



## Domain-Name Error Redirect: Incentives and Solutions<sup>\*</sup>

Alex Tajirian

May 25, 2008

### Abstract

Domain owners with inactive domain names may face a double whammy. First, their names are not generating any income. Second, that fact can put the owner in legal hot water.

The essay outlines the incentives for all parties involved to find a solution. As arm's-length incentives are weak, I explore direct cooperative agreements that will overcome the free rider problem, and I propose a solution motivated by corporate social responsibility.

### Introduction

Some domainers, having forgone parking revenue to avoid any claims of trademark violation, have then found themselves thrown into legal trouble with trademark claimants because of actions taken by a third party (ISPs and PC manufacturers).<sup>1</sup> In addition to the resulting direct legal cost, the possibility of action by a third party heightens uncertainty and steals management's attention away from its real job.

The troubles for the domain name owner start when a surfer who enters in the browser an inactive domain name<sup>2</sup> is redirected to a Web page with advertising instead of getting a page that says there is an input error.<sup>3</sup> The redirect page is controlled by either an ISP or the browser,<sup>4</sup> a fact many of you have experienced. Sometimes this page includes an ad

---

<sup>\*</sup> This essay was motivated by Frank Michlick's comment (#7) on an [earlier post](#).

<sup>1</sup> For a description of the problem, and a list of some of the culprits, see "[Cease & Desist Sent to Domain Owner Based on Redirect Service](#)," DomainNameWire.

<sup>2</sup> It can be argued that the undesirable redirect of an inactive domain name has a negative impact on the surfers' experiences. Thus, the redirecting party is indirectly causing harm to Internet users.

<sup>3</sup> When the input domain name does not exist, the analysis below (excepting the role of domain owners) also applies. However, a nonexistent name does raise additional legal and image issues for the domain name industry. For a discussion of the issue, see [Wikipedia on SiteFinder](#) and Christopher Parente, [A Patent for SiteFinder-Like Resolution](#), CircleID.

<sup>4</sup> When you enter a domain name into a browser, the ISP redirects you to an ads page through its server, not (as is more common) through the browser.

of a trademark name holder, who then claims that the domain name is an infringement on their intellectual property because it seems to be associated with the trademark, despite the fact the domain is inactive. The trademark claimant grabs the opportunity to coerce the owner into surrendering the domain name—the “gotcha!” effect. On the other hand, by keeping the domain name inactive, which is legal and not necessarily a trademark infringement,<sup>5</sup> a domain name owner can still incur legal bills and the already mentioned costs of distraction and uncertainty.

The problem stems from our lack of clear legal definitions of online network trademark infringements. Network members have an incentive to free ride<sup>6</sup> because of this trademark vacuum. Moreover, entities that are directly or indirectly related to this problem lack incentives to remedy the problem. And incentives schemes, such as bilateral arrangements, are not necessarily a cost-effective way to win cooperation.

### Players, Incentives, Solutions

To my knowledge, this essay is the first attempt at exploring solutions to the domain-name error redirection problem.

Given the relationships that now exist between the various entities, I point out possible constructive actions each entity can take, along with each entity’s incentives for acting. As the incentives for change are weak or cannot be ascertained without proprietary information from the intermediaries, I outline an external solution inspired by corporate social responsibility.<sup>7</sup>

The diagram below identifies the networked relationships between the entities that are directly or indirectly part of the problem and/or solution. Laws govern the actions of the network.

I begin with the potential remedies and incentives facing the redirection culprits, then go upstream to the entities featured in the diagram above.

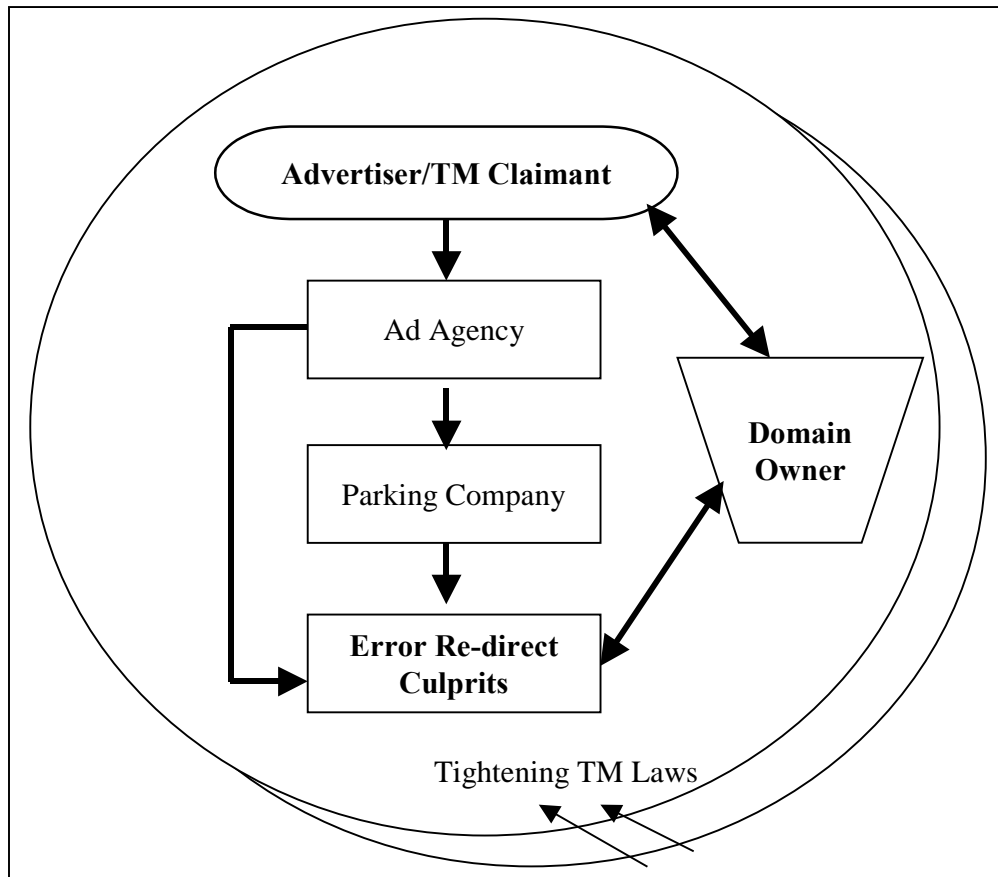
---

<sup>5</sup> If the trademark owner believed that the idle domain name was an infringement, or that they could bully the owner into surrendering it, they would have done so without seeking the pretext of alleged infringement through domain redirection.

<sup>6</sup> Google’s AdSense user agreement, for example, pushes the trademark responsibility to the advertiser. However, a recent [court decision](#) raises doubts about the legality of free riding.

<sup>7</sup> Michael E. Porter, Mark R. Kramer, “Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility,” *Harvard Business Review*, December 2006.

### Relationship Flows



#### 1. Redirection Culprits

##### a. ISP

- i. Facing no significant legal pressure, they don't have a strong incentive to filter and monitor ads unless doing so somehow brings a profit or the ISP receives compensation from the trademark or domain owner.
- ii. Some parking monetizers see an incentive to filter the ads. For example, GoDaddy has recently introduced such a service. If the aggregate industry demand is small, then trademark ad filtering is just a niche market and other parking companies will have no incentive to provide such a service. However, if there is money to be made, economies of scale suggest that the developer of such a filtering technology can leverage the technology. If so, GoDaddy or another monetizer ought to follow a platform strategy<sup>8</sup> to leverage other services. Thus, everything being equal, we might end up with platform competition shaping the domain name industry. On the other hand,

<sup>8</sup> Annabelle Gawer and Michael A. Cusumano, "[How Companies Become Platform Leaders](#)," *MIT Sloan Management Review*, Winter 2008.

with complementary innovation, a nonmonetizer<sup>9</sup> may be able to leverage its platform; thus, there would be no platform competition. Of course, the nonmonetizer could leverage its technology by going upstream to the ad agencies.

b. Browser control

The options and incentives of a trademark owner are:

- i. An agreement with an ISP designating which key words would turn up pages showing the trademark owner's ads and nobody else's, and which would turn up pages without the owner's ads.<sup>10</sup> This arrangement would be effective only when trademark claimants and/or domainers compensate the ISP for filtering ads.
- ii. From the perspective of trademark claimants, the viability of the incentive depends on the difference between the value of the damage to the trademark owner and the cost to the ISP.<sup>11</sup> If brand damage can be reduced by more than an acceptable compensation to the ISP, then such an incentive scheme will be effective. Nevertheless, the trademark claimant incurs additional costs: the need to make such arrangements with multiple ISPs, as well as administrative costs that must not be left out of consideration. To decrease monitoring and operating costs, an intermediary can leverage relationships across ISPs and trademark holders.

For the domainer, the arrangement is viable when the revenue outweighs the expected cost of legal action, a balance that is not easy to calculate.

- iii. Microsoft controls which page is served when there is an error in Internet Explorer's address input. With Google tool bar added to the browser, you are redirected to a page rendered by Google. The top of the page suggests an input correction by asking "Did you mean ...". Nevertheless, the page also has ads. Some PC manufacturers have made agreements with Microsoft to redirect the error to a page with ads supplied by the PC manufacturer. These ads are typically supplied by ad agencies such as Google and Yahoo.

Microsoft makes money from clicks on the ads. Thus, it's a real problem in foregone revenue for the company when users are served irritating content, since some may drop Internet Explorer for a new

---

<sup>9</sup> For a patent pending application, see "[Frank Schilling's Defensive Patent](#)," DomainNameWire.

<sup>10</sup> Of course, when the ISP ads and the advertisers are on different ad networks, there is no chance of overlapping ads and the conflict does not arise. An example would be if the ISP were using Yahoo and the advertiser were using Google.

<sup>11</sup> In the case of ad exclusivity, the cost includes forgoing revenue from other advertisers.

browser. In practice, of course, many people stick with what they have, whether because they don't like change, they doubt that another browser will be any different, or they work for a company whose IT department dictates the browser its employees use.

As the PC manufacturers seem not to be concerned about the legality of their action, their incentives to change behavior lie with browser developers, Microsoft, and the ad agencies.

- iv. An alternative to serving ads, the browser can be set up to check if any of the user's previously visited sites are related to the key word or the domain name entered in the browser.<sup>12</sup> Thus, in principle, the browser's developer can make money from information on users' surfing habits. However, privacy issues will probably prevent the implementation of such a service.

## 2. Ad agencies

Ad agencies have two control levers: at the advertiser level (Google's AdWords, for example) and at the publisher level by providing ads (Google's AdSense and parking feeds, for example).

### a. Advertiser level

- i. Instead of filtering the ads, Google, for example, gives advertisers the option to select which sites not to display their ads on. However, this can disadvantage parking in general if advertisers opt not to use any parked domain name. On the other hand, being selective domain-by-domain may not be cost effective.
- ii. The ad agency can place restrictions on the type of works that can and cannot be used.<sup>13</sup>
- iii. [Courts](#) can force advertisers to use "negative key words."

### b. Publisher level

- i. An ad agency's incentives to develop a filtering technology are primarily driven by two potential benefits: operating profits and strategic profits. The first is when operating revenue is greater than operating cost. Given that ad agencies have so far escaped trademark issues, their revenue comes from click-on ads. Thus, the lack of filtering may lead some advertisers to flee to a competitor's network. However, Google is now the dominant player in the text-based ad

---

<sup>12</sup> Firefox browsers have such an option.

<sup>13</sup> Google has recently reversed its [AdWords trademark policy](#) and now permits the use of trademark key words in the UK and Ireland.

market and may, in effect, become the only such player if the Justice Department allows Yahoo to use Google's ads.

An ad agency with the right open-platform strategy can expect more than an advantage. It can expect a monopoly.

3. Domain owners

Domainers can implement a cooperative strategy with trademark claimants and domainers either directly or through a niche monetization-service provider.<sup>14</sup>

4. Advertisers/TM claimants

- a. Adopt a cooperative carrot-and-stick regime with domainers that benefits both parties.<sup>15</sup>
- b. Take legal action against domain owners.
- c. Use an online identity protection service to monitor and resolve any potential infringements.

### External Solutions

What if the above incentives are weak or not cost effective? If so, an external solution is needed, one that rewards the good guys while making the ISPs and technology companies feel the pain of their actions. Remember, companies today care more than ever about their reputation. But the information about corporate deeds and misdeeds needs to be disseminated by methods beyond industry lobbying and a few articles on domain name news sites. Start a Web site to make the issue public, one where the actions and inaction of all groups is revealed. Such a site can be a weapon to enforce corporate responsibility, as it can also exploit blogs and forms more effectively. ■

---

<sup>14</sup> See Alex Tajirian, "[Don't Litigate, Open Them Up!](#)," DomainMart.

<sup>15</sup> See Alex Tajirian, "[Brand Complementors: Implementing a Cooperative Domain-Name Use](#)," DomainMart.