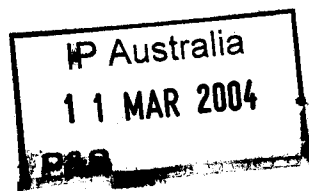


10 March 2004



Mr J Roberts
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Dear Mr Roberts,

SUBMISSION

**A review of the relationship between
trade marks and business names,
company names and domain names.**

Since 1 July 1996, Capital Monitor has provided its news services electronically, via e-mail and our website. When we first registered our domain name in early 1996, we attempted to register in Australia – www.capmon.com.au – and in the USA - www.capmon.com – to ensure that we could hold the abbreviation “capmon.com” worldwide.

In the event, our US registration - www.capmon.com – was approved months before the .au domain name, so we have used www.capmon.com ever since, although we maintain our registration of the .au and several other associated domain names.

There were two issues at the time:

- a. the Australian registration system was run idiosyncratically and slowly, by a private *person(!)*, and took little account of commercial/business realities; and
- b. US domain name registration was, and still is for many Australian organisations, highly desirable.

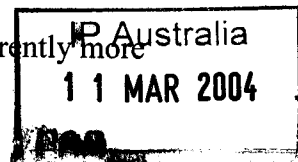
There have been recent moves in US courts which appear to open avenues to challenge foreign ownership of US (ie .com) domain names. That could be achieved by allowing US companies to register a business name or trade mark in the State of Virginia, the home of ICANN, and then to seek possession of the associated .com domain name. Capital Monitor has applied to register our business name and our www.capmon.com domain name as US Trade Marks.

I provide this background to demonstrate that Capital Monitor has some practical experience in these matters.

What Are Domain Names?

Domain names should not be thought of as trade marks. They are just addresses on the Internet which may incorporate the business's trading name. Just as the postal system has unique, worldwide, structured physical addresses, and the telephone system has world-wide electronic numbers as its addresses, so domain names must be unique addresses on the Internet.

As with any other form of address, one domain name address can be inherently more valuable than another.



Who Should Own Particular Domain Names?

If a person pays for a postbox in the Bellevue Hills, NSW, Post Office, they are entitled to use that address even if they live in Penrith. If they want to have a street address in Bellevue Hill, they must invest more.

If they want a *particular* postbox number or street address at Bellevue Hills, they might have to buy it from the current user. Similarly, if they wish to own a particular phone number, they can either register it, if not already in use, or buy it from the current owner. Likewise for company names and business trading names.

So it should be with domain names. All that is needed is an authoritative, unambiguous registration system which indicates who is the registered owner and ensures there are no multiple registrations of the same domain name. The same issues have to be addressed as with business trading names (except that domain names know no physical boundaries and the Internet can permit no ambiguity). If a business wishes to associate a domain name with its company or trading name or trade mark, let it buy the domain name and/or the trade mark or trading name from whoever holds it, or simply register it if unallocated.

If a company or person is sharp enough to buy land before a development is announced, we usually applaud their acumen. For some reason, if a domain name is registered and some other organisation then claims that it is associated with *their* business, the current derogatory term used against the first registrant is cybersquatting. This is partly because people assume some sort of intellectual property connection, without treating intellectual property as just another form of property, and partly because there is currently no single registration system linking business names with domain names.

Private or Public Domain Name Registration Systems?

Many of the current problems with domain name registration have been caused by ignorance of the importance of the Internet by the Australian Government (and many of the business owners of trading names) about 10 years ago. The result was that no Government regulatory agency was given responsibility for establishing a domain name registration system linking domain names with either the company registration processes (as their Internet *address*) or the trade marks that some of those organisations rely on for trading purposes. Since then we have bumbled along with a separate, *private* Internet domain name registration agency process, which does not work well and has sometimes been inhabited by commercial sharks who have had to be put out of business by the ACCC and ASIC.

Many Australian businesses and associations still have to register new domain names as .asn.au (which was intended to be used by the scientific community) or as "higher level" .com (ie US) domain names. This is often because of the difficulties they still experience with the various private Australian domain name registration companies.

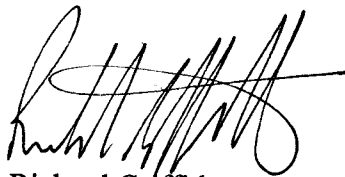
It can therefore be argued that we have tried private domain name registration systems for over a decade, and they have failed.

Recommended Domain Name Registration Responsibilities

All companies and many other organisations have to register their company details and their trading names with ASIC and the associated State Government business registration authorities (Surely an argument for one, centralised, national business name system?), but not many have any involvement with trade marks. *It therefore seems logical for ASIC to have carriage of the registration of the commercial domain names/addresses, eg .com.au, .biz.au, and , possibly .asn.au and .org.au.* (The only Government agency more ubiquitous than ASIC is the ATO, which holds details about everything and runs the Tax File Number and ABN identifier systems, but neither we, nor probably they, would recommend that they be given the task of regulating domain names!)

Private citizens could, presumably, use their personal telecommunications carrier to register their personal domain names, which would then become as much their personal, portable property as their telephone numbers and e-mail addresses are now. Australian Government agencies already have their own domain name coordination arrangements.

Yours sincerely



Richard Griffiths
Managing Director