



# THREE SOLID TIPS TO AVOID EMBARRASSING YOURSELF WHEN CLAIMING Internet Copyright Infringement

BY SAMUEL CASTOR, ESQ.

It was Thursday evening. I was about to head home when I received a pointed letter from a well-known, national law firm, representing a Fortune 100 company. To protect the potentially embarrassed, I will call their client “Company Tango.” The letter was a cease and desist notice, pursuant to 17 USC 512(c)(3) aka, the Digital Millennium Copyright Act. The attorney demanded that I take down material from my website — material that was allegedly infringing on Company Tango’s copyrights.

The letter was well drafted. It was crisp and to the point. It effectively claimed prima facie infringement and appeared to fully comply with the Digital Millennium Copyright Act requirements under Title 17 of the United States Code. It had the law firm’s name prominently positioned, instilling respect and evoking immediate attention. It was so well done that I stayed later that night to handle it. There was just one problem. The website using Company Tango’s copyrighted material was none other than the firm’s client, Company Tango.

Rather than fire off a retort, I called the attorney. He was a polite, young associate from a neighboring state. Imagine his discomfort when he realized he had innocently failed to confirm who controlled the website (domain), not just the Internet protocol address (IP) associated with that domain. Apparently, his client’s left hand was not communicating well with the right hand when it came to Internet marketing and development. With a little extra due diligence, he could have avoided the pitfall and embarrassment.

Believe it or not, this was not the first time I have received a misguided notification from an unaware or misdirected attorney, and it probably will not be the last. So, in an effort to assist active or aspiring copyright protectors, I offer some current events and three solid ways to avoid embarrassing yourself when protecting your copyright in this dynamic digital age.

## First Seismic Shift: New gTLDs

In October 2013, the International Corporation for Assigned Names and Numbers (ICANN) began rolling out the first set of generic top-level domain names (gTLDs).<sup>1</sup> For the uninitiated technology geeks out there, TLDs are the common endings of a website such as “.com,” “.net,” “.org,” “.edu,” etc., which ICANN historically limited to a short list of 22 domains, known as standard domains.

ICANN decided to offer new gTLDs as a policy shift in 2005.<sup>2</sup> Consequently, anyone (for a not-so-de minimis fee) could apply for a new gTLD. Applications abounded. More than 1,930 domain applications were filed.<sup>3</sup> More than 400 have been approved.<sup>4</sup> For example, “.vegas” began accepting applications earlier this year.<sup>5</sup>

If the information superhighway is anything like the physical highway, ICANN’s creation of more freeways likely means more Internet traffic. This is particularly true if you believe new gTLDs offer greater freedom to aspiring businesses (think entrepreneurs and start-ups) trying to be the next billion-dollar technology solution. Entrepreneurs and start-ups still have great difficulty trying to build their brands in the saturated and limited dot-com and dot-net markets.

By way of illustration, at the time I am writing this, Nevada businesses can buy “besttechnology.com” if they are willing to bid at least \$50,000 for the domain;<sup>6</sup> whereas, a business could purchase “besttech.vegas” for \$49.99. *See id.* Or the business could purchase “besttech.guru” for \$29.88. With these alternatives, and more than 1,000 alternatives to come, the company could have a shorter and similar domain, while using the gTLD as a garnish to their domain. In the case of “.vegas” they could show Vegas loyalty and build on the world-recognized brand, while in the case of “.guru” they could get one less letter and subtly appeal to potential customer ethos. *See id.*

If these incentives result in more domains, and more domains result in more Internet traffic, there will likely be more potential copyright collisions; all the more reason to know how to carefully navigate copyright enforcement on the growing information superhighway.

## Second Seismic Shift: The U.S. Letting Go of the Internet

In March 2014, the National Telecommunications and Information Administration (NTIA), the arm of the U.S. Commerce Department governing the Internet, announced its intent to hand off oversight of the administrative contract governing ICANN.<sup>7</sup> For years, NTIA has contracted with ICANN to carry out the Internet registration functions. NTIA insists the contract will not go to another government agency (think Russia or China), and assures that it will not affect the day-to-day operation of the internet.<sup>8</sup> Needless to say, debates about the effect of the shift still abound.

Given the potential increase in traffic and the potential distance from United States oversight, it is likely that the copyright enforcement in the dynamic digital domain may change dramatically. (Sorry, I couldn’t resist the alliteration). Even so, the following tips are fundamental and will be sure to help you save time and avoid embarrassment, despite likely changes.

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## Copyright Enforcement Tips

### *Recognize the difference between IPs and domains.*

It is possible to have multiple entities associated with a single IP, much like many people can receive mail at one address. Thus, it is crucial to verify both the IP and the domain. Consequently, the best point of contact for a cease and desist letter will be the domain's controller.

At the risk of getting too technical, this is, in part, due to the how IPs are used and to a growing shortage of IPv4 addresses.<sup>9</sup> Consequently, data centers, cloud or hosting providers (they are different), as well as other IP-related service providers have been known to acquire IPs to share with clients, either as a courtesy or for a fee. This, along with the shifting digital landscape, makes it even more crucial that you verify to whom you are sending any cease and desist notifications.

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As such, before sending a cease and desist or a take-down notice, confirm which service providers your client may be using. If an Internet or domain-related vendor, such as a cloud provider, data center or hosting provider of your client's appears to own the offending IP address but not the offending domain, it is possible that you may inadvertently send a cease and desist to your own client.

***Before sending a cease and desist, visit [WhoIs.com](http://WhoIs.com) or [Arin.net](http://Arin.net).***

Once you have identified the applicable IP and domain, ensure you are sending a cease and desist to the right point of contact. The process is so simple that you can be your own IT support. The free resources [www.whois.com](http://www.whois.com) and [www.arin.net](http://www.arin.net) allow you to check who is using the domains and IP addresses. Identify the offending domain or IP address, and then simply enter it into the search "Whois" field on either

website. On whois.com, look for the “Registrant Abuse Contact Email” and you’ll have your best point of contact. Note that arin.net is a regional Internet registry, and therefore North-American centric.

### ***Ensure your cease and desist is up to snuff.***

Once you have your data in hand, brush up on 17 USC 512(c) (3) of the Digital Millennium Copyright Act. The act requires several elements when sending a cease and desist or take down notification. Failure to include all of the elements may make it easier for someone to contest, or worse, ignore your claim.

These solid tips should help you navigate the expanding and changing digital world of copyright enforcement, make you look like a tech genius at work and help you avoid unnecessary embarrassment. ■

1. See Christine Willett, First New gTLDs Get the Green Light for Delegation October 21, 2013, <http://blog.icann.org/2013/10/first-new-gtlds-get-the-green-light-for-delegation/>.
2. See New Generic Top Level Domains, <http://newgtlds.icann.org/en/about/program> (last visited October 9, 2014).
3. See International Trademark Association, <http://www.inta.org/INTABulletin/Pages/ICANNReveals1.930ApplicationsforgTLDs.aspx> (last visited October 9, 2014).
4. See New Generic Top Level Domains, <http://newgtlds.icann.org/en> (last visited October 9, 2014).
5. See “.Vegas” registration landing page, <http://www.nic.vegas/> (last visited October 9, 2014).

6. See GoDaddy.com, <http://godaddy.com> (search for besttechnology.com, besttech.guru or besttech.vegas for price comparisons) (last visited October 6, 2014).
7. See NTIA US Department of Commerce, NTIA Announces Intent to Transition Key Internet Domain Name Functions, March 14, 2014, <http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>.
8. See Kyle Russell, No, They Didn’t Just Give Up Control Of the Internet, Business Insider, March 19, 2014, <http://www.businessinsider.com/ntia-icann-and-us-control-of-the-internet-2014-3>.
9. See ARIN.net, [https://www.arin.net/resources/request/ipv4\\_depletion.html](https://www.arin.net/resources/request/ipv4_depletion.html) (last visited October 9, 2014).



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