

# Country Code Top Level Domain Names (ccTLDs): Are they “property”?

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# Structure

1. The role and value of a ccTLD – but is it “property”?
2. Conflicting judgments.
3. The ccTLD as a brand.
4. Is a brand “property” ?
5. The ccTLD – “property” or “intellectual property” ?

# Top level domains (TLD)

Two main categories – generic and country code

## 1. Generics (gTLDs)

- (i) Open- available to anyone - .com
- (ii) some limitations - .gov .govt .edu .ac
- (iii) new gTLDs – e.g. .yoga .accounting .town .bike

# URL

Uniform Resource Locator

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subdomain

Top Level Domain  
TLD

http:// www . google . com

protocol  
(HyperText Transfer)

domain (name)

## 2 Country codes (ccTLD)

= Two-letter code representing a country, dependency or region.

- Part of the Uniform Resource Locator (URL) of a webpage.
- Appears to indicate (to the unsavvy) the geographical source of a business e.g [www.Pro1Digital.co.nz](http://www.Pro1Digital.co.nz)
- Promote the image and '**brand**' of a country? or purely for economic gain?

## C. Itoh v. ICANN (2007)

Plaintiff (Bahraini company) seeks transfer of .cd - the ccTLD of the Democratic Republic of Congo to satisfy arbitral ruling won against the Congo.

Superior Court of the State of California finds the ccTLD is 'not property'.

Ben Haim v. Islamic Republic of Iran; Calderon-Cardona v. Democratic People's Republic of Korea; Rubin v. Islamic Republic of Iran; Stern v. Islamic Republic of Iran; Weinstein v. Islamic Republic of Iran; Wyatt v. Syrian Arab Republic

*Ben Haim et al* (2014) - Plaintiffs were victims of terrorist attacks. Attempted to seize control of relevant ccTLDs to satisfy federal court judgments against the defendant governments. ICANN files notices to quash.

US District Court for the District of Columbia finds ccTLDs not “attachable property” (but does not rule out “property” – citing *Kremen v Cohen*)

Kremen v. Cohen 337F 3d 1024 (9<sup>th</sup> Cir 2003)

Ninth Circuit finds domain name, sex.com , to be “property” and capable of being wrongfully converted.



# The ccTLD as a brand

- Indicates the source and image of a country or region c.f. a flag or passport
- Imbues a business with that image- the commercial source of goods or services.
- Functions similar to a trade mark or brand- and is subject to abuse

Examples- misleading use of the ccTLD brand

# brand values

## Example: **Virgin**

- The best quality
- Must be innovative
- Must be good value for money
- A challenge to existing alternatives
- It must add a sense of fun and cheekiness



# Branding of countries



**100% PURE  
NEW ZEALAND**

# Property

Notoriously difficult to define.

- Natural rights to which individuals become morally entitled through their labour. (*John Locke*)
- A bundle of rights - the right to possess, the right to use, the right to exclude, the right to sell. (*William Blackstone*)
- **More recently-** ‘a multi-faceted, sometimes self-contradictory and internally irreconcilable notion which is variously manifested in plural (although inseparable) cultural discourses’ (*Margaret Davies*).

# Brands

Brands are “valuable intangibles” – but are they ‘property’?

(Dev Ganjee “Property in Brands” in Howe and Griffiths (eds) Concepts of Property in Intellectual Property Law )

Consisting of :

- the signifier (the perceptible form of the mark)
- the signified ( its semantic content- goodwill etc)
- the referent (product or service to which the mark refers)

# *L'Oréal SA v Bellure NV*

(2009) Case C -487/07

The defendants market “downmarket’ imitations of L’Oréal fragrances.

(No consumers were confused. No trademark infringement)

CJEU rules that ‘the owner of a well-known trade mark may **prohibit** a third party from using a sign similar to that trade mark where that third party seeks to ride on the coat-tails of the mark **in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark’s image.**’

# *L'Oréal SA v Bellure NV*

‘By prohibiting conduct that allows the defendant to benefit from someone else’s brand image and reputation, regardless of any harm to the image, the court has in effect recognised the **brand** as an **independent object of proprietary rights.**’

Dev S Gangjee

# The ccTLD as Property

1. Controlled and managed by the country or region – cf  
**‘bundle of rights property theory**  
(but ICANN denies “ownership” by countries)
  
2. Operates as a **brand** – and a brand could be a form of property



# To consider

- 1. Is proprietisation an over-protection** of geographical terms:  
cf geographical second level domain names and new gTLDs  
e.g. [Smith@perth.com](mailto:Smith@perth.com); Smith @ wine.barossa
- 2 Where does the GI fit? Is a ccTLD a form of IP?
3. If “property” should a ccTLD be assignable ? Taxed? used to satisfy a debt?

Thank you.

Comments welcome.