

Intellectual Property & The Internet

October 2010



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Copyright



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What copyright material can you use from other people?

- Research or study
- Criticism or review
- Reporting news
- Professional advice given by a legal practitioner
- Parody or satire.

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Protection of Website Content in Australia

- Copyright Act 1968 (Cth)
- Copyright Amendment (Digital Agenda) Act 2000 (Cth)
- Correspondence to infringing party advising that they are infringing copyright, and that they must cease to do so
- Litigation through the courts to protect Copyright

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Protection Outside of Australia

- Various conventions and treaties
- Various bi-lateral and uni-lateral agreements
- Agreement on Trade Related Aspects of Intellectual Property (TRIPS) 1994



WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

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Trade Marks

- A sign that is used to identify one traders goods and services from those of other traders
- A trade mark will give the owner proprietary rights
- Apply through each country that you intend to use the trade mark
- Madrid Protocol



Domain Names

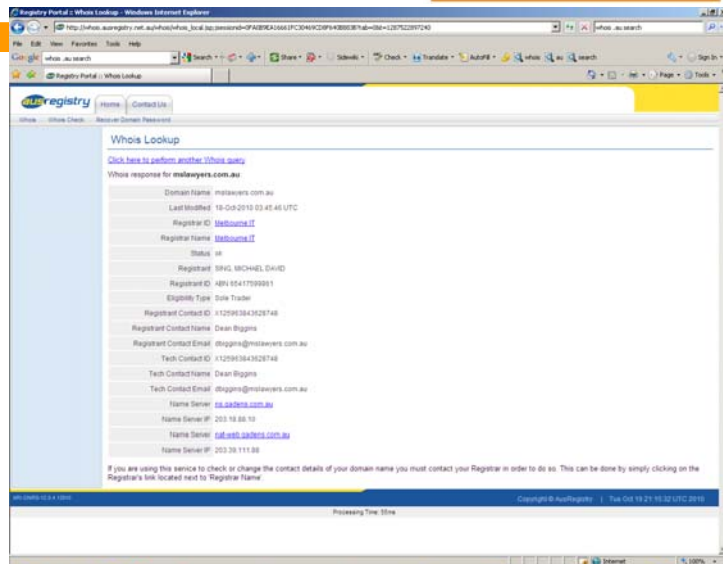
- ICANN – The Internet Corporation for Assigned Names and Numbers
- ICANN accredit registrars
- Registrar agree to the Registrar Accreditation Agreement
- Registrars agree to resolve disputes using the Uniform Domain Name Dispute Resolution Policy (UDRP)

- gTLD (general top level domains) = .com; .org; .net
- ccTLD (country code top level domains) = .com.au; .edu.au; .net.au

Trade Mark –v- Domain Name

- Domain names grant the owner contractual rights as opposed to proprietary rights
- Domain granted to licensee for 2 years, renewable every 2 years thereafter
- Contact information available through 'whois'

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Resolving a domain name dispute

- WIPO Arbitration & Mediation Centre
- UDRP – offers quick and inexpensive means of resolving disputes
- Lodge Complaint
- Lodge Response
- Elect Administrative Panel
- Panel appointed
- Panel have 14 days to make decision
- Panel notifies WIPO of decision
- WIPO communicates to the parties, ICANN and Registrar (3 days)

Grounds to be satisfied when lodging complaint with WIPO

- The infringing Domain name is confusingly similar to a trade mark
- Allegedly infringing party has no rights or legitimate interests in respect of the domain name
- The domain name were registered and being used by the allegedly infringing party in bad faith

- WIPO Case D200 –1133
 - *Stella Pty Ltd v Creative Internet Consultants Pty Ltd*

auDA – The Australian Domain Administrator

- auDA – deals with Australia’s ccTLD’s
- auDRP – the .au dispute resolution policy
- Matter decided by a selection of mediation/arbitration organisations
- Must satisfy same elements as detailed under the UDRP

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Courts

- Must be instituted in the location of the defendant
- Must ensure cause of action exists
- If defendant in Australia, and cause of action exists, can institute proceedings in Australia
- More costly than using Alternative Dispute Resolution
- *Mantra Group Pty Ltd v Taily Pty Ltd*

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Social Media & Intellectual Property

- All Intellectual Property rules still apply to social media



The Facebook logo, which consists of the word 'facebook' in a white, sans-serif font on a blue rectangular background.

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