

VIETNAM

Loophole in .vn domain name disputes

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Vietnam, like many other countries in the world, has an open policy on the registration and use of its country code top-level domain name, .vn. Accordingly, any individual or organisation, whether domestic or foreign, whether present in Vietnam or not, has the right to register and subsequently use domain names ending in .vn.

With such an open policy, disputes over domain names will naturally arise, especially when unrelated applicants register names similar to, or containing, the protected marks and brands of IP rights holders. While it seems that Vietnam has done well at creating a convenient mechanism allowing anyone to easily register and use domain names, it has not yet been able to establish an adequate mechanism to resolve the disputes arising therefrom.

An interesting challenge arises in cases where the registrant and user of the .vn domain name is located abroad and has never been present in Vietnam. For example, an enterprising cybersquatter in a foreign country could register the .vn version of an emerging tech company's .com domain name before the legitimate rights holder has turned its attention to securing all possible international permutations of its domain name.

Legal obstacles

In issues relating to cyberspace, Vietnamese law has struggled to keep up with rapid changes in technology, and this hinders the ability of rights holders to seek redress in the case of infringement by persons or entities located outside of Vietnam. The first obstacle is that Vietnam's legal system does not yet contain clear provisions to deal with situations where a defendant is located outside of Vietnam. In this regard, it must be noted

that at present all domain name disputes must be handled by civil or administrative actions (there is no mandatory arbitration required, and no cybersquatters would voluntarily agree to arbitration). An administrative action is essentially impossible, as the administrative body is required to meet face-to-face with the cybersquatter to directly serve a decision on inspection.

The current Civil Procedure Code of Vietnam, which was adopted in 2015 and entered into effect on July 1 2016, sets out in Article 189.3(d) that one of the mandatory factors for a lawsuit to be accepted is that the complaint must clearly indicate the name and residential address (for an individual) or the address of the headquarters (for a legal entity) of the defendant, or at least the last residential/headquarters address of the individual or legal entity. The law only affords jurisdiction in cases where the individual or organisation was in Vietnam and thus had a home or business address in Vietnam, or perhaps used to have a home or business address in Vietnam. The law as written did not contemplate a situation where the defendant had never lived or established an office in Vietnam, but undertook actions that had an effect in Vietnam, such as registering an infringing .vn domain name online from overseas.

Creative solutions

The lack of jurisdiction could be overcome if judges and administrative authorities use some creative approaches and flexible readings of the laws on the books.

One such reading may include considering a domain name as a type of "property" located in Vietnam, and, thus, jurisdiction being justified. In this regard, Article 68.1 of the Law on Information Technology states: "Vietnamese national domain names ending in '.vn' and their lower-level domain names constitute a *part of national information resources*, which are of the same utility and must be managed, exploited and used for proper purposes and with efficiency." Thus, it is plausible for courts to view the .vn domain name resource as a natural resource similar to coal or oil. Accordingly, there is no reason why the court of Vietnam should not have jurisdiction over these

disputes.

One other mechanism that could help the current jurisdictional issues in the context of domain name disputes would be for Vietnam to require registrants of .vn domain names to agree to a mandatory arbitration process when they register their domain name. At present, arbitration must be agreed to by both parties. Of course, if the cybersquatter is seeking to extort funds from the rightful owner of the domain name, they will not submit to arbitration.

In the meantime, all disputes must be solved through civil or administrative actions, or by negotiation with the cybersquatter. Moreover, the domain name registry should be required to collect and provide transparently the names, addresses and contact information of registrants when a dispute arises.