



Domain Name Lessons from iTunes

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What do [iTunes](#) and a cooperative domain-name IP regime¹ have in common? They are market solutions to illegal activity: free downloading of music and free use of brands in domain names, respectively.

The music industry tried to fight the free downloading of copyright-protected music by taking legal action against free downloaders under the pretext that their activity siphons industry revenue. First, Oberholzer and Strumpf find no statistical evidence that free downloads lower music sales.² Second, legal action resulted in only limited initial success and has not put a dent in free downloading. Nevertheless, the objective of IP owners should not be IP protection, but maximizing IP value.

With regard to domain names, brand owners are following the misguided footsteps of the music industry and other industries, current and from the past. Previous examples were occasioned by the birth of the radio and the VCR.³ Now it is the illegal download of textbooks.⁴ By providing cheap access to

legal music, iTunes is rewarding music lovers while not leaving IP owners any the worse off. Similarly, brand claimants and domain owners both benefit from a cooperative IP solution that makes it easier for sites to reward visitors with a better user experience.

Even without such a solution, brand owners can still benefit by mining information out of allegedly infringing domain names. For example, the frequent use of words in combination with a brand name can provide valuable insight as to what potential customers associate your brand with. If these key words did not attract relevant traffic, domain owners would not have registered them. Moreover, the volume of relative brand-related registrations can be a viable corporate intelligence tool. No less important is that some of the domain names can provide material for corporate slogans. Consider “CokeIsIT.com,” possibly the creation of a technology geek addicted to classic Coke. Additionally, the use of the brand in, say, [retro domain names](#) can have a favorable impact on prolonging brand recognition, and thus add value.

Unfortunately, the domain name industry is counting on only one weapon, the Internet Commerce Association ([ICA](#)), despite the cooperative regime being a win-win solution.⁵ ■

¹ See Alex Tajirian, “[Typosquatting: A Solutions](#),” CircleID.

² Felix Oberholzer and Koleman Strumpf (2004), “The Effect of File Sharing on Record Sales: An Empirical Analysis,” http://www.unc.edu/~cigar/papers/FileSharing_Marc_h2004.pdf.

³ See, for example, William Fisher, “Don’t Beat Them, Join Them,” *The New York Times*, June 25, 2004, <http://www.nytimes.com/2004/06/25/opinion/25FISH.html?ei=5007&en=55277d5b5679afb7&ex=1403496000&partner=USERLAND&pagewanted=print&position>.

⁴ See, for example, Randall Stross, “First It Was Song Downloads. Now It’s Organic Chemistry,” *The New*

York Times, July 27, 2008,

http://www.nytimes.com/2008/07/27/technology/27digi.html?_r=1&pagewanted=print&oref=slogin.

⁵ Alex Tajirian, “[Don’t Litigate, Open Them Up!](#),” DomainMart.