

**PROTECTION OF GEOGRAPHIC  
NAMES IN INTERNATIONAL  
LAW AND DOMAIN  
NAME SYSTEM POLICY**

**Heather Ann Forrest**



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Law & Business

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International Law and Domain  
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Name System Policy  
Heather Ann Forrest  
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*Inauguraldissertation zur Erlangung der Würde eines Doctor iuris der  
Rechtswissenschaftlichen Fakultät der Universität Bern. Die Fakultät hat  
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Thomas Cottier und Dr. Mira Burri, als Dissertation angenommen, ohne  
damit zu den darin ausgesprochenen Auffassungen Stellung nehmen zu  
wollen.*

## Foreword

The World Wide Web, conceived in the 1980s as a specialized tool facilitating computer-based information flows among a few professionals, exponentially grew in recent years and became a principal tool of general communication, indispensable to business, government, science and society at large with some 205 million second-level domain names by 2010. The network grew without a proper legal framework – perhaps thanks to that, it rapidly conquered the world beyond all initial expectations. It was not designed to fit the law, nor was the law ready for it. This is true both in domestic and international law.

When ICANN's Board of Directors announced preparations for new top-level domain names in 2008, largely with a view to meet new demands and to diversify an overstretched .com top-level, it was by no means clear whether the possibility of recourse to geographical names was compatible with international law and law in general. This book undertakes to assess the legal regime accompanying geographical top-level domain names. Is it lawful and possible to allocate names such as .asia, or .europe, or a particular locality, such as .newyork, as a prime organizational structure for the internet Domain Name System? Who is entitled to use these denominations?

Given the global dimension of the internet, this study seeks to answer these questions from a perspective of international law. The author examines the implications of positive international law with a view to assess to what extent geographical names are currently protected by different titles, and to what extent they can be exclusively claimed by governments in defence of territorial prerogatives under the principle of sovereignty. In doing so, the book walks a number of avenues, ranging from intellectual property to unfair competition and to human rights. It offers a comprehensive analysis of a field

## *Foreword*

which raises more questions than clear answers can be provided, given the flux and novelty of the field.

The author concludes her survey in finding that states cannot claim exclusive rights, and a great number of different factors will need to be taken into account in shaping future rules on the subject. Her work offers a most valuable contribution to this effort, as it sets out all the different legal facets which internet law should take into account in the field of internet domain name allocation.

This book is of great interest both to practitioners and to academics focusing on internet governance and its challenges in the process of legal globalization. It is based upon a thesis submitted to the Faculty of Law of the University of Bern, Switzerland in 2011. Working with Heather Forrest during regular visits to the World Trade Institute was a pleasure and an experience of gradually understanding an entirely new and emerging field of international economic law, thanks to the effort of the author of this highly commendable work.

*Prof. Thomas Cottier*



## List of Abbreviations

AIPPI	International Association for Protection of Intellectual Property
AoC	Affirmation of Commitments between ICANN and United States Department of Commerce
ARIPO	African Regional Intellectual Property Organization
ARPANET	United States Defense Department's Advanced Research Projects Administration
ccNSO	Country-code Name Supporting Organization, an ICANN advisory body
ccTLD	Country-code Top-Level Domain
CSTB	Computer Science and Telecommunications Board
DNS	Domain Name System
DNSO	Domain Names Supporting Organization, a former ICANN advisory body predecessor to the GNSO
ECJ	European Court of Justice
FCC	United States Federal Communications Commission
FRYOM	former Yugoslav Republic of Macedonia
GAC	ICANN's Governmental Advisory Committee
GATT	General Agreement on Tariffs and Trade
GNSO	Generic Names Supporting Organization, an ICANN advisory body
GPML	Globally-Protected Marks List

## *List of Abbreviations*

Green Paper	Proposal to Improve the Technical Management of Internet Names and Addresses
gTLD	generic Top-Level Domain
IAB	Internet Advisory (later, Activities, and ultimately, Architecture) Board
IAHC	Internet Ad Hoc Committee
IANA	Internet Assigned Numbers Authority
ICANN	Internet Corporation for Assigned Names and Numbers
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IDN	Internationalized Domain Name
IGO	Intergovernmental Organization
IP address	Internet Protocol address
IPC	Intellectual Property Constituency, a constituent body of the GNSO
IRT	Implementation Recommendation Team
ISI	Information Sciences Institute
ISO	International Standardization Organization
ISO 3166-1 List	International Standardization Organization 3166-1 list of English country names and code elements
ISOC	The Internet Society
New gTLD Program	ICANN new generic top-level domain program, the program of adding new generic top-level domains to the Domain Name System
NIC	Network Information Center
NGO	Non-governmental Organization
NSF	National Science Foundation
NTIA	National Telecommunications and Information Administration of the United States Department of Commerce
OECD	Organisation for Economic Co-operation and Development
Para.	Paragraph
PCIJ	Permanent Court of International Justice
RFC	Internet Request for Comments series
Restatement	Restatement (Third) of the Foreign Relations Law of the United States
Root	Authoritative root zone file
SRI	Stanford Research Institute

STI	Special Trademark Issues Review Team
STOP	Start-up Trademark Opposition Policy for .biz
TCE	Traditional Cultural Expression
TCP/IP	Transmission Control Protocol/Internet Protocol
TLD	Top-Level Domain
Trademark PDDRP	Trademark Post-Delegation Dispute Resolution Procedure
UDRP	Uniform Domain Name Dispute Resolution Policy
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNESCO Convention	Convention on the Protection and Promotion of Cultural Diversity of Cultural Expressions
URS	Uniform Rapid Suspension procedure
WIPO	World Intellectual Property Organization
WIPO I	World Intellectual Property Organization's First Internet Domain Name Process
WIPO II	World Intellectual Property Organization's Second Internet Domain Name Process
WIPO Standing Committee	World Intellectual Property Organization Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications
WTO	World Trade Organization

## Preface and Acknowledgements

The catalyst for the study documented in this book was the June 2008 decision of the Board of Directors of the Internet Corporation for Assigned Names and Numbers (ICANN) to commence a new round of expansion at the top-level of the internet Domain Name System. This book is the product of a doctoral thesis commenced at the University of Berne, Switzerland under the supervision of Professor Thomas Cottier, Director of the World Trade Institute and Institute for European and International Economic Law. Professor Cottier's inestimable experience in intellectual property and trade law pushed me to new levels of understanding and enquiry, inspired me to draw connections where previously I had not even considered that these existed, and encouraged me to look beyond the microcosm of ICANN policy-making to the larger world in which it operates.

This study was additionally guided by Professor Jürgen Bröhmer, then-Head of the School of Law at the University of New England, now Dean of the School of Law at Murdoch University and Visiting Professor at the Europa Institute, Saarbrücken University. Professor Bröhmer's early support encouraged me to turn mere ideas about the legality of domain names into a doctoral study. His input and insight at so many stages along the journey have inspired me to question fundamental assumptions; he has thus contributed much to the rigour of this work, particularly as respects the role of human rights law in the protection of geographic names.

Thanks to Professor Cottier and Professor Bröhmer, I had the great pleasure of undertaking several months of research in residence at the Institute of European and International Economic Law at the University of Berne, Switzerland. I am particularly grateful to Dr Mira Burri, Dr Christian Häberli, Dr Dannie Jost, Professor Marion Panizzon and Dr Susan Brown-Shafii for their support and interest in my work. I am also grateful to them

## *Preface and Acknowledgements*

for having introduced me to Dr Ueli Buri of the Swiss Federal Intellectual Property Institute and Professor Rolf Weber of the University of Zürich, who generously offered input in their respective areas of specialization and provided me with an opportunity to test my ideas. Further, the successful completion of this study also owes much to Wulfhard Stahl, Institute librarian, and the Institute staff, in particular Rosemarie Cöppicus and Gaby Hofer. I also wish to thank my fellow doctoral candidates for their perceptive and insightful comments and suggestions at our annual conferences and I wish them happiness and success in their future endeavours.

There are many whom I wish to thank for their day-to-day encouragement, beginning with my former colleagues in the School of Law at the University of New England and my current colleagues in the Faculty of Law at Australian Catholic University. Despite the tremendous distances between us, friends scattered across the globe provided motivation and moral support, often at exactly the moments I needed it most. Anna Jondelius and Tim Eavis in particular have, without hesitation, rearranged their lives, holidays and home to support the European phases of this project.

This journey could not have been sustained without the support of my family, immediate and extended. My husband, Jani Myöhänen, has carried the heaviest burden but done so with unfailing understanding, tolerance and companionship; he makes all things seem possible.

Finally, I could not possibly hope to articulate here the commitment that my parents, Teryle A and Mary Catharine Forrest, have made to their only child's education. The achievement of this milestone is as much theirs as it is mine, and it is to them that I dedicate this book.

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