

The Protection of Digital Intellectual Property: Domain Names Disputes under Jordanian Cyber Regulation

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Abstract

The protection of Intellectual property has faced new challenges with the tremendous expansion of Internet. Our article highlights the domain names disputes that may arise in the process of registration of new websites and the legal procedures able to arbitrate those particular cases. We focus the study of this problematic on the case of Jordan and the legal tools available to the Jordanian legislative and judicial authorities to arbitrate those disputes alongside with its memberships to International Organizations and Conventions specialized in protecting Intellectual property.

Keywords: Digital Intellectual property, domain name disputes, Jordanian Cyber regulation, NITC, TRIPS, cybersquatting.

INTRODUCTION

The more and more increasing and global use of Internet has paved the way to a wide scope opportunity to use the cyberspace as a must be place to display sales products, services, competencies, ideas, and so on. To meet these ends, websites has finally become the business card to anyone willing to be known within the World Wide Web. To be technically functional on the Internet, websites have to be registered under a domain name also known as the e-address or IP address; this step is however not as unchallenging as it seems to be since it may cause dispute over sites domain names. Indeed, a same domain name may be requested by several websites, and in this case, the protection of digital intellectual property in this particular context is a legal issue to be studied carefully at the State and International levels. As a point of fact, most disputes over the last thirty years regarding cyberspace cases, which the International legal community has had to arbitrate, related to jurisdictional conflicts arising from Intellectual Property (IP) cases on the Internet. Lawmakers, businessmen and politicians have worked in cooperation with International bodies to find urgent solutions to IP issues on the Internet. The combined definition “digital intellectual property” (DIP) is used both for IP innovations and applications in cyberspace. Because of the increasing importance and enormous growth of DIP use on the Internet, there is a perceived urgency in the need for States, individually and collectively, to manage each State’s IP legislation. This covers issues such as loss of profits, trademark and patent violations, domain names disputes and jurisdiction issues on the Internet.

Generally, various States have relied on this alternative in managing DIP: either, as applied in the UK and the USA, the legislative authority comes up with a new legislation for the control and regulation of DIP; or, as followed in Jordan, it amends the existing IP rules and design others specifically for the regulation of DIP. Meanwhile, the third option is that States follow neither of the above trends and rather depend on their current laws to regulate DIP cases. This is the choice made by most Third World States.¹

On the International level, solutions to resolving DIP, and in particular, related to jurisdiction disputes, have been sought through regional, bilateral and International cooperation, by means of International Conventions and agreements. Parallely, associations and organisations have been specialised to deal with those legal disputes like the World Trade Organisation (WTO), the World Intellectual Property Organisation (WIPO), the agreement of Trade Related Aspect for Intellectual Property Rights (TRIPS), the International Trademarks Office (ITO), and the International Cooperation for Assigned Names and Numbers (ICANN) and its Uniform Domain Name Disputes Resolution Policy (UDRP).²

Such concerted efforts to deal internationally with Internet disputes nevertheless have not prevented the

¹ Litman, Jessica. *Digital Copyright* (Prometheus Books, New York 2001).

² David, Maher. ‘Trademarks on the Internet: Who’s in Charge?’ International Trademark Association <http://www.isoc.org/inet96/proceedings/f4/f4_2.htm>. Accessed: December 2011.

arising of a very considerable number of clashes over IP jurisdiction on the Internet. Under the umbrella of DIP jurisdiction, debates occur on the way to encompass sovereignty over the Internet: jurisdiction types, selection of the type of law applied; choice of forum, and enforcement of foreign judgements issues.¹ Given the global and borderless nature of cyberspace and its jurisdiction, it is unsurprising that applying Conventional registration principles to cyber jurisdiction disputes has proven to remain a weak solution.²

Considering the international context of cyber disputes, the focus on the case of Jordan is an illustrative case study on the impact of such a situation on developing States, and shed light on certain issues related to jurisdiction authority over DIP issues. While major IP issues such as copyrights, patents and trademarks have been widely under research, other IP issues such as domain names in cyberspace have not yet been objects to legal clarification although these issues are not of less importance. This paper regards domain names as a potential major key in solving cyber jurisdiction cases, whether in Jordan or Internationally. Accordingly, this paper will focus specifically on DIP in Jordan, to include Jordanian memberships in major IP and DIP agreements and Conventions. A particular aim will be to highlight issues related to whether priority should be given to domestic rules or to International legislation in DIP. Following this will be a discussion of domain names issues, illustrated in the case study by Jordan's efforts to solve DIP jurisdiction disputes.

Digital Intellectual Property in Jordan

Internet IP protection and legislation in Jordan has undergone considerable innovation. In order to establish a strong legislative basis for the development of IP in Jordan, the government has had to promptly reform current IP legislation and to realign its IP laws to match International practices in protecting IP rights accordingly. Such responses to technological change have impacted hugely on Jordan's International trade in movement of goods, services and knowledge.³ These current reforms in IP law in Jordan are aimed to meet the requirements necessary to join International IP Organisations and comply with International treaties. For instance, as a requirement for joining the World Intellectual Property Organisation (WIPO), an International Organisation which manages IP matters between States, Jordan rebuilt its own IP set of regulations, amending them according to copyright and trademark laws at national level. Since then, Jordan has further amended its laws to establish a new set of IP laws assuring the necessary IP protection rules on its territory in order to strike a balance between national and International positions.⁴

In the past, an unsatisfactory compliance with International IP procedures has impeded Jordan's progress. For example, from 1996 Jordan had attempted several times to become a member of the World Trade Organisation (WTO)⁵, succeeding only in December 17, 1999. From this time, Jordan was required to follow agreements and Conventions as outlined by the WTO, particularly the Agreement of Trade Related Aspect for Intellectual Property Rights (TRIPS). In order to comply with TRIPS Agreement and other IP treaties, the Jordanian government was obliged to amend further its own IPR legislation⁶. Since the time of Jordan's entry into the WTO, many changes have been achieved in its IP laws. Examples are the Copyrights Law No 22 of 1992 and its amendments –especially the 2003 amendment- brought about in order to increase the protection provided to authors. Similar changes have been made to other legislation such as:

- The Patent of Invention Law No 32 of 1999,
- The Trademark Law 34 of 1999,
- The Unfair Competition and Trade Secret Law No 15 of 2000,
- The Geographical Indication Law No 8 of 2000,
- The Law for Protection of Integrated Circuits Designs No 10 of 2000,
- The Industrial Designs and Model Law No 14 of 2000,
- The Protection of New Varieties of Plants Law No 15 of 2000,
- The temporary Anti-trust Law No 49 of 2002, and
- The Electronic Transactions Law No 85 2001 which is still currently under review (MOJ)⁷.

The above list is a clear example of the impact of Jordanian membership in International Conventions. Nonetheless, in order to benefit by this membership in economic sectors such as industry, trade, and electronic publishing, the State has had to sacrifice a number of its traditional approaches. This has been seen as

¹ Fitzgerald, Brian. *Internet and E Commerce Law* (Lawbook co, Australia 2007) P.24.

² WIPO Internet Domain Name Process, S.140-144 http://www.icann.org/en/wipo/FinalReport_3.html. Accessed: January 2012.

³ Al-Ibraheem, Marwan and Tahat, Hisham. 'Regulating Electronic Contracting in Jordan' (April 2006, 21st BILETA Conference: Globalisation and Harmonisation in Technology Law).

⁴ Al-Abadi, Mohammad. 'Copyrights Protection in Jordan' (The Ministry of Culture, National Library, 2006).

⁵ World Trade Organisation (WTO) established on January 1, 1995 and located in Geneva, Switzerland. It has 153 members.

⁶ Aljazy, Omar, 'Intellectual Property: Law- Enforcement and Judicial Capacity Building' (2003) JIPA, Intellectual Property Week, Amman, Jordan).

⁷ Ministry of Justice (MOJ), Department of Legislations <<http://www.moj.gov.jo>>.

worthwhile, given that the most important benefit from amending and creating new laws in Jordan has been the ongoing protection of Jordanian nationals' rights abroad.

As a consequence of Jordanian membership in International IP treaties, and its having amended legislations on International protection of IPRs and Internet usage rules, it is currently understood that there has to be a higher level of protection both for national and foreigner IP cases. Amongst many other kinds of protection, DIP disputes and jurisdiction on the Jordanian citizens' rights on the Internet have been regarded as very important and as such it has to be the focus of further study. It is, then, important to have knowledge of the divisions of the main IP sectors which are followed by the Jordanian legislator. These major sections are:

A. Industrial Property

- The Patents of Invention Law No.32 of 1999.
- Trade Mark Law No. 33, May 1952, as amended by Law No. 34 of 1999.
- Industrial Design Law No. 14 of 2000.

B. Copyright and Related Rights

- Copyright Law No. 22 of 1992, as amended by Law No. 14 of 1998, Law No. 29 of 1999, Law No. 78 of 2003, Law No. 8 and Law No. 9 of 2005.

C. Trade Names

The Trade Names Law No 22 of the year 2003 (amended by the Law No. 9 for the year 2006).

D. Geographical Indications or Activities

Appellations of Origin / Geographical Indications / Indications of Source:

- Geographical Indications Law No. 28 of 2000.

E. Unfair Competition and Protection of Undisclosed Information:

- Unfair Competition and Trade Secret Law No. 15 of 2000.

F. Layout Designs (Topographies) of Integrated Circuits:

- Layout Designs of Integrated Circuits Law No. 10 of 2000.

G. Plant Variety Protection:

- Plant Varieties Law No. 24 of 2000.

The main IP branches under Jordanian law are copyrights, patents and trademarks, in addition to some other less important branches such as designs, domain names and geographic indicators. The importance of these IP branches at national level reflects a wider International intention and influence on IP issues.

It should be noted that the Jordanian legislature has granted an additional protection to IP types under the Jordan Secret and Unfair Competition Law and Trade Names Law. This protection covers copyrights and related rights, patents and the idea of the patent, and also trademarks. Arguably, the protection offered under these laws extends to some IP types not previously covered by particular copyrights, patents or trademarks laws.

According to article 9 of the Trade Secrets and Unfair Competition Law No. 15 of 2000,¹ copyrights, patents and trademarks have fallen under the intellectual property rights law. Article 9 states that:

“A. Every provision or condition restricting competition included in the license contract related to any of the intellectual property rights, which may have negative effect on commerce, or may hinder the transference or dissemination of the technology, shall be void and null, and in particular:

1. Prohibit the licensee from transferring modifications made to the technology included in the license contract except for the licensor (Back transferring of technology).
2. Prevent the licensee from Juridical or Administrative disputes arising in respect of the licensed intellectual property right.
3. Compel the licensee to accept the license with a number of rights instead of one right only.

B. The intellectual property rights mentioned in paragraph (A) of this article particularly include:

1. Copyrights and neighbouring rights.
2. Trademarks.
3. Geographical indications.
4. Industrial drawings and Industrial designs.
5. Patents.
6. Layout designs of integrated circuits.
7. Trade secrets.
8. New varieties of plant.

The significance of this article is that it is a part of a law that aims to award additional IP protection in

¹ The Trade Secrets and Unfair Competition Law No. 15 for the year 2000. Published on the Official Gazette No. 4423. Dated 02.04.2000.

Jordan, in addition to “the technology contract transfer”. However, this law and particularly article 9 has not avoided criticism that the new law has added nothing to the current protection level. Moreover, in relation to the technological contract mentioned in article 9, the legislature has not sufficiently regulated these issues in the light of provisions under the TRIPS agreement.

Furthermore, in relation to Jordanian court authority over DIP, this law has finally not allowed any further authority to apply jurisdictional legislation over DIP disputes on the Internet. Besides, it does not have any applicable reference to disputes brought to the Court as a consequence of applying the provisions of this law; consequently, while existing jurisdiction rules on current IP laws are used to resolve disputes, the need or applicability of a new law is a question still raised.

Jordan’s Memberships in IP Conventions and Agreements

The main motivation for States joining IP Conventions is to guarantee suitable protection for their citizens and also to play their part in global efforts to prevent IP abuses, particularly over the Internet.¹ DIP disputes and jurisdiction are topics of International concern, especially disputes concerning International interpretation of Conventions. Thus, jurisdiction issues and DIP disputes have been granted special and clear provisions in IP Conventions with a number of purposes: firstly, to manage International DIP disputes, secondly, to ensure implementation of Conventions’ rules between Conventions’ members, and thirdly to clarify any reluctance in applying jurisdiction articles.²

IP Conventions as they stand, respect the state sovereignties and immunities of domestic Courts, and give them precedence in hearing domestic disputes. The IP Conventions ensure prevention of any interference in State disputes by any other States. According to these Conventions, Members have the right to settle their disputes in appropriate ways, such as negotiation. In the case a dispute cannot be settled by negotiation, or any other methods of settlement, any of the States concerned could be brought before the International Court of Justice.³ These provisions are clearly stipulated in many Conventions, such as article 2 of the Paris Convention and article 32 of the Berne Convention. The importance of these provisions is to prevent any uncertainty between members as to which member’s laws should have precedence of application in International IP disputes, and to ensure domestic legislation priority in solving IP issues. Guaranteeing observance of these provisions can be achieved in many ways: for instance, many treaties require that their members shall agree a consistent and unambiguous statement regarding any reservations any State may express in applying methods of settlements, or the Conventions in their territories such as the WTO and WIPO. Another way is the establishment of special offices to adjudicate over IP disputes and issues, to set a specific period for the settlement of disputes, and to liaise with the other States concerned.

Although the situation in Jordan, as a developing State adapting to massive technological development, does not markedly differ from that of other developing States, or of developed States, the impact of its memberships in International treaties and Conventions is tangible. To a certain extent, the impact has been negative because of the pressure put on developing States by developed States and International bodies to accept their conditions or rules. For example, Jordan had to apply conditions and rules alongside with Jordanian legal codes such as the Jordan-Europe Free Trade Agreement (JEFTA), and more perceptibly, the pressure exercised on Jordan to join the Patent Cooperation Treaty (PCT) within a grace period of time. Additionally, the impact from Jordan-US Free Trade Agreement (JUSFTA) had forced Jordan to exclude software patenting from the mathematical methods mentioned in Jordanian patent law.

At the same time, Jordan has been benefiting from these treaties in being better positioned to protect its IP products internationally and to guarantee jurisdictional rights for its nationals in cases involving foreign norms; for example, individual inventors or innovative companies are able to compete internationally in spite of the challenges and obstacles posed by developed States. Another benefit beyond signing International Conventions, especially those related to regional and bilateral agreements, is the enforcement of Jordanian jurisdiction rules abroad, for instance the right to apply Jordanian personal rules in another State which guarantees a high degree of enforcement of Jordanian judgements abroad.

Consequently, Jordan had to make considerable adjustments to its many IP treaties and Conventions. These Conventions have been specialised in a variety of IP types such as copyrights, trademarks and patents.

Thus, the Jordanian memberships in International, regional and bilateral IP Conventions illustrate that Jordan has complied with many IP treaties to achieve a comprehensive protection of the IPRs in Jordan, and to harmonise Jordanian membership requirements with International Conventions and agreements. Joining so many

1 Hugenholtz, Bernt. ‘The Electronic Rights War: Who owns the rights to new digital uses of existing works of authorship?’ [2000] 4 IRIS.

< <http://www.ivir.nl/publications/hugenholtz/e-rights.html> > Accessed: December 2011.

² Kohl, Uta. ‘The Rule of Law: Jurisdiction and the Internet’ (2004) IJLIT.

³ Savantesson, Dan. *Private International Law and the Internet* (Kluwer Law International, Netherland 2007).

treaties has been necessary to gain membership to organisations for which it is a prerequisite to gain membership in other Organizations.¹ For example, to become a member of the World Intellectual Property Organisation depends on a prior membership to the World Trade Organisation. Conversely, some Conventions stipulate that a State should not have membership with any other Convention, completely or partially, such as the WIPO Performance and Producers of phonograms Treaty (WPPT).² Such conflicting requirements obviously may cause tensions, since Jordan's motivation for entering such Conventions is to guarantee a comprehensive protection of its IPRs, at the same time Jordan must deal with potential conflicts between such memberships.

IP Treaties position within the Jordanian legal system

The Jordanian Constitution does not contain an explicit article regarding application of the Conventions and Agreements in Jordan, nor of any precedence of these Conventions over the Constitution. Article 33 of the Jordan Constitution states that "(i) The King declares war, concludes peace and ratifies treaties and agreements. (ii) Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly. In no circumstances shall any secret terms contained in any treaty or agreement be contrary to their overt terms".

The said article does not clarify which of whom the Constitution or the International agreements has precedence on the other. Indeed, there are no clear articles in the Jordanian Constitution regarding the Treaties' precedence over the Constitution or the opposite, and the above article just demonstrates the legal circumstances of applying Treaties and Agreements on the Jordanian legislation. However, it must be noted that the Cassation Court, which is the highest judicial court in Jordan, has adopted an attitude that the constitution should take precedence over the treaties, and that there will be no exercising of treaty provisions if these conflicts with constitution provisions. This approach accords with that of the Higher Council for the Interpretation of the Constitution³.

In contrast to the vagueness of the affiliation between the constitution and the treaties, the constitution and civil law contains clear articles regarding precedence of treaties over domestic laws. First of all, articles 21 and 103 explicitly require application of International Convention rules over specific issues. Article 21/2 states that "extradition of ordinary criminals shall be regulated by International agreements and laws". Article 103 declares "(i) The Civil Courts shall exercise their jurisdiction in respect of civil and criminal matters in accordance with the law for the time being in force in the Kingdom, provided that in matters affecting the personal status of foreigners or in matters of a civil or commercial nature which in accordance with International usage are governed by the law of another State, such law shall be applied in the manner designated by the law".

In terms of Jordanian Civil Law, article 24 states that "the provisions of the preceding section shall not apply if there is a provision repugnant thereto in a special law or in an International treaty in effect in the Hashemite Kingdom of Jordan". This article clearly shows that the priority in application is to International Conventions over domestic laws. This approach has been adopted by the Jordanian Cassation Courts. For example, in its judgment No. 38/91 issued on April 18, 1991, the Cassation Court gave International Conventions the priority of application over national laws and the same approach has been upheld by the Supreme Court of Justice.

Consequently, if there is any conflict on jurisdiction between Jordanian domestic laws and IP Conventions, the IP Conventions and Agreements have precedence in Jordanian territory, that is, Jordan respects International relationships and reciprocity.⁴

Domain Names and Jurisdiction Disputes

Disputes related to trademarks are not new to traditional IP and DIP jurisdiction disputes; however, Internet-based trademarks issued in relation to domain names have dramatically challenged the e-community and

¹ International Convention such as: - WIPO Convention, since July 1972, Paris Convention (Industrial Property) since July 1972, the Universal Copyright Convention (UCC) 1952 since 1972, Berne Convention (Literary and Artistic Works), since May 27, 1999, WTO: Member and Signatory to the TRIPS Agreement, since April 2000. WPPT (WIPO Performances and Producers Phonograms Treaty), since May 2004. WCT (WIPO Copyright Treaty), since April 27, 2004. Member of UPOV since October 2004. Nice Agreement (International Classification of Goods and Services), since November 2008. Rome Convention 1961. And Madrid Agreement 1989.

Regional Conventions such as: Membership in the Arab Convention of IP 1981. Since 1981.

Bilateral Conventions such as: The United States-Jordan Free Trade Agreement JUSFTA 2001. Jordan Europe Free Trade Agreement JEFTA 2001. Cooperation Agreement under the WTO with Yemen, 2003, and Cooperation Agreement under the WTO with Lebanon, 2003.

² Edwards, Lilian and Waelde, Charlotte. *Law & the Internet: Regulating Cyberspace* (Hart Publishing, oxford 1997).

³ Ibid No. 9.

⁴ Al-Tabaa, Tawfeq. 'Copyrights Protection in the Internet' (2009) paperwork presented on the King Abdullah Centre of IP.

Jordanian domestic laws. Such challenge is known as “Cybersquatting”¹. Cybersquatting is judged by Jordanian courts as an act of trademark infringement and passing off². The importance of discussing domain names disputes on the Internet in Jordan is to assess the dispute resolution procedures adopted by the Jordanian authorities and the application of the ICANN Uniform Dispute Resolution Protocol (UDRP) in line with other bodies’ rules. Generally speaking, domain names are defined as “a series of alphanumeric strings that are separated by periods, such as www.hmco.com, that is, an address of a computer network connection that identifies the owner of the address”³. Generally known as titles which help Internet users to identify website owners and quickly to locate particular websites or WebPages, domain names consist of numbers known as IP addresses. Since numbered addresses, such as 329.843.843.84.948, are difficult to memorise, they have been changed to alpha-beta letters such as www.brookes.ac.uk. This amendment from numbers to letters and names has made these titles easier to remember than before⁴. Domain names consist of two levels. The top or first level is known as State code Top Level Domains (ccTLD), and the low or second level is known as generic Top level Domain (gTLD).⁵ States granted Top levels domain names must fulfil qualification criteria and demonstrate the capacity to control and protect these names⁶. The top level normally ends in the first two letters of the designated States, for example *.jo* for Jordan, *.fr* for France, *.uk* for United Kingdom⁷. In the case of disputes related to Top levels and their related domains, these are often governed by bodies relative to the State holding title to the domain level, for instance the National Information Technology Centre (NITC) in Jordan, or Nominet in the UK. Alternatively, some States will govern disputes according to the rules of ICANN or another International body such as WIPO. In contrast, disputes related to the low level are generally governed by the International Corporation of Assigned Names and Numbers (ICANN), in particular under the department of the Internet Assigned Numbers Authority (IANA) and the ICANN Uniform Disputes Resolutions Protocol (UDRP)⁸. Each secondary level has a marker related to a specific domain; for instance *.edu* signifies the domain name for education, *.com* for commercial, *.gov* for governmental, *.mil* for military, *.org* for organisation, *.biz* for business and *.per* for persons⁹. Taken together, the two levels comprise Uniform Resources Locators (URLs) such as *.gov.jo*, or *nict.org*. This explains why URLs, popularly known as websites or web pages, begin with the two-part <http://> and www, which mean Hypertext Transfer Protocol ([http](http://)) and World Wide Web (www)¹⁰. URLs may also begin with the abbreviation *ftp://* which indicates that the files concerned are using Files Transfer Protocol (FTP)¹¹. On establishing its National Information Technology Centre (NITC) and achieving International standards regarding domain names (RFC 1591), Jordan was granted use of the top level *.jo* in 1995 by the Internet Assigned Numbers Authority (IANA) and gained its licence to start registering Jordanian domain names under the responsibility of the NITC¹². Since that time, NITC has used *.jo* as the State code top level domain (ccTLD) and has been in charge of registering domain names within Jordan. It is important to mention here that the NITC was the first to launch the Internet service in Jordan in 1995 and become the first Internet Service Provider (ISP) for the public sector in 1996¹³. NITC has followed a transparent policy in registering and accepting national domain names under the top level *.jo*. in order to guarantee an equal treatment for all registrants. Moreover, to ensure applying a high level of technology process and legal protection, NITC has simplified the registration process by offering an online registration via the website www.dns.jo. The registration form is available in both Arabic and English languages. After filling the form, the person registering may send the form electronically to be approved by the department. The form filler may send or fax supporting documents with this form and finally the register must pay the form fees in advance by cash or bank transaction. In regard to registering domain names in Jordan, the NITC requires

¹ Cybersquatting: “involves the registrant having registered a name, or names in most cases, in bad faith to gain some commercial advantage. This can involve trying to sell it back to a party it knows would be interested in having registration of the domain name for an inflated price or more commonly using it to direct traffic to their website or the website of a trade competitor of the trade mark holder in return for payment of a commission”. Definition found at: < <http://www.out-law.com/page-5700>>. Accessed: January 2012.

² Olwan, Rami.: ‘Cybersquatting and Jordanian Trademarks Law’ [2008] Paperwork <<http://www.scribd.com/doc/3901259/Cybersquatting-and-Jordanian-Trademark-Law>>. Accessed: December 2011.

³ The American Heritage Science Dictionary Copyright, 2005. Houghton Mifflin Com. <<http://www.thefreedictionary.com>>. Accessed: January 2012.

⁴ Powers, Dennis. *The Internet Legal Guide* (John Willet & sons Inc. New York 2002).

⁵ Out-Law.com, Legal news and guidance from Pinsent Masons. ‘Domain Name Disputes’ March 2008. <<http://www.out-law.com/page-5700>>. Accessed: January 2012.

⁶ Ibid.

⁷ Ibid No. 22.

⁸ Ibid No 22.

⁹ Bettinger, Torsten and others, *Domain Names Law and Practice: An International Handbook* (OUP, Oxford 2005).

¹⁰ Reed, Chris. *Internet Law* (Law in Context, Butterworths, London 200).

¹¹ Rosenoer, Jonathan. *Cyber Law: the law of the Internet* (Springer-Verlag, New York 1997).

¹² The Jordanian National Information Technology Centre (NITC). www.nict.gov.jo

¹³ Ibid No. 18.

the person seeking registration to present formal documents to approve the identity of the domain name's owner and other information like documents proving that the company is registered in the Ministry of Trade and Industry. The centre requires a trademark photocopy if the requested name is different from the company or the Organisation name. The NITC has confirmed the conditions under which the form will be acceptable, available online on the NITC website (<http://www.nitc.gov.jo/En>).¹ However, domain name disputes are subject to Jordanian courts authorities which are the main reference for all domain name disputes in Jordan. Despite the capacity of rules in regard to IP, Trademarks, Trade Names and Secret and Unfair Competition to address domain names disputes, the NITC has clarified its own position in regard to disputes in its conflicts section:

"1- For disputes over a domain name between two or more organizations, NITC exempts itself from all responsibility for the verification of rights to a name. NITC cannot act as arbiter of disputes arising out of this kind of conflict.

2- It is not NITC's responsibility to check availability of names in resources that are not Jordanian.

3- NITC will abide by all court orders without being named as party to a lawsuit.

4- NITC will not be liable for any interruption of business, or any indirect damages of any kind (including losses of profits) or otherwise.

5- If legal action is taken regarding the use of a name, NITC reserves the right to revoke, suspend or delete the name as it sees necessary".²

According to above mentioned, it is obvious that the NITC has exempted itself from dealing with domain names disputes and, in practice, with jurisdiction disputes. Such an exemption *de facto* means that these disputes are subject to the traditional jurisdiction rules under the Jordanian legal system.

Thus, it is important to claim that domain name disputes should be regulated by an independent law, and especially challenging issues as "cybersquatting", as mentioned earlier, that defines a crime which constitutes the infringement of a domain name or a misuse of a domain name. At present, there is no clear definition of what constitutes a misuse of domain names, or any specification of related crimes, because of the lack of clarity in the use of categories of domain name levels; for instance it is possible to apply *.com* and *.net* to a single name³. The NITC stipulates on Cybersquatting, that it is a crime "if domain names are registered in an attempt to resell them"⁴. Therefore, to avoid confusion or conflicts in the use of domain names, it is necessary to regulate such names under domestic and national laws, and also under International Convention rules. Another important aspect not yet regulated under Jordanian law is the intention of use at the time of registering a domain name; there seems little to control whether the user has registered the domain name with the intention of using the domain name *honestly*, or whether of using it with intention to *mislead the public* (bad-faith intent), or of using it in any other way.

This issue is related to the process to establish the place of the registrant, or of the registration State as the jurisdictional forum. This is especially problematic in multijurisdictional disputes where the basis of "first come first served" cannot easily be applied. At present there is no consistency in the application of such rules among International bodies such as WIPO and ICANN⁵.

As an urgent solution to domain names jurisdiction disputes, the NITC considers the domain name application as a contract between the person seeking registration and the NITC under Jordanian court jurisdiction. This means that until receiving an official notification of settlement, the centre will suspend the domain name,

¹ Applications may be rejected for the following reasons:

- If the company registering is not Jordanian or if it is a foreign company but does not have a representative office in Jordan.
- If the application is submitted without the support documents whether an official letter or a trade mark or registration license.
- If the domain name infringes the rights of others.
- If the domain is identical with an already registered name. • If the domain name is confusingly similar to other domain names and could mislead users of the Internet.
- If geographic names are requested by organizations other than the government
- If the domain name does not comply with public ethics.
- If there is conflict with another global name or trade mark.
- If the name is translated. Transliteration is preferred.

² Domain Names Conflicts under NITC rules <http://www.dns.jo/Registration_policy.aspx#third_detail>. Accessed: January 2012.

³ Bonnici, Jeanne. *Self-Regulation In Cyberspace* (T.M.C. Asser Press, Hague 2008).

⁴ NITC, General Terms & Condition, 4th section: Rejection <http://www.dns.jo/Registration_policy.aspx#forth_detail>. Accessed: January 2012.

⁵ For instance, under the ICANN's UDRP rules; the submission by domain name's holder on the jurisdiction court will avoid jurisdictional disputes concerning or arising from the use of the domain name in several jurisdictions. In addition, "decisions using the UDRP are not binding on courts, and proceedings can be initiated after the panel has given its judgment". Disadvantage of the dispute resolution procedure, Out-Law.com <<http://www.out-law.com/page-5700>>. Accessed: January 2012.

with the reality that the Jordanian laws probably do not yet cover all domain names issues. Doing so would require a private law or specific provisions under the current laws. In the meantime, recourse is made to a specialised office at the WIPO in Geneva, designated to solve domain names disputes by using alternative disputes solutions (ADS) such as arbitration¹.

To sum up, there is a main challenge in the registering of trademarks on the Internet generally, and in Jordan particularly, as a consequence of the increased domain name jurisdiction disputes at the national and international levels. The absence of a qualified domestic law and the implementation of rules under membership of an International Convention have left the practice of awarding and registering domain names in a vague situation, especially with the massive increase of trademarks and domain names registration in Jordan. Moreover, the unsolved jurisdiction problems in cyberspace cases have created more obstacles to govern these issues under Jordanian laws. To minimise these problems on the Internet, Jordan must organise domain name legislations on the Internet, especially on issues related to trademarks rules. The idea of applying territorial and personal rules might be accepted under the top level *.jo*. Despite disagreement with the related International Conventions, these rules will grant Jordanian authorities the power to govern disputes in their territory and under the domain name *.jo* as a Jordanian nationality reference. However, a stronger principle is to follow the rules of the Jordanian registration place as the jurisdictional debate over disputes involving Jordanian and foreign parties.

It is important to review issues related to the *mental element* of trademarks and DIP crimes. The mental element means the intent of a defendant or an offender in committing a crime. It has been problematic for judges and Courts to affirm an offender's knowledge of a crime, given that the mental element must appear clearly in respect of trademark and domain name cases. The required law must deal with these issues and interlink them with other related issues such as protecting unregistered common trademarks. These crimes have to be combined and gathered under advanced laws to include intellectual and industrial laws especially the Unfair Competition and Trade Secret Law. In terms of domestic and International jurisdiction, there is a need to establish domain name rules which will allow reorganising current registration of different top levels with the same low level, such as using *xxx.com* and *xxx.net*. Such a reorganisation will prevent disputes over using the same domain or trade name on the Internet. This may also be arranged by maximising the scope of Provision 8 above to include in addition to cybersquatting other established crimes and offences related to trademarks and domain names such as "typosquatters²", "subdomain³", and "gripe sites⁴". In addition the meaning of "conflict" in this provision should be clarified, or removed or substituted by another term better adapted to the characteristics of the Internet⁵.

Finally, the "first come first served" principle of administration must be reconsidered. Currently, this involves cooperation between national trademark offices and domain name centres, International growing bodies and interested organisations. The idea of "first come first served" in its form may work at an individual level in the trademark field but may be open to jurisdiction conflicts if exercised in another field such as domain and trade names. Such conflicts may also appear in national and International cases since the Internet has no borders or nationality.

CONCLUSION

The study of domestic jurisdiction rules in Jordan and its memberships in IP Conventions and agreements helps to argue that subject matter rules appear to have the capacity and to be appropriate for governing cyber disputes in general, and DIP disputes in particular. Since domain names are classified under the gTLD, such as *.com* for commercial and *.biz* for business, these rules are fundamentally suitable to harmonise cyber classification with Conventional subject matter rules classification. Alternatively, the idea of a worldwide jurisdiction looks like a pious dream, observing the failure of personal and territorial rules to govern issues in cyberspace. That subject matter rules are more appropriate for application to Internet disputes has been illustrated by the example of problems and solutions related to domain name disputes on the Internet. However, subject matter rules in their current forms may not be able to control nor to accommodate the diversity of jurisdiction disputes, thus they may require further amendments at national and International levels. Thereto, Jordan needs to reform and amend its

¹ WIPO Arbitration and Mediation Centre < <http://www.wipo.int/amc/en/index.html>>.

² Typosquatters: also called URL hijacking, is a form of cybersquatting, and possibly brandjacking which relies on mistakes such as typographical by Internet users when inputting a website address into a web browser. Should a user accidentally enter an incorrect website address, they may be led to an alternative website owned by a cybersquatter. Definition found at STRIDER: < http://research.microsoft.com/en-us/um/redmond/projects/strider/urltracer/Parked_Domains.htm>. Accessed: January 2012.

³ Subdomain: "a domain which is part of a larger domain" <<http://encyclopedia.thefreedictionary.com/subdomain>>.

⁴ Gripe sites: Also know as complaint or sucks sites, are websites to critique or mockery someone or something. Ibid No. 21.

⁵ Washington DC Domain Name Lawyer & Domain Law Attorney. Cyber law P.C.

< <http://www.cyberlawonline.com/general/practices/domain-name-disputes-and-domain-name-law.html>>. Accessed: December 2011.

existing IP and DIP legislation in order to guarantee better enforcement and protection to users. This applies especially to jurisdiction rules under the discussed IP branches, particularly in respect to domain names. In addition, the State must grant the Jordanian relevant authorities the right to enforce and regulate DIP issues, such as the National Library, and the Adequate Financial and Resources Office, and to enable them to ensure protection of IP, especially via the Internet. It is moreover urgent to review the judiciary rules by rebuilding the capacity and qualification of the Jordanian judges to handle DIP disputes in general and disputes through the Internet in particular, following the EU trend in choosing the EPO judges. Finally, Jordan must review its memberships in IP and DIP Conventions and Agreements in order to monitor any disadvantages inherent in these memberships, particularly in relation to its Courts' jurisdiction in covering cyber disputes or disputes involve foreign norms. It is important also to counterpoise the internal benefits with the International benefits of such Conventions and agreements in terms of the extraterritorial jurisdiction rights they bring especially jurisdictional rights over DIP cases.

RECOMMENDATIONS

Regardless of future developments in Jordanian legislation, the research recommendations are:

- the authorities shall oblige domain name applicants to appoint the preferred jurisdictional forum in their registration applications;
- the place of registry would be better adopted by Jordan as a jurisdiction forum than others, regardless the nationality of applicants or registrars.

The implementation of such recommendations might prevent further jurisdiction or multijurisdictional disputes over domain names, or confusions as to place, that is, whether to claim jurisdiction on the basis of the place of the violated domain name, or of the place of the defendant or of the place of the registrar (in most case; the domain name owner).

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