

COMPLAINT TRANSMITTAL COVERSHEET

Attached is a Complaint that has been filed against you with the World Intellectual Property Organization (**WIPO**) Arbitration and Mediation Center (the **Center**) pursuant to the Uniform Domain Name Dispute Resolution Policy (the **Policy**) approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**) approved by ICANN on September 28, 2013, and in effect as of July 31, 2015, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**) in effect as of July 31, 2015.

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a **Complainant**) submits a complaint to a dispute resolution service provider, such as the Center, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name(s) that is/are the subject of the Complaint in the document that accompanies this Coversheet.

Once the Center has checked the Complaint to determine that it satisfies the formal requirements of the Policy, the Rules and the Supplemental Rules, it will forward an official copy of the Complaint, including annexes, to you by email as well as sending you hardcopy Written Notice by post and/or facsimile, as the case may be. You will then have 20 calendar days from the date of Commencement within which to submit a Response to the Complaint in accordance with the Rules and Supplemental Rules to the Center and the Complainant. You may represent yourself or seek the assistance of legal counsel to represent you in the administrative proceeding.

- The **Policy** can be found at <https://www.icann.org/resources/pages/policy-2012-02-25-en>
- The **Rules** can be found at <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en>
- The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://www.wipo.int/amc/en/domains/supplemental/eudrp/newrules.html>
- A **model Response** can be found at <http://www.wipo.int/amc/en/domains/respondent/index.html>

Alternatively, you may contact the Center to obtain any of the above documents. The Center can be contacted in Geneva, Switzerland by telephone at +41 22 338 8247, by fax at +41 22 740 3700 or by email at domain.disputes@wipo.int.

You are kindly requested to contact the Center to provide an alternate email address to which you would like (a) the Complaint, including Annexes and (b) other communications in the administrative proceeding to be sent.

A copy of this Complaint has also been sent to the Registrar(s) with which the domain name(s) that is/are the subject of the Complaint is/are registered.

By submitting this Complaint to the Center the Complainant hereby agrees to abide and be bound by the provisions of the Policy, Rules and Supplemental Rules.

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

NETBLOCKS GROUP

9 South Close
Highgate
London
England, N6 5UQ
GB
(Complainant)

-v-

Unknown
California, US
(Respondent)

Disputed Domain Names:

<netblocks.fyi>

COMPLAINT

(Rules, Paragraph 3(b); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

I. Introduction

[1.] This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the **Policy**), approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**), approved by ICANN on September 28, 2013, and in effect as of July 31, 2015, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**) in effect as of July 31, 2015.

II. The Parties

A. The Complainant

(Rules, Paragraphs 3(b)(ii) and (iii))

[2.] The Complainant in this administrative proceeding is **NETBLOCKS GROUP**, a social enterprise working on internet governance and network measurement in the public interest. It is founded and runs by British-Turkish social entrepreneur Mr. Alp Toker.

[3.] The Complainant's contact details are:

NETBLOCKS GROUP

Address : 9 South Close Highgate London England, N6 5UQ GB
E-mail : contact@netblocks.org

[4.] The Complainant's authorized representative in this administrative proceeding is:
June Intellectual Property Services Inc.

Address: Suleyman Seba Caddesi Acisu Sok. No.3/4 Akaretler 34357 Besiktas
Istanbul/TURKEY

Telephone : +90 212 327 28 08

Fax : +90 212 327 28 09

E-mail : dilek@june.legal

[5.] The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

Method: e-mail

Address: dilek@june.legal

Contact: Mrs. Dilek USTUN EKDIAL

Material including hardcopy

Method: courier

Address: **June Intellectual Property Services Inc.**

Suleyman Seba Caddesi Acisu Sok. No.3/4 Akaretler 34357 Besiktas Istanbul/TURKEY

Fax: +90 212 327 28 09

Contact: Mrs. Dilek USTUN EKDIAL

B. The Respondent

(Rules, Paragraph 3(b)(v))

[6.] The Respondent in this administrative proceeding is:

Unknown

California, US

[7.] For reasons related to the implementation of the EU General Data Protection Regulation (**GDPR**), the Whois information for the Domain Name is masked. Accordingly, little information is known about the identity of the Respondent, other than that the Respondent appears to be located in the California USA. A copy of the Whois information at Annex 1.

III. The Domain Name(s) and Registrar(s)

(Rules, Paragraphs 3(b)(vi), (vii))

[8.] This dispute concerns the domain name identified below:

<netblocks.fyi>

[9.] The registrar with which the domain name is registered are:

Dynadot, LLC (United States)

<http://www.dynadot.com>

Dynadot Staff Tel: +1 6502620100

Email: info@dynadot.com

IV. Language of Proceedings

(Rules, Paragraph 11)

[10.] To the best of the Complainant's knowledge, the language of the Registration Agreement is *English*; therefore the Complaint has been submitted in English.

V. Jurisdictional Basis for the Administrative Proceeding

(Rules, Paragraphs 3(a), 3(b)(xiv))

[11.] This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the domain names that are the subject of this Complaint is registered, incorporates the Policy. A true and correct copy of the domain name dispute policy that applies to the domain name in question is provided as Annex 2 to this Complaint and can be found at <https://www.icann.org/resources/pages/policy-2012-02-25-en> Annex 2.

VI. Factual and Legal Grounds

(Policy, Paragraphs 4(a), (b), (c); Rules, Paragraph 3)

[12.] This Complaint is based on the following grounds:

1. The domain name is identical to a trademark or service mark in which the Complainants have rights; and
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name was registered and is being used in bad faith by the Respondent.

A. The domain name(s) is(are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The Complainant NetBlocks is a civil society group working at the intersection of digital rights, cyber-security and internet governance. Independent and non-partisan, NetBlocks strives for an open and inclusive digital future for everyone.

NetBlocks is the best-known brand in the related industry with thousands of news reports, interviews, TV appearances and an established trading name in the US, UK, Europe and elsewhere since 2016.

See the Complainant's official web site netblocks.org and Annex 3 for more detailed information on **NETBLOCKS**.

The date of first use of NETBLOCKS trademark is stated to be **2016**, which *prima facie* gives the Complainant trademark rights sufficient for the purposes of the Policy.

Further, since December 07, 2016 NETBLOCKS is the legal owner of the domain name "netblocks.org" and is still using this domain name legally (Annex 4).

The Complainant has built up a substantial reputation in its "NETBLOCKS" trademark. The Complainant relies on its trademark for its reputation and recognition. The Complainant has used the mark NETBLOCKS in connection with a variety of services. As a consequence, the public has come to perceive services that are offered under a NETBLOCKS mark or a variation of the same as emanating from or being endorsed by or affiliated with Complainant.

NetBlocks is verified on the two leading social media platforms the organization uses, Twitter and Facebook.

Twitter Inc. explains that "an account may be verified if it is determined to be account of public interest. Typically this includes accounts maintained by users in music, acting, fashion, government, politics, religion, journalism, media, sport, and business and other key interest areas."

Facebook Inc. explains that "it means that Facebook confirmed that this is the authentic page or profile for public figure, media company or brand. Keep in mind that verified badges are for well-known, often searched pages and profiles. Not all public figures, celebrities and brands on Facebook have a verified badge."

The UDRP does not require that a complainant must hold rights specifically in a registered trademark or service mark. Instead, it provides only that there must be "a trademark or service mark in which the complainant has rights," without specifying how these rights are acquired. With this distinction in mind, many decisions under the UDRP have therefore determined that common law or unregistered trademark rights may be asserted by a complainant and will satisfy the first condition of the UDRP.

See J. T. McCarthy, *McCarthy on Trademarks and Unfair Competition*, Vol. 4, ch. 25, §25:74.2 (2000), indicating that “the reference to a trademark or service mark ‘in which the complainant has rights’ means that ownership of a *registered* mark is not required – unregistered or common law trademark or service mark rights will suffice” to support a complaint under the UDRP. (Emphasis in original).

One of the earliest decisions to rely on unregistered rights in a trademark was handed down in the consolidated cases of *Bennett Coleman & Co. v. Steven S. Lalwani*, WIPO Cases D2000-0014 and D2000-0015 (March 11, 2000). The Panelist, Professor W.R. Cornish, found first that, given the Internet provides worldwide access; the assessment of the propriety of a domain name registration cannot be confined only to comparisons with trademark registrations and other rights in the country where the web site may be hosted. Secondly, the Panelist relied on the “reputation from actual use” of the words in question to determine that, whether or not the Indian trademarks were registered, the Complainant had trademark rights.

See e.g., *Julia Fiona Roberts v. Russell Boyd*, WIPO Case D2000-0210 (May 29, 2000) (holding that the Complainant has common law trademark rights in her name: “The Policy does not require that the Complainant should have rights in a registered trademark or service mark. It is sufficient that the Complainant should satisfy the Administrative Panel that she has rights in common law trademark or sufficient rights to ground action for passing off”);

See also *Report of first WIPO Process*, paras. 149-50, at 42-43 (allow “consideration of all legitimate rights and interests of the parties (which are not necessarily reflected in a trademark certificate)”).

It has been held in many WIPO UDRP decisions See Digital Vision, Ltd. v. Advanced Chemill Systems, [WIPO Case No. D2001-0827](#); AB Svenska Spel v. Andrey Zacharov, [WIPO Case No. D2003-0527](#); MADRID 2012, S.A. v. Scott Martin-MadridMan Websites, [WIPO Case No. D2003-0598](#) that it is not necessary for the trademark to have been registered before the domain name, although that fact may, of course, become relevant when it is considered whether a respondent could have registered the domain name in bad faith at a time when no trademark with the same or similar name had been registered.

The fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier (WIPO Overview 3.0)

- **Common Law Rights**

The location of the parties can be significant for determining whether the complainant has trademark rights. Rule 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules of Procedure”) provides that the panel shall decide a complaint on the basis, *inter alia*, of “...**any rules and principles of law that it deems applicable.**” The applicable law will depend on the facts of the case, including the location of the parties. This Rule has allowed panels the flexibility to deal with

disputes between parties with different national affiliations and concerning activity on a global medium. It is also a feature that has enabled complainants to seek protection for their names under trademark law, although they have not registered their names as a trademark or service mark in every country of the world.”

Indeed support for the proposition that unregistered trademark rights may exist elsewhere is to be found in paragraph 1.7 of the “WIPO Overview of WIPO Panel Views on Selected UDRP Questions”. This states that the consensus view of panelists is that “unregistered rights can arise even when the complainant is based in a civil law jurisdiction.” One of the cases cited in support of this proposition is Skattedirektoratet v. Eivind Nag, [WIPO Case No. D2000-1314](#). In that case the three person panel held that unregistered trademark rights were recognized under Norwegian Law.

As noted in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) section 1.1.2, for a number of reasons, including the global nature of the Internet and Domain Name System, the fact that secondary meaning may only exist in a particular geographical area or market niche does not preclude the complainant from establishing trademark rights (and as a result, standing) under the UDRP.

Also noting the availability of trademark-like protection under certain national legal doctrines (e.g., unfair competition or passing-off) and considerations of parity, where acquired distinctiveness/secondary meaning is demonstrated in a particular UDRP case, unregistered rights have been found to support standing to proceed with a UDRP case including where the complainant is based in a civil law jurisdiction.

English Law and US Law both recognize common law rights. The parties are from England and USA.

The disputed domain name is identical to the complainant's "NETBLOCKS" mark as the domain name wholly incorporates the word "NETBLOCKS".

Since "NETBLOCKS" has established brand recognition on a global basis, Internet users would be likely to think that any site connected with the disputed domain name or any domain name incorporating the NETBLOCKS name (or a close approximation thereof) originates with the Complainant.

It has been stated in several decisions by other UDRP administrative panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is identical or confusingly similar to a registered trademark as well. See *Bayerische Motoren Werke AG, Sauber Motorsport AG v. Petaluma Auto Works*, [WIPO Case No. D2005-0941](#); *Thaigem Global Marketing Limited v. Sanchai Aree*, [WIPO Case No. D2002-0358](#); *Toyota France and Toyota Motor Corporation v. Computer-Brain*, [WIPO Case No. D2002-0002](#); *Pfizer, Inc. v. Seocho and Vladimir Snezko*, [WIPO Case No. D2001-1199](#).

Moreover; It is evident that the Respondent has knowledge of the Complainant because the content of the Respondent's website identifies the Complainant's organization by name, by country, and by field of activity, and even lists the Complainant's staff members by name:



Summary

The NetBlocks Internet Observatory is an organization that documents Internet shutdowns and censorship based on technical measurements. Unfortunately, recent disclosures on Netblocks' conduct raise a troubling record on important ethical and technical concerns that must be urgently addressed.

In particular:

- Netblocks conducts experiments that have been recognized to pose a meaningful risk to people, notably those in repressive regimes, without their awareness or consent.
- Netblocks has failed to provide adequate information about what it actually measures and has made incorrect claims about its operations.

Despite numerous questions and requests, Netblocks has not made substantive change to their practices or proven adequate safeguards to protect the public.

Instead, Netblocks' Alin Tokar and Isik Mater have – in public and private – repeatedly misrepresented

Accordingly, the Complainant satisfies the first factor under Paragraph 4(a) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the domain name;
(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

In WIPO Case No:D2002-0726 The Panel concludes that ; Paragraph 4(c) of the Policy sets out a non-exhaustive list of circumstances, which, if shown by the Respondent to be present, shall be evidence of the Respondent's rights or legitimate interests in respect of the Domain Name. However, the primary burden is on the Complainant to show that the Respondent has no such rights or legitimate interests. Once the Complainant has made out a prima facie case, paragraph 4(c) kicks in.

When the Respondent registered the disputed Domain Name it knew that "NETBLOCKS" was the name of the Complainant.

In the view of the Panel a registrant, who registers the trademark of another (without adornment), knowing it to be the trademark of that other and specifically as a reference to that other, effectively presents the Complainant with a prima facie case on a plate. It is there for all to see and the Respondent has a case to answer.

a) The respondent has made no claim that he is using the domain names in connection with a bona fide offering of goods and services Policy 4 (c)(i).

The complainant, NETBLOCKS, has not licensed or otherwise permitted the respondent use the mark "NETBLOCKS" or use any domain name incorporating that trade/service mark *Ref. to: Compagnie de saint Gobain v. Vcom-Union Corp., D 2000-0020 (WIPO Mar.14, 2000) .*

The respondent has no relationship with or permission from the complainant for use of its mark. The complainant has prior rights in that trade/service mark, which precede respondent's registration of the domain name.

The only interest which can be imagined for a person, not having an apparent particular connection to the trademark NETBLOCKS, in registering a domain name <netblocks.fyi> is to somehow create a connection or tarnish or otherwise harm the Complainant and its trademark "NETBLOCKS".

The Respondent is clearly aware of the Complainant's extensive goodwill and reputation in its service and trademark "NETBLOCKS" and its other derivatives.

The Respondent in this case would only have a right to the domain name <netblocks.fyi> if the Complainant had specifically granted that right.

The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet.

**b- The domain name in question is not a mark by which the respondent is commonly known.
Policy 4 (c) (ii).**

The Respondent does not use the domain name as its identifier (commercially or non-commercially) and the Respondent has not been commonly known by the domain name.

The Respondent has acquired no trademark or service mark rights and, there is no common knowledge (as an individual, business, or other organization) that he is known by the domain name.

The domain name in question is not a mark by which the respondent is commonly known. The respondent has never been licensed or granted permission from the complainant to use its mark. *Ref. to: Compagnie de saint Gobain v. Vcom-Union Corp., D 2000-0020 (WIPO Mar. 14, 2000)* (finding no rights or legitimate interest where respondent was not commonly known by the mark or never applied for a license or permission from the complainant to use the trademarked name).

The Internet is an alternative public medium as are television, newspapers and the radio. It is inconceivable that the Respondent, without license or permission, would be able to use the trade/service mark "NETBLOCKS". This would infringe the well-known NETBLOCKS marks. This same reasoning is valid for Internet domain names in general, and for the disputed domain name <netblocks.fyi> in this case in particular.

The Complainant, NETBLOCKS, has advertisements all over the world. They have tens of thousands of news print, online and televised articles of news coverage, including the [leading newspapers](#), a presence on major international internet social media platforms, news TV channels and radio stations because their work and their team members have excelled, received awards, and been presented as

a specimen of exemplary practice at [U.S. Congress](#), U.K. Parliament and [European Parliament](#) and as such have developed a global reputation.

Since the NETBLOCKS mark is famous worldwide, it is not likely that the holder of the domain name has not known the widely recognized and advertised mark NETBLOCKS. It is almost certain that the reason the holder of the domain name could have wanted to register the domain name fully incorporating the NETBLOCKS mark, obviously referring to the Complainant, was either to confuse Internet users or for their own benefit and/or profit or even both of these.

“In WIPO Case No. D2008-1625 “turkcell.org” the panel concludes that; The Panel recognizes the Complainant’s reputation in its field of activities and is satisfied with the fact that it is not possible for the Respondent to be unaware of the existence of the trademark TURKCELL.

The Panel concludes that the Respondent is not engaged in legitimate noncommercial or fair use of the domain name. It seems more likely to this Panel that the disputed domain name was registered with the Complainant’s well-known trademark in mind.”

If the purpose to register the disputed domainname was criticism;

“WIPO panels have repeatedly rejected [such a defense] when the domain name is identical to the Complainant’s trademark, reasoning that the right to criticize does not necessarily extend to registering and using a domain name that is identical or confusingly similar to the complainant’s trademark. This is particularly true when the trademark alone is used as the domain name because that may be understood by Internet users as impersonating the trademark owner.(WIPO Domain Name Decision: D2013-0097)

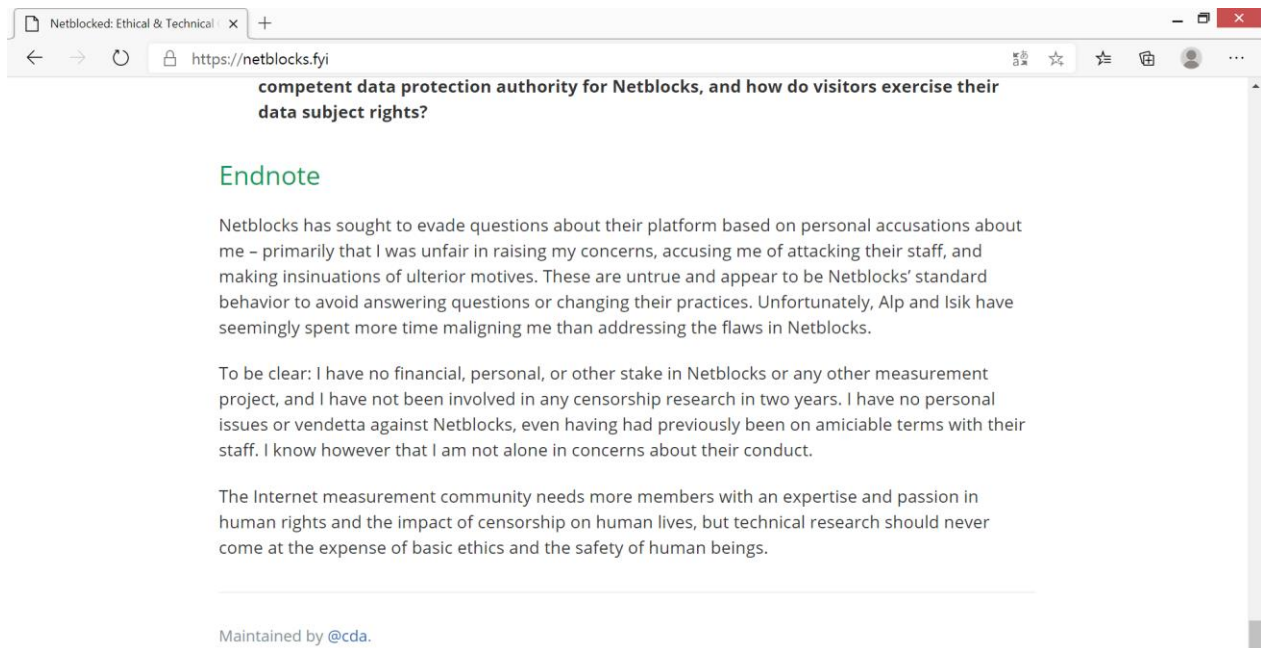
C. The domain name(s) was/were registered and is/are being used in bad faith.

(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

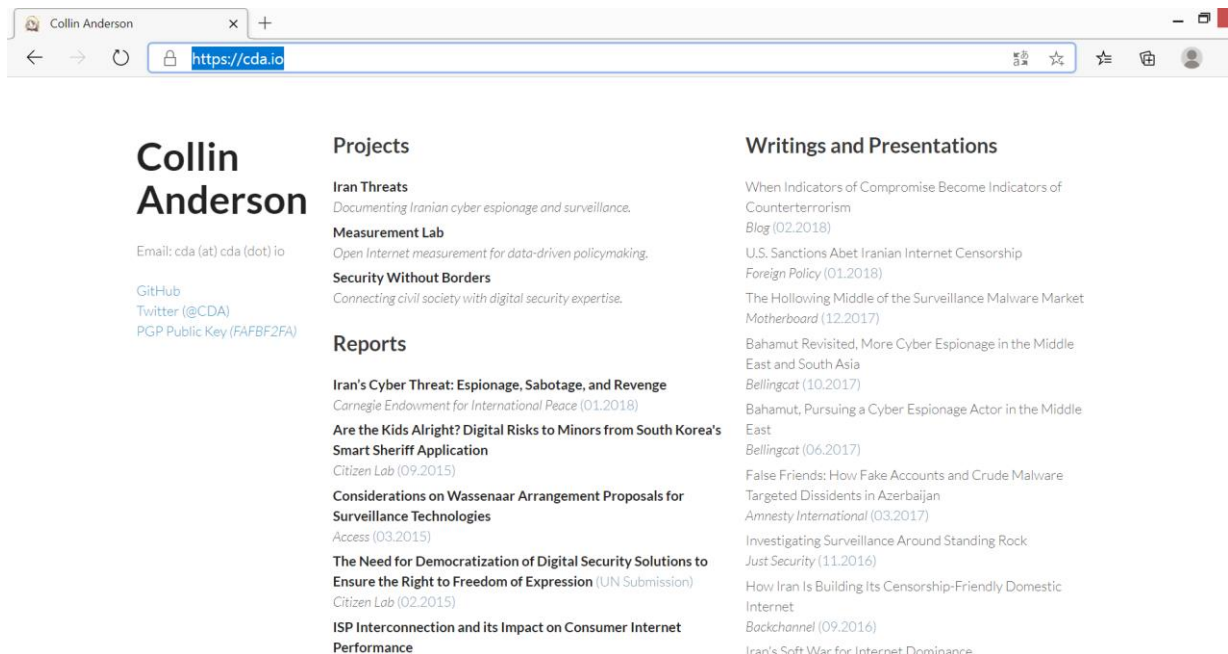
Factual Grounds:

1) @cda –Mr. Collin Anderson-

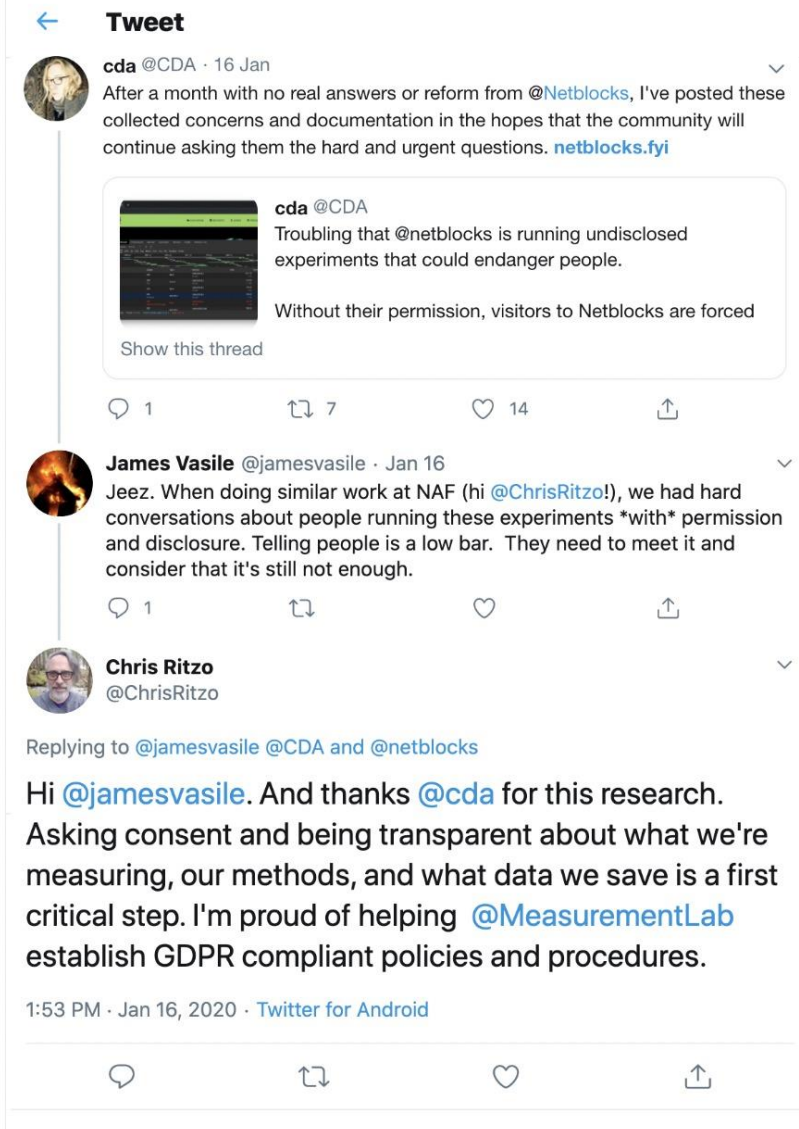
The Complainant believes that the Respondent is related with competitors of Complainant. The web site under disputed domainname closes with the signature @cda



Additionally;



Furthermore; a Twitter post, now deleted, and a response, still online, thanking Collin Anderson for delivering the disputed website, is reproduced below:



Mr. Chris Ritzo is the Program Management & Community Lead [for Measurement Lab](#), where he “supports researchers, policy makers, advocacy groups, and individuals interested in M-Lab’s open Internet measurement data.”

The Complainant sent a cease and desist letter to Measurement Lab (a competitor of the Complainant) and asked to for the return by transfer of the disputed domainname. However; they initially denied the claim and said that the owner of the domainname was a former employee and that they had no responsibility for the situation. Upon being presented further evidence that shows their involvement, M-Lab legal counsel became unresponsive. Please see Annex 5.

However; the Complainant commissioned an investigation and the activities have been traced to a Measurement Lab address. Each of the revisions is digitally signed by and originates from the organization’s address, with verified signatures and timestamps that can be independently verified using the verification hash code 40e47b.


```

(<collin@measurementlab.net> 2020-01-14 23:10:38 -0500
(<collin@measurementlab.net> 2020-01-14 23:10:38 -0500
(<collin@measurementlab.net> 2020-01-14 23:10:38 -0500
(<collin@measurementlab.net> 2020-01-14 23:10:38 -0500
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(<collin@measurementlab.net> 2020-01-14 23:10:38 -0500
(<collin@measurementlab.net> 2020-01-14 23:19:34 -0500
(<collin@measurementlab.net> 2020-01-14 23:19:34 -0500
(<collin@measurementlab.net> 2020-01-14 23:19:34 -0500
(<collin@measurementlab.net> 2020-01-14 23:19:34 -0500
(<collin@measurementlab.net> 2020-01-14 23:19:34 -0500
(<collin@measurementlab.net> 2020-01-14 23:19:34 -0500
(<collin@measurementlab.net> 2020-01-14 23:10:38 -0500

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While it is clear the activities of launching the domain and its content originated from Measurement Lab, for avoidance of doubt we will examine the next instance where links to the domain are distributed via Twitter, to followers of the Complainant's social media account as shown in the cease and desist letter in Annex 5.

The website at the disputed <netblocks.fyi> domain advertises Measurement Lab and OONI (Open Observatory), claiming they are superior alternatives to the Complainant's products and services:

"There's no reason to hide this data. Initiatives such as RIPE Atlas, CAIDA, Measurement Lab, OOONI, and countless others release comparable data in some form without constraints and without requiring work contracts. How can we trust Netblocks' statements if we cannot use the data ourselves or independently evaluate it?"

In practice, Measurement Lab and OONI act as one in the conduct of their business; namely, their staff use the two organization names interchangeably, their products are jointly developed, their publications are jointly authored and Measurement Lab (MLAB) sponsors the activities of OONI:

Simone Basso 白思蒙

@bassosimone

Human being. @OpenObservatory and @MeasurementLab dev. Previously: @neubot. PGP: rsa4096 - 388 77AA 6C82 9F26 A431 C5F4 80B6 9127 7733 D95B

📍 Ventimiglia, Italy 🔗 github.com/bassosimone 📅 Joined March 2010

2,389 Following 1,545 Followers

As seen in Annex 5, the director of Measurement Lab initially claimed no involvement or endorsement of the disputed domain registered under the Complainant's name NETBLOCKS. However, it is shown that the domain originates from a Measurement Lab address, and it is shown that senior Measurement Lab staff approved delivery of the disputed domain, and it is shown that OONI, a group which continues to distribute links to the domain, is acting with the ongoing consent and financing/support of Measurement Lab.

(i) Registration in bad faith

The disputed domain name resolves to a web page which is referencing the Complainant's field of activity at the moment.

"Respondent is not making a legitimate, non-commercial or fair use of the domain name and clearly misleadingly divert customers or dilute or tarnish the trademark of Complainant.

Respondent could have chosen domain name adequately reflecting both the object and independent nature of its site, as evidenced today in thousands of domain names.

Therefore, it is not possible to imagine any plausible future active use of the domain name by the Respondent that would not be illegitimate, such as being infringement of Complainant's mark or an act of unfair competition and infringement of consumer protection legislation.

Respondent's certain constructive and actual knowledge of complainant's service mark rights prior to registering the disputed domain names is already a strong evidence of registration of the domain name in bad faith (See WIPO Case Nos: D.2000-0018 and D.2000-0429 and D.2000-1399)

As mentioned above, it is highly likely that the respondent of the domain name in question knows the Complainant well. Therefore, the respondent of the disputed domain is aware the name "NetBlocks" was/is a famous trademark of the Complainant and nevertheless has gone to the extent of registering the domain name in subject for their own personal gain.

It is abundantly clear that the holders of the domain name in this case not only had the Complainant's registered trademark in mind and knew of the well-recognition of the trademark worldwide, but also deliberately created confusion that would follow in the minds of Internet users, online consumers and any third parties so as to sow doubts over their competitor while meanwhile diverting clients, sponsors and donors to themselves for their own personal agenda of illegitimate commercial gain.

Certain constructive and actual knowledge of complainant's service mark rights prior to registering the disputed domain names is already a strong evidence of registration of the domain name in bad faith (See WIPO Case Nos: D.2000-0018 and D.2000-0429 and D.2000-1399)

Registration and use of a domain name incorporating a famous mark is necessarily in bad faith where a respondent knew at the time of the registration that he could not make any actual use of the registered domain name without infringing on the trademark owner's rights.

For example; the panel in *Cellular One Group v. Brien* Case No. D2000-0028 (WIPO) The panel found bad faith registration based on the fact that it would have been impossible for the respondent to use the domain name as the name of any business or service for which it would be commercially useful without violating the Complainant's rights" in its trademark. *See also, Telstra Corp. Ltd v.*

Nuclear Marshmallows, Case No. D2000-0003 (WIPO) (The respondent's registration of domain names incorporating Complainant's famous trademark was necessarily in bad faith because the respondent must have known that it could not legitimately use the domain name.).

The actions listed above clearly show an attempt to attract Internet users familiar with the Complainant, its services and reputation and create tarnishment of the Complainant's mark and its services.

In WIPO Domain Name Case No: 2002-0726 "galatasaray.com" the Panels;

On the basis of the same reasoning as set out above in relation to paragraph 4(a)(ii) of the Policy the Panel finds that the Respondent falls foul of paragraph 4(b)(i) of the Policy. The Panel finds on the balance of probabilities that:

- a. *When the Respondent registered the Domain Name **it knew that the name was the name of the Complainant.***
- b. *When the Respondent registered the Domain **Name it intended the Domain Name to refer to the Complainant***
- c. *When the Respondent registered the Domain Name it intended to connect the Domain Name to a website relating to the Complainant*
- e. *In registering the Domain Name the Respondent **hoped and anticipated that the Complainant would pay to the Respondent substantial sums of money** (way beyond the Respondent's out-of-pocket costs directly related to the Domain Name)*

On the basis of that finding, it is not necessary for the Panel to consider the other allegations as to bad faith registration and use put forward by the Complainant.

The Panel finds that the Domain Name was registered in bad faith and is being used in bad faith within the meaning of paragraphs 4(a)(iii) and 4(b)(i) of the Policy.

Therefore the domain name <netblocks.fyi> has certainly been registered in bad faith.

(ii) Use in bad faith

"Respondent is not making a legitimate, non-commercial or fair use of the domain name and clearly misleadingly divert customers or dilute or tarnish the trademark of Complainant (Annex 6)

The Respondent's website at the disputed domain name contains hyperlinks and advertising for competing products constituting commercial content. The Respondent is directing the public and current and prospective clients, funders, and sponsors to the Complainant's competitors. See the below expressions of the Respondent at the web site:

"Netblocks falls far short of the standard practice of other projects that was created after the Encore controversy. For example, the Open Observatory of Network Interference (OONI) has (extensive documentation of its consideration of risks) and when a user installs the mobile application, it coaches them through the potential risks and requires them to pass a quiz. These are basic expectations common across projects, built from a collaborative discussions and field research across disciplines."

“Because the censorship measurements contain IP addresses, they are likely to be considered personal data under the GDPR (see Recital 30 on IPs). Article 13 has nothing to do with determining what personal data is. No matter whether Alp calls it outage or censorship measurements, it is data that describes a “natural person” in GDPR terminology. From personal experience, when Measurement Lab partnered with the Dutch Authority for Consumers & Markets to conduct even less sensitive network measurements, M-Lab was explicitly told measurements would fall under the GDPR and was required to obtain consent.”

Please see also Annex 6.

WIPO Overview 2.0, paragraph 2.4, there exist two lines of authority on this question, as follows.

"View 1: The right to criticize does not necessarily extend to registering and using a domain name that is identical or confusingly similar to the complainant's trademark. That is especially the case if the respondent is using the trademark alone as the domain name (*i.e.*, <trademark.tld>) as that may be understood by Internet users as impersonating the trademark owner.

" View 2: Irrespective of whether the domain name as such connotes criticism, the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is fair and noncommercial."

The Respondent is, without authority, intentionally holding itself out as a complainant in order to mislead Internet users seeking the actual Complainant and thereby expanding the group of Internet users who will read the content of its website. That does not generate a right or legitimate interest in Respondent's use of Complainant's mark. See WIPO Overview 2.0, paragraph 2.4, View 1, *supra.*, and cases there cited.

As stated in *The Laurel Pub Company Limited v. Peter Robertson / Turfdata*, WIPO Case No. DTV2004-0007:

"The Panel recognizes that the Respondent has a right to free speech and a legitimate right to host a complaint site about the Complainant on the Internet. However, in the view of the Panel this is a completely different thing and should not be confused with having a legitimate right to the Domain Name in question in this case."

By selecting a domain name that is essentially <trademark.tld>, a critic typically intends to lure to its website Internet users seeking information about the owner of the mark that it has appropriated, as a deceiving mechanism to increase the audience for the criticism.

It is deception that causes harm to Internet users. Once at the website, an Internet user is exposed to the criticism that they neither sought nor expected. This damage cannot be corrected by a disclaimer nor by the inclusion of some form of recognition within the site's content that its author was not the mark owner; neither of these matters come to the assistance of the Respondent. As stated by the Panel in *Justice for Children* case, *supra*: WIPO Domain Name Decision: D2013-0097.

“Decisions under the Policy focus upon a respondent's use of another's mark in a domain name to attract Internet users to respondent's site. This is true in typosquatting cases and in cases where a

respondent selected his domain name in anticipation of subsequent sale to the mark owner. The content of Respondent's sites in these two categories of cases – cases in which respondents almost uniformly lose – is irrelevant to the harm to the mark owner and to the unwary consumer. That harm results from the confusion caused by the initial attraction to the site by means of borrowing the complainant's mark. And that is exactly the harm the Policy was adopted to address.

The examples of bad faith in paragraph 4(b) are expressly non-exclusive.

Accordingly, the Panel majority believes that Respondent's intentionally holding itself out as Complainant to lure Internet users to its site is bad faith within the meaning of the Policy. See the example posited by the panel in *Grupo Costamex, SA de C.V. v. Stephen Smith and Oneandone Private Registration / 1&1 Internet Inc.*, WIPO Case No. D2009-0062, and his conclusion, equally applicable to Respondent's conduct. There, the panel stated that, "many people would find it difficult to ascribe the labels 'fair', 'legitimate', or 'in good faith' to the conduct of the [the hypothetical respondent] in that situation. Many would see it as dishonest, or at least borderline so, and would wonder whether acceptance of such conduct is really a necessary price which must be paid to safeguard the widely (but not universally) acknowledged value of freedom of expression."

Moreover; the Respondent's website at the disputed domain name creates confusion for the public. As of August 2020, the majority of posts that share <netblocks.fyi> are those mistakenly using the wrong link believing it is the <netblocks.org> domain name, for example while requesting assistance from NetBlocks in good faith as shown below:



Taking into account all these considerations, it is not possible to imagine any plausible future active use of the domain name by the Respondent that would not be illegitimate, such as being infringement of Complainant's well-known mark or an act of unfair competition and infringement of consumer protection legislation up to the point of fraud.

Accordingly, the Respondent has registered and used the disputed domain name in bad faith according to paragraph 4 (b) of the Policy.

VII. Remedies Requested

(Rules, Paragraph 3(b)(x))

[13.] In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section VI. above, the Complainant requests the Administrative Panel appointed in this administrative proceeding that *the disputed domain name <netblocks.fyi> be transferred to the Complainant.*

VIII. Administrative Panel

(Rules, para. 3(b)(iv))

[14.] The Complainant elects to have the dispute decided by a single-member Administrative Panel

IX. Mutual Jurisdiction

(Rules, para. 3(b)(xiii))

[15.] In accordance with Paragraph 3(b)(xiii), the Complainant agrees to submit, only with respect to any challenge that may be made by the Respondent to a decision by the Administrative Panel to transfer or cancel the domain name that is the subject of this Complaint, to the jurisdiction of the courts where the location of the principal office of the concerned Registrar.

X. Other Legal Proceedings

(Rules, para. 3(b)(xi))

[16.] *No other legal proceedings have been commenced or terminated in connection with or relating to the domain name that are the subject of the Complaint.*

XI. Communications

(Rules, para. 3(b)(xii); Supplemental Rules, para. 4(b))

[17.] This Complaint has been submitted to the Center in electronic form, including annexes, in the appropriate format.

[18.] A copy of this Complaint has been transmitted to the concerned registrar(s) on July 08, 2020 in electronic form in accordance with paragraph 4(c) of the Supplemental Rules.

XII. Payment

[19.] As required by the Rules and Supplemental Rules, payment in the amount of USD *[amount]* has been made by bank transfer. (*Annex 6*)

XIII. Certification

(Rules, Paragraph 3(b)(xiii); Supplemental Rules, Paragraph 15)

[20.] The Complainant agrees that its claims and remedies concerning the registration of the domain name(s), the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (a) the WIPO Arbitration and

Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar(s), (c) the registry administrator, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

[21.] The Complainant certifies that the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,



Dilek Ustun EKDIAL
Attorney at Law

Date: August 25, 2020

XIV. List of Annexes

(Rules, Paragraph 3(b)(xiv); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

Annex 1: Copy of the printout of the database search conducted on August 24, 2020

Annex 2: Rules for Uniform Domain Name Dispute Resolution Policy

Annex 3: Print-outs from the Complainant's official website

Annex 4: Print-outs from the Complainant's registration record.

Annex 5: Copy of the cease and desist letter of the complainant.

Annex 6: Screenshots of the Respondent's web site

Annex 7: Payment Receipt.