

# 'Dot anything' registrars, for better or worse, new warriors in piracy fight

## Global IP

By [Doris Estelle Long](#)

*Doris Estelle Long is the president of Doris Long Consulting, specializing in U.S. and international IPR and information security issues; a screenwriter and producer for VeraKen Productions; and a law professor emeritus at The John Marshall Law School. She has served as a consultant on IPR issues for diverse U.S. and foreign government agencies, including as attorney adviser in the Office of Legislative and International Affairs of the USPTO. She can be reached at [prof.doris.long@gmail.com](mailto:prof.doris.long@gmail.com).*

POSTED May 4, 2016 3:11 PM

There is an old saying: "Be careful what you wish for." In the realm of international copyright, those who successfully fought earlier efforts to strengthen enforcement against Internet piracy may soon be wishing for the good old days.

There are new developments involving domain name registration practices that make earlier efforts, such as the Anti-Counterfeiting Trade Agreement and the Trans-Pacific Partnership, look like weak sisters. While many are gearing up to fight the TPP, the battle over the norms for combating international digital piracy may be over. Not everyone will like the results.

The figures on digital piracy are astounding regardless of whose measure you use. The Recording Industry Association of America recently reported that vinyl record sales provide more profits than all combined monies from lawfully distributed digital music because of losses due to nearly unstoppable copyright piracy.

Efforts to create new international norms for fighting digital piracy have been stymied since the successful challenge in 2012 to ACTA and its U.S. legislative equivalent the Stop Online Piracy Act. While social media celebrated the victory, the rest of us waited to see what form ACTA would take in its re-emergence.

The wait is over. ACTA has re-emerged in the innocuous arena of "dot anything" domain name registrations. Its new form is less transparent and less protective of end-user rights. It will also be more effective in controlling piracy.

Dot anything generic top-level domain names, or gTLDs, were the brainchild of the Internet Corporation of Applied Internet Names and Numbers. GTLDs are the terms that appear after the dot in a domain name. Thus, in "chicagolawbulletin.com" the portion after the dot (dot com) is the gTLD.



applications for terms such as “dot movie,” “dot music,” “dot software,” “dot theater,” “dot search” and “dot blog.”

From reveal day glitches to inadequate protection of prior trademark owners' rights, the dot anything gTLDs have been the subject of numerous debates. Yet while many were focusing on the trademark issues posed by these new gTLD's, the content industry was negotiating voluntary agreements with registrars that placed them on the front line of international copyright protection.

To operate a dot anything gTLD, a registrar must agree to be bound by ICANN's Registrar Accreditation Agreement. Article 3.18 requires the registrant to provide a contact point to “receive reports of abuse involving registered names sponsored by registrar, including reports of illegal activity.” It further requires the registrar to take unspecified “reasonable and prompt steps to investigate and respond appropriately to any reports of abuse.”

The term “abuse” is not defined in the RAA. However, Article 1.13, defines “illegal activity” as “conduct involving exploitation of registrar's domain name registration services in furtherance of conduct involving the use of a registered name that is prohibited by applicable law.” New voluntary agreements with copyright content providers fill the missing gaps for responding “appropriately” to reports on digital piracy on a particular site.

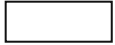
Voluntary agreements are not a new phenomenon in the copyright enforcement arena. Yet, previous voluntary agreements in connection with copyright protection have generally been contracted with online service providers or companies that receive financial benefits from pirate sites such as online advertisers and credit card companies. By contrast, these new RAA “gap filler” agreements involve domain name registrars directly in the fight against digital piracy.

The RAA gap filler agreement announced between the Motion Picture Association and Donuts Inc. in February has already become a model of best practices that revolutionizes registration procedures.

It does not create an automatic suspension system for pirate websites. But it certainly makes suspension much more likely — and much quicker than current court processes.

Under the agreement, the MPAA is considered a “trusted notifier” for the purpose of reporting large-scale pirate websites registered under a gTLD operated by Donuts. As part of its reporting obligation, the MPAA must provide “clear evidence of pervasive copyright infringement.” Donut serves as a last resort in the event the copyright owner is unable to secure a satisfactory result from the host service provider or the domain name registrant.

Donut's RAA has already been changed to incorporate this new suspension right for abuse of copyright. (See [netnames.com/sites/default/files/DonutsRegistrationTermsConditions.pdf](https://netnames.com/sites/default/files/DonutsRegistrationTermsConditions.pdf)). Since Donuts operates the registries for more than



On the plus side, since 1999 voluntary agreements involving cybersquatting, incorporated into dot com domain registry agreements have already demonstrated the effectiveness of such arrangements.

On the negative side, the privatization of international enforcement norms represented by such voluntary agreements threatens to undermine efforts to strengthen the already shaky transparency of international standard-making processes.

Part of the continuing challenge to the TPP is the lack of transparency in its negotiation process. Draft copies of the treaty were not publicly available except in the form of leaked documents. Unfortunately, such a process looks positively translucent compared to the processes leading to the agreement.

Because it is a private agreement, there is currently no publicly available copy online. Information about its terms and conditions can be gleaned only from secondhand information, such as press releases and RAAs.

Such secrecy exacerbates the adverse impact of the agreement on international transparency. Worse, it threatens to give content owners the unfettered ability to define such critical enforcement issues, such as who qualifies as a pirate website and the remedies against such sites, without judicial oversight.

Where international processes fail, self-help inevitably becomes the new norm. For copyright owners, voluntary agreements fill a critical enforcement gap. Unfortunately, they also make the defeat of ACTA and SOPA Pyrrhic victories for those seeking balance and transparency in international enforcement standards.