



## Voluntary Collective Licensing of Brand-Sharing Domain Names

Alex Tajirian

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The essay outlines a market-driven and value-adding solution to brand use in domain names. The solution relies heavily on the Electronic Frontier Foundation's [remedy to music file sharing](#). I propose its adoption for new registrations and renewals.

Brand sharing in domain names is here to stay; desperate attempts to stop it through legal action are [ineffective](#) and will do nothing but [destroy value](#). However, brand owners seem to be more concerned about protecting brands rather than maximizing brand value and shareholder return. This may be because the lawyers advising corporate branding departments steer them in the wrong direction, or it may be that the departments arrived at their mistaken beliefs all on their own.

A viable solution to brand sharing must have the following elements:

1. Brand name and trademark holders must be fairly compensated for the commercial use of their IP.
2. Value must be created for at least one party, either the domain or brand owner, without causing harm to the other side.
3. The market, not government intervention, must be the driving force.
4. Administering the solution must be easy and transparent.
5. Voluntary participation by trademark owners must underpin the system.

The solution concept:

1. Brand holders form several “collective societies” through domain name registrars, making it possible to have brand-sharing domains (in exchange for a reasonable payment at the time of registration and renewal).
2. The only additional registration restriction, besides the typical ISP restrictions—no hate promotion, and no illegal activity—is a ban on e-commerce without a mutually accepted affiliate relationship.
3. Money gets distributed among rights-holders based on the number of domain names registered. One potential sticking point is that, although it is legal to have more than one entity using the mark in the bricks-and-mortar environment, only one legal owner can be assigned to an online trademark. Nevertheless, one solution is for the legal “.com” owner of the mark to be the sole voluntary participating recipient of registration payments.

Below are the sources of potential value creation for the various stakeholders:

1. For domain owners
  - a. Reduced uncertainty of potential litigation by IP claimants.
  - b. The ability, because of brand sharing, to focus on [remixing](#) brand-related content that goes beyond technologically driven mash-ups of publicly available content. This will give domain owners the ability to innovate and to capture some of the content's value.
  - c. Enhanced reputation among their peers. Thus, companies should explicitly promote such reputations.
  
2. For brand owners
  - i. By means of remixing, fresh content to satisfy restless, attention-deficient visitors who seek customization/personalization, leading to more fresh content, and recommendations from friends. Who else besides independent entities can provide all this? The old school of "control and command" structure and a "one size fits all" approach to Web site design must change in favor of creative remixing. Companies should realize that most of the smart people are not working for them (see [Lakhani, et al](#)). Thus, instead of stifling innovation they can benefit from the innovation of others. Moreover, competition among domain owners is good for brand owners.
  - ii. Benefit from the display of their brand's logo on brand-sharing sites.
  - iii. Targeted traffic received from brand-sharing sites.

Thus, brand owners are paid brand usage fees, benefit from reduced value destruction as domain becomes more efficient, save on legal fees, and strengthen branding by means of active remixing and increased targeted traffic. Hence, the more remixed brand-sharing registrations, the more money brand owners make.

3. For the industry:
  - a. Enhanced industry reputation, with resulting benefits for domain owners and Internet users.
  - b. Decreased value-destroying domain tasting, thanks to the greater expense of domain registration and renewal.
  
4. Internet users benefit from improved user experience through a decrease in sterile parking pages and the value creation of remixing.

Thus, collective licensing adds value to all parties. However, this can only be achieved when brand owners realize that their current IP protection strategy is value destroying to their shareholders and that there is tremendous value in openness. Nevertheless, any solution requires cooperation with domain name owners, which requires a stimulus package from the domain name community, such as from the Internet Commerce Association ([ICA](#)). ■