Legal Nature and Protection of Domain Names with Emphasis on Iranian Law

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One of the main questions about domain names is whether they are property rights and therefore governed by property rules or contractual rights to which the general rules of contract law apply? In Iran, domain names may be simultaneously, property and contractual rights. Domain names may be intellectual property at the same time e.g. where they are registered as trademark but this does not mean that they are intellectual property in themselves. IRNIC, the .ir ccTLD manager in Iran, has adopted a number of documents to regulate.ir domain names. The gTLD domain holders must respect the ICANN rules. However, it is recommended that the Iranian legislator passes a specific law to deal with all aspects of domain names.

Keywords: Domain names, property, contractual rights, intellectual property, Iranian law

Despite the importance of domain names, their legal nature is uncertain. Some authors and courts consider domain names as property rights and believe that property rules including the possibility to seize them in order to enforce a judgment are applicable thereto. The main justifications of this view are the economic value of domain names and the bundle of rights theory. However, some commentators and courts have categorized domain names as contractual rights. The main reason is that domain names are the result of a registration contract between the domain name holder and the registrar and consequently the general rules of contracts are applied to them including the privity of contract principle. The supporters of contractual nature, compared to the registration contract to the contract between a telephone company and its customers and believe that the former does not transfer any property rights to the registrant. However, this comparison seems to be imperfect since unlike telephone numbers, domain names are not mere addresses and they carry an additional character i.e. the identification of what is provided by a website.

The relationship between domain name rights and intellectual property rights is a challenging issue deserving deep and comprehensive analysis. The question is whether domain names are a kind of intellectual property or not. The answer to this question depends on the answer to a more basic question: are intellectual property rights limited to those stated and guaranteed by legislator of a given country or not. The negative answer seems to be more acceptable because where a law is passed to protect some special rights under the title of intellectual property, it means that the legislator does not intend to protect other rights. Neither Iranian nor foreign laws have categorized domain names as intellectual property rights and unlike trademark, there are no international treaties regulating domain names.\(^1\)

Even the TRIPS Agreement has not mentioned domain names which indicate that domain names are not intellectual property rights. Yet, they may be registered as trademark if they meet its requirements and consequently enjoy trademark law protections (intellectual property protections). This is a way to protect domain names. But it is clear that in such a case, domain names will have an additional characteristic which shows that they are not intellectual property \textit{per se}. There may be conflicts between domain names and trademarks and between domain names themselves which will also be studied in this paper. Article 66 of the Iranian Electronic Commerce Act aims at protecting trademarks against being registered as domain names in bad faith. In Iran, ccTLDs are managed by IRNIC, while accredited registrars manage gTLDs. IRNIC has adopted specific rules to apply to its relationships with registrants which will be referred to in this paper where necessary.

Given the above said, different approaches to the legal nature of domain names, then the question of their legal protection will be studied.

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Legal Issues Related to Domain Names

Domain Name Acquirement

“The only way how to obtain a domain name is registration, which is based on first-come first-served principle”. But where should a domain name be registered and who is in charge of registration?

In Iran, the registration, management and sale of .ir ccTLDs is performed by IRNIC- an entity which is sponsored by Institute for Research in Fundamental Sciences. IRNIC has a set of documents, essentially based on UDRP, dealing, inter alia, with registration of .ir domain names, their assignment and dispute resolution. The first document is “Terms and Conditions for the Registration of an Internet Domain Name (under .ir)”. This document, which is in fact the registration agreement between IRNIC and the registrants, consists of 25 articles and 4 appendices (including domain rules, Whois policy, registration fee and renewal policy and procedure). The document has adopted the fist-come first-served principle in its article 6. (Other documents will be referred to when necessary). According to Domain rules adopted by IRNIC "Organizations legally represented within the geographic boundary of Iran" may apply for .ir domain names. As regards gTLDs, any person wishing to register a gTLD, must refer to an ICANN- accredited registrar. The disputes over gTLDs are resolved based on UDRP adopted by ICANN.

Effects of Domain Name Acquirement

As any other agreement, the registration agreement creates certain obligations for parties, of which the most important are: “1) for the applicant- payment of registration and/or yearly fee and 2) for the registrar – to accord the registered domain name to the registrant; to administer the domain name server; to administer and keep up to date the Whois database; to associate the domain name with a certain IP address – all these coming to provide the registrant with the possibility to use the registered domain name. Each registrar has its own contractual terms of service”.4

Upon the conclusion of the registration agreement, the domain name, is allocated to the registrant, whereby it becomes the legal owner of it. Some believe that as a result of the said agreement, it is entitled to “the use of an alphanumerical string to designate a path to a server in the Internet space”.5 Therefore, from the view point of this group, the domain name is not transferred to the registrant but only the use thereof. This is due to the fact that the legal nature of the registration agreement itself is not certain either.6

Subject to the laws and regulations of each state, the domain name owner has the right (not the duty, however) to use his/her domain name in any desired manner. On the other hand, there is a financial obligation under which, the registrant must pay an amount to the registrar on an agreed basis. IRNIC has declared such amounts in Appendix 3 to its Terms and Conditions titled: "Registration Fee".

Different approaches to the legal nature of domain names

Domain Names as Contractual Rights

Since a domain name is the subject of a registration agreement, some authors and courts have concluded that the right to a domain name is a contractual one.8 For example, the Virginia Supreme Court in Network Solutions, Inc. v UmbroInternational, Inc held that a domain name could not be subject of garnishment to the benefit of a judgment creditor. In fact, the court described the right to use a domain name as “the product of a contract for services”.9 The reasoning of the Supreme court has been followed by the District court of Colombia on 10 November 2014 which held that ccTLDs like .ir are not subject to attachment in the District of Columbia.10

It is clear from the judgment that the Virginia Supreme Court does not see any transfer of title in a registration contract which in the eyes of the court is classified as a service contract. In fact, according to the privity of contract principle, a person who is not a party to a contract cannot acquire rights arising from that contract nor can it be liable for obligations arising from it. In other words, “the general rule is that contracts cannot be enforced either by or against third parties”12 and given the contractual nature of a domain name, the rights thereto, are confined to the parties to the registration agreement and hence the impossibility of attaching the domain name in order to satisfy a judgment. The High Court of Justice of the UK treated domain names as contractual rights in the popular case of Pitman.13 In this case, the plaintiff Pitman Publishing Division of Pearson Professional Limited, registered the domain name pitman.co.uk in 1996 with Nominet U.K. Later it discovered that the domain name had been transferred to Pitman Training Ltd in the same year apparently due to technical errors. Pitman Publishing brought an action against Nominet and Pitman Ltd based on, inter alia, property
right grounds which were rejected by the court. In fact, according to the High Court, as no contractual link between Pitman Publishing and Pitman Ltd existed, the former could only sue the registrar, Nominet, for breach of contract in order to obtain indemnification and unless in special circumstances—such as goodwill or certain abusive manner—there is no means to obtain a transfer of the domain back to the first registrant.14

Similarly, some specialists argue that the holder of a domain name gets a kind of license to use it as long as the license fee is paid and in case the registration is not renewed, the holder loses the right to the domain name.15 These authors believe that domain names derive from the contract with the registrar and cannot exist separately from that contract.16 Some French experts have taken a similar attitude declaring that one is not the owner of a domain name, rather, he/she owns a right to use the domain name.17

According to some sources, domain names are relative rights as opposed to absolute rights. Absolute rights within which property rights fall, oblige an unlimited number of persons towards the right holder, while relative rights are rights towards which corresponds the obligation of an exact person and arise from contractual relationships, torts, etc. Since, domain name can be used as a result of a contract between the registrants (the right holders) and the registrar, and as was noted, the latter is the only one obliged towards the former, domain names must be considered as relative rights.18 From this perspective, such an idea may be accepted in Iranian law. It is evident that domain name rights are essentially contractual rights, but they are at the same time property because according to Iranian law, proprietary rights are divided into three categories. First, the rights which directly relate to a tangible thing such as a car; these are called real rights (Hoghooge Eini) and resemble absolute rights discussed above; second, those rights which directly relate to a person and involve the right to demand something from him/her, or require him/her to do an act or refrain from an act; these are called Hoghooge Deini and are similar to relative rights already discussed. They principally arise from a contract or a tort. Third, the rights that possess a mixture of the characteristics of the first and second categories and are called mixed rights such as shares in companies and intellectual property rights.19 So, in Iranian law, all categories of rights mentioned above are property and domain name rights are contained in the second category.

It should be noted that some authors have rejected to treat domain names as being merely contractual and believe that the examination of the rights attached to domain names leads us to this conclusion as the court in Kremen v Network Solutions (discussed below) arrived at the same.17

**Domain Names as Property**

The Supreme Court’s view in Network Solutions has been criticized by some commentators for taking a fairly simplistic view of property and ignoring the entire world of intangibles. They confirm the argument put forward by Umbro that one can separate the debtor’s right to use the domain name from the domain name registrar’s obligation to provide services relating to the domain name, and the holder’s right is a property right subject to garnishment. These authors—in order to prove their opinion—give the example of deposit bank accounts, which despite being inextricably bound to the obligation of the bank to keep records of the amounts flowing in and out of them, no one argues they are not a form of property. Although bank accounts, as an intangible property, have value, their corresponding rights are useless without bank services. The same is true for domain names, which without the services of the registrar to link them to an IP address, are useless10. Therefore, according to these authors, the dependence on services is not a justification to deny the property feature of domain names. However, it seems that a distinction may be drawn between the bank accounts case where the money deposited is from the beginning the customer’s property and registration agreements where the right to use a given domain name is granted to the registrant as a result of the agreement, without which no rights to the domain name use could be imagined for the registrant.

It is now time to seek another way to prove that domain names are a kind of property. The first solution is to see whether domain names have economic value. A look at the market shows that domain names are, no doubt, of economic value: they are sold at different prices depending on a variety of factors, there are numerous disputes regarding the ownership of domain names. But the fact that domain names are things with economic value is not a reason, from the viewpoint of some commentators, to justify their classification as property.17 In fact, they rely on the concurring opinion expressed by Justice Holmes in International News Services v Associated Press20 who contended that property as a creation of law does
not arise from value. “Property depends upon exclusion by law from interference, and a person is not excluded from using any combination of words merely because someone has used it before, even if it took labour and genius to make it”. In other words, the registered user of a domain name owns no property rights in it unless the law creates and grants the registered user certain rights relating to the domain name. Instead of relying on the value of domain names, some scholars have preferred the bundle of rights theory as a means to categorize domain names as property. According to these scholars, domain names are property because they possess all three requisite rights: first, the owner has the right to exert control over domain name, i.e. its domain name is unique; second, it has the exclusive right to use the domain name; and third, it has the right to alienate or otherwise dispose of the domain name.21,17 The court in Kremen v Network Solutions had been asked to decide whether the tort of conversion had been committed as to plaintiff’s domain name “sex.com”. To do this, the court had to answer the preliminary question of whether registrants had property rights in their domain names. The court applied a three-part test. Referring to G.S. Rasmussen case23 the court cited three criteria for property: “First, there must be an interest capable of precise definition; second, it must be capable of exclusive possession or control; and third, the putative owner must have established a legitimate claim to exclusivity”.23 The court went on establishing that domain names meet each criterion: first it compared domain names to a share of corporate stock or a plot of land and declared the domain name is a well-defined interest. “Someone who registers a domain name decides where on the Internet those who invoke that particular name whether by typing it into their web browsers, by following a hyperlink, or by other means are sent”. Second, the court proves the exclusivity of domain names: “Ownership is exclusive in that the registrant alone makes that decision. Moreover, like other forms of property, domain names are valued, bought and sold, often for millions of dollars and they are now subject to in rem jurisdiction”. Third, the court believes that “registrants have a legitimate claim to exclusivity. Registering a domain name is like staking a claim to a plot of land at the title office. It informs others that the domain name is the registrant’s and no one else’s.”27

The Ontario Court of Appeal held, in the case of Tucows.Com Co. v Lojas Renner S.A., domain names satisfy the criteria of property as defined under Canadian law and explained that domain names are a form of personal intangible property, in the sense that they are conceptual, rather than physical. It is worth noting that Justice Weiler, in order to justify this ruling, referred to, inter alia, jurisprudence and academic commentary from various countries, including England, the United States, India and Australia and found that “emerging consensus appears to be that domain names are a form of property”.24 This view is supported by some authors who assert that “there is general consensus amongst commentators that domain names, irrespective of whether they attach to a trademark and also irrespective of their content and popularity, should be treated as property for all purposes”.25 Similarly, some French researchers view domain names as intangible property because of their economic value.25 A number of French judicial decisions affirm this view: for example, le Tribunal de Grande Instance de Paris held on 20 June 2000 that a company registering a domain name is its owner.26

There has been, however, opposition to the idea that domain names are a kind of property. Rindforth has been quoted as believing that although domain names are assigned and traded, they are not property as such: as soon as an assignment occurs, the domain name is deregistered from the old holder and a new registration is made by the new holder. The supporters of this opinion rely on UDRP case law which states that the new holder of a domain name cannot avail himself of the time or rights held by the old holder of the identical domain name.27

In contrast to this view is the reasoning of some authors, followed by the Ontario Court in the above said case, who suggests that, as regards the legal nature of domain names, the property model may be preferable for several reasons: “It best accords with the way market participants relate to domain names. Even though a domain name is a form of contractual license from a registrar to a registrant, it results in a valuable asset that is freely traded on the open market and that is occasionally stolen by a bad faith actor. Even though a transfer of a domain name is, in reality, a de-registration from the original registrant and re-registration to the new registrant, it is now treated routinely as a seamless transfer, as if the name was being handed directly from the original registrant to
the new registrant. Further, the acceptance of a property rights rationale for regulating generic domain names could take advantage of existing property-based laws such as theft and conversion, and simply extend them judicially to virtual property.

Property has not been defined in Iranian laws. Rather, the doctrine has defined it as something which has two features: first, it is useful, i.e. meets a need; second, it is capable of appropriation by a given person or nation. In addition, property is something that is, from an economic aspect, transactionable and money or other property is given in exchange for it. In order to determine whether something has economic value or not, recourse must be made to the custom.

According to the custom in Iran, domain names have economic value, therefore these contractual rights, at the same time, may be considered property. This view has been supported by an American author who believes that the contractual nature of domain names originates from the registration contract between the registrant and registrar and their duration may be indefinite provided the required fees are paid. They are simultaneously intangible property in so far as the domain name holder has the right to exclude others from using the same domain name, and may control use of the domain name.

But it should be asked whether domain names are a kind of intellectual property? Some authors have answered negatively: “there isn’t yet any global consensus on whether domain names are part of other intellectual property rights and therefore protected by specified law”. In fact, in order to find an exact answer to this question, first must be answered the question of whether there is an exhaustive list of intellectual property rights? If yes, domain names fall under which kind of intellectual property? Domain names have not been mentioned as intellectual property rights in any international convention or agreement concerning intellectual property. Even TRIPS as the latest global agreement in this field, has no specific rule on the protection of domain names. Some authors have attributed this to the fact that “the Internet was not yet a pressing source of intellectual property infringements when the TRIPS Agreement was drafted”. They offer a second reason why domain names have not been mentioned in TRIPS which is very important for us. “Moreover, since, domain names are not intellectual property rights per se it is still a sensible decision not to regulate them under the TRIPS Agreement”. So, these authors do not see any inherent intellectual property rights in domain names. This view seems to be relatively justified: suppose a domain name in its first day of registration; such a domain name is not but an address which in itself has no economic value and, as was mentioned, through being used in the course of commerce may gain economic value. But it is reasonable to ask whether this economic value, without anything else, makes domain names a form of intellectual property? The answer is negative. Intellectual property rights are those rights which the law of a country recognizes and their validity does not depend, merely, on their economic value. Domain names, even after being used and gaining economic value, may not be considered as intellectual property rights since they have not been recognized by law makers around the world as such. In fact, one should go back to the main question which underlies our discussion: are intellectual property rights limited to those rights named in the laws of a given country? To the author, the answer is positive. As discussed earlier, domain names are a result of the registration contract and their existence depends on it. There are rights and obligation for both parties which derive from that contract. But intellectual property rights are not a creation of contract. A trademark, no doubt, is principally, valid if it is registered with the industrial property office, the same is true for a patent and a design, but their use is not regulated by a contract between the office and the owner.

Further, intellectual property rights are territorial rights, protected within the boundaries of a country, while domain names are universal rights and immediately after a domain name is registered, no one, except the owner, can obtain any rights to it.

It seems that in the Iranian legal system, intellectual property rights are also limited to those specified by laws and regulations passed in order to protect industrial property and literary and artistic property. For example, the Iranian Act on the Registration of Inventions, Industrial Designs and Trademarks of 2007 protects only these intellectual assets and the Iranian Act on the Protection of Literary and Artistic Works of 1969, does not contain any provision related to domain names.

Yet, if a domain name is registered as a trademark like Amazon.com, it will be accorded trademark rights, not because it is a domain name, but due to its quality as a trademark. But this does not mean that a domain name is intellectual property in itself.
are other authors who have endorsed this viewpoint. “A domain name shares characteristics with various forms of intellectual property as traditionally understood, but it does not fall neatly within "traditional" categories”. This opinion, if accepted, paves the way to think of new or in other words, untraditional forms of intellectual property. But the question remains how to protect these unprecedented types of intellectual property rights. It is beyond saying that they, by themselves, cannot enjoy the current statutory protections.

Legal Protection of Domain Names

A number of legal mechanisms are available to protect domain names which will be discussed below in detail.

Protection through Trademark Law

As mentioned earlier, a domain name holder may register it as a trademark. In such a case, the domain name acquires a new additional character as a trademark which entitles the holder to trademark rights and if the same domain name or a confusing one is registered or used as a trademark, the holder may take action against the infringer. According to Article 66 of Iranian Electronic Commerce Act: “In order to protect consumers’ rights and encourage legitimate competitions in the context of electronic transactions, exploiting a trademark as domain name or any other online display of trademarks which misleads or confuses others as to the originality of goods or services is forbidden and the offender will be sentenced to the punishment prescribed in this Act”. (Emphasis added). The purpose of this article is to protect trademarks against, inter alia, registration as domain names. The term “trademark” in this article includes all kinds of trademarks, including domain names registered as trademarks. Furthermore, Article 31 of the Iranian Act on the Registration of Inventions, Industrial Designs and Trademarks states that: “the exclusive right to exploit a trademark belongs to the person who has registered it in accordance with the provisions of this Act”. Registering a trademark as domain name is a kind of exploitation and therefore, is limited to the trademark owner and if done by anyone other than the owner, the latter may bring an infringement action against them (Article 40b of the Iranian Act on the Registration of Inventions, Industrial Designs and Trademarks). In addition to the provisions mentioned, IRNIC, in its Dispute Resolution Policy for Internet Domain Names, adopted provisions to deal with such situations. According to Article 4 of this document, a domain name holder is required to submit to a mandatory administrative procedure in case a third party asserts to the applicable Provider, that the conditions below are present:

The holder's "domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and"

The holder has "no rights or legitimate interests in respect of the domain name"; and

The holder's "domain name has been registered or is being used in bad faith".

There have been a number of cases decided by WIPO Arbitration and Mediation Center administrative panels concerning .ir domain names in accordance with IRNIC documents. For example in case No. DIR2015-0001, Marks and Spencer Plc v Ali Ebrahimi, the administrative panel, relying on the three-element test mentioned above, held that the domain name <marksandspencer.ir> should be transferred to the complainant.

According to the facts of the case, the respondent had registered the domain name <marksandspencer.ir> with IRNIC. Complainant is a UK corporation and is the owner of the trademark MARKS AND SPENCER and the domain name <marksandspencer.com>. The panel, in this case, found that the disputed domain name <marksandspencer.ir> was confusingly similar to Complainant’s MARKS AND SPENCER trademark which had been registered prior to the disputed domain name (and therefore the first element of the test was present). According to the panel "the mere presence of the ccTLD “.ir” is not enough to escape a finding of confusing similarity. In fact, such addition might even mislead consumers into the belief that the disputed domain name is Complainant’s domain name for the Islamic Republic of Iran consumers".

In addition, the panel held that the second element of the test had been proved by the complainant because the respondent had never used the disputed domain name or a name corresponding to it "in connection with a bona fide offering of goods or services", no evidence indicated that the respondent was commonly known by the disputed domain name and the use by respondent of the disputed domain name was not noncommercial or fair use name "without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue".
Finally, the panel agreed with the complainant that the disputed domain name had been registered and used in bad faith since "the trademark MARKS AND SPENCER has been in use long before the disputed domain name was registered, including in domain names highly similar to the disputed domain name. For such reasons, the Panel finds that Respondent must have been aware of Complainant’s trademark when it registered the disputed domain name" and no evidence was produced to justify respondent’s registration of the disputed domain name. Furthermore, the respondent’s use of the disputed domain name was passive because it was solely an under construction page. The panel, considering the above said, decided on the transfer of the disputed domain name to the complainant.

Registration of a domain name as a trademark is, however, limited to the special case of domain names related to goods or services. It is clear that all requirements provided in trademark law must be fulfilled in order for a domain name to enjoy trademark rights. One of the main requirements for registrability of trademarks is their association with goods (or services in case of service marks) and their ability to distinguish them from the goods of others. Article 30a of the Iranian Act on the Registration of Inventions, Industrial Designs and Trademarks defines a mark as "any visible sign which is capable of distinguishing the goods or services of natural or legal persons from another’s goods or services". But not all domain names are related to goods and services: suppose a personal website which does not seek any commercial advantage and merely contains educational experiences of a retired professor. It is not reasonable to expect him/her to register such a domain name as a trademark or even a service mark.

In addition, there is no trade to be distinguished from other trades through a trademark. Furthermore, there are domain names which cannot be registered as trademark. Article 32 of the same Act enumerates those marks which are unregisterable. For example, according to Article 32a, a mark that cannot distinguish the goods and services of one undertaking from those belonging to another is unregisterable. In fact, for a domain name to be registerable, it is not necessary to be capable of distinguishing goods or services. Instead, generic words, which do not possess the distinguishing feature and therefore, cannot be registered as trademarks, can, in principle, be registered and used as domain names.

Accordingly, it is necessary to find another way to protect those domain names which have not been or cannot be registered as trademarks. Suppose the case where a domain name owned by someone is registered as a trademark by another. The question is whether the domain name owner is entitled to bring an action against the trademark registrant? The answer, the author believes, is negative since, as it was observed, unregisterable trademarks are enumerated in the Iranian Act none of which includes this case and there is no specific provision on it. Concerning this situation, The Domain Name Rules of IRNIC have no provisions either. It seems that such cases must be treated relying on the general rules of Iranian civil responsibility.

Other Mechanisms of Protection

If a domain name does not possess the legal requirements of trademarks, one should seek other solutions for its protection. In fact, here the dispute involves two domain names as such. The situation where one’s domain name is registered as trademark by another was discussed above. There may, also, be disputes as to domain names themselves. It is self-evident that one cannot imagine a dispute between the same domain names with the same prefix and such hypothesis does not occur in practice because of the structure of DNS: “Every computer connected to the internet must have a unique Internet Protocol (IP) address and a corresponding domain name. This means that an IP address and its exact alphanumeric combinations using the same gTLD can only be registered and used by one entity”. But what if there is misleading similarity between two domain names (a kind of typosquatting) or a domain name with gTLD prefix is registered with ccTLD or vice versa. Again, the question arises as to the original domain name owner’s right to bring an action against the new registrant. If this is deemed as an unfair commercial practice, then unfair competition law must interfere and prevent such a conduct. There is no specific rule in the Iranian statutory laws to deal with this situation. Therefore, there is no general legal basis to prevent the registration of new domain names similar to the original one and in case such domain names are registered, their registration cannot be cancelled. Again, one may think of the general rules of civil responsibility. According to Article 1 of the Iranian Act on Civil Responsibility 1960 everyone who, without legal authority causes loss to another’s
property must compensate it. But in a civil responsibility action, the original registrant must prove the loss to its property and the causal relationship between the act of registration and the loss incurred upon him/her. It is clear that proving loss is not an easy task in all circumstances.

The only specific document in this respect is the Domain Rules adopted by IRNIC which in Section E declare the names that are excluded from the permitted domain names, among which are the names of Iranian provinces, cities and towns in Iran which “are reserved for respective administrative units” and famous personalities, events, natural features and resources of the country which “are reserved for appropriate applicants as designated by the Ministry of Culture and Islamic Guidance.” But these exceptions do not cover the cases discussed above. For example, a domain name holder whose domain name is not among these exceptions and has been imitated by another registrant, has no legal right to bring an action against the latter relying on the above said exceptions. Another document adopted by IRNIC is the Dispute Resolution Policy whose purpose is to govern the disputes between .ir domain name holders and any third parties (including gTLD domain name owners) other than IRNIC itself. Article 2b of this policy states that by applying to register a domain name… the registrant represents and warrants that: to its knowledge, “the registration of the domain name will not infringe upon or otherwise violate the rights of any third party”. As was discussed earlier, according to Section 4(a) of the same document, in case a third party refers to a dispute resolution provider approved by IRNIC and asserts to it that three elements discussed above are present, the registrant is "required to submit to a mandatory administrative proceeding". As was seen, the first element requires that the complainant is the owner of a trademark or service mark since, according to Article 4ai the complainant must prove that the domain name "is identical or confusingly similar to a trademark or service mark in which the complainant has rights". It is clear that the hypothetical case is not covered by this element. Therefore it is highly recommended that IRNIC revises its domain name rules to deal with the conflict between two domain name holders the first of whom is not the owner of a trademark.

Evidently, in cases a complainant who has no contractual relationship with IRNIC accepts the jurisdiction of a dispute resolution provider approved by IRNIC, this document will apply. But in case the original domain name owner is reluctant to refer the dispute to IRNIC and prefers to take action in a law court, it is doubtful whether the court would rely on IRNIC documents or tries to resolve the dispute by applying the general rules of civil responsibility. Given this fact, it is better for the Iranian legislator, in order to avoid inconsistencies and uncertainties, to intervene through passing a law to treat such situations and generally to regulate domain names.

**Conclusion**

Domain names are, in fact, the result of a registration contract between the registrant and a registrar authorized by ICANN, this has led a group of scholars and courts to classify them as contractual rights whose effects are limited to the parties to this contract. This view, if accepted, provides a limited context of protection for domain names. Given the economic value of domain names, other commentators consider them to be property rights since the economic value is the test to see whether something is property. Another group attribute the proprietary character of domain names to the bundle of rights theory because there are a set of rights related to domain names which are the conditions of property right. Categorizing domain names as intellectual property is very difficult because the prevailing opinion is that intellectual property rights are those specified and regulated by legislator and since, domain names have not been declared to be intellectual property rights by legislators including the Iranian legislator, they cannot be considered as intellectual property rights. But if a domain name is registered as trademark, it will be protected as such. In Iranian law, domain names may be property rights, since property is defined as a thing which, inter alia, has economic value. According to Iranian law, there is no problem for a right to be proprietary and contractual at the same time. In Iran, gTLDs and ccTLDs are registered before different authorities and consequently, they are governed by different rules which are respectively UDRP and the rules adopted by IRNIC. The Iranian legislator has not passed an exhaustive law to regulate domain names which may cause some uncertainties.

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