

Naming Games: cultural imperialism on the Internet

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The origins of Internet technology are concealed, whether they lie in state-sponsored scheme or market-oriented order. Technology or code appears to be 'just the way things are' and alternatives to it are difficult to imagine. Domain names provide a good example of this attitude and illustrate how technology is generally regarded as a less contentious means of shaping the Internet than the exercise of legislative control. This paper argues that the allocation of domain names reveals that the extent of US governance of the Internet is as invisible and uncontested as the governance of code itself.

What is a domain name?

A domain name is a mnemonic, string of English letters connected to a numeric Internet protocol (IP) address by the relevant domain name registration authority.¹ Domain name based email addresses are regarded as crucial references and the essence of online identity for Internet users because they determine where data packets are sent. All domain names consist of a top level domain (TLD) and a second level domain (SLD).

Who controls domain name allocation?

The allocation of top-level domain name space is currently dominated by the United States. This is highly significant for as David Diamond notes:

*To a large extent, whoever controls the DNS (domain-name system) and the root-server, the holy temple in which all names are housed - also controls the Internet.*²

US control or governance of the Internet has been subtly established through domain name technology. In order to differentiate nationality on the Internet, most nations are allocated TLDs with a suffix or "two-character country code" that closely corresponds to the name of the jurisdiction such as ".uk" in the United Kingdom or ".au" in Australia.³ In contrast, the US has

never allocated itself a TLD containing the suffix ".us".⁴ Some regard this discrepancy as purely technical and insignificant. For example Dr Willie Black of Nominet in the UK recalls that:

*In the USA they wanted our addresses to end in .uk because their system worked on trailing things, so we agreed to change...so that information could be readily transferred.*⁵

An opposing view is that the incorporation of a national suffix into the technology of mapping domain names is a deliberate US strategy and that the requirement for countries to distinguish their domain names from a US standard carries cultural implications. Network Solutions Inc in the US issue TLDs that are generic, such as ".com", ".org", ".edu" and ".net". As Lipton points out, US registrations under generic TLDs (gTLDs) have become the most sought after names on the Internet, because they are regarded as "international".⁶ The US domain name is now the standard by which domain names are globally measured. The allocation of gTLDs by the US favours American Internet content because gTLDs are easier to remember or guess, they are quicker to access than longer domain name addresses and are more likely to be visited by Internet users.

Traces of cultural imperialism?

By claiming the only "unmarked" TLDs as their own, the US use the seemingly neutral technology of domain names as a tool of cultural imperialism. The unmarked category is the identifying mark of the powerful. 'Markedness' is a concept taken from linguistics to express the nature of relationships between members of a binary opposition where one member is more regular or simple than the other, more frequently found, more neutral in meaning, and more generic.⁷ Domain name technology indoctrinates users to equate ".com" with "American"

and encourages the assumption that the origin of "unmarked" Internet content is American. This imperialist goal has been largely successful, for as Hawthorn notes, within the culture of the digerati, "'American' has become so pervasive in the discourse" that it has become invisible.⁸ Even national TLDs which are coincidentally memorable have failed to challenge the international status of ".com." For example although radio stations have rushed to acquire domain names under the Federation of Micronesia's ".fm" and many trademarks have sought domains using Turkmenistan's ".tm", the majority of users continue to expect ".com" to be part of all domain names. According to Bill Semich, president of an organisation that markets the ".nu" domain for the nation of Niue:

*Users have come to think that the www and the .com are necessary in an Internet name. Network Solutions essentially has a branding monopoly with .com - .com is like Coca-Cola and the others are...like supermarket brands.*⁹

Even the apparently methodical allocation of character codes to national domain names fails to be a neutral process. It is naïve to accept the assertion of the US Department of Commerce in their White Paper that the "management of Internet names and addresses" does not amount to "a system of Internet 'governance'".¹⁰ The political nature of domain name suffixes is illustrated by France's concern about Guadeloupe and Martinique which are overseas departments rather than independent countries yet have separate domain name suffixes to France. Similarly the UK government is not happy that the Pitcairn Islands have a separate country code despite being under the administration of the UK. Clearly, the decision to follow the International Organisation for Standardisation code (ISO 3166) which lists two character codes for

every country, has not ensured the neutrality of the process of domain name allocation. In fact the contrary is often argued when the Scottish or the Welsh demand domain name suffixes of their own.¹¹ One blatant example which demonstrates the advantage of the US government under the current domain name system is the fact that the Internet Assigned Numbers Authority (IANA) - a US government funded¹² overseer of IP allocations, gave administrative authority for ".tv" (the national TLD assigned to Tuvalu) to Andrew Rubin, manager of communications software for WebTV, a Microsoft owned corporation.¹³ When Tuvalu discovered that their national domain name had given to a US corporation, WebTV reportedly offered to pay the government of Tuvalu US\$10 000 for every name registered to the domain. The offer was rejected, yet it illustrates the fact that both TLDs and the act of their assignment are politically, culturally and economically charged. The political nature of domain name allocation is confirmed by the US response to suggestions that the ".us" domain space be utilised for American commercial uses: the US White Paper hastily states that it will "seek public input on this important issue" before commenting.¹⁴

Dominating domain name disputes

The US government also asserts their dominance over the Internet through the resolution of domain name disputes. The proposal of the US White Paper to headquarter in the United States a new, private non-for-profit corporation to manage the domain names, was criticised for representing "an inappropriate attempt to impose US law on the Internet as a whole."¹⁵ The international community has watched uncomfortably as US courts have boldly extended their trademark law jurisdiction in order to impugn international domain name use. For example a company called Granite Gate Resources was held to be subject to Minnesota jurisdiction purely as a result of its Internet advertising.¹⁶ As Lance points out,

this benchmark case for US jurisdiction over the Internet raises important issues for Australia, such as how a US court decision would be enforced in Australia and whether Australian companies will be required to operate within US trademark law.¹⁷ Most significantly, the case raises the question of whether US companies will be required to operate within the trademark law of other nationalities.

Reform

The US-centric nature of domain name allocation and dispute resolution may soon change. By September 2000, ICANN, the new, non-profit international corporation will implement a new domain name dispute mechanism proposed by the World Intellectual Property Organisation (WIPO).¹⁸ WIPO, an international UN-chartered group that negotiates the arbitration of international trade law, is currently considering the proposal for the introduction of seven new gTLDs intended to break the US monopoly on ".com" TLDs. The proposed gTLDs are:

- "firm" for businesses or firms
- "store" for businesses offering goods to purchase
- "web" for entities with activities related to the World Wide Web
- "arts" for arts organisations
- "rec" for entities involved with recreation / organisation
- "info" for entities providing information, and
- "nom" for individual or personal names.¹⁹

WIPO intends to break the grip of US jurisdiction in domain name dispute resolution. Already, the US Department of Commerce has conceded in their 1998 White Paper, that the domain name system "should fully reflect the global diversity of Internet users."²⁰ This is a vast improvement on the Green Paper which proposed that if an Australian had a gTLD dispute with a New Zealander, both would be required to litigate in the United States.²¹ However certain aspects of the 'Americanization' of the Internet

remain unchallenged. Neither the absence of an American ".us" TLD nor the allocation of country code TLDs to every other nation has been questioned by WIPO. Secondly, if the Internet is to become a truly global medium of communication, gTLDs which are relevant to languages other than English should be adopted. For example, "nom", "info" and "rec" hold meanings in French, Italian, Spanish, German and Portuguese. The fact that "global diversity" of the Internet is compromised by the proliferation of English domain names and the expectation that netizens will "speak English on the electronic frontier"²² has largely escaped attention. Thirdly, the notion that TLDs are a public resource of international relevance and should not be allocated by any particular national sovereignty has not been sufficiently articulated. Finally, the proposal of WIPO to give special protection to domain names that contain famous trademarks is problematic.²³ Although the "famous" criteria is yet to be set down by the WIPO, it already promises to be a valuable loophole through which the cultural imperialism of the US may continue to influence the content of cyberspace.

¹ Jacqueline Lipton, "What's in a (domain) name? Web addresses as loan collateral" (1999) 2:5 Internet Law Bulletin p.57

² David Diamond, "Whose Internet Is It, Anyway?" http://www.wired.com/wired/6.04/kashpur_eff.html

³ Stephen Lance, "Domain name disputes: A view from the Antipodes" (1999) 38 Computers & Law Journal for the Australian and New Zealand Societies for Computers & the Law p.26

⁴ ".us" exists as a locality based hierarchy in which second-level domain space is allocated to states and U.S. territories and has typically been used by branches of state and local governments in the U.S.

⁵ L. Eastham, "Lord of All Your Domains: Dr Willie Black of Nominet" (1999) August Computers & Law Journal for the Australian and New Zealand Societies for Computers & the Law p.25

⁶ Jacqueline Lipton, "What's in a (domain) name? Web addresses as loan collateral" (1999) 2:5 Internet Law Bulletin p.58

⁷ Justine Cassell and Henry Jenkins (eds.) From Barbie to Mortal Combat: Gender and Computer Games (The Massachusetts Institute of Technology Press, Cambridge Massachusetts: 1998) p.35

- 8 Susan Hawthorne, "Connectivity: Cultural Practices of the Powerful or Subversion from the Margins?" Susan Hawthorne & Renate Klein (eds.) *Cyberfeminism* (Melbourne: Spinifex Press, 1999) p.122
- 9 Andrew Raskin "Buy this Domain" (1998) September Wired p.110
- 10 United States Department of Commerce White Paper on Management of Internet Names and Addresses, June 5, 1998 p.6 of 21 at http://www.ntia.gov/ntiahome/domainname/6_5_98dns.htm
- 11 L. Eastham., "Lord of All Your Domains: Dr Willie Black of Nominet" p.25
- 12 IANA's root system and DNS databases are gradually being transferred by the US government to a new non-profit organisation.
- 13 Andrew Raskin "Buy this Domain" (1998) September Wired p.108
- 14 United States Department of Commerce White Paper on Management of Internet Names and Addresses, June 5, 1998, p.14 of 21 at http://www.ntia.gov/ntiahome/domainname/6_5_98dns.htm
- 15 ibid
- 16 The physical location of the site's server was Belize, Central America; Stephen Lance, "Domain name disputes: A view from the Antipodes" (1999) 38 *Computers & Law Journal for the Australian and New Zealand Societies for Computers & the Law* p.29
- 17 Lance, "Domain name disputes: A view from the Antipodes" p.29
- 18 Lance, "Domain name disputes: A view from the Antipodes" p.28
- 19 Lance, "Domain name disputes: A view from the Antipodes" p.30
- 20 United States Department of Commerce White Paper on Management of Internet Names and Addresses, June 5, 1998, p.13 of 21 at: http://www.ntia.gov/ntiahome/domainname/6_5_98dns.htm
- 21 Lance, "Domain name disputes: A view from the Antipodes" p.31
- 22 Perhaps English speaking netizens remain oblivious to the criticism; Brian Loader (ed.) Loader, B., (ed.) *The Governance of Cyberspace: Politics, Technology & Global Restructuring* (London: Foutledge, 1997) p.6
- 23 Stephen Lance, "Domain name disputes: A view from the Antipodes" p.31
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".com.au" domain name policy set to change

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The first significant changes to the ".com.au" policy are expected to be implemented later this year following an extensive review process. The most significant of these are:

Trade mark registrations and trade mark applications will be able to be used to support a ".com.au" domain name application.

Presently a registered company name or a registered business name is generally required before a corresponding ".com.au" domain name registration can be obtained. Companies have often had to register a business name, without any real intention to trade under that name, in order to obtain their desired domain name. The ability to instead use a trade mark registration or application will be a welcome change. A foreign company would be able to register a ".com.au" domain name in its own name if it owns a corresponding Australian trade mark registration or application.

"Substantial and close connection" will be the new test for derivation of the domain name from the registered name.

This will be a more flexible and reasonable test. The present rules simply require a domain name to be directly derived from the letters of the registered name without changing the order or adding any letters. For example, the domain name "asic.com.au" has been registered on the basis of a business name registration for "url assistance services".

The restriction of one domain name per registered name will be removed.

This will allow a business to register variations of a name without having first to obtain a further registered name, such as a business name registration. Other anticipated changes include:

- an inexpensive and quick dispute resolution policy for ".com.au" domain names will

be introduced. It will be modelled on the existing Uniform Domain Name Dispute Resolution Procedure presently available for ".com", ".net" and ".org" domain names.

- the present restriction preventing the registration of geographic names and generic words is expected to be removed. However, the process for assigning those names has not been decided upon.
- Consideration will be given to introducing new second level domains.
- Competition for registrars of ".com.au" domain names will be implemented.

Finally, a reminder: businesses should ensure that their domain name registration details are kept up to date so that renewal notices are sent to the correct postal or email address.