark owners. Thus, finding an immediate solution, though not perfect, is better for all parties.

A real possibility would be to develop a statistical model that uses historical data on legal decisions to predict whether a domain name infringes on a third party's trademark. For example, a logit-type regression model can be estimated, whereby the explanatory variables include trademark information, type of legal action, industry, and domain name information. Based on the model, the probability of the success of legal action can be assessed. Similar applications have been successfully developed to predict Supreme Court decisions and to value domain names.

Such a model would benefit all parties. It would reduce legal costs for trademark owners by focusing on cases with high probability of success, improve industry image, and decrease the anxiety, cost, and risk for registrants who cannot tell if their domain name is infringing. The benefits will also apply to future TLDs and new registrations under existing TLDs. Moreover, with the implementation of checks prior to approving registration, trademark-related domain tasting would drop.

Although there is no guarantee that the resulting model would have a strong predictive power, it is worth experimenting with such an approach. Model development can come from ICANN, the legal community, or an independent entity. ■