

ICA: The Domain Name Trade Association That Represents Your Financial Interests - With Philip Corwin

Watch the full video at:

<http://www.domainsherpa.com/phil-corwin-ica-interview/>

Every industry has its rules and regulations, which are needed for stability and safety. But when ICANN changes the rules that you have been accustomed to or discusses new rules that affect your domain name investments, what can you do about it? Stay tuned to find out.

Three messages before today's interview educates and motivates you.

First, if you're a domain name investor, don't you have unique legal needs that require domain name technical know-how and industry experience? That's why you need David Weslow of Wiley Rein. Go search for David Weslow on DomainSherpa, watch his interview and you can see for yourself that he can clearly explain issues, can help you with buy/sell agreements, deal with website content issues and UDRP actions, and even help you write your website terms and conditions. David Weslow is the lawyer to call for Internet legal issues. See for yourself at NewMediaIP.com.

Second, managing multiple domain name marketplace and auction site accounts is a pain. Inevitably, you forget to sign into one and lose a great domain...or worse. Now imagine using a single, simple-to-use and comprehensive control panel to manage all your accounts. That's Protrada. You can setup search filters, analyze domains, automate bidding, list domains for sale, and buy domains across all major marketplaces. Protrada also has a new semantic engine that builds Google-friendly websites with rich content and network feeds. Sign up at Protrada.com to get 20 free credits and start building and monetizing your domains today.

Finally, if you have questions about domain names, where should you go to ask them? The answer is DNForum.com. Not only is DN Forum the largest domain name forum in the world, but it's the best. You can learn about domain names and the industry, buy and sell domain names, talk about domain name news, and meet other domainers just like yourself. Register for

DomainSherpa.com: The Domain Name Authority

a free DN Forum account and begin advancing your skills and knowledge today. And when you do signup, send me a friend request so we can connect.

Here's your program.

Michael Cyger: Hey everyone. I'm Michael Cyger, and I'm the Publisher of DomainSherpa.com - the website where you come to learn how to become a successful domain name investor or online entrepreneur directly from the experts.

You have spent your time and hard earned money building a portfolio of domain names. You have followed all the rules and you consider one of the good guys in the domain name industry. But with ICANN's ever-changing industry messages, VeriSign's monopoly on the .COM TLD, and the news of yet another reverse domain name hijacking in the news, it is sometimes difficult to feel in control of your domain name investing destiny.

Today's guest is on the domain industry's front lines and serves as a voice of advocacy for domain name investors in the industry. We are joined by Phil Corwin, Founding Principal at Virtual Law, LLC. and Counsel to the Internet Commerce Association. Phil, welcome to the show.

Philip Corwin: Well, thank you for inviting me, Michael. It is great to be here.

Michael: Internet Commerce Association (ICA). What is the main purpose of the Association?

Philip: Well, it is very simple, Michael. The main purpose of the Association is to give domain investors - that is domainers - eyes, ears, and, most importantly, a voice, both in Washington, D.C. on Capitol Hill and with the Executive Agencies, like the Department of Commerce, which made a very big decision this morning; and also, within ICANN, which also makes many decisions that impact what domain investors can do and what their costs are; and what their rights are, which is the most important thing.

Michael: Right. And I want to get into that Department of Commerce decision that was made this morning. I am going to come back to that because that was important, but I think this is an important point of ICA - and one that I was not aware of before either - that you are the eyes and the ears for the domain name investing community. I have never attended an ICANN meeting, and when I get my daily briefings from ICANN through, I think it is, MyICANN.org, that is a lot of information to deal with. So, that is the purpose of ICA.

Philip: It is like drinking out of a fire hose sometimes.

Michael: It is not just a fire hose because I may get my portion today, but I really need to understand what happened for the previous year that led up to the letter that came in that the CEO of ICANN responded to or what have you. There is a lot to process.

Philip: Well, there is and, frankly, ICANN is not an easy Organization to understand - how it operations, what all the different constituencies, and working groups, and support organizations do, who the different personalities are, where they are coming from; and you need to spend a lot of time engaged with ICANN to know how to get the background information you need to respond intelligently when different things are on the line.

Michael: Yeah, that makes sense. Okay, so, tell me this, Phil, if ICA did not exist, what might have happened in the industry by now?

Philip: Congress might have passed the (Unclear 3:40.3) Bill years ago that would have setup a separate trademark regime just for domain names that was even more unfair than the current trademark regime. We certainly cannot take credit for killing SOPA. A lot of people had a hand in that early this year, but we were the only group to communicate to Congress about the trademark aspects of SOPA and how that might negatively impact the domain industry going forward if that bill had been enacted. Right now, as ICANN is continuing to fill in the details, the new rights protection mechanisms for new TLDs, we are still engaged every day of the week in making sure that the final rules respect the do process rights of domain registrants and our balance. This is that domain rights are given equal credence with trademark rights and

just are not subservient to trademarks. So, it is a continuing effort and, if we were not engaged, certainly there would be no voice for the entire industry speaking out on key issues. That will determine whether you can keep a domain or lose it. Right now, with this new uniform rapid suspension for new TLDs, the whole fight has been about keeping that as a very narrow focused supplement to the UDRP, which needs to be reformed on its own; and we keep pushing to get that going. Or whether it is going to be three hundred dollar replacements for the UDRP, where trademark owners win about all the time because the rules are stacked in their favor. And I cannot think of anything more important to a domain investor than the ability to keep your assets away from others. As the saying goes, a lot more has been stolen over the course of time with a fountain pen than with a gun. So, we want to make sure the agreements do not let anymore steal things they should not be stealing.

Michael: Makes sense. So, it is not just that. I think there is sort of the feeling in the domain name industry that there are the haves and the have-nots. There are the people who have the domain portfolios of ten thousand, fifty thousand, and one hundred and fifty thousand out there. The people with the haves that have a serious amount of capital invested in domain names, and so it is to their advantage to make sure that there is a person and association, like yourself, representing them in all of these locations in Washington. Whereas there is another group of people - let's call them the have-nots - that have many one thousand or two thousand domain names, and maybe they are not great domain names - a single word generic that some company is trying to take as their property because they have a trademark in one standard industrial class. Is the ICA serving both parties? The people with large portfolios and the people with small portfolios.

Philip: Oh, absolutely. I believe we are. A Trade Association is basically a group of entities that compete in the economic marketplace, but that cooperation in the policy marketplace because they have common interests to defend. We have some of the biggest companies and individuals in the domain space, and we have members and supporters at a much lower scale in that thousand, two thousand, or five thousand domain portfolio range, and we do not find any significant difference on the policy issues between the biggest and the smallest among our membership. Protecting the rights of registrants

is the same issue whether you have five thousand domains or five hundred thousand. Your risk exposure is just greater if you have five hundred thousand. So, we welcome members at every level of investment and interest, and we do not lean one way or the other because we have not had to. We find that keeping the rules fair and balanced is the same issue for everybody, regardless of their success in the economic marketplace.

Michael: Yeah. All right. And so, when I introduced you at the beginning of the interview, Phil, I said your role with ICA was Council. What does that mean? Are you in the entire legal team associated with ICA?

Philip: Well, we have other lawyers who are members who chime in legal issues and make contributions. When we publish a common letter to ICANN or to the US Government, it has been vetted by our members. This letter we have sent recently on .COM pricing, urging a reduction in the base price and a freeze on the price going forward, and we just got half a loaf this morning from Department of Commerce. That was vetted with our members. Our members made excellent suggestions for improving the letter. So, when we post a document, it is a consensus document that reflects the consensus position among our members.

Michael: Makes sense. All right. So, let's talk about that Department of Commerce decision that was announced this morning. What was announced?

Philip: Well, what was announced was that the Department of Commerce approved VeriSign being the registry operator for .COM for another six years. The new contract starts on December 1st of this year and ends November 30, 2018. But they made a very big change from the current contract and from the contract that ICANN's Board had approved in June, during the ICANN meeting held in Prague, Czech Republic. The current contract - and the one that ICANN had approved - would have allowed VeriSign to increase prices of .COM registration or renewals, without having to show any justification at all, by seven percent in four out of the next six years; and that would have increased .COM prices, and you know VeriSign did it four times under this contract. They would have been very reluctant, due to their shareholders, not to do it in four times in the next contract. It would have raised .COM prices - these are wholesale prices - from the

current \$7.85 right now to \$10.30 before this new contract expired. And then, of course, the registrars add their own retail markup and the ICANN fee on top of that. That is at least another three dollars on top. Department of Commerce said, "You can keep the contract. You can keep the \$7.85 base price," which we had urged a reduction to \$5.85 because that is the price for .NET domains and VeriSign is doing the same job out of the same facilities--

Michael: Exact same work, yeah.

Philip: --with the same employees for .NET as they are for .COM. There is not difference, and I will get more into why they do not need the cash in a moment. But they said, "Going forward, no more price increases without justification. The price is frozen at \$7.85 for the next six years unless you, VeriSign, can either show that there is new ICANN consensus policies that have been adopted that you are subject to, like every other registry operator, that add to your costs of running the registry - and that is fair; we have no objection to that - or if something has happened in the realm of cyber security that have increased your costs of running a secure registry," which is very important for .COM registrants, so we have no objection to that. We would have allowed, in our suggestions, for the exactly the same type of increases. Barring that, Department of Commerce is not even going to allow for it due to cost of living increases, which we had suggested would be reasonable if they had been accompanied by the reduction in the base price. So, it is a decision that is going to collectively save domain registrants. Our good member, Mike Berkens, over at TheDomains just did the calculations about an hour ago about what it saves a domain investor per thousand .COM domains over the next six years. It is quite a bit of money.

Michael: Do you know what number is offhand?

Philip: No, I would have to get out of Skype right now and bring up a web browser.

Michael: No worries.

Philip: But the focus for it was .COM. And we pointed out in our letter. This letter took a lot of research. I forget how many footnotes are in, but I think

there were close to twenty. I spent a lot of time going over VeriSign's press releases and the financial statements while writing this letter. I do not think most people are aware that, in the last two years, VeriSign distributed almost one billion dollars to its shareholders in special dividends.

Michael: Wow.

Philip: I do not think most people are aware that they still have 1.4 billion cash on hand, and announced that they plan to spend more than half of that on stock buybacks to increase the stock price. So, not the picture of a company that needs a lot of price increases to invest in its business. It looks like a company that has more cash than it knows what to do with; and that probably weighed in as a significant factor with the Department of Justice and the Department of Commerce when they revised the contract from what ICANN had approved.

Michael: Yeah. No, I did not realize that. Great research and I know I am appreciative of somebody bringing that up to the Department of Commerce and making them aware of it that it is not necessary to raise prices.

Philip: And let's say there are some issues raised by the approval too. While it is good news, there are some other issues, and we are going to be filing another letter with Commerce raising some of those issues. But it was a very new domain investors this morning.

Michael: Yeah. I mentioned, in the introduction, that you are the Founding Principal at Virtual Law, LLC. Is that a Law Firm that you founded, and what do you specialize in?

Philip: Well, that is a Law Firm located in Washington, D.C. It specializes in advocacy, particularly with the Federal Government. Basically, lobbying. So, I do my Government Relations work out of Virtual Law, sometimes I team up with other individuals or firms on an as-needed basis for clients, and I am also of council at an Intellectual Property Law Firm in Washington. So that when my clients need to do a trademark registration or patent registration, or to bring litigation against somebody, I work with the Law Firm on those kind of hardcore legal issues because, frankly, my expertise is on Public Policy

and how to influence successfully and their expertise is on Patent and Trademark Office work and Litigation. So, it is a good combination and we offer clients whatever they need in those areas.

Michael: Yeah. And so, that was sort of my feeling as I was doing some background research on ICA. That it seems like it is a Trade Association Group, but really that is the organizational body for a lobbyist group whose purpose is to speak for the domain name investing community. Would you say that that is a fair characteristic?

Philip: Yes, it is a Trade Association. It is a 501(c)(3) Non-Profit Trade Association under the Tax Laws. Registered as a District of Columbia Non-Profit Corporation. Like so many other Trade Associations, it is here to be an advocate for the industry it represents.

Michael: When was the ICA founded, Phil?

Philip: Well, it was founded in 2006, and actually, it originated out of the last debate on the .COM Registry Agreement. In 2005, I was not aware of domainers. I knew about ICANN, but I did not have the kind of insight knowledge I have now. I had worked on a lot of other eCommerce issues - digital copyright, and digital cash, and biometric authentication. Things like that. And I was hired in 2005 by Pool.com, which is a Canadian Secondary Market Firm to lobby in parallel with CFIT - the Coalition for Internet Transparency. That was Ad Hoc Coalition opposing the settle of the litigation brought by VeriSign against ICANN over the .COM Agreement, and whether it should be put out for competitive rebid. And there was huge outcry in the community when ICANN announced the settlement, which gave VeriSign presumptive renewal till the end of time and the ability to raise prices without justification. There was a big lobbying effort at the time. All the major registrars were involved. There was bipartisan support on Capitol Hill. Ultimately, we were not successful in blocking the Department of Commerce approval of the agreement even though the Department of Justice had ruled that .COM had market power in the domain name space. But actually, the Law Firm I was with, at the time, was able to get the only oversight hearing ever held in the US Congress on that .COM settlement that was actually held in the House Small Business Committee to assess the impact of the

settlement on small business; and that is where I first met domainers who came up for the hearing and they said, "People do not know we exist or worse, if they know we exist, they think we are all cybersquatters. They are all bad actors and we need to do something." And I said, "Well, you need to either form an Ad Hoc Coalition or form a Trade Association to start participating in Washington and in ICANN, and show people that you are legitimate business, and help them understand what your business is and how it is legitimate. And build up credibility so you can become an effective voice in D.C. and in ICANN," and they said, "That is a great idea." And we talked a few months and the Association launched in September 2006, so a couple of months ago we celebrated our sixth anniversary.

Michael: Excellent. And who were some of those founding members that came to these hearings that participated in the early days and the formation?

Philip: Well, I forget exactly who was at the hearing. I know there was a company at the time - Internet Reep. They are no longer with us. They were active in the founding, but most of our other founding members are still with us; still good supporters. Sedo and Jeremiah Johnston of Sedo is our President. Oversee. TrafficZ among individual domainers. Frank Schilling was there at the beginning. Mike Berkens. The (Unclear 19:25.4) brothers. Greg McNair is a great support. And I cannot list everyone who supports us in this interview, but our founding members have pretty much stuck with us through the years. Our membership has grown and we are very grateful for their support.

Michael: So, it sounds like it was a lot of people in the industry. It was not just two or three people that came together to form ICA. It was really a culmination of all the major organizations.

Philip: It was. And while we formerly launched in September of 2006, our membership really came together a month meeting. I went down to a TRAFFIC Conference down in Miami, where all these folks were attending, and that is where it really got organized and people committed the financial support necessary to get it moving forward.

Michael: How was the ICA initially viewed by the domain name industry or by ICANN? Do you remember?

Philip: It is hard to evaluate. I have to say, unfortunately, a lot of domainers had a I don't want to say cynical, but they were not convinced that participation in the policy sector is an effective way to go. They just kind of said what is the point. They have got it wired. The big interests always win. And I think we have had victories over the years and have had enough influence on policy to show that when you get organized, and you martial good arguments, and you work in tangent with other groups that have common interests - and I have to say nobody gets anything done along in the policy sphere. We have a saying in Washington. Success has a thousand fathers to feed as an orphan. But you will not get any issue in the newspapers. There are always groups on one side or the other. It is hardly ever just one interest. So, I think, among domainers, and I hope that a lot of the skepticism about whether the domain industry could be effective in the Public Policy Forum has dispelled over the last half dozen years by the results of what we have done. I think ICANN and Capitol Hill - I think we have changed the perception of domain investors, where I think there was that perception that: "Oh, these guys are some sleazy cybersquatting whatever," and there is a much better understanding now of the legitimacy of investing in great generic names at the top GTLDs and the top CCTLDs. And when you look at the new TLD Program, it is type-in traffic at the top level. It is instead of having a great registrant name registered at .COM or .UK, or something like that, it is having that name at the top level and hoping that draws consumer traffic. So, I think that alone legitimizes the business model.

Michael: Yeah, definitely. Okay. So, just like you dug into the financial statements on VeriSign in order to figure out how their working, and how profitable they are, and how they function, and why they need funding by raising the fees that they charge, I want to dig in a little bit on ICA because I could not find any financial statements, so I want to ask you. How is ICA funded in order to support the policy and legal action?

Philip: ICA is funded by financial support from our members and our supports. And also, sometimes, we get donations from folks who choose not to be officially supporters or members. Our website is InternetCommerce.org.

You can see everything I have been up to for years. We post all of our comment letters. We put comments on issues that are pending in Washington and before ICANN. We are very transparent in our operations about what we are up to. When we started out, I have to say, we tried to build a much broader base of support to bring in a lot of the small domainers. We had two sequential Executive Directors who were tasked with trying to bring in people at a much lower membership dues level. For a couple of years we had a starting membership due of \$295 per year - less than one dollar a day. And while we had some members at that level, frankly, it was fewer than one hundred. It proved, I think, a lot of smaller domainers had the issue that: "Well, let Sedo pay. Let Frank Schilling pay. They have got the big interest here and the big wallets." And frankly, it was not my decision. We have a Board of Directors who decided it was not cost effective to be paying Executive Directors as much money when there was so little take-up on the recruitment. So, they restructured the membership structure about two years ago. To be a member of the ICA, the start dues are five thousand dollars per year. To be guaranteed a seat on the board it is twenty-five thousand dollars per year; and that is where our biggest members come in. In addition to the folks who contribute at that level, Nat Cohen of Telepathy who is a great guy and a great contributor to our policy views. He has been elected by the members at the lower levels to represent them on the board and be their voice on the board. You can be a supporter of the organization for as little as one thousand dollars a year, and we take donation in any amount by credit card, PayPal, etc. So, that is the structure right now.

Michael: Makes sense. So, \$5k per member.

Philip: That is the amount for people who have a significant. Even one thousand dollars a year, we are very appreciative of that. And someone is not going to contribute that unless they have significant investment in the domain name space and what we do matters to them; and there are quite a few people in that category.

Michael: Definitely. So, \$5k per member. \$25k for a seat on the board. Anybody, including myself - I do not make investments in domain names for flipping, so I do not have a large portfolio like other people, but I find this to

be an important topic. And so, I can make a donation of any amount to ICA and I can just do that on a regular basis, or a year basis, or whatever I chose.

Philip: Any way you want to.

Michael: Okay, that makes sense. What is the total income of ICA that then goes directly to expenses since you are not-for-profit?

Philip: It all goes. We run a very lean operation. I will be frank. My retainer and my expenses for attending ICANN meetings are the main, and pay an accountant to do our books and our corporate filing every year. That is all the expenses we have. I do an awful lot of work for the Association for, I think, a reasonable retainer, and the Board thinks so. As well, if we could raise more money, it would not go to my pocket. It would go to other activities that would benefit domain investors. Frankly, we should have some presence in Brussels with the European community because they are a big player on these policy issues, and right now we do not have the funds to afford that. If we had more money, we would do more PR - educating people, particularly inside the Washington Beltway, about the domain investment sector. If we had more funds, when there is a key trademark case or a key UDRP, we could file an Amicus Brief in Federal Court or we could find an attorney to represent a domainer who does not have a lot of money to fight a key UDRP issue, but it is important to everybody. So, those are the kinds of things we would do if we had more support. It is not that Phil Corwin would get more money if we had a bigger budget.

Michael: Definitely. But it sounds like most of the income goes to spending time to have you organize the issues for the group, organize the letters, get the input from people - members in the community -, pull together their thoughts, file the motions, make sure that you are attending the events, and that people are discussing the right topics.

Philip: Yes. And I do want to give a shout out to Sedo and to our President, Jeremiah Johnston, because I am paid for my time. Jeremiah spends a considerable amount of time on administrative duties related to being President for which he receives no compensation. He just does that and Sedo

allows him to do that, and we are very appreciative of that in-kind contribution beyond their financial contribution.

Michael: Definitely. And a lot of people, including Nat Cohen who has been a proponent for ICA with Domain Sherpa to try and get some sort of interview going and education to the community is also, I know, a big supporter. Is Jeremiah Johnston President of ICA?

Philip: Yes.

Michael: Okay. I could not find a Board of Directors listed on the ICA website. Maybe it was just because I did not find it. So, are you able to name the people that are associated with the Board of Directors of ICA?

Philip: Yeah, I am trying to think. Right now, it is Jeremiah is on there as President. Philip Reynolds from TrafficZ. John Greene from Oversee. He is their general counsel. And Nat Cohen, representing all the other members. So, that is the current board membership.

Michael: Great. And I believe those are the platinum sponsors and then, I also saw, regular members listed on your website. Telepathy, Escrow.com, WorldWideMedia, First Place, PPX, and Reflex Publishing. Does that sound right?

Philip: Right, and that is Mike Berkens, and Frank Schilling, and Greg McNair. People that are well known in the industry and contribute their money and their time to the ICA.

Michael: Got you. What is the total income of ICA?

Philip: It is very modest. It is less than two hundred thousand dollars a year, which is nothing for a Trade Group. You look at any company with trademark issues - any fortune five hundred corporate -, they spend more on one trademark council per year active in ICANN and International Trademark Association; and we have to represent the entire industry. It is a David versus Goliath struggle, but we think we, nonetheless, have a significant impact.

Michael: Definitely. On the ICA website, InternetCommerce.org for the audience, there is a Code of Conduct. It says, "The ICA will guide members in conducting their domain name investment and development activities with professionalism, respect and integrity." How does the ICA do that?

Philip: I am happy to say that our members are very above board professionals who do not want the hassle of UDRPs or trademark litigation. They do not want to waste their money investing in suspect domains. You cannot avoid an occasion UDRP. If you have a big portfolio, somebody is going to come at you because a lot of people out there do not understand Trademark Law or they are engaged in reverse domain name hijacking. But our Board adopted that Code of Conduct; let me give you an example. One of the provisions of that conduct is that domain investors should not try to exploit tragedies or disasters for commercial gain. And I just posted something about two weeks decrying, really, the disgusting and, sometimes, fraudulent efforts of some people to capitalize on the human misery of hurricane sandy with fake domain sites. Some of them just trying to monetize traffic with PPC. Some of them engaged in clear frauds, trying to pretend they were a legitimate charitable organization to try to divert money that should have gone to the Red Cross or other charitable organizations. So, we speak out, but we have never had a situation of any of our members being the subject of actions which show that they were engaged in improper practices and deliberate cybersquatting. And again, Trademark Law. There are gray areas. What our code requires is not engaging in intentional cybersquatting or intentional bad acts; and we have never had a problem with it.

Michael: Great. All right. It sounds like it is serving a great interest in the community. I think we have gone over a lot. Let me ask you this, Phil. How is the ICA preparing for the release of the new GTLDs and what do you believe is going to be the biggest challenge for domain investors once they are released?

Philip: Well, let me start with the second question first. I think the biggest challenge - and I am not here to give advice for domain investors - is whether they want to invest in particular new TLDs, and everyone is going to have to make their own judgment on that. I know some folks in the industry are of

the opinion that new GTLDs we have seen in the past have not been particularly successful for domain investment. I think we are looking at a different animal here, where there is going to be a lot more specialized verticals where people may want to go. And perhaps, the PPC model, to some extent, is on the wane anyway because of changes in search engine practices and changes in what PPC revenues are, but they may be great development opportunities in some of those new verticals for people. It is no secret, one of our well-known members, Frank Schilling, has started a company, Uniregistry, which is one of the major applicants for new TLDs. So, on the investment side, everyone is going to have to decide for themselves do they see reasonable investment opportunities in the new TLDs; and we are not here to give investment advice. What we are here to do is to make sure our particular focus with new TLDs, and we do this within ICANN in a couple of ways. We are a member of ICANN's Business Constituency, which gives us a lot of inside information flow we would not see otherwise, and an ability to talk other major business interests and see where there is common ground. We participate in working groups. We attend ICANN meeting, and I speak out at all the Public Forums at ICANN meetings. Our real challenge, again, with the new TLDs is that, unfortunately, some folks in the trademark community have looked at new TLDs as an opportunity to create a dirt-cheap substitute for the UDRP with a deck stacked against registrants so that they almost always win. And to create new Trademark Rights in domains that do not exist on the law books of any name, it is not ICANN's job to be a legislature creating new Trademark Rights. Absolutely, their policies should enforce and protect the existing Trademark Rights, but they have no business creating new Rights. We were engaged right up to this week in watching particularly Uniform Rapid Suspension, which is the new Rights Protection mechanism for the new TLDs. And let me say, whether a domain registrant intends to invest in new TLDs or not, they cannot ignore URS. We are not in favor of URS coming to .COM and the other in-common generic TLDs, but I would be lying to you to say that is not probable that they will be applicable to .COM and the other GTLDs at some point in the future. And there are a couple ways that can happen. One: ICANN's policy-making body - the GNSO - has resolved to address UDRP reform starting eighteen months after the first new TLDs are added to the root. So, we expect that first new TLDs to come online in the third or fourth quarter of 2013, so we are looking at that UDRP reform process starting some time in 2015. The GNSO Resolution

specifically says that they are going to look at the new Rights Protections, which is the Trademark Clearinghouse, which is the database of globally protected trademarks, and the URS at the time the UDRP reform. So, we know the trademark interests are going to advocate, at that point in time, that URS be applied to .COM and the other in-commons. Now, some of them tried to get that in the .COM Renewal Contract. We resisted that and they did not get it in there. There is another way it could come in. Right now, there is no more registry-registrar separation for the new TLDs. The old TLDs are still prohibited from being affiliated with a registrar, but they can apply to ICANN to end that separation. So, if VeriSign wanted to affiliate with a registrar to have it become part of their corporation, they could make an application to ICANN; and there are two possibilities there. Either .COM would then, as a condition of ending that separation, become subject to all of the new registry contract provisions, which includes URS, or VeriSign could apply and say: "We only want some of them," and that would be open to public comment. But again, we know that the trademark interest, at that point in time, would say: "We want URS on .COM." So, if you got .COM domains and .NET domains and you think URS is nothing to worry about because it is only for new TLDs, wake up and smell the coffee. We are going to be debating. We have already debated its application to the .COM. That debate is going to come around again and again, and that is why we have to make sure that the URS respects the legitimate rights of domain registrants; that it balances Registrant Rights against Trademark Rights, and gives adequate due process. There has, frankly, been some suggestions from the trademark industry that would turn URS into a trademark version of SOPA, where it is completely stacked against registrants, where they do not have adequate administrative rights. And as long as ICA is around, we are going to be fighting very strongly and very loudly against any attempts to get that kind of unfair advantage.

Michael: So, is it fair to say that it is a battle between the trademark owners and the domain names owners around these domain names, which may include trademarks?

Philip: Well, to be fair to the trademark owners. And let me say, I am a member of the International Trademark Association; I went to their big annual meeting that was held in Washington this year. They just have a

different perspective. They look at the potential for fourteen hundred new TLDs and then they look at defensive domain portfolios they already maintain where ninety percent of the domains they own and have to pay for every year are domains they really do not want at all; will never use. They only keep paying those registry fees to keep them out of the hands of bad actors. And there are bad actors out there. There are real cybersquatters. Not on our Association hopefully, but they exist out there. And they look at fourteen hundred and say, "What is this going to cost us? How many UDRPs are we going to have to bring? How many more domains are we going to have to buy that we do not want just to keep them out of the hands of bad actors?" So, they just have a different economic interest; and we respect and understand that interest, but we cannot let trample registrant rights while their protecting their own interests. And frankly, when we get UDRP reform on the table, if we can get some of the protections we want to registrants - address some of the complaints that registrants have about the way the UDRP operates now -, I do not see any reason why we cannot put on the table discussing things like: "Why do people have to keep paying year after year for domains that they will never use? Why can't they just lock them away somewhere, pay a one-time fee, and they are off the table for everybody from now till the end of the time?" So, I think we can find bargaining chips in those discussions to hopefully get a balanced solution.

Michael: Exactly. And as a trademark owner with small businesses, I feel the exact same way. I do not want nineteen hundred new TLDs, where I am worried that somebody else is going to try to take advantage of the trademark that I have registered, that I have made, put in good will and money in to develop; and somebody else is going to try and do it, and it is going to cost me money to file a UDRP. So, I completely understand. I understand who it is that ICA is representing. It is me, as a domain name investor, with generic domains. Mike Berkens. Frank Schilling. It is anybody in the domain name industry, but what I do not understand is the other side. If you are looking at the trademark holders, who is funding that organization? Who is behind it?

Philip: Well, it is the fortune five hundred. It is the big brand interests that have lots and lots of trademarks, and are most susceptible. Cybersquatting is the International Trademark Association. As an umbrella group, frankly and very unfortunately, it is also WIPO - the World Intellectual Property

Organization, which, as a UN Agency is supposed to take a balanced position, but frankly, the position has been taking on new TLDs. It sure looks like another Trademark Trade Association to me. Let me back up. WIPO's position on URS is wrong because we have now seen applications go in that refute this. WIPO said that the target price for administering a URS Case of three to five hundred dollars per case - and remember, URS is supposed to only be for black and white, incontrovertible cybersquatting.

Michael: Which is what UDRP was supposed to be.

Philip: Yeah, that is infringing. I mean if it is any kind of shades of gray, and not black and white, it is supposed to be in a UDRP; not in a URS. So, it should not be very expensive. You are not talking about a long, drawn out process here, but WIPO's position was that the trademark interest (Unclear 44:24.0) and, originally, the URS model gave a registrant twenty-one days to respond to a URS filing. The ICANN Board, last year, under pressure from trademark interest, caved in and reduced that to fourteen days. Now, fourteen days is not a lot of time for a domain registrant to say: "What is this URS notice? What are the rules? And who should I hire? And then they have to produce a response for me that is going to pass the laugh test." Two weeks is not a lot of time to respond to something that can result in your domain being suspended and taking it off the grid. And WIPO took the position that where a registrant does not respond in those fourteen days that the trademark owner should automatically win every case; that there is no review of their complaint at all. It is just an automatic win. So, that was our proposal for how to keep costs down. Let's have no justice at all for registrants. And I want to say I participated; over the past month, I was in a joint working group of the Business Constituency and the Intellectual Property Constituency, which had been pushing for tougher rights protections going beyond things really ICA cannot support. A considerable amount of what they are pushing for, but we have a voice, we get in the debate, and even that working group concluded: "No, we have got to have some substantive evaluation by somebody who understands Trademark Law. You cannot just have an automatic win in those cases." So, here we had a Business and Intellectual Property Constituency Working Group - joint working group - that rejected the WIPO position, and I was in long debates on conference calls with members of the group, and we won that one on a very fundamental point of protecting domain registrant

rights and, hopefully, that is going to be preserved as ICANN goes forward with implementing URS. But if ICA was not there, if I was not part of that working group, I am not sure it would have gone that way. And a lot of that stuff is below the radar. It is too much detail for most domainers; that is why they hire folks like me. But if you do not have a voice in the debate, nobody is going to consider your point of view. And one more thing I want to add - I am chuckling a little - Nat Cohen, who is on our Board, recently joined the Business Constituency. And he sent me an email about a week ago, after seeing some of the traffic on the Business Constituency email list, which basically said, "Phil, I had no idea of what you were up against in this group." But we are happy to have Nat and some other domainers in the Business Constituency to give a different point of view. And I will say, even when we do not agree, the people from the big corporations and the Trademark Association give us a fair hearing. They respect our views. They may not wind up agreeing with us, but nobody tries to shutdown our voice within those ICANN discussions. So, it is a fair debate, whether it comes out our way or not, and that we get our voice heard.

Michael: And that is important. If you have a follow-up question for Phil, please post it in the comments below and we will ask Phil to come back and answer as many as he can. Phil, I believe you are on Twitter with ICA. Is that correct?

Philip: Well, ICA has their own Twitter. They repost all my tweets. And I am on Twitter at @VirtualLaw.

Michael: Okay. At @VirtualLaw. Great. And I believe ICA - the Internet Commerce Association - is on Twitter at @ICADomains.

Philip: Yes, it is. And anything I post, ICA reposts. So, you can see everything we are doing at the ICA Twitter Feed.

Michael: Excellent. So, most of the audience has spent forty-five minutes with us here, Phil. I hope that they have realized that you are providing value not just to the members that are paying to be members or Board of Directors for the ICA, but that you are actually representing every domain name investor out there - big and small alike. And I will urge them to make a

donation that they feel comfortable doing, and they can go to InternetCommerce.org and look for a donation link, and they can make any size donation.

Philip: You can donate. You can join. We love in-kind contributions of contributing time on issues that are concern for you. That is a way to get more done. Thank you very much. We welcome any more support and, yes, we speak for whether you are a member or not. The positions we are taking in Washington and at ICANN are of benefit to you if you have any significant investment in domain registrations.

Michael: And I appreciate that. Phil Corwin, thank you for coming on the show, sharing the information about the Internet Commerce Association and what you are achieving for all domain investors, and thank you for being a Domain Sherpa.

Philip: Well, thanks so much for inviting me. It was a pleasure talking with you.

Michael: Thank you all for watching. We'll see you next time.

Watch the full video at:

<http://www.domainsherpa.com/phil-corwin-ica-interview/>