Some parts of the Internet run well on informality. Peering agreements are one example. When two or more networks peer, they interconnect and exchange Internet traffic on a reciprocal basis. Traffic is exchanged between the parties but money, for the most part, is not. Each day, a tremendous amount of data travels over the "network of networks" on the back of these unpaid arrangements. Given their significant role in supporting global communications, it might come as a surprise that 99.5% of these peering agreements are actually informal "handshake" deals, the terms of which are not even written down. (Weller and Woodcock 2013).

The success of this modus operandi is self-evident; the occasional proposal for regulatory intervention in peering is normally met with widespread resistance on the grounds that market-based interconnection, "without the imposition of overriding regulatory impost," has enabled the Internet to expand as spectacularly as it has over the past few decades. (Huston 2012, 3).

In a similar vein, the "regulatory environment" surrounding the management of country code Top Level Domains (ccTLDs) could be described as relatively informal and, until the establishment of the Internet Corporation for Assigned Names and Numbers (ICANN), conducted largely on an ad hoc basis. ccTLDs are the two-letter Top Level Domains delegated by ICANN to countries and some territories, for example .nz (New Zealand), .ar (Argentina), or .io (British Indian Ocean Territory). The entities that manage ccTLDs vary wildly from one to the next in terms of "type of organization, policies followed, economics, language, culture, legal environment, and relations with governments." (ICANN 2012). Some country code top level domain name spaces are managed by academic institutions, some by government departments, others by charitable trusts or by private, commercial entities, or even individuals.

Unlike their "generic" counterparts ("gTLDs" - for example .com or .wiki), ccTLDs are not obliged to operate in accordance with a uniform contract with ICANN. As ICANN's Governmental Advisory Committee recognised in 2000, for the managers of ccTLDs, "the main principle is the principle of subsidiarity. ccTLD policy should be set locally, unless it can be shown that the issue has global impact and needs to be resolved in an international framework. Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet Community, according to national law." (ICANN GAC 2000, 1.2).

ccTLD managers enjoyed this relative degree of regulatory autonomy beginning with the first ccTLD delegation in 1985 (.us). In 2004, however, this autonomy was technically challenged, at least on a *de jure* basis, when minimum policy standards for ccTLD managers began to appear within a handful of bilateral Free Trade Agreements (FTAs), negotiated by and between the United States and Australia, the United States and Chile, and the United States and Singapore.

As of the date of writing, there are 16 FTAs in force requiring 17 countries to ensure that ccTLD managers provide a policy for domain name dispute resolution.[1] This requirement is accompanied by another, which is to maintain a public database of domain name registrant information.[2] The

[1] note that, as per the author's count, there are presently 299 ccTLDs the IANA Root Zone Database, including Internationalized Domain Name ccTLDs.

[2] See the text of Free Trade Agreements between the United States and Australia; Bahrain; Chile; Colombia; Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua (CAFTA); Morocco, Oman, Panama, Peru, Singapore, and South Korea, available at the website of the United States Trade Representative, at https://ustr.gov/trade-agreements/free-trade-agreements.

Trans-Pacific Partnership agreement, currently under negotiation between twelve countries, would purportedly see another seven countries added to this list.[3]

The policy problem that these provisions aim to solve is straightforward. Their purpose is to facilitate cross-border intellectual property rights enforcement, in particular for the infringing use of a trademark within a domain name. As the Internet expands, and as ccTLD domain names become more widely used, the cost to enforce one's trademark grows in no small part due to the cost of becoming familiar with and using the different dispute resolution processes followed by different ccTLDs. (Lerman 2012). Whereas all gTLD managers are required by contract with ICANN to follow the Uniform Domain Name Dispute Resolution Procedure (UDRP), ccTLD managers are not so obligated and, even though providing a dispute resolution service is generally accepted as best practice within the industry, some ccTLDs have no such policy in place.

It is in the natural interest of trademark owners to lobby for a uniform dispute resolution policy to be shared across ccTLDs, in order to reduce the cost of enforcing their rights across the Internet's global, digital marketplace. However, it is not necessarily within the best interests of the ccTLD manager, or its domain name registrants, to have its policy parameters constrained by an international trade agreement. In the least, traditionally speaking, the duty of the ccTLD manager has been to act as a trustee of their particular domain name space, and to serve the needs of the local Internet community. (Postel 1994). Such needs may not be recognised by the trade agreement negotiation process which, in contrast to best practice in ccTLD domain name policy development, is not generally recognised for its transparent and multistakeholder approach to consultation.

The purpose of this forthcoming paper will be to explore the potential frictions created by the convergence the trade negotiation sphere, on the one hand, and the very different - and diffuse - ccTLD policy sphere on the the other. With a few notable exceptions, little academic attention has been paid to this inchoate issue. The paper will raise questions moreso than provide answers by considering the issue of whether, and how, provisions in free trade agreements could affect ccTLD managers.

[3] Access to the official draft text of Trans-Pacific Partnership agreement is restricted to negotiating governments and certain parties. However, leaks of the Intellectual Property Rights chapters, which include those provisions relating to ccTLD managers, have appeared online. The forthcoming paper must cite to these unofficial texts in the absence of an official alternative.

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