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ICANN: A Study of Its Working

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Abstract: ***The Cyberspace is a borderless space and has led to many legal and jurisprudential problems and challenges for the enactment, enforcement and interpretation of laws. Governance of internet has always been a debated issue around the world. The internet society promotes net neutrality, open access, internet resilience and stability, freedom of expression, privacy and identity of the users. The World Wide Web Consortium (W3C) is an international community where Member organizations and the civil society work together to develop Web standards. The governance structure and processes introduced by IGF provide opportunities to integrate social media ways that enhance both remote and local participation in the yearly forums and throughout the year.***

Keywords: Cyberspace, internet, World Wide Web Governance and laws.

I. INTRODUCTION

The digitalization of information has been unceasingly progressing in an exponential degree which has revolutionized the manner of creation, storage, retrieval and dissemination of information to the extent that cyberspace has rapidly transformed itself into a self regulating or even unregulated medium of communication.

The cyber laws are in a state of flux more so because the global status of the internet which knows no geographical jurisdictions is sought to be regulated by territorially based national legal jurisdictions. IPR issues on internet attracted the centre stage of global negotiations and culminated in the TRIPS agreement which for the first time incorporated all forms of intellectual property protection in a single treaty and provided a strong enforcement mechanism.[1]

From the perspective of an ordinary man, a 'Domain Name' is the string of characters (words) that a user of internet types in a web browser in order to open a website.[2]

In technical terms, a domain name is the user friendly substitute for the address of a computer/server hosting a website on the internet. Every computer on the internet has a unique IP address which is a set of four numbers from 0 to 255 separated by a period, for e.g., 198.41.0.108. Using these addresses one computer is able to contact, communicate and share data with any other computer on the internet. Internet users find it difficult and cumbersome to remember these number strings, therefore a more user-friendly system of domain names was adopted in 1984. The purpose of domain names is to enable the users to locate sites on the internet in an easy manner.

The Cyberspace is a borderless space and has led to many legal and jurisprudential problems and challenges for the enactment, enforcement and interpretation of laws. To meet changing demands of cyberspace, various sovereign countries have enacted a number of domestic legislations. On international level too, there are various Conventions enacted in the arena of cyberspace and intellectual property rights.[3]

II. GLOBAL INTERNET GOVERNANCE

Governance of internet has always been a debated issue around the world. Different approaches, models and principles of governance have contributed in making its governance more complex. There have been tremendous policy dialogues, conferences, agendas & working draft to make a consensus on governance structure but that has been of little success. United States direct or indirect control over the governance structure has also been a contentious issue.[4]

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[1] M. Sivaraman, "Cyber Space and Protection of Intellectual Property Rights: Problems and Prospects in Law",*Chartered Secretary*, May 2004, p. 621

[2] J. Thomas McCarthy, *Trademarks and Unfair Competition*, (1998)

[3] Such as, Conventions on the Cyber Crime, Convention Establishing the World Intellectual Property Organization, 1967 and other WIPO-administered Treaties; TRIPS, ICANN, Model Law on Electronic Commerce, 1996 etc

[4] Alan Woodward, 'Viewpoint: Changing the way the internet is governed is risky' (BBC News, 14 June 2012) <www.bbc.com/news/technology-18440558> accessed on 15 January 2017

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III. INTERNATIONAL BODIES GOVERNING THE INTERNET

"Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures and programmes that shape the evolution and use of the Internet."[5]

As such there is no single body at the international level to control and govern the internet communications. Internet governance is done by a decentralized and international multi stakeholder network of interconnected autonomous groups which includes governments, civil society, the private sector, the academic and research communities etc. There are central control points on different levels. For example, an ISP can exercise some control over its subscribers, the operator of a BBS can exercise some control over their service and individual governments can exercise some control over their citizen's internet behaviour. They work cooperatively from their respective roles to create shared policies and standards that maintain the Internet's global interoperability for the public good. The lack of central control only exists on the highest international level.

International institutions ranging from the International Telecommunication Union to the U.N. General Assembly are becoming increasingly involved in regulating the Internet. A brief detail of these organizations are as follows:

A. International Telecommunications Union (ITU)

ITU, based in Geneva, Switzerland, is a member of the United Nations Development Group. ITU has been an intergovernmental public-private partnership organization since its inception. Its membership includes 193 Member States and around 700 public and private sector companies as well as international and regional telecommunication entities, known as sector members and associates, which undertake most of the work of each

B. Major Initiatives by ITU Vis A Vis ICTs

In its resolution no. 102 at Plenipotentiary Conference in 2014 titled 'ITU's role with regard to international public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses' need to preserve and promote multilingualism on the Internet as well as public private and regional initiatives role in expansion and development of the Internet was considered. It has also noted the importance of openness and transparency in the development of international Internet public policy issues and the need for all stakeholders to be consulted. In the same event, resolution number 130 titled 'Strengthening the role of the ITU in building confidence and security in the use of information and communications technologies' emphasized on assisting Developing countries in the use of ICTs and the establishment of Computer Emergency Response Teams (CERTs) for government-to-government coordination consistent with the ITU's role as lead facilitator of WSIS Action Line C5 (Building confidence and security in the use of ICTs). There are various instances where telecom regulators have established guidelines for the use of social media. For example, the Bahrain Telecommunications Regulatory Authority has established guidelines for social media use. Users are to refrain from posting, forwarding or re Tweeting messages that are untrue, or of an extreme nature, violent or pornographic. The authority's motivation behind the policy is to incorporate standards typically found within the journalism profession to social media. It notes that reputable journalism operates under a code of ethics (verification of content, protects viewers from images of extreme nature) but this is not the case with social media broadcasting.[6]

C. International Internet Society (ISOC)

The Internet Society (ISOC) is a nonprofit organization founded in 1992 to provide leadership in Internet related standards, education, and policy. It is a global cause-driven organization governed by a diverse Board of Trustees that is dedicated to ensuring that the Internet stays open, transparent and defined by users. It operates collaboratively and inclusively, working with governments, national and international organizations, Civil Society, the private sector and other parties to reach decisions about the Internet.

The internet society promotes net neutrality, open access, internet resilience and stability, freedom of expression, privacy and identity of the users. Through multidimensional approaches to keep the internet healthy and to secure a bright future, it has been involved in various policy decisions impacting the functioning of internet. Major initiatives of internet society in protecting the privacy and identity of users have far reaching implications for social media and other information technology users.

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[5] Château de Bossey , 'Report of the Working Group on Internet Governance' (WGIG, June 2005) <www.wgig.org/docs/WGIGREPORT.pdf> accessed 2 January 2017

[6] Editorial, 'SafeSurf Bahrain Newsletter of the TRA' (Business Intelligence Middle East , 27 April 2011) <www.bi-me.com/main.php?c=3&cg=4&t=1&id=52347> accessed 2 January 2017

The Internet Society works at the intersection of technology and policy supporting privacy standards (legal and technical) that are openly developed, transparent, globally interoperable and user-centric. The internet society through Internet Technical Advisory Committee (ITAC) has contributed to the OECD work on the privacy and data protection. The Internet Society has developed a series of papers providing an overview of online identity, focused on user-managed identity. The papers include discussions of privacy and some general guidelines on protecting your identity online.[7]

D. Internet Architecture Board (IAB)

The IAB is the body which oversight of the Internet Engineering Task Force (IETF) and acts as an advisory body of the ISOC. The body which eventually became the IAB was created originally by the United States Department of Defense's Defense Advanced Research Projects Agency with the name Internet Configuration Control Board during 1979; it eventually became the Internet Advisory Board during September, 1984, and then the Internet Activities Board during May, 1986. It finally became the Internet Architecture Board, under ISOC, during January, 1992, as part of the Internet's transition from a U.S.-government entity to an international, public entity.

E. Internet Engineering Task Force (IETF)

The Internet Engineering Task Force (IETF) is a large open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet. It is tasked for producing high quality, relevant technical documents that influence the way people design, use, and manage the Internet.

The actual technical work of the IETF is done in its working groups, which are organized by topic into several areas (e.g., routing, transport, security, etc.). Each working group has an appointed chairperson (or sometimes several co-chairs), along with a charter that describes its focus and what and when it is expected to produce. Much of the work is handled via mailing lists. The IETF holds meetings three times per year.

F. Institute of Electrical and Electronic Engineering (IEEE)

The IEEE (Institute of Electrical and Electronics Engineers) describes itself as "the world's largest technical professional society -- promoting the development and application of electro technology and allied sciences for the benefit of humanity, the advancement of the profession, and the well-being of our members." The IEEE fosters the development of standards that often become national and international standards. The organization publishes a number of journals, has many local chapters, and several large societies in special areas, such as the IEEE Computer Society.

IEEE has a dual complementary regional and technical structure with organizational units based on geography and technical focus. It manages a separate organizational unit (IEEEUSA) which recommends policies and implements programs specifically intended to benefit the members, the profession, and the public in the United States.

G. World Wide Web Consortium (W3C)

The World Wide Web Consortium (W3C) is an international community where Member organizations and the civil society work together to develop Web standards. All the stakeholders involved do have an opportunity to make voice in the development of W3C standards. W3C also engages in education and outreach, develops software and serves as an open forum for discussion about the Web.

The Consortium is jointly administered by the MIT Computer Science and Artificial Intelligence Laboratory (CSAIL), the European Research Consortium for Informatics and Mathematics (ERCIM), Keio University and Beihang University. The W3C also has World Offices in sixteen regions around the world. The W3C Offices work with their regional Web communities to promote W3C technologies in local languages, broaden W3C's geographical base, and encourage international participation in W3C Activities. Recommendations published by W3C are considered web standards after the thorough and extensive review and testing. However, it is voluntary for manufacturers to follow the recommendations of W3C. If a product would like to be labeled W3C-compliant, it must meet the defined level of conformance set by the W3C. Before W3C was created there were different versions of HTML put out on the market by various vendors.

[7] Internet Society, 'Our Work on Privacy' (Internet Society, 05 June, 2015) <http://www.internetsociety.org/our-work-privacy> accessed on 05 June 2017

Many of these different versions were not compatible with each other. The consortium allowed the vendors to get together and agree on core principles which everyone would use. Some web standards that W3C is responsible for are: CSS, XHTML, HTML, XML, P3P, and OWL. W3C also is working on device independence. Device independence would allow the web to be accessible by any device under any circumstance.

H. Internet Assigned Numbers Authority (IANA)

The Internet Assigned Numbers Authority (IANA) is a department of ICANN responsible for coordinating some of the key elements that keep the Internet running smoothly. Whilst the Internet is renowned for being a worldwide network free from central coordination, there is a technical need for some key parts of the Internet to be globally coordinated, and this coordination role is undertaken by IANA. Specifically, IANA allocates and maintains unique codes and numbering systems that are used in the technical standards ("protocols") that drive the Internet.[8]

I. Internet Governance Forum

The Internet Governance Forum (IGF) serves to bring people together from various stakeholder groups as equals, in discussions on public policy issues relating to the Internet. While there is no negotiated outcome, the IGF informs and inspires those with policy-making power in both the public and private sectors. At their annual meeting delegates discuss, exchange information and share good practices with each other. The IGF facilitates a common understanding of how to maximize Internet opportunities and address risks and challenges that arise. The Internet Governance Forum is an open forum which has no members. It was established by the World Summit on the Information Society in 2006. Since then, it has become the leading global multi stakeholder forum on public policy issues related to Internet governance.

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IV. INTERNET CORPORATION FOR ASSIGNED NAMES & NUMBERS (ICANN)

Internet Corporation for Assigned Names and Numbers (ICANN) is an internationally organized, nonprofit corporation that has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) top level domain name system management and root server system management functions. ICANN also distributes ranges of IP addresses to regional registries who in turn distribute them to network providers. ICANN's role in internet governance is to provide "universal resolvability." Universal resolvability allows receiving the same results despite the different internet access location.

ICANN has no control over the content and doesn't deal with access to the internet. ICANN helps to co-coordinate the supply and assignment of IP addresses to help stop duplicate IP address problems. ICANN was responsible for creating the registrar market (together with an accreditation system). This helped create greater competition on the internet and the price of domains has fallen 80 percent. The rapidly changing domain name market has caused ICANN to reform its accreditation process. ICANN has also help implement a low-cost way to resolve ownership disputes of domain names. The Uniform Domain Name Dispute Resolution Policy (UDRP) helps disputes turn into costly court battles. Approval of "generic top level domains" is also introduced by the ICANN. This helps provide enough space online as more and more people take advantage of the internet. Originally, the Internet Assigned Numbers Authority (IANA) and other entities performed these services under Department of Commerce (DOC), U.S. Government contract but on September 30, 2009 ICANN and the DOC signed an Affirmation agreement which fundamentally changed this relationship. The agreement calls for ICANN to become a global entity, with multiple stakeholders in its governance process. Rather than the United States being the only voice at the table in terms of internet management decisions, it will now be one of many.

Under the agreement, ICANN will be evaluated at least every three years by a committee which includes the Department of Commerce to ensure its accountability to the internet community. Further, it will produce annual reports of its decision-making in an attempt to increase transparency. The changes in ICANN have drawn criticism as well. Main apprehension that has been felt is about the creation of an unlimited number of gTLDs such as .food, .football, or .travel, for example.

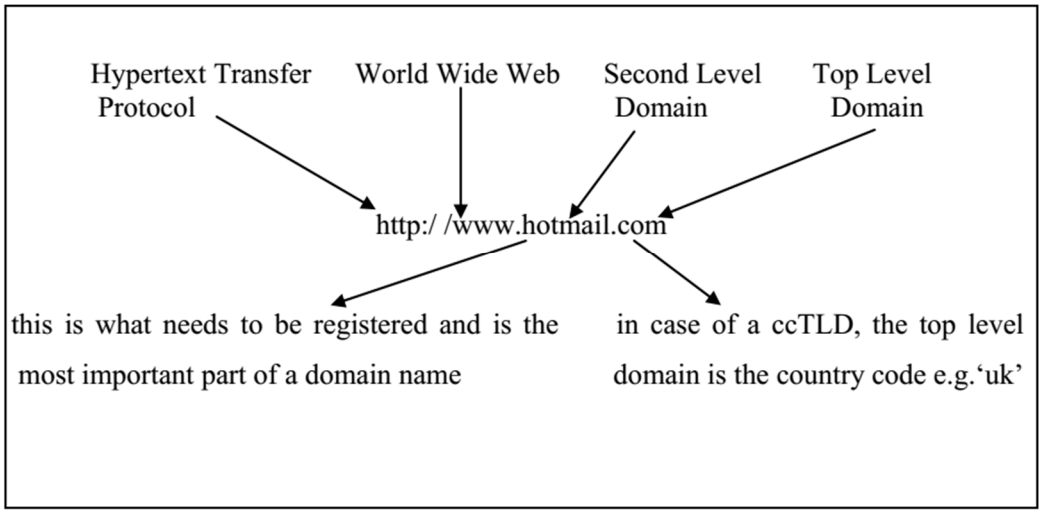
[8] IANA, 'Introducing IANA' (IANA, 12 June 2015) <http://www.iana.org/about> accessed on 12 June 2017

This means that companies that have already spent a great deal of money securing their domains in .com will have to buy large numbers of new domain names to protect their trademarks, at the cost of millions or even billions of dollars. Cybersquatters, who register valuable online names and then sell them to the highest bidder, would likely profit from the gTLD expansion. The concerns over gTLDs were more exemplified when the Coalition against Domain Name Abuse (CADNA) called for a full U.S. audit of ICANN, claiming that the organization had not done a cost-benefit analysis or a risk assessment of the changes the expansion of gTLDs would bring.

From the perspective of an ordinary man, a 'Domain Name' is the string of characters (words) that a user of internet types in a web browser in order to open a website. In technical terms, a domain name is the user friendly substitute for the address of a computer/server hosting a website on the internet. Every computer on the internet has a unique IP address which is a set of four numbers from 0 to 255 separated by a period, for e.g., 198.41.0.108. Using these addresses one computer is able to contact, communicate and share data with any other computer on the internet. Internet users find it difficult and cumbersome to remember these number strings, therefore a more user-friendly system of domain names was adopted in 1984. The purpose of domain names is to enable the users to locate sites on the internet in an easy manner.

Domain names are read from right to left, and are divided into 'levels'. The 'top level domain' (TLD) corresponds to either the generic type of organization or the geographic origin of the organization. The 'second level domain' (SLD) portion of the domain name appears directly before the TLD and is the key feature of the domain name. The SLD portion of the domain name establishes the unique identity of an entity on the internet.34 The prefix 'www' is a standard for all World Wide Web addresses.

The following depiction gives a better understanding of the anatomy of a domain name:



A. Classification of Domain Names

There are following 2 kinds of domain names

- Generic Top Level Domains (gTLD)
- Country Code Top Level Domains (ccTLD)

1) Generic Top Level Domains (gTLD)

These are domain names which are not country specific. For e.g. www.hotmail.com, www.wipo.org etc.

For a long time, there were only following 7 gTLDs:

- ✓ com generally used by commercial organizations
- ✓ .net generally used by internet service companies
- ✓ .org generally used by non-profit organizations
- ✓ .mil reserved for use by the US military organizations
- ✓ .gov reserved for use by the US government organizations
- ✓ .edu reserved for use by established colleges and universities
- ✓ .int reserved for use by international organizations databases related out of international treaties.

On November 16, 2000, the ICANN selected following 7 new g TLDs in addition to those mentioned above:
(i). .aero it is only intended for use of the members of the aviation community.
Registration of .aero domain name is done in the following 2 steps –*(a). identification: before a registrant can submit an application for .aero domain name, the registrant must be recognized as a member of the aviation community and obtain an Aviation Membership ID from the Registry, (b). registration: once the registrant has obtained an Aviation Membership ID, the registrant can obtain .aero domain name from an accredited Registrar.*
(ii). .biz it is only intended for domain names that are or will be used primarily for a bona fide business or commercial purpose.(iii). .coop it is sponsored gTLD for cooperatives. One has to abide by the .coop Charter.
(iv). .info it is an open gTLD without restrictions (anyone can register any domain name).
(v). .museum it is sponsored TLD for museums. One has to abide by the .museum Charter.
(vi). .name it is an open gTLD for registration of personal names or names of fictitious characters on the second level or on the second and third level (e.g. <Smith.NAME> or John.Smith.NAME> or Smith.John.NAME> or J.Smith.NAME>). However, it permits only for personal names (described as the legal name or the name by which the person is commonly known) of an individual or of a fictional character provided applicant has a trademark in that name.
(vii). .pro it is open for unsponsored TLD for qualified professionals meeting the registration restrictions. The details are given in the Appendix of the .PRO Registry Agreement.40 Registration is permitted on the third level only. The second level will indicate individual professions (<Smith.law.pro>, <Smith.med.pro>, <Smith.cpa.pro>). In an initial phase, domain name can only be registered by lawyers (.law.pro), medical doctors (.med.pro) and chartered accountants (.cpa.pro) In 2004, ICANN started exploring possibilities to add additional gTLDs.

2) Country Code Top Level Domains (ccTLD)

These are domain names specific to a country. For e.g. www.pokey.ch (Switzerland), www.paris.fr (France), www.vodafone.uk (United Kingdom) etc. Two letter domains, such as .uk, .fr, .au etc. are called as Country Code Top Level Domains (ccTLD) and correspond to a country, territory, or other geographic location. The rules and policies for registering ccTLDs vary significantly and a number of ccTLDs are reserved for use by citizens of the corresponding country. A few of these ccTLDs were established in 1980s, but most of them were created in mid and later 1990s.
The administration of ccTLDs is left to the specific country concerned. For e.g. the administration of domain names within the .in (Indian) ccTLD is looked after by the NCST. [For details refer to www.domain.ncst.ernet.in.html] With the gTLDs being over-used and short in supply, people are now turning to ccTLDs.
There are quite many instances where the ccTLDs are proving to be more apt to indicate more meaningfully one's business or profession. For e.g. .tv (of Tuvalu) which has been in high demand by television companies around the world. Another instance is .md (of Republic of Moldova) is a hot favourite for medical professionals. Other ccTLDs having higher appealing value could be .mr (of Mauritania), .ms (of Montserrat), .my (of Maldives), .tm (of Turkmenistan), .ac (of Ascension Island), .id (of Indonesia), .im (of Isle of Man), etc.

3) Procedure for Registration of Domain Names

Domain names are registered on a first-come, first-serve basis and offer a unique, global presence on the internet. In 1996, the US Government had signed a contract with Network Solutions Inc. (NSI), a private organization, giving it complete authority to operate the Domain Name System (DNS). The NSI's contract with the US Government was due to expire in September 1998. However, under the October 1998 agreement with the US Government, NSI was granted a 2 year's extension. Till April 1999, the registration of domain names continued to be in the hands of NSI. In April 1999, five additional corporations were allowed to register domain names on a trial basis. Subsequent to June 24, 1999, when the trial phase concluded, a new competitive registration procedure was opened to all interested companies whereby any company, which satisfied the standards set forth in ICANN's Statement of Registrar Accreditation Policy, was permitted to be an accredited registrar. The ICANN became the overall governing body with respect to the management of the Domain Name System (DNS). It was made responsible for the following:
(i). Internet Protocol Address Space Allocation
(ii). Protocol Parameter Assignment
(iii). Domain Name System Management

4) Procedure for Registration of a Generic Top Level Domain Name (gTLD)

ICANN accredits domain name registrars for the gTLDs throughout the world, who in turn register the domain names. Following are 2 such accredited registrars in India:

(i). Polar Software Ltd. (signdomains.com)

(ii). Direct Information Pvt. Ltd. (directi.com)

Registrations are done by these accredited registrars and the Domain Name System (DNS) is managed by the ICANN. Any person interested in registering a domain name can approach any of the ICANN accredited registrars. The domain name registrant would be required to furnish his address and other necessary details. Then an agreement would be signed whereby the domain name registration would be subject to the Uniform Dispute Resolution Policy (only in case of gTLDs .com, .net, .org) and after the payment of a nominal fee, the registrant would be entitled to use the registered domain name.

5) Procedure for Registration of Country Code Top Level Domain (cc TLDs i.e '.in') in India

On October 28, 2004, the Government of India, Ministry of Communications and Information Technology, announced a liberalization of the registration requirements. Under the new registration rules which became effective from January, 2005, unlimited generic '.in' registration were offered at the second level of domain name and also at the third level in the zones of domain registration, '.co.in', '.net.in' and '.org.in'. Registrations were carried out by Registrars to be appointed by the '.in' Registry. The National Centre for Software Technology (NCST), a scientific research and development institution under the Ministry of Information Technology, Government of India, was made the domain name registration authority for India's '.in' country code top-level domain (ccTLD) and thus is the ccTLD Manager. NCST had been registering domain names in the '.in' ccTLD since 1995. The primary duty of the ccTLD Manager is one of public service and to manage and operate the ccTLD Registry in the interest of and in consultation with the Local Internet Community, mindful of the interests of the Global Internet Community.

The Internet Management Group (IMG), a committee formed by the Government of India, oversees the Internet domain name registration related activities for the '.in' ccTLD. This committee consists of the members representing the following:

(i). Bharat Sanchar Nigam Ltd. (BSNL)

(ii). Ministry of Information Technology (MoIT)

(iii). Videsh Sanchar Nigam Ltd. (VSNL)

(iv). National Centre for Software Technology (NCST)

The NCST is the designated manager of the '.in' ccTLD. As such it is in charge of the operations of the DNS services for the '.in' domain name space. The '.in' ccTLD is separated into sub-categories, called as the second-level domains (SLDs).

In *Satyam Infoway Ltd.* v. *Sifynet Solutions (P) Ltd*.,[9] the Supreme Court of India observed that, "the original role of a domain name was no doubt to provide an address for computers on the Internet. But the Internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the Internet, a domain name is also used as a business identifier.

Therefore, the domain name not only serves as an address for Internet communication but also identifies the specific Internet site. In the commercial field, each domain name owner provides information/services which are associated with such domain name."

The Court further observed that "a domain name as an address must, of necessity, be peculiar and unique and where a domain name is used in connection with a business, the value of maintaining an exclusive identity becomes critical."

In *Tata Sons Limited* v. *Manu Kosuri & Others*,[10] the Court observed, "with the advancement and progress in technology the services rendered by an Internet site have also to be recognized and accepted and are being given protection from passing off. With the advent of modern technology particularly that relating to cyber space domain names or internet sites are entitled to protection as a trademark because they are more than a mere address. The rendering of Internet services is also entitled to protection in the same way as goods and services are, and trademark law applies to activities on Internet."

6) ICANN Policies

What impact the launch of new gTLDs will have on social media is uncertain. Social media websites are not taking it casually and not paying much attention. But as forecasted by Jennifer Wolfe time will ultimately tell the new gTLDs impressions on social media. Few questions which arises in this regard are-

[9] *Satyam Infoway Ltd.* v. *Sifynet Solutions (P) Ltd*., AIR 2004 SC 3540

[10] *Tata Sons Limited* v. *Manu Kosuri & Others*, 2001 PTC 432 Del

- Can new social media companies emerge in .moms or .families, .horses,.tennis, or .style? Within these categories, could social networks emerge totally focused on what matters to people in those social networks?
- Could American Express build a social network of entrepreneurs within .open? Likewise, will Amazon seek to build social networks within its portfolio of .book, .author, .pin, .video, .tunes, .smile, .kids, .joy, and .like, to name a few. Or, will Google do the same in .lol, .fyi, .rsvp, .family, .film, .VIP, .kid, .team, and .wow? What about .republican, .democrat, .motorcycles, .run, .shopping, or .wedding?
- While these same opportunities exist in .com, much of the primary Internet real estate in .com is taken. Each of these big categories of gTLDs represent niches of potential social networks just waiting for the next entrepreneur to explore in the next generation of the web.

The case of *Pinterest vs. Amazon*[11] is the best example to highlight the problems that can be caused by new gTLDs to social media. In this case the WIPO Arbitration and Mediation Center issued a panel opinion on an objection brought by Pinterest, Inc. ("Pinterest"), the San Francisco-based creator of the social media platform Pinterest, under the New gTLD Dispute Resolution Procedure. In this matter, Pinterest objected to registration of the gTLD <.pin> by Amazon EU ("Amazon"), asserting that it had trademark registrations for the mark PINTEREST, pending applications to register the mark PIN in several countries around the world, and common law rights to the marks PIN IT, PINTEREST, and a stylized "P." Use of <.pin>in a domain name by Amazon, Pinterest alleged, would:

- Create a likelihood of confusion with PIN and other "PIN family marks";
- Take unfair advantage of the character and reputation of these marks; and
- Unjustifiably impair the distinctive character and reputation of these marks.

Amazon, which had applied for numerous other gTLDs for common dictionary words, defended its application for the <.pin> gTLD, asserting that it had legitimate, noninfringing business objectives to use <.pin> to operate a single-entity domain name registry. Amazon moreover asserted that Pinterest's trademark applications for PIN did not bestow rights to exclusive use of the descriptive term "pin," and that there was no likelihood of confusion between the <.pin> gTLD and Pinterest's PIN IT, PINTEREST, or P marks. Rejecting the objection of PINTEREST, the panel concluded that the potential use of <.pin> as a gTLD by Amazon:

"(i) does not create an impermissible likelihood of confusion between the applied-for gTLD and Pinterest's P (stylised/logo), PINTEREST (word) or PIN IT (figurative) marks; and (ii) does not take unfair advantage of the distinctive character and reputation of any of those marks; and (iii) does not unjustifiably impair the distinctive character and reputation of any of those marks."

Given the recent nature of ICANN's new gTLDs and the rules governing them, companies seeking to apply for registration of, or object to an application for, a new gTLD should make sure they have legitimate, enforceable trademark rights to the domain in question before taking action.[12] Multiple numbers of gTLDs has made another interesting case. In June 2014, Shurat HaDin (ISRAEL LAW CENTRE) took the unprecedented legal step of asking a court to attach Iran's internet domains as assets. The hope is that the United State District Court will decide that the .ir domain name, along with Iran's IP addresses — without which Iranian websites cannot be included in the World Wide Web — are assets that can be seized to satisfy judgments against the Islamic state of more than a billion dollars, owed by Iran to Israeli and US victims of terror perpetrated by the Hamas and Hezbollah organizations. If the court rules in Shurat HaDin's favor, the decision could have far reaching effects on the way terror regimes use and abuse the Internet.[13]

V. ICANN'S ROLE IN PERFORMING THE DOMAIN NAMES FUNCTION

Based on established policies and procedures, ICANN acts as the global coordinator of the DNS root. It is responsible for:

- Evaluating and recommending for approval, creation of, or changes to, TLDs in the root.
- Verifying the requested changes to the root zone are implemented and the implementation communicated to the requester.
- Evaluating requests for changes to the root zone to ensure that they comply with current policies and procedures.
- Updating the details in the root zone database (including details published in the "WHOIS" service) to reflect changes in the information associated with TLDs.

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[11] EU S.à.r.l Case No. LRO2013-0050;

[12] Justin Haddock, 'Pinterest v. Amazon and ICANN's New gTLDs' (Trademark, 31 July 2013) <www.socialmedialawbulletin.com/2013/07/pinterest-v-amazon-and-icanns-new-gtlds> accessed on 12 January 2017

[13] Israel Law Center, 'Shurat HaDin's ICANN case may impact Iran's use of social media' (Israel Law Center, 7 August 2014) <ilcblog.org/2014/08/07/shurat-hadins-icann-case-may-impact-irans-use-of-socialmedia> accessed 12 January 2015

- Managing the Key Signing Key (KSK) for the root zone, which is central to implementing security of the DNS using the DNSSEC protocol enhancements.

ICANN, a private not-for-profit public benefit corporation, has performed the IANA functions on behalf of the global Internet community since the organization's creation in 1998. The primary governing framework for these functions is a series of contracts commencing in 2000 with the United States Government. Some other key agreements with the various stakeholder groups include:

- A MoU with the IETF, described in RFC 2860: iana.org/go/rfc2860
- An MoU and Exchange of Letters with the ICANN ASO: archive.icann.org/en/aso/aso-mou-29oct04.htm
- Documented relationships with some root server operators: https://www.icann.org/resources/pages/root-server-operators-2015-06-01-en
- Contracts, MoUs and other accountability framework documents with some of the ccTLD administrators: https://www.icann.org/resources/pages/cctlds/cctlds-en
- Contracts with gTLD registry operators: https://www.icann.org/resources/pages/registries/registriesagreements-en

VI. PROPOSED MODELS OF INTERNET GOVERNANCE

ICANN is a working example of a multi stakeholder model of Internet governance, whereby a bottom-up collaborative process is used to provide Internet stakeholders with access to the policymaking process. Support for the multi stakeholder model of Internet governance is reflected in international organizations such as the Organization for Economic Cooperation and Development (OECD) and the Group of Eight (G8).

For example, the OECD's Principles for Internet Policy Making cites multi stakeholderism as a central tenet of Internet governance: *"In particular, continued support is needed for the multi-stakeholder environment, which has underpinned the process of Internet governance and the management of critical Internet resources (such as naming and numbering resources) and these various stakeholders should continue to fully play a role in this framework. Governments should also work in multi stakeholder environments to achieve international public policy goals and strengthen international co-operation in Internet governance."*[14]

The European Union has reiterated its support for a free and open Internet and the multistakeholder approach to governance. The European Council passed a resolution on Internet governance on October 17, to further guide the organisation's Internet policy. The text of the resolution indicates support for the concept of a Global Internet Policy Observatory (GIPO), which would act as a central information hub to link the various layers of Internet governance.

VII. CRITICAL ISSUES OF INTERNET GOVERNANCE

A. Net Neutrality

Net neutrality is, at its core, the concept that every piece of information on the public Internet should be as accessible as any other. The internet's success in fostering innovation, access to knowledge and freedom of speech is in large part due to the principle of net neutrality — the idea that internet service providers give their customers equal access to all lawful websites and services on the internet, without giving priority to any website over another.

B. Necessity of Net Neutrality

Net neutrality is necessary for a free and open internet and a level playing field for companies large and small. This is the only key to the growth and success of the Internet and to the emergence of new businesses including social media webs, or any other startup that relies on Internet traffic. It has implications for the future of the Internet and the economies that rely on the Internet. For example, in 2004, MySpace was the dominant social networking site. If Net Neutrality did not exist in 2004, users who liked MySpace would pay for faster access to that site. As a result, Facebook would have suffered comparatively slower speeds. Since the initial Facebook experience (like many start-ups) was subpar, it likely would not have become the economic giant. In this scenario (without the existence of Net Neutrality), the launch of Google+ in 2011 could also have transpired very differently. Since it is backed by a billion-dollar corporation able to pay for faster access, Google+ could have rapidly dominated the social media market. The current practice of Net Neutrality has allowed a free and fair competition in the digital marketplace.

[14]Organisation for Economic Co-operation and Development, "OECD High Level Meeting, The Internet Economy: Generating Innovation and Growth, Communique on Principles for Internet Policy-Making" (OECD, 28-29 June 2011) <www.oecd.org/dataoecd/33/12/48387430.pdf> accessed 15 January 2017

C. Net neutrality Debate in India

As of April 2015, there were no laws governing net neutrality in India, which would require that all Internet users be treated equally, without discriminating or charging differentially by user, content, site, platform, application, type of attached equipment, or mode of communication. However there have been certain violations of net neutrality principle in India.

The debate regarding net neutrality has received heavy public attention when airtel has decided to levy additional charges for making voice calls (VoIP) from its network using apps like viber, whatsapp & skype. On 10 February 2015, Facebook launched Internet.org in India with Reliance Communications. It aims to provide free access to 38 websites through an app. Only Bing was made available as the search engine.

In March 2015, Telecom Regulatory Authority of India (TRAI) released a formal consultation paper on Regulatory Framework for Over-the-top (OTT) services, seeking comments from the public. It says that OTTS rely on broadband and mobile service providers' infrastructure to reach users, and compete not only with local online services, but brick-and-mortar businesses too. As in other countries, the debate is about how these services should be regulated, whether internet service providers should be allowed to prioritize traffic and charge for various kinds of content. The paper invited citizens to voice their opinions on 20 questions based on the licensing of internet services in the country. In pursuance of the TRAI consultation paper, over a million emails have been sent by the citizens. Many high profile politicians have come up in the support of net neutrality.

A YouTube comedy channel All India Bakchod uploaded a video titled "Save The Internet" which urged people to email TRAI demanding net neutrality. The video was reshared on Twitter by numerous times, including by some Indian actors. Cleartrip.com, the Times Group, NewsHunt and NDTV pulled out of the Facebook initiated Internet.org expressing their support for net neutrality.

At the bone of contention the main issue is of revenue. Most of the internet service providing companies are of the view that services like YouTube should pay an interconnect charge to the network operators. They argue that they are building highways for data then there should be a tax on highway. In July 2012, Bharti Airtel's Director of Network Services, Jagbir Singh suggested that large Internet companies like Facebook and Google should share revenues with telecom companies. According to him, Internet companies were making big profits from small investments, whereas the telecom companies were actually investing in building networks. He also suggested that the telecom regulator should establish interconnection charges for data services, similar to those applied to voice calls.

Arguments have been made in support of telecom companies that in order to make a level playing field for all the websites there should be net neutrality but they very conveniently forget that telecom companies spent billions of dollars in setting up infrastructure and bringing themselves under regulatory scrutiny. After it, telecom companies can't bear the fact that numerous applications ride on their networks for free. Some of the apps have millions of subscribers and command valuations of billions of dollars. Some like Skype and WhatsApp compete head on with the voice and messaging offerings of the telcos. But this is a disingenuous argument. Telecom companies make money by charging individuals and businesses monthly fees for access to the network. If that revenue was inadequate to cover the cost of running networks, telecom companies would raise prices or they would become insolvent. More app usage means more data consumed and more money inflow. Whether telcos are really aggrieved or not is always debatable. In any case, allowing telcos to violate net neutrality principle would be disastrous way of delivering justice. For, the licence to violate net neutrality will mean telcos could now be in a position to ensure some sites are served faster than others. It could also mean it becomes costlier to use certain applications. Most importantly, it could endanger the very feature of the Internet that has over the years made it possible for countless start-ups, right from the Googles to the watsapp.

In the case of *Google Inc. v Agencia Española de Protección de Datos*[15] the court of justice of EU has ruled that an internet search engine operator is responsible for the processing that it carries out of personal data which appear on web pages published by third parties. In Para 93 of the Judgment Court held that "Individuals have the right - under certain conditions - to ask search engines to remove links with personal information about them. This applies where the information is inaccurate, inadequate, irrelevant or excessive for the purposes of the data processing. In Para 85 the court found that in this particular case the interference with a person`s right to data protection could not be justified merely by the economic interest of the search engine. At the same time, the court explicitly clarified that the right to be forgotten is not absolute but will always need to be balanced against other fundamental rights, such as, the freedom of the expression and of the media. The court also said that case by case assessment is required considering the type of information in question, its sensitivity for the individual`s private life and the interest of the public in having access to that information.

[15] European Commission, 'How will the data protection reform affect social networks?' (European Commission) <ec.europa.eu/justice/data protection/document/review2012/factsheets/3_en.pdf> accessed on 16 January 2017

VIII. CONCLUSIONS

The governance structure and processes introduced by IGF provide opportunities to integrate social media ways that enhance both remote and local participation in the yearly forums and throughout the year. IGF and Dynamic coalitions through comparative analysis of social media identify the best practices of how to use social media. The success of IGF as a participatory platform and process could be vital for future iterations of the body. Though, the IGF has no power that makes binding and enforceable policy decisions, it has the power of recognition – the power to identify key issues. It has political effects in creating the principles, norms and values that can guide policy going forward. The critical role IGF plays, then, is encouraging dynamic, meaningful and equitable participation from the multiple sectors among developed and developing countries. The role of ISOC is equally important in protecting free speech, net neutrality and privacy. The functioning of this multi stakeholder body is doing really well in setting the internet standards, policies and education. The legal and technical standards by ISOC have been helpful in bringing uniform and uninterrupted services to the internet. ITU as an international body has been instrumental in developing information and communication technologies throughout the world. The initiatives taken by ITU in developing international public policies and the managing internet resources are also very helpful in the development of various communication technologies. ICANN functioning is managing internet protocol, gTLD and ccTLD is also very impressive. Now when ICANN has turned into an international body and free from USA interferences, it would be beneficial for the international community. ICANN now delivers into real terms.

It can be said that all these bodies has been really very impressive in their respective functioning. They are the prime reason behind the status achieved by internet and communication technologies today. The lesser players in the governance structure are also doing very well but these bodies must synchronize and update the time. The time has come when they must start delivering in real terms. If the lesser players are suffering from any power or authority gap because of which they are not as effective as they ought to be should be addressed by an international measure.

Why social media users should be worry of various approaches of internet governance is that social media by its architecture and design provides complete freedom to the users and any move which will curtail the freedom on the internet will impliedly affect social media. The nature of the Internet, with its decentralized architecture and structure, makes the practice of governing a complex proposition. First, the Internet is inherently international and cannot in its totality be governed by national governments whose authority ends at national borders. Second, the Internet's successful functioning depends on the willing cooperation and participation by mostly private sector stakeholders around the world. These stakeholders include owners and operators of servers and networks around the world, domain name registrars and registries, regional IP address allocation organizations, standards organizations, Internet service providers and Internet users, adopting an appropriate strategy to regulate the changing behaviors' persisting in information and communication technology, which has posed more challenges with the rise of social media applications on mobile apps, is increasingly complex for regulators in today's converged environment. As regulators consider these various difficult issues, they need to be mindful of the international context within which they operate. The rise of the mobile sector has forced a search for new spectrum—a search that begins with international allocations and is realized in the development of regional band plans that guide spectrum use. On the fixed network side, policymakers and regulators are grappling with how to improve access to the Internet's resources—to increase transnational connections to services and reduce costs; and how to ensure that traffic is managed in a fair and effective way that balances needs of consumers, network operators and content/service providers.

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.

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.

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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

Examples of administrative procedures for resolving domain disputes include:

A. ICANN's Uniform Domain Name Dispute Resolution Policy ("UDRP")

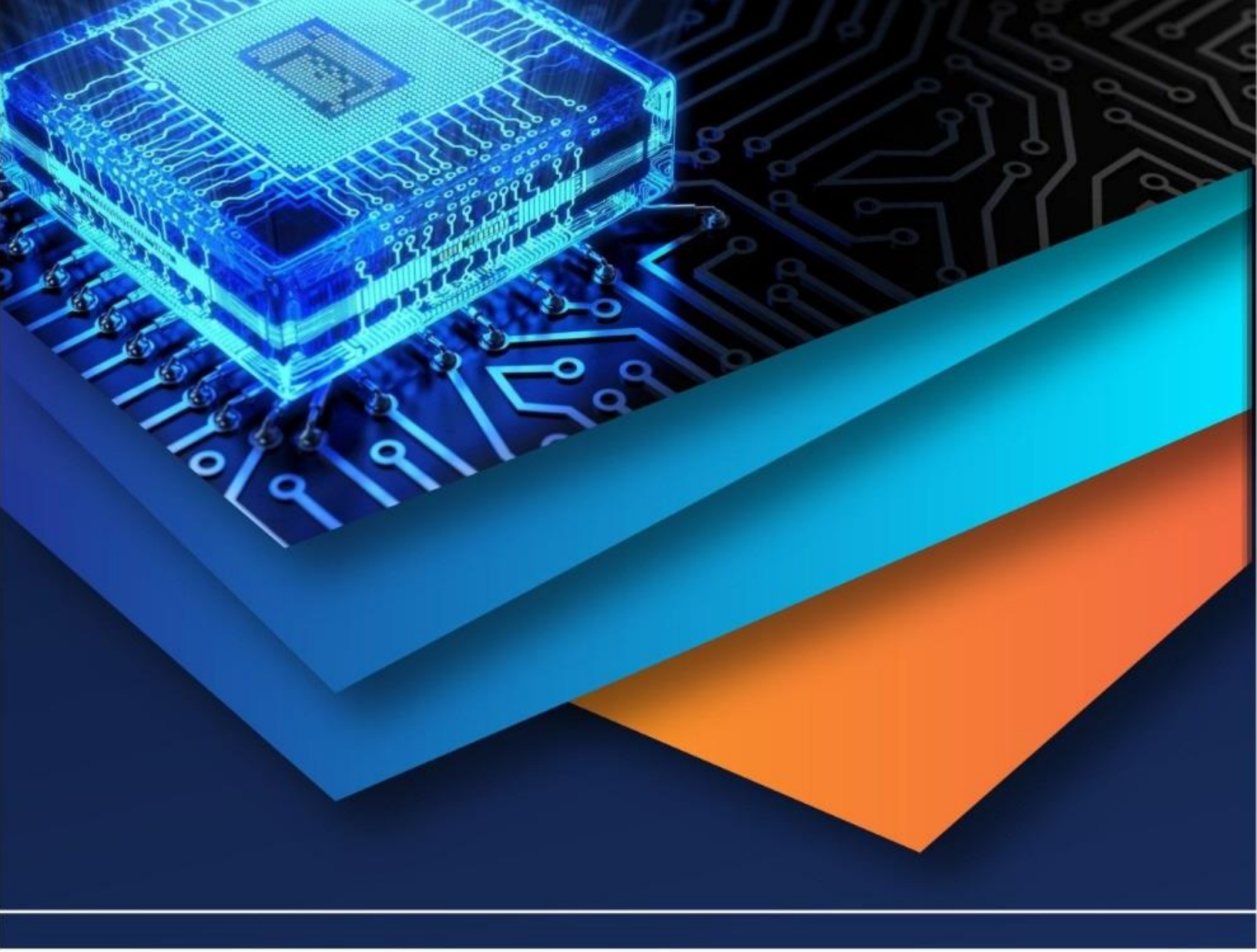
Which has been adopted by all ICANN accredited registrars for the ".cero", ".biz", ".com", ".coop", ".info". – museum", ".name", ".net" and ".org" gTLDs : The country Domain Name Dispute Resolution Policy if any. (INDRP in case of India).

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.

ICANN'S MISSION is to help ensure a stable, secure and unified global Internet. To reach another person on the Internet, you need to type an address into your computer or other device – a name or a number. That address must be unique so computers know where to find each other. ICANN helps coordinate and support these unique identifiers across the world. ICANN was formed in 1998 as a not-for-profit public-benefit corporation and a community with participants from all over the world.



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