CONCLUSION & SUGGESTIONS
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CONCLUSION

The jurisdictions under study are rich in Intellectual Property Right (IPR) resources, which are of great value to us and to the world at large. But we have more or less failed to protect and exploit them. The area of management of Intellectual Property Rights (IPRs) has assumed a great significance in the present day world of explosive technological growth and developments. With the rapid growth in diversified fields of technology, and with the advent of new scientific inventions and innovations, the country’s technological prospects and perspectives have to be redefined and one such important zone of globalization and modernization are Intellectual Property Right exploitation and Intellectual Property Right protection that establishes the significance of Intellectual Property Right in today’s modern and highly competitive world.

Protection of intellectual property rights will definitely promote the development of new products, services and national economies and any erosion thereof can threaten the economic performance of the sector and might curtail the major benefits accrued therefrom. It has brought the abundance of information and the each which can be accessed, reproduced, and distributed have become problems that must be seen in all of their complexity as well as the accompanying policy challenges. The Intellectual Property Right are increasingly becoming the physical assets in the digital age, though substantial time and effort may be required to achieve a workable balance between private rights and public interest in information. The technological changes bring challenges to the basic principles of Intellectual Property Right laws, Internet and the digital revolution poses complex problems for Intellectual Property Right laws and their protection. The three technological advances namely digitization of information, networking, and www. (world wide web) have turned the classical economics of the information upside down. An indication of the relative importance and complexity of the issues involved can be taken from a recent world intellectual property organization (WIPO) estimate that no Less than 90% of total investment in a multimedia product was expanded in dealing with intellectual property issue.
A trademark can be word, a logo, a number, a letter, a slogan, a sound, a colour, or sometimes even “Service” identify the source of goods and/or services with which the trademark used. Trademarks can be owned or companies and should be registered at a governmental agency, which is usually referred to as the trader when a trademark is used in connection with service. It is sometime referred to as a “Service mark”. The registration symbol – the latter “R” in circle ® - may not be used unless the trademark with which it is has been actually registered with the governmental agency alluded to above. It has four primary functions. The first is to signify that all goods bearing the trademark come from a single source. The second is to convey to the buying public a guarantee of quality. The consumer should know that from, purchase to purchase, the favourable characteristics of the goods bearing the trademark remain the same. The third is to allow one trade to distinguish his goods from those of his competitors. The fourth is to promote the goods. It is important to realize trademarks are property; just a buildings and machinery are property. They should therefore be treated with the same respect as these, more obvious, tenable form of the property. This type of property to which trademark is attributed is known as intellectual property. This term also encompasses patents, which protect inventions (useful advances), registered designs, which protect the shape or surface decoration of articles and copyright, which protect artistic or literacy works. Whilst a product may also be protected by some, or even all of these other property rights, it source and quality is always identified by its trademark.

A Trade Mark is a commercial asset intended to be used commercially by businessmen. It is a personal right which can only be claimed or enforced by action and not by physical possession. It is thus a legal right. The characteristics of a legal right are: right should be vested in a person, it must have contents, it must have a subject matter or object, there should be title by which the right has been vested in the owner, there should be a corresponding duty, means that there should be a person against whom the rights avails, the person who is bound by it and upon whom the correlative duty lies. The existence of object of a right is no longer an important characteristic, in the context of intellectual property. Rights relating
in these properties must without objects as understood in common parlance such as right in Trade Mark. Intellectual property rights are negatively available, protected by law against initiation and piracy. Obligation is fastened on persons other than the owner of the rights, to take care against limitation, piracy or plagiarism. Infringement by them involves liability for damages or invites penalty, fine or prosecution.

This means that they can be treated, in legal terms, in much the same way as real property, such as a house. To illustrates this further, let us consider how the owner of a registered trademark can benefit from his ownership of such an asset and compare this with the right enjoyed by a home owner. First, the trademark owner may use the mark himself on the goods for which it is registered, to the exclusion of others. Clearly, this is comparable to a home owner who lives in his own property. Alternatively, a trademark owner may license the use of his mark, under agreed conditions, to a third party. This is very similar to a homeowner who decides to let out his property, in return for rent.

The discussion as of now has concentrated on the value of and the rights attached to registered trademarks. This is understandable given that recent changes in trade mark laws around the world have widened the definition of the type of trade mark that may be registered (in some cases, to include shapes for the first time), increased the area of protection that is available to the registered trade mark owner and generally boosted the importance of registration still further. It should not be forgotten, however, that a registered trade mark that is never brought into use has little or no intrinsic value. It is only through use, in relation to particular goods that a trade mark becomes of some worth to its owner. The trademark becoming the symbol of a product’s reputation and goodwill in the UK, along with other developing countries like India and Pakistan that follow the UK’s legal tradition, recognize the separate nature of trade mark rights derived by use and by registration. Such unregistered trade mark rights may also allow their owner to prevent or stop unfair trade practices, by its competitors, either when he
has no registered rights or when his registered trade mark rights are unsuited to the task.

Now the time and attitudes have been changed. Business has recognized as the fundamental importance of their brands to present and their future success. Their legal advisors have realized that trademark rights are generally cheap to protect and relatively quick on simple to enforce. The judiciary has now understood that a trade marks is a valuable legal rights that deserves to be treated with the same respect as a patent and copyright. The internationalization of trade and the growth in advertising since the Second World War have meant that product can now be sold to a global audience. The need to encapsulate complex messages about a product character, quality advantages, in a simple way has therefore increased. Business has found that most elegant summation of these messages is use of member able trademarks.

All the values of trademark have grown, so has their abuse by competitors, eager to ride on the back of another’s hard earned reputation. However, all form of such competition can damage the reputation and sales of the originator’s product. Registered trademark and to lesser extent, their unregistered brethren, are powerful weapon against unfair practices. Recent changes in the trademark Laws, in India, and elsewhere, have increased the values of trademark and importance of registration. The importance and value of trademark to our business colleagues show how this sometimes arcane area in day to day activities operates. After all, trade that is chosen used and protection correctly, can has forever.

The trade Marks Act, 1999 replaces the Trade and Merchandise marks Act, 1958. The Act is a consolidated effort to bring the law at par with international practices. These changes are envisaged by India, well before it signed the General Agreement on Trade and Tariffs (GATT) and the Trade Related Intellectual Property Rights (TRIPS) agreements in April 1993. One of the main reasons for enacting the new legislation” is to ensure that the new act reflects current trading practice as well as guaranteeing that India conformed to
the Uruguay final Agreement on TRIPS relating to the trade marks. For the first time, the new Act will seek to protect service marks as well, as opposed to trade marks in goods. The services to which a trade mark can be registered include that of advertising and business, insurance and finance, construction and repair, transport and storage, material treatment, boarding and loading, education and entertainment.

The new Act expands the scope of the definition of “trade mark” to include graphic representation, shape, packaging and combustion of colours and covers both goods and services. Under the 1958 Act any name signature, word, letter or numeral or any combination thereof capable of distinguishing the goods of one concern from those of others were eligible for registration as trade mark. Under the new legislation any combination of colors is also register able. The scope of other terms like “mark” collective mark, goods, registered trade mark permitted use” has been expanded in tune with international practices. The jurisdiction of the courts is also affected with the formation of the appellate tribunal. The Act makes provisions for procedure for registration of trademarks easier by removing the earlier system part A and B registration. It provides for a single application for registration in more than one class and increases the period of registration and renewal from seven to ten years. The Act also provides for the classification of goods and services in conformity with recognized International Classification of goods and services which also envisaged in the publication of an alphabetical index of classification of goods and services. The registrar of trademarks is vested with greater powers in the classification of goods and services. The Act seeks to prevent a person from adapting someone else’s trade mark as a part of that person’s trade name or business.

The scope of the trade mark law has been expanded in the definition of “Infringement”. In the earlier Act a registered trade mark is infringed by a person who uses in the course of a trade mark which is identical with or deceptively similar to the registered mark. In the new Act “infringement” has defined to include not just deceptively similar, but similar marks, similar goods, and even
goods not similar to those for which the trade mark is registered. Trade mark infringement under the new Act is a cognizable offence. The police can act in cases where violation is “likely” to occur. The benefit under the Trade and Merchandise Marks Act are given to individuals, No public benefit is derived therefrom. It is to protect the individual right, statutory provisions have been made. The benefit derived under the Act can be waived. Another person can make use of the mark with the consent of the registered proprietary.

When a person gets his trade mark registered, he acquires valuable rights by reason of such registration. Registration of his trade mark gives him the exclusive right to the use of the trade mark in connection with the goods in respect of which it is registered and if there is any invasion of this right by any other person using a mark which is the same or deceptively similar to his trade mark, he can protect his trade mark by an action for infringement in which he can obtain injunction, damages or an account of profit made by the other person. The purpose of the Act is, thus, to protect the interest of the proprietors of the registered trademarks and the rights and duties created in relation to the rights of individual owners. The act does not seek to create any right in a general sense.

The aim of the provision of the enforcement is to ensure the undisturbed the IPR, which find their place in the substantive provisions. All TRIPS member (WTO member) are required to give effect to the provisions under their national laws. The TRIPS agreement has thus, harmonized the law on the protection and enforcement of Intellectual Property Rights (IPRS). As in the case of substantive standards, the United States standards were made the basis on enforcement measures. After the entry into force of the TRIPS Agreement, India has given effect to its different provisions through amending the existing IP Laws or legislating new ones. In this process, it has amended its Copyright Act 1957 (in 1994 and subsequently, in 1999) and the Patents Act, 1970 (by the Patents (Amendment) Act, 2002); replaced the Trade and Merchandise Marks Act 1958 with the new Trade Marks Act 1999; and enacted the Geographical Indications of

Since the Internet is a global phenomenon, experiences has shown that the US has tried to plug the legal lacuna by passing the Trademark Cyber Piracy Prevention Act. There are various steps already a foot to tackle the domain name disputes, especially cybersquatting, on international level. As far as India is concerned, one has to be pragmatic and it is to be realized that the virtual world of cyber space needs a law for itself. Bringing passing of within the framework of the Trade and Merchandise Marks Act, which is un antiquated legislation (pasted in the year 1958/would result in granting trademark holder more extensive protection than what the legislative originally interned. A trend of increased disputes over web address is gaining ground in India over the past few years as companies recognize the commercial potential on the Internet. As companies try to state their claims in cyberspace they often find their prime panels already in the hands of somebody else. The WIPO arbitration and mediation center may order the respondent only to refrain from the use damages for the loss caused to the complainant law are being continuously amended to take care of the technological changes.

As per its reports, WIPO elected to limit its mandatory general administrates procedure for the resolution of domain name registration (cybersquatting) WIPO also recommended that the registration agreement contains a provision, for domain on an optional basis, in respect of any dispute in relation to the domain name and such arbitration takes place on live. When one is legitimately entitled to register a domain name, why should be penalized if he seeks to trade in it can be contended that a cybersquatting does not deal in any gods and hence, his activities are not likely to cause confusion in the minds of the public. Intellectual Property Law is being continuously amended to take care of the technological changes. But it still requires major amendments to deal with challenged posed by the internet and digital revolutions. This allows transactions
signed electronically to be enforceable in a court of law. The Act provides legal framework for ecommerce, e-security and e-governance in India.

The various problems posed by digital medium are distribution, catching, protecting of confidential information patent, copyrights, trademarks, domain names, liability for defamatory statements over network, content liability and protection, payment mechanism for Internet commerce, money laundering, taxation, issue prohibited and activities etc. Intellectual Property laws are being continuously amended to take care of technological changes, but still requires major amendments to deal with challenges posed by the Internet and digital revolution. The activities of tampering, eavesdropping impersonation are some, issues that arise during the electronics transaction of documents. All these can be remedied by the use of public key cryptography. However the question of when (time of creation) a document was created or signed electronically still remains unanswered.

This information may be proved to be crucial to be ecommerce legally binding transaction When refers to time stamping. There is need as of now to introduce digital time stamping service in electronic transactions in India and the author has attempted a possible methodology for the same. With the help of DTS, it is possible to guarantee the integrity of electronic record. One can prevent, insider fraud, prove ownership of intellectual property, or settle disputes with customers, competitors, partners and employees, which are of vital importance in currently emerging Intellectual Property Right regime.

Real importance of time stamping becomes evidence when there is need for legal use of electronic documents with along” life time. The time stamping will help in solving the cases where cryptographic scheme used for become unreliable or where the signer have repudiates the signings claiming that he has accidentally lost her/his private key. Although today’s time stepping procedure may appear to be complicated, failure e-commerce application are expected to technology. The problem of cybersquatting is escalating globally and even in
India. Trademark and service mark owners need to be able to protect their marks as domain names from others who register and use the mark in bad faith. As a preliminary matter the owner must first discover that its mark is being used in an Internet address. An inexpensive way to do this is simply to use a search engine to discover web pages using the mark. Making detection even easier, one domain name registrar offers a service that will report cybersquatting or any trademark being used in hidden or overt ways.

The disputes between trademarks and domain names present unusual features that are currently stretching the capacity of Indian Judiciary to its limits. In certain cases, the global dimensions of domain name disputes have made it difficult for Indian courts to come up with comprehensive solutions to combat the cybersquatting menace. India passed the Information Technology Act, 2000 to deal with the emerging cyber issues. It aims to provide for the legal framework so that legal sanctity is accorded to all electronic records and transactions carried out by the means of electronic data interchange and other means of electronic communication (e-commerce). However, it does not deal with major issues like Cybersquatting, Spamming, and Cyber Stalking. Phishing etc., though it was expected to deal with so.

For the effective regulation of a phenomenon, the legal regime for it must be abreast with the latest developments taking place in that field, which becomes difficult in the case of Information Technology as it has an accelerated pace of development and hence the statute requires constant updating. There are some grey areas in the Act which need special attention as under:

- The Act extends the application of its penal provisions to persons outside India, irrespective of their nationality if the offence under the Act relates to a computer located in India. Such extra-territorial Jurisdiction is fraught with limitations as to its enforcement.
- The jurisdiction of a particular country over online transactions, which involves more than one jurisdiction, has been left open. This can lead to a conflict of jurisdictions.
The Act fails to address the issue of cross-border taxation that may arise in international contracts.

The Act does not address the issue of protection of intellectual property on the internet.

The Act does not deal with privacy and data protection issues on the internet.

The Act fails to cover cyber laundering of money, spamming, phishing, cyber stalking, and cyber-squatting and other innovative cyber-crimes.

The Act does not clarify the situation regarding the liability of network service providers.

Whereas domain names are used to establish a presence on the Internet, many organisations register as their domain names their own names, initials or trademarks (in text form), or words that are descriptive of their products or services or that are otherwise associated with them. It is almost intuitive for a seasoned Internet user seeking to locate the website of a particular organisation to type as URL words or initials that he would associate with that organisation.

However, domain names are usually issued on a “first come, first served” basis. Many TLD registries do not require an applicant to prove that he is entitled to a particular domain name before registering the domain name. As domain names are necessarily unique, disputes over who is entitled to a particular domain name may arise where there are two or more parties interested in using the same domain name. The parties to a typical domain name dispute are the registrant of the domain name and the party seeking to take over the domain name (the “complainant”). Generally, a domain name dispute may be resolved in five ways:

- By agreement between the parties (for instance, where the domain name is transferred.
- By the registrant to the complainant for an agreed consideration).
- By using alternative dispute resolution mechanisms such as mediation or arbitration.
- by court proceedings: and
by using any administrative procedure for resolving domain name disputes that may be prescribed by the domain name registration agreement entered into between the registrant and the registry registrar for that domain name.

Examples of administrative procedures for resolving domain disputes include:

- ICANN’s Uniform Domain Name Dispute Resolution Policy (“UDRP”). Which has been adopted by all ICANN accredited registrars for the “.cero”, “.biz”, “.com”, “.coop”, “.info”, – museum”, “.name”, “.net” and “.org” gTLDs:

- The country Domain Name Dispute Resolution Policy if any. (INDRP in case of India).

It should be noted that not all domain name registration agreements provide for administrative procedures for resolving domain name disputes. Realizing a need for change and in light of the aforesaid circumstances, a strong recommendation was made to formulate laws for regulating the domain names in cyber space. Accordingly, ICANN (International Community for Assigned Names and Numbers), Uniform Domain-Name Dispute-Resolution Policy (“UDRP”), came into existence with an object to streamline the process of acquiring domain names. Consequently a similar policy was adopted/introduced in India known as .IN DISPUTE RESOLUTION POLICY (“INDRP”) with a similar object. The courts across the country and authorities world over started reacting in seriousness to instances or cases of cyber squatting or misuse of registered trade mark by registered domain name holders, who were not the registered trade mark owner/user regarding UDRP, the following observations have been made:

- The process is fast (on average 42 days, but frequently as few as 28 days when the parties haven’t requested Stays.

- The process is usually hassle-free. Few parties report to us that they have serious problems with having decisions implemented, and in a large number of those cases, it’s the complainant who didn’t understand how the process worked, or didn’t follow up in a timely manner. However, I note
that ICANN rarely follows up on Rule 16 (a) violations. No matter how many times we bring to ICANN’s attention that a Registrar is not notifying the Parties and Provider of the Date on which the decision will be implemented, nothing is done about it. Many of the largest registrars are complying, notably, GoDaddy, eNom, and Tucows. Of the ones that don’t comply, there are few problems with transfer so it seems the non-compliance has little negative effect. However, for a handful of Asian-based registrars with whom obtaining transfer proves to be most difficult, ICANN isn’t enforcing Rule 16 (a), which should be the first step in enforcing the decision. The only entity that has leverage over Registrars that don’t comply with UDRP Panel Orders is ICANN. So if ICANN is not enforcing 16 (a) or a registrar’s refusal to contact/work with a prevailing complainant, the UDRP becomes worthless.

- The UDRP has by-and-large stood the test of time. The Internet has changed drastically since the UDRP was approved and few changes have arisen to really confound the process. We caution ICANN and the Working Group to consider the thousands of UDRP decisions serving as precedent when suggesting substantive changes to the UDRP.

Uniform Dispute Resolution Policy faces a lot of criticisms worldwide. Some of the most important of them are:

- The UDRP fails to account for a process that consists of checks and balances and is not consistent with due process.
- The UDRP does not provide incentives, equal for both parties.
- The UDRP promotes forum shopping.
- The panelists associated with the UDRP have mainly a trademark law background.
- The number of default cases is worryingly high.
- The democratic fractions of the UDRP are weak and incapable to resist trademark penetration.
- The UDRP makes arbitrary use of precedent.
Similarly, the UDRP also promotes an inconsistent system, despite the fact that is meant to be uniform.

The UDRP is based upon the illogical conclusion that all domain name registrations are potentially abusive and Hannifin and, occasionally, without any distinction or assessment between actual harm and the likelihood of such harm, it has normatively evolved into an inconsistent paradigm.

The substantive provisions of the UDRP (paragraph 4a) are at best etymologically obscure.

The bad faith element is open to wide and discretionary interpretations.

There is no authority responsible for the decisions (good or bad) that come out of UDRP panels.

**SUGGESTIONS**

An adequate trademark system is very important to consumers in developing countries, because it permits these consumers to rely on a particular standard of quality associated with the trademark and identify the origin of the trademarked goods, rather than have no means of distinguishing goods from different sources.

An adequate trademark system is very important to enterprises in developing countries because it permits them to develop domestic and foreign markets for their products. Without an adequate trademark system, it is very difficult to start a new business or introduce a new product line and compete with established foreign and domestic enterprises, particularly in consumer product lines.

Therefore, trademark protection is at least as important for the consumers and enterprises of developing countries as it is for consumers and enterprises of developed countries. Also a trademark may be of particular assistance in the transfer of technology to enterprises in developing countries. The license recipient
will have to acquire know-how and technical skills in order to maintain the quality standard required by the license supplier, and the licensed trademark, particularly if it is known in his country, will help the license recipient develop the market faster than would otherwise be possible.

The question of the significance of trademark systems in developing countries is worthy of further investigation and analysis by The International Trademark Association, providing essential trademark information to national and international governmental bodies and particularly enterprises in developing countries as under:

- Implementation and interpretation of TRIPS provisions for promoting both access to existing medicines and the creation of new medicines.
- TRIPS Agreement should not prevent member governments from protecting public health.
- TRIPS Agreement to be read in Light of its objectives and principles.
- International transfer of technology.

Some of the suggestions to reform the Indian law to tackle the problem of cybersquatting is that:

There is a need for a new legislation in India in lines with ACPA and UDRP. There is no legislation in India which explicitly refers to dispute resolution in connection with domain names. The existing laws concerning trademark infringement do not adequately protect trademark holders against cyber squatters. The Indian courts have been relying on the Trade Marks Act, 1999 (before 1999 on Trade and Merchandise Marks Act, 1958) and the Information Technology Act, 2000 to deal with the growing problem of cybersquatting. But, both these legislations fall short in providing an effective protection to domain names in India.

The Information Technology Act, 2000 regulates to a large extent cybercrimes and electronic signatures, but it does not cover all aspects of information technology and it leaves an important area - Intellectual Property
Rights (IPRs), specifically in respect of Internet-related activities. The Act also
does not contain any provisions with regard to cybersquatting, which is growing
in prevalence by the day as has been discussed in the aforementioned cases. In
many situations the Indian courts have to seek guidance from English and
American laws and decisions, which really makes it pertinent to make a new
legislation of its own, just like ACPA in the US which has resulted in significantly
controlling cybersquatting there. It has become important for India to legislate a
law like ACPA of US, and which necessarily conforms to the international
standards laid down in the UDRP.

There is a need for setting up an independent adjudicatory authority that
shall be able to decide cases relating to domain name disputes, especially
cybersquatting in India. The setting up such bodies has proved effective in many
countries like US (National Arbitration Forum) and Czech Republic (Czech
Arbitration Court).

Setting up such an independent judicial body to tackle the domain name
disputes, especially cybersquatting, shall prove less time consuming, more
expedient and more effective, as the parties will not have to wait to get onto a
docket, then for a trial, then for an outcome. The INDRP which deals with only
“.in” domain name disputes needs to be further strengthened and given the effect
of a law. The policy, since not being in the shape of a law, is not mandatory to be
followed. The inconsistency between the INDRP and the UDRP needs to be
removed The UDRP and the INDRP differ on the domain names in many places.
Thus to make INDRP more effective, it has to be made more compliant to the
UDRP, and be given the shape of a law.

After analyzing various approaches relating to cybersquatting, it is clear
that two methods have developed in the form of dispute resolution by the
regulatory authorities and the formal legal or court procedure. The majority of
authorities has either implemented the UDRP or has implemented one closely
modeled on it. This is indeed a very effective method of curbing cybersquatting,
though it requires changes with time. And then observing at how the courts have reacted. It is clear that the picture is altogether different. While some countries have implemented cybersquatting specific legislation, others have reacted rather indolently by simply applying trademark laws inappropriately.

Finally, in the light of still increasing rate of cybersquatting in India and other countries, it is important to make a concerted effort by registrars to address and curb it at the registration level itself. This is indeed going to be proving beneficial in controlling cybersquatting. Just like in real world the squatters have finally given up their practice with stringent property laws in force. Courts take recourse to the Trade Marks Act while dealing with the disputes of trademarks in cyber world. But this cannot be termed as a proper and permanent solution to these upcoming and newer kinds of disputes. So the need of the hour is to formulate a specific and detailed provisions in Trade Marks Act on the subject i.e. domain names until a special law is being passed.

Under the current Trade Marks Act, 1999 there is no specific provision to protect the interests of a registered domain name holder meant for non-commercial and private use, dealing neither in any trade nor in any services as stipulated by the Act and therefore to prevent the violation of rights of such users there should be express provisions envisaged in the Act.

One should always be cautious to protect his own website from being hijacked or unauthorized use or perversion. There are basically three basic options offered by Registrars to protect a domain name.

All Domain Names have a password based security. All Domain Names belonging to a particular Customer can only be modified though the right Username and Password combination of that customer.

Domain LOCK is must for all due to the recently announced transfer Policy by ICANN. Once a Domain Name is locked no modifications can be made.
to the Domain’ by anyone. The Domain Name may not even be transferred to another Registrar. The Domain will remain in a LOCKED status until you yourself choose to remove the LOCK. This feature is by far the most powerful feature to ensure that no one can make any changes to your Domain Name without your express approval.

In this status the domain name cannot be transferred, hijacked, or modified. The Owner of this domain name can easily change this status from their control panel. This feature is provided as a security measure against fraudulent domain name hijacking. Apart from these, the following are also the required changes in UDRP:

- Include a requirement that the Provider request verification and a lock from the Registrar for each domain name and that the Registrar respond within 48 hours. Currently, there is no provision for this, but Rule 2 requires the Provider to serve the billing address, which none can obtain no other way than through the Registrar, and Policy para, 8 forbids transfer, but nobody have any indication that the Registrar intends to comply. If the Registrar never replies, aggrieved persons are in a position of proceeding without a lock and there is a higher incidence of cyber flight on these cases. Because there is no formal requirement for this, it appears that ICANN’s hands are tied-no action can be taken against the Registrars that don’t comply. The information need from the Registrar for each domain name:
  a. Confirmation that the domain name (s) is/are registered with that Registrar.
  b. The name and billing address for the registrants (s) (Rule 2)
  c. Confirmation that the domain name (s) is /are locked (Policy Para 8)
  d. The language of the Registration Agreement (Rule 11)
  e. The expiration date (the who is often projects it out a year)
  f. Confirmation that the domain name will not be allowed to expire or be deleted during the pending UDRP proceeding. As provided under the Expired Domain Deletion Policy (EDDP).
Revise required for Rule 11 (a). Currently the Rule says “Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The Rule is impossible to administer as written. The language of the proceedings is determined well before commencement; at the time the domain name is verified by the Registrar, causing Complainant to have to translate the complaint during the deficiency period. At that point, the case is not commenced and no panel is appointed. Therefore, it’s impossible to ask a Panel to determine if the Complaint need not be translated. If we were to “pre-appoint” the Panel, it would remove Respondent’s ability to select a three member panel since a Panel would already be appointed.

It is recommend Rule 11 be amended to either codify the practice outlined in (b) above, or outline a new practice for the Providers, consistent with the UDRP timeline. While this Rule appears sound on its face, it’s not until you get into the practical implementation of it that the problems surface.

Currently, when a complainant has to translate a complaint, more time is needed than the five (5) day deficiency period. As a result, the Forum has a rule allowing a complainant to withdraw and then re-file for a nominal administrative fee. The challenge with this is that the withdrawal releases any lock that had previously been on the domain name. It would be helpful to write in an allowable extension of the deficiency period, only for use when complainant has to translate. While the UDRP is supposed to be fast, it’s clear the UDRP drafters didn’t consider the translation issue.

Developing countries, particularly India, require more sophisticated technologies to be competitive in today’s global economy. For which we need to give serious consideration to our policies for encouraging technology transfer. In addition to this, effective competitive policies must be established. With growing
pharmaceutical, software and entertainment industries, India has much to gain from implementing a more robust IPR regime. Increased intellectual property protection would boost bilateral trade and investment with the United States. Hi-tech trade and collaborative research and development are growing, but there is a need to do it faster.