Celebrity squatting: The Ubiquity of Celebrity Culture and the Unique Problem It Presents for Domain Name Ownership

Sarah Noel Sheffield
“CELEBRITYSQUATTING”: THE UBIQUITY OF CELEBRITY CULTURE AND THE UNIQUE PROBLEM IT PRESENTS FOR DOMAIN NAME OWNERSHIP

“Even if I move my site to www.anything-else.com, I’ll still be one of hundreds, maybe thousands, of Don Henleys.”

I. Introduction

Since the emergence of the Internet, celebrity culture has exploded to a new level of exposure, surpassing its “Page Six” roots and becoming firmly entrenched in mainstream culture. This newly ubiquitous presence of celebrities in mass media coverage has created a host of legal problems. Over the past ten years, the obsession with celebrity-watching shifted from its classic embodiment of magazines and newspapers to the Internet. Because of this change in form, one of the most pervasive and problematic le-

1. Don Henley, Don Henley Wants This Domain, http://www.don-henley.com/domain/dispute.htm (last visited May 1, 2008) [hereinafter Don Henley Wants This Domain] (detailing legal battle for Don-Henley.com). Christian activist and Internet moderator Don Henley has been involved in a legal battle with musician Don Hugh Henley over the website Don-Henley.com since 1999. See id.

2. See Fame: The New Meaning of Life, http://edstrong.blog-city.com/fame_the_new meaning_of_life.htm# (last visited May 1, 2008) (discussing huge increase in media outlets, particularly online media outlets, and their expansive effect on popularity of celebrity culture). The Internet has created “a perfect marriage between technology and new media,” resulting in celebrity culture exploding into traditional media outlets as well as Internet media. See id.

3. See Erika Eichelberger, Paris, Also a City in Europe: A Brief History of Celebrity, N.Y. Inquirer, Dec. 1, 2006, available at http://www.nyinquirer.com/nyinquirer/2006/12/a_brief_history.html (commenting on growth of celebrity culture with increased expansion of Internet). Eichelberger notes that “[s]ex sells, celebrities sell. It’s fairly simple. Add to this the rise of the Internet and you get the current state of affairs: celebrity ubiquity.” Id. This “ubiquity” directly conflicts with the basic economic theory behind celebrity itself: the use of a famous person’s name or likeness, in limited circumstances of his or her own choosing, to make a profit. See Scott L. Whiteleather, Rebels with a Cause: Artists’ Struggles to Escape a Place Where Everybody Owns Your Name, 21 Loy. L.A. Ent. L. Rev. 253, 270 (2001) (noting that celebrity’s “livelihood depends upon the calculated exploitation of his or her name, image, and likeness [and thus he or she] inherently suffer the greater loss by the unauthorized use. Perhaps the greatest asset a celebrity has to sell is his or her ‘persona.’”).


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gal challenges that celebrities must now confront is the protection of their rights in the Internet domain name system, since the Internet allows any user to purchase websites that bear celebrity names. At the center of this complex intersection of celebrity prominence and the World Wide Web is a basic question: if a profiteer owns a website that shares a celebrity's name, what legal right does a celebrity have to claim the website from that "cybersquatter?"

As both the Internet's popularity and our fascination with celebrities grow, so too do the incentives for opportunists who buy celebrity-named websites that they see as future moneymakers. The cybersquatting phenomenon has a unique effect on actors,

5. See Philip G. Hampton, II, Legal Issues in Cyberspace, in Understanding Basic Trademark Law 2003, at 537, 546 (PLI Patents, Copyrights, Trademarks, & Literary Prop., Course Handbook Series No. 663, 2003) (explaining unique problems that have arisen from creation of Internet’s unitary domain names). Hampton notes that a major problem with the Internet is that it can cause the creation of a unitary location for a name or property that may be extremely common:

The fact that the domain name is unitary - it can serve as the address for only one company - creates problems not seen in the real world. For example, in the real world, several companies can share a trademark without any likelihood of confusion. On the Internet, there are no subtle distinctions: the address jones.com can be owned by only one company, no matter how many companies may rightfully be able to use the "Jones" trademark off-line. Domain names are, in essence, locations - they often do not act to designate the source or origin of goods and services, but instead exist as a unitary physical address that may or may not constitute a trademark at all.

Id. at 546.

6. See id. at 552 (offering definition of "cybersquatting"). "Cybersquatting has been defined by the United States Congress as registering, trafficking in, or using domain names that are identical or confusingly similar to trademarks with the bad faith intent to profit from the goodwill of the trademarks." Id.

7. See, e.g., LoveTheName.com, http://www.lovethename.com (last visited May 1, 2008) (advertising domain names for sale). LoveTheName.com recently opened a new section on their site, "Fame Capitalization," devoted entirely to the purchase of "celebrity domain names." See id. (follow "Fame Capitalization" hyperlink on right toolbar). The section references a recent article describing the competition celebrities face in the race to control domain names. See id; see also Brangelina Jump on Baby-Name Bandwagon: Hollywood Heavy Hitters Buy Up Baby Domain Names, KEYT 3 SANTA BARBARA, June 8, 2006, http://www.keyt.com/entertainment/3002261.html (last visited May 1, 2008) [hereinafter Baby-Name Bandwagon]. “We teach that the name of the game, is to buy on the cutting edge, because the ultimate winner in this game, is the one who gets there before the market does.” Id. (quoting LovetheName.com media spokesperson). Celebrity1000.com has been engaged in multiple litigations and mediations with celebrities over the rights to their names. See, e.g., Spacey v. Burgar, 207 F. Supp. 2d 1037 (C.D. Cal. 2001) (challenging use of celebrity’s name as domain name); see also Springsteen v. Burgar, WIPO Case No. D2000-1532 (Jan. 25, 2001), http://www.wipo.int/aml/en/domains/decisions/html/2000/d2000-1532.html (explaining mediation between Bruce Springsteen and owner of Celebrity1000.com).
singers, and even political figures. Internet entrepreneurs have taken full advantage of this potentially lucrative area by purchasing celebrity domain names as soon as they become available.

Until recently, celebrities were powerless to stop the poaching of celebrity-related websites and were left only with the unpleasant option of buying the offending sites from opportunists for inflated prices. Celebrities can now use recently passed legislation, the Anticybersquatting Consumer Protection Act ("ACPA"), as well as mediation agencies, to protect themselves against Internet fortune-hunters. Unfortunately, this new legislation has created problems for both celebrities and website owners alike, as each struggle to meet the ill-defined criteria necessary to successfully build or defend against a claim. More often than not, celebrities have instead turned to mediation to resolve domain name disputes. Mediation has proven similarly troublesome, however, as it has gen-

8. For a further discussion of legal troubles that celebrities have faced in claiming domain names from prior purchasers, see infra notes 68-151 and accompanying text.

9. For a further discussion of the effect that widespread reporting of celebrities' lives can have on potential cybersquatters, see infra notes 69-74 and accompanying text.

10. See Hampton, supra note 5, at 553 ("[D]omain names are assigned without reference to who may be 'entitled' to that domain name . . . the domain name registrars do not have a responsibility to research who holds the trademark rights associated with a particular domain name.").

11. See Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d) (2006) [hereinafter "ACPA"] (establishing new standards for determining ownership of domain names, including criteria to determine whether purchase was made in "good faith" or "bad faith"). This new anticybersquatting legislation, enacted in 1999, protects "marks," such as celebrity names, as well as trademarks. See id. at § 1125(c)(2)(A) (extending increased protection to famous marks which are "widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner").

12. For a further discussion of the criteria used in determining ACPA cases, see infra note 40. For a further discussion of why celebrities are reluctant to prosecute under the ACPA, see infra notes 58-62 and accompanying text.

erated startlingly different outcomes despite theoretically applying the same criteria to each domain name dispute.\textsuperscript{14}

This Comment explores the problems the Internet has created for celebrities and, specifically, the challenges celebrities face when they try to claim Internet domain names through both mediation and traditional litigation.\textsuperscript{15} Section II provides a historical overview of the complications traditionally associated with domain name ownership and legislative and mediatory attempts to remedy those problems.\textsuperscript{16} Section III analyzes the difficulties that celebrities encounter when they try to claim ownership of domain names over prior purchasers, as well as their attempts to block cybersquatters from purchasing websites containing their children's names.\textsuperscript{17} Finally, Section IV proposes potential solutions for creating more consistency in the outcomes of these cases and suggests the establishment of more specific criteria in order to remove ambiguity from current anticybersquatting legislation and mediation techniques.\textsuperscript{18}

II. BACKGROUND

A. Explanation.com: A Brief History of the Establishment of the Domain Name System

The appeal of Internet "domain names" is also what makes them legally troublesome: anyone can own one.\textsuperscript{19} Domain names can be purchased by any Internet user, and until recently, they could be adopted for any reason.\textsuperscript{20} The domain name system is run by the Internet Corporation for Assigned Names and Numbers (ICANN). For a further discussion of mediations where the outcomes varied, see supra note 13. For a further discussion of the problems celebrities face, see infra notes 80-184 and accompanying text. For a further discussion of the ineffective use of legislation and mediation to remedy problems associated with domain name ownership, see infra notes 19-68 and accompanying text. For a further discussion of difficulties that celebrities face when attempting to purchase or reclaim domain names, see infra notes 69-184 and accompanying text. For a further discussion of potential remedies for legislative problems associated with domain name registration and ownership, see infra notes 185-202 and accompanying text. See Hampton, supra note 5, at 545 (defining "domain name"). A domain name is "part of a uniform resource locator, which is the address of a site or document on the Internet." \textit{Id.}

For a further discussion of the general purpose of the ACPA, see infra note 40 and accompanying text.
ICANN is a privately run, non-profit organization that oversees both the allocation and use of domain names and handles disputes. One of ICANN's duties in managing the system is the implementation of the Uniform Domain Name Dispute Resolution Policy ("UDRP"). The UDRP "has been used to resolve more than 5000 disputes over the rights to domain names" and "is designed to be efficient and cost effective." Because of its relative convenience and quick response time to Internet disputes, many celebrities have chosen to use the UDRP over traditional litigation.

21. See ICAAN, Welcome to ICANN!, http://www.icann.org/new.html (last visited May 1, 2008) (discussing functions and responsibilities of ICANN in domain name system). ICANN describes its mission as one of "technical coordination." See id. This coordination includes overseeing the domain name system ("DNS"), a tool that helps users navigate the Internet in an easier way. See id. Every computer has a unique Internet protocol ("IP") address that identifies it. See id. One of ICANN's primary functions is replacing these IP addresses with letters that are easier for the user to remember. See id. ICANN thus "coordinat[es] the management of the technical elements of the DNS." Id.

22. See id. (discussing nature of ICANN as organization and functions of ICANN in dispute resolution). ICANN is responsible for many functions, including the coordination of the Domain Name System in order "to ensure universal resolvability so that all users of the Internet can find all valid addresses." It does this by "overseeing the distribution of unique technical identifiers used in the Internet's operations, and delegation of Top-Level Domain names (such as .com, .info, etc.)." Id.

23. See id. (citing UDRP as "recent accomplishment" of ICANN).

24. See id. (discussing UDRP as important function of ICANN and describing merits of UDRP for resolving Internet disputes).

25. See, e.g., WIPO Case No. D2000-1532, supra note 7 (explaining that Springsteen chose to mediate through UDRP rather than pursue domain name owner of BruceSpringsteen.com in court); see also Marcella Bernhard, Domain Name Loss for Boss, FORBES, Feb. 8, 2001, www.forbes.com/2001/02/08/0207springsteen.html (discussing result of BruceSpringsteen.com domain dispute). "Celebrities usually choose the arbitration route because it is quicker and cheaper than a court case." Id. Filing a complaint for WIPO mediation is far less complicated than filing the complaint in court. See Jonathan H. Anschell & John J. Lucas, What's in a Name: Dealing with Cybersquatting, 21-SPG ENT. & SPORTS LAW 3, 5 (2003) (noting relative convenience of mediation versus litigation). WIPO complaints can be filed online in a matter of minutes. See id. Additionally, WIPO's website offers complainants a simple "form complaint" to use (though a complainant is also free to draft his own complaint). See id. In addition to the conveniences offered by mediation, some celebrities may also see mediation as a path to a guaranteed favorable outcome. See Matthew Heller, The Domain Name Game: Have Cybersquatting Arbitrators Become Too Friendly to Celebrities? HOLLYWOOD REPORTER, Apr. 4, 2007, www.hollywoodreportersq.com/thresq/ip/articleDisplay.jsp?vnu_contentid=100 3567452 (on file with author) (discussing recent favorable outcomes in celebrity domain name disputes and whether they indicate trend).
B. Mediation.com: The Unpredictability of the UDRP and WIPO in Solving Internet Disputes

In 1996, prior to the creation of the UDRP, ICANN began searching for a way to resolve domain name disputes. ICANN accredited an agency of the United Nations, the World Intellectual Property Organization ("WIPO"), to investigate ways to handle such disputes. WIPO typically manages intellectual property disputes between parties who choose to pursue mediation rather than litigation. After substantial investigation, WIPO issued its report, "The Management of Internet Names and Addresses: Intellectual Property Issues," on April 30, 1999. This report formed the basis for the UDRP, which was adopted on October 24, 1999.

The UDRP lists three criteria for determining domain name ownership prior to the mediation of a dispute by WIPO or any other mediation organization. If the complainant can demonstrate that these three criteria are met, then the respondent is re-

27. See id. (explaining involvement of WIPO in assisting in development of ICANN’s dispute resolution policy).
28. See WIPO, WIPO Arbitration and Mediation Center, http://www.wipo.int/amc/en (last visited May 1, 2008) (discussing alternative dispute resolution functions of WIPO). ICANN chose WIPO to investigate a potential dispute resolution policy because "[t]he process of negotiating a new international treaty was considered too slow, and new national laws would most likely be too diverse. What was needed were internationally uniform and mandatory procedures to deal with what are frequently cross-border disputes." WIPO, Internet Domain Name Disputes: Some Questions and Answers, http://www.wipo.int/about-ip/en/studies/publications/domain names.htm (last visited May 1, 2008).
31. See UDRP Policy, supra note 30, at §§ 4(a)(i)-(iii) (listing three criteria that domain name dispute must meet for mediation to be employed). If a complainant asserts that these three criteria are met, the respondent must submit to mediation. See id. § 4(a). Subsections 4(a)(i)-(iii) of the UDRP list the three criteria that a complainant must meet in order to qualify for a WIPO-mediated proceeding. See id; see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, http://www.wipo.int/amc/en/domains/search/overview/index.html (last visited May 1, 2008) (detailing elements complainant must prove under UDRP to claim domain name ownership). WIPO also provides analysis of the cri-
quired to submit to a mandatory administrative proceeding to determine true ownership of the domain name.\textsuperscript{32} First, the complainant must demonstrate that the domain name in question is "identical or confusingly similar to a trademark or service mark in which the complainant has rights."\textsuperscript{33} Second, the UDRP requires the complainant to prove that the website holder has "no rights or legitimate interests in respect of the domain name."\textsuperscript{34} Third, the UDRP necessitates that the "domain name has been registered and is being used in bad faith."\textsuperscript{35}

Mediation assures a speedier resolution of a domain name dispute than traditional litigation;\textsuperscript{36} however, a positive result for a celebrity hoping to obtain a particular domain is far from assured.\textsuperscript{37}

\begin{itemize}
\item \textsuperscript{32} See UDRP Policy, supra note 30 (listing criteria complainant must meet to obtain mandatory proceeding).
\item \textsuperscript{33} See id. at § 4(a)(i) (establishing first UDRP criterion for domain name ownership).
\item \textsuperscript{34} See id. at § 4(a)(ii) (establishing second UDRP criterion for domain name ownership).
\item \textsuperscript{35} See id. at § 4(a)(iii) (establishing third UDRP criterion for domain name ownership). As under the ACPA, the components of "bad faith," outlined in § 4(b) of the UDRP, are factors that the mediation Panel may consider in determining whether a domain name purchase was made in bad faith, but those factors are not exhaustive. See id. at § 4(b) (noting that "for the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith . . . ").
\item \textsuperscript{36} See, e.g., WIPO Case No. D2000-1532, supra note 7 (demonstrating example of swift ruling in WIPO proceeding). Springsteen filed his complaint on November 7, 2000, and the WIPO Administrative Panel ruled in Burgar’s favor on January 25, 2001. See id.; see also Anschell & Lucas, supra note 25 at 5 (noting preference of celebrities for mediation due to faster rulings). Anschell and Lucas point out that:
\[ \text{[R]esolution of a dispute before WIPO is much more expeditious than it would otherwise be through litigation in the federal courts. Once the complaint is submitted to WIPO and the respondent is notified, the respondent has 20 days in which to file a response. After the 20 days, each side submits a list of its preferred Panelists (the complainant or respondent can choose either a one or three-member Panel) and WIPO assembles the Panel depending on factors such as the Panelists’ availability. When the Panel has been confirmed, the matter is submitted and the Panel renders a decision shortly thereafter.} \]
\item \textsuperscript{37} See Peter Johnson, Can You Quote Donald Duck?: Intellectual Property in Cyberculture, 13 YALE J.L. & HUMAN. 451, 487 (2001) (reviewing Rosemary J. Coombe, THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW (1998)) (discussing inconsistent results that occur when celebrities pursue cybersquatters via mediation). Johnson notes several high-profile cases where there were inconsistent decisions regarding cybersquatting of celebrity websites:
\end{itemize}
In fact, celebrities have recently lost more cases than they have won, as the UDRP has yielded surprisingly inconsistent results for celebrities seeking to claim domain names.\textsuperscript{38}

C. Litigation.com: The ACPA Complicates Court Battles for Celebrity Domain Names

Celebrities who choose to go to court to claim domain names face daunting battles, and some cases are even more challenging than those fought through mediation.\textsuperscript{39} The ACPA has changed the nature of Internet domain name purchases.\textsuperscript{40} Congress created

In addition to the Anticybersquatting Act, celebrities found a new ally under the Uniform Domain Name Dispute Resolution Policy (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN). In recent cases, Madonna, Dan Marino, and Jethro Tull have recaptured domain names from cybersquatters, although Bruce Springsteen’s and Sting’s similar efforts failed.

\textit{Id.} at n.191.

\textsuperscript{38} \textit{See} Bernhard, \textit{supra} note 25 (discussing WIPO’s recent “turn” in celebrity cases and noting inconsistent results celebrities have obtained through WIPO procedures). Bernhard observes that celebrities chose mediation for its convenience and also because “until now, arbitration has usually been successful. Julia Roberts, Nicole Kidman, Venus and Serena Williams and others have all won rights to domain names associated with their names.” \textit{Id.}

\textsuperscript{39} \textit{See} Johnson, \textit{supra} note 37, at 487 (discussing general and ultimate failure of ACPA to protect celebrities against cybersquatters). Johnson notes that:

The expansion of intellectual property law has not escaped the notice of marketable celebrities . . . . The Anti-Cybersquatting Consumer Protection Act is, in fact, the only federal law that specifically protects celebrity names—the result of a compromise between the movie studios and actors’ organizations. The studios, such as Walt Disney Co. and Warner Brothers, originally opposed a cybersquatting bill that protected everything except trademarks, fearing that extending protection to celebrities could thwart studios’ Internet-related publicity for celebrity-named movies such as Nixon and The Doors and open the door to a federal right-of-publicity statute that could further limit studios’ rights to exploit celebrity names. Celebrities countered with straight faces that “individuals” should “get the same protection as a big company,” meaning, of course, only those individuals that are as famous as a big company. The Act therefore protects not only trademarks, but “famous personal names” from exploitation by “unfair” domain name registrations, such as proposing to sell it to a celebrity or falsely suggesting celebrity endorsement of the site.

\textit{Id.}

\textsuperscript{40} \textit{See} Elizabeth D. Lauzon, Annotation, \textit{Validity, Construction, and Application of Anticybersquatting Consumer Protection Act, 15 U.S.C.A. § 1125(d), 177 A.L.R. Fed. 1 (2002)} (explaining history of passage of ACPA). Lauzon notes that the ACPA: provide[s] trademark owners with stronger remedies against cybersquatters, who register domain names of well-known trademarks and then try to profit from the marks. Under the ACPA, a trademark owner is entitled to relief, including transfer, forfeiture, or cancellation of the domain name and/or recovery of up to $100,000 for each domain name, if the trademark owner shows: (1) that it owns a distinctive or famous mark; (2) that the defendant registers, uses, or traffics in a domain name that is
a new statute, the Anticybersquatting Consumer Protection Act ("ACPA"), in part to quell the increasing number of Internet entrepreneurs. These entrepreneurs, known as cybersquatters, purchase domain names in bulk and essentially extort money from celebrities who want to purchase these names later. In passing the ACPA, Congress also attempted to clarify an earlier piece of legislation, the Lanham Act, which was also designed to protect unregistered trademarks, albeit not as explicitly. Accordingly, the ACPA has created two categories of website purchases: "good faith" purchases, which are permitted, and "bad faith" purchases, which are illegal.

Further, the ACPA goes beyond trademark infringement and protects against the mere dilution of any mark that is famous.
enough to be well-known by the public.\textsuperscript{45} The statute unambiguously defines a “mark” as “famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner.”\textsuperscript{46} The ACPA grants expansive protection to either a person’s name or property.\textsuperscript{47} Moreover, the ACPA includes nine nonexclusive factors to aid courts in their determination of which purchases are made in “bad faith.”\textsuperscript{48} Because the statute’s list of factors is not exhaustive,

\begin{itemize}
  \item \textsuperscript{45} See id. at § 1125(a)(3)(c)(1) (prohibiting “dilution by blurring” and “dilution by tarnishment” of marks).
  \item \textsuperscript{46} Id. at § 1125(a)(3)(c)(2)(A) (defining “mark”).
  \item \textsuperscript{47} See id. at § 1125(a)(3)(c)(1) (stating that famous “marks” are protected by statute). The statute states in part that:
    \begin{quote}
    [T]he owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner’s mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.
    \end{quote}
  \item \textsuperscript{48} See id. at § 1125(d)(1)(B)(i) (defining term “bad faith” and listing criteria for determining whether purchase was made in bad faith). Courts are not limited to considering only these nine factors and are free to use any other criteria when making their determinations. See id. (“In determining whether a person has a bad faith intent described under subparagraph (a), a court may consider factors such as, but is not limited to . . . “). The nine factors that courts may consider are:
    \begin{enumerate}
      \item the trademark or other intellectual property rights of the person, if any, in the domain name;
      \item the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;
      \item the person’s prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;
      \item the person’s bona fide noncommercial or fair use of the mark in a site accessible under the domain name;
      \item the person’s intent to divert consumers from the mark owner’s online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;
      \item the person’s offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person’s prior conduct indicating a pattern of such conduct;
      \item the person’s provision of material and misleading false contact information when applying for the registration of the domain name, the person’s intentional failure to maintain accurate contact information, or the person’s prior conduct indicating a pattern of such conduct;
      \item the person’s registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain
    \end{enumerate}
\end{itemize}
courts have had great difficulty in delineating the distinction between good faith and bad faith domain name purchases.\textsuperscript{49} As one commentator has noted, "[e]ven in the realm of purely commercial interests, the current domain name dispute resolution mechanisms are somewhat lacking."\textsuperscript{50}

Despite these criticisms, the criteria listed in the ACPA have been somewhat helpful in attempting to determine bad faith purchases when deciding cases involving celebrities, particularly in instances where cybersquatters have registered a website that is a slight variation on a celebrity name.\textsuperscript{51} Based on the ACPA’s ban on names that are "confusingly similar" to a famous name or include the "intentional registration of domain names that are misspellings of distinctive or famous names," the Third Circuit has ruled registration of purposefully misspelled domain names is no longer allowed.\textsuperscript{52} The court noted that these types of cases are less about the website and more about the targeting of Internet users.\textsuperscript{53} According to the court, a domain name composed of a slightly misspelled celebrity name is directed at an "Internet user who makes a

\footnotesize{names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and

(IX) the extent to which the mark incorporated in the person’s domain name registration is or is not distinctive and famous within the meaning of subsection (c) of this section.

Id.}

\textsuperscript{49} See Jacqueline D. Lipton, Beyond Cybersquatting: Taking Domain Name Disputes Past Trademark Policy, 40 \textit{WAKE FOREST L. REV.} 1361, 1364-65 (2005) (introducing and discussing limited ability of good faith/bad faith distinction in dealing with domain name disputes).

\textsuperscript{50} Id. at 1368 (discussing failings of current cybersquatting legislation). Lipton notes that "with the advent of the [ACPA] . . . and the [UDRP] . . . [p]eople simply assume that we now have a workable and efficient system in place to deal with legal disputes about who might have the superior interest in a given domain name." Id. at 1362-63. Yet the problem is that these dispute mechanisms center mainly on commercial trademark interests, not individual ones. See id. As Lipton points out, "[w]hile the ACPA and the UDRP are extremely useful and effective in protecting trademark interests in the bad faith cybersquatting context, they are very limited in their ability to deal with disputes between two legitimate holders of similar trademarks with respect to a corresponding Internet domain name." Id. at 1363-64. For an example of a company that used the ACPA to its advantage, see \textit{PETA v. Doughney}, 263 F.3d 359, 369-71 (4th Cir. 2001) (ordering domain name PETA.org be transferred from Doughney to PETA after finding bad faith intent to profit by registrant).

\textsuperscript{51} See Anschell & Lucas, supra note 25, at 4 (noting improvements made by ACPA).

\textsuperscript{52} See Shields v. Zuccarini, 254 F.3d 476, 484 (3d Cir. 2001) (holding that misspelling celebrity domain name when registering website does not cure ownership of defect under ACPA).

\textsuperscript{53} See id. (concluding that targeting of users who intend to visit celebrity websites violates ACPA).
slight spelling or typing error" when trying to reach a celebrity site. Because these types of domain registrations are intended for users who are attempting to reach a celebrity website, they constitute a "confusing use" under § 1125(d) of the ACPA. WIPO has developed analogous standards for the misspelling of celebrity names in domain addresses, as illustrated by a ruling in favor of actress Nicole Kidman in a dispute over the ownership of NicoleKidmanNude.com.

Although such cases signal an immediate victory for celebrities, the dearth of precedential case law involving the intersection of the new ACPA and celebrity domain names creates uncertainty as to the future effectiveness of the ACPA. Few celebrity cases involving the ACPA have gone to trial. At the outset of litigation, celebrities face the challenge of meeting jurisdictional requirements. For instance, Spacey v. Burgar, which involved a suit between well-known actor Kevin Spacey and notorious cybersquatter Jeffrey Burgar over the website "www.kevinspacey.com," was dismissed due to lack of jurisdiction. If the case had been decided, it would have

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54. See id. (finding that misspelled names can still be "confusingly similar"). Shield admitted that he had registered numerous misspelled celebrity names, such as RikyMartin.com - instead of RickyMartin.com, BritneySpears.com - instead of BritneySpears.com, and GwenythPaltrow.com - instead of GwynethPaltrow.com. See id. at 485.

55. See id. at 483-84 (holding that domain name owners who purposely mispell celebrity names can still have domain names taken by courts).


57. See Anschell & Lucas, supra note 25, at 7 ("Despite the development of . . . a body of applicable legal standards, it is all but certain that evolving technologies and their exploitation by cybersquatters will continue to present new challenges to the protection of names and likenesses in cyberspace.").

58. See id. at 5 (discussing celebrities' preference for mediation over litigation).


60. See Spacey, 207 F. Supp. 2d at 1054 (dismissing case for lack of jurisdiction). See also Andrew Smith, Bruce Springsteen Loses Cybersquatting Dispute, THE REGISTER, Feb. 9, 2001, www.thereregister.co.uk/2001/02/09/bruce_springsteen_loses_cybersquatting_dispute/ (noting similar legal actions other parties have brought against Burgar). Burgar is described as "no stranger to allegations of cyber-squatting" and "[i]t is believed that he owns over 1,500 domains, many related to sports and entertainment." Id. Burgar has been the subject of legal action involving "Hewlett Packard, Mariah Carey, the search engine company Northern Light, and CAPS, an organisation which represents major sporting leagues . . . ." Id.
become a useful tool for courts in determining the limits of the ACPA in protecting celebrities from cybersquatters. As the law currently stands, celebrities overwhelmingly prefer mediation to litigation, although mediation produces mixed results for celebrities seeking a domain name.

D. Preparation.com: Celebrities Attempt to Beat Cybersquatters to Registration

As a result of the vague criteria used by mediators and courts, uncertainty remains in how celebrities should respond to domain name disputes. Even with additional protective legislation in place, actors, singers, and even politicians must still worry about who will buy domain names and how much it will cost if they attempt to acquire them.

Additionally, celebrities must be concerned for their children’s names. Some have chosen to preemptively confront this issue by purchasing various domain names for their children either prior to or immediately after their births. Those who have not taken these

61. See Anschell & Lucas, supra note 25, at 3-4 (discussing effect of jurisdiction requirement of ACPA in determining outcome).

62. For a further discussion of varying WIPO mediation outcomes, see supra note 13.

63. See, e.g., WIPO Case No. D2000-1532, supra note 7 (ruling against Springsteen despite other favorable rulings for celebrities). Celebrities seem to prefer mediation over litigation, but results of both are mixed and rulings are inconsistent. See supra note 13 (providing list of mediations with varying results for celebrities).

64. See Would You Pay 29K for Condoleezarice.com?, DOMAINWORKS, June 21, 2006, http://www.domainworks.biz/2006/06/would_you_pay_29k_for_condoleez. html (last visited May 1, 2008) (detailing recent purchase of website bearing political figure’s name, which occurred despite passage of ACPA). In 2006, a blog entitled “Political Domain World” was already speculating over who would run in the 2008 presidential election and purchasing domain names based on politicians’ names. See id. Registered websites included condoleezarice08.com and johnmcain08.net. See id. Condoleezarice08.com was estimated by one seller to be worth $29,000 as of June 2006, even though Ms. Rice’s name was misspelled. See id. Despite the misspelling, the blog maintained, “there are plenty of folks who'll only type one 'z.'” See id.


preventative measures will have to rely on largely untested statutory protections and undeveloped case law in their fight for these domain names. Celebrities who do not take these preventative measures will face an uncertain fight for domain names.

III. ANALYSIS

A. ProtectMyKids.com: Young Hollywood’s Preemptive Strike

As a precaution, actress Angelina Jolie preemptively registered several different domain names for her daughter, Shiloh Nouvel Jolie-Pitt. Despite her preventative efforts, Jolie still may face the same problems as celebrities who fail to register their children’s names. The 130% escalation of domain names containing the name “Shiloh” during the week after the baby was born demonstrates the interest cybersquatters possess in selling the domain names to Jolie. Furthermore, Jolie’s difficulties in registering domain names were compounded when news became widespread that Jolie had instructed her lawyers to purchase domain names for her daughter. Additional cybersquatters, who might not otherwise have thought to capitalize on the birth, bought hundreds of combinations of the baby’s name. Similarly, singer Gwen Stefani regist
tered several different domain name combinations for her son, rather than risk paying a higher price to acquire them later. 74

Celebrities who do not move quickly to procure these domain names and wish to acquire them later are forced to either purchase them at exorbitant prices or seek legal recourse. 75 Neither singer Britney Spears nor her attorneys predicted the heightened interest of cybersquatters in acquiring a website bearing her son’s moniker, and she will now face an uphill battle if she chooses to claim her son’s domain name. 76 The outcome of cybersquatting cases are inconsistent and unpredictable, and may ultimately lead to celebrities being forced to pay up rather than wage an extended legal battle that lacks clear guidelines for the desired results. 77

Cybersquatting is not a problem unique to celebrities, but the widespread attention they receive makes them more vulnerable targets. 78 The growth of the web log (“blog”) industry, which is committed to reporting even everyday activities, suggests that celebrities who wish to fight for domain names must be prepared to do so in court. 79

74. See Baby-Name Bandwagon, supra note 7 (discussing preventative measures taken by Stefani to purchase domain names before cybersquatters bought them).

75. See id. (stating problems celebrities have if they do not purchase domain names for their children quickly); see also Moral Controversy, supra note 66 (observing that cybersquatters have noticed that celebrities are “the quickest to act” on “Purchase/Protect/Prevent” theory of domain name purchasing). Actors Tom Cruise and Katie Holmes “are paying the price for not moving fast enough,” while singer Britney Spears was forced to wage a “brutal fight for her [youngest] son’s domain name.” See id.

76. See Britney, KFed Miss Out, supra note 67 (explaining singer Britney Spears’ mistake in not attempting to acquire domain name). Britney Spears’ son’s name, Jayden James Federline, was leaked to the press approximately one month after his birth. See id. Spears had previously leaked a fake name to the press. See id. Within hours of the real name being released, Leonard Lee had purchased JadenFederline.com, potentially for future sale of the domain. See id.

77. For a further discussion of mediation cases that have produced inconsistent results for celebrities, see supra note 13.

78. See Fame: The New Meaning of Life, supra note 2 (considering cultural fascination with celebrities).

79. See id. (discussing difficulties today’s celebrities face). See also Victim of Domain Squatters, supra note 68 (detailing problems presented by widespread media coverage of celebrities). Widespread reporting of celebrity activity may motivate more cybersquatters to take advantage of celebrity names. See id. 
B. ShouldHaveBoughtMyName.com: Older Hollywood Fights to Reclaim Their Names

1. Don-Henley.com

While younger celebrities are attempting preventative measures to counteract cybersquatters, aging musicians and actors who failed to take these measures will have to fight their battles in court. Generally, performance artists are at the forefront of developing technology and utilizing it to their advantage. However, many of these celebrities did not appreciate the consequences of failing to register their names as domain names and are now paying the price. Don Hugh Henley, the lead singer of The Eagles, is an example of a celebrity who is losing the domain name battle. Don Hugh Henley has been fighting an ongoing legal battle with Christian activist Don Henley over the domain name Don-Henley.com. Don Hugh Henley unsuccessfully attempted to use the ACPA for protection. In his communications with Don Hugh Henley, Don Henley has refused the demands of Don Hugh Henley’s attorneys.

Id. (describing Don Henley’s refusal to give up domain name). The first letter that Don Hugh Henley’s attorneys sent to Don Henley requested that

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80. For a further discussion of celebrities who have chosen to execute preemptive strikes against cybersquatters, see supra notes 69-74 and accompanying text.

81. For a further discussion of celebrities who have fought for personal use of domain names, specifically musicians Don Henley, Bruce Springsteen, Sting, Jethro Tull, and Madonna, see supra note 13.

82. See Whiteleather, supra note 3, at 254 ("[T]he entertainment industry has historically possessed superior insight into developing technologies . . . ").

83. See, e.g., WIPO Case No. D2000-1532, supra note 7, ¶ 7 (ruling against Springsteen, allowing Burgar to retain control of BruceSpringsteen.com); see also WIPO Case No. D2000-0596, supra note 13, ¶ 7.2 (ruling against musician Sting, allowing Urvan to retain possession of Sting.com).

84. See Don Henley Wants this Domain, supra note 1 (detailing dispute over domain name Don-Henley.com).

85. See id. (discussing ongoing legal fight for domain name).

86. See id. (attempting to use ACPA to acquire domain name). Don Henley’s archive includes legal memoranda and letters that Don Hugh Henley sent to him since 1999, including the first letter sent, which enumerates ACPA’s criteria that the domain owner allegedly meets. The text of the letter reads, in part:

Dear Mr. Henley:
This letter is sent to demand that you cease and desist your use of the “Don-Henley.com” domain name . . . .
Your conduct infringes our client’s rights in numerous ways, including but not limited to the following:
(1) It constitutes false association and false designation of origin in violation of 15 U.S.C. §1125(a);
(2) It constitutes trademark dilution in violation of 15 U.S.C. §1125(c) . . . .

Id.

87. See id. (describing Don Henley’s refusal to give up domain name). The first letter that Don Hugh Henley’s attorneys sent to Don Henley requested that
Don Hugh Henley does meet some of the bad faith criteria listed in the ACPA to help the court determine who is the legitimate owner of the domain name. "Don Henley" is the legitimate name of both men, so both have a genuine intellectual property interest in the name. Although not in the same way, both men profit commercially from the name. Don Henley’s website clearly violates one of part of the ACPA criteria: he knows that his domain name is confusing to others. Don Henley acknowledges on his website’s main page that some people may visit his website with the mistaken belief that he is Donald Hugh Henley. This acknowledgement works both in favor of and against Don Henley. Don Henley is obviously aware that his website may be confused with Don Hugh Henley’s, because he posted the disclaimer to warn people of the confusion. Conversely, a court could look favorably on his efforts the latter “immediately cease and desist” his use of Don-Henley.com, agree in writing he would no longer use name “Don Henley” commercially, and agree to assign Don-Henley.com domain name to Don Hugh Henley. See id. As of the publication of this article, Don Henley has not agreed to these terms. See id.

88. For a further discussion of how courts to determine whether a domain name purchase qualifies as a bad faith purchase, see supra note 48 and accompanying text.

89. For a further discussion of the nine criteria, see supra note 48.

90. See 15 U.S.C. §§ 1125(d)(1)(B)(i)(I)-(II) (2006) (establishing first two criteria for determining domain name ownership are “intellectual property rights of the person” and “the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person”).

91. See id. at § 1125(d)(1)(B)(i)(III) (establishing third criterion for determining domain name ownership). "[T]he person’s prior use ... of the domain name in connection with the bona fide offering of goods or services." See id.

92. See Don Henley, Note to Donald Henley’s Christian Perspectives, DON-HENLEY.COM, http://www.don-henley.com (last visited May 1, 2007) [hereinafter Note to Christian Perspectives] (providing introductory information for website). At the top of his website’s main page, Don Henley posted the following notice: “NOTE: Donald ‘Don’ Henley is NOT the singer Donald Hugh Henley, known in the music industry as Don Henley. This site has no connection with him nor he with it. Click here for details of my ongoing domain dispute with the reclusive rock musician.” Id.

93. See id. (acknowledging domain dispute).

94. See 15 U.S.C. § 1125(d)(1)(B)(i)(VIII) (establishing knowledge that mark may be confusing as criterion for bad faith purchase). Subsection VIII lists bad faith as a factor in determining domain name ownership stating that: "[T]he person’s registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties . . . ."

Id.

95. See Note to Christian Perspectives, supra note 92 (posting note that warns site visitors of possible confusion).
to warn site visitors that he is not Don Hugh Henley.\textsuperscript{96} Litigation in the Don Henley v. Don Hugh Henley dispute remains pending despite the intended clarity the ACPA was to provide.\textsuperscript{97}

2. \textit{Sting.com}

In spite of the protections extant in both the ACPA and the UDRP, some celebrities may have no recourse against domain name owners because their names or celebrity monikers are considered too common.\textsuperscript{98} After pursuing mediation through WIPO, singer Gordon Sumner, better known as "Sting," lost potential rights to the domain name sting.com partially because of the commonality of the word "sting."\textsuperscript{99} Sting lost the potential rights to Sting.com to a cybersquatter named Michael Urvan.\textsuperscript{100}

Despite the fact that the word "sting" is a common term, the WIPO Panel's ruling in \textit{Sumner v. Urvan} is troublesome after a close inspection of the case's facts.\textsuperscript{101} Urvan, in direct violation of the ACPA, linked the Sting.com domain to another, unrelated website, Gunbroker.com.\textsuperscript{102} This action violates one of the criteria used by

\textsuperscript{96} See 15 U.S.C. § 1125(d)(1)(B)(ii) (discussing occasions in which court may determine that use of domain name was fair). Because the criteria listed in the ACPA are not exhaustive, a court could also take into account the fact that he may not have known about Don Hugh Henley until after he had made the purchase. See \textit{id}. Additionally, under the ACPA, "[b]ad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful." \textit{Id}.

\textsuperscript{97} For discussion of the legislative intent behind passage of the ACPA, see \textit{supra} notes 40-42 and accompanying text.

\textsuperscript{98} See WIPO Case No. D2000-0596, \textit{supra} note 13 (noting domain name Sting.com not transferred due to varying alternative uses of word "sting"). \textit{But see} WIPO Case No. D2000-0847, \textit{supra} note 13, ¶ 6.6 (holding that common use of term "Madonna" does not affect domain name transfer). For a further discussion of this conflict, see \textit{infra} notes 161-65 and accompanying text.

\textsuperscript{99} See WIPO Case No. D2000-0596, \textit{supra} note 13, ¶¶ 6.5 – 6.6 (determining "sting" too common to be claimed as mark). The Panel observed that:

Although it is accepted that the Complainant is world famous under the name STING, it does not follow that he has rights in STING as a trademark or service mark. . . . [T]he personal name in this case is also a common word in the English language, with a number of different meanings.

\textit{Id} at ¶ 6.5.

\textsuperscript{100} See \textit{id}. at ¶¶ 7.1 – 7.2 (deciding in favor of prior domain name owner and refusing transfer of domain name Sting.com to Sting).

\textsuperscript{101} See \textit{id}. at ¶ 4.3 (listing activities Urvan allegedly engaged in that violate both UDRP and ACPA). For a further discussion of the "common word" reasoning behind the Panel's decision not to transfer the domain name, see \textit{supra} note 99 and accompanying text.

ACPA to determine bad faith purchases. Additionally, and perhaps more tellingly, Urvan offered to sell Sting.com for an exorbitant price after communicating with Sting’s representatives. The WIPO Panel even acknowledged that the price Urvan quoted Sting for the purchase of the domain name was inflated: “this Administrative Panel assumes the offered price was . . . at least for an amount in excess of [Urvan]’s out-of-pocket expenses.” This is yet another violation of the criteria the ACPA uses in establishing a bad faith purchase.

In addition to violating the ACPA, Urvan’s actions also violated the UDRP. The UDRP is ICANN’s attempt to clarify the criteria used by mediators when presiding over domain name ownership conflicts. A complainant must satisfy three UDRP conditions to successfully claim the rights to a domain name. First, the complainant must demonstrate that the domain name in question is “identical or confusingly similar to a trademark or service mark in which the complainant has rights.” After establishing similarity with a trademark, the potential domain owner must meet the UDRP’s second criterion: proving the current domain owner has location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark” should be used against the domain name owner in a dispute. Id. In Sumner, Urvan did not contest Sting’s allegation that Urvan linked the domain name Sting.com to the website Gunbroker.com, but instead claimed that the transfer was a mistake. See WIPO Case No. D2000-0596, supra note 13, ¶ 6.11. The WIPO Panel accepted this explanation. See id.


104. See WIPO Case No. D2000-0596, supra note 13, ¶ 6.10 (accepting Urvan’s admission that he offered to sell Sting.com for $25,000). The WIPO Panel noted that although “[Urvan] did not specify the price at which he offered to sell the domain name . . . he did not dispute [Sting]’s assertion of $25,000, so this Administrative Panel assumes the offered price was for that amount, or at least for an amount in excess of the Respondent’s out-of-pocket expenses.” Id.

105. Id. (acknowledging inflated price quote from Urvan to Sting for purchase of website).

106. See 15 U.S.C. § 1125(d)(1)(B)(i)(VI) (2006) (establishing non-use in connection with attempted sale as criterion for bad faith purchase). Subsection VI of the ACPA states that “the person’s offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services . . .” will be used in the court’s determination of whether a purchase was made in bad faith. Id.

107. See UDRP Policy, supra note 30 (noting that subsections 4(a)(i)-(iii) of UDRP list criteria for determining domain name ownership).

108. See id. (setting out rules and procedures to effectively settle disputes).

109. See id. at § 4(a) (placing burden of proof on complainant to have valid claim to domain name ownership).

110. Id. at § 4(a)(i) (listing first criterion).
“no rights or legitimate interests in respect of the domain name.”111 The Panel noted that “[Urvan] does not have a right to or a legitimate interest in the domain name, in the sense in which that concept is used in [the UDRP].”112 In addition, Urvan does not have any particular interest in the mark, other than claiming to use it as an Internet moniker.113

The third criterion that the UDRP uses to determine domain name ownership, whether the registrant acted in bad faith, can be the most imprecise.114 The elusiveness of “bad faith,” particularly the lack of established criteria for determining it, ultimately doomed Sting’s attempt to claim Sting.com.115

3. BruceSpringsteen.com

Bruce Springsteen (“Springsteen”), head of the E Street Band and commonly referred to as “The Boss,” also recently lost a WIPO battle over a domain name.116 Springsteen’s dispute is distinguishable from Sting’s because the WIPO Panel held that “springsteen” does not possess a common meaning in the English language.117 The Panel nevertheless found that Springsteen’s complaint failed to meet the UDRP’s criteria for recovering a domain name, and the Panel ruled against him in the dispute.118

Springsteen’s complaint, filed in November 2000, alleged that the domain name at issue was identical or confusingly similar to a mark in which Springsteen had rights, a violation of the UDRP’s

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111. Id. at § 4(a)(ii) (listing second criterion).
112. WIPO Case No. D2000-0596, supra note 13, ¶ 6.9 (stating no claim is made on mark “sting” by Urvan).
113. See id. at ¶ 4.4 (explaining that Urvan previously used “sting” as Internet moniker for eight years). The Panel held that this was not enough to establish a “legitimate interest,” and that “a more substantive use of the word ‘sting’ than that proven by [Urvan] is required to show a right or legitimate interest in the domain name ‘sting.com.’ (although this proven use is relevant to the issue of bad faith).” Id. at ¶ 6.9.
114. See UDRP Policy, supra note 30, at § 4(a)(iii) (listing third criterion).
115. See WIPO Case No. D2000-0596, supra note 13, ¶ 7.2 (holding that Sting cannot recover domain name Sting.com).
116. See WIPO Case No. D2000-1532, supra note 7, ¶ 7 (ruling that Springsteen’s complaint did not meet UDRP burden).
117. See id. (making no mention of any common uses for term “springsteen”).
118. See id. (finding that Springsteen did not meet UDRP’s three requisite elements). Specifically, the Panel held that “[Burgar] has demonstrated that he has some rights or legitimate interests in respect of the domain name, and the Complainant has failed to demonstrate that the domain name was registered and has been used in bad faith.” Id.
first criterion.\textsuperscript{119} Springsteen also claimed that cybersquatter Jeff Burgar ("Burgar") had registered BruceSpringsteen.com despite having no rights or legitimate interests in the domain name, thus violating the second criterion of the UDRP.\textsuperscript{120} Springsteen also claimed that Burgar acted in bad faith by registering the domain name, and in doing so he violated the third criterion of the UDRP.\textsuperscript{121} It claimed the registration was characterized by bad faith because Burgar used the site to attract Internet traffic to his other website, Celebrity1000.com.\textsuperscript{122} This argument is similar to the one Sting made regarding Urvan's link from Sting.com to Gunbroker.com.\textsuperscript{123} Unlike Urvan, however, Burgar owns multiple celebrity domain names.\textsuperscript{124} Springsteen contended, and Burgar did not dispute, that Burgar possessed over 1,500 celebrity domain names, the majority of which re-directed to Celebrity1000.com.\textsuperscript{125}

A WIPO Panel heard the matter in 2001 and again ruled in favor of the original domain name owner instead of the celebrity challenging ownership.\textsuperscript{126} The Panel found that Springsteen had not demonstrated that the domain name in question was "identical or confusingly similar to a trademark or service mark," that Burgar had "some rights or legitimate interests in respect of the domain name," and that Springsteen "failed to demonstrate that the do-

\textsuperscript{119} See id. at ¶ 6 (discussing Springsteen's claim of confusingly similar mark). For a further discussion of the first criteria required by UDRP, see supra note 33 and accompanying text.

\textsuperscript{120} See WIPO Case No. D2000-1532, supra note 7, ¶ 6 (noting that Springsteen is required to make this claim to prevail on claim under UDRP). For a further discussion of the second criteria required by UDRP, see supra note 34 and accompanying text.

\textsuperscript{121} See WIPO Case No. D2000-1532, supra note 7, ¶ 5 (describing Springsteen's complaint of bad faith registration). Springsteen pointed out that Burgar owned over 1,500 names and that all of these domain names redirected to Burgar's website, Celebrity1000.com. See id. He claimed that this "constitutes bad faith under paragraphs 4(b)(ii) and (iv) of the UDRP." Id. For a further discussion of the third criteria required by UDRP, see supra note 35 and accompanying text.

\textsuperscript{122} See WIPO Case No. D2000-1532, supra note 7, ¶ 5 (establishing BruceSpringsteen.com re-directs to Celebrity1000.com). Burgar's Celebrity1000.com website contains many hyperlinks to paid sponsors, allowing him to profit indirectly from ownership of BruceSpringsteen.com. See id.

\textsuperscript{123} See WIPO Case No. D2000-0596, supra note 13, ¶ 6.11 (detailing Sting's claim that Urvan linked Sting.com to Gunbroker.com). Urvan did not deny the link, but claimed it was a mistake. See id.

\textsuperscript{124} See Smith, supra note 60 (describing Burgar's numerous notorious domain name purchases).

\textsuperscript{125} See WIPO Case No. D2000-1532, supra note 7, ¶ 5 (attempting to link Burgar's multiple domain name purchases with bad faith).

\textsuperscript{126} See id. at ¶ 7 (ruling in favor of Burgar and allowing him to retain ownership of BruceSpringsteen.com).
main name was registered and has been used in bad faith." The Panel held that Springsteen did not meet the burden of proof required by § 4(a)(i), (ii), or (iii) of the UDRP, and that he had not proved the bad faith elements of § 4(b) of the UDRP. Addressing the problematic nature of disputes involving celebrity domain names, the Panel stated that "there are a number of concepts contained within this 'circumstance' that make it complex to resolve." This complexity, not present in cases involving a non-famous person, is what leads to such speculative results in mediation involving celebrity domain names.

In its reasoning, the Panel asserted that "[a]n [I]nternet search using the words 'Bruce Springsteen' gives rise to literally thousands of hits. It is perfectly apparent to any [I]nternet user that not all of those hits are 'official' or 'authorised' sites." The WIPO Panel's analysis implies that Internet users are capable of discerning whether a site is "official." This analysis defeats the intent of both the UDRP and the ACPA: to preclude a cybersquatter's ability to usurp a celebrity's name as a domain name.

The WIPO Panel also engaged in a curious analysis over what type of website link can "tarnish" a celebrity's reputation. The Panel stated, "[t]here is certainly no question of the common law rights of Mr. Springsteen being 'tarnished' by association with the

127. See id. (holding that Springsteen did not meet burden placed on Complainant by UDRP).
128. See UDRP Policy, supra note 30, at §§ 4(a)(i)-(iii), 4(b) (identifying sections of UDRP that served as basis for Panel's decision).
129. WIPO Case No. D2000-1532, supra note 7, ¶ 6 (noting complexity inherent in dispute).
130. For a further discussion of cases involving celebrity domain names and their differing outcomes, see supra note 13. There is one possible reason for the outcome in this particular case: Burgar's use of a disclaimer. See Bernhard, supra note 25 (discussing use of disclaimer as possibly outcome-determinative in case). Internet attorneys contend that Burgar likely won the case because of a simple disclaimer on BruceSpringsteen.com that informs site users that the site is not officially endorsed by Springsteen. See id. But see WIPO Case No. D2000-0847, supra note 13, ¶ 6.D (dismissing disclaimer as remedy for confusion). The WIPO Panel in Ciccone v. Parisi held that a disclaimer "does nothing to dispel" Internet user confusion. See id.
131. WIPO Case No. D2000-1532, supra note 7, ¶ 6 (commenting that not all Internet sites will be "official" and that users can differentiate for themselves).
132. See id. (reasoning that users can recognize official sites by browsing other sites). The Panel notes that users can "browse from one search result to another to find the information and material which he or she is looking for in relation to a search item, in this case the celebrity singer Bruce Springsteen." Id.
133. For a further discussion of the legislative intent behind passage of the UDRP, see supra notes 40-42 and accompanying text.
134. See WIPO Case No. D2000-1532, supra note 7, ¶ 6 (declaring that Springsteen's reputation is not tarnished by association with Celebrity1000.com).
'[C]elebrity1000.com' website. The Panelists' own search of that site indicates no links which would have that effect, for example connections to sites containing pornographic or other regrettable material."\(^{135}\) The Panel's analysis of whether Springsteen's reputation is somehow "tarnish[ed]" by the link from BruceSpringsteen.com to Celebrity1000.com is legally tenuous and overly concise.\(^{136}\)

Lack of tarnishment of a mark is listed in the UDRP as one of three examples of defenses that the prior domain name owner can use to his advantage.\(^{137}\) The UDRP informs the domain owner that this claim would be helpful in disproving the second criterion of the UDRP if the owner can demonstrate that he is not attempting to "misleadingly divert consumers or to tarnish the trademark or service mark at issue."\(^{138}\) The Panel was correct to respond to this UDRP-sanctioned defense; however, the succinctness of the Panel's dismissal of the idea of tarnishment is troublesome.\(^{139}\) The Panel concluded immediately that the material on Celebrity1000.com was not pornographic or "otherwise regrettable," and thus it did not tarnish Springsteen.\(^{140}\) There is no definition in the UDRP to determine tarnishment, however, and limiting potential tarnishment to pornography or vague "regrettable material" ignores the broader reasons why celebrities may pursue these domain names, beyond the names themselves.\(^{141}\) If a celebrity is seeking a domain name simply because he wants to have control over the way his name is used, then the use of that celebrity's name as a domain name to a

\(^{135}\) Id. (noting that lack of pornographic or other "regrettable" materials indicates no tarnishment of celebrity mark).

\(^{136}\) See id. (dismissing notion of Springsteen's mark being tarnished by association with Celebrity1000.com).

\(^{137}\) See UDRP Policy, supra note 30, at § 4(c)(iii) (providing potential defenses for Respondent in domain name disputes). Other possible defenses for the Respondent include "use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services," and if the domain owner has "been commonly known by the domain name." Id. at §§ 4(c)(i)-(ii). Because Burgar only argued the defense of lack of tarnishment, the Panel did not address the other two possible defenses. See WIPO Case No. D2000-1532, supra note 7.

\(^{138}\) See UDRP Policy, supra note 30, at § 4(c)(iii) (noting that proving lack of tarnishment can help Respondent's claim).

\(^{139}\) See WIPO Case No. D2000-1532, supra note 7, ¶ 6 (focusing on lack of tarnishment instead of other defenses). The Panel wrote two sentences of analysis that concluded Burgar's lack of tarnishment defense was valid. See id.

\(^{140}\) See id. (concluding that Celebrity1000.com did not tarnish Springsteen).

\(^{141}\) See generally UDRP Policy, supra note 30 (lacking definition for what "tarnishes" mark).
link to a celebrity website hub is probably, to him, a “regrettable” use of the name.\textsuperscript{142}

In addition to ruling that Springsteen’s mark was not being tarnished, the WIPO Panel also held that Springsteen’s fans would not be confused if they erroneously visited the website.\textsuperscript{143} The WIPO Panel ruled that it is “hard to see how it can be said that the registration of the domain name at issue can be ‘misleading’ in its diversion of consumers to the ‘[C]elebrity1000.com’ website.”\textsuperscript{144} Perhaps it is not patently misleading, but it seems possible, if not probable, that there are users who will associate BruceSpringsteen.com with Bruce Springsteen. Consequently, when they are redirected to Celebrity1000.com, the user will construct an association between the two websites.\textsuperscript{145}

The dissenting member of the WIPO Panel in \textit{Springsteen v. Burgar} argued that the ruling was not consistent with past rulings, and refuted each of the majority’s arguments.\textsuperscript{146} First, the Panelist noted, an Internet user is “more likely than not” to expect that BruceSpringsteen.com was official.\textsuperscript{147} Second, Burgar did not prove any legitimate interest in the website.\textsuperscript{148} Third, the dissenting Panelist observed that to prove Burgar’s bad faith intent, Springsteen had only to “prove that [Burgar] has intentionally attracted Internet users to [Burgar]’s website for commercial gain by creating a likelihood of confusion as to the source of the website.”\textsuperscript{149} The dissent believed that Springsteen met this burden, and thus proved Burgar’s bad faith intent.\textsuperscript{150} Having met all three crite-

\textsuperscript{142} WIPO Case No. D2000-1532, \textit{supra} note 7, ¶ 6 (stating that “regrettable” use of name is not present).

\textsuperscript{143} See WIPO Case No. D2000-1532, \textit{supra} note 7, ¶ 6 (positing that confusion could not result from user being linked to Celebrity1000.com).

\textsuperscript{144} \textit{Id.}

\textsuperscript{145} See \textit{id.} at ¶ 5 (noting that BruceSpringsteen.com immediately redirects to Celebrity1000.com). Springsteen offers this fact in his complaint, and Burgar does not contest it. \textit{See id.}

\textsuperscript{146} \textit{See id.} (Richard W. Page, dissenting) (noting disagreement with WIPO Panel’s decision).

\textsuperscript{147} \textit{See id.} (reasoning that Burgar violated first UDRP criterion by creating confusion between domain name and mark).

\textsuperscript{148} \textit{See id.} (explaining that Burgar did not prove any legitimate interest in website, thus violating second UDRP criterion).

\textsuperscript{149} \textit{Id.} (asserting that Springsteen met burden of proving Burgar’s bad faith, thus proving violation of third UDRP criterion). The dissent also points out that Burgar’s lack of direct profit from BruceSpringsteen.com is not relevant, because “[t]he test of a commercial undertaking is not that the enterprise turns a profit.” \textit{Id.}

\textsuperscript{150} \textit{See id.} (finding Springsteen had made showing of bad faith).
ria under the UDRP, the dissent felt that Springsteen should have been awarded the domain name.\footnote{151}

4. \textit{Madonna.com}

In the same two-year period during which WIPO ruled against Sting and Bruce Springsteen, the organization reached the opposite ruling in the legal battle for Madonna.com.\footnote{152} A unanimous WIPO Panel found that singer Madonna Ciccone ("Madonna") could immediately recover the domain name Madonna.com from its owner, Dan Parisi ("Parisi").\footnote{153} The WIPO Panel used the same criteria to determine the owner of Madonna.com as it used to determine the rightful owners of Sting.com and BruceSpringsteen.com, but reached an opposite result.\footnote{154}

The WIPO Panel, in determining the owner of Madonna.com, relied on the three UDRP criteria used to determine whether the current domain name owner should be compelled to transfer the domain to Madonna.\footnote{155} First, the Panel found that the mark was "identical or confusingly similar to a trademark or service mark in which the complainant has rights."\footnote{156} Parisi admitted that the website would be confusing to users because they would think that Madonna was affiliated with the site in some way.\footnote{157} Had Parisi contested this claim, it is uncertain what decision the Panel would have made regarding this UDRP criterion.\footnote{158}

The WIPO Panel’s use of the UDRP’s second criterion presents a more pointed departure from the Panel’s reasoning in Springsteen

\footnote{151. \textit{See id.} (stating disagreement with majority of Panel and belief that domain name should be awarded to Springsteen).}
\footnote{152. \textit{See WIPO Case No. D2000-0847, supra note 13, ¶ 7} (holding that Madonna could recover Madonna.com from domain name owner).}
\footnote{153. \textit{See id.} (ruling in favor of Madonna).}
\footnote{154. \textit{See id.} at ¶ 6.A (stating three UDRP criteria as "evidentiary standard" for Madonna.com decision). But see WIPO Case No. D2000-0596, \textit{supra} note 13, ¶ 7.1 - 7.2 (using three UDRP criteria and failing to transfer domain name Sting.com to famous musician); \textit{see also} WIPO Case No. D2000-1532, \textit{supra} note 7, ¶ 7 (using three UDRP criteria to rule that Springsteen’s complaint did not meet burden required by UDRP).}
\footnote{155. For a further discussion of UDRP criteria, see \textit{supra} notes 31-35 and accompanying text.}
\footnote{156. \textit{See UDRP Policy, supra note 30, at § 4(a)(i) (describing first criterion of UDRP); see also WIPO Case No. D2000-0847, supra note 13, ¶ 6.A (holding first criteria of UDRP met).}
\footnote{157. \textit{See WIPO Case No. D2000-0847, supra note 13, ¶ 6.B} (establishing that Madonna met first criteria required by UDRP because Parisi did not contest Madonna’s assertion).}
\footnote{158. \textit{See id.} (finding in favor of Madonna on first UDRP criteria because Parisi does not dispute domain name is identical or confusingly similar to mark protected by Madonna).}
v. Burgar and Sumner v. Urvan. In Ciccone v. Parisi, the Panel found Parisi had no "rights or legitimate interest in respect of the domain name." Curiously, the same reasoning that WIPO used against Sting, the fact that the domain name in question involved a "common word," was used in favor of Madonna. The Panel held that Parisi "failed to provide a reasonable explanation for the selection of Madonna as a domain name." The Panel concluded that "[a]lthough the word 'Madonna' has an ordinary dictionary meaning not associated with [the singer], nothing in the record supports a conclusion that Respondent adopted and used the term 'Madonna' . . . based on its ordinary dictionary meaning." This analysis shifts the burden of proof from the celebrity bearing the name to the original domain name owner, a direct contradiction of the WIPO Panel's allocation of the burden in Sumner v. Urvan. The Panel's decision to change the mechanics of this determination, a key element of Sumner v. Urvan, is not explained in the Ciccone v. Parisi decision.

The Panel also held that Parisi violated the third criterion of the UDRP because he registered and used the domain name in bad faith. According to the Panel, Parisi registered the domain name

159. For a further discussion of WIPO's reasoning in Sumner v. Urvan and Springsteen v. Burgar, see supra notes 98-151 and accompanying text.

160. See UDRP Policy, supra note 30, at § 4(a)(ii) (detailing second criteria required by UDRP); see also WIPO Case No. D2000-0847, supra note 13, ¶ 6.C (adjudging that Madonna met second criterion of UDRP because Parisi's "claim of rights or legitimate interests [was] not persuasive.").

161. See WIPO Case No. D2000-0847, supra note 13, ¶ 6.C (using fact that domain name is "common word" in favor of Madonna); see also WIPO Case No. D2000-0596, supra note 13, ¶¶ 6.5 - 6.6 (holding that common use of term "sting" precludes definitive showing that opponent has no interest or rights in name). The Panel in Sumner v. Urvan held that because "the personal name in this case is also a common word in the English language, with a number of different meanings," Sting could not show that Urvan had no rights or legitimate interest in the name under the UDRP. See id. at ¶ 6.6.

162. WIPO Case No. D2000-0847, supra note 13, ¶ 6.C (placing burden of providing explanation for use of "common word" on Parisi).

163. Id. (concluding that Parisi did not meet burden of proving adoption of domain name based on "ordinary dictionary meaning").

164. See WIPO Case No. D2000-0596, supra note 13, ¶ 6.12 (placing burden on Sting to prove that Urvan adopted domain name based on his name and not "common use" of term).

165. See generally WIPO Case No. D2000-0847, supra note 13 (lacking discussion of burden-shifting from celebrity to original domain name owner).

166. See UDRP Policy, supra note 30, at § 4(a)(iii) (specifying third criteria required by UDRP); see also WIPO Case No. D2000-0847, supra note 13, ¶ 6.D ("[T]he record shows [Parisi] acquired the registration in bad faith.")
purely for commercial gain.\textsuperscript{167} This seems similar to the contested commercial use of the domain name in \textit{Springsteen v. Burgar}, in which the WIPO Panel ruled that "it is hard to infer from the conduct of [Burgar] in this case an intent, for commercial gain, to misleadingly divert consumers."\textsuperscript{168} However, the situations seem similar: a user, upon visiting BruceSpringsteen.com, would presumably expect to see a Bruce Springsteen website, just as a user visiting Madonna.com would probably expect to see a Madonna website.\textsuperscript{169} Upon visiting BruceSpringsteen.com, the Panel ruled in \textit{Springsteen v. Burgar}, "[t]he user will browse from one search result to another to find the information and material which he or she is looking for in relation to a search item, in this case the celebrity singer Bruce Springsteen."\textsuperscript{170} In \textit{Ciccone v. Parisi}, however, the Panel ruled that even a disclaimer "does nothing to dispel initial interest [and] confusion that is inevitable from Respondent's actions."\textsuperscript{171} In short, Madonna's fans will be confused, while Springsteen's fans are free to navigate the Internet until they find the singer's true website.\textsuperscript{172}

Parisi's failed attempt to rely on \textit{Sumner v. Urvan}, a factually similar case, further demonstrates the inconsistency of WIPO rulings.\textsuperscript{173} The WIPO Panel did not see the similarities between the two disputes and held that Parisi's reliance on \textit{Sumner v. Urvan} was "misplaced."\textsuperscript{174} In distinguishing the two cases, the Panel stated that "[i]n the Sting decision there was evidence that the Respon-

\begin{footnotesize}
\footnotesize 167. See WIPO Case No. D2000-0847, \textit{supra} note 13, ¶ 6.D (concluding that "[b]ecause the evidence shows a deliberate attempt by [Parisi] to trade on [Madonna]'s fame for commercial purposes, we find that [Parisi] has satisfied [the bad faith criterion of the UDRP]").

168. WIPO Case No. D2000-1532, \textit{supra} note 7, ¶ 6 (determining Burgar's link from BruceSpringsteen.com to his own Celebrity1000.com website was not enough to demonstrate commercial gain).

169. See WIPO Case No. D2000-1532, \textit{supra} note 7 (Richard W. Page, dissenting) (pointing out that Springsteen's fans will likely be confused by BruceSpringsteen.com's redirect to Celebrity1000.com). For a further discussion of the dissenting opinion in \textit{Springsteen v. Burger}, see \textit{supra} notes 146-51 and accompanying text.

170. WIPO Case No. D2000-1532, \textit{supra} note 7, ¶ 6 (determining that Internet users will not be confused by domain name).

171. See WIPO Case No. D2000-0847, \textit{supra} note 13, ¶ 6.D (explaining confusion from domain name is "inevitable").

172. See \textit{id.} (noting that Madonna's fans will likely be confused by domain name); see also WIPO Case No. D2000-1532, \textit{supra} note 7 (Richard W. Page, dissenting) (dissenting from Panel decision finding that Springsteen's fans will not be confused by domain name).


174. See \textit{id.} (stating that Sting.com dispute differs from Madonna.com dispute).
\end{footnotesize}
dent had made bona fide use of the name Sting prior to obtaining the domain name registration and there was no indication that he was seeking to trade on the good will of the well-known singer." 175

With the exception of Urvan’s own claim that he used the name as an online moniker, the record of *Sumner v. Urvan* lacked evidence conclusively demonstrating that Urvan made bona fide use of the name. 176 While there was no conclusive proof that Urvan was seeking to “trade on the good will” of the singer, there was also no conclusive proof that he was not doing so. 177 Thus, the Panel’s conclusion in *Madonna v. Parisi* that “there is no similar evidence of prior use by [Parisi] and the evidence demonstrates a deliberate intent to trade on the good will of complainant,” fails to establish solid precedent for the next celebrity cybersquatting case. 178

Recent decisions do not answer the question of who benefits from mediation – domain name owners or the celebrities who challenge them. 179 One commentator contends that the current mass exposure of celebrity culture to the culture at large has created a beneficial situation for celebrities seeking to protect their names from cybersquatters. 180 This commentator points out that the tide seems to have turned for celebrities. 181 But it is possible that celebrities’ increased public presence leaves them more vulnerable than ever. 182 In recent years, the traditional methods of recovery under the ACPA and the UDRP have become unreliable and unpredictable for celebrities. 183 These difficulties, coupled with the ever-in-

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177. See *id.* at ¶ 6 (showing no proof found by Panel that Urvan was not seeking to capitalize on “sting” moniker); *see also* WIPO Case No. D2000-0847, *supra* note 13, ¶ 6.D (stating lack of conclusive proof).


180. See *id.* (offering that celebrities may get special treatment from mediation groups). An argument can be made that “the efficiency of the uniform system comes at the expense of those who aren’t household names.” *Id.*

181. See *id.* (pointing out several recent disputes with outcomes favoring celebrities). Recent favorable mediation outcomes include those for actresses Elizabeth Taylor and Carmen Electra and for singer Barry White. *See id.*

182. See Lipton, *supra* note 49, at 1414-16 (discussing problems that celebrities face when attempting to recover domain names under UDRP or ACPA).

183. See *id.* at 1415 (examining recent celebrity cases and their outcomes under ACPA and UDRP). Actress Julia Roberts successfully obtained the domain
creasing public fascination with celebrities’ personal lives, have created an environment in which celebrities are more vulnerable than ever to Internet opportunists.\textsuperscript{184}

\section*{IV. Conclusion}

The current state of the media leaves celebrities vulnerable to cybersquatters.\textsuperscript{185} A Los Angeles attorney characterizes this vulnerability frankly: celebrities are “fair game.”\textsuperscript{186} Thus, for celebrities to protect themselves from cybersquatters, the ACPA must be amended to include more specific criteria for determining whether a purchase was made in good faith or in bad faith.\textsuperscript{187} Likewise, the UDRP, which WIPO uses to facilitate mediation, should be amended to include more specific criteria for determining the outcome of cases.\textsuperscript{188} The UDRP’s current criteria are too vague, with guidelines that are open to multiple interpretations.\textsuperscript{189}

In addition to problems with the UDRP’s criteria, WIPO’s procedural problems have become apparent in the past few years.\textsuperscript{190} WIPO panelists are increasingly battle-weary from the sheer volume of incoming cases.\textsuperscript{191} The number of claims filed for WIPO mediation has almost doubled since 2003, numbering 1,946 in 2006 alone.\textsuperscript{192} With so many disputes coming in, one commentator has noted, panelists “are required to make a decision in a short period
of time . . . [q]uite often, the distinctions [between the cases] get lost." Panelists are often inundated with claims and must make their determinations without the benefit of either briefs or oral arguments. Instead, the complainant merely fills out a standard complaint form on WIPO's website. Although this process makes it easier for celebrities to file claims, it also provides WIPO with less information about domain name disputes. Additionally, the complainant and respondent are not permitted to be present when WIPO resolves the dispute, hindering their ability to adequately express their claims.

Despite the theoretically uniform standards specified by the UDRP, in a "fact-specific proceeding under what many believe is a vague standard of what constitutes improper use," it is difficult for WIPO panelists to make distinctions between similar celebrity domain-name cases. More specific criteria will not only protect celebrities from cybersquatters, but it will also protect good faith purchasers by preventing such purchasers from being stripped of their domain names simply because they happen to have the same name as a celebrity or a celebrity property.

Because law is a system that depends not just on statutes and policies, but on precedent, "time is now of the essence in developing new approaches to domain name disputes." As technology

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193. Id.
194. See id. (describing limitations on Panelists' access to information about disputes).
195. See Anschell & Lucas, supra note 25, at 5 (describing process that complainant must go through to file WIPO complaint). According to Anschell & Lucas:

[T]he process of preparing the complaint is much simpler. Instead of requiring drafting extensive pleadings from scratch; WIPO's Web site offers a form complaint that can easily be completed. If the complainant so desires, however, in lieu of the WIPO form complaint, the complainant may draft a complaint and attach it to an e-mail to WIPO. Id.
196. See Heller, supra note 25 (describing filing process).
197. See id. (discussing pitfalls of expedited and fact-specific WIPO inquiry).
198. Id. (noting challenges presented by limitations on mediation).
199. See Don Henley Wants This Domain, supra note 1 (detailing battle over domain name Don-Henley.com). Don Henley seems to have a good faith intent to use his own name as his website, but because of the vague criteria and inconsistent results produced by the ACPA and UDRP, he may have a difficult time proving this intent. For a further discussion of the fight for Don-Henley.com, see supra notes 84-97 and accompanying text.
200. Lipton, supra note 49, at 1364 (providing implications of absence of legislative response to domain name law). "If we do not develop these new approaches soon, we risk entrenching the current status quo. This . . . would likely lead to the adoption of a default regulatory policy suggesting that the only interests to be protected in the domain name context are commercially valuable trade-
and celebrity culture have simultaneously advanced to new levels of ubiquity in mainstream culture, the law struggles to keep pace. Mediation groups and legislative bodies have tried to establish new criteria for determining when a domain name purchase is harmful and when it is legal, but the criteria are not specific enough and decisions are still made largely on a case-by-case basis. If celebrities can ever hope to consistently predict the outcome of a costly legal battle or a mediation dispute, changes must be made to the standards used for both processes.

Sarah Noel Sheffield*

mark rights." Id. at 1364-65. Lipton's assertion, if true, would be disastrous for celebrities trying to prevent their names from being used in cybersquatters' domain names. See id.

201. For a further discussion of lack of precedent regarding the new standards set by the ACPA, see supra notes 57-62 and accompanying text.

202. For list of WIPO cases with varying outcomes, see supra note 13.

* 2009 J.D. candidate, Villanova University School of Law; Bachelors degree in English and Government, University of Alabama at Birmingham, 2005. Thank you to my family and friends for their support. Special thanks to all those who assisted in the editorial process, especially Kimberli Gasparon, Caroline O'Grady, Joshua Prince, Michael Huntowski, David Assalone, John Fuller, Edward Kennedy, Jonathan Payne, Michael Ryan, Annemarie Terzano, and Jonathan Etkowicz.