WWW.WHATSINA.NAME

> The Internet is exactly like real life, in regards to the availability of information... A student could, for instance, learn how to make a bomb from someone online—but he could gain the same knowledge from a chemistry book, so does that mean we have to ban books and stop teaching science, too? Of course not. It's just human nature to fear and protect against something we don't understand. It's too bad that there are still so many who distrust the Internet, rather than being open to comprehending the advantages.
>
> — Jennifer D. Barovian[1]

*Anthony M. Verna III, Esq.**

I. INTRODUCTION

Since its inception, the Internet has provided a multitude of resources and usage opportunities. Originally, it was not called the Internet, and its uses were limited. By the mid-1990s, the Internet had four main applications, e-mail, newsgroups, remote login, and file transfer. E-mail provides the ability to compose, send and receive electronic letters, newsgroups which are specialized forums in which users with a common interest share and exchange ideas, remote login allowing uses to log into one machine from a separate machine, file transer provides the ability to transfer files from one machine to another on the Internet.[2]

Since then, the Internet has expanded to include Chat[3] and the World Wide Web.Chatting allows users to send and receive

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1. http://www.io.com/~kinnaman/aupessay.html

2. Andrew S. Tanenbaum. COMPUTER NETWORKS 3d. Prentice Hall PTR Upper Saddle River, New Jersey, 53.

3. One of Telnet's biggest uses today is chatting. "Talkers," as they are known, are today mostly based of a set of programming code called EW-too. Currently, ewtoo.org is a website that will host talkers of many types based on the EW-too code set. http://www.ewtoo.org/

messages instantaneously, enablingusers to have a conversation, as if on the telephone.[4] Users can keep in touch with their long-distance friends over Internet chat as well as meet other people bychatting with each other.[5]

Today, the most popular use of the Internet is on the World Wide Web ("WWW" or "Web").[6] The Web allows users to set up sites with pagesthat contain different types of information, pictures, sound and video.[7] The Web opened the door so that commercial interests began to dominate the landscape of the Internet.[8] Other resources easily accessible on the Web include maps, which can be found on the Internet,[9] and prescription drugs, which can easily be bought on the Internet.[10] Also readily available is information about movies, actors, actresses, and scripts, allcontained in one site - the Internet Movie Database at www.imdb.com.[11]

Some information about actors and actresses are found on sites created by fans of the celebrities. For example, on one fan site, one can discover that rock musician Bruce Springsteen was a member of bands such as the Rogues and Dr. Zoom and the Sonic Boom[12] before becoming famous with his current band, the E Street Band.[13] Another fan site reveals that talk-show host David Letterman worked as a stand-up comedian and comedy writer for television shows before becoming a talk-show host[14] and that Comedian Joel

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4. A brief history of talkers can be found here: http://www.ewtoo.org/history.html

5. Anthony Verna. *"The 90s Singles Bar,"* THE FREE TIMES . March 14, 1999.

6 http://library.albany.edu/internet/www.html

7 *Id.*

8. Tanenbaum, at 54.

9. http://maps.yahoo.com Add substance.

10. Anthony Verna. *"Hard up for a Hard On,"* THE FREE TIMES March 28, 1999.

11. The website is a place to find "your favorite stars & movies, theater & TV showtimes, online trailers, movie & trivia games, and much, much more[.]" http://www.imdb.com/Help/

12. "Bruce's musical career has not been interrupted since. A brief army physical cleared him of military duty, 'for reasons of weirdness,' and left him free to play bars and weddings, fronting for various groups, the most successful being a 'Humble Pie-type band' called Steel Mill, which stayed together for a couple of years building a reputation in New Jersey, and the least successful being Dr. Zoom and the Sonic Boom, which featured everybody he knew who could play an instrument. Dr. Zoom died after only a couple of booms, which left Bruce to form the (ten-piece) Bruce Springsteen Band, which was only marginally more successful. At twenty-one, Bruce unplugged and set out on a solo acoustic career." Stuart Werbin, *"It's Sign up a Genius Month,"* ROLLING STONE, April 26, 1973.

13. "The Unauthorized Bruce Springsteen Web Site" 13."The Unauthorized Bruce Springsteen Web Site" http://www.brucespringsteen.com/

14. http://www.andmag.com/tdlp/

Hodgson appeared on one of Letterman's television shows.[15]

Celebrities use of the internet differs from that of corporations that primarily use the Internet for business. A quick check of some of the major companies in the United States shows that these companies do business on the Internet Microsoft advertises for its MSN8 product on its main page.[16] It also has articles discussing Windows, Office, NET, and Xbox.[17] Consumers can purchase Microsoft products from this website.[18] IBM has direct links to some of its products on its main page.[19] AOL allows users to download its new version of America On-Line software on its main page.[20] There are also advertisements from other companies in the AOL-Time Warner conglomerate.[21] Mattel and Hasbro share a website advertising the board game Scrabble.[22] Users have many different options on the websites.[23] For example, dictionaries, histories, and video games are available on the various sites..[24] Celebrities, however, utilize web pages up for different reasons. Some do have products to sell.[25] However, wcelebrities primarily advertise, themselves.[26] Comedian and actor Steve Martin discusses this sarcastically by saying on his website, "Mainly, this is a site for me to look at pictures of myself, but sometimes you may enjoy it too, as you might be the kind of person who enjoys reading my material without paying for it."[27] Likewise, comedian Adam Sandler has videos to download, but does not let you forget what

15. http://members.tripod.com/joelnomiko/joel/joel.html
16. http://www.microsoft.com
17. *Id.*
18. *Id.*
19. http://www.ibm.com
20. http://www.aol.com
21. http://timewarner.com
22. http://www.scrabble.com As will be seen later, this is a very unique solution. Since Hasbro owns the Scrabble marks in the United States and Canada and Mattel owns the Scrabble marks in the rest of the world, the main site is shared. Most of the time, when interests are in conflict with one another, completely different websites are set up to represent those interests.
23. *Id.*
24. *Id.*
25. Michael Jackson at www.michaeljackson.com, sells compact discs. Peter Gabriel's new compact disc is available through his website at www.petergabriel.com.
26. Even a musician like Tori Amos who has compact discs in the store has a website designed to advertise her latest CD. She even promises that with the new CD, a user can access more of the website than a user without the new CD (called "Scarlet's Walk).
27. http://www.stevemartin.com/foreword.php (which keeps changing). However, Steve Martin is also a writer and has links to purchase his books on his website, also.

movies he has done and what movies are coming out.[28]

The nature of the Internet has changed. Websites appear that are part vanity, part advertising, and part information. It is natural that conflicts have arisen concerning the ability that non-celebrities have to use celebrities' names in manners the celebrities have not been able to fathom. Do celebrities have more rights in cyberspace and on the Internet than they do in real life?

II. CONCLUSION

Celebrities have more rights than non-celebrities in the real world. Celebrities also have more rights than non-celebrities in cyberspace. When taking property from celebrities, such as images, celebrities correctly recover. However, there is a line of cases that create an increasingly broader right for celebrities. In these cases celebrities, as plaintiffs, are able to say that a defendant invoked the environment of the celebrity and have infringed various rights in Intellectual Property law. It is possible that only a small amount of the celebrities' environments create a reminder that takes some sort of property from the celebrities.

Celebrities are able to take away domain names from people who have registered the domain names. Celebrities use the Uniform Dispute Resolution Policy, paragraph 4, to show that the domain names are registered in bad faith and should be placed in the hands of the celebrities. The courts that have addressed this issue do not always explain their decision fully, nor do the courtsexplore all options when writing opinions. The courts heavily favor celebrities. However, there are cases in which non-celebrities have won when using their web sites in a very narrow, legitimate fashion. Celebrities can lose their claims in cyberspace. The balance, though still in favor of celebrities, does fall slightly more towards the regular, non-famous person in cyberspace disputes.

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28. 28.http://www.adamsandler.com/
What the celebrities do is try to find different angles in order to sell themselves. Tori Amos has her extra material with her CD. Michael Jackson and Peter Gabriel talk about their CDs on their websites. Steve Martin uses his droll, dry wit in order to create laughs, as he always does. Adam Sandler's sense of humor is much more blatant and he creates the videos in order to create laughs. Hopefully, the website experiences will create an experience that is strong enough to make the Internet user return to the site, and maybe partake in some of the other offerings the celebrity has.

III. WHAT IS THE CURRENT LAW?

In order to determine if celebrities have more rights in cyberspace than they do elsewhere, the amount of rights that celebrities have must be determined. There is a growing body of law in Intellectual Property that addresses this issue. Celebrities now have more rights than they have had before - in both voice and image. No longer is it acceptable to lampoon celebrities in advertisements. Even the hint of a particular celebrity's career can now be actionable against those who appropriate such an image.

A. Courts Granting Celebrities More Rights

Recently, various courts have been finding in favor of celebrities. The rich and famous have become a protected ward of the court. The courts accomplish this by either creating a new type of Intellectual Property, or stretching the bounds of current Intellectual Property law. The celebrities are able to protect, not just themselves, but their environments and show that anything resembling the work environment of the celebrity can be protected under state intellectual property law.[29]

One of the more logical court decisions rests within *Midler v. Ford Motor Co.*[30] Bette Midler, the famous chanteuse, was asked by an advertising agency, Young & Rubicam, Inc., on behalf of the Ford Motor Company, to appear in an advertisement.[31] Ford wanted to use the song "Do You Want to Dance?," which was popular in 1973 when Bette Midler recorded it and released it to radio.[32] Bette Midler refused to participate in the commercial.[33] Undaunted, Young & Rubicam found a replacement for Midler, Ula Hedwig, a backup singer for Midler during their careers.[34] Young & Rubicam hired Hedwig to sing the song "Do You Want to

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[29]http://library.Lp.findlaw.com/articles/file/000531009322/title/subject/topic/intellectual%20property%20Law_other/filename/intellectualpropertylaw_1_324. Findlaw, Tiger Woods – The Use of Celebrity Images in Works of Art. The Right of Publicity v. The First Amendment by Paul A. Winick and Noel Garcia 2002 Art World News and Thelen Reid and Priest, LLP.

30. 849 F.2d 460, 462 (9th Cir. 1988)
31. *Id.* at 461.
32. *Id.*
33. *Id.*
34. *Id.*

Dance?" and sound as much like Midler as possible.[35] Hedwig used her talents well and was able to sound so much like Midler, to the point of Midler's friends asking if she was the singer in the Ford commercial after it was aired.[36]

The court concluded that the imitation of the voice of a professional singer constituted a tort under California law.[37] According to the court, it is the impersonation of the singer that is piracy of the singer's identity.[38] The California state court, in this case, created a claim that impersonating a person infringes on state rights of publicity.[39] The copyright holder of the song, "Do You Want to Dance?" was correctly paid. There was no complaint filed about the copyright of the song.[40] There was a new recording made in a studio.[41]

The court in this case didnot discuss the problems that are innate in its ruling . It does not seem fair that a person who does not hold rights in the work should have protection of a work that is legally made under the copyright laws. Does any imitation of the artist, in which the artist has no rights, create an action? Clearly, the result here is problematic because of the dual nature of the song and the artist. The artist now has more rights than before.

Vanna White, the TV personality known for turning letters on the game show, "Wheel of Fortune," sued Samsung Electronics when the corporation ran an ad that starred a robot, dressed somewhat like White, in front of a board that looked like it came from the "Wheel of Fortune" set.[42] The caption of the ad read: "Longest-running game show. 2012 A.D."[43] In finding for White, the court said that recent law protects the environments of the celebrity.[44] Besides *Midler*, the court cited to *Motschenbacher v. R.J. Reynolds Tobacco Co.*,[45] in which a race car driver was successful in his lawsuit where the tobacco company used a photograph of the

35. *Id.*
36. *Id.* at 461-62.
37. *Id.*, at 463.
38. *Id.*, at 463-4.
39. *Id.* at 463.
40. 849 F.2d at 462.
41. *Id.* at 461.
42. *White v. Samsung Electronics America, Inc.* 971 F.2d 1395, 1396 (CA App., 1992).
43. *Id.*
44. *Id.* at 1397-99.
45. 498 F.2d 821 (9th Cir. 1974).

plaintiff in their ad.[46] The court also recognized *Carson v. Here's Johnny Portable Toilets, Inc.*,[47] in which popular talk-show host Johnny Carson was successful in establishing his state right of publicity when the toilet company used his famous introduction, "Here's Johnny," without Carson's permission.[48] Here, Samsung "appropriated" the identity of Vanna White, and committed this tort by reminding the general public of her in the ad.[49]

The court discussed that this teaches that the right of publicity in the United States is expanding.[50] "The theory of the right is that a celebrity's identity can be valuable in the promotion of products, and the celebrity has an interest that may be protected from the unauthorized commercial exploitation of that identity."[51] The problem with this is that there was no image or likeness of the celebrity used in the most recent cases. Yes, when the picture of the race car driver was used in an advertisement, then that driver has a claim under state rights of publicity. Bette Midler's voice was impersonated. Johnny Carson's famous phrase was used. Vanna White's career was suggested. In none of these cases was there an image or likeness of a celebrity used.

The problem is that there is now too much protection of

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46. White, 971 F.2d at 1398.
47. 698 F.2d 831 (6th Cir. 1983).
48. White, 971 F.2d at 1404.
49. 971 F.2d at 1399.

It appears as if this would be conduct not allowed by Indiana's statute codifying the right of

publicity. According to Ind. Code § 32-36-1-6, a "'personality' means a living or deceased

natural person whose:

(1) name;
(2) voice;
(3) signature;
(4) photograph;
(5) image;
(6) likeness;
(7) distinctive appearance;
(8) gesture; or
(9) mannerisms;

has commercial value, whether or not the person uses or authorizes the use of the person's rights of publicity for a commercial purpose during the person's lifetime. Burns Ind. Code Ann. §32-36-1-6 (2004).

According to Ind. Code § 32-36-1-8, consent from the personality would be needed. Certainly, Ms. White's pose around a board full of letters does come under this statute.

50. White, 971 F.2d at 1398.
51. *Id.*

Intellectual Property in the United States. Now, it is a tort for advertisers to remind the general public of a celebrity.[52] The Samsung ad with the robot would not have had the same impact without the robot or the board. There would be no reminder of Vanna White. Without a robot with a blond wig, without a board that looked like it came off the "Wheel of Fortune" set, there is no advertisement. In fact, it is not the robot, but the set that reminds the general public of Vanna White. Samsung did not copy what Vanna White did. In fact, Samsung created something new with its print advertisements.[53] What, exactly is the appropriation of a person's identity? Is it not possible that she, and not another person such as a writer or director, did not create her own identity? These are dangerous rights for a celebrity to possess.

B. What is the UDRP Policy Paragraph Four?

Today, the Internet Corporation for Assigned Names and Numbers (ICANN) has implemented the Uniform Dispute Resolution Policy (UDRP). The UDRP is in effect when a person registers a domain name.[54] The UDRP states that a domain name could be in dispute if it is identical or confusingly similar to a trademark, the domain name holder has no rights or legitimate interests in the domain name, and the domain name is being used in bad faith.[55]

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52. *White v. Samsung Electronics America, Inc.*, 989 F.2d 1512 (9th Cir. 1993) (White II).

53. White II, at 1514-15.

54. A domain name is the address that represents a certain machine on the Internet. The machine's real address is called its Internet Protocol (IP) Address, and is represented by a series of numbers. Tanenbaum, at 622.

55. http://www.icann.org/udrp_policy-24oct99.htm

4. Mandatory Administrative Proceeding.

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at www.icann.org/udrp/approved-providers.htm (each, a "Provider").

a. Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.

http://www.icann.org/udrp_policy_24oct99.htm

In the administrative proceeding, the complainant must prove that each of these

Bad faith is defined as registering the domain name in order to accumulate a profit by selling it to the trademark holder, preventing the mark holder from using its property, disrupting the business of a competitor, or attempting to attract business by confusing the domain name with the trademark.[56]

IV. HOW THE INTERNET COURTS SIDE TOWARDS CELEBRITIES

A. The Case of Juliaroberts.com

1. Common-law Trademark

JuliaRoberts.com is a website that is no longer in use. Russell Boyd originally registered juliaroberts.com along with registering many other websites with names of celebrities.[57] Boyd then put the domain name up for sale on the auction website,[58] eBay.com, in a process known as "cyber-squatting."[59]

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three elements are present. *Id.*

b. Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

Id.

[56] *Id.*

57. *Julia Fiona Roberts v. Russell Boyd*, WIPO Case No. D2000-0210, May 29, 2000, *available at* http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0210.html ("Roberts", WIPO").

58. *Id.*

59. "Cyber-squatting" is the practice of registering domain names with trademarks in

Julia Roberts, the film actress, claimed that juliaroberts.com is similar to and confusingly similar with her name.[60] She also claimed that Boyd had no rights or legitimate interests in registering for juliaroberts.com.[61] Ms. Roberts also argued that Boyd registered and used in bad faith the domain name of juliaroberts.com.[62]

The only way that Boyd could register and use the domain name in bad faith is if Julia Roberts has a trademark in her own name. Julia Roberts does not have a trademark in her own name, so she was asserting common-law trademark rights. As the World Intellectual Property Organization (WIPO) arbitration panel ruled, a

recent decision citing English law found that common law trademark rights exist in an author's name. The Policy does not require that the Complainant should have rights in a registered trademark or service mark. It is sufficient that the Complainant should satisfy the Administrative Panel that she has rights in common law trademark or sufficient rights to ground an action for passing off.[63]

The panel compares Julia Roberts' situation to *Jeanette Winterson v. Mark Hogarth,* in which Winterson sued Hogarth to retrieve websites with her names embedded in them.[64] Winterson was a writer and had published several fiction novels, a non-fiction novel, and a comic book.[65] The panel ruled that Winterson, as an author, had common-law trademark in her name, but that this is not a hard rule and that the facts can change the situation.[66] The panel seemed to be confused, however, as to what precedence to follow.[67]

The panel in *Roberts* extends the decision of the *Winterson* court.[68] If an author has trademark rights in his or her name, then it

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them in hopes of being able to make a profit by selling the domain name to the person who owns the trademark.

60. *Id.*

61. *Id.*

62. Roberts, WIPO.

63. *Id.* at *3.

64. Jeanette Winterson v. Mark Hogarth. WIPO Arbitration and Mediation Center, 2000. http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0235.html

65. A quick search of the book site, amazon.com, shows Ms. Winterson's library. http://www.amazon.com/exec/obidos/search-handle-url/index=books&field-author=Winterson%2C%20Jeanette/002-1938527-2820843

66. Winterson, WIPO

67. *Id.*

68. Roberts, WIPO.

must come from the rather singular nature of a novel. Yes, there are editors in the writing process, however, editors do relatively little work compared to the author. A movie, on the other hand, has many other people involved in the process.[69] In other walks of life, it is not uncommon to hear paintings referred to as "a Picasso." There are professions that require the work of a team of people. Professions exist where people can easily work solo, and the work can be identified by the person's name.

According to the late film director Stanley Kubrick, "One man writes a novel. One man writes a symphony. It is essential for one man to make a film."[70] The argument is that there are people in the movie business with control and there are people who do not have control. Kubrick's statement points to his want of control over the actors and actresses in his movies.[71]

One does not need to go to Kubrick's extremes in order to understand that the actors and actresses may not have as much input as other people in the movies as a novelist has in the novel. Looking at the credits of any major motion picture, there are writers, assistant directors, and people who need to operate the microphones and the camera. There may be more than one scriptwriter. The actors and actresses are just a small part of the motion picture.

2. Bad Faith

There is almost no problem in discussing the requirement of bad faith. In *Roberts*, Russell Boyd registered the domain name of juliaroberts.com and then put it up for sale on eBay.com, one of the largest auction websites on the Internet.[72] Boyd also admitted to registering the names of many sports and movie stars.[73] The panel defined this as a pattern of registering domain names.[74] Because of this pattern, the panel found that, according to UDRP paragraph 4(b)(ii), this was evidence that Boyd was acting in bad faith.[75]

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69. As Crow T. Robot says in "Mystery Science Theater 3000: The Movie," "Puppet wranglers? There weren't any puppets in this movie!" Gramercy Pictures, 1996.

70. http://kubrickfilms.warnerbros.com/

71. That is why the director exists. The director is the head of the movie. The director puts his own fingerprints on the movie. http://burickfilms.warerbros.com

72. Roberts, WIPO.

73. *Id.*

74. *Id.*

75. *Id.*

However, there are two problems with this finding of bad faith. The conclusion stems only from the claim that the name of the celebrity is a trademark. Once again, if a name is a common-law trademark as in books or paintings, then this argument of bad faith easily follows. If the name is not a common-law trademark, then there is no bad faith because the domain name holder does not hold someone else's trademark.

In today's world, Julia Roberts does not use www.juliaroberts.com as her website. In fact, there is nothing at that address. Ms. Roberts has no current official website. However, there are alternatives. Although it is not Ms. Robert's site, one website that exists now is www.juliarobertsonline.com. According to the UDRP, evidence of bad faith comes from registering the domain name "in order to prevent the owner of the trademark or service mark from reflecting the mark in *a* corresponding domain name."[76] Ms. Roberts proved that she is able to reflect her common-law trademark in a corresponding domain name. This is not the domain name that she wanted to own, but it is *a* domain name that she is able to own, and she does own and use it. Could the court consider any alternatives to www.juliaroberts.com as a valid website?

For example, there is a brand of shoes called Clarks. The website for Clarks shoes is www.clarks.com.[77] There is also a band from Pittsburgh, Pennsylvania called The Clarks, whose last album, "Another Happy Ending," peaked at #143 on the Billboard Magazine 200 chart.[78] Both would like to be identified by their name: Clarks. However, because the Internet only allows one entity to own one name, The Clarks' website is www.clarksonline.com.

There are other examples of finding a solution to deadlocks when more than one entity uses the same name as a trademark on the web. The popular board game Scrabble is produced by Hasbro in the United States and Canada and is produced by Mattel in the rest of the world.[79] The solution is that www.scrabble.com is used

76. UDRP 4(b)(ii) (emphasis added).

77. The word "Clarks" is a registered trademark of C&J Clark, LTD, according to the website. This fact, however, does not change the argument when two entities have similar names or marks; they both have some interest in using the name in *a* domain name that identifies the mark. Citation needed.

78. *Billboard*, June 29,2002, pages 68-69

79. *See* www.scrabble.com.

by both Hasbro and Mattel. On the main page is a map and the user clicks on which version of Scrabble the user would like to learn about. Hasbro's American version of Scrabble is found at www.hasbro.com/scrabble/home.cfm and Mattel's versions of Scrabble are found at www.mattelscrabble.com/en/adults/index.html. Regardless of the version of the board game that the user wants, www.scrabble.com leads the user to information about either version.

A. Another actor, Kevin Spacey, wants his name as a website.

Kevin Spacey, the movie actor, is another celebrity who fought for the right to have the domain name of his name.[80] The defendant in the case was Alberta Hot Rods (Alberta), a Canadian company.[81] Alberta runs a website, www.celebrity1000.com, that is a typical entertainment site containing information about celebrities in movies,sports, and opinion polls.[82] There will also be a movie guide that will be a part of the celebrity1000 site, contests, and trivia.[83]

Alberta also set up a website at kevinspacey.com that did not link to celebrity1000.com.[84] There was an unofficial site about Kevin Spacey set up at kevinspacey.com, still owned by Alberta.[85]

1. Kevin Spacey as Trademark

The panel[86] found that Alberta did not have legitimate interests in using the website, kevinspacey.com, as a fan site because it was changed to have that content after having been notified of a court challenge.[87] Therefore, there was no bona fide offering of goods or

80. Kevin Spacey v. Alberta Hot Rods. National Arbitration Forum Claim No. 114437, Aug. 1, 2002, *available at* http://www.arb-forum.com/domains/decisions/114437.htm ("Spacey Arbitration").

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. Unlike other cases, the National Arbitration Forum decided the case involving Kevin Spacey. *Id.* The panel discussed jurisdiction. *Id.* However, that is out of the scope of the current discussion. *Id.* The panel looked at the correct law. *Id.* The panel interpreted the law similarly to the WIPO arbitration, and accepts precedent from the WIPO arbitration. *Id.* Jurisdiction is not an issue in this situation. *Id.*

87. *Id.*

services.[88] The defendant did not license the name from the "owner" of the name.[89] No agreement of any kind existed between Spacey and Alberta.[90] Also, because the defendant was never known as Kevin Spacey, either formally or informally, Alberta could not assert rights over this domain name legitimately.[91]

The panel discussed that kevinspacey.com is confusingly similar to the proper name, "Kevin Spacey."[92] Of course, the domain name is similar to the proper name. The panel further discussed that there was no licensing agreement. Alberta probably has no rights to use the name "Kevin Spacey," as it relates to the person. However, the court does not discuss whether this is a fair decision to either Kevin Spacey or Alberta. There is one reference to the juliaroberts.com case with the court assuming that this is the best way to handle it.

Once again, does the name of Kevin Spacey have enough strength to be a trademark? He probably does not, as he is a movie actor. There are many people involved in his movies. No movie can correctly be described as "a Kevin Spacey movie." The panel did not look at this at all. The panel simply said that Kevin Spacey is "a noted actor."[93] At least the *Roberts* panel decided to list some of her movies. The panel there discussed that she is famous.[94] The problem in the *Spacey* case is that the situation changed. Alberta changed the purpose of the site.[95] It used to divert traffic from one site to another site, but then it was as if a fan of Kevin Spacey ran it, which was not the case.[96] The panel does spend time discussing that there is precedent stating that this situation is not proof that there is a legitimate reason for having a website.[97] Having a site run by a fan is not problematic, but this situation is.[98]

What, exactly, is the panel concerned about? If the panel was concerned about how trademarks over the Internet were being displaced and disseminated, then the court would discuss the name

88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*
93. Spacey, NAF.
94. See Roberts, WIPO, supra note 33.
95. Spacey Arbitration.
96. *Id.*
97. *Id.*
98. *Id.*

as a trademark. However, it does not. There is no reference to fame or movies or art.

2. Bad Faith

It appears as if the panel seems intent on punishing the bad actor in this situation. Alberta took the website and used it to divert people from one site to his site. In fact, this happens today. Typing www.michaelcrichton.com (the name of the author) loads a website that then leads to - you guessed it - www.celebrity1000.com.[99] Alberta Hot Rods, to this day, owns many websites that divert traffic to celebrity1000.com.

The panel discussed this website being registered with bad faith under UDRP 4(b)(iv), which states that a domain name that is created intentionally to attempt to attract, for commercial gain, users to another site be creating a likelihood of confusion with the mark.[100] Once again, there is little discussion as to how this situation fits with the past rulings. The Spacey panel admits that there are precedents that show bad faith when a site links users to advertisements, and that linking to another website is bad faith.[101]

However, the panel does not discuss the subtle nuances that are possible.[102] Can a person who types in www.kevinspacey.com and finds a website about celebrities be truly confused? The user, of course, is not looking for a website about lots of celebrities, but one particular celebrity. Users can use search engines in order to find websites of celebrities. Yahoo, Google, Webcrawler, and Lycos are all popular search engines used every day. Confusion can easily be cleared by a quick search of the Internet.

Kevin Spacey, just like Julia Roberts, does not currently use the domain name that he won in court.[103] Spacey has no current official website. Fans, however, do provide a starting point for alternatives to www.kevinspacey.com. One example is different than the solution to Julia Roberts' fan's site. The biggest fan site dedicated to Kevin Spacey is www.spacey.com. This site is novel because it uses only the last name for the website. Not everyone's last name is as unique as Kevin Spacey's. However, it is a solution.

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99. There was a lawsuit that was decided on November 25, 2002. This will be discussed later. http://arbiter.wipo.int/domans/decisions/html/2002/d2002-0872.html

100. UDRP 4(b)(IV)

101. Spacey Arbitration.

102. See *id.*

103. *See* www.kevinspacey.com.

B. How the Court Contradicts Itself - Michael Crichton

The facts of the Michael Crichton are no different than other cases in which Alberta Hot Rods is a defendant.[104] Alberta registered the domain name.[105] Alberta set up the site so that it redirects users to www.celebrity1000.com.[106] Michael Crichton, famous author and screenwriter, wanted to use www.michaelcrichton.com but was unable because Alberta owned it.[107] In this case, Alberta Hot Rods did not even file papers to mount a defense.[108]

The panel, ruling in favor of Michael Crichton, discussed what trademark rights Crichton has.[109]

> In light of the Second WIPO Domain Name Process, it is clear that the Policy is not intended to apply to personal names that have not been used commercially and acquired secondary meaning as the source of goods and/or services, i.e. common law trademark rights. . . . To establish common law rights in a personal name, it is necessary to show use of that name as an indication of the source of goods or services supplied in trade or commerce and that, as a result of such use, the name has become distinctive of that source.[110]

The problem with that statement is that actors' and actress' names are not distinctive of a movie. In 2001, Kevin Spacey starred in a movie called "K-Pax,"[111] which was produced by a number of companies from the US, UK and Germany.[112] In 1997, Spacey starred in "Midnight in the Garden of Good and Evil,"[113] which was produced by different companies.[114] "K-Pax" was a science fiction movie about a person who claimed to be an alien. "Midnight in the Garden of Good and Evil," by comparison, is completely different. It is a movie about a murder in Savannah, GA and the eccentric people who live in the town.

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104. Dr. Michael Crichton v. Alberta Hot Rods, WIPO Case No. D2002-0872, Nov. 25, 2002, available at http://arbiter.wipo.int/domains/decisions/html/2002/d2002-0872.html ("Crichton, WIPO").
105. *Id.*
106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*
110. Crichton, WIPO
111. *See* http://us.imdb.com/Title?0272152.
112. *See* http://us.imdb.com/Companies?0272152.
113. *See* http://us.imdb.com/Title?0119668.
114. *See* http://us.imdb.com/Companies?0119668.

Does Kevin Spacey make one type of movie? Absolutely not. Does Kevin Spacey make movies for one studio? Absolutely not. Does Kevin Spacey make movies written by one person? Absolutely not. How can the name "Kevin Spacey" be distinctive of anything except that he is an actor? It is not distinctive of the source of the commercial product - the movie.[115]

C. Almost the Voice of Balance - Bruce Springsteen

Bruce Springsteen, the "famous, almost legendary, recording artist and composer"[116] filed a complaint against Jeff Burgar, who runs the "Bruce Springsteen Club," because Burgar and the club registered www.brucespringsteen.com.[117] Springsteen, like every other celebrity, did not assert that he had registered his name as a trademark.[118] Instead, the assertion was made that a common-law trademark existed because "Bruce Springsteen" had secondary meanings that came from his fame and success.[119] As it turns out, Jeff Burgar is the person behind the "Alberta Hot Rods" and is the person who registers websites that lead to celebrity1000.com.[120]

1. Commercial Use?

The panel, even after all the precedents have been set, struggled to understand what makes a domain name "commercial" and how

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115. It might be said that authors write different types of books. There are many authors with a certain writing style. That style does have to do with the genre in which the authors write, but also their writing style. Michael Crichton writes mostly science fiction. Philip K. Dick wrote mostly science fiction. Nobody would confuse Crichton's accessible, motion-picture-like style with Dick's often confusing, obfuscating style full of drug use and questions about humanity.

116 http://arbiter.wipo.int/domains/decisions/html/2000/d2000-1532.html

117. *Bruce Springsteen v. Jeff Burgar and Bruce Springsteen Club*, WIPO Case No. D2000-1532, Jan. 25, 2001, available at http://arbiter.wipo.int/domains/decisions/html/2000/d2000-1532.html ("Springstein, WIPO").

118. *Id.*

119. *Id.*

120. Part of the issue was that brucespringsteen.com did point to celebrity1000.com. Should the case, then, not be an open-and-shut case, with Mr. Springsteen winning? That would make sense, as it would have been exactly the same issue as the other cases. However, Mr. Burgar did have a working functioning website at brucespringsteen.com at the time of trial. That same website exists today. http://arbiter.wipo.int/domains/decisions/html/200/d2000-1532.html. See also brucesprinstein.com.

that might confuse an Internet user.[121] "An internet search using the words "Bruce Springsteen" gives rise to literally thousands of hits. It is perfectly apparent to any Internet user that not all of those hits are 'official' or 'authorised' sites."[122] The fame of the celebrity is a part of the problem. Many people want to create sites that show the website creator as a big fan of the celebrity.

The panel also found no problem with a website whose domain name leadsto a site that is about other celebrities. "In this case, the internet user, coming upon the 'celebrity1000.com' website would perhaps be unsurprised to have arrived there via a search under the name 'Bruce Springsteen.'"[123] After all, users can search for the official Bruce Springsteen site themselves and if they are led to this site, they can go back and continue down the list of search results and continue searching.[124] This panel discussed how people really use the Internet - by loading a search page (which are readily available in buttons in the interfaces of Microsoft Internet Explorer and Netscape), doing the search, and scanning through the results.[125] It is not difficult to create the search, scan the results, and decide which web sites to look at.[126]

2 Name as a Trademark?

Bruce Springsteen's name, in the view of the panel, did not have a trademark that the UDRP was meant to protect.[127] The panel also said that there was little evidence that Bruce Springsteen's name had secondary meanings; in other words, that his name could "be associated with activities beyond his activities of a computer, performer, and recorder of popular music."[128] It is obvious that this panel saw "secondary meanings" with a different eye than the past courts. In the *Roberts, Winterson,* and *Spacey* cases, the panel seemed to define "secondary meaning" by implying that because "Julia Roberts" is a famous name attributed to an actress, this name has "famous actress" attributed to it as a secondary meaning.[129]

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121. *Id.*
122. *Id.* at *4.
123. *Id.*
124. http://www.brucesprinstein.net.
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. *See* Roberts, WIPO; Winterson, WIPO; Spacey Arbitration, supra.

This panel said there must be something other than the profession in order for the celebrity to have a common-law trademark.[130]

This seems a bit odd. What is needed past one's career in order for a celebrity to have secondary meaning in his or her name? "A Picasso" clearly means a painting.

This is where this panel made a mistake. Bruce Springsteen does play a specific type of music.[131] His style is unmistakable.[132] He wrote his songs. He played his songs. He had his name attached to his songs. If anyone deserves to have a common-law trademark in a name, it should be a person whose style is as unmistakable as Bruce Springsteen.[133]

3. Bad Faith

The panel here decided that Burgar did not have bad faith in registering the domain name.[134] The panel determined that Burgar did not fall under UDRP 4(b)(i) because he did not register the name only to sell it again.[135] He registered the domain name in order to link it to his main website.[136] There was enough evidence to show that Burgar did not fall under UDRP 4(b)(ii)'s definition of bad faith because he only registered www.brucespringsteen.com.[137]

If he wanted, Burgar could have registered

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130. Springstein, WIPO.

131. According to *Rolling Stone* magazine from April 26, 1973, "[m]uch about Springsteen reminds people of Dylan—the slept-in appearance, foggy manner, the twang, the lyrics and the phrasing of his songs. . . . "Onstage, he projected a dirty sexual energy that rivaled the best of the established stars with whom he has been compared (Robbie Roberston, Richie Havens, Van Morrison), coupled with a loose, cavalier attitude." Werbin. http://www.rollingstone.com/news/newsarticle.asp?nid=16340.

132. That style can be described as a rock musician whose music focuses on guitars and drums and whose lyrics focus on people, while not being loud all the time. "The songs invariably build from a whisper to a scream, not only because Springsteen's composing focuses so often on dynamics, but also vocally and emotionally." Marsh, Dave. "A Rock Star is Born," *Rolling Stone*, September 25, 1975.

133. This is true about his music later in his career as well as music early in his career.

Like Born in the U.S.A. before it, *The Rising* sounds unlike any other record of its time; in an era of rock murk and heavy synthetics, it flaunts its hard, bright guitars and positively walloping beats. . . . [E]very song on the album [*The Rising*] is unified, to an extent, by a mood of romantic longing and a yearning for human connection. In the end, they all flow together.

- Loder, Kurt. *Rolling Stone*, August 22, 2002.

134. Springstein, WIPO.

135. *Id.*

136. *Id.*

137. *Id.*

www.brucespringsteen.net and www.brucespringsteen.org.[138] This, the panel claimed, would have prevented the owner of the trademark (if Springsteen owns a trademark in his name) from using the mark. Id. However, Burgar only registered one of the three sites. This means that two of the sites were left open (though it is doubtful that a person like Springsteen would get the .org version of the site, since he is not a non-profit organization).[139] Springsteen's record company later registered www.brucespringsteen.net.[140] The panel said that the use of an alternative bars the mark holder from defining bad faith under UDRP 4(b)(ii).[141]

The panel admitted that UDRP 4(b)(iv)[142] is complex to apply and analyze. Because of the amount of fame that Bruce Springsteen has, there are a lot of websites with his name. There will be official sites and unofficial sites. Having Burgar own this one site cannot confuse the typical Internet user because searching on the Internet inherently has some confusion about it.

V. DO CELEBRITIES HAVE MORE RIGHTS?

Celebrities do have more rights than other people. The California and international courts continually make decisions for celebrities. In California, the state right of publicity has been expanded. Internationally, it is shown that celebrities can sue to take domain names that contain their names. The international courts have concluded that celebrities of all walks of life have a common-law trademark in their name that should be protected. However, the international courts do not agree on how to make that analysis. An actor or actress can take back the domain name, but a musician whose work is more closely associated with him or her cannot. Perhaps there is an analysis that is more fair.

VI. A POSSIBLE RUBRIC TO BE FAIR

If a celebrity claims a common-law trademark in his or her own name, ask if the name can be closely associated with a product. The

138. *Id.*
139. *Id.*
140. *Id.*
141. *Id.*
142. UDRP 4(b)(iii) does not apply, as nobody has claimed either participant in the case is a competitor. http://arbiter.wipo.int/domains/decisions/html/2000/d2000-1532.html

example of "a Picasso" is not out of reach. One thinks of paintings when one hears about "a Picasso." Stephen King is known for writing horror novels, even though he has written in other genres. Michael Crichton is known for writing science fiction novels, although he has written in other genres. Bruce Springsteen is known for writing, performing and recording popular rock music. Julia Roberts, however, is only known for acting. If there is a close association between the name and a genre or sub-genre in a particular career, then there is secondary meaning that will allow the name to rise to a common-law trademark.